

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

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

May 7, 2009

PROCEEDINGS AT
HEARING (DAY 49)

COPY

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1
Don Ehrenholz
In chief by Mr. Stewart (for Vancouver Airport
Authority)

Vancouver, B.C.
May 7, 2009

1
2
3
4 THE REGISTRAR: The hearing is now resumed.

5 MR. MCGOWAN: Good morning, Mr. Commissioner. Today's
6 first witness is Don Ehrenholz. He's the Vice-
7 President of Operations at Vancouver International
8 Airport. He's come to address you, Mr.
9 Commissioner, on matters related to the Airport
10 Authority policies and specifically with respect
11 to a number of changes that the airport has
12 implemented since the time of the Dziekanski
13 incident. It's a fairly lengthy list of changes
14 which they've put into place and there's a fair
15 amount of detail to be covered with respect to
16 those.

17 Given that, I've suggested that Mr. Stewart,
18 his counsel, go first and take him through and the
19 necessary detail through those changes. It might
20 save us some time.

21 THE COMMISSIONER: Yes, all right.

22 THE REGISTRAR: Good morning, sir. Before you're
23 seated, do you wish to be sworn or affirmed?

24 MR. EHRENHOLZ: Sworn, please.

25 THE REGISTRAR: Sworn? Would you please your right
26 hand on the Bible there, please?

27
28 DON EHRENHOLZ, a witness,
29 sworn.
30

31 THE REGISTRAR: Could you state your full name, please?

32 A Don Ehrenholz, Vice-President at YVR, Operations.

33 THE REGISTRAR: Thank you. Please be seated. Counsel.

34 MR. STEWART: Dwight Stewart, counsel for the Vancouver
35 Airport Authority.
36

37 EXAMINATION IN CHIEF BY MR. STEWART:
38

39 Q Just to be clear, Mr. Ehrenholz, you've identified
40 what your position is. You're the V.P. of -- the
41 Vice-President of Operations at the airport. Am I
42 correct in understanding that you are the manager
43 of the airport? You are the person responsible
44 for the day-to-day operations of the airport?

45 A Yes, I am.

46 Q I'm correct that you --

47 THE COMMISSIONER: Mr. Stewart, I would think, unless

2

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1 counsel objects, that you could lead quite freely.

2 MR. STEWART: Okay. Thank you, Mr. Commissioner.

3 Q You report to Mr. Berg, correct?

4 A I do.

5 Q He's the Chairman of --

6 A Chief Executive Officer.

7 Q Sorry, Chief Executive Officer of the Airport
8 Authority.

9 A That's correct.

10 Q With respect to the Airport Authority, if I can
11 just explain for everyone, its constitution --
12 because I think sometimes this is a bit of a
13 mystery to people -- it is incorporated pursuant
14 to Part II of the **Canada Businesses Corporation**
15 **Act** which essentially is a corporation that is run
16 as a not-for-profit organization.

17 A That is correct.

18 Q It has, according to its bylaws or directives, it
19 has a Board of Directors that is representative of
20 various community agencies, City of Richmond,
21 GVRD, City of Vancouver, Province of British
22 Columbia, federal government, the Law Society of
23 British Columbia, the Association of Engineers and
24 Geophysicists.

25 A Correct. There are also several members appointed
26 at large and several federal government
27 appointees.

28 Q Okay.

29 THE COMMISSIONER: How do you ever get along with all
30 that group?

31 A I present to them all the time.

32 MR. STEWART:

33 Q And just to be clear that with respect to the fact
34 that it is a not-for-profit, that's not to suggest
35 that the airport doesn't collect -- or collect
36 money and have revenues. We all remember the days
37 when we used to have to pay the airport
38 improvement fee. But in terms of the fact that
39 it's a non-profit, there are no shareholders, and
40 all those monies that you collect, any profit is
41 reinvested in the airport and is used for its
42 operation.

43 A That's correct.

44 Q It is a self-sustaining authority. It receives no
45 funding from the federal government or the
46 provincial government, it has no guarantees. It
47 relies on whatever revenue it generates to be able

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In chief by Mr. Stewart (for Vancouver Airport Authority)

1 to operate.

2 A Yes, it does, and it pays a fair amount of taxes
3 to various government agencies.

4 Q Okay. Now, obviously what we want you to help us
5 with today primarily is understanding a series of
6 changes that have been implemented at the airport.
7 They were communicated on December 7th, 2007, and
8 some of them were implemented by December 6th,
9 2007.

10 MR. STEWART: So, Mr. Lunn, if I could have the
11 Powerpoint up on the screen. I've already
12 established who Mr. Ehrenholz is. If I could have
13 the second slide (**Slide 2 - YVR Internal Review**).

14 Q So I'm correct, Mr. Ehrenholz that on November
15 7th, 2007, the airport communicated to the public
16 that it was undertaking an internal review of the
17 entirety of its processes and am I correct that
18 you were the person designed by CEO, Mr. Berg, to
19 be in charge of the consideration of any changes
20 that were to be made at the airport?

21 A That's correct. I was appointed as the head of an
22 internal task force to review all of our processes
23 and procedures and come up with recommendations,
24 and then if approved by our board, to implement
25 those.

26 Q And am I -- am I correct, Mr. Ehrenholz, that
27 basically you, with a team of people from the
28 airport, locked yourselves into a room for the six
29 weeks after the incident occurred with Mr.
30 Dziekanski to review every step of Mr.
31 Dziekanski's process through the airport as well
32 as Ms. Cisowski's experience at the airport, look
33 at what had happened and identify areas where you
34 thought change should be recommended?

35 A That's correct. I had a team of six senior people
36 and we dropped everything immediately and began
37 working on this.

38 MR. STEWART: Have we given copies out? I have copies
39 of the Powerpoint presentation as well as a couple
40 of tabs which are key documents. If I could have
41 that marked as the next exhibit. I'm just going
42 to --

43 THE COMMISSIONER: Yes, that'll be the next exhibit.

44 THE REGISTRAR: Exhibit number 126.

45

46

EXHIBIT 126: Powerpoint presentation

47

Don Ehrenholz
In chief by Mr. Stewart (for Vancouver Airport
Authority)

1 MR. STEWART:

2 Q Just to continue with the process that you
3 adopted, as well as looking at the systems
4 internally, am I correct that you undertook a
5 process of townhall meetings with all of the
6 employees of the airport to hear their feedback
7 and thoughts on any changes that they could
8 suggest in terms of improvement at the airport?

9 A That is correct.

10 Q And you consulted with various external agencies,
11 the City of Richmond, the various different
12 agencies that operate in the airport, the CBSA,
13 CATSA, the United States Border Services Agency,
14 all of the key agencies in the airport you
15 consulted with?

16 A That is correct.

17 Q Okay. Now, we have at Tab 2 -- pardon me, sorry,
18 Tab 1 of the document that I've just passed up,
19 the next exhibit, is the December 6th, 2007
20 preliminary report on the circumstances of the
21 death of Robert Dziekanski at Vancouver
22 International Airport on October 14th, 2007. I'm
23 correct, sir, that at least with respect to the
24 recommendations that were made in that document,
25 that it was your team that came together and
26 proposed those recommendations that were accepted
27 by the Board of Directors, and some had been
28 implemented by December 6, 2007, and others, the
29 implementation began on December 7, 2007.

30 A That is correct.

31 Q Okay. And just to be clear, the preliminary
32 report basically has two aspects to it. There is
33 a chronology. I just want to be clear, Mr.
34 Ehrenholz, you were not the person that was
35 responsible for putting together the chronology,
36 interviewing the various different people in the
37 airport who had had interactions with Mr.
38 Dziekanski, correct?

39 A That's correct.

40 Q But your purpose with respect to the review of
41 that chronology was to look at Mr. Dziekanski's
42 sort of intersection with the processes in the
43 airport and see if there was any way that you
44 could prevent a similar situation from happening
45 again.

46 A That's correct.

47 MR. STEWART: Okay. If I could have the next slide?

5
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1 **(Slide 3 - Recommendations).**

2 Q If I can just review -- sort of assert one key
3 point, and this is from page 28 of 33 as a central
4 issue in terms of recommendations. Am I correct
5 that what you essentially agreed to do was that
6 you'd review your systems and change your systems
7 so that they:

8
9 ...deal with the needs of every customer, no
10 matter what the time of day, no matter
11 whether they are in the areas controlled by
12 the Authority, the Customs Hall controlled by
13 the federal government, or in spaces occupied
14 by airlines...

15
16 A That's correct.

17 Q And that underlying -- underlying the changes that
18 were made is to:

19
20 ...plan services to assist passengers who may
21 not know about airports or how to ask for
22 help at an airport. When we refer a customer
23 to another agency we must continue to provide
24 any other assistance that a customer needs.

25
26 A That's correct.

27 MR. STEWART: If I could have the next slide? **(Slide 4**
28 **-December 6, 2007 Preliminary Report: CUSTOMER**
29 **CARE - Map).**

30 Now, for the benefit of the Commission, the
31 slide is the same as the board which we have put
32 up in the place where we've been traditionally
33 looking at the maps. This is just a visual
34 representation of some of the key changes.

35 Now, for the Commission, I don't -- I'm not
36 going to try and go through all 33 changes that
37 were communicated on December 7th, 2007. I'm
38 going to try and focus, with Mr. Ehrenholz, just
39 in terms of those key things that speak to some of
40 the issues that we've spent time focusing on in
41 the evidence of Mr. Dziekanski's time at the
42 airport.

43 If I could have the next slide, please?
44 **(Slide 5 - Communicating Change to the YVR**
45 **Community -YVR Air Mail).**

46 Q This is just a screen shot of YVR Air Mail. Can
47 you just explain to the Commissioner what YVR Air

6

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1 Mail is?

2 A This is an internal electronic newsletter to let
3 staff, both directly reporting to YVR or
4 contracted staff and other agencies that work at
5 the airport know about the services and things
6 that the airport does. We use that as a forum to
7 let those folks that work for -- at the airport
8 all of the things that we were doing in terms of
9 improvements.

10 Q Okay. Now, the reason why I have this particular
11 slide is it is the December 2007 edition of the
12 Air Mail, and that in that edition there was
13 included a review of the changes at YVR and a
14 message from President Larry Berg in terms of the
15 changing face of customer care, that this was a
16 continuation of the effort that you had started,
17 to consult with your people and keep them included
18 and informed of the changes that were being
19 implemented.

20 A That's right. And one of the keys is the
21 communication so that all of the frontline staff
22 know what is available, what help is available for
23 passengers.

24 MR. STEWART: Okay. If I could have the next slide,
25 please? (**Slide 6 - Communicating Change to YVR
26 Community -- Key Message**).

27 Q That message obviously adopted some of the wording
28 of the December 6, 2007 report. But the comment
29 made in terms that:

30
31 As I said on December 7 at the time I
32 announced our changes, I think that in the
33 process of working to serve the needs of
34 many, we lost a bit of the human touch - the
35 ability to reach out to individuals who may
36 have different unique circumstances, like
37 Robert Dziekanski did.

38
39 That was -- that was your sense of the feeling of
40 the team that worked on the recommendations and of
41 the airport community at the time?

42 A Yeah, for 15 years, the airport had run quite
43 well. Tens of millions of passengers had come
44 through the Customs Hall without any difficulty,
45 and we had never seen a situation such as this
46 that -- and we determined that it required -- the
47 processes worked quite well, but we determined

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1 that we needed more of a human touch, or some more
2 people to deal with very unique circumstances such
3 as Robert's.

4 Q Okay. Now, before we canvass the customer care
5 changes, the recommendations weren't only respect
6 to customer care. There were recommendations that
7 were made in terms of medical response at the
8 airport, and essentially, Mr. Ehrenholz, I'm
9 correct that the commitment was made where the
10 previous practice had been that, during the night
11 when B.C. Ambulance wasn't on site, that your ERS
12 was dispatched on Code 3 medicals. Essentially
13 the change that was adopted was to increase your
14 staffing so that whatever the nature of the
15 medical happened at night, ERS was responded
16 (sic), routine or a Code 3.

17 A Correct.

18 Q Now, this Commission has heard a great deal of
19 evidence with respect to the decisions that were
20 made by Mr. Ginter that night, and I'm not going
21 to have you speak to that decision in terms of his
22 consideration of the situation that was before
23 him. I do just want to sort of confirm with you a
24 few key points.

25 A Sure.

26 Q We've heard from various people at the airport
27 that, in their experience, they had never dealt
28 with a situation of an injury resulting in a
29 police use-of-force. Does that accord with your
30 15 years at the airport?

31 A That is correct. We had never seen such an
32 incident where police use-of-force had turned into
33 a medical incident.

34 Q And, to your knowledge, you'd never done any
35 specific planning around that kind of a situation?

36 A No, we had not. We have done training and
37 practice of a variety of circumstances that might
38 occur at an airport, but we've never practised or
39 planned around that one.

40 Q Without speaking to the facts of Mr. Ginter's
41 decision, he did make mention in terms of his
42 training and his understanding of his role and his
43 position within the airport, that he had been
44 trained that -- that it was expected of him that
45 he would use his -- well, if you could speak to
46 this. What was your understanding --

47 THE COMMISSIONER: This is an area where you shouldn't

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1 lead, counsel.

2 MR. STEWART: That's -- I just --

3 THE COMMISSIONER: I mean, you know these things.

4 MR. STEWART: I agree.

5 Q What was your understanding of what was asked of
6 Mr. Ginter in his position?

7 A Bob Ginter was the ARC, or the Airport Response
8 Coordinator and that person was my representative
9 on the floor. There was an individual on site 24
10 hours a day, seven days a week, and they were
11 there to be our -- my senior representative on the
12 floor dealing with situations and making decisions
13 regarding how to handle a situation, and making
14 sure that the various response agencies were there
15 providing the services or the -- services they
16 normally provide.

17 In this case, Bob Ginter did have the
18 authority to make a field decision based on his
19 judgment of the situation at the time as to
20 whether or not to dispatch our ERS team.

21 Q And in that regard, the Airport Authority is
22 accountable for the decision that Mr. Ginter made?

23 A That is correct.

24 Q And just very briefly -- and again, I don't want
25 to -- want you to speak to the specific facts.
26 The Commission has heard a great deal with respect
27 to the facts surrounding the decision that was
28 made in the early morning hours of October 14th.
29 But in terms of Mr. Sambrook, what were your
30 expectations of a shift supervisor in terms of
31 dealing with a response.

32 A Mr. Sambrook's position, the shift manager, would
33 normally not attend to an individual incident or
34 situation. His job was to oversee the entire
35 airport and be planning ahead for the next day,
36 making sure the airport as a whole was operational
37 and functional and could keep running. He would
38 only be -- or go into or down to a situation to
39 support Bob Ginter if he thought that was
40 necessary or to assess the impact of that
41 situation on the function of the airport.

42 Q If I can, then, just deal, then, with respect to
43 some of the changes in terms of ERS, if we could
44 go to the next slide? (*Slide 7 - Changes...D.
45 Medical Response*).

46 This is the commitment that was made on
47 December of 2007. I'm correct that in December 6,

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1 2007, was the first night where you had the
2 additional staff to provide a response to any in-
3 terminal medical situation.

4 A That is correct.

5 Q There was another change that was announced in
6 December of 2007, and it was one of those for
7 future implementation. That was to provide
8 additional training to your ERS technicians. We
9 heard from Mr. Caldwell who was here to give
10 evidence at the Commission. Can you explain that
11 process of training?

12 A We, at the time, had our ERS team trained to what
13 is called FR-3. My understanding of that is it's
14 the highest level of first aid training including
15 such things as CPR and AED use. The next level up
16 is emergency medical responder, which includes the
17 ability to administer a number of -- my
18 understanding is a number of medical drugs to
19 assist in such things as heart attacks and cardiac
20 arrest type of situations. So we actually
21 endeavoured to have our 38 ERS people upgraded to
22 EMR-3 -- or -- I believe it's EMR-3. It's the
23 first level of emergency medical response.

24 Right now, it's quite a difficult course.
25 There's a lot of work to it, and to maintain your
26 certification takes a lot of effort. We have 30
27 of our 38 individuals have completed their
28 certification in the EMR training, and the other
29 eight are -- either started the course or will be
30 taking the course in the next three or four
31 months.

32 Q This is -- this is one of the areas where you've
33 reviewed your progress with respect to that
34 undertaking of providing the additional training
35 and the commitment to provide in-terminal
36 response. Am I correct that one of the things
37 that you determined is that with a lot of people
38 away getting additional training and increasing
39 the staffing level, that you had to make some
40 decisions about -- about hiring?

41 A Yes, we added five new ERS staff. It takes about
42 18 months to fully train an individual through
43 that program to the point where they have all of
44 the technical training, the aircraft firefighter
45 training and then all of the first aid and medical
46 training that we're giving them, so it's quite a
47 long course, so the individuals that we did hire

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1 in March 2008, as part of this initiative, are
2 just in the final stages of their training and
3 certification.

4 Q I'm correct that the only people that won't
5 receive that certification are people that are
6 dedicated in terms of the FOD radar and the
7 maintenance of the runway itself; is that correct?

8 A There are some employees or staff members within
9 the ERS group that are solely dedicated to driving
10 snow ploughs and grass-cutting equipment and doing
11 what we call airfield maintenance activity.
12 They're not going to be trained because they're
13 dedicated to other activity.

14 Q They would never be the ones to respond to a
15 medical situation?

16 A No, they're not trained to do that.

17 Q Okay. In terms of your program monitoring, I'm
18 correct that there was a 16 nights since December
19 7th, 2007, where, because of the demands on
20 backfill positions and people being away on
21 training, that it was difficult to fill the
22 additional staffing in terms of this commitment.

23 A That's correct. To provide this in-terminal
24 medical service that we committed to takes an
25 additional two persons that are trained
26 appropriately per shift, and due to the large
27 amount of training these folks have to go through,
28 combined with holidays, sick days, and family
29 days, we did have 16 nights during 2008 where we
30 were unable to have two there.

31 Q Okay.

32 A In those cases, we would have one person or two
33 people respond from the fire hall to the terminal
34 as opposed to having them in the terminal.

35 Q And that -- that was part of the reason why you
36 undertook to hire the additional staff?

37 A Correct.

38 MR. STEWART: Okay. If I could just have the next
39 slide? **(Slide 8 - Onsite in-terminal medical
40 first responder...)**.

41 Q And confirm those are two members of your ERS team
42 in the terminal?

43 A That's correct.

44 MR. STEWART: If I could have the next slide? **(Slide 9
45 - Emergency Management Joint Agency Training
46 Exercises)**.

47 Q Can you speak a bit about the process of emergency

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1 management training with the joint agencies at the
2 airport?

3 A The Airport Authority relies heavily on a number
4 of outside agencies to provide various services.
5 We are experts on airport operations and we are
6 legally required to maintain certain -- the fire
7 -- ERS fire department, for instance, to provide
8 firefighting services to various aircraft
9 incidents. That is a legal requirement and we're
10 responsible to have that 24 hours a day, seven
11 days a week.

12 For such things as police, building
13 structural fires and ambulance services,
14 hospitals, we rely on the services of the
15 community and since -- to make sure that that --
16 any response is properly coordinated for the
17 variety of situations that could occur at the
18 airport, we run training exercises with all of
19 those agencies present. Some of them are tabletop
20 exercises which is what you see depicted in the
21 picture. There are some ambulance folks, you can
22 see the RCMP, some of our own people, security
23 people present running that exercise.

24 We also, once a year, run a live exercise
25 where we have hundreds of volunteers pretend to be
26 passengers. We drag out an old aircraft and we
27 put the fire out and wheel everybody off to the
28 hospital. Last month we actually ran one that was
29 a security/terrorist type exercise. All those
30 exercises again set up to practice and review and
31 update and upgrade our procedures and make sure
32 everybody that's helping us knows their role and
33 can respond appropriately.

34 Q You spoke about a process of review after you've
35 done the training exercise. Is that also
36 something that happens after real-life events?
37 After there's an emergency, there's a process
38 undertaken in that regard?

39 A There's always a review of -- after every incident
40 that occurs at the airport to take a look at our
41 processes and procedures, make sure they're
42 appropriate and make sure if there is some gaps or
43 things that we can learn, that we improve. We're
44 in -- we want to continually improve.

45 MR. STTEWART: Okay. If I could have the next slide,
46 please? **Slide 10 - Changes...D. Medical Response**
47 **- Future Safety and Securities Initiatives).**

12

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1 We've already spoken to that in terms of
2 increasing the EMR training.

3 If I could have the next slide? (*Slide 11 -*
4 *Training for Frontline Employees, Change 12 and*
5 *14*).

6 Q I'm going to start now in terms of some
7 discussions about the changes in terms of customer
8 care. I said I would be speaking specifically
9 about Mr. Dziekanski's progress through the
10 airport on that evening. But I'm correct that
11 there's been a process of having training for all
12 frontline employees in the airport. I'm wondering
13 if you can speak a bit about that.

14 A Sure. One of the things we did find was that some
15 of the services were available at the airport that
16 would have assisted Mr. Dziekanski.
17 Unfortunately, it was not widely known and a lot
18 of employees were not aware of how to access or
19 use those systems. So we were pretty good at
20 responding to questions when somebody approached
21 us, but we realized that we needed to not only
22 train YVR's direct staff, but also all of the
23 contracted staff and all of the staff from all of
24 the other agencies at the airport. There are tens
25 of thousands of employees in the terminal complex.
26 Only 400 of them are YVR. All of the rest of them
27 work for airlines, government agencies, security
28 companies, et cetera.

29 So we developed a comprehensive new training
30 program and during 2008, we -- sorry, I'll back
31 up. The training program was meant to incent
32 (sic) our employees, or ask our employees to be
33 more proactive in seeking out people that needed
34 assistance. If somebody's staring vaguely at a
35 sign, not looking like they understand where they
36 should go, we want our employees, whether they're
37 the janitor or the security guard or me to
38 approach them, ask them what they need and then
39 proactively assist them, not just point the right
40 direction but actually walk them over to where
41 they need to go. If they don't know the answer,
42 the training asks them to take them to a customer
43 service agent which are sprinkled around the
44 terminal at counters to actually get the more
45 detailed assistance they need.

46 So we implemented that training and we have
47 trained almost all of the YVR employees that are

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1 direct employees of the Authority. We have a
2 large percentage of the contracted employees, such
3 as Securiguard, Marquise, the baggage cart
4 retrievers trained, and we are now running initial
5 courses for the U.S. Customs agents. We've run a
6 course for the CBSA Customs agents.

7 We are working on courses with CATSA and we
8 are working on developing -- we actually have the
9 online version to train airline agents, both
10 check-in agents and others that work at the
11 airport through the airlines.

12 Q You mentioned the fact that you're part of the
13 frontline staff. We've heard a fair amount of
14 discussion about Prox records and Prox cards in
15 terms of gaining access to various areas in the
16 airport. That's also referred to as a RAIC; am I
17 correct?

18 A That's correct. That is a little red badge that
19 allows you to go airside.

20 MR. STEWART: And if we could have the next slide?
21 **(Slide 12 - Re-focusing Customer Care at YVR,**
22 **Change 13).**

23 This commitment was made in terms of ensuring
24 that everybody in the airport who had a RAIC card
25 had just some key points in terms of customer care
26 initiatives.

27 If we could have the next slide? **(Slide 13 -**
28 **TVR Customer Care Card Carried...).**

29 Q That card's on your RAIC, Mr. Ehrenholz?

30 A It is indeed.

31 Q And it speaks to just some of those key points in
32 terms of any initial interaction with a customer
33 in terms of providing help?

34 A That's correct. And again what we found is that
35 three or six months after training, if you haven't
36 used it a lot, people forget the phone number to
37 call for the language line or some of the other
38 basics, and so we decided that we would give them
39 a little card with the key bits of information so
40 that they would remember what they needed to do if
41 they were approached by a passenger to assist
42 them.

43 MR. STEWART: If we could have the next slide? **(Slide**
44 **14 - Language Line Instruction Cards...).**

45 Q It also gives directions in terms of use of the
46 language line, correct?

47 A Correct. We actually did have the language line

14

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1 available in October 2007, but very few people
2 knew how to access it or how to use it.

3 Q Okay. And can you speak to the progress you've
4 made in terms of reaching that goal of getting
5 people to have these cards with them in addition
6 to their training?

7 A Yes, we've -- we instituted a program of handing
8 them out every time somebody renewed their RAIC,
9 so we've issued over 5,000 which we believe is
10 basically 100 percent of the frontline staff in
11 the terminal complex.

12 MR. STEWART: I'll probably return to this with
13 Commission counsel in a more general way. We've
14 recently obtained copies of the Powerpoint
15 presentations that are used in the training with
16 all these different agencies. We're going to
17 speak to -- later to a process of marking a bunch
18 of documents and having them -- having them
19 reviewed. I just wanted to speak to that in terms
20 of the -- in terms of the training.

21 If we could have the next slide, please?

22 **(Slide 15 - Language Identification Cards)**

23 Q This is, as it states, it's a language
24 identification card and this is one of the other
25 tools that's available at the customer service
26 counters that assist people in identifying what
27 the language is that the non-English-speaking
28 person speaks, correct?

29 A Yes. One of the challenges when you encounter a
30 person that does not speak your language is how do
31 I identify what language they are speaking. So
32 the key to that is actually this card. It has the
33 top 20 or most -- 20 most commonly used languages.
34 In addition, one of our employees actually had the
35 idea of putting a globe on each of the customer
36 service desks so that if the language wasn't on
37 that card, they could simply turn the globe and
38 point to the country they came from, and that
39 would be a huge assistance in identifying the
40 language they spoke. So that is in place at all
41 the customer service counters throughout the
42 terminal.

43 MR. STEWART: And we'll see that in use in a moment.
44 If we could have the next slide? **(Slide 16 - Key
45 Changes Regarding the Events of October 13-14,
46 2007).**

47 As I indicated, there's a lot of information

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1 in this Powerpoint presentation, and for the
2 benefit of the Commissioner and counsel present,
3 I'm not intending to go through all of the slides.
4 Time depending, at the end of it I've included a
5 number of different videos. I spoke with Mr.
6 McGowan and he thinks there might be some benefit
7 in playing it but we'll see how we do in terms of
8 the time. That shows a number of these changes in
9 use, and gets a sense of the -- basically the
10 process that Mr. Dziekanski followed as he made
11 his way through the airport.

12 What we've done is identified a number of key
13 changes that we think speak to certain of the
14 areas that the Commission has heard considerable
15 evidence on in this proceeding in terms of the
16 chronology.

17 If I could have the next slide, please?

18 **(Slide 17 - Map of YVR International Terminal -**
19 **same as Slide 4)**. Again, this is the map that is
20 sometimes used in the airport in a pamphlet form.

21 Q But one of the key points, Mr. Ehrenholz, am I not
22 correct, is that you focused in terms of a
23 customer care presence in the Customs Hall?

24 A That was one of our key changes, and there's
25 actually a bunch of things that we've done that
26 compromise (sic) -- I believe it was nine of our
27 changes or improvements focused on the Customs
28 Hall to make sure that as people entered the
29 Customs Hall, there was language services and
30 somebody to assist. There was an ability to get
31 those that were immigrating into the country
32 directly to the Immigration area and avoid the
33 long line-ups at -- possibly at peak times at the
34 primary inspection counters.

35 Once inside the Customs Hall, we put in place
36 two customer information areas, and I think
37 there's some pictures here of those, staffed any
38 time the Customs Hall is open. They have a full
39 array of language services, flight information and
40 assistance that any passenger would need. There's
41 better signage, there's help phones on every
42 second post inside the Customs Hall now.

43 Q Let's -- let's --

44 A Now, I'll let you do --

45 Q -- break it down a little bit.

46 A Yeah. I'll let you --

47 Q Yeah, to speak to some of these more specifically.

16

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1 A Sure.

2 MR. STEWART: If we could have the next slide, please?

3 **(Slide 18 - Continuous Customer Care - Pre-PIL**

4 **Position)**. Now, we heard the evidence of Ms.

5 Hunter and Mr. Doré who were in the Pre-PIL

6 position in October of 2007. That position

7 existed and has changed.

8 If we could have the next slide, please?

9 **(Slide 19 - Continuous Customer Care - Pre-PIL**

10 **Counter)**

11 Q Am I correct, Mr. Ehrenholz, that one of the
12 changes is to put a customer service counter in
13 the area, the Pre-PIL area, amongst other things,
14 to give customer service agents in that area the
15 ability to use the double handset language
16 translation facilities?

17 A Correct. That gives the customer service agents
18 there access to 170 languages.

19 MR. STEWART: Okay. Now if we could have the next side
20 -- sorry?

21 THE COMMISSIONER: Do I understand that one side can
22 speak English and the other side can speak their
23 language and it comes out --

24 A Correct.

25 THE COMMISSIONER: -- so each can understand it?

26 A Some place -- and I understand it's in Texas,
27 there is a room with 170 people that speak 170
28 different languages, and so the individual that
29 speaks English -- the person with the foreign
30 language speaks or asks their question. The
31 interpreter on the other side understands that,
32 provides an English answer -- or an English
33 version of the question to the customer service
34 agent who then says, "Yes, the washrooms are over
35 there," or, "Immigration is that direction," and
36 then the interpreter then provides that
37 translation back to the individual on the other
38 handset. So it's a very handy service. It works
39 really well.

40 THE COMMISSIONER: I should have had that when I took
41 French at university.

42 MR. STEWART: We have a quick demonstration of how that
43 works within the Powerpoint. If I could have the
44 next slide? **(Slide 20 - Continuous Customer Care**
45 **- Pre-PIL Paddle Initiative)**

46 Q Obviously Mr. Dziekanski was immigrating to Canada
47 and one of the things that you identified was that

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1 he wasn't identified as an Immigrant until he
2 reached the PIL counter and was identified as such
3 by the Customs officer. We heard a bit from Ms.
4 Hunter and Mr. Doré about their training to look
5 for the types of documents that immigrants may
6 have in their possession. But if I -- you
7 identified this as an area where you hoped to
8 achieve greater compliance or greater use of the
9 voluntary compliance corridor.

10 MR. STEWART: If I could have the next slide, and it
11 probably shows basically the process that's been
12 implemented and -- Mr. Commissioner, this is a
13 video portion to see, and I don't think we have
14 the audio here. **(Slide 21 - Video Presentation**
15 **Pre-PIL Customer Service Presence and Voluntary**
16 **Compliance, Video 007)**

17 Q This is actually one of your -- one of your
18 employees how we hope that it would work. Can you
19 explain, Mr. Ehrenholz, just some of the things
20 that you've done to try and increase the number of
21 people who use voluntary compliance?

22 A Well, again, most folks that are immigrating into
23 the country would have certain pieces of paper
24 with them, and our folks are trained to ask a lot
25 of questions as they come down the escalators to
26 identify those folks, the intent being that
27 instead of going through the long line-up at the
28 front, the main counters coming into the country,
29 you would be directed straight to the Immigration
30 area and you would be served immediately as
31 opposed to waiting in the big long lines with
32 everybody else.

33 MR. STEWART: Okay. And maybe if we could go back a
34 slide, if that's okay. **(Slide 20 - Continuous**
35 **Customer Care - Pre-PIL Paddle Initiative).**

36 Q This is sort of a demonstration of the paddle
37 initiative. In the video actually I think you can
38 see the person physically holding the paddle in
39 the background. But this is one of the areas of
40 concentration, to have your customer service
41 agents try to be proactive and try and have
42 immigrants go down the voluntary compliance
43 corridor.

44 A Correct. And we have actually run a number of our
45 own tests and audit how well we're doing on this.
46 We are getting a huge percentage of the folks
47 through this, which saves them time and gets them

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1 to the right place very quickly.

2 Q Okay. We'll return to some of that testing more
3 in connection with the roving position just in a
4 moment.

5 MR. STEWART: So if we could forward two slides. **Slide**
6 **22 - Continuous Customer Care - Baggage Hall**
7 **Customer Care Counter).**

8 Q Obviously one of the things that this Commission
9 has heard a great deal of evidence on is Mr.
10 Dziekanski's presence in the Customs Hall for I
11 believe it's six hours and 20 minutes from when he
12 crossed the PIL until when he presented himself to
13 secondary Customs.

14 A Yes.

15 Q To your knowledge, was that something that you'd
16 encountered before, at least as you're aware of?

17 A It's something that we had never seen or been --
18 had not been reported to us and certainly we're
19 not aware of those sort of things happening in the
20 Customs area.

21 Q But we have here a -- just a picture of the
22 customer service counter. That is in the Customs
23 Hall and is one of the commitments that is a
24 change that you now have a customer service
25 presence in the Customs Hall.

26 A Yeah, this -- this customer service counter and
27 information area was put into place on December
28 6th, 2007. It is staffed all the hours that the
29 Customs Hall is open. It has the globe and the
30 language line service, and an individual that's
31 well-versed in any questions that you might have
32 inside the Customs Hall. They're able to respond
33 to those.

34 We actually have two positions. This one on
35 the east side of the Hall at about the mid point,
36 and I think -- I'm not sure if you have a picture
37 of the second one.

38 Q We do. If I can just speak in this context
39 quickly about the access to telephones, public
40 telephones in the Customs Hall, and basically
41 people's ability to use phones in the Customs
42 Hall.

43 A Well, you can use your cell phone in the Customs
44 Hall.

45 Q Yes.

46 A That is allowed. But if you are coming into the
47 country from Europe especially, your phone may not

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1 work in this country. So a number of things -- we
2 do have our "help" phones on the wall that you can
3 use and you can get patched through to our
4 Operations Centre. You can, and any of our
5 customer service agents will allow you to use
6 their Blackberry or their cell phone to make a
7 call to the outside.

8 As well, we are looking into the possibility
9 of having calling cards available at the customer
10 service counter in this location because that has
11 been requested a few times.

12 Q We -- we've learned that Mr. Dziekanski's cell
13 phone didn't have a SIM card in it. I'm correct
14 that you can buy international SIM cards at the 7-
15 Eleven?

16 A That's correct.

17 Q And that's in the public area.

18 A Right.

19 Q But you've indicated that their training is to
20 allow people to use their phones. There are
21 public pay phones as well in the Customs Hall that
22 can be used with a Visa or --

23 A We will give you the quarter to use the public
24 phone in the Customs Hall.

25 Q Okay. We -- you spoke about the use of the
26 language translation line, and gave a description
27 of that to the Commissioner.

28 MR. STEWART: If we could have the next slide, we've
29 got a demonstration of how it works. We don't
30 have the sound, sorry. I'm not sure if we can get
31 that. **(Slide 23 - Demonstration of Language
32 Translation Line in Use, Video 010)**

33 It's unfortunate that we can't turn the sound
34 up a little bit louder, but hopefully that shows
35 how it works, Mr. Commissioner, and the Commission
36 has a copy of this memory stick that includes all
37 of these videos.

38 Q You mentioned, Mr. Ehrenholz, that there are two
39 customer service counters in the Customs Hall.
40 You mentioned there's one on the other side.

41 MR. STEWART: If we could have the next slide, please?
42 **Slide 24 - Continuous Customer Care - Immigration
43 Area Counter).**

44 Q This is a customer counter over near the
45 Immigration area; is that correct?

46 A That is correct. That's at the entrance to the
47 Immigration area.

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1 Q And this counter has all of the same tools and
2 capacity as the other counter?

3 A That's correct.

4 Q But it's -- but this counter, the second counter,
5 is only open during certain hours, correct?

6 A It is 8:00 a.m. to 8:00 p.m. which is the primary
7 hours that people are -- we find the Immigration
8 needs.

9 MR. STEWART: Okay. If we could have the next slide,
10 please? (**Slide 25 - YVR Greeter Information**
11 **Board**).

12 Q One of the things obviously that we've heard
13 evidence on is the difficulties of communication
14 between the Customs Hall and the public area. The
15 -- your understanding of the policy in terms of
16 privacy -- and if I can confirm, we heard from the
17 CBSA in terms of the policies relating to privacy.
18 Those privacy laws also apply to the Vancouver
19 Airport Authority?

20 A They do.

21 Q There's a privacy officer that controls that
22 process, but in general, those same difficulties
23 posed by the privacy laws exist and this is one of
24 the ways you've tried to mitigate that?

25 A Right. Those laws exist for CBSA, for the Airport
26 Authority and for the airlines and prevent most
27 information from being released unless the
28 individual allows it to be released.

29 Q Okay.

30 A So depicted here is the Greeter Information Board.
31 We have worked very, very closely with CBSA to
32 allow this greeter board to be in place. We have
33 permission essentially to have people inside the
34 Customs Hall put their name, the destination
35 they've come from and the time that they have
36 arrived onto the board, and you can go to one of
37 our customer service counters inside the Customs
38 Hall and get your name up on the board.

39 The key one for -- the key user of this is
40 actually folks that are in the Immigration area.
41 We are allowed to have -- go through and have our
42 customer service people talk to the people in the
43 Immigration line and ask them if they wish to have
44 their name on the board, and if they do, we are
45 allowed to put it on the board. We, again, spent
46 quite a bit of time with CBSA so as not to
47 compromise any border laws to allow this process

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1 to go on. It is quite well received.

2 MR. STEWART: Okay. If we could have the next slide,
3 please? (**Slide 26 - Customer Service 'Rover'**
4 **Position**).

5 Q This is a picture of someone in the Customs Hall
6 holding a Blackberry. Can you speak briefly to
7 the use of the Blackberry, Mr. Ehrenholz?

8 A Again, a majority of our customer service people
9 that are roving are equipped with Blackberries,
10 and then can then use that to make phone calls for
11 individual passengers, or also access the language
12 services in a mobile way beside a carousel away
13 from one of the customer service desks.

14 Q So they can use this device to send a message out
15 to the greeter board out in the public area as the
16 International Arrivals?

17 A They can do that as well, yes.

18 Q Okay. And as well as being in contact with all of
19 the other telephone systems in the airport?

20 A Correct.

21 MR. STEWART: If I could have the next slide, please?
22 (**Slide 27 - May Showing Rover Positions**).

23 Q The rover position was one of the changes, one of
24 the initiatives that was announced on December
25 7th, 2007. Can you speak briefly to this new
26 position? Again, we know that Mr. Dziekanski
27 spent those hours in the Customs Hall. Explain
28 how this new position is -- how it's meant to
29 work.

30 A We -- one of the key things that we wanted to
31 ensure was that nobody had to spend that amount of
32 time I'll say lost or not able to find their way
33 inside the Customs Hall. It is a very large area.
34 I haven't measured it, but I'm told that it's two
35 to three football fields in size, and if you've
36 been in there, you know it's very large and
37 complicated.

38 The intent was that the rover position would
39 move through the entire area from the escalators
40 to the carousel area and also into the bathrooms
41 and look for people that needed assistance that
42 were lost or having difficulties with the
43 processes in the Customs Hall and assist them in
44 finding their way and getting -- getting through
45 the processes that are there. It includes an
46 hourly -- basically once an hour we will have
47 swept the entire area. We do keep records of

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1 those sweeps, and obviously we have to have a male
2 and a female individual so that we can do both
3 bathrooms.

4 We have checked that we -- we check regularly
5 that we're maintaining that schedule. We also
6 have run several audits using a mystery passenger
7 to see how long it would actually take us to find
8 somebody that was "lost" or disoriented in the
9 area. In the cases that we ran the tests, we were
10 able to find them within an hour.

11 Q Okay. My recollection is that there was one
12 occasion in the past 18 months where there was a
13 person identified in the Customs Hall who was in
14 need of assistance; is that correct?

15 A That's correct. We've only encountered what I'll
16 call one serious case of a person with serious
17 dementia that somehow managed to fly out of the
18 country and then fly back, that was lost in the
19 area and needed significant help in getting
20 through the processes. We were able to identify
21 them within an hour, get them through the
22 Immigration and Customs process. They spent the
23 night in a hotel and we were able to get them to
24 their care home on the Island the next day. So it
25 was -- that's the only time that we have
26 encountered that situation.

27 Q You mentioned efforts made to find this person a
28 place to stay. As I understand it, there are
29 translators in the Immigration area provided by a
30 service call CANN. Am I correct?

31 A Correct.

32 Q Can you describe that organization and its group
33 of volunteers called -- I think it's called
34 "SUCCESS" and when they're there and what it is
35 that they try to do.

36 A CANN is an agency that has been -- actually,
37 they're the paid agency that is contracted by
38 CBSA. They have a counter inside the Immigration
39 area. Typically during midday, at the peak, they
40 have three staff. At off hours it's typically
41 one. These are folks that speak a multitude of
42 languages and have an array of brochures to
43 describe services within the Lower Mainland or the
44 region that are available to newly immigrating
45 passengers. They are allowed to talk to all the
46 Immigration people coming into the country in the
47 Immigration area, and offer them various services

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1 to assist them in relocating to the Vancouver area
2 in a multitude of languages. They have
3 information on food and places to stay that are
4 free, et cetera.

5 Then they are -- again, they are contracted
6 by CBSA to provide that service to a whole variety
7 of people in the Immigration area. They also have
8 -- I believe it's a non-profit group called
9 "SUCCESS" that is related with them that is,
10 again, assisting Immigration -- people immigrating
11 to Canada or Vancouver after they've left the
12 airport, that they get in -- they are put in touch
13 with.

14 Q Okay.

15 A And we did meet with them and ask what assistance
16 we could be to assist them in their work, and we
17 did put a language line on their desk and some of
18 the other tools that we've equipped our customer
19 services counters with, we have provided to them
20 as well.

21 Q To your understanding, though, that -- that
22 service, it was in place in 2007 --

23 A Yes, it was.

24 Q -- and it still exists now, but it's only regular
25 business hours to the best of your understanding?

26 A They try to cover all of the hours that they think
27 there will be immigrating passengers. They do get
28 some information about Immigration, people
29 immigrating to the country in terms of numbers and
30 where they're coming from. They do get some
31 information about refugees. So they are there to
32 try to -- they don't get the -- they're not
33 allowed to have the exact names or detailed
34 information about people, but they are generally
35 aware of who might be coming in, and then try to
36 be ready to provide assistance to those.

37 MR. STEWART: Okay. If we could have the next slide?

38 **(Slide 28 - Directions to the public meeting area**
39 **with pictograms...Change 23).**

40 One of the other commitments that was made in
41 December 6, 2007 preliminary report, was to try
42 and improve the quality of the signage in the
43 Customs Hall. We have a picture there.

44 MR. STEWART: If we could have the next slide, it shows
45 it a little closer. **Slide 29 - Increased use of**
46 **pictograms...Change 24).**

47 Q Am I correct that these LCD screens were put in as

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1 part of the changes to try and improve the
2 people's way -- their ability to make their own
3 way towards the greeting area and the public space
4 of the airport?

5 A That is correct.

6 Q The LCD component of that, we can see there's some
7 French and an Asian language I can't identify.
8 With respect to all of your LCD monitors, you have
9 them switching sort of on a normal sequence
10 between French/English and the four most commonly
11 used languages in the airport.

12 A That's correct. Right now they are Spanish,
13 Korean, Mandarin and Punjabi.

14 MR. STEWART: If we could have the next slide, please?
15 **(Slide 30 - Tear-off Terminal Map, Change 9).**

16 Q You've also undertaken -- I know there were maps
17 that were in existence in 2007, but improved maps
18 to try and assist people in giving them directions
19 around the airport. This is one of the examples;
20 is that correct?

21 A That's correct.

22 MR. STEWART: There's another form. If we could have
23 the next slide? **(Slide 31 - Tear-Off Wayfinding**
24 **Map, Change 9).**

25 Q This is, as we see, basically that same image of
26 the Customs Hall that we've all become so familiar
27 with, but includes the pictograms that are used in
28 the Customs Hall. Part of the purpose of this is
29 to give these to people who have approached a
30 customer service agent to be able to show them
31 exactly how to make their way out of the Customs
32 Hall; is that correct?

33 A That's correct.

34 MR. STEWART: If we could have the next slide? **(Slide**
35 **32 - Larger, brighter signs with**
36 **pictograms...Change 22).**

37 There was also another commitment made in
38 terms of having better signage with respect to the
39 help phones. We have -- if we could have the next
40 slide, you could see inside the Customs Hall the
41 number of phones. **(Slide 33 - Additional help**
42 **phones...Change 30).**

43 Q You indicated before it's every second pillar?

44 A Every second pillar on both sides of the
45 carousels.

46 Q Okay. And those help phones provide access to
47 various different services in the airport?

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1 A They would get you either to our -- if you just
2 pick it up and don't dial, it will, within three
3 seconds, get you automatically connected to our
4 Operations Centre. You can also dial 9-1-1 from
5 those phones and get direct contact to them.

6 MR. STEWART: If we can have the next slide, please?
7 **(Slide 34 - Complete redesign of the passenger**
8 **service, Change 3).**

9 Q One of the other commitments that was made was to
10 redesign the passenger service area. Again,
11 there's been a great deal of evidence heard in
12 terms of the IRL on the evening of October 14th,
13 2007. This was the concept in December 2007. We
14 now have some pictures of this, and I'm correct
15 that this was just completed -- the full
16 engineering construction project in the last
17 couple of weeks?

18 A Yeah, the first phase was complete last -- early
19 last summer which included the --

20 MR. STEWART: If we could have the next slide, please?
21 **Slide 35 - End of hallway leading from Customs**
22 **Hall to IRL).**

23 A -- customer information counter. The final phase
24 was completed about a week ago.

25 MR. STEWART: And if we could have the next slide?
26 **Slide 36 - IRL towards public greeting area).**

27 Q This is the view -- the last picture that we saw
28 is really the end of the hallway that runs from
29 the Customs hall to the point where you come
30 around the corner to the exit from the IRL.

31 A Correct.

32 Q You're --

33 A This is -- this is as you turn the corner, what
34 you will see as you're exiting towards the meet-
35 and-greet area. One of the challenges or
36 criticisms of the area, or deficiencies in the
37 area, in my mind previously was that it was
38 difficult to identify the customer information
39 area. It looked too much like a tourist booth and
40 not enough like a place where you would get
41 information. So we wanted to make that bigger,
42 brighter, very obvious, easy to find, and it is
43 now staffed 24 hours a day, seven days a week.

44 Q You actually had to raise the roof?

45 A We did --

46 Q Or the ceiling.

47 A -- bump the ceiling up about four feet and added

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1 quite a bit more lighting, some better signage.
2 Also, the pattern of the lights and the carpet is
3 meant to help you turn the corner and find your
4 way out. It's sort of -- we call it the subtle
5 wayfinding of a good -- well-designed facility
6 will assist you in finding your way.

7 MR. STEWART: Okay. If we could just have the next
8 couple of slides, and try to show this. (**Slide 37**
9 **- IRL April 2009; Slide 38 - Representatives**
10 **providing customer care at the BC Visitor Centre,**
11 **Change 2).**

12 Q We're seeing now a picture of that same
13 information counter, now from the public side.
14 Hopefully people can tell from the pictures that
15 it is one continuous counter open both to the
16 International -- the IRL --

17 A Both. And the public side.

18 Q And the public side. Of course, as well, in terms
19 of the evidence that we've heard in this
20 Commission, we've heard about Ms. Cisowski's
21 attendance and her presence in the public area of
22 the airport. Of course, Mr. Dziekanski's exit
23 from the IRL at 12:53 p.m. -- sorry, 12:53 a.m.

24 This -- can you speak to the commitment made
25 in terms of this counter and its staffing?

26 A Yes. Previously I understand or believe that the
27 customer service staff there finished at about
28 11:00 or 11:30 p.m. We have committed to have a
29 24/7 staffing of this area and we have -- that has
30 been the case since December 6th, 2007.

31 THE COMMISSIONER: Okay. Did I understand you to say
32 that people from the meet-and-greet area can
33 access this?

34 A No, they can't. We've -- the IRL, as everybody
35 knows it, is a semi-sterile area. It is not post-
36 security so it's not a restricted area from an
37 aviation point of view. At the time of the Robert
38 Dziekanski thing, it was restricted when there was
39 baggage being handled in that area, but it is not
40 now. And so certain people are allowed to go in
41 there, but we try to keep the public on the one
42 side. But it is much more open so you can readily
43 see through, see who's on the other side. But
44 this is not the actual Customs Hall. The Customs
45 Hall is down -- a little bit farther down and
46 around the corner.

47 MR. STEWART: If we could just advance the next slide?

Don Ehrenholz

In chief by Mr. Stewart (for Vancouver Airport Authority)

1 It's just a different image. (*Slide 39 - 24-7*
2 ***Customer Care Counter in International Arrivals***
3 ***Public Greeting Area***).

4 We won't go to the next slide yet. I'll just
5 explain what it is. It's -- again, it's a video
6 and I think it assists, in part, in showing this
7 process in putting these pictures in perspective.

8 Q But before doing so, is -- is one of the other
9 changes that was announced was to try to improve
10 the visuals, the ability of people to see people
11 in the public area, to see their loved ones
12 exiting the Customs Hall and coming around the
13 corner. Can you just describe that process, Mr.
14 Ehrenholz?

15 A Yes. One of the things we have done is upgraded
16 the camera system in this area and so there is
17 several screens in the meet-or-greet or the public
18 area that depict or show passengers immediately
19 following their exit from the border -- or Customs
20 area so that you get an immediate visual of it.
21 They're bigger, brighter and very clear.

22 MR. STEWART: If we could then have the next slide?
23 (*Slide 40 - Video Presentation Improved Visuals in*
24 ***Public Greeting Area, Video 018***)

25 So this is a person leaving the Customs Hall
26 and we can see the greeter boards in the public
27 area.

28 MR. STEWART: If we could advance to the next slide?
29 (*Slide 41 - International Arrivals Public Greeting*
30 ***Area***).

31 Again, just another perspective. This is
32 obviously further back, about at the end of the
33 stanchioned walkway area.

34 Q One of the other changes that was implemented is
35 to provide a new storefront office for Customs.
36 We heard evidence in terms of in 2007 the
37 direction of going between the Tim Hortons and the
38 Burger King and going down the hallway, people
39 don't need to do that anymore; is that correct?

40 A That's correct. We've got a what we call a
41 storefront location for CBSA inquiries, so that if
42 we are unable to provide information -- or if our
43 customer service agents cannot provide information
44 about somebody in the Border Services area, that
45 you can go in and talk to somebody from CBSA to
46 inquire. Again, within their -- then they will
47 respond as they're able to.

Don Ehrenholz

In chief by Mr. Stewart (for Vancouver Airport Authority)

1 MR. STEWART: The -- now I just sort of -- speak to the
2 next slide before we go there. We've got, then,
3 really just another short piece of video and I
4 think it puts in perspective where the meet-or-
5 greet information boards are which we can't see in
6 this picture over to the left, and gives a sense
7 of exactly where the new CBSA storefront office
8 is.

9 If we could have the next slide? (*Slide 42 -*
10 *Video Presentation New Storefront CBSA Office in*
11 *Public Area, Video 017*). We can see the greeter
12 information boards off to the left.

13 I'm mindful of the time, Mr. Commissioner.
14 I'm not sure if you want to take your morning
15 break.

16 THE COMMISSIONER: Yes, all right.

17 MR. STEWART: We'll now recess for ten minutes.

18
19 (WITNESS STOOD DOWN)

20
21 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

22 (PROCEEDINGS RECONVENED)

23
24 DON EHRENHOLZ, a witness,
25 recalled.

26
27 THE REGISTRAR: The hearing is now resumed.

28 MR. STEWART: Mr. Lunn, if we could have the Powerpoint
29 back up to the next slide, please.

30 THE REGISTRAR: Mr. Stewart, you might have to speak up
31 louder because --

32 MR. STEWART: Sorry.

33 THE REGISTRAR: -- we're now contending with a rock and
34 roll band out here.

35 MR. STEWART: Oh, sorry, if we could go back? I'm new
36 to Powerpoint and these are playing automatically,
37 so I'll -- what we're about to see in the next
38 video is a demonstration of the greeter
39 information board where we can see a person who's
40 in the Customs Hall entering their name in at the
41 customer service counter in the Immigration -- in
42 the Customs Hall and how it appears on the board
43 outside. So if we could have the next slide?

44 MR. MCGOWAN: Mr. Commissioner, perhaps just before we
45 play that, I'm -- I apologize for interrupting my
46 friend, but I'm a little concerned about the state
47 of the record. I don't think the Powerpoint

Don Ehrenholz

In chief by Mr. Stewart (for Vancouver Airport Authority)

1 slides have numbers on them, but I'm just thinking
2 about how the record is going to look on review
3 sometime in the future.

4 I'm wondering if it might be of assistance
5 for my friend to perhaps --

6 MR. STEWART: Thank you.

7 MR. MCGOWAN: -- make some effort to identify the
8 slides --

9 MR. STEWART: Thank you.

10 MR. MCGOWAN: -- he's referring to.

11 MR. STEWART: So this is the slide with the title,
12 "Communication Between the Border and the Public
13 Area, Demonstration of Greeter Information Board."
14 **(Slide 43 - Communication Between Border and**
15 **Public Area, Video 012)**. I think -- thank you.

16 Hopefully that was clear to everyone. The
17 second person was in the public area of
18 International Arrivals and able to see the name of
19 the arriving passenger from Mexico City and, as
20 Mr. Ehrenholz indicated, that is used fairly
21 commonly outside of the Immigration area.

22

23 EXAMINATION IN CHIEF BY MR. STEWART ON BEHALF OF
24 VANCOUVER AIRPORT AUTHORITY, continuing:

25

26 Q Just want to confirm, Mr. Ehrenholz, that this
27 method of communication is still just one way.
28 It's once people in the Customs Hall have either
29 identified or requested this -- or been identified
30 that they can help them, they can send a message
31 out this way. There's no ability to send messages
32 in?

33 A That's correct

34 MR. STEWART: Okay. I want to speak briefly or have us
35 pass through a few of the things that are
36 available on the YVR website. And again, this
37 speaks to the evidence that we've heard in terms
38 of the efforts that people make to try and assist
39 a passenger arriving at Vancouver International
40 Airport, in knowing before they get there what to
41 experience and where they're going to go.

42 If we could have the next slide? **(Slide 44 -**
43 **YVR Arriving Passengers Terminal Information - on**
44 **YVR Website)**. It's obviously very difficult for
45 people to see. Hopefully on people's paper
46 record, this is the slide, "YVR Arriving
47 Passengers Terminal Information".

Don Ehrenholz

In chief by Mr. Stewart (for Vancouver Airport Authority)

1 Q The very first thing in terms of the guide, Mr.
2 Ehrenholz, is "Navigating YVR Video".

3 MR. STEWART: We -- it -- for the benefit if the
4 Commission, we have this available, and it's
5 certainly available on the website and a copy has
6 been provided to Commission counsel.

7 Q We won't play it here, but if you can describe it
8 for the Commissioner, what this is, and what
9 you've been trying to achieve with it.

10 A Yeah. This is a video that depicts the arrival
11 process for an international passenger going
12 through the Customs area, and tries to show the
13 route, the various processes. The visual gives
14 you a clue as to where you are in the process and
15 what steps you might need to take if you're
16 immigrating versus transferring versus just
17 arriving in Vancouver. It's about four minutes
18 long.

19 We have -- it is now played on all Air Canada
20 arriving international flights. We are working to
21 try and get it onto other airlines' flights, and
22 we've been in discussion with most of the airlines
23 that fly into Vancouver. We are making some
24 progress with other airlines, but it is a bit of a
25 challenge because their networks are large, and to
26 get them to actually only play it, or play it when
27 they come into Vancouver, when they've got a fleet
28 of 400 aircraft and they only have one flight a
29 day to Vancouver, it's a bit of a challenge, but
30 we are making progress.

31 The other thing we have done is distributed
32 to all of the Canadian embassies out there, and
33 again, with some instructions on how to use it,
34 and we have an individual that is going to be
35 visiting some of those embassies and try to get to
36 them all over a period of a couple of years to
37 make sure that this is being used, so that when
38 passengers do come here, they are more familiar
39 with the process at Vancouver.

40 MR. STEWART: If we could have the next slide, which
41 again is just a copy of YVR Air Mail, and an
42 effort to get the word out that this navigational
43 video exists. (**Slide 45 - Community Education:
44 YVR Navigation Video**).

45 Q I'm correct, Mr. Ehrenholz, that there was a
46 previous version of this.

47 A Correct.

Don Ehrenholz

In chief by Mr. Stewart (for Vancouver Airport Authority)

1 Q That you just made greater efforts with respect to
2 its distribution?

3 A It was updated to be a little bit easier to
4 understand, and then our distribution efforts are
5 much wider.

6 MR. STEWART: Now, if we could go back a slide (**to**
7 **Slide 44 - YVR Website**). Thank you, Mr. Lunn.
8 It's very difficult for the public to see but
9 there's also available on the YVR website numerous
10 different maps, and one of them is the
11 International Arrivals map. Again, it would be
12 difficult to show it here in terms of how it
13 actually works on the internet.

14 Q But if you could just describe briefly how that
15 works from the internet, Mr. Ehrenholz?

16 A Well, again, it's meant to be a virtual tour of a
17 couple of the Arrivals areas, both international
18 and domestic, again to familiarize people that
19 aren't familiar with the airport, before they
20 arrive, on how to navigate through the processes
21 that we have here, and where various things, such
22 as customer information counters, are, to assist
23 them, what services are available.

24 MR. STEWART: If we could go forward two slides,
25 please. (**Slide 46 - Landmarks Identifiable...**).
26 This is the -- it's titled "Landmarks Identifiable
27 in YVR Navigational Video and Interactive Map."
28 Probably most people who've come through
29 international arrivals will be familiar with some
30 of the First Nations artwork pieces that are
31 present throughout the airport.

32 Q They are obviously art, but there is another
33 purpose for these pieces, correct?

34 A There is a couple of purposes for the art pieces,
35 the significant ones. They are meant to be, as
36 the slide says, "Landmarks" and way-finding guides
37 so that if they're readily recognizable, you can
38 say, "Meet me by the big green statue," and
39 everybody in the airport knows where that is, or
40 by the link totem (sic) or by these, which are the
41 welcoming figures. It gives you a number of key
42 locations where you can meet somebody or know that
43 something specific can happen or is happening at
44 that location. In this case, it's the arrivals to
45 the Customs Hall itself.

46 The other purpose for the program, the art
47 program, is that it does identify the airport as

Don Ehrenholz

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- 1 Vancouver and gives you some powerful visuals of
2 Vancouver, but it is also designed to -- when a
3 747 unloads and there's 400 people coming in,
4 that's quite a crunch at the PIL counter. It's
5 meant to actually slow a few people down so they
6 look at the art and the aquariums and the pictures
7 and relax -- first relax, and also slow them down
8 so not everybody gets to the Customs Hall at the
9 same time. It is actually quite effective.
- 10 Q You mentioned the big green statue, which is Haida
11 Gwaii.
- 12 MR. STEWART: If we could advance to the slide? (**Slide**
13 **47 - Landmarks Identifiable...Spindle Whirl**).
- 14 A That's the spindle whirl.
- 15 MR. STEWART: And if we go one more slide, please?
16 (**Slide 48 - YVR Meeting Places**).
- 17 Q You mentioned the use of Haida Gwaii as a meeting
18 place. This is also on the YVR website suggesting
19 to use it as a meeting place. That's also part of
20 what the customer service agents try -- try to use
21 it for?
- 22 A Correct.
- 23 MR. STEWART: If we could have the next slide, it shows
24 Haida Gwaii (**Slide 49 - Haida Gwaii...Meeting**
25 **Place**).
- 26 Q Obviously it's an --
- 27 A Yeah.
- 28 Q -- identifiable piece, but it has a purpose.
- 29 A Correct. It's actually quite well world --
30 worldly -- known world over now.
- 31 MR. STEWART: Okay. If we could have the next slide,
32 please? (**Slide 50 - YVR Continuing Education -**
33 **Air Mail**).
- 34 Q This is, again, just a piece from YVR Air Mail
35 which is a communication to the airport community.
36 It's announcing the creation of a new position,
37 the International Arrivals Coordinator. Can you
38 describe for the Commissioner, Mr. Ehrenholz, what
39 this position entails? This is a new change since
40 the announced 33 changes in December 2007.
- 41 A That is correct. One of the needs we saw was that
42 our customer agents -- customer service agents in
43 the meeting and greeting area were required to
44 stay put and be available to answer questions in
45 the meeting and greeting area. We have a number
46 -- several electronic services that allow -- such
47 as phones and the meeter/greeter board that allow

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1 some limited communication within the Boarder
2 Services rules to connect passengers. But there
3 are still situations where unique circumstances
4 arise between -- and so we created this position
5 to help bridge the gap between the customer
6 service agent on the outside, the customer
7 services counters on the inside, and the various
8 Customs and Immigration processes inside the Hall
9 as well as the airline representatives in the
10 hall.

11 So if a circumstance comes up, this
12 individual -- we've negotiated some protocols for
13 this individual to be able to go from the inside
14 to the outside and back to the inside to solve
15 certain types of problems and issues with
16 passengers.

17 Q Okay.

18 THE COMMISSIONER: How is she reached?

19 A If -- basically, if a passenger comes up to one of
20 the customer service counters, either inside or
21 outside and has a unique problem or situation that
22 can't be resolved by the person that's at the
23 counter, then they would call the IACR position,
24 as we call it, the I-A-C-R, and engage that
25 individual to help resolve the problem.

26 MR. STEWART:

27 Q What are some of the types of situations that
28 you'd foresee them being involved in?

29 A Well, we've had some cases where there -- we'll
30 have a passenger with a unique medical condition
31 and the family is worried that the individual
32 can't stand in a long line-up in the Customs Hall,
33 or has been in the process a long time, so the
34 IACR would meet the individual, with permission
35 from CBSA, of course, and help the person get
36 through the processes quickly.

37 There's been cases where luggage is missing
38 or an individual needs some extra assistance to
39 get through an Immigration process, an elderly
40 family member, et cetera, so a whole host of
41 unique situations.

42 MR. STEWART: If we could have the next slide, please?
43 (**Slide 51 - Consultation**).

44 I can just confirm for the Commissioner, and
45 it's part of the documents that have been provided
46 to Commission counsel, is that the Airport
47 Authority undertook to have an independent

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1 consultant review its customer services processes
2 with a view to comparing the Vancouver airport's
3 processes to other airports in the world. It's
4 beyond sort of the time abilities to have that
5 consultant come.

6 Q If -- but your purpose in doing that, Mr.
7 Ehrenholz, if you can confirm that for the
8 Commissioner?

9 A Our purpose was to look out at the best practices
10 around the world. The airport has always strived
11 to be one of the best airports in the world, and
12 this was our check to see what best practices were
13 around the world.

14 We looked at -- we had the study look at
15 several airports in Canada. I believe it was
16 Ottawa, Toronto and, I think, Calgary; several in
17 the U.S. that had best practices or considered
18 best practices. I believe it was Dulles,
19 Washington -- I'm trying to recall -- Boston, I
20 believe, and then several international airports
21 including Schippel and Hong Kong, which are
22 considered the top airports in the world. And
23 then compare a number of the services and
24 processes available to international arriving
25 passengers to see if we measured up, or if there's
26 any improvements we could make.

27 So the study essentially showed that there
28 was no individual airport that won in all ten
29 categories. We were best practices on some
30 categories, and there was other airports that were
31 better than us in certain categories.

32 Q I'm correct -- and also this report has been
33 provided to Commission counsel and it's within a
34 package of documents not here before us today, but
35 that you also had InterVISTAS, Mr. Wong, return in
36 January of 2009, and do an audit of the changes
37 that you'd said you would implement in December of
38 2007, and assure himself that those changes had
39 been effected.

40 A Correct. He's -- he's verified that we made the
41 changes, and he updated the report to show how we
42 compared to other airports in the world and I
43 believe we were best practice on quite a number of
44 additional areas, now that we've completed our
45 upgrades.

46 MR. STEWART: Okay. If we could advance, I think, two
47 slides. **(Slide 53 - Consultation, including**

Don Ehrenholz

In chief by Mr. Stewart (for Vancouver Airport Authority)

1 **"Conclusions"**). I just included the summary
2 section of that January 2009 process that was
3 conducted by InterVISTAS.

4 If we could have the next slide, please?

5 **(Slide 54 - Program Monitoring, Language line)**.

6 This aspect of what the Airport Authority has done
7 is, I will submit, would be very time-consuming.

8 Q But there's a lot of program monitoring that's
9 done at the airport, correct, Mr. Ehrenholz?

10 A Correct.

11 Q And you've done that specifically with respect to
12 the changes that were implemented in December of
13 2007?

14 A Yes. The customer service counters throughout the
15 airport, but specifically in the Customs Hall
16 area, and the meet-and-greet area, record all
17 questions and requests, all usage of the language
18 lines. We are averaging roughly 150 to 200
19 language line uses per month, and you can see
20 there the types of languages that are requested.
21 We are averaging about 35 or 3600 inquiries a
22 month at the customer service counters inside the
23 Customs Hall.

24 We track the types of questions, and if we
25 see any trends in terms of the types of questions,
26 it gives us some clues as to what additional
27 signage might be necessary or what the gaps in our
28 service levels are and we try to correct some of
29 those if we can.

30 MR. STEWART: Okay. Just on that point - and Mr.
31 McGowan may join me in this - but I'm working with
32 Commission counsel in terms of -- there's been a
33 production of a great number of documents, and a
34 process for independent review of some of that
35 program monitoring, and a process by which if
36 there are suggestions in terms of additional
37 changes that can be made, or inquiries about -- a
38 lot of these changes. There's a lot of
39 information to process, and this is just an
40 overview of it. But there are, within the
41 documents that have been produced to Commission
42 counsel, examples of program monitoring in terms
43 of the types of questions that come to the
44 customer service agents and different aspects of
45 the services that have been provided.

46 Q` Just -- I failed to establish this with you when I
47 first called you. I should just have you speak

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In chief by Mr. Stewart (for Vancouver Airport Authority)

1 briefly or confirm your background. You're an
2 engineer by education?

3 A I am, yes, a Bachelor of Civil Engineering from
4 UBC.

5 Q And am I correct that since 1983, that your career
6 has basically been in -- in and around airports?

7 A Yes. In 1983, I started with Transport Canada,
8 Airports Division, and then in 1994 -- actually
9 the Airport Authority was created in 1992. At the
10 time I was designing and building the new control
11 tower at the airport. My career at Transport
12 Canada was doing airport projects across B.C.

13 In 1994, I joined the Airport Authority to
14 join the recently privatized company that runs
15 Vancouver International Airport. I was the
16 Director of Engineering Projects, and subsequently
17 been involved in essentially all of the
18 construction projects that you see at the airport
19 from the parkade, the renovations of the domestic
20 terminal building, and all the expansions, the
21 hotel, runways and taxiways, every aspect of the
22 projects at the airport to the present time.

23 March 2000 -- actually, November 2007, I was
24 appointed to the task force, as my counsel has
25 mentioned, and then in March 2008, I was appointed
26 the Vice-President of Operations.

27 Q Just, you know, for the assistance of the
28 Commission, and -- generally we've heard some
29 questions about how busy the airport is at
30 different times. What is the flow of passengers
31 on a -- on a daily basis at different periods of
32 the year in terms of passenger flow through the
33 International Arrivals process?

34 A The airport, on an average day in the
35 International Arrival process, we'll see about
36 12,000 passengers in a day, and about 1500 to 2000
37 an hour at the peak hours of midday. It varies a
38 little bit as flight schedules change. One 747
39 can make a big difference in the peak. So 12,000
40 a day arriving passengers internationally; about
41 the same number a day domestically. That goes up
42 about 50 percent in the peaks of the summertime.

43 Q Okay. And then --

44 THE COMMISSIONER: I'm sorry, I misunderstood. The
45 12,000 a day, is that international or everybody?

46 A That is international alone. So that would
47 include every location internationally including

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1 the U.S.

2 MR. STEWART:

3 Q In 2007, I'm -- I believe the figure is that
4 there's approximately 17 million passengers that
5 passed through the airport?

6 A In the calendar year of 2008, Vancouver airport
7 handled 17.9 million passengers.

8 Q That's both domestic and international?

9 A That's domestic and international. About nine
10 million of those were international arriving and
11 departing passengers, so four-and-a-half million
12 departures, four-and-a-half million arrivals.

13 Q How about the number of flights, aircraft that
14 land at the airport in a given day?

15 A Typically about 900 aircraft arrive or depart
16 Vancouver's runways every day.

17 Q And both with passengers and cargo?

18 A We have -- yes, that includes all passengers,
19 cargo, float planes and helicopters.

20 Q We know that there's a -- we've heard evidence in
21 terms of the last flight that landed on October
22 14th, 2007. What -- what further activity is
23 still carrying on at the airport during the night?

24 A Typically during the daytime, we have 60 to 65
25 aircraft landing and departing an hour. That
26 tails off after midnight and between midnight or
27 12:30 and approximately 5:00 a.m., we would have
28 about 65 to 70 flights, primarily cargo and/or
29 domestic arrivals.

30 Q These changes that you've implemented at the
31 airport, they were designed specifically to try
32 and prevent a similar tragedy from occurring.

33 It's now 18 months since those changes were
34 implemented. Can you comment on where you think
35 you're at in terms of achieving that prevention?

36 A I believe that we did extremely thorough review of
37 our processes and procedures, and that we've
38 implemented every possible change that we could to
39 prevent the circumstances that occurred on October
40 14th, '07. We've tried to anticipate every
41 circumstance and situation that an international
42 arriving passenger might encounter as they come
43 through the airport, and put 33 changes in place
44 to ensure that they are assisted, no matter what
45 language they speak, no matter what time of the
46 day or night they would arrive, no matter how
47 experienced or inexperienced a traveller they

Don Ehrenholz

In chief by Mr. Stewart (for Vancouver Airport Authority)

In chief by Mr. McGowan

1 might be.

2 We've tried to anticipate everything that
3 could happen, but as Vice-President of Operations,
4 I'd be a bit irresponsible if I said no tragedy
5 could ever occur at the airport again, because
6 there are probably some circumstances that I don't
7 even want to imagine, or we could never imagine,
8 or that are completely out of our control that
9 might occur. But beyond that, I believe we've
10 done everything humanly possible to make sure that
11 this -- that every passenger is taken care of.

12 MR. STEWART: Okay. My friends may have some questions
13 for you. Those are my only questions. Thank you,
14 Mr. Ehrenholz.

15

16 EXAMINATION IN CHIEF BY MR. MCGOWAN:

17

18 Q Mr. Ehrenholz, we spoke today --

19 THE COMMISSIONER: Turn on the microphone.

20 MR. MCGOWAN: I apologize, Mr. Commissioner.

21 Q Mr. Ehrenholz, we spoke today before you came to
22 give your evidence, and you're aware that because
23 of the specific nature -- and detailed nature of
24 some of our questions, some of them will be
25 submitted to you in writing and placed on the
26 record and you'll have an opportunity to, together
27 with your colleagues and workmates, to consider
28 those questions and provide thoughtful responses
29 to them.

30 A Yes, I do.

31 Q You know that's a process that we've discussed.

32 A Yes.

33 Q Okay. And that's something we'll deal with in the
34 coming days, correct?

35 A Yes.

36 Q Okay. You're also aware that, together with your
37 counsel, Commission counsel has been working to
38 put together a package of documents and police
39 materials and operational material to place before
40 the Commission as exhibits, but that's not quite
41 ready to go yet. There's some additional perhaps
42 redacting that has to be done and a couple of
43 small details. You're aware of that?

44 A Yes.

45 Q Okay. So for the purposes of today, I'm just
46 going to ask you a few questions, and the
47 remainder of the Commission's queries will be done

- 1 to you in the written form or through the
2 independent review process which we've discussed.
- 3 A Okay.
- 4 Q Okay. Let me ask you, first of all, sir, about
5 the topic of paging, because I'm not sure that I
6 was entirely clear from what you said today about
7 what the present situation is on the issue of
8 paging. What I'd like you to specifically do is
9 address for the Commissioner the situation with
10 respect to paging from outside into the secure
11 area, and from inside the secure area out of the
12 secure area. Who has the ability to do that, and
13 who controls those paging systems and why?
- 14 A Okay. There is a paging system throughout the
15 terminal complex. However, the Airport Authority
16 customer service representatives are not allowed
17 to page into the Customs Hall from the outside,
18 and our new customer service counters are not
19 allowed to page to the outside, because of border
20 laws. I understand that the CBSA folks are
21 concerned that it might compromise border
22 security. So the CBSA staff are able to page into
23 the Customs Hall area from their various counters
24 in Immigration, in Secondary and from their new
25 storefront area that is out in the public area.
- 26 The airlines also have customer service desks
27 or baggage service desks inside the Customs Hall,
28 and they are allowed to page for individuals
29 inside the Customs Hall to come to retrieve a bag
30 from their counters.
- 31 Q Okay. So the situation today is Airport Authority
32 employees cannot page over the security line,
33 essentially. They can't page from outside to
34 inside or inside to outside, and I'm speaking of a
35 verbal page.
- 36 A That's correct, and that has not changed. It was
37 -- that was the case in October 2007, and that has
38 not changed today.
- 39 Q That was my next question. So you've answered
40 that. Canadian Border Service does have the
41 ability to page across the security line from
42 outside to inside or inside to outside?
- 43 A They do.
- 44 Q That also remains the same today as it was in
45 October of 2007.
- 46 A That is correct.
- 47 MR. MCGOWAN: I wonder if the witness could have

40
Don Ehrenholz
In chief by Mr. McGowan

1 Exhibit 83, please.
2 Q Sir, a document's been placed before you, Exhibit
3 83. It's titled "Medical Emergency".
4 A Yes.
5 Q You see that? That's your emergency response plan
6 that was in effect at the time of this incident,
7 and specifically the emergency response plan that
8 addressed medical emergencies in the airport or at
9 the airport. Is that a fair description?
10 A That -- that is correct.
11 Q This was a policy document in effect at the time
12 of the incident we're here to address?
13 A Yes.
14 Q Okay. It set out the airport's policy with
15 respect to responses to medical emergencies at the
16 airport --
17 A That is correct.
18 Q -- in a written form.
19 A Yes.
20 Q I have a couple of questions for you about this
21 document. I wonder if you could -- and just to
22 make sure we're on the same thing, you have a 16-
23 page document in front of you?
24 A I do.
25 Q Okay. I wonder if you could turn to page 4,
26 please.
27 A Yup.
28 Q Now, page 4 deals with the Airport Operations
29 Officer; is that right?
30 A Yes.
31 Q And I want to ask you, first of all, about the
32 third box down on the right-hand side. Correct me
33 if I'm wrong, but it appears to me that this
34 contemplates, in the case of an emergency, the
35 patching through of the complainant, if it's
36 somebody calling from a courtesy phone, directly
37 to the B.C. Ambulance Service. Do I interpret
38 this correctly?
39 A Yes, that's correct.
40 Q Okay. So essentially what this contemplates, if
41 somebody phones about an emergency, a medical
42 emergency from a courtesy phone, they're to be
43 patched through directly to the B.C. Ambulance
44 Service to prevent the communication of
45 information through a third party; is that...?
46 A That's correct. It assists in having the B.C.
47 Ambulance dispatchers -- it enables them to ask

1 some more detailed questions if they need.
2 Q Okay. Does your phone -- is your phone system
3 capable of accommodating this scenario?
4 A Yes, it is.
5 Q Was it capable of accommodating this scenario in
6 October of 2007?
7 A That I'm not sure. I know we've done a number of
8 recent upgrades and I have personal experience
9 that it works today. I was not within the
10 Operations group at the time, so I'm not sure
11 about October 2007.
12 Q Now, is it fair to say you've made upgrades to the
13 phone such that patching through is no issue
14 today, and easily accomplished?
15 A That is correct.
16 Q Now, the Powerpoint which my friend filed -- and I
17 don't think he went through --
18 MR. MCGOWAN: I'm not sure, did you file the hard copy?
19 MR. STEWART: (No audible response - no microphone).
20 MR. MCGOWAN: Okay. And I'm not -- sorry, go ahead.
21 MR. STEWART: I just wanted to confirm that it was
22 marked as an exhibit, sorry.
23 MR. MCGOWAN: That's fine.
24 THE REGISTRAR: Exhibit 126.
25 MR. MCGOWAN: Okay, thank you. I wonder if that could
26 be placed before the witness, please. Thank you.
27 Q Now, the pages aren't numbered, but I wonder if
28 you could just flip to the very end of the first
29 section and then flip back four pages, the page
30 I'm looking at says, "Changes at YVR Announced
31 December 7th, 2007." I'm looking at a page with
32 the number 29, 30 and 31 on it.
33 THE COMMISSIONER: It's four pages forward from the
34 tab.
35 MR. MCGOWAN: I'm sorry.
36 A 29, 30 and 31.
37 MR. STEWART: Just for the benefit of --
38 MR. MCGOWAN:
39 Q I'll just show you this page.
40 A Okay. Yes, I found it.
41 MR. STEWART: I -- just to explain, I was mindful of
42 time and I edited down obviously just to focus on
43 those changes that I think are specific to the
44 facts. Beyond the sort of last slide that we
45 dealt with, with Mr. Ehrenholz, is a full
46 statement of the changes, the 33 changes. They
47 are also recorded in Tab 2, which is the

1 preliminary report from December 6, 2007.

2 And also for the benefit of counsel, there's
3 also some additional videos that show some of the
4 different processes, one of which is a video that
5 shows the route from Gate 53 through to the
6 Customs Hall. I didn't think that it was
7 necessary to play it, but it may be of assistance
8 to some people in seeing sort of exactly where it
9 was that the route was travelled.

10 MR. MCGOWAN: Yes. Certainly Mr. Stewart had made
11 clear to me and I understood that there were
12 materials placed before the Commission in the form
13 of this exhibit which he didn't specifically
14 address in your evidence.

15 Q But you've certainly looked at the entirety of
16 this Powerpoint presentation, sir?

17 A I have.

18 Q Okay. And you've looked at the attached
19 documents?

20 A Yes.

21 Q Those are all materials you're familiar with?

22 A Yes.

23 Q Okay. And they relate - the Powerpoint
24 presentation and the attached documents - to
25 changes that have been made at the airport,
26 primarily the changes made since this incident?

27 A That's correct.

28 Q And many of them, at least in part, in response to
29 this incident.

30 A All of the 33 were in response to this incident.

31 Q Now, the page that I had you go to ends with
32 change 31, and those are -- the preceding 31
33 changes are all changes that have been made.

34 A Yes.

35 Q And they're also addressed in the memo or press
36 release contained behind Tab 2; is that right?

37 A Yes, that was -- Tab 2 is the initial press
38 release.

39 Q Now, Tab 2 has 33 changes as opposed to 31, and I
40 think -- I want to ask you a few questions about
41 the last two changes, please, sir.

42 A Okay.

43 Q They're contained on the last page of the document
44 at Tab 2. My friend made some reference to these,
45 but I just want to make sure we're clear on what
46 the present situation is at the airport with
47 respect to emergency response availability for a

1 medical emergency.
2 A Okay.
3 Q At present -- and perhaps I'll just lead you
4 through this because I think I understand it. But
5 I want you to understand if I in any way get this
6 wrong, I want you to jump in and correct me, all
7 right?
8 A Sure.
9 Q Okay. From -- presently, from 6:30 in the morning
10 till 5:30 in the evening, there is a B.C.
11 Ambulance -- there are B.C. Ambulance Service
12 personnel on site in the airport.
13 A There are two and they are on bicycles.
14 Q Okay. And they're available, in fact, stationed
15 solely for the purpose of responding to medical
16 emergencies in the airport.
17 A Yes, and they respond to all routine and Code 3
18 medicals.
19 Q Okay. At present, the coverage from 5:30 p.m.
20 till 6:30 a.m., with respect to both routine and
21 Code 3 medical emergencies, is covered at least
22 initially by YVR ERS responders.
23 A That is correct.
24 Q Okay. And are they stationed in the terminal or
25 are they stationed at the airport fire hall on the
26 tarmac during those hours?
27 A A majority of the time, they are stationed in the
28 terminal and have a golf cart that they patrol on,
29 but there are times when they are located in the
30 fire hall, and our understanding is that the
31 response time between the fire hall and most
32 airside locations is about the same time as the
33 farthest distance to drive from one end of the
34 terminal to the other.
35 Q Okay. They are two in number?
36 A They are two in number.
37 Q And they are in addition to the other ERS
38 personnel who are always present at the airport
39 for both medical and airside emergency reasons?
40 A Yes. We added additional staff to be able to
41 provide the two.
42 Q So they're in addition to the minimum number
43 required to be present.
44 A That's correct.
45 Q They're there seven days a week covering the
46 evening hours.
47 A That is correct.

1 Q And they are, at present, mandated to respond, by
2 your policy, to all medical emergencies regardless
3 of the nature?

4 A Yes.

5 Q Okay. And that's a change that's been made since
6 the time of the Dziekanski incident?

7 A That is correct.

8 Q Okay. At the time of the Dziekanski incident, the
9 ambulance situation was the same; is that right?

10 A Yes.

11 Q Okay. So you had ambulance coverage during the
12 day --

13 A Yes.

14 Q -- and during the evening time hours, ERS was
15 present at the airport but largely stationed at
16 the airside fire hall?

17 A They were stationed at the airside fire hall.

18 Q And at the time of the incident, they were
19 mandated to respond to Code 3 medical calls.

20 A If they were available, and there would be some
21 circumstances where they weren't.

22 Q When you say "if they were available", you mean
23 not otherwise engaged in an emergency already?

24 A Correct.

25 Q Was there a discretion at the time of the
26 Dziekanski incident, that you're aware of, for
27 them to respond to non-Code 3 medicals?

28 A Repeat that? Could they respond to a non-Code 3
29 medical?

30 Q Yes, during the evening time hours, if you know.

31 A I'm not sure.

32 Q Fair enough. I'm going to ask you to turn back to
33 Exhibit 83, please.

34 A Yes.

35 Q You told us this is the policy -- written policy
36 in place at the time relating to YVR response to
37 medical emergencies and I'm still looking at the
38 same page 4. I'm looking on the left-hand side,
39 the fourth box down. This is the policy that
40 related to the Airport Operations Officer.

41 A Yes.

42 Q Okay. And it says [as read]:

43

44 Emergency response services if Code 3 ill
45 person is located in the terminal.

46

47 And then it says on the right-hand side:

45
Don Ehrenholz
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1 For Code 3 medical emergencies in the
2 immediate vicinity of these terminals --

3
4 Which includes the International Terminal.

5
6 -- the YVR AA supervisor ERS will determine
7 whether ERS will provide first response.

8
9 So does -- do I understand this policy to mandate
10 the dispatch of ERS by the Airport Operations
11 Officer in the face of a Code 3 medical emergency?

12 A I'm not sure if I've got the question.

13 Q The policy says if -- to the Airport Operations
14 Officer if it's a Code 3 medical, call out the
15 ERS.

16 A Yes.

17 Q Okay. Now, when you gave your evidence in chief,
18 you said in response to a question by my friend
19 that Mr. Ginter had authority to decide whether to
20 dispatch ERS.

21 A Yes.

22 Q The policy is a mandatory policy. It's not
23 permissive insofar as the dispatch is concerned;
24 is it not?

25 A In April 2-7 -- 2007, around the time that the
26 department or group was reorganized and the ARC
27 position was created, there was an additional page
28 or two added to this that allowed the ERS
29 supervisor field judgment in determining whether
30 ERS attended, and in the training that was given
31 to the ARCs, they were also told that they had the
32 ability to use field judgment in certain
33 circumstances to override and not dispatch ERS.
34 That's my understanding.

35 Q Okay, let's see if we can work through that.
36 We've talked about a two-page addition. A two-
37 page addition was addressed to the ERS supervisor,
38 not to the ARC, correct?

39 A That's what the document says itself, yes.

40 Q It's a written document and it clearly applies to
41 the ERS supervisor, and not addressed to the ARC.
42 Is that a fair summary of it?

43 A That's what that particular document says, yes.

44 Q Okay. So when you talk about field judgment being
45 addressed in a document, it's not addressed in
46 respect of the ARC.

47 A That particular document was written with the ERS

- 1 supervisor in mind.
- 2 Q Can you point me to a document in effect in
3 October of 2007 that provided discretion to the
4 ARC to depart from what appears in the written
5 policy to be a mandatory dispatch in the face of a
6 Code 3.
- 7 A No, I cannot.
- 8 Q Just so we're clear, the ERS supervisor on the
9 night in question would have been Mr. Caldwell,
10 that's who that --
- 11 A That's correct, yes.
- 12 Q -- is addressed to. Did I understand from the
13 answer you gave a moment ago that despite the
14 mandatory nature of this policy, there was some
15 training practice that was contrary to the policy?
- 16 A The policies and procedures at the airport are
17 always being reviewed, updated and training
18 adjusted to the circumstances that are out there.
19 It is my understanding that when the ARC position
20 was created, the ARC was given the authority to
21 use his field judgment in situations to make those
22 types of decisions.
- 23 Q Trying to understand, sir, if your Board of
24 Directors or upper management at the airport
25 approved a training policy that authorized
26 specifically departure from this mandatory
27 provision relating to the dispatch of ERS in the
28 face of a Code 3 medical.
- 29 A Again, this was a -- the particular incident on
30 October 14th, '07 was a police use-of-force
31 incident that turned into a medical call, and we
32 had no written procedures or policies that dealt
33 with that, when in that set of circumstances that
34 a Code 3 dispatch would be made. And so in those
35 cases, the ARC was meant, in unique situations, to
36 make a field judgment.
- 37 Q Your emergency response plan, medical emergency
38 policy, doesn't draw a distinction between Code
39 3's where police are involved or Code 3's where
40 they're not involved, does it?
- 41 A No, it doesn't. And that particular circumstance
42 was never contemplated and had never happened at
43 the airport, to my knowledge.
- 44 Q Are you familiar with the details of the training
45 program --
- 46 A No, I'm not.
- 47 Q -- with respect to ARCs?

Don Ehrenholz

In chief by Mr. McGowan

- 1 A No, I have not taken the course, and I'm not
2 familiar with the training details.
- 3 Q Okay. There's a policy with respect to the
4 bringing of an AED. You know that to be an
5 automatic defibrillator?
- 6 A I do.
- 7 Q And that's something that's a duty assigned to, at
8 the time of October 2007, to the ARC.
- 9 A That's correct.
- 10 Q And that was, again, contained in the written
11 policy?
- 12 A Yes.
- 13 Q Okay. And it was mandatory as opposed to
14 permissive?
- 15 A It was in the medical emergency procedures, yes.
- 16 Q Again, it wasn't a discretionary policy; it was
17 written --
- 18 A It's written in a --
- 19 Q In mandatory language.
- 20 A As a mandatory thing in the policy, yes.
- 21 Q Fair enough. My question to you, sir, is, if you
22 know, in October of 2007, where was the closest
23 automatic external defibrillator located in
24 relation to the IRL?
- 25 A It was located on the International Terminal Level
26 3, essentially at the top of the escalators.
- 27 Q Would that -- where was it in relation to the
28 information booth that we've heard was manned by
29 Ms. Sullivan that evening?
- 30 A It was about 100 feet away.
- 31 Q Okay. A hundred feet -- we don't have the map up
32 there.
- 33 A If there's a map, I can --
- 34 Q Well, we do have a map. Perhaps --
- 35 A Yeah, I can actually probably point it out.
- 36 Q Perhaps Mr. Lunn can just pull that map down and
37 there should be, underneath, a larger map and you
38 can --
- 39 A It actually can show on this green map here if you
40 wish.
- 41 MR. MCGOWAN: Okay, fair enough. That would be just
42 fine. I don't think we marked that map. I wonder
43 if -- I don't know if my friend wanted it marked.
44 It may be -- perhaps we should since the witness
45 is referring to it.
46 Mr. Stewart?
- 47 MR. STEWART: Sorry?

1 MR. MCGOWAN: I'm suggesting perhaps since --
2 THE COMMISSIONER: Yes, all right. It'll be --
3 MR. MCGOWAN: -- the witness is referring to this --
4 THE COMMISSIONER: -- the next exhibit.
5 MR. MCGOWAN: -- we mark the map.
6 MR. STEWART: (Indiscernible - no microphone). Thank
7 you, I agree with that. It was reproduced in the
8 materials and the slide presentation. Maybe this
9 should be marked as an exhibit.
10 THE COMMISSIONER: Let's just pause here a moment on
11 this. Marking this as an exhibit means it has to
12 be looked after and protected and stored and all
13 the rest of it. As I understand, we have it
14 reproduced in the material.
15 MR. MCGOWAN: Yeah, that's fine, Mr. Commissioner, I
16 take your point. Perhaps I'll just attempt to
17 have the witness describe for the record, as best
18 you can in words, where the AED was located in
19 October of 2007 in relation to the IRL.
20 Q We're all now a little familiar with the layout of
21 the airport. We know where the escalator is so
22 feel free to use landmarks in your description.
23 A Sure. The customer service counter that was
24 talked of was located at the boundary between the
25 public and the semi-secure IRL area.
26 Approximately 100 feet to the west at the top of
27 the escalators from the Level 3 check-in area of
28 the International terminal is where the AED --
29 closest AED would have been located at the time in
30 the customer service counter there.
31 It is -- if you're standing at the top of the
32 escalators, I think, in some of the earlier
33 testimony, that is where Mr. Ginter and Mr.
34 Sambrook first entered the scene. It would have
35 been ten feet from them at that point.
36 Q Okay.
37 A So it is less than a minute to walk up there, pick
38 up and come back down to the scene, in my
39 estimation.
40 Q Okay. Was information regarding the location of
41 automatic external defibrillators made available
42 to airport employees, including airport response
43 coordinators prior to October of 2007?
44 A I would guess that the ARC would have known that
45 it was there, but I'm not -- I have never asked
46 him that or I'm not aware if he actually knew it
47 was there. I believe he did.

- 1 Q Now, with respect to the issue of translation and
2 the translation line --
- 3 A Yes.
- 4 Q -- I just want to be clear. We've heard about
5 these two-handed headsets (sic). They're
6 additions since October of 2007?
- 7 A They are.
- 8 THE COMMISSIONER: They're not headsets.
- 9 MR. MCGOWAN: I'm sorry, handsets.
- 10 A Handsets.
- 11 MR. MCGOWAN: I apologize if I said headsets. I meant
12 handsets.
- 13 Q The phones with two handsets on them.
- 14 A Correct.
- 15 Q They're now available at customer service booths
16 both inside and outside the secure area?
- 17 A They are located at all terminal -- both
18 International and Domestic terminal customer
19 service counters.
- 20 Q In October 2007, was the same language line
21 available simply without the use of those
22 handsets?
- 23 A It was. However, we found that not very many
24 people knew how to access it. It could have been
25 accessed by a simple phone call to the correct
26 number or through the Operations Centre.
- 27 Q Since October of 2007, do I take it from your
28 answer you've taken steps to make sure employees
29 are more familiar with the availability of this?
- 30 A That's part of the training and they have the
31 phone number -- everyone has the phone number on
32 the back of their badge.
- 33 Q Okay. And when you talk about communicating this
34 information to -- I used the word employees. Does
35 that include Marquise employees that are
36 contracted to provide services at the airport?
- 37 A In the previous context, I'm referring to YVR
38 direct employees, all of the contract employees,
39 and employees of other agencies in the terminal
40 complex.
- 41 Q We saw some photographs today of a large
42 information booth, sort of a two-sided one down by
43 the IRL.
- 44 A Yes.
- 45 Q Just for clarity, that's the information booth
46 that was formerly the B.C. Tourist Information
47 Booth, and would have been manned by Mr. Richards

1 on the -- during part of the time that covered
2 this incident.

3 A Yes.

4 MR. MCGOWAN: If I might have a moment.

5 THE COMMISSIONER: Let me make sure I have this right.
6 When you're exiting through the Point and you're
7 into the IRL, the semi-secure area, and you walk
8 along a ways as we've seen, you see this new
9 counter that you've described to us.

10 A Yes.

11 THE COMMISSIONER: Do I understand that that counter is
12 the barrier and there's no glass there, so you can
13 approach the counter from both sides, the meet-
14 and-greet side also?

15 A Yes. Where the counter is, you can actually stand
16 on either wide of it and see right through. There
17 is no glass wall. On each edge of it, if you
18 will, where there is no counter, there is still a
19 glass wall, and it's about eight feet high, that
20 separates the two sides.

21 MR. MCGOWAN:

22 Q Have there been any additions insofar as de-
23 escalation training is concerned?

24 A We've done two things. We've given approximately
25 80 of the Operations Department within the Airport
26 Authority staff - so that's YVR staff - a de-
27 escalation course put on by the Justice Institute.
28 We've also, through contract with Securiguard,
29 provided one individual who has de-escalation
30 skill training who's -- so there's one person at
31 the airport through Securiguard who has that de-
32 escalation skill and dedicated to that activity
33 24/7.

34 Q So you now have one secure -- maybe I could
35 summarize just to make sure I understand. You
36 have one Securiguard employee on now, 24/7, who's
37 specifically trained in de-escalation skills?

38 A Correct, and that is an additional person to the
39 staff we used to have on sight.

40 Q Okay. And that's verbal de-escalation skills, of
41 course.

42 A Correct. They have their -- purely verbal.

43 Q Okay. Is his ability to interact, then, is that a
44 change to the -- what was formerly I think we've
45 had it referred to as the "observe-and-report"?

46 A That is correct.

47 Q I wonder if -- I'm not sure if you're able to

1 assist us, but one of the things that might be of
2 assistance to us, if you could provide us with an
3 estimate of the size of the IRL. Is that
4 something you can help with?
5 A Sure. I'm going to say that it's 100 feet in one
6 direction, and probably about 80 feet wide in the
7 other direction.
8 Q Okay. And of course that's not necessarily
9 exactly accurate, but that's your best estimate.
10 A That would be my best estimate.
11 Q Okay.
12 A It has -- the size of it has actually changed a
13 bit since the renovation.
14 Q Okay. Has it gotten bigger or smaller?
15 A Slightly smaller. We gave a bit more space to the
16 public, and a little bit less space to the IRL.
17 Q Your information booth, both at the bottom and top
18 of the escalators, in the meet-and-greet area and
19 up at the top there, are they both 24/7 now?
20 A The one at the bottom is. I couldn't say for sure
21 whether the top one is. It's fairly long hours,
22 but I don't believe it's 24/7. I could be wrong
23 about that.
24 Q Fair enough. Since the time of the incident, have
25 there been additions to the airport insofar as
26 self-service information stations are concerned,
27 maps and that sort of thing?
28 A We put a large amount of self-service information
29 on our website. The -- there has -- there was a
30 -- I call it a self-service map that was removed
31 as part of the renovations and is now going back
32 -- has gone back in recently. But other than
33 that, no.
34 Q Okay. I've seen reference to something referred
35 to as a "passenger record of entry and exit" plan
36 that perhaps hasn't been implemented, but there
37 was some thought of implementing. Do you know of
38 what I'm speaking?
39 A I think I know what you're speaking of and --
40 Q Tell the Commissioner what that is and whether
41 it's been implemented.
42 A That is something where we would actually have a
43 record of everybody that entered into the Customs
44 Hall at the beginning of the process and then by
45 some method, we know when they exited as well, so
46 we have a record of entry, how long they spent,
47 obviously, and when they left. That was something

1 that we were going to try and put together through
2 CBSA. They made some initial indications that
3 they were going to have a look at it and work on
4 something like that, and I don't believe they've
5 -- my understanding is that they're still working
6 on that and is not implemented at this time.

7 Q Have you submitted a proposal to the Canadian
8 Border Service relating to that system?

9 A I've had discussions with him on -- in our regular
10 meetings to encourage them to carry on, but
11 because all the information that's being collected
12 is Customs information, i.e. passports and time in
13 their area, we're not allowed to create something
14 of that nature. They have to do that, is my
15 understanding at this time.

16 Q So where does that plan stand now? Is it in sort
17 of -- are you waiting for a response, or is it --
18 is it still in the works or what's happening?

19 A It is something I continue to discuss with CBSA,
20 but it is something that they had talked about
21 doing and would have to do, because I'm not able
22 to collect that type of information. That's as
23 far as I know where that one has got to.

24 Q Is it a plan, perhaps without knowing all of the
25 details how it would work, is it a plan that
26 Airport Authority is generally in favour of
27 implementing?

28 A Absolutely.

29 Q Tell the Commissioner why.

30 A Well, that way, if there is anybody that has spent
31 an inordinate amount of time in the Customs Hall,
32 the system would be able to alarm or let somebody
33 in the Customs area know that, you know, somebody
34 had spent, say, four or five hours and hadn't --
35 had gone in, but had not come out. They do a
36 physical sweep at the end of the day at 1:30 or
37 2:00 in the morning every day, but if you'd
38 entered at nine o'clock, they wouldn't catch you.

39 So the solution that we were able to put in
40 is the rover position that we have, and that was
41 the part that we were able to do.

42 MR. MCGOWAN: Okay. Thank you, sir. We'll have
43 obviously some more communications going forward
44 for you to provide us with some more detailed
45 information.

46 A Sure.

47 MR. MCGOWAN: Those are the questions I have right now.

1 Mr. Commissioner, I expect -- I'm in your hands.
2 I don't expect there's much more in the way of
3 questioning. I think Mr. Kosteckyj has just a few
4 minutes. I'm in your hands as to whether you'd
5 like to finish this witness.

6 THE COMMISSIONER: Oh, let's go ahead if you're not --
7 you think you could.
8

9 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA
10 CISOWSKI:
11

12 Q Sir, just remind me again of what your position
13 is?

14 A I am Vice-President of Airport Operations.

15 Q And did I understand that the ARC is your
16 designate on shift?

17 A There are several layers, but the ARC position at
18 the time was the most senior person that would be
19 on the floor of the terminal responding to
20 incidents.

21 Q And I understood you to say that he was your
22 representative.

23 A Yes.

24 MR. KOSTECKYJ: Just for the record, it's Walter
25 Kosteckyj, counsel for Zofia Cisowski.

26 Q Now, I'm presuming that in the training of the
27 ARC, you would have been involved in that since he
28 was your representative.

29 A At the time the training was done and the ARC
30 position was created, I was not personally the
31 Vice-President of Operations. I didn't become the
32 Vice-President of Operations until March 2008.

33 Q Okay. Who was the Vice-President of Operations
34 then?

35 A It would have been Mr. Paul Levy.

36 Q Okay. And were you involved in the putting
37 together the program for the training of the ARC?

38 A No, I wasn't.

39 Q All right. Now, you indicated that you were told
40 that, in certain circumstances, the ARC could
41 make his own decision as to whether ERS showed up
42 or not.

43 A That is correct.

44 Q Who told you that?

45 A I got that from the Director of Security Emergency
46 Planning.

47 Q Who is that?

1 A That is a person that reports to me.
2 Q Then who is it?
3 A It's Jennifer Kooren.
4 Q And she gave you that information when?
5 A In the last few months.
6 Q All right. 'Cause I find that very confusing and
7 I'll tell you why. You have procedures in place,
8 written procedures and training so that mistakes
9 aren't made, correct?
10 A They are meant to provide guidance and a method of
11 making sure that things are done properly, yes.
12 Q So that in emergency situations, people know how
13 to react.
14 A That is correct.
15 Q And so that procedures and policies are always
16 followed in a similar way.
17 A It's difficult to write a policy and procedure for
18 everything that might occur, and for all the
19 circumstances that might arise, so they're to
20 provide direction on some situations, but there
21 are situations they may not apply.
22 Q Well, you've read those -- you've read these
23 regulations carefully.
24 A Yes.
25 Q And you've taken some time --
26 A Excuse me --
27 MR. STEWART: It's the word "regulations" --
28 A Yeah. That's not regulations.
29 MR. STEWART: -- suggests --
30 MR. KOSTECKYJ: Let talk about --
31 MR. STEWART: There are regulatory requirements that
32 apply to the airport in terms of --
33 MR. KOSTECKYJ: My friend's point is well taken --
34 MR. STEWART: -- what the law requires.
35 MR. KOSTECKYJ: -- and I will --
36 Q It's called the "Medical" -- these are -- what do
37 you call these? The "Medical Emergency Policies
38 and Procedures"?
39 MR. STEWART: No, it's --
40 MR. KOSTECKYJ: What are they called?
41 MR. STEWART: It's stated on the document. It's the
42 "Emergency Management Plan". It's a sub-component
43 of --
44 THE COMMISSIONER: Well, just a moment, counsel. The
45 question is clear. He's asking the witness what
46 it's called.
47 A Yeah. It is a chapter in the Medical Emergency

1 Plan.
2 MR. KOSTECKYJ: All right.
3 A Or, sorry, "Emergency Management Plan", and this
4 is the medical emergency chapter.
5 Q And the medical emergency chapter in this plan is
6 put together so that people know how to react in
7 medical emergency situations.
8 A Yes. And it would be a situation called a
9 "Condition 2 Golf".
10 Q And what does that mean?
11 A That is a specific type of medical emergency.
12 Q All right. Now, before coming here, you've
13 reviewed this document?
14 A That's correct.
15 Q With some care, I take it, because you knew you'd
16 be asked about it.
17 A Yes.
18 Q Well, the rationale, as far as calling out ERS,
19 the emergency response people, is that it's up to
20 the emergency response people to determine whether
21 they should attend or not.
22 A That is what is written in the procedure, yes.
23 Q And that's what the underlying rationale of the
24 entire thing was as well.
25 THE COMMISSIONER: A little louder.
26 MR. KOSTECKYJ:
27 Q And that's what the underlying rationale was of
28 this entire procedure.
29 A Yes, that was -- that was the rationale. However,
30 the ARC was charged with making sure the whole
31 airport was running properly and had the ability
32 to make a field judgment for the better of the
33 entire airport and to be able to plan ahead for
34 other circumstances that might occur at the
35 airport.
36 Q But that's not in any written policy.
37 A No, it's not.
38 Q No. And in fact the document that was produced
39 today, and is marked Exhibit 126, if you go to Tab
40 3 and you go to "Code 3 Medical Responses -
41 Standard Operating Guidelines", do you see that?
42 There's --
43 A Yes.
44 Q Towards the end.
45 A Yes.
46 Q And it's got page 1 of 17.
47 A Yes.

- 1 Q This talks about -- it goes further and provides
2 that there's a purpose to these procedures is to
3 provide guidance in all occasions where an
4 incident involving a medical emergency occurs,
5 right?
- 6 A Yes, guidance.
- 7 Q It says -- that's what it's for, provide guidance
8 in all occasions, correct?
- 9 A Yes.
- 10 Q All right. If you go to page 3, it talks about
11 [as read]:
12
13 When ERS personnel arrive on the scene, they
14 will do the following.
15
16 Do you see that?
- 17 A Yes, I do.
- 18 Q And it talks about establish radio communication,
19 right?
- 20 A
21 Establish radio communication with
22 Operations.
23
- 24 Q Right. And then it says:
25
26 Perform scene assessment.
27
28 Correct?
- 29 A
30 Perform scene assessment. If unsafe, use
31 RCMP or Securiguard to make it safe.
32
- 33 Q Right. So what it does is it gives the ERS the
34 discretion to determine whether a scene is safe or
35 not. It puts it in their court, in their
36 bailiwick, in their judgment as to whether they
37 need RCMP help or Securiguard, and whether it's
38 safe for them to enter, right?
- 39 A In this document, that's what's written down, yes.
- 40 Q And then if you go back to document 83 -- it's
41 also contained in this document, but perhaps the
42 easiest way is it's document -- or Exhibit 83 in
43 these proceedings. Do you have that, sir?
- 44 A I do have Exhibit 83.
- 45 Q Go to page 4. On the left-hand side, it talks
46 about response action and it talks about notify
47 and order BCAS, which is B.C. Ambulance Service,

1 right?

2 A Yes.

3 Q And then it also talks about the fact that you
4 will, on the right-hand side:

5

6 For Code 3 medical emergencies in the
7 immediate vicinity of the terminals --

8

9 Oh, sorry. Above that, it talks about the fact
10 that -- it talks about the Domestic, International
11 terminals specifically, and just below that, it
12 talks about Code 3 medical emergencies even in the
13 immediate vicinities of those areas. So that
14 would be outside, for example, of the terminal,
15 correct?

16 A That would imply the outside.

17 Q Yeah. And it says that the YVR supervisor ERS
18 will determine whether ERS will provide a first
19 response.

20 A And they will determine that based on whether they
21 think they can still safely respond to something
22 on the airside.

23 Q It doesn't say that anybody else has the right to
24 make that determination.

25 A This document doesn't, no.

26 Q No. And then if you go to page 6 -- we've already
27 dealt with that, but it talks about the fact that
28 the Airside Duty Manager -- now who is the Airside
29 Duty Manager, or who would have been on October
30 the 14th, 2007?

31 A Well, that's where this document is a little bit
32 out of date, and the Airside Duty Manager position
33 and the Terminal Duty Manager position were
34 combined into ARCs. So, formerly, Mr. Bob Ginter
35 would have been an Airside Duty Manager, and his
36 new role, as of early '07, was the ARC position.

37 Q So the ARC would have been in charge of, for
38 example, getting the defibrillator if one was --

39 A Yes.

40 Q -- thought to be necessary. Okay. Then let's go
41 to page 7. This talks about -- for Code 3
42 emergencies on airside. Do you see that?

43 A Yes.

44 Q But, again -- once again, it talks about the
45 rationale here, and that's what I'm getting to you
46 with here (sic). ERS will respond to a Code 3 in
47 the Domestic, International and South Terminal

- 1 buildings, right?
- 2 A Yes.
- 3 Q Specifically in those buildings.
- 4 A That is --
- 5 Q
- 6 For Code 3 medical emergencies in the
- 7 immediate vicinity, the ERS supervisor will
- 8 determine if he's attending.
- 9
- 10 Right?
- 11 A That's what this document says, yes.
- 12 Q So all of the discretion was always, in all of
- 13 these documents, and in this plan, was to give the
- 14 ERS supervisor the determination as to whether he
- 15 should attend or not.
- 16 A In early 2007, when the department was reorganized
- 17 and the ARC position was created, the ARC position
- 18 was given training, as I understand, to be able to
- 19 make a field judgment on basically all response
- 20 matters within the terminal complex.
- 21 Q The point of these procedures was that the
- 22 rationale was that the ERS person was the best
- 23 person to make that judgment, correct?
- 24 A The reason it was written that way is that the ERS
- 25 person would be the closest to the airfield and
- 26 would know if they were engaged in an airfield
- 27 incident or on standby for an airfield incident,
- 28 and such they were given that authority as well.
- 29 Q Because they knew what they could do in a medical
- 30 emergency, and they knew what else they had to
- 31 take care of.
- 32 A Their primary responsibility was to take care of
- 33 the airfield and any potential airfield incident.
- 34 Q Right. The point is the discretion was in the ERS
- 35 person.
- 36 A The ERS person did have discretion in that matter.
- 37 Q Right. Now, you said that you went through a long
- 38 process, six weeks of taking a look at what
- 39 happened in the Dziekanski matter, correct?
- 40 A Correct.
- 41 Q Did you find -- did you determine that any changes
- 42 had been made in the six months before Mr.
- 43 Dziekanski's death that had an impact on how
- 44 things proceeded that day?
- 45 A I wasn't looking at that, and I didn't look at
- 46 that.
- 47 Q Okay. I've been advised -- or received

1 information that there was a position similar to
2 the rover position in existence in the months
3 before the Dziekanski matter. Are you aware of
4 something of that nature?

5 A I'm not aware of that.

6 Q I'm advised -- or I received some information that
7 the people were given radios, went through the --
8 they were YVR employees who had radios, would go
9 through the terminals and deal with any types of
10 emergency situations or customer -- customer
11 complaints or customer health issues. Are you
12 aware of such positions?

13 A Well, we had a position called the Terminal Duty
14 Manager, and that's what that sounds like.

15 Q And what happened to that position?

16 A Well, that position got recreated, if you will,
17 into the ARC position.

18 Q I got the impression that these -- that this
19 position had been changed where the people,
20 instead of just being in the terminal buildings,
21 were taken to the outside areas and used as
22 security personnel. Does that ring a bell at all?

23 A My understanding is prior to about -- I'm going to
24 guess early 2007, February, March, April -- I
25 don't recall. I wasn't in that department so I
26 don't recall the exact date of the reorganization.
27 But prior to that time, for quite a number of
28 years, there had been a position in the terminal
29 called the Terminal Duty Manager, and a position
30 on the outside on the airfield called the Airside
31 Duty Manager. At any one time, there was one
32 individual from the Airport Authority in the
33 terminals and one individual outside on the
34 airfield.

35 I believe the -- what was happening was that
36 when there was two incidents or things that needed
37 to be responded to in the terminal, the person on
38 the outside would often be called in to help out
39 in the terminal and vice versa. There were
40 sometimes times when one of the two individuals --
41 or the individual in the terminal would have to go
42 outside and assist on the airside.

43 So hence the reorganization to the fact that
44 they had a person that was trained to do both
45 inside and outside roles.

46 Q Is there now 24-hour security posted at that pinch
47 point between the IRL and the meet-and-greet area?

- 1 A You're referring to the exit from the IRL area?
- 2 Q Yes.
- 3 A There is not, because it is a -- the guard was
4 formerly there because there was baggage activity
5 in that room during the daytime. Since early
6 January of this year, the baggage services are --
7 transfer baggage has not been handled in the IRL,
8 so the guards have been removed. It still
9 requires a RAIC or an employee pass to get in
10 there.
- 11 Q But you're familiar with the fact that Mr.
12 Dziekanski was let back into the IRL by somebody
13 who had such a pass.
- 14 A I am aware of that.
- 15 Q Okay. You didn't deem it necessary or recommend
16 that there be security posted there?
- 17 A Again, while the law or the rules are that --
18 security rules are that if there is baggage
19 activity in that area, and that baggage could get
20 onto an aircraft, we are required to have a
21 security guard there.
- 22 Actually things have changed even more
23 because now we have 100 percent X-raying of those
24 bags and the guard, again, as recent as a few
25 weeks ago, is no longer necessary. So the guard's
26 function was not related to people coming and
27 going. There was a guard further down the hall
28 just as you exit the Customs Hall that is for
29 other security reasons.
- 30 Q But the point is you didn't consider it prudent --
31 and you don't consider it prudent now to have a
32 guard at that pinch point.
- 33 A No, I don't.
- 34 Q All right. Now, the circumstances of Mrs.
35 Cisowski, that she found herself in on October the
36 13th, 2007.
- 37 A Yes.
- 38 Q Where she wanted to make contact with her son and
39 indicated that he couldn't speak English. How
40 would she go about doing that now with those
41 changes you've made?
- 42 A Again, if she approached our customer information
43 area, they would direct her over to the other side
44 of the public greeting area to the CBSA offices to
45 have them page for an individual inside the
46 Customs Hall. We would instruct her that if they
47 were unable to help her and he hadn't shown up for

1 a number of hours, that that person should come
2 back to the customer service counter and we would
3 then engage the IACR position, which is the new
4 position, to start to do a bit more investigation
5 to try and resolve what was going on with that
6 individual.

7 Q All right. Now, there isn't a way for someone in
8 the meet-and-greet area to type a person's name in
9 and say, "I'm here waiting for you," and for it to
10 be shown on a board on -- inside the secure area.

11 A My understanding from CBSA is that the border
12 protection laws do not allow us to do that.

13 MR. KOSTECKYJ: Okay. Those are my questions. Thank
14 you.

15 THE COMMISSIONER: Yes, Mr. Stewart.

16 MR. STEWART: Just two things with respect to the
17 documents. I just want to correct something for
18 the record. If there's any suggestion, in
19 reference to Mr. Kosteckyj's comment that what's
20 been -- what is the -- he made reference to a
21 document that's been produced today, and he's
22 making reference to the Standard Operating
23 Guidelines for ERS. It's the Standard Operating
24 Guidelines, number 17. I just want to confirm
25 that document was produced to Commission counsel
26 in October of 2008. It was produced to the
27 coroner in November -- on October 16th of 2007,
28 and was part of the materials that have been
29 produced in this. They -- it's now been marked as
30 an exhibit.

31 THE COMMISSIONER: Who -- why am I interested in all
32 this?

33 MR. STEWART: Just with reference to any suggestion
34 that this hasn't been produced. I thought there
35 was some reference to a new document.

36 MR. KOSTECKYJ: I didn't mean anything by it. It's
37 just that it was in the documents, and it's not in
38 the other exhibits.

39 MR. STEWART: Just -- and I'm in the hands of
40 Commission counsel with respect to this. Many
41 weeks ago there was a request that we provide a
42 to-scale diagram of the IRL. We've always had it.
43 It didn't get in, and I'm wondering if Commission
44 counsel would like to put that in through Mr.
45 Ehrenholz. It was -- I can satisfy Mr. Ehrenholz
46 it was produced by an engineer in his department.

47 MR. MCGOWAN: I'm happy to proceed in that manner.

Submissions by Mr. Neave (for TASER International)

1 MR. STEWART: Okay.

2 THE COMMISSIONER: I think we'll just have it marked.

3 MR. STEWART: Okay. Thank you.

4 THE COMMISSIONER: Next exhibit.

5 THE REGISTRAR: That will be exhibit number 127.

6

7

EXHIBIT 127: To-scale diagram of IRL

8

9 THE COMMISSIONER: All right, sir, thank you very much

10 for your time. It's certainly a complete

11 presentation.

12 A Thank you. I -- Mrs. Cisowski has left. I was

13 going to express my deepest sympathies to her

14 about the tragedy that occurred at the airport in

15 October 14th, 2007. I can't change the past, but

16 I believe that I've done everything that I can

17 possibly do to ensure that something like this

18 never happens again at the airport. Thank you.

19 MR. MCGOWAN: We are finished with the witness, Mr.

20 Commissioner. It's now one o'clock.

21 Unfortunately our next witness isn't able to

22 attend until 3:00 p.m., so I'm going to suggest we

23 take a slightly extended lunch and reconvene at

24 3:00 p.m.

25 THE COMMISSIONER: All right. Three o'clock.

26 THE REGISTRAR: The hearing is now adjourned until 3:00

27 p.m.

28

29

(WITNESS EXCUSED)

30

31

(PROCEEDINGS ADJOURNED FOR NOON RECESS)

32

(PROCEEDINGS RECONVENED)

33

34

MR. VERTLIEB: Mr. Neave has a motion he says will be

35 perhaps ten minutes. I think he has copies for

36 everyone. I trust you have a copy for the

37 Commissioner?

38 MR. NEAVE: Yes (indiscernible - no microphone). I

39 have some copies for my friends if you want to

40 give one to Walter.

41

42

SUBMISSIONS BY MR. NEAVE ON BEHALF OF TASER

43

INTERNATIONAL:

44

45

MR. NEAVE: Mr. Commissioner, before you, you'll have

46 some speaking notes and three cases that I will

47 take you to. The application is an objection to

1 the tendering of the expert opinions *viva voce* of
2 Dr. Charles Kerr, Dr. Keith Chambers, Dr. Xian
3 Tseng and the filing of Mr. Janke -- or Dr. Paul
4 Janke that we received by e-mail today. As we say
5 in paragraph 2, it appears, in our submission,
6 that this inquiry is now devolving into a battle
7 of experts. The difficulty with that, by way of
8 overview, is that the battle of experts is being
9 posited by -- on the part of experts whose reports
10 have been filed by Commission counsel for the
11 proof of their contents, and who are not being
12 called. In particular, that would be Dr. Di Maio,
13 Dr. Pollanen and Dr. Sloan. Against that
14 evidence, we have heard the -- now the evidence
15 *viva voce* of Dr. Panescu and Dr. Swerdlow as well
16 as Dr. Butt and Lee.

17 What's occurring now is a tendering of a
18 whole new group of expert material in which an
19 entirely new theory with respect to the effect of
20 the Taser device on Dr. Dziekanski is being
21 posited. The difficulty with that is that none of
22 that -- none of that -- none of the aspects of
23 that theory were put to or considered by the other
24 experts, and in particular, the experts Di Maio
25 and Pollanen, whose reports you're now familiar
26 with.

27 The issue relates to the question and the
28 theory of sustained ventricular tachycardia, and I
29 made reference to this yesterday and, at paragraph
30 3 of the submission, what Dr. Tseng appears to be
31 referring to in his draft -- or in his opinion
32 that we have got a copy of is that there was
33 sustained ventricular tachycardia lasting in
34 excess of seven minutes. That theory was not put
35 to anyone, and in particular, for example, Mr.
36 Eshenauer (sic) as the law -- as the first
37 responder who's trained, who responded and did the
38 monitoring that you've heard evidence on.

39 The difficulty with that, and the difficulty
40 with this battle, as we say that is occurring, is
41 that it places you and the participants, and
42 indeed the public, in an untenable position. That
43 is so because of what the Court of Appeal said in
44 the **Medley** decision and it's outlined at paragraph
45 7. Mr. Commissioner, if I can -- if you'd turn up
46 the case, and if I can direct your attention to
47 paragraph 17 first, this is a --

1 THE COMMISSIONER: Just a minute till I find it now.

2 MR. NEAVE: I'm sorry.

3 THE COMMISSIONER: The name of this case is...?

4 MR. NEAVE: It's **Medley -- Debra Sue Medley and Ronald**
5 **Thomas --**

6 THE COMMISSIONER: Yes, I have it.

7 MR. NEAVE: Thank you. It's a decision of our Court of
8 Appeal. Justice Anderson is writing for Wood and
9 Justice Hollinrake, a 1991 decision.

10 What occurred in this case, and you can see
11 it commencing at paragraph 17, Mr. Commissioner,
12 is that none of the health care experts who
13 treated the plaintiff were cross-examined,
14 including Drs. Weinstein, Robertshaw and Zindler,
15 whose reports were filed as evidence in the case.
16 Then Justice Anderson says this at paragraph 20:

17
18 What is of more importance, however, is that
19 while Drs. Weinstein, Robertshaw and Zindler
20 were available for cross-examination no
21 effort was made to call them as witnesses for
22 that purpose. In my opinion, it is difficult
23 for a defendant to satisfy the burden upon
24 him to show that prescribed treatment is
25 unreasonable, unless he has confronted the
26 health care experts whose opinions he has
27 sought to impugn. In this case, apart from
28 the evidence of Drs. Arthur and Lavorgna,
29 there is no evidence to show that the
30 treatment prescribed by Drs. Weinstein and
31 Robertshaw constituted unreasonable
32 treatment. The mere fact that the
33 plaintiff's condition did not improve did not
34 form a basis for holding that the treatment
35 was unreasonable.

36
37 And then at paragraph 21:

38
39 In short, at the end of the day, on the
40 unique facts of this case, the trial judge
41 had before him two rational opinions that the
42 treatments taken by the plaintiff were
43 necessary (sic) and ineffective --
44

45 THE COMMISSIONER: Unnecessary, yes.

46 MR. NEAVE: Sorry.

47

1 -- unnecessary ineffective and contrary
2 rational opinions that the treatments taken
3 by the plaintiff were reasonable and were
4 required in an effort to alleviate the
5 plaintiff's condition.
6

7 I just pause for a moment, Mr. Commissioner,
8 because -- because that's the situation you have
9 here. What we have, and what's being created for
10 you in this body of evidence is a spectrum, and
11 the spectrum -- at one end of the spectrum is Dr.
12 Di Maio who says the Taser had no effect, Dr.
13 Swerdlow, who says it had no effect. And at the
14 other end of the spectrum, Dr. Tseng, who said,
15 "Oh, yes, it did, and the theory of that effect is
16 this...". In between, lying in between are others
17 of these eight opinions.

18 The difficulty with respect to Di Maio,
19 Pollanen, Swerdlow, Panescu and Dr. Lee, as but
20 examples, are that none of this theory was put to
21 them such that you or any of us are in a position
22 to say, well, that opinion should be -- "x"
23 opinion should be preferred or there should be
24 more weight given to that opinion for these
25 reasons. It's simply not possible. And that's
26 what the court says here in the last sentence. It
27 says -- Justice Anderson again at the last
28 sentence in paragraph 20:

29
30 It was not open to the trial judge, in the
31 absence of any cross-examination or evidence
32 impugning the testimony of the plaintiff's
33 experts, to favour the evidence of the
34 defendants' experts and entirely disregard
35 the evidence of the plaintiff's experts, for
36 the purpose of reducing the claim for special
37 damages.
38

39 And, in my respectful submission, that's the
40 result here, is that you're going to be left with
41 this group of expert reports covering a spectrum,
42 and you're going to be then asked to say, in
43 accordance with your mandate, what do I do with
44 that? What the Court of Appeal says is you can't
45 do anything because there's been no cross-
46 examination on a substantial number of the experts
47 with respect to this theory. It simply can't be

1 accepted. For that reason -- and I make that
2 point at paragraph 8 of the submissions, and at
3 paragraph 9 -- and I further expand on it in
4 paragraph 9.

5 At paragraph 10 - and this is consistent with
6 what Justice Anderson is saying -- is that here
7 we've got experts who are providing this
8 Commission with opinion evidence all falling
9 within their respective fields, but there's a
10 group of them who are not being afforded the
11 opportunity to opine on the new theory.

12 We're supported, at paragraph 11, by Justice
13 Langston's decision from the Alberta Court of
14 Queen's Bench. The Commission counsel ought not
15 to be entitled to call rebuttal experts exposing
16 new and untested theories at this stage of the
17 proceeding. It's of no consequence that where we
18 are in the proceeding, having commenced in
19 January, we're now in May and we're now getting
20 these new theories coming out.

21 And what -- and what Justice Langston does is
22 analogizes the rule in **Browne v. Dunn** and your --
23 Mr. Commissioner, I know you're familiar with
24 that. I'm not going to take you to it -- with
25 respect to an improper attack on the first
26 expert's credibility which ought not to be
27 condoned.

28 And -- and the question will arise is this
29 really a question of credibility or not, but more
30 importantly, whether it clearly falls within the
31 **Browne v. Dunn** rule in the four squares of that.
32 The principle drawn from the case, I say, is
33 important and it's important in this Commission.

34 What Justice Langston says over the page, Mr.
35 Commissioner, onto page 4 of the submissions, just
36 reading from the highlighted section:

37
38 My Lords, **I have always understood** that if
39 you intend to impeach a witness you are
40 bound, whilst he is in the box, to give him
41 an opportunity of making any real explanation
42 which is open to him; and as it seems to me,
43 that is not only a rule of professional
44 practice in the conduct of a case, but is
45 essentially -- but is essential to fair play
46 and fair dealing with witnesses.
47

1 And that principle has been approved and followed
2 in the Supreme Court.

3 Now, Justice Langston went on to consider
4 whether to allow rebuttal evidence, without first
5 putting the theories in play, constituted a
6 mischief that -- which could be remedied by the
7 right of cross-examination, and he concluded that
8 it could not, and the passage is there starting at
9 20 -- paragraph 26 of the decision. Justice
10 Langston says:

11
12 The introduction of this evidence would also
13 be a mischief to the workings of the trial
14 process. [Similarly] (sic) Simply allowing
15 Ms. Zalik to be called to introduce the
16 surface leases into evidence --

17
18 And that was the issue in the case.

19
20 -- and be cross-examined would not be
21 beneficial to either party or to the court
22 (sic) -- or [to] this Court.

23
24 This is because [the]...the evidence of
25 CNRL's expert witness that is being called
26 into question by the introduction of this
27 evidence. Giving CNRL the right to cross-
28 examine --

29
30 The proposed experts.

31
32 -- Ms. Zalik will not alter this unfairness.

33
34 To absolve [the] this mischief, the
35 introduction of further evidence would have
36 to proceed as follows:

37
38 And then there's a process the justice considers.

- 39
40 1. Bennett would have to call...Zalik to
41 put [in] the additional surface leases
42 into evidence, and would have to be
43 given the right to recall its own
44 witnesses to prove the additional
45 surface leases are a relevant
46 consideration in determining the
47 appropriate rate of compensation for the

1 lands in question.

2
3 2. CNRL would have to be given the right to
4 cross-examine all [of the] witnesses...

5
6 3. CNRL would have to be given the right to
7 call or recall evidence...

8
9 This process would cause another mischief, in
10 that the process would divest each party of
11 the right to a finality to [this] the
12 litigation.

13
14 By permitting the application currently
15 before the Court, this Court starts a
16 tactical game that has no foreseeable end.

17
18 And that's the dilemma that you, Mr.
19 Commissioner, were alive to in the ruling that I
20 directed your attention to yesterday. And that's
21 simply there has to be some order, there has to be
22 an endpoint, and there has to be fairness. I say
23 that the introduction of this evidence is unfair
24 for a number of reasons, and I've outlined them.

25 Firstly, it doesn't provide any finality, and
26 that was Justice Langston's concern. We are
27 embarking then on ought these witnesses to be
28 recalled? Ought others to be tendered and, if so,
29 what's that evidence going to look like? There's
30 no order.

31 It's unfair to you, Mr. Commissioner, for the
32 reasons that I've outlined in that you're going to
33 be presented with this body of evidence, all of
34 which is before you from experts renowned in their
35 respective fields, and you're going to be asked,
36 "What do you make of all that?" Our Court of
37 Appeal says, well, you really can't make anything
38 of it. It's just there.

39 That raises the point that the evidence
40 that's now being tendered, if it's going to be not
41 possible to weigh it, the evidence has no value
42 because it serves no useful purpose. It can't be
43 used to impeach the evidence of the previous set
44 of experts because the theory wasn't put to them.
45 And it sits naked on the other hand because
46 there's no expert who's commenting upon it, other
47 than the expert who proffers the opinion, and

1 you're sitting there at the end of the day
2 juggling.

3 The difficulty again, for counsel, is in
4 order to assist you with submissions, counsel
5 would normally raise a preference with respect to
6 certain opinions on a reasoned basis in terms of
7 credibility, what they said, what they said here
8 and those sorts of things. But the difficulty
9 with that is half the -- half the game's not
10 there.

11 So, for counsel, they're in the same
12 position, and advancing any particular theory of
13 which expert ought to be preferred or not, becomes
14 hollow because for the same reason that you're
15 unable to weigh the evidence.

16 THE COMMISSIONER: Let me go back to the beginning here
17 a little bit. If you'd had all these reports at
18 the beginning of this case, which experts do you
19 say should have commented on them?

20 MR. NEAVE: I would say all of them.

21 THE COMMISSIONER: All of them? Well, it's not --

22 MR. NEAVE: Well, I would say --

23 THE COMMISSIONER: It's not in the field of many of
24 them.

25 MR. NEAVE: Well, I would say certainly Dr. Di Maio, as
26 the leading pathologist in the United States, Dr.
27 Lee, as the pathologist in the case, Dr. --

28 THE COMMISSIONER: Just a moment, now. Dr. Lee is not
29 an electrical cardiologist.

30 MR. NEAVE: But you recall Dr. Lee's evidence was very
31 succinct on the -- on the role of a pathologist,
32 and -- and he is charged with -- with determining
33 the principal cause of death. And -- and what is
34 being advanced, in particular by Dr. Tseng, is
35 exactly that. The principal cause of death, says
36 Tseng, is ventricular tachycardia that is of seven
37 minutes in length.

38 THE COMMISSIONER: All right. Who's -- who else?

39 MR. NEAVE: Dr. Pollanen. He's the chief -- he's the
40 chief pathologist from Ontario, provides the
41 opinion with respect to his view of the effect of
42 the Taser as -- as -- as does Dr. Di Maio, as did
43 Dr. Lee.

44 THE COMMISSIONER: So these three?

45 MR. NEAVE: Swerdlow, not put to Swerdlow. Dr. Lu,
46 because the other issue that's coming up now is
47 the report from Dr. Janke which is diametrically

1 opposed to what Dr. Lu said. We get that --
2 that's the e-mail today. But Dr. Panescu...

3 THE COMMISSIONER: Why do you say Panescu?

4 MR. NEAVE: Because it raises issues with respect to
5 the energy field created by the Taser having an
6 effect on the heart in a particular way. So, in
7 my respectful submission, without that balance,
8 and without those experts opining, we're in -- we
9 have a problem.

10 And the *Hide-Away* case that's referred to at
11 paragraph 15 -- just stepping back to paragraph
12 14. These proceedings -- and it's important:
13 These proceedings are unlike civil litigation
14 where expert reports are disclosed and exchanged
15 so that there's -- the possibility of the experts
16 providing rebuttal opinions, and those opinions
17 being canvassed. The proceeding is, I say, like
18 civil process because there is an overriding
19 requirement for procedural fairness, given your
20 mandate.

21 In the civil context, as you are certainly
22 aware, Mr. Commissioner, rebuttal expert evidence
23 that's not put to an existing witness goes to
24 weight. But the problem here is it's not being
25 put to them. That brings to play the comments
26 that I set out at paragraph 16. I won't repeat
27 them with respect to the dilemma that you face,
28 the dilemma that the public faces in reviewing the
29 evidence that's before you, because that's
30 certainly -- we see that occurring on a daily
31 basis in the newspapers. That evidence can't be
32 tested in a normal manner. And it clearly, in my
33 respectful submission, raises issues at paragraph
34 17 of natural justice where your mandate includes
35 making findings of misconduct, and the
36 reputational issue that's at stake in this case
37 for all participants is a significant and, I say,
38 overriding factor.

39 For those reasons, Mr. Commissioner, it is my
40 respectful submission that the evidence of Drs.
41 Kerr, Chambers, Tseng and Janke, not be permitted
42 to be tendered, because it has no evidentiary
43 value. Thank you.

44 THE COMMISSIONER: Mr. Vertlieb?

45
46
47

1 SUBMISSIONS BY MR. VERTLIEB:

2
3 MR. VERTLIEB: Mr. Commissioner, let me just say
4 briefly that Mr. Neave uses language that I do not
5 accept. I don't see this, frankly, as a battle of
6 experts. I don't adopt that language as part of
7 the role that we have here as counsel to your
8 Commission.

9 We are not seeking to impugn any of the
10 experts. We are not seeking to impeach any of the
11 experts. We are not adversarial to any of these
12 experts and we don't see this, from Commission
13 counsel's viewpoint, as an adversarial process.
14 Indeed, we are not cross-examining these
15 witnesses. We are calling them and treating them
16 as witnesses to be examined in chief.

17 I also note that with some of the experts
18 that Mr. Neave has mentioned, he indeed, on the
19 first day of this hearing, asked that these
20 reports -- some of these reports be filed, and
21 after giving it due consideration, those reports
22 have been filed. At no point has Mr. Neave asked
23 that any of those report-writers that he referred
24 to, that were just filed, be called as witnesses.

25 I also want to tell you that where Mr. Neave
26 has asked us to contact some of these experts,
27 we've in fact done so, and in cases where we've
28 been able to, we've had them come before you, and
29 we still have Dr. Ho, as you know, lined up for
30 Monday morning.

31 So the language that Mr. Neave adopts is not
32 language that I would adopt for the role that we
33 are doing. We are bringing the evidence that is
34 recommended by participants and through our own
35 research to give opinions to you so there's a
36 broad range of opinion evidence, and part of your
37 mandate, as a Commission and not as a court in a
38 civil litigation context, is to sort through the
39 opinions and give them the -- deal with them as
40 you would obviously do in your deliberation.

41 Keep in mind, of course, that much of the
42 discussion Mr. Neave's had with you ignores the
43 fact that you spent a long time last year on a
44 study commission considering issues that have come
45 into play on this particular aspect of it. So
46 it's a much more broadly-based approach than what
47 Mr. Neave would suggest, and it really is not a

Submissions by Mr. Vertlieb
Reply by Mr. Neave (for TASER International)

1 battle of experts at all.

2 I don't want to say any more. As you know,
3 in discussion with Mr. Neave following court
4 yesterday, we agreed that Dr. Kerr would come
5 today to give evidence in chief. Mr. Neave wanted
6 time to prepare for his cross, and to accommodate
7 that, Dr. Kerr has arranged to be available next
8 Thursday by telephone when he's in the United
9 States. Those arrangements were the result of
10 joint discussion between Mr. Neave and myself.

11 Dr. Kerr is here and he's available to give
12 his evidence. I have nothing else I wish to say
13 at this point in time on the subject.

14 The motion, Mr. Commissioner, I don't fault
15 anybody but we just saw that motion just before we
16 started the afternoon session at three o'clock.

17
18 REPLY BY MR. NEAVE FOR TASER INTERNATIONAL:

19
20 MR. NEAVE: Thank you, Mr. Commissioner. I apologize
21 to my friend for not raising the argument before
22 today, but I only got the second psychiatrist
23 report at about one o'clock.

24 But with respect to the battle of experts,
25 there is a point, and you will recall that Dr.
26 Butt was specifically retained to comment, and did
27 comment, on the reports of Dr. Lee, Di Maio and
28 Pollanen. And that's done in an adversarial way.
29 There's no question, in my respectful submission,
30 that the purpose of Dr. Butt was to place in issue
31 the comments of each of those doctors, and it's
32 clear when you look at his report. There is no
33 other purpose. And then asked to opine himself.
34 He reviewed them and you'll recall there was
35 extensive cross-examination on that point.

36 With respect to the study commission last
37 year, none of those --

38 THE COMMISSIONER: No, you don't --

39 MR. NEAVE: Thank you.

40 THE COMMISSIONER: I don't think the study commission
41 is part of this.

42 MR. NEAVE: Thank you.

43 THE COMMISSIONER: What I'm going to do is this: I
44 have to consider further this application. It is
45 serious, carefully presented, and I want to
46 attempt to relate it to the fact that this is a
47 commission rather than a trial. I have to

1 consider the differences that that makes.

2 Also, at this moment at least, I do not see
3 that the motion goes to the admissibility of the
4 evidence. As Mr. Neave characterized it, is not
5 the evidence useless? Well, that doesn't mean it
6 may not be admissible. It is a question of what
7 happens to it later on.

8 So what I'm going to do now is to proceed
9 with this evidence, reserve on the motion, and it
10 may be, one, that I'll have a ruling on the motion
11 soon, or it may be that at the end of the case
12 when I take my final deliberations, I will
13 consider this whole matter. I'm very much alive
14 to the necessary -- the necessity to apply the
15 principles of natural justice, and we have tried
16 hard throughout these proceedings to do so. Now,
17 how that impacts on the motion is something I must
18 consider.

19 Accordingly, the motion is adjourned except
20 that I will allow this evidence to be called with
21 a caveat as to its future use.

22 MS. ROBERTS: Mr. Commissioner, I just became aware of
23 the motion and don't have instructions. Would
24 there be an opportunity for other counsel to
25 address you on this motion --

26 THE COMMISSIONER: Yes, certainly.

27 MS. ROBERTS: -- on Monday perhaps?

28 THE COMMISSIONER: Yes. Well, I don't say Monday, but
29 yes.

30 MS. ROBERTS: Thank you.

31 MR. VERTLIEB: We're just going to get --

32 THE COMMISSIONER: That of course goes for all counsel.

33 MS. ROBERTS: (Indiscernible - no microphone).

34 MR. VERTLIEB: We're just going to get Dr. Kerr. We
35 thought it best to keep him out of the courtroom
36 while that motion was taking place.

37 MR. VERTLIEB: Dr. Kerr, come forward, please.

38 THE REGISTRAR: Good afternoon, sir.

39 DR. KERR: Good afternoon.

40 THE REGISTRAR: Before you're seated, do you wish to be
41 sworn or affirmed? Sworn is on the Bible and
42 affirmed is not.

43 DR. KERR: Doesn't matter. Affirmed would be fine.

44 THE REGISTRAR: Affirmed?

45
46
47

CHARLES ROBERT KERR, a
witness, affirmed.

Charles Robert Kerr

In chief on qualifications by Mr. Vertlieb

1

2 THE REGISTRAR: Thank you. You may be seated.
3 Counsel?

3

4 MR. VERTLIEB: Thank you, Mr. Giles.

5

6

EXAMINATION IN CHIEF ON QUALIFICATIONS BY MR. VERTLIEB:

7

8

Q Dr. Kerr, we have your resumé that you've
9 provided.

9

10

MR. VERTLIEB: I'm going to ask that it be filed and
11 marked as an exhibit, if I may, please, Mr.
12 Commissioner.

11

12

13 THE COMMISSIONER: Yes, the next exhibit.

13

14

14 THE REGISTRAR: It will be marked as Exhibit 128.

15

16

16 EXHIBIT 128: *Curriculum vitae* of Dr. Robert
17 Kerr

17

18

19 MS. ROBERTS: I asked for that c.v. and I never
20 received a copy. I wonder if I might have a copy
21 now.

19

20

21

22 MR. VERTLIEB:

22

23

Q Dr. Kerr, you are a cardiologist and an
24 electrophysiologist?

23

24

25 A Yes, sir.

25

26

Q We have your background in detail and I don't want
27 to spend time taking you through it. But in the
28 briefest of ways, let's just discuss your training
29 in medicine after you finished your undergraduate
30 studies. You went to med school for four years?
31 Where was that?

26

27

28

29

30

32 A At the University of British Columbia.

32

33

33 Q And then you did an internship in medicine for
34 four years?

33

34

35 A Residency is the official name, yes.

35

36

36 Q Thank you. And you spent, then, two years in
37 addition studying in the field of cardiology?

36

37

38 A Yes.

38

39

39 Q And spent a further two years studying in the
40 field of electrophysiology?

39

40

41 A Correct.

40

41

42 Q So that's 12 years in total post-undergraduate
43 education.

41

42

44 A Yes.

42

43

45 Q Tell us, very briefly, what an electrophysiologist
46 does in the field of cardiology?

43

44

47 A Well, first, we're fully trained in cardiology.

44

Charles Robert Kerr

In chief on qualifications by Mr. Vertlieb

In chief by Mr. Vertlieb

1 Then we branch into a subspecialty.
2 Electrophysiology is really a study and practice
3 of treating patients who have abnormalities of the
4 electrical system of their heart. That can be
5 patients with excessively fast heart rhythms; it
6 can be people with problems with electrical
7 conduction causing slow heart rhythms.

8 So we spend a very high percentage of our
9 time dealing with people with this type of
10 problem, which is really quite a high prevalence
11 in our -- in our communities and so a lot of
12 patients with these problems.

13 We see patients sort of clinically. We do
14 special electrical tests on them, putting wires
15 into their heart and bringing on and trying to
16 cure arrhythmias. We also deal extensively with
17 electrical devices, both pacemakers and
18 defibrillators. So it's quite a large spectrum of
19 what we do.

20 Q And this is work that you would do on patients on
21 a regular basis here in Vancouver?

22 A Yes, sir.

23 Q And so you would deal with arrhythmias?

24 A Correct.

25 Q You would deal with people who have problems with
26 a condition known as tachycardia?

27 A Yes, sir.

28 Q Okay. You teach as well through your work?

29 A Yes.

30 Q Okay. I don't want to cover any more background;
31 I just wanted the Commissioner and the counsel
32 here to have an understanding. Some of the
33 counsel may not have heard of the field that
34 you're involved in.

35 MR. VERTLIEB: Let me have your report that you have
36 prepared for us dated May 5, 2009, marked as the
37 next exhibit.

38 THE COMMISSIONER: Well, I take it now the doctor is
39 tendered as an expert in the field of cardiology
40 with a specialty in electrophysiology.

41 MR. VERTLIEB: Yes, sir. Thank you.

42 THE COMMISSIONER: Yes. Well, he'll be accepted as an
43 expert as described.

44 THE REGISTRAR: And the document will be marked as
45 Exhibit 129.

46
47

EXHIBIT 129: Report of Dr. Charles Kerr

1 dated May 5, 2009

2
3 EXAMINATION IN CHIEF BY MR. VERTLIEB:

4
5 Q Now, you were asked to review the medical report
6 of Dr. Keith Chambers and just deal with the
7 issues in his report as his report dealt with
8 matters of cardiology and the work that you do.

9 A Yes, sir.

10 Q You were not asked to provide a broader assessment
11 in the nature of the opinion that Dr. Chambers has
12 prepared.

13 A Correct.

14 Q You've read his opinion?

15 A Yes.

16 Q Okay. His opinion will be given to the court next
17 week. I'm not going to take you through his
18 words. He will be here to speak to them himself.
19 What I'd like to do is just deal with the issues
20 of interest to this Commission and what I'd like
21 to do is have you tell us what you did once you
22 received Dr. Chambers' report. Just give us the
23 summary of how you approached your opinion that's
24 contained in your May 5 report.

25 A Well, I reviewed the issues as well as the -- and
26 some of the other facts surrounding this inquiry,
27 and I tried to reinforce where I thought there
28 were areas of importance to correlate with a
29 cardiological opinion about -- and particularly
30 with a particular emphasis on the electrical
31 system of the heart to try and expand upon, in
32 certain areas, of his report.

33 I also gave some of my own opinions and
34 interpretation of issues based on the information
35 I had been given through that report.

36 Q What I'd like you to do is help us understand, as
37 lay people, the issues that you know as a
38 cardiologist that you've learned in great detail.
39 What I have in mind is having you deal with some
40 of the medicine that we've already heard - for
41 example, adrenaline and catacholomines, and hypro-
42 adrenergic (sic) state. Now, these are words
43 we've read and heard and will hear more about.
44 What I'd like you to do is tell the Commissioner
45 and counsel here, how it is that we, as lay
46 people, can understand what's going on when we
47 hear about adrenaline and the impact on heart.

1 A Sure. The heart is governed -- the electrical
2 system of the heart has a pacemaker in it which we
3 call the sinus node, and that's what really
4 triggers off the electricity of the heart. The
5 electricity then flows through the heart in a very
6 -- in a very uniform and sequential manner to
7 provide a very rhythmic and fluid contraction
8 pattern of the heart. If there were no
9 electricity in the heart, there would be no
10 contraction.

11 The rate of our heartbeat as we probably --
12 as probably everyone knows is usually in the range
13 of 55 or 60 up to 80 to 90 on an average basis.
14 The control of that, the rate of the rhythm, is
15 really largely due to the intrinsic nature of
16 these cells and their ability to fire off in a
17 triggered fashion, minute after minute -- or
18 second after second, minute after minute, hour
19 after hour, on a regular basis.

20 Superimposed on that, there's the control of
21 what we call the autonomic nervous system which is
22 the subconscious nervous system of the heart.
23 There are two sides to that. There's one called
24 the sympathetic nervous system and one called the
25 parasympathetic nervous system. They function in
26 a bit of the ying (sic) and the yang. The
27 sympathetic nervous system tries to speed the
28 heart up, and the parasympathetic nervous system
29 tries to slow it down. So when you're asleep at
30 night, the parasympathetic nervous system rises,
31 and the sympathetic nervous system goes down and
32 the heart rate slows.

33 Also the contractility of the heart is
34 affected. That is the ability of the heart muscle
35 to squeeze and to contract. We call it
36 contractility. That also is under the control of
37 the -- partially controlled by the sympathetic
38 nervous system.

39 In situations of stress or even physical
40 activity, then there's the reverse regulation.
41 The parasympathetic nervous system goes down, and
42 the sympathetic nervous system goes up. So this
43 constant balance between these two arms of your
44 subconscious nervous system is what controls your
45 heart rate and, to some degree, also affects the
46 way the heart contracts. It has many other
47 effects as well.

1 The typical thing that happens when you get a
2 surge of the sympathetic nervous system is a so-
3 called fight or flight reflex. That is, if you're
4 frightened or threatened or pushed into some
5 sudden physical activity, there's usually a surge
6 of your sympathetic nervous system. A sympathetic
7 nervous system is activated in two ways. There's
8 direct connection from the brain through the
9 sympathetic nerve fibres that go right onto the
10 heart muscle and stimulate the various parts of
11 the electrical system of the heart. There's a
12 very -- there's sort of almost -- people have
13 called it a brain of nerve cells around that heart
14 that encapsulate the heart. There are certain
15 foci that are very intensely enervated with these
16 nerve fibres that constantly are controlling the
17 heart.

18 If you get in a fight or flight recess --
19 situation, the brain stimulates and sends out
20 adrenaline surges down -- directly down the
21 sympathetic nervous system. It also causes -- the
22 other part of this is that there are circulating
23 in our circulations, in our bloodstream, are
24 hormones that we call catacholomines that also act
25 on those nerve fibres in the heart and directly on
26 the cells of the heart. These are drugs like
27 adrenaline, noradrenaline and there's a whole
28 cascade of other compounds that act as stimulants.
29 The majority of those come from the adrenal gland
30 and that's why it's called adrenaline.

31 So under fight and flight type of response,
32 you get sympathetic stimulation through the nerve
33 system, but you also get release of adrenaline,
34 and adrenaline-like products largely from the
35 adrenal gland that also get into the circulation
36 and directly affect the heart muscle and the cells
37 that regulate the heart rhythms.

38 So in a situation where you get very intense
39 stimulation, the adrenergic state, or the
40 sympathetic tone, gets progressively higher, and
41 essentially then starts to push the heart to
42 tremendous degrees. What will happen in a very
43 intensely-trained athlete, those levels will be
44 very high when they're at high levels of exercise.

45 Q So you've explained how this just happens as an
46 automatic response and it's the fight or flight
47 that will trigger the adrenaline and other

1 hormones. Tell us what happens, then, when this
2 is going on. What I'd like you to do is help us
3 understand, as non-trained people in the field of
4 the heart, how this kind of bodily response can
5 lead to a very bad medical result.

6 A Well, it's -- first of all, it's often associated
7 with other -- you know, with other factors that
8 can cause other metabolic changes. If a person is
9 not getting enough blood -- oxygen supply to the
10 tissues, they develop what we call hypoxia. If
11 there is changes in the acid-base balance, if
12 people get release of acids such as lactic acid,
13 which is a product of muscles that aren't getting
14 enough blood supply, they will release. And so
15 it's a compounded type of thing that happens.

16 But when you give a -- when you have high
17 adrenaline levels, your heart is much more prone
18 to developing various types of abnormal rhythms.
19 Cells that should not normally be -- you know,
20 aren't -- they're not normally pacemakers. In
21 other words, they're not the normal driver of the
22 heart rhythm, can start firing off extra beats and
23 so you get -- you get a lot of extra beats
24 produced by the enhanced activity of those
25 individual cells, and those cells can be in the
26 upper chamber of the heart or they can be in the
27 lower chamber of the heart. It's not at all
28 unusual to see people who have normal hearts who
29 get, with exercise, start firing off some extra
30 beats when they exercise. Certainly the same can
31 be said when they're given adrenaline-like
32 products for some reason or another.

33 Furthermore, it can actually change the
34 electrical system of the heart and the way the
35 electrical signals are conducted from one cell to
36 the other, creating the possibility to develop
37 abnormal rhythms where electricity will chase
38 itself around in circles around structures in the
39 heart and cause more -- you know, potentially more
40 sustained arrhythmias, either from, again, the
41 upper chamber of the heart, and thankfully not
42 that commonly, from the lower chamber of the
43 heart.

44 Q What's the worry about having an abnormal rhythm
45 from this extra activity?

46 A Well, the -- I mean, the majority of times, that
47 kind of rhythm you get with that is relatively

1 benign. But the biggest worry is if you -- if you
2 have any susceptibility at all to other factors,
3 particularly the types of metabolic derangements
4 I've noted, that the heart can become so irritable
5 it can develop a more sustained abnormal rhythm,
6 and if that comes from the lower chamber of the
7 heart, the ventricular, then it can be a very
8 serious and life-threatening arrhythmia.

9 There -- the two -- the two rhythms that are
10 the more common from the lower chamber to cause
11 that kind of a problem would be ventricular
12 tachycardia or ventricular fibrillation.

13 Q And this can happen as a result of the adrenaline
14 and other fluids being increased in the body as a
15 result of the brain doing the fight or flight
16 response.

17 A In a -- in usually very intense sort of
18 circumstances. It's uncommon in the absence of
19 other circumstances. In a -- you know, somebody
20 running for example, unless they have significant
21 underlying heart disease, it's rare for something
22 to collapse and have ventricular arrhythmia.

23 Q I just wanted to have you explain one part of your
24 report. We could go through it in great detail,
25 but time is of concern here as I'm doing this with
26 you. Paragraph 6 of your report. Now I want to
27 just take you through that and just make sure
28 we've got some definitions:

29
30 I concur with Dr. Chambers' statement that it
31 would be rare for a person, even with a mild
32 cardiomyopathy to develop an unprovoked
33 malignant ventricular arrhythmia.

34
35 Now, is your opinion that there was a mild
36 cardiomyopathy in Mr. Dziekanski's case?

37 A It is suggested that there is. I've read the
38 medical reports and it seems like there could have
39 been a mild cardiomyopathy. The heart seemed to
40 be, by weight, was normal in size, so -- which
41 would suggest it was not chronic and not severe.

42 Q But let's even assume that there was a mild
43 cardiomyopathy. What does the statement mean,
44 "develop and unprovoked malignant ventricular
45 arrhythmia"?

46 A That would mean that under fairly normal
47 circumstances, it would be highly abnormal for

1 somebody to have an arrhythmia that was -- when we
2 say "malignant" we're talking about ventricular
3 tachycardia with collapse or ventricular
4 fibrillation. So it would be very uncommon for
5 somebody without quite significant structural
6 heart disease to actually have an episode like
7 that.

8 Q Okay.

9 A It can occur, but that's usually in people who
10 have unusual genetic abnormalities of their -- you
11 know, the cells of their heart, than in a heart
12 that is otherwise felt to be normal.

13 Q Okay. Then you say:

14
15 We know that advanced cardiomyopathies may be
16 associated with spontaneous sudden death but
17 clearly he did not have evidence of an
18 advanced cardiomyopathy.

19
20 "He" meaning, of course, Mr. Dziekanski.

21 A The more scars there are on the heart, the more
22 likely it is to develop an abnormal rhythm.
23 Typically, scars can be laid down on the heart
24 from having had a heart attack. They can be with a
25 cardiomyopathy such as a virus that's attacked the
26 heart and left scars on the heart, and they can
27 predispose the development of abnormal circuits
28 that chase around these scars and cause an
29 extremely rapid and dangerous abnormal rhythm.

30 We know that the risk of developing those --
31 and the way they're triggered is usually by extra
32 beats that fire off in the lower chamber of the
33 heart. Almost everybody, you know, has abnormal
34 extra beats. I mean if you took 24-hour monitors
35 on everybody in this room, we'd probably have
36 about 60 or 70 percent of people would have at
37 least some extra beats. So you get those beats.
38 But why in some people they can trigger off these
39 rhythms is probably related to what is going on
40 with the rest of the heart.

41 We go by -- we go by a number. I don't know
42 if you want to really hear this, but we go by a
43 number called the "ejection fraction" which is the
44 percentage of blood that's pumped out of the
45 heart. Normally about -- with every contraction,
46 about 55 percent or more of the blood is pumped
47 out of your heart. The rest sits in the heart and

1 then is gradually circulated with subsequent
2 beats.

3 As the heart gets more scarred, that ejection
4 fraction goes -- becomes worse. We know that
5 under about 35 percent ejection fraction, the risk
6 of these malignant arrhythmias goes up
7 substantially. And under 30 percent, they go up
8 so high that we recommend prophylactic preventive
9 defibrillators be put in these individuals.

10 So we know that above that, the risk of
11 sudden cardiac death is really quite small.
12 Certainly with a very mild cardiomyopathy, we know
13 that the risk of spontaneous sudden cardiac arrest
14 is quite rare in the absence of these unusual
15 electric channel abnormalities that are really
16 usually genetic.

17 Q Okay. Paragraph 7, you use the term "extreme
18 metabolic derangement". What do you mean by
19 "metabolic derangement".

20 A It's sort of an extension of what I was saying
21 earlier. It really -- it really involves the fact
22 that the sympathetic nervous system is -- the
23 word, to use a term, in overdrive. It's really
24 pumping so much adrenaline product out that the
25 heart is contracting and beating at a -- that much
26 faster than a normal state. Coupled with that
27 would be other derangements. Probably the two
28 that I would highlight would be the release of
29 lactic acid and causing what we call acidosis in
30 the blood which also increases cardiac
31 irritability. Increasing the acid content of the
32 blood will also change the ionic composition of
33 the blood, potassium and other ions, which can
34 also affect the ability of the heart to contract
35 normally and promote abnormal contraction. Low
36 oxygen levels in the blood, for whatever reason,
37 can also derange the metabolic function of the
38 heart.

39 Q Continuing next page, still in paragraph 7, I want
40 to ask you why you make this comment. He clearly
41 -- this is the fourth line:

42
43 He clearly was agitated and anxious prior to
44 the approach by the police officers. Thus
45 his sympathetic nervous system would have
46 already been highly activated, with high
47 levels of circulating adrenaline and high

1 activation of the sympathetic nerves that
2 stimulate the heart directly. However, this
3 was not likely sufficient on its own to
4 provoke a fatal arrhythmia.
5

6 Now, just tell us what you're saying there and why
7 you involved the facts of agitation and being
8 anxious prior to the police arrival.

9 A Well, first of all, I mean, it, I think, certainly
10 looks like he's agitated, and -- unfortunately
11 agitated and anxious when he was -- when he was
12 waiting.

13 This would have caused a -- you know, some
14 increase in his sympathetic tone, a surge of
15 adrenaline-like products, just the same as anybody
16 gets anxious, upset. And any of the other factors
17 that are implicated here of sleep deprivation and
18 other factors, that will result in release of
19 adrenaline products and stimulation of the direct
20 sympathetic nerve effect on the heart.

21 But again, people don't usually, who've got
22 no significant heart disease, or minor heart
23 disease, normal coronary arteries, normal valves,
24 not a lot of heart muscle damage, that would be
25 very unusual for that degree of stress to trigger
26 this kind of abnormal rhythm. There are other
27 rhythms it can trigger: atrial fibrillation and
28 others, but they're usually not fatal arrhythmias.
29 They can get -- people like that can get a lot of
30 extra beats, but again, it would be rare for that
31 type of stimulation to trigger off a cardiac
32 arrest, essentially, or ventricular fibrillation.

33 Q You then continue:

34
35 The intense pain resulting from multiple
36 Taser applications would have sent surges of
37 catecholamines (adrenalin like products) into
38 his circulation and stimulated the nerve
39 fibres, exacerbating the pre-existent hyper-
40 adrenergic state.
41

42 Just tell us what brings you to say that, or why
43 are you saying that?

44 A Why I'm saying that, I mean, I've read quite a bit
45 about Taser applications and instituting (sic) the
46 process of this inquiry, they're obviously
47 intensely painful. So one is getting an intensely

1 painful stimulation which we know, again, causes
2 an intense outpouring of the sympathetic nervous
3 system, both the releasing of more adrenaline and
4 the stimulation of the nerve fibres that go to the
5 heart. So it's taking -- an individual must have
6 had a high -- high sympathetic adrenergic state to
7 begin with, and then applying repeated painful
8 stimuli I think can't help but having further
9 increased that catecholamine state.

10 Q I wanted to ask you about the word "acidosis".
11 You mention it in paragraph 8. What is that?

12 A It's a rise in the acid level in the blood. We go
13 -- a balance that we call the pH of the blood, and
14 the lower the pH, the more acid it is. One of the
15 responses to inadequate circulation to muscles is
16 -- or going into severe contraction is that they
17 release lactic acid.

18 So lactic acid -- somebody who's in shock,
19 for example, will often have very high lactic acid
20 levels dropping their pH level substantially,
21 which again can be -- and I'm going to use another
22 word here -- called arrhythmogenic, which means
23 they can create a milieu where arrhythmias can be
24 more easily induced.

25 Q You first mention the profound exacerbation of the
26 hyper-adrenergic state and acidosis.

27
28 Secondly, there remains a possibility that
29 the Taser discharge could have directly
30 induced ventricular arrhythmias, given that a
31 Taser barb appeared to be on the anterior
32 chest, quite close to the heart. It is
33 unlikely that Taser discharges directly
34 induced ventricular fibrillation, as this
35 would have caused much more rapid loss of
36 consciousness. However, they could have
37 induced ventricular tachycardia that
38 subsequently contributed to loss of adequate
39 circulation...

40
41 Fibrillation and tachycardia. Just tell us what
42 those two words mean.

43 A Yeah. Ventricular fibrillation is, in respect to
44 how the heart contracts, a totally chaotic rhythm.
45 It's extremely fast. The electrical signals in
46 the ventricular are going somewhere in the range of
47 250 to 400 beats a minute. Effectively, that

1 results in the complete inability of the heart to
2 sustain circulation. So ventricular fibrillation
3 results usually in a very abrupt loss of
4 consciousness.

5 If you go into ventricular fibrillation
6 without any coordinated ventricular contraction,
7 the heart will not pump any blood. It takes only
8 about five to seven seconds of absent blood flow
9 to the head for the -- to lose consciousness. The
10 brain is exquisitely sensitive. So the commonest
11 thing with somebody with ventricular fibrillation
12 is sudden collapse. There's no intermediate.
13 They don't get -- grey out for a while, and talk
14 to you for a while. They're usually right out.

15 Ventricular tachycardia is a more organized
16 rhythm from the ventricular usually. It can be
17 disorganized, but it generally is slower. It's
18 often due to a fixed circuit where the electricity
19 goes around in a fixed circuit. It can be due to
20 a specific spot firing off repetitively at a fast
21 -- at a fast rate. But it tends to be slower, it
22 tends to be more organized. Depending a little
23 bit on how fast it is and what the state of the
24 heart, people can remain conscious for periods of
25 time. Most people would remain conscious longer
26 than if they went into ventricular fibrillation.
27 But some people can be in it for hours and not
28 lose consciousness, and other people go down
29 pretty quickly.

30 Q Okay. But because it wasn't within five or ten
31 seconds -- because Mr. Dziekanski's apparent loss
32 of consciousness wasn't within five or ten seconds
33 is why you don't think it's fibrillation.

34 A That's exactly right. I think it would be highly
35 unlikely given the fact that between the -- I
36 think the last of the discharges through the barbs
37 in the chest, I think there was up -- a minute or
38 so between that and the -- and the apparent
39 cessation of movement, so...

40 Q You've watched the video?

41 A I have.

42 Q Paragraph 9:

43
44 I am in complete support of Dr. Chambers'
45 thoughtful and succinct 'Summary Opinion'.
46

1 I just want to ask you, Dr. Chambers, he's not
2 someone that's a friend of yours or someone you
3 work with regularly?

4 A I've known him for a long time, but we don't -- we
5 don't cross paths very frequently.

6 Q

7
8 I believe it is hard to escape the conclusion
9 that the Taser applications contributed as a
10 major cause of Mr. Dziekanski's death,
11 certainly through metabolic effects and
12 development of a hyper-adrenergic state, but
13 not excluding a direct induction of a
14 ventricular arrhythmia by the Taser
15 application.

16
17 Can you give us an analogy from just day-to-day
18 experience that might be another way of
19 understanding your opinion? Is there some other
20 way of looking at it? Trying to understand how
21 the adrenaline and the body response to the events
22 that were going on, why it is that you come to
23 that conclusion.

24 A Yeah. Well, I mean, I think, to my mind, there
25 would be no question that the level of sympathetic
26 stimulation in this circumstance would have been
27 astronomically high. You know, I can't think of
28 too many situations where there would be higher
29 sort of stimulation than in this type of a
30 situation. Not only with respect to heart
31 rhythms, but the high sympathetic tone stimulates
32 all parts of the body. It will also stimulate the
33 heart to beat excessively rapidly. Remember I
34 told you a minute ago that the ejection fraction
35 is normally about 55, 60 percent. In somebody
36 who's in a high adrenergic state, it'll be pumping
37 with about 80, 90 percent of the blood going out,
38 so it's pumping much, much harder and it's making
39 the heart do a whole bunch more work, so the
40 heart will start getting tired.

41 Even in certain situations of stress, you can
42 actually have transient quite severe damage to the
43 contractility of the heart that if you then rest
44 the heart, it recovers quite nicely.

45 So I think this state, and then you
46 superimpose on that the fact the patient -- well,
47 certainly by the end he was hypoxic because he was

1 cyanotic. But we don't know when he became
2 hypoxic. He probably became -- started getting
3 hypoxic - that's low oxygen levels in the blood -
4 before that, 'cause it takes a while for the
5 cyanosis to develop.

6 So the other things would be contributing as
7 well, and not only making the heart more prone to
8 electrical development, but weakening the heart
9 muscle further decreasing the circulation, further
10 enhancing the release of lactic acid, and just a
11 downhill spiral in terms of how the heart would be
12 functioning in this very acute phase of things
13 that were going on.

14 Q How long does it take for cyanosis to develop?
15 You said that --

16 A Well, it's hard to know. I can't --

17 Q -- it takes some time.

18 A -- give you an exact number, but it would probably
19 take probably 10 or 15 seconds. What's due to --
20 cyanosis is due to not enough oxygen being in the
21 blood, and that can occur when the circulation is
22 profoundly decreased so that there's not enough
23 blood flowing through the lungs to oxygenate. It
24 can recur -- it can occur when the lungs are
25 constricted and there's not enough oxygen
26 exchange, not enough air getting into the lungs.
27 So a variety of things can cause it.

28 So it -- if you completely -- if you
29 completely took every bit of oxygen away from
30 somebody, it probably wouldn't take that long.
31 But it'd probably take a little longer because
32 that process was -- would probably be a little
33 more gradual.

34 Q So you're talking about the heart working very
35 hard, and you've explained that to the
36 Commissioner and we've watched you with your hand
37 as you've shown us the extra pumping. You said
38 the heart just gets tired.

39 A It can, I think. You know, like we've seen
40 situations where, you know, not necessarily in
41 this kind of circumstance, but in situations where
42 other very intense trauma to the heart -- I mean,
43 trauma, I don't mean hitting the heart. But
44 somebody who develops abnormal rhythms who, you
45 know, has a lot of other stress going on, the
46 heart can suddenly, you know, quite suddenly
47 deteriorate in its pump function that -- and we've

Charles Robert Kerr
In chief by Mr. Verlieb

1 seen that when people come in quite stressed.
2 We've had a couple of people we've had to put
3 special assist devices in to support their
4 circulation. Once those stresses are removed,
5 there's quite -- a very dramatic recovery in the
6 pump function of the heart, suggesting this is --
7 can be a very acute deterioration of the heart
8 function in certain circumstances.

9 Q Can the heart get so tired in a gentleman of Mr.
10 Dziekanski's age that it just stops working?

11 A Well, it theoretically could if you had a very,
12 very high sympathetic level. You know, I've not
13 seen that myself, I mean, in a way I can prove it,
14 but -- you know, we unfortunately often see people
15 when it's too late to intervene and we can't -- so
16 I couldn't really tell how often that might occur.

17 One analogy I had just heard of from a
18 colleague of mine is that in a heart-lung machine
19 they -- if you put too much adrenaline into it,
20 you can -- the heart can actually stop. It can
21 just go into contraction and stop, so you have to
22 support the circulation until that wears off and
23 then it will -- then it can recover.

24 So I think with -- and I don't know how that
25 level of adrenaline would compare with amount of
26 adrenaline that would be circulating or
27 sympathetic stimulation in this kind of
28 circumstances, but that would be an extreme where
29 that definitely can occur. I think, you know, if
30 you flog any muscle -- if you run, if you keep
31 running and running and running, there'll come a
32 time when your muscles can't do it anymore. They
33 become so metabolically acidotic, so much lactic
34 acid they just can no longer function.

35 The heart is an extraordinarily resilient
36 organ in that it -- it beats 60 times a minute, 60
37 minutes an hour every day. It can't get tired.
38 So under normal circumstances, it doesn't get
39 tired until, you know, your age takes over and it
40 will only have so many years it can pump. But,
41 you know, it's actually extremely resilient in
42 that it doesn't normally tend to tire out as much,
43 but that's under fairly normal sort of
44 circumstances.

45 MR. VERTLIEB: Thank you very much. I'm in your hands,
46 Mr. Commissioner. Maybe some of my colleagues
47 here have some questions to help us along.

Charles Robert Kerr
In chief by Mr. Verlieb

1 THE COMMISSIONER: Does anybody want to -- have any
2 questions? You know before I said that could
3 wait, but if anybody has any...? No? Not at this
4 time?
5 UNIDENTIFIED SPEAKER: Can he have questions from the
6 floor, Judge? I wonder if you had questions on --
7 THE COMMISSIONER: No, I'm afraid not.
8 Doctor, as you know, we're very much
9 concerned about your time, but fortunately, you
10 have indicated that next week you could take a
11 call and I understand Mr. Vertlieb has arranged
12 that with you, so under those circumstances, we'll
13 adjourn, and that will happen later on.
14 MR. VERTLIEB: Do we gather, then, from the -- we know
15 Mr. Neath has some questions and he said he'd be
16 some time. I respect that. Does that mean that
17 the other counsel here do not wish to have
18 questions?
19 MR. KOSTECKYJ: I will have a few questions, but I
20 don't expect that I will be longer than 10 to 20
21 minutes.
22 MS. ROBERTS: I would expect to have questions and be
23 about as long as Mr. Kosteckyj.
24 MR. HIRA: I will follow Mr. Neave which will make me
25 much shorter.
26 MR. NEAVE: And, Mr. Commissioner, I'll be as expedient
27 as I can. And --
28 THE COMMISSIONER: Oh, there's no question about that.
29 MR. NEAVE: With your leave, what might assist is that
30 if I'm able to communicate with Dr. Kerr and
31 provide him with some papers that I may want to
32 address in cross-examination if that's acceptable
33 to you and to my colleague, that might assist.
34 THE COMMISSIONER: Yes, I see nothing -- no problem
35 with that.
36 MR. NEAVE: And I can get the contact details from Mr.
37 Vertlieb.
38 MR. HIRA: Sorry, I didn't hear that exchange. We're
39 getting the file I hope.
40 THE COMMISSIONER: There's going to be some papers
41 exchanged with the doctor.
42 MR. NEAVE: Yes.
43 MR. HIRA: Thank you.
44 MR. NEAVE: Yes, and Dr. Kerr's file too. I would have
45 a look at that. Thank you.
46 THE COMMISSIONER: So, Doctor, thank you very much. I
47 must say that your evidence in chief was very

1 clear. It's a complicated subject and I'm
2 boasting to say that I think I followed it quite
3 carefully. Thank you.

4 A Thank you. And I'm pleased to be here. Thank
5 you.

6 (WITNESS EXCUSED)
7

8 MR. VERTLIEB: Now, just before we break, we could do
9 some housekeeping if you don't mind, Mr.
10 Commissioner. There is a document -- there's a
11 document from the CBSA, if you recall those two
12 gentlemen who came, and there was a standard
13 operation procedure, the SOP that Mr. Kooner
14 mentioned. So we have that for you. We have that
15 copy.

16 Secondly, we have the CDs, the DVDs from the
17 Global, CTV and CBC that we mentioned we would
18 file. What we've done, just to assist with the
19 entry, we have prepared an index, as it were, "A"
20 through "I" that will help mark the exhibits, and
21 I'm comfortable with however Mr. Giles and you
22 wish to mark them. But I would like to have them
23 marked. So for this moment in time, as one
24 exhibit, we have the DVDs from the media side, and
25 the Standard Operating Procedure from CBSA.

26 THE COMMISSIONER: All right. The first of those will
27 be the next exhibit.

28 THE REGISTRAR: The Standard Operating Procedures will
29 be marked as Exhibit 130. The DVDs will be marked
30 as Exhibit 131.

31 MS. ROBERTS: Mr. Commissioner, I'm not sure what DVDs
32 and what's being filed, whether it was put to the
33 two Media Relations Officers, whether it's
34 material that hasn't been put to them. I wonder
35 if we could have an opportunity, Mr. Vertlieb and
36 I, to discuss that before it's filed.

37 THE COMMISSIONER: Yes, indeed.

38 MS. ROBERTS: Thank you.
39

40 EXHIBIT 130: Standard Operating Procedures
41

42 MR. VERTLIEB: And finally, you'll recall Mr.
43 Rosenbloom wishing to have the two interviews that
44 were transcribed marked, and we told him we would.
45 We have the interview with Eric Rankin, October
46 16, 2007, and we have the interview with Ian
47 Hanomansing, November 30. The October 16 is with

1 Sergeant Lemaitre, and the November 30 is with
2 Corporal Carr. Mr. Rosenbloom, I'd ask that we do
3 it -- as I mentioned, I have those, if we can mark
4 those as well.

5 MS. ROBERTS: Once again, Mr. Commissioner, I'm not
6 entirely sure if they're extracts from interviews
7 or they're entire interviews, whether they were
8 put to the Media Relations Officers. If I could
9 just have a chance to look at them and get back to
10 Mr. Vertlieb on that, that would be appreciated.

11 MR. VERTLIEB: Well, they were put to the witnesses and
12 Mr. Rosenbloom had them, and I just don't want to
13 lose track of that because he did specifically ask
14 that we do it, and we said we would, but --

15 THE COMMISSIONER: I think we're going to have to give
16 Ms. Roberts to have an opportunity to look at
17 them.

18 MR. VERTLIEB: Fair enough. Thank you, Mr.
19 Commissioner. So I think that is all we can do
20 today.

21 Now, tomorrow, Mr. Commissioner, we have Dr.
22 Tseng. He is only available tomorrow. He lives in
23 San Francisco area. We just can't not conclude
24 him tomorrow. He would be happy to start at
25 whatever time suits the Commission's convenience.
26 I'm not sure how long my friends collectively
27 would require, whether it's worth it to take a
28 quick sounding and get an idea. I can cut down
29 examination in chief to as brief as needed to
30 accommodate my friends' cross-examinations.

31 THE COMMISSIONER: I'll ask you first, Mr. Neave. Do
32 you see any reason to start early?

33 MR. NEAVE: Mr. Commissioner, I can tell you I'm
34 working on his cross-examination now. I will be
35 some time. Part of it obviously is going to
36 depend on how it goes and --

37 THE COMMISSIONER: No, I appreciate that.

38 MR. NEAVE: -- those sorts of things, so it's very
39 difficult to estimate. What I would propose, I
40 think, is this, is that we start at the normal
41 time and we shorten the lunch break if necessary
42 and obviously if -- is Dr. Kerr (sic) flying out
43 tomorrow night?

44 THE COMMISSIONER: We can sit late too.

45 MR. NEAVE: Or, sorry, Dr. -- yeah, that's what I'm
46 suggesting. Dr. Tseng, rather, my apologies. And
47 be flexible. I'm mindful of his schedule and I'm

1 mindful of his limited availability, so I will be
2 as quick as I can be.

3 MR. VERTLIEB: I don't think he's here past five
4 o'clock because of flight arrangements.

5 MR. NEAVE: That was my question.

6 MR. VERTLIEB: So I -- just so -- that's why I wanted
7 to raise it.

8 THE COMMISSIONER: I think we should start at 9:30.

9 MR. NEAVE: Fine.

10 THE COMMISSIONER: All right, 9:30 tomorrow.

11 THE REGISTRAR: The hearing is now adjourned till 9:30
12 tomorrow morning.

13

14 (PROCEEDINGS ADJOURNED TO MAY 8, 2009 AT 9:30
15 A.M.)

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