

**Commission of Inquiry
into the Actions of Canadian Officials in Relation to Maher Arar
Policy Review**

The RCMP and National Security: Supplementary Background Paper

June 2005

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* For ease of reference, the headings in this paper correspond to those used in the RCMP and National Security Background Paper published on December 10, 2004. A full list of these headings can be found at Schedule A.

** In the RCMP and National Security Background Paper published on December 10, 2004, the National Security Investigations Branch was referred to in some places as the National Security Intelligence Branch. It should have been, in all cases, the National Security Investigations Branch (NSIB).

*** There is an acronym list at Schedule B.

The Arar Commission's original RCMP and National Security Background Paper set out a history of the RCMP's national security activities and a description of the Force's current structure and activities in relation to its national security mandate.¹ Since the RCMP Paper was published, the Commission has undertaken further research on the national security activities of the RCMP, including site visits to RCMP National Headquarters and various field offices as a result of which we have obtained significant additional information. We believe it is useful to set out some of this information in a Supplementary Paper. For ease of reference the headings in this paper correspond to those of the RCMP Paper, the index of which is included as Schedule A hereto.

B.(ii)(a) Organizational Overview

As noted in the RCMP Paper, the organization of the RCMP's national security activities has undergone significant change since September 11, 2001. Further changes have occurred since the RCMP Paper was published. For example, the Threat Assessment Section, originally part of the NSIB, has been made a separate branch that reports directly to the Director General – National Security. There are now three branches that report to the Director General: the NSIB, NSOB and the Threat Assessment Branch. The functions of the Threat Assessment Branch have not changed materially from what is set out at pages 46-47 of the RCMP Paper.²

B.(ii)(a)(1) National Security Investigations Branch

As noted in the RCMP Paper, the focus of the NSIB is to collect and analyze intelligence and to develop potential strategic and tactical approaches to national security investigations. The other major group reporting to the Director General – National Security – the NSOB – is focussed on the coordination of such investigations. The NSOB is discussed in greater detail below.

One of the major functions of the NSIB is the production of Tactical Analytical Products (TAPs). TAPs are intelligence products which make the case for the commencement of criminal

¹ That Paper was published on December 10, 2004 and is referred to herein as the "RCMP Paper".

² Given the evolving nature of the RCMP's national security function, there will undoubtedly be further changes to the Force's structure by the time any Policy Review recommendations are made. It will, therefore, be important that any recommendations made take into account a potentially fluid organizational structure.

investigations (by INSETs and NSISs). We are informed that TAPs generally contain an executive summary and identification of the criminality implicated in the matter, as well as details of all of the intelligence behind the executive summary.

The process involved in creating TAPs, begins with review and analysis of information coming into NSIB from a variety of sources. These sources include: CSIS³; Canada's allies; other police forces; other intelligence agencies; other domestic government departments and agencies⁴; and the community. This information is analysed and prioritised in a manner consistent with the priorities set by CrOps officers at the annual tactical priorities meeting. Prioritization is also informed by discussions with CSIS.

In addition to information from external sources, NSIB also relies on RCMP-generated information in preparing TAPs. On occasion, NSIB will task INSETs or NSISs to assist with the preparation of TAPs. Information, in addition to that provided without request, will also be requested from domestic and foreign agencies. For example, we are informed that in the past the RCMP has tasked the CSE by identifying individuals overseas on whom more information is required.

Once a TAP is complete, it is either shelved or a decision is made to proceed with a tactical project. In the latter case, the file is delivered to the NSOB for coordination and oversight of any investigation. We are informed that the complexity and scope of a TAP determines who, within the RCMP, is responsible for authorizing release of the TAP to the field. In cases where that TAP is extensive and will likely require significant investment of resources to investigate, a presentation of the TAP will be made to the Director General National Security, and in some cases the Assistant Commissioner CID, whose authority is required to approve release to the appropriate Divisions for investigation. In the case of such TAPs, the transfer of the package to a field unit also entails holding a meeting with all implicated units including the Division Criminal Operations Branch and the INSET/NSIS commander. In instances where the TAP is not complex and does not appear to be resource-intensive, the TAP will be forwarded for follow-up investigation to a Division with the approval of the Officer in Charge (OIC) NSIB. We are also

³ CSIS is responsible for approximately 30% of the information coming into NSIS.

⁴ Including the CSE, DND, CIC, FINTRAC, FAC, DOJ and CBSA.

informed that in the majority of cases, the TAP or portions of it are shared with CSIS, as they are partners in the development of the TAPs.

In addition to the production of TAPs, NSIB is also involved in the day-to-day flow of national security information within the RCMP. A significant portion of national security information comes into the RCMP through NSIB. While this information may be used in the production of TAPs, it is also necessary for a significant portion to be directed to the field, even before any TAP is produced. NSIB is the primary contact within the RCMP for intelligence agencies with information to pass on.

A third area of responsibility for NSIB is answering requests for information from entities outside the RCMP. Requests from intelligence agencies and other government departments, both domestic and foreign, are directed to NSIB. Requests from police agencies are generally directed through NSOB. We are informed that, with the exception of CSIS and CSE, only a limited amount of information and intelligence is provided by NSIB to non-police agencies. This information flow to other non-police agencies is limited largely because of the *Privacy Act* requirement that police agencies such as the RCMP are generally only free to disclose information under the consistent-use disclosure and law-enforcement disclosure exceptions under the *Act*.

The final main area of responsibility for NSIB is the briefing of senior members of the Force on issues related to national security.⁵

B.(ii)(a)(2) National Security Operations Branch

The primary focus of the NSOB is the coordination of national security investigations across Canada. It has the responsibility to provide Headquarters' approval of all national security investigations undertaken by INSETs and NSIS.⁶ This includes an intake responsibility in

⁵ There are two additional points worth noting that arose from our NSIB interviews: (i) the Anti-Terrorist Financing Group located within NSIB is the main entry point for information coming from FINTRAC; (ii) the major focus of the Critical Infrastructure Intelligence Section (also within NSIB), is potential hacking into critical computer systems and databases.

⁶ INSETs, as set out in detail in the RCMP Paper, are integrated teams that carry out national security investigations. INSETs are located in Vancouver, Toronto, Ottawa and Montreal. RCMP Divisions which do not have INSETs have National Security Investigation Sections (NSIS) which carry out the

respect of work originating from NSIB and from other sources both internal and external to the RCMP. Work comes into the NSOB in a variety of ways. We are informed that the TAPs produced by NSIB, discussed in the previous section, represent the genesis of approximately 10% of the files which NSOB oversees. Other files are commenced as a result of information coming in from other sources both within and outside the RCMP.

When information comes into NSOB, it is initially assessed by either the OIC or the Operations NCO. They first determine whether or not the information involves criminality or potential criminality. If no criminality or potential criminality is apparent, the matter may be referred to CSIS. There are matters where criminality may be expected at the outset, but further investigation leads to the conclusion that there is no criminality. We are informed that in these circumstances the investigation stops and the information obtained may be handed over to CSIS. We are further informed that such information nevertheless remains on the SCIS database until it is deleted in the normal course. The second issue decided at the outset is whether the information relates to national security. Again, this is not always a permanent determination. As discussed in the RCMP Paper, national security crimes overlap with many other forms of criminal behaviour. We are informed that if there is a deemed national security link, a file is treated as a national security file and all national security policies and procedures apply, even if the investigation is being conducted by officers outside of an INSET or NSIS. If it is ultimately determined that there is no deemed national security link, the investigation is stopped or handed over/back to another area within the RCMP or another police agency. We are informed that a determination of what is or is not national security is guided by the *Security Offences Act* and the *Criminal Code*.

If the OIC or the Operations NCO decides to open an investigation on the basis of information received, that file is assigned to a reviewer within the NSOB. The reviewers play a pivotal role within NSOB. At the time we met with NSOB, there were a total of twelve reviewers and the goal was to have twenty. The reviewer is the Headquarters' coordinator of the national security investigations in his/her portfolio. We are informed that unless an investigation is open and shut⁷, virtually all national security investigations handled by the RCMP are assigned an NSOB

same function, but are not integrated with other police agencies or government departments. See further discussion below.

⁷ i.e. an investigation that lasts a very short time.

reviewer. The reviewer's job includes: coordinating the flow of information between Headquarters and the field officers assigned to the matter; finding specialized resources within the RCMP to support the file; interacting with domestic and foreign police agencies⁸; interacting with CSIS; interacting with RCMP liaison officers abroad; and ensuring that RCMP policies and procedures, including national security policies and procedures, are followed. Part of the role is also to make sure that all RCMP investigations with a deemed national security nexus (ie. even those that originate or continue to be investigated outside of INSETs or NSISs) are coordinated through Headquarters.

The NSOB is also responsible for oversight of information sharing with domestic police agencies. We are informed that while exchanges of information can happen at the field level, especially in cases where RCMP personnel are co-located with other police agency personnel,⁹ when this is done, NSOB is to be kept advised of all such exchanges. We are further informed that in such cases the INSET officer in charge is responsible for approval of information exchanges. We are informed that because of their interaction with RCMP Liaison Officers abroad, NSOB has also been involved in sharing information with foreign police agencies through the Liaison Officer. We are informed that the approval for such information exchanges goes through NSOB. As noted above, cases of information exchanges with foreign intelligence agencies are approved by NSIB.

B.(iii)(a)(4) National Security Investigation Sections, Integrated National Security Enforcement Teams, and other Integrated Teams

Commission staff visited and met with personnel from O-INSET, the Toronto IBET and the Windsor IJET.

O-INSET

O-INSET is located in suburban Toronto and has jurisdiction across Ontario with the exception of the National Capital Region. As noted in the RCMP Paper, in addition to RCMP members,

⁸ As noted below, in the case of domestic police agencies, information sharing is often direct, at least as between INSETs and the domestic police agency.

⁹ As discussed elsewhere in the RCMP Paper and this Supplementary Paper, RCMP national security personnel often share office premises with other national security actors. See discussion in relation to INSETs, IBETs and IJETs.

members of other agencies are seconded to INSET. In the case of O-INSET these include (or have included) the Ontario Provincial Police, Toronto Police Service, York Regional Police, Durham Regional Police, Peel Regional Police, CSIS and CBSA. As of August 2004, O-INSET included 53 regular RCMP members, two RCMP civilian members and 22 secondees from other agencies and RCMP units.¹⁰ In addition, both the Ontario Provincial Anti-Terrorism Section (PATS) and representatives of the Attorney General for Canada and the Attorney General of Ontario are co-located within O-INSET. The O-INSET is also co-located with the Combined Forces Special Enforcement Unit (CFSEU) the mandate of which centers around organized crime. This co-location facilitates communication between the two entities. We are informed that if a national security emergency, such as 9/11, were to occur with the result that significant additional personnel are required to fulfill the RCMP's national security role, CFSEU is a likely source of such personnel. It is anticipated that the increased communication arising from co-location would make the transition run more smoothly than if personnel who had no knowledge whatsoever of the operations of INSET were deployed.

As noted in the RCMP Paper, the focus of INSETs is on the investigation of national security crimes. In the most recent calendar year, there were approximately 1,174 new files opened by O-INSET.¹¹ In addition, there were 12 major projects and 9 mini-crises. Projects are major investigations reflecting the RCMP's national tactical priorities as determined by the CrOps officers. Mini-crises are short term emergencies. O-INSET cited the threat to bomb an EI AI flight destined for Toronto in 2003 as an example of a mini-crisis.

The O-INSET has a centralized input coordination function. We are informed that all external tasking comes through the O-INSET Intake Officer (IO). As is the case with intake at NSOB, two initial determinations are made by the IO: first, whether there is a sufficient national security nexus; and second, whether there is a sufficient criminal nexus. Tasks that do not meet these

¹⁰ We were informed that the term "secondee" may not be appropriate in the circumstances of most individuals assigned to INSET from other agencies. Those personnel from partner agencies who are intended to remain in INSET for a longer period of time have actually been "transferred" to INSET. Such transfers are generally for a period of three to five years. These personnel are considered to be INSET "assets". It is, however, our understanding that while "transferred" personnel report up through the INSET chain of command, they are most often paid by their home agencies and are subject to the disciplinary requirements of those home agencies. In addition, the INSET partner agencies also provide short-term personnel to INSET on a one-off, as-needed basis. O-INSET preferred to refer to only this latter type of personnel as "seconded".

¹¹ In 2003 1,123 new files were opened.

criteria are rejected, or sometimes in the case of an insufficient criminal nexus, are sent directly by the IO to CSIS.

A large volume of external tasking comes to O-INSET through the NSOB. As such, a significant amount of screening for the above noted criteria will have been completed before the matter arrives at O-INSET. Such tasking includes requests for assistance from foreign agencies. We are informed by the RCMP that all requests for assistance from foreign agencies (even those that can be classified as "life and death") must go through RCMP National Headquarters. When a foreign agency contacts INSET directly, we are advised that they are referred to RCMP National Headquarters.

Information which may lead to the commencement of a national security investigation may also come to the IO from other domestic police agencies. In this case as well, the IO makes the decision about whether the INSET will take on the work. In such cases, NSOB will be notified of the matter as soon as a file is generated. If only a discreet piece of information is passed to the INSET which does not involve further investigation by the INSET, or if any such investigation is minimal, NSOB may be notified by the uploading of the information to SCIS. As an example, we were given a hypothetical of a telephone call reporting an envelope found containing an unidentified white powder. The investigation of such a matter may be completed before any file is formally opened. In such cases, pre-approvals for the investigation are not obtained from NSOB but NSOB is notified contemporaneously with the investigation.

Information received by INSET from the public, and information obtained by INSET officers in the course of their investigation about matters not related to their files, is also screened through the IO before further action is taken by INSET. In addition, we are informed that the IO reviews reports such as the Canadian Police Information Centre printouts of virtually all crimes reported to see if any may have a national security nexus.¹²

The IO also monitors investigations in other areas¹³ to see if there is a national security nexus. We are advised that, if there is a deemed national security link, INSET becomes involved.

¹² We are informed by the O-INSET IO that he pays special attention to crimes such as the theft of explosives and may do further investigation to determine whether there is a national security nexus.

¹³ For example in the Organized Crime section.

Whether the file is moved to INSET, or INSET officers work with the originating department, will depend on the nature of the national security link. We are informed, however, that in all such cases full reporting on the file would take place through INSET to NSOB and that all national security policies and procedures will apply.

The work of O-INSET is roughly divided into 'day-to-day investigations' and 'long-term projects'. The day-to-day investigations can be further divided into short-term investigations and mini-crises. In the former category, the matter will usually be handled by a member of O-INSET's Quick Response Team. For mini-crises and in exigent circumstances, decisions may need to be made on the spot, and we are informed that there may not always be time for "formal" approval from RCMP Headquarters before work begins. Nonetheless, in such circumstances, both Headquarters and Division Criminal Operations Branch are notified immediately of any action taken. In addition, both are kept apprised of developments and we are informed that subsequent reviews and approvals are sought as soon as possible.

Longer term projects involve a more formalized approval process. Such projects begin with strategic analysis of criminal intelligence. The analyses focus on emerging trends such as what groups or entities appear to be involved in national security or criminal behaviour. These strategic analyses are sent to RCMP Headquarters as part of the priority-setting process. The strategic priorities are set by Headquarters in Ottawa in the spring of each year. Work continues on strategic priorities until such time that the investigation stops or the matter becomes a tactical priority. Tactical priorities are set in the fall of each year. When a matter becomes a tactical priority, the object of the investigation becomes disruption of the criminal activities and/or the laying of criminal charges. Both strategic and tactical priorities are ultimately determined by the Division Criminal Operations Branch¹⁴. We are informed that Division Criminal Operations Branch is the first line of reporting and approval before undertaking a major investigation. The Division Criminal Operations Branch reviews the investigative plan to

¹⁴ This process is much the same as that undertaken by NSOB in Ottawa in the preparation of TAPs. The work undertaken by NSIB also feeds into the setting of tactical priorities by ensuring that the Divisional Criminal Operations Branch is apprised of all the information in order to set the tactical priorities. Once the tactical priorities are set then the development of TAPs are based on these tactical priorities. The gathering of information and development of intelligence will be directly in line with both the strategic priorities and tactical priorities. For example, if Individual "A" is being designated a tactical priority, he or she will be a primary focus of a TAP if it is required. It should be noted that not all Tactical Priorities will require TAPs as some may be under active investigation when designated as a Tactical Priority.

ensure it complies with policy and procedure, then forwards the plan with its support and approval to NSOB where it is subjected to a further review with the ultimate authority being the Assistant Commissioner in charge of CID.

Both strategic and tactical priorities involve investigation and the collection of information. While prosecution of criminals is a goal, not all information collected meets the criteria of evidence. Regardless, all such information remains in SCIS until detected in the ordinary course.

While not the usual course, O-INSET has conducted a single joint investigation with the FBI. In addition, there have been occasions where the FBI or other law enforcement partners have conducted criminal investigations involving subjects that the RCMP is also investigating. We are informed that in those cases, information was shared and the two agencies cooperated. On one occasion FBI personnel attended in Toronto as observers in an investigation due to the alleged threat to American interests. We are informed that in all cases, these investigations were centrally coordinated.

O-INSET also has its own Source Development Unit. The Source Development Unit is tasked by members of INSET, who identify the need for a human source. Once the source has been developed by the Source Development Unit, he/she is handed over to the investigating officers who require the source. As noted in the RCMP Paper, the Headquarters' role in source development is one of oversight and development of source development policies.

We are informed that all information obtained by officers transferred to the INSET from other agencies, is not to go back to that other agency except through normal national security channels.

O-INSET also includes a Special Operations Center (SOC). This is a technologically advanced room with video screens on the walls and five or six rows with numerous computer stations at each row. The SOC is available for monitoring/coordinating major events such as the EI Al incident referred to above, or the visit to Toronto of a foreign dignitary. The computer stations available at each row in the SOC are for each of the INSET partners. These stations provide access to their respective home networks. None of the terminals has SCIS access. There are three O-INSET offices in the SOC with access to SCIS. One of these offices also has links to

Canadian Embassies and High Commissions abroad. While foreign agencies do not have stations within SOC, they can be electronically connected into the SOC as necessary.

IBET

IBETs were identified in the RCMP Paper as having a significant role in the RCMP's national security mandate. On the basis of our visit to the Windsor IBET, it appears at the present time that IBETs do not have a significant national security role. While IBETs feature prominently in the Manley-Ridge Accord, and while national security is a clear part of their mandate, their focus, at the present time, is more on the illegal movement of goods and individuals across the Canada-US border. The focus of the IBETs is on border enforcement between official ports of entry.¹⁵

IBETs currently play a support role in the RCMP's national security activities in conjunction with INSETs. Currently, the IBET operates as a type of eyes and ears for INSETs at the border. Any information which an IBET identifies as related to national security is passed to an INSET. In addition, members of an IBET are available to be tasked by an INSET. In the case of the Windsor IBET and O-INSET, such tasking has occurred from time to time. O-INSET has taken the lead on such matters, and we are informed that all national security policies and procedures have applied.

IBET is made up of the following core partners: the RCMP, CBSA, U.S. Immigration and Customs Enforcement, U.S. Coast Guard and U.S. Customs and Border Protection. The Windsor IBET also has one OPP secondment. In addition, O-INSET has two personnel who are co-located with the Windsor IBET. The core partners are not integrated as a team in the same way that INSETs are. For example, we are advised that partner personnel will not go out on an investigation with RCMP officers. Each partner has his/her own office and works independently of the others. The primary purpose of the co-location is to facilitate information sharing.

One of the O-INSET officers co-located at the IBET reviews IBET activity reports to see if anything of interest from a national security perspective arises. This information is reported

¹⁵ The CBSA is responsible for border enforcement *at* the ports of entry.

back to O-INSET.¹⁶ We are advised that access to SCIS or other national security information is through INSET only.

In addition to an operations or investigatory side, IBET also has an intelligence section. IBET is involved in the creation of two intelligence products: a monthly IBET Division Report; and an Annual Canada-U.S. Between-Ports Risk Assessment (BPRA). The monthly Division Report takes raw information obtained by IBET and processes it into intelligence. Its purpose is to establish patterns of criminal activity and to prioritize those individuals and organizations involved in criminal activities that would be of serious consequence in the community. The focus of the Report is on the illegal movement of goods and people. We are informed that the Report contains protected information but does not contain any national security or top secret information. The monthly Divisional Report is primarily prepared for IBET use but we are informed that it is funnelled through RCMP divisional intelligence into a divisional monthly intelligence report.

The BPRA is compiled through IBET's core partners and other law enforcement agencies. It profiles criminal activity in terms of geography, demographics, infrastructure, roots and the criminal organizations involved. Again we are informed that the primary purpose of the BPRA is the identification of risks associated with the illegal movement of goods and people across the border. We note, however, that our review of a BPRA disclosed that it included national security information, including information about suspects and possible links to terrorist groups. We were told that this information was supplied by INSET, but was not considered to be top secret. The BPRA is distributed to the IBET's core partners in Canada and the U.S.¹⁷ IBET partners meet regularly to exchange information. We are told that no national security information is shared at these meetings.

IIET

¹⁶ It was noted that there are different definitions of national security. For example, some on the U.S. side consider all illegal aliens to be threats to national security. This definition results in a much greater national security role for IBET.

¹⁷ We are informed that in addition to the core partners, the 2004 BPRA was sent to the following agencies: United States Department of Justice; Michigan State Police; Canadian Pacific Police; Ontario Provincial Police; and the Walpole Island Police Chief.

The Commission also visited the Toronto IJET. The Toronto IJET was co-located with the RCMP's Immigration Task Force (ITF). The majority of work done by the IJET was immigration warrant apprehension. This work was driven by CBSA which passed files on to both the IJET and the ITF. In the context of this work, IJET supported INSET by passing on to INSET any relevant information found in the CBSA files or in the course of the warrant apprehension work. INSET officers were free to take over any investigation that had a deemed national security nexus. It was also possible for IJET to continue working on such files under the supervision of the INSET.

In regard to the warrant apprehension cases, IJET received a CBSA file with a significant amount of information on the individual involved. The file was reviewed and all national security information was provided to INSET. We are informed that IJET officers did not have access to SCIS or any other national security information in connection with the warrant apprehension cases.

It was envisioned that IJET would eventually have its own national security projects,¹⁸ but to date this has not happened. It was also open for INSET to task IJET in a national security investigation. This has happened, but only rarely.

We are recently informed that as of April 1, 2005, the RCMP redeployed the IJET resources to the INSETs. As a result, IJETs no longer exist. We are informed that ITF, which consists of RCMP and CBSA personnel, continues to focus on immigration warrant apprehensions and supports INSET as required.

¹⁸ Projects related to passport fraud schemes were cited as a possible example.

SCHEDULE A

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SCHEDULE B

ACRONYMS

ACRONYM	DEFINITION
BPRA	Between-Ports Risk Assessment
CBSA	Canada Border Services Agency (Canada)
CFSEU	Combined Forces Special Enforcement Unit
CIC	Citizenship and Immigration Canada
CID	Criminal Intelligence Directorate
CrOps	Criminal Operations Officers
CSE	Communications Security Establishment (Canada)
CSIS	Canadian Security Intelligence Service (Canada)
DND	Department of National Defence (Canada)
DOJ	Department of Justice (Canada)
FAC	Foreign Affairs Canada
FBI	Federal Bureau of Investigation (U.S.)
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
IBET	Integrated Border Enforcement Team
IJET	Integrated Immigration Enforcement Team
INSET	Integrated National Security Enforcement Team (Canada)
IO	Intake Officer
ITF	Immigration Task Force
NCO	Non Commissioned Officer
NSIB	National Security Investigations Branch
NSIS	National Security Investigation Section
NSOB	National Security Operations Branch
O-INSET	INSET located in Toronto

OIC	Officer in Charge
OPP	Ontario Provincial Police (Canada)
PATS	Provincial Anti-Terrorism Section (Ontario)
RCMP	Royal Canadian Mounted Police (Canada)
SCIS	Secure Criminal Information System
SOC	Special Operations Center
TAP	Tactical Analytical Product