

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

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

May 5, 2009

---

PROCEEDINGS AT  
HEARING (DAY 47)

---

**COPY**

*McEachern & Associates*  
2390 Kensington Avenue  
Burnaby, B.C. V5B 4E2  
Phone: (604) 299-3595; Fax: (604) 299-3545  
Toll-free: 1-866-366-2202

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

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

May 5, 2009

---

PROCEEDINGS AT  
HEARING (DAY 47)

---

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:	H. Roberts, J. Brongers
Counsel for Vancouver Airport Authority:	D. Stewart, C. Friesen
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
Court Recorder:	P. Kealy, C.V.R., C.M.
Transcriber:	P. Kealy

1  
Brian Hilton  
In chief by Mr. Vertlieb

Vancouver, B.C.  
May 5, 2009

1  
2  
3  
4 THE REGISTRAR: Order. This hearing is now resumed.  
5 THE COMMISSIONER: Yes. Good morning, all.  
6 MR. VERTLIEB: We today have two gentlemen from CBSA, a  
7 Mr. Hilton and a Mr. Kooner. Mr. Hilton is from  
8 Ottawa and he has more of the bigger picture  
9 policy evidence to give. This is how I've been  
10 instructed, and I've been assisted on this by Mr.  
11 Brongers, and he's been terrifically helpful. And  
12 then Mr. Kooner is the Vancouver gentleman who's  
13 basically -- he knows Vancouver and what goes on.  
14 And so there's no magic as to how the presentation  
15 should go, but I think we should start with Mr.  
16 Hilton on the bigger picture, deal with some  
17 evidence with him, and then we can deal with Mr.  
18 Kooner.

19 We set aside the day because we weren't quite  
20 certain how much time would be necessary. But  
21 having met both of these gentlemen yesterday, I  
22 think all of us agreed, including Mr. Brongers  
23 when I say all of us, that a half day should be  
24 sufficient. There really aren't lots of issues  
25 that relate to their evidence. So we'll see how  
26 it goes, but that's the thinking right now.

27 So if we could get Mr. Hilton in the witness  
28 box first. Mr. Hilton, would you please come  
29 forward.  
30

31 BRIAN HILTON, a witness,  
32 sworn.  
33

34 THE REGISTRAR: Could you state your full name, please.

35 A Brian Roderick Hilton.

36 THE REGISTRAR: How do you spell your middle name?

37 A My middle name, R-o-d-e-r-i-c-k.

38 THE REGISTRAR: Thank you. You may be seated.

39 MR. VERTLIEB: Thank you, Mr. Giles.  
40

41 EXAMINATION IN CHIEF BY MR. VERTLIEB:

42 Q Mr. Hilton, tell the Commissioner about your  
43 background. I think we can confine it to CBSA.

44 A Okay.

45 Q I don't think we need to go past that. Tell us  
46 A how long you've been in the work that relates to  
47 our country's customs and immigration.

2  
Brian Hilton  
In chief by Mr. Vertlieb

1 A I joined the Canada Customs Service in 1979 and I  
2 was employed as a Customs inspector at the  
3 International Airport in Edmonton. In mid-1981, I  
4 moved to Ottawa in the Adjudications Division  
5 where I worked on the appeal process for Customs  
6 seizures. And then in 1983, I moved over to  
7 the -- at that time it was called the Passenger  
8 Programs area, and we had responsibility for  
9 traveller programs and enforcement programs. I've  
10 been pretty well employed in much the same type of  
11 activity. The organization around me has changed  
12 but my duties have pretty well been related to  
13 policy for and enforcement aspects of CBSA.  
14 Q Okay. So it's CBSA today. That's the name of the  
15 agency?  
16 A Right.  
17 Q What was it formerly called?  
18 A Well, formerly we were two -- actually three  
19 organizations if you think of Agriculture. In  
20 December 2003, a decision was taken to amalgamate  
21 the Customs branch of the former Canada Customs  
22 and Revenue Agency with the enforcement arm of  
23 CIC, or Citizenship and Immigration Canada, and  
24 the frontline inspection services of Agriculture  
25 Canada.  
26 Q And when did it become known as CBSA?  
27 A That was December 2003.  
28 Q So that's the date when everything became CBSA, so  
29 that everything to do with Mr. Dziekanski's case  
30 is under the umbrella of CBSA?  
31 A It is now. I believe at the time, the front end  
32 of CIC, the Immigration officers working at the  
33 airport, did not come under our purview, and they  
34 did so a year or so later.  
35 Q Now, tell the Commissioner, please, your exact  
36 title.  
37 A I'm a Senior Policy Advisor with the Arming  
38 Division in the Operations Branch of the CBSA.  
39 Q And the CBSA is a separate corporation or agency.  
40 It has a person at the top. And what's the title  
41 of the person at the top?  
42 A We report to a president. That would be the  
43 equivalent to the Commissioner of the RCMP.  
44 Q And who would the president report to, just so we  
45 have a sense of the organization?  
46 A He reports to the Minister of Public Safety.  
47 Q And then under the president, what are the titles

3  
Brian Hilton  
In chief by Mr. Vertlieb

1 of the different --

2 A Under the president there's an executive vice-  
3 president. Then we have several vice-presidents  
4 including the vice-president of Operations Branch.  
5 Under each of the vice-presidents there are a  
6 number of director generals and a director, and  
7 then we have managers, and my position is  
8 equivalent to a manager.

9 Q Now, just so the Commissioner knows, your  
10 attendance here today, you were not asked by us by  
11 name to be here but you were the person given to  
12 us as the one who would be most knowledgeable  
13 about policy?

14 A That is correct.

15 Q And in the course of that - and your organization  
16 has been very helpful and the lawyers helping your  
17 organization have been most helpful - you have  
18 provided memorandums that deal with the different  
19 policy issues that relate to the Dziekanski  
20 matter?

21 A Yes, we have.

22 MR. VERTLIEB: Mr. Commissioner, I have two copies, of  
23 course, one for you and one for Mr. Giles. It's a  
24 fairly lengthy set of materials. They're  
25 different memorandums. I don't see a need to mark  
26 them separately but I leave it entirely up to you,  
27 Mr. Commissioner. This is what we're dealing with  
28 in size. My thought would be --

29 THE COMMISSIONER: What exhibit are we at?

30 THE REGISTRAR: We're currently at -- 121 will be the  
31 next exhibit.

32 THE COMMISSIONER: Well, 121 A and B.

33 MR. VERTLIEB: Actually, Mr. Commissioner, they're just  
34 the one document, so 121 for now, please.

35 THE COMMISSIONER: All right.

36  
37 EXHIBIT 121: Copies - Bundle of CCRA/CBSA  
38 Policy Memorandums and Training Documents  
39

40 MR. BRONGERS: Mr. Commissioner, I don't want to  
41 interrupt my friend, but I thought it might be  
42 convenient at this point. My friend mentioned  
43 that the Canada Border Services Agency is a  
44 separate corporation. And just to be clear, the  
45 Canada Border Services Agency is not a Crown  
46 corporation like VIA Rail or something like that.  
47 It is in fact an agency within the Government of

4  
Brian Hilton  
In chief by Mr. Vertlieb

1 Canada, within the Canadian government. I just  
2 wanted to clarify that.  
3 THE COMMISSIONER: All right. Thank you very much.  
4 MR. VERTLIEB: Thanks, Mr. Brongers.  
5 Q Now, let's just deal with a few areas that have  
6 emerged. We don't intend to take you through the  
7 policy documents. You're familiar with them and  
8 you can tell us what the policy is. Is that a  
9 fair comment?  
10 A I'm quite familiar with them.  
11 Q So let's just talk a number of subjects. The  
12 first one I want to talk about is rovers. Now,  
13 tell us what the rover means and how it works.  
14 What we want to focus on is October of '07.  
15 A Okay. Well, the rovers are a group of special  
16 enforcement officers that are -- it's a concept  
17 that's evolved over the years to specialize in  
18 enforcement aspects that we might have missed at  
19 Primary and to deal outside of the normal  
20 Primary/Secondary process. So rovers work in  
21 engaging -- they work in the non-traditional  
22 areas. They don't work at PIL but they would work  
23 maybe pre-PIL or post-PIL or in around the baggage  
24 area, and often throughout the airport and  
25 engaging with travellers for enforcement-related  
26 purposes.  
27 Q Now, your policy manual says:  
28  
29 The primary goal of roving is to identify  
30 individuals who may be involved in the  
31 unlawful importation/exportation of goods...  
32  
33 A That is correct.  
34 Q Are there any other additional goals, though,  
35 involved in roving? Are you people taught to do  
36 anything else other than that primary goal of  
37 enforcement?  
38 A I would say no, not in terms of their roving  
39 duties.  
40 Q Now, what's a rover trained to do if such a  
41 person, a rover, encounters a problem that doesn't  
42 relate to unlawful importation or exportation of  
43 goods?  
44 A Well, a rover in that case is primarily a Border  
45 Services Officer and he would expect to aid the  
46 traveller to the degree that he can.  
47 Q So if a rover sees a passenger who's been in the

5  
Brian Hilton  
In chief by Mr. Vertlieb

1 Customs Hall for a prolonged period of time, say a  
2 number of hours, would that raise any security  
3 concern?  
4 A Not necessarily.  
5 Q If someone was in the Customs Hall area as a  
6 passenger and, say, sleeping on a sofa or a bench  
7 or chair, whatever, what's the policy for what  
8 rovers are to do? And I'm talking October '07.  
9 A Okay. We don't have any policy that would require  
10 they engage with that traveller at that point.  
11 Q And why is that?  
12 A I don't believe that type of situation is  
13 contemplated under the rover duties.  
14 Q What is the purpose, then, of the rover?  
15 A To engage with as many people as possible, make a  
16 quick determination as to whether they're outside  
17 of, say the realm of the normal traveller, and  
18 then try to elevate the level of questioning and  
19 make a decision whether they need to inspect the  
20 person further.  
21 Q So their focus clearly is enforcement?  
22 A It is. The rover is.  
23 Q They're not trained to be customer service people  
24 in any way?  
25 A As a Border Services Officer, they would provide  
26 customer service where it's needed.  
27 Q Okay. Have you changed your policy towards rovers  
28 as a result of the Dziekanski incident?  
29 A No, we have not.  
30 Q Is there anything else that you need to tell us  
31 about the policy concerning the rover and the use  
32 of rovers?  
33 A I can't think of anything at this point.  
34 Q On the evening of Mr. Dziekanski's event - we know  
35 he arrived around 4:00 in the afternoon in  
36 Vancouver, somewhere in there, and you know he was  
37 at the airport throughout until the interaction  
38 with the police - can you tell us what the rover  
39 staffing was, or should we ask Mr. Kooner that?  
40 A I believe there was one officer on in the  
41 afternoon shift and one in the evening, but that  
42 would be best addressed by Mr. Kooner.  
43 Q All right. Thank you. We've covered the rover  
44 situation. Now, let's talk about the issues  
45 concerning giving information about passengers  
46 that may have arrived. You understand that's an  
47 issue in this case?

1 A That's right.

2 Q All right. So tell us what is the overall policy  
3 concern about giving out information.

4 A Well, generally we have two pieces of legislation  
5 that govern our disclosure of what we would call  
6 first party information or personal information.  
7 We have section 107 of the **Customs Act**. That  
8 governs the disclosure of Customs information.  
9 Customs information could be impersonal  
10 information but is generally anything that's  
11 collected by Customs in the course of, say, the  
12 importation of goods into Canada and anything  
13 related to the processing for Customs purposes.  
14 The **Privacy Act** would govern the **Immigration and**  
15 **Refugee Protection Act** or, as we call it, IRPA.  
16 Both of those pieces of legislation have clear --  
17 well, I shouldn't speak so much for the **Privacy**  
18 **Act** as much as the **Customs Act** has a clear outline  
19 that it is an offence to unlawfully release, use  
20 or allow access to Customs information. The  
21 **Privacy Act** has a general prohibition on the use  
22 of personal information except for which it was  
23 collected and cannot be disclosed without the  
24 consent of the individual. So it's an overarching  
25 prohibition on the use and disclosure of  
26 information except for the purposes for which it  
27 was gathered or with the consent of the individual  
28 to whom it pertains.

29 Q So in a practical way, if a family member is at  
30 the airport on the outside waiting for somebody  
31 who's arriving from abroad and that person wants  
32 to make inquiry about the traveller, the air  
33 traveller, what does the policy say about giving  
34 out that information?

35 A The policy isn't specific about communications  
36 with greetings in the arrivals area. But officers  
37 as they're trained, they know generally they  
38 cannot communicate any information about an  
39 individual who we have dealt with to anybody else  
40 without that individual's permission.

41 Q Now, just as an adjunct to this issue, I want to  
42 ask you about the fact that in this case Mr.  
43 Dziekanski was being sponsored by his mother.

44 A That's correct.

45 Q And you understand that, don't you?

46 A Yes.

47 Q And I'm sure that prior to coming here, you've

7  
Brian Hilton  
In chief by Mr. Vertlieb

1 looked at the immigration papers to familiarize  
2 yourself with this case?  
3 A Right.  
4 Q All right. And we've heard that on the computer,  
5 when someone checked the name Dziekanski, his  
6 mother's name was there and a phone number for her  
7 in Kamloops. You understand that to be the case?  
8 A That's right. That would be the FOSS system.  
9 Q What does that mean?  
10 A That's the Field Operational Support System. It's  
11 an Immigration database used for documentation of  
12 Immigration matters.  
13 Q Now, in terms of policy at October '07, if the  
14 mother was listed as a sponsor in some way, did  
15 that authorize your people to then communicate  
16 with that person, i.e. the mother, about the  
17 situation with the son?  
18 A It would not have prior to our dealings with Mr.  
19 Dziekanski himself.  
20 Q And that's a policy that's written down in your  
21 manual, or is that the way your people are  
22 trained?  
23 A That would be the way it's trained and  
24 interpreted.  
25 Q So that approach is not something that's mandated  
26 by a specific section of an act?  
27 A Well, the section of the act would preclude the  
28 disclosure of the information.  
29 Q Right. But the specific situation I've just  
30 discussed with you is based on your  
31 interpretation?  
32 A Right. But that would be further in the process.  
33 Q Has that policy --  
34 THE COMMISSIONER: Excuse me. I'm not tracking this.  
35 Did I understand you to say that before Customs  
36 dealt with Mr. Dziekanski --  
37 A Right.  
38 THE COMMISSIONER: -- then they could look into FOSS  
39 and give some information?  
40 A No. We would be precluded from looking into FOSS  
41 to confirm any data on FOSS with Mrs. Cisowski  
42 until we had begun to deal with Mr. Dziekanski.  
43 MR. VERTLIEB:  
44 Q Just to follow the Commissioner's question, if you  
45 had not yet begun to deal with Mr. Dziekanski,  
46 your interpretation of your privacy issues is that  
47 you would not give that mother any information

8  
Brian Hilton  
In chief by Mr. Vertlieb

1 even if she was listed as the sponsor?  
2 A That is correct.  
3 Q Now, just to stay with this a moment, let's assume  
4 now you're dealing with Mr. Dziekanski --  
5 A Correct.  
6 Q -- and the mother phoned in to make an inquiry, or  
7 someone on mum's behalf. What would you do then  
8 under your policy?  
9 A In that case, then, we would have a contact. We  
10 would have -- we could probably look at the FOSS  
11 or we would already have FOSS up and we would know  
12 that the phone or the caller is the person that's  
13 listed as the sponsor, and in that case we could  
14 ask Mr. Dziekanski if he wished to talk to his  
15 mother.  
16 Q What would happen if Mr. Dziekanski couldn't speak  
17 English?  
18 A I'm -- I'm not sure, sir.  
19 Q Now, just while we're on this discussion, did both  
20 Immigration and Customs Secondary have access to  
21 FOSS, F-O-S-S, in October 2007?  
22 A It is my understanding that FOSS is available only  
23 in the Immigration Secondary area, not in the  
24 Customs Secondary area.  
25 Q So FOSS would be available in the Immigration  
26 Secondary area?  
27 A Correct.  
28 Q That's where someone would go to be processed  
29 after they've crossed the PIL?  
30 A That's correct.  
31 Q So that's where people like Ms. Van Agteren and  
32 the others that work in the Customs Secondary that  
33 we've heard about? They were there?  
34 A Right.  
35 Q All right. Now, I wanted to ask you about  
36 interpreters. I just mentioned it a moment ago.  
37 Tell us about October '07 policy towards  
38 interpreters.  
39 A The CBSA doesn't have a policy per se mandating  
40 the use of interpreters. What we do require,  
41 though, is we require bilingual services to be  
42 available at all airports, and we do mandate the  
43 use of interpreters when we have an admissibility  
44 issue in an Immigration Secondary or Immigration  
45 process.  
46 Q So explain that.  
47 A If we're at the point where we think that a person

- 1 is inadmissible to Canada, before we proceed any  
2 further we would seek the services of an  
3 accredited interpreter.
- 4 Q And why is that?
- 5 A I believe there's a court ruling from the early  
6 1990s that essentially sets out the requirement to  
7 have accredited interpreters when we're dealing  
8 with potential deportations.
- 9 Q And is that related to making sure that you have a  
10 proper evidentiary base to support a deportation?
- 11 A I'm not certain as to the reasons.
- 12 Q But again, that approach of interpreter use is  
13 geared to your enforcement?
- 14 A That is correct at that point.
- 15 Q Has there been any change to the attitude or  
16 policy towards use of interpreters since the  
17 Dziekanski incident?
- 18 A Not that I am aware of.
- 19 Q Has there been any change towards the privacy  
20 issue that we covered a moment ago since the  
21 Dziekanski incident?
- 22 A No, there has not.
- 23 Q What training do CBSA officers receive regarding  
24 the release of information concerning a  
25 traveller's presence in the Customs Hall to the  
26 RCMP?
- 27 A I'm not conversant exactly with their training  
28 that they get in terms of specifically releasing  
29 information to the RCMP. They do receive training  
30 in respect of section 107 during their port of  
31 entry recruit training. They're taught the  
32 conditions under which information may be  
33 disclosed, and I would add the uses to which it  
34 may be made.
- 35 Q Is there a different policy for release of  
36 information to RCMP than the general public?
- 37 A There is provision for the release of information  
38 for -- relating to criminal -- to indictable  
39 offences. It wouldn't be specific to the RCMP.
- 40 Q Now, just to stay with this for a moment longer,  
41 are CBSA officers trained concerning what they can  
42 tell a waiting family member, that a traveller has  
43 arrived and is in the Customs Hall? In other  
44 words, are there any policies around this?
- 45 A Not that I am aware of in that specific instance.
- 46 Q So just to follow it one step more, if the mother  
47 phones in and wants -- either a direct call or

10  
Brian Hilton  
In chief by Mr. Vertlieb

1 through a friend, and wants to inquire about a  
2 family member, is there a policy that you would  
3 then page the family member?  
4 A No, there is not.  
5 Q Or the traveller?  
6 A No, there is not.  
7 Q So if mum or a friend phones in and says, "I'm  
8 looking for Mr. Dziekanski," was there a policy in  
9 place to pick up a paging and say, "Mr.  
10 Dziekanski, please come to Immigration"?  
11 A Not that I am aware of.  
12 Q Has that changed since this incident?  
13 A Not on a national basis.  
14 Q Has it changed in Vancouver?  
15 A I can't answer for Vancouver.  
16 MR. BRONGERS: Mr. Commissioner, just to be clear, Mr.  
17 Hilton is here to answer questions about national  
18 policies, and I hope and expect that my friend and  
19 certainly I will then ask Mr. Kooner about the  
20 practices in the Vancouver Airport. They're two  
21 different concepts. Thank you.  
22 MR. VERTLIEB:  
23 Q Well, just on that point, I understand that  
24 comment of Mr. Brongers because he's said that to  
25 us in meetings. But there's only one policy  
26 manual, correct?  
27 A Well, we -- it's arguable to say whether we have  
28 only one policy manual. We have certain policies  
29 for Immigration; we have certain policies for  
30 Customs. But overall you're correct. There is  
31 only one processing manual, "People Processing  
32 Manual" it is called, and it does not deal  
33 specifically with communicating with greeters.  
34 Q Right. And you don't have a separate policy for  
35 dealing with people in Vancouver versus people in  
36 Calgary or Toronto?  
37 A No, we don't.  
38 Q No, okay. It's a national agency with national  
39 standards?  
40 A That's correct.  
41 Q Is there any circumstance where a CBSA officer is  
42 required to call a translator when someone does  
43 not speak English?  
44 A That would be in a question of admissibility only.  
45 Q So that's where there's a possible deportation?  
46 A Possible deportation. Otherwise they're taught to  
47 use coping mechanisms, to rely on the use of other

11  
Brian Hilton  
In chief by Mr. Vertlieb

1 officers who might speak that language, assuming  
2 of course they can identify the language. And  
3 ultimately they can release travellers based on  
4 documentation and examination alone.  
5 Q I want to ask you about communications in the  
6 Customs Hall, and just a couple more questions in  
7 that area.  
8 A Okay.  
9 Q Did CBSA have a paging system for passengers in  
10 the Customs Hall?  
11 A I can't answer that. That I think you should  
12 direct to Mr. Kooner.  
13 Q Okay. Would that not be part of a national  
14 standard, though, whether someone is in Vancouver  
15 or Toronto?  
16 A I don't recall seeing it in the Facility Standards  
17 Guide. But it would -- it's quite possible there  
18 are paging systems in the facility.  
19 Q But nothing mandated as a matter of --  
20 A Nothing mandated, no.  
21 Q -- customer procedure?  
22 A Not that I am aware of.  
23 Q All right. So if Vancouver has something, that  
24 would be unique to Vancouver, not part of a  
25 national approach?  
26 A My experience has been that most places do have  
27 the ability to page. Who owns and operates that  
28 system, I'm not familiar with.  
29 Q Now, I wanted to just deal in a specific way with  
30 some of the evidence that the Commissioner has  
31 heard relating to Mrs. Cisowski and Mr.  
32 Hutchinson, who brought her to Vancouver.  
33 A Okay.  
34 Q You know that Ms. Cisowski was living in Kamloops?  
35 You know that from the work you've done to prepare  
36 yourself?  
37 A Correct, yes.  
38 Q And no doubt you've heard that there was someone  
39 who lived in her apartment building, a gentleman  
40 by the name of Richard Gerald Hutchinson, and she  
41 asked him to drive her to Vancouver to help her  
42 get her son?  
43 A Correct.  
44 Q You're aware of that?  
45 A I'm aware of that.  
46 Q And you perhaps have even seen or read some of the  
47 transcripts around this evidence?

12  
Brian Hilton  
In chief by Mr. Vertlieb

1 A Yes, I have.

2 Q And I'm sure you did that because you're  
3 interested in knowing what happened and try to  
4 understand how this event unfolded.

5 A Yes, sir.

6 Q Are you familiar that Mr. Hutchinson has told the  
7 Commissioner that he had a telephone discussion  
8 with someone who we now know was Tina Zadavec?

9 A I'm aware of that.

10 Q Did you read his evidence about his discussion  
11 with her?

12 A Yes, I did.

13 Q All right. I have a copy. Just for your  
14 convenience I want to give it to you.

15 A Okay.

16 MR. VERTLIEB: And for the convenience as well, Mr.  
17 Commissioner, for you, I'll just pass it up. Not  
18 to mark it but just for ease of reference.

19 MR. BRONGERS: I don't have a copy of that. May I --

20 MR. VERTLIEB: I'm sorry, here.

21 MR. BRONGERS: If you have an extra --

22 MR. VERTLIEB: Yes, I do. Here. I'm sorry.

23 Q I just want to go through his evidence and just  
24 ask you how this would fit with the policy, okay?

25 A Okay.

26 Q Starting at page 34. Do you have that?

27 A Yes, sir.

28 Q Thanks, Mr. Hilton. There's a few pages I want to  
29 read, and I think I should just read it all so you  
30 get a flavour of it. So he says:

31  
32 I picked up the phone and a lady came on  
33 the other end and said, "Canada  
34 Immigration."  
35

36 Just stopping there, that's how the phone would be  
37 answered at the end by one of your employees?

38 A I think so, yes.

39 Q Okay. And he says:

40  
41 I said, "We're looking for this Polish  
42 fellow who's supposed to be here on  
43 flight 6070, Concord (sic), and we're  
44 not finding him. Is there -- is there a  
45 way you can help us?" I said, "He's 38  
46 years old. He's -- can't speak English,  
47 and his name is Robert" -- and I told

1 her that I couldn't pronounce the last  
2 name but I could spell it for her. She  
3 -- and at that time, I did the first,  
4 you know, engaging of talking and then  
5 she said, "Well, I don't -- I don't see  
6 how we can help you. You've been here -  
7 - you've been here too long, for one  
8 thing. It doesn't take that long to get  
9 through Immigration." And I said,  
10 "Well, I don't quite understand that  
11 'cause we're still here and he's not.  
12 It's pretty confusing."  
13 So she said, "Well" -- she said --  
14 I'm having a hard time just remembering  
15 exactly what she said. I know more what  
16 I said.

17 THE COMMISSIONER: Well, just do the best you  
18 can, sir.

19 A Okay. And I said that, "We're looking  
20 for this guy and we need some  
21 assistance," and she said, "You've been  
22 here too long. There's no way that it  
23 would take that long for anybody to get  
24 through Immigration." And I said that  
25 it was -- he was in a landed immigrant  
26 situation, not a work visa situation.

27 MR. VERTLIEB:

28 Q How did that come about? Did the woman  
29 ask you about his status or did you  
30 volunteer it?

31 A No, I volunteered that. I got that from  
32 Zofia, that that was his -- whatever you  
33 call that word, prologue (sic) or -- I'm  
34 not sure how you say that word,  
35 whatever, his situation.

36 Q Okay. Yes. Now, you -- was there a  
37 discussion on the phone about his name?

38 A I just -- I said his first name and I  
39 asked if you would -- "Would you like me  
40 to give him (sic) his name?" And he --  
41 she said, "No."

42 Q Okay.

43 A And I said, "Well, wouldn't you want his  
44 name?" And she said, "No, that would be  
45 a confidentiality thing. We're not  
46 allowed to say whether who -- who comes  
47 over on these planes." And, again, I

14  
Brian Hilton  
In chief by Mr. Vertlieb

1                               was baffled.

2

3

MR. VERTLIEB:

4

Q    Now, just stopping there, that would accord with  
5       your understanding of policy?

6

A    That is correct.  She is following policy  
7       guidelines.

8

Q    That's fine.  Okay.  But then let's continue:

9

10

Q    Now, was there any discussion about  
11       whether this gentleman had made or  
12       missed the flight?

13

A    She mentioned that he could have missed  
14       the flight.  I said, I -- you know, I  
15       don't know.  I haven't a clue whether he  
16       missed the flight.  All I know is he's  
17       supposed to be here.  And she mentioned  
18       to the fact that maybe you should phone  
19       Poland and find out if he did get on  
20       there.  And I said, "Well, yeah."  And  
21       that was pretty much the conversation of  
22       that.

23

Q    How long was the phone call with this  
24       woman?

25

A    Be four or five minutes.

26

Q    Okay.  And all this time that you're on  
27       the phone, you're standing at the end of  
28       the hallway?

29

A    That's correct.

30

Q    Did you see where this woman was?

31

A    No.

32

Q    Was there any way you could see into the  
33       area?

34

A    No.

35

36

Now, just stopping there.  I'm sure you've been to  
37       the Vancouver Airport and gone through the  
38       facility there, right?

39

A    I've been through it once, yes.

40

Q    If you're on the phone outside in the hallway, you  
41       couldn't see inside; is that correct?

42

A    I'm not sure where the phone is or was located at  
43       the time.

44

Q    All right.  Okay.  So then:

45

46

Q    So you have no idea what this woman  
47       looked like or where she was standing?

47

1 A No, I had no idea. She could have been  
2 a mile away from me, I don't know.  
3 Q Did at any time it appear to you that  
4 she'd put you on hold?  
5 A No.  
6 Q Did at any time it appear to you that  
7 she put the phone down to go do  
8 anything?  
9 A No, it didn't.  
10 Q Was this a continuous discussion on the  
11 phone between you and her?  
12 A Mm-hmm, yes.  
13 Q Was there any discussion about phoning  
14 Poland at all in terms of the detail of  
15 that?  
16 A Not really.  
17 Q Now, I want to ask you about a cell  
18 phone. Was there any discussion about  
19 that?  
20 A I don't recall any cell phone  
21 discussion. I remember something about  
22 is there a phone number where she can be  
23 reached, and I -- I said I guess the  
24 number at Kamloops is all I know.  
25 Q Did you at that time know if Mrs.  
26 Cisowski had a cell phone?  
27 A If she had one, I didn't know about it.  
28 Q Did you ever see her use one?  
29 A No.  
30 Q So there was a discussion about whether  
31 or not he made the plane.  
32 A Yeah.  
33 Q Was there any discussion about looking  
34 in that place where this woman was on  
35 the phone to see if he was there?  
36 A No. No.  
37 Q How did you conclude that telephone  
38 discussion? How did it end?  
39 A She basically informed me that I had  
40 been waiting too long, that there's no  
41 possible way that that would take that  
42 long for anyone to get through there and  
43 that there's -- "I can give you, in all  
44 certainty, that there's no landed  
45 immigrant from Poland here in this  
46 place," is what she told me, "So you  
47 might as well go home."

1 Q Is there any other discussion you can  
2 remember with that woman?  
3 A No. That's -- that's about the --  
4 that's about it.  
5 Q You mentioned that you told her he was  
6 Polish. Was there any discussion about  
7 his ability to speak or understand  
8 English?  
9 A Oh, I did mention the fact that he -- he  
10 can't speak English, yes, I did.  
11 Q And was there any comment or reply?  
12 A Yes. She did tell me -- assured me that  
13 there was translators there that would  
14 take care of that. Oh, yeah, and she  
15 also said that when I told her his age,  
16 being 38, that he's a full-grown man and  
17 he can -- big enough to take care of  
18 himself, like I was -- it was a -- when  
19 I said that her (sic) mother's worried  
20 about him, she was assuring me that he  
21 was a grown man and -- you know what I'm  
22 saying?  
23 Q No.  
24 A Okay. She was -- she assured me that he  
25 was a grown man and being 38 years old,  
26 even though he couldn't speak English,  
27 that he could be taken care of by the  
28 translators and assured that he would be  
29 fine because he was a grown-up.  
30 Q This was her discussion to you?  
31 A That's correct.  
32 Q How did you feel by the end of that  
33 discussion?  
34 A I felt that he wasn't there. That's how  
35 I -- I felt. I felt that -- she had  
36 told me that I had waited too long, that  
37 he couldn't possibly be taking that long  
38 to get through the airport security, the  
39 Immigration, and that I had -- he's not  
40 there. And she also said the fact that  
41 there would be another plane in from --  
42 I believe she said Europe tomorrow --  
43 late tomorrow afternoon. He'll probably  
44 be on that plane. She did say that.  
45 Q How -- how was your tone of voice with  
46 this person? How would you describe it  
47 to the Commissioner?

1           A     I would say it's close to what it is  
2                   today. I don't -- I don't think I was  
3                   -- I was not irate with that woman. I  
4                   was calm.

5           Q     Okay. And how would you describe her  
6                   tone of voice with you?

7           A     She was -- she was cooperative and very  
8                   pleasant.  
9

10                   Now, we covered the first part of the discussion  
11                   where Ms. Zadavec said, We can't disclose this  
12                   information, and you've told us yes, that would  
13                   accord with your understanding of policy, right?  
14                   When she gets into the discussion, though, about  
15                   the issues around him missing the plane and  
16                   phoning Poland, is that something that she's doing  
17                   under a policy directive?

18   MR. BRONGERS: Mr. Commissioner, just to make it  
19                   absolutely clear, this is only Mr. Hutchinson's  
20                   testimony about the conversation. Ms. Zadavec's  
21                   recollection of the conversation is different. So  
22                   I think it's important to not put to the witness  
23                   questions assuming that in fact Mr. Hutchinson's  
24                   version of the conversation is the only true  
25                   version.

26   THE COMMISSIONER: Well, not the only, but it is one.

27   MR. VERTLIEB: Right, exactly. And I accept what Mr.  
28                   Brongers has said in his commentary about that,  
29                   but I wanted to have this discussion for Mr.  
30                   Hilton to answer.

31   Q     Sir, the discussion that Mr. Hutchinson relates -  
32                   and it's obviously for the Commissioner to make  
33                   decisions about what happened - but if that  
34                   discussion took place in that way, is that  
35                   something that you would be saying she was doing  
36                   under policy?

37   A     No. There's no policy that governs that type of  
38                   communication with the traveller. They are  
39                   expected to cooperate to the best of their ability  
40                   with persons in answering inquiries.

41   Q     Now, I wanted to ask you about the sharing of  
42                   control over these premises. You know I asked you  
43                   a few moments ago about the paging system and --

44   A     Correct.

45   Q     -- you said you weren't sure. And Vancouver  
46                   Airport people will come and they'll discuss their  
47                   paging system as well. But you've got your CBSA

1 authority in the Customs Hall and we've heard that  
2 you control that, right?

3 A It's a tenant-controlled area and we're the  
4 tenant.

5 Q But you're in an airport that's controlled by a  
6 separate authority, right?

7 A Right.

8 Q So how do CBSA share control of Customs Hall with  
9 airports? In other words, could the airport  
10 implement their own paging system to help their  
11 passengers without your participation?

12 A I'm not too familiar on how we work particularly  
13 with the airport authorities or the airlines, but  
14 I believe each of the airlines have paging systems  
15 of their own for paging passengers. How YVR does  
16 it within the Customs Hall or the CBSA facility,  
17 I'm not too sure.

18 Q Now, we discussed this FOSS system.

19 A Correct.

20 Q That system would keep track of somebody who's  
21 crossed the PIL line, the P-I-L line?

22 A I don't believe that would be tracked in FOSS.

23 Q We've heard that a person who worked for Lufthansa  
24 Airlines in the baggage area was able to determine  
25 that Mr. Dziekanski had crossed the PIL.

26 A That is correct.

27 Q You know that's the case to have occurred here,  
28 right?

29 A Right. That was a different system they used to  
30 check.

31 Q And what system was that?

32 A That was the Integrated Primary Inspection Line,  
33 or IPIL as we would refer to it.

34 Q And in the Immigration side of CBSA in October  
35 '07, who had access to that information?

36 A I believe at that time it was only the  
37 superintendent may have had access.

38 Q The supervisor?

39 A The supervisor.

40 Q And each shift would have a supervisor on shift?

41 A They should have, I believe.

42 Q So if one of the Immigration officers or employees  
43 wanted to access that information, you could do  
44 that via the supervisor on shift?

45 A I believe that to be correct.

46 Q Were there any security concerns regarding a  
47 paging system in the Customs Hall?

Brian Hilton

In chief by Mr. Vertlieb

Cross-exam by Mr. Brongers (for Government of Canada)

1 A Not that I'm aware of.

2 Q Just on that point about checking with the  
3 supervisor to see if someone had crossed the PIL,  
4 I gather that an Immigration officer, though,  
5 could have asked a Customs officer?

6 A I believe at that time -- I'm not even sure if the  
7 persons who were from legacy Immigration would  
8 have known about the IPIL system. Quite likely  
9 their superintendent would have, but they would  
10 have worked on FOSS, the Immigration database.

11 Q But if somebody from Lufthansa who's a baggage  
12 attendant person can go and find the information  
13 out, presumably a Customs officer, a peace  
14 officer --

15 A They went to part of the Primary Inspection Line  
16 or, I believe, the extension desk where they made  
17 the inquiry there, which was run at that time by  
18 Customs inspectors.

19 Q Right. No, I understand. But presumably if  
20 someone is working for Immigration, they're part  
21 of CBSA, they could have phoned Customs and got  
22 the information?

23 A Theoretically they could have. They still would  
24 not have been able to release that information.

25 Q And last question about FOSS. I just want to be  
26 clear on this. Is the name of the sponsor for  
27 someone who's coming as a landed immigrant  
28 available on the FOSS system in October '07?

29 A I can't say with certainty that it is. I believe  
30 it is.

31 MR. VERTLIEB: Thank you very much.

32 MR. BRONGERS: Thank you, Mr. Commissioner. Jan  
33 Brongers on behalf of the Government of Canada.

34

35 CROSS-EXAMINATION BY MR. BRONGERS ON BEHALF OF THE  
36 GOVERNMENT OF CANADA:

37

38 Q Mr. Hilton, could you explain to us in general  
39 terms what the Canada Border Services Agency is  
40 responsible for?

41 A Well, we're responsible for the clearance of  
42 travellers and their goods as they enter Canada.

43 Q And generally speaking, what is the agency's  
44 objective in processing travellers?

45 A Our objective in doing so is to facilitate the  
46 entry of compliant travellers while ensuring that  
47 they -- I guess to say facilitate the entry of

1 travellers while ensuring that the laws of Canada  
2 are respected and enforced.

3 Q And if I understand correctly, the general layout  
4 at airports is to have a two-stage processing  
5 system. Could you explain the two-stage  
6 processing for the Commissioner.

7 A Two-stage is the concept that we use to refer to  
8 the design where you split your primary from your  
9 secondary processing. One stage is where you do  
10 everything all up front. Small land border  
11 crossings will often operate on the basis of a  
12 one-stage. You ask the questions, you do the  
13 examination, you collect the duties and taxes.

14 At airports, in order to facilitate the entry  
15 of travellers, 90 percent of travellers go through  
16 Customs without any secondary inspection of any  
17 sort. So to get those people through as quickly  
18 as possible, we expedite their clearance by  
19 splitting the process into the Primary Inspection  
20 Line, where we ask basic questions, and then we  
21 make a determination at that point whether the  
22 person is a mandatory referral for Immigration  
23 purposes or for Customs purposes such as the  
24 payment of duties and taxes, whether we have any  
25 suspicions of the person, and then we make a  
26 decision to release or refer the person.

27 Q So you've described generally what occurs at  
28 primary. What generally will occur at a secondary  
29 examination?

30 A Well, depending on where the person is referred  
31 to, they will either -- they go to Immigration  
32 Secondary. That's usually the next step in the  
33 process. And in my experience working at  
34 Edmonton, we told people to pick up their baggage  
35 and then go to Immigration and then to give the  
36 declaration card to the officer at the exit, which  
37 we refer to as Point.

38 So in most processing, the next stage in the  
39 operation is baggage claim and/or Immigration  
40 Secondary.

41 Q And after Secondary, or assuming there's no  
42 referral to Secondary, what's the next step in the  
43 process?

44 A Then they would pick up their baggage and they  
45 would proceed to the exit point where the officer  
46 working at that point, referred to as a Point  
47 officer, would ask the passenger for his card, do

- 1 a quick scan to make sure that the traveller and  
2 his baggage all match and whether or not the  
3 person has been referred to Secondary and been  
4 seen by Secondary. In this case most Immigration  
5 referrals would be indicated on the card that he  
6 had been seen by Immigration. If not, he would  
7 redirect the person back to Immigration Secondary.  
8 Or if there's a Customs referral, he would send  
9 the person usually off to one side of the Point  
10 area where the Customs Secondary is located.
- 11 Q I'd like to ask you some questions about the  
12 interpretation services. First of all, from your  
13 experience and understanding, how common is it for  
14 Border Services officers to deal with people who  
15 cannot speak English or French?
- 16 A I believe it is common on a daily basis.
- 17 Q And is it mandatory for a Border Services officer  
18 to use an accredited interpreter when dealing with  
19 a person who doesn't speak English or French?
- 20 A No. Only when there's a question of  
21 inadmissibility of the individual.
- 22 Q And we're specifically of course interested in the  
23 case of a person who has a permanent resident visa  
24 like Mr. Dziekanski did and is coming to Canada to  
25 be landed. In a situation like that is it  
26 necessary to call an accredited interpreter?
- 27 A No, it isn't. We can -- all his issues have been  
28 dealt with overseas, so it's just a documentation  
29 process at that point, basically confirming his  
30 arrival.
- 31 Q Right. Now, you explained this a little bit  
32 earlier as well. But if an interpreter is not  
33 available and a person cannot speak English or  
34 French, how are Border Services officers taught to  
35 deal with those people?
- 36 A They're taught to use other mechanisms. They can  
37 look for staff who might speak that language.  
38 They can draw from -- in my case what we used to  
39 do is we used to go to the airlines and have an  
40 airline personnel assist us. Many airports have  
41 established telephone lines for interpreter  
42 services where they can phone. They have a list  
43 of interpreters they can phone and find someone  
44 who speaks a language they have identified. And  
45 in some cases they can physically call -- if there  
46 is someone in the area and they can get them there  
47 quickly, they might call for an interpreter to

1 attend.

2 Q And is it also possible to process these  
3 travellers without interpretation services?

4 A Oh, definitely.

5 Q And how would --

6 A Based on documentation alone. Documentation in  
7 the case of the immigration process and inspection  
8 in the case of the customs process.

9 Q And I understand that the agency also provides a  
10 multilingual leaflet to assist travellers who  
11 can't speak English or French. Can you describe  
12 that to the Commissioner?

13 A They do, that is correct. We have a -- the card  
14 itself, the declaration card, is available in  
15 English or French only. We do have a multilingual  
16 leaflet that is available. The airlines have it.  
17 I can't say whether the airlines provide it in all  
18 cases. But at most ports of entry, including the  
19 larger airports, we have the multilingual leaflet  
20 available. I believe it's a form CE311, and it's  
21 a translation into a dozen or so of the most  
22 commonly encountered languages in the CBSA  
23 process.

24 Q And is Polish one of those languages?

25 A Polish is one of them.

26 Q Thank you. Now, my learned friend entered into  
27 evidence a number of documents that were marked as  
28 Exhibit -- was it 122?

29 THE REGISTRAR: 121.

30 MR. BRONGERS: May I approach the witness?

31 Q Mr. Hilton, I'm showing you a document here  
32 entitled "CE311 Translation of the Canada Border  
33 Services Agency Declaration Card - Polish" and  
34 then a second page which says "Translation of the  
35 Canada Border Services Agency Declaration Card"  
36 and thirdly --

37 THE COMMISSIONER: Would you speak right into the  
38 microphone.

39 Mr. BRONGERS: Certainly.

40 Q And thirdly, what appears to be a translation of a  
41 declaration card. Could you explain what this  
42 document is?

43 A Well, what it does is it -- on the English  
44 version, there are instructions showing the person  
45 how to complete the card and then there's basic  
46 questions asked. They're asked to fill out their  
47 name, their citizenship and such. It's all

1 translated into Polish with an example given for  
2 the individual so that he knows what he's supposed  
3 to put down.

4 Q Thank you. Now, the evidence in this case is that  
5 none of the Border Services officers who dealt  
6 with Mr. Dziekanski used an accredited  
7 interpreter. Would that be in violation of any  
8 policies, to your knowledge?

9 A No, it would not.

10 Q Now, on the other hand, does the CBSA have any  
11 policies that would forbid a Border Services  
12 officer from calling an accredited interpreter in  
13 any situation?

14 A Not that I'm aware of.

15 Q You were asked a number of questions about the  
16 CBSA's policy respecting communications between  
17 travellers in the secure CBSA area and people who  
18 may be waiting for them in the public meet-and-  
19 greet area. Now, if a person waiting for a  
20 traveller in the public area asks a CBSA officer  
21 if the traveller is there, what does CBSA policy  
22 require exactly?

23 A It doesn't require them -- it only prohibits them  
24 from releasing basically -- from confirming that.

25 Q Now, is there any exception made for family  
26 members if the person in the public area  
27 identifies themselves (sic) as a family member?

28 A No.

29 Q Is there any exception made for medical  
30 emergencies?

31 A There's always a life, health or safety exception  
32 to the general rule. The disclosure provisions I  
33 don't believe would contemplate that type of  
34 situation where we would call in a family member.

35 Q Now, just to be absolutely clear, my friend took  
36 you through Mr. Hutchinson's testimony, and  
37 unfortunately I don't have Ms. Zadavec's  
38 testimony handy. But my recollection of the  
39 evidence is that Ms. Zadavec, after checking the  
40 Immigration Secondary office but not the entire  
41 Customs Hall, recalls that she likely told Mr.  
42 Hutchinson, "Without breaking confidentiality, I  
43 can tell you that there is no one here from Poland  
44 in a landed immigrant situation." Now, from your  
45 understanding, having reviewed the transcript, was  
46 there any violation of CBSA policy by BSO  
47 Zadavec?

- 1 A No. She did not confer -- or she did not provide  
2 any first party information to him in doing so.
- 3 Q Now, evidence has also been presented to this  
4 inquiry about a Border Services officer that was  
5 processing Mr. Dziekanski, and she learned from  
6 his Immigration documentation that he had been  
7 sponsored by his mother and then attempted to  
8 contact her to see if she might be able to assist.  
9 And this officer did so first by trying to page  
10 the mother in Mr. Dziekanski's presence, with his  
11 assistance as he corrected her pronunciation of  
12 his mother's name. Then the officer tried to  
13 phone the mother and left her a message on her  
14 answering machine. And thirdly the officer tried  
15 to find her by searching the meet-and-greet area  
16 of the airport. Now, assuming those facts to be  
17 true, was there any violation of CBSA policy by  
18 that officer?
- 19 A Not -- not in my mind.
- 20 Q And why not?
- 21 A There's certain implications. To confirm the  
22 landing, you have to confirm certain data, one of  
23 which would be to confirm that she was his  
24 sponsor. So there would be certain permitted use  
25 of the information in terms of confirming persons  
26 and are you indeed his sponsor. To look for  
27 him -- the guidelines that I'm aware of in terms  
28 of Immigration processing, particularly when  
29 there's a language issue, suggests you could use  
30 family members. So in that type of situation  
31 you're looking for a family member to communicate.
- 32 Q And would it be significant that the Border  
33 Services officer testified that she thought she  
34 had Mr. Dziekanski's consent for those  
35 communications?
- 36 A Yes. It's implied consent in that.
- 37 Q My learned friend asked you what would happen if  
38 the person in the Customs Hall could not speak  
39 English. Now, the evidence in this case of course  
40 is that Mr. Dziekanski did not speak English. But  
41 nevertheless, does the policy cover a situation  
42 where somebody doesn't speak English? Does it  
43 preclude the officer from then trying to find the  
44 sponsor or the mother just because the person  
45 doesn't speak English?
- 46 A No, it doesn't preclude that.
- 47 Q Now, questions have been raised about the computer

- 1 databases that the CBSA uses and their potential  
2 ability to track passenger movement. Can you  
3 explain the three main CBSA computer databases  
4 that were in use in October 2007?
- 5 A I believe in the Vancouver Airport we have IPIL,  
6 which is the system used at Primary.
- 7 Q What does IPIL stand for?
- 8 A Integrated Primary Inspection Line.
- 9 Q Okay.
- 10 A It's essentially a database -- I shouldn't say  
11 it's a database. It's a computer system that will  
12 search databases primarily for enforcement  
13 lookouts. So it'll search the Customs --  
14 Integrated Customs Enforcement System database to  
15 see if there's anybody, like the name on the  
16 passport has a previous Customs enforcement  
17 action. And at the same time it will search the  
18 FOSS database to see if the person might be  
19 someone who's been previously deported.
- 20 Q So that's IPIL. What's the other database called?
- 21 A Well, the Integrated Customs Enforcement System is  
22 our equivalent to CPIC, for greater understanding.  
23 It's a database of Customs enforcement actions and  
24 it contains lookout information in it as well.
- 25 Q And what does CPIC stand for?
- 26 A CPIC? The Canadian Police Information System.  
27 That's a police database.
- 28 Q So you've told us about IPIL and ICES. Is there a  
29 third database?
- 30 A The third is FOSS, the Immigration Field  
31 Operational Support System.
- 32 Q And what is that database used for?
- 33 A I believe it's -- contains background information  
34 on persons who are applying to land in Canada and  
35 previous enforcement actions as well.
- 36 Q Now, to your knowledge, can any of these databases  
37 be used to completely track passenger movement  
38 inside a Customs Hall from the Primary Inspection  
39 Line to Point?
- 40 A No, they're not designed for that purpose.
- 41 Q What are they designed for?
- 42 A They're designed as enforcement databases to --  
43 one keeps records of -- well, FOSS and ICES keep  
44 records of enforcement actions and then IPIL  
45 searches those databases for those enforcement  
46 actions. It allows us to track referrals or  
47 release, basically the decision process taken.

1 But it's not a tracking mechanism.

2 Q Okay. Now, I'd like to ask you if you could  
3 explain generally what the agency's policy is in  
4 respect of assisting travellers with special  
5 needs.

6 A Well, officers are trained to be aware of  
7 individuals with special processing requirements:  
8 handicapped people, say the blind, for example.  
9 They're basically told you don't discriminate  
10 against persons because they have differences,  
11 that they're taught to, you know, treat them as  
12 anyone else would be treated. But they're also at  
13 the same time taught that if you need to take  
14 extra time, you recognize the disability. You  
15 facilitate that person's entry. In the case of  
16 physically handicapped, we have a directive out  
17 that talks about allowing handicapped persons to  
18 use the -- it's often called the crew desk or the  
19 expedited desk or extension of Primary desk. Just  
20 it's another locale that's reserved for crew  
21 members, diplomats, and in this case, say, someone  
22 in a wheel chair would be brought down by the  
23 elevator with the airline personnel.

24 Q Now, in Exhibit 121, the documents that were shown  
25 to you - I believe you might have a copy of this  
26 with you - there's a document within there called  
27 "People Processing Manual, Air and Marine  
28 Division, Part 1 Introduction, Chapter 4 Awareness  
29 Issues."

30 A Right.

31 Q Do you have that in front of you?

32 A Yes, I do.

33 Q And could you explain to the Commission what that  
34 document is.

35 A It's more or less what I initially mentioned.  
36 It's the document that tells officers to be aware  
37 of persons with disabilities, cultural  
38 differences, and to make sure that they're treated  
39 equally and fairly.

40 Q Thank you. Now, can you explain the nature of the  
41 CBSA's responsibility for security in airports  
42 like the Vancouver International Airport vis-à-vis  
43 the Airport Authority?

44 A Well, physical security in the airport itself  
45 would be a YVR responsibility or the police in  
46 that case. I'm not sure who does it in most  
47 airports. Within the tenant-controlled area -

Brian Hilton

Cross-exam by Mr. Brongers (for Government of Canada)

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

1           that's where we are - we're often responsible for  
2           who enters through the front door. Travellers  
3           would generally enter from the airside. And then  
4           I believe CATSA is responsible for making sure  
5           there's no backflow into the restricted area after  
6           a traveller has entered into the CBSA facility.

7           Q     What does CATSA stand for?

8           A     That's the Canadian Air Transport Security  
9           Administration.

10          Q     Now, can you explain nationally if the CBSA used  
11          surveillance cameras in its airports?

12          A     We do have surveillance cameras.

13          Q     Were there any policies with respect to their use  
14          in existence?

15          A     Not at the time, and there still isn't.

16          Q     There still aren't today?

17          A     No, there aren't any policies.

18          Q     And are there any CBSA policies on how CBSA  
19          officers should deal with a traveller in distress?

20          A     Generally officers are taught to call 911 if it's  
21          a medical emergency. All officers -- part of  
22          their prerequisite to join the CBSA at this point  
23          is that officers have to have standard first aid  
24          training.

25          Q     Now, you've explained in some detail the roving  
26          function, policies and procedures, so I won't go  
27          over that again. But I do want to ask one  
28          question of you. That is, is there a policy or  
29          general practice in Canada for CBSA officers to  
30          question travellers as to why they might be  
31          waiting in a Customs area if they see a passenger  
32          waiting for a long period of time?

33          A     Not that I am aware of.

34          MR. BRONGERS: Those are all my questions. Thank you,  
35          Mr. Hilton.

36          MR. KOSTECKYJ: My name is Walter Kosteckyj. I'm  
37          counsel for Zofia Cisowski.

38

39          CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA  
40          CISOWSKI:

41

42          Q     Sir, we've been led to believe by other witnesses  
43          that the Canadian Border Customs and Immigration  
44          Hall is your turf, and by that I mean it's the  
45          CBSA's turf. Is that fair?

46          A     We --

47          MR. BRONGERS: I'd like my friend to define the word

- 1 "turf." It's somewhat ambiguous.  
2 MR. KOSTECKYJ: Okay, well, I'll explain it.  
3 Q What it means is that you have total control over  
4 what goes on in the Customs Hall.  
5 A We are --  
6 Q When I say "you" I'm referring to CBSA.  
7 A We are a tenant. There's not all aspects that we  
8 are responsible for in there. We have other  
9 agencies, other organizations working in that  
10 facility as well.  
11 Q Yeah. But we've been told by airport witnesses  
12 that, for example, everything that goes on there  
13 in terms of how people react, who's allowed to  
14 talk to whom, and who's allowed to be in there is  
15 controlled by CBSA. Is that accurate?  
16 A I would not say it's entirely accurate.  
17 Q Okay. How is it not accurate?  
18 A We would not interfere with communications between  
19 and airline and a passenger in the CBSA facility.  
20 Q That's communications. What about allowing people  
21 in there? How do they get the okay to be able to  
22 be in the Customs Hall? Who gets --  
23 A We would have to. In that case we have -- as a  
24 tenant we have the right to control who enters our  
25 area.  
26 Q Right. So you control who enters and you decide  
27 who's allowed in and who isn't?  
28 A That's correct.  
29 Q Now, you were talking to Mr. Brongers about the  
30 purpose of CBSA clearing travellers and goods,  
31 correct?  
32 A Correct.  
33 Q Well, it's actually a bit more than that. Isn't  
34 it also protecting the Canadian public from people  
35 coming into the country that aren't supposed to be  
36 here?  
37 A That is correct.  
38 Q And in fact isn't that as important or more  
39 important than collecting taxes, which is  
40 basically what Customs is?  
41 A I would say that they all share -- they're shared  
42 equal responsibilities. We have to collect duties  
43 and taxes. We have to ensure the security of the  
44 borders.  
45 Q Right. But security of the border, isn't that the  
46 principal concern?  
47 A It is our -- one of our main focuses at this time.

- 1 Q Right. It's always been one of your main focuses,  
2 hasn't it?
- 3 A I think that could be argued.
- 4 Q All right. Well, now, we've heard some evidence  
5 here before that travellers, particularly people  
6 who want to claim refugee status, will often find  
7 their way into the Customs Hall and will try to  
8 stay in the Customs Hall for an extended period of  
9 time to hide where they have come from. Are you  
10 familiar with that?
- 11 MR. BRONGERS: Just to be clear, I don't think there  
12 was any evidence that this happens often.
- 13 MR. KOSTECKYJ:
- 14 Q Well, the point of it is this. We were given  
15 evidence that people who are illegal refugee  
16 claimants, that one of the things that occurs is  
17 people come into the Customs Hall and then they  
18 try to destroy or obfuscate their documents so  
19 that Customs officials or Immigration officials  
20 can't determine what flight they came from or  
21 where they arrived from. You're familiar with  
22 that?
- 23 A I believe that that's correct.
- 24 Q And one of the ways that they do that is by  
25 spending extended periods of time in the Customs  
26 Hall, correct?
- 27 A I believe that to be correct. I can't say with  
28 any certainty. I'm not --
- 29 Q Well, one of the purposes of the rovers is to go  
30 through the Customs Hall and to protect against  
31 such occurrences from happening, correct?
- 32 A That's correct.
- 33 Q And so when they see somebody who's sat in the  
34 Customs Hall for a period of three, four, five or  
35 six hours, that's a matter that you would expect a  
36 rover to take notice of?
- 37 A Not necessarily.
- 38 Q Well, let me get this straight. Do you want  
39 people staying in the Customs Hall for two, three,  
40 four, five or six hours?
- 41 A There's nothing wrong with doing so.
- 42 Q Well, I got the impression that the point of the  
43 Customs Hall from other witnesses is that you want  
44 people to go through the PIL and you want them  
45 through and out of the Customs Hall so that the  
46 next group of people can come in.
- 47 A That is correct. That's the general intent of the

- 1 process.
- 2 Q And there are other waiting areas outside of the  
3 Customs Hall?
- 4 A Correct.
- 5 Q Well, you don't want people sitting in the Customs  
6 Hall for six hours, do you, sir?
- 7 A We have -- there's a multitude of reasons that  
8 people will sit in Customs.
- 9 Q Yeah. But you investigate those reasons, do you  
10 not?
- 11 A Not necessarily.
- 12 Q You don't train your rovers that you've got  
13 somebody sitting in the Customs Hall for an  
14 excessive period of time, you should be checking  
15 that person out to make sure they're not a refugee  
16 claimant?
- 17 A The rovers are a Customs concept. They would be  
18 looking for persons with suspicions about drugs.  
19 They would work around the baggage claim area and  
20 they would -- part of their training is if they  
21 see a person is referred to Secondary, they're  
22 taught to move on to the next person.
- 23 Q All right. Well, they started off as being drug  
24 enforcement --
- 25 A Pardon?
- 26 Q They started off as being drug enforcement, but  
27 they've moved on since then.
- 28 A There are -- when we were two separate  
29 organizations, I know that Immigration had what  
30 they called the DART teams. I think they were  
31 document or disembarkation arrival teams. I'm not  
32 sure exactly what the title stood for. And their  
33 objective was to greet the aircraft and make sure  
34 that everybody had documents as they disembarked  
35 from the aircraft. We then would know when we  
36 dealt with someone in the facility that they had  
37 to have a document when they arrived. So they  
38 would -- now, in terms of what that does for the  
39 Immigration and Refugee process, I'm not from that  
40 side of the house so I can't answer.
- 41 Q Well, let's take a look at -- part of document 121  
42 is an excerpt from the "Customs Enforcement  
43 Manual, Part 3, Chapter 4, Roving Policy and  
44 Procedures." Do you see that?
- 45 A I think it's the last --
- 46 Q Do you have that, sir?
- 47 A Yes, sir.

- 1 Q Okay. I'm going to take you to page 2 of that  
2 document and I'm going to take you to paragraph 9.  
3 Do you see that?
- 4 A Mm -hmm.
- 5 Q It talks about the fact that:  
6  
7 Since 1984, the use of roving has been one of  
8 the fundamental components of the CBSA  
9 enforcement program. Originally conceived to  
10 help identify drug couriers, it now forms one  
11 third of our traveller screening...  
12
- 13 Do you see that, sir?
- 14 A Mm-hmm.
- 15 Q Is that true?
- 16 A I can't answer whether it's --
- 17 Q All right. Well, I'm presuming that this is an  
18 official manual?
- 19 A It is.
- 20 Q Somebody's prepared it and based it upon  
21 information that they have that's accurate,  
22 correct?
- 23 A I would presume as well, sir.
- 24 Q Okay. And it goes on to say:  
25  
26 ...screening and examination program, which  
27 includes primary, secondary, and roving.  
28
- 29 Right?
- 30 A Yeah. I believe they're talking there in terms of  
31 the concept: primary, secondary and roving,  
32 roving being the third concept for screening.
- 33 Q Yeah. And --
- 34 A It doesn't mean that one third of our activities  
35 are devoted to roving.
- 36 Q Now, the point to this is that CBSA has been  
37 joined to be a more functional unit, that being  
38 the Customs and Immigration, correct?
- 39 A That is correct.
- 40 Q So this is an integrated function between Customs  
41 and Immigration, correct?
- 42 A Correct.
- 43 Q And it was an integrated function dating back  
44 to -- I think you told us 2003.
- 45 A 2003, correct.
- 46 Q So this was 2007, four years after the integration  
47 took place, correct?

1 A Correct.

2 Q Well, the rovers didn't work exclusive and not  
3 take into account the Immigration function of what  
4 was going on at the airport, did they?

5 A No.

6 Q All right. Now, policy guidelines, also on page  
7 2. Paragraph 15:

8

9 Roving may be conducted in any area used for  
10 the international arrival or departure of  
11 people and/or goods. Roving will be limited  
12 to areas where customs powers may be  
13 exercised.

14

15 A Correct.

16 Q That's the Customs Hall?

17 A That's correct.

18 Q And then on page 4, roles and responsibilities.

19

20 Roving officers are responsible for --

21

22 And it's got a, b, c --

23

24 -- determining, based on risk, where to  
25 concentrate roving efforts --

26

27 Correct?

28 Q And then it talks about:

29

30 reviewing information on passengers and  
31 shipments provided by targeting officers

32

33 And then it also talks -- under there it goes:

34

35 Note --

36

37 It says:

38

39 Roving officers differ from targeting  
40 officers in that targeting officers select  
41 passengers or shipments based on advance  
42 documentation whereas roving officers review  
43 information from targeting officers and  
44 select based on real-time observations and  
45 risk assessment.

46

47 Correct?

1 A Correct.

2 Q Well, is it not a risk to the Customs Hall to have  
3 people who are in that Customs Hall for an  
4 extended period of time and are either loitering  
5 or avoiding detection?

6 A Not -- I don't see how anyone's avoiding detection  
7 by remaining in our area, and there's no law  
8 against loitering --

9 Q Well --

10 A -- unless they're causing a disturbance or  
11 interfering with the process.

12 Q Well, didn't you agree with me that there are  
13 refugee concerns?

14 A There are refugee concerns, and certainly they  
15 would eventually be dealt with. They can't leave  
16 the facility without going through us.

17 Q But the concern is you want to identify the people  
18 who are avoiding detection.

19 A I don't see that a refugee is avoiding detection.  
20 He's going to make a claim. He would be an  
21 unlawful entry if he avoided detection.

22 Q Well, isn't it part of your job to make sure when  
23 you're investigating that that you get as much  
24 information as possible, and if you deal with a  
25 refugee claimant before he destroys his documents,  
26 that's a lot better than dealing with him  
27 afterwards?

28 A Well, that would be -- certainly be helpful.  
29 That's part of the original origin of the DART  
30 teams.

31 Q Okay. And look at c) on the same page:

32  
33 visually screening arriving passengers and  
34 conveyances to determine, based on real-time  
35 observation and risk assessment, which merit  
36 further examination  
37

38 A Right.

39 Q All right. Now, page 6, 31: "Use observational  
40 skills..." Do you see that?

41 A Mm-hmm.

42 Q Thirty-four:

43  
44 Select individuals to question or refer for  
45 secondary examination based on suspicions  
46 raised through observation.  
47

1           You see that?

2       MR. BRONGERS: Mr. Commissioner, I'm happy to let the  
3           witness assist the Commissioner, but there is no  
4           evidence that Mr. Dziekanski was behaving in a  
5           suspicious manner or somehow should have come to  
6           the attention of the CBSA, that he was behaving  
7           improperly. So I'm just not sure where this gets  
8           us.

9       MR. KOSTECKYJ:

10      Q     Well, I'm not going to spend too much more time on  
11           it, but the point to it is, sir, the rovers are  
12           supposed to identify situations which through  
13           their observation are supposed to require further  
14           investigation, correct?

15      A     Where we have rovers, that is correct.

16      Q     Okay.

17      A     It isn't mandatory to have rovers. That's an  
18           assigned duty.

19      Q     Right.

20      A     And they could be working at any part of the  
21           terminal. They're not security functions.

22      Q     Well, they have to be in an area that's controlled  
23           by Immigration. That was from the previous  
24           material.

25      A     How do you mean by Immigration?

26      Q     Well, they have to be --

27      A     I'm not familiar with the previous material.

28      Q     Well --

29      A     They have to work in a CBSA-controlled area.  
30           That's anywhere where we have the authority to  
31           exercise the **Customs Act**.

32      Q     Right. Now --

33      A     Or I would argue as well (indiscernible).

34      Q     Now, would it be common for the rovers to check  
35           with airlines and check to see if luggage hasn't  
36           been picked up?

37      A     I suppose they could do that.

38      Q     All right. Now, let's talk for a second about  
39           sponsorship and what it means. What does  
40           sponsorship mean?

41      A     I'm not overly conversant with the Immigration  
42           legislation so I really can't answer that  
43           question.

44      Q     Okay. So you're not aware, or are you aware that  
45           a sponsor is financially responsible and needs to  
46           speak for the person and maintain responsibility  
47           for that person when they arrive in Canada?

- 1 MR. BRONGERS: Mr. Commissioner, is my friend asserting  
2 that as a matter of law that that is what a  
3 sponsorship's function or duties are? I don't  
4 understand the question.
- 5 MR. KOSTECKYJ:
- 6 Q Well, do you understand this? When you sponsor  
7 somebody, you remain financially responsible to  
8 the Government of Canada for that person?
- 9 A I understand there's a class called a sponsorship  
10 class in Immigration legislation, yes. That is  
11 the basic premise of that class.
- 12 Q And you're here to talk about policy and procedure  
13 respecting CBSA?
- 14 A Within the limits of my knowledge and  
15 understanding, of course.
- 16 Q All right. Well, one of the things that you  
17 indicated in your evidence in chief was that when  
18 someone comes into the country as a sponsored  
19 individual, it's appropriate for you to ask to see  
20 the sponsor to make sure that they are indeed  
21 agreeing to sponsor that individual, correct?
- 22 A That is correct.
- 23 Q Well, if you have to confirm that someone's there  
24 as a sponsor, isn't it important and you treat a  
25 sponsor in a different way than you do an ordinary  
26 person inquiring about an arriving traveller?
- 27 MR. BRONGERS: Mr. Commissioner, I think that question  
28 is a little bit ambiguous. There was no actual  
29 interaction between any BSO and Ms. Cisowski. So  
30 again, I'm not sure how it assists putting that  
31 hypothetical to the witness.
- 32 MR. KOSTECKYJ: Well, I'm not putting it --
- 33 Q The simple point, I guess, that I'm making is  
34 this. When you have somebody who's sponsored into  
35 the country, you have an obligation to make sure  
36 that that person is actually accepting the  
37 sponsorship when the person comes in. That's what  
38 you're telling me?
- 39 A I believe most of the acceptance of the agreement  
40 is done in advance when the documentation -- or  
41 done overseas in terms of the application for  
42 landing.
- 43 Q But in your examination in chief, I understood you  
44 to say that it would be appropriate --
- 45 A Correct.
- 46 Q -- for an Immigration official to call upon the  
47 sponsor to make sure that you are indeed

- 1 sponsoring this person.
- 2 MR. BRONGERS: That's not my recollection of the  
3 evidence. The evidence was, the suggestion being  
4 made was that BSO Van Agteren testified that she  
5 thought it might be of assistance to get in  
6 contact with Mr. Dziekanski's mother to assist  
7 with the processing process. There is no evidence  
8 that she felt it was necessary in order to confirm  
9 that Mrs. Cisowski was in fact a legitimate  
10 sponsor.
- 11 MR. KOSTECKYJ: I didn't say --
- 12 THE COMMISSIONER: That's what she said. But the  
13 witness put it in a different context.
- 14 MR. KOSTECKYJ: Yeah.
- 15 Q You, sir, advised that it would be appropriate  
16 for, not specifically with respect to Ms. Van  
17 Agteren, but that when you have a sponsorship  
18 situation, the Immigration officer, it would be  
19 appropriate for them to clarify and confirm that  
20 that sponsor is accepting the responsibility, that  
21 that's a bona fide situation, correct?
- 22 A Correct. It is my understanding it would not be  
23 inappropriate to do so.
- 24 Q So in those circumstances, common sense is  
25 supposed to be used by Canadian Border Services  
26 agents as well, correct?
- 27 A That's correct.
- 28 Q Well, people in sponsorship positions coming into  
29 the country in Immigration are treated in a  
30 different way, correct, than those who are not  
31 sponsored?
- 32 A I cannot answer that.
- 33 Q Well, in this sense that you were entitled to  
34 confirm that they are actually legitimately being  
35 sponsored?
- 36 A When dealing with Mr. Dziekanski, yes.
- 37 Q Yeah. Now, you mentioned something about, sorry,  
38 the DART team earlier.
- 39 A Correct.
- 40 Q What is the DART team?
- 41 A They were teams that I understood that were under  
42 the -- under the legacy Immigration organization  
43 that used to meet aircraft and then they would  
44 confirm the travellers as they left the aircraft  
45 that they had their documentation, that they had  
46 their passport.
- 47 Q But that wasn't in existence in 2007, you're

- 1           telling us; is that correct?
- 2       A     I don't know.
- 3       Q     Okay. It may have been?
- 4       A     It could very well have been. I know it's an  
5           assigned activity. I don't know if they operate  
6           all the time.
- 7       Q     I'm looking also at the same exhibit that we've  
8           been dealing with, and this deals with secondary  
9           questioning. It looks like this on the front,  
10          sir.
- 11      A     Okay.
- 12      Q     It says "CBSA Port of Entry Recruit Training  
13           Program."
- 14      A     Correct.
- 15      Q     Do you have that?
- 16      A     Yes, I do.
- 17      Q     Well, I'm looking particularly at page 31, 5.1.1,  
18            "Where no interpreter is available."  
19
- 20                    Ask accompanying friends or family members to  
21                    assist in translation.  
22
- 23            Correct?
- 24      A     Correct.
- 25      Q     So if a CBSA officer knows that a person doesn't  
26            speak the language, it would make sense for them  
27            to want to have family members around to be able  
28            to interpret, correct?
- 29      A     That's appropriate.
- 30      Q     And if you go to page 30, 5.1, "Use of  
31            interpreters" -- Mr. Brongers took you and showed  
32            you the Immigration form which was translated into  
33            Polish, for example, I think.
- 34      A     The Immigration form?
- 35      MR. BRONGERS: The CE311 customs declaration.
- 36      A     Oh, the declaration card.
- 37      MR. KOSTECKYJ:
- 38      Q     The declaration form. I'm sorry. And that's  
39            what's discussed here as well, correct?
- 40      A     Correct.
- 41      Q     Because sometimes what happens is, in spite of the  
42            fact that you have translation services, some  
43            people have difficulty with those forms, correct?
- 44      A     Correct.
- 45      Q     Not unusual?
- 46      A     No.
- 47      Q     And so one of the things that if they need

1 additional assistance in filling those forms out  
2 or if it takes extra time, that's considered to be  
3 quite normal, correct?

4 A That's correct.

5 Q And if necessary, you call an interpreter.

6 A No, not necessarily.

7 Q Well, if necessary. It talks here about -- I'm  
8 looking again at page 30.

9 A Correct.

10 Q

11 Where it is not possible to reach a point of  
12 finality for customs purposes at PIL, the  
13 individual should be referred to secondary  
14 for additional assistance, whether it be in  
15 the form of an interpreter --

16

17 A Correct.

18 Q

19 -- or to allow extra time for communication.

20

21 Correct?

22 A

23 Correct.

23 Q

24 So --

24 A

25 And communication can be through a variety of  
26 forms: hand signals, bringing in someone. The  
27 key point in that paragraph is reaching a point of  
28 finality. In other words, it's saying we cannot  
29 take enforcement action based on the declaration  
30 made by the person where we are unsure that that  
31 person could make a declaration.

31 Q

32 And one of the availabilities is if you're not  
33 sure, get an interpreter.

33 A

34 That's one of the possibilities. But we have to  
35 recognize there's over a thousand different  
36 languages and dialects in the world, and we can't  
37 have interpreters for every one. We address the  
38 major and we use coping mechanisms.

38 Q

39 And you use family where you're able to?

39 A

40 We use family where appropriate, and during the  
41 inspection process -- you'll note in that it talks  
42 about the traveller's documentation. It's quite  
43 possible to enter a person based on their  
44 documentation alone. From the Customs process, we  
45 can deal with the inspection process, because what  
46 we're concerned about in terms of persons landing  
47 in Canada -- essentially all their goods are  
admissible except for goods which are prohibited

- 1 under law from entry into Canada or goods which  
2 may be controlled, restricted or regulated, such  
3 as firearms. So we would carry out an inspection  
4 to make sure that the individual is not carrying  
5 anything that he would not be permitted to.
- 6 Q Okay.
- 7 A We would not take seizure action in those  
8 situations because we cannot reach the point of  
9 finality for that purpose.
- 10 Q Yeah. The simple point is, if a person's having  
11 difficulty, you get a translator if you can.
- 12 A If you can. But if there's none available, you  
13 don't want it to delay the traveller  
14 unnecessarily.
- 15 Q Okay. Let's talk about a point that has always  
16 puzzled me, and that's this. When Mr. Dziekanski  
17 went through the PIL, an entry was made in a  
18 computer.
- 19 A Correct.
- 20 Q Is there some warning, when the person is directed  
21 to Secondary from the PIL, to Secondary to advise  
22 them that there has been this referral?
- 23 A I believe there currently is a referral screen  
24 that shows up on those areas to indicate who --  
25 that there are referrals waiting.
- 26 Q Well, in this particular case, in 2007, did such a  
27 thing exist?
- 28 A I don't know. I can't answer that.
- 29 Q Well, sir, this is a question that has been raised  
30 by me and others. You must have been aware that  
31 you would be asked this question.
- 32 A I'm not aware of the layout in the Immigration  
33 Secondary.
- 34 Q Okay.
- 35 MR. BRONGERS: If I may, I think perhaps the question  
36 could be asked to Mr. Kooner. That's why we've  
37 brought two witnesses here, to make sure that all  
38 the questions can be answered.
- 39 MR. KOSTECKYJ:
- 40 Q I'll put this on the record with you, sir, just so  
41 that you understand what my question is.
- 42 A Okay.
- 43 Q My question is this. When you go through Primary,  
44 there's an entry made in the computer.
- 45 A That is correct.
- 46 Q As far as you know, is there any warning system to  
47 Secondary advising that this person is supposed to

Brian Hilton

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

Cross-exam by Mr. Buchanan (for PSAC)

1 be there so that if they don't show up in an hour  
2 or two hours or four hours, some alarm bell goes  
3 off somewhere?

4 A I am not aware of a warning system. I am aware  
5 that there is a referral screen that indicates  
6 who's been referred to Secondary.

7 Q And to the best of your knowledge, somebody in  
8 Secondary would be checking that screen to make  
9 sure as to who's coming or not?

10 A That I can't answer whether it's -- I think as the  
11 people queue in, they would look at that screen in  
12 terms of who has been there, who's been referred  
13 first.

14 Q I'm talking about somebody who doesn't show up for  
15 hours and hours.

16 A I'm not aware of a flashing warning screen at that  
17 time.

18 MR. KOSTECKYJ: Those are my questions. Thank you.

19 THE COMMISSIONER: Maybe we should take the morning  
20 break, then.

21 MR. BUCHANAN: I just have a couple of questions.

22 MR. BRONGERS: Just to be clear, I also have a couple  
23 of questions. I don't know if Mr. Vertlieb --

24 MR. BUCHANAN: Good morning. I'm Chris Buchanan. I'm  
25 counsel for the PSAC. I just have a couple of  
26 questions for you.

27

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

30

31 Q The first is, is there any policy that compels a  
32 CBSA officer when they receive a call from the  
33 public to try to track down a traveller that may  
34 or may not be in the secured Customs Hall?

35 A No, there is not.

36 Q And you were read a rather lengthy passage of  
37 testimony from Mr. Hutchinson in these  
38 proceedings. There's factual disputes about the  
39 evidence. But from the passage that was read to  
40 you, was there any breach of policy if that  
41 evidence is found to be true?

42 A No, there is no breach of policy.

43 Q Thank you. I guess I should be -- that's with  
44 respect to Ms. Zadavec.

45 A Okay.

46 Q And the answer is still the same?

47 A Yes.

Brian Hilton

Cross-exam by Mr. Brongers (for Government of Canada)  
(cont'd)

1 MR. BUCHANAN: Thank you.

2 MR. BRONGERS: If I may, Mr. Commissioner. If I may  
3 just do my redirect. I only have a couple of  
4 questions.

5 THE COMMISSIONER: Yes, redirect.

6

7 CROSS-EXAMINATION BY MR. BRONGERS ON BEHALF OF THE  
8 GOVERNMENT OF CANADA, continuing:

9

10 Q Mr. Hilton, you were asked by my colleague, Mr.  
11 Kosteckyj, about why a rover or a BSO may not  
12 notice a traveller who's been sitting in the  
13 Customs Hall or loitering in the Customs Hall for  
14 a while, and you answered there's a multitude of  
15 reasons why people stay in the hall but you  
16 weren't given an opportunity to give some  
17 examples. What are some reasons why travellers  
18 would stay in the Customs Hall for an extended  
19 period of time?

20 A Well, they could simply be waiting for baggage  
21 coming in on another flight. They could be  
22 waiting for family members on another flight. An  
23 example has been told to me by my associate,  
24 Binder Kooner, that he once saw a person who was  
25 on a conference call while waiting in the Customs  
26 area. It's not an unusual aspect to have people  
27 wait a little bit longer.

28 Q So just to be clear, what would be an example of  
29 when a person in the Customs Hall would become of  
30 concern to the Border Services officer?

31 A I think if they were causing a disturbance. In  
32 that case it would be -- we would have to address  
33 that because that would be disturbing to other  
34 travellers, and we would call in the police or the  
35 YVR security officials for that.

36 Q And the only other area I'd like to ask you a  
37 question about, Mr. Kosteckyj asked you whether  
38 essentially is there some sort of a requirement  
39 that a BSO confirm with a sponsor that they are in  
40 fact a legitimate sponsor. And what I'd like to  
41 ask you is whether as a matter of policy a Border  
42 Services officer is required to confirm with the  
43 sponsor by actually speaking to them at the point  
44 of landing to confirm that they are a legitimate  
45 sponsor? Is that a requirement?

46 A I am not entirely comfortable answering the  
47 Immigration process, so I can't say yes or no to

1           that.

2       MR. BRONGERS: Thank you very much.

3

4       RE-EXAMINATION BY MR. VERTLIEB:

5

6       Q     Just one issue, Mr. Hilton. What's this referral  
7           screen? We haven't heard about that. What is it?

8       A     Referral screen?

9       Q     Yes, you mentioned it here today. What do you  
10          mean by referral screen? What is it?

11      A     Oh. My understanding is that -- now again, I'm  
12          not an IPIL user. But my understanding is that  
13          there is a screen that comes up that shows a list  
14          of individuals who have been referred to  
15          Secondary.

16      Q     So where is the screen?

17      A     I think it's one of the screens that you can pull  
18          up in IPIL. As I said, I'm not familiar enough  
19          with the system. I believe that might be  
20          something that has been implemented since this  
21          incident.

22      Q     So Mr. Kooner should be helping us with that?

23      A     If he's familiar enough with IPIL.

24      MR. VERTLIEB: Okay, thanks. That's all. Thank you,  
25          Mr. Hilton. Mr. Commissioner, thank you.

26      THE COMMISSIONER: Mr. Hilton, thank you very much for  
27          your time. It's very much appreciated. We'll  
28          take the morning break.

29

30                   (WITNESS EXCUSED)

31

32      THE REGISTRAR: The hearing will now recess for ten  
33          minutes.

34

35                   (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

36                   (PROCEEDINGS RECONVENED)

37

38      MR. VERTLIEB: Thank you, Mr. Commissioner. I think  
39          we're well on track for the session. Mr. Kooner  
40          will not be as lengthy a witness as Mr. Hilton.  
41          Mr. Kooner, come on forward, please. Mr. Kooner  
42          was in the courtroom, but there was no problem  
43          about him listening to Mr. Hilton, Mr.  
44          Commissioner, just so you know.

45

46

47

43  
Binder Kooner  
In chief by Mr. Vertlieb

1                                   BINDER KOONER, a witness,  
2                                   sworn.  
3

4       THE REGISTRAR:   Would you state your full name, please.

5       A       Bupinder Singh Kooner.

6       THE REGISTRAR:   You may be seated.  
7

8       EXAMINATION IN CHIEF BY MR. VERTLIEB:  
9

10      Q       Mr. Kooner, tell us about your work with CBSA.  
11              How long have you been there and tell us about  
12              your jobs and what do you presently do?

13      A       I was hired on as an Immigration officer back in  
14              1988 at the Douglas border crossing.  Then I moved  
15              to the airport as a senior officer in 1990.  In  
16              1998 I became a shift supervisor at the airport,  
17              and in nine -- sorry, 2004, I became the Acting  
18              Director of Immigration.  February 2007, I became  
19              the Chief of Passenger Operations at the airport.

20      Q       Chief --

21      A       Chief of Passenger Operations.

22      Q       So you're basically the most senior person on the  
23              ground at the Vancouver Airport?

24      A       I have a director who's at the airport as well  
25              that I report to, yes.

26      Q       And as a result of the circumstances relating to  
27              Mr. Dziekanski's death, you've investigated the  
28              facts as it related to your agency?

29      A       Yes, I did.

30      Q       You were present and heard Mr. Hilton's discussion  
31              with myself and the Commissioner and other  
32              counsel?

33      A       Yes.

34      Q       Let's just talk for a moment, then, about the  
35              paging system at the time, October '07, that would  
36              have existed.  Was there a system where people  
37              working for the Customs/Immigration agency could  
38              page passengers in the Customs Hall?

39      A       Yes, there was such a system.

40      Q       So tell us about that.

41      A       The system -- normally we would page people that  
42              were outside the Customs Hall, but on the odd  
43              occasion, if we needed to, we could page in the  
44              hall as well.

45      Q       So if a person's working for CBSA in the  
46              Immigration Secondary, that employee could page?

47      A       They could.

- 1 Q So just to deal with this in a bit more detail,  
2 you know the circumstances surrounding Mr.  
3 Hutchinson and the evidence he gave and Ms.  
4 Zadavec gave about interaction?
- 5 A Yes.
- 6 Q And you briefed yourself on that a number of  
7 months ago when it was current?
- 8 A Yes.
- 9 Q And you've read the evidence no doubt of Mr.  
10 Hutchinson and Ms. Zadavec prior to being here in  
11 this courtroom?
- 12 A Yes, I did.
- 13 Q So when Mr. Hutchinson phoned her, as we've heard  
14 him state - and of course it's up to the  
15 Commissioner to determine the facts of the case -  
16 she would have had access to a paging system had  
17 she so chosen?
- 18 A She would have access, yes.
- 19 Q Have you ever asked her why she didn't page?
- 20 A No, I have not.
- 21 Q Has there been any official request to her about  
22 that to your knowledge?
- 23 A Not to my knowledge, no.
- 24 Q You heard the discussion that I had with Mr.  
25 Hilton about confidentiality?
- 26 A Yes.
- 27 Q And you agree with what Mr. Hilton was saying in  
28 terms of the law as you understand it and the way  
29 you're taught to interpret it and the way you  
30 teach your employees to interpret it?
- 31 A Yes.
- 32 Q So the point is that if someone phones in, you're  
33 not going to say yes, Mr. Smith or Ms. Jones is  
34 here in Customs? You won't say that?
- 35 A That's right.
- 36 Q But that doesn't for a moment suggest that your  
37 people can give inaccurate information?
- 38 A I'm sorry, could you repeat that.
- 39 Q That does not suggest for a moment, though, that  
40 your people, your officers, can give inaccurate  
41 information?
- 42 A Absolutely they should not be giving inaccurate  
43 information.
- 44 Q Okay. And of course, at all times the person  
45 who's in the Customs Hall, the traveller, can  
46 consent for the officers to speak with somebody  
47 outside?

1 A That's correct.  
2 Q I think that's a given, but I want to just be  
3 clear. So that if someone paged Mr. Dziekanski,  
4 for example, and he came and nodded or gave  
5 consent to talk to somebody, that could have  
6 happened?  
7 A That's true.  
8 Q All right. Now, this may be self-evident, but  
9 just to finish it off. Have there been any  
10 changes to the paging system since Mr.  
11 Dziekanski's death?  
12 A No, there has not.  
13 Q Now, also as part of your work for CBSA, you  
14 checked with the rover? You heard me ask Mr.  
15 Hilton about rovers?  
16 A Yes.  
17 Q And sir, there was a rover on duty at the time Mr.  
18 Dziekanski was there?  
19 A There was. There was one.  
20 Q And that's an Inspector Bishop?  
21 A That's correct.  
22 Q And Inspector Bishop, the full name of that  
23 person, please? First name?  
24 A Alexander Bishop.  
25 Q Sir, you had involvement in this. You wanted to  
26 find out what the rover, Bishop, knew about this  
27 case?  
28 A Yes.  
29 Q And this memo is from that rover to you?  
30 A It looks like it.  
31 MR. VERTLIEB: Next exhibit, please, Mr. Commissioner.  
32 THE COMMISSIONER: Yes, next exhibit.  
33 THE REGISTRAR: That will be number 122.  
34  
35 EXHIBIT 122: Copy - To Whom It May Concern  
36 letter of Insp. Bishop  
37  
38 MR. VERTLIEB:  
39 Q And you or CBSA, somebody, specifically wanted to  
40 know if Mr. Dziekanski had been in there and in  
41 any way that caused him to come to the attention  
42 of anybody such as a rover?  
43 A That's correct.  
44 Q And as far as you're concerned, Inspector Bishop  
45 can say no more than what would be in Exhibit 122?  
46 A That's correct.  
47 Q Thank you. Now, I want to ask you about the

1 ability of Customs and Immigration people to ask  
2 each other questions and get information. Now,  
3 you know there's evidence here about the Lufthansa  
4 baggage person who went to the Customs at the PIL  
5 on the extension and got information that Mr.  
6 Dziekanski had crossed the PIL?  
7 A Yes, I'm aware of that.  
8 Q You're aware of that. And you understand, then, a  
9 question that flows is, well, if the baggage  
10 person could find that out, why couldn't somebody  
11 in Customs Secondary find that out?  
12 A Yes.  
13 Q Now, just to confirm for us, the people in Customs  
14 and Immigration, they can communicate with each  
15 other?  
16 A That's correct.  
17 Q And so if somebody from Immigration phones  
18 somebody from Customs, the Customs person wouldn't  
19 say, well, I can't talk to you, there's breach of  
20 **Privacy Act**?  
21 A That's correct.  
22 Q Okay. Could an Immigration person find out from  
23 the Customs person if Mr. Dziekanski had crossed  
24 the PIL, the same way the Lufthansa agent did?  
25 A They could have, yes.  
26 Q And what would they have had to do to do that on  
27 the afternoon or evening of October 13, 2007?  
28 A They would have had to ask an officer that had  
29 access to IPIL to give them that information.  
30 Q And ask an officer -- you mean a CBSA officer?  
31 A Yes.  
32 Q And there would be officers around?  
33 A That's correct.  
34 Q And what's the magic in this access? Is it just  
35 knowing how to work the computer? Is it just that  
36 simple?  
37 A No. As Brian was talking about earlier, there's  
38 three legacy organizations that make up CBSA.  
39 IPIL was traditionally a system that Customs used  
40 and Immigration didn't have access to it.  
41 Q But it would have been accessible had someone  
42 taken the time to make that inquiry?  
43 A Yes.  
44 Q As a result of the issues that you're aware of and  
45 your agency is aware of concerning Mr. Dziekanski,  
46 have there been any changes at all since October  
47 '07?

- 1 A In terms of?
- 2 Q Paging, communication, dealing with a sponsor who  
3 might be waiting, interpreters.
- 4 A Well, we've done a number of changes. For  
5 example, with interpreters, we've gone through the  
6 list of interpreters that we had back in '07 and  
7 we've removed people that are no longer available  
8 and added additional people onto the list. We've  
9 also updated our staff list as well so people that  
10 speak different languages, they've been added onto  
11 that list. And we've also -- the officers are  
12 more aware of people that if they're in the hall  
13 to see what's going on, to investigate.
- 14 Q Just take a moment to tell the Commissioner just  
15 what you mean by that. Give an example.
- 16 A It's just heightened awareness on the part of the  
17 officers, that if they see someone in the hall,  
18 for example, for extended periods of time, they  
19 may go up to that person and ask what they're  
20 doing in the hall, and if they have a valid  
21 reason, then they would let them remain in the  
22 hall.
- 23 Q So in other words, just a heightened sense of  
24 awareness of what's going on in the hall?
- 25 A That's correct.
- 26 Q And that's because of the Dziekanski incident?
- 27 A That's correct.
- 28 Q I want to ask you about the interpreter 24-hour  
29 line. We've heard that the airlines have access  
30 to 24-hour interpreter lines. Just tell the  
31 Commissioner about what was available in '07,  
32 October '07, and any changes.
- 33 A In terms of what was available for interpreter  
34 services, we have a database of interpreters that  
35 are available. And there's also language lines  
36 that officers could use. And as I said, there's  
37 also a staff list of people that speak different  
38 languages. In addition to that, we also have  
39 interpreters at the airport depending on the  
40 language needs of the day.
- 41 Q And is that 24-hour service available?
- 42 A It is.
- 43 Q Was it available in October '07 the same way as it  
44 is today?
- 45 A That's correct. The only thing that's not  
46 available 24 hours a day are the interpreters at  
47 the airport.

- 1 Q So tell us about this, then. I want to be clear  
2 that we have your evidence on it. Would the  
3 information that Mr. Dziekanski had arrived and  
4 crossed the PIL, the P-I-L, have been available to  
5 a CBSA officer on a computer who was in the  
6 Immigration Secondary?
- 7 A No.
- 8 Q That person in Immigration Secondary would have to  
9 go to somebody else to access that had they chosen  
10 to do so?
- 11 A That's correct.
- 12 Q Now, I wanted to ask you about this issue around  
13 the screen that you heard me ask Mr. Hilton about,  
14 the referral screen. Tell us about that. We  
15 hadn't heard about that before. That's why I was  
16 asking him.
- 17 A To be honest, I'm not sure what he was talking  
18 about. The way the system works is when someone  
19 goes past the PIL line, their document is swiped,  
20 and if the officer is going to make a Secondary  
21 referral, they make that referral, and then we  
22 have a system called IPIL Secondary, which will  
23 identify those referrals. So for example, when  
24 the individual ends up in Secondary, the Secondary  
25 officer will know the rationale or the reason why  
26 the person was referred into Secondary.
- 27 Q So that's just information in the computer, right?  
28 Is that what you're --
- 29 A That's correct.
- 30 Q But is it coming up as a warning notice, look for  
31 Mr. Jones or Ms. Smith? Is that how it comes up?
- 32 A Not to my knowledge, no.
- 33 Q So what's he talking about? It was new to us.  
34 That's why I'm asking you. Better take us through  
35 it. A person comes through the PIL, Mr.  
36 Dziekanski in point of fact. At 4:09 he clears  
37 the PIL. And we know and you know that he was  
38 sent to Secondary for Customs and Immigration,  
39 right?
- 40 A That's correct.
- 41 Q You know that. Okay. So tell us what this  
42 referral information would be.
- 43 A The referral information would be the reason why  
44 the person was referred into Secondary, so --
- 45 Q But where is that contained?
- 46 A That would be in IPIL Secondary. It's also in  
47 IPIL, but IPIL Secondary will tell the Secondary

- 1 officer, this is the reason why this person was  
2 referred in to Secondary.
- 3 Q And how does it tell the officer?
- 4 A When the person shows up in Secondary, they'll run  
5 the name again, and then that's when the  
6 information will come up.
- 7 Q So is the information then inputted by the first  
8 border officer at the PIL?
- 9 A That's correct.
- 10 Q So when the PIL person is there, they swipe the  
11 passport, right?
- 12 A Yes.
- 13 Q Check the declaration card?
- 14 A Yes.
- 15 Q And having made a determination that Customs  
16 Secondary and Immigration Secondary needs to  
17 assess the person, does that PIL officer type it  
18 into the computer?
- 19 A I believe they have one button they can press  
20 for -- or a couple of different buttons depending  
21 on why the person is being referred. They'll  
22 select the appropriate button.
- 23 Q Okay. So it's not a screen, though, that's on a  
24 TV set monitor somewhere saying, Mr. Jones, Ms.  
25 Smith, all these people have been referred to --
- 26 A That's correct.
- 27 Q Okay. So it's just a way that when Mr. Dziekanski  
28 then would show up with his passport, they could  
29 swipe it and say, oh, now we know why he's here.
- 30 A It's a manner for the Primary officer to  
31 communicate with the Secondary officer.
- 32 Q I got the sense -- maybe I'm the only one. I got  
33 the sense there was a screen somewhere with his  
34 name on it saying he's coming and watch for him.
- 35 A No.
- 36 Q Okay. And other than that, you don't know what  
37 the referral screen was about?
- 38 A No.
- 39 Q I just want to make sure we're clear, and pardon  
40 me if I've missed it. We've heard from people who  
41 work for CBSA that they could go to this computer  
42 and get the same information that the Lufthansa  
43 baggage agent got, that Mr. Dziekanski had  
44 crossed.
- 45 A Yes.
- 46 Q We're clear on that? That could have been done  
47 had someone chosen to access it?

Binder Kooner

In chief by Mr. Vertlieb

Cross-exam by Mr. Brongers (for Government of Canada)

1 A That's correct.

2 Q But if you didn't have the computer access  
3 directly, you could go get someone to do it for  
4 you?

5 A That's right.

6 Q There's no magic in doing that?

7 A No.

8 MR. VERTLIEB: Thank you.

9 MR. BRONGERS: Jan Brongers for the Government of  
10 Canada.

11

12 CROSS-EXAMINATION BY MR. BRONGERS ON BEHALF OF THE  
13 GOVERNMENT OF CANADA:

14

15 Q Mr. Kooner, we've heard some of this explanation  
16 before, but given that you are the Chief of  
17 Passenger Operations at the Vancouver  
18 International Airport, I think it is helpful to  
19 hear it from you. As you can see, to your right  
20 there is a map of the Customs Hall. Could you  
21 just describe generally and briefly the physical  
22 layout of the Customs Hall and confirm that in  
23 fact that does reflect the Customs Hall back in  
24 October of 2007?

25 A So when the passengers come down the escalators,  
26 this is the Primary Inspection Line right here,  
27 and all passengers coming in, whether it's  
28 international flights or trans-border flights,  
29 would be coming in through here, talking to a BSO.  
30 The BSO will make a determination in terms of  
31 admissibility, and if the person is admissible to  
32 Canada, they'll admit that person and the person  
33 will collect their bags at one of these carousels  
34 and exit out of Point, which I believe is on this  
35 side here. If the person needs to go for a  
36 Customs or Secondary examination, then the BSO  
37 will make that referral either to the Immigration  
38 area or the Customs Secondary area, or to both  
39 depending on the case.

40 Q And could you show us where the PIL extension is  
41 and describe what its function is?

42 A PIL extension is located right here, and the  
43 purpose of that is to provide services for  
44 wheelchair or immobile people, minors, that sort  
45 of thing.

46 Q Okay. And could you tell us, because I don't  
47 think it's clear on the diagram, where the public

1 washrooms that people inside the Customs Hall  
2 would have access to.

3 A There's a washroom, I believe, right here and then  
4 another one right back there, and then there's  
5 also a washroom in the Immigration area right  
6 about there.

7 Q Thank you. And approximately, given that you do  
8 work there, can you describe what the size is of  
9 this Customs Hall.

10 A The whole hall probably is comparable to two  
11 football fields.

12 Q Now, I think it would be helpful to have an idea  
13 as to how many Border Services officers are  
14 typically on shift by reference to October 2007  
15 and the time that Mr. Dziekanski was there,  
16 between approximately 3:30 in the afternoon and  
17 12:30 in the next morning. How many BSOs would  
18 typically be on shift?

19 A Normally there would be three teams on. One would  
20 be responsible for the Primary line, one for  
21 Immigration Secondary and one for Customs  
22 Secondary. And each team generally would have  
23 anywhere between eight to twelve to thirteen,  
24 fourteen officers.

25 Q So just doing simple math, approximately how many  
26 officers in total?

27 A It could be anywhere between 35, 40, depending on  
28 whether they brought people in on overtime. It's  
29 hard to say.

30 Q And this is a difficult question, but can you give  
31 us an idea as to what sort of passenger volumes  
32 the Vancouver International Airport handles  
33 through the Customs Hall? Perhaps I can ask it to  
34 you this way. Approximately how many people would  
35 be in the Customs Hall at any given time?

36 A It depends on time of season. It depends on time  
37 of day. Daytime you could have 2,000 passengers  
38 in the hall.

39 Q Up to 2,000 passengers?

40 A Yes.

41 Q And at night time?

42 A Night time, I'd say three to five thousand people  
43 would go through the hall.

44 Q In total. But I'm asking at any given time, if  
45 you were to take a snapshot of the Customs Hall in  
46 the evening, approximately how many people do you  
47 think would be there?

- 1 A Evening, I would say there's probably hundreds.  
2 Could be.
- 3 Q And I understand that when you helped prepare the  
4 CBSA's internal report about the Dziekanski  
5 incident, that an estimate was made as to how many  
6 people were processed through the Customs Hall on  
7 the evening of October 13th. Do you recall what  
8 that number is?
- 9 A Unless I'm mistaken, I think it's 4,000 roughly.
- 10 Q Now, the evidence before the inquiry is that Mr.  
11 Dziekanski left the PIL at approximately 4:10 p.m.  
12 on October 13th and that he didn't deal with  
13 anyone at the CBSA until he tried to leave the  
14 Point some six hours and 20 minutes later at 10:30  
15 p.m. And we also know that the only surveillance  
16 footage that we have of Mr. Dziekanski during that  
17 period were two brief glimpses of him walking near  
18 the baggage carousels and the Immigration  
19 Secondary office at around 9:30 p.m. Do you have  
20 any explanation as to where Mr. Dziekanski might  
21 have been during that time period?
- 22 A I can't -- I can't explain that.
- 23 Q We would be asking you to speculate?
- 24 A That's right.
- 25 Q Now, you've testified, and indeed, the document  
26 was entered into evidence, that the rover on shift  
27 that night was consulted and asked about whether  
28 he had seen anyone possibly matching Mr.  
29 Dziekanski's description; is that correct?
- 30 A That's correct.
- 31 Q And obviously from the document, we know that he  
32 says that he did not notice anyone who might have  
33 resembled Mr. Dziekanski. Could you explain why  
34 it might be possible for a rover to not see or  
35 notice a passenger who's been in the Customs Hall  
36 for six hours?
- 37 A It could be a whole host of different reasons. If  
38 the passenger is sitting in the hall, not causing  
39 a disturbance or doesn't attract attention to  
40 himself, I don't expect the rover to go and talk  
41 to him.
- 42 Q Now, we heard evidence early in the proceedings  
43 from Border Services Officer Trevor Gross about  
44 the camera surveillance that was in place at the  
45 airport in October 2007, and he explained that  
46 some portions of the Customs Hall were not subject  
47 to camera surveillance. Do you have any

- 1 information that you can provide to the Commission  
2 about that, the state of camera surveillance back  
3 in October 2007?
- 4 A Yes. I believe back in '07, the camera coverage  
5 was limited in the hall and there was a little bit  
6 of coverage in Customs Secondary, but there was no  
7 coverage pre-PIL and there was no coverage in the  
8 Immigration area.
- 9 Q Could you perhaps by reference to the map explain  
10 the areas that you believe were not being covered  
11 by cameras?
- 12 A This whole area here and this area right in front  
13 here did not have camera coverage.
- 14 Q Was there construction going on at that time as  
15 well?
- 16 THE COMMISSIONER: Excuse me. Could you put that on  
17 the record.
- 18 MR. BRONGERS: Pardon me?
- 19 THE COMMISSIONER: Could you describe that area on the  
20 record.
- 21 MR. BRONGERS: Certainly.
- 22 Q Mr. Kooner, could you try and describe the area by  
23 using words as opposed to simply pointing, which  
24 portions of the Customs Hall were not subject to  
25 camera surveillance back in October 2007.
- 26 A The area that was not covered was the Immigration  
27 Secondary area and the pre-PIL area.
- 28 Q The pre-PIL area. Were there any other areas to  
29 your knowledge, for example washrooms?
- 30 A There were no cameras in the washroom.
- 31 Q And just to be clear, I understood that there was  
32 some construction going on at that area. Could  
33 you explain again by reference to words which  
34 portions of the Customs area there was some  
35 construction, perhaps some hoarding that was up.
- 36 A I believe there was hoarding around this last  
37 carousel.
- 38 Q Could you describe where that is approximately by  
39 using words.
- 40 A It's the last carousel before you enter into the  
41 Customs Secondary area.
- 42 Q Now, we've asked the previous witness this  
43 question, but since you actually work at the  
44 Vancouver International Airport and are familiar  
45 with it, I think it's helpful to ask it to you  
46 too. Are you aware of any reasons why passengers  
47 might choose to remain in the Customs Hall for an

- 1 extended period of time rather than simply leaving  
2 at the earliest opportunity?
- 3 A There's various reasons why people may want to  
4 stay there. They may be waiting for family off of  
5 subsequent flights. They might be waiting for  
6 delayed bags. And as Brian mentioned earlier, I  
7 had noticed one person that was conducting a  
8 conference call. So there's a variety of reasons  
9 why people could want to remain there.
- 10 Q There's no practice in the Vancouver Airport to  
11 encourage people to leave unnecessarily? Could  
12 you explain that.
- 13 A I would say there's not. I mean, the main goal is  
14 to get people through the hall and out. But if  
15 someone has a valid reason for being there, then  
16 we wouldn't force them to leave.
- 17 Q My colleague, Mr. Vertlieb, has gone through the  
18 state of interpretation services at the airport in  
19 quite some detail, so I won't ask you questions  
20 about that. But I would like to ask you some  
21 questions about communication between passengers  
22 in the Customs Hall and members of the public who  
23 are waiting for them outside in the meet-and-greet  
24 area, what is sometimes referred to as their  
25 reception. And we've heard about the CBSA's  
26 policies in respect of communications between  
27 travellers and reception. Now, in your capacity  
28 as Chief of Operations at the Vancouver  
29 International Airport, have you ever received any  
30 complaints about problems arising from travellers  
31 not being able to communicate with their  
32 reception?
- 33 A No.
- 34 Q Can you think of any reason for this?
- 35 A Well, a lot of passengers coming through have cell  
36 phones. There's pay phones in the hall. So they  
37 have means of communicating with reception.
- 38 Q And to your knowledge, are there also pay phones  
39 in the public areas of the airport, such as the  
40 meet-and-greet?
- 41 A I believe there are, yes.
- 42 Q And what is your practice at the airport with  
43 respect to allowing travellers to use the CBSA's  
44 own phones, say, if a request was made. What's  
45 the practice in Vancouver?
- 46 A I would say that would be a case-by-case, but it  
47 would be very rare for us to let someone into our

- 1 secure area to use their phones.
- 2 Q So if someone asks that question, what would you  
3 generally respond, then?
- 4 A I would want to know what the reason was.
- 5 Q Would you suggest alternatives to them?
- 6 A Yes, I would.
- 7 Q Such as?
- 8 A I would refer them to the pay phones.
- 9 Q Now, I'd like to ask you some questions about the  
10 time that Mr. Dziekanski spent in the Customs  
11 Hall. We know that approximately nine hours  
12 passed from the time Mr. Dziekanski entered the  
13 Customs Hall until he left it. Is that an unusual  
14 length of time to spend in the Customs Hall, in  
15 your experience?
- 16 A It is.
- 17 Q But we also know that once Mr. Dziekanski finally  
18 attempted to leave the Customs Hall at 10:30 and  
19 began to deal with various Border Services  
20 officers, that he was processed in approximately  
21 two hours. Now, is two hours an unusual length of  
22 time to be processed by both Customs and  
23 Immigration officers for a person who can't speak  
24 English and is landing as a permanent resident?
- 25 A It's not unusual, no.
- 26 Q Would you say by CBSA standards it would be  
27 acceptable or unacceptable processing time?
- 28 A I would say it's acceptable.
- 29 Q Now, it has been suggested by some that had Border  
30 Services Officer Zadavec accessed the Customs  
31 database, the IPIL database, and noted that Mr.  
32 Dziekanski had cleared the PIL at 4:00 p.m., that  
33 should have indicated to her that Mr. Dziekanski  
34 was still in the Customs Hall. Do you agree with  
35 that?
- 36 A No, I don't.
- 37 Q Why not?
- 38 A That would tell her that Mr. Dziekanski came  
39 through at 1600 hours, but it wouldn't necessarily  
40 tell her that he was still in the hall.
- 41 Q Why not?
- 42 A When he comes through the Primary line, that's  
43 when he came through. We don't keep track of  
44 people when they leave the hall.
- 45 Q So there's no data entry then done at the Point,  
46 then, with respect to traveller movement?
- 47 A No, there's not.

- 1 Q So just to confirm, then, the data is entered when  
2 the passenger goes through PIL; is that correct?
- 3 A That's correct.
- 4 Q That indicates that they have in fact crossed the  
5 PIL line. But there is no corresponding entry,  
6 then, made when they leave the Point?
- 7 A That's correct.
- 8 Q Now, with respect to the camera surveillance at  
9 that time, do you know approximately how many  
10 cameras were in operation at the airport in  
11 October 2007?
- 12 A I believe there were 13 cameras.
- 13 Q And has there been any change to the number of  
14 cameras since then?
- 15 A Yes. We've upgraded the system and there's much  
16 greater coverage now. I think we're up to 97  
17 cameras in the hall.
- 18 Q Okay. And I asked this question of your  
19 colleague, Mr. Hilton, but I'm curious with  
20 respect to Vancouver Airport specifically. What  
21 is the practice and expectation for BSO officers  
22 who encounter a traveller in distress who's having  
23 a medical emergency? What are they expected to  
24 do?
- 25 A Well, they're all trained in first aid so they  
26 will do whatever they can. But the practice would  
27 be to call 911 as quickly as possible.
- 28 Q And with respect to a violent disturbance that  
29 requires security, what is the practice in the  
30 airport?
- 31 A Again, we would attempt to deal with it ourselves  
32 but we would also call the RCMP for help.
- 33 Q My learned friend, Mr. Kosteckyj, had a question  
34 for Mr. Hilton with respect to whether or not  
35 there is a requirement that an Immigration officer  
36 actually speak to a landed immigrant's sponsor.  
37 And so I think it's important that the Commission  
38 get an answer to this question. Is there any  
39 requirement for an Immigration officer at the  
40 airport who's processing a sponsored landed  
41 immigrant to in fact speak with the sponsor prior  
42 to making a determination on admissibility?
- 43 A There is no requirement.
- 44 Q So in this case, the fact that BSO Van Agteren did  
45 not speak with Ms. Cisowski before stamping Mr.  
46 Dziekanski's Immigration form to allow him into  
47 the country, that was or was not a violation of

- 1 policy?
- 2 A That was not a violation in policy. And in fact,  
3 that's the routine process.
- 4 Q Could you explain what is the routine process in  
5 terms of contacting sponsors during Immigration  
6 processing.
- 7 A Normally we wouldn't contact the sponsor unless  
8 there was some reason to do so. All of that --  
9 everything's been confirmed by the overseas  
10 office, so whatever information is required of the  
11 sponsor has already been provided to the overseas  
12 office, thus the reason for the person being at  
13 the POE with the confirmation of landing.
- 14 Q Mr. Kooner, are you generally familiar with the  
15 job descriptions of Customs officers at the  
16 Vancouver International Airport?
- 17 A Generally, yes.
- 18 Q And are you generally familiar with the job  
19 descriptions of Immigration officers at the  
20 Vancouver Airport?
- 21 A Yes.
- 22 Q Now, we've heard evidence that certain officers  
23 provided certain assistance to Mr. Dziekanski, and  
24 I'd like to ask you about some of those services  
25 that were provided and whether in fact they were  
26 required by job descriptions. First of all,  
27 Customs officers did apparently escort Mr.  
28 Dziekanski from Customs Secondary to Immigration  
29 Secondary. Is that part of a Customs officer's  
30 job description?
- 31 A No, it's not.
- 32 Q Is there any prohibition on providing that  
33 assistance?
- 34 A No, there's not.
- 35 Q What about an Immigration officer who escorts a  
36 traveller to Customs Secondary and then on to the  
37 Point? Is that part of an Immigration officer's  
38 job description?
- 39 A No, it's not.
- 40 Q Is there any rule against providing that help?
- 41 A No, there's not.
- 42 Q What about an Immigration officer who does try to  
43 contact a traveller's sponsor and mother by  
44 paging, phoning and searching for the sponsor with  
45 the traveller's consent? Is that required as part  
46 of a job description for an Immigration officer?
- 47 A No, it's not.

Binder Kooner

Cross-exam by Mr. Brongers (for Government of Canada)

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

1 Q But is there any rule against it?

2 A No, there's not.

3 Q What about an Immigration officer who searches the  
4 Immigration Secondary area to try and find a  
5 traveller at the request of a member of the  
6 public? Is that required by the job description?

7 A No, it's not.

8 Q Is there any rule against it?

9 A No.

10 Q And what about a Customs officer fetching a  
11 traveller's unclaimed luggage? Is that part of an  
12 Immigration officer or a Customs officer's job  
13 description.

14 Q Any rule against it?

15 A No, there's not.

16 Q And finally, what about an Immigration officer and  
17 a Customs officer fetching water for a thirsty  
18 traveller? Is there anything in the job  
19 descriptions that would require that the officers  
20 fetch water if a traveller requests it?

21 A No, it's not.

22 Q Is there any rule prohibiting that?

23 A No.

24 MR. BRONGERS: Thank you for answering my questions.

25 THE COMMISSIONER: Mr. Kooner, have you any suggestions  
26 on how the mother could determine whether or not  
27 her son had arrived on his airplane?

28 A She could check with the airline. And I guess we  
29 could check in as well, but we wouldn't be able to  
30 release that information unless the son had given  
31 us consent to do so.

32 THE COMMISSIONER: So you'd have to page the son and  
33 ask him?

34 A We'd have to locate the son and ask him.

35 THE COMMISSIONER: All right.

36 MR. KOSTECKYJ: Walter Kosteckyj, counsel for Zofia  
37 Cisowski.

38

39 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA  
40 CISOWSKI:

41

42 Q Now, you're familiar with sponsorship. Your  
43 background is in Immigration.

44 A Correct.

45 Q The sponsor is financially responsible for the  
46 person that they sponsor into the country?

47 A Correct.

- 1 Q Doesn't Immigration or CBSA take it that that's  
2 implied consent to discuss an individual with a  
3 sponsor, an individual coming into the country?
- 4 A I would say there's consent to confirm information  
5 that we have, but not to divulge any extra  
6 information that we may come across.
- 7 Q Yeah, extra information like what they're bringing  
8 into the country or how much money they may have.  
9 But in terms of general basic knowledge about the  
10 person, there's no reason not to share that with  
11 the sponsor who's responsible for the person,  
12 right?
- 13 A Again, I would have to say any personal  
14 information that we've collected outside of the  
15 sponsorship, I would say that we cannot share.
- 16 Q Yeah, outside of the sponsorship, correct?
- 17 A That's right.
- 18 Q So anything that comes within the confines of the  
19 sponsorship is fair game to discuss with the  
20 sponsor, correct?
- 21 A Yes.
- 22 Q All right. Now, I'm still baffled by this, and  
23 you probably heard me ask this question of Mr.  
24 Roderick. When somebody goes through Primary  
25 Customs, I'm presuming that there's a computer  
26 entry made, right?
- 27 A That's right.
- 28 Q Now, that computer entry, does it ring any bells  
29 anywhere? Does it give warning to somebody in  
30 Secondary Customs or in Immigration saying, this  
31 person went through the PIL: they've been referred  
32 for Secondary Customs? Is there anything that the  
33 person in Secondary Customs looks at or is  
34 knowledgeable of and says, "Gee, Joe hasn't shown  
35 up and he went through two hours ago or four hours  
36 ago or six hours ago." Is there anything like  
37 that in the Immigration or Secondary Customs?
- 38 A No, there's not.
- 39 Q Even today?
- 40 A Even today.
- 41 Q Now, when someone does go through Secondary  
42 Customs, there's an entry made in a computer as to  
43 the fact that they've been processed?
- 44 A There should be, yes.
- 45 Q Right. So when Mr. Brongers indicated that you  
46 don't know what time the person exits through the  
47 Point, you do know, or you're supposed to know,

- 1 when the person was processed, correct?
- 2 A I agree with that with a qualification. The  
3 Secondary officer is supposed to make an entry  
4 into the Secondary system to close the loop on the  
5 Primary referral, and we encourage them to do that  
6 as soon as they finish with the passenger. But  
7 that's not always done. They might go back and  
8 make that entry at the end of the night before  
9 their shift.
- 10 Q But at some point somebody's got to make an entry  
11 into the computer saying the person's dealt with?
- 12 A At some point, yes.
- 13 Q Yeah. File's closed?
- 14 A Correct.
- 15 Q They're supposed to do it at the time but they may  
16 not do it till later?
- 17 A That's right.
- 18 Q All right. But the procedure is, when you're  
19 finished, do the entry?
- 20 A That's what we recommend, yes.
- 21 Q Okay. Now, look. I presume that you've seen the  
22 videotape of Mr. Dziekanski dealing with the  
23 officers in Customs, correct?
- 24 A Yes, I've seen it.
- 25 Q And you've seen that in that video there were  
26 numerous Customs officers standing around?
- 27 A Yes.
- 28 Q And I presume that's because it was a very quiet  
29 time at the airport?
- 30 A Yes.
- 31 Q So when Mr. Dziekanski was in the airport - I'm  
32 talking about nine, ten o'clock at night - you may  
33 have processed 4,000 people that night, but there  
34 were very few people in the airport - and I'm  
35 talking about the Customs Hall specifically - at  
36 9:30, 10 o'clock at night, correct?
- 37 A Yes.
- 38 Q From your investigation and everything you've been  
39 able to glean, there were very few people there?
- 40 A Yes.
- 41 Q All right. Now, the other part that's always  
42 troubled me is the baggage. When an airline gets  
43 baggage and they don't have a person to put with  
44 that baggage, does that not raise red flags that  
45 they have to advise Immigration or that you want  
46 to be interested in that kind of situation?
- 47 A Not necessarily.

- 1 Q You know, in most places in the world when you're  
2 in an airport, you always hear these warnings  
3 about don't leave your baggage unattended. If  
4 your bags aren't there or you can't explain, the  
5 bags will be destroyed. You've heard that before?
- 6 A Yes, I have.
- 7 Q Now, are you telling me in the Vancouver  
8 International Airport you can have someone's bags  
9 there and no person to go with them, and that's  
10 not a security concern?
- 11 A I would say those warnings apply more to the  
12 public areas. The bags that are in the hall have  
13 been pre-screened overseas.
- 14 Q Well, you're relying on someone else's pre-  
15 screening there, correct?
- 16 A Yes, we are. Yes.
- 17 Q All right. But the point is, isn't there a  
18 security concern within the Customs Hall to try to  
19 deal with the people at the various airlines about  
20 the bags? Like if the bags are there and there's  
21 no customer? There's no procedure for that?
- 22 A There is a procedure for that.
- 23 Q What's the procedure?
- 24 A If the airlines bring a baggage to us that there's  
25 no passenger with that baggage, then we will  
26 examine that baggage before it leaves.
- 27 Q Okay. Are they supposed to do that?
- 28 A The baggage comes to us before it leaves the hall.
- 29 Q Well, if there's -- is there a time limit that  
30 they're supposed to do that with you?
- 31 A No, there's not.
- 32 Q So you could have bags there for three and four  
33 days?
- 34 A I'm not sure if that's accurate but I can't say  
35 it's not.
- 36 Q Now, there is no requirement to check with the  
37 sponsor, but the Immigration officer can if they  
38 want to, correct?
- 39 A If there's reason for them to do so, yes.
- 40 Q So they have the option of doing that?
- 41 A Yes, they do.
- 42 Q Were you ever asked to make recommendations after  
43 the Dziekanski matter?
- 44 A I was involved in looking at processes, yes.
- 45 Q And did you make recommendations for change after  
46 the Dziekanski matter?
- 47 A Yes, I did.

- 1 Q And what were they?
- 2 A We put together a SOP, a standard operating  
3 procedure, for our front office that if reception  
4 was to show up there looking for a passenger two  
5 hours after the flight had arrived, then they  
6 would make an effort to locate that passenger.
- 7 Q Okay. Any other changes?
- 8 A To my knowledge, that's the only one.
- 9 Q Well, I gather that the other change that you did  
10 tell us about was that there was a change with  
11 respect to everybody being more vigilant about  
12 people being in the area.
- 13 A That's true.
- 14 Q And were there changes also made with respect to  
15 the rovers and asking them to be more vigilant?
- 16 A Yes.
- 17 Q Now, I notice that the rover in this case is  
18 called an inspector. The other people were  
19 called, I think, just Border Services officers.  
20 What's the difference?
- 21 A There is no difference. They're all Border  
22 Services officers. And in fact, even the rovers  
23 are Border Services officers. So depending on the  
24 volumes that are coming through, there may not be  
25 any rovers at any given time of the day. The  
26 rover may be in the booth processing passengers.
- 27 Q Now, the one thing about a rover, though, is that  
28 the rover is supposed to have some experience  
29 before they become a rover, correct?
- 30 A Yes, that's correct.
- 31 Q And they have to have a minimum of what, one year  
32 or two years?
- 33 A I'm not sure what the requirement is.
- 34 Q But you do know that they have to have some level.  
35 I know it's in the material, and I thought it was  
36 a minimum of a year or two years. Does that sound  
37 right?
- 38 A You're correct. I wouldn't put a new recruit in  
39 as a rover, for example.
- 40 Q So rovers are experienced people?
- 41 A That's correct.
- 42 Q All right. In this case, was Mr. Bishop, the  
43 rover, or Officer Bishop, Inspector Bishop, was he  
44 actually shown a picture of Mr. Dziekanski and  
45 asked to see if he recognized him, or shown the  
46 video of Mr. Dziekanski?
- 47 A I believe he was, yes.

Binder Kooner

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

Cross-exam by Mr. Buchanan (for PSAC)

1 Q So am I correct that nothing has changed in the  
2 computer system in the way that people are tracked  
3 coming through the PIL and going through Secondary  
4 now? It's the same now as it was when Mr.  
5 Dziekanski was going through?

6 A Yes.

7 MR. KOSTECKYJ: Those are my questions. Thank you.

8 MR. BUCHANAN: Good morning. I just have a few  
9 questions. I may not finish at 12:30. If we can  
10 maybe extend the morning.

11

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

14

15 Q You were asked some questions with respect to the  
16 paging system at the YVR, and I believe your  
17 evidence was ordinarily the CBSA officers would  
18 only page the public area. When, if at all, would  
19 a CBSA officer page the secure hall?

20 A If they were looking for someone in the hall.

21 Q Are you aware of there being any ability to  
22 translate a message to go over the paging system?

23 A Unless you had someone that spoke that language,  
24 no.

25 Q So if an officer only spoke English or French,  
26 there'd be no way for it to be translated into the  
27 secure area into a different language?

28 A That's correct.

29 Q Okay. Now, you're familiar with the phone that  
30 Mr. Hutchinson used to contact the Immigration  
31 area?

32 A I am.

33 Q And who would ordinarily answer that phone during  
34 the day?

35 A During the day there would be a receptionist there  
36 from 8:00 to 4:00, Monday to Friday.

37 Q And what was the expectation at the time of what  
38 the receptionist would do if they received a call  
39 from the public trying to track a passenger?

40 A During the operating hours, Monday to Friday?

41 Q Yes, that's correct.

42 A They would relay that information to one of the  
43 officers or the supervisor.

44 Q And what would happen in that instance?

45 A Then the officers would make the assessment in  
46 terms of what needed to be done in that case.

47 Q Okay. And how frequently do you get calls from

Binder Kooner

Cross-exam by Mr. Buchanan (for PSAC)

Re-exam by Mr. Vertlieb

1 the public trying to track down a passenger?

2 A All the time.

3 Q And what's the expectation at the YVR about what  
4 steps an officer would have to do in response to  
5 such calls?

6 A Normally, as was the case in this case, is that --  
7 for example, if reception shows up saying that  
8 they're waiting for a new immigrant, then the  
9 officer would look in the Immigration Secondary  
10 area where the new immigrants would be processed,  
11 do a visual and then report -- if the person was  
12 there, then they would get into what we've just  
13 been talking about. They would talk to the  
14 individual, get consent, and if they got it, they  
15 may relay that information to reception. If they  
16 couldn't locate the person, then they would deal  
17 with it accordingly.

18 Q And so at the time was there an expectation that  
19 officers in Immigration would track down to see  
20 whether or not the individual had crossed the PIL?

21 A No.

22 Q And we've heard some evidence about the practice  
23 of whether or not these Secondary referrals were  
24 closed. I understand your evidence is that it was  
25 recommended -- do you have any evidence that the  
26 practice was that Secondary referrals frequently  
27 weren't closed at the time that the individual was  
28 processed?

29 A Yes. Not in a timely fashion. They were  
30 eventually but not right away.

31 Q Right, okay. And you've had an opportunity to  
32 review the transcript with respect to Mr.  
33 Hutchinson's evidence, have you?

34 A Yes.

35 Q And Ms. Zadavec's evidence?

36 A Yes.

37 Q And upon either of the testimony, was there any  
38 breach of any local policy by Ms. Zadavec?

39 A No.

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

41

42 RE-EXAMINATION BY MR. VERTLIEB:

43

44 Q I think everyone's finished. You mentioned this  
45 SOP, the standard operating procedure. Can you  
46 get a copy of that to Mr. Brongers so he can get  
47 it and we can have it filed as an exhibit?

1 A Yes.

2 Q It's something that you have -- do you have it  
3 with you?

4 A I don't have it with me, no.

5 Q So can you get it to him today?

6 A Yes.

7 MR. VERTLIEB: Thank you. Thanks very much. Thank  
8 you, Mr. Commissioner.

9 THE COMMISSIONER: All right, that seems to be all the  
10 questions. Thank you very much, sir, for your  
11 time. You've been very helpful.

12  
13 (WITNESS EXCUSED)

14  
15 THE COMMISSIONER: We'll adjourn, then, until 10  
16 o'clock tomorrow.

17  
18 (PROCEEDINGS ADJOURNED TO MAY 6, 2009, AT  
19 10:00 A.M.)  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47