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CONSOLIDATED HEARINGS BOARD

IN THE MATTER OF Sections 2 and 3 and 6 (3) of the Consolidated Hearings Act, 1981, S.O. 1981, c.20;

— and —  
IN THE MATTER OF Section 12(2) of the Environmental Assessment Act, R.S.O. 1980, c.140;

— and —  
IN THE MATTER OF Sections 30, 35 and 38 of the Environmental Protection Act, R.S.O. 1980, c.141, as amended;

— and —  
IN THE MATTER OF Sections 24 and 61 (2) of the Ontario Water Resources Act, R.S.O. 1980, c.361, as amended;

— and —  
IN THE MATTER OF Section 28 (3) of, and Regulation 164 under, the Conservation Authorities Act, R.S.O. 1980, c.85, as amended;

— and —  
IN THE MATTER OF Section 40(12) of the Planning Act, S.O. 1983, c.1, as amended; in connection with site plan control of the sanitary landfill site;

— and —  
IN THE MATTER OF Section 22(1) of the Planning Act, 1983 in connection with a referral to this Board by the Honourable Bernard Grandmaitre, Minister of Municipal Affairs, on a request by the Regional Municipality of Halton to amend the Official Plan for the Town of Milton to redesignate a parcel of land comprising Part Lots 3 and 4, Concession 2 N.S. in the Town of Milton from "Agriculture" and "Conservation and Hazard Lands" to permit the construction, operation and maintenance of a landfill site, Minister's File No. 24-OP-0208-A01;

— and —  
IN THE MATTER OF Section 34(11) of the Planning Act, 1983 in connection with an appeal to this Board by the Regional Municipality of Halton for an order directing an amendment to By-law 61-85 of the Town of Milton to rezone the lands situated at Lot 3 and part of Lot 4, Concession 2 N.S., in the Town of Milton from "Agriculture" to permit a regional sanitary landfill site and ancillary uses;

— and —  
IN THE MATTER OF Section 15(1) of the Planning Act, R.S.O. 1980 ch.379 in connection with a referral by the Honourable Claude F. Bennett, Minister of Housing on a request by Tremaine Britannia Citizen's Group for consideration of part of the Official Plan for the Halton Planning Area with respect to Sections 1 to 5 inclusive, 7, 9 and 10 of Part III D3 Solid Waste Management, Minister's File No. OPC-0026;

— and —  
IN THE MATTER OF Section 64 of the Ontario Municipal Board Act, R.S.O. 1980, c.347 as amended in connection with an application by the Regional Municipality of Halton for an order approving:

a) the acquisition of land for the construction, operation and maintenance of a sanitary landfill site to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton and to do so by one of two alternative methods as follows:

- (i) landfilling at the site referred to in Halton's Environmental Assessment as Site F in the City of Burlington;
- (ii) landfilling at the site commonly referred to in Halton's Environmental Assessment as Site D in the Town of Milton

at an estimated cost of \$12,775,000.00, and the borrowing of money by way of temporary advances not exceeding in the aggregate such estimated cost pending the sale of debentures, and

(b) the issuance of necessary debentures to a maximum of \$12,775,000.00 for a term not to exceed fifteen years;

— and —  
IN THE MATTER OF Section 193(5) and Paragraph 84 of Section 210 of the Municipal Act, R.S.O. 1980, c.302, as amended;

— and —  
IN THE MATTER OF Sections 6, 7 and 8 of the Expropriations Act, R.S.O. 1980, c.148;

— and —  
IN THE MATTER OF an undertaking of the Regional Municipality of Halton to provide facilities for the purpose of receiving, dumping and disposing of waste as required by section 137 of the REGIONAL MUNICIPALITY OF HALTON ACT, R.S.O. 1980, c.436, as amended, by acquiring the land for, constructing, operating and maintaining a landfill to contain 7.96 million cubic metres of waste in the Regional Municipality of Halton.

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I N D E X

WITNESS:

McDONALD, William Paul, resumed:

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| Cross-examination by Mr. Lederer   | 18159 |

E X H I B I T S

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| M-431      | Chart from COAAMP Study                                                                                                                       | 18133       |
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17 - and -  
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19 S.O. 1983, c.1, as amended; in connection with site  
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BEFORE: H. H. Lancaster, Q.C. - Chairman

Dr. D.J. Kingham - Member



Nethercut & Co. Ltd.

Toronto, Ontario

Hearing conducted at The Oakville  
Granary Commercial Centre, 105 Robinson  
Street, Oakville, Ontario, on Wednesday,  
January, 20, 1988

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VOLUME 77  
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APPEARANCES:

|                                                                     |                                                                                             |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| T.R. Lederer and<br>H.D. Hodgson                                    | for the Regional<br>Municipality of Halton<br>(Proponent)                                   |
| J.R. Tidball                                                        | for the Ministry of the<br>Environment                                                      |
| T. Vigod<br>J.F. Castrilli                                          | for the West Burlington<br>Citizens Group                                                   |
| D. Estrin,<br>F.E. Leitch and<br>H. Dahme                           | for the Corporation of the<br>Town of Milton                                                |
| S.R. Garrod and<br>A. Nurvo                                         | for the Milton Area Citizens<br>Coalition and several<br>affected Milton area<br>landowners |
| R.B. Tuer, Q.C.<br>E.A. Cronk,<br>F. Perrier and<br>L. J. Griffiths | for National Sewer Pipe<br>Limited                                                          |
| L.F. Longo                                                          | for Azova Investments<br>Limited                                                            |
| M.J. McQuaid, Q.C.<br>and C.J. Tzekas                               | for the City of Burlington                                                                  |
| C. Mansfield                                                        | for the Ministry of Natural<br>Resources                                                    |
| P. Renaud                                                           | for Cumis Limited                                                                           |



*Nethercut & Co. Ltd.*

*Toronto, Ontario*

APPEARANCES (Cont'd):

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2  
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25

C. Stevenson  
P. Hancock

for Framgard Holdings,  
Fosseri Investments  
Limited, Seriphos  
Investments Limited and  
Topic Investments

J.H. Olah

for the Halton Region  
Conservation Authority

\* \* \* \* \*

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Per: C.F. Nethercut, CVR



Oakville, Ontario  
January 20, 1988

1 --- Upon Commencing at 9:00

2 MR. LANCASTER: Please be seated.

3 WILLIAM PAUL McDONALD, resumed:

4 EXAMINATION-IN-CHIEF BY MR. ESTRIN (Cont'd):

5 Q. Mr. McDonald, you made some phone  
6 calls to your office in Ottawa in an attempt to get  
7 some of the statistics Dr. Kingham was asking you  
8 about?

9 A. I have and they should be  
10 available by 10:30 when we take a break and I will get  
11 them at that time.

12 MR. LANCASTER: Are these the 1986  
13 figures?

14 THE WITNESS: Yes.

15 MR. ESTRIN: Before I forget, here is  
16 the film, a copy of the video, and I am not sure what  
17 exhibit number it was given.

18 MR. LANCASTER: 427, I believe, M-427.

19 MR. ESTRIN: Q. On that film yesterday  
20 there was mention that gulls contribute 60 per cent of  
21 bird strikes. Could you comment on the percentage of  
22 involvement of strikes involving gulls?

23 A. Okay. This is one thing that has  
24 come up in discussion and we have heard the numbers on

25



1 the film, it was 60 per cent and in the States it's  
2 supposedly 50 per cent of the strikes are gulls, and  
3 Vic Solman was quoted as saying 40 per cent of strikes  
4 were gulls, but in fact in our 1986 analysis of our  
5 data, the actual amount of bird strikes caused by gulls  
6 is 20 per cent of the total reported strikes, and that  
7 does not include any possibility of gulls being in the  
8 category of unidentified bird strikes.

9 So, when you look at the number of gull  
10 strikes that have happened over the years, and if you  
11 go back to the period of 1970 to 1975, when the actual  
12 number of bird strikes being reported per year was 250  
13 to 300 bird strikes a year, and if in fact 50 per cent  
14 of those birds that were identified were gulls, then  
15 the maximum number of gull strikes you would have had  
16 in a year would have been 125 or 150 gull strikes.  
17 That is assuming that the statement that 50 per cent  
18 of strikes are gulls when in fact it was 50 per cent of  
19 identified strikes, and if the identified proportion of  
20 strikes was actually 30 or 40 per cent, then the number  
21 would be much lower, but the actual number at 50 per  
22 cent, the most it could have been was 125 or 150 gull  
23 strikes.

24 But, in 1986 we had 868 bird strikes  
25 reported in Canada and we know that 20 per cent of them



1 were gulls. If 20 per cent of the 868 strikes have  
2 been positively identified, the number of gull strikes  
3 reported would be 172. The actual number of gull  
4 strikes is increasing in our annual reports and really  
5 the significance of the problem has not gone down, even  
6 though the percentage of gull strikes has gone down as  
7 a percentage of total bird strikes that can actually be  
8 documented with the actual bird strike reports.

9 Q. Yesterday you mentioned for  
10 example at Sudbury, or I think you mentioned yesterday  
11 there have been nine strikes in a certain time period,  
12 and all of those were gulls?

13 A. Yes. Information presented I  
14 think by John Richardson when he was discussing one of  
15 the exhibits that had been entered, I believe it was H-  
16 402, the 1984 summary report, and he referred to the  
17 computer print-outs in the back of that report as --  
18 and looked at the number of gull strikes and the number  
19 of birds by size and various other things, but the  
20 important thing there is that at some airports such as  
21 Sudbury and Sault Ste. Marie, and other airports where  
22 we know there are known problems that attract gulls to  
23 the airport, very high percentages, in some cases one  
24 hundred per cent of the strikes are gulls. So, if you  
25 have a known attraction that is causing a problem with



1 gulls or any other species of bird that can be  
2 identified at the airport, then you cannot use national  
3 figures to discuss or analyze the problem at that site.  
4 You have to use specific information obtained through  
5 reporting to determine what the problem is at that site  
6 and what we should do about it. So, in the case of  
7 Sudbury, we know it's gulls and we have to try to do  
8 something about gulls at Sudbury. At Halifax it's  
9 snow bunting and we are trying to do something about  
10 snow bunting. If you have a landfill site near an  
11 airport and it is attracting large numbers of gulls and  
12 you are getting a large number of gull strikes at a  
13 site, such as we had at Trenton and North Bay and we  
14 have had in the past at Vancouver due to various  
15 reasons, but the case of Vancouver was well documented,  
16 that there was a landfill site and a sewage treatment  
17 plant that were causing direct flyways across the  
18 airport several times a day, we were able to eliminate  
19 the garbage dump in that case and prevent one of these  
20 flyways that reduce the number of gull strikes at the  
21 site.

22 So, by analyzing your bird strike data  
23 and the types of birds you are hitting, you can  
24 identify specific problems and determine what the  
25 corrective action would be.



1                                   Q.     Mr. McDonald, I would like to  
2 refer back to your witness statement, paragraph 11, and  
3 particularly the top of page 7 and in that paragraph I  
4 wanted to direct your attention to the top of page 7 of  
5 the witness statement which begins:

6                                   ".... it remains imperative that proper  
7 land use planning around airports be  
8 carried out through provincial and  
9 municipal procedures."

10                                  I wanted to ask you about efforts made  
11 by your department to get your land use guidelines  
12 incorporated into Ontario Government practices,  
13 particularly in relation to landfill sites. I believe  
14 you had some correspondence with the Ministry of the  
15 Environment in that regard?

16                                  A.     Okay. We wrote to Mr. Ron Gotts,  
17 Director of the Waste Management Branch of the Ontario  
18 Ministry of the Environment, informing him of our  
19 concerns and our guidelines for the location of  
20 sanitary landfill sites within eight kilometres of an  
21 airport and we asked him if it would be possible for us  
22 to provide advice and assistance on developing. I  
23 became aware that the province was revising their  
24 guidelines for the site selection process for landfill  
25 sites, and so I wrote him and asked him if we could



1 provide advice on development of these guidelines with  
2 respect to the location of landfill sites near  
3 airports.

4 Mr. Gotts wrote back saying that they  
5 were aware of the guidelines and they would take them  
6 into consideration in the development of their new  
7 procedures.

8 MR. ESTRIN: I wonder if we could make  
9 this correspondence as the next exhibit?

10 MR. LANCASTER: M-430.

11 MR. ESTRIN: This is two letters; one  
12 from Mr. McDonald dated June 10, 1987 and one to Mr.  
13 McDonald from the Ministry of the Environment dated  
14 September 22nd, 1987.

15 --- EXHIBIT NO. M-430: Letter from Mr. McDonald  
16 to the Ministry of the  
17 Environment dated June  
18 10, 1987 and the reply  
19 from the Ministry dated  
20 September 22, 1987.

21 MR. ESTRIN: Q. I wanted to refer you  
22 to the response from the Ministry on the first page,  
23 the last paragraph:

24 "Although the Ministry regulates the  
25 operation of sites, the location of  
waste disposal sites is site specific  
and must be dealt with on a case-by-case  
basis. This issue is being addressed



1 through the site selection process under  
2 the Environmental Assessment Act and by  
3 siting guidelines that are presently  
4 being developed."

5 First of all, was your department  
6 contacted by the Ministry of the Environment, any  
7 aspect of it, with regard to commenting on the Halton  
8 environmental assessment?

9 A. No, we have not been contacted by  
10 the Ministry.

11 Q. Insofar as it is stated in this  
12 letter that the location of waste disposal site is site  
13 specific and must be dealt with on a case-by-case  
14 basis, what do you have to say about that in  
15 relationship to your presence here?

16 A. Well, we hadn't been asked or  
17 given an opportunity or asked to comment on the  
18 selection of the location of this landfill site and  
19 when we became aware of the fact that there were two  
20 sites available being considered, and that one of them  
21 was near the airport, we felt we should present our  
22 evidence on why, when two locations are available, if  
23 at all possible the site closest to the airport should  
24 not be selected. So, for that reason, and also because  
25 this is the first hearing under the Environmental



1 Assessment Act reviewing the location of a landfill  
2 site near an airport, we felt it was important for us  
3 to ensure that the Environmental Assessment Branch was  
4 aware of our criteria for landfill location site  
5 selection and the hazards that are created by bird  
6 hazards on airports and in the vicinity of airports.

7 Q. Now, you mentioned yesterday that  
8 the land use guidelines, or your department's land use  
9 guidelines have been around, you said you thought since  
10 at least the late sixties and certainly throughout the  
11 1970s, but the documents we referred to yesterday, such  
12 as Exhibit M-426, "A Bird Strike Hazard" and there were  
13 two or three of these publications in 1987, but I  
14 wanted to ask you if there has been any increase in  
15 efforts or priority by your department with regard to  
16 this issue in the last few years?

17 A. Yes, there has and we put a lot of  
18 emphasis on the development of national programs to  
19 inform people across the country of our program and  
20 certain specific aspects of it.

21 I said yesterday that this increased  
22 awareness of the national program can help us both  
23 within the aviation community and airport community as  
24 well as outside of that community. In this case, one  
25 of our priorities was to inform officials across the



1 country of the hazards of landfill sites near airports.  
2 This is a thrust that we will be continuing, that we  
3 started in late 1986 and had three publications plus a  
4 museum display in 1987, and by the continued  
5 publication of the bulletin in 1988, and also the  
6 information that is indicated in that pamphlet on the  
7 landfill site, there are five documents that are  
8 available and some of those documents are being  
9 finalized now and again will be available for  
10 distribution across the country.

11 So, this is part of a large national  
12 effort we have been working on quite intensively for  
13 the last couple of years.

14 Q. I wanted to turn to paragraph 12  
15 of your witness statement where it is indicated you  
16 would discuss Transport Canada's experience with  
17 measures to discourage and control birds. Before I ask  
18 you about some specific examples, it goes on that you  
19 will indicate that the most sensible and cost-  
20 effective measure is to prevent a land use known to  
21 attract birds from being located in the vicinity of an  
22 airport, or, failing that, to remove it. I would like  
23 you to discuss that range of measures but, in  
24 particular, bird control efforts in your experience and  
25 how they have or have not been problematic and what



1 leads you to some of these conclusions in paragraph 12?

2 A. Our most cost-effective method of  
3 bird control on airports is environmental modification  
4 to reduce the attractiveness to birds. Yesterday when  
5 I was talking about our visits to the airports, I said  
6 that our visit always includes a technical evaluation  
7 of the site to see if there are environmental  
8 conditions there that do attract birds and then we make  
9 recommendations on which of these attractions should be  
10 removed or reduced to prevent the attractiveness.  
11 If you prevent the attractiveness, then you reduce the  
12 number of birds you have to scare, and by reducing the  
13 birds you also reduce the hazard. So, it's not always  
14 practical and it's not always cost-effective once you  
15 get to a certain point to continue modifications on the  
16 airport, so then you have to get into actual manpower  
17 intensive scaring activities and we heard about these.  
18 There is the use of shotguns and shell crackers,  
19 distress cry tapes, gas cannons, flares. There is  
20 ticker-tape you can use, there is Rid-a-Bird-Perch,  
21 various chemical compounds, and there are various sound  
22 devices people claim work but we have never had any  
23 success with. One thing about bird control is the  
24 people using the control devices, they have to know  
25 something about the birds they are scaring and they



1 must be motivated enough that if something doesn't  
2 work, they will go on and try something else. Distress  
3 cry tapes is a good example. They can be very  
4 effective, but you have to use the proper tape and use  
5 it in a proper manner and if it doesn't work the first  
6 time, you have to reinforce it with perhaps a shell  
7 cracker or perhaps a shotgun. If you send somebody  
8 from field maintenance out to scare birds, he is more  
9 apt to go out with a shotgun and take a couple of shots  
10 at them and hope they move on and chase them away and  
11 go back to the garage or go back to cutting grass. So,  
12 you have to have people who understand the complexity  
13 of the problem and are willing to spend the time and  
14 effort to ensure that control programs, that their  
15 activities, their specific activities are effective.  
16 We have contracts at Toronto, North Bay and Vancouver  
17 where we have hired people specifically to control  
18 birds and they are not maintenance staff and their  
19 responsibility is solely bird control, so they cannot  
20 be called off to do fire practice or cut grass or any  
21 other maintenance activity. The contracts over the  
22 years have been very troublesome. They have caused our  
23 department, I would say, much grief.

24 One of the problems has been the  
25 involvement of falconers in our program. Over the



1 years I would feel safe to say that they are a shady  
2 bunch and most of them have been in trouble at one time  
3 or another with the law and the large investigation  
4 that has been reported quite extensively in the paper  
5 in the last couple of months is an indication of that.  
6 So, we have had trouble getting high quality wildlife  
7 control people to work under our contracts.

8 At Toronto and North Bay I have been  
9 involved in contract review and performance of  
10 contractors where it has been reported that even though  
11 these people are being paid to be on the airport during  
12 all hours of daylight, there are days when we have not  
13 been able to find them. It is hard to get good  
14 wildlife controllers, and the quality control  
15 requirements on those contracts is quite stringent if  
16 you want a high level of performance.

17 I guess they are very effective when  
18 they do perform well but, again, even a very effective  
19 wildlife control program will not reduce the number of  
20 bird strikes to zero and especially at a busy airport.  
21 Right now we feel confident that the control program at  
22 Toronto is very effective, but if you look at the  
23 statistics, we are still getting bird strikes at  
24 Toronto and I believe they are in the neighbourhood of  
25 fifty or fifty-five strikes a year. When you consider



1 they have 300,000 movements, I feel that Transport  
2 Canada has accepted their responsibility in reducing  
3 that number of bird strikes to that level and when you  
4 go to Toronto airport at any one time, the bird  
5 movement on the airport is very low compared to what it  
6 used to be. At one time we used to get flocks or  
7 various flocks of gulls on the airport, and there would  
8 be one thousand gulls on the airport and now it would  
9 be very rare to go out there with the control program  
10 and see flocks of hunters, but if the weather turned  
11 and it happened in one or two days in 1987 where I  
12 believe around one thousand gulls came to the airport  
13 and they were very hard to disperse. The thing is you  
14 still can't reduce the number of strikes to zero.  
15 So, it shows you that you can hire specialized people  
16 and use all the techniques that are known to them and  
17 available to them, but you still will have some bird  
18 strikes.

19 Q. You mentioned three airports and I  
20 think you said North Bay, Vancouver and Toronto, which  
21 are under contract to Transport Canada?

22 A. Yes.

23 Q. And other airports -- and you tell  
24 us, is there a certain budget allocated that airport  
25 managers have to work within in terms of control



1 measures?

2 A. Yes. It's very hard to convince  
3 airport managers that they should spend or dedicate  
4 money to contracting out wildlife control. So, most of  
5 them do it within their own personyear allocations and  
6 so the control programs are paid for out of the airport  
7 budget.

8 At all of the other airports besides  
9 those three, the majority of bird control and wildlife  
10 control, if you include mammals, is undertaken by  
11 airport staff and the exception to that may be some  
12 small contract at some airports for specific control of  
13 pigeons or groundhogs or ground squirrels or one  
14 species of either bird or mammal.

15 Q. So, what has been your experience  
16 of dealing with airport managers that have to work  
17 within budgets in that regard?

18 A. We find it very difficult to  
19 convince the airport manager that the people he has on  
20 staff that are hired for other jobs and their job  
21 description is specific to another duty on the airport,  
22 it is very difficult to get those people allocated to  
23 perform adequate wildlife control or bird control  
24 measures when the level of activity or the level of  
25 bird activity on the airport warrants it. Most



1 airports only have a bird problem for specific periods  
2 of time and it may be migration or it may be when the  
3 weather is bad and flocks of gulls come in off the  
4 lake, or it may be -- there may be an agricultural  
5 activity on the airport which is causing a problem and  
6 so you must get out there and scare birds. It is hard  
7 to get these people to realize that everybody should  
8 not be cutting grass and two or three people should be  
9 dedicated to wildlife control and bird scaring at that  
10 time.

11 Now, without specific personyears  
12 dedicated to this activity on airports, it is very  
13 difficult to get people removed from other duties at  
14 the time when the greatest thrust for control is  
15 required.

16 Q. Just one brief comment if you  
17 could with regard to noise-scaring devices. You made  
18 mention of propane cannons and other such devices and  
19 could you comment on the relative noise level that  
20 things like that make or are intended to make?

21 A. A propane cannon, what it does is  
22 release a certain amount of propane gas into a bladder  
23 and the bladder triggers a switch and the propane goes  
24 into a large nozzle and it is ignited by a spark and it  
25 goes off. I would say it was louder than a shotgun,



1 but it is intended to imitate a shotgun. One of the  
2 problems I guess that could -- they do scare birds and  
3 they are most effective during migration on birds that  
4 are being shot at. As far as being used as just a  
5 static device, you cannot put one of these things in a  
6 field and let it go all the time, because people have  
7 reported that the birds will actually sit on them and  
8 fly up just before the cannon goes off. They know it  
9 goes off every two minutes, and then they will land  
10 back on it and this has been reported.

11 One of the problems with these things is  
12 that complaints have been received around airports and  
13 with agricultural activities that this persistent bang,  
14 bang, bang every two minutes or thirty seconds, and you  
15 can set these things for varying time lengths, but it  
16 has raised complaints from people living close to  
17 airports or barnyards or other agricultural activities.  
18 Sometimes the use of control devices raises public  
19 concern and in a control program that would have to be  
20 taken into consideration.

21 I guess at an airport like Burlington or  
22 even at a landfill site, if there were houses in close  
23 proximity to the airport, you could get complaints from  
24 local residents on types of bird- scaring activity  
25 including gas cannons you were undertaking. Another



1 thing is on an airport like Burlington it may be hard  
2 to use live shot, which sometimes has to be used to  
3 reinforce the impact of static or non-lethal control  
4 devices. If you don't have the room on the airport to  
5 use live shot, it may restrict the effectiveness of  
6 control programs.

7 Q. Now, while we are on this topic of  
8 control, can you comment on your particular  
9 observations with regard to gulls, birds being  
10 attracted not only to the working area of the landfill  
11 but to other aspects of it?

12 A. This is something that John  
13 Richardson talked about, but birds and landfills or  
14 gulls and landfills, one of the considerations we have  
15 to take into account is directly related to the  
16 location of the landfill and that is the flight path of  
17 the birds. It's not only the birds on the landfill  
18 that are attracted, but also their voyage back and  
19 forth every day. Also, the landfill can be attractive  
20 as a resting site and at Ottawa when we were conducting  
21 studies on the use of distress cry tapes, quite often  
22 when we went out there, there would be two or three  
23 thousand gulls on the landfill site, and maybe only one  
24 hundred or two hundred of them would be on the active  
25 face and the others would be resting on the flat areas



1 or the wet areas around the site. Another thing too is  
2 that I have heard reports from people in discussing how  
3 clean a landfill site can be, in reducing the active  
4 face, but in Europe there are cases where gulls have  
5 actually been buried by bulldozers trying to get at the  
6 food that is being dumped at the landfill. If food  
7 sources in the area are restricted, and if the gulls  
8 are hungry enough, they will actually go right in front  
9 of the bulldozers trying to pick up garbage and will be  
10 buried.

11 Q. Okay. I would now like to turn  
12 to paragraph 13 of your witness statement where it is  
13 indicated you will discuss efforts made by Transport  
14 Canada in other situations to have garbage dumps and  
15 landfills removed from the vicinity of airports; that  
16 in particular.

17 Has Transport Canada actually attempted  
18 to have garbage dumps or landfill sites closed or  
19 removed?

20 A. We have. I have been involved in  
21 three of them. I was involved in the closure of the  
22 Yarmouth site, which went fairly smoothly and after  
23 they agreed to close it, but the process went on for, I  
24 believe, ten or twelve years before the council finally  
25 agreed to move it. I guess, depending upon who the



1 mayor is at the time and the council, they may or may  
2 not decide to allocate resources to moving a dump.  
3 When they finally did agree to move it, I believe  
4 within a year or a year and a half, they had a new site  
5 open, but that is a small town. We know what's going on  
6 at Trenton and North Bay with regard to the closure of  
7 those.

8 Q. Perhaps we don't know actually?

9 A. Okay. We know they are in the  
10 process now of moving them. Before I discuss those,  
11 Transport Canada has also had garbage dumps closed  
12 adjacent to Sault Ste. Marie airport, Thunder Bay  
13 airport and Vancouver airport that I know of.

14 Q. Because of what reason?

15 A. Because the garbage dumps or  
16 landfill sites -- I guess in those days they probably  
17 were garbage dumps, but they attracted gulls to the  
18 airport that were causing problems, causing bird  
19 strikes and increasing hazards at the site.

20 At Trenton we were trying -- I was  
21 involved in that since 1976, I believe, in trying to  
22 get that site relocated and the site is operated by a  
23 private individual, and I believe he has a closure  
24 notice now, but it was very hard to have or to try and  
25 convince him to close that site because that was his



1 source of income. As far as he was concerned, he was  
2 going to continue to operate that and he kind of had  
3 the municipalities over a barrel, because not being a  
4 municipal site, if he closed the site, what would the  
5 town do with the garbage? They would have to go out and  
6 find another site.

7 At North Bay, and I was involved in that  
8 also since 1976, and the first concern over the  
9 location of that dump I believe was expressed in 1962,  
10 the year after it opened. It was noted that that site  
11 was increasing gull activity at the airport and I  
12 believe the statistics at Trenton also show that after  
13 that site was opened, the number of gull strikes at the  
14 airport did increase. So, there are statistics or bird  
15 strike statistics that show that the opening of a  
16 landfill site has increased bird strikes at an airport.

17 Part of the negotiations with North Bay  
18 were to get an agreement between North Bay and  
19 Transport Canada that we would pay to make the landfill  
20 site unattractive to birds if they would close and  
21 relocate the site. This is what we did at Yarmouth. I  
22 believe we paid them something in the neighbourhood of  
23 \$30,000.

24 Q. Yarmouth?

25 A. Yarmouth, Nova Scotia, to cover



1 their site and make it unattractive to birds after they  
2 closed and relocated the site. We negotiated an  
3 agreement with North Bay in 1979, I believe it was,  
4 where they would close the site and relocate it and we  
5 would pay them \$220,000 to make the site unattractive  
6 birds and that included putting six inches of clean  
7 fill over the top of the site and seeding it.

8 Now, the landfill site at North Bay I  
9 guess was being operated as basically a garbage dump at  
10 that time and the operator had scavenger rights for  
11 cardboard and for that reason it was in his interests  
12 to have garbage dumped over quite a wide area so he  
13 could get out what he wanted. The City took over the  
14 operation at that time and closed the working face to a  
15 considerably smaller active area, and for that we gave  
16 them their first payment of \$55,000 and they appeared  
17 to be acting in good faith and continued to reduce the  
18 working face of the landfill site. We paid them another  
19 \$55,000 and I think the first two payments were made  
20 within a year of us negotiating the contract. North Bay  
21 had agreed to relocate the landfill site I believe in a  
22 year and a half or something like this, and all of this  
23 is documented in the North Bay hearing, but after they  
24 had received the first \$110,000, their progress in  
25 relocating the landfill site has gone downhill to the



1 point now where up until the time the hearings were  
2 initiated at North Bay, they had not even retained a  
3 consultant to look at alternate sites. So, they were  
4 really making no effort to relocate the site, even  
5 though they were looking at other methods of waste  
6 disposal for the City. Even though we had agreed to  
7 pay the \$220,000 and had in fact paid them \$110,000 of  
8 it, our efforts to relocate the landfill site have been  
9 futile since 1979 when the agreement was signed.

10 Hopefully the landfill site now, the  
11 decision of the Board was to have that site closed by  
12 December, 1990 and I would expect that after that time,  
13 even though North Bay has had this inactivity since  
14 1981 to relocate the site, I imagine we will still have  
15 to pay the remaining \$110,000.

16 Q. Mr. McDonald, there is a letter  
17 from Transport Canada, the Regional Director, to Mr.  
18 Clarke of the Ministry of the Environment,  
19 Environmental Assessment Branch, with regard to the  
20 North Bay situation and perhaps you could elucidate for  
21 the Board what the opinions were at that time with  
22 regard to the situation?

23 A. In paragraph 2 of that letter it  
24 says:

25 "In order to restore safe air space at



1 and around the North Bay Airport, it is  
2 the opinion of Transport Canada that the  
3 City must close this site without  
4 further delay as the area is a food  
5 source for seagulls and attracts an  
6 unusual number of birds in the airspace  
7 frequented by approaching military and  
8 commercial passenger aircraft mostly  
9 powered by jet engines."

10 That has been our position all along,  
11 that the site had to be closed and relocated. When we  
12 started negotiations with the City, and I believe our  
13 first wildlife or bird control contract at North Bay  
14 was in 1978, it was around 1978, and at that time we  
15 agreed that if the City would pursue the relocation of  
16 the landfill site, then Transport Canada would accept  
17 its obligation to reduce the bird hazards at the  
18 airport and we would pay for the wildlife control  
19 program at the site. That program costs approximately  
20 \$80,000 to \$85,000 a year to operate, and we have been  
21 operating it now for nine years approximately and we  
22 will have to continue operating it, at least until  
23 1990. So, we will have pumped \$800,000 into the  
24 wildlife control program there in order to reduce our  
25 liability in the event of a bird strike, and that is a



1 lot of money to pump into an airport the size of North  
2 Bay. I feel that the level of expenditure we have had  
3 to put into North Bay, because of the attractiveness of  
4 the landfill site, is probably ten times the level of  
5 effort that would have to be put into another airport  
6 with suitable size and suitable aircraft movements as  
7 North Bay, if it hadn't been for the attractiveness of  
8 the dump.

9 Q. I wanted to refer you to the  
10 second page of the letter, Mr. Binnie's comments with  
11 regard to the opinion of Transport Canada on the City's  
12 action or inaction, the first paragraph, where it is  
13 underlined in this copy of the letter?

14 A. "...it is the opinion of Transport  
15 Canada that the City has acted in bad  
16 faith by its lack of effort to find an  
17 alternative site and legal action  
18 against the City for 'specific  
19 performance' is being considered by the  
20 Department."

21 We have believed all along that after  
22 the lack of activity by the City to relocate the site,  
23 when we signed the agreement with them that it was not  
24 the political will, I guess, of the municipal  
25 officials, it was not in their favour to spend money



1 that could be spent on other developments within the  
2 City on the relocation of the landfill site, and this  
3 political will was probably one of the main forces  
4 behind the inability of the City to relocate the site.  
5 An example of that is they have pursued incineration in  
6 North Bay since the beginning, and they had a private  
7 company in North Bay that was willing at one time to  
8 pay part of the cost of establishing a heat recovery  
9 incinerator so they could use the steam for processing  
10 building products, and it was the Norfibre plant that  
11 made either siding or waferboard of some sort.

12 In 1986, I believe it was, they were  
13 prepared to go ahead with the construction of the  
14 incinerator and it was going to be built in conjunction  
15 with the Ontario Energy -- I forget the name right  
16 offhand, but the Ontario corporation that was involved  
17 in that, an Ontario Government corporation, but a group  
18 of local citizens in the area of the plant where the  
19 incinerator was going to be built voiced a concern that  
20 the incinerator was going to be in their neighbourhood  
21 and the whole project was squashed again. I guess I  
22 can't really comment on whether or not a political  
23 decision should have been made to continue that  
24 operation or not because of the sensitivity of  
25 incinerators right now in Ontario, but it does show



1 that we feel they were acting in bad faith and once a  
2 landfill site is established, the relocation of that  
3 landfill site is a very, very difficult process.

4 MR. LEDERER: Who was it who was acting  
5 in bad faith? That should be very clear.

6 THE WITNESS: The City of North Bay.

7 MR. LANCASTER: The letter states that.

8 MR. LEDERER: The letter at tab 8?

9 MR. LANCASTER: Page 2.

10 THE WITNESS: For that reason, Transport  
11 Canada was considering taking legal action against the  
12 City for recovery of the funds at least that we had  
13 given them in order to close and relocate the landfill  
14 site and possibly to have the landfill site removed  
15 from its current location.

16 MR. ESTRIN: Q. Just to clarify, in the  
17 second last paragraph of the letter with regard to the  
18 bird control program it states:

19 "The current annual cost to Transport  
20 for this program is approximately  
21 \$55,000.00."

22 and I thought you mentioned a higher figure?

23 A. This \$55,000 is Transport Canada's  
24 share and that is the specific cost for the contracting  
25 of the wildlife control operator. National Defence



1 pays for some of the equipment the controller uses and  
2 also provides him with food and lodging and lodging for  
3 his birds. So, DND has estimated that those costs are  
4 \$25,000 to \$30,000 a year. I believe in the report  
5 tabled by both Burlington and John Richardson, that  
6 \$80,000 figure is reflected. Wildlife control  
7 contracts in other airports -- at Trenton are \$103,000,  
8 at Toronto I believe they are in the neighbourhood of  
9 \$118,000 and Vancouver's contract was around \$88,000.

10 Q. What is the current status with  
11 regard to North Bay?

12 A. Right now the City of North Bay,  
13 the hearings have been concluded and the permit to  
14 operate the current landfill site has been extended to  
15 the end of December, 1990 and the City has been told  
16 that by 1990 they will have to have an alternate site  
17 for waste disposal developed and operating. They are  
18 in the process right now of selecting a site and they  
19 are looking at sites beyond the five-mile radius from  
20 the airport and in their preliminary investigations,  
21 three sites were identified and they are now seriously  
22 looking at one site, the two other sites are not being  
23 considered and I guess they are doing their examination  
24 of one site, and they have asked us if we would assist  
25 them in the evaluation of that site from a bird hazard



1 point to view, to see if it would be acceptable and  
2 that is something I am currently involved in with  
3 Proctor & Redfern.

4 Q. I wonder if we could turn to  
5 another topic. I wanted to ask you about some  
6 specific comments on Burlington Air Park. You have  
7 been there and have gone through the facilities?

8 A. I have.

9 Q. I wanted to ask you for your  
10 comments or impressions of it and, first of all, just  
11 on a general basis?

12 A. In the course of performing my  
13 duties I have been to many airports in Canada, both  
14 large and small, and when I went to Burlington Air Park  
15 I was surprised at the level of activity out there, the  
16 number of people who are employed at the airport and  
17 the number of aircraft that are parked there.

18 In the list of airports that I reported  
19 and in the handwritten list of bird strikes we  
20 discussed yesterday....

21 Q. Exhibit M-428.

22 A. ... at airports where bird strikes  
23 to small aircraft have been experienced and reported, I  
24 have been to a number of those airports and I would say  
25 that at most -- the Burlington Air Park has a level of



1 general aviation activity that would exceed the  
2 activity of most of the airports on this list where  
3 strikes and damaging strikes have been encountered. I  
4 feel that the number of airplanes stationed there, the  
5 125, is probably greater or is greater than most of the  
6 airports on this list and also the fact that nineteen  
7 people are employed full-time at the airport is  
8 significantly greater than some other airports I have  
9 been to that have much more developed facilities and  
10 greater expenditure of capital and O&M at the airport.  
11 An example of this perhaps is Cochrane. Cochrane  
12 airport has paved runways and I know they have one main  
13 paved runway and they are serviced by executive jet  
14 aircraft and scheduled aircraft movements, and when I  
15 was out there, there was only one person working at the  
16 airport and he was employed by the Town and he also had  
17 another job, it wasn't his full responsibility to  
18 solely maintain the airport. So I feel that  
19 Burlington Air Park is quite a busy and well developed  
20 service.

21 Q. An issue that has arisen is -- or  
22 it has been suggested as an issue at least, is to what  
23 extent Burlington Air Park can go from visual flight  
24 rules to IFR, instrument flight rules. I wonder if  
25 you could comment on that?



1                   A.     I am not a planner within  
2 Transport Canada, and I am not involved in the planning  
3 process for airport development, but in looking at the  
4 statistics that were presented in the COAAMP study, you  
5 can see that for the airports in that study area, less  
6 than ten per cent of the movements at those airports  
7 are instrument flight rule movements, except for  
8 Toronto, Lester B. Pearson. One of your concerns...

9                   Q.     Would you stop right there. You  
10 are referring to this chart from the COAAMP study?

11                  A.     Yes, I am.

12                  MR. ESTRIN: I wonder if we could mark  
13 that as the next exhibit?

14                  MR. LANCASTER: M-431.

15        --- EXHIBIT NO. M-431: Chart from COAAMP study.

16                  MR. ESTRIN: The title is Itinerant  
17 Aircraft Movements by IFR and VFR - 1983.

18                  Q.     Go ahead, I'm sorry.

19                  A.     If you look at Toronto Island and  
20 Buttonville, you will see at Buttonville it's less than  
21 10 per cent of the movements, between 5 and 10 per cent  
22 are IFR, and so you would have to say that it wasn't a  
23 substantial consideration in the operation of that  
24 airport and for the type of people who are using it.  
25 One of our concerns, and it has been expressed in



1 correspondence and it was expressed in a letter to John  
2 Richardson, but in the location, the siting of landfill  
3 sites near airports, we are concerned about future  
4 growth at the airport and the potential for use of that  
5 airport of other types of aircraft and increased  
6 aircraft movements. So, I think that a serious  
7 consideration in siting a landfill site near Burlington  
8 Air Park would be the consideration for the potential  
9 for future growth there and the use of that airport as  
10 a reliever airport for Pearson for general aviation  
11 aircraft.

12 Q. In terms of future growth, and  
13 assuming there is limited or no IFR at Burlington Air  
14 Park, what relevance do these statistics have?

15 A. Again, not being a planner or a  
16 person expert in aviation facilities, I would say that  
17 a large number of movements could be incorporated at  
18 Burlington Air Park that would not need to be IFR and  
19 the use of the facility could be expanded to include  
20 movements that would not solely rely on IFR. As Vic  
21 Kovachik said, there may only be eight or ten days a  
22 year when the weather is bad enough that you would not  
23 be able to get into a non-IFR airport.

24 Q. On that last topic of the future,  
25 what is the position of Transport Canada with regard to



1 looking not only at the activity presently at  
2 Burlington Air Park, but over the next twenty years in  
3 light of the fact that the landfill is projected to go  
4 that long? What concerns, if any, should be taken into  
5 account in your view by the Board in looking at that  
6 situation?

7 A. The concern is that increased --  
8 that the landfill site at Site D will attract gulls and  
9 the increase in gulls in the vicinity of Burlington Air  
10 Park will increase the number of strikes or the  
11 possibility of strikes in the area. Again, we have  
12 documented statistics to show that landfill sites near  
13 North Bay and Trenton have increased the number of  
14 strikes in the vicinity of the airport. I feel that a  
15 serious consideration should be the fact that that  
16 landfill site will attract birds and it will increase  
17 the possibility of bird strikes at the airport. If the  
18 airport continues to grow at the rate it has been  
19 growing in the last ten years, as we have heard here,  
20 then that increase, and the possibility of a strike,  
21 and a serious strike, will continue to climb as the  
22 bird populations in the area increase and as the number  
23 of aircraft movements at the airport increase.

24 Q. So, in your opinion, even if the  
25 risk is at a certain level today, and someone suggested



1 it was even an acceptable level today for Burlington  
2 Air Park, what about the future?

3 A. I feel that the risk of a bird  
4 strike and a serious bird strike at the Burlington Air  
5 Park will be increased. I believe we are attracting,  
6 by the presence of a sanitary landfill site, a bird, a  
7 gull, that is recognised as a major contributor to  
8 serious bird strikes and to catastrophical bird strikes  
9 around the world and we are bringing this bird, which  
10 is recognised as a problem, into the immediate vicinity  
11 of an airport. Even though Burlington Air Park right  
12 now is used by small piston aircraft and some turboprop  
13 aircraft, these aircraft are being operated by pilots  
14 who aren't the most experienced pilots in the world and  
15 again it is increasing the risk, even though we went  
16 through statistics which showed that nobody has been  
17 killed, but we have heard evidence that people have  
18 been killed, which has not been documented, and I feel  
19 we are seriously increasing the possibility of a pilot  
20 with limited experience encountering a bird strike that  
21 he may not be able to deal with.

22 Q. Now, just in terms of aviation  
23 growth in the Toronto area, have you tried to look at  
24 those movement numbers for the Toronto area relative to  
25 the rest of the country in connection with just -- I am



1 thinking of the concept of future growth of aviation in  
2 this area?

3 A. When you look at the total number  
4 of aircraft movements for the top ten airports in  
5 Canada, the total aircraft movements reported at these  
6 ten airports, and they are Toronto International,  
7 Vancouver, Toronto Island, Calgary, Victoria, St.  
8 Hubert, Ottawa, Dorval, Buttonville and Winnipeg, you  
9 get 1,898,484 movements. At Toronto International,  
10 Toronto Island and Buttonville airport, the three  
11 airports in the Toronto area on the list, you have  
12 633,831 movements. So, of the ten busiest airports in  
13 Canada, one-third of those aircraft movements are in  
14 the Toronto area and so again, not being a planner and  
15 not being able to specifically comment on the plans for  
16 the development of airport systems in Toronto, I  
17 believe that with this requirement for airport  
18 facilities in the area, that if the Toronto area  
19 population base and the requirement for aviation  
20 increased, there is potential for Burlington Air Park  
21 to expand to relieve some of the requirement for this  
22 demand for aviation facilities.

23 Q. Turning to another topic, the  
24 issue of mitigation measures and, in particular over-  
25 wiring, which was raised in Dr. Richardson's report and



1 in cross-examination of him, can you give us please  
2 your experience with that, particularly at Trenton?

3 A. At Trenton we agreed to undertake  
4 a study to see if it was possible to over-wire the  
5 Trenton dump and relieve its attractiveness to gulls.  
6 This was done....

7 Q. The Trenton dump is otherwise  
8 referred to as the Quinte sanitary landfill site?

9 A. Okay, the Quinte sanitary landfill  
10 site. It was brought to our attention in the late 70s  
11 that one of the members on the interdepartmental  
12 committee on bird hazards to aircraft had received  
13 information on the use of over-wiring to keep birds off  
14 landfill sites and water reservoirs in the United  
15 States and so we agreed at the committee that it would  
16 be useful to examine the use of wires at Trenton, to  
17 over-wire the dump. Our office agreed, or Transport  
18 Canada agreed to pay the cost of examining the  
19 feasibility of putting the wires over the dump if  
20 National Defence would install the facility. We were  
21 able to locate four metal towers within DND, four 100-  
22 foot towers that we would use to suspend a wire grid  
23 over the landfill site. I believe the area we would  
24 have had to cover was in the range of 800 feet by 1200  
25 feet. At the Quinte sanitary landfill site; the site



1 is built on a fairly flat piece of land and is mounded  
2 and the height of the centre of the site was around 45  
3 feet. What we had to do was try to suspend a wire  
4 grid high enough in the air so there would be about 40  
5 feet of operational space underneath the wires for the  
6 trucks and bulldozers to operate. We retained an  
7 engineering firm that specializes in the installation  
8 of towers and tower devices, wiring systems for  
9 communication purposes, Morrison Hershfield or  
10 something along that line from Toronto, and I'm not  
11 sure what the name was.

12 After about a year or more than a year  
13 of investigation, the firm came to the conclusion that  
14 the towers we had acquired through DND for use would  
15 not be strong enough to support the grid system and the  
16 engineering difficulty of putting that site up or the  
17 wire up over that site, over such a large area -- one  
18 of the problems is just in designing the grid. The  
19 weight of the fine wire, which I believe has been  
20 reported as .5 millimetre or .05 millimetre, it is a  
21 very fine wire, thinner than a pencil line and it's  
22 like a piano wire, but the weight of the wire would  
23 cause the cables from the four main corner posts to  
24 come in because of the weight of the cables themselves  
25 and the weight of the wire, and because the wire is



1 thin and not that strong, you would have to design a  
2 system where every one of those wires was an exact  
3 length and fastened at an exact length so when you  
4 raised up the main cables to the top of the towers, and  
5 they had to be raised up so you could maintain the  
6 system and it had to be raised and lowered. If these  
7 wires from one end of the system to the other were not  
8 the right length, when you started to pull up the main  
9 cables, you would put pressure on the wires that were  
10 too short and they would start to snap because they  
11 would be supporting the weight of the whole system.

12 So, we came to the conclusion that for a  
13 site that size it would be very expensive to try and  
14 design a system that was operationally feasible.

15 Another problem that had to be taken  
16 into consideration was what they called radial ice and  
17 under worse conditions, these wires could be coated  
18 with a half an inch or one inch of radial ice which  
19 would substantially add to the weight of the system and  
20 could cause the whole grid to collapse in the event of  
21 a serious ice storm.

22 After that we looked at other methods of  
23 over-wiring it and by putting poles into the site and  
24 by running wires from these poles. Because of the  
25 unstable nature of landfill sites, the owner felt that



1 the operation of his equipment on the site would cause  
2 these poles to vibrate and possibly even shift if they  
3 were mounted in the buried garbage and the use of that  
4 system was also not considered feasible.

5 So, it ended up that after looking at  
6 this for a year or a year and a half, we agreed that  
7 for Trenton it would not be economically feasible to  
8 continue to pursue this and we chose to continue the  
9 scaring operations, the bird-scaring operations at the  
10 landfill site.

11 Q. Just to get it clear, the Quinte  
12 site, as you described it, at the time you were trying  
13 to design an over-wiring system, had a mound, I think  
14 you said, of about 40 feet?

15 A. Yes, I believe so, 40 or 45 feet.

16 Q. The next thing I wanted to ask you  
17 about is certain matters. At North Bay, going back to  
18 North Bay for a moment, were falcons -- you told us  
19 there was a bird control program and is that the one  
20 that cost around \$80,000 or \$85,000?

21 A. Yes, at North Bay.

22 Q. Notwithstanding that program, it  
23 was still Transport Canada's desire to have that site  
24 closed?

25 A. Yes, it was.



1 Q. At North Bay, did the control  
2 program include the use of falcons, not only at the  
3 landfill site but also on the airport?

4 A. Yes, it does. One thing I should  
5 perhaps point out is that at North Bay and at  
6 Vancouver, at North Bay we have been using contracted  
7 services of individuals who have their own companies  
8 for wildlife control purposes, and that has been going  
9 on since the contract was initiated.

10 At Vancouver, I was able to contract  
11 wildlife control in there on a full-time basis last  
12 year and they retained a firm whose sole purpose was  
13 wildlife control at the airport. Because of problems  
14 in dealing with some of the employees of these  
15 companies and their temperament and inability to  
16 perform in a manner in some cases that was even  
17 suitable for safe aircraft operations at the airport,  
18 the airport managers at both of those airports have  
19 decided not to contract out the service to individual  
20 firms who work in wildlife control, but this year they  
21 are going to have the service for wildlife control  
22 provided under contract by the Corp. of  
23 Commissionaires, and we have a standard agreement with  
24 the Corp. of Commissionaires where they will provide  
25 the manpower specified under the terms of reference for



1 the contract and train a supervisor to manage that  
2 contract on our behalf. This is a direct result of the  
3 problems we have encountered with the type of people  
4 that contract out specifically for wildlife control.  
5 The airport managers feel that the Corp. of  
6 Commissionaires are a more regulated type of person and  
7 they will have more effective control programs under  
8 the Corp. of Commissionaires than they will have  
9 received from these contractors.

10 I have seen myself at North Bay the lack  
11 of activity performed by the wildlife control  
12 contractor under the direct guidance and request of the  
13 airport managers. To try and get these people to  
14 perform what the airport manager sees as an acceptable  
15 level of wildlife control and to reduce his risks,  
16 seeing that he is the representative on the airport who  
17 is responsible for safety and operation of that site,  
18 he would ask the contractor to do something and the  
19 contractor would flatly refuse. Even with the use of  
20 falcons, and we hear how wonderful falcons are, but  
21 last year on the two or three times I was at the  
22 landfill site and at the airport, the falconer would  
23 not fly his falcons; one day he said it was too hot and  
24 another day he said they had just eaten and they have  
25 various reasons why they cannot fly their birds. Even



1 though everyone discusses how effective falcon control  
2 is, the temperament of the birds and the handlers is a  
3 serious consideration to take, a serious consideration  
4 that we have to take into account in how we view the  
5 effectiveness of these control programs.

6 Q. Now, just a couple of other  
7 specific matters. I wanted to ask you to comment on a  
8 certain statement and it's the statement that the eight  
9 kilometre radius included in your land use guidelines  
10 is often not followed due to other factors. I am  
11 looking at page 53 of the Burlington study which has  
12 not yet been marked, and I want to read a sentence and  
13 ask you to comment on it under the heading of Transport  
14 Canada Regional Position and the statement is:

15 "It was further indicated that the  
16 eight kilometre radius is also  
17 suggested for other non-Transport  
18 Canada airports as a guideline but  
19 that this is often not followed  
20 due to other factors, proximity of  
21 landfill sites, low volume of  
22 aircraft activity, bird  
23 populations attracted, mitigating  
24 procedures taken and non-  
25 interference with operations."



1        Could you comment on that?

2                                A.        We have heard from other people  
3        that the location of resting sites and feeding sites  
4        and roosting sites for gulls are significant  
5        considerations in the location of landfill sites around  
6        airports and this statement is intended to mean that a  
7        landfill site on the opposite side of an airport from a  
8        roosting or breeding site for gulls is much more  
9        hazardous than a landfill site closer to a breeding  
10       colony or a roosting site for gulls, if the airport is  
11       on the opposite side.

12                              Q.        When you say "this statement" you  
13       are referring to the guideline?

14                              A.        The guideline, yes, and the  
15       statement in the document. You have to seriously  
16       consider the location of the landfill site in  
17       relationship to these other attractions and what the  
18       flyways of the birds will be. So, at some airports we  
19       would agree that if there were two sites that both  
20       would attract birds and one site would not create  
21       flyways over the airport or in the vicinity of the  
22       airport and that site would be the preferred site and  
23       would create less of a hazard at the airport.

24                              If there was no known gull colonies or  
25       other colonies of birds in the area that would be



1 attracted to dumps, that would also be a major  
2 consideration. But, when you have an expanding gull  
3 population in an area and a landfill site is being  
4 located, the proximity of that landfill site and the  
5 flyways near an airport are serious considerations in  
6 the selection of the site.

7 Q. I guess what I want to ask you  
8 then is with particular reference to the words "but  
9 this eight kilometre radius guideline is often not  
10 followed due to other factors;" and in the particular  
11 case before the Board, in the opinion of Transport  
12 Canada, should it be followed or not?

13 A. In the particular case before the  
14 Board, yes it should for Site D.

15 Q. Now, I want to turn to one other  
16 reference from this document and ask you to comment on  
17 it because your name appears in this document. I am  
18 looking at pages 58 and 59.

19 MR. LANCASTER: Which document?

20 MR. ESTRIN: It's not an exhibit yet,  
21 but I wanted to identify those pages for the record.  
22 It is 58 and 59.

23 Q. The last section begins "Suggested  
24 Actions" and it says:

25 "It is likely that the strategy for the



1 site control suggested in the technical  
2 study, biophysical analysis report, Site  
3 D, August, 1986, will provide some  
4 assistance as far as the suggested  
5 measures go, but as long as the open  
6 face goes unprotected and access is not  
7 denied aggressively and persistently,  
8 gulls can be expected."

9 And do you agree with that?

10 A. Yes, I would.

11 Q. "The use of long grass and the  
12 removal of standing water could  
13 transfer the search by the gulls  
14 for loafing and drinking to other  
15 surrounding areas which could  
16 include farms and the Air Park."

17 And do you agree with that?

18 A. I would.

19 Q. It goes on to say:  
20 "The best solution is to  
21 aggressively and persistently  
22 deny access by the gulls to a food  
23 source from the outset."

24 Stopping right there, would you agree  
25 with that?



1                   A.     The best solution is the  
2 prevention of the food source in proximity to the  
3 airport.

4                   Q.     This statement seems to assume  
5 that the landfill site is there and then let's go on:  
6 "The best solution is to aggressively  
7 and persistently deny access by the  
8 gulls to a food source from the outset  
9 and the following action is therefore  
10 suggested for consideration."

11                   And there are a number of measures set  
12 out including a suggestion that assistance should be  
13 provided to Burlington Air Park to ensure that  
14 attractiveness to gulls is minimized and assistance  
15 including the use of a trained biologist, a review of  
16 air traffic and operating procedures, publishing  
17 notices to airmen, et cetera, and it goes on to say:

18                   "These suggested actions were discussed  
19 with Mr. Paul McDonald of Transport  
20 Canada. His reaction to this program  
21 was that if the Region was prepared to  
22 institute such measures at the sanitary  
23 landfill site and the airport, this  
24 would be a reasonable approach that  
25 would give adequate consideration to the



1 operation of the airport."

2 Could you comment please? First of  
3 all, were you contacted by someone for the City of  
4 Burlington?

5 A. We were. We were contacted by Paul  
6 Hays, who I believe is the author of this report, and  
7 it was during our discussions we expressed the concern,  
8 and again the concern I have expressed here, that if  
9 there is a choice for the location of a -- two choices  
10 for the location of a sanitary landfill site and one of  
11 those choices will reduce the attractiveness and risk  
12 of bird strikes at or in the vicinity of an airport,  
13 Transport Canada would support the selection of the  
14 site that was least attractive to birds and this  
15 statement here, it seems to preclude the fact that Site  
16 D will be the site and if Site D was the site and these  
17 are the actions we would recommend, but it is not the  
18 intention of my discussions with Burlington and its  
19 officials that Site D is an acceptable site and all  
20 along we have maintained that if Site D and Site F were  
21 both available and flight safety was the consideration,  
22 then we would select the site -- Site F should be  
23 selected because it does present what we would say is a  
24 less attractive and less hazardous situation from the  
25 bird strike point of view.



1 Q. So someone on behalf of the City  
2 of Burlington did contact Transport Canada and do you  
3 recall about when or what year?

4 A. These discussions took place in  
5 1987.

6 Q. 1987. Did you send to Mr. Hays or  
7 anyone else on behalf of the City of Burlington, as far  
8 as you can recall, anything in writing?

9 A. I don't believe we have.

10 Q. Then I want to come back to the  
11 last paragraph of your witness statement and this  
12 refers to some correspondence, and I think we can turn  
13 to tab 9 of the witness statement, and we looked  
14 briefly at the first two letters, the one of May 14,  
15 1986 and the reply of June 2nd, 1986, which you  
16 discussed yesterday with regard to how Transport Canada  
17 became aware of this proposal?

18 A. The first time we were notified of  
19 the hearings and the site selection process was in a  
20 letter from David Estrin to the Region and on June 2nd,  
21 1986, in the second letter there it says:

22 "Thank you for your letter of May 14,  
23 1986, bringing to our attention the fact  
24 that the Region of Halton is conducting  
25 an environmental assessment on locating



1 a landfill site within the Region of  
2 Halton. Copies of the environmental  
3 assessment for review and comment are  
4 being requested from the Region of  
5 Halton."

6 This was the first time that Transport  
7 Canada had become aware of the availability of the  
8 material and it was going to request it for review  
9 because it hadn't been provided to us at that time.

10 Q. Would you turn to the next letter,  
11 the one of September 26, 1986 from the Region to Mr.  
12 Paul Attack of the Region of Halton?

13 A. That letter in the last paragraph  
14 it states:

15 "Transport Canada cannot regulate the  
16 location of landfill sites on land not  
17 controlled by the Department. However,  
18 the Transport document entitled 'Land  
19 Use in the Vicinity of Airports' (TP  
20 1247E) provides guidelines regarding  
21 landfill sites. Instituting land use  
22 controls near airports is necessary to  
23 minimize the serious bird hazard from  
24 the viewpoint of aircraft safety."

25 The last sentence on page 2:



1 "The proposed location for the site is  
2 within this 5 nautical mile area and  
3 consequently unacceptable according to  
4 our aforementioned guidelines."

5 At that time we were informing the  
6 Region of Halton that Transport Canada considered Site  
7 D unacceptable because of the risks it was creating at  
8 the air park.

9 Q. There is an indication of a carbon  
10 copy of the letter not only to my firm but to a firm  
11 called MacNaughton Hermsen Planning in Kitchener and do  
12 you know anything about that on that letter, on the  
13 last page? There is an indication....

14 A. Where are you?

15 Q. On the same letter there is an  
16 indication of a carbon copy to MacNaughton Hermsen  
17 Planning and do you know about that?

18 A. No, I don't know about that.

19 Q. Would you turn to the next letter,  
20 a letter of October 23, 1986, a letter from my office  
21 to Transport Canada and again raising certain questions  
22 with regard to the previous letter?

23 A. Okay.

24 Q. Go ahead.

25 A. This letter basically requests



1 clarification on whether or not Transport Canada  
2 guidelines apply at non-Transport Canada airports, and  
3 asking whether or not Transport Canada has concerns  
4 over the location of the site in reference to  
5 Burlington Air Park.

6 Q. Would you look at the reply of  
7 December 10, 1986?

8 A. The next letter of December 10,  
9 1986, in response to Transport Canada from David  
10 Estrin, in the first indented paragraph noted as A:

11 "Burlington Air Park is a privately  
12 owned and operated airport. It is  
13 however a Publicly licensed airport  
14 which means that it meets specific  
15 standards set by the Department of  
16 Transport and therefore may be used with  
17 assurance by the general public as  
18 regards the airport meeting required  
19 operational and safety criteria. The  
20 publication, 'Land Use in the Vicinity  
21 of Airports' has been written, to  
22 supplement and support these operational  
23 and safety criteria where applicable.

24 Therefore the guidelines apply to  
25 all and every publicly licensed



1 airport."

2 Under B:

3 "Whether the aircraft utilizing an  
4 airport such as Burlington Air Park are  
5 piston, turbo-prop or jet powered has no  
6 bearing on the application of the  
7 guidelines. As mentioned the guidelines  
8 supplement the operational aspects of  
9 the airport to ensure the safety of  
10 aircraft in flight."

11 It specifically states they do apply to  
12 non-Transport Canada airports and the fact that jet  
13 aircraft may not operate at the airport would not have  
14 a bearing on the application of the guidelines.

15 Q. And then if we turn to the last  
16 letter of December 17, 1986, this was authored by  
17 yourself and could you refer us to how this came about?

18 A. I was asked to provide information  
19 to John Richardson, who at that time was working for  
20 Milton preparing information on the bird strike hazard  
21 at the airport. He asked me to comment on how I felt  
22 about the situation and the application of our guide-  
23 lines.

24 In the second last paragraph, I wrote  
25 back:



1 "Transport Canada considers the location  
2 of a landfill site near an airport to be  
3 a serious detriment to aircraft safety.  
4 When the selection of a landfill site  
5 includes alternate sites that are  
6 farther away from an airport, Transport  
7 Canada would support a site farther from  
8 the airport that would not create bird  
9 movement in or near aircraft flight  
10 paths.  
11 During the selection of a landfill site,  
12 the proponent should also consider  
13 future growth at the airport. Change in  
14 aircraft usage or increased flights can  
15 have an impact on flight safety if a  
16 landfill is located near an airport.  
17 Legal liability and compensation should  
18 also be considered if flight safety is  
19 impacted by the location of a landfill  
20 site."

21 Q. Could you turn back then to your  
22 witness statement, the last paragraph, or rather  
23 paragraph 16. Would you agree that what is stated  
24 there summarizes some of the important aspects of the  
25 correspondence we have just referred to?



1 A. Yes, it does and it indicates the  
2 involvement of Transport Canada in the site selection  
3 process to date, and I think it indicates too the  
4 importance of us coming here to present information and  
5 our reasons for being concerned about the location of a  
6 sanitary landfill site near Burlington Air Park and  
7 these concerns relate to the location of a landfill  
8 site anywhere, near an airport anywhere in Canada. We  
9 are not here solely to support the location of a  
10 landfill site for one municipality over another, but  
11 rather to inform the Board and the people here and the  
12 general public even of the hazards that can be created  
13 specifically by bird strikes to aircraft, but even  
14 generally the hazards created by a bird strike and the  
15 impact of a bird strike.

16 Perhaps everybody in this room before  
17 this hearing wasn't really aware of what a bird can do  
18 to an aircraft, and some people, including pilots as I  
19 have said, feel that birds are fluffy little things  
20 that bounce off aircraft, but it is important that we  
21 inform people of both the existing risk nationally and  
22 our programs to reduce it, but also the very specific  
23 risks that are created when landfills are located in  
24 the vicinity of airports.

25 Perhaps with the permission of the Board



1 what I could do -- I have brought with me a couple of  
2 blades out of aircraft. Now, I can show these to  
3 everybody, not just to you, but these are out of a DC-  
4 9. It does show you that when a bird hits a blade,  
5 things happen. What happens generally is that a blade  
6 will bend and sometimes you will get a nick in the  
7 blade. When a blade bends like that, and you saw some  
8 pictures in the movie, but that can cause an imbalance  
9 in the engine, and if the engine is not shut down then  
10 you can have destruction within the engine from  
11 vibration. In other cases when the bird hits the end  
12 of the blade like that, it can break off, as in this  
13 case, and that piece of steel goes through the engine  
14 and that can cause total destruction of the engine.  
15 In Canada these strikes ... would you like to see  
16 these?

17 MR. LANCASTER: We can see them.

18 THE WITNESS: These strikes regularly  
19 cost right now in the vicinity of \$3,000,000 worth of  
20 damage a year to civil aircraft. So it is a problem  
21 not recognised by people who are not involved in the  
22 field of aviation or even in the field of wildlife  
23 control.

24 MR. ESTRIN: Q. Finally, Mr. McDonald,  
25 paragraph 17 of your witness statement, you have



1 indicated that Transport Canada has made efforts and in  
2 some cases successful efforts to close down landfill  
3 sites that have been problematic with regard to bird  
4 hazards. Could you comment generally with respect to  
5 what is set out in paragraph 17 of your witness  
6 statement?

7 A. Could I see that? Okay. We have  
8 made efforts, and I have discussed these efforts, to  
9 close landfill sites and we have been successful in  
10 some cases in relocating landfill sites. Some of these  
11 have been through cooperative negotiations with the  
12 municipalities, and we have used the Aeronautics Act to  
13 zone, to prevent the location of landfill sites from  
14 developing near airports and in some cases this was  
15 through the regular zoning process and the restrictions  
16 have been applied at airports and in some cases such as  
17 Abbotsford and North Bay, we have had to apply the  
18 Aeronautics Act to prevent the establishment of a  
19 landfill site, or to even try to remove it, but we find  
20 that these negotiations are not always fruitful, but in  
21 the event that a hazard is created at an airport and  
22 even Burlington Air Park, and the Department would have  
23 to consider the use of the Aeronautics Act to relieve  
24 any hazard that would be created at the airport to  
25 pilots and aircraft using the facility. Again we



1 discussed what the intent of the Aeronautics Act was  
2 yesterday.

3 MR. ESTRIN: Thank you very much, Mr.  
4 McDonald, for being here for this length of time and I  
5 think you probably will have to remain for a little bit  
6 longer. Thank you very much. Those are my questions.

7 MR. LANCASTER: Thank you, Mr. Estrin.  
8 The Board will have a fifteen minute  
9 adjournment. Mr. Griffiths.

10 MR. GRIFFITHS: I have no questions.

11 MR. LANCASTER: Who will be next? Mr.  
12 Lederer. Very well, fifteen minutes.

13 --- Recess

14 MR. LANCASTER: Please be seated.

15 CROSS-EXAMINATION BY MR. LEDERER:

16 MR. LEDERER: I don't want anyone to  
17 make any false assumptions about how long this will  
18 take. I am afraid at least in my view, and I could  
19 turn out to be wrong, but the issue is not whether Mr.  
20 McDonald will finish today but whether I will finish  
21 with him, and we will have to see how matters proceed  
22 over the course of the day.

23 MR. LANCASTER: We might as well address  
24 it right now. The Board is prepared to sit until 6:00  
25 o'clock if we were able to finish; otherwise we will



1 sit until 5:00 o'clock or thereabouts.

2 MR. LEDERER: I should indicate I have  
3 a meeting in Toronto with respect to a hearing I have a  
4 week Friday at 5:15, and if I can rearrange that, I  
5 will, but frankly I see no question, I don't think we  
6 are going to finish Mr. McDonald today, and I don't  
7 think we should pretend that we will.

8 MR. LANCASTER: What will happen  
9 tomorrow?

10 MR. LEDERER: Presumably we will begin  
11 the direct examination of Mr. Estrin's next witnesses  
12 and we will have to interrupt that to finish Mr.  
13 McDonald.

14 MR. LANCASTER: Is it acceptable to  
15 counsel that we interrupt a witness? Is it acceptable  
16 to you?

17 MR. LEDERER: It is never advisable, but  
18 we just have no choice.

19 MR. LANCASTER: That is up to you.

20 MR. LEDERER: The Region, as always,  
21 prefers to take every minute of the Board's time we can  
22 get and we have a day tomorrow, so I think we should  
23 make use of it.

24 MR. LANCASTER: Certainly the Board  
25 would want that.



1 MR. ESTRIN: If I could just speak to  
2 that. My thoughts are that if Mr. McDonald is not  
3 finished by the end of the day, he is prepared to come  
4 back on Monday and what I propose to do is to start our  
5 hydrogeological evidence tomorrow, and essentially we  
6 have two people on a panel and it will take the better  
7 part of a half a day just to talk about their curricula  
8 vitae, experience et cetera, and then we will get into  
9 the introductory aspects of it, and we can comfortably  
10 resume their examination-in-chief on Monday afternoon  
11 or Tuesday.

12 In that respect, I don't think it will  
13 be a great difficulty to follow that evidence, but  
14 tomorrow will in some respects be an introduction and  
15 an overview to where they will be going over the next  
16 several days.

17 Mr. McDonald says he is available all  
18 day Monday if that is really necessary.

19 MR. TZEKAS: I have some difficulty with  
20 that. I share Mr. Lederer's view on the matter and I  
21 think it would be preferable to have Mr. McDonald done  
22 at one time, but I don't think realistically we are  
23 going to finish, even if the Board sits until 6:00.  
24 I think we would probably be half a day on Monday.

25 I have informed Mr. McQuaid and I will



1 inform Ms. Vigod of the scheduling, but they anticipate  
2 being here tomorrow to hear the beginning of the hydro-  
3 geology.

4 MR. LANCASTER: In that case we will  
5 rise today at 4:30 and you can then meet your  
6 commitments.

7 MR. LEDERER: I appreciate that.

8 DR. KINGHAM: Does your commitment for  
9 tomorrow extend into Friday?

10 THE WITNESS: Yes, I have an inter-  
11 departmental meeting on Friday and I am available  
12 actually next Monday and Tuesday, and Wednesday I am  
13 meeting with a consultant from Vancouver, and on  
14 Thursday, Environment Canada.

15 DR. KINGHAM: The commitment tomorrow is  
16 too critical?

17 THE WITNESS: The worst part is because  
18 I missed my meeting on Friday, because of the time I  
19 was here, and I have these other people I must meet.  
20 Maybe if you thought you would be finished in half a  
21 day tomorrow, I would consider staying for half a day,  
22 but if it was going to run all day tomorrow and  
23 possibly into Friday, if that was a possibility...

24 MR. LANCASTER: The arrangements have  
25 been made for these other people involved, these other



1 witnesses.

2 THE WITNESS: I may be able to make other  
3 arrangements with the people from North Bay, to meet  
4 with them again, but they are in Ottawa right now and  
5 that was one of the advantages of meeting with them  
6 tomorrow, but I may be able to meet with them again  
7 next week some time.

8 MR. LANCASTER: That would be useful.  
9 When could you determine this?

10 THE WITNESS: I could find out at lunch  
11 possibly.

12 MR. LANCASTER: In order that we could  
13 arrange the days.

14 MR. LEDERER: It would be preferable if  
15 we could continue on tomorrow.

16 MR. LANCASTER: Hopefully we can still  
17 start the other evidence tomorrow as well. Anyway, see  
18 if you can do that, and if possible, it would be nice.

19 MR. LEDERER: Q. Mr. McDonald, I  
20 scarcely know where to begin, so I'm going to step in  
21 with a few general questions and see where we go.

22 First of all, I want to make it  
23 absolutely clear that I understand your view of this  
24 potential for bird strikes. Do I understand  
25 correctly, looking at paragraph -- I believe it's



1 paragraph 7, yes, paragraph 7 on page 4 of your witness  
2 statement, that there is a certain randomness to the  
3 serious bird strikes?

4 A. Yes.

5 Q. Which I understand to mean there  
6 is a certain degree of unpredictability in when, where  
7 and in what circumstances such a strike would occur?

8 A. The study we did that I referred  
9 to in discussion of point 7 indicated that we felt they  
10 could be predicted, that strikes could happen at large  
11 and small airports, and strikes and serious strikes  
12 were related to the number of aircraft movements at  
13 airports or classes of airports. We felt that half the  
14 serious strikes were happening at larger airports  
15 because larger airports accounted for -- the small  
16 portion of large airports accounted for maybe half the  
17 aircraft movements in Canada, but we also felt that the  
18 total combination of aircraft movements at the many  
19 small airports would account for half the serious  
20 strikes. So, we feel that we can predict that some of  
21 the serious strikes will happen at small airports.

22 Q. That doesn't seem to respond to my  
23 question. I recall you said all of that, and I am not  
24 debating it, at least for the moment, but my question  
25 was a much simpler one.



1                               When you say as you do in the opening  
2 sentence of paragraph 7 on page 4 of your witness  
3 statement:

4                               "Mr. McDonald will indicate that bird  
5 strikes are not regular events but  
6 rather a random event, and that any  
7 strike is potentially life-threatening."

8                               Can we agree there is a certain degree  
9 of unpredictability to it, and you can have these  
10 things potentially anywhere?

11                            A.     I can't agree that they are  
12 unpredictable in that I would say that I cannot predict  
13 that they will or will not happen.   As I said, I think  
14 we can predict they will happen, based on the number of  
15 aircraft movements.

16                           Q.     What do you mean by that sentence  
17 or that statement:

18                           "Mr. McDonald will indicate that bird  
19 strikes are not regular events but  
20 rather a random event...."

21 and what does that mean, what does that reference to a  
22 rather random event mean?

23                           A.     That the timing of a bird strike  
24 at a certain place cannot be predicted, but it is a  
25 random event.



1 Q. So would you agree with me that  
2 what random implies is a certain degree of  
3 unpredictability?

4 A. Yes.

5 Q. All right. Will you agree with me  
6 that this risk, this risk of a random event, exists at  
7 very many airports, for example, throughout this  
8 country?

9 A. Yes, it would exist at all  
10 airports.

11 Q. In fact, Mr. Kovachik, when he was  
12 here, indicated to us that he has seen forty gulls on  
13 his field and you have referred to the fact he gave  
14 evidence there were two bird strikes at his airport.  
15 There is a risk of a random event, of a bird strike at  
16 his air park, even at this time, isn't that correct?

17 A. Yes, that is correct.

18 Q. So we can agree then, can we not,  
19 that there is a certain degree of risk of this kind of  
20 event at most airports in the country and even now at  
21 the Burlington Air Park?

22 A. Yes, there is a level of risk  
23 there now.

24 Q. Thank you. Now, can we also  
25 agree, and perhaps the best way would be to refer you



1 to tab 5 of your witness statement. Do you have that  
2 there, sir? Do you have it?

3 A. Yes.

4 Q. Go to the first page, paragraph  
5 6.1.4. Do you see that? Perhaps you could read that  
6 with me:

7 "Before undertaking an actual programme  
8 of environmental management, it is  
9 highly important to have an ecological  
10 survey of the area made by a trained  
11 biologist with experience in such  
12 matters. He will submit those  
13 recommendations that in his opinion are  
14 feasible and meet the needs of the  
15 individual situation."

16 Do you see that?

17 A. Yes, I do.

18 Q. Now, sir, I define all of that or  
19 interpret all of that as meaning that each situation is  
20 somewhat different and needs to be evaluated by  
21 somebody trained in the science of biology; would you  
22 agree with that?

23 A. The issue -- I don't agree with  
24 that totally, because the issue that is being discussed  
25 in paragraph 6.1.4 is the development of a program.



1 Q. In order to determine the type of  
2 program, you have to know the nature of the risk, don't  
3 you?

4 A. The program is in response to the  
5 risk.

6 Q. Exactly. To define the program,  
7 you need to know what the risk is and you can't respond  
8 to something you don't understand, can you? The  
9 proposition I am putting to you isn't that complicated.  
10 I am suggesting every situation is a little bit  
11 different and requires a case-by-case study in order to  
12 understand it. Would you agree with that?

13 A. That is true. The situation at  
14 each airport is different.

15 Q. And requires some kind of case-by-  
16 case study; do we agree?

17 A. Yes.

18 Q. With that in mind, I want to raise  
19 with you a series of questions I have asked just about  
20 every witness who has been called by the Town of  
21 Milton, and I want to do this and I have been frank  
22 with every witness, but to tell them that it's the  
23 starting point and for everyone it's the same. Would  
24 you agree with me that as a society that we are  
25 producing waste?



1 A. Yes.

2 Q. Will you agree with me that we are  
3 apparently producing it in rather significant  
4 quantities?

5 A. Yes.

6 Q. Will you agree with me from your  
7 work in trying to close sites and whatever else you are  
8 doing in this area, that it is not an entirely easy  
9 problem to deal with. Do you agree?

10 A. I agree with that.

11 Q. Do you agree that it raises a  
12 large number of technical issues like hydrogeology and  
13 hydrology and noise and impact on neighbourhoods and  
14 all those kinds of things?

15 A. Yes, I will agree with that.

16 Q. Will you agree with me then that  
17 those people who are responsible for providing the  
18 service need to balance out all of those concerns and  
19 the risks implicit in them?

20 A. I will agree with that, but there  
21 are also some other factors.

22 Q. I am not suggesting I have given  
23 you a comprehensive list of the factors, but I am just  
24 saying there are a large number of issues that have to  
25 be balanced out; correct?



1 A. Correct.

2 Q. One of which you have brought  
3 before this Board, and I am not suggesting for a moment  
4 it doesn't fit into the balance, because it does,  
5 doesn't it?

6 A. Yes.

7 Q. Thank you. Will you agree with me  
8 then -- perhaps I had better do it this way. You have  
9 said a number of times over the course of today, and  
10 it's in the final letter behind tab 9, that given a  
11 choice of two sites, Transport Canada's view is that  
12 you would prefer to go to the site which is away from  
13 the air park; that's the thrust of your position, as  
14 stated in that letter, isn't that correct?

15 A. Yes.

16 Q. That is the thrust of your  
17 position as you stated it in evidence here, isn't it?

18 A. Yes.

19 Q. In fact what you said this morning  
20 to Mr. Estrin, and I don't think you used the words  
21 "All things being equal," but I think that was the  
22 thrust of it, but all things being equal and air  
23 traffic being the issue, you would rather go to the  
24 site which is farthest from the air park; is that not  
25 correct?



1 A. Yes.

2 Q. Will you agree with me that since  
3 every air park is difference, each air park raises a  
4 different degree of risk of a bird strike? Some will be  
5 greater and some will be smaller, depending upon the  
6 nature of the operation and the size of the planes, the  
7 number of movements, the birds and distance from water  
8 and all of that?

9 A. Yes, they are different.

10 Q. Will you agree with me then that  
11 in a circumstance where all other things are not equal,  
12 that it is possible, and it is not something you would  
13 like to see and I understand that, but it is possible  
14 that when all other things are not equal, and with an  
15 evaluation of this risk played into the balance, the  
16 people who are responsible for balancing out all of  
17 these various items might yet pick the site which is  
18 closest to the airport. In the abstract that can  
19 happen, can we agree?

20 A. It could happen.

21 Q. Sir, I was interested in your C.V.  
22 You finished school, as I understand it, and went to  
23 work immediately for Transport Canada, is that correct?

24 A. That is correct.

25 Q. In 1975.



1 A. It was.

2 Q. You have been working since 1975  
3 at Transport Canada and dealing with this issue, the  
4 issue of birds and planes, is that correct?

5 A. This issue and other issues.

6 Q. What other issues, issues of  
7 wildlife you mean?

8 A. No, there were other programs  
9 within the department. I have knowledge of other  
10 issues, other programs within the department other than  
11 specifically wildlife.

12 Q. None of those are listed on page 1  
13 of your witness statement?

14 A. No. The environmental assessment  
15 one is, yes, on the first page, my activities in  
16 environmental assessment are indicated in the second  
17 paragraph.

18 Q. You served as secretary to the  
19 Bird Strike Committee. I am looking at the witness  
20 statement?

21 A. The witness statement. It may  
22 not be indicated in the witness statement, but they are  
23 in my C.V.

24 Q. But you will agree that in your  
25 work experience you have not dealt with all these other



1 issues that people responsible for siting landfills or  
2 waste disposal facilities will have to look at; is that  
3 not correct?

4 A. Not really. I work for the  
5 environmental management services.

6 Q. What do you know about  
7 hydrogeology?

8 A. We are responsible for  
9 environmental quality at federal airports in Canada and  
10 the regulation of federal airports to ensure that they  
11 comply with federal, provincial and municipal  
12 guidelines. I have been involved in the writing of  
13 design construction documents for airport operations.  
14 Through my studies at the University of Waterloo I was  
15 aware of the environment program of environmental  
16 concerns and we did deal with some of those concerns  
17 and so I would say that I do have some knowledge of  
18 some of the environmental considerations required.

19 Q. Do you have an engineering degree?

20 A. I don't.

21 Q. Have you studied hydrogeology?

22 A. No.

23 Q. Have you studied hydrology?

24 A. No.

25 Q. Have you studied traffic?



1 A. What type of traffic?

2 Q. The implications of increased  
3 traffic on various roads and streets?

4 A. No.

5 Q. Have you studied noise and the  
6 implications of noise on people who live in proximity  
7 to it?

8 A. In my work in Transport Canada I  
9 have had a requirement to become familiar with the  
10 department's programs on noise in their undertakings  
11 and how noise is determined at airports.

12 Q. At airports?

13 A. Yes.

14 Q. Have you done it with respect to  
15 traffic?

16 A. I have not done it specifically  
17 related to traffic.

18 Q. Have you done it with respect to  
19 the operation of a landfill?

20 A. No.

21 Q. Have you any idea as to what level  
22 of noise is generally thought to be tolerable by the  
23 average human ear?

24 A. Not in respect to landfills.

25 Q. Now, sir, I take it you haven't



1 read the various reports prepared with respect to this  
2 environmental assessment dealing with all those issues?

3 A. No.

4 Q. Would you be prepared to agree  
5 with me that in that situation you are not in a  
6 position as you appear before this Board, to in any  
7 sense balance out all the various concerns and risks  
8 this Board will have to consider?

9 A. No, I'm not in that position.

10 Q. You are really here to advise the  
11 Board of one of the particular features it will have to  
12 work into its balance?

13 A. Yes.

14 Q. Now, I think you have agreed with  
15 me that having done that, it is still possible, in the  
16 abstract at least, that this Board may yet decide to go  
17 to Site D. Would you agree with that?

18 A. Yes, I would agree with that.

19 Q. Now, sir, Dr. Kingham raised with  
20 you a series of questions about the meaning of hazard  
21 and risk and I am going to admit something lawyers are  
22 not supposed to admit, but in my own mind I did not  
23 quite understand its importance overnight and now I  
24 have got it and I want to see if you and I can agree as  
25 to why it becomes significant or, more accurately, what



1 it all means.

2 What I would like to do is start with  
3 the word hazardous; can we do that?

4 A. Yes.

5 Q. Can we can agree if we can remove  
6 birds and remove them from any particular use or  
7 application, but the word hazard tell us about or  
8 explains to us there is a danger. Can you accept that  
9 as a general proposition or general definition of the  
10 word? If you have a hazard, you have a danger?

11 A. Yes.

12 Q. Okay. Would you agree with me that  
13 in certain circumstances you could have a hazard or a  
14 danger, and this is my word, but which is absolute and  
15 let me give you an example.

16 Let's say we have a hazardous chemical.  
17 If you drink it or if you inhale its fumes or touch it,  
18 you will do something bad to yourself; can you agree  
19 with me that there you have something which is  
20 hazardous and by definition it is harmful to a human  
21 being. Do you understand what I mean?

22 A. Yes, under certain circumstances  
23 that chemical would be hazardous.

24 Q. So you have a sort of absolute  
25 hazard and you know if you come in contact with it it



1 will hurt you in some fashion?

2 A. If you come in contact with it  
3 under the conditions that are hazardous to your health.

4 Q. I tried to give you an example  
5 which suggests that for the purposes of my  
6 hypothetical, and it is completely hypothetical, but  
7 you have a chemical which is so hazardous that if you  
8 touch it, inhale it, or drink it or come in contact  
9 with it in any way, it will do harm to you. Based on  
10 my hypothetical would you agree -- you understand the  
11 hazard in very absolute terms; do you agree?

12 A. Yes.

13 Q. The risk is, to bring risk into  
14 it, the risk is very high and the moment you expose  
15 yourself to it, you have a problem?

16 A. Yes.

17 Q. You agree that kind of hazard  
18 exists in our society?

19 A. Yes.

20 Q. Now, I then tried to look to see  
21 if I could find how to deal with a hazard which is not  
22 inherent in that fashion or not absolute. I went to  
23 Dr. Kingham's example of the tobacco farmer. Would you  
24 agree with me that in those circumstances the act of  
25 growing the tobacco is not hazardous. You can grow



1 tobacco, but if you don't smoke it, by and large you  
2 are not hurting yourself; would you agree?

3 A. Based on what I know about  
4 tobacco, yes.

5 Q. Here the hazard is sort of one  
6 step removed and there is a causal distinction in the  
7 hazard and you have to smoke it before the hazard is  
8 created and there is some intervening act; do you  
9 understand what I mean?

10 A. I know what you mean.

11 Q. Would you agree with me that in  
12 those circumstances we now have a hazard which is a  
13 little different than our absolute hazard, because the  
14 hazard or the danger is created by the intervening act  
15 and so we have a different use of the word hazard.  
16 It's a different kind of hazard, and perhaps that's a  
17 fairer way to put it?

18 A. It's similar to your first  
19 example, because it's how you package the tobacco and  
20 how you package the toxic chemical that makes it  
21 hazardous to people. You still have to come into  
22 contact with it in the method that is hazardous to  
23 human health.

24 Q. In your view, tobacco is like any  
25 other hazardous element and there is a certain



1 absoluteness in it, and is that your view?

2 A. Yes.

3 Q. For the purposes of this, I can  
4 certainly accept that. Can we agree, however, that  
5 tobacco introduces some other aspects of risk? For  
6 example, you may be able to apply some controls to it  
7 by decreasing the nicotine before you roll it into a  
8 cigarette. Would you agree with that?

9 A. Depending on -- yes, depending on  
10 how the cigarette is manufactured, then the level of  
11 hazard can be different.

12 Q. Can you agree that it appears that  
13 different people, and I am sorry to take so long with  
14 this and I didn't mean to be this long because I  
15 thought I understood what it all meant. Would you  
16 agree with me that people seem to respond differently  
17 to cigarettes?

18 Let's assume for the purposes of my  
19 question that they do, and certain people have a  
20 greater propensity to contract cancer than others do,  
21 so you have to work that in in order to understand the  
22 degree of hazard on any individual. Do you understand?

23 A. That is possible, yes.

24 Q. Would you agree that what that  
25 does is introduce the notion of some flexibility in the



1 hazard, and the hazard is different for different  
2 people or the hazard moves around, as it were?

3 A. Yes.

4 Q. That really introduces, if you  
5 like, the element of risk because risk is the  
6 measurement of the hazard in a particular circumstance.  
7 Would you agree?

8 A. Yes.

9 Q. With this notion of flexibility  
10 introduced, I want to move and try and look at the  
11 hazard here as I understand it. The hazard here, if I  
12 understand your evidence correctly, is not as a result  
13 of the land being used in a particular way, but is as a  
14 result of the attractiveness that that use creates for  
15 birds, correct?

16 A. Yes, that is true.

17 Q. So it's a little bit like my first  
18 proposition to you about cigarettes. There is this  
19 sort of intervening factor and the fact there is a farm  
20 of a landfill in and of itself may not create a hazard,  
21 but what creates the hazard is that it is operated in a  
22 way that is attractive to birds and brings birds to the  
23 area; do we agree?

24 A. I can't agree with that totally,  
25 no.



1 Q. Would you agree with me that it is  
2 the attractiveness that creates the hazard. Can you  
3 agree with that?

4 A. If we go to tab 7, it seems to me  
5 we get some definition of how that attractiveness  
6 works. Perhaps we could just explore that.

7 Let's look at extremely hazardous --  
8 first of all, let's look at first of all a reference in  
9 the main paragraph on page 24 to hazardous bird types,  
10 in the middle of the main paragraph, about four lines  
11 from the bottom:

12 "Hazardous birds types will be  
13 persistent in their attempts to use the  
14 airport..."

15 Do you see that?

16 A. Yes.

17 Q. Here is another feature added to  
18 the hazard, which is certain bird types which are  
19 hazardous?

20 A. Yes, more hazardous.

21 Q. The hazardousness is the  
22 attractiveness of bird types which are themselves  
23 hazardous; is that right? If you attract a bird that  
24 is not hazardous, it's not a problem?

25 A. Some birds are more hazardous.



1 Q. Exactly my point. Let's look at  
2 extremely hazardous land use practice:

3 "The following land use practices are  
4 extremely attractive to bird species  
5 that are:

6 (i) a high hazard to aircraft because of  
7 their larger size, behavioral  
8 characteristics (flocking, soaring), and  
9 their preference for airport environ-  
10 ments, and

11 (ii) far-ranging in their daily food-  
12 searching activities."

13 Do you see that?

14 A. Yes.

15 Q. So the nature of the  
16 attractiveness is if it pulls in these kinds of birds,  
17 it is an extremely hazardous land use?

18 A. Yes.

19 Q. So, in those circumstance then,  
20 it's the nature of the attractiveness to a particular  
21 type of bird that creates the extremely hazardous  
22 condition; right? Would you agree?

23 A. Could you say that again?

24 Q. It's the act of attracting these  
25 particular kinds of birds that makes the land use



1 attractive -- that makes it extremely hazardous, excuse  
2 me, do you agree?

3 A. That makes these land uses  
4 hazardous, yes.

5 Q. To compare that, if you go to  
6 moderately hazardous:

7 "The following land use practices are  
8 moderately hazardous to airport  
9 activities because they attract bird  
10 species that:  
11 (i) are of moderate hazard to aircraft  
12 because of their smaller size,  
13 behavioral characteristics, and not  
14 particularly far-ranging in their food-  
15 searching activities, and/or;  
16 (ii) are of concern as aircraft hazards  
17 chiefly during limited time spans only,  
18 i.e., migration, infrequent climatic  
19 conditions."

20 It is the nature of the bird species attracted that  
21 determines this evaluation of hazardous, extremely  
22 hazardous or moderately hazardous?

23 A. Yes.

24 Q. What we see is a flexibility in  
25 the notion of hazard based upon the kind of birds that



1 are attracted to the land use. Can we agree?

2 A. Yes, there is a flexibility.

3 Q. So we have here a flexible concept  
4 of hazard and there is some flexibility in that  
5 concept, would you agree?

6 A. There is a degree of hazard  
7 created by various birds, but the hazard does exist.

8 Q. Oh sure, but it may be greater or  
9 larger depending on what you are attracting; would you  
10 agree?

11 A. Yes.

12 Q. That is what is said there. Now,  
13 let's take up one of the other examples Dr. Kingham put  
14 to you. He said let's look at one of these extremely  
15 hazardous land uses which was a fish canning plant. Do  
16 you recall that series of questions?

17 A. I do.

18 Q. If you do that, you have an  
19 extremely hazardous land use because you will attract  
20 these big birds which tend to flock and which will fly  
21 long distances to food. Would you agree?

22 A. Yes, that was my intent.

23 Q. He said let's suppose for the  
24 moment that we close in this canning factory and we  
25 bring the boat inside the factory. In those circum-



1 stances, and it may be completely hypothetical and may  
2 not be practical, but in those circumstances can we  
3 agree that what you do is reduce the degree, to use  
4 your words, the degree of hazard, because you reduce  
5 the attractiveness to certain kinds of birds?

6 A. If those hypothetical situations  
7 you just mentioned of covering in a building and making  
8 it inaccessible to birds were met, then I agree, you  
9 could reduce the attractiveness.

10 Q. And therefore reduce the degree of  
11 risk?

12 A. Yes.

13 Q. And therefore reduce the hazard?

14 A. Yes, but it's all a hypothetical  
15 situation we are in.

16 Q. What that introduces in a purely  
17 hypothetical fashion is the notion that you can reduce  
18 the hazard by the way in which you operate the plant.  
19 Would you agree?

20 A. Yes, I would agree with you.

21 Q. In fact, when you do that, you are  
22 reducing the risk and in that sense hazard and risk, if  
23 you use hazard in this kind of flexible fashion, hazard  
24 and risk are almost synonymous or, if you like, risk is  
25 directly proportionate to the degree of hazard; do you



1 agree with that?

2 A. Yes.

3 Q. All right. Now, you have sort of  
4 given us an example, I think, of how on certain days  
5 and under certain conditions attractiveness increases  
6 and perhaps extremely hazardous situations are created,  
7 and I am thinking about your comment about Sudbury.  
8 You said you could always tell when blueberries were in  
9 season because that is when you get the highest bird  
10 strikes at the Sudbury airport; do you recall that?

11 A. Yes.

12 Q. So when blueberries are in season,  
13 we move to the high end of our flexible hazard and we  
14 have an extremely hazardous situation created by the  
15 presence of blueberries while they are in season; do we  
16 agree?

17 A. Yes.

18 Q. At other times of the year we have  
19 less of a hazard; do you agree?

20 A. Yes.

21 Q. You could control that maybe by  
22 killing all the blueberry bushes, I suppose. Do you  
23 agree?

24 A. Yes, that could be a control.

25 Q. Or it may be as a society we



1 simply understand that from time to time there will be  
2 an increase in hazards and we accept it because of the  
3 benefits, we all like to eat blueberries and I don't  
4 mean to be flippant, but do you agree?

5 A. That is an analogy, but I wouldn't  
6 agree and....

7 Q. You haven't killed the blueberry  
8 bushes in Sudbury, have you?

9 A. Other control techniques have been  
10 put in place at Sudbury to deal with the situation  
11 because of an environmental situation at the airport  
12 that does not allow us to remove the plants.

13 Q. Where you have an extremely  
14 hazardous situation, what you do is reduce the hazard,  
15 the degree of hazard by putting in a control; do you  
16 agree? That is what you have done at Sudbury.

17 A. I will agree and the situation  
18 illustrates that the controls are not always effective.

19 Q. With respect to the matter of  
20 agricultural fields, were you here for Dr. Richardson's  
21 evidence?

22 A. Most of it.

23 Q. I showed him the Risley Report, or  
24 I know it as the Risley Report, which was done in fact  
25 for your department, so I assume you are aware of it,



1 bird observations and bird control measures at a  
2 sanitary landfill near Canadian Forces Base Trenton?

3 A. I am aware of it.

4 Q. You will recall I put to him  
5 certain figures, and I don't want to put it any further  
6 with you than I did with him. At certain moments in  
7 time at certain fields, there were more birds than were  
8 observed over an entire week at the neighbouring  
9 landfill. Do you recall that? Do you recall those  
10 questions and that data from this report?

11 A. Something to the effect of certain  
12 moments in time.

13 Q. There were seven hundred birds in  
14 some fields and in the course of a week that number  
15 were never observed at the landfill. Do you recall  
16 that?

17 A. Not specifically.

18 Q. Take it from me that that was the  
19 evidence. Would you agree that in those circumstances  
20 and for that moment of time, and I am not pressing you  
21 beyond the moment of time, because that is all we have  
22 hard data for, but for that moment in time, the field  
23 is more hazardous than the landfill because it is  
24 attracting more birds, which is the measure of the  
25 hazard. I think you agreed earlier.



1                   A.    If they are the same type of bird  
2   and if the field is in the same proximity to the  
3   airport as the dump.

4                   Q.    You can bring in all the other  
5   variables to see. All right.

6                   We can agree then that hazard not only  
7   moves in the sense that you may control it in some  
8   fashion or nature -- I guess nature covers it in the  
9   sense of growing blueberries, but there may be other  
10   factors which move the different hazards around from  
11   time to time, as in the circumstances I have just given  
12   to you.    Would you agree with that?

13                  A.    Yes.

14                  Q.    All right.

15                  A.    But....

16                  Q.    All right.

17                  MR. ESTRIN: Let the witness answer.

18                  THE WITNESS: Risk is also in there and  
19   if the hazard continues to exist and move around, then  
20   when the hazard is worse then the risk is worse.

21                  MR. LEDERER: Q. Absolutely, no  
22   question about that, and I am not arguing with you on  
23   that.

24                  Now, sir, when we look at tab 7, and  
25   these various definitions of hazardous land use



1 practices, would you agree with me that within those  
2 definitions there is no mention of control measures.  
3 There is no mention of mitigation?

4 A. I can't agree with that, because  
5 there are suggested alternatives listed for moderately  
6 hazardous land use practices which are indicated to be  
7 control measures.

8 Q. Where are they?

9 A. On page 25, suggested  
10 alternatives. I would suggest they are control  
11 measures that can be implemented to reduce the hazard.

12 Q. Any other control measures you see  
13 on that page?

14 A. Yes. Not on that page, but on  
15 page 24 it says:

16 "These practices are not recommended for  
17 areas five miles or less from an  
18 airport."

19 and I suggest that is also a control measure.

20 Q. So your evidence is that those are  
21 control measures which may in some way impact upon the  
22 degree of risk?

23 A. Yes.

24 Q. Now, would you agree with me that  
25 in your experience, and we can go through all these



1 documents and eventually we will, I suppose, but there  
2 are a whole raft of other control measures which are  
3 available and which have been attempted and employed at  
4 different airports and landfills and such throughout  
5 North America?

6 A. Yes, I would agree with that.

7 Q. With varying degrees of success.

8 Can we agree on that for the moment?

9 A. Yes.

10 Q. Some are more successful than  
11 others?

12 A. Yes.

13 Q. Will you agree that the more  
14 successful the control program, the less attractive for  
15 birds the land use is, whatever land use you are  
16 dealing with?

17 A. I would say yes and I would like  
18 to also qualify that and say that it relates  
19 specifically to the ability of a control activity at a  
20 point in time and that effectiveness has to be measured  
21 over a long period of time of the control program. The  
22 effectiveness can vary from one moment to the other as  
23 attractiveness can vary. The attractiveness of the  
24 birds can affect the effectiveness of the control  
25 activity.



1                   Q.     You are telling me that you have  
2 to monitor it over a long period of time to see what  
3 the real results are?

4                   A.     And the results of a control  
5 program are not constant, they vary from moment to  
6 moment as the effectiveness varies.

7                   Q.     You have to monitor to have a full  
8 appreciation of the full impact of what you are doing?

9                   A.     By monitoring it you can determine  
10 the effectiveness.

11                  Q.     What I want you to do is agree  
12 with me that depending upon the level of success of  
13 your control program, you will reduce the hazard. You  
14 remember, we had this flexible concept of hazard?

15                  A.     I would say that your control  
16 program does not reduce the hazard, because you have  
17 said the hazard is directly related to the  
18 attractiveness. If your control program is control  
19 measures instituted by human activity, then you have  
20 not reduced the attractiveness but have put in an  
21 artificial deterrent to try and keep the birds from  
22 coming to a site, but the attractiveness is still  
23 there, so the hazard is still there. You may have  
24 reduced the risk by initiating control activity, but  
25 you haven't reduced the hazard because the



1 attractiveness is still there.

2 Q. Let's go back to our fish plant.

3 You remember the fish plant which we covered up?

4 A. Yes.

5 Q. You agreed with me when I gave you  
6 that example, that what you have done there was reduce  
7 the hazard by reducing the attractiveness. Do you  
8 recall?

9 A. By undertaking one type of  
10 activity, yes.

11 Q. You agree with me that that is  
12 what you said?

13 A. Yes, I agreed that under that  
14 control measure....

15 Q. That is a man-made activity, isn't  
16 it?

17 A. That is not a human activity but a  
18 physical barrier.

19 Q. Building a building and putting it  
20 over a landfill is not a human activity; is that your  
21 evidence?

22 A. I would differentiate between a  
23 person using a shotgun or a distress cry tape from the  
24 physical activity of a man putting a physical building  
25 up.



1 Q. Let's put up monofilament wires.  
2 Would you agree that monofilament wire in effect is  
3 like the building and reduces the hazard?

4 A. Again, I would want to  
5 differentiate in the maintenance of a system of mono-  
6 filament wires to perform and provide a physical  
7 barrier as opposed to a sealed structure with a  
8 lifespan of perhaps one hundred or two hundred years to  
9 -- and it's ability to keep birds out of a site,  
10 whether it's a fish plant or a landfill site. I would  
11 want to discuss that.

12 Q. I am going to suggest to you that  
13 what happens is you apply a control measure, which is  
14 the best you can do in a circumstance, and you reduce  
15 the attractiveness and therefore you reduce the hazard.  
16 Do you agree with me?

17 A. I will agree with that statement  
18 that every measure will reduce it a certain extent.

19 Q. I put no absolute on it and I am  
20 not saying you make it disappear, but, to the contrary,  
21 you have indicated it never disappears and I will agree  
22 with that. I am asking you if you agree that with  
23 these control measures you reduce the hazard because in  
24 some fashion, however limited, you reduce the  
25 attractiveness for birds?



1 A. I can't agree you always reduce  
2 the attractiveness.

3 Q. Do you reduce the hazard? Do you  
4 agree with that?

5 A. Not under your definition of  
6 hazard being attractiveness. I say you are reducing  
7 the risk and the possibility of a bird strike.

8 Q. I thought that given we were  
9 dealing with a flexible notion of hazard, that hazard  
10 and risk were really the same thing and risk was merely  
11 the potential for a realization of the hazard. If you  
12 reduce the risk, you reduce the hazard. Isn't that  
13 right?

14 A. Not if you are saying that hazard  
15 and effectiveness are the same thing; I can't agree.

16 Q. You were the one who said, and in  
17 fact it's your document that says that the hazard here  
18 is the propensity of the land use to attract different  
19 kinds of birds. I didn't write this, you did.

20 A. Which statement are you using to  
21 infer that?

22 Q. I am not inferring it:  
23 "The following land uses are extremely  
24 attractive to bird species that are:  
25 (i) a high hazard.... because of their



1 larger size, behavioral  
2 characteristics."

3 A. It's the bird species that are a  
4 hazard, not the land use.

5 Q. Isn't the hazard the fact that the  
6 land use attracts those bird species to the area?

7 A. That is a hazard.

8 Q. Let's talk about that hazard.

9 A. Okay.

10 Q. Would you agree with me that if  
11 you put in control measures which reduce the attraction  
12 that those land uses have for those birds, you reduce  
13 the level of risk and therefore the level of hazard?

14 A. Under those situations, yes, that  
15 you are now talking about.

16 Q. That being the case, and knowing  
17 now that we can move the level of hazard around in some  
18 fashion as a result of employing control measures,  
19 would you agree with me in the abstract, okay, and I am  
20 not asking you to apply this for the moment to any  
21 actual situation, but in the abstract you could take an  
22 extremely hazardous land use and apply to it sufficient  
23 controls that you would sufficiently decrease the level  
24 of attractiveness for birds of a larger size, which  
25 tend to flock and soar, and to the point where that



1 land use is no longer extremely hazardous but is only  
2 moderately hazardous or even less hazardous than that.  
3 That is in the abstract?

4 A. I would agree in the abstract that  
5 that is possible.

6 Q. You indicated earlier in your  
7 evidence that one of the really different situations  
8 you were confronted with here was the situation at  
9 Trenton with the Quinte Sanitation landfill. Do you  
10 recall that? I certainly took that from your evidence.  
11 One of the big problems you have had to deal with over  
12 the course of your employment in this area?

13 A. Yes.

14 Q. You weren't at the hearing  
15 involving that site were you?

16 A. I wasn't.

17 Q. Are you aware of that decision?

18 A. Not first hand.

19 Q. Are you aware of the evidence that  
20 was led?

21 A. Not first hand, no.

22 Q. We can come back to that in a  
23 moment. You have agreed with me that you can reduce  
24 the level of hazard and I think we have agreed there is  
25 a certain unpredictability or randomness in all of



1 this, so you can get a bird strike -- I think you said  
2 this to Mr. Estrin, you can never remove the risk to  
3 zero no matter what you do, because there is always  
4 some risk out there, isn't that right?

5 A. Yes.

6 Q. It's in relation to that, isn't  
7 it, that when we look for example at agricultural  
8 practices, that you don't force the airport manager to  
9 change the leasing arrangements, according to the  
10 manual on bird hazards, until you get to five strikes  
11 and there is a recognition -- there is a certain  
12 randomness or certain unpredictability or certain  
13 inability to remove the risk entirely, so you accept  
14 that for the purposes of that kind of control measure;  
15 isn't that right? You may not be happy with it and I  
16 am not suggesting you should be doing anything other  
17 than be concerned about the one, two or three strikes  
18 you do have, but you don't impose a policy change  
19 because there is a certain recognition you can't remove  
20 the risk entirely, isn't that right?

21 A. And the risk may not be associated  
22 totally with that one hazard.

23 Q. Fair enough. In the Quinte  
24 Sanitation landfill case, the evidence was, and I can  
25 show you where this is in the decision, but the



1 evidence was that over ....

2 MR. ESTRIN: Would it be perhaps more  
3 helpful and less contentious if Mr. Lederer were asked  
4 to put the question "I will ask you to assume the  
5 evidence was..." and if he wishes to read something  
6 from a transcript, that's fine, because then we know  
7 what the evidence was, or at least that portion of it,  
8 but I don't want to keep hopping up and I think it  
9 would be helpful if he would say, "Assume the evidence  
10 was this..." or read something specific and let him  
11 comment on specific words.

12 MR. LANCASTER: It would be better to  
13 read it specifically.

14 MR. LEDERER: Q. You have no reasons to  
15 disagree with the findings of the Board as an accurate  
16 reflection of the evidence?

17 MR. LANCASTER: I don't know if he is  
18 familiar with it.

19 MR. LEDERER: My point is that it would  
20 be simpler to read from the Board's decision. Is Mr.  
21 Estrin going to say that I have to read the transcript,  
22 because I was reading the decision, and that's the  
23 issue?

24 MR. LANCASTER: You can read from the  
25 decision.



1 MR. ESTRIN: You can read from the  
2 decision but I don't agree with the statement a moment  
3 ago that what the Board found is in all cases  
4 reflective of all the evidence. The Board must weigh  
5 the evidence and come to its own conclusions about what  
6 the facts are, and what the Board says in a particular  
7 phrase is not necessarily reflective of all the  
8 evidence.

9 MR. LEDERER: Let me try and dispel Mr.  
10 Estrin's fears, because I am worried about numbers and  
11 not opinions or factual findings which may be  
12 reflective of other evidence, but I am just interested  
13 in numbers.

14 MR. ESTRIN: What page?

15 MR. LEDERER: 37.

16 MR. ESTRIN: Do you have a copy of this?

17 THE WITNESS: I don't.

18 MR. LANCASTER: Do you have a copy?

19 THE WITNESS: No, I don't.

20 MR. LEDERER: Perhaps I can do this a  
21 different way. I think there is an easier way.

22 Q. Could you refer to Dr.  
23 Richardson's witness statement. Can we agree that we  
24 accept -- let me think about how to deal with this.  
25 You gave some evidence to Mr. Estrin earlier today that



1 you thought a circumstance in which there were fifty  
2 bird strikes at Toronto International Airport arising  
3 out of 300,000 movements was a demonstration of a  
4 pretty successful bird control program; do you  
5 recall?

6 A. I didn't use the statistics in  
7 that manner. I said we felt the bird control program  
8 at Toronto International was successful in reducing the  
9 number of birds that came to the airport and I believe  
10 I gave some examples, and even with the success of that  
11 program, there were still fifty bird strikes at the  
12 airport, approximately. Those numbers were approximate.

13 Q. I see. Can we also agree that the  
14 principal danger arising from this issue as it has been  
15 raised here, arises from the possibility of attracting  
16 gulls, seagulls of different breeds or species to this  
17 area?

18 A. You are referring specifically to  
19 Site D?

20 Q. Yes.

21 A. Yes, I would agree that that is  
22 the primary issue here.

23 Q. Would you agree with me that even  
24 without the landfill, there is some level of risk and  
25 Mr. Kovachik has told us he has seen as many as forty



1 birds on his runway?

2 A. Yes, I would agree there is a risk  
3 of bird strikes at any airport.

4 Q. When we come to measure then the  
5 success or possible success of control programs  
6 reducing the hazard, we need to be aware of the  
7 difference between sort of randomness and the increase  
8 that may result as a result of the program. You don't  
9 start from zero and presume you have nothing and then  
10 look at the number of strikes you have, you have to  
11 consider the fact there is a certain randomness and you  
12 will never get rid of it no matter what you do; isn't  
13 that correct?

14 A. There are a couple of things  
15 there. First of all, you are saying I have to agree  
16 there is a randomness.

17 Q. You don't have to agree with  
18 anything I say, and it would make it a lot easier if  
19 you do.

20 A. I will agree with that, but your  
21 second question is related to ....

22 Q. I am saying when you make the  
23 judgment of a successful control program, you didn't  
24 start with zero as your control, but whatever  
25 randomness gives you?



1                   A.     I would say you shouldn't go from  
2 randomness either, and to measure the successfulness of  
3 a control program, you should try and have base line  
4 data and hopefully it will be reliable or even  
5 scientific base line data, but I wouldn't want to use  
6 randomness as a national average and use that national  
7 average to try and measure the effectiveness of any  
8 control program at one site.

9                   Q.     Very often it's not possible to  
10 have scientific data; do you agree?

11                  A.     I agree.

12                  Q.     Isn't that a bit inconsistent with  
13 the position you took with Mr. Estrin? The position  
14 with Mr. Estrin was that you could have these accidents  
15 anywhere and it doesn't matter that you haven't had one  
16 in the past, because there is randomness; wasn't that  
17 your answer?

18                         If I had an airport which had ten years  
19 without strikes, you on the basis of what you said to  
20 Mr. Estrin, wouldn't be satisfied because you could  
21 have a strike tomorrow. Isn't that right? Isn't that  
22 what you said to Mr. Estrin?

23                  A.     Okay, we are talking a different  
24 issue.

25                  Q.     No, we are not, and that's the



1 point. We are talking about consistent.

2 A. To answer your question on  
3 randomness and whether I would be satisfied that an  
4 airport has no strikes, I would not be satisfied if an  
5 airport did not have a control program in existence.  
6 That is what I would not be satisfied on. The  
7 indication of whether or not there were no strikes at  
8 that airport would have to be examined to determine  
9 whether that was due to an effective program or whether  
10 it was due to the fact there had been no reporting and  
11 my measure of satisfaction would be the level of effort  
12 of that airport to operate an effective control  
13 program.

14 Q. What I would like you to do is  
15 look at the numbers for the Toronto Island Airport and  
16 Trenton Airport and North Bay, as presented....

17 A. Whereabouts are you?

18 Q. Tab 1.

19 A. Yes.

20 Q. Let's start first with North Bay,  
21 which you indicated was one of the serious problems.  
22 Dr. Richardson in his evidence indicated that he had  
23 looked at five years, 1981 to '85, and had no gull  
24 strikes for 1982 or 1984 and had four gull strikes in  
25 total and 25 bird strikes over that period; do you



1 recall and do you accept that as his position?

2 A. I will accept that as his  
3 position.

4 Q. And then at North Bay where we  
5 have this terrible situation we have talked about, we  
6 have, it would appear, on an average basis, five bird  
7 strikes a year, do you agree?

8 A. On average.

9 Q. In two years no gull strikes and  
10 in two years, one gull strike per year and in one year  
11 two gull strikes in that year; right?

12 A. I think you have too many. Did  
13 you say two years at two?

14 Q. I can do it again. Two years with  
15 no bird strikes, two years with one bird strike per  
16 year and one year with two bird strikes in that year?

17 A. Right.

18 Q. What I am suggesting to you, and  
19 using five bird strikes for agricultural practice  
20 policy changes as a guideline, and I realize it's not  
21 directly applicable, but as a guideline we have a  
22 situation here where the bird control program has  
23 reduced an extremely hazardous situation to one which  
24 is better than less than moderately hazardous and in  
25 fact one which you are prepared to accept as



1 demonstrative of randomness for the purposes of  
2 agricultural practices. Do you agree?

3 A. No, because I think this relates  
4 back to the fact that you said yourself that every case  
5 had to be examined on a site specific basis and when  
6 you examine North Bay on a site specific basis, even  
7 though the figures show the number of gull strikes is  
8 down, the attractiveness has not been removed and the  
9 hazard is still there.

10 Q. Will you agree with me that based  
11 upon strikes, and strikes are what we are concerned  
12 about, isn't it?

13 A. No.

14 Q. It's not what we are concerned  
15 about?

16 A. It's not the only thing we are  
17 concerned about.

18 Q. Let me ask you this; if you had  
19 20,000 birds at the North Bay airport every day but you  
20 had some method of keeping the birds away from  
21 airplanes, I don't know, because you could put  
22 something on the airplane, would you agree that no one  
23 would be as concerned about the interplay of birds and  
24 airplanes?

25 A. I would agree with you that if we



1 could prevent the damage occurring to aircraft, if that  
2 is what you are saying, from a bird strike, then the  
3 concern would be less; is that what you are saying?

4 Q. I am trying to think what my words  
5 were. I used to be a great fan, and I am being quite  
6 serious about this, but I used to be a great fan of the  
7 TV program Star Trek. Did you ever watch it?

8 A. Unfortunately I hated it.

9 Q. You and I disagree on more than  
10 just birds and airplanes.

11 A. I am aware of it.

12 Q. Do you know what it was about?

13 A. Yes.

14 Q. A space ship that went around  
15 where no man had gone before, I recall as being the  
16 words. This ship had the ability to put these shields  
17 down which would protect it from attacks from the  
18 outside. Do you recall?

19 A. Yes.

20 Q. Let's suppose in a purely  
21 hypothetical situation that we could put shields up  
22 around our airplanes as they landed at airports, okay?  
23 That is a hypothetical science fiction for our  
24 purposes, but I want to make a serious point.

25 Therefore, we now know that no matter



1 how many birds there are in the area, the shields would  
2 protect our planes and people from damage?

3 A. Yes. That is hypothetical too.

4 Q. Pardon?

5 A. The situation you are creating.

6 Q. You will never have a more  
7 theorial hypothetical put to you. Would you agree that  
8 in those circumstances, we wouldn't be concerned about  
9 the interplay or as concerned -- we wouldn't be  
10 concerned about the interplay of birds and airplanes?

11 A. Under those situations where the  
12 shield is one hundred per cent successful, sure.

13 Q. I am saying that the concern here  
14 is with the damage that the birds will cause to the  
15 airplanes. Do we agree, and to the people in those  
16 planes?

17 A. That is the ultimate risk.

18 Q. So what we are concerned about is  
19 collisions between birds and airplanes, because that is  
20 what causes that kind of damage?

21 A. That is the end concern.

22 Q. What we are concerned about is  
23 bird strikes. Do you agree? If we could control bird  
24 strikes by putting up shields, we wouldn't have a  
25 problem anymore?



1 A. I can agree with that.

2 Q. Looking again at the North Bay  
3 example, will you agree with me, using strikes as the  
4 danger, will you agree with me that this control  
5 program has reduced the hazard from extremely hazardous  
6 to something less than moderately hazardous in that  
7 particular situation?

8 A. In the analogy you were drawing, I  
9 would agree with you that the bird control program has  
10 reduced the hazard because it has reduced the number of  
11 strikes.

12 Q. Looking at Trenton as an example,  
13 and here the numbers are a little different, but here  
14 we have over a five-year period, sixty-two strikes; do  
15 you see that? Strikes in total?

16 A. I do.

17 Q. That is something just over twelve  
18 per year?

19 A. Yes.

20 Q. Eight in total of which are  
21 related to gulls, one in '81, one in '82, two in '83,  
22 three in '84 and one in '85; do you see that?

23 A. Yes.

24 Q. With respect to gulls and gull  
25 strikes, will you agree with me the bird control



1 program in that particular situation has reduced the  
2 hazard from extremely hazardous to something less?

3 A. Well, I would agree with your  
4 analogy, but if you want to measure hazard as a point  
5 in time like we were measuring before and discussing  
6 before as a point in time, there obviously was a break  
7 in the effectiveness of the program at the point in  
8 time when these strikes happened and perhaps you should  
9 be looking at the dump.

10 Q. With all due respect, you have  
11 agreed there is always a risk, haven't you?

12 A. Oh yes.

13 Q. Therefore you can't tell us  
14 whether or not these eight gull strikes would have  
15 occurred anyway, really, can you? You can't be sure  
16 what you just said is correct, can you?

17 A. I wouldn't agree with that,  
18 because you yourself have said that the control program  
19 in place at Trenton has been put there to reduce the  
20 risk and if we evaluate this airport on a site specific  
21 basis, the risk there is greater than the national  
22 average and the fact that the control program has  
23 reduced the risk, these statistics do show that it  
24 cannot eliminate the risk.

25 Q. You say it has shown that it has



1 reduced the risk, but you would agree with me surely  
2 that there may be other things attracting birds to that  
3 area; isn't that correct?

4 A. Yes.

5 Q. And therefore, if we were to look  
6 at the landfill as a land use, we would have to account  
7 in some way for which of those bird strikes were caused  
8 by the landfill and which were caused by other  
9 attractants, wouldn't we; isn't that correct?

10 A. Yes.

11 Q. Just give me a moment.

12 A. I believe that was discussed.

13 Q. I just don't want to mislead you  
14 in view of Mr. Estrin's concern. Let me read you the  
15 bottom of page 37 and the top of page 38.

16 A. The Trenton hearing?

17 Q. Yes. This is the decision, I  
18 apologise. Let me read it with you so you can follow  
19 along:

20 "The statistics presented at the hearing  
21 indicate the success of the bird control  
22 program. From 1979 to the present time,  
23 there have been a total of 91 bird  
24 strikes in the Trenton area, 13 of which  
25 involve seagulls. This is only 14.28 per



1 cent of the total. Dr. Solman's figures  
2 for Canadian airports is 15 to 20 per  
3 cent and up to 50 per cent in the USA."

4 Stopping there, you indicate in your  
5 evidence, and its on Exhibit M-412, the pamphlet you  
6 sent to the municipalities and also in your ICAO  
7 article, that 20 per cent of all gull strikes in Canada  
8 are caused by seagulls?

9 A. Of those strikes where the species  
10 is identified.

11 Q. Absolutely. Would you agree that  
12 given that the total in Trenton is 14.28 per cent, in  
13 fact that is less than the national average of gull  
14 strikes as opposed to total strikes?

15 A. I would agree.

16 Q. "It should be remembered that at  
17 Trenton as well as at all other  
18 airports, there is a percentage of  
19 unidentified birds involved and so the  
20 figures are valid to the extent that the  
21 identification of the birds has been  
22 established."

23 That is your point. You were here for Dr.  
24 Richardson's evidence on that?

25 A. Yes.



1 Q. Where he agreed that as more and  
2 more birds are identified, the percentage of bird  
3 strikes falling from the CATA statistics don't appear  
4 to change too much and unidentified birds appear to  
5 have not been gulls based on his evidence and do you  
6 recall that?

7 A. I would agree.

8 Q. "Another indication of the success  
9 of the bird control program is that  
10 since 1979, only one gull strike can be  
11 established as having occurred over the  
12 landfill site and only four or five are  
13 probables, although these are very  
14 probable. No one, however, should take  
15 too large a measure of comfort from  
16 these figures presented. One bird  
17 strike that results in serious damage or  
18 injury or worse is one too many."

19 With respect to that sentence, you would  
20 obviously agree?

21 A. Yes.

22 Q. Hence that was your point to Mr.  
23 Estrin, that you are still concerned if you are between  
24 zero and five, but you don't change the policy you ask  
25 the operation manager of the airport to act under with



1 respect to agricultural leases?

2 A. If it was shown that the number of  
3 strikes at an airport was less than five, and those  
4 strikes -- especially when you are talking about an  
5 average, but if it was shown in one year that the  
6 number of strikes at an airport was three, four, five  
7 or even ten and those reported strikes had been  
8 recorded at that airport, to reduce that average number  
9 of strikes over a five-year period to less than five,  
10 then we would definitely take actions at that airport  
11 to reduce the attractiveness of the crop that did cause  
12 that fluctuation in strikes in that one year or in that  
13 one case. The application of our standards, even  
14 though they are, shall we say, to be strictly adhered  
15 to, if we find that a situation is created that is  
16 causing undue concern, whether it is for bird hazards  
17 or any other reason, there is no reason in the world  
18 why the airport manager cannot take more stringent  
19 measures to correct that situation.

20 Q. Now, sir, my point is that in  
21 looking at impact of the bird control program at  
22 Trenton with respect to the landfill as the attraction,  
23 you would agree with me that among the things you would  
24 have to consider are the number of birds specifically  
25 identified with the landfill. Would you agree?



1 A. Say that again?

2 Q. One of the things you would need  
3 to do in considering the landfill as an attraction for  
4 birds in that area is to look at the number of bird  
5 strikes associated with the landfill. That is a factor  
6 and not the only factor?

7 A. That -- yes.

8 Q. Here we have got one that is  
9 specifically so identified and four or five probables  
10 for a total of six, looking at, from my perspective,  
11 the worst case; right?

12 MR. ESTRIN: Before he answers, the  
13 question was he would need to consider the bird strikes  
14 associated with landfill, but the Board, in the  
15 decision we are looking at....

16 MR. LEDERER: Mr. Estrin can do this in  
17 reply. This is reply and you don't give the witness  
18 the answer. If I don't do this properly, and I will,  
19 but if I don't do this properly, Mr. Estrin can raise  
20 it in reply, but he doesn't get to give the witness the  
21 answer now. This is completely improper and before Mr.  
22 Estrin makes his point, and I am sorry, but I would  
23 like to have a specific ruling. The Board must  
24 determine what the proper parameters for this kind of  
25 objection are.



1 MR. LANCASTER: I don't know the  
2 objection.

3 MR. ESTRIN: My objection is that the  
4 question, as Mr. Lederer put it, is not in accordance  
5 with the statistics or statement he is quoting from the  
6 report.

7 Now, I would be happy to have the  
8 witness leave the room and so Mr. Lederer doesn't think  
9 I'm trying to give an answer, because I don't think he  
10 needs my help, but if it is necessary, let the witness  
11 stand down and leave the room and I can discuss what  
12 the particular problem is if Mr. Lederer wants to go  
13 that far, or perhaps he could just correct his question  
14 to reflect what the Board's decision is actually  
15 talking about on that page.

16 MR. LEDERER: I don't want to correct my  
17 question, I would like it answered.

18 MR. LANCASTER: Ask the question again.

19 MR. LEDERER: Q. Would you agree that  
20 among the factors, and not the only factor that you  
21 would want to consider in looking at the attraction  
22 that a landfill is for birds, is the number of bird  
23 strikes associated directly with the landfill and that  
24 is one of the things you would look at and not the only  
25 thing?



1                   A.     I see that you are confusing the  
2 words attraction and strikes and hazard. The reduction  
3 in the number of strikes at the Quinte landfill site is  
4 directly related to the control program and not to the  
5 attractiveness of the site. That is something I was  
6 trying to get at earlier. If you have an attractive-  
7 ness, whether it is a landfill site or an environmental  
8 condition on an airport or surrounding area and you do  
9 not reduce the attractiveness, control measures can  
10 reduce the number of strikes, but the hazard of the  
11 attractiveness is still there. In that respect I  
12 would say no, the reduction in the number of strikes at  
13 Quinte is not related to a reduction in the attractive-  
14 ness to the site, but rather related directly to the  
15 effectiveness of the control program.

16                   Q.     I thought we had been through all  
17 of this and if we have to do it again, we will, but  
18 when you look at tab 7 in your witness statement and  
19 the discussion of what is extremely hazardous, the  
20 definition of extremely hazardous is the attractiveness  
21 that the land use has for particular sizes of birds  
22 with propensities to flock and move great distances to  
23 food. Isn't that right? That is what the hazard is,  
24 isn't it?

25                   A.     Yes.



1 Q. Therefore, sir, if you put in a  
2 control measure which reduces the tendency of birds of  
3 that size and flocking characteristic to move to that  
4 land use, you have reduced the hazard, haven't you,  
5 because you have reduced the attraction that that land  
6 use has for those birds. You may have done so in a  
7 way which is dependable on fallible human beings, but  
8 that is what you have done?

9 A. If you qualify it and say you have  
10 reduced the attraction of the landfill site by the  
11 activity of human beings to prevent birds from feeling  
12 at rest there, yes, I agree.

13 Q. Therefore you have reduced the  
14 hazard as defined in terms of attraction for birds,  
15 haven't you?

16 A. Yes.

17 Q. One of the things you will want to  
18 consider in looking at a situation like the Quinte one,  
19 in other words a case-by-case study, but one thing you  
20 will want to look at is the landfill's influence on the  
21 attraction of birds; isn't that correct?

22 A. Yes.

23 Q. And the landfill and birds and  
24 strikes are the ultimate indicator of the degree of  
25 risk and the number of strikes which are associated



1 directly with the landfill; correct? That is one thing  
2 you will look at?

3 A. Yes.

4 Q. You will also look at the  
5 relationship of the landfill to the airport and water  
6 and movement between the airport and landfill and all  
7 of that, won't you?

8 A. Yes.

9 Q. What I am suggesting to you is if  
10 you look at these numbers for Trenton, particularly  
11 with respect to gulls, and relate it specifically to  
12 those incidents which occur over the landfill or in  
13 proximity to it, and some of them occur some distance  
14 away, some of the thirteen gull strikes, what we have  
15 got here is a hazard which has been reduced from  
16 something which is extremely hazardous to something  
17 less than that?

18 MR. ESTRIN: Again here is a problem.  
19 He has just juxtaposed two different facts; first of  
20 all he talked about thirteen gull strikes in the area  
21 and he then moved to reference to the number of gull  
22 strikes over the landfill and is attempting to get the  
23 witness to compare one apple to one orange.

24 MR. LEDERER: I'm not, I'm asking him to  
25 consider all of those facts.



1 MR. ESTRIN: We don't have the number  
2 of gull strikes associated with the landfill. All the  
3 Board's decision talks about is the number of strikes  
4 over the landfill and if you look at the third line on  
5 page 38, that is my concern, the number of strikes over  
6 the landfill. If you read the transcript, there was a  
7 lot of debate about what was happening over the  
8 landfill versus how many around the landfill.

9 MR. LEDERER: When I say associated, I  
10 mean geographically associated.

11 Q. Let me use Mr. Estrin's language.  
12 Looking at the number of strikes that occurred over the  
13 landfill and looking at the total number of gull  
14 strikes, looking at the relationship of all of these  
15 things, the geographical relationship of all of these  
16 land uses, would you agree that what we appear to have  
17 is a situation in which the hazard has been reduced  
18 from something extremely hazardous, land use or rather  
19 landfill as an attraction and a hazard has been reduced  
20 from something which is extremely hazardous to  
21 something less than that.

22 A. Yes.

23 Q. Thank you. All right. Can we also  
24 look at the Toronto Island airport. Here we have -- I  
25 don't know if this is clear from the evidence and I



1 don't recall whether Dr. Richardson was asked if he  
2 looked at all five years here or not, and to be  
3 consistent we can assume he has but we do know we have  
4 three bird strikes all involving gulls, one in 1982,  
5 and two in 1983; so you see that?

6 A. Yes.

7 Q. Looking at Toronto Island in a  
8 case-by-case way, would you agree with me that this  
9 would suggest that we have a situation where the bird  
10 hazard here has been reduced from something which -- it  
11 doesn't fall into the extremely hazardous category I  
12 suppose as defined under tab 7, because we don't have  
13 here either a landfill site or a commercial fish plant,  
14 but can we agree there are a large number of birds in  
15 proximity to Toronto Island Airport?

16 A. Yes, I can agree with that.

17 Q. Given the number of birds and  
18 their proximity, would you agree it is a hazardous  
19 situation in its natural state, in the absence of bird  
20 control?

21 A. Yes.

22 Q. Pardon?

23 A. Yes, I would agree with you.

24 Q. Would you agree with me that it  
25 might be classified by some people again without



1 control as being extremely hazardous?

2 A. By some people, yes.

3 Q. By you?

4 A. I may say it is extremely  
5 hazardous, yes.

6 Q. Would you agree with me that with  
7 bird control in place and looking at these numbers,  
8 what we have is a situation in the area, to allow some  
9 flexibility because of the uncertainty in your  
10 response, but it is in the area of being extremely  
11 hazardous to being something less than that?

12 A. I wouldn't say that because other  
13 evidence has been shown here that there are in fact a  
14 lot more strikes at Toronto Island than what are  
15 documented here, and the report prepared by the City of  
16 Burlington indicated there were five strikes in one  
17 year and none of those strikes were reported and the  
18 level of reporting, and I have even said myself that I  
19 don't believe any reporting system is one hundred per  
20 cent accurate, but the level of reporting of strikes, I  
21 believe, would be higher at Trenton and North Bay than  
22 it is at Toronto Island and I would not want to use  
23 these statistics to indicate what the actual number of  
24 strikes at Toronto Island are. I have heard, if you  
25 want rumours, that I....



1 Q. I don't want to hear rumours as I  
2 don't think rumours are appropriate.

3 A. It's not a rumour. If you would  
4 like me -- I can change that. If you would like me to  
5 report on unsubstantiated bird strikes reported to  
6 Transport Canada airports, people who have worked at  
7 Toronto Island Airport have reported as many as twenty  
8 or thirty bird strikes a year. I believe these  
9 figures to be much higher than reflected in this  
10 report.

11 Q. The whole business of reporting of  
12 bird strikes is a problem across the country?

13 A. Yes.

14 Q. It is something you have been  
15 attempting to deal with and last year you sent out a  
16 flyer which I think is tab 1 of your witness statement,  
17 to every licensed pilot?

18 A. Yes, the complete reporting is a  
19 problem.

20 Q. When you come to deal with the  
21 impact of five bird strikes on agricultural leases and  
22 the forcing of airport operators to change their  
23 policies when that happens, am I correct in saying that  
24 those five strikes would have to be reported strikes?

25 A. Yes.



1 Q. You can't take into account  
2 unreported strikes?

3 A. They are reported strikes.

4 Q. Would you agree that when this  
5 document was prepared, even at that time it was known  
6 there were difficulties with reporting bird strikes?

7 A. It was known there were  
8 inconsistencies in the reporting procedures, yes.

9 Q. In fact, the problem, if I  
10 understand your evidence, has been greatly overcome in  
11 the succeeding years because at that time we were about  
12 250 reports a year and now we are up to around 800?

13 A. The reporting procedures have been  
14 improved.

15 DR. KINGHAM: If I can interrupt you,  
16 what then is an unsubstantiated bird strike reported to  
17 Transport Canada?

18 THE WITNESS: It is a report which is  
19 not received in writing, but something I may be aware  
20 of.

21 DR. KINGHAM: Somebody telephones you  
22 and says a plane hit a bird and is that  
23 unsubstantiated?

24 THE WITNESS: Or something I would hear  
25 in conversation or something I may even see in the



1 tower log. We do not include notes by air traffic  
2 controllers as strikes because they are not reported on  
3 the site report or the pilot report. So, those reports  
4 would not be in the annual statistics for that airport  
5 unless we had received one of the four types of reports  
6 I discussed earlier.

7 MR. LEDERER: Q. Now, sir, when,  
8 therefore, Transport Canada indicated they would not  
9 require a policy change for five strikes or less within  
10 the parameters of agricultural leases, they understood  
11 there was the potential for unreported strikes which  
12 would not be counted; is that not correct? That is  
13 part of the calculation, as it were?

14 A. It's not a policy but a standard  
15 and standards are developed underneath a policy and I  
16 would have to read it, but I believe that what it says  
17 is that we require a change above that and not below  
18 it.

19 Q. Exactly. Now, the point of all  
20 of this, as I am sure you appreciate it without me  
21 saying it to you is that we can effect the degree of  
22 the hazard by putting in control measures. Would you  
23 agree with me that if your worst fears and if  
24 Dr. Richardson's worst fears are realized here, there is  
25 the possibility that we could put in control measures



1 which would reduce the degree of the hazard?

2 A. Yes, I agree with that.

3 Q. And when this Board comes to  
4 consider the balance of all the risks from all the  
5 disciplines that have been considered here, you would  
6 agree with me that one of the things it may want to  
7 consider is the way in which this risk or hazard can be  
8 decreased by reasonable mitigation measures. That's  
9 fair, isn't it?

10 A. That is only one aspect of it, but  
11 they should also consider the fact that, as John  
12 Richardson said, and as I believe myself, the risk of a  
13 bird being in front of an aircraft is a biological risk  
14 and it's not an engineering risk and it's not a risk  
15 that we can deal with in an engineering or predictable  
16 manner and the variability of that risk as opposed to  
17 some of the other risks they will have to assess should  
18 also be looked at.

19 Q. Some portion of it is random and  
20 it is unpredictable?

21 A. As opposed to some of the other  
22 risks they would have to assess such as hydrogeology,  
23 noise, traffic and other things that may be easier to  
24 control than the flight of birds.

25 Q. It may or may not be, but in a



1 case-by-case study we can't be sure?

2 A. Yes.

3 Q. Let's move on to something else.

4 Mr. Estrin has asked you a number of times in questions  
5 how Transport Canada feels about certain things. I  
6 want to be certain if I understand exactly the basis on  
7 which you are here. You are employed by the Federal  
8 Government?

9 A. Yes.

10 Q. You are employed by Transport  
11 Canada with the particular responsibilities you have  
12 outlined?

13 A. Yes.

14 Q. When you come here, is it fair to  
15 say that you represent Transport Canada and its views?

16 A. Yes. I represent Transport Canada  
17 and its views, but I wouldn't go so far as to say that  
18 I could accurately represent the opinions of the  
19 Minister or someone like that. You know yourself  
20 there are limitations on my views that I would have to  
21 have clarified if it got beyond my capacity.

22 Q. To the point you have given your  
23 views freely to Mr. Estrin, those are the views of  
24 Transport Canada?

25 A. They are.



1 Q. And the views therefore of the  
2 Federal Government?

3 A. They are.

4 Q. When you come here and speak in  
5 this fashion, we can agree and you have agreed, but you  
6 speak from the position of an employee of that  
7 government and with that authority; do we agree?

8 A. In what I have said so far, yes.

9 Q. You are a representative and in a  
10 sense an agent of the Federal Government; isn't that  
11 correct?

12 A. Yes.

13 Q. I presume that as such you would  
14 want to be perceived as, and in fact would want to act  
15 in a responsible manner?

16 A. Yes.

17 Q. You would want to be careful about  
18 the evidence you gave here and have it be accurate?

19 A. I would.

20 Q. You would want to be fully  
21 informed about legislation you have commented on?

22 A. In my capacity with Transport  
23 Canada, I have not been in a position to be fully  
24 informed of the legislation under which our department  
25 acts.



1 Q. When you offer an opinion about  
2 legislation or indicate a certain position from  
3 legislation, you would want to be sure you are right?

4 A. The opinions I expressed was based  
5 on work I have done in relation to the use of the  
6 Aeronautics Act as it relates to my job and I discussed  
7 those opinions with Justice related to other matters  
8 and I feel that what I have said is accurate to the  
9 best of my knowledge, but I wouldn't want to come here  
10 as a representative of Transport Canada and attempt to  
11 understand the Aeronautics Act.

12 Q. To the extent you have commented  
13 on the Aeronautics Act you would want to take care to  
14 be accurate, wouldn't you?

15 A. Yes, I would.

16 Q. Now, sir, you gave some evidence  
17 to Mr. Estrin concerning, as I understood it, your view  
18 of the Quinte Sanitation decision and the situation in  
19 North Bay. Do you recall? You commented on that this  
20 morning?

21 A. You would have to....

22 Q. You indicated that the Quinte  
23 Sanitation site had been closed or was going to be  
24 closed?

25 A. What I believe I said was that I



1 had no first-hand knowledge of what the decision was,  
2 but that is what I thought may have happened.

3 Q. Did you mean to imply in your  
4 answer to Mr. Estrin that the principal reason why that  
5 site has been closed is as a result of bird risk?

6 A. I did not imply that.

7 Q. I beg your pardon?

8 A. I did not imply that.

9 Q. I think the question of whether  
10 you implied it or not will come from the record, but  
11 you didn't mean to?

12 A. I didn't.

13 Q. In fact what the Board said was  
14 that save and except for the manner in which the site  
15 was operated, it would have been prepared to let the  
16 site go ahead with the bird control program as it  
17 existed in place; isn't that right?

18 A. What I recall is that I said I was  
19 not familiar with the Trenton Board report, so I can't  
20 comment on it.

21 Q. In the North Bay case, sir, you  
22 indicated to that Board, as I understand it, that the  
23 control program in place there had been successful and  
24 had helped to reduce the hazard; isn't that correct?

25 A. Are you referring to that in the



1 Board report?

2 Q. I get it from the Board report.

3 A. I am not familiar with where that  
4 statement is.

5 DR. KINGHAM: The North Bay Board  
6 decision?

7 MR. LEDERER: The North Bay case.

8 THE WITNESS: I don't recall that  
9 statement being in the report.

10 MR. LEDERER: If you don't, I will show  
11 it to you.

12 MR. ESTRIN: What page?

13 MR. LEDERER: I will read you the full  
14 paragraph from page 5, but I will tell you that what  
15 is of interest to me is the last sentence of the  
16 paragraph, but I don't want it to be out of context.  
17 Page 5, the first full paragraph on the page -- the  
18 second full paragraph:

19 "Jet aircraft are particularly  
20 susceptible to bird strikes because of  
21 the speed at which jets travel. A bird  
22 can go through a piece of metal or a  
23 windshield or be ingested into an  
24 engine. Every year in Canada there are  
25 apparently 800 to 900 bird strikes and



1 approximately 125 of these in engine  
2 strikes, 22 to 25 per cent of which  
3 cause damage. Of these, four to five  
4 cause significant damage. Bird strikes  
5 can be reduced with a proper bird  
6 control program. North Bay has such a  
7 program and it is currently very  
8 effective."

9 Do you agree with that?

10 A. I would agree. Yes, I would have  
11 to agree that North Bay's program is effective.

12 Q. To the extent -- in fact that  
13 Board has allowed that site to remain open for a  
14 further -- is it two years, until 1990?

15 A. December, 1990, I believe, but the  
16 operation of the control program at North Bay is not  
17 the responsibility of the landfill owner, but rather  
18 the responsibility of the airport. The effectiveness  
19 of that program, I believe, is directly responsible or  
20 directly related to the responsibility of the airport  
21 manager to accept his responsibilities to ensure the  
22 safest operation of aircraft that he can at that site  
23 and not to the direct operation of a landfill site by  
24 the landfill owner.

25 Q. My point is that -- understanding



1 the situation in North Bay and the problems, it is  
2 important to understand there is a bird control program  
3 which has been effective in decreasing the hazard?

4 A. Yes.

5 Q. Are you familiar -- I will come to  
6 that. You indicated in your evidence -- actually, sir  
7 I am about to enter into something new and it is now  
8 twenty after 12:00.

9 MR. LANCASTER: I think it might be  
10 appropriate to break.

11 MR. LEDERER: I would be happy to rise  
12 now if the Board finds that appropriate.

13 MR. LANCASTER: We will adjourn until a  
14 quarter to 2:00.

15 MR. ESTRIN: May I ask one thing of a  
16 very technical nature. We have this projector and  
17 screen under rental and does anyone require it be kept  
18 here?

19 MR. LEDERER: What other films are you  
20 offering?

21 MR. ESTRIN: I take it the answer is no.  
22 In that case, we can arrange to remove it.

23

24 --- Luncheon Adjournment (12:22 p.m.)

25



1 --- Upon commencing at 1:45 p.m.

2 MR. LANCASTER: Please be seated.

3 MR. ESTRIN: Mr. McDonald, I guess we  
4 are interested in knowing what you were able to  
5 clarify?

6 THE WITNESS: I can be here tomorrow.

7 MR. ESTRIN: I am sure all of us  
8 appreciate that.

9 DR. KINGHAM: The Board very much  
10 appreciates it.

11 MR. LANCASTER: We do indeed.

12 MR. ESTRIN: Did you have any luck from  
13 your Ottawa people with regard to statistics?

14 THE WITNESS: No, I have not had time to  
15 do it.

16 DR. KINGHAM: If those figures are any  
17 difficulty for you....

18 THE WITNESS: They are looking them up.  
19 I just didn't have a chance to call the fellow up.

20 MR. LEDERER: Q. Now, Mr. McDonald,  
21 this morning we were talking about hazards and  
22 attractiveness and all of that. Do you remember that?

23 A. Yes.

24 Q. One of the things in this area of  
25 attraction of birds you discussed with Mr. Estrin in



1 direct examination was the matter of the attractiveness  
2 of fields to gulls and birds; do you recall that?

3 A. Yes, sir.

4 Q. I asked you this morning whether  
5 you would agree that in particular circumstances, and I  
6 gave you some examples from the Quinte Sanitation  
7 situation, there might be particular moments in time  
8 and I hope I was careful enough not to go beyond that,  
9 but in which fields might be more hazardous, more  
10 attractive to birds than landfills. Do you recall that?

11 A. At a particular moment in time.

12 Q. i don't want to go back to that,  
13 but I wanted to refer you to the matter of the  
14 attractiveness of agriculture to birds and suggest that  
15 that is a matter which you are concerned about in the  
16 course of your work; isn't that correct?

17 A. Yes, it is.

18 Q. That is why, for example, we find  
19 the sort of leasing policies we referred to in the  
20 manual on bird hazards?

21 A. Yes, that's true.

22 Q. In fact, Transport Canada has  
23 produced a book, a manual called The Attractiveness of  
24 Agriculture to Birds at Canadian Airports which deals  
25 with that problem, isn't that right?



1 A. I talked about that yesterday.

2 Q. This book, and this is the only  
3 copy I have and I don't propose to go into it at great  
4 length, but I just want to make the point it exists and  
5 review generally what is here. Can we agree that  
6 generally speaking, it is divided into two sections.  
7 In other words, it looks at the attractiveness of  
8 certain agricultural crops to birds and discusses  
9 grains, grasses, hays and vegetables, fruits, that kind  
10 of thing and their respective attractiveness to birds?

11 MR. ESTRIN: May I see the document?  
12 This is nothing in the witness statement. Have you a  
13 copy, I am not aware of....

14 MR. LEDERER: That's the only copy I  
15 have.

16 THE WITNESS: In response to that  
17 question, it discusses not only agricultural crops but  
18 other agricultural activities.

19 MR. LEDERER: Q. It looks at it from  
20 the point of view of birds and discussed various bird  
21 species?

22 A. Yes, and I discussed that  
23 yesterday also.

24 Q. The whole matter of birds -- of  
25 fields as an attractant for birds is something that is



1 sufficient, or of sufficient concern to Transport  
2 Canada that you have prepared this manual in which to  
3 assist people with the nature of that risk; isn't that  
4 fair?

5 A. Yes, it is.

6 Q. I wanted to just read to you a  
7 little bit of what's called the managerial summary and  
8 what it says about gulls, just to put it in context and  
9 I don't mean to suggest I would restrict it in that  
10 way.

11 MR. ESTRIN: Which page?

12 MR. LEDERER: This is the very first  
13 printed page, entitled The Attractiveness of  
14 Agriculture to Birds at Canadian Airports, which is  
15 really the title of the manual itself and it has as a  
16 heading Managerial Summary. I take it you are  
17 familiar with this document?

18 A. I am.

19 Q. "This report is a compilation of  
20 data concerning the attractiveness of  
21 agricultural crop and livestock farming  
22 practices to those types of birds of  
23 significant hazard to aircraft. It  
24 examines those agricultural practices  
25 that are common on airports across



1 Canada as well as those crops and  
2 livestock that could be considered for  
3 airport lands. The report is national in  
4 scope and considers bird types from  
5 across Canada that are known to be  
6 hazardous at airports in addition to  
7 other birds potentially hazardous due to  
8 specific behavior, size, flight  
9 patterns. Attractiveness data is  
10 indexed by both agricultural practice  
11 and bird species."

12 And that summarizes what is here?

13 A. It does.

14 Q. "This report is to act as a  
15 reference guide for use by Transport  
16 Canada in the evaluation of  
17 (i) candidate crop livestock practices  
18 for airport agricultural leases and  
19 (ii) present agricultural practices as  
20 possible attractants for specific bird  
21 species, causing airport hazards. The  
22 report also provides an insight into the  
23 manipulation of specific agricultural  
24 practices to reduce the attraction to  
25 birds."







1 specifications and evaluations."

2 Do I understand then that the leasing of  
3 agricultural lands is a way in which airports make  
4 money or produce revenue?

5 A. Yes, it is.

6 Q. As a result of doing that, they do  
7 create this potential attractant for birds?

8 A. No, I wouldn't say that that was  
9 correct.

10 Q. "Concern over the impact of  
11 airport agriculture as a bird attractant  
12 has had a parallel increase."

13 Isn't that what that says? As there has  
14 been an increase in the use of airport lands for  
15 agriculture there has been a parallel increase in  
16 airports as a bird attractant?

17 A. The application of agricultural  
18 leases on airports in Canada is done on a site by site  
19 basis. I would not want to make a categorical  
20 statement that agricultural leases on Canadian airports  
21 has generically increased the risk of bird strikes at  
22 all Canadian airports, which seems to be what you are  
23 implying.

24 Q. Do you disagree with the statement  
25 I read to you?



1 A. No, not as a motherhood statement.

2 Q. I don't know what a motherhood  
3 statement is if it isn't generic?

4 A. It says that the document is  
5 national in scope and I agree with you on a national  
6 basis, but the application of agricultural leases,  
7 depending upon the activity and the crop at an airport,  
8 may or may not be more hazardous than the activity that  
9 may have been taking place before that crop was put  
10 into practice.

11 Q. As a general statement then, an  
12 increase in agricultural leases may lead to an increase  
13 in the attractiveness of a particular airport to birds,  
14 but it is something that needs to be evaluated on a  
15 case-by-case basis?

16 A. Yes, I would agree with that.

17 Q. Just as a landfill situation needs  
18 to be evaluated on a case-by-case basis to determine  
19 the actual risk. Do we agree?

20 A. Yes, I would agree with that.

21 Q. What interests me here is that you  
22 haven't stopped leasing all airport lands for  
23 agricultural purposes, have you?

24 A. Not all lands, no.

25 Q. There is a benefit which counter-



1 balances that risk, whatever it may be in any given  
2 case, and that is revenue to the airport; right?

3 A. I can't agree with that  
4 categorically either because I have already referred to  
5 a number of cases that I am aware of where revenue from  
6 agricultural leases has been sacrificed, shall we say,  
7 because we have restricted agricultural practices and  
8 this included my reference to Toronto and Calgary where  
9 the airport manager took it upon himself to have  
10 agricultural leases which were causing a problem at the  
11 airport to be removed, and so I would not agree.

12 Q. I am not suggesting that in  
13 certain cases the over-balance is still not to having  
14 agricultural leases and that isn't my point. You said  
15 to Mr. Estrin that the easiest way, the easiest way to  
16 deal with a bird attractant is not to have it, so you  
17 don't build a landfill near an airport, and I am saying  
18 the easiest way to ensure that you don't have  
19 agricultural leases attracting birds is not to have any  
20 agricultural leases; isn't that right?

21 A. Yes, that is true.

22 Q. The fact is that in certain  
23 situations based upon certainly a case-by-case  
24 analysis, you permit those agricultural leases?

25 A. Yes, we do.



1 Q. Despite the fact that in some  
2 fashion it increases the attractiveness of birds to the  
3 airport?

4 A. I can't agree with that. It does  
5 not necessarily in every case increase the  
6 attractiveness of that land that the agricultural lease  
7 is on to birds. We don't know what the agricultural  
8 lease is replacing and what it is replacing could have  
9 been a field, a wheat field or a seed field that was  
10 very attractive to birds, and if you were to put in a  
11 field of, say, maybe soya bean in a field that was  
12 previously in wild mustard, I would think, not being a  
13 farmer or pretending to be an expert, but from my  
14 experience I know at Toronto International, by removing  
15 some of the unmanaged land on the airport and having  
16 that land turned over and getting rid of the rough  
17 areas used by mice and small mammals and the weedy area  
18 used by seed-eating birds, and by putting proper  
19 agricultural leases in there we were able to greatly  
20 reduce the attractiveness of those areas to birds and  
21 the same applies to mammals. You can draw an analogy  
22 there. If you have gophers or ground squirrels on your  
23 airport which can be attracted to large rafter ants and  
24 other mammals which come in to eat them, they are root-  
25 eating environments, and by turning that land into



1 proper agricultural practice and getting rid of the  
2 weeds, the legumes, you can reduce the attractiveness  
3 of that land to birds that are after the small mammals.

4 I cannot categorically say that agricultural activity  
5 is more attractive than previous land uses on  
6 airports, and these are documented cases and cases that  
7 are supported by people in the agricultural field.

8 Q. What you are telling me is that  
9 you can put in agriculture, but reduce the risk  
10 sufficiently, just as we discussed this morning?

11 A. I was responding to your previous  
12 question.

13 Q. As a matter of fact, I don't think  
14 you were, but be that as it may, let's go back and try  
15 again. Would you agree with me that agricultural  
16 practices may well, in certain circumstances, attract  
17 birds?

18 A. In that case I can agree.

19 Q. I beg your pardon?

20 A. I can.

21 Q. Can you agree there may well be  
22 circumstances where Transport Canada has allowed leases  
23 to be entered into, agricultural leases in  
24 circumstances where an attraction for birds is thereby  
25 created?



1                   A.     Yes, I would have to say there are  
2 cases where that may well be.

3                   Q.     But there has been a competing  
4 benefit for the airport which has been the production  
5 of revenue; do you agree?

6                   A.     I would not say that Transport  
7 Canada has ever sacrificed airport safety and aircraft  
8 safety for the generation of revenue. It may be the  
9 case that in some cases bird strikes may have occurred  
10 as a result of agricultural practices, but agriculture  
11 or any other activity I would say has never been  
12 allowed to jeopardize safety.

13                  Q.     I'm not suggesting there is a  
14 single improper decision which has been made, but I am  
15 trying to get a comparison to see where we are. Do you  
16 agree with me in certain circumstances agricultural  
17 leases have been permitted in circumstances where it  
18 creates an attraction for birds? You have agreed with  
19 that?

20                  A.     I have.

21                  Q.     You wouldn't allow it if there  
22 wasn't some benefit to it, would you? There is nothing  
23 evil about making money or nothing evil about a  
24 benefit. You wouldn't do something unless there was a  
25 benefit to somebody, would you?



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A. You are referring specifically to agriculture?

Q. At the moment, yes.

A. I would say yes there is a benefit to somebody.

Q. So what you do then is you look at the potential to attract birds and you balance it with the benefit and you determine on a case-by-case basis that in this case the additional risk is over-balanced by the benefit, whatever it is, and you allow the practice; isn't that what happens? It's pretty straightforward or pretty typical. The government does it all the time, don't they?

A. One thing is we cannot measure the anticipated increase in risk and I think what we do is we take a look to see if we anticipate an increased risk. If we were to anticipate an increased risk, we would take a lot harder look at that agricultural practice and may even restrict it.

Q. You are permitted to say anything you want here, and I can't stop you and Mr. Estrin is very quick to remind me of that, nor will I try. If you want to keep qualifying everything this way, we will be here for three days. The question is not hard and nothing malevolent in what I am suggesting and I am



1 not pointing out anything sinister to you, but I am  
2 asking, isn't it clear in those cases that what happens  
3 is that somebody has decided that the increased risk is  
4 overbalanced by the benefit. That's a very common  
5 decision for policy and decision-makers to make and  
6 that's what happens, isn't it?

7 A. I would say maybe if you were  
8 discussing a national program and the application of  
9 agricultural leases nationally, I would say yes.

10 Q. So in a similar fashion then, it  
11 may very well be that when this Board comes to evaluate  
12 everything about this landfill, on balance the benefits  
13 may outweigh the increased risk given the control  
14 measures you can put in place, just as you described  
15 for agriculture and therefore you might permit a  
16 landfill in this kind of circumstance. That might  
17 happen, isn't that correct? It's the same kind of  
18 decision in the same general circumstance.

19 A. There are two issues there and one  
20 is I do not consider a landfill to be in the same  
21 general circumstance as an agricultural lease and so I  
22 would not want to draw that analogy that if you can  
23 permit agriculture, you can permit landfills.

24 Q. I didn't ask that. That isn't the  
25 question.



1 A. Could you break it down into two  
2 questions?

3 Q. The question is it's the same  
4 thing. There may be an increased risk and you balance  
5 it with control measures against the benefits and you  
6 make a decision and in the abstract it is possible the  
7 benefits may outweigh the risks and that is all, just  
8 as it does from time to time with agricultural  
9 resources?

10 A. This morning we referred to two  
11 different kinds of risks and referred to a risk of you  
12 taking a breath of a severely hazard toxic waste or  
13 chemical that was known would kill you immediately, and  
14 we talked about the risk of having a cigarette. I  
15 would compare the risk of agricultural leases and  
16 landfill sites to be similar to those two and we could  
17 make the same analogy.

18 Q. Mr. McDonald, we went through the  
19 cases this morning of the airports and you agreed that  
20 three airports, two of which have landfills, and you  
21 agreed that in both of those cases, the risk had been  
22 reduced beyond what is extremely hazardous as found  
23 under tab 7, so let's not play around with analogies.

24 The form of decision is the same. You  
25 take the increased risk and take the control and



1 balance it against the benefits and make a decision.  
2 Isn't that right?

3 A. For agricultural leases.

4 Q. And for landfills?

5 A. On a case-by-case basis.

6 Q. Thank you. Just as you do for  
7 agriculture, on a case-by-case basis?

8 A. On Transport Canada land and it's  
9 in our document, Transport Canada has adopted a  
10 position that no food garbage shall be deposited on  
11 lands owned by the Department of Transport, which I  
12 think indicates the degree of severity which we  
13 consider the risk of garbage dumps and the  
14 attractiveness of landfills to birds. I think if you  
15 consider that to the level of intensity of effort that  
16 is in that document on agricultural leases or  
17 agricultural practices that you have been showing off,  
18 it is an indication of how we interpret the severity of  
19 the attractiveness or hazard of the attractiveness in a  
20 relative manner of those two activities.

21 Q. You have agreed, haven't you, that  
22 in fact you can reduce the hazard, and haven't you also  
23 agreed that you examine each possibility, each site,  
24 each proposal on a case-by-case basis?

25 A. Yes, but we were beyond that and I



1 thought we had gone beyond that.

2 Q. I asked you --

3 A. And I agreed.

4 Q. And you would look at a landfill  
5 on a case-by-case basis too, wouldn't you?

6 A. Landfills are outside airport  
7 property and are beyond our control.

8 Q. Answer the question. Would you  
9 look at it on a case-by-case basis, yes or no?

10 A. On lands outside Transport Canada.

11 Q. These lands are outside Transport  
12 Canada, aren't they, Site D?

13 A. Yes, but not all agricultural  
14 lands are outside Transport Canada.

15 Q. - Just because I said I would read  
16 the way this deals with gulls, this is page 7:

17 "Short grass pastures and ploughed  
18 fields attract large flocks of gulls  
19 which feed on insects and earthworms.  
20 Pastures are used throughout the summer  
21 by the gulls, but bare fields attract  
22 gulls only during and immediately  
23 following ploughing. Herring, ring-  
24 billed, California and Franklin gulls  
25 are the common inland species. In



1 contrast to long grass, short grass  
2 fields also attract gulls because they  
3 are ideal roosting areas, offering  
4 unobstructed movement and visibility."

5 That just indicates that pastures will  
6 attract birds, some of these gulls throughout the  
7 summer and other fields attract them only when they are  
8 ploughed and there are variations in hazard, as we  
9 discussed this morning?

10 A. Yes.

11 Q. There are control measures you can  
12 use for example, as the film also referred to, the  
13 length to which you allow the grass to grow?

14 A. Yes.

15 Q. Have you read Exhibit H-17, the  
16 work done by Miss Hellas? Have you reviewed this?

17 A. I have seen it but not reviewed  
18 it.

19 Q. To the extent it deals with bird  
20 hazard, you have not read those pages?

21 A. I wouldn't want to comment....

22 Q. I asked you if you read them?

23 A. I haven't read them but I have  
24 seen them.

25 Q. I wanted to come back to this



1 matter of your role as a government official and I want  
2 to review that with you a bit further. Would you  
3 agree that government, and I'm talking about the  
4 Federal Government in conjunction with the Provincial  
5 Government in conjunction with the Municipal Government  
6 has a lot of competing values out there it must fight  
7 with and in this case you must provide waste disposal  
8 and there are potential problems with birds and many  
9 other risks and the government must handle all of  
10 those; would you agree?

11 A. I would agree.

12 Q. For example, in Energy from Waste,  
13 which is not what you are dealing with here, you might  
14 have a competition between the Ministry of the  
15 Environment, who is concerned about pollutants coming  
16 out of the stack, as opposed to the Ministry of Energy,  
17 which wants to have energy produced and you have that  
18 kind of interplay, don't you?

19 A. Yes.

20 Q. There is a famous story about the  
21 American Government and how the Department of Health &  
22 Welfare spends all kinds of money trying to stop people  
23 from smoking, while the Department of Agriculture  
24 spends all kinds of money promoting tobacco growth; but  
25 that kind of dispute. The government has to work to



1 balance a lot of these kinds of concerns?

2 A. They do.

3 Q. The Federal Government with its  
4 particular responsibility and jurisdiction, will have  
5 to work with the Province to balance out the various  
6 competing interests in circumstance such as this, do we  
7 agree?

8 A. Yes.

9 Q. In fact, that is really the  
10 instruction given to the government, or given by the  
11 government to the Minister and through the Minister to  
12 you in Section 4.4, sub 3(a), which you referred the  
13 Board to yesterday, in the new Aeronautics Act and I  
14 can read that into the record while you are looking for  
15 it.

16 "The Governor in Council shall not make  
17 a zoning regulation under paragraph 2(a)  
18 unless

19 (a) the Minister, after making a  
20 reasonable attempt to do so, has been  
21 unable to reach an agreement with the  
22 government of the province in which the  
23 lands to which the zoning regulation  
24 applies are situated providing for the  
25 use or development of the lands in a



1 manner that is compatible with the  
2 operation of an airport;..."

3 It is really an instruction to try and  
4 get the province and the federal government to get  
5 together on these issues?

6 A. Yes, I would say so.

7 Q. There is an instruction there for  
8 you to work with the provincial government. Can we  
9 agree?

10 A. Yes.

11 Q. And with other authorities  
12 responsible for providing the services which may impact  
13 upon or be a concern to you as a result of your  
14 particular responsibilities?

15 A. Yes.

16 Q. You want to work with those  
17 authorities, do we agree?

18 A. Yes.

19 Q. You referred us to this Act and to  
20 your power to zone and regulate lands and just referred  
21 to the fact that there is some limit on your power  
22 beyond the boundaries of the airport and I wanted to  
23 refer to Section 4.4 sub 2, which is the section to  
24 which you referred yesterday. Do you have that?

25 A. I do.



1 Q. "The Governor in Council may  
2 make regulations for the purposes of  
3 (a) preventing lands adjacent to or in  
4 the vicinity of a federal airport or an  
5 airport site from being used or  
6 developed in a matter that is, in the  
7 opinion of the Minister, incompatible  
8 with the operation of an airport;..."

9 and that was (a) and then:

10 "(b).... preventing lands adjacent to or  
11 in the vicinity of an airport or airport  
12 site from being used or developed in a  
13 manner that is, in the opinion of the  
14 Minister, incompatible with the safe  
15 operation of an airport or aircraft; and  
16 (c) preventing lands adjacent to or in  
17 the vicinity of facilities used to  
18 provide services relating to aeronautics  
19 from being used or developed in a manner  
20 that would, in the opinion of the  
21 Minister, cause interference with  
22 signals or communications to and from  
23 aircraft or to and from those  
24 facilities."

25 And you said the Governor in Council has the power to



1 make regulations dealing with the use of lands in the  
2 vicinity of airports, or the vicinity of a federal  
3 airport or an airport site. Do we agree?

4 A. Yes.

5 Q. This Act I think you said  
6 yesterday, has been in force since 1986?

7 A. There is a date of 1985 on it.

8 Q. I thought you said yesterday and  
9 it was '85-'86, but I will happily accept 1985. I was  
10 interested in tracing that back before 1985, and I  
11 didn't have a copy but I found one late last night and  
12 I don't think it's terribly controversial. I looked  
13 at the Aeronautics Act as it existed prior to this new  
14 Act of '85-'86. I will refer you to Section 6.1(j)  
15 and (k). Those were the sections, can we agree, under  
16 which these regulations could have been enacted prior  
17 to the coming into force of the new Act?

18 A. Yes.

19 Q. The government has had the power  
20 to enact these kinds of regulations for some time, it's  
21 not a recent development, do we agree?

22 A. Yes, I agree.

23 Q. Sir, if the government felt that  
24 there was some need to regulate the lands adjacent to  
25 an airport, they could have done that for some time.



1 Can we agree?

2 A. There are over one thousand  
3 airports in Canada and the development and enforcement  
4 or creation of the zoning regulations is a costly  
5 matter in some cases as I have said. I think acting in  
6 a reasonable manner, I would not say that the  
7 government has had cause to implement extensive zoning  
8 regulations at all of those over one thousand airports  
9 in Canada.

10 Q. I didn't ask if they had cause, I  
11 just asked if they had the power, and they had the  
12 power at least as long ago as 1970, do you agree?

13 A. Yes.

14 Q. At least seventeen years such a  
15 regulation could have been put in place.

16 Now, sir, I am going to show you a  
17 document which I got from the newspaper and ask you  
18 whether you are familiar with it. It's a notice from  
19 Transport Canada dealing with the zoning regulation  
20 governing Buttonville airport. Have you seen this  
21 before?

22 A. No, I haven't.

23 Q. Would you agree with me that  
24 Buttonville is a private airport?

25 A. Yes, it is.



1 Q. I am pretty sure you said to Mr.  
2 Estrin that Transport Canada had no jurisdiction to  
3 regulate lands in proximity to private airports as  
4 opposed to Transport Canada airports. Did you say  
5 that, do you recall?

6 A. No, I don't recall saying that.

7 Q. Just so you know, my notes  
8 demonstrate that it comes early on in your evidence, in  
9 the introductory phase?

10 A. Could you repeat that question?

11 Q. Pardon?

12 A. Could you repeat that statement?

13 Q. What my notes show you said, and  
14 let's see if I can find the note specifically. They do  
15 not have regulatory authority over private airports;  
16 that is what my notes say. Did you say that yesterday?

17 A. I may have.

18 Q. Pardon?

19 A. I may have.

20 Q. If you said that, you didn't mean  
21 to suggest that this kind of zoning regulation couldn't  
22 be put in place with respect to a private airport?

23 A. I imagine I could have been  
24 referring to our policy standards.

25 Q. Not to the zoning power. What I



1 wanted to do was look at the opening of this as an  
2 example of the kind of thing that might be done. I  
3 observed the date is June 17th, 1987. That is at the  
4 top in small print.

5 A. Yes.

6 Q. This is something done last year.

7 A. Right.

8 Q. "Notice is hereby given, pursuant  
9 to section 4.5 of the Aeronautics Act,  
10 that the Governor in Council, pursuant  
11 to section 4.4 of that Act,..."

12 that is the section you referred to as the authority  
13 for making these zoning regulations; correct?

14 A. I would imagine so.

15 Q. "... proposes to make regulations  
16 respecting the regulations at Toronto/  
17 Buttonville airport.

18 The proposed zoning regulations  
19 will limit the height of new buildings,  
20 structures and objects, or additions to  
21 any existing buildings, structures or  
22 objects, including objects of natural  
23 growth, and will prohibit the disposal  
24 of any waste edible by or attractive to  
25 birds on lands adjacent to the airport.



1 Property owners within the limits of the  
2 outer surface, within a radius of 4000  
3 metres above the airport reference  
4 point, will be restricted in any  
5 construction within that area to an  
6 elevation of 45 metres above the airport  
7 reference point elevation and, within  
8 the runway approaches and transitional  
9 surfaces, to more restrictive  
10 limitations."

11 And then if you go to the second page as I have put it  
12 together, and in fact it appears as one page in the  
13 original advertisement, but under Disposal of Waste,  
14 Section 6:

15 "No owner or occupier of any land to  
16 which these Regulations apply shall  
17 permit that land or any part of it to be  
18 used for the disposal of any waste that  
19 is edible by or attractive to birds."

20 Do you see that?

21 A. I do.

22 Q. This makes it fairly clear that  
23 there is an effort here to regulate use beyond the  
24 boundaries of Buttonville Airport, including waste  
25 disposal facilities, because there won't be any waste



1 disposal facilities within the boundaries shown on  
2 the map at the lower righthand corner of the  
3 advertisement?

4 A. Yes.

5 Q. That suggests then, doesn't it,  
6 that to the extent that Transport Canada felt there was  
7 a danger or an unseemly risk, they had the power to  
8 regulate specifically the problem that concerns you,  
9 isn't that right?

10 A. With reference to Buttonville  
11 Airport?

12 Q. They could have done it with  
13 reference to any airport, but they happen to have done  
14 it with reference to Buttonville?

15 A. Yes.

16 Q. Now, can we look at the map and  
17 would you agree with me first of all that the way in  
18 which this is done, if you read it carefully, is you  
19 find the situation is studied on a case-by-case basis  
20 and then a whole lot of surfaces are defined which  
21 really are transitional surfaces and outer surfaces and  
22 what you really get is a three-dimensional airspace  
23 depiction above the property which shows, if you lay it  
24 out on the land, how far these zoning regulations are  
25 to apply?



1 A. Yes, but I'm not sure of your  
2 definition of a case-by-case basis.

3 Q. This is very particular to  
4 Buttonville and if you look at the boundaries, the  
5 boundaries are very specific and you wouldn't take  
6 those boundaries and place them at any other airport?

7 A. But the setting of those  
8 boundaries; my understanding of the setting of those  
9 boundaries is that it's a regimented and regulated  
10 practice within Transport Canada to determine what  
11 those surfaces are and I believe, and I'm not certain  
12 of this, but the application of those requirements is  
13 administered uniformly across the country. That could  
14 be checked, but that is my understanding of how they  
15 determine what the outer limits and horizontal planes  
16 are.

17 Q. But you take those rules or  
18 parameters and apply them in each specific case to come  
19 up with the boundaries that will apply on a case-by-  
20 case basis?

21 A. Yes.

22 Q. Can we agree, and there's no scale  
23 so it is difficult to say, but I am fairly certain of  
24 this, but can we agree that whatever the boundary is  
25 here, it's not five miles from the centre of the



1 airport?

2 A. That is probably true.

3 Q. Here we have a circumstance where  
4 Transport Canada has chosen to regulate and to zone,  
5 zone with respect to waste disposal, but has determined  
6 that it is not necessary on a case-by-case basis to go  
7 to the eight kilometre limit to which you have referred  
8 and which is appropriate, because, after all, it is a  
9 guideline; correct?

10 A. I would like to say first of all  
11 that the application of the zoning regulations at  
12 Buttonville Airport were probably not in direct  
13 response to concerns of either the airport or the  
14 surrounding area over the location of a landfill site,  
15 but rather an encroachment of the urban area on the  
16 airport, either for aircraft -- safe aircraft  
17 operations or communications devices referred to in the  
18 previous section of the zoning regulation.

19 As I said before, because Transport  
20 Canada recognises the seriousness of landfill sites  
21 around airports, when we are zoning airports for  
22 obstacles of natural growth or interference with rated  
23 communications or whatever, the zoning regulation for  
24 landfill sites is included in that zoning.

25 Q. Sir, it is that zoning regulation



1 which refers specifically to waste disposal, doesn't  
2 it?

3 A. That one regulation.

4 Q. The boundaries are not five miles  
5 from the centre of the airport; do we agree?

6 A. Yes.

7 Q. Therefore you could put a waste  
8 disposal with this regulation in place, a waste  
9 disposal site within the eight kilometre range of a  
10 specifically regulated site, couldn't you?

11 A. Yes.

12 Q. Could you agree with me that in  
13 this case what we have is an example of where Transport  
14 Canada believes it is not necessary to follow the  
15 guideline of eight kilometres?

16 A. My interpretation would be that  
17 Transport Canada has put restrictions on the land  
18 around Buttonville Airport and these restrictions are  
19 based on -- what was your question again?

20 Q. The question was very simple. The  
21 question is, here we have an example where an airport  
22 is being regulated specifically with respect to waste  
23 disposal and evidently waste disposal would be  
24 permitted within the eight kilometre limit. That is  
25 what this all says, isn't it?



1 A. Yes.

2 Q. Therefore, on this case-by-case  
3 basis, Transport Canada has determined it is not  
4 necessary to follow the guideline slavishly; would you  
5 agree?

6 A. Yes, it hasn't followed the  
7 guideline.

8 Q. Pardon?

9 A. It hasn't followed the guideline.

10 Q. If you come to evaluate a specific  
11 situation, even Transport Canada may conclude that the  
12 guideline need not be specifically applied. This is an  
13 example of that, one example?

14 A. Well, the....

15 Q. Can't you answer yes or no? If you  
16 can't, fine, but it's not that hard?

17 A. From a legal point of view, I'm  
18 not sure exactly what the comparison of the  
19 requirements for approach slopes and various other  
20 things are on lands surrounding airports and I do not  
21 know whether or not, from a legal point of view, there  
22 are legal requirements for those approach slopes. If  
23 there are legal requirements for them and if they are  
24 zoned to meet these legal requirements, then I wouldn't  
25 want to say that those legal requirements have the same



1 weight as what out guideline on the location of  
2 sanitary landfill sites has. Because I am not a lawyer,  
3 I can't really comment on whether or not the zoning of  
4 an approach slope to an airport is a guideline or a  
5 regulation.

6 Q. I'm not talking about that being a  
7 guideline or a regulation, I'm talking about the  
8 guideline which says that waste disposal ought not to  
9 occur within eight kilometres, the guideline you wrote  
10 and the guideline in the manual of bird hazards, that  
11 guideline. Will you agree that on this regulation,  
12 Transport Canada has not felt it necessary to follow  
13 that guideline?

14 A. I would agree with that.

15 Q. Thank you. So we have the  
16 possibility that on a case-by-case basis, it may not be  
17 necessary; do we agree?

18 A. Yes, I do.

19 Q. Thank you. I was interested in  
20 something you said and I confess I was a bit troubled  
21 by it. You said these regulations were a matter of  
22 some concern because first of all it was difficult to  
23 notify people; do you recall saying that?

24 A. Yes.

25 Q. And you said it was also difficult



1 because you say the government has to compensate people  
2 whose land may be affected; do you remember saying  
3 that?

4 A. Yes.

5 Q. First of all, could you agree with  
6 me that one of the things we see in this kind of  
7 legislation, and I don't know whether you personally  
8 would be aware of it, but the Board would be, and it's  
9 in a lot of regulations governing these kinds of  
10 matters, but there is an onus on government or  
11 authorities who want to act to notify the people who  
12 are going to be affected or will be affected, so they  
13 will know what will happen. Do you understand that?

14 A. Yes.

15 Q. Would you agree with me it is an  
16 important responsibility for government to advise  
17 people how they will act to affect their lands?

18 A. I would agree with that.

19 Q. I am troubled that you come here  
20 as a government official and tell us that you are  
21 concerned about the difficulty of notifying people.  
22 Isn't that something that you would want to do as a  
23 responsible official? Are you telling me you don't  
24 regulate this and you come to this Board because you  
25 want to avoid the responsibility of notifying people.



1 Is that what you are telling us?

2 A. No, I am coming to this Board to  
3 inform the people concerned of the hazards of landfill  
4 sites around airports and the responsibility to control  
5 land use around airports that is not zoned is not a  
6 federal matter, but is rather a provincial matter for  
7 other people to regulate and set and in the absence of  
8 zoning regulations for an airport and the official  
9 notification of the people who live around that airport  
10 and imposing land use restrictions on them which we  
11 have not done in this case, we would like to inform the  
12 people making the decision of the hazards that could be  
13 created if there is an absence of zoning regulations.

14 Q. Let's look at all of that. The  
15 government has the power to zone; would you agree?

16 A. Yes.

17 Q. It has had the power for some  
18 time?

19 A. Yes.

20 Q. In the Buttonville case we have a  
21 private airport like the Burlington Air Park; would you  
22 agree?

23 A. Yes.

24 Q. There the government has chosen to  
25 act on its own power to zone and say where on a case-



1 by-case basis study, the boundary for landfill and  
2 other uses ought to be?

3 MR. ESTRIN: I have let this go on for  
4 some time because I don't want to unduly interrupt, but  
5 this notice does not do more than indicate that  
6 Transport Canada intends to zone, and we have no idea,  
7 unless Mr. Lederer is prepared to file the final  
8 regulation issued by the Governor in Council, what the  
9 product of this effort was.

10 MR. LEDERER: That is right, this is a  
11 notice of intention, and if I have said anything that  
12 makes it more than that, excuse me, but it demonstrates  
13 the intention of Transport Canada, that is correct.

14 MR. ESTRIN: Because it's that and  
15 because we are talking about a process where public  
16 notice is given, who knows what the final form of this  
17 regulation could be?

18 MR. LEDERER: I agree and this is the  
19 introductory view of Transport Canada, I agree.

20 MR. GRIFFITHS: I have some concern as  
21 well that this is a document the witness has said he  
22 has never seen before. Surely there must be some limit  
23 to the cross-examination on proposed regulations and on  
24 a document which the witness admits he has never seen  
25 before and we are not even sure what regulations apply



1 outside and the process that has occurred to formulate  
2 this document. There must be some limit.

3 MR. LEDERER: On that basis you can't  
4 cross-examine on a document that the witness has not  
5 seen, but that would be an extraordinary proposition  
6 based on what has happened at this hearing. Being the  
7 one who has had to defend it up until now, I hope the  
8 rules won't change.

9 MR. LANCASTER: They won't.

10 MR. LEDERER: This witness was brought  
11 here as an expert and has commented on these  
12 regulations and talked about the North Bay regulation  
13 as an example of this kind of thing and I have put to  
14 him another example. He has happily answered the  
15 questions and has no perceivable difficulty I have seen  
16 and if he has that difficulty, then of course I will  
17 immediately give him time to go away and read the  
18 thing, but there is nothing improper, but I am not  
19 going back to any of the specifics and have gone as far  
20 as I want and need to go through this.

21 MR. LANCASTER: It does say proposed.

22 MR. LEDERER: I should have been a bit  
23 clearer.

24 Q. You would agree this is an  
25 indication of what Transport Canada proposes from its



1 study of what it thinks would be appropriate, subject  
2 to public comment, et cetera?

3 A. I would agree.

4 Q. Subject to public comment and  
5 political input, as I understand these regulations  
6 ultimately go to Cabinet, correct?

7 A. I'll take your word for it.

8 Q. You don't know that. Fair enough.

9 A. I would like to make one comment  
10 on your last statement as to the zoning of airports.  
11 Airports from my knowledge of airports that have been  
12 zoned, airports are zoned for a specific reason. It  
13 may have been brought to the attention of Transport  
14 Canada that something is infringing on the operation of  
15 that airport and an example of that is Chatham airport  
16 where somebody went and put a silo up at the end of the  
17 runway and the airport was not zoned at the time the  
18 silo went up and the silo was erected and it interfered  
19 with the approach and take-off requirements at the  
20 airport. The airport was zoned but the silo was already  
21 up and zoning regulations are not retroactive. I  
22 would say the reason that airport was zoned was to deal  
23 with that specific problem. I would say the reason  
24 Buttonville airport was zoned was to deal with a  
25 specific problem brought to the attention of Transport



1 Canada, and it was not brought specifically to the  
2 attention of Transport Canada that a landfill was going  
3 in around there, and that is why the eight kilometre  
4 radius for landfills was not adhered to in this  
5 circumstance. It is the opinion of our Department of  
6 Justice that if we were to zone an airport for the  
7 purposes of restricting sanitary landfill sites around  
8 that airport, we would have to apply the five-mile or  
9 eight-kilometre radius or else we would be showing  
10 prejudice. The cost of zoning eight kilometres around  
11 an airport as opposed to what I would estimate here  
12 might be two and a half miles or four kilometres would  
13 be considerably more, especially being a circle, it's a  
14 considerably larger area than going out in a straight  
15 line.

16 Q. Mr. McDonald, we have a proposed  
17 regulation here that doesn't go to five miles. Are you  
18 prejudicing somebody in the Buttonville regulation and  
19 are you saying that Justice's opinion is that this  
20 regulation is improper. Is that what you said?

21 A. No.

22 Q. I don't understand. Explain how it  
23 can be that you can stand here and tell us how it would  
24 be prejudicial and we can't regulate any way other than  
25 some guideline which is not passed upon by Cabinet or



1 the Legislature and nonetheless you are restricted by  
2 it when you zone. Explain that to me?

3 A. I don't think I said we are  
4 regulating any land use outside the zoning of  
5 Buttonville airport. I said if we wanted to regulate a  
6 land use outside the Buttonville airport, I have been  
7 informed by the Department of Justice that we would  
8 have to zone an area of equal distance for the purposes  
9 of landfill sites from the reference point. We could  
10 not go out and zone one hundred four-acre field and say  
11 there will be no landfill sites on that field. We would  
12 have to zone all fields and all lands within the eight  
13 kilometre radius of the airport reference point to show  
14 we were not being prejudicial to the one landowner who  
15 happened to want a landfill site on his property.

16 Q. You would have to zone all land  
17 uses the same way; that's what you were saying?

18 A. Yes.

19 Q. Whatever the distance is out, it  
20 applies to all land uses?

21 A. Yes.

22 Q. This all being the case, can we  
23 agree that you have known about this proposal since  
24 1986 and you received the full environmental assessment  
25 at that time?



1 A. If that's the date in the  
2 correspondence, yes.

3 Q. I believe it's September, although  
4 you may want to check. You have known about this  
5 proposal for two years, but the simple fact is that you  
6 could have put in a regulation dealing with this if it  
7 was thought to be a serious enough problem; isn't that  
8 right?

9 A. It wasn't two years, but September  
10 of '86.

11 Q. Whatever it is.

12 A. I suppose that that is an  
13 alternative, yes.

14 Q. But you didn't do it and the  
15 reason you tell us in part is because you are concerned  
16 with the difficulty of notifying people; that is one  
17 difficulty?

18 A. No. That is a cost of zoning and  
19 if we wanted to zone an airport, I am sure they  
20 wouldn't be concerned about that if they felt it was  
21 warranted.

22 Q. The other difficulty is that you  
23 would have to compensate the landowner; do you remember  
24 saying that?

25 A. Yes.



1 Q. Would you turn to Section 4.8 of  
2 the present Aeronautics Act. Do you have it in front  
3 of you? On page 63:

4 "No person is entitled to any  
5 compensation or costs for any loss,  
6 damage, removal or alteration resulting  
7 from the application of a zoning  
8 regulation to any lands, building,  
9 structure or object."

10 Do you see that?

11 A. Yes.

12 Q. Under this Act, you don't pay  
13 compensation, do you?

14 MR. ESTRIN: That is exactly asking for a  
15 legal opinion. The issue of whether or not injurious  
16 affection and compensation for that is within the  
17 meaning of the words "loss, damage, removal or  
18 alteration" I would submit is something that would have  
19 to be carefully considered. I don't think Mr. Lederer  
20 should be asking this witness for that kind of a  
21 complex legal opinion.

22 MR. LANCASTER: I would agree. You may  
23 point out -- ask him if he has noticed it with regard  
24 to what he has said, but giving an opinion is another  
25 thing.



1 MR. LEDERER: If I can proceed one point  
2 further so the Board has everything before it.

3 Q. You referred to two situations  
4 where compensation was made, Abbotsford, the airport in  
5 British Columbia. When was that compensation paid, do  
6 you recall? Would it have been prior to 1985?

7 A. I believe it was probably two and  
8 a half or three years ago.

9 Q. It would have been under the old  
10 legislation or the Aeronautics Act as it existed prior  
11 to this Act, the one you have brought here and put in  
12 evidence?

13 A. More than likely.

14 Q. The North Bay situation, that has  
15 existed since well before the new Act as well, is that  
16 correct?

17 A. Yes.

18 Q. Just by way of comparison, and if  
19 you don't want to comment or if Mr. Estrin wanted to  
20 object, fine, but I do want it to be out here for the  
21 Board. I am going to refer to Section 6(10) of that  
22 Act. You remember Section 6.1(j) and (k), but  
23 6(10)....

24 MR. ESTRIN: Could you just wait a moment  
25 while I find a copy of that?



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MR. LANCASTER: Which subsection?

MR. LEDERER: 6(10).

MR. ESTRIN: Can I show a copy to the witness?

MR. LEDERER; By all means.

MR. ESTRIN: This is the old Act.

MR. LEDERER: "Every person whose property is injuriously affected by the operation of a zoning regulation is entitled to recover from Her Majesty, as compensation, the amount, if any, by which the property was decreased in value by the enactment of the regulation, minus an amount equal to any increase in the value of the property that occurred after the claimant became the owner thereof and is attributable to the airport."

Now, I don't want you to answer my question until Mr. Estrin has had an opportunity to object because I don't want to have the same problem, but I want to have this all out before the Board. Would you agree that this is the form of the Aeronautics Act that existed at the time that Abbotsford was compensated to the best of your knowledge?



1 A. To the best of my knowledge, but  
2 I'm not sure.

3 Q. Would you agree that that would be  
4 the section under which that compensation was paid?

5 A. I would have to check with legal.

6 Q. Would you agree with me, and here  
7 I want you to be very careful before you answer, but  
8 would you agree with me, sir, that in order for there  
9 to be compensation owing in this situation, there will  
10 have to be some section of the Act that empowers  
11 compensation just as this section existed in the prior  
12 Act?

13 MR. ESTRIN: In this section  
14 particularly which...

15 MR. LEDERER: Site D.

16 MR. ESTRIN: The question?

17 MR. LEDERER: There will have to be a  
18 section that allows this kind of compensation.

19 MR. ESTRIN: I would object.

20 MR. LEDERER: I will withdraw the  
21 question.

22 MR. ESTRIN: This is something that  
23 should be addressed in argument, quite properly.

24 MR. LEDERER: I'm not disagreeing, but I  
25 wanted to give the witness a chance and if he doesn't



1 want to answer, fine.

2 THE WITNESS: I would answer....

3 MR. LANCASTER: No.

4 THE WITNESS: I could comment.

5 MR. LANCASTER: It has been objected to  
6 and let's leave it at that.

7 MR. LEDERER: Q. When you came here and  
8 gave this evidence about requiring compensation, what  
9 interested me was were you relying on the Abbotsford  
10 experience as the justification for making that  
11 statement to this Board?

12 A. I would say not solely, no.

13 Q. Did you go back to Justice before  
14 coming here and say has there been a change in the new  
15 Act with respect to compensation?

16 A. No, I haven't.

17 Q. In fact, the opinion of Justice  
18 which you are reciting would appear to be an  
19 opinion which springs from the earlier Act, is that  
20 correct?

21 A. I would say so, yes.

22 Q. So, assuming for the moment, and I  
23 have to put this as an assumption because Mr. Estrin  
24 doesn't want you to deal with these questions, but  
25 assume there has been a change between the two Acts,



1 would you agree with me that, first of all, to put it  
2 as simply as I can, you are wrong, or it is possible  
3 you are wrong in what you said with respect to the  
4 requirements of compensation?

5 A. That is possible.

6 Q. And, sir, if you are wrong and  
7 this is a matter for argument, would you agree with me  
8 that it's an indication that you as a responsible  
9 federal employee coming here and speaking for Transport  
10 Canada didn't take enough care to be sure that the  
11 opinions you were giving us were correct, because you  
12 didn't take the time to compare the new and old Act on  
13 this important issue?

14 MR. ESTRIN: Don't answer the question.  
15 We don't know whether he's wrong and it's purely  
16 hypothetical. Mr. Lederer is quite capable of arguing  
17 to the Board that that proposition which he is asking  
18 the witness to answer is something the Board should  
19 take into account when and if the Board comes to that  
20 conclusion.

21 MR. LEDERER: I can put it another way.

22 Q. Let me put it this way. You  
23 haven't gone to check whether there has been a change  
24 in this issue, have you? You just said that a few  
25 moments ago.



1 A. In my dealings with Justice on a  
2 somewhat regular basis, I would say that it has not  
3 been brought to my attention, and I have not determined  
4 whether or not there is a change to that regulation.

5 Q. We had a major overhaul to the  
6 Aeronautics Act just two years ago?

7 A. Yes, I would say so.

8 Q. And you came here and offered a  
9 legal opinion about the requirements of Transport  
10 Canada to pay compensation, didn't you?

11 A. I wouldn't say it was a legal  
12 opinion.

13 Q. You said you would have to pay  
14 compensation.

15 A. I don't think I am entitled to  
16 make a legal opinion.

17 Q. Did you say you would have to pay  
18 compensation?

19 A. I can't recall my exact words.

20 Q. Assume from me, because I think  
21 you said it more than once, that one of your concerns  
22 was you would have to pay compensation and you quoted a  
23 figure from Abbotsford, which to my recollection was  
24 over \$400,000?

25 A. I may have been referring to



1 compensation in other matters also and that is  
2 compensation from damages. It is possible.

3 Q. You also used the words  
4 injuriously affect, and I remember them specifically,  
5 and you will find that in the record too. My point is  
6 you didn't go back to check and see whether there had  
7 been any change as a result of this complete overhaul  
8 to the Aeronautics Act did you?

9 MR. ESTRIN: The witness says he has more  
10 or less regular dealings with Justice and he has not  
11 been informed that there was in fact such a change.  
12 Whether that is an omission or whether in fact there  
13 hasn't been a change, is something we can't determine  
14 by any cross-examination.

15 MR. LEDERER: I'm sorry, but I think  
16 there is a fairly important point here.

17 MR. LANCASTER: I think so too. The  
18 point is, you didn't check yourself?

19 THE WITNESS: I did not check to see if  
20 that clause was still in there.

21 MR. LEDERER: Q. You came here and told  
22 us there would have to be compensation without checking  
23 if that was so under the new Act, is that so?

24 A. I don't know whether I said there  
25 would have to be compensation or there could be



1 compensation.

2 Q. There could be compensation and  
3 you said that without checking the new Act?

4 A. I did not check the new Act, but  
5 the matter of whether or not there could still be  
6 compensation, I'm not sure of and I would like to  
7 discuss that with Legal.

8 Q. That is my whole point. You came  
9 here and said there might well be compensation and I  
10 think you said there would be based on the Abbotsford  
11 experience and you did that without checking with  
12 Justice as to whether there was a change in the law,  
13 didn't you?

14 A. If I said anything, I may have  
15 said there could be.

16 Q. And I am suggesting to you that is  
17 not what a responsible federal employee does, because a  
18 responsible employee checks the status of the Act,  
19 especially when there has been an overhaul, before  
20 offering opinions; would you agree on that?

21 A. Not in the context of the manner  
22 in which I said it here because in our national  
23 programs for wildlife control in Canada, one of the  
24 things we discuss at our seminar every year when we  
25 bring in these twenty-five people, is liability. We do



1 not inform people of the liability of the hazards of  
2 bird strikes to put the fear of the Lord into them or  
3 to have them start putting money away every year in the  
4 event there will be a bad strike or so they will go out  
5 and insure themselves, but rather the reason we discuss  
6 liability and compensation is to let them know that  
7 they are at risk in dealing with the safety of other  
8 people and the safety of other people as it relates to  
9 bird strikes is basically my understanding the  
10 responsibility of the airport manager as a  
11 representative of Transport Canada on the airport. I  
12 feel that I am qualified to express that opinion to the  
13 airport manager, that in accepting his liability or  
14 responsibility or his lack of responsibility, that he  
15 is putting himself in a legal position, in which case  
16 he may have to assume certain injurious affects or  
17 whatever, and I don't know if that's the proper legal  
18 term. I feel in my dealings with Justice I am  
19 qualified to make that statement and I feel I may not  
20 be qualified or I am not qualified to legally interpret  
21 the Aeronautics Act, but that was the intent of my  
22 interpretation of the Aeronautics Act and the  
23 Abbotsford judgment, that the intent is to inform the  
24 people who perform wildlife control functions across  
25 the country that based on past experience and the



1 opinions of Justice, that there may be certain  
2 liabilities and compensation they may be responsible  
3 for, and that could either be as a result of a strike  
4 or, as I said and as I thought was true, in the event  
5 of zoning regulations they may choose to enact.

6 Q. Are you finished? Are you  
7 finished?

8 A. Yes.

9 Q. Now can you answer my question?  
10 Let me ask you again. Would you agree that a  
11 responsible federal employee would check the status of  
12 any new legislation before coming before a Board and  
13 making any comment about the duties owed by officials  
14 under that Act; that is what a responsible government  
15 official would do? Do you agree?

16 A. I would say in the context of what  
17 I just said, no, I would not agree.

18 Q. A responsible government official  
19 doesn't check the Act for which he is responsible or  
20 which he acts under, he doesn't need to, is that what  
21 you are saying?

22 A. If it was his job to interpret and  
23 apply that Act, I would say yes.

24 Q. Now, sir, let's go to your witness  
25 statement and make absolutely certain what it is you



1 have said to this Board and perhaps you could go to  
2 paragraph 11.

3 Read the second sentence, and it's a  
4 long one, but it begins six lines down:

5 "He will address the issue of zoning  
6 regulations made pursuant to the  
7 Aeronautics Act and indicate that  
8 although Transport Canada through the  
9 Aeronautics Act has the power to zone  
10 property to prohibit, for example, the  
11 location of garbage dumps on lands in  
12 the vicinity of airports, such zoning  
13 regulations require a lengthy  
14 consultation process, implicate the  
15 federal government to pay compensation  
16 by way of injurious affection, and are  
17 considered not to be retroactive."

18 Do you see that?

19 A. Yes.

20 Q. You made that statement without  
21 checking whether or not the new Act had any  
22 implications for that statement, didn't you?

23 MR. ESTRIN: Mr. Lederer is really  
24 wasting our time, in my respectful submission. We have  
25 heard the same submission by him for the last five



1 minutes and, as I said a moment ago, we will not have  
2 the answer. Mr. McDonald has answered the question of  
3 whether or not he felt he ought to have checked in the  
4 context of his overall responsibilities and can go no  
5 further. The same question has now been repeated three  
6 or four times. The only thing we can do to be helpful  
7 to the Board is to look at the Act and see what legal  
8 interpretations have come out to date, see if Transport  
9 Canada has published anything that attempts to clarify  
10 the position from their point of view and we can argue  
11 about it, but I believe and it is my respectful  
12 submission, that Mr. McDonald has been as frank as he  
13 can.

14 MR. LEDERER: With great respect, there  
15 is nothing wrong with what I am doing. First of all to  
16 be candid, whether the Act or whether the law has  
17 changed is irrelevant to the question I am asking. The  
18 question is, did he even consider the possibility there  
19 was a change, and has he been responsible, and that  
20 goes to his credibility, the care with which he acted  
21 before coming here and that is the important point.  
22 As to whether or not I have asked that question a  
23 second or third time, and I have done, it's true, but  
24 that's proper cross-examination until the Board gets  
25 upset and now I have put to him something quite new and



1 something quite important. He said he's not sure what  
2 he said yesterday and maybe he meant some other kind of  
3 compensation. Now what I have put to him is the fact  
4 that he has in writing specifically that it's just the  
5 kind of compensation we have been talking about,  
6 compensation for injurious affection, injurious  
7 affection to property and not these other kind of  
8 things which he has raised. It is entirely proper. I  
9 have raised something new and certainly it's the same  
10 question but with a new factor, and I think this is  
11 important and I think I have a right to ask the  
12 question.

13 MR. LANCASTER: You certainly have in  
14 this particular case.

15 MR. LEDERER: Q. Now, Mr. McDonald, will  
16 you agree that you made this statement without checking  
17 to see whether the law had changed and may it has  
18 changed and maybe it hasn't, but you did it without  
19 checking to see, didn't you?

20 A. We have raised two issues here and  
21 one is whether I am sure of what I said, and I think  
22 that works both ways. I am not sure you are sure what  
23 I said, and without going through the transcript I  
24 can't fight back.

25 Q. Ignore what you said for this



1 question and let's look at what you wrote.

2 A. What I would like to say on that  
3 matter is that this witness statement was drawn up from  
4 the testimony presented at the North Bay hearing. At  
5 the North Bay hearing I was represented by a lawyer  
6 from the Department of Justice, and I believe that this  
7 would reflect what the testimony at the North Bay  
8 hearing said, and, in that way I would think that the  
9 Department of Justice, acting on my behalf, would have  
10 corrected any improper interpretation of the  
11 Aeronautics Act. I think in preparing for that case  
12 and the evidence presented at that case, after long  
13 dealings with the Department of Justice, if that point  
14 was not corrected at that time, then I assume that the  
15 Department of Justice would have taken responsibility  
16 for that and if I did repeat it at that time in North  
17 Bay, and I am sure it would be found in the testimony  
18 if I did, but I was acting on full direction and  
19 support of the Department of Justice and I would have  
20 taken it that with their support that what I was saying  
21 was correct at the time.

22 Q. So where we are now, as I  
23 understand it correctly, is you never went to check  
24 this question before coming here. You just relied on  
25 something implicit in the fact that nobody told you you



1 were wrong as you prepared your North Bay evidence. Is  
2 that where you are?

3 A. I worked long and hard with the  
4 Department of Justice to prepare for the hearings in  
5 North Bay in June and September, and that was since the  
6 publication of the new Aeronautics Act and my testimony  
7 at North Bay and my testimony here I would say has been  
8 reviewed with the Department of Justice and they would  
9 have informed me, I would hope, if my interpretation of  
10 the Aeronautics Act, if it was wrong, given the many,  
11 many hours we spent getting ready for the North Bay  
12 hearing.

13 Q. The North Bay problem started  
14 under the old Act and I take it, and even I don't want  
15 to go any further, but you made no specific effort  
16 before coming here to check whether or not there had  
17 been a change in the law with respect to the payment of  
18 injurious affection?

19 A. I have not read the whole  
20 Aeronautics Act.

21 Q. I asked you if you went to the  
22 Justice Department to discuss with them whether there  
23 had been a change with respect to this very specific  
24 question on which you have given evidence?

25 A. I haven't.



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Q. I am suggesting that was irresponsible. Do you agree with that; that a responsible person would have double-checked that question specifically before coming here and making such a categorical statement. Do you agree?

A. I will agree if you want me to agree.

Q. I want you to give me your honest answer. Do you agree?

A. I believe in my responsibilities within Transport Canada and have acted in a reputable manner.

Q. At least give me the courtesy of answering the question I asked.

A. I do not agree.

Q. Thank you.

MR. LANCASTER: Mr. Lederer, do you need a break?

MR. LEDERER: Is it that obvious?

MR. LANCASTER: I do.

MR. LEDERER: I said to Mr. Tzekas I might not be that long and I don't know how the Board is interpreting this, but I didn't expect it to take this long and I didn't expect these kind of answers and that may be my fault, I don't know, but I can tell you



1 now, this will go on for some time if it continues in  
2 this fashion and I have no option but to see my way  
3 through it and I have no choice but to do that. As I  
4 say, I have to, because that is my responsibility.  
5 Right now I don't anticipate finishing today.

6 MR. LANCASTER: We will go on until  
7 4:30, but if you don't mind, we will take a break.

8 MR. LEDERER: I appreciate it. Thank you,  
9 sir.

10 --- Recess

11 MR. LANCASTER: Be seated, please.

12 MR. LEDERER: Mr. Ramsay reminds me that  
13 the notice of regulation for Buttonville Airport wasn't  
14 exhibited and perhaps we should mark that as an  
15 exhibit.

16 MR. LANCASTER: M-432.

17 --- EXHIBIT NO. M-432: Notice of Regulation  
for Buttonville Airport

18  
19 MR. LEDERER: Q. Do you have in front of  
20 you your witness statement?

21 A. Yes, I do.

22 Q. What I would like you to do is  
23 turn for a moment with me to tab 2, the pamphlet Clear  
24 the Air. Do you have that?

25 A. Yes.



1 Q. As I understand it, that was  
2 delivered to all licensed pilots, 72,000 of them, some  
3 time last year, in 1987?

4 A. It was.

5 Q. Can I presume from that that what  
6 you were trying to do is advise pilots of this  
7 potential hazard, of this risk?

8 A. Yes, the risk and the requirement  
9 to report.

10 Q. Can I assume from that that you  
11 felt that in fact pilots were not sufficiently informed  
12 about that potential risk?

13 A. Yes.

14 Q. There was a need to correct that  
15 deficiency and therefore this, and I presume other  
16 things, this was sent out and other things were done to  
17 advise?

18 A. Yes.

19 Q. If you could turn with me to tab  
20 No. 3, this is Bulletin No.1 and this was prepared in  
21 April of 1987, last year?

22 A. It was.

23 Q. Again, if I understood your  
24 evidence correctly, this was done because there was a  
25 concern that people were not aware of the problem and



1 this is being delivered to airport operators and others  
2 interested in the field, is that correct?

3 A. Yes, and also to let those people  
4 know that we are doing something with the information  
5 they provide to us so they will continue to participate  
6 in our programs.

7 Q. And to understand the problem is a  
8 continuing one and the problem doesn't disappear with  
9 the receipt of one piece of paper?

10 A. Right.

11 Q. In April of 1987 it was determined  
12 there was a need to advise people of this problem and  
13 this is another part of that effort?

14 A. Yes.

15 Q. If I could also refer to Exhibit  
16 M-426, the document that has -- this is the document  
17 delivered to me entitled A Bird Strike Hazard. This  
18 also was prepared last year, sir?

19 A. It was.

20 Q. It was prepared, if I understand  
21 your evidence correctly, because there was a concern  
22 that municipalities weren't aware enough of the  
23 seriousness of this hazard and risk?

24 A. Yes.

25 Q. In fact, you said to Mr. Estrin



1 that one of the reasons why we see the planes depicted  
2 in these drawings as being single-engined smaller  
3 planes is because you wanted to make it clear it wasn't  
4 just a danger at Pearson International Airport, but  
5 also smaller airports such as the Burlington Air Park  
6 as an example?

7 A. Yes.

8 Q. So in 1987, someone made a  
9 judgment that the municipalities had not been informed  
10 enough and therefore this document was prepared and  
11 sent out, is that right?

12 A. That is when the document was  
13 prepared and sent out, but it wasn't only in 1987 that  
14 we discovered that many municipalities were not  
15 informed.

16 Q. You decided in 1987, whatever had  
17 been done previously, that they didn't know enough or  
18 were not aware enough of it, so you heightened their  
19 efforts by the publication of this document?

20 A. That is the year we did it, yes.

21 Q. So it appears there was quite a  
22 bit of activity in 1987 surrounding the need to inform  
23 people about the seriousness of this problem?

24 A. Yes.

25 Q. Now, would it be fair to say then



1 that you became aware of the fact that despite your  
2 efforts, that people involved in the programs you are  
3 involved in, that people became aware of the fact in  
4 1970 that there was a need to enter into this kind of  
5 information program?

6 A. In 1970?

7 Q. In 1987.

8 A. The need was recognised before  
9 that.

10 Q. In '87 it was acted on?

11 A. Yes, with the planning cycles and  
12 monetary cycles and whatnot, it was 1987 when these  
13 contracts were issued -- actually '86, '86-'87.

14 Q. You indicated to Mr. Estrin in  
15 response to questions put by him that you never heard  
16 from the Region of Halton in all of this; do you recall  
17 saying that?

18 A. The correspondence that we  
19 have....

20 Q. Prior to 1986. Prior to 1986 when  
21 Mr. Estrin contacted you, you had never heard from the  
22 Region?

23 A. Not on the present project.

24 Q. Can we assume, or would you agree  
25 with me that you weren't suggesting, were you, that



1 there was anything sinister or some effort to hide all  
2 of this from you? This was a municipality, can we  
3 agree, that like others apparently was not properly  
4 informed as to the seriousness of this problem as you  
5 see it; isn't that right?

6 A. Yes.

7 Q. There is nothing sinister and they  
8 weren't hiding things, they just didn't realize its  
9 seriousness. Is that possible?

10 A. It is possible.

11 Q. Thank you. I appreciate your  
12 candor.

13 Now, having received notification or  
14 having been advised of this in 1986, I want to look at  
15 what you did or what your department did. If I  
16 understand this correctly, you received the full EA and  
17 all the reports that support it in 1986?

18 A. They were sent to our regional  
19 office and I am not sure what they got.

20 Q. Well, sir, unfortunately I had a  
21 copy of a letter which I have managed in the last day  
22 or two to misplace....

23 A. I'll take your word for that.

24 Q. Looking at the letter to Mr.

25 Attack, this is at tab 9, the third letter dated



1 September 26th, 1986 from Mr. Livingstone to Mr.

2 Attack:

3 "A review has been completed of the  
4 Environmental Assessment for the  
5 Landfill Component of Halton's Solid  
6 Waste Management System.... with regards  
7 to the potential conflicts between the  
8 proposed landfill and Burlington  
9 Airpark."

10 So you are not saying that you didn't  
11 receive all the reports dependent on that issue, and I  
12 don't want to take it any further than that?

13 A. I am not contesting that.

14 Q. You agree.

15 MR. ESTRIN: He may not contest it, but  
16 the relevant question is does he know? Is he agreeing  
17 to be helpful without knowing? Let's fine out.

18 MR. LEDERER: Q. Did you get all the  
19 reports or did your Department get all the reports with  
20 respect to this hazard?

21 A. I do not know, I have no personal  
22 knowledge of that.

23 Q. So you come here without even  
24 knowing if your Department has the reports with respect  
25 to the issue you are talking about. Is that what you



1 are telling us?

2 A. I don't know if they received all  
3 the hydrogeological and other engineering and technical  
4 reports.

5 Q. Let me ask the question and be  
6 fair, and I thought I had done this and if I didn't I  
7 apologise.

8 You got the reports dealing with the  
9 bird hazard, and I don't know about the rest of them  
10 and I don't want to mislead you?

11 A. The Region would receive that.

12 Q. The Region?

13 A. Myself, no.

14 Q. When you say the region, you mean  
15 the regional office of Transport Canada?

16 A. Yes.

17 Q. Transport Canada has those reports  
18 dealing with this issue?

19 A. Yes, I would assume so.

20 Q. To respond to Mr. Estrin's  
21 concern, do you know that yourself?

22 A. I don't.

23 Q. You came here without knowing  
24 that. Is that fair?

25 A. Yes.



1 Q. You came here without reviewing  
2 the reports prepared by the Region that deal with this  
3 issue; is that fair?

4 A. Yes.

5 Q. Sir, you agreed earlier that this  
6 sort of thing requires a case-by-case study, do you  
7 remember?

8 A. Yes.

9 Q. Do you come here having made all  
10 these comments about the risk without making any effort  
11 to familiarize yourself with the work the Region has  
12 done with respect to this issue; isn't that right?

13 A. Before I pass comment on that and  
14 before I started to testify, I did take the trouble to  
15 sit through five days of testimony, I believe it was,  
16 to become acquainted with what the situations are. I  
17 haven't read the reports, but I think based on the fact  
18 that we did -- the Department did take the time to have  
19 me sit here for those days, that I have acquired some  
20 knowledge and views before I have expressed an opinion  
21 on this matter.

22 Q. Let's think about that. First of  
23 all, when you talk about five days of evidence, you are  
24 talking about the evidence of Dr. Richardson, is that  
25 correct?



1 A. And Mr. Kovachik and the  
2 cross-examination.

3 Q. You didn't attend at any day prior  
4 to Dr. -- Dr. Livingstone, I presume -- prior to  
5 Dr. Richardson getting on the stand?

6 A. I didn't.

7 Q. This witness statement which has  
8 been delivered in your name, you understand, don't you,  
9 that that was prepared and delivered to my office prior  
10 to Christmas of this year?

11 A. I will have to take your word for  
12 that.

13 Q. Would you agree it was prepared  
14 prior to Dr. Richardson giving his evidence; do you  
15 agree?

16 A. Yes.

17 Q. In this witness statement you  
18 express opinions; isn't that right? It says:

19 "He will indicate the most sensible and  
20 cost effective measure to prevent a land  
21 use known to attract birds."

22 And all the manuals and opinions you have offered are  
23 dealt with in this witness statement. Do you agree?

24 A. Yes.

25 Q. You formed those opinions and the



1 intention to speak to them before you heard Dr.  
2 Richardson's evidence; is that fair?

3 A. I believe I had seen his witness  
4 statement, but I had not read his report at that time.

5 Q. You formed those opinions without  
6 having read any of the reports and without hearing any  
7 evidence and then had them expressed in this witness  
8 statement; isn't that correct?

9 A. The opinions all relate to the  
10 national program of bird control.

11 Q. But the implication is that they  
12 apply to Site D, isn't it?

13 A. I don't think that it implies that  
14 I am for or against any site. These only imply to such  
15 a nature that Site D may contravene Transport Canada's  
16 recommendations as opposed to Site F, which would be  
17 outside of them, and my opinions on the application of  
18 our policy as it relates to the location of landfill  
19 sites was not based on Dr. Richardson's testimony but  
20 rather on our national program.

21 Q. Would you agree that you had done  
22 no case-by-case work, no work specific to Site D prior  
23 to having this witness statement prepared; would you  
24 agree with that?

25 A. I will.



1 Q. Let's go to paragraph 17 of the  
2 witness statement and do you have that?

3 A. I don't.

4 Q. I can read it with you, paragraph  
5 17 on page 10:

6 "Mr. McDonald will indicate that if a  
7 landfill at Site D is established and  
8 impacts on the safe operation of the  
9 Burlington Air Park, the Department of  
10 Transport may have no option but to  
11 either remove the Aeronautics Act Public  
12 Licence issued to Burlington Air Park  
13 or, alternatively, take whatever  
14 measures are possible to limit the  
15 operation or cause the early closing of  
16 the Regional landfill site."

17 Do you see that?

18 A. Yes.

19 Q. You raised the spectre of closing  
20 the air park?

21 A. I want to clear one thing...

22 Q. Do me this courtesy, answer my  
23 question. It's fairly simple. You raise in that  
24 paragraph the spectre of closing the air park, don't  
25 you?



1 A. Yes.

2 Q. Or you raise the spectre of having  
3 to have an early closing of the landfill, don't you?

4 A. Yes.

5 Q. Now, sir, can you give me one  
6 example where an airport has been closed as the result  
7 of the proximity of a landfill site. I am not talking  
8 about a landfill, but I want to know of an airport that  
9 has been closed?

10 A. I don't know of an airport being  
11 closed. Oh yes, I do. Trenton air base has been closed  
12 because of the number of birds on the airport,  
13 aircraft flights at Trenton have been suspended because  
14 of birds on the airport.

15 Q. Let's look at what you said here  
16 because that's not what we are talking about:

17 ".... the Department of Transport may  
18 have no option but to either remove the  
19 Aeronautics Act Public Licence issued to  
20 Burlington Air Park...."

21 If you remove the licence, you are not  
22 suspending flights, you are telling them they can't  
23 operate an air park there?

24 A. Yes.

25 Q. Can you give me one example of



1 where that happened as a result of the proximity of a  
2 landfill?

3 A. I can't.

4 Q. Would you agree with me that this  
5 is a pretty Draconian kind of measure if it in fact has  
6 to take place? Would you agree?

7 A. It's a drastic measure.

8 Q. You arrived at that conclusion and  
9 the possibility, and you have put it no higher than a  
10 possibility, but you suggested the possibility of  
11 having to do something that has never been done before  
12 without ever having read any of the reports that the  
13 Region prepared and without having attended at this  
14 hearing and without anything, isn't that right?

15 A. I discussed that matter before in  
16 Ottawa with regard to landfill sites and other matters  
17 that have affected aircraft operations at airports with  
18 the Department of Justice, and they are, and have in  
19 the past explored the possibility that that is an  
20 option and that opinion has been expressed by Justice  
21 and by Licensing, and in expressing that opinion, I did  
22 not do it in an effort to try to prejudice what was  
23 going on here, but rather the fact that that opinion  
24 has been expressed before in the past and to make  
25 people aware of the fact that it is the ultimate



1 possibility that in the event something serious did  
2 happen, that it is a possibility, and I didn't do it to  
3 come here and say the airport would be closed, but  
4 rather, based on what has taken place in the past, it  
5 is a real possibility.

6 Q. Will you agree with me that you  
7 did no case-by-case work prior to issuing that  
8 paragraph in this witness statement?

9 A. That is something I forgot to  
10 mention before. I have been provided with information  
11 on the location of Site D and I do have maps in my  
12 files of where the location was and I was aware because  
13 of the information I have in my files in Ottawa, of  
14 where Site D was and how it related to the airport with  
15 regard to our guideline.

16 Q. Did you read any of the Region's  
17 reports?

18 A. No, I didn't.

19 Q. So you published a witness  
20 statement indicating the possibility of some action  
21 that has never been taken before without having read  
22 the reports prepared by the Region with respect to this  
23 issue, without having attended this hearing and knowing  
24 only the location of the landfill in relation to the  
25 air park, is that correct?



1                   A.     I also have extensive knowledge  
2 because of my involvement with the Canadian Wildlife  
3 Service and Bird Strike Committee Canada of the  
4 concentrations of gulls in Canada and the Great Lakes  
5 area, the ring-billed gulls specifically, and I knew  
6 the relationship of the Hamilton Harbour colony in  
7 relation to Burlington Air Park and the landfill site.  
8 So, I would also have to say that I was aware of the  
9 fact that there are upwards and possibly more than  
10 400,000 gulls in this area and in the worst case, a  
11 large number of those gulls could possibly use this  
12 site because it is a heavily populated site, a heavily  
13 populated area, and in the worst case it could attract  
14 very significant numbers of the 400,000-plus gulls in  
15 the area and it was based on the fact that I knew where  
16 those gull colonies were located, where the airport was  
17 located and where the landfill site was located. If  
18 controls were not taken at a landfill site to prevent  
19 those gulls from traversing the airways of Burlington  
20 Air Park, then something serious could happen.

21                   Q.     Sir, would you agree with me that  
22 first of all, would you agree that every proposal  
23 requires case-by-case study?

24                   A.     Yes.

25                   Q.     Would you agree that what that



1 means is that you look at the specific proposal, the  
2 specific circumstances and make a specific  
3 determination based on your specific understanding of  
4 that proposal?

5 A. Yes.

6 Q. Would you agree with me that other  
7 than a rather general understanding of the location of  
8 the gull colony and the geographic location of the air  
9 park and proposed Site D, you had no other knowledge.  
10 Would you agree with that, and we have covered all the  
11 knowledge you had now?

12 A. I believe that's my knowledge.

13 Q. Would you agree with me that that  
14 does not amount to a case-by-case study. You made no  
15 inquiry into the specific proposal?

16 A. I am not here -- my purpose here  
17 is not to defeat the location of a landfill site at  
18 Site D, but rather to make the Board aware of what  
19 could possibly happen. I felt in including the  
20 information on page 10, item 17 in my witness  
21 statement, that I had a responsibility to inform the  
22 Board of what the worst case could be.

23 Q. It has never happened before, has  
24 it?

25 A. Not to my knowledge.



1 Q. Will you agree with me, and I  
2 think you did on this before, but you have a  
3 responsibility to try and work with other levels of  
4 government to try and deal with these problems?

5 A. Yes.

6 Q. Sir, I am going to suggest to you  
7 that in failing to read the Region's reports and coming  
8 here to give evidence without having considered its  
9 position or the work that it has done, is not working  
10 with the Region. Will you agree with that? If you  
11 pay no attention to what they said, you can't be said  
12 to be working with them, can you?

13 A. No, we have provided them no  
14 assistance or guidance.

15 Q. Would you agree with me then that  
16 you have failed in your responsibilities to work with  
17 other levels of municipalities who hold responsibility  
18 and you didn't do that and that was a failure; do you  
19 agree?

20 A. I feel that coming here to present  
21 the information we have presented is an attempt to work  
22 with the Region and assist them in their selection of a  
23 site, an appropriate site for a landfill.

24 Q. You still haven't read their  
25 reports, have you?



1 A. I haven't.

2 MR. ESTRIN: Mr. Lederer keeps saying  
3 reports, but as far as I know there is only one  
4 document discussing birds and the discussion is buried  
5 in the midst of a discussion of trees and plants and  
6 rivers and streams. I think we are talking about a  
7 few pages within a major document discussing other  
8 things.

9 MR. LEDERER: I think that is a matter  
10 for argument, but the material was supplied and that is  
11 agreed to.

12 MR. LANCASTER: It is available.

13 MR. LEDERER: And he now comes here and  
14 states all these positions.

15 Q. The fact of the matter is you  
16 still haven't read Exhibit H-17 to the extent it deals  
17 with bird control proposals?

18 A. I have agreed to that.

19 Q. So, you can't be said to be  
20 working with the Region if you haven't considered what  
21 it is they are proposing to do. Isn't that right?

22 A. We have not worked with them in  
23 the past.

24 Q. Will you agree with me then that  
25 that's a failure in the way in which you have carried



1 this out because you haven't done what you yourself say  
2 you should be doing, which is to work with other  
3 responsible government levels?

4 A. I agree it's failure in this case  
5 and I hope that by the efforts you have seen me put  
6 forward in 1987 and the publication of a lot of  
7 brochures and that sort of thing, it would inform the  
8 public of our concerns and coming here and hopefully  
9 making the Environmental Assessment Branch aware of  
10 what our concerns are that municipalities and regions  
11 and Transport Canada can establish a precedent where  
12 this may not happen in the future.

13 Q. I appreciate your candor. Thank  
14 you, sir. I want to be fair to you. There is one  
15 letter you wrote to the Region -- I am sorry, it wasn't  
16 written by you, but it is under tab 9, the letter we  
17 referred to a few moments ago. This is the letter to  
18 Mr. Attack from Mr. Livingstone. I don't want to be  
19 taken to be misleading you, so perhaps we had better --  
20 let's read the whole letter, because I'm sure... well,  
21 I'm primarily interested in the last paragraph:

22 "The reports fails to state the exact  
23 distance between Burlington Airpark  
24 property and the landfill site. The  
25 report does indicate that it is less



1 than 5 nautical miles.

2 Transport Canada...."

3 That does suggest that somebody read the report, do we  
4 agree?

5 A. Yes.

6 Q. "Transport Canada cannot regulate  
7 the location of landfill sites on land  
8 not controlled by the Department.  
9 However, the Transport Canada document  
10 entitled 'Land Use in the Vicinity of  
11 Airports'.... provides guidelines  
12 regarding landfill sites. Instituting  
13 land use controls near airports is  
14 necessary to minimize the serious bird  
15 hazard from the viewpoint of aircraft  
16 safety.  
17 Food garbage disposal sites attract and  
18 support concentrations of birds. Due to  
19 increased bird activity and potential  
20 hazards to aircraft during all phases of  
21 flight, food garbage disposal sites  
22 should not be located within 5 nautical  
23 miles of an airport. The proposed  
24 location for this site is within this 5  
25 nautical mile area and consequently



1 unacceptable according to our  
2 aforementioned guidelines."

3 Do you see that?

4 A. Yes.

5 Q. Again I think you have agreed with  
6 me that there is a requirement to work with other  
7 responsible levels of government; correct?

8 A. Yes.

9 Q. You have also agreed with me that  
10 you can, in certain circumstances, employ control  
11 measures to decrease the hazard attributable to the  
12 potential for bird strikes; do you agree on that as  
13 well?

14 A. Yes.

15 Q. In fact you have agreed with me  
16 that we have a case where there is a zoning regulation  
17 from Transport Canada itself in which landfilling is  
18 going to be permitted within that eight kilometre limit  
19 we have heard so much about, do you recall?

20 MR. ESTRIN: Proposed.

21 MR. LEDERER: Q. Proposed by  
22 Transport Canada, do you agree?

23 A. Well, not the exact way you are  
24 wording it. A zoning regulation does not permit the  
25 dumping of garbage, it just doesn't restrict it.



1 Q. Fair enough, you can turn it  
2 around.

3 In fact, although the zoning regulation  
4 is in place, the proposal by Transport Canada is to  
5 permit -- it not to restrict landfill to the full eight  
6 kilometre limit?

7 A. Yes.

8 Q. Now, sir, would you agree with me  
9 then that in order to work together and be helpful and  
10 to be the people with this knowledge, what might have  
11 been done here was to examine what possible control  
12 measures were available to reduce the hazard and to  
13 examine what the degree of the risk would be and to  
14 examine whether or not it was possible in the words of  
15 the Aeronautics Act to strike an agreement. Do you  
16 agree that that is something that could have been done  
17 in this situation?

18 A. The examination of the  
19 mitigational measures was done and that is why we have  
20 created the guideline. Under certain circumstances,  
21 landfill sites are still very attractive and so we have  
22 not really excluded the examination of all mitigational  
23 measures and those mitigational measures were examined  
24 when we developed the guidelines. I would have to say  
25 the guideline was written and written as a guideline



1 based on that examination.

2 Q. If you agreed with me once that  
3 you do this on a case-by-case basis, you have agreed  
4 twenty times. You do it on a case-by-case basis, don't  
5 you?

6 A. Yes.

7 Q. This was a specific proposal?

8 A. It was.

9 Q. Can you agree with me that in  
10 addressing the specific proposal to work with the  
11 Region with this particular problem, one of the things  
12 you might do is to propose control measures that might  
13 help and to meet with the Region to discuss them, to  
14 look at the problem and to discuss the degree of risk  
15 and that is something you might do. Do you agree?

16 A. Yes.

17 Q. Will you agree with me that simply  
18 writing a letter back and saying no, no, no, there is a  
19 guideline in place, and without discussing the  
20 specifics really isn't very helpful. Do you agree with  
21 me on that?

22 A. Yes, I could agree with you.

23 Q. Would you agree with me that if  
24 you were working with the Region, and when I say you I  
25 don't mean you personally, but Transport Canada might



1 have carried out its responsibilities and might have  
2 gone a little further and given us a case-by-case  
3 analysis and maybe asked for a meeting, whatever. Do  
4 you agree?

5 A. I agree they could have done that  
6 and I also think the Region could have done that and  
7 asked for an interpretation of our definition of the  
8 guidelines in that last sentence.

9 Q. Didn't the Region have your  
10 interpretation, because you told the Region we want the  
11 eight kilometres and nothing else and isn't that what  
12 that paragraph says and doesn't that say there is  
13 nothing more to be said?

14 A. It still states it's a guideline  
15 and it does not reflect...

16 Q. Would you agree that by failing to  
17 go further and to give us the case-by-case work that  
18 you agree is necessary, that one might define that as  
19 something of a failing by Transport Canada in this  
20 situation?

21 A. We could also assume the fact that  
22 by reason the Region did not object to our  
23 interpretation of the guideline that they accepted our  
24 letter and were no longer considering the site.

25 Q. I understand you think the Region



1 is partly to blame and I accept that.

2 A. Okay.

3 Q. Now I have accepted that, will you  
4 answer my question? Will you agree from the point of  
5 view of Transport Canada that this indicates a failing?

6 A. I agree we are partly a concern as  
7 well.

8 Q. Quite apart from contacting the  
9 Region, sir, are you aware of the fact that the  
10 Ministry of the Environment of the Province of Ontario  
11 carries out a review procedure with respect to all  
12 environmental assessments prepared?

13 A. I am not aware of the procedure.

14 Q. Are you aware that the Ministry of  
15 the Environment of the Province of Ontario provides  
16 other government agencies with an opportunity to  
17 comment on all environmental assessments prepared and  
18 made public so that people may comment?

19 MR. ESTRIN: I object to the form of the  
20 question. There is an assumption which I don't know is  
21 in evidence or can be put in evidence here.

22 MR. LEDERER: Mr. Clarke will be here.

23 MR. ESTRIN: Whether Transport Canada  
24 was circulated or any aspects of government was  
25 circulated by the Ministry of the Environment, and that



1 is a factual matter.

2 MR. LEDERER: I haven't got to Transport  
3 Canada, but this is a general proposition that these  
4 opportunities are made and whether Transport Canada is  
5 on the Ministry's list is something presumably we will  
6 have to get from Mr. Clarke, but I haven't got to that  
7 point, and if I could be permitted to set this up.

8 Q. You understand that opportunities  
9 are provided for other government agencies to comment?

10 A. I am not aware of that.

11 Q. I see. So, if I were to suggest to  
12 you and put to you the documents which are the result  
13 of that review in this case, you will not be surprised  
14 or wouldn't know first of all if Transport Canada got  
15 notice of it, and, secondly, whether or not any comment  
16 was made?

17 A. No, I'm not aware of it.

18 Q. Can you from your knowledge --  
19 have you ever discussed this with the Ministry of the  
20 Environment to the best of your recollection and have  
21 you ever provided them with any written comments?

22 A. Not on this site, no.

23 Q. So then we have a circumstance  
24 where we have a provincial ministry that is responsible  
25 for this issue, which you have not contacted; would you



1 agree?

2 A. I contacted the provincial  
3 ministry with our concerns and provided them with a  
4 copy of our documentation on the location of sanitary  
5 landfill sites.

6 Q. You did that, if I understand it  
7 correctly, on June 10, 1987, that is the letter to Mr.  
8 Gotts?

9 A. Yes.

10 Q. June 10, 1987, and would you  
11 accept, and it's a matter of public record, that the  
12 hearing started before June 10, 1987, are you aware of  
13 that?

14 A. I am not aware of the date the  
15 hearing started.

16 Q. Accept from me it started last  
17 May. So you agree that your writing Mr. Gotts on June  
18 10, 1987 won't help the situation very much?

19 A. I would agree.

20 Q. With respect to this particular  
21 case, and I think you said you haven't, but you haven't  
22 made any effort to contact the provincial ministry,  
23 have you?

24 A. Not with respect to this case.

25 Q. Then will you agree with me that



1 you haven't lived up to the directive in the  
2 Aeronautics Act which says, and you were the one who  
3 drew it to our attention, that the Minister is to work  
4 with the provincial ministries to get agreement with  
5 respect to these issues?

6 A. I would agree with you that there  
7 have been shortcomings in the process and I have agreed  
8 to that already. It's unfortunate that the Ministry  
9 did not work with the Region before this date, but I  
10 would hope that the Region and the Board would consider  
11 what is going on here today and yesterday would be  
12 considered as constructive efforts to ensure that the  
13 Department of Transport's position is understood and  
14 taken into consideration.

15 Q. You said you already indicated you  
16 didn't talk to the Region and you should have done  
17 that, but would you say the same applies to the  
18 Ministry of the Environment and upon reflection it  
19 would have been within the directive under the  
20 Aeronautics Act appropriate for you to have done that  
21 as well, to deal with the provincial ministry?

22 A. Yes, if we were aware of the case.

23 Q. Would you agree that is also a  
24 failing in the way this has all been carried out on  
25 behalf of Transport Canada?



1                   A.     It's a failing in the fact that we  
2     were not aware of it and we did not conduct proper  
3     procedures to do what we could do, but we can't be  
4     aware of everything that goes on around the thousands  
5     of airports in Canada.

6                   Q.     You have been aware of this since  
7     September, 1986, haven't you?

8                   A.     Yes.

9                   Q.     You have had a year and a half to  
10    do something about it and you haven't, isn't that  
11    right.

12                  A.     After we responded to the letter  
13    and got no response from the Region, we could have  
14    assumed that the site was no longer under  
15    consideration.

16                  Q.     I'm talking about the Ministry of  
17    the Environment?

18                  A.     We did not contact them  
19    specifically.

20                  Q.     For that year and a half we have  
21    another demonstration of a failing in the way in which  
22    Transport Canada has dealt with this matter?

23                  A.     Until we found out whether or not  
24    we were on the distribution, we would have to find out  
25    about that to see if it was a total failing on



1 Transport Canada's part or a failing of the system.

2 Q. If you know there is a potential  
3 problem, do you sit around and wait for the provincial  
4 Ministry to write to you about it or do you get in  
5 touch with them and say put me on the distribution list  
6 as we have an issue?

7 A. Again I wasn't aware of that  
8 process and I would have to find out if the people in  
9 the Region are aware of that process.

10 Q. Let's go back a step. You have  
11 been aware through the letters from Mr. Estrin since  
12 September or whenever of 1986, that there was a  
13 potential problem, haven't you?

14 MR. ESTRIN: You already indicated or Mr.  
15 Lederer agreed at one point he would differentiate  
16 between this witness and the Department when he said  
17 you. The letters in September, '86 are not addressed  
18 to this witness or to Ottawa.

19 MR. LEDERER: Q. I'm sorry. Excuse me.  
20 The Department has been aware since September, 1986,  
21 would you agree?

22 A. Yes.

23 Q. Perhaps I had better clarify this.  
24 When you say no effort has been made to contact the  
25 provincial Ministry, are you talking about you or



1 anyone else dealing in this area?

2 A. I am talking about the knowledge I  
3 have of my activities. I do not know if anyone else  
4 in the Department has contacted them.

5 Q. Are you aware of the general  
6 activities going on surrounding this issue of bird  
7 control hazards?

8 A. Yes.

9 Q. If a problem arises, are you made  
10 aware of it?

11 A. No. The way our structure is set  
12 up in Transport Canada, there are people with the  
13 authority and responsibility to act on their own in our  
14 regional office and if they feel competent in dealing  
15 with an issue and it was under their jurisdiction,  
16 whether that is legislatively regulated or not, I am  
17 not sure, but they could feel quite confident in  
18 dealing with the situation themselves. The control of  
19 the non-international airports in the Ontario region is  
20 the responsibility of the regional director general.

21 Q. You don't know if the Region, and  
22 I mean the Region in Transport Canada, is involved in  
23 this issue and, if so, what comments they made?

24 A. They wouldn't necessarily make us  
25 aware of all their concerns and comments.



1 Q. In theory there could be a letter  
2 from the Region, the Region of Transport Canada to  
3 somebody in the Province saying that this is  
4 acceptable?

5 A. It could exist.

6 Q. You haven't checked the files and  
7 you don't know?

8 A. I don't know if it exists.

9 Q. Here we are again where you have  
10 come here and you have given evidence about this  
11 without checking the files of Transport Canada that  
12 deal with this question?

13 A. I checked the files available to  
14 me in Ottawa on this subject and that letter is not in  
15 the files in Ottawa.

16 Q. As far as I know there is no such  
17 letter and I don't want to suggest there is.

18 A. I did check the files available to  
19 me.

20 Q. You didn't check the files in the  
21 Region, who you say may have been dealing with this on  
22 their own?

23 A. I didn't go through them.

24 Q. You don't know if the Region dealt  
25 with it on their own?



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A. It has not been brought to my attention.

Q. You come here again without being fully informed about what your own agency has done with respect to this, isn't that right?

A. To the site selection process here, yes.

Q. Would you agree with me that that is a failing, and you have a duty, before you come here you should inform yourself as to the positions adopted by Transport Canada, and you made quite a thing about how you speak for Transport Canada, but you have not checked all their files, have you?

A. Well, not related on the specific selection of Site D, no.

Q. Would you agree that was irresponsible of you?

A. Yes, it may have been.

Q. Now, sir, you did talk and you have been in contact with Mr. Estrin. That is fair, isn't it?

A. I have talked to him.

Q. You understand, don't you, that Mr. Estrin's position and the position of his client, the Town of Milton, with respect to this issue is that



1 they don't want a landfill built at Site D?

2 A. Yes.

3 Q. You understand that?

4 A. I understand that.

5 Q. They are opposed to it. Do you  
6 understand that?

7 A. Yes.

8 Q. Would you agree with me, and at  
9 the risk of asking a somewhat silly question, but that  
10 is not what one might call a balanced view and I am not  
11 being critical, but that is a partisan view that  
12 lawyers take and clients take in this kind of an issue?

13 A. They don't have a balanced view of  
14 this issue, I agree.

15 MR. ESTRIN: I would hope not.

16 MR. LEDERER: Q. What I would like you  
17 to do is go with me to the letter which Mr. Estrin's  
18 office wrote you on May 14, 1986, to the Department,  
19 and this ones goes to Mr. Brian Campbell, and I presume  
20 this is the regional office because the address is in  
21 Toronto. Do you have that, the very first page under  
22 tab 9?

23 A. Okay.

24 Q. What I'm interested in is the last  
25 paragraph:



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"We would appreciate the opportunity of speaking with you prior to you making your comments to the Region, and further-more would request a copy of your comments to the Region, once those comments have been made."

Do you see that?

A. Yes.

Q. In other words, they want to hear from you before the proponent who has the responsibility to provide the facility to hear what you have to say about this?

A. Presumably so.

Q. Presumably they want to talk to you?

A. The Department.

Q. You collectively is the Department. Now, I would like to show you the answer that request got and perhaps you would turn over to the second letter, the second paragraph:

"Further, Transport Canada staff are prepared to discuss with you the environmental assessment, with regards to the potential conflict between the proposed landfill sites and Burlington



1 Air Park, prior to submitting comments  
2 to the Region of Halton."

3 And do you see that?

4 A. Yes.

5 Q. So it's fair to say, isn't it,  
6 that what you are doing is saying we will talk to the  
7 people who want to support the idea of this being a  
8 hazard prior to communicating with anybody else; that's  
9 what's in that request -- sorry, in the Department's  
10 response, isn't that right?

11 A. It indicates that they will talk  
12 to them, but I don't know whether or not they  
13 understood at that time what the position of David  
14 Estrin or Milton was. I don't know that.

15 Q. Would you agree with me, sir, that  
16 what has happened here is that the federal government  
17 agency interested in this issue has chosen to align  
18 itself with one of the parties which has a partisan  
19 position to take with respect to this issue?

20 A. I don't think I would agree with  
21 that.

22 Q. You have talked freely with Mr.  
23 Estrin?

24 A. I have talked freely with  
25 consultants for Burlington. I have talked probably



1 more extensively with the consultants for Burlington  
2 than I have the consultants for Milton, probably in the  
3 order of two or three times as often and as  
4 extensively.

5 Q. Who prepared the witness statement  
6 which is drafted in your name here?

7 A. It was prepared by David Estrin's  
8 office.

9 Q. Could I ask you, when did you  
10 first see it?

11 A. I saw it in December.

12 Q. Could you give me the date?

13 A. No, I can't give you the date, I  
14 would have to check.

15 Q. It was before or after Christmas?

16 A. Before Christmas. If it wasn't  
17 before Christmas, it was in that neighbourhood.

18 Q. It is fairly important for me to  
19 know the date, and if you don't have it, there is  
20 nothing I can do about it, but I would sort of like to  
21 know the date.

22 A. It was around Christmas but I  
23 don't know. It was within a few days one way or the  
24 other.

25 Q. What we have here then is a



1 written statement prepared by Mr. Estrin's office and  
2 given to you and you reviewed it, I take it?

3 A. I did.

4 Q. And determined whether or not you  
5 agreed with it?

6 A. Yes.

7 Q. I take it you did agree with it?

8 A. Yes.

9 Q. At that point it was bound up with  
10 all these other documents and I presume you are aware  
11 that that was being done?

12 A. Yes.

13 Q. And it was delivered to the other  
14 parties?

15 A. I wasn't aware of that.

16 Q. I beg your pardon?

17 A. I wasn't aware of that.

18 Q. The situation we have here is that  
19 you discussed with Mr. Estrin the evidence you could  
20 give and he prepared this witness statement?

21 A. That arrangement was confirmed  
22 with the Department of Justice before it was undertaken  
23 by Mr. Estrin that it would be fair.

24 Q. I didn't ask you if it was  
25 confirmed with Justice, I just asked you if that is



1 what happened?

2 A. That is what happened, yes.

3 Q. So, will you agree with me again  
4 that what you have done -- let me ask the question this  
5 way. What you have done is align yourself with  
6 somebody who takes a partisan approach to this  
7 particular issue?

8 A. I can't agree with that because  
9 our department has provided all information that is  
10 available and that has been requested by all parties  
11 involved in this case. My being here was discussed  
12 with the Department of Justice and they decided that I  
13 was not aligning myself with any case and I was coming  
14 here of my own free will and I was not subpoenaed and I  
15 think we have acted fairly in all cases and tried to  
16 prevent aligning ourselves with anybody, but have come  
17 here to make the Board aware of our concerns and what  
18 impact a landfill site can have on aircraft safety.

19 Q. I haven't suggested yet you acted  
20 unfairly, I just asked you if you would agree you have  
21 aligned yourself with someone who has taken a partisan  
22 position here and that's all I asked?

23 A. I wouldn't agree with that.

24 Q. I would remind you that you have  
25 already said you haven't discussed this matter with the



1 Region of Halton or the Ministry of the Environment; is  
2 that fair?

3 A. No, I haven't to my knowledge.

4 Q. Now, I want to completely change  
5 direction and look at another part of your evidence.  
6 In part of your evidence you gave some examples of  
7 accidents between birds and aircraft and I think there  
8 was a blue heron that crashed into a plane somewhere in  
9 the north and you went through a series of such  
10 accidents?

11 A. The blue heron accident was  
12 discussed by Vic Kovachik and I discussed another  
13 incident.

14 Q. You remember what I am talking  
15 about, a series of incidents.

16 A. Incidents.

17 Q. Frankly I have been trying to  
18 figure out how that helps the Board. I presume your  
19 purpose was to give us some examples of the kinds of  
20 horrific things that can happen when birds and  
21 airplanes collide; would you agree?

22 A. That wasn't the sole purpose. It  
23 is a recognised fact that small aircraft do not strike  
24 birds as often as large aircraft because they have  
25 found that birds can get out of the way of aircraft



1 going in the vicinity of 80 miles an hour, but I also  
2 wanted to make it clear that small aircraft can strike  
3 birds and have struck birds and can be damaged by birds  
4 and I also related that to the experience of the pilots  
5 in those reports. Many of them were commercial pilots  
6 and I related the fact that pilots with less experience  
7 may be put in a dangerous situation where they may not  
8 be able to react correctly to recover from such an  
9 incident.

10 Q. To the best of my recollection you  
11 gave us no statistics as to how many of those accidents  
12 involved training pilots?

13 A. When I went through that list, I  
14 told you that the majority -- no, that was the other  
15 list, the five incidents I related, I related to  
16 commercial aircraft pilots and the other list I didn't  
17 tell you whether they were commercial aircraft pilots.

18 Q. So I guess you were trying to  
19 demonstrate to us that small planes hit birds and the  
20 terrible accidents that can occur as a result?

21 A. Yes.

22 Q. It tended to lift us beyond  
23 numbers into the horrifying things that can happen and  
24 to make it real. Is that what you wanted to do?

25 A. I was just trying to put the



1 element of risk into proportion.

2 Q. That's what I don't understand.  
3 How do you put the element of risk in by discussing  
4 five random accidents? Let me give you a hypothetical  
5 situation and I want you to remember that you were  
6 trying to give us the degree of risk.

7 I am going to try something with you and  
8 let me see -- I am trying to think of a comparable  
9 situation and see how that would help us understand  
10 this notion and what we will get out of it, out of this  
11 evidence. Will you agree with me, and I think it is  
12 pretty self-evident, that just as terrible things  
13 happen when birds strike airplanes, terrible things  
14 happen when cars strike people. Would you agree?

15 A. Yes, terrible things happen.

16 Q. Would you also agree with me that  
17 there are certain kinds of land uses which attract cars  
18 or brings cars into a particular area?

19 A. Yes.

20 Q. In fact they may also bring people  
21 into those areas at the same time; do you agree?

22 A. I agree.

23 Q. Causing a potential interaction  
24 between people and cars?

25 A. I agree.



1 Q. Would you agree for the purposes  
2 of this depiction that McDonald's franchises attract  
3 cars and attract people?

4 A. I will agree with that.

5 Q. I want to give you what I think is  
6 a common planning situation and see if we can draw a  
7 parallel. I am going to assume here you have a  
8 downtown area in red and assume there is a road which  
9 leaves the downtown and goes to somewhere in the  
10 outskirts, all right?

11 A. Okay.

12 Q. I want you to also suppose that  
13 there is a school here and I'll mark that with "S" for  
14 school.

15 A. Okay.

16 Q. You agree that children go to  
17 school, young adults, depending upon whether we are  
18 talking about high schools or public schools?

19 A. Yes.

20 Q. You would agree that children or  
21 young adults are among those people who are attracted  
22 to a McDonald's franchise?

23 A. Yes.

24 Q. I want you to suppose with me that  
25 somebody proposes to put a McDonald's franchise in



1 here. Would you agree?

2 A. Yes.

3 Q. This is just a proposal,  
4 understand. In examining the proposal, what people  
5 are going to be concerned about is whether cars will be  
6 attracted from the downtown and whether students will  
7 walk across the street and whether there will be an  
8 interaction of people and cars and accidents and  
9 damage?

10 A. That could be a consideration.

11 Q. You would agree there are certain  
12 controls you could put in place. You could put a  
13 street light here?

14 A. I agree.

15 Q. In fact -- have you ever driven up  
16 High 11 to Bracebridge or Gravenhurst and Orillia?

17 A. Not for years.

18 Q. Tell me if you are aware of this,  
19 but for those who make that voyage, there is a very  
20 famous hamburger stand which has a bridge built across  
21 Highway 400 or Highway 11 and what it is is the bridge  
22 that used to convey people from Front Street to the CN  
23 Tower, but are you aware of that?

24 A. No.

25 Q. You could build a bridge as



1 another measure of control?

2 A. I agree.

3 Q. I want you to suppose that this  
4 proposal goes on before a Board to decide whether or  
5 not the McDonald's ought to be built?

6 A. Right.

7 Q. I want you to suppose that they  
8 bring some guy down from Ottawa and he gives evidence  
9 and his evidence is to tell everybody about the  
10 horrible accidents he has seen where people have been  
11 hit by cars somewhere else entirely?

12 A. Okay.

13 Q. Would you agree with me that that  
14 evidence won't help us understand the risk we are  
15 creating in building a McDonald's, is it?

16 A. If he was presenting information  
17 on how many school age children were killed in jay  
18 walking accidents not obeying traffic lights, I would  
19 say it is relevant. I can't say no, he could not  
20 provide information that was national in scope.

21 Q. You didn't tell us about jay  
22 walking or comparable things like that, did you? You  
23 agree with me that simply discussing accidents in some  
24 other place at some other time doesn't help us in  
25 understanding the degree of risk; would you agree with



1 that? It is just an accident that happened somewhere  
2 else?

3 A. Say that again?

4 Q. Simply talking about accidents  
5 that happen somewhere else at some other time doesn't  
6 help us understand the risk of building a McDonald's  
7 franchise, does it?

8 A. Yes, it does, I believe.

9 Q. If I came in and gave evidence in  
10 this situation and said in my life I have seen ten  
11 terrible accidents and one was a blue car that hit a  
12 young child crossing a road and boy was he mangled and  
13 I gave six or seven examples like that, that would help  
14 somebody appreciate the risk in your view, would it?

15 A. Not if you were talking  
16 specifically about accidents in general.

17 Q. Isn't that what you have done?

18 A. No.

19 Q. Haven't you come and told us about  
20 some commercial pilots who had accidents somewhere  
21 else?

22 A. Those were accidents very specific  
23 to the nature of the bird strike situation in Canada.  
24 Every one of them was related to a bird strike and if I  
25 was to relate the accidents to small aircraft in



1 general in Canada, I would be going on for days and  
2 days.

3 Q. Let's just look at this in the  
4 context of what we are talking about. You are saying  
5 it was all done in the context of bird strikes. In my  
6 little depiction, the downtown in our situation really  
7 becomes the lake and the cars really are the birds  
8 which come from the lake into the area. The school is  
9 really the air park and the McDonald's is the landfill.  
10 So, in these accidents we have talked bout, you have  
11 just said every one of your accidents involved birds  
12 and aircraft. Every one of my car accidents involves  
13 birds, in this case being the children or the people  
14 walking in the area, and -- I am sorry, I have made a  
15 mistake here, you are quite right. The people are the  
16 planes, I should have written it down, and the cars are  
17 the birds, or you could do the reverse, it doesn't  
18 really matter.

19 Now, in that situation, would you agree  
20 with me that every accident involves a conflict between  
21 these two different moving objects, people in one case  
22 and cars and birds and planes, but to say that every  
23 one of my accidents involves a bird does not progress  
24 us very far in understanding the risk. It may  
25 dramatically, to be fair to you, because this is what I



1 think you were doing, it may very dramatically  
2 demonstrate the kind of things that can happen, but it  
3 doesn't help us understand the risk, does it?

4 A. It doesn't help us understand the  
5 risk of Burlington Air Park.

6 Q. When you gave that evidence, it  
7 doesn't help us understand the risk, but it's just an  
8 example of the kind of things that can happen?

9 A. It doesn't help us understand the  
10 risk at Burlington Air Park, but it does help us  
11 understand the risk of putting birds and aircraft in  
12 the same airspace.

13 Q. If risk -- if I use risk as a  
14 statistical term as opposed to just a danger, you would  
15 understand what I am getting at. We understand it's  
16 the sort of thing that can happen?

17 A. It won't help you put a number on  
18 the risk.

19 Q. Pardon?

20 A. It won't help you put a number on  
21 the risk.

22 Q. You also talked to us about  
23 recording in your evidence, and I would like to look at  
24 that for a moment. As I understand, you wrote the  
25 script for the film we saw?



1 A. I wrote the draft of the script  
2 and that script was used as the basis for it.

3 Q. When the narrator told us that  
4 sixty per cent of all bird strikes were from gulls,  
5 that was something that originated from you?

6 A. Yes, at that time that was  
7 accurate.

8 Q. That's my next question. It was  
9 accurate at that time?

10 A. Yes.

11 Q. Can we agree that since that time,  
12 and I think this is consistent with what Dr. Richardson  
13 has told us, there has been a tremendous increase in  
14 the gull population in this area generally?

15 A. Yes.

16 Q. Can we also agree there has been  
17 better identification of birds?

18 A. A greater number of birds have  
19 been identified, yes.

20 Q. I think I asked you this morning,  
21 but Mr. Richardson told us and I think you agreed, that  
22 by and large the birds we are identifying is not  
23 changing the percentage of all strikes which are gull-  
24 related, it is about twenty per cent; would you agree  
25 with that?



1 A. Twenty per cent of the strikes  
2 reported now are gulls.

3 Q. Including unidentified birds. So  
4 as we increase our ability to identify the species  
5 involved, we are not getting an increase in the  
6 percentage of all strikes which are gulls, it is  
7 remaining fairly constant?

8 A. Not a large percentage, and some  
9 of them may be gulls, but I wouldn't say it is large.

10 Q. You had written both in the ICAO  
11 bulletin which you wrote, and I'm sorry I don't have  
12 the exhibit number, and Exhibit M-26, the document you  
13 sent to all municipalities, and this was last year, but  
14 at present gull strikes amount to 20 or 25 per cent of  
15 all strikes; correct?

16 A. Correct.

17 Q. Now, sir, if you have more gulls  
18 and despite that fact you have a two-thirds decrease in  
19 the percentage of strikes that gulls represent, sixty  
20 down to twenty, doesn't that suggest that for some  
21 reason the risk of striking a gull has been getting  
22 less, it has been lowering?

23 A. I would say no it doesn't.  
24 Firstly, gulls are very easily identified birds and  
25 most people associate a large white bird going by their



1 aircraft as a gull. I believe that is why there was a  
2 high percentage of gulls that may have been reported by  
3 pilots in earlier days and there was a large percentage  
4 of birds not identified, because I believe the greater  
5 percentage of identified birds may be identified by  
6 site reports and not by airline pilot reports. At  
7 some sites where gulls have been a problem, Transport  
8 Canada and National Defence have put in extensive  
9 programs to try and reduce the number of strikes at  
10 those airports and those programs have been effective  
11 in reducing the number of gull strikes, but it has not  
12 removed the hazard that large increases in gulls in  
13 areas do present..

14 Q. Pardon me?

15 A. It hasn't removed the hazard that  
16 large increases in gull populations present.

17 Q. We were not talking about removing  
18 the hazard, and so no one has disagreed, because to  
19 some degree the hazard will be there, but my question  
20 is whether or not this reduction in the percentage of  
21 strikes involving gulls, even while the gull population  
22 is so dramatically increasing, indicates decreased risk  
23 of striking a gull and your answer is no, you think  
24 that in fact a lot of birds were being identified as  
25 gulls which weren't really gulls in the early days.



1 That is what you said?

2 A. No. In the early days, the total  
3 percentage of birds identified was very low and of the  
4 birds that were identified, it was easy to identify a  
5 gull and so they would associate large white birds as  
6 being a gull and that 50 per cent figure represented  
7 the fact that 50 per cent of those birds that were  
8 being identified were gulls, but the total percentage  
9 identified was very low.

10 Q. I think we had better go to the  
11 CATA data, because I don't think what you are saying  
12 depicts what's in that data at all.

13 A. Which report?

14 Q. The 1984 material, and  
15 unfortunately Dr. Richardson had the 1983 and to be  
16 candid I don't know where my copy is. This is Exhibit  
17 402. Would you firstly turn to page 5 of that?

18 A. Yes.

19 Q. Here we have the data of what I  
20 gather is called a histogram for 1982, 1983 and 1984?

21 A. Yes.

22 Q. In 1982, 51 per cent of the  
23 species of birds involved in strikes were identified;  
24 do we agree?

25 A. Yes.



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Q. 49 per cent were not identified?

A. Right.

Q. The percentage which was gulls was approximately 18 per cent?

A. Right.

Q. In 1983 it would appear that 61 per cent of birds was identified, would you agree?

A. I would agree.

Q. And therefore it stands to reason, I suspect, that 39 per cent were not; would you agree?

A. Right.

Q. At which point I would say about 21 per cent were gulls?

A. Approximately 22 or 23.

Q. In 1984, 70 per cent of all strikes were where species were identified?

A. Right.

Q. And we now have a low ranking of about 20 per cent which were gulls?

A. Slightly more I would say, but about that.

Q. What number do you like? Give me the number you think is fair?

A. I think twenty is fine.

Q. So 70 per cent were identified and



1 30 were not, and 20 per cent which were gulls; do we  
2 agree?

3 A. Right.

4 Q. Just comparing 1982 to 1984, that  
5 span of two years, there is an increase in the number  
6 of birds identified of 19 per cent; 51 from 70 is 19?

7 A. Right.

8 Q. And yet the increase in gulls is  
9 really minimal, about 18 per cent to 20 per cent and so  
10 that's a bit of a reduction from what we saw in 1983;  
11 would you agree?

12 A. The increase in gulls is minimal,  
13 I can agree with that.

14 Q. The birds which were not  
15 identified in the earlier years, it transpires, were  
16 not gulls, would you agree. They were something else,  
17 because if they were gulls, we would have a higher gull  
18 number in the later years than we do in the earlier  
19 years; isn't that right?

20 A. That is what I said all along. A  
21 small percentage of the unidentified birds....

22 Q. You said the reason the numbers  
23 got skewed was because more and more birds were being  
24 identified, but in fact would you agree that that is  
25 not important in this because they have always been



1 taken as a percentage of all birds, unidentified and  
2 identified?

3 A. That's not true. They have not  
4 always been.

5 Q. They are on this chart?

6 A. Oh yes, that is since the  
7 realignment -- the reorganization of responsibility for  
8 bird control and we started to clear that matter up and  
9 it as only to give a fair representation of what was  
10 going on and we had to start identifying the  
11 unidentified as a category. If you look at the 1982  
12 data, you will see twenty out of fifty-one birds or 40  
13 per cent of the birds identified were gull strikes and  
14 that was the intention of the earlier analysis that 40  
15 per cent of bird strikes were gulls where the species  
16 was identified.

17 Q. I see. When you said that 60 per  
18 cent, I think I understand, but when you said 60 per  
19 cent is shown on the film as being gull strikes, your  
20 evidence is that that is 60 per cent of all identified  
21 species?

22 A. That's right.

23 Q. If I were to say to you, and we  
24 will have to check the film, but I want you to know  
25 that our recollection of what is said on that film is



1 60 per cent of all bird strikes in Canada. If that is  
2 what is said, would you agree with me that it takes in  
3 all bird strikes, identified and unidentified alike?

4 A. I would agree with you and I could  
5 agree that that is an inaccuracy in reporting in the  
6 film rather than have you check it.

7 Q. If that's what it says then it  
8 turns out the film is wrong?

9 A. It is inaccurate on that point.

10 Q. The script as it was prepared in  
11 some way -- a mistake was made and somebody made a  
12 mistake in the course of the whole thing?

13 A. There is an inaccuracy in the  
14 reporting of it.

15 MR. LANCASTER: Mr. Lederer, it's now  
16 4:30.

17 MR. LEDERER: Thank you.

18 MR. LANCASTER: Is it an appropriate  
19 time?

20 MR. ESTRIN: We have had a tentative  
21 discussion as to how long this will go tomorrow and to  
22 understand whether or not myself, Milton, as well as  
23 the other parties will gather together their various  
24 troops with regard to hydrogeology and so before the  
25 Board goes, I wonder if we could have a moment because



1 then myself and Mr. Lederer and Mr. Tzekas could  
2 discuss this and make some reasonable decision about  
3 it.

4 MR. LEDERER: I'm astonished that people  
5 want me to make predictions on how long I will be.

6 MR. LANCASTER: We can always double  
7 them!

8 MR. LEDERER: I could admit in this  
9 moment I was once at a hearing where the Board always  
10 multiplied my predictions by three.

11 MR. LANCASTER: I think I recall that.  
12 How long do you think you will be?

13 MR. LEDERER: In fact I don't expect to  
14 be that long and barring what occurs to me this  
15 evening, I have just two more areas to discuss; one of  
16 which I think will be quite brief and another which  
17 will require me to review some documents, but I think  
18 in a manner which I think is uncontroversial and a  
19 third point which is the concluding point, three  
20 matters to touch on, and I would hope not to be more  
21 than an hour.

22 MR. ESTRIN: We will make that two.

23 MR. TZEKAS: My best estimate is about  
24 two hours and I think that that's it.

25 MR. LANCASTER: Two hours.



1 DR. KINGHAM: The Board will probably  
2 have some questions.

3 MR. ESTRIN: And I may have some re-  
4 examination.

5 DR. KINGHAM: That's three and a half.

6 MR. LANCASTER: It looks like we've got  
7 a day pretty well.

8 MR. ESTRIN: With some interspersing of  
9 who knows what as the evidence goes in.

10 MR. LANCASTER: There will be a bit of  
11 that.

12 MR. LEDERER: A little bit of jousting,  
13 just to keep it active. Quite apart from anything  
14 else, I think it would be fair to say it won't hurt to  
15 have an early day and if we rise at 3:00, we won't have  
16 lost much.

17 MR. LANCASTER: It won't be worth while  
18 starting a new witness at that hour.

19 MR. ESTRIN: I appreciate that because we  
20 have two witnesses in a panel and it is something that  
21 I would say would be on for, with cross-examination, we  
22 will be on it for at least two weeks or maybe longer.

23 MR. LANCASTER: Are there any filings  
24 which could be made ahead of time and that would take a  
25 bit of time?



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MR. ESTRIN: Yes, we can do that tomorrow.

MR. LANCASTER: So we will adjourn --

DR. KINGHAM: Did you say double that and it may be longer than two weeks?

MR. ESTRIN: My best estimate as to how long I will be in-chief with my hydrogeological and modelling witnesses, and it would be approximately -- if we did it in four days I think it would be fast, but five would be the medium range and it could be as long as six. We are dealing with some aspects of the topic the Board has heard nothing about in any detail with respect to major concepts that have to be understood in some detail and we will attempt to do that with a number of overheads. Each of our experts has prepared a report on each site and so we have four reports and then they have a witness statement which replies to many issues that have already arisen and it goes on for sixty pages and there is a lot of material to go through. I fully anticipate trying to get that out in an understandable way, we will be at it for four days minimum and probably six or so maximum, but I don't want to promise it, except that I will do my best not to drag it out.

MR. LANCASTER: Thank you. 9:30 in the



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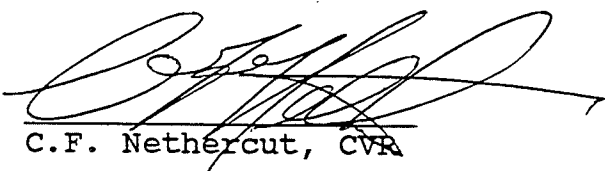
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McDonald, cr ex (Lederer)

1 morning.

2 --- Adjournment (4:30 p.m.)

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5 CERTIFIED CORRECT:

  
C.F. Nethercut, CVR

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