

# **VOLUME THREE**

## **THE RELATIONSHIP BETWEEN INTELLIGENCE AND EVIDENCE AND THE CHALLENGES OF TERRORISM PROSECUTIONS**

### **CHAPTER II: COORDINATING THE INTELLIGENCE/EVIDENCE RELATIONSHIP**

#### **2.0 Introduction**

Since 9/11 there has been an increased need to establish strategic policy and priorities and to improve coordination between departments of government as more of them take on national security responsibilities. There has been an even greater need for decisive action to ensure coordination and proper sharing of information within government about potential security threats and terrorism.

Yet as more government agencies become involved in national security matters, there is an increased risk of bureaucratic fencing among them. Someone must be in charge to ensure that the agencies are executing the government's strategic security plans. Someone must also be in charge to ensure that disputes among agencies are resolved in the public interest. Someone must exercise meaningful oversight and have the power and legitimacy to intervene if the agencies are not cooperating or if the system is not effective. That person should be a guardian of the public interest – an interest that transcends those of individual agencies.

This chapter examines means of coordinating the government's response to the threat of terrorism, with particular attention to problems presented by the relationship between intelligence and evidence. Decisions on how and when to respond to a particular threat to national security should be taken in the public interest. In the Canadian context, the office of the National Security Advisor (NSA) is best positioned to carry out that task. This chapter advances the case for an enhanced role for the NSA.

The enhanced role for the NSA would give effect to the following policy imperatives:

- Where CSIS has determined that it should pass information to the RCMP, it should be free to do so without restraint and without the involvement of the NSA. This maximizes the development of expertise and enhances the improving relations between CSIS and the RCMP in terrorism investigations. This relationship should be encouraged to develop and mature;

- It is in Canada's national interest to protect some intelligence from the risk of public exposure that may flow from engaging the police. However, CSIS should not unilaterally decide to withhold information from the RCMP. Such decisions should be made by the NSA on behalf of the Prime Minister. This supervisory role would ensure that the decision to withhold information from the RCMP is made in the public interest;
- Some threats to national security can be managed effectively by employing alternatives to engaging the RCMP. Where there are good reasons not to engage the RCMP, those alternatives should be considered by the NSA;
- It is not the role of the NSA to supervise agencies, but to resolve disputes between those agencies.

During this Inquiry it became apparent that the obstacles to effective information sharing between CSIS and the RCMP, and to the successful conversion of intelligence into evidence, were symptomatic of a larger structural problem. Many agencies deal with national security issues under their mandates. These agencies are spread across various ministries and are not subject to an overriding line of authority for those national security matters.

There is no single agency at present with responsibility for managing, executing and controlling responses to terrorist threats. No one is in charge. Twenty-four years after the terrorist attack on Flight 182, there remains a worrying lack of integration and coordination among government agencies on national security matters.

In the vast majority of cases involving terrorist threats, CSIS monopolizes most aspects of the initial response. By gathering intelligence, CSIS assesses the extent of the threat and also determines the extent to which other partners will become involved in managing the threat. CSIS does this through its discretion about whether to disclose information to the RCMP or to other government agencies.<sup>1</sup> This leaves CSIS with the *de facto* ability to determine the *how* and the *when* of the government response to a threat. Dictating the government's response by controlling the flow of relevant information exceeds CSIS's statutory mandate. That mandate is to "report to and advise" the Government of Canada about threats to the security of Canada. The Government of Canada, not CSIS, is to decide the appropriate response.

CSIS should have sufficient tools to be able to learn of terrorist threats, even at their earliest stages. This is a different function from that of law enforcement

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<sup>1</sup> This is the result of the information sharing mandate set out in s. 19 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23 [CSIS Act]. As discussed in Chapter IV, s.19(2)(a) gives CSIS discretion whether to disclose intelligence to police and prosecutors. Section 19(2) also gives CSIS discretion whether to disclose intelligence to ministers, such as the Minister of Foreign Affairs or the Minister of National Defence.

agencies and it should remain distinct.<sup>2</sup> CSIS is, in effect, stationed on a watchtower searching the horizon for early signs of danger. However, if CSIS does not inform the Government about the security threats that it sees on the horizon, no one in government except CSIS will know of them. CSIS will arrogate to itself the power to decide the Government's response to those threats. Yet it is the Prime Minister who must have the power and the ultimate responsibility to act for the Government of Canada in deciding how to respond to security threats. In discharging this responsibility, the Prime Minister is assisted by the NSA and by other non-partisan and expert public servants in the Privy Council Office.

The role of the Prime Minister in matters of national security is fundamental. If an act of terrorism occurs, the Prime Minister will have to answer to Parliament and to the people of Canada. The ultimate responsibility of the Prime Minister for national security is not a new and controversial theory of governance, nor a new and controversial invention for intelligence coordination. It has long been recognized and is a practical reality.<sup>3</sup>

## 2.1 The Need to Revise the Approach to Preventing Terrorism

There are some disadvantages to employing law enforcement as a tool to prevent terrorism. Chief among them is the inflexibility of the criminal trial process. Criminal investigations are time-consuming and expensive. So too are criminal trials. They both can attract publicity that may not be in the public interest. Moreover, there is a risk that the prosecutors will not be able to protect the confidentiality of information they receive from CSIS. As well, an unsuccessful prosecution can undermine confidence in a counterterrorism effort, even though it may simply represent the inability of the prosecution to meet the high standard of proof of guilt beyond a reasonable doubt. The decision to involve law enforcement must take into account these risks and any alternatives to a prosecution.

The RCMP is not always the only, or the best, agency to respond to a terrorist threat. For example, when dealing with non-citizens, the security certificate regime is, in some respects, preferable to the criminal law process because the government is able to rely on secret intelligence information to support the removal from Canada of persons who are a threat to national security.

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<sup>2</sup> Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006), pp. 312-316 [*Report of the Events Relating to Maher Arar: Analysis and Recommendations*].

<sup>3</sup> *Report of the Royal Commission on Security* (Abridged) (Ottawa: Supply and Services Canada, 1969) [*Report of the Royal Commission on Security*]; Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Freedom and Security under the Law*, Second Report - vol. 2 (Ottawa: Supply and Services Canada, 1981), p. 847 [*Freedom and Security under the Law*]; Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Public Works and Government Services Canada, 2006), p. 196 [*A New Review Mechanism for the RCMP's National Security Activities*].

Law enforcement, while not the only option, is a valuable and integral part of any nation's security machinery. Law enforcement offers unique means to denounce, disrupt and punish terrorism. Nevertheless, the involvement of law enforcement agencies must be the product of a considered and strategic decision, since it is not possible to rely on secret information to secure a conviction in a criminal trial.

A broad approach to the management of terrorist threats should be the norm. In cases of terrorist financing, for example, removing the charitable status of an organization may impair its ability to raise funds. It is also possible for the authorities to seek orders freezing or confiscating the assets of a terrorist organization. Preventive target-hardening measures may also be appropriate in areas such as aviation security. Given the international nature of terrorism, providing intelligence to allies may also reduce the threat within Canada.<sup>4</sup>

Terrorist threats engage the mandates of the RCMP, CSIS and, among others, the CBSA, the Department of National Defence (DND), the Department of Citizenship and Immigration, the Canada Revenue Agency (CRA), the Canadian Air Transport Security Authority (CATSA) and the Department of Foreign Affairs and International Trade (DFAIT). At present, the Minister of Public Safety is responsible for the nation's security, yet has authority only over CSIS, the RCMP and the CBSA. While much of the national security work is carried on in those agencies, they do not comprise all the agencies at the government's disposal. As Commissioner O'Connor noted, in reporting on the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, there are at least 25 government entities involved in national security matters, with 16 different departments and agencies being identified by the government as having "key" national security responsibilities.<sup>5</sup>

A flexible approach is needed to determine the appropriate governmental response. An NSA with enhanced responsibilities should perform a central role in deciding the appropriate response to particular security threats. The new governance structures proposed in this volume should allow for informed decisions about the costs and benefits of commencing terrorism prosecutions. They should also provide a forum for quick and decisive resolution of disputes that may arise between agencies.

The challenges of designing workable governance structures are significant but achievable. There must be respect for the principles of prosecutorial and police independence that are supported by the Canadian constitution and a corresponding commitment to the impartial application of the rule of

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<sup>4</sup> Although two recent commissions found deficiencies in information-sharing with other countries and recommended enhanced safeguards, both affirmed that this practice is an important tool to prevent terrorism. See *Report of the Events Relating to Maher Arar: Analysis and Recommendations*, pp. 320-321, 331-332, 343-349; *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin* (Ottawa: Public Works and Government Services Canada, 2008), pp. 68-71, 78, 81-93.

<sup>5</sup> *A New Review Mechanism for the RCMP's National Security Activities*, pp.127-128.

law. There must be respect for the importance of maintaining secrets, but governance structures must prevent agencies with relevant information from withholding information from other agencies for fear that it will ultimately have to be disclosed publicly. Finally, there must be adherence to the constitutional protections for all individuals charged with criminal offences.

Any new governance structure must be nimble enough to allow quick decisions about imminent threats and must avoid duplicating existing bureaucracies. The structure must also avoid becoming a dysfunctional system in which each agency arguably does its own job properly while the system as a whole fails to achieve the ultimate objective of protecting the security of Canadians. To ensure that the system works to prevent terrorism, there must be someone at the centre of government to receive all relevant information and to make decisions in the public interest about the appropriate government response to particular security threats.

## 2.2 The Critical Role of CSIS in Providing Intelligence to Government about Security Threats

The CSIS mandate includes advising the Government of Canada about threats to Canada's security. CSIS does not have the mandate to prevent terrorist acts. It is not the responsibility of CSIS to carry out any law enforcement activities to prevent terrorism. CSIS provides advice; the Government is responsible for devising the appropriate response.

CSIS carries out operations in the sense that it conducts interviews, uses human sources, performs searches authorized by warrant, and clandestinely intercepts private communications.<sup>6</sup> All these are means by which CSIS obtains information to learn of threats to Canada's security. However, this operational mandate ceases after the information-gathering stage. Beyond that point, CSIS is not authorized to perform any "police-like" functions. For example, the *CSIS Act*<sup>7</sup> does not empower CSIS employees to conduct arrests, engage in disruption interviews, detain persons for interviews or employ agents (as opposed to sources, who merely provide information but do not become actively involved on behalf of CSIS in operations). Those techniques are reserved for other agencies, such as law enforcement and the Canada Border Services Agency (CBSA).

There is a transition from collecting intelligence to collecting evidence, as an operation shifts from an intelligence-gathering exercise to a law enforcement investigation. An obvious role for the NSA will be to ease the transition from intelligence to evidence.

The evidence at the Inquiry showed that understanding a threat to national security can take years. It is not the case that all threats are readily apparent

<sup>6</sup> These operations are authorized by a Federal Court judge under s. 21 of the *CSIS Act*. See Chapter IV for further discussion of these search powers.

<sup>7</sup> R.S.C. 1985, c. C-23.

or that their danger is immediately understood. Accordingly, CSIS conducts many long-term investigations that require patience and careful analysis of a large amount of intelligence. CSIS has an incentive to maximize secrecy and to continue its covert intelligence investigation to maximize its understanding of the threat. At the same time, it may not always serve the public interest to keep secret the intelligence that CSIS collects.

When should the intelligence collected by CSIS be passed on to the RCMP? When a dispute arises, it should be up to the NSA to make this decision.

### 2.2.1 Inherent Tensions between CSIS and the RCMP

Conflict between CSIS and the RCMP stems from their core mandates. CSIS is an intelligence agency that relies on secret sources and information received in confidence from allies to inform the Government of Canada about threats to the security of Canada. In contrast, the RCMP is a police force dedicated to collecting evidence of crimes for public prosecutions.

At present, to manage the information flow between them, the two agencies are left to devise non-statutory and non-binding mechanisms which do not interfere with their very different functions. The success of these mechanisms turns largely on the personalities of the employees in the two agencies. Although relations continue to improve, there remains a lack of understanding on the part of each agency of the other's functions and national security mandates.

CSIS has at least three concerns that adversely affect relations with the RCMP:

- Experience has shown that when the CSIS shares information with the RCMP, the RCMP has failed to respect the intelligence mandate by endangering sources, disclosing allies' confidences and making investigations by CSIS much more difficult;
- CSIS is alarmed by the scope of *Stinchcombe*<sup>8</sup> disclosure obligations, which create a risk of public exposure of intelligence operations and reduce the effectiveness of CSIS; and
- CSIS fears that closer cooperation will blur the lines between a civilian intelligence function and a law enforcement function. Put bluntly, CSIS fears that this would render it a substitute police force or that police will increasingly intrude into civilian intelligence matters.

For its part, the RCMP has chosen to manage the relationship with CSIS by treating CSIS as a "tip service." By applying a philosophy of "the less information we obtain from CSIS, the better," the RCMP hopes to lessen the chances of a conflict with CSIS and increase the likelihood of a successful police investigation. The RCMP has at least three concerns that adversely affect relations with CSIS:

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<sup>8</sup> *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.

- The RCMP doubts whether CSIS appreciates the overlap of their mandates in counterterrorism matters. As a result, there is a perception that CSIS has an unsophisticated understanding of its impact on criminal investigations;
- The RCMP fears that CSIS has disregarded evidentiary standards about the collection and retention of intelligence; and
- The RCMP is concerned that CSIS will seek to protect its own investigations in preference to criminal investigations.

The RCMP's "the less information we obtain from CSIS, the better" approach to involvement with CSIS increases the potential for duplication and conflict. As will be discussed below, the two agencies have employed a rather elaborate process to avoid this. That process does not mean integration or cooperation. Most often, it emphasizes a separation of activities that enables each agency to stay out of the other's way.

### 2.2.2 Joint Management Team Meetings

The RCMP and CSIS have regular meetings at both the regional and headquarters levels where the agencies review their respective case inventories to ensure that there are no conflicts arising during their respective investigations and to address any conflicts that do arise. In essence, the RCMP discloses to CSIS all the targets of RCMP investigations and may provide a brief synopsis of the status of each investigation. CSIS attempts to review the material and indicates where there is a conflict. If there is a conflict, the agencies negotiate how to manage it.

RCMP Superintendent Jamie Jagoe<sup>9</sup> testified that, in resolving conflicts, he does not tell CSIS what to do, nor does CSIS direct the RCMP. Instead, a cooperative approach is taken to ensure respect for each other's mandate while each continues with its investigation.<sup>10</sup>

For example, if the RCMP is conducting an investigation into a matter that is also being monitored by CSIS, CSIS may choose to take a more passive role to permit the RCMP to acquire the evidence to build its case. As well, this process allows CSIS to remove human sources that are within a group targeted by the RCMP to avoid public exposure of these sources if a police investigation leads to a prosecution, thereby preserving the integrity of the CSIS investigation.

If a conflict between CSIS and the RCMP cannot be resolved at the regional level, the matter is dealt with at the headquarters level. Almost all witnesses thought it extremely unlikely that matters could not be worked out at the regional level. As well, given the extent of ongoing dialogue between the two agencies, there

<sup>9</sup> RCMP Superintendent, Assistant CROPS Officer for National Security for O Division (which is the Province of Ontario).

<sup>10</sup> Testimony of Jamie Jagoe, vol. 82, November 23, 2007, p. 10460.



should not be any surprises when reviewing each other's targets. Nevertheless, witnesses acknowledged that, if an irreconcilable difference arose between CSIS and the RCMP, the matter could end up before the Minister of Public Safety, who has ministerial responsibility for both agencies.

The agencies appear to be making a concerted effort to understand the scope of the other's investigations to ensure that they do not compromise each other's efforts. This process is an important and necessary part of the relationship between the RCMP and CSIS. However, these meetings, and this process for avoiding conflicts, do not address the fundamental problem of how to manage the transition from an intelligence investigation to a police investigation.

At the headquarters level, CSIS and the RCMP have regular Joint Management Team (JMT) meetings. The purpose of the JMT is to identify areas of concern to the two agencies and to determine how best to manage resources from their headquarters' perspectives. There is sensitivity to the fact that front line officers have to resolve many of these issues. Nevertheless, the officials at the headquarters level can provide guidance and a broader perspective than is available in the regions. CSIS can also use the JMT to inform the RCMP about new threats. However, CSIS will not always wait until a JMT meeting to discuss an issue. As RCMP Assistant Commissioner Mike McDonell remarked, "The regularized forum would be the Joint Management Team but in a lot of instances, we speak to the matter as the matter arises; we don't wait for the JMT. So the whole trick is not to impede or impair the investigators and to facilitate the work on the front line. So it's been my experience that we pick up the phone or go to one another's offices and deal with it forthwith."<sup>11</sup>

While there is some discussion between CSIS and the RCMP about alternatives to using law enforcement, the reality is that the default course of action is to commence a police investigation. Typically, the only issue is timing – when the RCMP should commence its investigation. McDonell noted that "...[i]t's much easier for [CSIS] to harvest from us or from our actions than for us to harvest from the Service's action. So that if we're looking at a specific event where there must be an intervention, it's much easier in the long run if the Royal Canadian Mounted Police conduct the inquiries, conduct the search or do whatever is required and the Service can have access to the fruit of our labour. But our primary purpose is to collect evidence and the reverse is a little more difficult. So it's been my experience in this job that we've always defaulted to the RCMP conducting the primary action."<sup>12</sup>

McDonell's comments exemplify the approach of "the less information we obtain from CSIS, the better." This suggests that the RCMP is generally not receiving all the intelligence from CSIS that it could.<sup>13</sup>

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<sup>11</sup> Testimony of Mike McDonell, vol. 95, December 13, 2007, p. 12654.

<sup>12</sup> Testimony of Mike McDonell, vol. 95, December 13, 2007, p. 12637.

<sup>13</sup> Means to improve the protections of intelligence from disclosure, while still preserving the accused's right to a fair trial, are discussed in Chapters V-VII. These chapters examine disclosure standards, privileges and the means to obtain judicial non-disclosure orders in specific cases.



As well, McDonnell's evidence suggests that, instead of CSIS supplying the RCMP with detailed intelligence about possible terrorist threats, the RCMP is providing intelligence to CSIS. There are obvious benefits to the RCMP sharing information with the CSIS with respect to their often overlapping counterterrorism investigations.<sup>14</sup>

CSIS alone controls the quality, volume and timing of disclosure to the RCMP. Section 19(2)(a)<sup>15</sup> of the *CSIS Act* gives CSIS discretion to decide whether to share relevant intelligence with the police.<sup>16</sup>

Once intelligence is provided to the police, there is a risk that criminal investigations and prosecutions may be commenced, even though this may not be the most effective way to manage the terrorist threat. The JMT is not institutionally equipped to assess management strategies other than the use of law enforcement. The JMT is narrow in its focus in that the choice is typically between maintaining the CSIS investigation and turning the matter over to the RCMP. The JMT is not the place for strategic decision-making about the appropriate response to a particular security threat or even for strategic decision-making about whether a terrorism prosecution is in the public interest.

A further disadvantage of relying on the JMT as the locus for managing terrorist threats is the risk of public exposure of CSIS information that has been provided at JMT meetings. Although section 38 of the *Canada Evidence Act*<sup>17</sup> may provide protection for information disclosed to the JMT, the presence of the police imports the full menu of constitutional protections, including rights to disclosure of information, that are afforded persons who are the subject of criminal investigations. The risk of public disclosure of information from a police investigation should be accepted only after careful consideration. As discussed below, the NSA, with full input from all affected agencies, would be in the best position to determine if disclosing secret intelligence is in the public interest.

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<sup>14</sup> Stanley Cohen has argued that "the generous sharing 'up' of information and data from law enforcement to security intelligence is to be encouraged, provided, of course, that adequate safeguards, oversight and monitoring are features of the system as a whole": Stanley A. Cohen, *Privacy, Crime and Terror: Legal Rights and Security in a Time of Peril* (Markham: LexisNexis, 2005), p. 406 [Cohen, *Privacy, Crime and Terror*].

<sup>15</sup> Chapter IV discusses reforms to s. 19 to ensure that CSIS is required to share relevant intelligence directly with the police or the National Security Advisor and that it no longer have the discretion that it currently exercises to withhold relevant intelligence.

<sup>16</sup> Stanley Cohen notes that s. 19 of the *CSIS Act* "provides an express grant of authority to the Canadian Security Intelligence Service to disclose information that it has lawfully obtained to law enforcement": Cohen, *Privacy, Crime and Terror*, p. 407. He further notes that the discretion of CSIS to share such information is influenced by a variety of factors including "the fact that the disclosure of subject information may ultimately become public in an open proceeding, such as a criminal trial; the downstream implications of revealing information that may ultimately tend to reveal covert, secret or surreptitious operational practices and techniques; the need to protect sensitive sources; and the requirement to adhere to agreements and undertakings with other nations in the interest of securing the nation's security and of promoting international cooperation and comity with Canada's friends and allies in the international community": p. 408.

<sup>17</sup> R.S.C. 1985, c. C-5.

### 2.3 The Current Role of the National Security Advisor

In late 2003, a National Security Advisor to the Prime Minister was appointed "... to improve coordination and integration of security efforts among government departments."<sup>18</sup> This was a positive and necessary development, given the difficulties in cooperation and coordination among various agencies during both the pre- and post-bombing phases of the Air India investigation.

Due to the importance of coordinating national security activities, several witnesses from within and outside government were asked to comment on the role of the NSA when they appeared before the Commission.

The NSA is one of the most senior officials in the Privy Council Office (PCO). The PCO serves as a secretariat to ensure the smooth functioning of Cabinet. It is also the Prime Minister's "...source of public service advice across the entire spectrum of policy questions and operational issues facing the Government."<sup>19</sup> It is headed by the Clerk of the Privy Council who is the Prime Minister's Deputy Minister.<sup>20</sup>

The NSA has several roles:

- as Associate Secretary to the Cabinet, who acts "...on the Clerk's behalf on any of the policy and operational issues that come before the Privy Council Office;"<sup>21</sup>
- as NSA, who "...ensures the effective coordination of Canada's security and intelligence community;"<sup>22</sup>
- as Deputy Minister for Operations and Policy for the Communications Security Establishment (CSE); and
- as NSA, to oversee "...the provision of intelligence assessments to the Prime Minister, other ministers and senior government officials."<sup>23</sup>

Former NSA William Elliott, who is currently the Commissioner of the RCMP, told the Commission that one of his important duties was to play "a very central

<sup>18</sup> Canada, *Securing an Open Society: Canada's National Security Policy* (April 2004), p. 9, online: Government of Canada Depository Services Program <<http://dsp-psd.pwgsc.gc.ca/Collection/CP22-77-2004E.pdf>> (accessed June 4, 2009) [*Canada's National Security Policy*].

<sup>19</sup> Privy Council Office, "The Role and Structure of the Privy Council Office 2008," 1.0, online: Privy Council Office <[http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=Role/role2008\\_e.htm#1](http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=Role/role2008_e.htm#1)> (accessed July 29, 2009).

<sup>20</sup> Privy Council Office, "The Role and Structure of the Privy Council Office 2008," 2.0, online: Privy Council Office <[http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=Role/role2008\\_e.htm#2](http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=Role/role2008_e.htm#2)> (accessed July 29, 2009).

<sup>21</sup> Privy Council Office, "The Role and Structure of the Privy Council Office 2008," 3.0, online: Privy Council Office <[http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=Role/role2008\\_e.htm#3](http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=Role/role2008_e.htm#3)> (accessed July 29, 2009) ["The Role and Structure of the Privy Council Office 2008," 3.0].

<sup>22</sup> "The Role and Structure of the Privy Council Office 2008," 3.0.

<sup>23</sup> "The Role and Structure of the Privy Council Office 2008," 3.0.

role" with respect to the work of the Cabinet committee responsible for national security. Part of his role involved "...coordination efforts, including work done by and in support of ministers on that committee." He also testified that the NSA plays an important role "...with respect to getting people from interested departments and agencies together to deal with important matters relating to national security including where there were fairly significant, at least at the beginning, differences of views with respect to things..." He said that what he had specifically in mind was work in relation to the application of section 38 of the *Canada Evidence Act* and the experience gained in dealing with issues relating to the O'Connor Inquiry. There, he said, "...the National Security Advisor certainly played a role with respect to the development of a government position which resulted in a position of the government as decided and articulated by ministers."<sup>24</sup>

The NSA at the time of the Commission hearings, Margaret Bloodworth, described her position as consisting of three roles: an advisory role, a coordination role and an operational role with CSE. She acts as an advisor to the Prime Minister and to a Cabinet committee on intelligence programs and national security policies. The NSA also acts as the Associate Secretary of the Cabinet. Bloodworth also spent time on public service renewal at large, particularly relating to the intelligence community.

Bloodworth described her coordination role as "...co-ordinating with regard to intelligence, to carry things like development of priorities and overall assessment. And secondly, on national security more generally which would include response and resilience and border issues..."<sup>25</sup> She added that her coordination role with respect to the RCMP and CSIS would be exercised without interfering with the ultimate responsibility of the Minister of Public Safety for both agencies, which she described as "...pretty fundamental to our system."<sup>26</sup>

Nevertheless, she noted, the NSA's coordination role could include meeting with the heads of RCMP and CSIS and saying, "...[y]ou two should fix this' or some variation thereof or perhaps Justice could play a role if it was a legal issue and so on. If in the end it was not resolvable, then it would be up to their minister to take action and if they didn't bring it to their minister I would feel some onus to make sure their minister was aware of it. Now, I don't think it would come to that because there's also a Deputy Minister of Public Safety who would know something about that."<sup>27</sup>

The NSA also chairs a committee of deputy ministers on national security that meets roughly once a month or every six weeks and considers "a whole range" of national security issues, including "lessons learned."<sup>28</sup>

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<sup>24</sup> Testimony of William Elliott, vol. 90, December 6, 2007, p. 11827.

<sup>25</sup> Testimony of Margaret Bloodworth, vol. 95, December 13, 2007, pp. 12671-12672.

<sup>26</sup> Testimony of Margaret Bloodworth, vol. 95, December 13, 2007, p. 12676.

<sup>27</sup> Testimony of Margaret Bloodworth, vol. 95, December 13, 2007, pp. 12676-12677.

<sup>28</sup> Testimony of Margaret Bloodworth, vol. 95, December 13, 2007, pp. 12681-12682.

Finally, the NSA is also the Deputy Minister for Operations and Policy for the CSE. In that capacity, Bloodworth becomes involved in the operations of CSE, especially as they relate to the Government of Canada's intelligence priorities and other security agencies.<sup>29</sup> The CSE has a three-part mandate under the *National Defence Act*:

- to acquire and use information from the global information infrastructure for the purpose of providing foreign intelligence in accordance with the Government of Canada's intelligence priorities;
- to provide advice, guidance and services to help protect the Government's information infrastructures; and
- to provide technical and operational assistance to federal law enforcement and security agencies in the performance of their lawful duties.<sup>30</sup>

In short, the NSA has multiple policy, coordination and operational responsibilities.

The NSA is assisted by a Deputy National Security Advisor and by two secretariats within the PCO: the Security and Intelligence Secretariat and the International Assessment Staff Secretariat. The Security and Intelligence Secretariat works with federal departments to coordinate a range of security measures. These include the security component of the Security and Prosperity Partnership of North America and issues relating to the security of the Prime Minister, the Cabinet, the Government and the National Capital Region. The International Assessment Staff Secretariat provides information relating to terrorism through the Integrated Threat Assessment Centre (ITAC) and directly from Canada's allies. The Executive Director of the International Assessment Staff Secretariat and the Assistant Secretary to the Cabinet (Security and Intelligence) both report to the NSA through the Foreign and Defence Policy Advisor to the Prime Minister. Both the NSA and the Foreign and Defence Policy Advisor support the Cabinet Committee for Foreign Affairs and National Security.<sup>31</sup>

### **2.3.1 Competing Views on the Adequacy of the Coordination Powers of the National Security Advisor**

Professor Martin Rudner, Distinguished Research Professor Emeritus at the Norman Paterson School of International Affairs at Carleton University, saw the present function of the NSA as "...to advise the Prime Minister on national security; it is manifestly not to coordinate the security intelligence community. There are no resources, instruments or intent."<sup>32</sup> He also rejected the idea that

<sup>29</sup> Testimony of Margaret Bloodworth, vol. 95, December 13, 2007, pp. 12671-12672.

<sup>30</sup> R.S.C. 1985, c. N-5, s. 273.64.

<sup>31</sup> Privy Council Office, "The Role and Structure of the Privy Council Office 2008," 8.0, online: Privy Council Office <[http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=Role/role2008\\_e.htm#8](http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=Role/role2008_e.htm#8)> (accessed July 29, 2009).

<sup>32</sup> Testimony of Martin Rudner, vol. 92, December 10, 2007, pp. 12254-12255.

the Department of Public Safety could play a coordinating role, stating that "... it's a big bill for a young department."<sup>33</sup> In a paper prepared for the Commission, Rudner proposed a significant enhancement of the role of the NSA to include the resources to make supplementary budgetary appropriations and additional personnel allocations and to use moral suasion.<sup>34</sup> Rudner argued that a proactive "whole of government," intelligence-led approach required "...a significant enhancement of this coordination function in order to ensure policy coherence, inter-agency cooperation, and effective synergy among a wide array of security, intelligence and law enforcement organizations, relevant governmental departments (at all levels), and even private owner/operators of critical national infrastructure."<sup>35</sup>

Professor Bruce Hoffman, of the Edmund Walsh School of Foreign Service at Georgetown University, testified that the essential powers of an intelligence coordinator consisted of the ability to set standards across the intelligence community, budgetary control and personnel control. A person in charge of coordinating and overseeing the intelligence community "...required control over the purse strings, that is budgetary control; the ability to hire and fire senior managers and then the ability to set standards for both the information structure and personnel across the entire intelligence community."<sup>36</sup> In his view:

"[T]he magnitude of the threat and the complexity of the threats that's posed to our countries in the 21<sup>st</sup> century means that you have to have an individual that again can reach across the stakeholders, set the priorities, because these priorities are not the priorities of individual agencies; we're talking about national priorities, and then, having set the priorities, to actually dictate the tasking. I think this is enormously important. Not just to sometimes force reluctant bureaucracies out of their comfort zone or out of their box, but also to provide the strategic dimension to ensure that the focus is on precisely those priorities that are most critical to national security."<sup>37</sup>

Rudner and Hoffman were not alone in arguing that there was a need for enhanced coordination powers in national security matters. Norman Inkster, a former Commissioner of the RCMP, agreed with the suggestion that there is a need for an arbiter to decide disputes between CSIS and the RCMP about the handling of sources.<sup>38</sup>

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<sup>33</sup> Testimony of Martin Rudner, vol. 92, December 10, 2007, pp. 12257-12258.

<sup>34</sup> Martin Rudner, "Building Canada's Counter-Terrorism Capacity: A Proactive All-Of-Government Approach to Intelligence-Led Counter-Terrorism" in Vol. 1 of Research Studies: Threat Assessment RCMP/CSIS Co-operation, pp. 137-139 [Rudner Paper on Building Counter-Terrorism Capacity].

<sup>35</sup> Rudner Paper on Building Counter-Terrorism Capacity, p. 138.

<sup>36</sup> Testimony of Bruce Hoffman, vol. 94, December 12, 2007, p. 12530.

<sup>37</sup> Testimony of Bruce Hoffman, vol. 94, December 12, 2007, p. 12514.

<sup>38</sup> Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10368.

Giuliano Zaccardelli, also a former Commissioner of the RCMP, testified that a change of governance was required to stop the practice of agencies operating in silos, exchanging information only on an *ad hoc* basis. He called for a governance body, staffed by officials from the highest levels of the key intelligence agencies, that would be responsible for ensuring the safety and security of Canada. The governance body would be able to make resources available and integrate them in a way that would ensure that "...the whole is greater than the sum of its parts."<sup>39</sup> Zaccardelli argued that the work of the governance body should be facilitated by someone outside of government.<sup>40</sup> He did not think that this role should be filled by a minister, because of the risk of political interference, or by a senior bureaucrat, because of the risk of being captured by "vested interests."<sup>41</sup> Rather, the person should have the credibility and stature to bring the various agencies together "...and make them work for the good of Canada."<sup>42</sup>

Reid Morden, a former Director of CSIS, testified that there was not enough "...clout within the current structure to bring about the coordination and to give direction to this rather multi-headed intelligence beast which we have created." He testified that the coordinator should not be in the Prime Minister's Office, but that the person "...should have direct access to the Prime Minister who has always, at least in title, chaired any Cabinet committee which has dealt with security or intelligence affairs."<sup>43</sup> He testified that there was a need for "...a new look at the kind of machinery we have," as governments responded "...to a world which has become a much more dangerous and a much more ruthless place than it was a number of years ago."<sup>44</sup>

Not all witnesses agreed that the NSA needed greater coordination powers. The Hon. Ronald ("Ron") Atkey, the former chair of SIRC and a person with extensive experience in national security matters, testified that Canada was "...not mature enough yet to go for a security czar. We see attempts in the United States now to move in that direction, but they are still having difficulties...."<sup>45</sup>

Former NSA Elliott testified that he was not sure that creating a new entity, "...whether...called an 'Intelligence Czar' or some other thing, is really necessary or desirable. If it was – if a principal objective was to resolve disputes, I don't think the individual would be very busy and...I'm not sure of the merits of putting somebody in charge of operations across government departments and agencies. I'm not sure that that would lead to very effective operations, frankly."<sup>46</sup>

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39 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11030-11032.

40 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11077.

41 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11080-11081.

42 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11078.

43 Testimony of Reid Morden, vol. 88, December 4, 2007, pp. 11455-11457.

44 Testimony of Reid Morden, vol. 88, December 4, 2007, p. 11456.

45 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 6030.

46 Testimony of William Elliott, vol. 90, December 6, 2007, p. 11828.



Jim Judd, the Director of CSIS at the time of his testimony and who has since retired, also testified that there was no need for an enhanced coordination role in Canada. He stated that, "...[i]n our circumstances here in Canada, I think it's probably fair to say that in respect of anything that we do in our organization, internationally or domestically that is of note, in our view, the National Security Advisor and the Minister and very often Prime Minister know about it as it happens, so that I think we have perhaps a bit of a better history of ensuring that those communications channels do exist. And it's partly a functional fact that, of course, you're dealing with a much smaller universe in the Canadian context than you are in the United States. I don't know of any other Western jurisdiction other than the United States which has sought to impose this kind of regime of a super personality at the top of the system. And I don't, in current circumstances, certainly see the need for that to happen here, given the arrangements that already exist."<sup>47</sup>

Finally, Margaret Bloodworth, the NSA at the time of our hearings, argued that Professor Hoffman's proposals for increased coordination were not compatible with a parliamentary system where ministers are ultimately accountable for the performance and budgets of the agencies in their ministries. With respect to budgetary issues she saw difficulties in "...splitting money from accountability": "And I think accountability matters, and I'm actually a believer in Ministers, to the extent possible, being accountable at the end of it, and I think there's a limit to how much you can make the Prime Minister personally accountable."<sup>48</sup> She added that "...having run three different departments now, it's not been my experience that money managed from the centre is managed more effectively than [money] managed in departments."<sup>49</sup>

It could be argued that the Minister of Public Safety, rather than the NSA, should play a coordinating role for national security activities. At present, the Minister of Public Safety is responsible for the RCMP and CSIS. Both agencies at times seem to be more powerful than their Minister. This is because Public Safety, as a direct descendant of the former Ministry of the Solicitor General, may be seen as insufficiently senior within government to take the lead on complex national security matters.

There are limits to the jurisdiction of the Minister of Public Safety. While CSIS, CBSA and the RCMP fall within the Minister's jurisdiction, significant players such as DFAIT, DND and CSE do not. As well, the decision about how to manage a particular terror threat may very well engage our international strategic interests. DFAIT can and ought to make an important contribution in such cases. The Attorney General of Canada, who is outside the Department of Public Safety, also has important responsibilities for the approval of terrorism prosecutions and for the protection of secret information from disclosure.

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<sup>47</sup> Testimony of Jim Judd, vol. 90, December 6, 2007, pp. 11866-11867.

<sup>48</sup> Testimony of Margaret Bloodworth, vol. 95, December 13, 2007, pp. 12684-12687.

<sup>49</sup> Testimony of Margaret Bloodworth, vol. 95, December 13, 2007, p. 12689.



It is the Commission's view that national security is far too important to leave in the hands of one minister or agency. The Ministry of Public Safety does not command the national security apparatus. Only the Prime Minister's delegate can have the legitimacy to wield that power.

### **2.3.2 The Legitimate Role of the Prime Minister and the Privy Council Office in Coordinating National Security Activities**

The need for the Prime Minister and the Privy Council Office to play a key role in national security matters has long been recognized. A 1969 Royal Commission on Security observed that, while the Privy Council Office provided some support to Cabinet committees on security and meetings of the relevant deputy ministers, the effectiveness of this central coordination was "...more apparent than real."<sup>50</sup> The Royal Commission recommended that a Security Secretariat within the Privy Council Office be given adequate authority, resources and staff "...to formulate security policy and procedures in the context of general governmental policies, and more importantly, with effective authority to supervise the implementation of government security policies and regulations and to ensure their consistent application."<sup>51</sup>

Although the security environment is very different today from that of 1969, the basic insight of that Commission still rings true: "...under present arrangements the total view of the requirements of security may often be obscured by the pressures exerted by individual departments."<sup>52</sup> Indeed, the danger of failing to see the "big picture" and of losing central oversight and control is even greater today, since many more agencies than before have security responsibilities in the post-9/11 environment.

The Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police (McDonald Commission) recommended that the Prime Minister chair a Cabinet committee on security and intelligence because "...[w]eaknesses in the internal security system can have drastic consequences for the well-being of the nation. The secret, intrusive nature of security work makes it dangerous to permit any Minister to become overly dominant in this field. The consideration of intelligence needs should be a balanced process free from domination by any single government department."<sup>53</sup>

In his 2006 report, Commissioner O'Connor recognized that, "...[a]s the head of government in Canada, the Prime Minister has ultimate responsibility for national security."<sup>54</sup> In discharging these responsibilities, the Prime Minister is assisted by the Privy Council Office (PCO) which "...provides non-partisan advice

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<sup>50</sup> *Report of the Royal Commission on Security*, p. 17.

<sup>51</sup> *Report of the Royal Commission on Security*, pp. 18, 105.

<sup>52</sup> *Report of the Royal Commission on Security*, p. 17.

<sup>53</sup> *Freedom and Security under the Law*, Second Report - vol. 2, p. 847.

<sup>54</sup> *A New Review Mechanism for the RCMP's National Security Activities*, p. 196.

and support for the Prime Minister, departments within the Prime Minister's portfolio, the federal Cabinet and Cabinet committees."<sup>55</sup>

The natural locus for coordinating federal agencies involved in preventing and prosecuting terrorism is the Privy Council Office. This was recognized by the federal government when the position of Prime Minister's National Security Advisor was established in 2003.

The clear trend in this area has been to centralize operations as much as possible. For example, the RCMP has gone to great lengths to centralize terrorism investigations. CSIS has been highly centralized since its inception. Centralization of national security investigations is a virtual necessity, given that most, if not all, national security investigations have national and international aspects.

Centralization permits a broader approach to decision making and ultimately promotes cooperation between agencies. Without a centralized, cross-ministry rationalization of Canada's national security infrastructure, government will not address the long-term structural issues that have plagued the RCMP and CSIS. A failure to address these issues would leave Canadians relying solely on the goodwill of those who currently hold senior positions at those agencies.

Increased coordination is possible in the national security field because the Prime Minister is the first among equals and, with limited exceptions,<sup>56</sup> can take responsibility for decisions in the national security area. Fears that officials in the Privy Council Office will abuse their power, or not be held accountable for its exercise, overlook the fact that the Prime Minister is responsible for their conduct. The Prime Minister is also responsible and accountable to Parliament for the Government's overall performance in national security matters. The Prime Minister's special role in national security simply recognizes the reality that the Prime Minister has the ultimate decision-making authority in almost all national security matters.

Although she stressed the importance of ministerial accountability and responsibility in her testimony, Bloodworth recognized the reality of the Prime Minister's pre-eminent role when she testified that, even with respect to matters within the portfolio of the Minister of Public Safety, "...it's possible the Prime Minister might be brought in, then I provide advice there."<sup>57</sup> The roles of the Prime Minister and the PCO do not generally affect day-to-day operations, but rather involve setting national security policy and priorities, ensuring that the ministries and agencies implement the policy, and resolving high level disputes involving policy matters.

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<sup>55</sup> *A New Review Mechanism for the RCMP's National Security Activities*, p. 196.

<sup>56</sup> The role of police and prosecutorial independence and discretion is discussed in Chapter III.

<sup>57</sup> Testimony of Margaret Bloodworth, vol. 95, December 13, 2007, pp. 12679-12680.

The idea that, on national security matters, the ultimate authority in most matters rests with the Prime Minister accords with Canada's democratic traditions. It also accords with the commonsensical expectations of Canadians.

It is important that the Prime Minister receive expert advice from senior civil servants in the Privy Council Office. The suggestion that an enhanced national security coordination role in the PCO would be too "political" should be rejected. As Elliott testified, "Canada has a long, important, proud history of independence of the public service." Furthermore, "...when governments change as they frequently do at least in the modern context, there is not a wholesale or immediate change of senior officials, and just as I was the National Security Advisor to Prime Minister Martin, I was the National Security Advisor to Prime Minister Harper and my roles and relationships with the Prime Minister and the Prime Minister's Office really didn't change substantially because one government went out of office and another government came into office."<sup>58</sup>

Although ministers should, by law and tradition, remain accountable for their departments and for the agencies in those departments, it is the Prime Minister, assisted by experts in the Privy Council Office, who can assess the security needs of the Government and assess the public interest in determining the appropriate response to a given threat.

In summary, the Prime Minister and the Privy Council Office have vital and legitimate roles to play in national security matters. These roles include:

- establishing strategic national security policies and priorities;
- coordinating national security activities, including the distribution of intelligence;
- resolving disputes between the agencies and ministries that have national security responsibilities; and
- overseeing the effectiveness of national security activities.

The exercise of these important roles is in keeping with Canada's tradition of parliamentary democracy and with the role of the Privy Council Office in providing impartial and non-partisan public service advice and expertise to the Prime Minister.

### **2.3.3 Expanding the Role of the National Security Advisor**

At present, the NSA's mandate is ill-defined. This mandate should be enhanced and clarified. The nature of Canada's multi-faceted national security activities and the challenging task of establishing priorities for these agencies, coordinating them, resolving disputes among them and determining whether they are working together effectively will require a substantial enhancement of the NSA's role.

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<sup>58</sup> Testimony of William Elliott, vol. 90, December 6, 2007, pp. 11828-11829.

An enhanced mandate for the NSA is especially necessary to better balance the pressure to keep intelligence secret with the conflicting pressure to allow it to be used as evidence. In addition, the NSA needs greater powers to oversee the effectiveness of the agencies and departments responsible for national security activities.

An NSA with enhanced responsibilities should at a minimum continue to hold the NSA's current rank as the National Security Advisor and Associate Secretary to the Cabinet, just below the Clerk of the Privy Council and Secretary to the Cabinet.<sup>59</sup>

### **2.3.3.1 Establishing Strategic National Security Policies and Priorities**

In 2004, Canada established its first official National Security Policy.<sup>60</sup> An official policy was necessary because of the changed threat environment and because so many parts of the government now exercised national security responsibilities – ranging from the collection of intelligence to the discharge of responsibilities for emergency preparedness and management. The national security policy devoted a whole chapter to "...building an integrated security system" in recognition that "...the lack of integration in our current system is a key gap..."<sup>61</sup> It proposed an integrated security system that would include threat assessment, protection and prevention, evaluation and oversight, and consequence management.<sup>62</sup> The policy recognized that "...[a]n effective national security framework must, of necessity, be a continual work in progress. We need to continuously evaluate the success of the system by testing its effectiveness."<sup>63</sup>

The National Security Policy stressed the need for more coordination and strategic planning for a wide array of security initiatives, including transportation safety, intelligence and international security. To implement this security policy, or any other that the Government may develop, it will be necessary to have a broad vision of government's abilities and responsibilities.

A chapter in the 2004 National Security Policy was devoted to intelligence. Security intelligence agencies are deliberately subject to fuller political direction than police and prosecutors. In Canada's system, the responsible minister is accountable for these agencies but, as suggested earlier, the Prime Minister and his advisors have a pre-eminent role in establishing priorities and policies in the national security field. There is a need to ensure that the priorities of security intelligence agencies reflect the best strategic judgments of the Government of

<sup>59</sup> Privy Council Office Organization Chart (March 2009), online: Privy Council Office <<http://www.pco-bcp.gc.ca/docs/Org/2009-03-eng.pdf>> (accessed June 4, 2009).

<sup>60</sup> Canada, *Securing an Open Society: Canada's National Security Policy* (April 2004), online: Government of Canada Depository Services Program <<http://dsp-psd.pwgsc.gc.ca/Collection/CP22-77-2004E.pdf>> (accessed June 4, 2009) [*Canada's National Security Policy*].

<sup>61</sup> *Canada's National Security Policy*, p. 9.

<sup>62</sup> *Canada's National Security Policy*, pp. 10-13.

<sup>63</sup> *Canada's National Security Policy*, p. 12.

Canada. As Professor Hoffman suggested, a critical responsibility of an NSA is to establish community-wide intelligence priorities.<sup>64</sup>

Intelligence priorities should be centrally coordinated, informed by careful analysis of intelligence to determine the most important threats, the biggest gaps and the most strategic vulnerabilities.<sup>65</sup> This does not mean that the Prime Minister or the NSA should run CSIS or the CSE. These agencies will develop their own strategic plans, consistent with the priorities set by the Government of Canada. In appropriate cases, however, it is perfectly permissible for the Government, acting through the Prime Minister and the NSA and in consultation with the appropriate minister(s), to adjust the priorities of intelligence agencies and to coordinate them with other Government priorities.

The setting of priorities in the national security field is a matter of daunting complexity. There is a need for input from many departments and agencies, and Canada's National Security Policy can be influenced by a wide range of domestic and international factors. Only the Prime Minister and the NSA can ensure that each agency's priorities fit into the larger picture. Only they have the incentive and the ability to determine if the multiple departments and agencies with national security responsibilities are working well together.

As discussed earlier, the NSA already has responsibilities as a Deputy Minister for the Communications Security Establishment, Canada's signals intelligence agency, which obtains information from the global communications infrastructure. Although this responsibility may be delegated to the Deputy National Security Advisor because of the enhanced responsibilities that would be given to the NSA under the Commission's recommendations, it is important that the NSA retain some connections with CSE. As the narrative of this report has revealed, relevant information obtained by CSE was not distributed before the Air India bombing. Increases in the threat of international terrorism make it more likely that CSE will obtain information of relevance to the NSA and other agencies. It is also important that the activities of CSE be guided by the Government's intelligence priorities.

The establishment of priorities is a critical function of the NSA. This function cannot be carried out without adequate staff. As suggested by Rudner, the establishment of national security priorities should ideally be informed by intelligence analysis. The talent for such analysis is most likely to be found within the intelligence agencies, but, as Rudner suggests, there is a need to ensure better career paths for such analysts, which may include time in the PCO.

As national security activities expand into areas such as aviation security and preventing terrorist financing, there is a greater need to establish strategic policies and priorities. Although the responsible agencies and departments should develop policies in the first instance, the NSA might have a role in

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<sup>64</sup> Testimony of Bruce Hoffman, vol. 94, December 12, 2007, pp. 12544-12545.

<sup>65</sup> Rudner Paper on Building Counter-Terrorism Capacity, pp. 133-137.

ensuring that the policies accord with overall governmental policies. The NSA might also help resolve disputes about the nature of a particular policy or its implementation.

The NSA might also play a role in developing policy to respond to deficiencies in anti-terrorist-financing programs, which may be revealed by domestic or international reviews or by conflicts between the multiple agencies that are involved in preventing terrorist financing. One example is the need to establish adequate performance indicators and assessment mechanisms for programs aimed at terrorist financing. Although the NSA would call on the agencies to implement the policies, the NSA would have a role in ensuring that adequate policies were in place and were followed.

### ***2.3.3.2 Coordination of National Security Activities, Including Distribution of Intelligence***

The NSA's present role should be expanded to include responsibility for the strategic coordination of the government's response to terrorist threats. The most important enhanced role might be to ensure coordination of the various agencies responsible for national security, including addressing issues that arise from the distribution of intelligence within government. The NSA might play an important role in ensuring that sufficient information is shared among agencies.

There is a need to ensure that intelligence gets into the hands of the proper decision makers. Such distribution should help prevent the dysfunctional relationships and poor flow of intelligence that tainted the pre- and post-bombing Air India investigations. There is also a need to ensure that intelligence agencies implement the priorities that have been set for them. At the same time, care should be taken to avoid collecting intelligence for the sake of collecting intelligence; the collection must have a legitimate purpose.

Unlike the Director of CSIS or the RCMP, the NSA should have no institutional bias favouring a particular response. The NSA should not have a bias towards maintaining the CSIS intelligence investigation or commencing a process that may end in a prosecution. Instead, the NSA should have the necessary independence to make decisions in the public interest regardless of their popularity with a particular agency.

The enhanced role of the NSA will require the NSA to work closely with the responsible ministers and deputy ministers to ensure compliance with the Government's national security strategy. For instance, in the unlikely event of a senior official rejecting specific advice from the NSA, that senior official would be required to provide a written explanation to the official's responsible minister. At that point, the matter would be dealt with at the ministerial level, with the involvement of the Prime Minister if needed.

In appropriate cases, ministers should intervene, as the former Solicitor General did to resolve the dispute between the RCMP and CSIS about access to CSIS material in the post-bombing Air India investigation. In such a case, the NSA can ensure that the Prime Minister is aware of, and supports, the minister's actions. The NSA may have an even more important role where two agencies headed by different ministers are not cooperating adequately. Examples could include conflicts between foreign affairs and domestic security agencies or conflicts involving the agencies responsible for anti-terrorist financing initiatives and aviation security.<sup>66</sup> The NSA would have the responsibility to manage interagency relationships so that conflicts are dealt with efficiently and in the public interest.

It is important that the NSA regularly brief the Prime Minister about threats to national security so that the Prime Minister can advise Cabinet colleagues. These briefings can assist the Prime Minister in dealing directly with the responsible ministers to ensure cooperation among agencies.

Each agency with national security responsibilities should have to submit to the NSA's decisions and authority. The only exception would be if the minister responsible for the agency was prepared to take the matter to the Prime Minister for decision. It is unacceptable for individual agencies to operate in silos, unconcerned about the impact of their decisions on other governmental actors or on the broader public interest.<sup>67</sup> Interagency competition must be avoided and strongly discouraged.

In difficult or disputed cases, the NSA would be responsible for determining how and when the government should respond. This might involve engaging the RCMP or Citizenship and Immigration, CBSA or CRA officials, or pursuing diplomatic initiatives. The NSA should determine, in his or her view, the most effective response in the public interest. The fact that the NSA reports directly to the Prime Minister will vest the position with sufficient power to command the respect of the agencies involved.

### **2.3.3.3 The Need for a Privilege to Protect the NSA's Deliberations and Information Received by the NSA**

The ability of the NSA to perform this enhanced role will depend on the NSA's ability to obtain information from agencies with national security responsibilities. If CSIS provides information to the NSA, it will be necessary to ensure that this does not place the information at risk of public exposure. The advice and information provided to the NSA should be protected by a new national security

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<sup>66</sup> On the tensions between the role of Transport Canada and the Canadian Air Transport Security Authority (CATSA), see the review of the *Canadian Air Transport Security Authority Act* by the CATSA Advisory Panel: *Flight Plan: Managing the Risks in Aviation Security - Report of the Advisory Panel*, paras. 2.4 and 4.3 and ch.6, online: Transport Canada <[http://www.tc.gc.ca/tcss/catsa/final\\_report-rapport\\_final/final\\_report\\_e.pdf](http://www.tc.gc.ca/tcss/catsa/final_report-rapport_final/final_report_e.pdf)> (accessed July 31, 2009).

<sup>67</sup> There are some legitimate exceptions, given the constitutional status of police independence and prosecutorial discretion, both of which are discussed in Chapter III.



privilege, beyond the reach of the courts or access to information legislation. Similarly, the NSA's deliberations about managing terrorist threats should be privileged. This legal protection will construct a "safe house" in which CSIS, other agencies and the NSA can discuss a terrorist threat freely without concern that public exposure may thwart efforts to control the threat. Such a privileged "safe house" is necessary to ensure that the NSA can effectively coordinate the Government's response to security threats. The legal details of such a new privilege are discussed in Chapter VI.

The deliberations of the NSA, and information prepared by the agencies for the NSA, should be protected from disclosure by a new class-based national security privilege patterned after the privilege that applies to Cabinet deliberations under section 39 of the *Canada Evidence Act*. Making communications between CSIS and the NSA privileged would eliminate the concerns of CSIS about disclosure. The same privilege would also apply if the CSE or other agencies provided information to the NSA. All information prepared for and considered by the NSA would be covered by the new privilege.<sup>68</sup>

The NSA would have the authority to disclose information to the RCMP or to other agencies, and the privilege would not apply to information once the NSA disclosed it.<sup>69</sup> This privilege would respond to the risk that the information could not otherwise be protected from disclosure in legal proceedings by existing privileges or by judicial non-disclosure orders under sections 37 and 38 of the *Canada Evidence Act*.

Even without a new national security privilege, the risk is low that information produced for and by the NSA would have to be disclosed publicly. If attempts were made to obtain disclosure, the Attorney General of Canada could use section 38 of the *Canada Evidence Act* to prevent the disclosure on the basis of the harm that disclosure would cause to national security. For this reason, the measures recommended in this chapter to enhance the role of the NSA should not be delayed until the enactment of legislation on the new national security privilege.

If CSIS wanted to withhold information from another agency, the NSA would have the authority to require CSIS to provide the information to that agency. The NSA would consider the interests of CSIS and might choose a way to manage the threat that did not place the CSIS information or a related CSIS investigation at risk.

This new arrangement for sharing information with the NSA should not preclude CSIS from exercising its discretion to provide information to the RCMP.<sup>70</sup> CSIS

<sup>68</sup> The details of this new privilege, patterned after the provisions for the confidentiality of Cabinet confidences in s. 39 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 [*Canada Evidence Act*], are discussed in Chapter VI.

<sup>69</sup> Other privileges, such as national security privilege under s. 38 of the *Canada Evidence Act* could, however, still be claimed. This is discussed in Chapter VI.

<sup>70</sup> This information will also have to be passed to the NSA.

would continue to share information when it decided that it was appropriate to do so. There would be no need to go through the NSA when CSIS decides to disclose information to another agency.

#### **2.3.3.4 The Relationship between the NSA and CSIS**

At present, sections 12 and 19 of the *CSIS Act* permit CSIS to share intelligence with other agencies in a number of situations. For example, the Service may share information with the RCMP, local law enforcement agencies, the Minister of Foreign Affairs, the Minister of National Defence or any other Minister of the Crown or person in the federal public administration.<sup>71</sup> Reform of the role of the NSA should not affect this. CSIS should continue to be able to pass on relevant information to the police and other officials.

Typically, CSIS will have obtained as much intelligence about a threat as anyone else in government. However, the NSA might sometimes want additional information or wish to solicit additional points of view. To that end, the NSA should be empowered to meet with representatives from any government agency – be it the CRA, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)<sup>72</sup> or any other agency – to discuss the threat and, where necessary, to seek information. As well, the NSA could simply ask CSIS to obtain the additional information that the NSA was seeking.

As discussed above, information provided to the NSA and discussions with the NSA should be protected by a new national security privilege. This will remove any incentive for agencies to withhold information from the NSA.

#### **2.3.3.5 The Relationship between the NSA and Law Enforcement Agencies**

The NSA is primarily concerned with responses to terrorist threats on the basis of intelligence information and has no responsibility for conducting criminal investigations. The NSA can provide information to the RCMP, which may lead it to commence a criminal investigation. However, once the information is passed to the RCMP, the NSA has no ongoing role in the investigation. It is a police matter.<sup>73</sup> The RCMP is then duty bound to conduct the investigation independent of any outside influence. At the same time, as will be discussed below, the NSA should be able to have contact with the RCMP about policy, dispute resolution or about general matters relating to the effectiveness of operations, particularly as they involve the RCMP working with other agencies. The NSA would have no direct relationship with municipal and provincial forces. These police forces already have various mechanisms to liaise with the RCMP.

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<sup>71</sup> *CSIS Act*, ss. 12, 19(2).

<sup>72</sup> Limits placed on the disclosure of information from FINTRAC are discussed in Volume V. The NSA should not generally need access to such information for his or her coordination or dispute resolution duties. If necessary, the NSA could request CSIS or the RCMP to apply under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 to obtain the necessary information.

<sup>73</sup> Police independence is discussed in Chapter III.

This approach emphasizes the RCMP's independent and primary role as the police force responsible for criminal investigations relating to terrorism.

In some cases, it may be appropriate for the NSA to provide information to the Attorney General of Canada when that information is relevant to the exercise of prosecutorial discretion.<sup>74</sup>

In practice, Integrated National Security Enforcement Teams (INSETs) serve as information hubs for local police forces and CSIS. The basic principle is that local police forces move information that may have national security implications from local detachments to an INSET. The INSET, in turn, should send that information to CSIS to help CSIS generate intelligence. When CSIS provides advice to the NSA, CSIS will have benefited from any local police information in preparing that advice. The importance of the information flow from INSETs to CSIS and to the NSA will increase if domestic terrorist groups continue to develop as a serious threat to national security. CSIS will have sufficient coverage to understand a threat, but local police officers and others might provide useful additional sources of information for CSIS.<sup>75</sup>

#### **2.3.3.6 Resolving Disputes between the Agencies, Including Disputes Arising from the Intelligence/Evidence Relationship**

The NSA should also assist in resolving the disputes that will inevitably arise when multiple agencies with different mandates work on the same terrorist issues. Disputes will occur as a result of the competing demands, on one hand, to keep intelligence secret and, on the other, to disclose it for criminal trials. These conflicts cannot easily be resolved. All agencies involved could benefit from the NSA's participation. This is an area of critical importance, as revealed by the Air India investigation, and an area where Canada has the potential to break new ground in coordinating national security activities.

Conflicts may increase because many activities are newly described as terrorist crimes under the *Anti-terrorism Act*,<sup>76</sup> and because the nature of a terrorist threat may require law enforcement powers to be used to stop suspects from engaging in lethal terrorist activities.

Elliott testified that the NSA has played a role in bringing others together to discuss important matters of national security. His own experience included preparing the response to the O'Connor Commission.<sup>77</sup> This experience suggests that there is a legitimate role for central coordination with respect to some of the issues arising from the relationship between intelligence and evidence, even though the ultimate responsibility for dealing with issues of privilege under section 38 lies with the Attorney General of Canada.

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<sup>74</sup> Prosecutorial discretion is discussed in Chapter III.

<sup>75</sup> As well, local forces may provide information of a national security offence that may form the basis of an investigation by the INSET.

<sup>76</sup> S.C. 2001, c. 41.

<sup>77</sup> Testimony of William Elliott, vol. 90, December 6, 2007, p. 11827.

The dispute resolution role of the NSA could help to prevent the types of conflicts that infected and slowed the Air India investigation. Bloodworth explained how the NSA can resolve disputes through the exercise of moral suasion. She described her ability to meet with the heads of CSIS and the RCMP to encourage them to resolve disputes.

Hoffman emphasized the important dispute resolution role that a national security coordinator could play. He testified that there is an "...advantage of having someone with this kind of responsibility...[to] facilitate the successful resolution of these types of internal conflicts or disputes...[to] adjudicate between the different agencies, not ride roughshod over them but, nonetheless, the direct opposite of having one agency to slam the door in the face of another agency and [the national security coordinator] at least can provide some mechanism to ensure the flow of appropriate intelligence and necessary intelligence to whom and where and when it's most needed."<sup>78</sup>

### **2.3.3.7 Oversight of the Effectiveness of National Security Activities**

As the account of the pre- and post-bombing Air India investigation illustrates, the prevention and prosecution of terrorism implicates many agencies. These include police, security intelligence, transportation and immigration agencies, to mention a few. In a 2004 report, the Auditor General of Canada remarked on the need for improved coordination on security issues that "cross agency boundaries," such as "...information systems, watch lists, and personnel screening."<sup>79</sup> Later that year, the Auditor General commented, with respect to terrorist financing, that there was a lack of "...effective procedures for resolving interdepartmental disputes and ensuring accountability for results. We found, as we had in our audit of the anti-terrorism measures of 2001, that the government did not have a management framework to direct complementary actions in separate agencies."<sup>80</sup>

The work of the O'Connor Commission and the Iacobucci Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin also underline how various elements of the Canadian government, including CSIS, the RCMP and the Department of Foreign Affairs, may become involved in complex international terrorism investigations. The O'Connor Commission listed 16 departments and agencies that the federal government identified as having "key" national security responsibilities.<sup>81</sup> That Commission recommended a new, integrated, independent and self-initiated

<sup>78</sup> Testimony of Bruce Hoffman, vol. 94, December 12, 2007, pp. 12519-12520.

<sup>79</sup> *Report of the Auditor General of Canada to the House of Commons*, March 2004, Chapter 3: "National Security in Canada - The 2001 Anti-Terrorism Initiative," para. 3.161, online: Office of the Auditor General of Canada <<http://www.oag-bvg.gc.ca/internet/docs/20040303ce.pdf>> (accessed June 4, 2009).

<sup>80</sup> *Report of the Auditor General of Canada to the House of Commons*, November 2004, Chapter 2: "Implementation of the National Initiative to Combat Money Laundering," para. 2.27, online: Office of the Auditor General of Canada <<http://www.oag-bvg.gc.ca/internet/docs/20041102ce.pdf>> (accessed January 16, 2009).

<sup>81</sup> *A New Review Mechanism for the RCMP's National Security Activities*, p. 127.

review of national security responsibilities, with a focus on the propriety of such activities, including their legality, fairness and proportionality.

There is an equal need for oversight of the efficacy of the government's many national security activities. Commissioner O'Connor described the differences between propriety-based review and efficacy-based oversight. Review is conducted after the fact and "...at arm's length from both the management of the organization being reviewed and from the government."<sup>82</sup> It evaluates an agency's conduct against standards like lawfulness and/or propriety. In contrast, "...oversight mechanisms are often directly involved in the decision making of the organization they oversee":

Involvement can be through setting standards against which the organization's activities are evaluated, pre-approving operations, implementing and enforcing recommendations, and/or imposing discipline. The organization's activities are sometimes assessed while they are going on. In their pure forms, oversight mechanisms can be seen as direct links in the chain of command or accountability: they both review and are responsible for the activities of the overseen body.<sup>83</sup>

Efficacy-based oversight focuses on whether the agencies have the competence and capacity to do their jobs and on whether their activities are sufficiently coordinated to accomplish the ultimate job of preventing terrorism. Such oversight is of critical importance.<sup>84</sup>

The NSA would be best positioned to conduct efficacy-based oversight. The NSA would have, under the new structure, access to all the information that is required to judge efficacy. Moreover, the NSA will have access to the Prime Minister, who might require improvements in the efficacy of the national security system. The deliberations of the NSA would be subject to the new national security privilege discussed above. Although the secrecy protected by such a privilege might limit the transparency that may be required for propriety-based review, secrecy will often be required in efficacy-based oversight.

The ability of the NSA to oversee the effectiveness of national security activities should not displace the responsibilities of ministers to ensure the efficient operation of the individual agencies and departments. The NSA should not hesitate to bring problems to the attention of the appropriate deputy minister or agency head for remedial action. However, the NSA should not be expected to supervise the details of the remedial action.

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<sup>82</sup> *A New Review Mechanism for the RCMP's National Security Activities*, pp. 456-457.

<sup>83</sup> *A New Review Mechanism for the RCMP's National Security Activities*, p. 457.

<sup>84</sup> Commissioner O'Connor did not dispute the importance of efficacy-based oversight, but believed that it was not within his mandate to make recommendations about reviewing the RCMP's national security activities.

### **2.3.3.8 Staffing the National Security Advisor's Office**

The NSA should have a background in intelligence and a good understanding of the federal government and how law enforcement works. The NSA must also appreciate that there is no preferred response to terrorist threats, that each threat must be assessed individually and that the response must be tailored accordingly. The best individual from within or outside of government should be sought. An individual with these attributes will command the respect of the national security community and be able, as a result, to exercise the functions of the position independently and effectively.

The NSA should be appointed by the Prime Minister, preferably for a fixed term. A fixed term is useful to avoid the NSA becoming beholden to various interests. As well, a fixed term is necessary to avoid "burn out," as this will be one of the most demanding positions in government.

The NSA would receive information and advice from CSIS and from other agencies about threats to national security and would be responsible for determining how the government should respond. To do this, the NSA would need a modest full-time staff to assist in processing the advice provided by CSIS and in evaluating the merits of any proposed response.

The goal is to avoid a bureaucracy that duplicates that of other agencies. The purpose is to develop analysts who can support the NSA in serving the public interest – that is, serving without being blinkered by the vested interests of a particular agency.

The NSA will need a modest number of staff members who can advise about the efficacy of a specific government response to a threat. The NSA staff will also assist in preparing briefings for the Prime Minister. It will be for the NSA to determine the precise staffing requirements.

The NSA will need support in assessing the usefulness of passing the information to law enforcement agencies. The NSA should have secondees from the RCMP on staff.

The PCO structure supporting the NSA should be flexible enough to allow for hiring from the academic and private sectors and from abroad, as needed, and with appropriate security vetting. The NSA will also need adequate legal expertise, especially to address disputes that may arise in the relationship between intelligence and evidence. To this end, personnel from the office of the proposed Director of Terrorism Prosecutions should, if needed, be seconded to the staff of the NSA.<sup>85</sup>

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<sup>85</sup> See the discussion in Chapter III on the proposed Director of Terrorism Prosecutions.

### **2.3.3.9 Limits on the Role of the National Security Advisor: No Direct Budgetary or Personnel Control and Limited Operational Involvement**

Hoffman's proposals that a national security coordinator have direct budgetary control over intelligence agencies and be able to hire and fire across the intelligence community<sup>86</sup> are not appropriate in the Canadian system, given that the NSA reports directly to the Prime Minister. In the Canadian tradition of parliamentary governance, an NSA with direct access to the Prime Minister would not necessarily require formal budgetary powers or personnel powers to exercise considerable authority. Although she advocated that budgeting decisions remain at the ministerial level, Bloodworth noted that the NSA could influence budgeting and high-level personnel decisions by way of access to the Prime Minister.

There may be merit in Rudner's proposal that the NSA have access to discretionary funds that could be allocated to agencies on a strategic basis.<sup>87</sup> The NSA would act as a transfer agency and the agency receiving the funds would remain accountable through ordinary channels about how it spent the funds.

The proposed NSA should not be involved in the day-to-day operations of the police, prosecuting and intelligence agencies. The NSA may, however, need to become involved in specific cases if they raise issues of policy, coordination, the resolution of disputes between the agencies or the need to intervene as part of effective oversight.

### **2.3.3.10 International Best Practices on Central Coordination of National Security Activities**

The enhanced role for the NSA contemplated above is consistent with evolving international best practices.

In the United Kingdom, intelligence coordination is led by the Prime Minister's Security Adviser and Head of Intelligence, Security and Resilience, in the Cabinet Office. He chairs the Joint Intelligence Committee (JIC), the central agency of the government responsible for security and intelligence. The JIC has an analytical capacity and a coordinating role. The JIC does not override the decisions of the Director of the British Security Service (MIS), but has great influence.<sup>88</sup>

As in Canada, the central machinery is supported by the civil service in the form of an Intelligence and Security Secretariat, which is designed "...to ensure that the Prime Minister and other senior Ministers are well served on cross-Government

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<sup>86</sup> Testimony of Bruce Hoffman, vol. 94, December 12, 2007, pp. 12544-12545.

<sup>87</sup> Rudner Paper on Building Counter-Terrorism Capacity, pp. 138-139.

<sup>88</sup> Testimony of Martin Rudner, vol. 92, December 10, 2007, pp. 12256-12257. See also *National Intelligence Machinery*, pp. 20-27, online: Cabinet Office (United Kingdom) <[http://www.cabinetoffice.gov.uk/media/136045/national\\_intelligence\\_booklet.pdf](http://www.cabinetoffice.gov.uk/media/136045/national_intelligence_booklet.pdf)> (accessed July 28, 2009).



intelligence policy and security issues.”<sup>89</sup> As in Canada, these forms of cross-governmental central coordination mirror similar intelligence coordination at lower levels. In Canada, this integration occurs through the Integrated Threat Assessment Centre and, in Britain, it occurs through the Joint Terrorism Analysis Centre. Although both bodies are located in intelligence agencies, both also involve the police.

In December 2008, after conducting a review of its national security activities, Australia appointed an NSA within the Prime Minister’s Department with responsibilities for coordination matters. These included the training of executives in a whole-of-government approach and a more coordinated budgeting process to establish priorities across portfolios. The Australian NSA will also be responsible for an evaluation mechanism that will “...consider performance against whole-of-government outcomes in light of the priorities set out in the National Security Statement.”<sup>90</sup> Australia’s new NSA will also participate in a committee of secretaries or deputy ministers and will chair a national security intelligence coordination committee.<sup>91</sup> The Australian developments are notable because of their focus on the relationship between evidence and intelligence and the need for continuity of legal advice to both police forces and security intelligence agencies at all stages of terrorism investigations and prosecutions. The Australian developments are also notable for the role that an NSA located in the Prime Minister’s Office can play in coordinating and evaluating national security activities from a whole-of-government perspective, and in view of the government’s strategic priorities.

In the United States, the 9/11 Commission recommended greater integration of counterterrorism activities across the foreign/domestic divide as well as greater information sharing. Some of that Commission’s proposals for more central oversight of intelligence by a Director of National Intelligence (DNI) were implemented in the *Intelligence Reform and Terrorism Prevention Act* of 2004.

It is clear that democracies are seeking to improve central coordination of national security activities. To achieve this, they are drawn to the idea of having a person at the centre with the authority to ensure coordination and resolve disputes among agencies, to establish and monitor the implementation of strategic security priorities, and to assess the efficacy of increasingly complex multi-agency national security systems.

### **2.3.3.11 Summary of the National Security Advisor’s Enhanced Role**

As former RCMP Commissioner Giuliano Zaccardelli testified, there is a need for someone with the necessary credibility and stature and who is not beholden to

<sup>89</sup> “Directorate of Security and Intelligence,” online: Cabinet Office (United Kingdom) <[http://www.cabinetoffice.gov.uk/secretariats/intelligence\\_and\\_security.aspx](http://www.cabinetoffice.gov.uk/secretariats/intelligence_and_security.aspx)> (accessed July 28, 2009).

<sup>90</sup> Hon. Kevin Rudd, “The First National Security Statement to the Australian Parliament” (December 4, 2008), online: The Australian <<http://www.theaustralian.news.com.au/files/security.pdf>> (accessed July 31, 2009) [Rudd National Security Statement to Australian Parliament].

<sup>91</sup> Rudd National Security Statement to Australian Parliament.

vested interests to bring the heads of sometimes warring agencies together and "...make them work for the good of Canada."<sup>92</sup> An NSA with an enhanced role could perform that function and bring the public interest to bear on thorny issues concerning: 1) strategic national security policies and priorities, 2) coordination of national security activities, 3) dispute resolution between agencies with national security responsibilities and 4) oversight of the effectiveness of the government's national security activities.

### **Recommendation 1:**

The role of the National Security Advisor in the Privy Council Office should be enhanced. The National Security Advisor's new responsibilities should be as follows:

- to participate in setting strategic national security policies and priorities;
- to supervise and, where necessary, to coordinate national security activities, including all aspects of the distribution of intelligence to the RCMP and to other government agencies;
- to provide regular briefings to the Prime Minister and, as required, to other ministers;
- to resolve, with finality, disputes among the agencies responsible for national security;
- to provide oversight of the effectiveness of national security activities; and
- to carry out the government's national security policy in the public interest.

In carrying out these new duties, the National Security Advisor should be assisted by a Deputy and by a staff of secondees from agencies which have national security responsibilities, such as CSIS, the RCMP, the CBSA, and DFAIT. The National Security Advisor should continue to support relevant Cabinet committees and serve as Deputy Minister for the CSE, but these duties could, if necessary, be delegated to the Deputy National Security Advisor or to another official within the office of the NSA.

Measures to enhance the role of the NSA should not be delayed until the enactment of legislation on a new national security privilege.

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<sup>92</sup> Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11077-11081.

