

**Commission d'enquête  
sur les actions des  
responsables canadiens  
relativement à Maher Arar**



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

**Audience publique**

**Public Hearing**

**Commissaire**

L'Honorable juge /  
The Honourable Justice  
Dennis R. O'Connor

**Commissioner**

**Tenue à:**

Centre des conférences du gouvernement  
Salle Annexe  
2, rue Rideau,  
Ottawa (Ontario)

le lundi 21 juin 2004

**Held at:**

Government Conference Centre  
Annex Room  
2 Rideau Street  
Ottawa, Ontario

Monday, June 21, 2004

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Mr. Emelio Binavince	Minority Advocacy and Rights Council
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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Monday, June 21, 2004

3 at 10:00 a.m. / L'audience débute le lundi

4 21 juin 2004 à 10 h 00

5 THE COMMISSIONER: You may  
6 sit down.

7 We will wait a couple of minutes,  
8 Mr. Cavalluzzo, while cameras are taking pictures.

9 --- Pause

10 MR. CAVALLUZZO: Before we start  
11 this morning I thought that I would introduce  
12 counsel to you.

13 THE COMMISSIONER: Please do.

14 MR. CAVALLUZZO: With me, as you  
15 know, is Commission counsel, Marc David. With us  
16 today there will be Adela Mall and Veena Verma.  
17 In the front row to your right is Mr. Arar's  
18 counsel, Mr. Lorne Waldman, Ms Parnes and  
19 Ms Davies.

20 THE COMMISSIONER: Good morning.

21 MR. WALDMAN: Good morning.

22 MR. CAVALLUZZO: Government  
23 counsel today will be Ms McIsaac and Mr. Baxter.

24 THE COMMISSIONER: Good morning.

25 MR. CAVALLUZZO: Ms McIsaac, I

1 don't know if you want to introduce the counsel  
2 behind you.

3 MS McISAAC: That's fine.

4 MR. CAVALLUZZO: Thank you.

5 I thought this morning at the  
6 beginning I would give somewhat of a brief road  
7 map as to where we are headed in the next three  
8 days and weeks in respect of this public inquiry.

9 This morning and for the next  
10 couple of days, indeed on June, 22nd, 23rd, and  
11 30th, we are going to be hearing from contextual  
12 witnesses, beginning today with Mr. Ward Elcock  
13 who is the former Director of CSIS.

14 Tomorrow we will be hearing from  
15 the Assistant Director of CSIS, Mr. Hooper; and on  
16 Wednesday we will be hearing from Mr. Sigurdson,  
17 who is a representative of DFAIT, Department of  
18 Foreign Affairs and he is the head of the Consular  
19 Division.

20 Next week, on June 30th we will  
21 hear from the RCMP and we will be hearing from  
22 Deputy Commissioner Garry Loepky.

23 If we do not complete the  
24 contextual evidence in respect of the  
25 cross-examinations and so on, we will continue on

1 July 6th, so I would ask counsel to hold that date  
2 open in case this contextual evidence is not  
3 completed.

4 On July 5th, as you know, we will  
5 be hearing a motion from Mr. Arar in respect of  
6 the disclosure of certain information and  
7 documents.

8 After that motion, two weeks later  
9 on July 19th, we will start what I call the Arar  
10 evidence. Our first witness will be Monia Mazigh.

11 We will be hearing evidence for  
12 two weeks, the week of July 19th and the week of  
13 July 26th, and then we will be taking a break and  
14 resuming after Labour Day, which is September 7th  
15 or thereabouts.

16 In the month of August and the  
17 early part of September, the Commission counsel  
18 will be reviewing further government documentation  
19 at this time. We will have received thousands of  
20 documents which we have reviewed and which the  
21 government has redacted and we will be discussing  
22 a process in order to try to expedite the hearings  
23 in light of the nature of some of the evidence  
24 which may have to be heard in camera because of  
25 its content in respect of its national security



1           confidentiality.

2                           This morning, at the beginning I  
3 will be giving a very brief overview of the legal  
4 framework as well as the structural framework  
5 surrounding national security in Canada and then,  
6 hopefully in an hour or so, we will be hearing  
7 from our first witness, Mr. Ward Elcock.

8                           What I intend to do, I intend to  
9 complete my overview by about quarter to 11:00 or  
10 10 to 11:00. We shall break to give Mr. Elcock  
11 time to come and place himself in the witness box.  
12 We shall commence his evidence around 11 o'clock.

13                           Before commencing with the  
14 overview, you should have before you a large  
15 binder with the opening statements, which have  
16 been filed both by the parties and the  
17 intervenors.

18                           THE COMMISSIONER: Yes, I do. I  
19 have that.

20                           MR. CAVALLUZZO: I thought we  
21 might file that as an exhibit, as a bundle. As  
22 you can see, at the beginning of the volume it is  
23 appended with numbers, and so on. If we perhaps  
24 file that as the first exhibit.

25                           THE COMMISSIONER: Exhibit 1.

1 EXHIBIT NO. P-1: Opening  
2 Statement Binder

3 MR. CAVALLUZZO: When we hear from  
4 Mr. Elcock there are a few other documents that I  
5 will be giving you.

6 That brings us to the overview.  
7 You should have a copy of that in front of you and  
8 I am going to briefly take you through it.

9 For the parties and the  
10 intervenors, this is an attempt by Commission  
11 counsel to give a fairly broad overview not only  
12 of the legislation but of the organizational and  
13 structural framework which applies to the national  
14 security environment in Canada today. If there  
15 are any comments in respect of the legislation or  
16 anything indeed that we have in this memorandum,  
17 we would be pleased to hear from you and, if  
18 necessary, we will incorporate those changes.

19 The overview is really divided  
20 into three parts. The first deals with the  
21 legislative framework in Canada today.

22 Secondly, we will look at the  
23 framework of the international law which might be  
24 applicable to the facts brought before you in this  
25 public inquiry.

1                   The third part deals with the  
2                   organizational or structural framework for  
3                   national security in Canada today.

4                   Now, if I could briefly refer to  
5                   the legislative framework in Canada, the first  
6                   legislation that I will refer to is the  
7                   Anti-Terrorism Act, or otherwise known as  
8                   Bill C-36, which was an extensive response by the  
9                   federal government to the events of September 11,  
10                  2001.

11                  It was introduced into Parliament  
12                  on or about October 15, 2001 and received Royal  
13                  Assent on December 18, 2001.

14                  During the period, you may recall,  
15                  between October 15th and December 18, 2001 there  
16                  was a great deal of public debate within Canada,  
17                  in respect of these provisions and, as you will  
18                  see, there was some response from Parliament and  
19                  from the government to these comments made by  
20                  different segments of the public.

21                  The point that I would refer to  
22                  initially is the comment of the federal government  
23                  which is quoted on page 1, wherein they state:

24                                 "A key he element of Canada's  
25                                 Anti-Terrorism Act is

1 prevention. The focus on  
2 prevention is something of a  
3 cultural shift for our law  
4 enforcement community. It  
5 places the is the emphasis on  
6 the collection of  
7 intelligence, rather than the  
8 investigation of crimes that  
9 have already occurred."

10 As you will see, this will be a  
11 recurring theme throughout this public inquiry,  
12 and that is the differences between police work or  
13 law enforcement work and the collection of  
14 security intelligence.

15 Bill C-36 amended numerous pieces  
16 of legislation including the Criminal Code, the  
17 Official Secrets Act and the Canada Evidence Act.  
18 In the next few pages we have summarized the  
19 impact of each of the parts of Bill C-36 and I  
20 will highlight some of them.

21 Part 1 of Bill C-36 amends the  
22 Criminal Code to implement a number of  
23 international conventions which are related to  
24 terrorism. It creates offences related to  
25 terrorism, including financing of terrorism and

1 the participation, facilitation and carrying out  
2 of terrorist activities, and it provide a means by  
3 which property belonging to terrorist groups or  
4 properly linked to terrorist activities can be  
5 seized, restrained or forfeited.

6 In respect of those changes to the  
7 Criminal Code we commence, at page 3, describing  
8 the important changes.

9 Really, the first change which we  
10 should be aware of is the definition of "terrorist  
11 activity" which is defined as:

12 "... an act or omission that  
13 takes place..."

14 And this is important:

15 "...either within or outside  
16 Canada..."

17 Then the first part:

18 "...that is an offence under  
19 one of the ten United Nations  
20 (UN) anti-terrorism  
21 conventions or protocols."

22 In the legislative materials you  
23 will see Bill C-36 which sets out those 10 United  
24 Nation conventions.

25 The important definition of

1 "terrorist activity" is found as well on page 3.

2 Once again:

3 "A `terrorist activity' may  
4 also include an act or  
5 omission, within or outside  
6 of Canada..."

7 Which is somewhat of a departure  
8 from our criminal law. Another departure is the  
9 first paragraph, which is:

10 "...committed for the political,  
11 religious or ideological purpose,  
12 objective and cause,"

13 So that now we are interested in  
14 motivation, which sometimes we aren't in the  
15 criminal law.

16 It goes on:

17 "...with the intent of  
18 intimidating the public with  
19 regard to its security,  
20 including economic security,  
21 or compelling a person,  
22 government, or a domestic or  
23 an international organization  
24 to do or to refrain from  
25 doing any act, and

1 intentionally causes death,  
2 seriously harms or endangers  
3 a person, causes substantial  
4 property damage that is  
5 likely to seriously harm  
6 people, or causes a serious  
7 interference with or  
8 disruption of an essential  
9 service, facility or system."

10 That last part, the interruption  
11 or disruption of essential services created a  
12 great deal of debate and in response to that  
13 debate the following sentence was added:

14 "Interfering with or  
15 disrupting an essential  
16 service is not a terrorist  
17 activity if it occurs as a  
18 result of advocacy, protest,  
19 dissent or stoppage of work  
20 that is not intended to harm  
21 or endanger a person or pose  
22 a serious risk to health and  
23 safety."

24 As well there is an interpretive  
25 clause which is important, which can be found at

1 the bottom of the page, which states:

2 "Under this definition ... an  
3 expression of political,  
4 religious or ideological  
5 thought, belief or opinion  
6 alone is not a `terrorist  
7 activity', unless it is part  
8 of larger conduct that meets  
9 all of the requirements of  
10 the definition of `terrorist  
11 activity'."

12 Mr. Commissioner, that is another  
13 recurring theme that we will see throughout this  
14 inquiry, and that is the tension or the balance  
15 between protecting national security and at the  
16 same time protecting civil liberties. We will be  
17 coming to that throughout this inquiry.

18 A "terrorist group" is also  
19 defined and has two important aspect. One, it is"  
20 "an entity that has as one of  
21 its purposes or activities  
22 facilitating or carrying out  
23 any terrorist activity, or  
24 a listed entity as defined in  
25 s. 83.05 ... and includes an



1                                    association of such  
2                                    entities."

3                                    At this particular time in respect  
4                                    of the listed entities, there are 35 such entities  
5                                    which are listed in the regulations. As is noted  
6                                    in the overview, 25 of the 35 listed entities are  
7                                    described as Islamic or Muslim extremist groups.

8                                    Terrorism offences. I won't be  
9                                    going much beyond this, but terrorism offences is  
10                                   very important as well because it includes:

11                                   "...an indictable offence  
12                                   under any Act of Parliament  
13                                   that is done for the benefit  
14                                   of, at the direction of, or  
15                                   in association with a  
16                                   terrorist group;  
17                                   where the act or omission  
18                                   constituting the offence also  
19                                   constitutes a terrorist  
20                                   activity."

21                                   So those are the important  
22                                   definitions which have now become part of the  
23                                   legal framework in Canada.

24                                   The other important aspects I will  
25                                   point to you but without going into them:

1           Financing of Terrorism. That is a very important  
2           issue. That implements a number of UN  
3           conventions, as you will see.

4                           The List of Entities is referred  
5           to at page 5.

6                           There are a number of other  
7           aspects to the new legislation in respect of  
8           Freezing of Property, Seizure and Restraint of  
9           Property, Forfeiture of Property.

10                           At page 7 we expand on the new  
11           offence of Participating, Facilitating,  
12           Instructing and Harboring terrorist groups.

13                           And I would like to spend a few  
14           minutes on two important aspects of Bill C-36  
15           which are part of the machinery now that  
16           government has to deal with terrorism.

17                           The first is what is referred to  
18           as an Investigative Hearing, and that is defined  
19           and described at page 8 of the memorandum.

20                           You will see that:

21                                   "Sections 83.28 and 29  
22                                   provide for a procedural  
23                                   mechanism to gather  
24                                   information about terrorism  
25                                   offences from persons with

1 knowledge. A peace officer,  
2 on the consent of the  
3 Attorney General, may apply  
4 ex parte to a judge for an  
5 order that requires  
6 individuals with information  
7 relevant to an ongoing  
8 investigation of a terrorist  
9 offence to appear before a  
10 judge and provide that  
11 information."

12 The conditions which the judge has  
13 to be satisfied with in terms of allowing the  
14 government access to this investigative hearing  
15 are twofold.

16 One:

17 "there are reasonable grounds  
18 to believe that a terrorism  
19 offence has been committed,  
20 and information about the  
21 offence, or the whereabouts  
22 of the suspected perpetrator,  
23 is likely to be obtained as a  
24 result of this order."

25 Or there are reasonable grounds to

1 believe that a terrorism offence is about to be or  
2 will be committed.

3 The important aspect of this new  
4 mechanism which created a great deal of debate is  
5 that:

6 "The person named in the  
7 order has the right to legal  
8 counsel, but must answer  
9 questions and produce things  
10 as required by the order,  
11 subject only to claims of  
12 privilege or  
13 non-disclosure ..."

14 Importantly:

15 "The person has no right to  
16 refuse to answer questions or  
17 produce things on the ground  
18 of self-crimination, but such  
19 information cannot be used in  
20 current or future criminal  
21 proceedings against the  
22 person, except ... for  
23 perjury ..."

24 The other new mechanism that I  
25 will refer to is referred to as preventative

1           arrest or recognizance with conditions.

2                            "These provisions relate to  
3                            powers of 'preventative  
4                            arrests'. Section 83.3  
5                            allows a provincial judge to  
6                            require a person to enter  
7                            into a recognizance to  
8                            prevent a 'terrorist  
9                            activity' from being carried  
10                           out. With the consent of the  
11                           Attorney General a peace  
12                           officer who  
13                           - believes on reasonable  
14                           grounds that a terrorist  
15                           activity will be carried out;  
16                           and  
17                           - suspects on reasonable  
18                           grounds that the imposition  
19                           of a recognizance with  
20                           conditions on a person, or  
21                           the arrest of a person, is  
22                           necessary to prevent the  
23                           carrying out of the terrorist  
24                           activity,  
25                           may lay an information under

1                   oath before a provincial  
2                   court judge. The judge may  
3                   then compel the person named  
4                   to appear before the judge."

5                   So these are two significant  
6                   amendments to the Criminal Code, and because of  
7                   their significance you will see that:

8                   "Pursuant to section 83.31,  
9                   the federal and provincial  
10                  Attorney Generals are  
11                  required to report annually  
12                  on the use of the  
13                  investigative hearing and  
14                  preventative arrest  
15                  provisions."

16                  Both provisions are subject to a  
17                  renewable five-year sunset provision under 83.32.

18                  There are other provisions in the  
19                  Code that have been amended that had we refer to.  
20                  Wiretapping, for example, we describe at pages 10  
21                  and 11, and others as well that we really don't  
22                  have the time to expand on this morning.

23                  Another important change, though,  
24                  that we should look at is Bill C-24 which is  
25                  described at page 12.

1                   As you know, police officers  
2           investigating crimes such as smuggling of  
3           contraband, and so on and so forth, and  
4           international terrorism, use a variety of  
5           techniques, including on occasion committing  
6           offences to infiltrate, destabilize and dismantle  
7           these operations.

8                   What Bill C-24 does is it  
9           strengthens the ability of law enforcement  
10          officers and prosecutors to fight organized crime  
11          by amending the Code and establishing an  
12          accountability process to protect law enforcement  
13          officers from criminal liability when they commit  
14          certain acts that would otherwise be considered  
15          illegal during the course of the criminal  
16          investigation.

17                   That important accountability  
18          process is referred to in the final paragraph  
19          wherein it states that such public officers who  
20          commit these offences have to file a written  
21          report and annual reports.

22                   So there is that accountability  
23          mechanism to deal with contraventions of the law.

24                   Coming back to the opening parts  
25          of the framework, you will see that -- this is at

1 page 2 -- coming to Part 2 of Bill C-36, Part 2  
2 amends the Official Secrets Act, which now becomes  
3 something called the Security of Information Act.

4 "It addresses security  
5 concerns, including threats  
6 of espionage by foreign  
7 powers and terrorist groups,  
8 economic espionage and  
9 coercive activities against  
10 all persons in Canada. It  
11 creates new offences to  
12 counter intelligence-  
13 gathering activities by  
14 foreign powers and terrorist  
15 groups, as well as other  
16 offences --"

17 The description of what the new  
18 legislation does can be found at page 15 of the  
19 memorandum.

20 The important parts of the  
21 Security of Information Act, which as said before  
22 used to be called the Official Secrets Act, can be  
23 found at the bottom of the page where we describe  
24 that:

25 "Instead of referring to



1 'classified information', the  
2 new Act uses the phrase  
3 'information that the  
4 Government of Canada is  
5 taking measures to  
6 safeguard'.

7 Section 8 defines special  
8 operational information. That can be found at  
9 page 16.

10 It is interesting to see that the  
11 criteria which are set out in this definition of  
12 special operational information is very similar to  
13 the kinds of principles that you will have to look  
14 at in respect of hearing matters in camera.

15 For example, the first part talks  
16 about confidential sources of information or  
17 intelligence.

18 The second part deals with  
19 military plans which would protect a national  
20 defence.

21 The third part talks about the  
22 means that the government used or intends to use  
23 to covertly collect or obtain, assess or analyze  
24 information.

25 The fourth part is whether a

1 place, person, agency, group, et cetera, which is  
2 intended to be the object of a covert  
3 investigation or covert collection of information,  
4 et cetera.

5 The fifth part is in terms of the  
6 identity of a person who is engaged in covert  
7 activities, and so on and so forth.

8 So the principles we see within  
9 this definition are somewhat similar to the  
10 principles that we will have to consider in  
11 respect of whether hearings should be heard in  
12 camera.

13 Part 3 of Bill C-36 amends the  
14 Canada Evidence Act.

15 As you know, the amendments to the  
16 evidence act imposes obligations on parties to  
17 notify the Attorney General of Canada if they  
18 anticipate the disclosure of sensitive information  
19 or information the disclosure of which could be  
20 injurious to international relations, national  
21 defence or security.

22 The changes brought about by Bill  
23 C-36 to the evidence act are described as page 13  
24 of the memorandum.

25 In the first paragraph we refer to

1 section 37, which is the specified public  
2 interest, but I would like to immediately move to  
3 section 38, which of course is the important  
4 provision in respect of this public inquiry.

5 As you know, section 38 deals with  
6 the disclosure of information relating to  
7 international relations, national defence and  
8 national security.

9 The two important definitions are  
10 found on this page. The first is "sensitive  
11 information".

12 Sensitive information is defined  
13 as:

14 "information relating to  
15 international relations or  
16 national defence or national  
17 security that is in the  
18 possession of the Government  
19 of Canada, whether  
20 originating from inside or  
21 outside Canada, and is of a  
22 type that the Government of  
23 Canada is taking measures to  
24 safeguard."

25 Once again similar to the

1 definition of information found in the Security of  
2 Information Act.

3 The other important definition is  
4 "potentially injurious information", which is:

5 "information of a type, that  
6 if it were disclosed to the  
7 public, could injure  
8 international relations or  
9 national defence or national  
10 security."

11 We describe the procedure, which  
12 is set out, and I would like to gloss over it but  
13 just focus in on a couple of items.

14 The first is section 38.04, under  
15 which:

16 "... the Attorney General may  
17 apply to the Federal Court  
18 for an order with respect to  
19 the disclosure of information  
20 about which notice was  
21 given."

22 This of course is the important  
23 clause in light of the terms of reference under  
24 which you act.

25 It goes on:

1 "This application is  
2 confidential and measures may  
3 be taken by the court to  
4 protect the confidentiality  
5 of the application."

6 And then the general rule is that:  
7 "Pursuant to 38.06(1),  
8 '[u]nless the judge concludes  
9 that the disclosure of the  
10 information would be  
11 injurious to international  
12 relations or national defence  
13 or national security, the  
14 judge may, by order,  
15 authorize the disclosure of  
16 the information'."

17 And 38.06, paragraph 2, provides  
18 that if the judge concludes that the disclosure of  
19 the information would be injurious to one of these  
20 interests, but that the public interest in  
21 disclosure outweighs the importance of public  
22 interest in non-disclosure, in that situation:

23 "... the judge may by order,  
24 after considering both the  
25 public interest in disclosure

1                                   and the form of conditions to  
2                                   disclosure that are most  
3                                   likely to limit any  
4                                   injury ..."

5                                   To any one of these three  
6                                   interests, the judge may authorize the disclosure,  
7                                   subject to any conditions he or she may deem  
8                                   appropriate in the circumstances.

9                                   Other aspects of the procedure are  
10                                  also set out there, including issuing a summary of  
11                                  the information, which is somewhat similar to the  
12                                  process in which we find ourselves in light of  
13                                  your terms of reference.

14                                 THE COMMISSIONER: So that,  
15                                 Mr. Cavalluzzo, is really a two-part or two  
16                                 aspects to that test. There is the question  
17                                 initially whether it would be injurious to  
18                                 national security, national defence or  
19                                 international relations. That is one category.

20                                 And the second part, under  
21                                 38.06(2), at least for the Federal Court, is then  
22                                 a balancing of the public interest against the  
23                                 injury, if it falls within that.

24                                 MR. CAVALLUZZO: That is correct.  
25                                 The public interest in disclosing the information

1 weighed against the possible damage that the  
2 federal court judge has found in respect of one of  
3 these three interests. That is correct.

4 So it is a two-step process.

5 THE COMMISSIONER: Thank you.

6 MR. CAVALLUZZO: We do describe  
7 other important changes to the evidence act. The  
8 only other provision which I think is important  
9 for you and the public is to be aware of  
10 section 38.13 of the evidence act, which empowers  
11 the Attorney General to personally:

12 "... issue a certificate that  
13 prohibits the disclosure of  
14 information in connection  
15 with a proceeding for the  
16 purpose of protecting  
17 information obtained in  
18 confidence from, or in  
19 relation to, a foreign entity  
20 ... or for the purpose of  
21 protecting national defence  
22 or national security."

23 This certificate expires 15 years  
24 after the day upon which it is issued.

25 The only aspect of judicial review

1 in respect of such a certificate under  
2 section 38.13(1) is that:

3 "... a judge may vary, cancel  
4 or confirm the order to the  
5 extent that the information  
6 does not relate to  
7 information obtained in  
8 confidence from or in  
9 relation to a foreign entity  
10 or to national defence or  
11 security."

12 So there are very limited rights  
13 of judicial review.

14 THE COMMISSIONER: And just so  
15 that that is clear again, what that says is that  
16 at the end of the day regardless of any order that  
17 may be made by a court or a Commissioner, or  
18 whoever else, the government can issue a  
19 certificate and maintain confidentiality.

20 MR. CAVALLUZZO: That is correct.

21 There is one final backstop to  
22 that, which is the Charter of Rights and Freedoms,  
23 and that issue has not been determined yet.

24 I would like to move on from the  
25 evidence act to other changes brought about by



1 Bill C-36, coming back to page 2 of the  
2 memorandum.

3 Part 4 of the memorandum:

4 "... amends the Proceeds of  
5 Crime (Money Laundering) Act,  
6 which becomes the Proceeds of  
7 Crime (Money Laundering) and  
8 Terrorist Financing Act. The  
9 amendments will assist law  
10 enforcement and investigative  
11 agencies in the detection and  
12 deterrence of the financing  
13 of terrorist activities,  
14 facilitate the investigation  
15 and prosecution of terrorist  
16 activity financing offences,  
17 and improve Canada's ability  
18 to cooperate  
19 internationally."

20 There is an important  
21 international push in respect of preventing  
22 financing or support of terrorist activities, and  
23 this is part of Canada's response to the  
24 international consensus that this kind of activity  
25 should be strictly prohibited and regulated.

1                   At page 28 of the memorandum we  
2 describe the changes, and the only aspect of this  
3 legislation that I want to refer to is the entity  
4 called -- you will hear it as FINTRAC. That is  
5 the Financial Transactions and Reports Analysis  
6 Centre of Canada.

7                   You can see its mandate, as  
8 broadened by Bill C-36, is described at page 29.

9                   FINTRAC is:

10                   "... empowered to detect  
11 financial transactions that  
12 may constitute threats to the  
13 security of Canada and to  
14 disclose this information to  
15 CSIS and other ..."

16                   That shouldn't say "other". It  
17 should say "and law enforcement agencies".

18                   Of course, CSIS is not a law  
19 enforcement agency.

20                   Then Part 3 of the Act describes  
21 its mandate.

22                   Part 5 of Bill C-36 amends  
23 numerous legislation, which we describe  
24 throughout. I don't want to take you through  
25 those. We don't have the time. But they are

1 well-described in this memorandum.

2 Part 6 enacts the Charities  
3 Registration, which is the Security Information  
4 Act, and amends the Income Tax Act, et cetera.

5 Finally, Part 7 is a very  
6 important aspect of Bill C-36, which once again  
7 was part of the debate that we had between October  
8 and December of 2001.

9 "Part 7 provides for a  
10 comprehensive review of the  
11 Anti-Terrorism Act and its  
12 operation which will be  
13 commenced by a Parliamentary  
14 Committee by December 18,  
15 2004 --"

16 Which is three years from the date  
17 of Royal Assent.

18 "The review is to be  
19 completed within a year  
20 unless further time is  
21 authorized by Parliament."

22 That is the significant impact  
23 that Bill C-36 had on the legal framework under  
24 which we will be operating in this public inquiry.

25 There are other pieces of

1           legislation that I would like to briefly take you  
2           through so that you and the public are aware of  
3           where we are headed.

4                       The first can be found at page 18,  
5           and this is the Canadian Security Intelligence  
6           Service Act, and we will be hearing a great deal  
7           about that today through Mr. Elcock.

8                       I think there are important parts  
9           to highlight at this point in time.

10                      Obviously this is our domestic  
11           civilian agency, which is under the direction of  
12           the Director who controls and manages the  
13           service -- and we will be talking extensively  
14           about this today -- under the direction of the  
15           Minister.

16                      The Minister:

17                               "... may issue to the  
18                               Director written directions  
19                               with respect to the Service."

20                      That used to be called the  
21           Solicitor General and we will be referring to the  
22           new title shortly.

23                      Importantly there are limits on  
24           what CSIS can do. The mandate is that it may:

25                               "... collect, to the extent

1                   that it is strictly  
2                   necessary, and analyzes and  
3                   retains information and  
4                   intelligence on activities  
5                   that may be reasonably  
6                   suspected of constituting  
7                   threats to the security of  
8                   Canada; reports to and  
9                   advises the Government in  
10                  relation to these threats;"

11                  That aspect that can be found in  
12                  that mandate describes what we refer to as the  
13                  intelligence cycle, which we will be hearing from  
14                  Mr. Elcock about.

15                  The threats to the security of  
16                  Canada are expressly defined and these are set out  
17                  dealing with he is even and sabotage,  
18                  foreign-influenced activities. The important one,  
19                  from our aspect, is the third bullet, where a  
20                  threat to the security of Canada means:

21                         "...activities within or  
22                         relating to Canada directed  
23                         toward or in support of the  
24                         threat or use of acts of  
25                         serious violence against

1                   persons or property for the  
2                   purpose of achieving a  
3                   political, religious or  
4                   ideological objective within  
5                   Canada or a foreign state."

6                   Those words "religious or  
7                   ideological" were added to the definition of  
8                   "threat to the security of Canada" by virtue of  
9                   Bill C-36. But, once again, the tension with  
10                  civil liberties, you will see the closing  
11                  expression of "threats to the security of Canada"  
12                  says:

13                                 "...but does not include  
14                                 lawful advocacy, protest or  
15                                 dissent, unless carried on in  
16                                 conjunction with defined  
17                                 threats...".

18                  We describe the accountability  
19                  mechanisms, which is, as you know, the inspector  
20                  general, which is an external independent review  
21                  body, as well as the Security Intelligence Review  
22                  Committee, and we will be describing those  
23                  processes today and tomorrow.

24                                 The next legislation which is  
25                  important is the Royal Canadian Mounted Police

1 Act. We will be reviewing this with Mr. Loepky  
2 on June 30. Its mandate is set out in the middle  
3 paragraph. The important point, of course, is the  
4 first bullet point, which says:

5 "It is the duty of members of  
6 the RCMP who are peace  
7 officers to perform all  
8 duties that are assigned to  
9 peace officers in relation to  
10 the preservation of the  
11 peace,..."

12 -- and that's this is the important part here --

13 "...the prevention of crime  
14 and of offenses against the  
15 laws of Canada and the  
16 apprehension of criminals and  
17 offenders and others who may  
18 be lawfully taken into  
19 custody".

20 There are some review mechanisms,  
21 which you are aware of, and certainly in respect  
22 of the second part of your mandate you will be  
23 closely reviewing this legislation.

24 The next act which is important is  
25 the Security Offenses Act, on page 23. The

1 important part here is that the RCMP has primary  
2 responsibility to perform duties in respect of  
3 this legislation and the offenses defined therein.

4 Foreign affairs is described at  
5 page 23. The important aspect of foreign affairs  
6 which we will be interested in this public inquiry  
7 will be the conduct of diplomatic and consular  
8 relations, as well as the international law  
9 aspects under which foreign affairs has powers and  
10 jurisdiction.

11 The National Defence Act describes  
12 a number of intelligence agencies within that  
13 legislation. I won't refer to them now, but you  
14 are aware of the CSE or the Communications  
15 Security Establishment, and that is described  
16 extensively at pages 25 and 26.

17 That is a very important  
18 intelligence agency within Canada. The review  
19 mechanism for the CSE, the Commissioner of the  
20 CSE, his mandate is described at page 26.

21 Well, I would like to move on.  
22 There are, obviously, other statutes which are  
23 important, which I leave for others to read at a  
24 convenient time, and I would like to move into the  
25 second realm or part of this paper, which is



1 international law, because there are some very  
2 important international conventions which will be  
3 relevant to our mandate.

4 We commence with the description  
5 of "international law" at page 34, wherein we  
6 initially describe the United Nations suppression  
7 of terrorism regulations. This is a Canadian  
8 regulation which implements a number of United  
9 Nations resolutions.

10 I would like to move now to the  
11 United Nations Anti-Terrorism Conventions. These  
12 are described at the next page. These are the  
13 conventions which have been implemented by the  
14 suppression of terrorism regulations.

15 Now, in terms of international  
16 documents, the first is the -- is a very basic and  
17 fundamental one in our legal system, and that is  
18 the United Declaration of Human Rights, which, of  
19 course, dates back to 1948. There are very  
20 important rights which are important here, such as  
21 described in Article 2, which states that:

22 "Everyone is entitled to all  
23 the rights and freedoms set  
24 forth without distinction of  
25 any kind, such as race,

1 colour, sex, language,  
2 religion, political or other  
3 opinion, national or social  
4 origin, property, birth or  
5 other status".

6 Article 3 is similar to our  
7 section 7 of the Charter which states:

8 "Everyone has the right to  
9 life, liberty and security of  
10 the person".

11 Article 5 states:

12 "No one shall be subjected to  
13 torture or to cruel, inhuman  
14 or degrading treatment or  
15 punishment".

16 Article 6 states:

17 "Everyone has the right to  
18 recognition everywhere as a  
19 person before the law".

20 Article 7 is the equality law:

21 "All are equal before the law  
22 and entitled without  
23 discrimination to equal  
24 protection under the law".

25 Article 9 states:

1 "No one shall be subjected to  
2 arbitrary arrest, detention  
3 or exile".

4 Article 10 stipulates:

5 "Everyone is entitled to full  
6 equality, to a fair and  
7 public hearing by an  
8 independent and impartial  
9 tribunal, in the  
10 determination of his or her  
11 rights and obligations and of  
12 any criminal charges".

13 Article 12 states:

14 "No one shall be subjected to  
15 arbitrary interference with  
16 his privacy, family, home or  
17 correspondence, nor to  
18 attacks on his honour and  
19 reputation and everyone has  
20 the right to the protection  
21 of the law against such  
22 interference and attacks".

23 Finally, 13(2) states:

24 "Everyone has the right to  
25 leave any country, including

1 his own, and to return to his  
2 own country".

3 The next international convention  
4 that I would refer to is the convention against  
5 torture and other cruel, inhuman or degrading  
6 treatment or punishment.

7 Article 1.1 defines "torture" in  
8 those words that are found.

9 Article 2.2 states:

10 "[n]o exceptional  
11 circumstances whatsoever,  
12 whether a state of war or a  
13 threat of war, internal  
14 political stability or any  
15 other public emergency, may  
16 be invoked as a justification  
17 of torture".

18 Article 3.1 is a very important  
19 clause and it provides: "[n]o State Party shall  
20 expel, return or  
21 extradite a person to  
22 another State where there  
23 are substantial grounds  
24 for believing that he  
25 would be in danger of

1                   being subjected to  
2                   torture".

3                   Article 3.2 states:

4                   "[f]or the purpose of  
5                   determining whether there are  
6                   such grounds, the competent  
7                   authorities shall take into  
8                   account all relevant  
9                   considerations, including,  
10                  where applicable, the  
11                  existence in the State  
12                  concerned of a consistent  
13                  pattern of gross, flagrant or  
14                  mass violations of human  
15                  rights".

16                  Article 15 states:

17                  "[e]ach State Party shall  
18                  ensure that any statement  
19                  which is established to have  
20                  been made as a result of  
21                  torture shall not be invoked  
22                  as evidence in any  
23                  proceedings, except against a  
24                  person accused of torture as  
25                  evidence that the statement

1                                   was made".

2                                   Articles 21 and 22 deal with the  
3                                   authority of the Committee Against Torture:  
4                                   Article 21 dealing with State versus State  
5                                   complaints; Article 22 dealing with individual  
6                                   citizen versus State complaints.

7                                   In terms of -- as you know, with  
8                                   international conventions, the question is whether  
9                                   the country ratifies and accepts the convention.  
10                                  In respect of Canada we signed the Convention  
11                                  Against Torture in 1985, we ratified it in 1987  
12                                  and we have made no reservations in respect of its  
13                                  application.

14                                  Jordan is also a state party to  
15                                  the convention and its dated of accessions was  
16                                  November 13, 1991. Jordan did not make any  
17                                  reservations. Jordan has not submitted any  
18                                  declarations.

19                                  The United States signed the  
20                                  convention in 1988 and ratified it in 1994, with  
21                                  numerous reservations and understandings.

22                                  Syria has not signed or ratified  
23                                  the Convention Against Torture and is, therefore,  
24                                  not a state party to the convention.

25                                  The final international convention

1 is the Vienna Convention on Consular Affairs. I  
2 will be taking Mr. Sigurdson, on Wednesday,  
3 through that convention so there is no need to  
4 touch on it right now.

5 Now, the remaining part of the  
6 memorandum, Mr. Commissioner, deals with the  
7 organizational framework for national security  
8 prior to December 2004. We initially deal with  
9 that, and then we also deal with the situation as  
10 of June 2004.

11 I just want to briefly touch on  
12 certain things. As you know, in December of 2003,  
13 Prime Minister announced structural or  
14 restructuring changes to the government through  
15 its paper, called "Securing Canada's Public Health  
16 and Safety". As a results of this new  
17 restructuring a new portfolio was created, the  
18 Public Safety and Emergency Preparedness  
19 Portfolio. So you will see the time period over  
20 which we will be interested in. There have been  
21 some changes.

22 There are a couple of other  
23 matters that I would just refer to, which I think  
24 will be important. Secondly, on page 40, we refer  
25 to the Canada-U.S. Smart Border Agreement. The

1 Smart Border Agreement has aspects dealing with  
2 sharing of information, such as passenger lists on  
3 airplanes and joint operations in respect of  
4 intelligence gathering.

5 What we will have to do through  
6 the course of the inquiry, since this is an  
7 evolving process, is to determine whether any of  
8 these aspects of the Smart Border Agreement had  
9 any impact whatsoever in respect of what happened  
10 to Mr. Arar.

11 At page 41, I would ask you to  
12 refer to a new entity called the Integrated  
13 National Security Enforcement Team, which will be  
14 referred to throughout as the INSET. What we say  
15 here is that the RCMP has refocused its national  
16 security intelligence section, which is called  
17 NSIS, to become Integrated National Security  
18 Enforcement Teams, these INSETs.

19 The purpose of these teams is to  
20 increase the capacity for the collection, sharing  
21 and analysis of intelligence among partners, with  
22 respect to targets that are a threat to national  
23 security. And you will see that these INSETs have  
24 the participation of the RCMP, provincial forces,  
25 where applicable, municipal police services, and



1 other agencies, as well, including CSIS. So that  
2 is an important new integrated team that we will  
3 be looking at throughout these hearings.

4 We go on and describe other  
5 aspects of the changes made in December of 2003,  
6 as well as the paper that I have referred to.  
7 Really, at this point in time, there is no need to  
8 go through that, other than to say that it is very  
9 interesting reading.

10 So at this point in time, I think  
11 it's -- I promised to be finished at ten to  
12 eleven. It's now ten to eleven. If we rise,  
13 perhaps, for 10 minutes, we can have Mr. Elcock  
14 come in and --

15 THE COMMISSIONER: Shall we mark  
16 this as an exhibit?

17 MR. CAVALLUZZO: Yes, we can. It  
18 can be Exhibit 2.

19 THE COMMISSIONER: So that will be  
20 the next exhibit, then, Exhibit 2.

21 EXHIBIT NO. P-2: Legislative  
22 and Organizational Framework

23 MR. CAVALLUZZO: And as I say, I  
24 underline once again, if any parties, intervenors,  
25 have any comments whatever on the legal and

1 structural framework, please, give them to us and,  
2 if necessary, we will incorporate them. Thank  
3 you.

4 THE COMMISSIONER: Yes. And let  
5 me make that clear, even though it has been marked  
6 as an exhibit, if people do have comments, we  
7 would be glad to hear them and the appropriate  
8 adjustments can be made.

9 Okay, we will rise for 10 minutes.

10 --- Upon recessing at 10:50 a.m. /

11 Suspension à 10:50 a.m.

12 --- Upon resuming at 11:03 a.m. /

13 Reprise à 11 h 03

14 THE COMMISSIONER: You may sit  
15 down.

16 MR. CAVALLUZZO: Mr. Commissioner,  
17 before we start with Mr. Elcock, I should have  
18 noted that the legislative overview, the  
19 structural overview, is on the Internet. It can  
20 be found at our Website. I think it is being  
21 posted today.

22 Mr. Commissioner, we have as our  
23 first witness Mr. Ward Elcock, who is prepared to  
24 be affirmed this morning.

25 THE COMMISSIONER: All right.

1           AFFIRMED:   WARD ELCOCK

2                           MR. CAVALLUZZO:   Mr. Commissioner,  
3           you should have in front of you a book of  
4           documents in respect of Mr. Elcock.

5                           THE COMMISSIONER:   I do.

6                           MR. CAVALLUZZO:   I wonder if that  
7           may be marked as the next exhibit.

8                           THE COMMISSIONER:   That will be  
9           Exhibit 3.

10                                  EXHIBIT NO. P-3:   Book of  
11                                  Documents - Ward Elcock

12                           MR. CAVALLUZZO:   You should also  
13           have a binder of policies from the Canadian  
14           Security Intelligence Service.

15                           THE COMMISSIONER:   Yes.

16                           MR. CAVALLUZZO:   I would ask that  
17           that be the next exhibit, please.

18                           THE COMMISSIONER:   Exhibit No. 4.

19                                  EXHIBIT NO. P-4:   Binder of  
20                                  documents entitled "Canadian  
21                                  Security Intelligence Service  
22                                  (CSIS) Policies"

23                           MR. CAVALLUZZO:   Finally, you  
24           should have Chapter 7 from the McDonald Report,  
25           which is entitled "International Dimensions".

1 THE COMMISSIONER: That will be  
2 Exhibit 5.

3 EXHIBIT NO. P-5: Extract  
4 from McDonald Report entitled  
5 "Chapter 7 - International  
6 Dimensions"

7 MR. CAVALLUZZO: At the outset,  
8 Mr. Commissioner, let me give you an overview of  
9 Mr. Elcock's evidence in terms of some of the  
10 issues we will be dealing with this morning and  
11 into the afternoon.

12 Initially, we are going to deal  
13 with the historical policy debate leading to the  
14 creation of CSIS and the elimination of the  
15 security service of the RCMP.

16 We will be referring to what I  
17 referred to earlier as the security intelligence  
18 cycle.

19 We will be discussing reliance on  
20 and the reliability of security intelligence  
21 information, including such information that we  
22 receive from foreign entities.

23 We will be talking about that  
24 recurring theme that I mentioned earlier; that is,  
25 the difference between police work and

1 intelligence collection.

2 We will be discussing arrangements  
3 with foreign agencies for information sharing as  
4 well as the operations of CSIS abroad, which is a  
5 related topic.

6 We will also be referring to the  
7 new imperatives that CSIS faces in light of the  
8 threat environment today.

9 And as you will see throughout,  
10 Mr. Elcock's evidence underlying all of it will be  
11 important issues related to the balancing, once  
12 again, between national security and civil  
13 liberties.

14 Let us begin and look at the  
15 background of Mr. Elcock.

16 EXAMINATION

17 MR. CAVALLUZZO: Mr. Elcock, good  
18 morning.

19 MR. ELCOCK: Good morning.

20 MR. CAVALLUZZO: Mr. Elcock, I  
21 understand in 1973 --

22 And, by the way, his curriculum  
23 vitae can be found behind Tab 1 of the Elcock Book  
24 of Documents.

25 Mr. Elcock, I understand that in

1           1973 you received a law degree from Osgoode Hall  
2           Law School.

3                           MR. ELCOCK: That is correct.

4                           MR. CAVALLUZZO: That is a good  
5           start, because both the Commissioner and I are  
6           graduates of Osgoode Hall. So I think this should  
7           be an easy day.

8                           You were admitted to the Law  
9           Society of Upper Canada in 1975?

10                          MR. ELCOCK: That is correct.

11                          MR. CAVALLUZZO: You articulated with  
12           the Federal Department of Justice and returned  
13           after the Bar admissions course?

14                          MR. ELCOCK: That is correct.

15                          MR. CAVALLUZZO: You held a number  
16           of positions within the Public Service. For  
17           example, you were initially assigned in the  
18           Department of Energy, Mines and Resources. You  
19           were assigned for a period in the Department of  
20           Finance.

21                          There are a couple of positions  
22           that I would refer to.

23                          Between 1989 and 1994 you were the  
24           Deputy Clerk, Security & Intelligence and Counsel  
25           to the Privy Council Office. Is that correct?

1 MR. ELCOCK: That is correct.

2 MR. CAVALLUZZO: Briefly there,  
3 what did you do in that role?

4 MR. ELCOCK: I had two  
5 responsibilities essentially. I had  
6 responsibility for the legal work of the  
7 department, the Privy Council Office, the Prime  
8 Minister's department, which is separate from the  
9 Department of Justice.

10 Second, I was the Coordinator for  
11 Security and Intelligence and responsible for the  
12 communications security establishment.

13 MR. CAVALLUZZO: You say you were  
14 responsible for security and intelligence. Just  
15 so we are clear, the Privy Council Office plays an  
16 important role in respect of security  
17 intelligence.

18 MR. ELCOCK: It plays the same  
19 role in respect of security and intelligence as it  
20 does in essentially any other area of government.  
21 The Privy Council Office is the Prime Minister's  
22 department and is made up of units which deal with  
23 issues broadly related across government. There  
24 is a section within the PCO that deals as well  
25 with the security and intelligence issue.

1 MR. CAVALLUZZO: The person  
2 responsible for security and intelligence within  
3 the PCO is the position you held as the Deputy  
4 Clerk.

5 MR. ELCOCK: There is an Assistant  
6 Secretary of Security and Intelligence who is  
7 responsible, if you will, for the ongoing work of  
8 the PCO. The job of the coordinator was always  
9 seen as more trying to bring together all the  
10 disparate parts of the security and intelligence  
11 community and coordinate it better than if it were  
12 simply allowed to function on its own.

13 MR. CAVALLUZZO: Did that position  
14 still exist in the material period we are looking  
15 at, between 2001 and 2004?

16 MR. ELCOCK: Yes, although now it  
17 is called the National Security Advisor.

18 MR. CAVALLUZZO: That is the new  
19 position that was created by Mr. Martin in the  
20 last few months?

21 MR. ELCOCK: That is correct.

22 MR. CAVALLUZZO: Finally, you were  
23 the Director of CSIS for ten years, between 1994  
24 and 2004?

25 MR. ELCOCK: That is correct.



1 MR. CAVALLUZZO: Your term there  
2 was over when?

3 MR. ELCOCK: Two terms.

4 MR. CAVALLUZZO: Your second term  
5 was over when?

6 MR. ELCOCK: Was over on May 30th.

7 MR. CAVALLUZZO: Of this year.

8 MR. ELCOCK: Midnight of May 30th.

9 MR. CAVALLUZZO: At the present  
10 time you are a Senior Advisor to the Privy Council  
11 Office.

12 MR. ELCOCK: That's right.

13 MR. CAVALLUZZO: Mr. Elcock, I  
14 want to deal initially with the historical  
15 background and origins of CSIS.

16 You may recall -- and I am going  
17 to lead you a bit because this is not very  
18 controversial.

19 CSIS culminated after about 15  
20 years of debate, and we did have two Royal  
21 Commissions, one in 1969, the Royal Commission on  
22 Security, which recommended a new non-police  
23 agency for intelligence collection.

24 Is that correct?

25 MR. ELCOCK: That is correct.

1 MR. CAVALLUZZO: That is referred  
2 to sometimes as the Mackenzie --

3 MR. ELCOCK: The Mackenzie  
4 Commission.

5 MR. CAVALLUZZO: Then in 1977  
6 Justice McDonald was appointed as a royal  
7 commissioner or a Commission of Inquiry. He held  
8 something like four years of hearing, which  
9 culminated in his report in 1981.

10 Is that correct?

11 MR. ELCOCK: That is correct.

12 MR. CAVALLUZZO: Could you briefly  
13 tell us what gave rise to the appointment of  
14 Justice McDonald in respect of his public inquiry.

15 MR. ELCOCK: Essentially what gave  
16 rise to that was the view that indeed there had  
17 been some activities in Quebec in the context of  
18 the work against the FLQ and subsequently dealing  
19 with issues of separatism, Separatist groups in  
20 Quebec; that there had been activities on the part  
21 of the RCMP security service which went beyond  
22 what was acceptable in a democratic society.

23 MR. CAVALLUZZO: I understand that  
24 Justice McDonald made about 300 recommendations in  
25 his reports.

1 MR. ELCOCK: Yes.

2 MR. CAVALLUZZO: I understand as  
3 well that Professor Peter Russell from the  
4 University of Toronto, who is the Research  
5 Director, stated -- and these are his words:

6 "I can't think in living  
7 memory of legislation coming  
8 as close to a Royal  
9 Commission's whole set of  
10 recommendations as Bill C-09  
11 does then."

12 Would you agree with that?

13 MR. ELCOCK: I think that is a  
14 fair comment. It does follow the outline of the  
15 report recommendation.

16 MR. CAVALLUZZO: The CSIS Act was  
17 proclaimed in force on July 16th of 1984. Is that  
18 correct?

19 MR. ELCOCK: That is correct.

20 MR. CAVALLUZZO: As I said before,  
21 not only did the CSIS Act create CSIS itself but  
22 it also eliminated the security service of the  
23 RCMP.

24 MR. ELCOCK: Essentially the RCMP  
25 security service was phased out.

1 MR. CAVALLUZZO: I would like to  
2 come to certain parts of the McDonald Report.

3 If you go to your book of  
4 documents, you will see behind Tab 2 we have  
5 excerpted portions of the McDonald Report.

6 Initially I would like to refer  
7 you to certain definitions that Justice McDonald  
8 made and ask whether they are still applicable  
9 today.

10 If we initially refer to page 414,  
11 in paragraph numbered 5, he defines security  
12 intelligence in that paragraph, in the second or  
13 third sentence.

14 He says:

15 "Security intelligence is  
16 essentially advance warning  
17 and advice about activities  
18 which threaten the internal  
19 security of Canada."

20 Is that still a fair definition of  
21 security intelligence?

22 MR. ELCOCK: Yes, I think it is.

23 MR. CAVALLUZZO: Let's move on.

24 He also defines national security in the following  
25 words.

1 He says:

2 "National security involves  
3 at least two concepts:  
4 first, the need to preserve  
5 the territory of our country  
6 from attack; second, the need  
7 to protect our democratic  
8 process of government from  
9 violent subversion."

10 Would you agree that that is still  
11 an applicable definition of national security?

12 MR. ELCOCK: Yes, in particular if  
13 you give "attack" the broadest definition. It is  
14 not simply a military attack. It could be a  
15 terrorist attack or some other kind of operation.

16 MR. CAVALLUZZO: Justice McDonald  
17 then goes on in the latter part of the paragraph  
18 to describe what were the principal threats to  
19 Canada at that point in time.

20 He says:

21 "The principal threats to the  
22 security of Canada ... fall  
23 into three general  
24 categories: foreign  
25 intelligence activities,

1 terrorism, and domestic  
2 subversion."

3 Then he describes each of them.

4 He says:

5 "With respect to each of  
6 these categories we think it  
7 important to indicate in more  
8 detail the types of activity  
9 about which governments and  
10 police forces in Canada  
11 should have advanced  
12 intelligence."

13 I'm going to ask you whether --  
14 first of all, why don't we do it right now before  
15 we go into each, and that is: Are these three  
16 categories of threats still applicable to the  
17 situation in which we find ourselves in July of  
18 2004.

19 MR. ELCOCK: Certainly the first  
20 two continue to be, one might add, the work  
21 against counter-proliferation of weapons of mass  
22 destruction to that, although you could equally  
23 argue it comes under some of the other headings  
24 under the foreign intelligence activities heading  
25 as well.

1                   Domestic subversion, there is  
2                   still a provision in the CSIS Act which covers the  
3                   issue of domestic subversion, but we have not had  
4                   any domestic subversion investigations for years.  
5                   I don't remember any in my term.

6                   MR. CAVALLUZZO: Let's deal with  
7                   each of them in turn and ask for your comments.

8                   The first category is foreign  
9                   intelligence activities. He says that:

10                                 "There is ample evidence that  
11                                 members of many of these  
12                                 foreign agencies have been  
13                                 active in Canada."

14                   It goes on:

15                                 "The intelligence agencies of  
16                                 Communist countries remain  
17                                 the most significant threat  
18                                 of this kind in Canada  
19                                 today."

20                   Presumably that is no longer  
21                   the case.

22                   MR. ELCOCK: Well, some of the  
23                   countries still have intelligence services and  
24                   some of them still function as foreign  
25                   intelligence services to collect information of

1           advantage to the State, but they don't function as  
2           communist States, that's correct.

3                           MR. CAVALLUZZO:  And he goes on  
4           and he says:

5   "Several Middle Eastern  
6   countries, for example, have  
7   developed aggressive foreign  
8   intelligence agencies and we  
9   have reviewed evidence of  
10    their activities in Canada."

11   Is that still true today?

12   MR. ELCOCK:  I wouldn't  
13           necessarily at this juncture focus entirely or  
14           solely on Middle Eastern countries, but there are  
15           a lot of countries in the world that do have  
16           foreign intelligence services.  I think in the  
17           aftermath of the end of the Cold War many foreign  
18           intelligence services became much more active and  
19           have continued to be more active broadly read  
20           rather just simply Middle Eastern countries.

21   MR. CAVALLUZZO:  He goes on to  
22           refer to some of our allies.  He says that:

23   "Furthermore, it would be  
24   naive to believe that our  
25   sister democracies and



1 military allies would never  
2 in the future attempt to  
3 pursue their economic or  
4 political interests in Canada  
5 through their well-funded and  
6 highly professional secret  
7 intelligence agencies."

8 Is that true and is it true today?

9 MR. ELCOCK: There are certainly  
10 still risks.

11 MR. CAVALLUZZO: We will refer to  
12 it as "risks". And you are in the business of  
13 risk management?

14 MR. ELCOCK: That's right.

15 MR. CAVALLUZZO: Okay. He goes on  
16 to terrorism at paragraph 9.

17 Would it be true to say that the  
18 first category he referred to, foreign  
19 intelligence, was that the greatest threat to  
20 Canada in 1984 when CSIS was created.

21 MR. ELCOCK: I think in the period  
22 prior to 1984 the two biggest perceived risks were  
23 the activity of foreign intelligence agencies and  
24 counter-subversion investigations. That obviously  
25 changed subsequently.

1 MR. CAVALLUZZO: By  
2 counter-subversion, do you mean subversion within  
3 Canada, domestic subversion.

4 MR. ELCOCK: Yes.

5 MR. CAVALLUZZO: In terms of  
6 terrorism which he describes in the second  
7 category at paragraph 9, he says:

8 "The second category of  
9 activity about which security  
10 intelligence is needed  
11 concerns those political acts  
12 which, while not amounting to  
13 a full-scale rebellion or  
14 revolution, involve the use  
15 of threat of violence to  
16 influence the political  
17 process. The modern term for  
18 activity of this kind is  
19 terrorism. Although  
20 terrorism is by no means a  
21 new phenomenon, it has  
22 assumed dimensions which pose  
23 a serious threat to Canada's  
24 internal security. To begin  
25 with, there has been a

1                                   significant increase in  
2                                   international dimensions of  
3                                   terrorism."

4                                   And he goes on.

5                                   Was terrorism a major threat in  
6                                   1984 when Justice McDonald released his report and  
7                                   CSIS was created.

8                                   MR. ELCOCK: I think it was  
9                                   increasingly perceived as the more important  
10                                  threat. Certainly with the downing of Air India  
11                                  in 1985 it became, for Canada and for CSIS, a  
12                                  seminal event, if you will, in terms of looking at  
13                                  what were the major priorities of the service. I  
14                                  think since then it has increased immeasurably.

15                                 MR. CAVALLUZZO: And 1985, which  
16                                 was the year after its creation, is when the Air  
17                                 India situation occurred?

18                                 MR. ELCOCK: Took place.

19                                 MR. CAVALLUZZO: That was an  
20                                 alleged act of terrorism. What was the terrorist  
21                                 group there?

22                                 MR. ELCOCK: The terrorist group  
23                                 there were Sikh extremists, Sikh terrorists.

24                                 MR. CAVALLUZZO: Justice McDonald,  
25                                 in paragraph 10, then goes on to describe the

1 principal difference between terrorism and other  
2 forms of violence. He says:

3 "We should stress that it is  
4 the political form of  
5 terrorism with which security  
6 intelligence is primarily  
7 concerned. Threats or acts  
8 of violence by persons with  
9 no political motive, while of  
10 great concern those  
11 responsible for the security  
12 of life and property in  
13 Canadian communities, do not  
14 threaten to subvert Canada's  
15 democratic process of  
16 government or infringe on its  
17 national sovereignty. But  
18 threats of violence designed  
19 to force a municipal,  
20 provincial or federal  
21 government to change its  
22 policies are a serious  
23 violation of the Canadian  
24 system of democratic  
25 government."

**StenoTran**

1                   That is a very important principal  
2           distinction, is it not?

3                   MR. ELCOCK: I think it is  
4           an important distinction. It is the one that  
5           is certainly replicated in the legislation, in  
6           the Act.

7                   MR. CAVALLUZZO: We will come to  
8           that.

9                   Then finally he says in  
10          paragraph 11:

11                               "Acts of political terrorism,  
12                               when there is reason to  
13                               believe they are about to  
14                               occur or after they occur,  
15                               are properly the concern of  
16                               law enforcement agencies.  
17                               But governments and police  
18                               forces in Canada should have  
19                               advance intelligence."

20                   He seems to be referring there to  
21          the distinction between law enforcement and  
22          security intelligence.

23                   Is that correct?

24                   MR. ELCOCK: Yes, he is.

25                   MR. CAVALLUZZO: The third

1 category is domestic subversion. We really need  
2 not take you through that in light of your view as  
3 to the kind of threat which we face in respect of  
4 that today.

5 In light of that distinction that  
6 we talked about, about a role of police and a role  
7 of security services, I would like to take you to  
8 the next issue which I think is important for this  
9 public inquiry and that is the distinction between  
10 police work and intelligence collection.

11 Certainly, you would agree with me  
12 that Justice McDonald spent a great deal after  
13 time on that important distinction, did he not?

14 MR. ELCOCK: Yes, he did.

15 MR. CAVALLUZZO: Maybe if we refer  
16 to page 418 of his report. In paragraphs 19 and  
17 20 in the report, he is referring to an  
18 alternative or a suggestion that was being put  
19 forward in the 1980s where it is described as  
20 frequently urged an alternative"

21 "...to blend security  
22 intelligence responsibilities  
23 into the regular work of  
24 national, provincial and  
25 municipal police forces."

1                   In response to that he states in  
2           paragraph 20:

3                   "We think it would be a  
4                   serious mistake to adopt this  
5                   alternative in Canada. Such  
6                   an approach completely  
7                   ignores fundamental  
8                   differences between most  
9                   police work and security  
10                  intelligence  
11                  responsibilities. These  
12                  differences have led over the  
13                  years to an increasing  
14                  specialization of personnel  
15                  and organizational  
16                  distinctiveness of the part  
17                  of the R.C.M.P. devoted to  
18                  security intelligence work.

19                  Just stopping there, it is my  
20                  recollection at that point in time that the RCMP,  
21                  prior to the creation of CSIS, had its own  
22                  security intelligence group called the Security  
23                  Service of the RCMP.

24                  MR. ELCOCK: The Security Service  
25                  of the RCMP, although that in many ways was an

1           increasingly separate part even of the RCMP.

2                               MR. CAVALLUZZO:  He goes on,  
3           he says:

4                               "The main product of security  
5                               intelligence work takes the  
6                               form of advice to both  
7                               government and regular police  
8                               forces.  The ingredients of  
9                               this advice are twofold:  
10                              first, the raw information  
11                              obtained through  
12                              investigations, and second,  
13                              an analysis of the  
14                              information based on an  
15                              assessment of its  
16                              significance in both a  
17                              national and international  
18                              context."

19                              Then he goes on to say:

20                              "...require a combination of  
21                              specialized investigative and  
22                              intellectual skills that are  
23                              not found in regular police  
24                              forces."

25                              Would you agree with that



1 statement today?

2 MR. ELCOCK: Perhaps not as baldly  
3 as he makes it in a sense that it implies that  
4 police agencies by definition are not as  
5 intelligent as intelligence agencies.

6 I think the reality is,  
7 increasingly in some areas of law enforcement such  
8 as organized crime you would find police forces  
9 tend to have more highly developed analytical  
10 groups than they did at an earlier time, and  
11 indeed to be successful probably need to have more  
12 analytical capability.

13 The reality is, however, at its  
14 core that intelligence agencies rely much more on  
15 analysis, in part because you are collecting at an  
16 earlier stage -- rely much or extensively on  
17 analysis than do police forces.

18 MR. CAVALLUZZO: He goes on in  
19 paragraph 21 to talk about a second level of  
20 scrutiny or analysis. He states:

21 "It would, we believe, be a  
22 serious mistake to assign the  
23 investigative and analytical  
24 roles to two difference  
25 agencies. Analysis is

1 required in investigative  
2 process if the subjects of  
3 investigations are to be  
4 selected intelligently and  
5 the behaviour of what is  
6 observed is to be  
7 intelligently reported."

8 Then he goes on:

9 "In addition to the  
10 analytical and research  
11 capacity of the security  
12 intelligence agency, there is  
13 a need for government to have  
14 an analytical capacity  
15 independent of the agency to  
16 receive its reports, to  
17 integrate these reports with  
18 information obtained from  
19 other departments and to  
20 ensure that legitimate  
21 intelligence needs of  
22 government departments are  
23 being met."

24 As far as that second level of  
25 scrutiny is concerned within government itself,

1 independent of CSIS, do we have that today?

2 MR. ELCOCK: Within CSIS there are  
3 two levels of analysis.

4 There is the analysis that is done  
5 as part of any investigation and as the direction  
6 of that investigation.

7 Secondly, we also have a more  
8 strategic area within the service that does  
9 analysis outside the service and they would  
10 receive certainly the reports from the strategic  
11 analytical group that we have.

12 There is a group in the Privy  
13 Council Office, the IAS, that would make use of  
14 those reports in some cases for reports on wider  
15 issues that it would put to government.

16 MR. CAVALLUZZO: You said the  
17 "IAS". What does that stand for?

18 MR. ELCOCK: The "IAS" is the  
19 "Intelligence Advisory" -- I have forgotten the  
20 exact acronym. I think it is "Intelligence  
21 Analysis Secretariat". It is essentially a group  
22 of analysts within the Privy Council Office.

23 There also a committee known as  
24 the IAC, which is chaired usually by the head of  
25 the IAS. Sorry for all the acronyms.

1                   The IAC is essentially a committee  
2 of a number of different departments which meet on  
3 a regular basis to look at broader analytical  
4 papers that are being done in government that may  
5 require the assistance of other departments that  
6 will provide advice, broader pieces of advice,  
7 papers on various issues, to ministers and to  
8 senior officers of PCO and other departments.

9                   MR. CAVALLUZZO: Just for the  
10 public, those two agencies are referred to in our  
11 legal framework and you can see what the different  
12 functions and responsibilities are.

13                   I don't want to get into this  
14 in great detail, just to be aware that in  
15 respect of both these committees that these  
16 are interdepartmental which are coordinated by  
17 the PCO?

18                   MR. ELCOCK: The IAS is part of  
19 the PCO. It is an analytical shop on its own. It  
20 doesn't necessarily -- it does draw occasional  
21 contributions from another departments, but it is  
22 a PCO office with analysts who are part of that  
23 office.

24                   The IAC is a committee. It is a  
25 coordinating committee, if you will, that looks at

1 specific drafts of papers that are being prepared  
2 and allows departments to bring their viewpoint to  
3 that particular paper before it goes to ministers.

4 MR. CAVALLUZZO: In respect of  
5 that latter committee, are we talking about upper  
6 civil servant Deputy Ministers?

7 MR. ELCOCK: No, the IAC usually  
8 it is the director of the IAS who would chair  
9 those meetings. Usually the membership would be  
10 Assistant Deputy Minister or lower.

11 MR. CAVALLUZZO: I would like to  
12 move on here and talk about the political control  
13 that Justice McDonald was concerned about in the  
14 creation of an intelligence agency.

15 Picking up his report at  
16 paragraph 23, still talking about the important  
17 and fundamental distinction between police work  
18 and security intelligence work, he goes on:

19 "Another characteristic of  
20 security intelligence work  
21 which makes it inappropriate  
22 for regular police forces is  
23 the long-term nature of many  
24 security threats. Espionage  
25 networks and terrorist

1 support systems, for  
2 instance, may develop slowly  
3 over a long period of time,  
4 during which there is no  
5 evidence of a probable  
6 crime."

7 First of all, do you agree with  
8 that?

9 Secondly, if you do, could you  
10 give us a brief explanation of what Justice  
11 McDonald is referring to.

12 MR. ELCOCK: Essentially I  
13 would agree with it. In essence what he is  
14 saying is that intelligence agencies tend to work  
15 on phenomena rather than specific incidence. You  
16 are looking at a broader issue and trying to  
17 determine whether indeed it poses a threat, or the  
18 nature of the threat that is posed by specific  
19 occurrences by a number of individuals, whatever  
20 it happens to be.

21 But it is a much broader and  
22 earlier, generally, inquiry than would be true of  
23 most police forces.

24 MR. CAVALLUZZO: Maybe I can  
25 just ask you now, in terms of the major threat

1 facing Canada's security services today, what  
2 would it be?

3 MR. ELCOCK: Certainly we have  
4 said publicly for some years that the major threat  
5 confronting Canada is of course terrorism, in  
6 particular Sunni Islamic terrorism which  
7 unfortunately has posed a serious threat for the  
8 last few years.

9 MR. CAVALLUZZO: Is there any way  
10 that you can publicly discuss with us for example  
11 how much of the resources of CSIS are directed  
12 towards terrorism today?

13 MR. ELCOCK: We have said  
14 continuously roughly two-thirds of the resources.  
15 In periods of real stress that would go up.  
16 Two-thirds of CSIS' resources go on counter-  
17 terrorism investigations.

18 MR. CAVALLUZZO: In terms of how  
19 broad the net is, you obviously can't tell us  
20 specifics in terms of, for example, how many  
21 targets CSIS has at the present time, but I recall  
22 in a speech that you made --

23 MR. ELCOCK: That was in the  
24 speech to the Kelly Committee originally, I think.

25 MR. CAVALLUZZO: As I say, I don't

1 think there is anything controversial about this.  
2 This was an address that was given to the  
3 "Terrorism Law and Democracy, How is Canada  
4 Changing Following September 11" to the Canadian  
5 Institute for the Administration of Justice?

6 MR. ELCOCK: Yes.

7 MR. CAVALLUZZO: I just want to  
8 read it to you and if you could just confirm that  
9 so we have an idea what we are looking at in terms  
10 of the net of CSIS. You say:

11 "To put the numbers in  
12 perspective it is important  
13 to keep in mind that the  
14 number of people we are  
15 looking at in Canada is not  
16 large whether you look at  
17 targets of serious concern or  
18 even the broader group that  
19 would include less serious  
20 targets." (As read)

21 Do you agree with that?

22 MR. ELCOCK: Yes.

23 MR. CAVALLUZZO: Do you  
24 confirm that?

25 You go on:



1 "It is also important to  
2 understand that of the broad  
3 spectrum of groups or  
4 individuals that qualify as  
5 threats for the security of  
6 Canada in sense of our Act,  
7 few of those groups or  
8 individuals pose a threat of  
9 direct terrorist attack in  
10 Canada, or indeed to our  
11 closest neighbour, although  
12 they may pose such a threat  
13 else where in the world."

14 (As read)

15 MR. ELCOCK: That's right. I  
16 think I have also said that the numbers -- and  
17 they vary dramatically, so in a sense the specific  
18 numbers are not crucial.

19 We had as targets at any  
20 particular time somewhere around 50 terrorist  
21 organizations on our list and somewhere around  
22 350, give or take 50 or 60, depending on what the  
23 situation was at any particular point in time with  
24 a specific target.

25 MR. CAVALLUZZO: I would like

1 to move on to another issue which is related to  
2 this point that Justice McDonald consistently  
3 made, that is distinguishing between police work  
4 and intelligence work. It relates to whether  
5 he recommended whether CSIS would have  
6 enforcement powers.

7 If you refer to page 613, which is  
8 part of your book.

9 --- Pause

10 MR. CAVALLUZZO: Do you have that?

11 MR. ELCOCK: Yes.

12 MR. CAVALLUZZO: In paragraph 1 he  
13 states -- this is Chapter 6 now:

14 "Because the essential  
15 function of a security  
16 intelligence agency is to  
17 collect, analyze and report  
18 intelligence about threats to  
19 Canada's security, we believe  
20 it should not be authorized  
21 to enforce security  
22 measures."

23 He gives the rationale for that in  
24 paragraph 2.

25 Just stopping before we go to

1 the rationale, you would agree that as a result  
2 of his recommendation CSIS does not have  
3 enforcement powers?

4 MR. ELCOCK: CSIS has no  
5 enforcement powers.

6 MR. CAVALLUZZO: In paragraph 2,  
7 the rationale, as he states:

8 "...we think it is  
9 unacceptable in Canada that  
10 the state should use a secret  
11 intelligence agency to  
12 inflict harm on Canadian  
13 citizens directly."

14 He goes on:

15 "Second, we think the liberty  
16 of Canadians would be best  
17 protected if measures to  
18 ensure security were not  
19 enforced by the organization  
20 with the prime responsibility  
21 for collecting information  
22 about threats to that  
23 security. The assignment of  
24 executive enforcement  
25 responsibilities to agencies

1 other than the security  
2 intelligence organization  
3 assures desirable  
4 countervailing powers and  
5 avoids the danger that the  
6 security intelligence  
7 organization might be both  
8 judge and executor, in  
9 security matters."

10 So CSIS has no enforcement powers  
11 in response to that recommendation.

12 Let us move on, then, to the  
13 fourth issue, which I think is important for our  
14 mandate, and that is some of the particular  
15 problems which an agency such as CSIS has in  
16 getting information from foreign sources.

17 In particular, if you refer back  
18 to page 420, he states in paragraph 26 -- and I  
19 will ask you questions in respect of this.

20 He states:

21 "It is important to stress  
22 the need for, and problems  
23 associated with, obtaining  
24 information about security  
25 threats from foreign

1 services. Many of the  
2 activities which threaten  
3 Canada's internal security  
4 have their origin in foreign  
5 countries."

6 Is that true today?

7 MR. ELCOCK: It's still true.

8 MR. CAVALLUZZO: He goes on:

9 "Canada cannot afford to be  
10 cut off from international  
11 information about threats to  
12 its security."

13 Still true today?

14 MR. ELCOCK: I think it has always  
15 been true. I think for all services now  
16 increasingly, even larger ones, would recognize  
17 that they cannot secure their own security if you  
18 will by themselves; that the necessity is to have  
19 relationships with other organizations in the  
20 international sphere.

21 MR. CAVALLUZZO: He goes on:

22 "Such information is not  
23 easily obtained."

24 Is that true?

25 MR. ELCOCK: Yes, it's very true.

1 MR. CAVALLUZZO: He goes on:  
2 "Canada requires a national  
3 security intelligence agency  
4 which is sufficiently  
5 respected internationally to  
6 obtain from the intelligence  
7 agencies of foreign countries  
8 such security intelligence  
9 pertinent to Canadian  
10 interests as may be in their  
11 possession. Without the  
12 ready co-operation of such  
13 agencies and their  
14 willingness to be forthcoming  
15 with such intelligence, the  
16 ability to protect Canada's  
17 internal security would be  
18 hobbled."

19 Would you agree with that?

20 MR. ELCOCK: Yes, I would and I  
21 think the early years of the service would make  
22 that clear in the immediate aftermath of the  
23 passage of the legislation. I think there was  
24 great unease on the part of some of the agencies  
25 we work with about the review agencies that have

1           been established by the legislation which reach  
2           considerably further than any other review  
3           agencies that I can think of even now.

4                         There was at that point real  
5           concern about whether in fact we would be able to  
6           keep information secure.

7                         As a result, for a period of time  
8           sharing with a number of agencies decreased  
9           dramatically.

10                        MR. CAVALLUZZO:  Has that improved  
11           after we have seen SIRC and the Inspector General  
12           in practice over the years?

13                        MR. ELCOCK:  Although it may seem  
14           odd, the intelligence business is based very much  
15           on trust.  The reality is you build that over a  
16           period of time.  If you can demonstrate that you  
17           can indeed secure that information and that indeed  
18           the system will permit that information to be  
19           protected, then the trust allows information to  
20           flow.

21                        MR. CAVALLUZZO:  Then he goes on  
22           finally at the bottom of the paragraph to state:

23                                 "It is also essential that  
24                                 Canada's security  
25                                 intelligence agency be

1                   sufficiently accountable to  
2                   government to ensure that the  
3                   arrangements it enters into  
4                   to obtain information from  
5                   foreign intelligence agencies  
6                   are in accord with Canada's  
7                   international policies, and  
8                   adequately protect the rights  
9                   and interests of Canadian  
10                  citizens."

11                  Would you agree with that; and,  
12                  secondly, if you do, do you agree that certainly  
13                  those concerns were expressed in the CSIS  
14                  legislation?

15                  MR. ELCOCK: They certainly are  
16                  reflected in the legislation and policies that  
17                  govern how the service operates.

18                  MR. CAVALLUZZO: At that point,  
19                  before moving on, I think it is important because  
20                  once again that political accountability is also a  
21                  very important distinction between police work and  
22                  security intelligence collection.

23                  Is that correct?

24                  MR. ELCOCK: Yes, I think that is  
25                  a very clear distinction between police forces and



1 intelligence agencies. Intelligence agencies are  
2 subject to government direction, and we are  
3 subject to government direction. Police agencies  
4 rarely are.

5 MR. CAVALLUZZO: That is well  
6 defined and described by Justice McDonald. If you  
7 refer to the previous page, page 419 at paragraph  
8 22, he states:

9 "Also, we must stress the  
10 extent to which security  
11 intelligence work must be  
12 directed by political  
13 judgment. The political  
14 judgment must be sensitive  
15 not only to the nature of  
16 security threats but also to  
17 Canada's international  
18 relations and to the civil  
19 liberties of Canadians."

20 Would you agree with that?

21 MR. ELCOCK: Yes.

22 MR. CAVALLUZZO: He goes on in the  
23 next few lines and he says:

24 "... the choice of countries  
25 with which it is appropriate

1 to trade intelligence, must  
2 all take Canadian foreign  
3 policies into consideration.  
4 Those involved in these  
5 decisions must have close and  
6 effective working  
7 relationships with the  
8 Department of External  
9 Affairs . . . ."

10 And he goes on.

11 That is still true today, and we  
12 will come to that in the legislation. Isn't that  
13 correct, Mr. Elcock?

14 MR. ELCOCK: Yes, that is still  
15 true. That is more a policy issue. It is  
16 expressed in the legislation but more effectively  
17 in the policy.

18 MR. CAVALLUZZO: And the final  
19 point I raise is about five lines up from the  
20 bottom of paragraph 22, where he states:

21 "The protection of civil  
22 liberties requires that the  
23 collection of intelligence in  
24 this area, particularly when  
25 intrusive techniques are

1                   involved, be subject to a  
2                   thorough system of controls  
3                   and independent review. The  
4                   effectiveness of the system  
5                   of controls and review would  
6                   be very much reduced if this  
7                   function were carried out by  
8                   a number of police forces."

9                   You would agree with that?

10                  MR. ELCOCK: Yes, although I think  
11                  there he is talking about domestic subversion  
12                  because the precursor sentence is:

13                         "In the area of domestic  
14                         subversion, we have already  
15                         stressed the need to confine  
16                         security intelligence ..."  
17                         But essentially it is true.

18                  MR. CAVALLUZZO: In terms of the  
19                  amount of independent review of the activities of  
20                  CSIS, could you give us some idea as to how that  
21                  compares with security agencies around the world?

22                         MR. ELCOCK: I have said before,  
23                         and I think it is true, that CSIS is probably  
24                         subject to the most stringent review of any  
25                         intelligence service in the world.

1                   We are reviewed by the Security  
2 Intelligence Review Committee, which is the  
3 primary review agency.

4                   We also have the Inspector General  
5 who is not so much a review agency as, if you  
6 will, sometimes she has been described as the eyes  
7 and ears of the Minister and in a sense,  
8 therefore, review on behalf of the Minister.

9                   We are also subject, as are all  
10 other government departments, to things such as  
11 the Access to Information Act and the Privacy Act  
12 and the Human Rights Act and a lot of other review  
13 agencies, the Auditor General as well.

14                   MR. CAVALLUZZO: In your view,  
15 what is the impact of the extent of this kind of  
16 review on CSIS?

17                   Has it made it a weaker  
18 organization or a stronger organization?

19                   MR. ELCOCK: I think it has made  
20 it a much stronger organization. I think there  
21 was initially some concern about what review would  
22 do, and arguably, if would you have too much  
23 review you can become immobilized. The easiest  
24 way to avoid problems with review is to do  
25 nothing.

1                   I think the reality is, however,  
2                   that it has made CSIS a much more disciplined  
3                   organization than many other services that I can  
4                   think of.

5                   MR. CAVALLUZZO: The next area I  
6                   would like to move to, Mr. Alcock, is legal  
7                   framework or structures. Here we are concerned  
8                   about whether the mandate of a security agency  
9                   should be spelled out in the statute or whether it  
10                  should be left to the discretion of the government  
11                  or the agency itself.

12                  Perhaps we could pick it up at  
13                  page 427 of the report, moving now to Chapter 3  
14                  under the title of "The Scope of Security  
15                  Intelligence".

16                  In paragraph 2, Justice McDonald  
17                  talks about the status quo back in the early  
18                  1980s.

19                  He says:

20                         "The current mandate of the  
21                         R.C.M.P. Security Service is  
22                         diffuse and ambiguous. It is  
23                         not clearly provided for in  
24                         law. The security  
25                         intelligence functions of the

1 R.C.M.P. are not explicitly  
2 and comprehensively set out  
3 in an Act of Parliament,  
4 Order-in-Council or  
5 administrative directive.  
6 Over the years security  
7 intelligence functions have  
8 been assigned to the R.C.M.P.  
9 by ministerial correspondence  
10 ... and by Cabinet  
11 directive ..."

12 And then he specifies the  
13 directive itself.

14 He goes on on the next page, in  
15 paragraph 4, to talk about the wisdom of being  
16 explicit as to the mandate which you give a  
17 security intelligence agency.

18 He says in paragraph 4:

19 "We believe that the  
20 definition, by several  
21 categories, of the activities  
22 about which the agency should  
23 be authorized to collect,  
24 analyze and report  
25 intelligence should be

1                   established by Act of  
2                   Parliament. Such a  
3                   definition would not refer to  
4                   specific groups or  
5                   activities. Its purpose  
6                   would be to fix the  
7                   boundaries of security  
8                   intelligence activities. We  
9                   believe it is essential to  
10                  set out these boundaries in  
11                  legislation."

12                   Was this particular recommendation  
13                  picked up by the Parliament of Canada?

14                   MR. ELCOCK: Yes, very much so.  
15                  It essentially is referring to what is now section  
16                  2 of the legislation, which defines the threats to  
17                  the national security of Canada, which are those  
18                  things which CSIS can effectively investigate.

19                   MR. CAVALLUZZO: The next  
20                  paragraph I think it is important to refer to. He  
21                  talks about the harm or the damage which can be  
22                  caused by not being definitive enough in the  
23                  legislation in respect of the powers of CSIS or  
24                  any other agency.

25                   He states:

1 "Past experience has  
2 demonstrated the dangers  
3 involved in leaving the  
4 definition of these limits to  
5 the discretion of the  
6 government or to the security  
7 agency itself. In the past,  
8 as our examination in section  
9 B of this chapter will show,  
10 neither the government nor  
11 the R.C.M.P. has had clear  
12 and consistent policies on  
13 the proper limits of security  
14 intelligence investigations."

15 Then he goes on:

16 "As a result R.C.M.P.  
17 surveillance on occasion went  
18 beyond the requirements of  
19 the security of Canada."

20 Those are the kinds of problems  
21 you talked about before which gave rise to the  
22 creation of the McDonald Commission. Isn't that  
23 correct?

24 MR. ELCOCK: I think that was very  
25 much what happened in the period before the



1 McDonald Commission was set up.

2 MR. CAVALLUZZO: For example, I  
3 notice in paragraph 6, dealing with that issue of  
4 boundaries in the legislation, once again showing  
5 Justice McDonald's concern for civil liberties,  
6 about ten lines down or 15 lines down in paragraph  
7 6, he says:

8 "A basic principle in the  
9 system of controls we shall  
10 propose for the use of these  
11 techniques is that the more  
12 the use of a technique  
13 encroaches on individual  
14 privacy and freedom of  
15 political association and of  
16 speech, the stronger the  
17 evidence should be of a  
18 significant threat to the  
19 security of Canada. To use a  
20 shorthand phrase: the more  
21 intrusive the technique, the  
22 higher should be the  
23 threshold."

24 Is that a principle which is now  
25 engrained in the CSIS legislation?

1 MR. ELCOCK: Yes, it is, in the  
2 legislation and policies.

3 MR. CAVALLUZZO: We will come to  
4 that.

5 If we could just wrap up on that  
6 point, if you refer back to 423, you will see that  
7 there is a very good description of the agency  
8 which ultimately found its creation in the CSIS  
9 Act in paragraph 35.

10 Justice McDonald states:

11 "The agency should be  
12 established by an Act of  
13 Parliament. That Act should  
14 define the organization's  
15 mandate, its basic functions,  
16 its powers and the conditions  
17 under which they may be used,  
18 and its organizational  
19 structure. It should also  
20 provide for its direction by  
21 government and for  
22 independent review of its  
23 activities. The statutory  
24 definition of its mandate  
25 should define the types of

1 activity constituting threats  
2 to the security of Canada to  
3 which the intelligence  
4 collection work at the agency  
5 must be confined. There must  
6 be no undisclosed additions  
7 to this mandate by the agency  
8 itself or by the executive  
9 branch of government, whether  
10 such additions be inadvertent  
11 or deliberate."

12 Would you agree with me that all  
13 of the statements and principles made by Justice  
14 McDonald have been incorporated into the CSIS Act?

15 MR. ELCOCK: Yes, they have.

16 MR. CAVALLUZZO: The final area,  
17 before we come to some practical issues, are  
18 generally the governing principles that Justice  
19 McDonald said should apply to CSIS.

20 If you refer to page 513, these  
21 are five basic principles which Justice McDonald  
22 says should underlie whatever system of powers and  
23 controls may be used for intelligence gathering in  
24 the future.

25 First:

1 "The rule of law must be  
2 observed."

3 Is that true today?

4 MR. ELCOCK: Yes, it is.

5 MR. CAVALLUZZO: No CSIS officer  
6 can violate the law?

7 MR. ELCOCK: No. Indeed, section  
8 20 requires that if a CSIS officer inadvertently,  
9 or even advertently, violates the law, that I have  
10 to report to the Minister.

11 MR. CAVALLUZZO: Second:

12 "The investigative means used  
13 must be proportionate to the  
14 gravity of the threat posed  
15 and the probability of its  
16 occurrence."

17 We have referred to that and that  
18 is certainly true today?

19 MR. ELCOCK: Yes.

20 MR. CAVALLUZZO: Third:

21 "The need to use various  
22 investigative techniques must  
23 be weighed against the  
24 possible damage to civil  
25 liberties or to valuable

1 social institutions."

2 Is that principle still applicable  
3 to CSIS today?

4 MR. ELCOCK: Yes, it is in respect  
5 to a number of institutions.

6 MR. CAVALLUZZO: Fourth:

7 "The more intrusive the  
8 technique, the higher the  
9 authority that should be  
10 required to approve its use."

11 Is that true today?

12 MR. ELCOCK: Yes, it is.

13 MR. CAVALLUZZO: Finally:

14 "Except in emergency  
15 circumstances, the least  
16 intrusive techniques of  
17 information collection must  
18 be used before intrusive  
19 techniques."

20 Is that true today?

21 MR. ELCOCK: It is still true,  
22 yes.

23 MR. CAVALLUZZO: I would like to  
24 move quickly now to relate some of those  
25 principles to the legislation itself.

1                   You should have before you a book  
2                   of legislation.

3                   I just want to make a brief  
4                   reference to the CSIS Act.

5                   Do all counsel have the  
6                   legislation?

7                   The mandate of CSIS, Mr. Elcock,  
8                   can be found in section 12. Is that correct?

9                   MR. ELCOCK: Not so much the  
10                  mandate as the powers in the sense that section 12  
11                  is the primary section under which we would  
12                  actually collect information and maintain those  
13                  collections and then pass the advice on to  
14                  government.

15                  MR. CAVALLUZZO: Just a couple of  
16                  questions in respect to section 12.

17                  In respect of collection, you  
18                  collect information to the extent that its  
19                  strictly necessary. Is that correct?

20                  MR. ELCOCK: That is correct. The  
21                  legislation requires that.

22                  MR. CAVALLUZZO: And also the  
23                  legislation requires that in terms of collecting  
24                  information and investigating, it is in respect of  
25                  activities that may, on reasonable grounds, be

1           suspected of constituting threats to the security  
2           of Canada.

3                           MR. ELCOCK: That is correct.

4                           MR. CAVALLUZZO: And those threats  
5           have been defined expressly in the legislation you  
6           stated earlier?

7                           MR. ELCOCK: In the definition of  
8           threats to the security of Canada in section 2.

9                           MR. CAVALLUZZO: In section 2.  
10           I noted earlier -- and you may not  
11           have been here -- that even in respect of the  
12           definition of threats, there is a concern for  
13           civil liberties in the last paragraph which states  
14           that:

15                                   "A threat to the security of  
16                                   Canada does not include  
17                                   lawful advocacy, protest or  
18                                   dissent unless carried on in  
19                                   conjunction with any of the  
20                                   activities referred to in the  
21                                   previous paragraphs."

22                                   That is correct.

23                           MR. CAVALLUZZO: I would like to  
24           move on to what is referred to as the security  
25           intelligence cycle.

1                   Mr. Commissioner, I don't know if  
2                   you want to have a break this morning. We did  
3                   have one. We can plow ahead.

4                   THE COMMISSIONER: I am fine, if  
5                   the witness is fine.

6                   MR. ELCOCK: I am fine.

7                   MR. CAVALLUZZO: You are fine?  
8                   Okay.

9                   THE COMMISSIONER: Let's carry on.

10                  MR. CAVALLUZZO: The security  
11                  intelligence cycle, we describe it from a CSIS  
12                  Website.

13                  It can be found behind Tab 3 of  
14                  Mr. Elcock's book of documents.

15                  Really, there are five aspects to  
16                  it. I will take you through each of them,  
17                  Mr. Elcock.

18                  There is firstly government  
19                  direction; second, planning; third, collection;  
20                  fourth, analysis; and then fifth, reporting or  
21                  dissemination of that security intelligence  
22                  information.

23                  Coming first to the first phase of  
24                  the cycle, Mr. Elcock, that is government  
25                  direction, which once again was a recurring theme



1 in the McDonald Report, I assume that CSIS  
2 responds to the direction of the federal  
3 government.

4 MR. ELCOCK: Yes, indeed. We  
5 receive every year from the minister a letter of  
6 direction with respect to the areas of  
7 investigation that we are pursuing -- in general  
8 terms, not in precise detail.

9 MR. CAVALLUZZO: And in that --  
10 and perhaps we can look at the policy documents  
11 now, Mr. Elcock.

12 MR. ELCOCK: Where are you?

13 MR. CAVALLUZZO: That will be Tab  
14 1. We have something called "Ministerial  
15 Direction". Is that what you are referring to?  
16 Or are you referring to the --

17 MR. ELCOCK: No. What I was  
18 referring to is, I think, at Tab 2, "Ministerial  
19 Direction National Requirements for Security  
20 Intelligence 2003-2004".

21 MR. CAVALLUZZO: Okay. That is  
22 also, Mr. Commissioner, in the book of documents  
23 at Tab 4. Maybe I can take you to that.

24 THE COMMISSIONER: Well, I have  
25 both. I am fine.

1 MR. CAVALLUZZO: Okay. So in  
2 terms of the ministerial direction, which is  
3 entitled "National Requirements for Security  
4 Intelligence", was this the first year that this  
5 document, or a document like it, became  
6 unclassified.

7 MR. ELCOCK: Well, it didn't  
8 become unclassified. This is an unclassified  
9 version of a classified document. There is a more  
10 detailed classified document, "Direction from the  
11 Minister", but this is the first year that there  
12 was an unclassified version done.

13 MR. CAVALLUZZO: Okay. In regard  
14 to this ministerial direction, and at the material  
15 point in time, if we are referring to, say -- the  
16 material time I would refer to is September of  
17 2001 to December of 2003. At that point in time  
18 the minister concerned was the Solicitor General?

19 MR. ELCOCK: Yes, at that time it  
20 would have been the Solicitor General.

21 MR. CAVALLUZZO: Right. I don't  
22 think I have ever asked you that -- I am not  
23 trying to test your memory -- but if you could be  
24 of assistance to us, at that period of time who  
25 was the Solicitor General, starting on 9/11,

1 September 11, 2001?

2 MR. ELCOCK: I think at that time  
3 it was Mr. MacAulay and, subsequently, Mr.  
4 Easter.

5 MR. CAVALLUZZO: Okay. And Mr.  
6 Easter remained the Solicitor General until the  
7 end of 2003. Is that correct?

8 MR. ELCOCK: Yes. My dates are  
9 not perfect on that, but I think that's right.

10 MR. CAVALLUZZO: Okay, if we can  
11 come back down to the ministerial direction and,  
12 once against, this is an unclassified version of  
13 the classified version, and this is what the  
14 government is saying that CSIS should be doing in  
15 the next year or the year 2003-2004? Is that  
16 correct?

17 MR. ELCOCK: Yes. It's based, in  
18 fact, on a document we send to the minister every  
19 year, which is essentially our report of our  
20 activities during the previous year.

21 MR. CAVALLUZZO: Okay. So that  
22 this direction emanates from information and  
23 analysis that you have given the government?

24 MR. ELCOCK: Well, you are back to  
25 your circular process --

1 MR. CAVALLUZZO: Right.

2 MR. ELCOCK: -- the dissemination  
3 leads, the direction leads, inevitably, to the  
4 whole circle being repeated.

5 MR. CAVALLUZZO: Okay. And in  
6 terms of, if we can call it, the prime area of  
7 concern that the government says that CSIS should  
8 be dealing with in the -- it's referred to as  
9 counter-terrorism, and it says:

10 "Serious violence for the  
11 purpose of achieving a  
12 political, religious or  
13 ideological objective  
14 continues to pose the  
15 greatest threat to the is the  
16 security of Canada, whether  
17 the violence originates  
18 domestically or within a  
19 foreign state"

20 -- and he refers to the September 11th attacks and  
21 how that changed the nature of the threat  
22 environment in North America -- and then it goes  
23 on in the next paragraph to state that:

24 "Nearly all of the world's  
25 terrorist groups have a

1 presence in Canada."  
2 -- and then makes reference to domestic terrorism  
3 issues, and it says, "To a lesser degree..." and  
4 then it says stays:

5 "CSIS is therefore directed  
6 to investigate threats of  
7 serious violence for the  
8 purpose of achieving a  
9 political, religious or  
10 ideological objective, and to  
11 advise the government about  
12 such threats, including those  
13 arising from: Religious  
14 extremism; State-sponsored  
15 terrorism...; and Terrorist  
16 financing."

17 Then, it goes on to say:

18 "Given the current assessment  
19 of the threat environment,  
20 Sunni extremism shall remain  
21 the top priority within the  
22 Service's Counter-terrorism  
23 program."

24 Then, finally, it says:

25 "The Service, in cooperation

1 with other government  
2 departments, is also directed  
3 to continue to strategically  
4 target, and to work in  
5 support of the prosecution  
6 and/or deportation of key  
7 members of terrorist  
8 organizations, and the denial  
9 of a safe haven in Canada."

10 It does give direction in respect  
11 of other problems. "Counter-proliferation", can  
12 you just briefly describe what that means?

13 MR. ELCOCK: "Counter-  
14 proliferation" is largely the issues surrounding  
15 proliferation of weapons of mass destruction, such  
16 as chemical or biological or nuclear weapons and,  
17 indeed, methods of delivery, such as missile  
18 programs. And to the extent that Canada is used  
19 by a number of countries as a source of dual-use  
20 goods or technology, obviously, those are  
21 investigations we pursue to try and prevent that  
22 from happening.

23 MR. CAVALLUZZO: Okay. Thirdly,  
24 it makes reference to "counter-intelligence". Can  
25 you just briefly describe what that is?

1                   MR. ELCOCK: "Counter-  
2 intelligence" is essentially dealing with those  
3 organizations, foreign intelligence organizations,  
4 that seek to operate in Canada covertly, in  
5 essence, to collect information here, either  
6 information that is relevant to Canadian political  
7 issues and/or to Canadian communities. In some  
8 cases, some foreign intelligence services continue  
9 to try and exercise influence over their former  
10 populations in Canada.

11                   MR. CAVALLUZZO: Okay. And then  
12 security screening, where that has just --  
13 screening responsibilities which CSIS has in  
14 respect of immigrants, prospective employees of  
15 the public service and so on?

16                   MR. ELCOCK: The service has  
17 responsibility for screening people who are  
18 seeking to obtain a clearance in government, but  
19 also we screen individuals on behalf of the  
20 Department of Immigration, to both immigrants and  
21 refugees.

22                   MR. CAVALLUZZO: Okay. Reference  
23 is then made to foreign intelligence, which we  
24 have dealt with.

25                   And then technological

1 development, analysis and production.

2 "Intelligence liaison", what does that mean, that  
3 last direction?

4 MR. ELCOCK: "Intelligence  
5 liaison" is essentially -- we have relationships,  
6 service has relationships, with some 247 services  
7 around the world, all of differing kinds and  
8 import. The management of that is intelligence  
9 liaison.

10 MR. CAVALLUZZO: Okay. Finally,  
11 it says:

12 "In respect of reporting to  
13 the minister, the director  
14 will report to me in a  
15 timely, regular and  
16 comprehensive manner on any  
17 investigation where there is  
18 well founded risk of serious  
19 violence or potential for  
20 public controversy." (As  
21 read)

22 How often do you meet with the  
23 minister?

24 MR. ELCOCK: It varies, but,  
25 generally speaking, I would meet with the minister



1 at least every two weeks, sometimes as often as  
2 every week. It depends on what issues are on the  
3 table and, to some extent, the minister's  
4 availability, given all the other  
5 responsibilities. But, generally speaking, it  
6 would be at least every second week.

7 MR. CAVALLUZZO: Okay. Now, let  
8 us move to the second phase, which is the planning  
9 phrase of the cycle. Now, what does this have  
10 reference to? Who does the planning?

11 MR. ELCOCK: Essentially, the  
12 planning side, once we receive the direction, it's  
13 essentially the operational side that issues  
14 directions from the deputy director of operations  
15 to the various components under him or the ADO, to  
16 the components under him, in terms of how to make  
17 those directions operational in the coming year,  
18 what our expectations are of regional offices and  
19 headquarters sections.

20 MR. CAVALLUZZO: As you said  
21 earlier, CSIS is in the job of risk management.  
22 So that what you have to do is you have to take  
23 into account the direction given to you by the  
24 government, you have to take into account,  
25 presumably, your own assessment, in terms of the

1 risks or threats, which are present. And on top  
2 of that, presumably, you have to take into account  
3 your resources?

4 MR. ELCOCK: You start with some  
5 sense of what your resources are, under the  
6 direction from the minister, and that gives you a  
7 sense of broad direction for the coming year.

8 The reality is that at any point  
9 during the year that may change as circumstances  
10 change. If there is suddenly an emergency, if for  
11 example there were a terrorist attack or the  
12 threat of a terrorist attack in the middle of the  
13 year that came from an unexpected area, then you  
14 would suddenly have large numbers of resources  
15 that were supposed to be doing other things under  
16 the plan suddenly dedicated to looking at that  
17 particular issue.

18 MR. CAVALLUZZO: Okay.

19 MR. ELCOCK: I mean, intelligence  
20 agencies are organizations which have to have  
21 enormous flexibility in order to move people  
22 around to respond to whatever the particular risk  
23 is that is the highest priority at any point in  
24 time.

25 MR. CAVALLUZZO: Maybe at this

1 point in time we can deal with the issue of  
2 resources. I understand, subsequent to Bill C-36,  
3 that the resources of CSIS were significantly  
4 increased?

5 MR. ELCOCK: They were increased  
6 in the aftermath of September the 11th in the  
7 budget of December the 10th by about somewhere  
8 between 32 and 35 per cent, depending on whose  
9 numbers you use.

10 MR. CAVALLUZZO: As a true civil  
11 servant, you wouldn't say "significant", but it  
12 was --

13 MR. ELCOCK: No, it was very  
14 significant.

15 MR. CAVALLUZZO: Okay.

16 MR. ELCOCK: It was a very  
17 significant number. I think at the time we  
18 received, of the requests we have made, the  
19 largest proportion of what we had requested.

20 MR. CAVALLUZZO: Okay. If you can  
21 help us, in terms of officers, persons, power, how  
22 many new employees or officers would CSIS have  
23 been able to hire as a result of that increased  
24 budget?

25 MR. ELCOCK: It would mean an

1 increased mix of people, probably somewhere in the  
2 region of 280 to 300 people additional to the  
3 service, but that would be a mix of people, both  
4 technical people, intelligence officers, and  
5 others that you require.

6 MR. CAVALLUZZO: Okay. Now, let  
7 us move, then, to the third phase of the  
8 intelligence cycle. That is collection.

9 Now, in respect of collection,  
10 what is the basic principle which applies to CSIS,  
11 in respect of collecting information about  
12 Canadians or others?

13 MR. ELCOCK: In what sense? I'm  
14 not quit sure --

15 MR. CAVALLUZZO: Well, is there a  
16 statutory limit imposed as to what you can  
17 collect? What I am referring to here is section  
18 12, again. It talks about "only to the extent  
19 that is strictly necessary".

20 MR. ELCOCK: It has to be, self-  
21 evidently -- under section 12, it has to be  
22 strictly necessary. Whatever you are collecting  
23 has to meet the test of the legislation and of the  
24 policies, in terms of what you are collecting, in  
25 respect of any particular investigation. We also

1 have a committee. I'm not sure if you are getting  
2 to that yet, but a targeting committee.

3 MR. CAVALLUZZO: We will come to  
4 that.

5 MR. ELCOCK: We will come to that.  
6 Okay.

7 MR. CAVALLUZZO: Right. In fact,  
8 as you know, Mr. Hooper -- in respect of the  
9 targeting committee, Mr. Chairman, Mr. Hooper,  
10 tomorrow, will be extensively dealing with how it  
11 operates. I just want to touch on it, this aspect  
12 of the cycle, and that is maybe to see whether  
13 CSIS complied with what Mr. McDonald recommended.

14 In his report -- you don't have to  
15 refer to it, but let me just briefly describe what  
16 he did in his report -- he said there should be  
17 tree three basic levels of investigation which  
18 determine the degree of intrusiveness. He said  
19 the first level should be field level approval; he  
20 said the second level should be headquarters  
21 approval and then the third level should be  
22 ministerial approval or approval by a justice of  
23 the Federal Court, depending on the nature of the  
24 intrusiveness.

25 Now, did the CSIS Act come out in

1 terms of words that are consistent with those  
2 recommendations?

3 MR. ELCOCK: No, the CSIS Act  
4 doesn't really deal with that issue. That was  
5 really an issue of policy. In terms of how the  
6 service made that operational, the reality is we  
7 are considerably, in a sense, stricter than Mr.  
8 Justice McDonald recommended, in the sense that  
9 intelligence agencies tend to be highly  
10 centralized organizations and all of the levels of  
11 investigation are approved at the centre rather  
12 than much in the way of local authority being  
13 delegated down.

14 MR. CAVALLUZZO: You have  
15 mentioned something called the "targeting  
16 committee".

17 MR. ELCOCK: The targeting  
18 committee is actually the committee that sits to  
19 consider proposals to target a specific individual  
20 or group. A proposal is put forward which puts  
21 forward all the evidence that justifies the  
22 request and, indeed, sets out the level of  
23 targeting authority required, whether it is, one,  
24 the least intrusive or, three, the most intrusive.

25 MR. CAVALLUZZO: Right. And you

1 chair that committee?

2 MR. ELCOCK: I chaired that  
3 committee, yes.

4 MR. CAVALLUZZO: Or you chaired  
5 that committee.

6 When it comes to seeking warrants,  
7 is there another committee in respect of  
8 authorizing the use of warrants?

9 MR. ELCOCK: When we moved to  
10 obtain a warrant, there another committee, the  
11 warrant review committee, which I also chaired,  
12 which considers each of those requests -- reviews  
13 the warrant application before it goes to the  
14 minister.

15 MR. CAVALLUZZO: Right. I could  
16 ask you about the number of warrants that are  
17 sought every year in the last two or three years,  
18 but I understand that there are weaknesses as far  
19 as those kinds of statistics are concerned. Is  
20 that fair?

21 MR. ELCOCK: Not so much  
22 weaknesses as the number don't necessary reveal  
23 the number of individuals or organizations that  
24 may be the subject of warranted interceptions or  
25 whatever.

1 MR. CAVALLUZZO: Right. Those are  
2 set out in the annual SIRC report, if anyone is  
3 interested.

4 MR. ELCOCK: Under section 12, the  
5 raw numbers are set out, in terms of the number of  
6 warrants that are obtained in a year.

7 MR. CAVALLUZZO: Okay. Now, I  
8 would like to turn to the fourth phase of the  
9 security intelligence cycle, and that is analysis.  
10 I think it is important to see what Justice  
11 McDonald said about this important aspect of the  
12 security intelligence cycle.

13 Once again, if you could refer  
14 back to your book of documents, at Tab 2, at page  
15 603. McDonald says, in paragraph 13, he says:

16 "Our proposals for  
17 strengthening the analytical  
18 capabilities of Canada's  
19 security intelligence agency  
20 fall into three categories.  
21 First, we shall recommend in  
22 Part VI...that the agency be  
23 staffed with individuals who  
24 are well-educated in a  
25 variety of disciplines, who



1 express themselves clearly,  
2 who have in many instances  
3 working experience in other  
4 organizations before joining  
5 the agency and who are full  
6 members eligible for  
7 promotion for senior  
8 positions."

9 And we will be coming back to that aspect of what  
10 kind of employees CSIS recruits.

11 It goes on:

12 "Second...we shall recommend  
13 a revamped and revitalized  
14 interdepartmental committee  
15 system, which will allow the  
16 consumers of the agency's  
17 products to play a more  
18 active role in setting the  
19 government's intelligence  
20 collection priorities and in  
21 providing the collection  
22 agencies with better  
23 assessments of the strengths  
24 and weaknesses of their  
25 current products."

1                   Is that kind of coordination and  
2 feedback from the other departments true today, in  
3 terms of the mechanisms within CSIS and the wider  
4 government?

5                   MR. ELCOCK: It is probably less  
6 true of issues such as counter-terrorism where, in  
7 a sense, the client is more often, in a sense,  
8 CSIS than it is the wider -- the primary client is  
9 CSIS rather than the wider government departments.  
10 The government departments are interested in  
11 receiving from us threat assessments, the product  
12 of our investigations. Ultimately, is there a  
13 threat to a specific place or a specific person?  
14 Is there a growing problem in a certain area?  
15 Those are the kinds of products that government  
16 departments are looking to us for.

17                   We, indeed, have a service within  
18 the research and production area of the service,  
19 which is our Strategic Analytical Unit, which does  
20 customer relations: goes to departments and finds  
21 out whether a paper we have done on a specific  
22 issue is of interest to people, was it useful to  
23 people, so on and so forth.

24                   But in terms of the collection  
25 process in the counter-terrorism area,

1 intelligence agencies rarely ever have a grand  
2 coup that explains everything to you. It is  
3 largely the compiling of small pieces of  
4 information, which, ultimately, allow you to draw  
5 a picture. So much of the information we collect  
6 goes into the database, our centralized database,  
7 and is there until somebody can draw a broader  
8 picture, which allows you to put out a product  
9 more widely to government.

10 That collection process may take  
11 months, may take years, in some cases, before it  
12 bears fruit. So that collection process isn't  
13 something that goes back on a frequent basis to  
14 the client. It's the ultimate product that goes  
15 to the client.

16 MR. CAVALLUZZO: I am going to be  
17 asking you about the reliability of security  
18 intelligence information, but let's assume just a  
19 practical example of me being a -- you called them  
20 field officers.

21 MR. ELCOCK: No, they are  
22 intelligence officers.

23 MR. CAVALLUZZO: Okay. So I am an  
24 intelligence officer out in the field in Toronto,  
25 for example, and I get a bit of information. Do I

1 analyze the information at that point in time, if  
2 it is related to a threat in Canada? Or do I just  
3 ship it off to headquarters and let them do it?

4 MR. ELCOCK: As I said before,  
5 most intelligence agencies are highly centralized  
6 and most analysis is done centrally. That's why  
7 the largest part of our resources are, indeed, in  
8 our headquarters in Ottawa, not in our regional  
9 field offices, which is where most of the  
10 investigations are done.

11 So, generally speaking, if you are  
12 the officer who is entering the report, because  
13 you may also have some analytical experience, you  
14 may have put some analytical component into that  
15 report, but that would go into the database and it  
16 would go straight to headquarters and be available  
17 both to headquarters and to other officers across  
18 the country essentially instantaneously.

19 MR. CAVALLUZZO: Has CSIS  
20 encouraged generalists in the sense that you like  
21 people working in the field as well as working in  
22 the analysis section of the headquarters.

23 MR. ELCOCK: Yes. There are  
24 different ways to go. Other services operate  
25 differently. Our view was that has a relatively

1 small service that we required people who were  
2 generalists, in other words people who could  
3 operate in the field and also as analysts.  
4 Obviously over a career some people will spend  
5 some time in one area than another. They will be  
6 better field officer or better analysts, but the  
7 reality is they all start with the same  
8 educational background in terms of their service  
9 education.

10 MR. CAVALLUZZO: Right. Let us  
11 assume that there is some analysis done at the  
12 field level, that information is plugged into the  
13 centralized system at headquarters. What happens  
14 to that information when it reaches headquarters?

15 MR. ELCOCK: It would be available  
16 to whichever -- to the desk that was appropriate  
17 for that particular investigation and allow them  
18 to begin -- it is simply another piece of  
19 information which they can add to the puzzle they  
20 have already been trying to work on to ultimately  
21 create a picture. So it is essentially another  
22 piece of information to be fitted into the puzzle  
23 by the analysts on that desk in headquarters.

24 MR. CAVALLUZZO: Presumably that  
25 picture may become clearer and clearer over time

1 or may become unclearer over time.

2 Is that correct.

3 MR. ELCOCK: It can go in either  
4 direction.

5 MR. CAVALLUZZO: And whatever  
6 picture is there, the person in the field has  
7 access to it because it is a centralized database.

8 MR. ELCOCK: Yes, it is accessible  
9 across the country so they would have access to  
10 what is on that database. So an officer in  
11 Halifax working on the same problem would also  
12 have access to that database.

13 MR. CAVALLUZZO: I understand from  
14 previous speeches or papers that you have given  
15 that you have said that the centralization of  
16 information gives uniformity of practice and  
17 jumped across the system which is obviously  
18 beneficial.

19 Is that correct?

20 MR. ELCOCK: It does that, as well  
21 as providing us with an ability to run a national  
22 investigation in a sense that people working on  
23 the same issue, whether it is Halifax or Vancouver  
24 or Montreal, will have a same information at their  
25 fingertips essentially at the same time.

1                   MR. CAVALLUZZO: In terms of its  
2 centralized database and its technological  
3 systems, how does CSIS compare with foreign  
4 security intelligence agencies?

5                   MR. ELCOCK: We are probably one  
6 of the most advanced in the world in the context  
7 of our ability to manage information.

8                   MR. CAVALLUZZO: Now I'm going to  
9 come to the fifth or final part of the cycle and  
10 spend some time on this aspect. This is when you  
11 get the information, you have a picture -- how  
12 clear it is is up to you -- and then you will be  
13 reporting this information or disseminating the  
14 information in accordance with your obligations.

15                   Obviously the main recipient of  
16 the information is whom?

17                   MR. ELCOCK: The main recipient of  
18 the information -- well, it varies on what kind of  
19 information you are talking about.

20                   If it is information relative to  
21 the immigration process, then obviously it is  
22 going to go through the Department of Immigration;  
23 if it is information relevant to the Department of  
24 Transport, it is going to go largely to the  
25 Department of Transport; if it is information that

1           may be criminal in nature, then it will largely go  
2           to the police and that may be either the RCMP or a  
3           local police force.

4                       MR. CAVALLUZZO: At times, you may  
5           have arrangements with foreign agencies where you  
6           may share information with foreign agencies.

7                       Isn't that correct?

8                       MR. ELCOCK: Yes, we do, although  
9           like all other intelligence agencies we hope to  
10          get more than we share.

11                      MR. CAVALLUZZO: I am going to  
12          come to that. I call that the capitalism of  
13          security intelligence.

14          --- Laughter / Rires

15                      MR. CAVALLUZZO: This is an  
16          important part of this public inquiry, and that is  
17          the relationship with foreign agencies.

18                      If you refer once again back to  
19          the statute which defines your powers, we can see  
20          that is regulated in section 17.

21                      MR. ELCOCK: Sorry. Could you  
22          repeat the question again?

23                      MR. CAVALLUZZO: It is  
24          arrangements with foreign agencies or countries  
25          and it can be found in section 17 of the CSIS Act.



1 MR. ELCOCK: That's correct.

2 MR. CAVALLUZZO: I guess we can  
3 refer to them or call them section 17(1)(b)  
4 arrangements.

5 Just for the public who doesn't  
6 have access to the legislation, it states:

7 "For the purpose of  
8 performing its duties and  
9 functions under this Act, the  
10 Service may,

11 ...

12 (b) with the approval of the  
13 Minister after consultation  
14 by the Minister with the  
15 Minister of Foreign Affairs,  
16 enter into an arrangement or  
17 otherwise cooperate with the  
18 government of a foreign state  
19 or an institution thereof or  
20 an international organization  
21 of states or an institution  
22 thereof."

23 That is an authority under which  
24 you act when you enter into that kind of  
25 arrangement?

1 MR. ELCOCK: That's right.

2 MR. CAVALLUZZO: Subsection (2)

3 states:

4 "Where a written arrangement  
5 is entered into pursuant to  
6 subsection (1) or  
7 subsection 13(2) or (3), a  
8 copy thereof shall be given  
9 forthwith to the Review  
10 Committee."

11 That is the Security Intelligence  
12 Review Committee.

13 Isn't that correct.

14 MR. ELCOCK: That's right.

15 MR. CAVALLUZZO: A couple of  
16 questions initially. It refers to "written  
17 arrangement" in (2).

18 Just out of interest, are all  
19 of these arrangements with foreign entities in  
20 writing?

21 MR. ELCOCK: No, they are not.  
22 Some are in writing but many are not.

23 MR. CAVALLUZZO: Are the bulk of  
24 them in oral rather than non-writing?

25 MR. ELCOCK: The bulk of them

1 would be oral.

2 MR. CAVALLUZZO: In terms of the  
3 concerns once again that we have with obtaining or  
4 giving information to foreign entities, I would  
5 like to refer back to what Mr. McDonald said those  
6 years ago in Chapter 7, which is the free-standing  
7 excerpt you have.

8 --- Pause

9 MR. CAVALLUZZO: At page 632, he  
10 referred to the policy concerns about these kinds  
11 of arrangements. In particular I would just refer  
12 to paragraph 27. He states:

13 "Liaison with foreign  
14 agencies raises a number of  
15 important policy concerns.  
16 One is, simply, whether true  
17 reciprocity exists. There is  
18 always a danger that, unless  
19 the exchange of information  
20 is carefully monitored,  
21 Canada may give far more than  
22 it gets."

23 This is the capitalist  
24 perspective, if we can call it that. So that is  
25 very important that you try to get the better of

1 the deal so to speak?

2 MR. ELCOCK: That's right.

3 MR. CAVALLUZZO: He goes on:

4 "A second concern relates to  
5 the entering into agreements  
6 which may conflict with  
7 Canada's foreign policies.  
8 An agreement should not be  
9 made with the agency of a  
10 foreign country if it would  
11 entail implicitly condoning  
12 policies which Canada has  
13 opposed as a matter of our  
14 foreign policy."

15 Is that principle --

16 MR. ELCOCK: That is indeed why  
17 the legislation requires consultation with the  
18 Minister of Foreign Affairs.

19 MR. CAVALLUZZO: He goes on:

20 "A third issue involves the  
21 need for sufficient control  
22 over information leaving this  
23 country to ensure that the  
24 rights of Canadians are  
25 adequately protected."

1                   Once again we see that concern for  
2           civil liberties.

3                   He goes on in paragraph 28:

4                   "These and other issues all  
5                   point to the need for careful  
6                   and accountable control by  
7                   government of liaison  
8                   agreements between the  
9                   Canadian security  
10                  intelligence agency and  
11                  foreign agencies. From our  
12                  review of this subject, it is  
13                  evident that there has been a  
14                  lack of government attention  
15                  to the policy issues inherent  
16                  in such agreements, a neglect  
17                  which can create an excessive  
18                  vulnerability to the hazards  
19                  of liaison with foreign  
20                  agencies.

21                  Are you aware of any of the  
22                  problems that Justice McDonald was referring to in  
23                  paragraph 28?

24                  MR. ELCOCK: I'm not sure which  
25                  specific problems he was referring to.

1                   MR. CAVALLUZZO: But generally, if  
2 you would just describe --

3                   MR. ELCOCK: But it is true, and  
4 it is something that we, in the service, have  
5 managed very carefully. You are to some extent at  
6 the mercy of your liaison partners unless you  
7 manage your relationships carefully.

8                   MR. CAVALLUZZO: That can  
9 obviously lead to many problems.

10                   He goes on at page 633 to talk  
11 about the kinds of political controls he thinks  
12 would be necessary.

13                   He says at paragraph number 34:

14                   "We think that the statutory  
15 mandate of the security  
16 intelligence agency should  
17 explicitly provide that there  
18 may be foreign liaison  
19 agreements subject to proper  
20 control."

21                   And then he goes on:

22                   "The principal points of  
23 control should be the two  
24 Ministers..."

25                   That is obviously what we see in

1 section 17(1)(b).

2 Is that correct?

3 MR. ELCOCK: Yes.

4 MR. CAVALLUZZO: Then he goes on  
5 to suggest certain statements of principles or  
6 priorities which are important when you are  
7 entering into this kind of an arrangement with a  
8 foreign agency.

9 In paragraph 36 at page 634  
10 he said:

11 "The government should  
12 establish a clear statement  
13 of principles to guide the  
14 security intelligence  
15 agency's relationships with  
16 foreign security and  
17 intelligence agencies. One  
18 purpose of these guidelines  
19 would be to diminish the risk  
20 of the security agency's  
21 becoming an appendage of  
22 foreign agencies,  
23 particularly in relation to  
24 those agencies from whom it  
25 borrows information

1 frequently. These principles  
2 should be developed as a set  
3 of guidelines by an  
4 interdepartmental committee,  
5 and approved by Cabinet. In  
6 the following paragraphs, we  
7 suggest some of the  
8 principles that should be  
9 reflected in these  
10 guidelines."

11 And he goes on.

12 MR. ELCOCK: I think in fact those  
13 are reflected in the directions given to us by the  
14 Minister rather than in quite the way the McDonald  
15 Commission foresaw. The level of detail sometimes  
16 will not necessarily entirely function --

17 MR. CAVALLUZZO: I'm going to take  
18 you back to those directives as well.

19 MR. ELCOCK: Yes.

20 MR. CAVALLUZZO: There are just  
21 two other points that I would refer to from  
22 Mr. McDonald before I do take you there.

23 If you refer, finally, to page  
24 636, he talks about the limits to information  
25 sharing with a foreign agency.



1 He says in paragraph 43:

2 "The information given to  
3 foreign agencies must be  
4 about activities which are  
5 within the statutory mandate  
6 of the Canadian security  
7 intelligence agency. Foreign  
8 agencies are likely to have  
9 different mandates and  
10 therefore are likely to ask  
11 for information about  
12 Canadians or about people in  
13 Canada which is beyond the  
14 Canadian agency's terms of  
15 reference."

16 Would you agree with that, that in  
17 terms of sharing information that CSIS has with a  
18 foreign agency, that you are strictly bound by  
19 your statutory mandate?

20 MR. ELCOCK: Yes. We do encounter  
21 cases where agencies do seek to have us pass them  
22 other information, but, no, we can't pass them  
23 information other than that which is within our  
24 mandate. Indeed, because we can only maintain  
25 that information because it is strictly necessary

1 and so on, we don't usually have that information  
2 in our files. So it is simply a question of  
3 saying to somebody "We can't get you that  
4 information because we don't have it."

5 MR. CAVALLUZZO: Then the  
6 final aspect that Justice McDonald states in  
7 paragraph 44, he says:

8 "We take the view, too, that  
9 the Canadian Security  
10 intelligence agency, as a  
11 pre-condition for passing  
12 information to a foreign  
13 agency, should know the  
14 reason for the request. To  
15 provide information without  
16 questioning the request  
17 invites the danger that the  
18 security agency will operate  
19 according to the mandate of a  
20 foreign agency rather than  
21 according to its own terms of  
22 reference."

23 Would you agree with that  
24 admonition as well?

25 MR. ELCOCK: I would agree with

1           that as a concern. It clearly is a concern for us  
2           to be aware of the agenda of a foreign security  
3           organization that is looking for information, why  
4           do they want it. But it is also the reason that  
5           we put caveats on information that we do share to  
6           limit what it can be used for beyond what we may  
7           have given it for.

8                         MR. CAVALLUZZO: We are going to  
9           take you through those caveats. Let's just move,  
10          then, to the direction you referred to. That is  
11          in the policy documents at Tab 1.

12          --- Pause

13                        THE COMMISSIONER: I see it is  
14          after 12:30, Mr. Cavalluzzo. Are you starting a  
15          new area? Is this a good time for the break?

16                        MR. CAVALLUZZO: I just would like  
17          to ask one further question before we get into --  
18          I am going to be spending a little time with  
19          foreign arrangements.

20                        Just if you would look at Tab 1, I  
21          just want to confirm in the Ministerial Direction,  
22          right at the very first page -- do you see that?

23                        MR. ELCOCK: Yes.

24                        MR. CAVALLUZZO: It says:

25                                 "Accordingly, the following

1 five fundamental principles  
2 will form the foundation of  
3 the CSIS operation.  
4 The rule of law...  
5 The investigative means..."

6 These are the very same five  
7 governing principles that I referred to from  
8 McDonald.

9 MR. ELCOCK: Yes, they are.

10 MR. CAVALLUZZO: Thank you,  
11 Mr. Elcock. I think we will break for lunch at  
12 this point in time and we will resume at --

13 THE COMMISSIONER: Two o'clock.  
14 We will rise until two o'clock.

15 MR. CAVALLUZZO: Thank you.

16 --- Upon recessing at 12:32 p.m. /

17 Suspension à 12 h 32

18 --- Upon resuming at 2:00 p.m. /

19 Reprise à 14 h 00

20 THE COMMISSIONER: You may sit  
21 down.

22 Mr. Cavalluzzo.

23 MR. CAVALLUZZO: Mr. Elcock, when  
24 we broke for lunch, we were just about to begin  
25 dealing with the issue of the sharing of security

1 intelligence information with foreign entities,  
2 and I referred you to the policy document book at  
3 Tab 1, which is the Ministerial direction.

4 I would like to refer you to  
5 Annex D, which is at page 7.

6 In that annex we see, about  
7 halfway down the page, there is a title "Foreign  
8 Arrangements and Cooperation". And then it says:

9 "Subject to the Minister's  
10 approval, CSIS may have with  
11 each such organization an  
12 arrangement for cooperation."

13 This is obviously cooperation with  
14 foreign agencies.

15 It goes on to say:

16 "The Director will manage  
17 these arrangements subject to  
18 any conditions imposed by the  
19 Minister."

20 Just so that I understand that,  
21 when CSIS enters into an arrangement with a  
22 foreign agency, that is done with the approval of  
23 the Minister.

24 Is that correct?

25 MR. ELCOCK: That is right.

1 MR. CAVALLUZZO: With consultation  
2 with the Minister of Foreign Affairs.

3 MR. ELCOCK: That is correct.

4 MR. CAVALLUZZO: In terms of  
5 operations under that arrangement -- for example,  
6 if you have an arrangement with country A, and  
7 under that arrangement you want to share  
8 information with country A, do you have to go back  
9 to the Minister for approval or do you do that on  
10 your own?

11 MR. ELCOCK: No, we would not  
12 normally go back to the Minister for approval on  
13 those issues once the arrangement is in place,  
14 unless there is a material change in the  
15 relationship which causes us to look at whole  
16 relationship.

17 MR. CAVALLUZZO: Let us look at  
18 the detailed guidelines.

19 It says:

20 "The following points provide  
21 for detailed guidelines in  
22 this regard."

23 First of all:

24 "Arrangements may be  
25 established and maintained as

1 long as they remain  
2 compatible with Canada's  
3 foreign policy towards the  
4 country or international  
5 organization in question, as  
6 determined in ongoing  
7 consultations with the  
8 Department of Foreign Affairs  
9 and International Trade  
10 (DFAIT)."

11 And then it goes on on the next  
12 page:

13 "Arrangements may be  
14 established and maintained  
15 when such contacts are in the  
16 interests of the security of  
17 Canada."

18 As far as that guideline is  
19 concerned, is that done also in consultation with  
20 the Department of Foreign Affairs as well as the  
21 Solicitor General?

22 MR. ELCOCK: No. Under the  
23 previous bullet, in that respect, the issue of the  
24 security of Canada is more an issue for CSIS and  
25 for our Minister than it is necessarily for

1 foreign affairs.

2 MR. CAVALLUZZO: And the final  
3 guideline says:

4 "Arrangements will respect  
5 the applicable laws relating  
6 to the disclosure of personal  
7 information."

8 I would like to move to Tab 4  
9 which looks like an operational guideline.  
10 Perhaps you can describe what that is.

11 It is entitled "OPS-402 Section 17  
12 Arrangements With Foreign Governments and  
13 Institutions".

14 What is this document?

15 MR. ELCOCK: That is essentially  
16 or policy following on from the Minister's  
17 direction with respect to exchanges with foreign  
18 governments and institutions.

19 MR. CAVALLUZZO: I would like to  
20 refer to the second page in under "Guidelines for  
21 Foreign Arrangements".

22 The first two bullet points refer  
23 to the two points that we have raised, and then  
24 3.3 states:

25 "Arrangements with countries



1 or international  
2 organizations that do not  
3 share Canada's respect for  
4 democratic or human rights  
5 will only be considered where  
6 there is a definite  
7 requirement to protect the  
8 security of Canada."

9 Is that a consideration that is  
10 taken by the Solicitor General and CSIS or also in  
11 consultation with DFAIT?

12 MR. ELCOCK: There would be some  
13 consultations with foreign affairs in terms of  
14 entering into the relationship, and that would  
15 presumably be one of the things they would be  
16 interested in as well. But we would be looking at  
17 it as well ourselves.

18 MR. CAVALLUZZO: The implication  
19 from this is that even if a country does not have  
20 the same kind of respect for democratic or human  
21 rights that there still might be a situation where  
22 Canada would enter into an arrangement with that  
23 country.

24 Is that correct?

25 MR. ELCOCK: At the end of the day

1 the responsibility of CSIS is to collect  
2 intelligence with respect to threats to the  
3 security of Canada. That information may come  
4 from any number of sources and on occasion it may  
5 come from sources of countries that may not have  
6 the same respect for democratic and human rights  
7 as Canada does.

8 MR. CAVALLUZZO: I would like to  
9 break this down in terms of sharing information.  
10 There are two aspects to that or two sides to the  
11 coin. One is the giving of information from CSIS  
12 or any Canadian entity to a foreign entity and  
13 then there is the other side, and that is  
14 receiving information from the foreign entity.

15 We have heard about the  
16 Ministerial approval under section 17. Are there  
17 different types of arrangements that you could  
18 help us on in terms of understanding the kinds of  
19 relationships we are going to be look at?

20 MR. ELCOCK: In the context of the  
21 kinds of information we will share with any  
22 particular --

23 MR. CAVALLUZZO: Right.

24 MR. ELCOCK: Yes, there are three.

25 MR. CAVALLUZZO: What are they?

1                   MR. ELCOCK: In one case we would  
2 share only technical information or we would share  
3 technical information. We may also share  
4 screening information, and we may also share  
5 security intelligence.

6                   Each of those are three  
7 alternatives or they could be all together  
8 depending on the organization in question.

9                   MR. CAVALLUZZO: In terms of CSIS  
10 sharing any kind of information, whether it be any  
11 of the three examples you gave us, are there  
12 certain conditions imposed by CSIS?

13                   MR. ELCOCK: In terms of the  
14 caveats we would impose on the information?  
15 Generally speaking, that applies less obviously to  
16 technical information.

17                   But generally speaking, we put  
18 caveats. There are four caveats that we normally  
19 put, for which we can take one, two or three or  
20 four caveats to put on any information we share.

21                   One of them is, for example --

22                   MR. CAVALLUZZO: Why don't I take  
23 you to it.

24                   MR. ELCOCK: All right.

25                   MR. CAVALLUZZO: If you refer to

1           your document book at Tab 5, there is an  
2           operational policy called "Disclosure of  
3           Operational Information and Intelligence -  
4           Caveats".

5                           MR. ELCOCK:   Tab 5?

6                           MR. CAVALLUZZO:  It is in your  
7           document book which is the soft volume.

8                           MR. ELCOCK:   Sorry.

9                           MR. CAVALLUZZO:  Tab 5.

10                          MR. ELCOCK:   I have it.

11                          MR. CAVALLUZZO:  As you stated,  
12           there appear to be four caveats?

13                          MR. ELCOCK:   Yes.

14                          MR. CAVALLUZZO:  Caveat 1, which  
15           is at the bottom of the page -- first of all, it  
16           says the policy is that:

17                                   "The appropriate caveat must  
18                                   be added to all information  
19                                   or intelligence disclosed in  
20                                   written or print form to any  
21                                   person, agency or department  
22                                   outside the Service."

23                                   So that is the policy.

24                                   It talks about in written form.

25           What if you give information orally.  Do you still

1 impose a caveat?

2 MR. ELCOCK: Generally speaking,  
3 if we are sharing information with another  
4 service, it has to be authorized by the Director  
5 General and it would be written.

6 MR. CAVALLUZZO: So we have  
7 different kinds of caveats.

8 What is Caveat 1, which is  
9 described in paragraph 3.1 of this policy?

10 MR. ELCOCK: It says:

11 "Caveat 1 relates to  
12 information and intelligence  
13 subject to the Access to  
14 Information and Privacy Acts  
15 ... and should appear on all  
16 letters, telex ..."

17 And so on. And then it says:

18 "This document constitutes a  
19 record which may be subject  
20 to mandatory exemption under  
21 the Access to Information Act  
22 or the Privacy Act. The  
23 information or intelligence  
24 may also be protected by the  
25 provisions of section 37(1)

1 of the Canada Evidence Act.  
2 The information or  
3 intelligence must not be  
4 disclosed or used as evidence  
5 without prior consultation  
6 with the Canadian Security  
7 Intelligence Service."

8 MR. CAVALLUZZO: All right.  
9 Caveat 2, which is described in  
10 paragraph 4.1, what is that?

11 MR. ELCOCK: Caveat 2 relates to  
12 the reclassification and further dissemination of  
13 information and intelligence and reads as follows:

14 "This document is the  
15 property of the Canadian  
16 Security Intelligence  
17 Service. It is loaned to  
18 your agency/department in  
19 confidence, for internal use  
20 only. If you are subject to  
21 public access to information  
22 laws which do not allow you  
23 to protect this information  
24 from disclosure, notify CSIS  
25 immediately and return the

1 document."

2 MR. CAVALLUZZO: Caveat 3 does not  
3 really relate to sharing information with foreign  
4 entities.

5 Is that correct?

6 MR. ELCOCK: It covers information  
7 and intelligence from sensitive sources, and it  
8 might well be applied to information shared with a  
9 foreign service if indeed that information was  
10 sensitive human source information.

11 MR. CAVALLUZZO: Could you please  
12 read what that caveat is?

13 MR. ELCOCK: Caveat 3 is:

14 "This document is the  
15 property of the Canadian  
16 Security Intelligence  
17 Service. It is loaned to  
18 your agency/department in  
19 confidence. The information  
20 or intelligence contained in  
21 this document emanates from  
22 sensitive sources and no  
23 action may be taken on the  
24 basis of this information or  
25 intelligence which may

1                   jeopardize those sources. It  
2                   must not be reclassified or  
3                   disseminated, in whole or in  
4                   part, without the consent of  
5                   the originator."

6                   MR. CAVALLUZZO: If you could you  
7                   help us here, this is a caveat which basically  
8                   says before you disclose this information to  
9                   anybody, you need our consent.

10                  MR. ELCOCK: Essentially this is  
11                  the third party rule which is a traditional part  
12                  of most intelligence agencies' practices; i.e., if  
13                  I share with you, you don't share with a third  
14                  party without consulting me.

15                  MR. CAVALLUZZO: What happens if  
16                  the other agency violates the third party rule?  
17                  In other words, you discover that they have  
18                  disclosed this information without your consent.

19                  MR. ELCOCK: You may not be able  
20                  to do very much about that particular incident,  
21                  but the reality is it will govern how you share in  
22                  future with that organization.

23                  Respect for the third party rule  
24                  is crucial in fact to all of our relationships.  
25                  Services that don't respect the third party rule



1 obviously we deal with very differently than ones  
2 that do.

3 MR. CAVALLUZZO: So you don't run  
4 off to court and sue them.

5 MR. ELCOCK: There is  
6 unfortunately no court you can go to to sue them.

7 MR. CAVALLUZZO: Finally, the  
8 fourth caveat deals with enforcement. Could you  
9 describe what that is?

10 MR. ELCOCK: This is related to  
11 security information and intelligence disclosed to  
12 Canadian law enforcement agencies, and it is to be  
13 used in all documents containing privileged  
14 information provided to Canadian law enforcement  
15 agencies.

16 It reads:

17 "Because disclosure of this  
18 document would be injurious  
19 to national security, the  
20 Canadian Security  
21 Intelligence Service objects  
22 to its disclosure before a  
23 court, person or body with  
24 jurisdiction to compel the  
25 production. The Service

1 reserves its right to certify  
2 to the above instances,  
3 pursuant to section 37(1) of  
4 the Canada Evidence Act, that  
5 the information or  
6 intelligence contained in  
7 this document should not be  
8 disclosed on the grounds of  
9 national security."

10 MR. CAVALLUZZO: Before  
11 information goes out from CSIS to a foreign  
12 agency, you said that the Director General has to  
13 agree to it or approve it?

14 MR. ELCOCK: The Director General  
15 of that particular branch. Generally it would be  
16 a headquarters branch, not a regional office.

17 MR. CAVALLUZZO: The Director  
18 General you say of a particular branch. Can you  
19 give us an example of a branch?

20 MR. ELCOCK: The Director General  
21 of Counter-Terrorism.

22 MR. CAVALLUZZO: So the Director  
23 General would approve it going out and would  
24 ensure that the appropriate caveats were imposed?

25 MR. ELCOCK: Yes.

1 MR. CAVALLUZZO: Presumably that  
2 approval is done on a case-by-case basis?

3 MR. ELCOCK: Yes.

4 MR. CAVALLUZZO: Let's deal with  
5 the other side of the coin -- and I am going to  
6 get a little more specific as we move on -- in  
7 terms of CSIS receiving information.

8 Presumably, in terms of receiving  
9 information, you are faced with what we call  
10 reverse caveats.

11 MR. ELCOCK: Caveats imposed by  
12 other services.

13 MR. CAVALLUZZO: Correct.

14 MR. ELCOCK: Yes.

15 MR. CAVALLUZZO: In other words,  
16 before you can disclose information given to you  
17 by them, you would have to seek their consent?

18 MR. ELCOCK: That is right.

19 MR. CAVALLUZZO: In terms of  
20 receiving information from a foreign agency, CSIS  
21 hasn't assessed its reliability because it would  
22 be a foreign agency that obtained this  
23 information. What do you do when you receive  
24 foreign information? Do you assess its  
25 reliability on your own?

1                   MR. ELCOCK: You have a leg up in  
2 the sense that you have an assessment of the  
3 reliability of the service that is providing the  
4 information. So it may have more or less  
5 credibility.

6                   At that point, if you receive any  
7 information -- and it does not really matter from  
8 whatever source you receive it -- you have to look  
9 at that information to see if you can corroborate  
10 it. A piece of information that cannot be  
11 corroborated, no matter who it comes from, is  
12 essentially useless to us.

13                  MR. CAVALLUZZO: What about a  
14 situation in which, as is the practice, the  
15 foreign agency has imposed a caveat that CSIS  
16 cannot disclose this information without their  
17 consent.

18                  Has CSIS ever sought their consent  
19 in terms of whether such information may be  
20 disclosed, whether it be to a court of law or  
21 public inquiry?

22                  MR. ELCOCK: Yes, on occasion we  
23 have gone back and asked services if we would be  
24 allowed to disclose information, probably more  
25 often than not to a law enforcement agency but it

1           also happens in other cases.

2                           MR. CAVALLUZZO:   Okay.   Now I  
3           would like to deal with that guideline that talked  
4           about the human rights record of the foreign  
5           agency or the foreign country from which the  
6           information is coming.   We have seen obviously  
7           before you enter into the relationship you take  
8           that into account.

9                           When you receive information from  
10          a country with a poor human rights records, do you  
11          also take that into account on an ad hoc basis as  
12          you are receiving information from that country?

13                          MR. ELCOCK:   Certainly, because it  
14          may go to the credibility of the information and  
15          therefore its utility.

16                          MR. CAVALLUZZO:   Okay.   If we can  
17          look at one particular country, Syria.

18                          In the year 2002, was CSIS aware  
19          of the human rights record of Syria?

20                          MR. ELCOCK:   I suspect we probably  
21          would have been.

22                          MR. CAVALLUZZO:   Let me just point  
23          you to two particular publications at that time.

24                          One is the Amnesty International  
25          Annual Report which was released in May of 2002

1           which talked about the concern about torture in  
2           Syria. The wording of the report, and I am  
3           quoting is:

4                            "Torture and ill treatment  
5                            continued to be inflicted  
6                            routinely on political  
7                            prisoners especially during  
8                            incommunicado detention at  
9                            the Palestine branch and  
10                           military interrogation branch  
11                           detention centres."

12                           (As read)

13                           Were you aware of the Amnesty  
14           International report in 2002?

15                           MR. ELCOCK: I don't recall being  
16           particularly aware of that one, but I am aware of  
17           Amnesty International producing such reports and  
18           have seen them in respect of other countries.

19                           MR. CAVALLUZZO: I don't want to  
20           get too close to the Arar facts, but you are aware  
21           that Mr. Arar was detained in the Palestine branch  
22           in Syria?

23                           MR. ELCOCK: Actually, I had  
24           forgotten that. I'm not even sure if I originally  
25           knew it.

1 MR. CAVALLUZZO: Okay. The U.S.  
2 State Department also gives an annual review of  
3 the human rights record.

4 MR. ELCOCK: Yes.

5 MR. CAVALLUZZO: In 2002 in  
6 respect of the human rights practices for Syria,  
7 which was released in March of 2002, it stated:

8 "Although torture occurs in  
9 prisons, torture is most  
10 likely to occur while  
11 detainees are being held at  
12 one of the many detention  
13 centres run by the various  
14 security services throughout  
15 the country and particularly  
16 while the authorities are  
17 attempting to extract a  
18 confession or information  
19 regarding an alleged crime or  
20 alleged accomplices."

21 (As read)

22 Those Department of State Annual  
23 Reports are available to the public?

24 MR. ELCOCK: I am familiar with  
25 them. I have read them on other occasions.

1 MR. CAVALLUZZO: Just out of  
2 interest, does Canada have such an annual report?

3 MR. ELCOCK: Not that I am aware  
4 of. We of course look at all of those and do our  
5 own assessment if we are interested in or  
6 concerned about any particular country on the  
7 basis of what our own reporting is and so on to  
8 make an assessment for our own purposes.

9 MR. CAVALLUZZO: Okay. I would  
10 like to just ask you a few questions concerning,  
11 generally speaking, the reliability of security  
12 intelligence information and the reliability of  
13 information which may have resulted from torture.

14 Dealing first with the reliability  
15 of security intelligence generally, there is, I  
16 think, a very apt description in this document  
17 entitled "Securing an Open Society Canada's  
18 National Security Policy", which you have no doubt  
19 read. I only refer to it because there is an apt  
20 description of "security intelligence". I am  
21 referring now to page 16.

22 MS McISAAC: Does the witness have  
23 a copy of this, Mr. Cavalluzzo?

24 THE COMMISSIONER: We can  
25 certainly get him one.



1 MS McISAAC: Is there a tab number  
2 you could refer us to, please?

3 --- Pause

4 THE COMMISSIONER: It is in  
5 Volume 1, page 96.

6 --- Pause

7 MR. CAVALLUZZO: The only  
8 reference here, Mr. Elcock, is just the portion  
9 above the title "Progress to Date" just describing  
10 the "Nature of Intelligence".

11 It is stated:

12 "The nature of intelligence  
13 is that we rarely, if ever,  
14 have complete information.  
15 Rather, intelligence  
16 reporting and assessments are  
17 based on fragmented and  
18 sometimes contradictory  
19 information. It is therefore  
20 essential to bring together  
21 information on threats to  
22 Canada from all available  
23 sources and properly assess  
24 it in order to provide as  
25 accurate and complete a

1 picture as possible. It is  
2 also critically important  
3 that the resulting product be  
4 conveyed in a timely,  
5 accurate and usable manner to  
6 those whose actions or  
7 decisions depends upon it."

8 (As read)

9 That is the only reference. Would  
10 you agree with that description of security  
11 intelligence?

12 MR. ELCOCK: That is certainly  
13 accurate in terms of what the difficulties are.  
14 It rarely comes to you all in one piece. As I  
15 said earlier, you receive lots of little bits and  
16 what you are trying to do is make a picture out of  
17 the puzzle pieces.

18 MR. CAVALLUZZO: Right. In terms  
19 of generally speaking there is a great deal of  
20 discussion and debate today about, for example,  
21 the reliability of the security information that  
22 the Americans relied upon in going into Iraq in  
23 terms of the weapons of mass destruction so that  
24 the public is somewhat concerned about the  
25 reliability -- or some of the public is somewhat

1 concerned about the reliability of security  
2 information, and the questions I have are the  
3 following:

4 First of all, does CSIS ever pass  
5 on information that it believes is unreliable?

6 MR. ELCOCK: No.

7 MR. CAVALLUZZO: Does CSIS --

8 MR. ELCOCK: Although in  
9 circumstances, if we received information that  
10 said there will be a bomb tomorrow, even if it is  
11 unreliable we would pass on the information that  
12 there is the possibility of a bomb tomorrow but we  
13 believe the information to be unreliable, pass  
14 that on to the police forces so in fact if  
15 something were to happen they would actually have  
16 had that information and have been able to pay at  
17 least some additional attention to that particular  
18 area or individual or whatever it happened to be.

19 MR. CAVALLUZZO: So that if  
20 information is transferred or shared or given,  
21 which information is not definitive or somewhat  
22 speculative, that -- not a caveat, but certainly  
23 that would be pointed out in terms of the  
24 receiving agency?

25 MR. ELCOCK: Yes.

1 MR. CAVALLUZZO: Or should be?

2 MR. ELCOCK: Yes.

3 MR. CAVALLUZZO: Should be. It is  
4 unreliable, but here it is.

5 MR. ELCOCK: Well, if it weren't  
6 for an urgent situation like that we would not  
7 normally pass it on period, but in a situation  
8 where you have an urgent piece of information  
9 which may suggest a threat or a specific incident,  
10 then you may have to pass that on so the law  
11 enforcement agencies, or the Department of  
12 Transport if it is in respect of an airplane, can  
13 at least have some forewarning if indeed something  
14 materializes.

15 MR. CAVALLUZZO: Okay. Now, I  
16 would like to move to information which may have  
17 been the product of torture.

18 Now, in terms of receiving  
19 information that CSIS reasonably believes may be a  
20 product of torture, what does CSIS do with that  
21 kind of information?

22 MR. ELCOCK: I think to go a  
23 little bit before that, the reality is in most  
24 cases we would have no knowledge that it was  
25 derived from torture. You may suspect that it was

1 derived from torture, but that is about as far as  
2 one will get in most circumstances.

3                   Clearly, the issue of whether it  
4 was derived from torture or not goes to the  
5 validity of the information. It calls into  
6 question the validity of the information.

7                   MR. CAVALLUZZO: Okay. How does  
8 CSIS assess whether a statement or information may  
9 have been the product of torture? One thing  
10 presumably, as we have discussed, is the human  
11 rights record of a country?

12                   MR. ELCOCK: Yes. That might well  
13 give us a clue, although it doesn't necessarily  
14 give you certainly even there, but it may give you  
15 a clue that that may be the result of torture.

16                   MR. CAVALLUZZO: Are there any  
17 other indicia apart from the human rights record  
18 of the country from which it comes to indicate  
19 whether a statement may be the product of torture?

20                   MR. ELCOCK: The form of the  
21 information may give you some hints in some cases,  
22 but the reality is you don't have very much to go  
23 on and very few people send messages around saying  
24 this was derived from torture.

25                   MR. CAVALLUZZO: Right. What if

1 CSIS concludes that the information is likely to  
2 have been the product of torture. Do you  
3 immediately reject it or what does CSIS do with  
4 that information?

5 MR. ELCOCK: Not necessarily. It  
6 would depend on whether we could corroborate that  
7 information. If indeed we could corroborate that  
8 information from other sources, then that  
9 information may in fact be important information  
10 in any particular investigation. But if it is not  
11 capable of being corroborated, then it is of no  
12 value to us.

13 MR. CAVALLUZZO: Okay. If it is  
14 corroborated -- and I assume corroborated by  
15 independent information?

16 MR. ELCOCK: By other sources of  
17 information unassociated with the source from  
18 which you received that information.

19 MR. CAVALLUZZO: Right. The  
20 obverse is, if it isn't corroborated or can't be  
21 corroborated what would you do with that statement  
22 that you suspect is the products of torture?

23 MR. ELCOCK: If it can't be  
24 corroborated it is useless to us. Ultimately it  
25 would leave the database.

1 MR. CAVALLUZZO: It would be  
2 removed from the database?

3 MR. ELCOCK: You would remove it  
4 from the database because there is no necessity to  
5 keep it.

6 MR. CAVALLUZZO: Okay. Once  
7 again, just like any other reliable information,  
8 presumably you wouldn't pass on this information,  
9 that is information you suspect coming from  
10 torture, to any other Canadian agency unless there  
11 is an emergency or some kind of an emergent  
12 situation?

13 MR. ELCOCK: No. No. From our  
14 point of view as an intelligence agency, we are  
15 there to collect information, collect intelligence  
16 that may reflect on a threat to the security of  
17 Canada and we will look at information from any  
18 source in order to secure some information about  
19 threats to the security of Canada, but obviously  
20 if it is unreliable information ultimately it is  
21 of no use to us.

22 MR. CAVALLUZZO: Now, just one  
23 other aspect in terms of receiving information  
24 from foreign countries or agencies.

25 In 2002 and 2003, as Director of

1 CSIS, were you aware of what is referred to as a  
2 policy or practice of rendition which allegedly  
3 was being conducted by the Americans in respect of  
4 certain terrorist suspects?

5 MR. ELCOCK: I have seen newspaper  
6 articles on the subject and I am aware the United  
7 States had a policy of arresting even where  
8 another country had not necessarily consented,  
9 arresting individuals that were subject to  
10 procedure under American law and transporting them  
11 back to the United States. There have been a  
12 number of cases of that over the years and that is  
13 what I understand rendition to be.

14 MR. CAVALLUZZO: So that you would  
15 describe rendition as being Americans seizing  
16 somebody in a foreign country with or without the  
17 consent of the foreign country and then bringing  
18 the person back to the United States?

19 MR. ELCOCK: To the United States  
20 to face legal process.

21 MR. CAVALLUZZO: Okay.

22 MR. ELCOCK: I think there have  
23 been some newspaper articles which talked about  
24 rendition in different circumstances, but  
25 newspaper articles are newspaper articles.



1 MR. CAVALLUZZO: Right. Are you  
2 aware of the situation -- and some newspaper  
3 articles really describe the forced transfer of a  
4 person from one State to another State --

5 MR. ELCOCK: Yes.

6 MR. CAVALLUZZO: -- in order to  
7 get information in that other State because the  
8 means used to obtain that information may not be  
9 lawful in, if we can call it, the sending State?

10 MR. ELCOCK: I have seen newspaper  
11 articles alleging those practices.

12 MR. CAVALLUZZO: So you are not  
13 aware that this was going on other than from  
14 newspaper articles?

15 MR. ELCOCK: I'm not aware of any  
16 specific cases, no, apart from the allegations in  
17 newspaper articles.

18 MR. CAVALLUZZO: Right. Are you  
19 aware that Mr. Tenet, who was the head of the CIA  
20 at a particular point in time, referred before a  
21 Senate Committee that the United States was  
22 engaged in rendition, whatever he meant by that?

23 MR. ELCOCK: I'm aware that he  
24 made that statement. I don't think he elaborated  
25 on what he precisely meant.

1 MR. CAVALLUZZO: This is the last  
2 question on this.

3 Were you ever aware of a situation  
4 in the United States where they were detaining a  
5 foreign citizen and then --

6 MR. ELCOCK: In the United States?

7 MR. CAVALLUZZO: In the United  
8 States -- were detaining a foreign citizen who was  
9 passing through and then rendered or deported, or  
10 whatever word you want to use, sent this person to  
11 another country to be whatever?

12 MR. ELCOCK: Apart from Mr. Arar's  
13 case I am not aware of another case.

14 MR. CAVALLUZZO: That was the  
15 first case that you became aware of that kind of  
16 situation?

17 MR. ELCOCK: Yes. Yes.

18 MR. CAVALLUZZO: Now, I would like  
19 to come to a related way that CSIS may obtain  
20 foreign intelligence and that is operations  
21 abroad, which is I guess the other side of the  
22 coin. You can get information either through  
23 17(1)(b) agreements that we have spent the last  
24 half hour discussing --

25 MR. ELCOCK: That's right.

1 MR. CAVALLUZZO: -- or CSIS could  
2 operate abroad. I would like to come to those.

3 MR. ELCOCK: Although I wouldn't  
4 describe either of those as foreign intelligence.  
5 Those are simply --

6 MR. CAVALLUZZO: I'm sorry.

7 MR. ELCOCK: -- security  
8 intelligence that we have obtained either from a  
9 foreign service or obtained from our own  
10 investigations abroad.

11 MR. CAVALLUZZO: Okay.

12 MR. ELCOCK: The Act makes a  
13 distinction on those points.

14 MR. CAVALLUZZO: For those who  
15 have the document book -- and I'm not going to  
16 take the witness through it -- at Tab 7 you see  
17 there is a CSIS Website or description as to  
18 operations abroad. I just have a few questions  
19 for you.

20 Initially, I would like to see  
21 what Mr. McDonald said about whether CSIS should  
22 be operating abroad in order to obtain  
23 intelligence relevant to your mandate. Once again  
24 if you get the Chapter 7, which is the  
25 free-standing -- you have it? Good.

1                               For example, at page 626 in  
2       paragraph 8 he states that:

3                               "Questions concerning a  
4                               security intelligence  
5                               agency's operations abroad  
6                               are closely related to  
7                               questions concerning the  
8                               agency's relationship with  
9                               `friendly' foreign agencies.  
10                              If Canada wishes to obtain  
11                              intelligence about activities  
12                              in other countries which  
13                              threaten the security of  
14                              Canada, intelligence not  
15                              openly available, Canada must  
16                              either collect the  
17                              information covertly or  
18                              obtain it from an  
19                              intelligence agency of a  
20                              friendly country.

21                              He goes on, In the next few  
22       pages, for example at page 628, he describes the  
23       current practice in the late 1970s and early 1980s  
24       as to the RCMP. In paragraph 15 he states:

25                              "Covert Security Service

1 operations outside Canada  
2 today are conducted on an  
3 ad hoc basis. These cases  
4 involving foreign travel  
5 always arise from an internal  
6 security investigation begun  
7 in Canada. Generally, the  
8 rationale for such operations  
9 is that the information  
10 sought relates directly to  
11 the internal security of  
12 Canada and is not the kind of  
13 information that can be  
14 obtained or should be  
15 obtained through liaison with  
16 friendly security and  
17 intelligence agencies."

18 McDonald then went on to recommend  
19 that CSIS have the authority to operate abroad, if  
20 we can call it is that.

21 Isn't that correct?

22 MR. ELCOCK: That's right.

23 MR. CAVALLUZZO: That is  
24 recognized in what provision of the CSIS Act?

25 MR. ELCOCK: It is recognized

1           essentially in section 12, although it is in there  
2           indirectly. You have go to section 16 which has a  
3           territorial limitation on it which effectively  
4           makes it clear that section 12 has no territorial  
5           limitation.

6                           MR. CAVALLUZZO: Okay.

7                           MR. ELCOCK: So it is by operation  
8           of interpretation rather than a specific set of  
9           words, but the intent is clear.

10                          MR. CAVALLUZZO: Right. And that  
11           is clearly what Mr. McDonald recommended.

12                          MR. ELCOCK: Yes.

13                          MR. CAVALLUZZO: In fact, it would  
14           surprise most to know that this kind of covert  
15           foreign activity went on prior to Confederation,  
16           when Prime Minister Macdonald sent Canadians out  
17           across the border to gain --

18                          MR. ELCOCK: Into the Finian  
19           raids.

20                          MR. CAVALLUZZO: -- information  
21           about the Finian raid?

22                          MR. ELCOCK: Yes.

23                          MR. CAVALLUZZO: So it is a long-  
24           standing but exceptional exercise of CSIS.

25                          Now, what -- I want to ask you a

1           few questions. In some of these documents there  
2           is reference to "foreign liaison officers". Is  
3           that something different than operating abroad?

4                       MR. ELCOCK: Yes, it is. We do  
5           have foreign liaison officers stationed in a  
6           number of missions around the world. Essentially,  
7           they are there to maintain the liaison  
8           relationships we have with services around the  
9           world. They also are there to participate as or  
10          in assistance to the immigration program officers  
11          in various missions, in terms of our  
12          responsibilities and screening immigrants and  
13          refugees, particularly immigrants, though, in that  
14          case.

15                      MR. CAVALLUZZO: Okay. But  
16          focusing on operating abroad, does CSIS ever get  
17          involved in joint operations in foreign countries?

18                      MR. ELCOCK: We do participates in  
19          joint operations with other services periodically.

20                      MR. CAVALLUZZO: Okay. Now, does  
21          that have to be approved by the minister?

22                      MR. ELCOCK: No, unless -- it  
23          would in cases where -- such an operation probably  
24          would have to be approved in cases where there was  
25          a serious risk to Canada's reputation, which

1           essentially takes you to foreign policy, which  
2           would mean consultation with foreign affairs  
3           and/or serious risk to life or limb in carrying  
4           out such an operation, which is really a  
5           ministerial concern.

6                           MR. CAVALLUZZO: Right. And what  
7           about a situation where a Canadian was detained in  
8           a foreign country, would CSIS ever send over an  
9           officer to question that individual?

10                          MR. ELCOCK: It has happened on  
11           occasion.

12                          MR. CAVALLUZZO: Okay.

13                          MR. ELCOCK: It would be unusual  
14           for us to do that, but it has happened.

15                          MR. CAVALLUZZO: Now, given the  
16           fact that most of the current threats to the  
17           security of Canada either have their origin abroad  
18           or are manifest across international borders,  
19           presumably CSIS' relationships with foreign  
20           agencies have increased substantially in the last  
21           few years?

22                          MR. ELCOCK: They have been not  
23           increased inordinately since September the 11th,  
24           but they have increased in numbers since September  
25           the 11th. There are a number of countries we



1 opened up relationships with as a consequence of  
2 the events of September the 11th and the  
3 investigations that flowed from it.

4 MR. CAVALLUZZO: And you had told  
5 me before that we have about 250 foreign  
6 arrangements right now, which is an increase from  
7 around 50 in the 1980s. Is that correct?

8 MR. ELCOCK: Yes. It would have  
9 been much smaller back in the eighties. It that  
10 is increased over the last 10 or 15 years  
11 substantially, and now about 247, 250, I think,  
12 although not everyone of those would be in -- some  
13 of them would be, in a sense, in library status,  
14 in the sense that they are not in the full bloom  
15 of participation by all sides.

16 MR. CAVALLUZZO: Okay. And I  
17 guess the other question I would ask you in that  
18 regard, in light of the present threat  
19 environment, has the amount of operating abroad  
20 increased in the last few years because of 9/11  
21 or, indeed, events prior to 9/11?

22 MR. ELCOCK: I think the reality  
23 is that it has increased because of the nature of  
24 the threat, the threat that comes from outside  
25 Canada. In the case of al-Qaeda, it has increased

1           because of the magnitude of the threat and it has  
2           also increased because, in many cases, we have  
3           expertise and capabilities that we may not have  
4           had at the beginning. Operating abroad is, by  
5           definition, more difficult than operating in  
6           Canada. Indeed, our first approach would be to  
7           operate -- to collect the information in Canada,  
8           if we could. But if the only place we can collect  
9           it is in Afghanistan, then we may have to go to  
10          Afghanistan.

11                           MR. CAVALLUZZO: Okay. Now, I  
12          would like to move to another area, and that is  
13          what you have referred to in the past as "keystone  
14          principles underlying the legislation". I am  
15          going to be referring to an address that you gave  
16          in October of 2003 to the Canadian Association for  
17          Security and Intelligence Studies in Vancouver.

18                           MR. ELCOCK: Yes.

19                           MR. CAVALLUZZO: It is at Tab 6.

20                           You dealt with what you said were  
21          some important policy choices that were made by  
22          the Government of Canada in response to the  
23          McDonald Commission in the creation of CSIS. And  
24          the first issue that you have talked about, and  
25          that we have talked about over the last few hours,

1 is what you have referred to as "individual and  
2 collective rights" and you talked about the  
3 "tension between collective and individual  
4 security", and so on and so forth.

5 And I guess, referring, initially,  
6 to the statement from Mr. McDonald, which I think  
7 is still important today, in your middle  
8 paragraph, you -- well, why don't you read it, as  
9 to the way Mr. McDonald put it?

10 MR. ELCOCK: Sorry, where are you?

11 MR. CAVALLUZZO: This is the  
12 second paragraph --

13 MR. ELCOCK: Oh, sorry.

14 MR. CAVALLUZZO: -- page 3 of 11.  
15 It's at the top right corner.

16 MR. ELCOCK: You are back in the  
17 McDonald Commission?

18 MR. CAVALLUZZO: No, no, no. This  
19 is your article that you quoted from McDonald --

20 MR. ELCOCK: Okay.

21 MR. CAVALLUZZO: -- page 3 of 11,  
22 under the title, "Individual and Collective  
23 Rights".

24 MR. ELCOCK: Yes.

25 MR. CAVALLUZZO: In the second

1 paragraph, you quote McDonald. I will let you  
2 read that?

3 MR. ELCOCK: Okay.

4 "The McDonald Commission puts  
5 it this way: Canada must  
6 meet both the requirements of  
7 security and the requirements  
8 of democracy; we must never  
9 forget that the fundamental  
10 purpose of the former is to  
11 secure the latter."

12 MR. CAVALLUZZO: And you have told  
13 us, and you certainly set this out at the bottom  
14 of the page, is that CSIS is a reflection of that  
15 concern of the government at the time to protect  
16 civil liberties. For example, it's found in the  
17 definition of "threat", in the legislation, itself  
18 -- go on. Where else?

19 MR. ELCOCK: It underlies the  
20 design of the system of warrants that service has  
21 that require the Federal Court judge to review  
22 investigative briefs to ensure that no more than  
23 an appropriate degree of intrusion is used,  
24 fundamental to the role of the review agencies  
25 that are given the responsibility to monitor and

1 report CSIS' investigative activities, i.e. SIRC  
2 and the Inspector General.

3 MR. CAVALLUZZO: Right. And  
4 interestingly, over the years, the nature of the  
5 threat may have changed, but the mandate of CSIS  
6 hasn't changed, has it?

7 MR. ELCOCK: No, it hasn't.

8 MR. CAVALLUZZO: And over the  
9 years, could you tell us how often the CSIS  
10 legislation has been amended since 1984?

11 MR. ELCOCK: The only amendment  
12 was a consequential, as part of Bill C-36 because  
13 they used a slightly different wording in a  
14 definition of "terrorism". The added a word to  
15 the definition of "threats to the security of  
16 Canada" in the CSIS Act.

17 MR. CAVALLUZZO: And they added  
18 the words "religious and ideological" --

19 MR. ELCOCK: Yes.

20 MR. CAVALLUZZO: --in the  
21 definition? And from your perspective, did that  
22 change your mandate at all, by the addition of  
23 those two word?

24 MR. ELCOCK: No, it certainly  
25 didn't change any investigations we were doing or

1 had any intention to do. It was, from our point  
2 of view, simply consequential because C-36 had  
3 imported some different words.

4 MR. CAVALLUZZO: Okay. Let us  
5 move on to the next issue that you described as  
6 civilianization. And here there are a couple of  
7 questions I want to ask you about this. You say  
8 both the MacKenzie and McDonald Commissions had  
9 recognized that, while there are similarities,  
10 there are distinct differences between the  
11 orientation of police work and intelligence  
12 collection -- and we have dealt with that  
13 extensively today -- but I would like to ask you  
14 about the next paragraph.

15 You say that some differences are  
16 obvious, but then you go on, in the third  
17 sentence, you say:

18 "But the highly charged chain  
19 of events since September 11  
20 have obscured some of the  
21 reasons that lie behind the  
22 choices that were made, and  
23 lead me to highlight them."

24 What did you mean by that?

25 MR. ELCOCK: The period after

1           September the 11th, I think was a difficult period  
2           and involved a number of organizations, all  
3           seeking to make as much of a contribution as they  
4           possibly could to both Canada's security and the  
5           security of our neighbour to the south. It was a  
6           situation in which there was some expectation of  
7           another attack and the need to ensure security was  
8           at a high level was, I think, regarded by everyone  
9           as an important step.

10                         The difficulty, I suppose, when  
11           everybody is trying to do that, is not everybody  
12           has the necessary tools or not necessarily the  
13           right approach to deal with the problem  
14           appropriately.

15                         MR. CAVALLUZZO: Presumably, the  
16           reasons as to why Mr. McDonald gave to keep  
17           constantly aware of the fundamental difference  
18           between police work and security intelligence  
19           collection or investigations and so on is still  
20           true today as it was many years ago?

21                         MR. ELCOCK: It is still true,  
22           although I think it is important to keep  
23           cognizance of the fact that our mandate and the  
24           police's mandate, at its edges, are mandates that  
25           are like this rather than are mandates that are

1           like that. The reality is, at the end of a day, a  
2           terrorist is a criminal and will need to be  
3           arrested. And, therefore, the police have a  
4           mandates as well if somebody carries out an act,  
5           he becomes a criminal and will be arrested by the  
6           police.

7                                So our mandates are, by  
8           definition, integrated. So at the edges they meet  
9           and there are some similarities between what we do  
10          and the police do. At the core, there are some  
11          fundamental differentials, but on the fringes  
12          there are some real similarities.

13                           MR. CAVALLUZZO: I can't do that.  
14          I'm not as ambidextrous as you are, I guess. But  
15          using that analogy, when does the police  
16          jurisdiction, if we can call it that, or  
17          responsibility, where does that flow into your  
18          responsibility, when you are director of CSIS?

19                           MR. ELCOCK: In a sense, there is  
20          no precise definition of that. In fact, that is  
21          probably the way it should be. Because if there  
22          was a precise definition, then, by definition,  
23          there would be a gap. The instant you create a  
24          definitional difference between two things, there  
25          is a gap between them. Something can fall between



1 the gap.

2 In point of fact, the mandates  
3 overlap, and that's a reality, which means that,  
4 in many cases, we have meetings with the police or  
5 continuing processes with the police to ensure  
6 that we don't come into conflict in any particular  
7 case. They may, indeed, as a part of a criminal  
8 investigation, have come across somebody who has a  
9 bomb in their house and is planning a terrorist  
10 attack. At that juncture, while we may be able to  
11 assist them, they may take primacy in the  
12 investigation; on the other hand, if we see, as a  
13 result of our investigation, see an organization  
14 that we think might be preparing a bomb, we would  
15 go to the police in order to begin to involve  
16 them, if we thought there was a possibilities that  
17 they had a real intention of putting a bomb  
18 somewhere.

19 MR. CAVALLUZZO: In terms of your  
20 mandate, obviously, once again -- and I want to  
21 repeat it -- but relates to the threats of the  
22 security of Canada, whereas the mandate of the  
23 police or law enforcement agencies --

24 MR. ELCOCK: Theirs is broader,  
25 but it comes back to the us on issues such as

1 counter-terrorism, where, in fact, a terrorist may  
2 be a criminal, as well.

3 MR. CAVALLUZZO: Right.

4 MR. ELCOCK: But they are  
5 obviously looking at much broader criminality than  
6 we are.

7 MR. CAVALLUZZO: Right. And  
8 indeed, with Bill C-36, the number of crimes  
9 related to terrorism --

10 MR. ELCOCK: In some sense,  
11 multiplied.

12 MR. CAVALLUZZO: -- have  
13 increased, have multiplied --

14 MR. ELCOCK: Yes.

15 MR. CAVALLUZZO: -- as a result of  
16 the new terrorism offenses?

17 MR. ELCOCK: That is right.

18 MR. CAVALLUZZO: And has the  
19 division between law enforcement and security  
20 intelligence become murkier as a result of that  
21 expanded definition of "terrorist offenses"?

22 MR. ELCOCK: I don't know that it  
23 becomes murkier. It does mean we have to work  
24 together more effectively and have to have contact  
25 with each other frequently to avoid difficulties

1 in those areas. I wouldn't describe it as  
2 "murkier", it's just simply there are opportunity  
3 for conflict and it is important to minimize those  
4 in order that you can both be effective.

5 MR. CAVALLUZZO: Okay. Now, in  
6 the this part of the article on civilianization, I  
7 think you -- it's probably the place that I found  
8 -- I read a lot recently in the last couple of  
9 months, but this is the best description,  
10 practical description, I have found between police  
11 work and security intelligence. You describe "law  
12 enforcement" as "generally reactive". What did  
13 you mean by that?

14 MR. ELCOCK: In many cases, the  
15 police do the -- their investigation will begin  
16 with a criminal act. So they are looking for the  
17 person who has committed the criminal act. It  
18 doesn't mean that the police have a preventive  
19 jurisdiction. If they see somebody about to throw  
20 a Molotov cocktail through a window, they don't  
21 have to wait to grab him before he throws about  
22 the Molotov cocktail.

23 MR. CAVALLUZZO: Right.

24 MR. ELCOCK: But having said that,  
25 generally speaking, their investigations would be

1 more reactive than would ours. Ours, as I said  
2 earlier, are looking at a phenomena, are looking  
3 at -- such as terrorism or a particular group  
4 involved in terrorism, trying to gain an  
5 understanding of that group: why it's operating  
6 the way it is, what its course of future action  
7 will be, with a view of trying to prevent it from  
8 ever becoming effective.

9 MR. CAVALLUZZO: Okay. You go on  
10 to say that police officers are result-oriented.  
11 What does that mean, are "result-oriented"?

12 MR. ELCOCK: I meant that, in the  
13 sense that, at the end of the day, the role of the  
14 criminal process is either to secure a conviction  
15 or a declaration of innocence. In our process, we  
16 are simply looking for threats to the security of  
17 Canada, trying to identify them and decide who to  
18 advise about them.

19 MR. CAVALLUZZO: Okay. You go on  
20 to say that "they work on a closed system of  
21 limits defined by the Criminal Code and other  
22 statutes". What did you mean by that?

23 MR. ELCOCK: I meant, in a sense,  
24 that it is a somewhat more straightforward process  
25 than the collection of intelligence. With respect

1 to phenomena that, in a sense, is an intelligence  
2 organization, you are always seeking to know the  
3 unknown and your scope is much broader than it is  
4 for most police officers, who may be investigating  
5 a break-in in your house last night and that is a  
6 relatively narrower world. It doesn't make it  
7 better or worse, it's just a different process.

8 MR. CAVALLUZZO: Okay, you go on  
9 to say that "they operate in a highly  
10 decentralized mode".

11 MR. ELCOCK: Intelligence  
12 agencies, by definition, as I said earlier, tend  
13 to be highly centralized. In a police force, an  
14 individual officer begins an investigation and  
15 carries it through, and he may do so without much  
16 in the way of direction. In the case of an  
17 intelligence agency, we don't have investigations  
18 that aren't managed centrally.

19 MR. CAVALLUZZO: Right. Okay,  
20 and, finally, you talk about, in terms of police  
21 work, that "trials are public events and obviously  
22 CSIS may have to operate differently at times"?

23 MR. ELCOCK: We would rather not  
24 be involved in public trials, if we can possibly  
25 avoid it.

1 MR. CAVALLUZZO: Okay. Now, in  
2 terms of the changes which occur, maybe if you can  
3 just give us an historical backdrop here. Now, in  
4 1984, when CSIS was created and the security  
5 service of the RCMP was eliminated, I understand  
6 that most of the CSIS officers in 1984 came from  
7 the RCMP security service. Is that correct?

8 MR. ELCOCK: Yes, most of the  
9 officers of the RCMP security service transferred  
10 across to CSIS. Some eventually went back, but  
11 most stayed.

12 MR. CAVALLUZZO: I understand that  
13 today -- at one time it was 80:20 and today it's  
14 just the obverse, it's 20:80?

15 MR. ELCOCK: It is about now 20  
16 per cent, I think, former RCMP officers, members  
17 and also of civilian staff.

18 MR. CAVALLUZZO: Okay. Now, in  
19 the next part -- and I am going to -- in that  
20 portion you talk about the kind of employees that  
21 will be recruited -- and I am going to do that in  
22 a wee bit in a few minutes, but I just want to  
23 move on to the next point, which is  
24 accountability, which you thought, as well, was a  
25 very important issue. And for the most part, we

1 have basically dealt with that, in terms of  
2 political accountability, whether it be in terms  
3 of the boundaries which are set out in the  
4 legislation in respect of your powers and mandate,  
5 whether it be the kinds of ministerial approvals  
6 you have to get, in terms of entering into  
7 particular kinds of arrangements and, at the same  
8 time, you have a couple of review agencies --

9 MR. ELCOCK: That's right.

10 MR. CAVALLUZZO: -- that are  
11 reviewing things that you were doing on an annual  
12 basis?

13 MR. ELCOCK: And highly  
14 specialized review agencies, which are accustomed  
15 to looking at us and probably would have not much  
16 capacity to go elsewhere.

17 MR. CAVALLUZZO: And what did you  
18 mean by that, I'm sorry?

19 MR. ELCOCK: Well, in the sense  
20 that -- I mean, it's a highly specialized process.  
21 They have to become familiar with our process.  
22 They understand what we are doing. They  
23 understand what the functioning of an intelligence  
24 agency is and, therefore, in reviewing it, can  
25 make sense of what we are doing and whether we are

1 doing it right or wrong.

2 MR. CAVALLUZZO: If we can look at  
3 SIRC, the Security Intelligence Review Committee,  
4 is that becoming a model for other foreign  
5 countries in respect of their security  
6 intelligence agencies?

7 MR. ELCOCK: No, it hasn't. I  
8 think generally most countries have decided not to  
9 opt for such a -- so far anyway, have decided not  
10 to opt for such a strict form of review. So it  
11 had not been picked up anywhere.

12 MR. CAVALLUZZO: Do you feel that  
13 because of the presence of SIRC in terms of  
14 reviewing the operations and activities of CSIS  
15 that CSIS is a stronger organization?

16 MR. ELCOCK: Yes, I do.

17 MR. CAVALLUZZO: Okay. There is a  
18 final area I would like to move to, Mr. Elcock.  
19 That is also part of your article given in  
20 Vancouver last October and it is under the title  
21 "CSIS Adjusts to New Imperatives" which can be  
22 found at page 8.

23 Do you have that in front of you?

24 MR. ELCOCK: Yes.

25 MR. CAVALLUZZO: What I would



1 refer to are the three imperatives that you feel  
2 are facing CSIS today.

3 In the second paragraph under that  
4 title, it is stated:

5 "The first requirement is the  
6 adoption of an intelligence  
7 model rather than an  
8 enforcement model that is  
9 able to understand the world  
10 of modern terrorism, and that  
11 is equipped to forewarn or  
12 prevents terrorist acts. The  
13 fundamental difference  
14 between law enforcement and  
15 intelligence work that led to  
16 the creation of CSIS as a  
17 separate, civilian security  
18 intelligence organization had  
19 to be reflected in its  
20 makeup, in the composition of  
21 its management cadre and its  
22 employee base. Legislators  
23 wanted to encourage a new  
24 management style that would  
25 be responsive to political

1 decision-makers, cooperative  
2 with review, bodies and  
3 disciplined. The employee  
4 base should have good  
5 analytical skills through  
6 higher education and respect  
7 for legitimate political  
8 dissent."

9 Then you go on as to the kind of  
10 employee that CSIS should utilize. You say:

11 "Moreover, people who do this  
12 work have to think like  
13 terrorists and be able to  
14 understand the societies that  
15 spawn them. They have to  
16 know the mainstream politics  
17 and the insurgencies of  
18 nations all over the world in  
19 order to know what to make of  
20 the information they gather."

21 Then you go on:

22 "Instead of studying of  
23 forensics and the finer  
24 points of assembling evidence  
25 to support prosecutions under

1                   the Criminal Code, they have  
2                   to understand the Immigration  
3                   Act and the migratory  
4                   patterns of populations."

5                   Now, in light of that particular  
6                   skill experience that CSIS should have in respect  
7                   of its employees, in terms of your recruiting  
8                   patterns what are you looking for in terms of  
9                   employees of CSIS?

10                   MR. ELCOCK: Generally speaking,  
11                   to become a CSIS officer you have to have at least  
12                   one degree. You have to be able to speak English  
13                   and French, although the service will train you in  
14                   the one that you don't speak if you make it  
15                   through all the rest of the interviews and so on.  
16                   Many of the candidates have more than one degree  
17                   and many of them would have more than two  
18                   languages, more than English and French.

19                   They have to go through a  
20                   formidable period. It usually takes about six  
21                   months to a year to succeed in joining the service  
22                   through a process of exams -- through a process of  
23                   tests and interviews and polygraph tests.

24                   If you ultimately succeed, then  
25                   any successful candidate is, with their former

1 training, on probation for a five-year period  
2 before they actually, in a sense, become a formal  
3 member of the service.

4 MR. CAVALLUZZO: Okay. You go on  
5 to state:

6 "Apart from civilization,  
7 education and cultural  
8 orientation, specialized training  
9 has helped to ensure that  
10 individual rights are respected in  
11 the application of the systems and  
12 processes that are prescribed in  
13 the CSIS Act."

14 You go on:

15 "Our professional standards  
16 require that an intelligence  
17 officer be trained to respect  
18 civil liberties as well as be  
19 trained in the operational  
20 ways and means."

21 What kind of training in respect  
22 of civil liberties are we talking about there?

23 MR. ELCOCK: Each intelligence  
24 officers that joins spends a period in the  
25 classroom initially, if the training is starting

1 in headquarters, a period of about 14 weeks, all  
2 of which is, in part, to try and inculcate into  
3 the student. Even though they may have one or two  
4 university degrees we are trying to inculcate into  
5 people who join the service the way in which the  
6 service functions, the standard to which the  
7 service functions, to make sure that as they begin  
8 their career they understand the basics in the  
9 next five years of their probationary period when  
10 they will be, in a sense, learning through  
11 working.

12 Since they go first to  
13 headquarters and then to the region they get an  
14 opportunity to carry into operation the things  
15 they have learned in the classroom, but in a  
16 period when they are being supervised, in the  
17 sense that they are in a probationary  
18 relationship.

19 MR. CAVALLUZZO: A respect for  
20 civil liberties and dissent is an important part  
21 of this orientation?

22 MR. ELCOCK: Important part of the  
23 initial part of that orientation.

24 MR. CAVALLUZZO: You go on in the  
25 next page at the bottom of paragraph and you say:

1 "We have sought out recruits  
2 whose travels have acquainted  
3 them with foreign languages,  
4 cultural norms and  
5 geography."

6 Which you have just discussed.  
7 Then you go on to state:

8 "We have assembled a work  
9 force that is more  
10 representative of the  
11 Canadian population than it  
12 was in 1984."

13 Does CSIS make a conscious effort  
14 to ensure that its employment complement better  
15 reflects the diversity of Canada?

16 MR. ELCOCK: Yes. It is in our  
17 interest to do so. If we don't reflect the makeup  
18 of the country it does become harder for us as a  
19 service to operate.

20 MR. CAVALLUZZO: Then you go on  
21 there beyond that to talk about the foreign  
22 arrangements, which we need not go into.

23 Maybe I should come back just to  
24 be fair, which I hope I have been throughout.

25 You say:

1 "More to point, 8.6 per cent  
2 of CSIS employees are visible  
3 minorities from various  
4 ethnic groups representative  
5 of the Canadian reality, and  
6 33 per cent of our  
7 intelligence officers speak a  
8 foreign language."

9 Then you go on:

10 "In addition to their travels  
11 and post-graduate work  
12 experience, 25 per cent of  
13 our intelligence officers  
14 have a second or a third  
15 university degree."

16 The final two imperatives that you  
17 have talked about, the second one can be found at  
18 the bottom of the page. You say:

19 "The next requirement of an  
20 effective  
21 intelligence-gathering  
22 organization is the capacity  
23 to manage information."

24 I wonder if you just might briefly  
25 expand on that, what you meant by that?

1                   MR. ELCOCK: Well, it goes back to  
2 the issue of what is intelligence. Intelligence  
3 is primarily the analysis of large amounts of data  
4 and an attempt to construct a picture from it. It  
5 is a puzzle in a sense.

6                   In a previous age that was all  
7 done in hard copy and you relied on the  
8 librarian -- not the librarian, but the records  
9 clerk to remember which file was where and what it  
10 contained. Nowadays the reality is, for most  
11 services, increasingly it is a very sophisticated  
12 database. As I said earlier, ours is probably one  
13 of the most sophisticated around in terms of other  
14 intelligence agencies.

15                  MR. CAVALLUZZO: Okay.

16                  MR. ELCOCK: Because if you can't  
17 manipulate that information, if you can't manage  
18 that information, if you can't find something that  
19 was picked up from this source and match it with  
20 something else you picked up from an entirely  
21 different source, you really don't have anything.

22                  MR. CAVALLUZZO: The final point  
23 you raise is, you say:

24                               "The third element of a fully  
25                               effective intelligence agency



1 is the centralized  
2 organizational structure that  
3 can ensure investigations are  
4 run in a tightly disciplined  
5 manner."

6 Finally, could you expand on that  
7 somewhat?

8 MR. ELCOCK: I'm sorry?

9 MR. CAVALLUZZO: What do you mean  
10 by that? What are we talking about there?

11 MR. ELCOCK: The reality of  
12 intelligence investigations into a phenomena like  
13 Sunni extremism, Sunni terrorism, is that it  
14 covers all of the jurisdictions of Canada. You  
15 may have investigations in every major city and  
16 other small towns across Canada all as part of  
17 same investigation. All of those investigations  
18 need to be done together.

19 I think some of the events after  
20 September 11th in the United States make it clear  
21 that if you don't have the coordination between  
22 different areas of the same organization -- in  
23 that case I think it was FBI -- if you don't have  
24 coordination in the investigations then bits gets  
25 missed.

1                   Again, by the same definition, the  
2                   advantage of having information, being able to put  
3                   foreign intelligence straight into that mix, means  
4                   that it makes it easier for us in many ways to get  
5                   a complete picture without any gaps in moving  
6                   information around.

7                   MR. CAVALLUZZO: There is just one  
8                   final question and it is related to this  
9                   integration, not necessarily with foreign agencies  
10                  but with the police.

11                  When we were discussing the  
12                  differences between police work and security  
13                  collection you talked about the integration which  
14                  is now required between, say, the RCMP and CSIS.  
15                  I am making reference to our legal overview.  
16                  There is something that we have reviewed at  
17                  page 41 of the legal overview, something called  
18                  "Integrated National Security Enforcement Teams,  
19                  INSETs".

20                  MR. ELCOCK: INSETs.

21                  MR. CAVALLUZZO: Yes. We  
22                  understand that these are -- let me just read it  
23                  to you. It says:

24                                 "The RCMP has refocused its  
25                                 National Security

1 Intelligence Sections (NSIS)  
2 to become Integrated National  
3 Security Enforcement Teams  
4 (INSETs). The purpose of  
5 this is to increase the  
6 capacity for the collection,  
7 sharing and analysis of  
8 intelligence among partners  
9 with respect to targets that  
10 are a threat to national  
11 security; create an enhanced  
12 enforcement capacity to bring  
13 such targets to justice; and  
14 to enhance partner agencies  
15 collective ability to combat  
16 national security threats..."

17 Then it talks about the RCMP along  
18 with provincial police forces where applicable,  
19 municipal police forces, and it says that these:

20 "INSETs were originally  
21 formed in Vancouver, Toronto,  
22 Ottawa and Montreal."

23 The question I have is: Does CSIS  
24 participate in the INSETs?

25 MR. ELCOCK: The INSETs are

1           actually a police coordination integration tool if  
2           you will. In the context of CSIS and RCMP  
3           relationships it is less integration than simply  
4           to make sure that we work together to manage the  
5           mandate, our, if you will, shared mandate, at  
6           least certainly in areas like counter-terrorism.  
7           In others there would be less.  
8           Counter-intelligence would be less of a shared  
9           mandate, but clearly on terrorism there is an  
10          interlocking mandate, perhaps is a better way of  
11          describing it, and we need to manage that. That  
12          doesn't necessarily mean integration.

13                         We are not part of INSET as CSIS.  
14          The INSETs are, as I said, a police management  
15          integration tool for police forces. We did loan  
16          on secondment -- we have loaned, given on  
17          secondment, officers to act as analysts in those  
18          units but for the period they are there they are  
19          employees of the RCMP. They are secondments to  
20          the RCMP. They are not --

21                         MR. CAVALLUZZO: It is a pure  
22          secondment under the --

23                         MR. ELCOCK: It is a pure  
24          secondment. They are still officers of the  
25          service ultimately, but they are not there as our

1 representative in the INSET, nor are they there to  
2 transmit information to the INSET from the  
3 service.

4 MR. CAVALLUZZO: Okay. Thank you.

5 Mr. Commissioner, that would  
6 complete my direct examination of Mr. Elcock.

7 It is now 3:05. I don't know what  
8 your pleasure is at this point in time.

9 THE COMMISSIONER: Let me just  
10 canvass to see where we are going.

11 Mr. Waldman, you are going to  
12 cross-examine next?

13 MR. WALDMAN: Yes, I am.

14 THE COMMISSIONER: How long do you  
15 expect to be?

16 MR. WALDMAN: I'm not sure. I  
17 expect at least the rest of the afternoon.

18 THE COMMISSIONER: Just for  
19 counsel generally and just as a guide, I will  
20 typically for all counsel ask them how long they  
21 expect to be with their examinations. They are  
22 not locked into it, but I find it is a good idea  
23 to have people give estimates. I understand this  
24 is the first one.

25 I was planning to sit until

1 4:30 today. We will perhaps have a 10-minute  
2 break now if that suits before you start so you  
3 can get set up.

4 MR. WALDMAN: That might be good.

5 THE COMMISSIONER: As I say, with  
6 respect to your estimate, if you are not able to  
7 finish in that time just let me know when we get  
8 to that point how much longer you would be.

9 MR. WALDMAN: Because there were  
10 some documents that we received today, which was  
11 the Canadian Security Intelligence Service  
12 Policies.

13 I hadn't seen those before. I am  
14 going to need to have an opportunity tonight to  
15 look them over then.

16 THE COMMISSIONER: That's fine.  
17 Just so long as you let me know how long things  
18 are going to be as best you can as we go.

19 Ms McIsaac, you will be examining  
20 next after Mr. Waldman. Do you have any idea at  
21 this point?

22 MS McISAAC: I'm sorry. I don't  
23 at the moment, sir.

24 THE COMMISSIONER: We will take a  
25 10-minute break and resume then.

1 --- Upon recessing at 15:07 p.m. /

2 Suspension à 15 h 07

3 --- Upon resuming at 3:25 p.m. /

4 Reprise à 15 h 25

5 THE COMMISSIONER: You may sit  
6 down.

7 MR. CAVALLUZZO: Mr. Commissioner,  
8 just a couple of points before I sit down.

9 Mr. David has pointed out that  
10 some of the policy documents have "secret" on the  
11 bottom, and I should advise the public that we do  
12 have the agreement to disclose this documentation.

13 Hopefully I haven't violated the  
14 Security of Information Act or I may not be here  
15 tomorrow.

16 THE COMMISSIONER: It would be a  
17 bad start for the inquiry if you have,  
18 Mr. Cavalluzzo.

19 MR. CAVALLUZZO: It would be quite  
20 a bad start. I may have to ask for an  
21 adjournment.

22 The second point is that  
23 Mr. Waldman has a great deal of paper work there,  
24 and because of the limited space there he has  
25 asked if he could ask his questions in

1 cross-examination from his desk. I said I don't  
2 think you would mind.

3 THE COMMISSIONER: Absolutely.  
4 That is fine, whatever suits you.

5 I have noticed with my desk -- and  
6 you have even more paper than I do -- that these  
7 desks are too small for the lawyers. We will  
8 simply make arrangements. I don't know how we  
9 will do it, but we will so that people have  
10 adequate space to spread out and do their job  
11 properly.

12 We may not be able to accomplish  
13 that this week, but we will in due course make  
14 some arrangements.

15 The other thing we might want to  
16 think about, and if counsel want to get together  
17 with the staff for the inquiry and talk about it,  
18 that's fine.

19 I see there is a cart there, but  
20 perhaps shelves or whatever arrangements necessary  
21 to handle the paper so that we don't feel like we  
22 are all jammed in.

23 Finally, I might say if any  
24 counsel who are questioning wish to do so, as you  
25 do today at least, from a sitting position, that



1 is fine by me as well.

2 EXAMINATION

3 MR. WALDMAN: Good afternoon,  
4 Mr. Elcock.

5 Ms McIsaac in her opening  
6 statement to the Commission, stated that Canada  
7 does not countenance torture in any form.

8 I assume that you agree with that  
9 as well. You don't countenance any form of  
10 torture.

11 Is that correct?

12 MR. ELCOCK: That is correct.

13 MR. WALDMAN: Could you tell me  
14 how you would define torture? Do you have a  
15 definition that you work with, given that you must  
16 receive documents from time to time that were  
17 obtained under torture? How do you define  
18 torture?

19 MR. ELCOCK: As I said, in most  
20 cases we don't know that torture would have been  
21 involved. We would only know that if we received  
22 some information that allowed us to come to that  
23 conclusion, some other information that allowed us  
24 to come to that conclusion.

25 In most cases we would be

1 operating on the basis of simply an assessment of  
2 the service, which might indicate to us that the  
3 individual might have been tortured but would give  
4 us no confirmation.

5 If we had that other information,  
6 then we would have to look at whether or not that  
7 meet the test or not.

8 It wouldn't be whether I had an  
9 opinion whether it was torture or not. We would  
10 have to have the lawyers look at it and others  
11 look at it to determine whether in fact it met the  
12 definition.

13 MR. WALDMAN: Do you have a  
14 definition for torture yourself or are you  
15 familiar with the definition?

16 MR. ELCOCK: Personally, no.

17 MR. WALDMAN: Are you familiar  
18 with the UN definition of torture? That would be  
19 the one that has been incorporated into our  
20 Immigration and Refugee Protection Act.

21 Are you familiar with that  
22 definition or do you want me to read it to you to  
23 see if you agree with it?

24 MR. ELCOCK: If you have it. I  
25 have seen it before, but I don't read it every

1 night.

2 MR. WALDMAN: It is in the  
3 legislation book. I don't know if you have that?

4 MR. ELCOCK: I have the  
5 legislation book. Where is it?

6 MR. WALDMAN: It is Tab 10. It is  
7 Article 1 of Tab 10.

8 MR. ELCOCK: Yes.

9 MR. WALDMAN: I want to make sure  
10 we are all talking about the same term.

11 It says:

12 "... torture means any act by  
13 which severe pain or  
14 suffering, whether physical  
15 or mental, is intentionally  
16 inflicted on a person for  
17 such purposes as obtaining  
18 from him or a third person  
19 information or a confession,  
20 punishing him for an act he  
21 or a third person has  
22 committed or is suspected of  
23 having committed, or  
24 intimidating or coercing him  
25 or a third person, or for any

1 reason based on  
2 discrimination of any kind,  
3 when such pain or suffering  
4 is inflicted by or at the  
5 instigation of or with the  
6 consent or acquiescence of a  
7 public official or other  
8 person acting in an official  
9 capacity. It does not  
10 include pain or suffering  
11 arising only from, inherent  
12 in or incidental to lawful  
13 sanctions."

14 Do you agree with that definition  
15 of torture?

16 MR. ELCOCK: It is the UN  
17 definition. The issue of whether I would agree or  
18 not I am not sure is relevant.

19 It is the UN definition. I would  
20 accept it as that.

21 MR. WALDMAN: You accept it as  
22 that. There is another definition that has been  
23 floating around. I don't know if you have been  
24 aware that the Department of Justice of the United  
25 States presented a legal opinion in which they

1           gave a considerably different definition of  
2           torture. I would like to read it to you.

3                           It is in this document, U.S.  
4           Department memorandum, which I think we gave to  
5           you, on page 1.

6                           Do you have that, sir?

7                           The Department of Justice of the  
8           United States, the Office of the Official Legal  
9           Counsel, on August 1st, 2002, said:

10                           "We conclude that for an act  
11                           to constitute torture as  
12                           defined in section 23.40 must  
13                           inflict pain --"

14                           MR. ELCOCK: Sorry, where are you?

15                           MR. WALDMAN: In the second  
16           paragraph:

17                           "We conclude that for an act  
18                           to constitute torture as  
19                           defined in section 23.40 it  
20                           must inflict pain that is  
21                           difficult to endure.  
22                           Physical pain amounting to  
23                           torture must be equivalent in  
24                           intensity to the pain  
25                           accompanying serious physical

1 injury such as organ failure,  
2 impairment of bodily function  
3 or even death. For pure  
4 mental pain or suffering to  
5 amount to torture under  
6 section 23.40, it must result  
7 in significant psychological  
8 harm or of significant  
9 duration, e.g. lasting for  
10 months or even years. We  
11 conclude that the mental harm  
12 also must result from one of  
13 the predicate acts listed in  
14 the statute, namely threats  
15 of imminent death, threats of  
16 infliction of the kind of  
17 pain." (As read)

18 Which definition does the service  
19 use for torture, the one in the convention or the  
20 one from the Department of Justice?

21 MR. ELCOCK: We certainly wouldn't  
22 use the definition under American law. So that  
23 would be irrelevant to us.

24 MR. WALDMAN: Would you agree that  
25 the definition that the Americans are using is a

1 far more restricted definition of torture than the  
2 one that we use in Canada?

3 MR. ELCOCK: To be perfectly  
4 honest, although I am a lawyer I have not spent  
5 any time analyzing this. I got this document this  
6 morning, and long ago I decided not to give myself  
7 legal advice.

8 So I haven't analyzed the  
9 difference between that or any other definition of  
10 torture.

11 MR. WALDMAN: You don't think  
12 there is a difference between -- I don't think it  
13 is very difficult. Maybe we could go through it  
14 together for a moment. I don't think you have to  
15 be --

16 MS McISAAC: Mr. Commissioner, I  
17 hesitate to interrupt this early but this is a  
18 legal opinion we received over the weekend. I  
19 only accessed it this morning.

20 Whether or not Mr. Elcock agrees  
21 with an opinion from the U.S. Department of  
22 Justice strikes me as hardly being relevant to  
23 your inquiry.

24 MR. WALDMAN: With all due  
25 respect, Mr. Commissioner, I think it is highly

1 relevant to the inquiry.

2 THE COMMISSIONER: I think  
3 Mr. Elcock has answered the question once, but it  
4 is cross-examination. I don't mind him putting it  
5 again.

6 Go ahead please, Mr. Waldman.

7 MR. WALDMAN: Thank you.

8 I want to compare the two  
9 definitions for you. I don't think it is terribly  
10 difficult, Mr. Elcock, to see that --

11 MR. ELCOCK: You are undoubtedly a  
12 better lawyer than I am.

13 MR. WALDMAN: I don't know. We  
14 will see. We will see.

15 The Convention Against Torture  
16 definition says that the pain is intentionally  
17 inflicted on a person for the purpose of obtaining  
18 information punishing, him for an act he has  
19 committed, if such pain or suffering is inflicted  
20 by the organization.

21 Basically, torture means any act  
22 of severe pain or suffering, so it is severe pain  
23 or suffering. The U.S. definition says the  
24 torture must be equivalent in intensity and pain  
25 accompanying serious physical injury, organ



1 failure, impairment of bodily function or even  
2 death.

3 Don't you think there is a  
4 definition --

5 MR. ELCOCK: There are clearly  
6 some differences in definition in the sense that  
7 the UN definition is limited by certain purposes  
8 which don't appear in the U.S. one, but the U.S.  
9 one has appears to have slightly broader -- sorry,  
10 more limited definition of what actual events will  
11 cause it to be described as torture.

12 What the balance is, I am not sure  
13 that I am equipped to provide an assessment.

14 MR. WALDMAN: If we deal with the  
15 concept of the pain that is inflicted, do you  
16 believe that torture is severe pain or suffering  
17 or do you think it is pain that is difficult to  
18 endure which accompanies serious physical injury  
19 such as organ failure, impairment of bodily  
20 function?

21 Which one of the two do you  
22 prefer?

23 MR. ELCOCK: It is not a question  
24 of what I prefer. The UN definition is one which  
25 Canada would have some interest in. The U.S.

1 definition is presumably a definition under U.S.  
2 law and has no application in Canada. I don't get  
3 an option to prefer it. The only one that would  
4 be of any relevance would be the UN definition.

5 MR. WALDMAN: The one that Canada  
6 uses is the UN definition?

7 MR. ELCOCK: It would certainly  
8 have more impact in Canada than a definition under  
9 U.S. law.

10 MR. WALDMAN: I am a bit  
11 surprised. Do you mean to say that as the  
12 Director of CSIS you haven't directed your mind --  
13 given that you told us before that you might be  
14 getting documents that come from countries that  
15 engage in torture, you haven't directed your mind  
16 to what torture means and what the legal  
17 definition is in all these years that you have  
18 been Director of CSIS?

19 MR. ELCOCK: I think what I said  
20 is that we would rarely, if ever, know if a  
21 document was derived from torture. We might  
22 suspect it is a consequence of the work we had  
23 done to assess any particular country and its  
24 practices. But that said, I doubt very much  
25 whether we would ever know that information was

1 derived from torture. We might suspect it but not  
2 know it.

3 So in a sense we would never know  
4 what instances of torture were involved.

5 MR. WALDMAN: With all due  
6 respect, you are still not answering my question.

7 I was just asking you about the  
8 definition of torture and which one you preferred  
9 and which one the organization CSIS --

10 THE COMMISSIONER: You have asked  
11 that about three or four times and he has answered  
12 it the same way each time.

13 MR. WALDMAN: Okay.

14 So I gather then, from what you  
15 have told us, that you agree with the Canadian  
16 definition.

17 Doesn't it trouble you that you  
18 are sharing information with the Americans when  
19 they have a definition of torture that is so  
20 severe and so limiting that basically to be  
21 encompassed by the definition of torture you have  
22 to be almost tortured to the point of almost  
23 death?

24 MR. ELCOCK: I think there are so  
25 many assumptions in that question, it is almost

1 impossible for me to answer.

2 The reality is that we share  
3 information with any service we share information  
4 with very carefully. And no service shares all of  
5 the information it has with all other services.

6 We assess carefully the services  
7 we share information with, the implications of the  
8 sharing of that information for any particular  
9 individual and make a decision in each particular  
10 case whether to share that information, whether it  
11 is with the Americans or anybody else.

12 MR. WALDMAN: We will get on to  
13 the question of sharing in a minute.

14 Are there any circumstances under  
15 which CSIS agents operating outside of Canada  
16 would ever be authorized to engage in torture?

17 MR. ELCOCK: No.

18 MR. WALDMAN: To your knowledge,  
19 has any CSIS agent ever engaged in torture?

20 MR. ELCOCK: No.

21 MR. WALDMAN: Have there ever been  
22 any allegations that you are aware of that a CSIS  
23 agent engaged in torture?

24 MR. ELCOCK: I certainly don't  
25 recall any. Somebody may have made some, but I am

1           certainly not aware of them.

2                           MR. WALDMAN:   Have you ever had  
3           any occasion to report an officer under subsection  
4           22 of the CSIS Act because there is an allegation  
5           that an officer engaged in torture?

6                           MR. ELCOCK:   No.

7                           MR. WALDMAN:   Is it safe to say  
8           that under Canadian law, under no circumstances  
9           would it be lawful for any CSIS officer to engage  
10          in torture?

11                          MR. ELCOCK:   The reality is that  
12          it would be virtually impossible for any CSIS  
13          officer to be involved in that, because the  
14          reality is we have no law enforcement powers.  We  
15          have no power to arrest anybody.  We have no power  
16          to hold anybody.

17                          When we have a conversation with  
18          somebody, it is an entirely on a voluntary basis.

19                          In my experience, in the voluntary  
20          conversation it would be rather hard, I assume,  
21          to indulge in torture.

22                          MR. WALDMAN:   We will come back to  
23          that in a bit.

24                          You have told us that there are  
25          about 247 information sharing arrangements with

1 foreign governments. Is that correct?

2 MR. ELCOCK: With 247, roughly,  
3 services. Some countries have more than one  
4 service.

5 MR. WALDMAN: Right.

6 MR. ELCOCK: So it may be five  
7 arrangements with five services, all in the same  
8 country in some cases.

9 MR. WALDMAN: You have advised us  
10 in-chief that the bulk of these arrangements are  
11 oral. Is that correct?

12 MR. ELCOCK: The basis of the  
13 arrangement is oral.

14 MR. WALDMAN: Given the importance  
15 of the arrangements, why aren't they reduced to  
16 writing?

17 MR. ELCOCK: I think the reality  
18 is the importance isn't in the writing. The  
19 importance is in the management of the information  
20 and other things that share.

21 In a sense, an arrangement with a  
22 foreign intelligence service is we will go down  
23 the road together. We will consider in each  
24 individual case as it comes along the sharing of  
25 information or the possibility of joint operations

1 with another service, but each one is a new case  
2 in and of itself. You make a decision in each  
3 case whether you will share that information or  
4 undertake that operation.

5 So in a sense the initial  
6 arrangement is a very simple thing.

7 MR. WALDMAN: You seem to describe  
8 more that some CSIS officer goes to some foreign  
9 country or meets with a foreign intelligence  
10 officer in Canada and they have a conversation  
11 about sharing information, and this is the  
12 beginning of an oral agreement?

13 MR. ELCOCK: It may be as simple  
14 as that. It may involve a meeting between heads  
15 of services. It depends.

16 MR. WALDMAN: If we go to Annex D  
17 to the policy directives, Tab 1, which I just had  
18 an opportunity to quickly look at over lunch --

19 MR. ELCOCK: Which one are you at?

20 MR. WALDMAN: It is the Canadian  
21 Security Intelligence Service Policies, Annex D,  
22 Tab 1.

23 THE COMMISSIONER: Is there a page  
24 number, Mr. Waldman?

25 MR. WALDMAN: It is at page 7.

1                   Actually, it is on page 8.  
2                   On page 8 in the last paragraph it  
3           says:

4                               "Records relating to foreign  
5                               arrangements will be  
6                               maintained, including a  
7                               written record of the terms  
8                               and understandings of oral  
9                               arrangements."

10                              Is that correct?

11                              MR. ELCOCK: We maintain a record  
12                              or register, if you will, of whatever the nature  
13                              of the arrangement is and whether the -- usually  
14                              it is based on the third party rule and acceptance  
15                              of the third party rule and acceptance of the  
16                              third party rule, et cetera.

17                              That is all recorded in our own  
18                              files.

19                              MR. WALDMAN: Let me make sure I  
20                              understand this. The bulk of your arrangements  
21                              are oral. You meet with a foreign intelligence  
22                              agency, and then you reduce it to writing?

23                              MR. ELCOCK: We don't reduce it to  
24                              writing. We reduce it to essentially notations in  
25                              the file so we know exactly what it is, who we got



1           that arrangement with, who our contacts are with  
2           and whether or not the service has indicated, for  
3           example, that it will respect the third party  
4           rule.

5                           We talked earlier about sharing of  
6           information. There are some services we would  
7           have a certain level of sharing with and there are  
8           some services we would have a greater level of  
9           sharing with and that would be noted in the file.

10                          MR. WALDMAN: You get a written  
11           record. Do you show this to your counterpart?  
12           Let's say we have a record that says we are going  
13           to do A, B and C with country X.

14                          MR. ELCOCK: No.

15                          MR. WALDMAN: You don't show it.

16                          So how can you be certain that the  
17           arrangement that you have is understood in the  
18           same terms by the other service as you do?

19                          MR. ELCOCK: It depends on how it  
20           is executed.

21                          MR. WALDMAN: If it is an oral  
22           arrangement?

23                          MR. ELCOCK: It depends on how it  
24           is executed. Each element of each instance of  
25           sharing, each joint operation that you manage, is

1 in essence, if you will, a new agreement under  
2 that head of agreement.

3 You manage each one of those  
4 separately and individually.

5 MR. WALDMAN: So you are saying  
6 you just sort of wait and see how it works out to  
7 make sure as time --

8 MR. ELCOCK: I wouldn't describe  
9 it as we wait and see how it works out. We manage  
10 it very carefully. We continually assess and SIRC  
11 will assess any information shared and any  
12 discussions, anything that is on the record  
13 between us and that other service. So we manage  
14 those very carefully.

15 The reality is that the first  
16 agreement is really just an agreement to work  
17 together within certain limits.

18 MR. WALDMAN: You told us that the  
19 Minister has to approve the agreement. Is that  
20 correct?

21 MR. ELCOCK: That is right.

22 MR. WALDMAN: How can the Minister  
23 approve an agreement when he doesn't really  
24 know --

25 MR. ELCOCK: Because at the end of

1 the day the Minister is approving cooperation with  
2 a specific service of a specific country.

3 MR. WALDMAN: So he just approves  
4 the cooperation?

5 MR. ELCOCK: He approves on a  
6 document that we would submit to him which would  
7 go into the reasons why we need the arrangement,  
8 the purpose of the arrangement, any limitations  
9 that we would impose on the arrangement, and any  
10 concerns with respect -- because there must also  
11 be consultation with the Minister of Foreign  
12 Affairs, any consultations, any issues that will  
13 come up in that context.

14 MR. WALDMAN: How can the Minister  
15 of Foreign Affairs give you advice if he doesn't  
16 know the full details of the arrangement because  
17 it is an oral one?

18 MR. ELCOCK: The Minister of  
19 Foreign Affairs will give us advice on the basis  
20 of Canadian foreign policy and its application  
21 with respect to that country and an assessment of  
22 the human rights record, et cetera, of that  
23 country.

24 MR. WALDMAN: Has there ever been  
25 a time when you in your term as Director of CSIS

1           terminated a relationship because of human rights  
2           abuses in a country?

3                         MR. ELCOCK:  I don't recall off  
4           the top of my head.  We may have but I don't  
5           recall one way or the other.

6                         MR. WALDMAN:  Was there ever a  
7           time when you placed restrictions on a  
8           relationship because of human rights abuses that  
9           you can recall?

10                        MR. ELCOCK:  There are cases where  
11           we have placed restrictions on various  
12           relationships, yes.

13                        MR. WALDMAN:  Could you give me  
14           some examples, please?

15                        MR. ELCOCK:  No, I can't give you  
16           those examples.

17                        MR. WALDMAN:  Why not?

18                        MR. ELCOCK:  If I were to do that,  
19           I would be venturing into the disclosure of  
20           national security information.

21                        MR. WALDMAN:  Is that your job to  
22           decide today or is that the job of the  
23           Commissioner?

24                        MS McISAAC:  Mr. Chairman, I think  
25           the appropriate way for this to be dealt with is

1           that is information which the Attorney General  
2           would claim national security confidentiality for.

3                         We would obviously be quite happy  
4           to have those questions answered, if you wish to  
5           have the answers in an in camera ex parte  
6           proceeding, and presumably you will make some  
7           determination at some point as to whether that is  
8           properly heard in camera and ex parte or not.

9                         THE COMMISSIONER: The question of  
10          Mr. Waldman -- and this may come up, it occurred  
11          to me, throughout these cross-examinations.

12                        If questions are asked over which  
13          the Attorney General claims national security  
14          confidentiality, perhaps we should list those  
15          questions. I should then in camera hear the  
16          answers.

17                        I am going to be, as you are  
18          aware, down the road making extensive rulings with  
19          respect to information over which national  
20          security confidentiality is claimed and simply put  
21          those questions in as part of that.

22                        MR. WALDMAN: Perhaps then I  
23          suppose the procedure I should use is I will ask  
24          my questions, and if my friend objects we will  
25          make a list of them. Then at the end of the day

1           they will get asked again in camera, if  
2           Mr. Cavalluzzo thinks they are relevant.

3                           Is that how we are going to  
4           proceed?

5                           THE COMMISSIONER:  If you think  
6           they are relevant, we can ask the question in  
7           camera and I will make a ruling on it.

8                           MR. WALDMAN:  I am going to ask my  
9           question, and if my friend objects I will proceed  
10          to the next one.

11                          THE COMMISSIONER:  As you are  
12          aware, we put in place a process, if it occurs to  
13          you -- and I am not suggesting it did here.

14                          If it occurs to you that clearly  
15          it is a question over which your friends can claim  
16          national security confidentiality, perhaps just  
17          provide a list of questions that fit in that  
18          category -- and we contemplate in the process that  
19          you will be able to do that -- and those questions  
20          will be asked in camera.  Ultimately I will rule  
21          upon them, whether it is a valid claim or not.

22                          MR. WALDMAN:  Just one  
23          clarification for my understanding.  Is it the  
24          witness who is going to claim the confidentiality  
25          or counsel for the witness?

1 MS McISAAC: If I can clarify, the  
2 confidentiality is claimed by the Attorney General  
3 of Canada. The Attorney General of Canada has  
4 made and will make a number of requests to you,  
5 sir, to hear evidence in camera ex parte, pursuant  
6 to the national security provisions of the rules  
7 and the dictates in your terms of reference.

8 At this stage, it is not an  
9 objection to the answering of any question. It is  
10 simply a request that the information be heard in  
11 camera and ex parte. It will be determined at  
12 some later date as to what the consequence of that  
13 is, depending on your ruling, sir.

14 So there is no objection at this  
15 point.

16 If my friend is asking if the  
17 Canada Evidence Act is being triggered at this  
18 point, my answer would be no; that we are simply  
19 making a request that that particular information  
20 be heard in camera ex parte in accordance with the  
21 provisions of the rules, particularly Rule 47.

22 THE COMMISSIONER: Mr. Waldman's  
23 question though was slightly different. It was:  
24 Who makes the request? Do you do or does the  
25 witness?

1 MS McISAAC: The reason he is  
2 asking that question, I would have thought, is  
3 because it makes a difference under the Canada  
4 Evidence Act.

5 The answer is that I am making the  
6 objection, or I am making the request --

7 THE COMMISSIONER: To hear it in  
8 camera.

9 MS McISAAC: To hear it in camera.

10 THE COMMISSIONER: It is not a  
11 section 38 request.

12 MS McISAAC: That is correct.

13 THE COMMISSIONER: It strikes me,  
14 Mr. Waldman, unless you have some strong  
15 disagreement, that if a witness like Mr. Elcock,  
16 who is familiar with these and knows what the  
17 answer would be, has a concern that it may be  
18 national security confidentiality, if he absent  
19 Ms McIsaac springing to her feet to make the  
20 request raises that point, there wouldn't be  
21 anything wrong with it.

22 If I thought the witness was  
23 abusing it just to avoid answering difficult  
24 questions, I will intervene. But I certainly  
25 don't sense that at all.



1                   MR. WALDMAN: I understand. I was  
2 trying to clarify the procedure. It seems to me,  
3 as Ms McIsaac said, given the procedure that it  
4 would be the objection by her and not by the  
5 witness --

6                   THE COMMISSIONER: If on the other  
7 hand you ask a question, as I say, and the witness  
8 has a genuine concern that it would reveal  
9 information that in his belief ought not to be  
10 revealed, the fact that Ms McIsaac does not pull  
11 the trigger on the request I don't think should  
12 impair the witness from raising the concern.

13                   I think we can proceed in that  
14 sort of spirit of cooperation. If that proves to  
15 be a problem, I will control it.

16                   MR. WALDMAN: I appreciate that.  
17 We are learning the rules as we go along.

18                   THE COMMISSIONER: I think we all  
19 are. There are some peculiar and difficult issues  
20 in this inquiry and we will do our best to manage  
21 them.

22                   Go ahead.

23                   MR. WALDMAN: To go back, if I  
24 understand -- I am recapitulating -- there are  
25 times when you have placed restrictions on

1 relationships because of human rights violations.

2 MR. ELCOCK: There have been cases  
3 where restrictions have been placed on  
4 relationships, and I can't recall precisely off  
5 the top of my head whether they were because of  
6 human rights restrictions or not.

7 But there are cases that I recall  
8 off the top of my head where we have placed  
9 restrictions on various relationships. There can  
10 be other reasons for the placing of such  
11 restrictions.

12 MR. WALDMAN: I think in the SIRC  
13 report it gives the -- perhaps we could find that.

14 It is Volume 1.

15 In the SIRC report there is a  
16 mention that there are five. It is in the most  
17 recent 2002 report. I will give you have the  
18 reference.

19 In the 2003 SIRC Report there is a  
20 notation --

21 MR. ELCOCK: Volume 1, what page?

22 MR. WALDMAN: Page 350, Foreign  
23 Arrangements.

24 In the second paragraph --

25 MR. ELCOCK: From the bottom?

1 MR. WALDMAN: Right.

2 "The Service reported that

3 during fiscal 2002-2003 it

4 had received the Minister's

5 approval to establish five

6 new liaison arrangements and

7 to modify arrangements with

8 21 others. The Service

9 continued to maintain

10 restrictions on exchanges

11 with five agencies due to

12 concerns either about the

13 agencies' human rights

14 records violations of the

15 rule against transferring

16 information or overall

17 reliability?" (As read)

18 MR. ELCOCK: Correct.

19 MR. WALDMAN: Do you know how many

20 of the five were for human rights record

21 violations?

22 MR. ELCOCK: No, I don't off the

23 top of my head.

24 MR. WALDMAN: Do you know how were

25 for violations of the rule against transferring

1 information?

2 MR. ELCOCK: No, I don't.

3 MR. WALDMAN: So is it possible  
4 that none of the five were for human rights  
5 records?

6 MR. ELCOCK: It is possible that  
7 none of the five were for human rights records and  
8 it may all be on reliability. I am not sure.

9 MR. WALDMAN: We have been advised  
10 by various sources -- we do our own intelligence  
11 work here -- that CSIS agents went to Syria at the  
12 end of 2002.

13 Was that pursuant to a foreign  
14 information arrangement with Syria?

15 MS McISAAC: Again, Mr. Chairman,  
16 that would be information over which the Attorney  
17 General claims national security confidentiality.

18 MR. WALDMAN: Perhaps I will break  
19 the question down into two because there are two  
20 questions.

21 Do you know whether CSIS agents  
22 went to Syria at the end of 2002 --

23 MS McISAAC: The same response,  
24 Mr. Chairman.

25 MR. WALDMAN: So you are not going

1 to tell us whether there is an arrangement with  
2 Syria, either orally or in writing?

3 MS McISAAC: The position of the  
4 Attorney General of Canada is that information as  
5 to which country CSIS has arrangements with is a  
6 matter over which national security  
7 confidentiality is claimed.

8 I assure you that those questions  
9 will be answered to your satisfaction.

10 THE COMMISSIONER: I will say it  
11 again, but I won't each time it comes up. We will  
12 deal with each and every one of these questions in  
13 camera.

14 Again, if occurs to you there are  
15 some of the questions that the claims can be made,  
16 you are certainly welcome to ask them in the  
17 public hearing or provide Mr. Cavalluzzo with the  
18 questions. I am sure he intends to ask all of the  
19 questions you just asked, in camera.

20 And just so that the public  
21 understand, that process does not mean that these  
22 answers will not necessarily be made public. It  
23 will be at the end of the in camera hearings that  
24 I will be called upon, having heard the evidence,  
25 to make a ruling about what needs to remain

1 confidential and what will be available in the  
2 public hearings.

3 So people should not read into it  
4 at this point the fact that just because it is  
5 being heard in camera it won't eventually come out  
6 in the public hearings.

7 MR. WALDMAN: Perhaps I can ask  
8 another question in a different way to see if I  
9 can get to the same answer.

10 I just looked at the Website of  
11 the Department of State and you said you are  
12 familiar with that, the Human Rights Reports.  
13 Very quickly and cursorily I saw that Saudi  
14 Arabia, Syria, Jordan, India, Sri Lanka, Tunisia,  
15 Libya, Pakistan, Kazakhstan and Afghanistan all  
16 are countries for which the Department of State  
17 has identified they use torture in order to  
18 interrogate people.

19 Do we have information-sharing  
20 agreements with any of the countries? I'm not  
21 asking you to specify which ones, but with some  
22 of them?

23 MS McISAAC: Again, Mr. Chairman,  
24 that is the question that elicits information over  
25 which the Attorney General claims national

1 security confidentiality.

2 MR. WALDMAN: Do we have  
3 information-sharing agreements with countries that  
4 engage in torture?

5 Can you answer that question?

6 MR. ELCOCK: The think the problem  
7 is that I don't know what countries necessarily  
8 engage in torture. There are certainly  
9 allegations that certain countries do, but I have  
10 no independent knowledge in most cases that any  
11 country has engaged in torture. Clearly that  
12 information, if we have information from reports  
13 such as Amnesty International, the State  
14 Department, or any information we may have  
15 independently that indicates that generally  
16 speaking or on occasion a service does use  
17 torture, then that will have clear implications  
18 for the way in which we assess the information.

19 MR. WALDMAN: Are you telling me  
20 that if the Department of State of the United  
21 States and its Human Rights Reports says that  
22 these countries engage in torture, you are still  
23 going to say "I'm not sure that they do"?

24 Is that your position?

25 Is your position then that "I am

1 going to close my eyes to torture until I see the  
2 person putting the electric cattle prods on the  
3 individual"?

4 Is that your position sir?

5 MR. ELCOCK: I didn't say that was  
6 my position at all. I just said that --

7 MR. WALDMAN: You just said that.  
8 I thought you just said that. You said that "I  
9 don't know if these countries engage in torture.  
10 I read the reports". I asked you if you read the  
11 Department of State report and you said "I did".

12 Do you believe that Syria engages  
13 in torture, sir?

14 MR. ELCOCK: The fact of those  
15 reports is simply that they allege that Syria or  
16 other countries use torture. That is not  
17 necessarily --

18 MR. WALDMAN: I'm asking you if --

19 THE COMMISSIONER: Mr. Waldman, do  
20 let him finish. Let him finish the answer and  
21 then you can ask the next question.

22 MR. WALDMAN: I am just asking  
23 you -- I'm not asking you whether --

24 THE COMMISSIONER: He was --

25 MR. WALDMAN: I am asking you a



1           personal question, sir, what your opinion is,  
2           which is highly relevant.

3                           As a Director of CSIS, do you  
4           believe that Syria engages in torture, having read  
5           the Department of State reports; a simple yes  
6           or no?

7                           MR. ELCOCK: I have seen the  
8           reports. I can suspect that Syrian may engage in  
9           torture. I have no confirmation of that one way  
10          or the other.

11                          MR. WALDMAN: I'm not asking a  
12          confirmation. I am asking you your belief based  
13          upon the reports, the Amnesty International, the  
14          Special Rapporteur on Torture from the United  
15          Nations, the Department of State, they all say  
16          that Syria engages in torture in interrogation of  
17          people.

18                          I'm asking you whether you believe  
19          that Syria engages in torture. It is a simple yes  
20          or no question. Are you going to give it to me?

21                          MR. ELCOCK: It is not a simple  
22          yes or no question.

23                          MR. WALDMAN: Why not? Why isn't  
24          your belief --

25                          MR. ELCOCK: Because all of those

1 documents simply provide conclusions. I have no  
2 knowledge as to the background of those documents,  
3 the evidence that they rely on or anything else.

4 MR. WALDMAN: This is really --

5 MR. ELCOCK: So I can't make any  
6 conclusion on the basis of those documents, except  
7 that they provide an indicator to us that some  
8 services may indeed use torture.

9 MR. WALDMAN: Okay. This is  
10 really fascinating. You just have spent the whole  
11 day telling us about how intelligence operations  
12 work. You put together little pieces of a puzzle  
13 and you reach a conclusion.

14 Isn't that correct?

15 MR. ELCOCK: Yes.

16 MR. WALDMAN: At a certain point  
17 you form an opinion that something is happening.

18 Is that correct?

19 MR. ELCOCK: That's true.

20 MR. WALDMAN: So I am asking you a  
21 simple question: You have read these documents,  
22 you know how these services work, you know the  
23 societies, I'm asking you to put the pieces of the  
24 puzzle together and to give me an opinion.

25 Does Syria engage in torture,

1           yes or no?

2                               Why can you do it with respect to  
3           Sunni extremists, or whatever, as you identify  
4           them, or other people, but you are not willing to  
5           do it about a foreign State from whom you receive  
6           information?

7                               MR. ELCOCK:   The reality of our  
8           investigations is --

9                               MR. WALDMAN:   Sorry.  I don't want  
10          to interrupt you.

11                              MR. ELCOCK:   We carry out  
12          investigations of individuals and/or of people who  
13          may be regarded as a threat to the security of  
14          Canada.  At the end of the day, the issue of  
15          whether or not a service indulges in torture or  
16          not is something we can investigate, it is  
17          something simply on which we can collect enough  
18          information in order to be in a position to assess  
19          the quality of that service, the reliability of  
20          that service, whether or not they do use torture  
21          in their investigations, and whether or not we  
22          should be alive to those possibilities in  
23          receiving any information from any service like  
24          that if we had a relationship with such a service.

25                              MR. WALDMAN:   But at the end of

1 the day isn't it highly relevant that you form an  
2 opinion as to whether a particular service engages  
3 in torture so that you can determine the  
4 reliability of the information of that service?

5 MR. ELCOCK: It is not necessary  
6 that I necessarily form that opinion. It may be  
7 that it will be crucial in terms of the exchange  
8 of information that those who make the decisions  
9 on a day-to-day basis to send information have  
10 that and that we have worked with the Department  
11 of Foreign Affairs to make sure we have a view of  
12 those issues.

13 MR. WALDMAN: But aren't you the  
14 person who is responsible for determining whether  
15 or not we get into arrangements? Didn't you just  
16 testify earlier today that it was your  
17 responsibility to decide whether we get into  
18 arrangements and you are the one who made the  
19 ultimate decision?

20 MR. ELCOCK: In terms of entering  
21 into an arrangement the Minister has ultimately to  
22 consent to those arrangements and I make that  
23 recommendation to the Minister.

24 MR. WALDMAN: So you don't think  
25 it is relevant in the context of that that you

1 form an opinion as to whether a State engages in  
2 torture when you advise the Minister?

3 MR. ELCOCK: That would be an  
4 issue which we would put before the Minister if  
5 there were any concerns with respect to the human  
6 rights record of a country that we were proposing  
7 to enter into a relationship with.

8 MR. WALDMAN: But are you telling  
9 me that when you make a recommendation to the  
10 Minister about an information-sharing with, let's  
11 say hypothetically, Syria --

12 MR. ELCOCK: At the end of the day  
13 if I make the recommendation to the Minister, I am  
14 making the recommendation to the Minister that we  
15 enter into an arrangement with a country because  
16 it is essential to protecting Canadian security  
17 that we do so.

18 MR. WALDMAN: But I think the  
19 Director requires you to take into account the  
20 Human Rights Record.

21 MR. ELCOCK: We balance a lot of  
22 things including the Human Rights Record of the  
23 country in question to the best of our ability to  
24 know something about it.

25 MR. WALDMAN: If you are going to

1 balance that, how can you balance that if you  
2 don't form an opinion about Syria or any other  
3 country whether they engage in torture?

4 I just find it rather shocking  
5 that you are going to enter into an agreement with  
6 a foreign State when you acknowledge that there is  
7 all this documentation out there that says they  
8 engage in torture and you don't form an opinion as  
9 to whether they engage in torture.

10 Is that your evidence today?

11 MR. ELCOCK: You asked me if I had  
12 an opinion about whether Syria engaged in torture.  
13 I can't offer you that opinion.

14 But the reality is, when I make a  
15 recommendation to the Minister in respect of any  
16 country then obviously we have balanced all of the  
17 concerns, including the Human Rights Record of the  
18 country involved and ultimately if we recommended  
19 to the Minister, we have recommended to the  
20 Minister because it is important in our view, in  
21 terms of Canada's security, to secure that  
22 relationship in order to share information if we  
23 can with that service.

24 MR. WALDMAN: You are reluctant to  
25 talk about Syria because you don't want to

1           acknowledge that Syria might have entered -- am I  
2           reading you right, that you don't want to  
3           acknowledge that you might have made a  
4           recommendation to the Minister and found that  
5           Syria engaged in torture?

6                         MR. ELCOCK: In respect of any  
7           country we neither confirm nor deny -- the  
8           practice generally is neither to confirm nor deny  
9           that we have a relationship with any service apart  
10          from those where we acknowledge the presence of  
11          liaison officers in the three capitals where we do  
12          acknowledge the presence of liaison officers.

13                        MR. WALDMAN: What countries  
14          are those?

15                        MR. ELCOCK: That is the U.K.,  
16          France and the United States.

17                        MR. WALDMAN: So we have liaison  
18          officers in those three countries

19                        MR. ELCOCK: And we  
20          acknowledge that.

21                        MR. WALDMAN: I don't know if I  
22          got an answer to this question: To your knowledge  
23          do we have foreign agreements with countries that,  
24          according to your assessments when you make the  
25          recommendation to the Minister, engage in torture?

1 MR. ELCOCK: We may well have  
2 arrangements with countries that we suspect may  
3 engage in torture. I doubt very much whether we  
4 would ever know for sure whether they engage in  
5 torture. There is a difference.

6 MR. WALDMAN: What steps do you do  
7 to find out whether a country engages in torture  
8 or not, beside reading the Department of State  
9 reports?

10 MR. ELCOCK: We would look at  
11 those. We would look at any independent  
12 information we had received from other sources.

13 MR. WALDMAN: You just told me you  
14 have a suspicion that some countries might engage  
15 in torture. We know that there are different  
16 standards of proof that are applied with respect  
17 to CSIS information depending on where it is being  
18 used.

19 Is that correct?

20 MR. ELCOCK: Sorry. I'm not sure  
21 what --

22 MR. WALDMAN: Different standards  
23 of proof. In other words, in an immigration  
24 context it is different than a criminal  
25 proceeding, the level of proof that CSIS has to



1           have in order to -- well, in a criminal proceeding  
2           the burden of proof is beyond a reasonable doubt  
3           and in the Immigration Act Security Certificate it  
4           is reasonable grounds.

5                           Is that correct? Are you familiar  
6           with that?

7                           MR. ELCOCK: It is the Immigration  
8           Act standard whichever that is. A section 77  
9           Certificate is what you are referring to?

10                          MR. WALDMAN: Yes?

11                          MR. ELCOCK: So it would be the  
12           Immigration Act standard.

13                          MR. WALDMAN: Right. So when you  
14           say that you are not certain that countries engage  
15           in torture, what standard are you applying?

16                          MR. ELCOCK: I wasn't applying any  
17           particular standard. The reality is, in most  
18           cases we will not know that a country engages in  
19           torture. We may have some information that allows  
20           us to suspect that they may engage in torture.

21                          It may be as simple as having  
22           access to the State Department report, Amnesty  
23           International. We may, as I said, have  
24           information from other sources that indicates --  
25           other services perhaps that indicate they believe

1           that the service uses torture or they may indeed  
2           have some instance of the service having used  
3           torture.

4                           It will depend on each particular  
5           case what information we have that allows us to  
6           come to a view about whether or not that -- what  
7           the human rights practices of that particular  
8           service are, and again back to the issue of  
9           balancing that against the issue of securing  
10          information that is necessary for the security of  
11          Canada.

12                          MR. WALDMAN:  You say that in some  
13          cases you have a suspicion.  So let's talk about  
14          that around issues of torture here and countries  
15          that engage in torture.

16                          So if you read the Department of  
17          State reports, would that give you a suspicion  
18          that a country might engage in torture if they  
19          said that it is routine and systematic?

20                          MR. ELCOCK:  It is certainly an  
21          important conclusion if the State Department -- an  
22          important piece of information, if you will, if  
23          the State Department has come to that conclusion,  
24          but it is not necessarily determinative.

25                          There can be many reasons for -- I

1 don't know what the basis for that conclusion is  
2 on the part of the State Department. What were  
3 the reasons that they came to that conclusion?  
4 What was the evidence, the basis on which they  
5 came to that conclusion? It is an indication. It  
6 is a relatively credible document, but I would put  
7 it no higher than that.

8 MR. WALDMAN: What about if we had  
9 the State Department and Amnesty International  
10 both saying identical things about a specific  
11 country?

12 MR. ELCOCK: It is more helpful.  
13 It is more information.

14 MR. WALDMAN: If on top of that  
15 we had --

16 MR. ELCOCK: It is not  
17 determinative of anything necessarily, but it is  
18 more information.

19 MR. WALDMAN: On top of that, if  
20 the Special Rapporteur for the United Nations said  
21 that there was systematic use of torture in a  
22 given country, so if you had these three  
23 documents, how would you feel about your level of  
24 confidence that torture was being committed in a  
25 given country?

1                   MR. ELCOCK: It may give you a  
2 better indication that there is a likelihood of  
3 torture being used in that country, but it still  
4 may not allow you to come to any conclusion that  
5 in fact torture is being used.

6                   MR. WALDMAN: What would you need  
7 in order to be certain that a State is engaging in  
8 torture, sir?

9                   MR. ELCOCK: If you were to be  
10 certain if a country was engaging in torture you  
11 would actually have to have information that made  
12 it clear to you that they were using torture.

13                  MR. WALDMAN: What information  
14 over and above all these different reports from  
15 all these different human rights agencies based  
16 upon eyewitness information would you need to be  
17 certain?

18                  MR. ELCOCK: At the end of the day  
19 each of those documents are useful documents, they  
20 are information, but they are report from other  
21 institutions collected by those institutions. We  
22 know nothing about the source. We know nothing  
23 about the information that was provided on which  
24 it is based.

25   We regard those documents as

1           credible in the sense that they allow us to  
2           assess a country that we may not be able to go  
3           and inspect their prisons and determine whether  
4           torture is in fact used. They give us an  
5           indication, but do they allow us to come to an  
6           absolute conclusion that torture is used, which  
7           is is the question you are asking me. No, they  
8           don't.

9                           MR. WALDMAN: I wasn't asking your  
10           absolute conclusion, I was asking your belief.

11                           Anyway, do you have people at  
12           CSIS that investigate whether countries engage in  
13           torture?

14                           MR. ELCOCK: We have people who  
15           review the circumstances involved with respect to  
16           any particular country when we are either  
17           assessing the viability over the importance of  
18           having an arrangement with that country and people  
19           who review them on an ongoing basis to determine  
20           whether we should look again at the relationship  
21           we have with any particular country.

22                           MR. WALDMAN: You have told us, if  
23           I understood you correctly, that there may be  
24           arrangements with some countries that you have a  
25           "reasonable suspicion" -- is that the word you

1           used -- that they engage in torture. I don't want  
2           to put words in your mouth?

3                       MR. ELCOCK: As you described it  
4           yourself, there is ultimately a balancing and if  
5           on balance we believe we should recommend to the  
6           Minister that an arrangement go ahead, even if we  
7           suspected that that country was using torture --

8                       MR. WALDMAN: So have you  
9           recommended to the Minister that we enter into  
10          foreign arrangements with countries where there  
11          was suspicion that they engaged in torture?

12                      MR. ELCOCK: Yes.

13                      MR. WALDMAN: Aren't you worried  
14          that -- do we give information to those countries?

15                      MR. ELCOCK: Very carefully and in  
16          very a limited fashion from our point.

17                      MR. WALDMAN: Well, could you  
18          explain to me how you give information carefully?

19                      MR. ELCOCK: Because every piece  
20          of information we look at, before we share it we  
21          have to decide who we are giving it to, what the  
22          reliability of that organization is, what uses  
23          they might put that information to and whether or  
24          not simply it is information we can provide to  
25          that service in respect of, for example, the

1 Canadian travelling or being outside the country.

2 MR. WALDMAN: If you give  
3 information to countries that engage in torture,  
4 how can you not be concerned that that information  
5 might not be used against those people and result  
6 in them being tortured?

7 MR. ELCOCK: That is why we make a  
8 very careful assessments before we share the  
9 information. If we don't believe we should share  
10 the information, we don't share it.

11 MR. WALDMAN: But you still share  
12 information with countries that engage in torture.  
13 Is that correct?

14 MR. ELCOCK: I said we have  
15 relationships with countries that may use torture.  
16 I didn't say we necessarily shared a lot of  
17 information or any information with them.

18 MR. WALDMAN: I thought you just  
19 did a minute ago. I will ask you again.

20 I'm pretty sure you said a  
21 minute ago that you give information that engage  
22 in torture?

23 MR. ELCOCK: I thought you asked  
24 me -- my recollection of the question was that you  
25 asked whether we had relationships with

1 countries --

2 MR. WALDMAN: Then I went on to  
3 ask you -- I will ask the question again: Do you  
4 give information to countries that engage in  
5 torture?

6 MR. ELCOCK: We may give some  
7 information to those countries, but what that  
8 information would entail and in fact whether it  
9 would even relate to a person, it might be as is  
10 simple as information management information,  
11 sharing of information management information  
12 which had nothing to do with any individual or  
13 group.

14 MR. WALDMAN: Just to be clear, I  
15 just want this to be on the record: CSIS gives  
16 information to countries that engage in torture?

17 MR. ELCOCK: We may share certain  
18 limited kinds of information with countries that  
19 engage in torture. It may or may not be relevant  
20 to any individual or group.

21 MR. WALDMAN: Has CSIS ever given  
22 information that related to individuals to  
23 countries that engage in torture?

24 MR. ELCOCK: I can't answer that  
25 question off the top of my head. We do share



1 information with services. We may have provided  
2 some in the past. I can't recall.

3 MR. WALDMAN: So it is that you  
4 don't remember, it is not that you are not  
5 answering on grounds of national security?

6 MR. ELCOCK: At this juncture, I  
7 suspect if I looked at the file it would be on  
8 grounds of national security.

9 --- Pause

10 MR. WALDMAN: My friend just  
11 pointed out, I would ask that the witness make an  
12 effort to find out the answer to that question  
13 and, given that he has now told us he won't answer  
14 it in public, that the Commission make an effort  
15 to obtain the answer to the question whether  
16 Canada has given information on individuals to  
17 regimes who engage in torture in camera?

18 THE COMMISSIONER: Thank you.  
19 That question will be asked.

20 MS McISAAC: I just want to make  
21 it clear, though, that the witness' real answer  
22 was he simply couldn't answer the question off the  
23 top of his head because he does not have the  
24 appropriate information at his fingertips.

25 MR. WALDMAN: Then he did go on

1 to say --

2 MS McISAAC: He said if he had  
3 the information we would claim national security  
4 for it, yes.

5 MR. ELCOCK: I said probably.

6 MS McISAAC: Probably.

7 MR. WALDMAN: My response was  
8 then, given that, I wouldn't ask you to try to get  
9 the information overnight but I would ask  
10 Mr. Cavalluzzo to ask that question in camera  
11 afterwards.

12 MR. ELCOCK: Okay.

13 MR. WALDMAN: If you want to check  
14 overnight, and if you find you can answer the  
15 question tomorrow, I think we would all very much  
16 like an answer to that question.

17 MR. ELCOCK: Since I'm not the  
18 Director of the service any longer in fact I don't  
19 have any access that that information.

20 MR. WALDMAN: Maybe we will wait  
21 to ask that question to Mr. --

22 MR. WALDMAN: Doesn't it concern  
23 you that if we give information to regimes that  
24 engage in torture that that information might be  
25 used to torture people?

1 MR. ELCOCK: Which is why we  
2 manage the sharing of information with any regime  
3 very, very carefully and any regime which we  
4 suspect of using torture more carefully.

5 MR. WALDMAN: How could you  
6 possibly trust a regime that violates the most  
7 fundamental principles of the United Nations by  
8 engaging in torture? How could you possibly trust  
9 anything that such a regime would say so as to be  
10 sure they are not going to use the information for  
11 purposes of torture?

12 MR. ELCOCK: In those cases we  
13 would likely not share the information.

14 MR. WALDMAN: Don't you think  
15 that by sharing information with regimes that  
16 engage in torture that makes Canada complicit in  
17 the torture?

18 MR. ELCOCK: At the end of the  
19 day, Mr. Waldman, I was the head of an  
20 organization that is responsible for investigating  
21 threats to the security of Canada. My primary  
22 role is to do that. If I have the approval of the  
23 Minister to deal with a regime, or a particular  
24 service, then we do so with a very careful  
25 assessment of the kinds of information we share

1 with that service or any other service. And the  
2 kind of information we receive from them is  
3 similarly reviewed carefully.

4 MR. WALDMAN: So you are saying  
5 that if it is really the responsibility of the  
6 Minister who approves the agreement with regimes  
7 that engage in torture?

8 MR. ELCOCK: No, I am not saying  
9 it is the responsibility of the Minister. I am  
10 saying it is the responsibility of the service on  
11 a continuous basis to manage the sharing or  
12 information with any such service and/or the  
13 receipt of information from any such service.

14 MR. WALDMAN: I would like to take  
15 you to Volume 1, page 329, please?

16 THE COMMISSIONER: These are the  
17 volumes that you handed up?

18 MR. WALDMAN: Yes.

19 THE COMMISSIONER: Thank you.

20 MR. WALDMAN: This is the 2003  
21 SIRC report?

22 THE COMMISSIONER: And it's  
23 page...?

24 MR. WALDMAN: Page 329.

25 THE COMMISSIONER: Thank you, Mr.

1 Waldman.

2 MR. WALDMAN: It's the paragraph,  
3 "In this regard...". I have highlighted it?

4 MR. ELCOCK: Yes. It's the first  
5 full paragraph.

6 MR. WALDMAN: Yes. This is SIRC.  
7 This is in 2002-2003 report.

8 "In this regard, the  
9 committee took noted several  
10 new relationships where the  
11 service will need to exercise  
12 vigilance to ensure that no  
13 information received from an  
14 agency is a product of human  
15 rights violations and that no  
16 intelligence transferred to  
17 an agency results in such  
18 abuses." (As read)

19 So it seems to me that SIRC is  
20 telling the agency, the service, that you have to  
21 be vigilant --

22 MR. ELCOCK: I thought I had  
23 already said that we are vigilant for precisely  
24 those purposes. The fact that SIRC is confirming  
25 that we will have to do that is an added

1           admonition, if you will, but it is -- and policies  
2           of the service make it clear that we have to  
3           manage those, in any case.

4                       Q.   Okay.   So you agree with what  
5           SIRC said, that Canada should not provide  
6           information to regimes that would result in human  
7           rights violations.

8                       MR. ELCOCK:   I don't think that  
9           paragraph says that.   It says it will need to  
10          exercise vigilance to ensure that no information  
11          received from an agency is the product of human  
12          rights violations and that no intelligence  
13          transferred to agency results in such abuses.   I  
14          don't think it quite says what you said it said.

15                      MR. WALDMAN:   Well, I think it  
16          did.   But then I will ask the question a different  
17          way:   Do you agree that no intelligence that  
18          Canada sends to any other agency in the world  
19          should result in human rights abuses?   Do you  
20          agree with that?

21                      MR. ELCOCK:   Yes.

22                      MR. WALDMAN:   Well, how can you  
23          then countenance the sharing of information with  
24          regimes who engage in human rights abuses?

25                      MR. ELCOCK:   Because there maybe

1 information that I can and share that will not.

2 The nature of relationships  
3 between intelligence services is, to a certain  
4 extent, if you have nothing to offer, you may not  
5 get anything. But the reality is that in any  
6 relationship between services there is information  
7 that can be exchanged. That has nothing to do  
8 with a human being. It may be purely  
9 technological information on how to make a  
10 computer function or how to make a computer system  
11 work. That has nothing to do with any of the  
12 issues that you are concerned about.

13 So there are other kinds of  
14 information that are shared, not simply  
15 information about individuals or organizations.

16 MR. WALDMAN: Okay. Well, I think  
17 there is obviously a need to explore much more  
18 fully this issue of sharing of information with  
19 human rights regimes, but I think I have gone  
20 about as far as I can go without getting more  
21 objections and I think Mr. Cavalluzzo is aware of  
22 my concerns.

23 THE COMMISSIONER: Well, what I  
24 would suggest is if there are other specific  
25 matters, your concerns, as you put it, the

1 specific questions that you wanted to ask, by all  
2 means, as I have made clear, those will be pursued  
3 in camera.

4 MR. WALDMAN: Now, I would like to  
5 move on to another area. I'm just sort of  
6 wondering whether -- there is only 10 minutes  
7 left. I don't know if it makes sense to stop now  
8 or...

9 THE COMMISSIONER: I'm in your  
10 hands.

11 I might just indicate, and the  
12 last point, too, as you have indicated, Mr.  
13 Waldman, we are all sort of engaged in a somewhat  
14 different type of process, but I know that many of  
15 the areas that you have raised here that have  
16 fallen into the in-camera category were matters  
17 that Commission counsel intended to before today  
18 and will pursue in camera, the fact that they  
19 weren't asked in the public hearings today by  
20 Commission counsel, doesn't indicate a lack of  
21 interest on their part in those types of issues.

22 Is what you are saying that you  
23 would like to take the break now?

24 MR. WALDMAN: Just one second.

25 --- Pause



1 MR. WALDMAN: I think that I had  
2 two themes that I wanted to cover -- well, I am  
3 just sort of wondering. It doesn't look like in  
4 10 minutes, but I could go on a little bit.

5 I have a few more questions.  
6 Given that we know that we have a relationship  
7 with the United States and we have and  
8 information-sharing agreements with the United  
9 States, I suppose I have some questions to ask you  
10 about that.

11 Would you agree with me that the  
12 United States engages in torture in order to  
13 obtain information?

14 MR. ELCOCK: I have no knowledge  
15 of that.

16 MR. WALDMAN: You have no  
17 knowledge of that. You haven't read about what is  
18 happening -- what happened in the Iraq at Abu  
19 Ghraib?

20 MR. ELCOCK: I'm not sure that  
21 it's clear, in any way, shape or form, at this  
22 juncture, that what happened at Abu Ghraib was  
23 countenanced by the Government of the United  
24 States at all.

25 You asked me about the United

1 States. If somebody off their own hook did  
2 something in Iraq, I am not sure that speaks to  
3 what the United States countenances or doesn't  
4 countenance.

5 MR. WALDMAN: Well, I think -- are  
6 you aware of -- well, you know what, I think  
7 perhaps it might be useful if we stop here because  
8 there is a document that I gave you haven't read  
9 that we need to explore, if you are going to take  
10 the position that you don't know whether the  
11 United States engages in torture. So I think it  
12 might be better, instead of me asking him  
13 questions about a document he hasn't read, which  
14 is this one here, ending "...secret detention by  
15 human rights first", maybe it would be better if  
16 he read it and we resumed tomorrow.

17 THE COMMISSIONER: Okay. Well, I  
18 am certainly content. It's four twenty.

19 Can you help me, Mr. Waldman, as  
20 to your time limit for completing the  
21 cross-examination is?

22 MR. WALDMAN: At the maximum, two  
23 hours.

24 THE COMMISSIONER: Okay.

25 And Ms McIsaac, I take it you are

1 to follow Mr. Waldman?

2 MS McISAAC: That's my  
3 understanding, sir.

4 THE COMMISSIONER: Yes. And I  
5 know you haven't heard all of his examination, but  
6 can you give me just -- this is for planning our  
7 schedule for other witnesses. Do you have any  
8 idea how long you might be?

9 MS McISAAC: I would be surprised  
10 if I were longer than about a half an hour.

11 MR. WALDMAN: I was just going to  
12 say I could -- okay, we will leave it.

13 THE COMMISSIONER: Well, okay.

14 We will break for the day now. We  
15 will resume tomorrow morning at 10 o'clock.

16 Mr. Cavalluzzo, then, the  
17 estimates we will have for the completion of this  
18 cross-examination are going to take the better  
19 part of the morning. What happens after that?

20 MR. CAVALLUZZO: Hopefully, not  
21 that.

22 What we will do, then, is Mr.  
23 Hooper will likely begin his testimony shortly  
24 after lunch, and then we will see how he does. He  
25 will obviously go into Wednesday. On Wednesday,

1 we will follow him with Mr. Sigurdson, from DFAIT,  
2 who will not be as long as either of these two  
3 witnesses.

4 So I am hoping we can complete all  
5 of the evidence in three days. If not, what I  
6 suggest we do is we commence with the RCMP  
7 evidence on June 30 and any other evidence we have  
8 coming from these three days that we finish on  
9 July 6.

10 THE COMMISSIONER: Okay. And you  
11 might wish to discuss with counsel, if you would,  
12 as to whether or not they would be prepared to sit  
13 somewhat longer than the hours we did today? I  
14 realize people are working hard, but it is a  
15 knocker, at this stage, from me, is to either  
16 start earlier or go longer in the day or take a  
17 shorter lunch hour. But I bear in mind, I know  
18 that counsel are under pressure.


19 So that rather than debating that  
20 in the open hearing, Mr. Cavalluzzo, and the other  
21 counsel, if you could speak together and see  
22 whether or not we could stretch out, if you will,  
23 the hearing day somewhat.

24 We will break till 10 o'clock  
25 tomorrow morning.

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THE REGISTRAR: All rise.

--- Whereupon the hearing adjourned at 4:25 p.m.,  
to resume on Tuesday, June 22, 2004 at  
10:00 a.m. / L'audience est ajournée à  
16 h 25 pour reprendre le mardi 22 juin  
2004 à 10 h 00



Lynda Johansson,  
C.S.R., R.P.R.

StenoTran