

PART 4

MR. DZIEKANSKI'S ARRIVAL IN VANCOUVER AND CLEARANCE TO ENTER CANADA

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A. INTRODUCTION

In this part, I will review Mr. Dziekanski's movements from the time he disembarked from his flight at the Vancouver International Airport at approximately 3:15 p.m. on October 13, 2007, until he cleared Canadian Immigration and left the Customs Hall at approximately 12:40 a.m. on October 14, 2007.

Although some of his movements were captured on the closed-circuit video system in the Customs Hall area, his whereabouts for more than half of this time remain unknown.

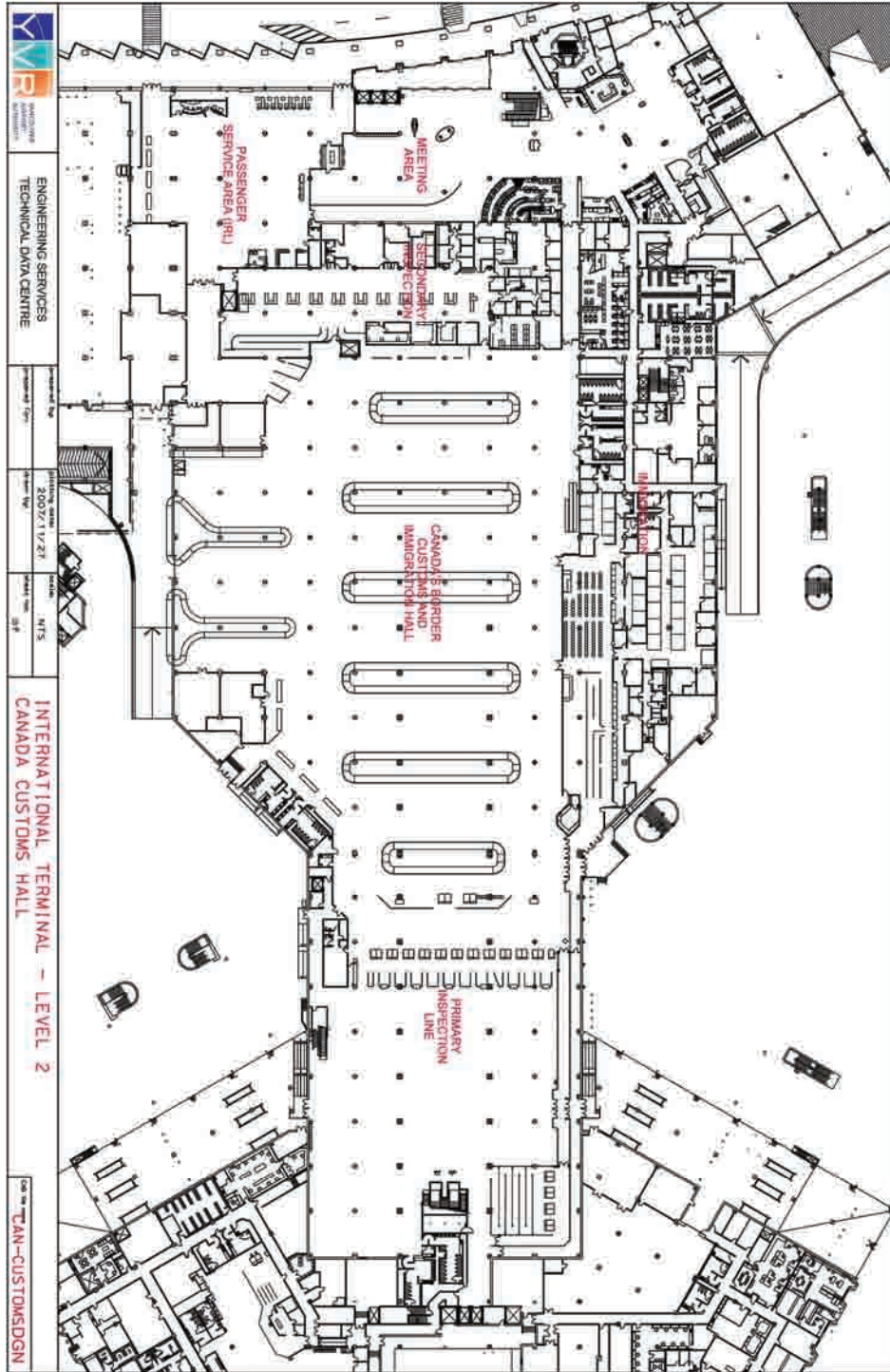
B. VANCOUVER INTERNATIONAL AIRPORT ARRIVALS LAYOUT

There are seven areas of the Vancouver International Airport that make up the International Arrivals area (see Figures 1 and 2), discussed below. The first five are, collectively, a secure area controlled by the Canada Border Services Agency (CBSA):

- *Primary Inspection Line* – passengers arriving on an international flight come down escalators into a large hall, where they queue in order to speak to a Canada Border Services Agency officer at one of 24 counters. The officer asks a series of questions to make an initial determination whether the passenger is admissible into Canada or should be referred for further immigration or customs processing.
- *Customs and Immigration Hall* – after passing through the Primary Inspection Line, passengers proceed into the Customs and Immigration Hall, where they claim their checked luggage from large carousels.
- *Secondary Inspection or Secondary Customs* – passengers (Canadian or foreign) who have been referred for secondary customs inspection must go to this area for examination of their baggage or questioning about their declarations.
- *Secondary Immigration* – passengers who require further processing before they are allowed into Canada (e.g., study permit, work permit, new immigrants) must go into the Secondary Immigration area, where a Canada Border Services Agency officer interviews them.

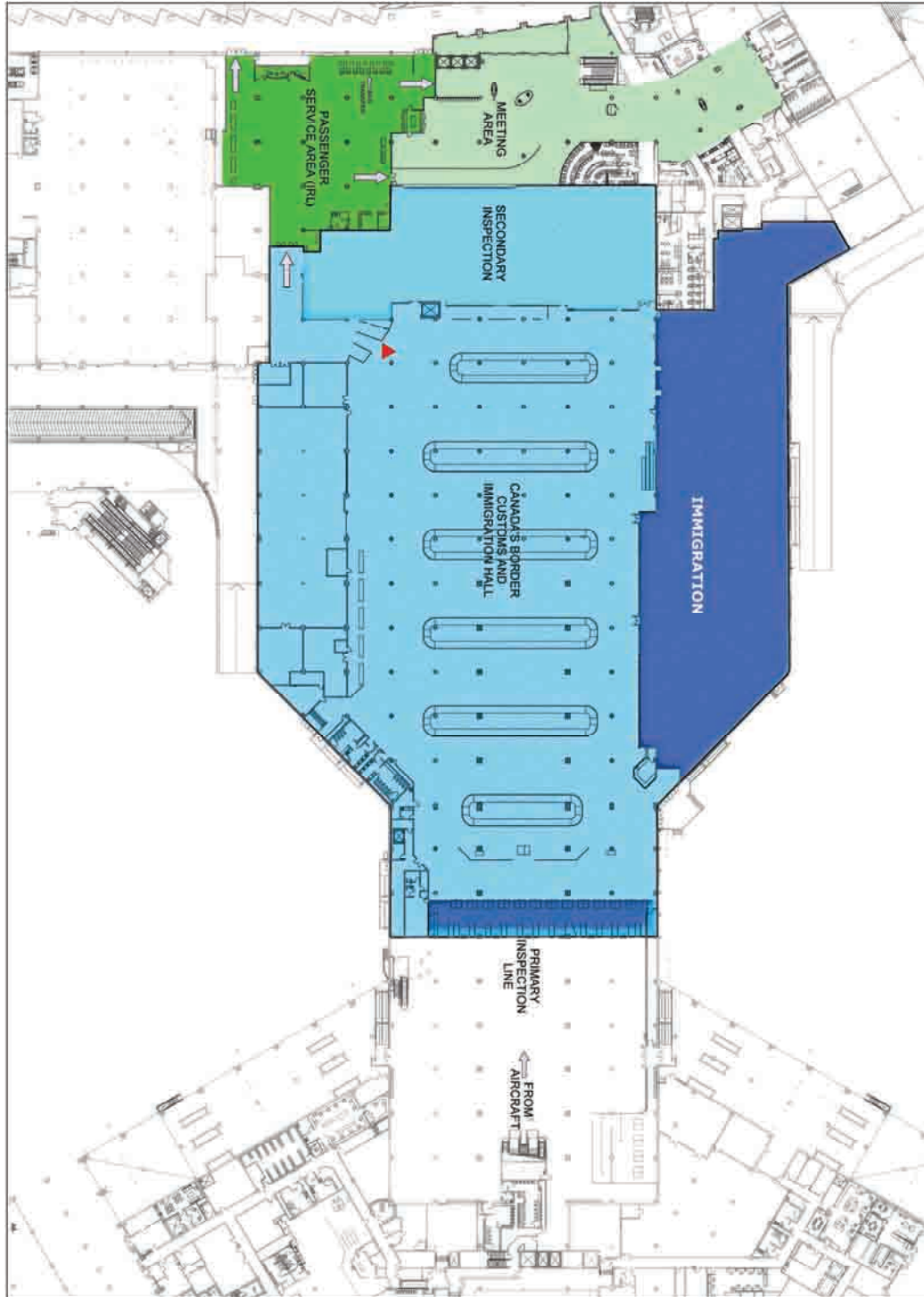
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Figure 1: International Terminal – Level 2



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Figure 2: Canada Border Services – International Terminal



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- *Point* – at the far end of the Customs and Immigration Hall, there is an exit where Border Services officers collect declaration cards from arriving passengers. Once passengers have passed the Point, they have cleared the Customs and Immigration Hall and are no longer under the control of the Canada Border Services Agency.
- *International Reception Lounge (Passenger Service Area)* – after passing the Point, passengers go through doors into the International Reception Lounge. Passengers connecting to a domestic flight check their bags here. Passengers staying in Vancouver who are meeting a tour company representative or a limousine driver do so here. Otherwise, passengers pass straight through and out automatic swinging glass doors into the public Meeting Area. The International Reception Lounge, controlled by the Airport Authority, is not accessible to the public. Airport employees, Canada Border Services Agency officers, and authorized civilians such as limousine drivers can access this area from the public Meeting Area by scanning an ID card.
- *Meeting Area* – this area, open to the public, is where passengers meet family or friends who are waiting for them. They leave this lower level of the Airport through adjacent doors to the street and parking, or take an escalator to the upper Departures level.

According to several Canada Border Services Agency officers, there would typically be about 15 officers working at the Primary Inspection Line, several officers acting as “rovers” circulating among the carousels interviewing passengers, 10 officers working in Secondary Immigration, and 10-15 officers working Secondary Customs and the Point. In October 2007 there was a “disembarkation screening team” that would meet some arriving aircraft and check washrooms to ensure that everyone had appropriate travel documents. There were pay phones located throughout the Customs Hall for passengers to phone out, but there was no way for a person to phone directly into the hall to contact a passenger. However, a customer service agent could, on behalf of a waiting friend or relative, phone through to another agent working at the Primary Inspection Line, although that was done infrequently.¹⁸ In addition, an Immigration officer in the Customs Hall could page a passenger inside the Customs Hall area.¹⁹

¹⁸ Transcript, January 21, 2009, p. 93.

¹⁹ Transcript, January 22, 2009, p. 29.

C. THE PRIMARY INSPECTION LINE

Patricia Hunter was a customer service agent on duty when Mr. Dziekanski's flight arrived at the Vancouver International Airport shortly after 3:00 p.m. She was employed by Marquise Customer Services, a private company that contracts with the Airport Authority to provide certain customer services. She wore a uniform with "Customer Service" written on the back and front. On that day she was acting as a greeter in the International Arrivals area, at the bottom of the escalator just before the Primary Inspection Line. Her duties were to manage the queue so that incoming passengers would get to the inspector in the order in which they came into the hall, and to answer passengers' questions.

Arriving international passengers are required to complete a Customs Declaration Card before reaching the Primary Inspection Line. The form is usually distributed to passengers during the flight, and there also are forms available in the International Arrivals area. The form is printed in English and French. There are books in the Customs area that have translations in other languages, including Polish.

Condor Air was the only arriving flight at that time. By about 3:15 or 3:30 p.m. all the other passengers from that flight had come through the Primary Inspection Line, had been cleared, and had gone. She saw Mr. Dziekanski enter the queue in the inspection area.²⁰ It was very unusual to see a solitary passenger arrive after everyone else had moved through. He was walking very steadily, staring straight ahead. Ms. Hunter approached him and asked if he had his Customs Declaration Card. He looked down momentarily at the form she was holding, and then reverted to looking straight ahead. She realized that she would not be able to communicate with him so, by hand signals, she indicated that he should proceed ahead and speak with a Border Services officer. He followed her directions. He had nothing in his hands. She did not notice any odours on him, but he had a small sheen of perspiration over his lip.

²⁰ Closed-circuit video showed Mr. Dziekanski entering this area at 3:34 p.m.

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Ms. Hunter observed that Mr. Dziekanski and the Customs officer communicated for a few moments. Then, the officer took Mr. Dziekanski over to a table, where he took out the booklet with the translations, gave a translation to Mr. Dziekanski, and then told Ms. Hunter that he was Polish. He left Mr. Dziekanski there to complete his form. For about 15-20 minutes Ms. Hunter observed Mr. Dziekanski looking at the translation book and then at his form, but she was not able to see whether he wrote anything on his form. She observed him pull out a handkerchief and wipe perspiration from his face frequently, but saw no signs of agitation, aggressive behaviour, or impairment. She did not intervene to assist him in completing the form because she had been trained not to. It is a confidential document, and if she were to coach a passenger about how to complete the form it may jeopardize any prosecution for smuggling.

Another Marquise employee, **Peter Dore**, had a brief encounter with Mr. Dziekanski before he reached the Primary Inspection Line. He described Mr. Dziekanski as having a disturbed look on his face and sweating profusely. However, Mr. Dore did not feel threatened, did not feel the need to report anything to security, and did not consider any medical procedures necessary. He did, however, adopt several parts of the written statement he gave to the RCMP to the effect that he felt uncomfortable with Mr. Dziekanski standing so close to him, that Mr. Dziekanski had a scary look about him, and that he could be a person of violence.

Monica Kullar came on duty as a Canada Border Services Agency officer at 4:00 p.m. on October 13, 2007. She was assigned to the Primary Inspection Line. Some time after another officer had shown Mr. Dziekanski the translation book, Mr. Dziekanski approached her booth. He was speaking rapidly in Polish and waving his declaration card at her. He repeatedly pointed at the part of the card stating what airline he had arrived on and showed her his boarding pass stub. He had written in "SAMOLOT," which means "airplane" in Polish. She wrote in "DE6070," which meant Condor Air Flight 6070. He showed her his passport with a visa. She marked the declaration card to show he was travelling alone and that he was a visitor as opposed to a resident. He had completed the other parts of the card correctly, except that he had repeated his

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birthdate and citizenship in the three spaces reserved for information about others travelling with the passenger, so she crossed out those entries. She stamped the front of the card, and on the back of the card made notations requiring secondary immigration and customs processing, which was mandatory when there was a language issue.

Ms. Kullar scanned his passport into the computer and made entries into the computer about immigration and customs referral. Her normal practice, after processing a passenger through the Primary Inspection Line, was to point them behind her to go into the next section, although she could not remember what she did in this case. The only thing about Mr. Dziekanski that caused her to remember him was that he had sweat rolling down and dripping off his chin, but he was not sweating from his chest or underarms. Notwithstanding the language barrier, he was courteous and she had no concerns of personal security and did not feel any physical threat. Officers working on the Primary Inspection Line do not call for translators; that is left to officers at Secondary Immigration or Secondary Customs. Her dealing with him lasted only about 30 seconds, and according to a computer record, she completed her processing of him at 4:09 p.m.

Between 10 and 11 o'clock that evening she received a phone call from an officer in Secondary Customs or Immigration about Mr. Dziekanski. He asked what time the Condor flight had landed. She checked the clipboard and said approximately 4 p.m. She asked the officer if he was still sweating, and the officer said no.

At about 12:50 a.m. on October 14, she saw Mr. Dziekanski standing with another officer, who was enquiring of several other officers if they were done with Mr. Dziekanski in that area. Mr. Dziekanski appeared a lot calmer and was no longer sweating. In her experience, she had never heard of a passenger being in the Customs terminal for so long – by now he had been there for nearly nine hours.

According to Ms. Kullar, in October 2007 one could not tell from the computer record whether a passenger who had been processed through the Primary Inspection Line was still in the secure area or had passed the Point. That could only be ascertained by a

visual inspection of the secure area or by reviewing all declaration cards that had been turned in that day, which could total 20,000.

D. HIS DISAPPEARANCE FOR MORE THAN FIVE HOURS

Border Services Officer Trevor Gross reviewed all the video footage between 4:00 p.m. on October 13 and 1:30 a.m. on October 14, 2007, recorded on the 16 closed-circuit cameras in the secure Customs Hall area and the public Meeting Area. He identified 17 video segments showing Mr. Dziekanski.

There are four segments, between 4:05 p.m. and 4:11 p.m., showing Mr. Dziekanski passing through the Primary Inspection Line, arriving near Secondary Immigration, walking back toward the Primary Inspection Line, and checking a baggage monitor screen near the Primary Inspection Line. The next segment begins at 9:25 p.m.

None of the video cameras recorded Mr. Dziekanski between 4:11 p.m. and 9:25 p.m., a period of five hours and 14 minutes. A United Airlines customer service agent, **John Jubber**, was stationed at a baggage kiosk near the carousels, and sometime between 4:30 p.m. and 6:30 p.m. he saw Mr. Dziekanski (who appeared disheveled) walk by. No other witness saw him or knows where he was — he may have been in a washroom or he may have been standing, sitting, or lying down somewhere. I conclude that he remained within the secure Customs Hall area during this five-and-a-quarter-hour period. In the words of Mr. Gross:

What I could tell from having reviewed all the cameras and all the video everywhere is that Mr. Dziekanski was not wandering around in the Customs Hall. He must have been stationary for us not to have caught him [on one camera or another].²¹

We do know that at about 4:30 or 4:45 p.m., **Julene Ann Widiner**, a Lufthansa German Airlines baggage agent assigned to the Customs Hall area, took Mr. Dziekanski's two bags off carousel 23 and placed them on the floor nearby. She determined from her computer that he had travelled from Poland through Frankfurt to

²¹ Transcript, January 20, 2009, p. 86.

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Vancouver. She went into the Secondary Immigration office and asked an officer if Mr. Dziekanski had been processed. At her request, the officer looked through the cubicles at the back, and determined that Mr. Dziekanski was not there.

Ms. Widiner then went to the extension desk between the carousels and the Primary Inspection Line and asked the officer if Mr. Dziekanski had been processed. That officer checked the computer and told her that Mr. Dziekanski had been processed through the Primary Inspection Line at about 4:10 p.m. She then (about 5:15 p.m.) picked up Mr. Dziekanski's bags and put them behind the Lufthansa counter with a note attached summarizing her enquiries. When she went off duty at 5:30 p.m. the bags were still there.²²

As I noted earlier, the Canada Border Services Agency had a small group of special enforcement officers ("rovers") who would circulate throughout the Customs Hall area, and often throughout the Airport generally, seeking out individuals who may be involved in unlawful importation/exportation of goods. The officer who was scheduled to work that evening as a rover had no recollection of seeing Mr. Dziekanski.²³

E. HIS MOTHER'S ATTEMPTS TO REACH HIM

Mr. Dziekanski's mother, Zofia Cisowski, lives in Kamloops, BC, 350 km northeast of Vancouver. Several months before Mr. Dziekanski's flight, she asked a neighbour in the same apartment building, **Richard Gerald Hutchinson**, to accompany her to Vancouver to meet her son at the Airport. She did not want to drive in the city, and she felt that she needed help to communicate in English at the Airport. To compensate him for missing a day's work, she agreed to pay him \$120 for accompanying her.

22 Ms. Widiner told me that the next day, after learning of Mr. Dziekanski's death, an Air Canada agent told her that at about 7:15 p.m. the preceding evening an agent in a blue uniform had picked up Mr. Dziekanski's bags and had taken them across the hall in the direction of Secondary Immigration. According to CBSA Officer Kal Bharya, he recovered Mr. Dziekanski's two bags from the Lufthansa counter at about 10:30 p.m.: Transcript, January 22, 2009, p. 67.

23 Transcript, May 5, 2009, pp. 45 and 52, and Exhibit 122.

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According to Mr. Hutchinson, they arrived at the Airport at about 1:20 p.m. on October 13, expecting the flight to arrive at 1:30 p.m. On their arrival at the International Arrivals area, they went over to an information counter in the Meeting Area and asked where would be the best place to wait for a passenger arriving from Poland.

According to **Christopher Arthur Richards**, a tourism/visitor information counsellor employed by Marquise and working at this counter, it had a prominent sign announcing that it was a "Tourist Information" or "Visitor Information" facility. His duty was to provide information to incoming passengers about hotel bookings, tourist attractions, and tours. He had no information about flights or other Airport matters. The information counter straddled the public Meeting Area and the International Reception Lounge. He told me that during an average day, between 100 and 200 people may approach him for information, and approximately half of them ask for information unrelated to tourism, such as flight arrivals or passengers. He tries to answer their questions, but if he cannot, he routinely refers people to the Marquise information desk at the top of the escalator or to the Canada Immigration office beyond the Meeting Area. Sometimes people get extremely agitated when he cannot give them the type of information they request, which is quite understandable given the location of the information counter.

Mr. Hutchinson and Mr. Richards both testified as to the events of that afternoon and the three or four times Ms. Cisowski and Mr. Hutchinson sought assistance from Mr. Richards. Although their accounts differ on minor points, the overall thrust of their evidence paints a consistent picture of confusion and growing frustration and distress.

Mr. Richards remembered Ms. Cisowski and a man coming to the counter between 12:30 p.m. and 1:30 p.m. She said she was waiting for her son, that it was taking awhile, and she wondered where he was. He told her that it normally takes quite some time to be processed, and to try to be patient. She could check the overhead flight board to determine when the flight had arrived, or she could go to the customer

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information desk at the top of the escalator. If she thought her son had any immigration issues, she could go to the Immigration office up the hall to the right.

According to Mr. Hutchinson, after waiting in the Meeting Area for an hour he went back to the information counter and asked for assistance. According to Mr. Richards, Ms. Cisowski came to the counter as well, and did the talking. They were told to check the monitor to find out what time the flight was arriving. According to Mr. Hutchinson he did so, and discovered that the flight had been delayed and would be arriving at 3:35 p.m. He went back and related this information to Ms. Cisowski, who was still standing by the glass doors. They continued to wait in this area.

According to Mr. Richards, at about 4:45 p.m. Ms. Cisowski and Mr. Hutchinson came back to the information counter. She was visibly distressed about her son's whereabouts. According to Mr. Hutchinson, they explained that they were waiting for a passenger from Poland who spoke no English and that they needed some help to find him. He was told that all they could do was stay there and wait, which they did for another hour.

According to Mr. Hutchinson, at about 6:30 p.m. he went back to the information counter and explained again their concern. He was told that there was nothing they could do, that there would be people to translate for the passenger and that if Ms. Cisowski was needed, she would be paged. At some point Mr. Richards told Ms. Cisowski that people sometimes wait six or seven hours for passengers to come out. They continued to wait, taking shifts so that one of them could go and get something to eat. Mr. Hutchinson had a photograph of Mr. Dziekanski, to assist in recognizing him.

Mr. Hutchinson told me that three or four times they told Airport personnel that Mr. Dziekanski had no experience flying and that he did not speak English, and that Ms. Cisowski had mistakenly told her son that she would meet him in the baggage carousel area (which she could not do, because it was within the secure Customs Hall area). Mr. Richards told me that people tell him surprisingly frequently that they had mistakenly arranged to meet the passenger in the baggage carousel area.

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Mr. Hutchinson was getting discouraged and frustrated. He told me that at about 7:00 p.m. he went up the escalator to the information booth on the International Departures level. The Marquise employee at the booth, **Janet Sullivan**, told me that her job was to provide information to people about flight arrivals and departures and other Airport information. She said that Ms. Cisowski and Mr. Hutchinson told her they were waiting for a man coming from Poland. She checked all the flights arriving from Europe, and determined that they had all arrived.

Ms. Sullivan paged Mr. Dziekanski twice, about five to ten minutes apart. She told me that her normal practice is to tell people that a page cannot be heard in the Customs Hall, but she could not remember if she told them that. She could see that Ms. Cisowski was getting upset. When she learned from Ms. Cisowski that Mr. Dziekanski was immigrating to Canada, she recommended that they go to the Immigration office downstairs, and they left. Ms. Sullivan knew that Immigration officers do not give out information about arriving passengers (because of the *Privacy Act*), but sometimes when dealing with an immigrant they will seek a family member's help in translating. She knew there was no point in contacting the airline baggage agents, because they would not release information about a passenger's name, and she had no ability to interact with security personnel in the Customs Hall. According to Mr. Hutchinson, Ms. Sullivan told him that they would need an RCMP search warrant to find out if Mr. Dziekanski was on the flight.

Ms. Cisowski and Mr. Hutchinson went back downstairs. According to Mr. Hutchinson, he entered the Canada Immigration office, where he was directed down the hall to a phone. He picked up the phone and explained to an Immigration officer that they were looking for a Polish passenger from Condor Flight 6070 who was immigrating to Canada and who did not speak English, and requested her assistance to find him. The officer, **Tina Zadravec**, looked on the board in the shift supervisor's office that listed all people in detention and did not see anyone from Poland. She put the phone down and went into the Secondary Immigration area and did not see anyone sitting down or standing in a queue. She went into the secure cubicle area where examinations are

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conducted. Only one male was being examined, and she determined that he was an Iranian refugee claimant. According to Ms. Zdravec, she told Mr. Hutchinson that she could not see anybody in the Secondary Immigration area who could be the traveller he was looking for. She suggested that he contact the airline, phone Poland to make sure that he had departed on the flight, or wait at home until the traveller contacted them. She did not tell Mr. Hutchinson that she had not searched the carousel area of the Customs Hall or that she had the ability to page a passenger in the Customs Hall area.

According to Mr. Hutchinson, Ms. Zdravec said that they had been there too long; there was no way that it would take that long for someone to get through Immigration. She said that translators were available to assist passengers who did not speak English, and she assured Mr. Hutchinson that the passenger was an adult and would be fine. When he offered to give her Mr. Dziekanski's name so that she could check to see whether he had arrived, she said that she did not want his name, because for confidentiality reasons they were not allowed to say who comes off a flight. She suggested that he phone Poland to find out whether the passenger had boarded the flight. She told him that in all certainty there was no landed immigrant from Poland there and that they might as well go home. Mr. Hutchinson described the Immigration officer as cooperative and very pleasant.

Ms. Zdravec was asked about her ability, that evening, to determine whether a passenger had entered the Customs Hall:

- Q So you certainly, if I've got it right, were well aware that evening, that had you wanted to determine whether a passenger had entered the Customs Hall, that was something you could easily accomplish?
- A Yes.²⁴

24 Transcript, January 22, 2009, p. 31. Mr. Binder Kooner subsequently testified on behalf of CBSA respecting its policies. He told me that an officer working in Secondary Immigration who received an enquiry about a passenger was expected to perform a visual inspection of the Secondary Immigration area and then report back. The officer was neither expected to track down an individual outside the Secondary Immigration area, nor expected to determine whether the passenger had crossed the Primary Inspection Line, including no expectation that the officer would access the database.

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Ms. Zadavec was asked what, if anything, she would have done differently. She replied:

I think about it a lot. But I can't — I wouldn't do anything differently. If I knew he was going to die, I would do everything differently. But in doing my job — I did my job.²⁵

After their exchange with Ms. Zadavec, Ms. Cisowski and Mr. Hutchinson went back upstairs to Ms. Sullivan's information booth. Ms. Cisowski told her that an Immigration officer had told them that Mr. Dziekanski was definitely not there and they should go home. They had a brief conversation about him possibly having missed his connection, in which case he would not arrive until the next afternoon, after which they left.

Mr. Hutchinson told me that the Airport personnel made him feel disregarded and not important. He was convinced that Mr. Dziekanski was not at the Airport, and sometime after 10:00 p.m. they left the Airport and drove back to Kamloops, intending to return the next day.

Soon after their arrival in Kamloops, Ms. Cisowski came to Mr. Hutchinson's apartment and asked him to listen to a phone message. He thought that the message was not in English, and in any event, her phone went dead, so he did not hear it and could not say what it was about. She told him that she was going back to Vancouver, and she left.

F. SECONDARY CUSTOMS

The closed-circuit video shows that at approximately 10:30 p.m., Mr. Dziekanski approached the Point, where Customs officials directed him to the Secondary Customs area. Officer **Kal Bharya**, seen following him in that direction, told me that he quickly determined that there was a language barrier. Mr. Dziekanski had a Canadian visa with his passport, indicating that he was immigrating to Canada, but he did not have his Confirmation of Permanent Residence document with him. From his inspection of

²⁵ Transcript, January 22, 2009, p. 39.

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Mr. Dziekanski's airline ticket, he realized that Mr. Dziekanski had two additional pieces of checked luggage but did not have them with him. In his view there were no Customs concerns so, at approximately 10:50 p.m., he escorted Mr. Dziekanski over to the Secondary Immigration office, showed him where to sit down, and then explained the situation to the acting Immigration superintendent, Alexandra Currie.

Mr. Dziekanski indicated that he would like a glass of water, which another officer obtained. Officer Bharya went over to the Lufthansa counter, found Mr. Dziekanski's two bags, took them to the Secondary Immigration office, and then returned to his Customs duties. He told me that Mr. Dziekanski appeared frustrated, but was otherwise cooperative and compliant, did not seem aggressive, and acted just like any other typical traveller. He did not consider it necessary to seek the assistance of an interpreter during his dealings with Mr. Dziekanski.

CBSA Officer Kelly McKenzie assisted Officer Bharya in his initial dealings with Mr. Dziekanski in the Secondary Customs area. Her account of these events, and of Mr. Dziekanski's actions and demeanour, is largely consistent with Officer Bharya's.

G. SECONDARY IMMIGRATION

Acting Immigration superintendent Alexandra Currie told me she knew, from what Officer Bharya had told her, that Mr. Dziekanski was entering Canada as an immigrant, did not speak English, was unsure where his Confirmation of Permanent Residence form was, and needed assistance. She knew that he had arrived mid-afternoon. In her experience it was unusual for an arriving passenger to take six or seven hours to get to the Secondary Immigration office. She greeted Mr. Dziekanski. She made a sleeping gesture with her head and hands, and Mr. Dziekanski nodded, which she interpreted as meaning that he had been sleeping. She instructed Officer Van Agteren to process him.

Officer Juliette Van Agteren tried, unsuccessfully, to communicate with him in several languages. Knowing that he was immigrating, but not in possession of the

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Confirmation of Permanent Residence form, she went around the counter to where Mr. Dziekanski's suitcases were, and asked him to open them. She saw a FedEx envelope, which contained the form she needed. She went back to her station, happy that they could proceed with his landing. She was aware that he had been there for an excessively long time, and wanted to expedite his processing. Officer **Sonya Purewal** assisted her.²⁶ Officer Van Agteren paged Mr. Dziekanski's mother in the Meeting Area, then repeated the page when Mr. Dziekanski corrected her pronunciation of his mother's first name.²⁷ They found a phone number for his mother in Kamloops; at about 11:30 p.m. she called and left a voice mail, asking her to call their office. They did not receive a response to the page or the voice mail, and after waiting awhile, she went out into the public Meeting Area to try to locate his relatives, but was unsuccessful. She returned to Secondary Immigration and, with the help of Officer Chapin, who knew some Polish words,²⁸ attempted to confirm that there had been no change to Mr. Dziekanski's marital status, dependents, or criminal convictions since he had applied for immigration. Mr. Dziekanski signed the form, and she gave him a copy, stamped his passport, and congratulated him on becoming a landed immigrant. She told me that during their interaction, she refilled Mr. Dziekanski's water cup four or five times. He was visibly fatigued and a little distracted; he was perspiring and his hair was disheveled with a day's beard growth, but he was otherwise calm. At no time was he uncooperative. In hindsight, one of her observations is poignant:

This is a very uncomplicated procedure. It's usually a very happy occasion when an immigrant finally arrives in Canada. It usually takes a long time overseas to undergo all the examinations and the scrutiny. To receive one of these is quite a happy occasion. So it's one of the nicer aspects of an Immigration officer's job is [*s/c*] to welcome new immigrants to Canada.²⁹

26 Officer Purewal's testimony was consistent, in all important respects, with Ms. Van Agteren's.

27 By this time, Mr. Dziekanski's mother and Mr. Hutchinson had left the Airport and were driving back to Kamloops.

28 Ms. Van Agteren told me that she checked the CBSA database for Polish interpreters. Four were listed, but the three local ones were shown as no longer accessible, and the fourth, from back East, did not want to be contacted for interviews of less than two hours.

29 Transcript, January 26, 2009, p. 70.

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Ms. Zadavec, who had taken the phone call from Ms. Cisowski and Mr. Hutchinson several hours earlier, told me that she saw Mr. Dziekanski several hours later, seated in a chair in front of the Secondary Immigration counters, in conversation with Officer Van Agteren. Mr. Dziekanski looked tired and slightly disheveled. She told me, "I thought that the way he was physically moving, his mannerisms, were the way that I normally associate with a person who had been drinking. Otherwise he was calm, quiet. He seemed relaxed."³⁰ He was not sweating, and she did not detect any odours.

She realized that he fit the description of the man who Mr. Hutchinson had been asking about earlier, and she confirmed with Officer Van Agteren that this was the Polish immigrant. She told her about the earlier phone call, that Mr. Dziekanski's mother was at the Airport and that she (Ms. Zadavec) thought perhaps they might have decided to return to Kamloops. She made no attempt to contact Ms. Cisowski or Mr. Hutchinson, and did not discuss with any other officer whether that should be done.

Ms. Zadavec acknowledged that in her December 1, 2007 statement to the RCMP, she stated:

But um ... the way he looked, the way he seemed to be behaving ... ah he looked like a man that I would of described as ... being drunk. And he looked to me like a guy who um ... the story I would have built around the way he was, he looked – amount of time for him to get to us ... the way he was physically behaving it seemed to me ah, my own explanation of it was that he looked like a guy who drank a heck of a lot on the airplane, maybe came off drunk, fell asleep, woke up and was still slightly drunk and um sort of having the physical ... um clumsiness that ... I normally associated with somebody who's been drinking too much.³¹

She was asked whether she has, since this event, received training on how to handle a request for information about an incoming passenger. She told me that she has received no training that would cause her to make enquiries whether a passenger had

³⁰ Transcript, January 22, 2009, p. 33.

³¹ Transcript, January 22, 2009, p. 48.

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passed through the Primary Inspection Line. However, she has received training that in such circumstances she should refer a caller to the RCMP, and if the RCMP decides to come into the Customs Hall to investigate, they can do so.

Gracie Churchill-Browne, an interpreter, was on duty from 10:30 p.m. that evening until 1:30 a.m. the next morning. At about 11:00 p.m., while sitting in Secondary Immigration, she observed Mr. Dziekanski sitting across from her, about three metres away. She witnessed an exchange between Mr. Dziekanski and several Border Services officers. They were trying to make themselves understood, and it was clear that Mr. Dziekanski did not speak the language. Ms. Churchill-Browne suggested that they call an interpreter and mentioned that she knew a Polish interpreter. Mr. Dziekanski looked tired and his eyes were red. He would pace around the room and at times appeared to be speaking to himself. The officers were trying to be helpful, and twice got water for him to drink. At some point a female Border Services officer came in, saw Mr. Dziekanski, and said to the other officers, "What? Is that man still here? His family have been waiting for him all day and they've just left for Kamloops." Later, after Mr. Dziekanski had left Secondary Immigration, Ms. Churchill-Browne remarked to a female officer that she hoped Mr. Dziekanski would stay at the Airport until daylight because he looked confused and very tired, and obviously did not know his way around. The officer responded, "Oh, he's a big boy."

Officer Currie, who had talked to Mr. Dziekanski briefly when Officer Bharya had brought him into Secondary Immigration, told me that she subsequently observed Mr. Dziekanski several times as she went about her business. There was nothing unusual about him. He was calm, appeared cooperative, and was attempting to respond. He had a little sweat on his forehead, as do many other travellers. There was no sign of aggression, animosity, or impairment. She overheard Officers Zadavec and Van Agteren talking about a phone call received earlier that evening from the public area, attempting to locate their son who was coming as a landed immigrant from Poland. She was asked what she did, once she realized that the call had been in

relation to

Mr. Dziekanski:

Again, it was the officer who was handling the situation with Mr. Dziekanski. It was Officer Van Agteren. I was aware that she made attempts to find the family, not only by paging them, but going outside to look for them, and then phoning them with the telephone number that Mr. Dziekanski had provided.³²

The closed-circuit video shows that Mr. Dziekanski cleared Secondary Immigration at approximately 12:40 a.m., one hour and 50 minutes after Mr. Bharya escorted him into Secondary Immigration. Officer Currie agreed that this was an unusually long time for someone to be in Secondary Immigration (she could process a simple case in 10 minutes), which she explained as being the result of attempts to help Mr. Dziekanski locate his family. She told me that it is not standard practice to involve an interpreter in the case of immigrants, since most of the processing, including the interview, medical examination, and criminal record check, is done overseas. It was not necessary in Mr. Dziekanski's case, because he was a lowest-risk traveller. In her opinion, the Immigration officers who dealt with Mr. Dziekanski that night exhibited courtesy and respect, and went above and beyond what is expected of them.

H. FINAL CLEARANCE TO ENTER CANADA

Border Services Officer **Adam Chapin** confirmed that, using hand gestures and his rudimentary knowledge of Polish, he assisted Officer Van Agteren in asking Mr. Dziekanski three questions about being married, having children, or having been arrested. After Mr. Dziekanski answered "no" to all three and signed the form, Officer Chapin went back to his other duties. Approximately half an hour later, he saw Mr. Dziekanski still sitting in the Secondary Immigration office. He confirmed with Officer Agteren that Mr. Dziekanski had been processed and was cleared to go. He conveyed this to Mr. Dziekanski and told him to follow him. He led him to Secondary Customs, where it was confirmed that he had cleared Customs. At about 12:40 a.m.

³² Transcript, January 26, 2009, p. 35.

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Officer Chapin took Mr. Dziekanski to the Point, turned over his declaration form to the officer there, and told Mr. Dziekanski he was free to go. Officer Chapin said, in Polish, "Thank you, and have a good night," and Mr. Dziekanski said the same in return. Officer Chapin said that in his dealings with Mr. Dziekanski, he appeared slightly disheveled and was sweating a bit, but not profusely; his shirt was untucked; he stumbled once; he was calm, cooperative, and seemed happy. Officer Chapin thought he was perhaps a little "tipsy" or mildly intoxicated from alcohol. He adopted several statements in his written statement to the effect that Mr. Dziekanski appeared very intoxicated, had slurred speech, and was unsteady, walking with some stumbling.

Officer Chapin received a phone call from Mr. Dziekanski's mother at approximately 2:00 a.m.; she was returning the phone call that Officer Van Agteren had left.

Mr. Chapin confirmed that her son was at the Airport and had cleared Immigration. He offered to go out into the public area and, if he found him, bring him back into the Immigration area and have him call her. She left her phone number. Officer Chapin did not see him in the Meeting Area or outside the terminal building. When he asked an RCMP officer there if he had seen an intoxicated Polish gentleman, the RCMP officer brought him into the International Reception Lounge. He saw Mr. Dziekanski lying on the floor; paramedics were trying to resuscitate him. Within 30 seconds, they pronounced Mr. Dziekanski dead. He helped the RCMP locate Mr. Dziekanski's documents and gave one of the officers the message from Mr. Dziekanski's mother and her phone number. He did not phone her himself, thinking it would be better left to the RCMP to tell her that her son had passed away.

I. FINDINGS OF FACT AND CONCLUSIONS

Before making any findings of fact or reaching any conclusions, I gave careful consideration to the written and oral closing submissions of counsel for the participants. Having done so, I have reached several conclusions.

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First, there is no question that by the time Mr. Dziekanski reached Vancouver, he was fatigued, confused, and stressed. He was disheveled and sweating profusely around the face. I do not find any of this remarkable, given his fear of flying, the long trip, and his inability to speak English. Not finding his mother waiting for him at the baggage carousels (where she had said she would meet him) must have compounded his stress and confusion. Although several witnesses likened some of his behaviours to a person who was intoxicated, the evidence confirmed that he was not intoxicated.

Second, although some of Mr. Dziekanski's behaviours were unusual, those who dealt with him told me, almost without exception, that they did not feel threatened by him. Some of these witnesses had years of experience dealing with people who did not speak English, and they managed to communicate with Mr. Dziekanski. Some did not think that his behaviours or appearance were dissimilar to other weary travellers.

Third, Mr. Dziekanski was aware of time and place, and he appeared to understand what people were telling him or asking of him. He was compliant with Canada Border Services officers' requests for information and documents.

Fourth, one senses that Mr. Dziekanski's mother grew increasingly worried as time went on. She, with her travelling companion Mr. Hutchinson, did everything in their power to find out whether he had arrived, where he was, and when they could meet him. It must have been distressing to her to be powerless to do anything to help her son, who spoke no English, was afraid of flying, had no experience in international travel, and was obviously dependent on her.

Fifth, even now no one knows where Mr. Dziekanski was for five-and-a-quarter hours. He must have been somewhere within the secure Customs Hall area, and he must have been stationary in order not to have been captured on the closed-circuit cameras. How could an arriving passenger go missing in this type of secure facility for such a long time? Two matters concern me:

- One would think that the Canada Border Services Agency would want, for its own security purposes, to maintain tighter control than this on the movements of arriving international travellers. I heard evidence

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about a "disembarkation screening team" that would meet some arriving aircraft, check washrooms, and circulate throughout the Customs Hall to ensure that everyone had appropriate travel documents, which suggests to me a corporate desire to intercept stragglers who might try to enter Canada illegally. The Border Services officer acting as a "rover" that evening had no recollection of seeing Mr. Dziekanski, which suggests that the program was not effective in identifying stragglers.

- From a customer service perspective, it disturbs me that an arriving passenger could go unnoticed for more than five hours in a secure area (as opposed to a passenger lounge). The passenger could experience a medical emergency, or may simply need assistance. The fact that Mr. Dziekanski went unnoticed for more than five hours points to inadequate services to ensure that passengers move through the customs and immigration processes in an orderly and prompt manner.

Sixth, the Canada Border Services officers, customer service agents, and other people who interacted with Mr. Dziekanski could tell that he was struggling. They treated him respectfully, and several of them made a special effort to assist him. I particularly commend Canada Border Services Officers Bharya, Van Agteren, and Chapin for doing what one hopes any of us would do – show genuine compassion to another human being in need.

Seventh, I regret that I cannot be as complimentary about some of the actions of one Canada Border Services officer, Tina Zdravec. She took the call on the Immigration phone from Mr. Hutchinson and Ms. Cisowski and, after a survey of the Secondary Immigration area, told them that she could not see the person they were looking for. She suggested that they contact the airline, phone Poland to make sure he had departed on the flight, or wait at home until the traveller contacted them. I accept Mr. Hutchinson's testimony that Ms. Zdravec told him that in all certainty there was no landed immigrant from Poland there and that they might as well go home. I also accept Mr. Hutchinson's testimony that Ms. Zdravec declined his offer to give her Mr. Dziekanski's name so that she could check to see whether he had arrived, because for confidentiality reasons they were not allowed to say who comes off a flight. Ms. Zdravec herself told me that she had the ability to page an arriving passenger in the Customs Hall area and that she had the ability to determine whether a passenger

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had been on an arriving flight. I am satisfied that it was in part because of Ms. Zadavec's assurances that the traveller was not there and that they might as well go home, that Ms. Cisowski and Mr. Hutchinson left the Airport some time after 10:00 p.m. and returned to Kamloops.

I accept, based on the testimony of Mr. Kooner, that CBSA did not have an expectation that a Border Services officer working in Secondary Immigration would search the entire Customs Hall area for a passenger or would search the database to determine whether the passenger had crossed the Primary Inspection Line. Consequently, I do not fault Ms. Zadavec for taking neither of these steps. However, it was ill-considered and cavalier for her, not having taken those steps, to advise Mr. Hutchinson that in all certainty Mr. Dziekanski was not there and that they might as well go home.

If Ms. Zadavec had accepted Mr. Hutchinson's offer to give her Mr. Dziekanski's name and if she had taken steps to request a computer search, she would have learned that Mr. Dziekanski had indeed arrived. While I do not question her belief that she was under a duty not to disclose the fact of his arrival, she most certainly would not have told them he was not there and to go home. If they had not left the Airport, there is a good chance that they would have been there when Canada Border Services Officer Van Agteren went out to the public Meeting Area sometime after 11:30 p.m. to try to locate Mr Dziekanski's relatives.

Eighth, there is a haunting quality to one of the statements of Canada Border Services Officer Van Agteren, that it was one of the nicer aspects of her job to congratulate Mr. Dziekanski on becoming a landed immigrant and to welcome him to Canada. How awful that such a happy occasion would, within an hour, turn so tragic. It is difficult to fathom the sorrow that Ms. Cisowski must have felt. Their hopes and dreams for reunification and a life together in Canada had almost been realized, but now he was dead.

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