

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

AUDREY TOBIAS

\*\*\*\*\*

PROCEEDINGS AT TRIAL

EVIDENCE ONLY OF YVES BELAND

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BEFORE THE HONOURABLE, MR. JUSTICE R. KHAWLY

On October 3<sup>rd</sup>, 2013, at Toronto, Ontario.

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APPEARANCES:

Counsel for the Crown

M. Gaspar, Ms.

Counsel for the Accused

P. Rosenthal, Esq.

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Old City Hall

Courtroom 123

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I.

ONTARIO COURT OF JUSTICE

TABLE OF CONTENTS

WITNESSES	PAGE NUMBER
-----------	-------------

**YVES BELAND**

Examination In-Chief by Ms. Gaspar.....	3
Cross Examination by Mr. Rosenthal.....	35

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EXHIBITS

NUMBER	PAGE NUMBER
--------	-------------

2	Form 2A	7
---	---------	---

October 3<sup>rd</sup>, 2013

YVES BELAND: SWORN

EXAMINATION IN-CHIEF BY MS. GASPAR:

5 Q. Sir, you're employed by Statistics  
Canada?

A. Yes, I am.

Q. How long have you been employed  
there?

10 A. I've been an employee of Statistics  
Canada for the last 26 years.

Q. Since 1987?

A. Since 1987.

Q. And what is your current position?

15 A. I'm currently the director of Census  
Operations Division.

Q. How long have you been director?

A. Five years. Since November of 2008.

Q. And your positions with Statistics  
20 Canada prior to that?

A. Over the last 26 years I held a  
number of positions. I started as a survey  
statistician for 19 years working on various projects  
at Statistics Canada. I worked on the '86, '91 and '96  
25 censuses of population. After that I moved on to work  
on the Health Survey Program and then I moved into more  
of ... more of management type position in the  
operations side. And then for the last five years I'm  
a director of Census Operations Division.

30 Q. Okay. Can you describe your role and  
duties as director?

A. As a director of Census Operations

Division I'm responsible for 120 employees working on three sub-projects of the census program. The three sub-projects are mail out/mail back, which consists of everything surrounding the mailing out and the mailing  
5 back of the questionnaires for the Census Program. I also manage employees working on the processing sub-project which is basically the treatment of the information provided by the Canadians and the cleaning of the information. And the third sub-project is the  
10 dissemination project which consists of tabulating the final information and prepare the information to push out on the internet for public consumption.

Q. Were you involved in the 2011 census?

A. Yes, I was involved in the 2011  
15 census.

Q. In what capacity?

A. I was part of the management team. I joined in 2008. At that time the 2011 project has already started so I joined in the middle of the ... of  
20 the planification and the strategic thinking of the main elements of the census program. And then from that point on up to now I participated in every aspect of the census population program, going from collection to processing, to dissemination, certification of data,  
25 in fact, including ... I worked on every aspect of the census because I'm part of the management team.

Q. Okay. When the census is referred to as having a seven year cycle, can you explain what that means?

A. It always starts with the evaluation  
30 of the previous census. So we ... we conduct a series of strategic conferences within Statistics Canada where

we identify the lessons learned of the previous one.  
And then from the lessons learned and building on the  
success ... the successes we basically plan and come up  
with the main ... the main drivers of the subsequent  
5 census and then we integrate the new technologies as  
part of it. So this is the planification stage.

And then we move into the development and  
implementation of the various processes. But since  
10 this program is a very large project it involves over  
300 indeterminate employees at Statistic Canada working  
continuously on this program. So ... and then it's the  
planning, it's the development and then we do the  
conduct of the census and then after that we still have  
15 two more years as part of the program where we would  
process the information and clean the information and  
disseminate the information to Canadians.

Q. So the 2011 census, the seven year  
cycle would have started when and ended when?

20 A. It would have started in 2006 at the  
same time as we were conducting the 2006 census and  
then it's ending in a couple of weeks from now because  
we finished the disseminating the information of the  
National Household Survey which is also a part of the  
25 census program. The last released was three weeks ago.

Q. Okay. If I could ... if we could  
talk now about the 2011 census and just practically  
speaking that ... that census involved ...

30 **THE COURT:** Could you move the mike just  
a bit at an angle, please? Yes. Try it  
a bit. Just move it. Go ahead.

**MS. GASPAR:** Q. For the 2011 census,

there's the form that's known as form 2A?

A. Yes.

Q. Okay.

A. This is the mandatory short form of  
5 the census program.

**THE COURT:** Keep your voice up, please,  
Mr. Beland. It's the mandatory short  
form?

**THE WITNESS:** It's a mandatory short  
10 form.

**MS. GASPAR:** Q. And for the 2011 census,  
it was the only mandatory form?

A. It was the only mandatory form sent  
to 100 per cent of the dwellings in Canada.

15 Q. Okay. And I'm just going to show you  
an envelope with a form enclosed. Is that the form 2A?

A. That's the form 2A.

Q. Okay. And this is a paper copy of  
the form that was sent to the Canadian households?

20 A. Yes, that is the paper copy.

Q. And for those individuals that  
completed the form online would this paper copy ...

A. No, they would not have seen this  
paper copy. They would have received a letter with a  
25 secured access code on the letter indicating that they  
should go on the internet, enter that secured access  
code and then they would have an electronic version of  
the questionnaire.

Q. But the electronic version of the  
30 questionnaire contained the same questions?

A. Is identical.

Q. Okay.

7.  
Beland, Y. - in-ch by  
Ms. Gaspar

**MS. GASPAR:** Your Honour, if the form 2A  
could be made the next exhibit, please.

**THE COURT:** Mr. Rosenthal, content?

**MR. ROSENTHAL:** Content, thank you.

5 **THE COURT:** Thank you. Mr. Registrar?

**CLERK OF THE COURT:** Exhibit 2, please,  
Your Honour.

**THE COURT:** Thank you.

10 **EXHIBIT NUMBER 2:** Form 2A.  
Produced and marked.

**MS. GASPAR:** Q. So for the 2011 census  
can you describe the process by which the households  
15 were identified to receive the form?

A. Yes. For the census program we use  
the Statistic Canada address register as the frame for  
the census. The address register comprises 14.6  
million dwelling addresses from all over the country,  
20 ten provinces and three territories. So this is our  
starting point, that's the frame. And then we have  
three ways of delivering the census questionnaire to  
Canadians and there are four ways of ... for Canadians  
to answer to the census questionnaire and I will go  
25 through them.

So the entire country is divided into  
three parts. We have what we call the mail out area.  
This is 79 per cent of the country. It's areas where  
30 we do have good civic addresses and that the Canada  
Post Corporation can mail pieces of information to.  
That's 79 per cent of the Canadian dwelling ...

dwelling addresses. And then there's 19 per cent of addresses are falling into the area called list/leave. These would be areas where the civic address are not good enough for Canada Postal Corporation to mail materials to those dwellings. So in those areas we would send enumerators where ... and then they would list all the dwellings and leave a questionnaire at the door.

And then the third portion is ... is for two per cent of the Canadian population. We call that area canvasser areas and these would be very remote areas where we do not have addresses at all and then we send enumerators there on the spot and they do face to face interview. For the mail out portion of the country, 60 per cent of the 80 per cent would have received a letter with the secured access code encouraging them to go online and enter the secured access code and complete their questionnaire using the internet response channel. The other 20 per cent of that 80 per cent received directly a paper questionnaire through mail.

That was because in those areas we did not feel that the connectivity to the internet was not large enough so we mailed them directly a paper questionnaire. I talked about the list/leave areas. There we had enumerators walking in the street listing the dwelling addresses and dropping ... leaving a questionnaire at each door. So those were the three ways of delivering the ... the questionnaire. Now we ...



Q. If I could just stop you there just for a moment. And so you said there were 14.6 dwelling addresses?

A. Million dwelling.

5 Q. Oh, sorry, 14.6 million dwelling addresses that were ultimately identified?

A. Yes.

Q. And so 14.6 million requests were made ...

10 A. Yes.

Q. ... for completion of the form?

A. Yes.

Q. Okay.

A. We received a little bit over 13  
15 million completed questionnaires for 98 per cent response rate.

Q. Okay. And when did this take place for the 2011 census?

A. For the 2011 census program we  
20 implemented what we call the wave methodology. So it's a series of stimulants to encourage Canadians to participate and fill out their census form. The first week of May Canadians would have received the first wave of information so those it mail out they would  
25 have received either the letter or a paper questionnaire. Those in list/leave would have received their questionnaire at the door, okay? And then eight to nine ... eight to ten days after that first week for those who would not have responded to the census they  
30 would have received a reminder, so the second wave and other pieces of information. And then an extra six or seven days after that point again for those who would

not have not responded to the census questionnaire they would ... we would have mailed a questionnaire so this would be the third wave. And this takes place all in May. And then starting ...

5                   **THE COURT:** Considering ... excuse me, Mr. Beland, considering the agreed statement of facts do we really need to get into that kind of detail? Because it sounds like in the agreed statement of  
10                   fact your client is conceding she received a questionnaire and she decided that she would not fill it out, correct?

**MR. ROSENTHAL:** That's correct.

**THE COURT:** So do we need to go through  
15                   this?

**MR. ROSENTHAL:** Well, some aspects of this might be useful, sir, but I'm not sure where my friend is heading.

**THE COURT:** Well, what I'm suggesting is  
20                   unless there's a particular reason that you want to ask those question why don't you leave it just to cross examination?

**MS. GASPAR:** The reason maybe this, Your Honour, is that if the ... I think that  
25                   the implementation phase of the census process is important because ultimately if we get to a section one analysis the manner of impairment may be at issue and I think that the means in which the  
30                   government employed to gather the data may be relevant on that and that's why I'm trying to establish a factual

foundation.

5           **THE COURT:** Well, it would be relevant if  
under a section ... if it came to a  
section one for the defence to argue that  
in some manner section 2A and 2B ... and  
sub B were effected in a manner that she  
received the questionnaire and I don't  
think that's where Mr. Rosenthal is  
headed at all.

10          **MR. ROSENTHAL:** You can tell from the  
material I'm heading in a different  
direction, sir.

15          **THE COURT:** I think we should just leave  
that and just move on to the other areas  
that we ... are more germane to this  
application.

20          **MR. ROSENTHAL:** Excuse me, sir, following  
on your suggestion, it might assist my  
friend if I did the cross examination and  
then she was allowed in re-direct to deal  
with all those issues? I might ...

25          **THE COURT:** Look, counsel, if Mr. ... I  
agree, if Mr. Rosenthal is content why  
don't we simply let Mr. Rosenthal do his  
cross examination and we will give you a  
wide latitude in re-examination. The  
kind of latitude I would not normally  
give you.

30          **MS. GASPAR:** What I ... if I could, Your  
Honour, I'll move onto the areas that are  
more germane ...

**THE COURT:** All right.

**MS. GASPAR:** ... and lay those areas out then instead.

**THE COURT:** Fair enough.

5 **MS. GASPAR:** If that's all right with Your Honour? And if ... if something comes out in Mr. Rosenthal's cross I'll seek an opportunity to address those matters then?

**THE COURT:** Fair enough.

10 **MS. GASPAR:** All right.

**MS. GASPAR:** Q. Let's turn to the purpose of the census gathering exercise. Generally speaking why is it important for the government of Canada to conduct a census?

15 A. The census of population is like a snapshot of the population at one point in time. It is the only current and detailed source of information for small geographic areas based on the same statistical concepts for the entire country. The information is  
20 used by all level of government, by the private sector and by non-profit organization in many ways in their decision making process.

Q. And what are the primary objectives of the census exercise?

25 A. It has multiple objectives. The main one would be that the population count are used under the *Fair Representation Act* to draw the boundaries and the number of seats for the House of Commons. So census counts are specifically mentioned and used for  
30 that purpose. As well, pop counts ... population counts are used for the equalization payment and the health and social transfer payments from the federal to

the provincial government.

And then thirdly, the provincial government would make grants to local and municipal governments based on the head count. So each individual counted as a census represents an amount of money hence the importance of adding the right number. And then it is used like in many other ways, like town planners would use it to look at the shift of population. They would use it to build roads. They would use it for housing needs. They would use it to build hospital. School boards would use them for ... to build new school and so on. The private sector will use it to identify it marketing opportunities and so on and so on. The uses of census data is numerous.

Q. So that the objectives that you ... as I see that you've identified them are primarily for determining representation at the House of Commons? A. Yes.

Q. Determining equalization in transfer payments?

A. Yes.

Q. And also in terms of decision making information ... there's an informational component ...

A. Yes.

Q. ... to that as well? Okay. And so at ... is the information shared with all levels of government?

A. Okay. The information that is shared is only at the aggregate level. Statistic Canada will always keep the micro data level ... the micro data information of Canadians and then we would produce data

tables of various credits, we would aggregate the information and we would produce the information in that manner.

Q. So when you speak of aggregate data  
5 and products referring to the aggregate data are individual names or identities attached to that data at all?

A. Not at all. The first thing we do when we receive the response data base at statistic  
10 Canada is we strip off the names of all the information that we have on the file and these are kept totally separated. And from that point on, up to the end, we only work with anonymous data.

Q. And with respect to the transfer of  
15 funds from the federal government to the provinces and the equalization payments, what ... what are the amounts of dollars that we're talking about here?

A. So in 2009/2010, close to 60 billion dollars were transferred from the federal government to  
20 the thirteen provincial and territorial governments.

Q. So then at the provincial level how would the census data be important apart from determining the amount of funds that they would receive?

A. Then the next step for the provinces  
25 is they would make grants to their local or municipal government based on the head count. So that money is then redistributed, some of it is redistributed to all municipalities, all little hamlets or little designated  
30 places in the country based on the head count.

Q. And so what would be the impact of inaccurate data?

A. Inaccurate, I mean the impact could be tremendous. It could go from millions to tens of millions of dollars not being transferred or misallocated based on wrong population counts.

5 Q. And so at the municipal level, what ... what could that translate into in practical terms?

A. Okay. There are a little bit over five thousand municipalities in the country, they vary in size. They go from a municipality of fifty persons,  
10 up to the city of Toronto which has 2.5 million, but it varies a lot. So for very small municipalities in the country missing one or two persons could be ... could have severe ... severe consequences in their money transfer. Thus the importance of counting everyone in  
15 the right place on the same point in time.

Q. And you said earlier that the census process was the only source of coherent and detailed information. Would there be any other mechanism for these ... for these governments to ... or these levels  
20 of government to attain accurate data?

A. At this point in time, no.

Q. Are there any other stakeholders that benefit from the use of the data?

A. The private sector and the private  
25 sector would ... would use it a lot, especially to identify marketing opportunities, where to build stores, depending on the demographic of the population and the aging of the population. So this would be an example.

30 Q. Okay. And again, when the information shared with stakeholders like the private sector are we talking again about aggregate data or are

we talking about individualized data?

A. We are always talking about aggregate data. We never, never share in individual information.

Q. Okay. All right. Well, let's ...  
5 let's turn to that then and ... uhmm, and the ... let's talk about the safeguards that are in place to protect individualized information. Earlier you said that there were different ways that the responses could be returned to the government?

10 A. Umhmm.

Q. Could you just talk about each of those different ways?

A. Okay. So in 2011, fifty per cent ...  
fifty four per cent of Canadian completed their census  
15 form using the internet response channel. So those Canadian households would have received a letter with a secured access code. They would have entered the code on their computer and they would have accessed the internet response channel that Statistic Canada built  
20 and then they would have completed the questionnaire.

At that point, their information would be encrypted and then sent from their home to the Statistic Canada database. And then once in the ... on  
25 the Statistic Canada premises only Stat Can employees would have access to that information.

Q. Okay.

A. And there was thirty one per cent of Canadian household who completed their questionnaire on  
30 paper and they mailed it back directly to the head office of Statistic Canada in Ottawa. Those paper questionnaire once on Statistic Canada premises were



handled by Statistic Canada employees. And then there were thirteen per cent of Canadian households who completed their questionnaire as part of the non-response follow up procedures. So this would have been  
5 either a telephone or a face to face interview with the help of an enumerator.

So the enumerator would, a Stat Can employee, under oath would have completed the  
10 information on behalf of the Canadian household. The crew leader, the supervisor of that enumerator would have applied a quick verification on the questionnaire. So that person, also a Stat Canada employee would have seen the information. Then the questionnaire would go  
15 to the collection support unit of the local census office for a third ... for a second verification. So, of course, remember that's ... would have been seen a third time by a Statistic Canada employee. And then the questionnaire would be put into bundles and they  
20 would be shipped to head office at Statistic Canada and then again once on Stat Can premises only our employees would have opened the envelope and manipulate the census questionnaire.

Q. Okay. Just breaking that down a  
25 little bit. Fifty four per cent of the responses were submitted on line?

A. Yeah.

Q. And those responses were transmitted through a encrypted channel?

30 A. Yes.

Q. And made their way to Statistics Canada's head office?

A. Yes.

Q. And did you say ... is there a particular name for the place that they ended up at?

A. They came into the Response Database.

5 Q. The Response Database?

A. Yes.

Q. All right. And once at the Response Database they are handled by Statistic Canada employees?

10 A. Yes.

Q. Okay. And those employees, are they subject to any kind of requirement ... what security requirements are they subject to?

A. To conduct the census, the 2011  
15 census of population we hired close to 40,000 employees to work on the census. All of them we had their security checked by RCMP and all of them had to swear an oath of secrecy to not share the confidential  
20 information on Canadians that they could see as part of their day-to-day job. And they were specifically told that there could be some severe repercussion should they do so, including possible fine or possible jail time.

Q. So there are ... there's a criminal  
25 sanction ...

A. Yes.

Q. ... for violating the oath of secrecy?

A. Yes, there is.

30 Q. And is this oath of secrecy applicable during the term of employment?

A. No, this oath of secrecy is valid ...

is valid for their entire life.

Q. Okay. And so you said 40,000 individuals were employed by Statistics Canada. Would all of those individuals have had access to the  
5 individual response?

A. No, only on a need to know basis. So some of those individuals worked on activities that did not require them to see confidential information, they did not have access to confidential information.

10 Q. And so at the ... those online responses, they make their way to the response database which is managed by Statistics Canada employees, subject to this oath of secrecy?

A. Yes.

15 Q. And the paper questionnaires are mailed directly again to this same place, again to be handled by individuals subject to the oath of secrecy?

A. Correct.

20 Q. And with respect to the census respondent who completed the form by way of an enumerator who attend at their household, is the enumerator who attends at their household also subject to the same security requirements?

A. Of course, yes.

25 Q. All right. And as that paper form makes its way, ultimately, to the response database, each of the individuals that handles that form again are subject to the security requirements?

A. This is correct.

30 Q. Okay. And so what ... what happened to the paper copies of the ... of the forms once they make their way to the ...

A. Then there's a series of activities to ... and this is what we call the processing of the paper questionnaire. So first we would open the envelope, we would acknowledge the reception of the envelope by reading the bar code on the questionnaire. And then the questionnaire would go into an activity called document preparation which is basically putting them into batches and then it goes into the cutting, we are cutting the side of the questionnaire to separate the pieces, the individual pieces of paper, pages of paper.

And then it goes into scanning. We use intelligent character recognition and up ... optical character recognition technology to convert the written information into digital information and then it goes into specific activities like coding and maybe some keying of information for paper form that do not go through well into the scanning system.

Q. Okay. And are those paper copies kept some where?

A. Those paper copies are kept within the Statistic Canada premises all the time.

Q. Okay. And this ... those premises, can you tell me about how those premises are secured?

A. For the 2011 ... each time we conduct a census we have to acquire a new space because of the influx of employee that we need to conduct the operation. The head office at Statistic Canada does not accommodate this ... cannot accommodate this huge influx so for the 2011 census we acquired the ... a space in Hull, in Gatineau and it was fitted to be a

Statistic Canada office. So it was a satellite office of Statistic Canada with the same security measures that we do have in head office. So more specifically we do ... this environment works in a secured network,  
5 totally isolated from the rest of the world.

Q. Okay. And how long are those paper copies kept? Are they kept indeterminately?

A. Those paper questionnaires, we come ... we have an agreement with Library and Archive  
10 Canada to keep the paper questionnaire up to the point where we have them all microfilmed, okay, and then because so microfilm are then given to Library and Archive Canada. And then on the questionnaire there's a ninety two year question where we would ask the  
15 consent of the Canadian to share their information in ninety two years from now. For those who say yes to that question we transfer that information on microfilm to Library and Archive Canada and then ninety two years from now they would make them public.

20 **THE COURT:** May I have your indulgence for a second.

**REPORTER'S NOTE:** Discussion off the record.

**MS. GASPAR:** Q. So Statistics Canada  
25 keeps the paper questionnaires for a period of time and eventually if individuals have consented by way of their form, ninety two years later that information may be made public ...

A. Yes.

30 Q. ... through the Library of Archives?

A. Yes.

Q. Okay. And if they have declined to

share that information after ninety two years it won't be shared with the public?

A. It will not be shared.

Q. Otherwise, does Statistics Canada  
5 maintain a database of the individualized information?

A. Of course, yes.

Q. It does, okay. And where is that housed or how is that maintained?

A. That information is maintained on the  
10 separated and secured network that we have at Statistics Canada. That network is isolated from the rest of the world.

Q. Okay.

A. This is the same thing for all of our  
15 survey programs.

Q. Okay. And when you say isolated is it connected to the other branches of the community in government, for instance?

A. No, not at all.

Q. And so tell me about all of these  
20 individual responses come in, you have thirteen million individual responses, and eventually it makes it's way to become aggregate data?

A. Umhmm.

Q. And you said earlier that in doing so  
25 the individual information is stripped down?

A. Yes. So we do ... we have the ...  
let's see this into two ... two separate processes.  
The first part would be the handling of the paper  
30 questionnaire and the combining of the information coming from the paper questionnaire with the information coming via the internet response channel.

So there is an initial round of activities to ... to do ... to pre-groom the information and we need to transfer the paper information into digital, combine it with the internet so this is the initial set of activities. This is done in the data operations centre in Gatineau. And the final product at the end of ... the end of August of the census year is call Response Database. That Response Database include all the information that were provided on the paper questionnaire and through the internet. So names would be attached to the individual information. Then that response database is transferred to head office to do the final steps of processing.

The first thing we do is we strip off the names from the file and the names are kept totally separated and only a handful of Stat Can employees would ... would have access to this but we need to grant them permission to do have access and that is my responsibility to give that permission or not. It's only a handful. Then the anonymous information is being processed like any other ... any of our other survey programs. We do conduct surveys of edits and implication activities on the information and this could take up to eighteen months of processing to do and at the end of the day we do have a clean data set, complete, ready to be used for tabulation.

Q. And that data set, is that ... that's the data set that contains aggregate information?

A. No, that data set contains micro (ph) of all information.

Q. Okay.

A. So we have thirty four million people there with all their census information so age, sex, family composition and their language detail and their answer to the ninety two year consent question. Names  
5 are not there.

Q. Okay. And from there, what you call products, are generated?

A. Exactly. We tabulate this information and based on the ... the needs of our data  
10 users we ... we produce for them various products, tables, maps, charts, any kind of ... any kind of products that they would like to have we would do it for them using the micro label (ph) data.

Q. All right. Would there be anyway for  
15 someone to access an individual census form?

A. No, other than Statistic Canada employee, no.

Q. Like a Canadian citizen, for instance, couldn't seek out a copy of a census form?

20 A. No. Canadian can ask to have their own answer back only. It cannot be by proxy.

Q. Okay. So only their own ...

A. Only their own information and we have a procedures ... procedures to follow. We need to  
25 acknowledge that it's the right person asking for the ... for their own information.

Q. Other than that, they're not accessible?

A. No.

30 Q. Okay. All right. I understand that a number of contracts were tendered by the Canadian government to assist with the 2011 census?



A. Yes, that's true.

Q. Okay. Can you ... how many ... do you know how many contracts are just talked generally about those contracts?

5                   A. Yes, I do. Yes, I do. For the census program we tried as much as possible to be as cost effective as possible so in areas where we are not the expert we would ... we would acquire that expertise from ... from various companies so we do have a  
10 contract ... we did have contact with Lockheed Martin to provide technical support in the development of ... and the setting and the fitting of the 2011 version of the census processing system. We had a contract ... we had a printing contract for the printing of our  
15 questionnaire and all the paper material. We had a contract with telecommunication. We had a contract for communication to come up with the various committees to communicate with Canadians for marketing the census and so on.

20                   Q. Okay. Now, is the contracting done by Statistics Canada itself or another governmental branch?

                  A. No, we worked through Public Works Government Services government services Canada. They  
25 have a unit there that are specialized in coming up with fair transfer and a very stringent competitive bidding process. So what we do at Stat Can is we gather all the requirements. We basically list what we are looking for, what should be the end results and  
30 then we ... we end ... this from the ... this information to Public Works Government Services Canada and they take care of coming up with the ... all the

... implementing the tendering process.

Q. All right. And so you mentioned that Lockheed Martin was one of the recipients of a contract for 2011 census?

5 A. Yes, that's correct.

Q. Okay. And what ... and that was undertaken by Public Works?

A. Yes.

Q. Okay.

10 A. Lockheed was awarded the contract in 2008.

Q. Okay. And what was the amount of the contract?

15 A. For the 2011 census, Statistic Canada took over a lot of the responsibilities that Lockheed had in the 2006, so the total amount for the 2011 contract was 20 million dollars.

Q. Okay. And so you said then that they were also awarded a contract for the 2006 census?

20 A. Yes, correct.

Q. Okay. And that it was scaled back in the 2011 census?

A. Okay. Yes, it was scaled back ...

Q. All right.

25 A. ... 2011 census.

Q. All right. Can you ... maybe we'll talk first then about the 2006 census.

A. Okay.

30 Q. Can you tell us what the role was in that census?

A. So their initial role was to ... was much larger than what they ended up doing up at the

end, and I'll get through that, but their initial role was to build the census processing system. So giving us the ... a solution to handle and combine information coming from paper, internet and telephone, altogether.  
5 So they basically built the census population system from scratch.

In addition to that, they ... they handled the printing contract and they handled specific  
10 IT solution contract as well. But initially they were suppose to ... they were suppose to acquire the space to do the processing of the paper questionnaire. They were suppose to equip and fit that space to conduct the processing system. They were suppose to hire the human  
15 resources to actually do the work during the processing activity. And they were providing the management aspect of those activities. The four items I just mentioned, they did not do it. In 2004, because of some ... some Canadians including members of the  
20 parliament, they were concerned regarding the *Patriot Act* and then they ... their concern was were not ... were not true. But it was perceived that the US government, through the *Patriot Act*, could access confidential information provided by Canadians that  
25 would ... that would be collected using the Lockheed Martin system.

Q. So what you're saying then is to alleviate those concerns, Lockheed Martins role for the 2006 census was limited?

30 A. Exactly. We descope as soon as we heard those concerns. We took the matter very seriously and we descope their mandate right away.

Q. All right. So what they did do was develop the system and the hardware ...

A. Yes.

Q. ... and printed the questionnaires?

5 A. Yes.

Q. And that ... it was to develop the software?

A. Yes. They provided a technical solution, a software to integrate information coming from paper, telephone and internet.

10 Q. Okay. So they didn't have anything to do with acquiring space?

A. Nothing, nope.

Q. Hiring personnel?

15 A. No.

Q. Or the actual management of the data processing?

A. No.

20 Q. Okay. And for the 2011 census they were awarded another contract?

A. Yes.

Q. And their role for the 2011 census ...

A. Was ... was just to provide us with technical solution in the fine tuning of the system. For example, the paper questionnaire changed between 2006 and 2011 so we had to adapt the scanners to be able to able to end all the new format of the questionnaire. The new colour, the new positioning on the piece of paper. So they provided technical support. We did ... we did the job. They did not do it like they did in 2006. We did it but we needed

their help for technical support here and there.

That's what they did.

Q. For either the 2006 or the 2011  
census, what was Lockheed Martin's involvement with the  
5 analysis of the census forms?

A. At no point Lockheed Martin staff had  
access to Statistic Canada data. So the census data.  
They provided the tool. They provided the IT solution.  
We managed the ... the operation with our staff.

10 Q. And did Lockheed Martin have access  
to the response data basis that you've referred to?

A. Never.

Q. Did they have access to the ... the  
physical office where the individual responses were  
15 housed?

A. Never.

Q. What ... you mentioned that there  
were concerns following the awarding of the contract to  
Lockheed Martin in 2006. And the concerns related to  
20 the US government potentially having access to Canadian  
information through the *Patriot Act*. What other steps  
did Statistics Canada take, apart from descoping the  
contract in order to address those concerns?

A. Okay. We ... we implemented a full  
25 IT security plan, okay? And that consisted of several  
activities in relation with the ... with assuring to  
find ... to get ... to get assurance that the data  
would remain confidential. So we hired IT companies  
... companies with expertise in hacking IT system and  
30 we basically asked them try ... try to come in. That  
was prior to the census, of course. So those companies  
were specifically asked to come and hack ... try to get

in the system and they were not able to. Okay?

And along during ... during these activities they provided some ... some recommendations, you know, to even ... to further strength the system that we had. So we ... once ... once we finalize the system then to give even more assurance that this system was secured we put in place a task force headed by a former audit general, Denis Desautels and he ... he got help from very ... from IT expert from Canada and from United States and they basically they reviewed all IT security aspect of our system and they concluded that there were no risks of anyone from outside to gain access. There were no weaknesses in the system to get into our census processing system.

Q. So if I understand you correctly  
Statistic Canada hired, secured three IT security firms ...

A. Yes.

Q. ... to ... to do effectively an audit or a ... or try to infiltrate the Statistics Canada informational database?

A. Yes.

Q. And they were not successful?

A. No.

Q. Okay. And apart from that there was also a task force that was conducted by the former auditor general to assess and evaluate the security systems?

A. Yes.

Q. And again that's the ... the ultimate finding was that it was secure?

A. It was secured.

Q. All right. Is there monitoring of ... is the system monitored to ensure that ... the integrity of the security system is maintained?

5 A. Yes. During production we had 24/7 monitoring on ... of any suspicious traffic around the system. And during the 20 ... during the 2006 and the 2011 censuses there were no such suspicious traffic around the census processing system. But it was  
10 monitored on a 24/7 basis.

Q. And these checks, are these ... this task force, that took place following the 2006 census?

A. No, the task force was just before.

Q. Just before?

15 A. Just before the 2006 census.

Q. Right. And was a similar assessment done with respect to the 2011 census?

A. For the 2011 census we had a full IT security plan before, during and after the census that  
20 to overlook all the IT aspect and physical security aspect of the Canadian information.

Q. And the results ...

A. Nothing ...

Q. ... of those ...

25 A. There was ... there nothing ... there was no breaches, there was no suspicious traffic around our system in 2011.

Q. All right. Are you familiar with a privacy impact assessment?

30 A. Yes, I am.

Q. Can you just tell us generally what it is?

A. A privacy impact assessment is basically to determine if there would be any privacy, confidentiality or security risk surrounding the various aspects around the census for example. So  
5   Statistic Canada is very proactive. We always do PIA, privacy impact assessment prior to go in live production and those PIA's would ... would be focussed on the new technologies that we would have introduced at the time. So in 2006, for example, we introduced  
10   the internet response channel so we had a specific PIA on this.

Q. Okay.

A. Okay? In 2006 it was the first time where we asked Canadians if they ... we could link  
15   their information to the income tax data. So we had a PIA on this. In 2006, it was also the first time where we asked the 92 year consent question. We another specific PIA. For the 2011 census we had a series of PIA's as well. In 2011, we had for the first time, a  
20   questionnaire request system. We had a PIA on this. We had a new system to help the enumerators in the field called Field Management System. We had a PIA on this as well.

Q. And just to stop you, but PIA's or  
25   Privacy Impact Assessments, they're not conducted by Statistics ...

A. No.

Q. ... Canada itself? They're conducted by an independent agency?

30   A. Yes. Yes, by an independent party.

Q. And ... and that's also ... do you know which party that is?



A. No, I don't know what that ...

Q. Okay.

A. ... party that is.

Q. Okay. But it's an external  
5 assessment?

A. Yes.

Q. Okay. And with respect to these  
various PIA's conducted regarding census operations  
either for 2006 or for 2011, ultimately what is the  
10 conclusion of these assessments?

A. That there was no risk in place that  
could not be mitigated by the existing procedures that  
we have.

Q. All right. Just in terms of Lockheed  
15 Martin in particular and giving their involvement in  
terms of developing the software for the census is it  
possible that they could have designed the software in  
such a way that would enable them to gain access to the  
data?

20 A. No.

**THE COURT:** Which census are we first  
going to deal with? The '06 or the '11  
or both?

**MS. GASPAR:** Q. For both.

25 A. No, there is no such way. What we do  
to ... to ensure that this not possible is we hire  
external companies with expertise in detecting what  
they call back doors. So they come in and they do what  
they call a code source review. And they would  
30 basically go through every single line of codes and  
would try to find any suspicious code that could lead  
to that back door. So they would look at all retrieved

statement, fetch, send, transmit, write and they would go through each and everyone of them and they would sit down with the programmers to make sure where they ... where they are writing, where they are transmitting the information. This is a code source review. It's not just Statistic Canada. It's all government of Canada departments are using this approach and the private sector as well, banks are using this same type of approach. So they do a code source review to ensure that there is no back door. Once this is done we lock the system down. So ... which means that there's no additional changes that is ... that are permitted to the code.

Q. Okay.

15 A. So ...

Q. Could Lockheed Martin have included a device in either the 2006 or the 2011 census that could send the data to an outside entity?

A. No. That was not possible.

20 Q. And would that have been captured through the code review that you've just described?

A. Definitely.

Q. Are there any other means by which Lockheed Martin could have accessed the census data?

25 A. No. No other means.

Q. Are you aware of any security breaches following either of the 2006 or the 2011 census?

30 A. There was ... there was no breaches in both censuses.

Q. Has any of the confidential census data ever left this country?

35.  
Beland, Y. - cr-ex by  
Mr. Rosenthal

A. Never.

**MS. GASPAR:** Those are my questions for  
now, Your Honour.

**THE COURT:** Very good.

5 **MS. GASPAR:** Thank you.

**THE COURT:** We will not be doing your  
cross examination now. We'll take the  
morning recess and in the meantime I'm  
going to deal with the other matter. The  
10 other matters.

**MR. ROSENTHAL:** Thank you, sir. Should  
we be back in twenty minutes or ...

**THE COURT:** No, let's come back at noon.

15 **MR. ROSENTHAL:** At noon? Okay, thank  
you, sir.

**REPORTER'S NOTE:** Matter held down.  
Dealt with other matters on docket.

\*\*\*\*\*

#### RECESS

20 \*\*\*\*\*

**UPON RESUMING:**

**REPORTER'S NOTE:** Dealt with other  
matters on docket.

25 **THE COURT:** All right, sir. Mr.  
Rosenthal.

**MR. ROSENTHAL:** Thank you, sir.

#### CROSS-EXAMINATION BY MR. ROSENTHAL:

30 **MR. ROSENTHAL:** I'm told that the  
microphones are now arranged so that I  
can speak from here. I hope it's audible

to everybody.

**THE COURT:** I don't know. I think they'll let you know if they don't hear you.

5 **MR. ROSENTHAL:** Yes, they're not shy.

**MR. ROSENTHAL:** Q. Good afternoon, sir.  
The security stuff is pretty complicated business,  
isn't it?

A. Yes, it is.

10 Q. There's a constant war between  
hackers and security people?

A. Yes.

Q. And there's more and more  
sophisticated hackers and more and more sophisticated  
15 defences as time goes by?

A. Yes.

Q. Now among the most sophisticated  
people with respect to these matters are US military  
and intelligence people, right? You know that they  
20 have developed much in this ... in this area and  
they're way ahead of most other people, isn't that  
true?

A. I'm not aware of this.

Q. You're not aware of that, sir?

25 A. No.

Q. It wouldn't be your understanding  
that US intelligence people including military people  
have very advanced studies and knowledge about computer  
security?

30 A. I guess.

Q. Did you ever hear of Edward Snowden?

A. No.

Q. The person who made the revelation about the US monitoring phone calls all around the world?

A. No, I'm not aware.

5 Q. You didn't hear about that case? The man who then is in hiding in Russia?

A. I'm not aware.

Q. I see.

10 **THE COURT:** In fairness to the witness, he ... the Crown has not put him forward as an expert in ... in understanding the capabilities of US intelligence agencies.

**MR. ROSENTHAL:** Yes.

15 **THE COURT:** The Crown put him forward as his appreciation of the security system of the database of Statistic Canada, so in fairness to him we may be asking him questions beyond his expertise.

20 **MR. ROSENTHAL:** Yes, sir. And I would want you to realize that it is beyond his expertise when it is because he made some categorical statements.

**THE COURT:** Well, in any event you can ask him questions.

25 **MR. ROSENTHAL:** Thank you, sir.

**MR. ROSENTHAL:** Q. What His Honour indicated is true. You're not an expert in security institutes, are you, sir?

A. No, I'm not.

30 Q. You don't know much about computer programming and those kind of things?

A. No, I know some computer programming.

I had a degree in applying math and as part of my degree I did some computing so ...

Q. But you talked about evaluation of this program from a security point of view. You  
5 wouldn't be capable of doing that yourself, would you?

A. No, I would not be able to.

Q. And you wouldn't understand how people do that in detail, would you?

A. I would ask question but my job would  
10 be to tell them ... ask them to ... what they should do.

Q. Okay.

**UNIDENTIFIED FEMALE VOICE:** Can the witness speak into the mike, please.

15 **MR. ROSENTHAL:** Q. Now, Lockheed had an involvement in 2006, as well as the 2011 census, you told us, right?

A. Yes, correct.

Q. And some of the materials that they  
20 supplied from 2006 were used still in 2011, is that correct?

A. What they provided in 2006 were software.

Q. Yes?

25 A. Not material but computer software and yes, we used ... we reused the software that they have developed in 2006. Just this software is called the Census Processing System. They built it from scratch in 2006. We reused it in 2011 and we hired  
30 them to do some fine tuning of that system for the new questionnaires that we had in 2011.

Q. Thank you. Now, you indicated they

supplied some hardware too?

A. Sorry, I didn't hear that.

Q. You indicated in your examination in-  
chief, sir, that they supplied some hardware with  
5 respect to the census as well?

A. No, I didn't mention that. I didn't  
mention hardware.

Q. No hardware whatsoever?

A. No.

10 Q. All right.

A. Software solution.

Q. Okay.

A. Programs.

Q. Now you made categorical statements  
15 that it's inconceivable that they could have gotten  
access to any of the data, is that what you said, sir?

A. That's what I said.

Q. I would put it to you, sir, that  
nobody can responsibly make such a categorical  
20 statement? Can you ... do you really ... would make it  
an absolute statement? You would bet your life on the  
fact that they could not have gotten access to any of  
the data no matter how sophisticated they were in  
designing the software?

25 A. I'm convinced that nobody in Lockheed  
Martin nor any other Canadian not swear under the oath  
of secrecy have access to the Statistic Canada data.  
I'm convinced, yes.

Q. Okay. Well, I put it to you that  
30 there may be expert opinion that suggests that nobody  
should ever be that convinced. Have you ever heard of  
that, sir?

A. No.

Q. You've never heard of that kind of concern?

A. No.

5 Q. Now you indicated you were aware of concerns in 2006 about US getting some of this data, especially because of the *Patriot Act*, right?

A. Yes.

10 Q. Was it ever considered that given the *Patriot Act* that might mean you should not use a US company to provide the software in this situation?

A. I don't have an answer for that. I do not make the rules.

15 Q. No, no but are you aware of any consideration of that as a factor in determining who should do the software?

A. No.

20 Q. Were you aware of concerns also because of the fact that Lockheed Martin was an arms manufacturer?

A. I'm aware of that concern.

Q. And concerns about the link between an arms manufacturer and the Canadian census? You were aware that people raised such concerns?

25 A. I'm aware of it.

Q. Was that ever considered, to your knowledge, by Statistics Canada in determining whether or not to continue with Lockheed Martin?

30 A. No, that was not considered. At that time it was determined to descope the mandate of Lockheed based on the false perception that Canadian had?



Q. But the possibility of eliminating Lockheed Martin entirely because of concerns either about the *Patriot Act* or about arms manufacturing was never considered as far as you're aware?

5 A. I don't think so.

Q. Okay. In general when contracts are made by Statistics Canada or other government agencies perhaps, but Statistic Canada which you know about, is there any consideration about what the company  
10 represents in some moral or political sense when you're hiring under contract?

A. I'm not aware of that kind of procedures in public works and government services Canada.

15 Q. Suppose, for example, Lockheed Martin, instead of being a major arms manufacturer was a major manufacturer of child pornography, would Statistics Canada consider that a problem in getting them to work on the census?

20 **THE COURT:** Okay. Here's the problem that I have at this point. Again, the Crown did not put him forward as someone who is involved in putting out bids for various contracts. I don't think ... and  
25 I don't think was his evidence. His evidence is any such bids are considered by Public Works Canada, is it? And I gather they're the ones who make the evaluation on what perimeters to put on  
30 any bid?

**THE WITNESS:** Exactly.

**THE COURT:** I guess Mr. Rosenthal's

questions is does Statistics Canada  
itself, beyond what Public Works does,  
have itself certain guidelines or rules  
in place governing those bids, is that  
the question?

**MR. ROSENTHAL:** I didn't phrase it  
exactly that way but I'll take that as  
the question.

**THE WITNESS:** No, the way it works is at  
Statistic Canada we would gather all the  
requirements that we need for that  
service that we want, that software that  
we want, gather them into one document  
and then we hand it over to Public Works  
Government Services Canada and they take  
care of the tendering process.

**MR. ROSENTHAL:** Q. Okay.

A. We're out ... we're out of the ball  
... we're out of the game at that point.

Q. I appreciate that, sir, and thank  
you, but Statistics Canada is involved in very public  
operation when they do the census, right? You can't  
just shake your head, sir.

A. Yes.

Q. You have to answer. Thank you. So  
given the public nature, would Statistics Canada have a  
concern if a company was publicly involved with  
Statistics Canada and also that company had a  
reputation for being involved in something that many  
people might consider immoral? Would that be a  
consideration, perhaps?

A. And that's what I mentioned this

morning. In 2004 Canadians including some members of the parliament expressed that concern and Statistics Canada although it was only a false perception and there was absolutely no risk of confidential data  
5 handing ... be handed into the hands non-Stat Can employees, that was impossible, Statistic Canada took the decision to descope the contract with Lockheed to address this false perception.

Q. I don't think that was exactly  
10 responsive to my question, sir, but I'll move on if I may?

**THE COURT:** Well, I guess he's answering in a parallel frame which is Statistic Canada does get involved in the public perception aspect.  
15

**MR. ROSENTHAL:** Yes. So they did make some accommodation to public perception is what he's telling us, I guess?

**THE COURT:** Correct.

20 **MR. ROSENTHAL:** Not enough for Ms. Tobias but ...

**THE COURT:** You can ... you can ask him about the child pornography one but that's still was his answer.

25 **MR. ROSENTHAL:** Right.

**MR. ROSENTHAL:** Q. Now, sir, you told us that when Statistics Canada receives the census data from the individuals the first thing they do is strip the identity from the data, is that correct?

30 A. No, that's not what I said.

Q. I'm sorry, I misunderstood your answer.

A. So see the processing activities in two steps.

Q. Yes.

A. The first step is ... is pre-grooming  
5 kind of activities where we would cut the paper  
questionnaire, do the scanning and so on so we would do  
some preliminary cleaning of the information. At that  
time the personal information is still attached to the  
individual ...

10 Q. Right.

A. ... to the entire information of the  
questionnaire.

Q. Right.

A. Once this is done then it goes to  
15 head office for the final processing. The first  
activity in that second set of activities is to strip  
the name and put them away.

Q. So then you have the data without the  
names and it's further used for all sorts of purposes  
20 without the names?

A. Exactly.

Q. And that processes happens what other  
way the data comes in? Online or paper and so on?

A. Yes.

25 Q. Some point earlier on the names are  
stripped?

A. At some point the names are stripped,  
yes.

Q. But then there is a record still of  
30 the connection between the names and the data because  
you need it after 92 years, right?

A. Yes, there is ... there is a link.

There's a link key.

Q. Yes, and where is that link kept?

A. The link key is kept within the Stats  
... Statistic Canada premises and only a handful number  
5 of person have access to that link key.

Q. Now that's on the computer system in  
Statistics Canada, is it?

A. Yes.

Q. That system consists of a number of  
10 computers connected together on that right? Is that  
true?

A. Well, it's a network. Statistic  
Canada ...

Q. Network, yes.

15 A. ... has its own network, isolated  
from ... from the rest of the world.

Q. Yes.

A. So it's in one compartment of that  
isolated network.

20 Q. Okay. And then when information  
comes in online from those who fill out the form online  
that goes into ... it's received in a certain computer?

A. Yes.

Q. And that computer obviously is  
25 connected to the internet?

A. No.

Q. Well, how do they send it online,  
sir?

A. Okay. At Stat Can we do have this  
30 separated and isolated network, okay. Now Canadians  
when they complete their census online they would first  
enter the secured access code. Then their information

before they press the send button is encrypted and then sent into this isolated network.

Q. Yes.

A. Just like the banks or any financial  
5 entities out there.

Q. But it's sent by them into this network, correct?

A. Yes. Yes.

Q. So that network is accessible, at  
10 least to that extent, from outside, right?

A. There's one entry point and the entry point is only for that information coming from the internet response channel.

Q. Yes, there is that entry to the  
15 network, right?

A. Yes.

Q. Now, sir, you told us that you had various companies trying to break into the network, correct?

20 A. Yep.

Q. Were any other them privy to Lockheed Martins' code? To the source code?

A. No.

Q. No?

25 A. No, that secured access code ...

Q. Yeah.

A. ... is like the key to enter our internal ... internal networks.

Q. Sorry, I'm ... I didn't express  
30 myself very well perhaps. Let me ... go on. I'm not talking now ... the users can connect to the network at least to the extent of putting in their data, right?

A. Yes.

Q. And you can't absolutely assure us, can you, sir, that if there's a connection that allows me to put in data it can also allow me to extract it?

5 A. No, I mentioned this morning that there's no back door.

Q. Yes.

A. There's no going out. There's only coming in, there's no going out.

10 Q. As far as you were able to determine?

A. Yes. We hired specific companies who looked at the source ... the code source review and they made sure that there were no back door. And then we locked all the systems so there's no way out.

15 Q. What companies was that, sir?

A. Oh, I don't know. I don't know. I don't know the name. We'll have to ... I don't know the name, sorry.

20 Q. Did these companies meet with Lockheed Martin people?

A. No.

Q. No?

A. No.

25 Q. Again, perhaps I misunderstood you. I thought in your evidence in-chief you said they met with the programmers?

A. Yeah, they meet with the programmers and again, Lockheed provided the IT solution, okay?

Q. Yes.

30 A. So they could have ... they could have programmed some aspect of the software but the bulk of the software was programmed by ... by our

people too.

Q. Okay.

A. Okay?

Q. The IT solution provided by Lockheed,  
5 your people never got to source code for that, did  
they? That's copied ...

A. No.

Q. ... that's kept secretly by Lockheed?

A. No. No, we had it now. We had ...  
10 this was ... that was part of the deal with Lockheed  
that they would build it. They would do a little bit  
less in 2011 and they're out of the picture totally for  
the next one. So Stat Can has taken over the entire  
maintenance and setting up of the census processing  
15 system.

Q. But, sir, they provided whatever they  
provided. You call it ... whatever you call it.

A. Yes. Yeah.

Q. That consists of a program that runs  
20 to do this ... to annualize these data, right?

A. Yes.

Q. That program, there would be source  
code, which is the language that it's written in ...

A. Yep.

Q. ... and then it gets translated into  
25 a machine code, right?

A. Yep.

Q. And it runs as machine code?

A. Yes.

Q. Right? And what they would provide  
30 would be the machine code that runs the program?

A. No, we acquire the source. That was



part of the contract, that we acquire the source.

Q. What was the source code written in, what language, sir?

A. I don't know that. I don't know that  
5 information?

Q. Are you saying the source code for every bit, what Lockheed did was acquired by statistic Canada?

A. Yes.

10 Q. How do you know that?

A. That was part of the contract.

Q. It said they would provide all source code?

A. Yes.

15 Q. Including what they did in 2006?

A. Including what they did in 2006. So in 2011 we had that code and we hired them to provide technical support in fine tuning the code for the specifics of the 2011 census.

20 Q. Yes. And when they provided that type of support it's usually by online interaction, isn't that correct?

A. Not necessarily.

Q. Not necessarily but usually?

25 A. I guess. I don't know.

Q. You don't even know?

A. No, I don't know that.

Q. But I would put it to you, undoubtedly, people in Lockheed Martin are sitting  
30 wherever they are in the States and communicating with your people and providing the adjustments as required, right?

A. I would assume so.

Q. Yes.

A. That we were in communication with them.

5 Q. And they'd be in communication with your computers in doing that, right?

A. No.

Q. How would they be in communication? By telephone, sir?

10 A. They would ... they did not have access to our internal network.

Q. Well, how would they be in communication if not by computer, sir?

A. Either by phone or either us sending them the information. In their plans they have ... they had a perfect copy of the census processing system and they are replicating what we are doing in house.

Q. And they ...

A. Totally separate, they had the same ... we ... they had the same ... in fact, we have the same system as they have and we were communicating the information and they were doing their analysis, their suggestions were coming out of the testing that they were doing on their own system.

25 Q. Yes, and ...

A. And then they were transmitting to us the information what to do and so on and our people opened our code and then we made the modification.

Q. And the transmitting of the information would consist of them giving you modifications to the program to deal with whatever issues had arisen by internet, right? By sending it by

electronically, right? Not by phone.

A. No, it's ... it's a suggestion. They sent suggestions and we made the modification to the code, right? And when there's communication like this  
5 it's ... it's using a different network. For example, in my office I have two computers that do not talk each other.

Q. Yeah.

A. One of them is for my internal  
10 network to do my work with my colleagues. The other one is my ... is my connection with the world. Those two computers do not talk. There are some specific channels that will transfer the information from one to the other. There's encryption and there's control 24/7  
15 to make sure that there's no suspicious traffic ... suspicious traffic.

Q. Now, sir, you don't really suggest, do you, that by telephone is the way that Lockheed communicated with your people, do you?

20 A. Well, there were some ... there were some telephone conversations.

Q. There might have been some phone calls?

A. There were some calls by telephone  
25 calls.

Q. But also they sent information electronically to your people mostly, isn't that true?

A. Some of the information would come electronically, some of them would come by phone.

30 Q. And they would send electronically, among other things, they were would send changes to the programming that they suggested that you use in order

to deal with whatever issues had been identified?

A. They don't ... they don't send what they call patch, they send suggestion. The suggestion were programmed by our people.

5 Q. So you're saying the only programming done by Lockheed was in the initial stages in 2006 and 2011?

A. Yes, correct.

10 Q. There was no correcting to the program whatsoever done by Lockheed people at any time after that, after the initial ...

A. For the 2011 ... the 2011 contract with Lockheed calls for providing technical support in the setting up and the fine tuning of the 2011 census  
15 processing system.

Q. But I would suggest to you, sir, technical support meant that Lockheed would correct some problems and they would do so by supplying new code, they would correct the issues that were dealt  
20 with, isn't that fair?

A. That's not what I said. I said that we were ... we were programming our own code, that's what I said.

Q. And none by Lockheed?

25 A. They provided suggestions.

Q. Now, originally much of the data is sent by respondents by internet you told us? That's sent to a computer? How does that computer then send the information to the database computer?

30 A. It's within the internal network that I mentioned.

Q. I see.

A. There are several compartments.

Q. Yes.

A. From one compartment to the other there's encryption and decryption going on.

5 Q. Yes.

A. But it's all within this isolated network.

Q. Okay.

A. It's all within there.

10 Q. So there's a network of a number of computers. One or more of the computers receives information from outside encrypted?

A. Umhmm. Umhmm.

15 Q. And then it's sent to other parts of the network encrypted to do with it what you must due to analyse the data.

A. Exactly.

Q. Is that a fair description?

A. That's a fair description.

20 Q. For lay terms?

A. Yes.

Q. So anyone who broke the code of the encryption would be able to go all over your network?

25 A. We conducted several ... a numerous number of penetration testing and we were doing some monitoring before, during and after the census and there was no suspicious traffic and there was no successful penetration testing.

Q. That you were aware of?

30 A. No, we ... well, we conducted several penetration testing and there were none.

Q. Now, sir, ...

A. And there was no suspicious traffic.

Q. And you have these different experts trying to get in, in various ways and they couldn't do it, right?

5 A. Correct.

Q. But none of them was privy to what Lockheed had done in it's original programming, right?

A. I guess.

Q. So wouldn't you understand, sir, even  
10 though you're not a security expert, that Lockheed could easily have built something in that only they would know about and that would allow them easy access even though all other hackers would have a very difficult time?

15 A. My understanding is this is not possible. There was one entry point and this is that entry point and the surrounding of the network that was subject to the penetration testing.

Q. But you ...

20 A. There's no such way of ...

Q. Sir, ...

A. ... having hidden codes that would allow a special door to open once in awhile. There's not such approach.

25 Q. That's your understanding but you're not an expert, right?

A. Well, that's why we hire expert IT company in the domain.

Q. Yes. And they tried to break in and  
30 couldn't ...

A. Yep.

Q. ... but you didn't ask ... well, you

didn't give anybody Lockheed Martins full code and asked them to try and break in, did you?

A. No, never.

Q. So the software provided by Lockheed  
5 is run on your network?

A. Correct.

Q. And you say there are a number of computers in that network? Some of them firewall from each other, right?

10 A. Correct.

Q. Do virtually all the computers have some software run by ... provided by Lockheed Martin?

A. No, the way you're describing it is wrong.

15 Q. Okay.

A. The census processing system is one system ...

Q. Yes.

A. ... okay? And there's an entry point  
20 and an exit point ...

Q. I see, okay.

A. And census information would go through that system. There's no such thing as computer's linked to that system having access to the  
25 data being processed during production.

Q. Okay.

A. There's no such thing.

Q. Okay. But so in any event that network was running software provided by Lockheed  
30 Martin?

A. Yes.

Q. Now originally in 2006 and/or in 2011

was Lockheed Martin involved in purchasing or installing or configuring any of the hardware?

A. Ah, what they did is this ... the ... yes, the answer is yes. They were responsible to  
5 acquire the scanners for example.

Q. Yes.

A. So my understanding is they sub-contracted this part to a specialized company in ... in the production of scanners.

10 Q. So they ... that's one of the things that they provided, hardware but it wasn't software?

A. I'm not sure it's considered hardware. It's a device. It's a machine.

Q. Okay.

15 A. It's an electronic machine that you feed in a piece of paper and then it transforms into digital information.

Q. But they also would have to help configure the hardware?

20 A. Yes.

Q. So they'd have to have access to the hardware for that purpose, obviously?

A. Again, they had ... they had a copycat version of our physical installation and our  
25 system on their premises, but totally separated from ours.

Q. But they ... they had to configure it to your hardware, right?

A. They provided ... they provided  
30 instruction, yes.

Q. What about installing the software on your network? They would have been involved in that?



A. In 2004 and '05, yes.

Q. Yes. And some of that was still  
being used in 2011?

A. Yes. Correct.

5 Q. Now part of Lockheed's responsibility  
in designing this system for you would have been to  
design security aspects of it as well, right?

A. No.

10 Q. No? You didn't ... it wasn't part of  
the instructions to make this a secure system?

A. No, we were following the Government  
of Canada IT solution, I don't have the exact term but  
...

15 Q. So you may have mentioned this but  
just to be sure, some of the 2006 census software  
supplied by Lockheed Martin is still in operation in  
2011 and might well be the next time too, right?

A. Correct.

20 Q. And the associate between names and  
data which you keep for 92 year revelations, is kept  
somewhere on that same network?

A. No, not exactly. What we provide  
Library and Archive Canada are microfilm. It's  
pictures of the actual, physical questionnaire. Okay,  
25 so that's why we keep then paper questionnaire for a  
certain period of time. We take ... micro film ... we  
micro fiche then and this is ... it's that information  
that is provided to Library in Canada.

Q. What about the ....

30 A. And then once this is done we destroy  
it according to the regular procedures, we destroy all  
the paper questionnaire.

Q. And what about the non-paper responses, the internet responses?

A. The digital information what we send is a flat file. Okay? Library and Archive Canada is a  
5 ... has asked us to provide them with a flat file of the digital information.

**MR. ROSENTHAL:** Could I have your indulgence for one minute, Your Honour?

**THE COURT:** Yes.

10 **MR. ROSENTHAL:** Q. Now, about how many people refuse to or fail to fill out the 2011 census?

A. Approximately, 3700 people were considered as refusal. We consider there's three conditions to be counted as a refusal for the census.  
15 You have refused a number of times and one of that times should be a face to face refusal. The person is fully aware of the mandatory component and the mandatory aspect of the census questionnaire. And third, the person is fully aware of the consequences of  
20 not filling that questionnaire. So there were 3700 ... close to 3700 refusal at the end of July 2011.

Q. Okay. So those are refusals and then other just fall through the cracks somehow, is that correct?

25 A. Other would be what we say ... what we call non-response.

Q. Yes.

A. Either because they were not at home, because they were away ... out of the country or that  
30 we could not reach them.

Q. And in fact, how many of those were there for 2011?

A. We ended up with 98 per cent response rate.

Q. I see. Ninety eight per cent response.

5 A. So there's two per cent ...

Q. So only two percent were in either of the categories we've just been talking about?

A. Exactly.

10 Q. So as far as using this statistical data, 98 per cent response is fine, right?

A. It's pretty good.

Q. It's very good and you don't need Ms. Tobias to figure out how to allocate monies?

15 A. Well, case ... I mean, as I mentioned this morning, we provide ... this is the only source of information for a very small level of geography, including the municipalities of 50 people.

Q. But two ...

A. So ...

20 Q. But I'm suggesting to you, sir, that two percent being left out would not effect any of the decisions that are made on ... based on the data that you require?

25 A. Okay. There is a series of adjustment that is done to bring that population to 100 per cent.

Q. Yes.

30 A. But the goal is to go as close as possible to 100 per cent. So any missing individuals, any pockets missing of individuals even there in the country is effecting this adjustment to bring the 98 to 100 per cent.

Q. And now with respect to the several thousand refusals, do you ... is it the position of Statistic's Canada that you prosecute all those people if possible?

5 A. So from the end of July for the entire month of August in 2011, those 3,700 total refusal forms are closely looked at to ensure that the information that is provided is valid and what I'm saying is is we collect information from the field on  
10 the number of visits, the time of the day, what ... what did the ... what did the other person say and so on. So we validate and make sure that the information coming from the field is as accurate and ...

Q. Right.

15 A. ... and comprehensive as possible. In that meantime, questionnaires continue to come in.

Q. Yes.

A. Some people change their mind and then ...

20 Q. Right.

A. ... they send the questionnaire in. So we do that cleaning in the month of August. As of August 24 we identify close to 320 real, real refusal cases.

25 Q. I see.

A. And for those ones we prepare prescription label and we have the chiefs at the station to prepare a letter asking one more time for the participation and then explain also the consequence  
30 with a deadline of ...

Q. Should ...

A. ... September 16<sup>th</sup>. So we mailed out

a little bit under 330 letters from the chiefs at the station.

Q. Now as you know, Ms. Tobias responded to your people by saying from matters of conscious  
5 given the association with Lockheed Martin she could not participate in the census, right? You're aware that that was her position?

A. I'm aware of it.

Q. Well, among the 330 were there others  
10 who expressed some reasons such as that for failure to fill out the form?

A. I ... to be honest, I did not go through the 330 total refusal forms.

Q. So you don't know the extent to which  
15 there might have been ...

A. I don't know.

Q. ... people who refused based on some principle that they held? And others who refused just because they didn't get around to it?

20 A. I don't know that information.

Q. What is the enforcement cost Statistics Canada? Is that a big expense to whittle down from 3,000 to 300 and then to examine the situation, then prosecute people like Ms. Tobias?

25 A. I don't have a cost associated to this activity but this is part of the regular activities. So we prepare 330 letters signed by the chiefs at the station and then ... with a deadline of September 16<sup>th</sup> and then most of them would fill the  
30 questionnaire and so at the end of September Statistic Canada handed 54 cases to Public Prosecution Services of Canada.

Q. Thank you very much. Those are my questions. Thank you for coming and giving your evidence.

**THE COURT:** Re-examination?

5 **MR. ROSENTHAL:** Thank you, Your Honour.

**THE COURT:** Thank you.

**MS. GASPAR:** No, thank you.

**THE COURT:** Hold, officer. Do you know ... do you know Mr. ... Mark Hamel?

10 **THE WITNESS:** Yes, he's my boss.

**THE COURT:** He's your boss? There's an article here that Mr. Rosenthal filed from the Toronto Star from May 10<sup>th</sup>, 2011 where apparently he stated as a source of  
15 Statistics Canada the following;

"That Lockheed Martin was the only company to bid on both contracts in 2006 and 2011."

20

Do you know anything about that yourself?

**THE WITNESS:** Yes, I know.

**THE COURT:** Can you expand on that for us, please?

25 **THE WITNESS:** As I mentioned ...

**THE COURT:** In other words do you know, I gather when you provide your requirements to Public Works Canada, Public Works then set it up for general bid, correct?

30 **THE WITNESS:** Correct.

**THE COURT:** And I gather their information is that only Lockheed Martin

was prepared to bid on the contract?

**THE WITNESS:** My understanding was they were the only one in 2011 but there were more than one in 2006. So that's a correction.

**THE COURT:** Okay. And normally speaking when Public Works Canada, if you know and you may not know because you don't work for them but normally speaking if you only get back one ... one response do they then try and send it out again, perhaps changing the perimeters slightly to allow others to bid or you don't know that?

**THE WITNESS:** No, I know that. They would not redo it. When we gave ... when we gave them our requirements they were clear. We were very specific, knew what we were looking for and they ... they applied the rules for the tendering process in a very stringent way and it's very transparent and very fair. So if there's only one company who could apply and I don't work there but they don't come back to us and say ... we were very specific in what we wanted.

**THE COURT:** So they don't come back and they say, "Hey, can you change your perimeters so we can more bids in?"?

**THE WITNESS:** No.

**THE COURT:** They don't say that to you?

**MR. ROSENTHAL:** Sir, may I?

**THE COURT:** I'm not done. When I'm done and then I'll going to swing it back to you.

**MR. ROSENTHAL:** Sorry.

5 **THE COURT:** For the 2006 you said there were more than one response.

**THE WITNESS:** My understanding is yes.

**THE COURT:** Do you know if any of them were Canadian companies, wholly owned as  
10 opposed to subsidiaries?

**THE WITNESS:** I don't know that information.

**THE COURT:** Okay. Just as an aside, it really has nothing ... nothing much to do  
15 with anything but you told me earlier or you told us that you're the one who decides if anybody can go into the bank to determine the names of the actual persons who send in their questionnaire,  
20 correct?

**THE WITNESS:** I'm the one who is authorizing the ... the view ...

**THE COURT:** Access?

**THE WITNESS:** ... to that link.

25 **THE COURT:** Okay. Why would anybody need to know the name of the person other than for the 92 year reason?

**THE WITNESS:** This is ... this would be mainly for internal views either as  
30 evaluation purposes or either to be used by our other civic programs. For example, if we have a request to do a



survey on children then we could use that information and try to find children and be able to better pinpoint them when we do this additional survey.

5       **THE COURT:** Yes, but would you need the person's name to do that?

10       **THE WITNESS:** Well, it could be either to have a personalized message to be sent to that person and so on but this would be very rare. You're correct, most of the time we would not need the name. So it ...

15       **THE COURT:** Why would you need to send a personalized message to the person who filled out the questionnaire?

20       **THE WITNESS:** Well, for some ... for some surveys we are, ... we are looking for very, specific particular taste and my understanding is it is ... it could ... although it's very rare that we would address like a personal letter, for example.

25       **THE COURT:** All right. Now it's your ball game. Any questions arising out of my questions?

**MR. ROSENTHAL:** Yes, sir. Thank you.

**THE COURT:** Okay, Ms. Gaspar, do you have any questions?

**MS. GASPAR:** No, thank you, Your Honour.

30       **MR. ROSENTHAL:** Sorry, I'm over anxious. So you told His Honour that in 2006 there were several bidders, you understand,

you're not sure if any of them were Canadian or not, is that correct? You did say that.

**THE WITNESS:** That's correct.

5 **MR. ROSENTHAL:** But in 2011 there was just one. And I would put it to you, sir, that the way the contract was described in 2011 it was clear that the contractor would have to use the existing  
10 code that had already been provided by Lockheed Martin in 2006 and just modify it some. So the way it was worded it would be very difficult for any other contractor to bid on it, isn't that fair?

15 **THE WITNESS:** It was not to modify the code, it was to provide suggestion to help us in fine tuning the system with the new configuration of the ... on the questionnaire paper.

20 **MR. ROSENTHAL:** Yes, fine tuning the system that Lockheed Martin had developed, right?

**THE WITNESS:** Yes.

25 **MR. ROSENTHAL:** And so it would be very hard for any other contractor to bid against Lockheed Martin with respect to find tuning a system that Lockheed Martin had developed, isn't that fair?

30 **THE WITNESS:** I don't have an answer for that.

**MR. ROSENTHAL:** Well, would you agree it's fair ... comment?

67.  
Beland, Y. - cr-ex by  
Mr. Rosenthal

**THE WITNESS:** I'm not an IT expert.

**MR. ROSENTHAL:** Thank you. Thank you.

**THE COURT:** All right. Thank you, sir.  
Thank you for coming down, sir.

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

I, **CHERYL MAYHEW**, certify that this document is a true and accurate transcript of the recording of **R. v. Audrey Tobias**, in the Ontario Court of Justice held at 60 Queen Street West, Toronto, Ontario taken from recording **4811-123-20131003-10015**, which has been certified in Form 1

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Date

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