

**IN THE MATTER OF THE THOMAS R. BRAIDWOOD, Q.C.,  
COMMISSIONS OF INQUIRY UNDER THE *PUBLIC INQUIRY ACT*,  
SBC 2007, c. 9**

Room 801  
Federal Courthouse  
701 West Georgia Street  
Vancouver, B.C.

January 22, 2009

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PROCEEDINGS AT  
HEARING (DAY 4)

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Commissioner:	T.R. Braidwood, Q.C.
Commission Counsel:	A. Vertlieb, Q.C.
Associate Commission Counsel:	P. McGowan
Counsel for Zofia Cisowski:	W. Kosteckyj, S. Whiteley, S. Parhar

(ii)

Counsel for Government of Canada:	J. Brongers, H. Roberts
Counsel for Vancouver Airport Authority:	D. Stewart, B. Ergun
Counsel for B.C. Civil Liberties Association:	G. Pastine, S. Dubinsky
Counsel for Government of Poland:	D. Rosenbloom
Counsel for Corporal Benjamin Robinson:	R. Harris
Counsel for Constable Gerry Rundel:	T. Beaubier
Counsel for Constable Bill Bentley:	D. Butcher
Counsel for Constable Kwesi Millington:	R. Hira, Q.C.
Counsel for Public Service Alliance of Canada:	C. Buchanan, B. Matthews
Counsel for City of Richmond:	J. Goulden, M. Kleisinger, G. Trotter
Counsel for TASER International, Inc.	D. Neave, J. Spencer
Registrar:	L.N. Giles
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Transcriber:	P. Kealy

Vancouver, B.C.  
January 22, 2009

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THE COMMISSIONER: Good morning.

MR. VERTLIEB: Mr. Commissioner, maybe we could deal with any of our the other participants who have submissions on Mr. Neave's motion, and then I can make my comments, please.

THE COMMISSIONER: Does anybody have any comments?

MR. KOSTECKYJ: Yes, Mr. Commissioner. Walter Kosteckyj, counsel for Mrs. Cisowski.

With respect to both, I say that the application is premature at this point. The factual evidence upon which these reports are to be based, particularly the medical reports, is not yet in play. The evidence that Mr. Neave was talking about -- alcohol consumption and history of alcohol abuse and so forth -- is not at present before the court, and it seems to me that those issues should be decided before those expert reports are ruled upon.

My issue with respect to the report where the Taser was working appropriately is that that report doesn't necessarily say either that the Taser is safe or that it was subject to independent study. The independent analyst, from what my recollection of that report is, said that based upon the specifications provided by TASER and TASER alone, it was working within those limits. So I have some question about the weight of that report more than I do about the admissibility of it.

But as to the medical reports, I say that application is premature at this point and ought to wait until at least more of the body of evidence is in.

THE COMMISSIONER: In terms of whether or not counsel for the Commission should call these witnesses or not, do you have any comment to make whether or not that should be declared at this stage?

MR. KOSTECKYJ: I say that it ought not to be declared at this stage and that the evidence and the basis upon which those witnesses should be called should be only made after the evidence is properly in, or at least enough of it to be able to make the application in a clear way.

THE COMMISSIONER: All right. Thank you. Any other

1           comments?

2       MS. ROBERTS: Helen Roberts. I act for the Government  
3           of Canada.

4       THE COMMISSIONER: Yes, Ms. Roberts.

5       MS. ROBERTS: I'd like to start by expressing the  
6           Government of Canada's condolences to Mrs.  
7           Cisowski. We haven't had the opportunity at this  
8           hearing yet, and I'd like to do that.

9           As you stated at the beginning of the  
10          inquiry, the inquiry is about learning the truth  
11          of what happened. And Canada is voluntarily  
12          participating in this inquiry in order to achieve  
13          that goal so that we can all find out the truth of  
14          what happened, and we assume that all the  
15          participants are working towards that goal.

16          The medical and psychiatric experts have all  
17          considered materials collected by the Integrated  
18          Homicide Investigation Team, and they have  
19          provided opinions within their respective fields  
20          of expertise. In our view, it would be  
21          inappropriate not to call that evidence and not to  
22          permit the public to see that evidence just  
23          because some of it may not reflect well on Mr.  
24          Dziekanski.

25          I do a lot of work before the Coroner's  
26          Inquest in British Columbia, and it is common  
27          practice at inquests to lead the pathologist's  
28          evidence about the cause of death at the beginning  
29          of the inquest, and that is to provide a context  
30          for the questioning of witnesses. I believe it  
31          would be helpful in this case to have those expert  
32          opinions entered into evidence so that we all know  
33          what the opinions are, so that we can all then  
34          test the evidence of the various witnesses upon  
35          whom the experts relied in order to assist you in  
36          determining whether those opinions should bear  
37          weight, whether the facts that they relied upon  
38          are substantiated by the evidence. And it's  
39          extremely difficult to do that without knowing  
40          what the experts relied upon and having that in  
41          the public domain so that it is appropriate to ask  
42          the witnesses about it.

43          I'm not sure that I can add anything further.  
44          Mr. Kosteckyj suggested that it was not  
45          appropriate to lead expert evidence until all the  
46          facts were in, until they were in fact findings of  
47          fact. That's not practicable. The evidence from

Submissions by Ms. Roberts (for Government of Canada)  
Submissions by Ms. Pastine (for B.C. Civil Liberties  
Association)

1 the experts will have to be led before you have  
2 had an opportunity to file your report and make  
3 findings of fact. So the reality is that the  
4 factual evidence and the expert evidence will go  
5 in before you have reached your conclusions, and I  
6 think it would be useful to have that in at this  
7 stage.

8 So Canada does support the application by  
9 TASER to file the expert reports at this time, to  
10 call the experts -- and that is with regard to the  
11 medical and psychiatric evidence in particular.  
12 With regard to the Taser testing, the evidence  
13 simply says that the machine operated within the  
14 specifications of the manufacturer. That is  
15 important evidence. It is not the answer to all  
16 the questions but it is certainly part of the  
17 picture.

18 Thank you.

19 THE COMMISSIONER: All right. Anybody else?

20 MS. PASTINE: Thank you, Mr. Commissioner. Grace  
21 Pastine, counsel for the B.C. Civil Liberties  
22 Association.

23 THE COMMISSIONER: Yes, Ms. Pastine.

24 MS. PASTINE: We also take the position that it would  
25 be premature at this time to have the reports  
26 tendered. This commission of inquiry, as you  
27 know, is engaging in a fact-finding exercise and  
28 it has been mandated to report on all the facts  
29 and circumstances that led to Mr. Dziekanski's  
30 death. Our submission is that the expert opinions  
31 are not relevant until the factual bases of those  
32 opinions have been established, which has of  
33 course not yet happened.

34 We see that there will be no disadvantage to  
35 counsel to hold off and wait to determine whether  
36 or not to admit those reports as evidence until a  
37 later date. All counsel at this inquiry have  
38 access to those reports and can base their cross-  
39 examinations upon those reports. So we don't see  
40 there is being any disadvantage and take the  
41 position that they ought not to be tendered at  
42 this point.

43 THE COMMISSIONER: Have you any comment to make on  
44 whether or not counsel should declare whether or  
45 not these witnesses should be called, or indeed  
46 undertake to call them to the best of his ability?

47 MS. PASTINE: We also take the position that it would

Submissions by Mr. Hira (for Constable Millington)  
Submissions by Mr. Butcher (for Constable Bentley)

1           be premature to make a decision at this point on  
2           that issue.  
3    THE COMMISSIONER: All right. Thank you.  
4    MS. PASTINE: Thank you.  
5    THE COMMISSIONER: Yes, Mr. Hira.  
6    MR. HIRA: Thank you, Mr. Commissioner. Ravi Hira  
7            appearing for Constable Kwesi Millington.  
8            I echo and support Ms. Roberts' comments and  
9            add one more thing. These reports have been part  
10           of the IHIT report that was presented to Crown  
11           counsel. Crown counsel made a charging decision  
12           and released a public statement based, amongst  
13           other things, one would assume, on these reports.  
14           So their existence is in the public realm,  
15           and --  
16    THE COMMISSIONER: Well, I wouldn't go that far.  
17            Anyway --  
18    MR. HIRA: Well, this --  
19    THE COMMISSIONER: The understanding that they exist is  
20           probably in the public realm.  
21    MR. HIRA: That's what I meant, as opposed to their  
22           content. And it would be unfortunate if this  
23           commission did not have access to that evidence  
24           knowing that it exists. In other words it is  
25           relevant evidence. We know it exists. The public  
26           knows it exists. And in order for the commission  
27           to report back pursuant to its mandate, it should  
28           have that evidence. So that is the only  
29           additional point that I make beyond what Ms.  
30           Roberts said.  
31    THE COMMISSIONER: Thank you. Yes, Mr. Butcher.  
32    MR. BUTCHER: David Butcher for Constable Bentley. I  
33            adopt the submissions of Ms. Roberts and Mr. Hira,  
34            but having said that with respect to these  
35            reports, that's not to be taken as acceptance or  
36            agreement with all of their contents.  
37    MR. HARRIS: Could you speak up, sir.  
38    MR. BUTCHER: Sorry.  
39    THE COMMISSIONER: You can pull the mike towards you if  
40            you wish.  
41    MR. BUTCHER: My request that the reports be filed is  
42            not to be taken as agreement or acceptance with  
43            respect to the correctness of their contents.  
44    THE COMMISSIONER: Thank you.  
45    MR. HARRIS: Mr. Commissioner, it's Reg Harris, counsel  
46            for Corporal Monty Robinson.  
47            I support the submissions by Ms. Roberts,

Submissions by Mr. Stewart (for Vancouver International Airport)

Submissions by Mr. Vertlieb (Commission counsel)

1 Mr. Hira, and Mr. Butcher. I also add, at this  
2 stage, this is not a criminal process, as everyone  
3 is well aware. I do not see the harm that would  
4 flow from them being entered at this stage to  
5 assist generally.

6 Now, if counsel have particular issues on  
7 evidentiary points contained therein, certainly  
8 that might be something that could be addressed  
9 later on. But my review of them seemed to suggest  
10 they would be of great assistance, given the task  
11 that this Commission is facing.

12 THE COMMISSIONER: Thank you very much. Yes, counsel.

13 MR. STEWART: Dwight Stewart, counsel for the airport.

14 My only thought with this is that I think for  
15 everyone involved, these reports were provided  
16 only about five working days before we started,  
17 and I know that all counsel have been working  
18 very, very hard over the last ten days to get  
19 ready for this. I think that anything that we can  
20 do to provide greater certainty over what to  
21 expect makes the job of all counsel just a little  
22 bit easier. If we're agreeing now, and I can't  
23 think of any reason why -- this evidence will go  
24 in and these experts at least may be called -- I  
25 think just to know that they're going to be there  
26 and be part of the record is of great assistance  
27 to counsel just in terms of processing the volume  
28 of information that's been provided so close to  
29 the start of a long hearing.

30 THE COMMISSIONER: All right. Thank you. Yes,  
31 Mr. Vertlieb.

32 MR. VERTLIEB: Thank you, Mr. Commissioner. Just by  
33 way of background, Mr. Neave spoke to the letter  
34 he wrote to me on December 19 wanting to know  
35 about an updated list. In point of fact, just so  
36 you know -- and he made the comment that that  
37 wasn't answered then -- we didn't even get the  
38 RCMP material until December 22 in the afternoon.  
39 That was delivered to us by counsel in the form of  
40 a C: drive. That meeting of the 22nd in the  
41 afternoon resulted in the C: drive being sent to  
42 your office. Because of Christmas and the  
43 holidays and staffing, those documents weren't put  
44 into paper form until sometime after that.

45 The first time I have seen that product was  
46 once we started back in intensive preparation for  
47 these hearings, and that would be after January 5.

1           So that material came to Commission counsel only  
2           this month.

3           Now, as to the request for that issue, the  
4           motion was filed by Mr. Neave on January 15.  
5           There had not been any request made by Mr. Neave,  
6           to me in writing or informally, to have a  
7           declaration on those witnesses, just so you know  
8           that. The first request came by way of a motion,  
9           which is a fact I just want to give you by way of  
10          background. So at that point in time when the  
11          motion was filed, there had not even been a  
12          request for these people.

13          Now, where we are at in terms of the request  
14          that we now take -- and we're not standing on the  
15          formality. There are rules that we have set out  
16          in your procedures for this, but we're not  
17          standing on that as a formality and saying no  
18          proper request was made. It's obvious. We're  
19          accepting the motion as a request.

20          Here's where we're at. We need to review  
21          those reports in detail, and we stand by the  
22          commitment that we will bring all relevant  
23          evidence to you, and we will do that. The  
24          difficulty is those reports are lengthy and they  
25          need to be analyzed in a thorough way by  
26          Commission counsel. And then we need to take  
27          instructions from other people who are  
28          independent, who we have discussed the case with,  
29          and determine just what the nature of that  
30          evidence is and determine its proper relevance.

31          We will not act irresponsibly by committing  
32          to witnesses before we know fully what the opinion  
33          is and to ensure it's relevant. And so, given  
34          that we're somewhat otherwise engaged right now  
35          with these hearings and organizing factual  
36          evidence, we just haven't turned our mind to those  
37          witnesses in the way we need to do so.

38          So what I want to say to you is that at no  
39          point have we ever said or even decided that we  
40          won't be wanting to call that evidence. In fact,  
41          we had always believed that Dr. Lee would be a  
42          witness because he was the pathologist, and we've  
43          had his report, I should add, for months. His  
44          report was not new to us. We had that months ago.  
45          So had there even been a request about Dr. Lee in  
46          the normal way, we would have said yes.

47          As far as another witness, Dr. Lu, the

1           psychiatrist from Vancouver, he in fact made a  
2           presentation to you at the urging of Commission  
3           counsel in May when we had the study session. So  
4           we certainly have never had issues around that.

5           You heard as well during the May hearings  
6           from a Sergeant Milligan from Vancouver Police  
7           Department on use of force, and we're alive to  
8           that.

9           So I just want you to understand that we've  
10          never said no to any of this.

11          The issue about dealing with the reports  
12          being filed now so that the facts can be put to  
13          the witness is just really not sensible in any  
14          way. Any of the factual underpinnings that those  
15          people have taken into account can be put to the  
16          witnesses because everyone has those reports.

17          So I just wanted you to be very clear that at  
18          no point have we ever said we will not be calling  
19          that evidence.

20          Now, in terms of just simply filing at this  
21          time, there's a practical problem. Some of the  
22          participants may want those people presented for  
23          cross-examination, and that is potentially an  
24          issue for us because two of those experts are in  
25          the United States and beyond the reach of this  
26          Commission. And we have no idea whether or not  
27          arrangements can be made with those two people,  
28          should anyone want them to be available for cross,  
29          to even come here. We don't know what those  
30          people would want by way of arrangement with this  
31          Commission.

32          So the danger of filing now, and just filing,  
33          is that we may not be able to have all of these  
34          people brought forth to give *viva voce* evidence,  
35          should that be requested or necessary.

36          Now, I also want to tell you in terms of the  
37          timing, the focus we've had at this stage is to  
38          really do everything we can to bring in the  
39          factual underpinning of what happened and do it in  
40          a way that causes the least inconvenience to the  
41          many witnesses involved. That includes people  
42          from the Border Services. It includes people from  
43          the airport. It includes people from the fire  
44          department. It includes just citizens of the  
45          community who had no participation at all.

46          So our focus has been to do everything we can  
47          to expedite the hearing in that way, and we have

1 made the decision in that context to deal with  
2 that in a very, very focused way and then come  
3 back and deal with the medical evidence. And  
4 that's why in my opening to you the seventh area  
5 of inquiry that I outlined of the eight was the  
6 medical evidence, being essentially the very last  
7 part of the inquiry, subject only to dealing with  
8 policy changes and recommendations. And our  
9 thinking had been -- knowing that we were  
10 scheduled to sit through January and through the  
11 end of February, our hope had been that we could  
12 then in the latter part of February, when we have  
13 a good sense of all the non-expert evidence and  
14 we've accommodated people and brought them in  
15 before you, that we could then have the meetings  
16 we need to have to properly and responsibly assess  
17 that evidence and make decisions about the  
18 relevance.

19 And so there's been never any time ever by  
20 your Commission to say to anyone that this  
21 evidence won't be called. And I want you to stand  
22 assured that that is the way we will handle the  
23 function of Commission counsel.

24 And so all we're saying to you right now is  
25 that we do believe it's a premature application  
26 and we wish to keep going with our factual  
27 evidence and proceed the way we're going.

28 THE COMMISSIONER: Do you have any comment on the  
29 filing of the report testing the Taser?

30 MR. VERTLIEB: The answer is no. That was a new report  
31 to us. We had no indication of that report at  
32 all. And so that has not been sent to anybody in  
33 any way. We're familiar with the work by the CBC  
34 on Taser testing and we've read, as many of us  
35 have, about police inquiries or police action  
36 since that CBC report. But we just have not  
37 analyzed that at all, so I can't assist you.

38 But I will say this. In the unlikely event  
39 that we decided not to call any of that evidence  
40 for whatever reason, our colleagues will have  
41 notice, and they have every opportunity to come  
42 before you and make an application. I don't  
43 anticipate that -- my thinking is that it may not  
44 come down that way. But I want to say, if we tell  
45 them that we're not going to call them, they have  
46 options before you.

47 THE COMMISSIONER: All right. Thank you. Mr. Neave,

1 have you any answer?

2 MR. NEAVE: Thank you, Mr. Commissioner. David Neave  
3 with TASER.

4 I want to respond to the comments from my  
5 colleagues with respect to the application being  
6 premature. I do so, and I hearken back to my  
7 initial submissions with respect to the very  
8 purpose of this Commission that is set out in the  
9 OIC. It's to provide Mr. Dziekanski's family and  
10 the public with a complete record of the  
11 circumstances of and relating to Mr. Dziekanski's  
12 death. And clearly, as I endeavoured to show to  
13 you upon my review of the expert reports and their  
14 contents, each of those experts provides  
15 information which clearly falls within the purpose  
16 for which this Commission was established. And to  
17 withhold the filing of the documents at this stage  
18 does not, with respect, accord with the purpose of  
19 the Commission, and in my respectful submission,  
20 doesn't accord with the principles of fairness to  
21 either the participants or to the public, who have  
22 a right to know the facts underlying and  
23 circumscribed by the purpose of this Commission.

24 The questions of -- my friend has said we  
25 don't even know if they're relevant because we  
26 need to talk to others. Well, that doesn't affect  
27 the relevance of the opinions themselves. What it  
28 may do is place the opinions and place issues  
29 around the opinions that you will decide with  
30 respect to whether you reject or accept their  
31 opinions, but clearly they're relevant to the  
32 issues for which this Commission was established.  
33 And in my respectful submission, each of the  
34 opinions, including the Taser testing ones, ought  
35 to be filed at the outset so that we have  
36 confidence in what the record is going to look  
37 like, because according to my friend, he says he  
38 may not -- as I understood him, may not feel it's  
39 necessary for these individuals to be called in  
40 any event. And I take issue with that.

41 With respect to the cross-examination issue,  
42 we can sort that out as it goes. We don't know if  
43 there will be other experts that may be called in  
44 addition to these individuals, and we can deal  
45 with that in due course.

46 But what we have before you now is a body of  
47 evidence which are relevant to the purposes for

1           which this Commission was established and, in my  
2           respectful submission, ought to be filed now.  
3           It's not premature.

4           And those are my submissions, barring any  
5           questions you may have.

6       THE COMMISSIONER: Thank you. What I'm going to do is  
7           make an interim ruling. And I do this partly  
8           because to some extent I am responsible for the  
9           position we're in, in this sense that I did not  
10          wait for the decision to be made as to whether or  
11          not the officers involved should or should not be  
12          charged criminally and set this date in advance of  
13          that decision being made. Now, I'm not in any way  
14          in these remarks criticizing when the decision was  
15          made. I'm just saying this was a fact of life. I  
16          thought that the public needed to get on with this  
17          hearing, and accordingly I set it.

18          Now, because of those things, counsel has  
19          received these documents very late, and as it has  
20          been explained by Mr. Neave in his opening  
21          remarks, those opinions are very full and very  
22          complicated. And so I am going to have all of the  
23          documents -- that is to say the opinion reports  
24          and the Taser testing -- marked as A for  
25          identification, A, B, C and so on for  
26          identification in these proceedings. I am not  
27          going the full route of having them elevated to  
28          the status of an exhibit partially because I'm  
29          somewhat concerned about cross-examination.  
30          Namely I don't particularly at this stage want to  
31          make a ruling that has a medical opinion as an  
32          exhibit if it cannot be tested on cross-  
33          examination. I am alive to the fact that I need  
34          not follow closely the rules of evidence  
35          established in the Supreme Court, but yet as a  
36          matter of fairness and because of the value placed  
37          in our system on cross-examination, I am concerned  
38          about that point.

39          So accordingly, the first ruling will be that  
40          all of these opinions including the testing will  
41          be marked for identification. In that sense they  
42          can be useful if anyone needs them.

43          With reference to the calling of the  
44          witnesses themselves, I currently am of the  
45          opinion -- and as I say, this is an interim,  
46          tentative ruling -- that they are *prima facie*  
47          relevant. And that being so, I am somewhat

1 concerned about the availability of those  
2 witnesses. And accordingly, I am urging Mr. Neave  
3 and Commission counsel to have a discussion as to  
4 the availability of those witnesses so that the  
5 procedure can be beginning to be in place as to  
6 when they may or may not be available, and then,  
7 when the final decisions are made, we're ready to  
8 go.

9 So that's my interim ruling. Yes, Mr. Neave.

10 MR. NEAVE: Thank you, Mr. Commissioner. It's David  
11 Neave, for the record. Just in terms of a point  
12 of clarification -- and I'm more than pleased to  
13 assist Mr. Vertlieb with trying to contact these  
14 individuals, but we have had no contact with them.  
15 They're not --

16 THE COMMISSIONER: Neither has Mr. Vertlieb.

17 MR. NEAVE: No, fair enough. And I'm happy to do that.  
18 I'm happy to facilitate that.

19 THE COMMISSIONER: For all we know, they're in the  
20 hospital.

21 MR. NEAVE: Hopefully not.

22 THE COMMISSIONER: No, hopefully not.

23 MR. NEAVE: And I might seek the assistance of counsel  
24 for the Government of Canada given that they were  
25 identified and --

26 THE COMMISSIONER: Well, whatever. I'm just urging  
27 cooperation so that --

28 MR. NEAVE: Yes.

29 THE COMMISSIONER: -- if and when the time comes that  
30 they can be called, we all know when they're  
31 available.

32 MR. NEAVE: Thank you, Mr. Commissioner.

33 THE COMMISSIONER: I'm tentatively hoping that the  
34 second and third weeks of March these hearings  
35 will not take place, that we can all have a  
36 respite from them over those two weeks. But  
37 that's just a tentative I'm mentioning. I know  
38 that some counsel has expressed the view that  
39 they'd like to be with their children over the  
40 spring break, and that encompasses one of those  
41 weeks. All right. Thank you.

42 MR. NEAVE: Thank you, Mr. Commissioner.

43 MR. VERTLIEB: Thank you, Mr. Commissioner. Just on  
44 that last comment, we have informed all counsel  
45 that we will not be sitting March 9 to 20 to  
46 accommodate witnesses and other needs, so that is  
47 a confirmed fact.

12  
Tina Zadavec  
In chief by Mr. McGowan

1 THE COMMISSIONER: Thank you very much.  
2 MR. VERTLIEB: Thank you, Mr. Commissioner. That takes  
3 care of that motion, and then we can just proceed  
4 now. We have two witnesses for the morning  
5 session.  
6 MR. MCGOWAN: Mr. Commissioner, the first witness this  
7 morning is a Border Services officer, Ms. Tina  
8 Zadavec.

9  
10 TINA ZADRAVEC, a witness,  
11 affirmed.  
12

13 THE REGISTRAR: Could you state your full name, please.  
14 A Tina Maria Zadavec.  
15 THE REGISTRAR: Could you spell your last name.  
16 A Z-A-D-R-A-V-E-C.  
17 THE COMMISSIONER: Thank you very much, Ms. Zadavec.  
18

19 EXAMINATION IN CHIEF BY MR. MCGOWAN:  
20

21 Q Now, Ms. Zadavec, the spelling of your name looks  
22 like "Zadravik" but it's actually pronounced  
23 "Zadravitz"; is that correct?  
24 A Yes.  
25 Q Thank you. You live in the Lower Mainland?  
26 A Yes.  
27 Q After high school, you were self-employed between  
28 1986 and 1992; is that correct?  
29 A '86 to '91.  
30 Q '86 to '91, okay. And you have been employed  
31 since 1992 by the federal government?  
32 A Yes.  
33 Q In various capacities including for seven years in  
34 the tax department?  
35 A Yes.  
36 Q You started with Immigration Canada in 2004; is  
37 that right?  
38 A Yes.  
39 Q And at the time you started working for  
40 Immigration Canada, it was a separate entity from  
41 Customs; is that right?  
42 A Yes.  
43 Q They ultimately merged and you now work as a  
44 Border Services officer for Customs and  
45 Immigration?  
46 A Canada Border Services Agency, yes.  
47 Q And that encompasses both Customs and Immigration

13  
Tina Zadavec  
In chief by Mr. McGowan

1           currently?  
2       A     Yes.  
3       Q     You're still working full time at the Vancouver  
4           International Airport; is that right?  
5       A     Yes.  
6       Q     I'm going to ask you to start with, Ms. Zadavec,  
7           just a few questions about your job generally.  
8           I'll ask you to keep in mind that the time period  
9           I'm talking about is October of 2007; is that  
10          okay?  
11       A     Yes.  
12       Q     All right. And I'll ask you just to keep your  
13           voice up while you're speaking and direct your  
14           voice towards the microphone, please.  
15           In 2007, what did you wear when you were  
16           working in terms of a uniform?  
17       A     Shirt, pants, duty belt, vest, boots.  
18       Q     I take it those had some logo or insignia that  
19           designated you were an Immigration officer?  
20       A     Yes. They have what are called flashes on the  
21           arms.  
22       Q     Did you carry any tools?  
23       A     Yes.  
24       Q     What were those?  
25       A     Retractable baton, O/C spray, handcuffs.  
26       Q     And in 2007, were you working primarily on the  
27           immigration side?  
28       A     Yes.  
29       Q     October? And what were your duties when you were  
30           working on the immigration side, yours personally?  
31       A     To process travellers entering into Canada. To  
32           assist other officers in technical aspects of the  
33           job.  
34       Q     Now, we've heard about people working at the  
35           Primary Inspection Line. That's not something you  
36           would have done in 2007, or is it?  
37       A     That's correct. I would not have worked at the  
38           Primary Inspection Line at that time.  
39       Q     You were primarily stationed in what we call  
40           Immigration Secondary; is that right?  
41       A     Yes.  
42       Q     I wonder if you'd just -- is there a laser pointer  
43           beside you? Perhaps our registrar could get you  
44           one. I wonder if you could just indicate for the  
45           Commissioner on the map over your right shoulder  
46           the area in the Customs Hall where you would have  
47           been stationed to work.

14  
Tina Zadavec  
In chief by Mr. McGowan

1 A (Indicating)  
2 Q You're indicating the darker blue area at the top  
3 of the map; is that right?  
4 A Yes.  
5 Q Now, is that the area exclusively where  
6 Immigration worked at that time?  
7 A Yes.  
8 Q There would have been Customs people working at  
9 other areas; is that right?  
10 A Yes.  
11 Q And that includes the Primary Inspection Line?  
12 A Yes.  
13 Q The baggage carrousel area?  
14 A Yes.  
15 Q And Customs Secondary?  
16 A Yes.  
17 Q And the Point?  
18 A Yes.  
19 Q And I take it as part of your work you interacted  
20 freely with the people working the Customs jobs?  
21 A Yes.  
22 Q You could certainly speak with them and share  
23 information with them?  
24 A Yes.  
25 Q You were familiar with the Customs process as well  
26 as the Immigration process?  
27 A No.  
28 Q Did you know generally how people proceeded  
29 through the Customs Hall and the various points  
30 they would have to pass?  
31 A Yes.  
32 Q So you knew a passenger would come through the  
33 PIL?  
34 A Yes.  
35 Q Did you know what took place at the PIL in terms  
36 of the scanning of the passport and the taking of  
37 any information?  
38 A Yes.  
39 Q You were working on the evening of October 13th,  
40 were you, ma'am?  
41 A Yes.  
42 Q What was your shift that evening, if you recall?  
43 A I don't recall, but I do recall it was an  
44 afternoon shift or evening shift.  
45 Q Roughly what hours would you have been working?  
46 A Perhaps 4:00 to 1:00.  
47 Q That's 4:00 in the afternoon till 1:00 in the

15  
Tina Zadavec  
In chief by Mr. McGowan

1 morning?  
2 A Yes.  
3 Q And did you have a specific task you were assigned  
4 that evening or position that was assigned to you?  
5 A No.  
6 Q You were --  
7 A Just my normal duties.  
8 Q And that would have included working in the  
9 Secondary Immigration area assisting processing  
10 immigrants or other people coming on various types  
11 of visas?  
12 A All travellers.  
13 Q All travellers, okay.  
14 A Yes.  
15 Q Now, I understand there's a couple of aspects of  
16 your evidence that are relevant to what happened  
17 with Mr. Dziekanski, a couple of things that  
18 happened that evening. Am I right about that?  
19 A It would depend -- yeah. I'm not sure what  
20 you're --  
21 Q Let me be more specific. Maybe that will help.  
22 You took a telephone call at some point in the  
23 evening which you ultimately learned had some  
24 connection with Mr. Dziekanski; is that right?  
25 A Yes.  
26 Q And you also made some personal observations of  
27 Mr. Dziekanski later in the evening; is that  
28 right?  
29 A Yes.  
30 Q Let me ask you first of all, have you seen a  
31 photograph of Mr. Dziekanski or --  
32 A Yes.  
33 Q Have you seen the video?  
34 A No, I haven't. I don't watch the video.  
35 Q The person you made observations of later in the  
36 evening, do you recognize him as the same person  
37 you saw in the photograph?  
38 A Yes.  
39 Q You're confident that was Mr. Dziekanski?  
40 A Yes.  
41 Q I'm going to start, Ms. Zadavec, by asking you  
42 about the telephone call. I'm going to ask you to  
43 take your time with your evidence. Tell us, when  
44 I ask you questions, everything you remember by  
45 way of an answer. I'm going to ask you, if you're  
46 uncertain, to tell the Commissioner you're  
47 uncertain, and likewise if you're confident about

16  
Tina Zadavec  
In chief by Mr. McGowan

1           your answer, please feel free to say so as well.  
2           Okay?  
3       A     Yes.  
4       Q     The telephone call you received, tell us how it is  
5           that it came into the office, if you know, and why  
6           you know that.  
7       A     The call I received that evening came in on what  
8           we call line 8. It's a dedicated phone line to  
9           allow the public access to Immigration officers  
10          when our front office was closed.  
11       Q     Now, you made reference to a front office. Where  
12          is this front office located?  
13       A     It doesn't show on this map. I can give you an  
14          idea where.  
15       Q     If you could give us some indication as to  
16          approximately where it would be.  
17       A     It would have been in this vicinity here. This  
18          map doesn't show what the hallway -- this hallway  
19          looked like at that time. But this hallway  
20          continued down further and then went toward the  
21          outside wall, and then the front office was near  
22          the outside wall.  
23       Q     I'm going to place a map before you which is a  
24          small cut-out of that map. I'm just going to ask  
25          you a couple of questions about this and then  
26          perhaps we'll have it marked. Is this a smaller  
27          piece of the Customs Hall which shows a close-up  
28          of the Immigration area where you worked?  
29       A     Yes.  
30       Q     And does this map designate approximately how the  
31          area looked when you were working in October of  
32          2007?  
33       A     Yes.  
34       MR. MCGOWAN: I wonder if that could be the next  
35          exhibit, please, Mr. Commissioner.  
36       THE COMMISSIONER: Yes.  
37       THE REGISTRAR: That will be marked as Exhibit Number  
38          9.  
39  
40                   EXHIBIT 9: Copy -- 8½" x 14" Floor Plan of  
41                   Canada Customs area; marked by witness  
42  
43       MR. MCGOWAN:  
44       Q     Now, Ms. Zadavec, I wonder if you could just hold  
45          up your map, and so we're all holding it the same  
46          way, with the baggage carrousel at the bottom,  
47          and line it up the same way as the map you've seen

17  
Tina Zadavec  
In chief by Mr. McGowan

1 over there. And if you could just point for the  
2 Commissioner and counsel to the approximate area  
3 of the outside office you were referring to.  
4 You're showing an area close to the top of the  
5 map, the diagram which is on there adjacent to  
6 what looks to be a hallway?  
7 A Yes.  
8 Q What hours is that office open?  
9 A At that time I believe it was 8:00 a.m. to 4:00  
10 p.m. Monday to Friday -- or no, I'm sorry. It was  
11 also open on weekends. But 8:00 a.m. to 4:00 p.m.  
12 Q I'm sorry, you said from 8:00 in the morning till  
13 what time?  
14 A 4:00 p.m.  
15 Q 4:00 p.m. And it was manned by an Immigration  
16 person?  
17 A A clerk, yes.  
18 Q A clerk.  
19 A An Immigration clerk, yes.  
20 Q An Immigration clerk. Okay. And when the office  
21 was closed -- well, what was the function of the  
22 office? Maybe tell me that first.  
23 A It had many functions. It provided access to the  
24 public -- for the public to access general  
25 immigration information. Also we had -- there are  
26 a lot of clients who have to report to us for  
27 various actions, and so they would report to the  
28 front office and then the clerk would put them in  
29 touch with the appropriate officer that needed to  
30 assist them in completing whatever it is they were  
31 doing.  
32 Q Did the clerk also act as a liaison between people  
33 in the non-secure area and Immigration officials  
34 or others on the inside?  
35 A The clerk would come to Immigration officers and  
36 relay information as appropriate. If somebody  
37 came in to see them, the clerk would tell you that  
38 someone was there to see you.  
39 Q So one of their functions, if I understand you,  
40 was to speak with perhaps concerned family members  
41 or others waiting for a passenger coming through  
42 the international terminal?  
43 A I don't know that that would be part of their  
44 functions. I don't know.  
45 Q When the office was closed, was there any ability  
46 for the public -- and I think you're going to say  
47 yes, this is line 8 -- to communicate with the

18  
Tina Zadavec  
In chief by Mr. McGowan

1           inside?  
2       A     Yes.  
3       Q     And am I right that was through what you called  
4           the line 8 phone?  
5       A     Yes. It was a phone situated outside the closed  
6           office door, accessible from the hallway, and  
7           there was a sign on it that told people to simply  
8           pick up the phone. When they picked up the phone,  
9           the phone would begin ringing inside the office at  
10          all of the cubicles, and it rang to show flashing  
11          on line 8.  
12       Q     And was this telephone in the same location the  
13           office was, just outside?  
14       A     It was just outside the front door of the front  
15           office.  
16       Q     I wonder if you would be so kind as to take a red  
17           pen and draw a circle on the exhibit around the  
18           location of both the telephone and the outer  
19           office that you've been referring to.  
20       A     Do you want me to indicate the telephone  
21           separately?  
22       Q     Are they right in the very same area?  
23       A     Yes.  
24       Q     I think it would be sufficient if you draw a  
25           circle around both the office and the outer wall  
26           where the telephone would be. Have you done that?  
27       A     Yes.  
28       Q     Thank you. Perhaps just so we can all keep it  
29           straight in case there's other markings, you could  
30           write the word "telephone" next to the circle.  
31       THE COMMISSIONER: "TC" will do.  
32       MR. MCGOWAN:  
33       Q     Now, you told us you received a phone call on  
34           line 8. Are you able to tell us what time that  
35           call came in?  
36       A     It was later in the -- mid-evening. I thought it  
37           was around 7:00 p.m.  
38       Q     And how confident are you of the time?  
39       A     I'm not.  
40       Q     It could have been earlier or later?  
41       A     Yes.  
42       Q     Where were you when you received the call?  
43       A     I was in the shift supervisor's office.  
44       Q     Is the shift supervisor's office in the secure  
45           area?  
46       A     Yes.  
47       Q     I wonder if you could take your red pen and put an

19  
Tina Zadavec  
In chief by Mr. McGowan

1 "S" on the shift supervisor's office, please.  
2 Just to be clear, you weren't working as the shift  
3 supervisor that evening?  
4 A No.  
5 Q Did you ever act as the shift supervisor?  
6 A Yes.  
7 Q Was the supervisor's office an area that was  
8 available to any Immigration person to take calls  
9 or deal with people if necessary?  
10 A Yes.  
11 Q Why was it you that received the call?  
12 A It was just whatever available officer that  
13 happened to answer the telephone took the call.  
14 It was not an assigned duty.  
15 Q Does line 8 ring on all of the phones?  
16 A Yes, I believe so.  
17 Q So you picked up the telephone, and who was on the  
18 other side, if you know?  
19 A I don't know the name of the person that I was  
20 speaking to. I do know the name now but I didn't  
21 know at that time. It was a male.  
22 Q Fair enough. What I'm going to do now, Ms.  
23 Zadavec, is ask you to take us through slowly the  
24 contents of that telephone conversation. First of  
25 all, what was said by the speaker on the other  
26 side and what was said by you? And take as much  
27 time as you need to take us through this, please.  
28 A I answered line 8 and a male voice advised me that  
29 he was inquiring about a traveller. I don't know  
30 why I got the impression at that time that it was  
31 for his wife's son, so I don't know why I believed  
32 that at that time. But the impression was that he  
33 was looking for someone else's son. He told me  
34 that he expected him to come around one o'clock  
35 that afternoon from Germany and that they were  
36 waiting outside and he still hadn't come out yet.  
37 So I asked him a few questions about -- I don't  
38 remember if I asked him questions about his age or  
39 citizenship or if he had just volunteered it. I  
40 don't recall the specifics. So I knew that he was  
41 looking for somebody about 38 years old, a citizen  
42 of Poland, and that they had expected him off the  
43 flight from Germany earlier in the day, that this  
44 person was coming to Canada to become -- to  
45 confirm their permanent residency. I asked him if  
46 he knew for sure that the client was on the  
47 flight, and I don't recall what he said exactly

1 but I got the impression that they simply hadn't  
2 heard any differently, that they expected him to  
3 be on the flight.

4 I don't remember if I -- I remember when --  
5 while I was talking to him, I looked at our  
6 detention board in the shift supervisor's office.  
7 The detention board lists all people who were  
8 detained, who are currently in detention, and it  
9 has their name, sex and citizenship in the first  
10 field. So I looked at the detention board to see  
11 if there were any Polish names or Polish  
12 citizenships. I didn't see that there were. And  
13 I don't recall if I put the telephone down or if I  
14 just put the person on hold. Then I walked out of  
15 the shift supervisor's office and I looked in the  
16 Immigration Secondary area where the public queue  
17 up and sit while they're waiting for their  
18 examinations. I didn't see anybody. So then I  
19 walked back into -- toward our cubicle area where  
20 we conduct examinations. They were all empty  
21 except one, and there was a male that was being  
22 examined by another officer. So I asked the  
23 officer who his client was and he told me it was a  
24 Iranian refugee claimant. So then I knew that  
25 this wasn't who this traveller was -- the caller  
26 was looking for.

27 So I went back to the phone and I advised the  
28 caller that, you know, I didn't see anybody that  
29 could be -- that I thought could be the traveller  
30 he was looking for.

31 I made some suggestions that I thought might  
32 be helpful, like contacting the airlines, phoning  
33 home to make sure he got -- he was in fact on the  
34 flight or perhaps he had called back and left a  
35 message for them at his home. I asked if the  
36 mother had a cell phone and the caller told me  
37 yes. And I asked if the traveller knew her number  
38 and the caller said yes, he did. I suggested they  
39 might want to consider waiting at home until he  
40 contacts them. I remember he said something to  
41 the effect that they live in Kamloops. And then  
42 it was -- I pretty much -- I think at that point  
43 told him that I, you know, really couldn't help  
44 him any further, that the traveller wasn't there.

45 Q Is that everything that you recall about the  
46 telephone call?

47 A Yes.

21  
Tina Zadavec  
In chief by Mr. McGowan

1 Q Just so the Commissioner has an understanding, how  
2 clear is your recollection of this call?  
3 A Not extremely clear.  
4 Q How many calls would you take in a day personally  
5 on line 8 during a shift?  
6 A Many. I don't -- I never kept track, but I  
7 frequently answered line 8.  
8 Q Is it possible that other things were said by the  
9 male caller that you don't recollect?  
10 A Yes.  
11 Q Is it possible you said other things that you now  
12 don't recollect?  
13 A Yes.  
14 Q I'm going to ask you first of all about the call  
15 and what was said, and then I'm going to ask you a  
16 few questions about your movements during the  
17 call, okay? So right now I'm going to focus on  
18 what was spoken during the call. How long was the  
19 call, if you recall?  
20 A I don't recall.  
21 Q Do you recall anything about the tone of voice of  
22 the male speaker?  
23 A No.  
24 Q What about your tone of voice?  
25 A I don't recall what my tone of voice was.  
26 Q I take it you typically try to be polite during  
27 your telephone calls?  
28 A Yes.  
29 Q You do recall that you were told this person was  
30 Polish?  
31 A Yes.  
32 Q Is it possible you were told the flight number?  
33 A It's possible.  
34 Q Is it possible you were provided a first name for  
35 the passenger?  
36 A Yes, it's possible.  
37 Q If you were offered a last name, is that something  
38 you would have required or that would have been  
39 helpful to you?  
40 A It could be.  
41 Q Is it possible that you were offered the last name  
42 but told the person you were speaking with that  
43 that wasn't necessary or you didn't need it or  
44 something to that effect?  
45 A That might be possible.  
46 Q You were told this person was coming to be a  
47 landed immigrant? Did I hear that right?

1 A Yes.

2 Q Is it possible you were told that the passenger  
3 did not speak English?

4 A Yes.

5 Q Is it possible you were told they were an  
6 inexperienced traveller?

7 A It's possible.

8 Q Do you recall whether there was any discussion  
9 about where the passenger had been advised to meet  
10 his family members?

11 A I don't recall hearing anything like that.

12 Q Is it possible there was some discussion of that?

13 A Yes.

14 Q Did you understand from the call, either through  
15 what was said or the tone of voice of the male  
16 speaker, that either he or the passenger's mother  
17 was worried and anxious about the whereabouts of  
18 the passenger, her son?

19 A I don't recall anything specifically about that.

20 Q Is it something you surmised or do you know from  
21 the fact that they'd been waiting since one  
22 o'clock?

23 A I'm sorry, I don't understand.

24 Q You did understand that they'd been waiting at the  
25 airport from early in the afternoon?

26 A Yes. I believe he told me that.

27 Q You knew the age of the passenger?

28 A He told -- I recall 38 years old.

29 Q Is it possible you had a discussion with the male  
30 speaker, something to the effect of, "Given his  
31 age, he's a grown adult and should be fine"?

32 A I -- I don't recall that.

33 Q Is it possible you had a discussion about the  
34 availability of translators in response to the  
35 suggestion he didn't speak English?

36 A That's possible.

37 Q I take it this call was a sometime around 7:00 in  
38 the evening or earlier or later. You knew they'd  
39 been at the airport for five, six or more hours  
40 when you spoke with the male on the phone?

41 A Yes.

42 Q Did you indicate to them that that was longer than  
43 should have been necessary for somebody to travel  
44 through Customs and Immigration and make their way  
45 out to the international meet-and-greet area?

46 A I don't recall saying anything like that  
47 specifically.

- 1 Q Is that something you might have said given the  
2 length of time that had passed?
- 3 A It's possible.
- 4 Q Do you recall offering the suggestion that the  
5 next flight from Europe would be the next  
6 afternoon?
- 7 A I believe I did say something. I recall knowing  
8 at that time that there were no more flights from  
9 Germany that day.
- 10 Q Okay.
- 11 A That's one of the reasons why I suggested he  
12 contact the airline, because the flight could be  
13 delayed or rerouted.
- 14 Q Okay. Now, I understand that you have certain  
15 rules about what information you can share with  
16 somebody who's making a telephone call; is that  
17 right?
- 18 A Yes.
- 19 Q And you have certain policies with respect to  
20 confidentiality; is that right?
- 21 A Yes.
- 22 Q I wonder if you could tell the Commissioner what  
23 your understanding in October 2007 was about what  
24 information you were permitted to share with  
25 somebody calling in on line 8?
- 26 A My understanding is that I was bound by the  
27 *Privacy Act* to not release information about any  
28 travellers to any unauthorized people. So if  
29 you're calling for any reason, I would not be able  
30 to give you specific information about a  
31 traveller.
- 32 Q Who would be an authorized person to receive  
33 information?
- 34 A Someone authorized by the person concerned to  
35 interact with us.
- 36 Q Okay. And what was it that caused you to have  
37 this understanding about the limits on your  
38 ability to communicate?
- 39 A I received training from --
- 40 Q Who gave you that training?
- 41 A Citizenship and Immigration Canada at the  
42 beginning of my career as an officer.
- 43 Q And what year was that approximately?
- 44 A I don't remember if it was 2004 or 2005 that I  
45 received the *Privacy Act* training.
- 46 Q Fair enough. That was a few years ago.
- 47 A Yeah.

- 1 Q Did you have any updated training between your  
2 first training and 2007 with respect to that  
3 specific issue, the issue of confidentiality?  
4 A No.  
5 Q When you were speaking with the male person on the  
6 phone, is it likely you would have said something  
7 to the effect of, "Without breaking  
8 confidentiality, I can honestly tell you that  
9 there is no one here from Poland in a landed  
10 immigrant situation"?  
11 A It is likely that I could have said something like  
12 that.  
13 Q Okay. Now, you had limits on what information you  
14 could share. Were you free to share information  
15 about who wasn't present?  
16 A Could you explain that, please.  
17 Q Certainly if there was somebody there, I take it  
18 from what you've said you wouldn't share  
19 information about the details of a person's  
20 application or their whereabouts with just anybody  
21 who called up; is that right?  
22 A Correct.  
23 Q Was it the practice in Immigration at that time,  
24 if somebody called up looking for a passenger who  
25 wasn't there, to share that information,  
26 essentially negative information?  
27 A I don't know if it was the practice of other  
28 officers, but I did try to help people out, so I  
29 would -- if the entire hall were empty, I felt  
30 comfortable telling someone that.  
31 Q Okay, fair enough. Now, despite these  
32 confidentiality rules, was there a practice  
33 amongst Immigration officers at that time to share  
34 a little bit of information with family members on  
35 occasion to ease their minds or assist them in  
36 some way?  
37 A I don't know what other officers did. I tried to  
38 abide by what my understanding of the *Privacy Act*  
39 was at all times.  
40 Q Was there a practice on occasion to involve family  
41 members in providing assistance as translators or  
42 sharing information with potential landed  
43 immigrants or other travellers in certain  
44 circumstances?  
45 A Yes.  
46 Q So sometimes a family member, you knew, would be  
47 paged from the meet-and-greet area to come in and

- 1 provide assistance through the immigration  
2 process?
- 3 A They would be paged but they wouldn't come into  
4 the secure area.
- 5 Q Where would they go to?
- 6 A To the front office.
- 7 Q And how is it they would assist from the front  
8 office?
- 9 A By telephone.
- 10 Q And you felt comfortable that that could be  
11 accomplished without breaching confidentiality?
- 12 A It would depend on the circumstances.
- 13 Q In what circumstances could you engage a family  
14 member to assist and in which circumstances  
15 couldn't you, in your mind?
- 16 A If I had a traveller who presented me with a note  
17 that said, "I don't speak English. My family is  
18 waiting outside. This is their name. This is  
19 their phone number. Please call them." And so  
20 then I would feel comfortable calling the person,  
21 and occasionally even using them as interpreter.
- 22 Q Is there any circumstance without a note where you  
23 would feel comfortable involving a family member?
- 24 A Yes.
- 25 Q And what would those be?
- 26 A If we had a minor child, and so then the  
27 custodian -- custodial parent would have to sign  
28 the documents on their behalf and answer the  
29 questions on their behalf. A very elderly or  
30 frail person or a medically needy person where I'd  
31 want to make sure that their reception was there.
- 32 Q Okay.
- 33 A This is all in relationship to processing  
34 permanent residents.
- 35 Q Yes. That's right. That's what my question was  
36 designed to get, so thank you. Now, in terms of  
37 your practice in October 2007, was there a record  
38 kept of the time or the content of calls that came  
39 in on line 8?
- 40 A No.
- 41 Q Do you know whether those calls were recorded?
- 42 A I didn't -- my understanding is -- I never  
43 understood them to be recorded. I believed then  
44 to never be recorded.
- 45 Q Were you involved subsequent to this time in  
46 making any inquiries about whether they were  
47 recorded?

- 1 A No.
- 2 Q Now, you've told us about some movements you made  
3 while you were on the telephone, or during the  
4 telephone call.
- 5 A Yes.
- 6 Q The telephone you were speaking on, was it corded  
7 or cordless?
- 8 A It's corded.
- 9 Q So I take it from that you couldn't move about  
10 with the phone in your hand?
- 11 A Correct.
- 12 Q And you've told us you did move about during the  
13 telephone call?
- 14 A Yes.
- 15 Q And you did that, I take it, by putting the  
16 telephone down?
- 17 A Yes.
- 18 Q How long was the telephone out of your hand and  
19 you were moving about?
- 20 A I don't recall.
- 21 Q Can you give us an approximation?
- 22 A Under one minute.
- 23 Q And that was the only time during the conversation  
24 when you were making efforts to locate the  
25 caller's son or the mother's son, who we now know  
26 to be Mr. Dziekanski?
- 27 A Yes.
- 28 Q I'm going to ask you to take us through in as much  
29 detail as you can where you went from the shift  
30 supervisor's office and what specifically you did  
31 to attempt to locate the passenger. I know you've  
32 told us a little bit already, but just take your  
33 time and take us through your movements as best as  
34 you can remember.
- 35 A The shift supervisor's office at that time was  
36 extremely physically close to the front counters.  
37 I walked out the shift supervisor's office and  
38 went to the closest front counter, and I looked in  
39 the secondary area.
- 40 Q I wonder if you could put an X on the exhibit, on  
41 the counter that you walked up to.
- 42 A (Witness marks exhibit)
- 43 Q So you walked up to this front counter, and that  
44 would be the closest counter outside the door of  
45 the shift supervisor's office?
- 46 A Yes.
- 47 Q And tell us what you did from that counter.

- 1 A I looked into the -- on the other side of the  
2 counter into the Immigration Secondary area where  
3 the queues and the chairs are.
- 4 Q Could you see the entirety of the Immigration  
5 Secondary area from that point?
- 6 A Yes.
- 7 Q Did you see anybody in the Immigration Secondary  
8 area?
- 9 A I don't recall seeing anyone in the secondary  
10 area. If there was anyone, there had to have been  
11 very few people. But I actually don't recall  
12 seeing anyone at all.
- 13 Q Did you say anything or just look?
- 14 A I don't recall saying anything. I just looked.  
15 I --
- 16 Q Did you speak with any of the other Immigration  
17 officers by the counters?
- 18 A I don't recall speaking to any other officer by  
19 the counters.
- 20 Q Now, I'm looking at the map which is Exhibit 9,  
21 the diagram. The counter will be marked on the  
22 exhibit where you've marked outside and there's a  
23 bunch of very small squares in rows in front of  
24 it. Those are seats?
- 25 A Yes.
- 26 Q Okay. And if we look to the right of the section  
27 with the small seats, there's an area with lines.  
28 What's that area?
- 29 A That's the stand-up queue area.
- 30 Q And at the time in October 2007, could you see  
31 that area from where you were standing?
- 32 A Yes.
- 33 Q Are you quite certain of that?
- 34 A Yes.
- 35 Q Could you see right to the end of that area where  
36 the lines were, to your recollection?
- 37 A Yes.
- 38 Q How long were you at the front counter?
- 39 A A few seconds.
- 40 Q And where did you go from there?
- 41 A I went to the cubicle -- examination cubicles.
- 42 Q And where are those located?
- 43 A A few feet past the shift supervisor's office.  
44 Closer to the hallway?
- 45 A I'm sorry, which hallway?
- 46 Q The hallway where the telephone is.
- 47 A Yes. If you went in that direction, there is a --

1           there was at that time a glass holding area,  
2           waiting room, and there were cubicles on the other  
3           side of the glass. The shift supervisor's office  
4           was separated by a walk space from the glass  
5           holding area, and then we had more examination  
6           cubicles on the other side of the glass holding  
7           area.  
8           Q     And the cubicles are in a secure area?  
9           A     Yes.  
10          Q     And you told us you looked through those cubicles.  
11          Did you see all of them from where you were  
12          standing?  
13          A     I had to walk past them to see them.  
14          Q     Okay. And you observed, I think you told us, just  
15          one officer and one what appeared to be an  
16          immigrant?  
17          A     One officer and one male who could have been  
18          around the correct age.  
19          Q     And you determined that he was an Iranian man?  
20          A     I asked the officer who his client was.  
21          Q     Okay. And that's the advice you were given?  
22          A     Yes.  
23          Q     And you told us you looked at a detention board.  
24          A     Yes.  
25          Q     And you looked at the names on the detention board  
26          to see if any of them looked Polish?  
27          A     Yes.  
28          Q     And I think you told us today that you also looked  
29          at some other information on the board?  
30          A     The board has a lot of information. It has the  
31          name, sex, citizenship, the date of detention, and  
32          other various technical information.  
33          Q     And I take it you didn't see anything on that  
34          board which you thought was relevant to your  
35          search?  
36          A     Correct.  
37          Q     You went back to the telephone after this and  
38          communicated with the male that was -- was that  
39          the end of your physical search?  
40          A     Yes.  
41          Q     And you communicated to the male on the phone that  
42          you hadn't located anybody matching the  
43          description of the person he was looking for?  
44          A     Yes.  
45          Q     Did you explain to him what the extent of your  
46          search was?  
47          A     No.

- 1 Q Did you explain to him anything that would have  
2 indicated that it didn't include the carousel  
3 area?
- 4 A No. I don't recall that.
- 5 Q So the information -- and correct me if I don't  
6 have this right. I want to make sure that it's  
7 your recollection that we have. You indicated to  
8 him that the person wasn't there and that you'd  
9 looked for him. Is that the gist of what  
10 happened?
- 11 A I don't recall telling him that I looked for him,  
12 but I would have conveyed to him that there was  
13 nobody of that description in the Immigration  
14 Secondary area.
- 15 Q Did you have any discussion with the man about  
16 what the Immigration Secondary area consisted of  
17 and what it didn't consist of?
- 18 A No.
- 19 Q I take it you knew from the telephone call that  
20 there was a language barrier with this person?  
21 Wherever they were, they would have difficulty  
22 communicating in English?
- 23 A I don't recall if --
- 24 Q Okay.
- 25 A -- I was told that he didn't speak English.
- 26 Q Okay. Did you know in October of 2007 whether a  
27 significant language barrier would result in a  
28 mandatory referral to Immigration and Customs?
- 29 A I didn't know that at that time, no.
- 30 Q To be clear, you didn't at any point make any  
31 search after the telephone call for this  
32 gentleman; is that right?
- 33 A Correct.
- 34 Q At the time of the telephone call, did you have  
35 the ability to page for passengers in the Customs  
36 area, the Customs Hall?
- 37 A Yes.
- 38 Q That would have included the area of the  
39 carrousel?
- 40 A Yes.
- 41 Q Would it have included the washrooms that were in  
42 the Customs Hall?
- 43 A I don't know.
- 44 Q Would it have included Customs Secondary?
- 45 A I don't know.
- 46 Q Did you discuss the telephone call with your  
47 supervisor or any other of the Border Services

- 1 officers prior to seeing Mr. Dziekanski later in  
2 the evening?
- 3 A I don't recall doing that.
- 4 Q In October of 2007 as an Immigration officer, you  
5 had access to computers; is that right?
- 6 A Yes.
- 7 Q And what information could you access with respect  
8 to arriving passengers on those computers?
- 9 A With respect to arriving passengers?
- 10 Q Yes. Or prospective immigrants.
- 11 A We have what we call a field operational support  
12 system, or FOSS system. It's an immigration  
13 history for all immigrants and a lot of other  
14 clients who come to Canada.
- 15 Q And it would have certain documentation related to  
16 the immigration process that you could access; is  
17 that right?
- 18 A Yes.
- 19 Q You couldn't, am I right, access flight manifests  
20 or passenger lists?
- 21 A I could not.
- 22 Q From your computer that you personally had access  
23 to in the Immigration Secondary. That's what  
24 I'm --
- 25 A No.
- 26 Q -- asking about right now. Okay. You were aware,  
27 of course, that passports were scanned and that  
28 the time somebody passed the Primary Inspection  
29 Line was recorded?
- 30 A I had a vague understanding of that, yes.
- 31 Q There's a computer system -- I think it's called  
32 ICS-ISID.
- 33 A ICS, and then SID is the French.
- 34 Q Okay, ICS. At that time did you have information  
35 on your computer in the ICS system?
- 36 A I didn't have access to that. I don't know if it  
37 was even available to us.
- 38 Q On your computer at the time, were you aware of  
39 any way that you could have determined whether a  
40 passenger had passed the Primary Inspection Line  
41 and entered the Customs Hall?
- 42 A From my computer?
- 43 Q From your computer.
- 44 A I don't remember if we had access to ICS. I don't  
45 think we did.
- 46 Q You knew, I take it, at the time that your  
47 supervisor could get access to this information?

31  
Tina Zadavec  
In chief by Mr. McGowan

1 A I think that if you made a phone call, any officer  
2 could get access to the information.  
3 Q That would include you?  
4 A Yes.  
5 Q You could get the information either by calling  
6 somebody in the customs side --  
7 A Yes.  
8 Q -- or perhaps speaking to your supervisor?  
9 A Yes.  
10 Q And your supervisor that night was a Ms. Currie;  
11 is that right?  
12 A Yes.  
13 Q So you certainly, if I've got it right, were well  
14 aware that evening that had you wanted to  
15 determine whether a passenger had entered the  
16 Customs Hall, that was something you could easily  
17 accomplish?  
18 A Yes.  
19 Q There are airline desks located in the Customs  
20 Hall; is that right?  
21 A Yes.  
22 Q And that includes a desk which is manned by  
23 somebody from Lufthansa?  
24 A Yes.  
25 Q There's also Air Canada and other airlines  
26 accounted for there; is that right?  
27 A Yes.  
28 Q And did you know whether those people had the  
29 ability to access passenger lists, who actually --  
30 A I don't know.  
31 Q Had you ever had occasion to consult them about  
32 whether a passenger had arrived?  
33 A Not at that time.  
34 Q Is that something you've done since?  
35 A Yes.  
36 Q In October of 2007, what did you understand the  
37 purpose of line 8 to be?  
38 A I'm sorry, say that again, please.  
39 Q In October of 2007, what did you understand the  
40 purpose of line 8 to be, the line 8 telephone?  
41 A It would allow people to report to our office for  
42 continuation of immigration proceedings. It would  
43 allow those that we've paged to come into contact  
44 with us. Sometimes it would just be the provision  
45 of general immigration information.  
46 Q When you spoke to who we now know to be Mr.  
47 Hutchinson on the telephone -- I just want to make

1           sure I understand. It was clear at the end of  
2           that telephone call, to you, that they'd been  
3           waiting in the meet-and-greet area for quite a  
4           number of hours for their anticipated passenger?  
5        A     I don't recall knowing where they were waiting.  
6        Q     You knew they'd been waiting?  
7        A     I -- yes.  
8        Q     And you knew that he hadn't materialized?  
9        A     I believe he told me that. I'm not sure.  
10       Q     He must not have come or he wouldn't have been  
11       calling, I guess.  
12       A     I assume so.  
13       Q     And did you know at the time that all of the  
14       flights from Germany had come in much earlier in  
15       the day?  
16       A     That was my understanding. But you know,  
17       schedules change, routing changes  
18       Q     Did the call cause you any level of concern about  
19       the whereabouts of the passenger?  
20       A     Not at all.  
21       Q     Aside from what you've told us, did you make any  
22       efforts to locate the passenger prior to seeing  
23       him later in the evening, either by making calls,  
24       speaking with somebody, or physically looking?  
25       A     No.  
26       Q     Now, I understand later in the evening you made  
27       some observations of Mr. Dziekanski yourself?  
28       A     Yes.  
29       Q     Tell us approximately what time did this happen.  
30       A     I don't recall. I don't know what time it was.  
31       It was much later. It was several hours later.  
32       Q     And where did you observe him?  
33       A     At the front counter.  
34       Q     What was he doing at that time? Was he  
35       interacting with somebody?  
36       A     I believe he was sitting down and he may have  
37       been -- there may have been a verbal conversation  
38       between himself and Officer Van Agteren. I don't  
39       recall whether they were speaking or not at that  
40       time.  
41       Q     When you saw him sitting, was he sitting in the  
42       chairs in front of the Immigration Secondary  
43       counters?  
44       A     Yes.  
45       Q     Was there anybody else in the Immigration  
46       Secondary hall that you saw at that time?  
47       A     I don't recall seeing anyone else, but I believe

- 1           that -- I knew that I was entering that area,  
2           going up to the front counter because we had  
3           clients to process.
- 4           Q     Okay.
- 5           A     So I knew that there were other people in the  
6           hall. I just don't specifically recall seeing  
7           anybody else.
- 8           Q     Okay, fair enough. Did you specifically interact  
9           or speak with Mr. Dziekanski?
- 10          A     No.
- 11          Q     How close did you get to him approximately?
- 12          A     Six, eight feet.
- 13          Q     Can you describe how he looked physically? I  
14          don't mean his height and his weight. We know  
15          what he looks like. But did you make any  
16          observations about him?
- 17          A     He looked slightly dishevelled. He looked tired.  
18          At the time, I thought that the way he was  
19          physically moving, his mannerisms, were the way  
20          that I normally associate with a person who had  
21          been drinking. Otherwise he was calm, quiet. He  
22          seemed relaxed.
- 23          Q     Did you hear him speak at all?
- 24          A     I don't recall hearing him speak.
- 25          Q     Did you smell any odours on him?
- 26          A     No.
- 27          Q     Did you observe whether or not he was sweating?
- 28          A     No, I didn't.
- 29          Q     Did you have a discussion about him with the other  
30          Border Services officer that was present?
- 31          A     Yes.
- 32          Q     What was the nature of that discussion?
- 33          A     I was walking past to go to resume a station at  
34          the front counter, and I saw him, and he fit the  
35          description. He could have been the person that  
36          the caller had called about earlier. So I asked  
37          Officer Van Agteren who her client was and I think  
38          I specifically asked her, you know, "Is this  
39          fellow 38 years old? Is he Polish? Is he coming  
40          here to become a permanent resident?" I think she  
41          said -- she agreed in some way that indicated to  
42          me that this was probably the person that the  
43          caller was asking about earlier. And so then I  
44          communicated what I thought were just the relevant  
45          details of the phone conversation that I had  
46          earlier.
- 47          Q     And what details did you communicate, if you

- 1 recall?
- 2 A It would have been something -- something to the  
3 effect of that I had received the phone call, that  
4 his mother was at the airport and they called on  
5 line 8, and I thought perhaps that they may have  
6 decided to return to Kamloops.
- 7 Q Did you convey anything about whether or not they  
8 were worried about the traveller?
- 9 A I don't recall saying anything like that.
- 10 Q Did you convey anything about a language barrier  
11 problem?
- 12 A No, I don't believe so.
- 13 Q Did you convey anything about his degree of  
14 experience as a traveller?
- 15 A I don't believe I would have.
- 16 Q Did you make the Border Services officer -- is it  
17 Van Agteren?
- 18 A Van Agteren.
- 19 Q Van Agteren? Did you make that Border Services  
20 officer aware of the advice you had given the male  
21 caller that there was nobody matching the  
22 description of the person he was looking for  
23 sometime earlier?
- 24 A I don't recall exactly what I told Officer Van  
25 Agteren about all of the call.
- 26 Q Without remembering the specifics of the call,  
27 would it have been clear to this Border Services  
28 officer that the call had come in sometime earlier  
29 about likely this man and that, as a result of the  
30 call, it was likely that -- or following the call  
31 it may be the case that they had departed the  
32 airport, perhaps believing he wasn't at least in  
33 Immigration Secondary?
- 34 A Well, I didn't know that they were going to leave.  
35 It was one of several suggestions I had made. I  
36 don't know that I told Officer Van Agteren all of  
37 the suggestions that I had made. I did think  
38 that -- I do believe that I told her that I  
39 thought it was possible that they had left.
- 40 Q Did you make any attempts personally to contact  
41 either the person that had called earlier or  
42 Mr. Dziekanski's mother?
- 43 A No.
- 44 Q Did you discuss whether that ought to be done or  
45 who would do that?
- 46 A I'm sorry?
- 47 Q Did you discuss with any Border Services officers

Tina Zadavec

Cross-exam by Mr. Buchanan (for Public Service Alliance of Canada)

1           whether that should be done?

2           A     No.

3           MR. MCGOWAN: This might be the appropriate time.

4           THE COMMISSIONER: Yes, we'll take the morning break  
5           now.

6

7                           (WITNESS STOOD DOWN)

8

9                           (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

10                           (PROCEEDINGS RECONVENED)

11

12

TINA ZADRAVEC, resumed.

13

14

EXAMINATION IN CHIEF BY MR. MCGOWAN, continuing:

15

16

Q     Ms. Zadavec, one more question. When you left  
17     the supervisor's office to take your look for the  
18     passenger, did you interact with, speak with, or  
19     see Officer Purewal, Sonya Purewal?

20

A     I don't recall.

21

MR. MCGOWAN: Thank you. Those are my questions, Mr.  
22     Commissioner.

23

THE COMMISSIONER: Mr. Buchanan.

24

MR. BUCHANAN: Thank you. Chris Buchanan, counsel for  
25     the witness.

26

27

CROSS-EXAMINATION BY MR. BUCHANAN ON BEHALF OF THE  
28     PUBLIC SERVICE ALLIANCE OF CANADA:

29

30

Q     Just on that last question. Would it have been  
31     possible for you to have interacted with  
32     Ms. Purewal when you left looking for  
33     Mr. Dziekanski?

34

A     It's possible.

35

Q     You were asked questions about whether or not you  
36     could call to find out the information whether a  
37     passenger had gone through the PIL. With your  
38     understanding of the privacy policy, would that be  
39     information you could have relayed to  
40     Mr. Hutchinson?

41

A     No.

42

Q     You were asked questions about the ability to page  
43     the hall from the Immigration area. What, if any,  
44     practice was there to page passengers as the  
45     result of public inquiries

46

A     I don't -- I'm not aware of any policy. I have  
47     never done it.

Tina Zadavec

Cross-exam by Mr. Buchanan (for Public Service Alliance  
of Canada)

1 Q And have you ever been present when it's ever been  
2 done?

3 A I don't recall ever seeing it done.

4 THE COMMISSIONER: Excuse me. Is there any way at all  
5 that a concerned parent can figure out whether or  
6 not their friend or relative has arrived?

7 A Other than the traveller themselves contacting  
8 that person --

9 THE COMMISSIONER: I don't know how that can occur  
10 either.

11 A There are pay phones in the hall and lots --

12 THE COMMISSIONER: Sorry. Pay phones to whom?

13 A There are public pay phones that a client --  
14 anybody can use to make phone calls to anyone they  
15 like.

16 THE COMMISSIONER: No, no. But I don't see how that  
17 can come into play unless you're talking cell  
18 phones. I mean, how can someone outside determine  
19 whether their friend has come?

20 A I'm not aware of any way that they can do that.

21 MR. BUCHANAN:

22 Q As kind of a follow-up to that question, perhaps,  
23 as a CBSA officer, what, if any, duties or  
24 responsibilities did you have to ensure that  
25 travellers were able to meet up with any member of  
26 the public?

27 A That wouldn't be part of my duty or  
28 responsibility. If it were the case of a minor  
29 child, I would certainly take that responsibility,  
30 but that wouldn't be a normal part of my job.

31 Q In what circumstances could your action lead to  
32 people missing planned meet-ups?

33 A In many, many circumstances. Our queues can be  
34 rather lengthy, so any examination -- waiting for  
35 their examination, they can certainly be held up  
36 many hours. But also my examination itself could  
37 also take many hours, and then sometimes those  
38 examinations result in people being detained or  
39 arrested, in which case they wouldn't be entering  
40 at all. Sometimes the examination results in the  
41 person being turned around on a flight  
42 immediately, in which case they wouldn't leave the  
43 airport either.

44 Q What was the practice at the time about -- what,  
45 if any, steps would you take to notify anybody if  
46 you were to, say for example, send somebody back  
47 or to detain them?

- 1 A The only time -- the only people that we would  
2 notify is at the request of the client. If the  
3 client asked us to let someone know that they  
4 weren't being allowed entry into Canada for  
5 whatever reason, then we'd certainly try to do  
6 that. Other than that, they have Vienna rights  
7 where they would be allowed to contact legal  
8 representation and/or their consulate  
9 representative.
- 10 Q You were asked questions with respect to your call  
11 that you had with Mr. Hutchinson and you indicated  
12 one of your suggestions was that they might want  
13 to go home. When you made that suggestion, what  
14 did you believe to be the case about whether  
15 Mr. Dziekanski was in the hall or not?
- 16 A I didn't think that he was there. I knew he  
17 wasn't in the Immigration Secondary area, and it  
18 was not believable to me that he would be in the  
19 Customs Hall after -- if he had landed at one  
20 o'clock that afternoon.
- 21 Q You say it's unbelievable. Why would that be?
- 22 A I'd never heard of that happening. The only  
23 people who try to evade us are people -- generally  
24 in my experience, I've only been aware of  
25 potential refugee claimants who hide in bathrooms,  
26 hide out in different locations in the airport so  
27 that we don't know their time of arrival. Other  
28 than that, I have never heard of anybody not  
29 travelling through the Customs Hall like everyone  
30 else.
- 31 Q I want to turn your attention to when you observed  
32 Mr. Dziekanski in the Secondary Immigration.  
33 First, have you received first aid training?
- 34 A Yes.
- 35 Q And what, if any, conclusion did you draw about  
36 whether or not Mr. Dziekanski was in need of  
37 medical assistance at the time he was in Secondary  
38 Immigration?
- 39 A I didn't believe that he was in need of medical  
40 assistance.
- 41 Q And in your observation with Mr. Dziekanski in  
42 Secondary Customs, was there anything unusual  
43 about him, his appearance or his actions?
- 44 A I didn't observe him in Customs Secondary. I only  
45 observed him in Immigration Secondary.
- 46 Q Sorry, I meant with respect to your observations  
47 in Secondary Immigration?

Tina Zadavec

Cross-exam by Mr. Buchanan (for Public Service Alliance of Canada)

1 A I'm sorry, and what was the second part of that?

2 Q Sure. What, if anything, was unusual about his  
3 appearance or actions in Secondary Immigration?

4 A I wouldn't -- I didn't notice anything unusual.  
5 It seemed very routine, very normal. No different  
6 than many of the other travellers we see hundreds  
7 of times a day.

8 Q For somebody who is arriving to Canada on a CPR, a  
9 Confirmed Permanent Residency, when would you  
10 ordinarily use translation services, if at all?

11 A I've never used a telephone interpreter to process  
12 a Confirmation of Permanent Residency. If I felt  
13 it was necessary and an interpreter was available  
14 on site, I would. But I -- it wasn't my practice  
15 to do so. I've found that I was able to process  
16 permanent residents for the most part without the  
17 need of translators.

18 Q You said you thought your shift -- I believe you  
19 said was till one o'clock. Can you just tell us,  
20 for the rest of your shift did you have any other  
21 knowledge about Mr. Dziekanski or what happened to  
22 him?

23 A Later on, before the end of my shift -- I was in  
24 another area and -- processing another traveller,  
25 and Officer Chapin came into that area. He was  
26 very upset looking, and he told me Mr. Dziekanski  
27 had died.

28 Q How did you react when you learned of that?

29 THE COMMISSIONER: Counsel, what's the point of this?

30 MR. BUCHANAN: It's going to complete the narrative of  
31 Mr. Chapin, who --

32 THE COMMISSIONER: All right.

33 MR. BUCHANAN:

34 Q Given what you had seen in Secondary Immigration,  
35 what was your reaction to that news?

36 A It was just so shocking. It was just unbelievably  
37 shocking because the earlier interaction was just  
38 absolutely fine. It was -- it appeared pleasant,  
39 calm, relaxed. And it was really shocking because  
40 this was a person, and becoming a permanent  
41 resident is generally an absolutely joyous event,  
42 and -- it was just truly horrible that this person  
43 died.

44 Q You've had some time to think about it. Today,  
45 what, if anything, would you have done differently  
46 with respect to either your call with Mr.  
47 Hutchinson or the events in Secondary Immigration?

1 A I think about it a lot. But I can't -- I wouldn't  
2 do anything differently. If I knew he was going  
3 to die, I would do everything differently. But in  
4 doing my job -- I did my job.

5 Q Just a final point. Has the CBSA done an  
6 investigation of the activities of yourself and  
7 the other officers that evening, and if so, have  
8 they concluded whether any discipline is  
9 warranted?

10 A My --

11 THE COMMISSIONER: I don't think we're interested in  
12 that.

13 MR. BUCHANAN: All right. Thank you. Those are our  
14 questions.

15 MR. KOSTECKYJ: Do you want to give the witness an  
16 opportunity to compose herself?

17 THE COMMISSIONER: Yes. Madam, would you like some  
18 time or do you want to continue? How are you  
19 doing?

20 A I'd rather just finish, please.

21 THE COMMISSIONER: All right.

22

23 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA  
24 CISOWSKI:

25

26 Q There are no translators available in Immigration  
27 Secondary, are there? No official translators?

28 A Yes, there are. Yes, there are.

29 Q Were there any official translators for any Slavic  
30 languages available on that particular evening?

31 A I don't believe there were.

32 Q So there was nobody that could translate Polish?

33 A That's my understanding, yes.

34 Q Were you aware that you could obtain translation  
35 services if you needed through the Polish Embassy,  
36 for example?

37 A No, I wasn't.

38 Q Or rather through the Polish Consulate in  
39 Vancouver?

40 A No, I wasn't aware of that.

41 Q Now, somewhere I had heard a rumour, and maybe you  
42 can confirm this for me, that a Polish translator  
43 was available through Canadian Border Services in  
44 Toronto by telephone if that was necessary.

45 A We have lists of interpreters that we can call and  
46 they are situated all across Canada.

47 Q Okay. Now, do you know if on this particular

- 1 evening, that translation service was not  
2 available after four o'clock in the afternoon or  
3 five o'clock Pacific Standard Time?
- 4 A I don't have any such knowledge.
- 5 Q Now, to your knowledge, nobody ever tried to  
6 obtain a translator or to speak to Mr. Dziekanski  
7 when he did finally show up?
- 8 A I don't know.
- 9 Q You never saw anybody obtain a translator? No one  
10 asked you about translation services or otherwise?
- 11 A I never saw anybody using a translator, Polish  
12 translator, with Mr. Dziekanski, and I never  
13 assisted in obtaining interpretation services.
- 14 Q You said, as I understood it, that you had been  
15 trained as an Immigration officer and that there  
16 was a separation between Immigration and Customs  
17 in 2007, correct?
- 18 A Yes.
- 19 Q But you did say that you were familiar with the  
20 workings of the PIL in the sense that you knew  
21 that at that customs point, people were checked in  
22 by way of computer.
- 23 A I knew that they scanned the passports. I  
24 wasn't -- I don't know if I was -- if I had a  
25 working knowledge of the system that they used.  
26 I don't know at this point.
- 27 Q Well, we heard evidence from a Lufthansa employee  
28 that she was able to walk down to the PIL when she  
29 found Mr. Dziekanski's bags and ask them as to  
30 whether or not he'd arrived, and she was told that  
31 he had. I'm presuming that you would have had the  
32 same ability.
- 33 A I would have been able to do that, yes.
- 34 Q Would you have been able to make a phone call to  
35 the PIL to see if Mr. Dziekanski had arrived?
- 36 A I could make a phone call to people who could  
37 contact the people at PIL.
- 38 Q At that time there was no way that you could just  
39 punch his name into the computer and see if he had  
40 arrived; is that correct?
- 41 A I don't think I had access to that system.
- 42 Q Did others on the immigration side have access to  
43 that system?
- 44 A I don't know.
- 45 Q Now, you recollect being interviewed by a police  
46 officer about the events relating to this matter  
47 on December the 1st, 2007?

1 A Yes.

2 Q And that was a Corporal Teboul?

3 A I don't remember the name but that sounds  
4 familiar.

5 Q Did you tell him at the time that you had a very  
6 poor memory in recollection of the events of that  
7 evening?

8 A I could have said so.

9 Q And do you recall him asking you about the  
10 searches that you conducted? Do you remember  
11 discussing that with him?

12 A Yes.

13 Q In terms of what you did in looking for  
14 Mr. Dziekanski?

15 A I don't specifically remember those questions, but  
16 I do recall discussing it, yes.

17 MR. KOSTECKYJ: If I may approach.

18 Q Do you recognize this as a statement that you  
19 gave --

20 A Yes.

21 Q -- to Corporal Teboul?

22 A Yes.

23 Q And have you had a chance to see it before you  
24 came today?

25 A Yes.

26 Q I'm just looking at page 11 --

27 THE COMMISSIONER: Counsel, it might make it easier for  
28 everybody if you used your learned friend's copy.

29 MR. KOSTECKYJ: Ah, thank you.

30 Q I'll just take you to page 11 of your statement.  
31 Page 10. Corporal Teboul is asking you at the top  
32 of the page:

33

34 Do you remember specifically --

35

36 And it says "indecipherable."

37

38 -- with respect to call ... um --

39

40 And then "indecipherable."

41

42 -- a brief conversation you had with this  
43 male ... on the phone. Do you remember  
44 physically what you've done ... to try to  
45 locate the person that they were talking  
46 about? That this male was talking about?

47

1 And do you remember telling him, "Not really"?  
2 A That's what I'm reading that I said here. I don't  
3 recall saying that exactly.

4 Q But that's what you told him at the time.

5  
6 Not really. But one thing I remember, is I  
7 remember um looking in the cubicle. And not  
8 seeing anybody in the cubicles that made me  
9 thing that it could be this person. Except I  
10 saw another officer, Christopher McCutcheon  
11 (phonetic) was interviewing ah, a male that  
12 could have been, like physically could have  
13 matched the description ...

14  
15 Correct?

16 A Yes.

17 Q You didn't tell the police officer about this  
18 additional search, leaving the area any further  
19 than that, did you?

20 A If it's not in here, then I must not have.

21 Q All right. Now, when you saw Mr. Dziekanski, you  
22 said that he was cooperative, pleasant --

23 A Yes.

24 Q -- correct?

25 A Yes.

26 Q You did indicate that you observed that he seemed  
27 a little bit wobbly perhaps and you told us that  
28 you thought, well, maybe that was as a result of  
29 him drinking perhaps; is that correct?

30 THE COMMISSIONER: No, no. She said "like a person."

31 MR. KOSTECKYJ: Like a person, sorry.

32 Q Now, you have a fair bit of experience with people  
33 that have travelled for long periods of time in  
34 your line of work?

35 A Yes, sir.

36 Q And we now know that Mr. Dziekanski had left his  
37 home some 24 hours previously. When you see  
38 people that have travelled for 24 hours, do they  
39 often seem a little unsteady?

40 A They seem tired, but I don't normally associate  
41 their behaviour with somebody who had been  
42 drinking, like they --

43 Q But they walk slowly sometimes?

44 A They exhibit all kinds of signs that make me think  
45 they're tired, some people.

46 Q What are some of those things that they exhibit  
47 when they're tired?

- 1 A Closing -- rubbing closed eyes, leaning on  
2 something to rest their head, not moving, not  
3 being animated.
- 4 Q Sometimes they perspire a little more, correct?
- 5 A From being tired? I don't know.
- 6 Q Now, in the hall, the immediate hall itself, at  
7 that time, there was no real seating in the area  
8 where the carrouseles are located, is there?
- 9 A In the Customs Hall?
- 10 Q Yeah.
- 11 A I'm not sure what the seating was at that time. I  
12 know I see a lot of benches between the  
13 carrouseles. There's a lot of benches. And I've  
14 observed benches along some of the walls.
- 15 Q My impression from the diagrams was that there  
16 were very few benches, and the purpose of the  
17 immigration hall is to try and get you to move  
18 through there as quickly as you can.
- 19 A Well -- may I point with this?
- 20 Q Yes.
- 21 A In between these carrouseles -- like here's the  
22 luggage carrousel. In between there, there's long  
23 lines of benches, seats.
- 24 Q All right.
- 25 A Maybe not between every carrousel and --
- 26 Q Right.
- 27 A -- to varying numbers. And there has been a lot  
28 of renovation so there has been a lot of changes.
- 29 Q Now, you were on the Immigration side.
- 30 A Yes.
- 31 Q And the Immigration side has some individuals that  
32 usually work as rovers. They walk through the  
33 immigration hall.
- 34 A No, sir.
- 35 Q We were told earlier that there were rovers,  
36 people that would work and look through the  
37 immigration hall.
- 38 A Those are Customs inspectors. Those were Customs  
39 officers.
- 40 Q All right.
- 41 A And they would work in the Customs Hall where the  
42 luggage et cetera is. I'm not familiar with them  
43 ever entering and roving in the Immigration  
44 Secondary area.
- 45 Q Oh, no. I'm talking about in the main Customs  
46 Hall.
- 47 A Yes.

- 1 Q Are there Immigration officers that patrol the  
2 main Customs Hall?
- 3 A Well, there's officers. We're all Border Services  
4 officers now. At that time I would think that it  
5 was only Customs officers, the people who normally  
6 performed Customs duties, would do that job.
- 7 Q Well, one of the points you made to us was that  
8 there was some concern -- refugees, for example,  
9 often wanted not to be found and wanted to  
10 obfuscate as to which flight they arrived on so  
11 that it wasn't easy to send them back or deal with  
12 them. I'm presuming that somebody was patrolling  
13 for these people.
- 14 A We had at that time what we called a  
15 disembarkation screening team. They were  
16 Immigration officers and they would greet aircraft  
17 upon arrival at the airport and check passengers  
18 disembarking to make sure everyone had the  
19 appropriate travel documents et cetera. It was  
20 routine. My understanding of the routine, having  
21 never served on the disembarkation screening team,  
22 that they would also check bathrooms for documents  
23 and travellers.
- 24 Q Did you know if there were members of that team  
25 working on this particular evening of October the  
26 13th?
- 27 A I'm not aware of that.
- 28 Q Now, these privacy concerns that we were hearing  
29 about. If someone sponsors an individual as an  
30 immigrant to Canada, is that deemed to be an  
31 acknowledgement that the person being sponsored  
32 has given their consent to deal with the sponsor?
- 33 MR. BRONGERS: Mr. Commissioner, Jan Brongers for the  
34 Government of Canada. I'm just concerned about  
35 this question. It appears to be a legal question  
36 that is being asked to the witness and I'm not  
37 sure if she's competent to answer that.
- 38 MR. KOSTECKYJ: Let me rephrase it and perhaps --
- 39 THE COMMISSIONER: Well, that apart, I don't remember  
40 any evidence as a backup to what you're asking.
- 41 MR. KOSTECKYJ: Well, I think that the evidence will  
42 be -- and you'll hear from Mrs. Cisowski --
- 43 THE COMMISSIONER: Oh, well, all right.
- 44 MR. KOSTECKYJ: -- that she indeed was the sponsor of  
45 her son to Canada.
- 46 THE COMMISSIONER: No, no. But in terms of this  
47 witness or anybody else knowing that.

1 MR. KOSTECKYJ: No. And what I -- I intend to get into  
2 that to follow up. But I just want to know about  
3 her training and as to whether or not there was  
4 anything mentioned during the course of her  
5 training about dealing with people who were  
6 sponsors.

7 THE COMMISSIONER: All right, go ahead.

8 MR. KOSTECKYJ:

9 Q Now, in your training, was that issue brought up,  
10 about the fact that some immigrants are sponsored?

11 A In my *Privacy Act* training?

12 Q Yeah. Any of your training.

13 A I have always been aware from the time of my  
14 initial Immigration officer training that many  
15 immigrants are sponsored to come to Canada.

16 Q Okay. Now, in your *Privacy Act* training, was  
17 there anything brought up about the fact that  
18 there were special exemptions for sponsors?

19 A I'm not aware -- with my understanding of the  
20 *Privacy Act*, I'm not aware of any special  
21 exemption to allow sponsors to have private  
22 information about other travellers.

23 Q Well, when you were dealing with this gentleman,  
24 the issue of sponsorship never came up? You never  
25 asked him any questions about that?

26 A I don't recall asking any questions about  
27 sponsorship.

28 Q Is it now possible for you to access information  
29 from the PIL area by computer? Has that changed?

30 A I now in my duties as a Border Services officer, I  
31 work in the PIL area as well. There is a system  
32 there, a database that collects incoming traveller  
33 information. I'm able to access that. It's the  
34 ICS system. I can also access my e-mail and  
35 intranet.

36 Q At the time, back in October of 2007, was there  
37 any kind of a warning system built in where that  
38 if somebody checked in through Primary Customs,  
39 that if they hadn't shown up at either Secondary  
40 Customs or Immigration, that you'd go looking for  
41 them, if they were required to do that?

42 A I'm not aware of any system such as that.

43 Q The evening of October the 13th, 2007, would you  
44 agree that it was a relatively quiet day -- in  
45 terms of particularly the evening of October the  
46 13th, 2007, in terms of the number of passengers  
47 going through the area?

1 A I don't know what the numbers were.

2 Q You don't recollect whether it was a slow evening  
3 or a busy evening?

4 A No, I don't.

5 MR. KOSTECKYJ: Those are all my questions.

6 THE COMMISSIONER: Mr. Brongers.

7 MR. BRONGERS: Thank you, Mr. Commissioner. Jan

8 Brongers for the Government of Canada.

9

10 CROSS-EXAMINATION BY MR. BRONGERS ON BEHALF OF THE  
11 GOVERNMENT OF CANADA:

12

13 Q Ms. Zadavec, I think my friends have covered  
14 virtually all of the relevant factual narrative  
15 that you have. There's just one area I'd like to  
16 complete, and that's just to get an idea of just  
17 how far you had to walk when you were speaking  
18 with the person inquiring about where a traveller  
19 was. You said you put the phone down and then you  
20 had to walk around to look to see what you could  
21 find. Could you just explain to the Commissioner  
22 just how far you had to walk, perhaps in terms of  
23 the number of steps you had to take, or feet?

24 A I don't know how many feet. These are very short  
25 distances. The door from the shift supervisor's  
26 office is -- faces the small short hallway, and  
27 then the -- then there is the front counter  
28 stations that begin just almost immediately.  
29 I don't know how many feet those are. Maybe 12  
30 feet. I don't -- and I -- I just -- I'm not sure.  
31 And then right beside the SS office, there's a  
32 little hallway and then there's the glass waiting  
33 room, and then the three examination cubicles,  
34 three or four, are on the other side of that glass  
35 doorway -- glass holding area. I'm sorry.

36 Q And how many feet would you say it is to there?

37 A To the cubicle where the officer was dealing with  
38 the other passenger --

39 Q About the same distance perhaps?

40 A Almost -- I would say about the same distance, you  
41 know, give or take a foot. Yeah.

42 Q And then from there to get back to the telephone,  
43 about how many feet would that be?

44 A I'm sorry?

45 Q Then to get back to the --

46 A From the doorway to the -- the doorway of the  
47 supervisor's office to the telephone?

Tina Zadavec

Cross-exam by Mr. Hira (for Constable Millington)

1 Q Yes.

2 A Maybe eight feet. I don't know. Something like  
3 that. Ten feet.

4 MR. BRONGERS: Thank you very much, Ms. Zadavec.

5 THE COMMISSIONER: Yes, Mr. Hira.

6 MR. HIRA: Thank you, Mr. Commissioner. It's Ravi Hira  
7 for Officer Millington.

8

9 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE  
10 KWESI MILLINGTON:

11

12 Q I just have a few questions regarding a statement  
13 that you gave to the police, ma'am. You have the  
14 statement in front of you; is that not correct?

15 A Yes.

16 Q And this statement was taken on December the 1st,  
17 2007; is that correct?

18 A Yes.

19 Q And you've had a chance to read the statement and  
20 refresh your memory from that statement?

21 A Yes.

22 Q And what you told the police at that time, that  
23 was your best recollection of the incident?

24 A I would think so, yes.

25 Q And what you told them, of course, was the truth  
26 as you remembered it, correct?

27 A Yes.

28 Q I'd like to turn to page 19 of the statement. Are  
29 you at page 19?

30 A Yes.

31 Q What I'm going to do is read to you the questions  
32 asked of you by Constable Teboul and your answers,  
33 starting with the first question at page 19, and  
34 going to the first line at page 20. All right?

35 Were you asked these questions and did you  
36 give these answers?

37 A Yes.

38 Q

39 Cpl. Teboul: Did you make any observations  
40 about the male while he was ---

41

42 And then the next word is indecipherable.

43

44 -- office ah being dealt --

45

46 And the next word is indecipherable.

47

1                   -- with by your colleague ...

2  
3           Answer by you: "Yeah."   Question by the officer:

4  
5                   ... and if so, tell me about that?

6  
7           Answer by you:

8  
9                   Yeah, I did and um ... you know, I can  
10                   describe that in an a way that makes sense to  
11                   me.

12  
13           The officer says: "Yeah."   And you then give a  
14           long answer:

15  
16                   But um ... the way he looked, the way he  
17                   seemed to be behaving ... ah he looked like a  
18                   man that I would of --

19  
20           The next word is indecipherable.

21  
22                   -- described as ... being drunk.   And he  
23                   looked to me like a guy who um ... the story  
24                   I would of built in my head around the way he  
25                   was, he looked --

26  
27           And the next word is indecipherable.

28  
29                   -- amount of time for him to get to us ...  
30                   the way he was physically behaving it seemed  
31                   to me ah, my own explanation of it was that  
32                   he looked like a guy who drank a heck of a  
33                   lot on the airplane, maybe came off drunk,  
34                   fell asleep, woke up and was still slightly  
35                   drunk and um sort of having the physical ...  
36                   um clumsiness that ... I normally associated  
37                   with somebody who's been drinking too much  
38                   ... that's what he looked like to me.   He  
39                   also looked like um ... you know, he was ...  
40                   pretty calm and he ... I wasn't really paying  
41                   attention but I recall um ... that it, later  
42                   on when I was thinking about it, it seemed to  
43                   me that he was um responding to the, kind a  
44                   ... you know, sign language, conversation,  
45                   physical signals that the officers were  
46                   giving to him to produce, you know, his  
47                   passport, his ... to do this, to do that,

Tina Zadavec

Cross-exam by Mr. Hira (for Constable Millington)

Cross-exam by Mr. Butcher (for Constable Bentley)

1                   that he was responding to those things,  
2                   'cause --

3

4                   And the next word is indecipherable.

5

6                   -- paying attention and he was responding,  
7                   you know, seemed to be in a way that I  
8                   thought --

9

10                  And the next word is indecipherable.

11

12                  -- but also with that physical clumsiness,  
13                  that kind of delayed response that I --

14

15                  And the next word is indecipherable.

16

17                  -- drinking.

18

19                  Now, you were asked those questions and you gave  
20                  those answers?

21

A                Yes.

22

Q                And those answers are true?

23

A                Yes.

24

Q                And this was at the time that you were within six  
25                to eight feet of him, correct?

26

A                No. I was sitting -- by that point, when I was  
27                observing him, I was sitting at a station a little  
28                bit further away.

29

MR. HIRA: Thank you. Those are my questions of this  
30                witness, Mr. Commissioner.

31

THE COMMISSIONER: Thank you.

32

MR. BUTCHER: David Butcher. I'm counsel for Constable  
33                Bentley.

34

35                  CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE  
36                  BENTLEY:

37

38                  Q                I'm just going to ask you to clarify for a moment  
39                how long you observed Mr. Dziekanski all together.  
40                I'm getting the impression that there are two  
41                separate observations that you make of him; is  
42                that correct? One is --

43

A                Yes.

44

Q                One is you're within six to eight feet of him and  
45                one when you're sitting away from him?

46

A                Yes.

47

Q                First of all, can you tell us how long you're

1           observing him when you're six to eight feet away  
2           from him?

3           A     A few seconds.

4           Q     And how long do you observe him in the second set  
5           of observations?

6           A     I'm not sure. It was -- I looked over  
7           periodically several times while I was sitting in  
8           that area and was looking at him. But I honestly  
9           just can't tell you how long.

10          Q     So it's a series of observations that you make  
11          over a period of time?

12          A     Yes.

13          Q     Are you able to assist us at all with how long  
14          that period of time was?

15          A     No.

16          Q     How far away were you from him when you were  
17          making those observations?

18          A     I'm just not sure. Maybe twenty feet.

19          Q     At no time during the period that you were walking  
20          by him or making observations of him did you smell  
21          any alcohol on him, did you?

22          A     I never smelled alcohol.

23          Q     I'm going to go to your statement that you have  
24          been referred to earlier and just take you to the  
25          next page, please, page 20, and read to you from  
26          an answer in the middle of that page. This is  
27          what you told Corporal Teboul at the end of that  
28          answer:

29  
30                         So, it all fit for me that ah he looked like  
31                         he just woke up from a very serious drunk ...  
32                         that's what it looked like and it explained  
33                         in my own head why he was ... gone for so  
34                         many hours.

35  
36                         Have I read that correctly?

37          A     Yes.

38          Q     And that's what you told the police?

39          A     Yes.

40          Q     And that was an honest expression of your opinion  
41          about his physical condition?

42          A     Yes.

43          MR. BUTCHER: Thank you.

44          MR. BUCHANAN: Counsel for the witness again.

45

46

47

51

Tina Zadavec

Cross-exam by Mr. Buchanan (for Public Service Alliance  
of Canada)

1 CROSS-EXAMINATION BY MR. BUCHANAN ON BEHALF OF THE  
2 PUBLIC SERVICE ALLIANCE OF CANADA, continuing:  
3

4 Q Do you have your police statement with you?

5 A Is this the one?

6 Q Yes.

7 A Yes.

8 Q Can you just turn to page 11. Mr. Kosteckyj asked  
9 you some questions about what you told the police  
10 about your physical search for Mr. Dziekanski in  
11 the office. I'm just going to read you your  
12 passage to see if it helps you with your  
13 recollection. And if you go to your statement the  
14 second time on that page, and you say:  
15

16 And then behind the counter on ... one half  
17 of (INDECIPHERABLE) are cubicles and ah work  
18 stations where officers conduct their  
19 investigations and they perform examinations  
20 and um that's where Christopher was. So I  
21 looked ... in the Immigration Secondary area  
22 ... where the public area is ... --  
23

24 Constable: "Yeah."

25  
26 You:

27  
28 -- ... where people (INDECIPHERABLE) queued  
29 up ...  
30

31 Constable again: "Okay." And you again:

32  
33 -- and I didn't see anybody who I thought ...  
34 it could be and um ... I remember looking at  
35 the detention board and --  
36

37 Does that assist your recollection with whether or  
38 not you told them about searching the public area  
39 for Mr. Dziekanski?

40 A I did discuss with this constable looking in the  
41 areas for Mr. Dziekanski.

42 MR. BUCHANAN: Thank you. Those are our questions.

43 MR. MCGOWAN: Mr. Commissioner, just a couple of very  
44 brief questions in re-examination.  
45  
46  
47

1 RE-EXAMINATION BY MR. MCGOWAN:  
2

3 Q Ms. Zadavec, your counsel, Mr. Buchanan, asked  
4 you the first time he was asking you questions, he  
5 asked you if you had obtained information that  
6 Mr. Dziekanski had passed the Primary Inspection  
7 Line, is that information you would have shared  
8 with the caller. Do you recall him asking you  
9 that?

10 A Yes.

11 Q And your answer was that no, that wasn't  
12 information you would have shared?

13 A That's correct.

14 Q That was your answer. I take it, had you made the  
15 call and determined that he had proceeded past the  
16 Primary Inspection Line, though, you wouldn't have  
17 told the caller, "It appears the traveller you're  
18 looking for is not in Immigration Secondary area  
19 and there are no more flights from Germany this  
20 evening," and would not have made as one of your  
21 suggestions that perhaps they should go home from  
22 the airport and wait for him?

23 A That's correct.

24 Q Okay. And my friend, Mr. Buchanan, also asked you  
25 this question. Would you do anything differently  
26 today if you were faced with this call? Do you  
27 recall him asking you that question?

28 A Yes.

29 Q And your answer was no?

30 A That's correct.

31 Q Do I take your answer to mean that since this  
32 incident, you've received no training or  
33 information that would in any way change your  
34 response or change the efforts you might make to  
35 follow up on a call like this?

36 A I don't recall exactly how it was conveyed to us,  
37 but we would -- I would refer such a caller to the  
38 RCMP in the future, and if the RCMP wanted to come  
39 into our area and investigate, then they could do  
40 so.

41 Q There's been nothing in your specific training  
42 conveyed to you personally since that time that  
43 would cause you in response to a call like this to  
44 make queries about whether somebody had passed the  
45 PIL?

46 A Correct.

47 MR. MCGOWAN: Thank you. Those are my questions in

53  
Kal Bharya  
In chief by Mr. Vertlieb

1 re-examination.

2 THE COMMISSIONER: Thank you very much. You're very  
3 helpful. This is a difficult inquiry. Thank you.

4  
5 (WITNESS EXCUSED)

6  
7 THE COMMISSIONER: I suppose we should break for lunch.  
8 I understand there's some technical equipment to  
9 be put together.

10 MR. VERTLIEB: Yes, I think we should break now,  
11 please.

12 THE COMMISSIONER: All right. Two o'clock.

13  
14  
15 (PROCEEDINGS ADJOURNED FOR NOON RECESS)  
16 (PROCEEDINGS RECONVENED)

17  
18 THE COMMISSIONER: Yes, Mr. Vertlieb.

19 MR. VERTLIEB: Thank you, Mr. Commissioner. The only  
20 witness for the afternoon session is Mr. Kal  
21 Bharya, and he's here in the courtroom. Mr.  
22 Bharya, if you'll please come forward.

23  
24 KAL BHARYA, a witness,  
25 affirmed.

26  
27 THE REGISTRAR: Could you state your full name, please.  
28 A Kulvinder Singh Bharya.

29 THE COMMISSIONER: Thank you, Mr. Bharya. You can have  
30 a seat there.

31  
32 EXAMINATION IN CHIEF BY MR. VERTLIEB:

33  
34 Q Now, Mr. Bharya, you were born here in Vancouver  
35 and have been in this community since your birth?

36 A That's correct.

37 Q You studied at SFU in criminology?

38 A That's right.

39 Q You worked for approximately three years from the  
40 age of 22 for BC Corrections?

41 A That's right.

42 Q And then you joined CBSA at the time it was CCRA?

43 A That's right.

44 Q When did you start working for CCRA, now CBSA?

45 A Approximately February 19 of 2002.

46 Q Are you still there today?

47 A Yes.

- 1 Q So you've worked continuously, then, for almost  
2 seven years?
- 3 A That's correct.
- 4 Q Now, tell us about the work experience that you  
5 have in terms of Customs and Immigration.
- 6 A 2002, when I joined the agency, I joined on the  
7 Customs end of the organization, and shortly  
8 after, a couple of years after, we merged with  
9 Immigration, CIC and CFIA, and merged into one  
10 agency, which is now known as Canada Border  
11 Services Agency. The majority of my background is  
12 from the Customs perspective. During the last few  
13 months of my time at the airport, I worked  
14 Immigration approximately about six months of that  
15 time. But like I said, the majority of my  
16 background is from the Customs end of things.
- 17 Q CBSA is responsible for both Customs and  
18 Immigration?
- 19 A That's correct.
- 20 Q For much of your time, they were separate  
21 departments?
- 22 A Yes.
- 23 Q And today they're now merged?
- 24 A That's right.
- 25 Q In October 2007, they were separate departments?
- 26 A Operationally, they were separate but -- the  
27 merger did occur, but legacy Immigration and  
28 Customs officers were not working as one.
- 29 Q So in October of 2007, were you working on the  
30 Customs side?
- 31 A Yes.
- 32 Q During that month, would you have done any work at  
33 all at Immigration?
- 34 A No, I was not trained at that time.
- 35 Q So your training in the months leading up to  
36 October '07 was on the Customs side and that's  
37 what your duties involved?
- 38 A That's correct.
- 39 Q And you worked at the airport?
- 40 A That's right.
- 41 Q Now, in a general way, if you're dealing with  
42 someone who's coming into Canada to be a permanent  
43 resident, what's the general approach you take,  
44 you yourself would take at Customs in dealing with  
45 such a person?
- 46 A Like I said, I wasn't trained in processing any of  
47 the CPR documentation. So we would process all

- 1 customs formalities and essentially redirect them  
2 to the Immigration Secondary area for further  
3 processing of what we call the landing documents  
4 for any newcomer or immigrant to Canada.
- 5 Q CPR meaning?
- 6 A Confirmation of Permanent Residency.
- 7 Q And that's an Immigration form?
- 8 A That's correct.
- 9 Q And in this case, because Mr. Dziekanski was  
10 coming to be a permanent immigrant, he would have  
11 to deal with that documentation?
- 12 A That's right.
- 13 Q And that would all be at Immigration?
- 14 A That's right.
- 15 Q Okay. So let's just discuss when you're dealing  
16 at the customs side with a person who you learn to  
17 be coming as a permanent resident. How much of a  
18 worry do you have about that type of passenger?
- 19 A From a Customs perspective, any newcomer,  
20 immigrant coming to Canada is extremely low risk.  
21 We wouldn't be too concerned about them bringing  
22 any kind of illegal goods into Canada. Therefore  
23 we'd just be asking about currency that's coming  
24 into Canada over the excess of \$10,000 or any kind  
25 of food items that might be in their possession  
26 that are controlled. So from a Customs  
27 perspective, it would be extremely low risk.
- 28 Q Now, let's talk about the shift you worked on  
29 October 13 of 2007. You remember that shift well,  
30 given what happened?
- 31 A That's right.
- 32 Q That was the afternoon shift?
- 33 A That's right.
- 34 Q And your hours that day, sir, were what?
- 35 A 4:00 to 1:00 in the morning.
- 36 Q And did you start at 4:00 and leave at 1:00?
- 37 A Yes.
- 38 Q And you were in uniform?
- 39 A That's correct.
- 40 Q I won't have you describe the uniform because  
41 you'll be visible in the video we will watch.  
42 What's your recollection of how busy it was that  
43 shift?
- 44 A I can't recall specifically how busy it was. But  
45 generally speaking the afternoon shift as  
46 comparable to a day shift is not that busy.
- 47 Q And thinking back about that particular Saturday,

1 mid-October, was that a usual Saturday or more or  
2 less busy than a usual Saturday afternoon/evening  
3 shift?

4 A From what I recall it was just a regular afternoon  
5 shift.

6 Q Now, you were in a number of CBSA videos, and  
7 we've already had those videos played to the  
8 Commissioner and counsel and others here in this  
9 courtroom. So we've all seen those once without  
10 commentary of any significance. What I'd like to  
11 do, Mr. Bharya, is take you through the videos in  
12 which you appear and we can have you tell the  
13 Commissioner during each of these segments what it  
14 is you're doing, and if there's a need to stop to  
15 explain something, you let us know --

16 A Okay.

17 Q -- and we will have the passage stopped. Okay?

18 A All right.

19 Q And I want you to take as much time as you need to  
20 go through this, because all together there's a  
21 number of minutes where you're on these videos and  
22 we know you had quite extensive dealings with  
23 Mr. Dziekanski.

24 A Okay.

25 Q So feel under no rush at all, sir.

26 MR. VERTLIEB: Dr. Perra, could we please get the first  
27 clip, which is marked 006. This is one that we've  
28 seen on the sheet as being at the Point.

29

30 (VIDEO CLIP PLAYING)

31

32 Q Officer Bharya, do we see you in that video? Are  
33 you viewable?

34 A Yeah. I'm the person that's leaning against the  
35 counter right there, on the right-hand side.

36 Q Now, we're going to give you a laser pointer. And  
37 it's awkward -- the only thing, sir, if you face  
38 too much to the screen, we won't hear your voice  
39 properly, so try to do the best you can as a  
40 compromise.

41 A Okay.

42 Q Show us with the pointer where you are.

43 A That's me right there.

44 Q And looking at that, can you tell us who you are  
45 with? Who's beside you there?

46 A I can't recall exactly who this officer is, nor  
47 can I make out this person. It's probably two

57  
Kal Bharya  
In chief by Mr. Vertlieb

1 other officers obviously that are stationed at  
2 Point on that particular evening shift, but I  
3 can't tell from the video who it was nor can I  
4 recall.

5 Q Now, is the Point normally manned by Customs or by  
6 Immigration officers?

7 A At that particular time it was the responsibility  
8 of Customs.

9 Q So the people with you that are in uniform and  
10 CBSA employees would be on the Customs side?

11 A That's correct.

12 Q We won't take you through the Point and what it  
13 means. We've all heard about that.

14 MR. VERTLIEB: Dr. Perra, would you please run this  
15 clip for us. Can you stop that one second,  
16 please.

17  
18 (VIDEO CLIP PAUSED)

19  
20 Q Now, we know that now to be Mr. Dziekanski. Do  
21 you recognize him in that passage?

22 A Yes, I do. It's this individual with the white  
23 jacket.

24 Q Could you overhear any discussion between the CBSA  
25 officer and the gentleman, Mr. Dziekanski?

26 A Not that I recall.

27 Q Was there anything alerting you in any way about  
28 that interchange?

29 A No.

30 MR. VERTLIEB: Thank you. Please continue. Now stop  
31 there one second, please.

32 Q Was there any discussion that you were part of or  
33 overheard between your other officers and the  
34 gentleman that we know to be Mr. Dziekanski?

35 A No.

36 Q So you still are having no involvement in this at  
37 all?

38 A That's correct.

39 Q Now, you appear to be looking towards the  
40 direction of Mr. Dziekanski. Were you, or do you  
41 remember?

42 A I don't remember, but viewing the video, it seems  
43 that way.

44 MR. VERTLIEB: Keep going please.

45  
46 (VIDEO CLIP PLAYING)

47

1 THE COMMISSIONER: Do we know the time on this?

2 MR. VERTLIEB: Yes. That is 22:33, 22:32, so about  
3 10:30.

4 Q Now, tell us, sir, what you're doing here. You're  
5 walking obviously towards where Mr. Dziekanski  
6 went.

7 A Yeah. On that particular evening I was not  
8 positioned at the Point area. I was actually  
9 positioned in the Customs secondary inspection  
10 area, and if you're looking at this diagram,  
11 that's this area here where (indicating on  
12 Exhibit 2) -- this is the Point area with the  
13 arrow, where all traffic exits, and Mr. Dziekanski  
14 was redirected here. So I was part of the team  
15 that was scheduled for the secondary inspection  
16 area, and so chances are that I just proceeded to  
17 the rear to assist Mr. Dziekanski.

18 Q Now, how did you know that he was going to go to  
19 secondary?

20 A All traffic is either exited out this way into the  
21 waiting area, or if there's any kind of further  
22 inspection required of the traveller, they're  
23 redirected into what we refer to as the Customs  
24 secondary examination area.

25 Q Were you asked to go and deal with him?

26 A No, I -- chances are I probably just kind of took  
27 a peek in the back and decided to assist him.

28 Q So you weren't asked to do anything in particular  
29 by your fellow officers?

30 A No.

31 MR. VERTLIEB: Okay. Thank you. Just run the end of  
32 that clip, please. That's it? Okay.

33  
34 (VIDEO ENDED)

35  
36 So that's the clip 22:33 and it's called "At the  
37 Point," Mr. Commissioner, on that video itinerary  
38 you have.

39 Now, the next, please, is marked 007, and  
40 this is in Customs Secondary, and this is about  
41 ten minutes plus. We'll just get that up on the  
42 screen, Officer Bharya, and you can then take us  
43 through your dealings with Mr. Dziekanski.

44  
45 (VIDEO CLIP PLAYING)

46  
47 Q We see him coming into the video. Tell us when

1           you're visible.

2       A     Right there.

3       Q     Thank you.  You're walking beside him?

4       A     That's right.

5       Q     Tell us everything that was happening at that  
6           point and continue.

7       A     At that point in time I just escorted Mr.  
8           Dziekanski to what we refer to as the secondary  
9           examination counter just to take a look at his  
10          customs declaration card, find out exactly why he  
11          was referred to the Customs secondary examination  
12          area.  So when we start off any examination, we  
13          take a look at the customs declaration card to  
14          determine why the primary inspection officer made  
15          the referral to secondary, and that would gauge  
16          our examination with the individual.

17   MR. VERTLIEB:  Stop the clip one second, please.

18

19                   (VIDEO PAUSED)

20

21       Q     Keep going.  We'll just stop it a second because I  
22           want to ask you about why the coat was being  
23           opened.

24       A     Yeah.

25       Q     But continue with your narrative, please.

26       A     So again, like I said, the first thing we do is we  
27           take a look at the customs declaration card, find  
28           out what concerns the primary officer had with the  
29           individual.  And chances are I probably took a  
30           look at his card and, you know, observed it and  
31           noticed that there was a language barrier, because  
32           we have a Customs coding system that signifies  
33           that the person had a language barrier.  So it  
34           looks like I'm inspecting the documents right now.

35       Q     Were you speaking to the gentleman?

36       A     I can't tell, looking at the still view, but  
37           chances are I'm asking questions of him, yes.

38       Q     Were you ever able to speak with him in his  
39           language?

40       A     No.  I do not speak Polish.  He tried to converse  
41           with me in what appeared to be Polish, and that's  
42           just from observing his passport, and I was not  
43           able to understand him.

44   MR. VERTLIEB:  Continue, please, with the video.

45

46                   (VIDEO PLAYING)

47

1 Q Can you help us with what's happening?

2 A At this point in time, I didn't ask him to remove  
3 his jacket or anything. From what I recall, he --  
4 it looks like he's fumbling around. Chances are  
5 he's probably looking for his immigration  
6 documents, which he did not produce to me at that  
7 time. That is something I remember quite clearly.  
8 He did not have his CPR documents with him. He  
9 did, from what I recall, have his passport and his  
10 declaration card, so I'm assuming that's what he's  
11 looking for at this point in time.

12 Q Tell us what was happening right there.

13 A As far as my conversation with the other officer?

14 Q No. What was happening? Were you talking or  
15 asking him or --

16 A I was -- chances are, again, like I said, probably  
17 trying to ask him questions and trying to  
18 ascertain where his immigration documents were.

19 Q Do you remember what he took out? He appears to  
20 have taken something out of his jacket. Do you  
21 remember what that was?

22 A No, I don't recall. I could -- what it looks like  
23 is perhaps his wallet, but I don't remember  
24 specifically, no.

25 Q Anything unusual that he was doing?

26 A He was really fumbling through his jacket and his  
27 belongings and -- and from what I do recall, it  
28 was -- it was clear to me that, you know, I didn't  
29 understand what he was saying, but he continuously  
30 tried to speak to me in, again, what I said to be  
31 Polish. And he kept on looking for some kind of  
32 documents, and he started opening up his luggage  
33 at this time.

34 Q Did you ask in any way, with hand gestures, for  
35 him to open?

36 A I may have. I didn't notice myself gesturing on  
37 the video footage.

38 Q Does this refresh your memory of some of your  
39 dealings when you watched this?

40 A Yes, it does. My concern here is usually when you  
41 have a new immigrant coming to Canada, the CPR  
42 document and their passport is something that is  
43 one of the first things that they give to an  
44 officer, in my dealings in the past. And what I  
45 found unusual about this circumstance is Mr.  
46 Dziekanski did not produce that document to me nor  
47 did he know where it was. After inspecting his

1           airline tickets, I realized just looking at his  
2           tickets that he had additional two pieces of  
3           luggage, and I observed that just by looking at  
4           the bag tags issued by the airlines, and I found  
5           it unusual that he didn't have those two bags with  
6           him also. And so those are some of the details  
7           that kind of stuck in my mind after -- after  
8           viewing this footage here.

9           MR. VERTLIEB: Now, just to stop the video one second.

10  
11                           (VIDEO PAUSED)

12  
13           Q           At this point in time, it's obvious he's not  
14           understanding -- to you. It's obvious to you he's  
15           not understanding you and you're certainly not  
16           understanding him. Can you help us with what he  
17           was doing while you were standing there and he had  
18           his suitcase up on the tray there?

19           A           Again, I think -- it appears that he's trying to  
20           locate his immigration documents. And I do recall  
21           myself saying to him, "Immigration papers,"  
22           because I flipped through his visa -- I mean his  
23           passport and I noticed that he did have a Canadian  
24           visa. That would indicate that he was immigrating  
25           on that particular day. And you know, it's  
26           unusual that anybody immigrating wouldn't have  
27           those documents ready for the Immigration and  
28           Customs officer.

29           Q           You had no sense ever that he was coming in as a  
30           refugee or anything of that sort?

31           A           No.

32           Q           Okay.

33           A           Usually when you see the visa in the passport with  
34           an immigrant counterfoil, it's indicative that  
35           they're landing for the first time.

36           Q           And that would tell you they must have had some  
37           contact with the Canadian embassy or consulate in  
38           some --

39           A           That's correct. They go through the interview  
40           process abroad before that.

41           Q           And you know from your training that that's a  
42           lengthy process?

43           A           That's right.

44           MR. VERTLIEB: Okay. Keep going with the video,  
45           please.

46  
47

1 (VIDEO PLAYING)

2  
3 Q There's some books that he shows. I just want to  
4 ask you when that comes out, okay? If there's  
5 anything else that you feel is important to  
6 understanding what was happening, you tell us,  
7 please.

8 A At this point in time, it looks like I'm just  
9 going through his luggage to see if I can help him  
10 find his immigration documents. For anybody  
11 that's immigrating, it's very crucial that those  
12 paperwork -- that those documents be processed  
13 during their first time landing, so it appears I'm  
14 just trying to give him a hand, trying to locate  
15 that document and see if there's any other  
16 information I could try to help him out with,  
17 especially his baggage.

18 Q So you were trying to help as opposed to be on the  
19 alert? Is that --

20 A Yeah. There was no real customs concerns right  
21 from the get-go with Mr. Dziekanski. It was  
22 more so trying to help him find his immigration  
23 documents and get him ready for the next step in  
24 the process.

25 MR. VERTLIEB: If you CAN stop that one second, please,  
26 Dr. Perra.

27  
28 (VIDEO PAUSED)

29  
30 Q Look on the table. You see those books there? Do  
31 you have any memory of that?

32 A No, I don't recall what exactly those books are.  
33 Just looking at it, I can't make it out either.

34 Q If this helps you, there may be some evidence that  
35 they were atlases or geography books about Canada  
36 and other areas of the world. Does that ring any  
37 bell with you?

38 A No, it does not.

39 MR. VERTLIEB: Thank you. Please keep going.

40  
41 (VIDEO PLAYING)

42  
43 A So this officer beside me is just a fellow  
44 colleague, Officer McKenzie. We tend to help each  
45 other out on an afternoon shift just to expedite  
46 the process a little bit more efficiently, and I  
47 think maybe she was just trying to give me a hand.

1 Q She was just helping? You were the principal  
2 Customs person?

3 A That's right.

4 Q Thank you.

5 A Again, I'm just verifying in his jacket if any of  
6 those documents are in there because based upon my  
7 experience, usually people just put them in their  
8 pocket. They get so confused when they're dealing  
9 with Customs that they just forget they're in  
10 their pocket, so...

11 Q Do you know what he was putting away and holding  
12 there? Do you remember any of that?

13 A No, I --

14 Q I know you're looking away. Do you remember,  
15 though?

16 A No, I don't.

17 Q Was something being entered on the computer by  
18 your colleague?

19 A I can't make it out if she's actually on the  
20 computer or just inspecting the documents.

21 Q Would there be any need to be on a computer for  
22 this kind of processing?

23 A Usually what we do is after we deal with an  
24 individual, we will log into a system known as ICS  
25 and enter any examination results if there was  
26 something out of the ordinary or -- log into a  
27 system of that nature.

28 Q Who's that who just came into the screen?

29 A It's another colleague. I'm sorry, I'm drawing a  
30 blank with his name. I believe he was a student  
31 for the summer at the time, and it could be he  
32 just came over just to ask a question of myself or  
33 Officer McKenzie. It looks like he's dealing with  
34 this passenger over here.

35 Q Nothing to do with Mr. Dziekanski?

36 A No.

37 MR. VERTLIEB: Thank you. Just stopping for a moment.

38

39 (VIDEO PAUSED)

40

41 Q Physically do you remember anything about him at  
42 that time in terms of how he appeared to you?

43 A I don't recall any details as far as, you know,  
44 what he appeared. He appeared nor -- I mean, I  
45 found it odd he was really fumbling through his  
46 jacket to locate something, but that's all I  
47 can -- that kind of really sticks out in my mind.

1 Q Was there any odour that you remember?

2 A I don't recall.

3 Q Did you have any concern about alcohol?

4 A I mean, just my dealing with him, there was --  
5 there was nothing out of the ordinary as far as  
6 dealing with him, any concerns. So the answer to  
7 your question is no.

8 MR. VERTLIEB: Keep going, please.

9

10 (VIDEO PLAYING)

11

12 So just stop there a second.

13

14 (VIDEO PAUSED)

15

16 Q Do you remember what you were doing?

17 A I was probably instructing him to kind of get his  
18 luggage together and follow me. At this point in  
19 time, all customs formalities were complete and I  
20 thought it would probably be prudent if I walked  
21 him over to the Immigration office so he can get  
22 further processed. And my goal at that time was  
23 to try to help him locate his luggage because he  
24 didn't have his immigration documents. He would  
25 need those in the next step of the process, and I  
26 thought, you know, I'll walk him over there, help  
27 him get his luggage, try to locate the immigration  
28 documents and convey any concerns to the  
29 Immigration personnel that was on shift.

30 Q Is it part of your job description to walk someone  
31 over to Immigration?

32 A It's highly unusual that we do do that just for a  
33 few reasons. Number one is we're extremely,  
34 extremely busy during a day shift and we don't  
35 have the liberty walking from the secondary  
36 examination all the way to Immigration and then  
37 back again. We don't usually do that unless  
38 there's a -- you know, it's not that busy or  
39 there's something out of the usual. In this  
40 particular case, just the fact that he didn't  
41 understand me, I didn't understand him, I thought  
42 it would probably be best if I just walk him over  
43 so he wouldn't -- he would be able to go through  
44 the next process.

45 Q And who was the fourth person who joined the woman  
46 standing to the left of Mr. Dziekanski.

47 A This lady here. That's Border Services Officer

1 Lavallee.

2 Q Okay. So are you near the end of your dealings at  
3 that time with Mr. Dziekanski?

4 A Yes, it appears so.

5 MR. VERTLIEB: Okay. We'll just watch the end of this,  
6 please.

7

8 (VIDEO PLAYING)

9

10 Q So now you're just waiting with him to, it looks  
11 like, zip up his luggage?

12 A That's right.

13 Q And you and he walked out?

14 A That's right.

15 Q Do you remember anything about him walking? Can  
16 you help the Commissioner with anything about  
17 that?

18 A Nothing that I recall that was unusual.

19 Q He came back for something there. Do you remember  
20 what that was?

21 A It looks like he set something on that little  
22 counter there that he may have forgotten, maybe a  
23 document or something. There's a little shelf  
24 right there in front of that counter.

25

26 (VIDEO ENDED)

27

28 Q While we're just changing the video, it's funny,  
29 you're reaching for water. I was just going to  
30 ask you about that. Did you at any time, either  
31 then or later or whenever, help him with a glass  
32 of water or more than one?

33 A Yes. After we escorted Mr. Dziekanski to the  
34 Immigration Secondary processing area, I do  
35 remember that, you know, he made a gesture,  
36 something to this effect (gesturing) that he  
37 required some water. So I instructed Officer  
38 Lavallee to get him some water. I do remember  
39 that clearly, yes.

40 Q Now, you were with him, according to the video,  
41 almost eleven minutes in that Customs secondary  
42 area. How would you describe his demeanour with  
43 you and the others?

44 A He was frustrated. He -- there was an obvious  
45 language barrier there. He followed all my non-  
46 verbal commands when I gestured to him to get his  
47 stuff together. He complied when I kind of waved

1 him along to proceed to the Immigration Secondary  
2 area. So I didn't feel that -- I mean, he was  
3 fine. I didn't feel that I was -- he was  
4 following my instructions throughout the process.

5 Q In terms of attitude towards you, what can you say  
6 about that?

7 A All I can remember is that he just seemed  
8 frustrated. He kept on fumbling through his  
9 jacket pocket and -- that's all I can remember.

10 Q Was there any issue about the level of his voice  
11 or the tone of his voice?

12 A No. It was -- when you're dealing with people in  
13 Customs Secondary area, it's quite normal to deal  
14 with travellers that are -- that are frustrated  
15 with you and, you know, they've gone through a  
16 long travelling process and the last thing they  
17 want to do is answer any more questions or deal  
18 with Customs. So in that case it was quite usual.  
19 His demeanour towards me, I didn't feel anything  
20 threatening about it. As I said, any time I  
21 gestured him along to follow me, collect his  
22 belongings, he did so and he was compliant.

23 Q Now, did you when you were dealing with him have a  
24 sense of when his plane had arrived?

25 A Thinking back on it, after I did escort him to  
26 the Immigration Secondary area, as I mentioned  
27 before, I noticed that he had two additional  
28 pieces of luggage, and chances are that, you know,  
29 one of the pieces of luggage did contain his  
30 immigration documents, and so I decided to try to  
31 help him find that. So after I escorted him to  
32 the Immigration area, I told him to have a seat.  
33 We got him water. And the next thing I did was  
34 walk into the office of the Immigration supervisor  
35 and advise them of, you know, what the situation  
36 was, advise them that this gentleman here was  
37 landing, he was immigrating today, that he was  
38 dealt with in Customs, he didn't have any  
39 immigration documents nor did he have two pieces  
40 of his luggage. So I instructed the acting  
41 superintendent that evening that I would go find  
42 the luggage. I sat him down and he's seated down  
43 there. And I proceeded towards the carrousel area  
44 after I left the Immigration Secondary area, and I  
45 tried to locate his luggage. And usually, when a  
46 flight disembarks, there's all these carrouseles  
47 here and the airline will just take the baggage

- 1 and offload it off the carrousel, and -- you know,  
2 just to prepare for the next flight that's coming  
3 in. And so what I did is I quickly, walking from  
4 the Immigration exit, walked around the centre  
5 area, you know, try to see if I can find any  
6 luggage, you know, placed on the floor. And I  
7 didn't see anything so I walked along this wall  
8 here (indicating on Exhibit 2), which is where all  
9 the airline counters are located. And looking at  
10 his ticket, I realize that it was a Lufthansa -- I  
11 believe a Condor flight operated by Lufthansa.  
12 And I looked around this area and that's when I  
13 saw two pieces of luggage, and I matched the names  
14 to the passenger's name and I realized, okay, he's  
15 off this flight.
- 16 Q Okay. Now, we've heard that that flight arrived  
17 in Vancouver -- and you're right, it was Condor --  
18 and it landed just say around 3:30.
- 19 A Okay.
- 20 Q And you're dealing with him now about 10:30 at  
21 night. At the time, do you remember having any  
22 question in your mind about the timing of that in  
23 terms of the arrival of the plane and the fact  
24 that you were dealing with him at 10:30 at night?
- 25 A I thought perhaps maybe the flight would have got  
26 delayed or something to that effect. But now,  
27 thinking back on it, I do remember talking -- or  
28 making a call. I don't know if I went up there  
29 and I spoke to the officer at Primary. But on the  
30 customs declaration card there's a stamp that  
31 identifies the primary inspection officer, and I  
32 do remember briefly -- I don't know if I placed a  
33 call or I went to go see her, just inquiring as to  
34 why it took so long or when she dealt with him.  
35 And I don't remember the specifics of that  
36 conversation or where it occurred, either on the  
37 phone or in person.
- 38 Q Was that Monica Kullar?
- 39 A Now that you mention it, yes.
- 40 Q And so how often would you in your work make that  
41 type of inquiry?
- 42 A Very rarely, unless there's an incident that  
43 required me to kind of investigate or look into  
44 the matter a little bit more.
- 45 Q Do you remember why you made that inquiry on this  
46 evening about Mr. Dziekanski?
- 47 A No, I don't recall why.

1 Q Did you give him any water in the Customs Hall?

2 A Not in the Customs Hall. When we -- as I  
3 mentioned before, when we escorted him into the  
4 Immigration Secondary area, he made a gesture that  
5 he required something to drink and I assumed it to  
6 be water, so I instructed Officer Lavallee to get  
7 him a glass of water.

8

9 (VIDEO CLIP PLAYING)

10

11 Q Let's just deal with that very brief segment  
12 showing him walking past the Point. This is 007a.  
13 And that was you with him?

14 A That's correct.

15

16 (VIDEO ENDED)

17

18 Q Now, there's another segment, the next one -- it's  
19 about 40 seconds -- showing you walking in the  
20 area of the Immigration Secondary, and this now is  
21 about 22:50, about ten to 11:00.

22

23 (VIDEO CLIP PLAYING)

24

25 A These here is the Immigration Secondary area.  
26 That's if you're looking at this wall here. And  
27 these are the carrousel's obviously outlined on the  
28 diagram right there (indicating on Exhibit 2).

29 Q Can you help us there?

30 A Again, like I said, chances are we probably walked  
31 from this area here, secondary inspection. Here's  
32 the Point area where the camera of the last  
33 footage. We probably walked from this area in  
34 through one of these carrousel's, and this is where  
35 you see the current footage right here, going into  
36 the Immigration office. And what we usually do is  
37 just ask travellers to leave their baggage outside  
38 the office, and then when you walk in here, that's  
39 where the Immigration Secondary area is.

40 Q I just want to see if you remember -- and you may  
41 or not be able to help us. We're told that it was  
42 at 22:44, 10:44, that you and Mr. Dziekanski  
43 walked past the Point, that brief nine-second  
44 video. Apparently that clip we're just now  
45 looking at is 22:51, or seven minutes later. Now,  
46 it wouldn't take seven minutes of course to walk  
47 across the hall from Customs Secondary to

1           Immigration Secondary, right?  
2       A     Uh --  
3       Q     Do you --  
4       A     It doesn't look like much of a walk, but depending  
5           on how quick you're going and how fast the  
6           traveller is going, if they stop or -- I wouldn't  
7           say stop, but to walk from here to here, normal  
8           paces, you know, at least two and a half, three  
9           minutes. So that's walking straight there. It  
10          could be that perhaps I was trying to get him to  
11          locate his luggage around the carrousel area. I  
12          don't recall exactly.  
13       Q     So you just don't have recall of that --  
14       A     That's right.  
15       Q     Okay. So that was you taking him into the  
16          Immigration Secondary?  
17       A     That's right.  
18       Q     Now, do you remember from looking at that if you'd  
19          already picked up his bags, or do you not  
20          remember?  
21       A     No. It appears, and from what I recall, is we  
22          walked him over there first, and he only had his  
23          one carry-on luggage at that time. So I don't  
24          think he did have the additional two pieces of  
25          luggage yet.  
26       Q     Now, your memory, then, is you walked him to  
27          Immigration Secondary. And it's not something you  
28          had to do. You were doing it to help him, as you  
29          said earlier?  
30       A     That's correct.  
31       Q     And then you, also to help him, went to look for  
32          his luggage?  
33       A     Well, he didn't come with me when we located his  
34          luggage. I found it for him --  
35       Q     Right.  
36       A     -- and brought it back to him.  
37       Q     And that's something you did to help him?  
38       A     That's right.  
39       Q     You don't have to do that?  
40       A     That's correct.  
41       Q     So you went over to Lufthansa. Tell us about  
42          finding his bags, the two suitcases.  
43       A     As I mentioned earlier, the airline counters are  
44          all located around this area (indicating on  
45          Exhibit 2), and usually, if a passenger doesn't  
46          pick up their luggage from the carrousel area, the  
47          airline or one of the airline representatives will

- 1 just essentially take all the luggage, line it up  
2 around the airline counters, and then they'll  
3 start a file or a delayed luggage report on it.  
4 And so what I did is I just walked straight up  
5 here. I tried to see if there was any airline  
6 representative from that airline. There wasn't  
7 and I just started looking for his luggage and I  
8 found it and matched it to his name and brought it  
9 back over to this area and into Immigration.
- 10 Q So you took his two suitcases into Immigration?  
11 A That's correct.
- 12 Q Again, that's not something you had to do?  
13 A No.
- 14 Q Now, did you have any discussion with Acting  
15 Superintendent Currie about the situation?  
16 A Reviewing my reports, I know that I went over  
17 there and just told her what the situation was,  
18 that this individual didn't have his Immigration  
19 paperwork, that I'd go find the luggage and bring  
20 it over so they could start processing him. And  
21 usually, you know, we'll just let the Immigration  
22 personnel know when we've brought somebody over  
23 from the Customs Secondary area just so that  
24 they're not seated there waiting, not being  
25 processed and assisted.
- 26 Q Did you have any discussion with Superintendent  
27 Currie about how long he had been in the airport?  
28 A I can't recall those details, no.
- 29 Q But you spoke with her. Where was Mr. Dziekanski  
30 when you spoke with her and left Immigration  
31 Secondary to go get his bags? Where was he?  
32 A I walked him -- the last footage you see is me  
33 walking him into here (indicating). And  
34 essentially there's counters all along here and  
35 then there's benches in this area. So I remember  
36 I seated him in a bench right in front of the  
37 officer counters there, and then I walked into the  
38 back here where the shift supervisor's office is  
39 and I spoke to her there.
- 40 Q So having brought his bags over to Immigration  
41 Secondary, you then left?  
42 A That's right.
- 43 Q And went back to customs secondary?  
44 A That's correct.
- 45 Q Did at any time up to that juncture you consider  
46 getting an interpreter?  
47 A At that time I didn't feel I needed one for the

1 dealings that I needed to -- from a Customs point,  
2 there was no concerns. I just wanted to escort  
3 him over there. There was no need to get any  
4 further information to process him. I didn't feel  
5 it was necessary at the time.  
6 Q Do you remember what Ms. Kullar, Monica Kullar,  
7 who was at the PIL, told you?  
8 A No, I don't.  
9 Q Do you have any memory of passing on any  
10 information from her to anybody else?  
11 A No, I do not.  
12 Q Now, you have no knowledge of what took place  
13 inside the Immigration Secondary that evening?  
14 A No, I wasn't there. I went back to the Customs  
15 Secondary area.  
16 Q Now, I think, then, that brings us to the next  
17 segment of tape, which is now about 20 to 1:00 in  
18 the morning, 00:39, and this is the tape marked  
19 008. This is about six minutes.  
20  
21 (VIDEO CLIP PLAYING)  
22  
23 Is that Officer Lavallee?  
24 A That's right.  
25 Q And that other person has nothing to do with this  
26 matter?  
27 A No. It looks like he's just another traveller  
28 being processed.  
29 Q Tell us when you appear. Was anyone with Mr.  
30 Dziekanski at this time?  
31 A Not that I see.  
32 Q But you recognize him?  
33 A Just from his jacket. That appears to be him.  
34 Q And he's got one of those airport luggage carts?  
35 A Yes, right there. Right there. There I am.  
36 MR. VERTLIEB: Now just stop there for a moment,  
37 please.  
38  
39 (VIDEO PAUSED)  
40  
41 Q During this clip, he's just standing there. You  
42 see that?  
43 A Yeah.  
44 Q Was there any issue at all about what he was doing  
45 or how he was doing it? Meaning Mr. Dziekanski.  
46 A No. I can't -- I mean, it seems like another  
47 officer from immigration is standing there and I

- 1           probably came over and spoke to him about Mr.  
2           Dziekanski, but I can't -- I can't recall exactly.  
3        Q     And he seems to be just standing there. Was there  
4           any problem at all of any sort, any kind  
5           whatsoever?  
6        A     No, not that I can see and not that I can recall.  
7        Q     How would you describe him?  
8        A     Describe?  
9        Q     Mr. Dziekanski, from your observations of him as  
10           you passed by him.  
11       A     I mean, just looking at the video footage, there's  
12           nothing abnormal here, but I can't recall  
13           specifically.  
14       Q     So do you remember why you came into that area, to  
15           that counter?  
16       A     No.  
17   MR. VERTLIEB: Okay. Keep running, please, Dr. Perra.  
18  
19                           (VIDEO CLIP PLAYING)  
20  
21       Q     Can you tell us what was happening at that time?  
22       A     All I know is Officer Chapin and myself had a  
23           conversation. I don't know exactly what about.  
24       Q     That's Adam Chapin?  
25       A     That's right.  
26       Q     Is that Officer Chapin --  
27       A     That's right.  
28       Q     -- walking towards Mr. Dziekanski? When you dealt  
29           with him earlier for that length of time when his  
30           bags were open, the books were out, and you were  
31           checking, did you ever stamp his customs  
32           declaration card?  
33       A     I can't recall exactly if I did.  
34       Q     Do you remember anything unusual about that  
35           interchange right there?  
36       A     Which interchange?  
37       Q     Between Mr. Dziekanski and it appears to be  
38           Officer Chapin.  
39       A     No. I wasn't there.  
40       Q     Were you still in the room?  
41       A     No, it appears I exited off into this direction.  
42           We have some more Customs offices located in the  
43           back here.  
44       Q     I think that's the end of your dealings, then, is  
45           it?  
46       A     That's correct.  
47

1 (VIDEO ENDED)

2

3

MR. VERTLIEB: Mr. Giles, can we get Exhibit 3, please,  
4 which is the declaration card, the customs  
5 declaration card. Could you give that to this  
6 gentleman, please.

7

Q That's a copy. It's not the original, of course.  
8 That's the front and back of Mr. Dziekanski's  
9 card. Do you see that?

10

A Yeah.

11

Q Are there any markings of yours on there?

12

A Not that I can tell, no.

13

Q Thank you. You recognize the markings, though,  
14 that would require someone to be going for  
15 Secondary Customs and Secondary Immigration?

16

A Yes. Usually we put our badge or stamp numbers.  
17 I don't see anything that's identifying that I  
18 marked his card.

19

Q Now, when Mr. Dziekanski came back into that  
20 Customs Secondary area, did you have any  
21 discussion with another officer about whether his  
22 customs check had been done and were there any  
23 other formalities that had to be sorted out?

24

A I do remember mentioning to Officer Chapin that,  
25 you know, all Customs formalities were completed.  
26 And you know, he probably brought him back here  
27 because the card was not marked, and that tends to  
28 happen if an officer forgot, and it appears that's  
29 the case here, is I didn't mark the back of the  
30 card so he brought him back just to make sure that  
31 the Customs examination was complete. And I do  
32 recall mentioning that to him, that all Customs  
33 formalities were complete and he was cleared.

34

Q And then Mr. Dziekanski and Officer Chapin left,  
35 as we saw in that video?

36

A That's correct.

37

Q And how was Mr. Dziekanski in terms of following  
38 directions, instructions, et cetera, and his mood  
39 and appearance?

40

A He was fine from what I can recall. I remember  
41 Officer Chapin even escorted him right out to the  
42 Point area, and I believe he even shook his hand,  
43 if memory serves me correct, or something to that  
44 effect, and he made sure he got right out to the  
45 exit here.

46

Q So this is the last sighting of Mr. Dziekanski in  
47 the Customs Hall --

Kal Bharya

Cross-exam by Mr. Buchanan (for Public Service Alliance of Canada)

1 A That's correct.

2 Q -- before he leaves. And ultimately we know  
3 within an hour he's passed away.

4 A Correct.

5 Q How would you describe your very last observation  
6 of him and your memory of him in terms of his  
7 attitude, demeanour with you and your colleagues?

8 A He was cooperative. He was compliant, non-  
9 violent. He didn't seem aggressive. Just like  
10 any other typical traveller.

11 MR. VERTLIEB: Thank you, Officer Bharya.

12 MR. BUCHANAN: Chris Buchanan, counsel for Mr. Bharya.

13

14 CROSS-EXAMINATION BY MR. BUCHANAN ON BEHALF OF THE  
15 PUBLIC SERVICE ALLIANCE OF CANADA:

16

17 Q In your experience in Secondary Customs, how  
18 frequently do you deal with travellers who have no  
19 English skills?

20 A On a daily basis.

21 Q And for passengers with no English and who are  
22 arriving on a CPR, Confirmation of Permanent  
23 Residency, how frequently would you require the  
24 assistance of a translator?

25 A I'm inclined to say never, but it's a pretty  
26 strong term. I've never in my experience  
27 consulted an interpreter for a CPR. It's  
28 something that we don't need to deal with from the  
29 Customs end. It's more to be processed by  
30 Immigration.

31 Q You've described how you escorted Mr. Dziekanski  
32 to Secondary Immigration. In your experience, how  
33 many times would you have escorted an adult male  
34 to Secondary Immigration?

35 A I can probably count on my hands how many times  
36 I've done that in my six and a half, seven year  
37 career at the airport.

38 Q And how many times, in your experience, would you  
39 have received or got the luggage for an adult  
40 traveller?

41 A Again, same answer. I don't remember going,  
42 finding the person's luggage, finding their  
43 documentation. So extremely rarely.

44 Q At this time in October 2007, was there a Customs  
45 area that was available to the public?

46 A Yes. We've always had a front office that's been  
47 staffed by Customs personnel, and that was the

1 same at that particular time. There was.

2 Q And what type of inquiries would be made at the  
3 public side of the Customs area?

4 A I've only worked in the front office several  
5 times. Usually just, you know, if anybody's in  
6 the Customs area or, you know, they're clearing  
7 goods through, the commercial aspect of it, just  
8 to follow up on those goods.

9 Q Do you know when it was staffed at that time, what  
10 hours?

11 A I believe it was 4:00 to 1:00, the same shift that  
12 I worked -- 4:00 to 1:00 in the afternoon, that  
13 is, then obviously during the day.

14 MR. BUCHANAN: Thank you. Those are our questions.

15 MR. KOSTECKYJ: Walter Kosteckyj, counsel for Mrs.  
16 Cisowski.

17

18 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA  
19 CISOWSKI:

20

21 Q Where was that Customs area that the public could  
22 access?

23 A On this diagram (indicating Exhibit 2)?

24 Q Yeah.

25 A I -- during that particular incident, there was  
26 quite a bit of construction going on. And so if  
27 memory serves me correctly, it's always been in  
28 this -- this is the secondary inspection counter  
29 (indicating). This is a meeting area. There are  
30 some escalators that go up. And the front office  
31 is generally right here.

32 Q That's the hallway where people exit out of the  
33 secure area?

34 A No.

35 Q Well, as I understand it, there's a railing there.

36 A Oh, okay. Yeah, sorry. It would be right here,  
37 then. Right there. Sorry, that railing, I failed  
38 to notice that.

39 Q Sorry. So there's a railing along the walk there?

40 A Yeah. So people would walk out of here. This is  
41 a meeting area. So that would be the office right  
42 there. Right there.

43 Q Well, you know, I remember going there in the  
44 immediate aftermath of all this. Was that  
45 actually posted? Was there signs up about  
46 Customs?

47 A Yeah. There's always a sign outside. I remember

- 1           during the construction process it was temporarily  
2           moved down this corridor, so that's what I find a  
3           little bit confusing, exactly at that time where  
4           it was.
- 5       Q     So is it possible that there wasn't any public  
6           access while this was going on because of  
7           construction?
- 8       A     From my memory, the customs office never shut  
9           down. There's always access to it.
- 10      Q     Okay. Now, I know that you did some unusual  
11           things in terms of getting luggage and so forth  
12           and helping Mr. Dziekanski. But this was kind of  
13           a pretty unusual circumstance too, wasn't it?
- 14      A     In hindsight, definitely, yes.
- 15      Q     Well, even at the time. You had his ticket. He  
16           was showing that to you, correct?
- 17      A     That's right.
- 18      Q     His plane ticket. So you knew what time that  
19           plane -- you knew that Condor arrived at 1:30 or  
20           2:30 or 3:30 in the afternoon, correct?
- 21      A     I knew it was in the afternoon. I don't remember  
22           it was 1:30, 2:00 -- I --
- 23      Q     And now it was roughly 10:30, so seven hours later  
24           you were dealing with him. Didn't that seem  
25           unusual?
- 26      A     When you're dealing with people coming through  
27           Customs, usually they may have got -- you know,  
28           been processed at Immigration, may have waited  
29           around the carrousel. A couple hours delay, in my  
30           mind at that time, I didn't find it highly unusual  
31           that warranted me looking into it any more than I  
32           did.
- 33      Q     But you didn't find it unusual that there had been  
34           in this case a seven-hour delay?
- 35      A     I can't recall exactly what I thought at that  
36           time.
- 37      Q     Okay. You don't have any recollection of thinking  
38           that was unusual?
- 39      A     No.
- 40      Q     When you had a conversation with Ms. Kullar -- I  
41           think that was -- if I'm correct, that's the woman  
42           who processed him at the PIL?
- 43      A     Yeah.
- 44      Q     Did she say anything that you recollect now about,  
45           "Oh my gosh, I saw that guy like at three  
46           o'clock"?
- 47      A     No, all I remember is speaking to her and I can't

Kal Bharya

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

1 remember if I called her or if I went to go see  
2 her in person. I don't remember the specifics of  
3 what we talked about.

4 Q Now, I'm showing you a document that I understand  
5 that you prepared; is that correct?

6 A Yeah.

7 Q What were the circumstances of you preparing that  
8 document?

9 A The report was -- was written -- I learned of what  
10 happened to Mr. Dziekanski the day after, the next  
11 morning, and I wasn't asked to prepare this report  
12 till -- I think the date it was requested -- this  
13 report was requested on October 18th of 2007.

14 Q Right. So in any event, that was a report that  
15 you prepared --

16 UNIDENTIFIED SPEAKER: Could my friend identify which  
17 report he's putting to the witness?

18 MR. KOSTECKYJ: Oh, I'm sorry. That's a report that  
19 was obtained through the Freedom of Information  
20 request documents.

21 Q Do you call that a statutory declaration or a  
22 declaration or something?

23 A We just refer to it as an officer's report.

24 MR. KOSTECKYJ: Okay. I saw it in a Freedom of  
25 Information request but my friend tells me it was  
26 also in a CBSA disclosure. I think all my friends  
27 have it.

28 Q It's called "Report Submitted by Border Services  
29 Officer K. Bharya," correct?

30 A That's right.

31 Q Now, why were you requested to prepare that?

32 A I'm assuming as a result of the incident following  
33 my dealings with him, and it's stated on here that  
34 Superintendent Peters requested this report.

35 Q And so I take it that you would have prepared that  
36 report with some care, to be sure that anything  
37 you thought was important was included in that  
38 report?

39 A That's right.

40 Q And can you look through that and identify that  
41 that indeed is the report you prepared?

42 A This is the report I prepared, yes.

43 MR. KOSTECKYJ: I'll ask that that be marked as an  
44 exhibit.

45 THE COMMISSIONER: Yes, all right.

46 THE REGISTRAR: Exhibit Number 10.

47

Kal Bharya

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

1 EXHIBIT 10: Copy - Report submitted by  
2 Border Services Officer K. Bharya  
3

4 MR. KOSTECKYJ:

5 Q That report was an accurate reflection of what you  
6 thought was important on October the 18th, 2008  
7 (*sic*)?

8 A That's right.

9 Q Now, Mr. Dziekanski did make himself understood at  
10 least partially to you because do you recollect  
11 that he talked to you about the fact that he  
12 mentioned Kamloops and his mother?13 A Only after taking a look at this report to refresh  
14 my memory. I don't specifically remember that but  
15 it's contained in my report.16 Q So at that time he was able to communicate and he  
17 was able to tell you Kamloops, mother. At least  
18 you understood that portion of it?19 A It appears those are the two things that I did  
20 understand.21 Q So he was telling you that he had a mother,  
22 Kamloops, something to that effect, correct?  
23 Family.24 A It just states in the report he mentioned  
25 something about Kamloops and his mother.26 Q Did you consider it prudent or did you think maybe  
27 an announcement should be made to see if his  
28 mother was still at the airport?29 A At the time, no. I didn't think -- I thought that  
30 the most prudent thing to do would be to escort  
31 him right over to Immigration and continue his  
32 process and facilitate getting him out of there at  
33 that time.34 Q So it never occurred to you that, look, people  
35 might be waiting for him. He's communicating to  
36 you about his mother, about Kamloops. It just  
37 never occurred that maybe we should also make an  
38 announcement and see if they're still here,  
39 considering the lateness of his arrival?

40 A No. I've never done that in the past.

41 THE COMMISSIONER: Let's be clear now. Did you know  
42 that someone was waiting for him?

43 A No. No.

44 MR. KOSTECKYJ:

45 Q From what he was telling you about his mother and  
46 Kamloops, what did you get from that?

47 A I don't recall. Looking at the report, all I

1           understood was those two terms. Whether or not I  
2           believed at the time that his mother was outside  
3           waiting, I don't recall exactly.

4       Q     You just never sort of considered that someone  
5           might be waiting for him?

6       A     Again, like I said, I didn't -- I don't recall, or  
7           thought it was necessary to go outside and find  
8           his reception at the time.

9       MR. KOSTECKYJ: All right. Thank you.

10      A     Thank you.

11      THE COMMISSIONER: Counsel, if there's any suggestion  
12           later on that there's a difference between the  
13           testimony and what's in Exhibit 10, in fairness to  
14           the witness, that should be put to him. Now, I  
15           don't know whether your point simply was to do  
16           what you've already done, and if that's so, that's  
17           fine. But there shouldn't later be a suggestion  
18           of contradiction without the witness having an  
19           opportunity to comment.

20      MR. KOSTECKYJ: Okay.

21      Q     Well, is there anything in that report -- or is  
22           there anything missing from that report that  
23           should be in that report, now upon reflection?  
24           Can you think of anything that you omitted to put  
25           into that report that you now think is important?

26      A     No. At the time, I prepared everything that came  
27           to my mind that I thought was relevant.

28      Q     And at the time, you thought that this gentleman  
29           acted appropriately when you prepared the report,  
30           correct?

31      A     What do you mean by --

32      Q     Well, you didn't see any concern from a health  
33           issue?

34      A     No.

35      Q     His motor skills were fine?

36      A     That's right.

37      Q     In the report you say that he was compliant and  
38           followed your instruction?

39      A     That's correct.

40      Q     So you had no concerns about any of his behaviour  
41           in any way that you noted in that report?

42      A     No.

43      MR. KOSTECKYJ: Thank you.

44      THE COMMISSIONER: Everybody seems to be content. Oh,  
45           you're getting up slowly. Go ahead.

46      MR. HIRA: I was waiting for counsel ahead of me at the  
47           federal table.

Kal Bharya

Cross-exam by Mr. Hira (for Constable Millington)

1 THE COMMISSIONER: All right.

2 MR. HIRA: Mr. Commissioner, for the record, Ravi Hira.

3 I represent Officer Millington.

4

5 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE

6 MILLINGTON:

7

8 Q Now, Mr. Bharya, the report that my friend just  
9 cross-examined you on is a report that you  
10 prepared for CBSA; is that correct?

11 A That's correct.

12 Q And that report bears the date of November 15,  
13 2007; is that correct?

14 A I think it's --

15 Q I'm sorry, it's --

16 A -- it was requested on the 18th, sir.

17 Q I've made a mistake. I have been corrected. That  
18 was the date that it was printed. This is  
19 something that was requested on Thursday, October  
20 18, 2007, correct?

21 A That's right.

22 Q All right. You provided a statement to the RCMP  
23 as well, correct?

24 A That's correct.

25 Q And that statement was provided on October 17,  
26 2007, the day before the one-and-a-half page  
27 report that has just been produced to you,  
28 correct?

29 A I'm not sure when that report was provided.

30 Q Fair enough.

31 MR. HIRA: Mr. Commissioner, I wonder if I might  
32 produce the statement to the RCMP to the witness.

33 THE COMMISSIONER: Yes.

34 MR. HIRA:

35 Q Witness, I'm showing you a document. It's a 13-  
36 page typewritten document bearing the date of  
37 October 17, 2007. In the second line there's a  
38 notation that it's being taken at 10:15 a.m. in  
39 the morning. Would you agree with me?

40 A Yes, I would.

41 Q So you spoke to the RCMP the day before you  
42 provided the report to CBSA?

43 A It appears so, yes.

44 Q All right. Now, I'm going to refer you to some  
45 specific parts of the RCMP report and ask you some  
46 questions. Before I get there, you were telling  
47 the truth to the police; isn't that correct?

1 A Yes.

2 Q You were being as accurate as you could be?

3 A That's right.

4 Q And have you had a chance to read that 13-page  
5 statement before testifying?

6 A Yes, I have.

7 Q And it has helped refresh your memory as well?

8 A Yes.

9 Q Thank you. So proceeding to the bottom of page 9  
10 of 13, you were being asked questions by Corporal  
11 Brassington; is that correct?

12 A Yes, it appears so. Yeah.

13 Q At the bottom of page 9, did the officer ask you  
14 this question:

15

16 Okay, um, okay, um, tell me what you noticed  
17 about the male, what you're a, what your take  
18 on was on him.

19

20 And did you provide the following answer:

21

22 Um, my take just based upon experience at the  
23 airport is, ah, I had thought that perhaps he  
24 may have, um, had something to drink, or um,  
25 he was under the influence of something, ah,  
26 based upon the fact that he continuously  
27 tried conversing with me in Polish and, and  
28 normal situation in an individual was that  
29 okay I don't understand the language. I  
30 would probably stop. Ah, he didn't  
31 understand anything, ah, as far as any  
32 questions I put forth to him, but I did  
33 notice, ah, during the conversation that he  
34 was attempting to have with me in Polish, ah,  
35 that he did mention something about Kamloops  
36 and his mother, and that is all. I did not,  
37 ah, during examination find any a medication,  
38 or could not smell any alcohol from his  
39 breath, um, but he did follow all  
40 instructions and, ah, was cooperative with me  
41 and, and, um, when I followed, lead him to  
42 Immigration, um, he was cooperative so he did  
43 follow instructions from my end, ah, that is  
44 all I can recall.

45

46 Did you give that answer?

47 A Based upon the report. I don't remember exactly

- 1 the conversation or exactly everything I did say  
2 to the officer.
- 3 Q Fair enough. That's on the transcript. You don't  
4 have any reason to doubt that you gave that  
5 answer?
- 6 A No.
- 7 Q And having refreshed your memory from the  
8 transcript, you would agree with me that the  
9 answer is true?
- 10 A True.
- 11 Q All right. You were then asked about physical  
12 symptoms and whether he wanted water, correct?  
13 The very next question on page 10. The officer  
14 says:  
15  
16 Okay, um, can you comment at all on the  
17 physical symptoms, ah, you mentioned that you  
18 gave him some water.  
19
- 20 Do you see that?
- 21 A Yeah, I see that.
- 22 Q And you then say that:  
23  
24 Um, when he first came to Customs secondary  
25 he did seem, ah, you know that he, like he  
26 was sweating, or he was, ah, you know, very  
27 dry mouthed because he did, ah, when we got  
28 to Immigration he did request some water and  
29 made the gesture you know a cup in his hands  
30 drinking. So we assumed that he was  
31 requesting water when we said water he nodded  
32 to us. And, ah, this is officer LAVALEE  
33 (sic), um did, give him some water from the  
34 Immigration area and, ah, yeah that's it.  
35
- 36 Do you recall giving that answer?
- 37 A Again, I don't recall specific remarks that I made  
38 during the interview, but now that after reading  
39 the report seems consistent with what I may have  
40 said.
- 41 Q Yes. And it's true today, is it not, sir?
- 42 A It appears so, yes.
- 43 Q So he did seem like he had been perspiring at some  
44 point in time?
- 45 A Again, I can't recall exactly.
- 46 Q You said that to the police on the 17th, three  
47 days after the incident, correct?

1 A That's right.

2 Q And you have no reason to detract from that today,  
3 do you?

4 A No.

5 Q And if we go to the next page, page 11, the  
6 officer asked you the following question. And I  
7 am at the top. He said:

8

9 Um, um, tell me about his demeanor (sic) with  
10 you.

11

12 And you provided the following answer:

13

14 Demeanor (sic) with me was, ah, as I stated  
15 he was, he was cooperative, ah, he was it  
16 seemed a little, ah, I wouldn't say a little,  
17 ah, he was quite confused, with the whole  
18 process, ah, we attempted to, ah, coversate  
19 (ph) with me but a I felt he just got more  
20 and more frustrated as time progressed  
21 because he was unable to communicate with  
22 me...

23

24 You did give that as a part answer to the  
25 demeanour question; is that correct?

26 A Again, like I said, I don't remember specifically  
27 mentioning that to him, but based upon the report.

28 Q So you will agree with me that he seemed confused  
29 and appeared to be getting more frustrated as time  
30 progressed?

31 A I mentioned earlier he did seem frustrated when I  
32 did deal with him, yes.

33 Q And he seemed to be getting more frustrated as  
34 time progressed?

35 A I can't comment if it progressed. I don't recall  
36 that.

37 Q You certainly told the police, "I felt he just got  
38 more...frustrated as time progressed..." Isn't  
39 that correct?

40 A It appears, based upon the report. I can't  
41 remember exactly.

42 Q Well, I guess what I'm asking is this. Do you  
43 adopt here what you told the police then on  
44 October the 17th?

45 A After reading the report, it's consistent with  
46 what I did tell the officer, yes.

47 Q And you will agree today that he was getting more

1 frustrated as time progressed?

2 A Like I said, I agree with the report and -- after  
3 reading it, yes.

4 Q Thank you. Now, there is --

5 MR. KOSTECKYJ: (Off microphone) With respect, I  
6 believe that the rest of the passage is important  
7 as well. (Inaudible) that was the witness's  
8 partial answer to the question.

9 MR. HIRA: I'm happy to read the rest of the answer,  
10 Mr. Commissioner.

11 Q You also continue:

12  
13 ...because he was unable to communicate with  
14 me, um, at no time did I feel that, ah, you  
15 know that his behaviour (sic) was threatening  
16 towards me or, or a you know I felt that  
17 there was any safety concerns, ah, he seemed  
18 to walk fine so a he wasn't walking staggered  
19 or falling or stumbling. So that was  
20 something that I real...I you know took, took  
21 observation of. And a when we did lead him  
22 over to Immigration he did follow  
23 instructions a, a I think the language  
24 barrier was a very frustrating for him as it  
25 was for us, we encounter it on a daily basis  
26 so.

27  
28 You also said that to the police?

29 A It appears so, yes.

30 Q Now, just dealing with his walk, we have a very  
31 short video that actually depicts a little bit of  
32 his walk earlier in the day, I think around 9:25  
33 p.m.

34 MR. HIRA: I wonder whether it's possible to play video  
35 clip 4a.

36 Q And while it's being teed up, so to speak,  
37 officer, if I could have you view the video and  
38 tell the Commissioner whether the walk -- and it's  
39 not much -- that you see on the video, was he  
40 walking the same way when you were dealing with  
41 him?

42 MR. HIRA: And while it's being played, this is -- that  
43 should be sufficient.

44  
45 (VIDEO CLIP PLAYING)

46 (VIDEO ENDED)

47

1 Q First of all, this is the area outside Immigration  
2 Secondary; is that correct?

3 A That's right.

4 Q We can see it again.

5

6 (VIDEO CLIP PLAYING)

7 (VIDEO ENDED)

8

9 You see him appear on the right-hand side of the  
10 screen close to the baggage carrousel.

11 A That's right.

12 Q Would you agree with me that in the course of  
13 walking, certainly his bag appears to be wobbling?

14 A It appears so on the footage, yes.

15 Q Would you agree with me also that in the course of  
16 walking, he appears to be wobbling?

17 A I can't make that judgment because he's only on  
18 there for a split second, and it's more the  
19 baggage.

20 Q Fair enough. Did you notice the bag wobbling the  
21 same way in any of your dealings with him?

22 A I can't recall that detail, no.

23 MR. HIRA: Well, the video speaks for itself, Mr.  
24 Commissioner, and I am sure we don't want to watch  
25 the video all over again. I will leave that  
26 question on the record. You as the person dealing  
27 with the facts can reach your own conclusions.

28 THE COMMISSIONER: Well, I have to say to you, counsel,  
29 as one judge said to me that you put a piece of  
30 weight on it so it doesn't float away.

31 MR. HIRA: I --

32 THE COMMISSIONER: You didn't follow that.

33 MR. HIRA: I'm sorry, English is a third language.

34 Sometimes --

35 THE COMMISSIONER: We don't need to see it again.

36 MR. HIRA: -- it goes over me. I'm sorry?

37 THE COMMISSIONER: We don't need to see it again.

38 MR. HIRA: No, no. I'm not suggesting that. Thank  
39 you. Those are my questions of this witness.

40 THE COMMISSIONER: Witness, just let me try to  
41 understand something. Counsel pressed you on the  
42 point that as time progressed, he became more  
43 frustrated. Now, I don't want to put words into  
44 your mouth, but I'm trying to find out just when  
45 that was. Is that when we saw you on the video  
46 going through his jacket in the -- what were you  
47 referring to there? What timeframe?

Kal Bharya

Cross-exam by Mr. Butcher (for Constable Bentley)

1 A As it appears just reviewing the report, it's  
2 probably just during my attempt to converse with  
3 him, and it appears perhaps he got more  
4 frustrated. This is just what I can only assume.  
5 I don't recall specifically. But I only dealt  
6 with him in customs secondary and after that -- he  
7 was compliant after that.

8 THE COMMISSIONER: All right. Thank you. Anybody  
9 else?

10 MR. BUTCHER: David Butcher, counsel for Constable  
11 Bentley. Can we just have the first minute of  
12 video 8 played, please. I'm sorry, it's the last  
13 video of number 7 series, I think.

14 THE COMMISSIONER: Number 7?

15 MR. BUTCHER: 7c, I think. Sorry, I was right the  
16 first time. It's number 8.

17 This is the video showing Mr. Dziekanski  
18 coming into the secondary area for the first time.  
19 Sorry, second time.

20

21 (VIDEO CLIP PLAYING)

22

23 You can stop it. I think I have the wrong video  
24 still. It's number 7.

25

26 (VIDEO CLIP PLAYING)

27

28 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE  
29 BENTLEY:

30

31 Q What I'm interested in, Mr. Bharya, is what Mr.  
32 Dziekanski has with him. He's pulling with his  
33 right hand a carry-on bag; is that correct?

34 A Yes, it appears so.

35 Q And in his left hand, he has what appears to be a  
36 document bag; is that correct?

37 A It appears so, yes.

38 MR. BUTCHER: I'm going to ask that the video be  
39 stopped there.

40

41 (VIDEO PAUSED)

42

43 Q We saw there that he produced his passport. Did  
44 he produce anything else or did he have any other  
45 documents in that bag?

46 A I can't recall. I didn't -- nothing of importance  
47 to me. My main concern during the examination was

Kal Bharya

Cross-exam by Mr. Harris (for Corporal Robinson)

1           trying to locate his immigration documentation.

2       Q     And his immigration documentation was not in that  
3           bag?

4       A     No, not that I recall.  No.

5       Q     Did you see when you dealt with him later what had  
6           happened to that bag?

7       A     To --

8       Q     To that document bag that he had.  Did you see it  
9           again?

10      A     I don't recall.

11      MR. BUTCHER:  Thank you.  Those are my questions.

12      MR. HARRIS:  Officer, it's Reg Harris.  I'm counsel for  
13           Corporal Robinson, one of the members of the RCMP  
14           that were there that early morning.

15

16      CROSS-EXAMINATION BY MR. HARRIS ON BEHALF OF CORPORAL  
17           ROBINSON:

18

19      Q     I just have a few questions for you, sir, if I  
20           might.  Firstly, I'd like to touch on the police  
21           investigation.  We've already heard that you gave  
22           a statement to Corporal Brassington.  He  
23           interviewed you?

24      A     That's correct.

25      Q     And I take it on the night that you were dealing  
26           with Mr. Dziekanski, you certainly didn't expect  
27           the events to unfold as they did.  You saw no  
28           indication that they would unfold as tragically as  
29           they did?

30      A     No.

31      Q     All right.  And you had no reason to commit your  
32           interaction with him to memory?  There was no  
33           warning that it would be required?

34      A     No.

35      Q     Correct?

36      A     No.

37      Q     And when you were interviewed by Corporal  
38           Brassington, I see that you had the benefit of  
39           looking at the video footage, some of the video  
40           footage that we've seen today, correct?

41      A     I can't recall if he showed it to me prior to the  
42           interview, no.

43      Q     Do you have your statement with you that was  
44           referred to earlier by counsel?

45      A     Yes, I do.

46      Q     All right.  I'm going to ask you, sir, if you  
47           could turn to page 6, and that's 6 of 13.

1 A Sorry, are you talking about the statement -- my  
2 report or the --  
3 Q The recorded statement by Corporal Brassington.  
4 A Okay. Page 6?  
5 Q Page 6, yes, the 13-page document. And if you  
6 just head up from the bottom of the document, the  
7 fourth entry where it shows you commenting, and it  
8 goes: "Those were the people that were scheduled  
9 on that day..." Do you see that heading?  
10 A Yes.  
11 Q All right. I'd just like you to read that to  
12 yourself, sir.  
13 A Just that statement?  
14 Q Yeah, that little bit.  
15 A Okay.  
16 Q I'm going to suggest that that likely refreshes  
17 your memory, that you did have the benefit of  
18 looking at the video footage that we've seen  
19 today.  
20 A It appears so, yes.  
21 Q And it's that that helped your memory in giving  
22 the statement that you did to Corporal  
23 Brassington, correct?  
24 A Yes, it appears so.  
25 Q And it would be fair to say that given how low key  
26 the events were, without that video it might have  
27 been somewhat difficult to recall precisely the  
28 details as accurately as you did, correct?  
29 A That's right.  
30 Q All right. Now, I'm going to transition to  
31 another subject, sir, and it's this. In your role  
32 as an officer, it's not uncommon for you to deal  
33 with many travellers that do not speak English?  
34 A That's correct.  
35 Q You'd agree with that?  
36 A Yeah.  
37 Q And it's not uncommon that you don't speak their  
38 language as well?  
39 A That's right.  
40 Q And despite this language difficulty, you manage  
41 to communicate on most occasions through sign  
42 language?  
43 A That's right.  
44 Q And from your experience, sign language is not an  
45 unreasonable tool to communicate with people that  
46 don't speak the same language as you?  
47 A That's right.

- 1 Q And in this case, you used that sign language with  
2 Mr. Dziekanski on a number of occasions, correct?
- 3 A Yes.
- 4 Q For example, you signed when you wanted him to  
5 wait at a spot?
- 6 A Yeah.
- 7 Q You signed when you wanted him to follow you?
- 8 A That's right.
- 9 Q You signed when you wanted him to put things on  
10 the table?
- 11 A That's correct.
- 12 Q You indicated with hand gestures when you wanted  
13 to receive documents from him?
- 14 A That's correct.
- 15 Q He communicated to you through the use of his  
16 hands of drinking water?
- 17 A Yes.
- 18 Q All right. And from all those communications, I'm  
19 going to suggest to you it became obvious to you  
20 that he understood the basic communications,  
21 correct?
- 22 A Yes.
- 23 Q And he responded appropriately to all those  
24 communications, correct?
- 25 A From what I remember, yes.
- 26 Q And just dealing on the issue of his frustration,  
27 if you'll recall previous counsel drawing your  
28 attention to, he seemed to get frustrated  
29 originally over a period of time. It was building  
30 up for a little bit. Do you recall that?
- 31 A No, I don't. Only after --
- 32 Q Let me rephrase it. I'm sorry I wasn't clear. Do  
33 you recall counsel canvassing that with you about  
34 this frustration?
- 35 A Today, just previous?
- 36 Q Yes.
- 37 A Yes, I do.
- 38 Q All right. On that night, today, you have no  
39 recollection of that; is that correct?
- 40 A That's right.
- 41 Q It's not uncommon at times, from your experience,  
42 when there is a language barrier, that there is a  
43 bit of frustration, correct?
- 44 A That's right.
- 45 Q And it's also not uncommon that the frustration  
46 tends to settle down once there seems to be some  
47 understanding between you and the traveller,

- 1 correct?
- 2 A It depends on the situation. If --
- 3 Q Well, in your experience, you've experienced the
- 4 initial frustration with the traveller when
- 5 there's a communication barrier, correct?
- 6 A Yes.
- 7 Q And then you've worked out through signing some
- 8 communication and that level of frustration has
- 9 appeared to diminish on the traveller's behalf.
- 10 You've witnessed that?
- 11 A Yes, I've witnessed that.
- 12 Q All right. And certainly when Mr. Dziekanski
- 13 left, when you saw him leave in the early hours of
- 14 that morning, you saw no indication that there was
- 15 any frustration going on with him?
- 16 A No.
- 17 Q He seemed happy and content from what you could
- 18 see?
- 19 A I wouldn't say happy or content. Just nothing
- 20 seemed out of the ordinary. He was leaving
- 21 like --
- 22 Q He seemed absolutely consistent with numerous
- 23 other travellers that come and go?
- 24 A That's right.
- 25 Q All right. And nothing from your observations to
- 26 suggest that he would be involved in an incident
- 27 of picking up a chair or throwing a computer
- 28 around or anything like that?
- 29 A He left like thousands of other people leave on a
- 30 daily basis.
- 31 Q I take it from your response you saw nothing to
- 32 suggest --
- 33 A No.
- 34 Q -- that behaviour was coming?
- 35 A No.
- 36 Q All right. Given your knowledge of the area, is
- 37 there anything that you can think of that might
- 38 have triggered such a response from Mr.
- 39 Dziekanski?
- 40 A No.
- 41 MR. HARRIS: Thank you, sir, for answering my
- 42 questions.
- 43 A Thank you.
- 44 THE COMMISSIONER: All right. Are there any more
- 45 questions? Thank you very much, Mr. Bharya, for
- 46 sharing your time with us.
- 47

(WITNESS EXCUSED)

THE COMMISSIONER: I take it that concludes today's --  
MR. VERTLIEB: Yes, Mr. Commissioner. Thank you.

THE COMMISSIONER: All right. Adjourned until Monday  
morning at 10:00.

(PROCEEDINGS ADJOURNED TO JANUARY 26, 2009,  
AT 10:00 A.M.)

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