

**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**

**Examen de la Politique
Audience publique**

**Policy Review
Public Hearing**

Commissaire

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

Commissioner

Tenue à:

Salon Algonquin
Ancien hôtel de ville
111, Promenade Sussex
Ottawa (Ontario)

le jeudi 17 novembre 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Thursday, November 17, 2005

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| | |
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| Mr. Jack Ewatski Mr. Gordon Schumacher | Canadian Association of Chiefs of Police |

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1 Ottawa, Ontario / Ottawa (Ontario)
2 --- Upon commencing on Thursday, November 17, 2005
3 at 9:00 a.m. / L'audience reprend le jeudi
4 16 novembre 2005 à 9 h 00

5 THE COMMISSIONER: Good morning.
6 Welcome back to those who were here before. We
7 will carry on.

8 Just for those that weren't here
9 before, a brief word about the nature of the
10 process. It is very informal. I try to make it
11 informal and encourage discussion between the
12 presenters and myself. If counsel to my right
13 have any questions they may ask some too.

14 Mr. Saloojee, you are first. If
15 you would like to open with a presentation and
16 then I may have some questions with respect to the
17 presentation, if that suits.

18 If you would like to come forward?
19 You are welcome to stand or sit as you find most
20 comfortable.

21 SUBMISSIONS

22 MR. SALOOJEE: Thank you very
23 much, Mr. Commissioner. I would like to extend my
24 heartfelt appreciation to you for accommodating
25 our very short and quick request for a scheduling

1 change.

2 THE COMMISSIONER: That is no
3 problem. I understood completely, so that is not a
4 difficulty.

5 I might just indicate for people
6 who may be viewing this or watching that it is
7 Mr. Riad Saloojee who is representing the Canadian
8 Arab Federation and the Canadian Council on
9 American-Islamic Relations.

10 You appear today on behalf of
11 both?

12 MR. SALOOJEE: Yes, that's right,
13 I am appearing for both.

14 THE COMMISSIONER: Yes, okay.
15 Thank you, Mr. Saloojee.

16 MR. SALOOJEE: Mr. Commissioner, I
17 am making this submission to you regarding your
18 mandate to recommend an independent arm's
19 length-review mechanism for the national security
20 activities of the RCMP.

21 You have previously stated, Mr.
22 Commissioner, that the most appropriate review
23 mechanism will require the balancing of three
24 objectives. First, maintaining national security;
25 second protecting rights and freedoms; and third,

1 ensuring accountability. We would argue that all
2 three objectives are organically connected.

3 National security, if done right,
4 makes us safer; rights and freedoms are not
5 abstract entitlements but exist to aid in the
6 search for truth; and that accountability is the
7 key to both.

8 Review agencies play, in analogy,
9 the role of a judge in a courtroom. A poor or
10 ineffectual agency is the equivalent of a
11 judgeless court. As national public interest
12 community-based organizations we feel a that our
13 knowledge of both the Muslim and Arab communities,
14 as well as our interaction with security agencies
15 after 9/11 will be able to inform your choice of a
16 review mechanism that accomplishes these three
17 objectives.

18 We also hope that perhaps a silver
19 lining of our communities' interaction with
20 security agencies will be our experience to speak
21 to the inadequacies of the current regime and the
22 steps that must be taken to ensure a robust
23 accountable review mechanicalism that enjoys the
24 confidence of both affected communities and the
25 broader Canadian polity.

1 On the issue of national security,
2 our communities have lived in Canada since 1850
3 and our integration into Canadian society has not
4 been a clash of civilizations as some have
5 suggested.

6 Instead, there has been a
7 symbiosis of shared and common values that have
8 made both communities feel that Canada is our
9 home. We care about national security as deeply
10 as any other Canadian citizen.

11 The Koran teaches that justice is
12 a universal moral constant and commands Muslims to
13 stand for justice even if it be against
14 themselves, their relatives or their communities.

15 We all know that extremism
16 devastates with equal opportunity. Our
17 communities will certainly be directly affected
18 and also doubly affected by any extremist attack,
19 because we will bear the stigma of guilt by
20 association.

21 We have tried our best to do our
22 part in ensuring Canada's security and safety,
23 while at the same time ensuring that fundamental
24 rights and freedoms are protected and preserved.
25 However, the experience of our communities has

1 been that prevailing institutional models have
2 sacrificed the rule of law and civil liberties in
3 the quest for security.

4 I would now like it turn to the
5 issue of protecting rights and freedoms, which is
6 your second objective.

7 The security agenda post-9/11 has
8 changed the landscape of our multicultural
9 society. Many of these changes have been
10 legislative and institutional, giving security
11 agencies new and enhanced powers. But by far we
12 would submit that the change has been more subtle
13 and more insidious. Our collective consciousness
14 has acceded to the necessity for more secrecy, a
15 greater devolution of power to security agencies,
16 and to do whatever is necessary to avert a
17 ubiquitous and sometimes ill-defined threat.

18 Our communities have long raised
19 concerns regarding issues of racial profiling,
20 intimidating and coercive field practices,
21 stereotyping and discrimination, overzealous
22 investigations and the premature linking of
23 individuals to terrorism. We have provided you
24 and the Commission with a copy of our national
25 survey on RCMP and CSIS security visitations, "A

1 Presumption of Guilt".

2 The survey confirms what our
3 organizations have long been documenting; that
4 there are systemic practices and operational
5 methods that are being used by our security
6 agencies that are unethical, unacceptable and in
7 some cases unconstitutional.

8 Seven such practices were
9 documented by the survey: work visitations, active
10 discouragement of a lawyer, intrusive and
11 irrelevant questions, improper documentation,
12 intimidation tactics, improper solicitation of
13 informants and the interrogation of a minor
14 without a legal guardian present.

15 For the purposes of this review,
16 it is instructive to note that the conduct that we
17 complained about in the survey involved the RCMP,
18 CSIS and local police active in security
19 investigations. The operational methods were not
20 the sole preserve of any one agency and in
21 numerous cases the officials were acting as part
22 of a team.

23 To date, there has been still no
24 official response regarding the employability or
25 acceptability of these methods by either the RCMP

1 or CSIS. There have certainly been responses
2 about a commitment not to racially profile and not
3 to involve in discriminatory policing practices,
4 but no official response regarding these specific
5 operational methods or field practices.

6 The second cause of concern for
7 our communities has been the litany of individuals
8 that have been stigmatized as terrorists and
9 subsequently vindicated. They include the
10 publicly recorded cases of Liban Hussain, Mohamed
11 Attia, Ahmad Shihab and the two dozen victims of
12 Operation Thread, to name a few. In all of these
13 instances the reputation and livelihood of the
14 individuals was destroyed.

15 Despite that many of these
16 individuals asked for either an apology or a
17 statement that they were not found to be connected
18 to terrorism, it is only in one of these cases
19 that an apology was forthcoming, and even then it
20 was done quietly and unofficially.

21 We strongly submit that remedial
22 action is and was non-existent.

23 The third cause of concern has
24 been the cases of Mr. Arar, Mr. Almalki, Mr. El
25 Maati and Mr. Nureddin, all Canadian Muslims and

1 Arabs who were tortured abroad and who have
2 alleged complicity on the part of Canadian
3 security agencies. To date, there has been no
4 effective response from our security agencies
5 regarding these cases, and the Canadian government
6 has not responded to the request for an
7 independent investigation into the cases of
8 Mr. Almalki, Mr. El Maati and Mr. Nureddin,
9 although the possibility of a Canadian style
10 rendition policy is arguably one of Canada's
11 greatest human rights scandals.

12 The last objective is that of
13 accountability.

14 We have been disappointed by
15 current accountability mechanisms for our security
16 agencies. The CPC has been unable to effectively
17 investigate or audit concerns regarding the RCMP's
18 operational methods. As I have mentioned earlier,
19 these concerns have pre-dated our study and have
20 been covered with candour by the media for the
21 last few years at least.

22 Moreover, these concerns have been
23 raised by ourselves and others time and time
24 again. The chair of the CPC, Ms Shirley Heafey,
25 has herself lamented that the RCMP is guilty of

1 "thwarting" the complaints process.

2 Institutionally, the CPC does not have the legal
3 tools to compel full disclosure.

4 It is also telling that SIRC has
5 not similarly initiated an audit into the
6 operational methods of CSIS. In fact, to the
7 dismay of both the Canadian Muslim and Arab
8 communities, a SIRC report to the minister that
9 studied CSIS probes between April 2001 and March
10 2002 found that "in its investigations of Islamic
11 extremist terrorism in Canada, the Service
12 restricted its activities to the threats posed by
13 persons and organizations and did not investigate
14 the Islamic community as a whole". This has not
15 been the day to day experience of our communities.

16 Due to this inaction and the low
17 profile of our security review mechanisms, many in
18 our communities have the impression that our
19 review mechanisms are themselves secretive
20 agencies intrinsically connected to the agencies
21 they review. Many do not perceive them as arm's
22 length or independent. This loss of confidence
23 stems in part from their apparent inability to
24 grapple with the real and well-publicized issues
25 facing Arabs and Muslims.

1 The post-9/11 climate has
2 presented numerous opportunities for our reviewing
3 agencies to act and to assert their commitment to
4 the rule of law and civil liberties. This has not
5 happened. Outreach opportunities have been
6 missed.

7 The last four years have presented
8 clear opportunities for our review agencies to
9 demystify their roles and attain the confidence of
10 our disaffected communities.

11 The culture of a review agency
12 must be activist, robust, incisive and probing.
13 It is not simply independent or arm's length. It
14 is our position that proactive review has been few
15 and far between and that existing review
16 mechanisms has failed to embrace the culture of an
17 activist watchdog role that is so critical in
18 ensuring the protection of the rule of law and the
19 civil liberties of Canadians.

20 I would now like to speak very
21 briefly about what we propose for a security
22 review agency.

23 In our earlier submission to you,
24 we focused primarily on what a review agency
25 overseeing the RCMP would look like. Would it not

1 speak in specifics to whether that agency would
2 oversee more than the RCMP?

3 Due to information that has
4 surfaced from the inquiry since then, the results
5 of our national survey, as well as public
6 information, we would like to broaden our
7 recommendation that the review agency have
8 jurisdiction over all federal agencies involved in
9 national security work. We continue to maintain,
10 as in our earlier submission, that there must also
11 be a parliamentary committee on national security.

12 We will address the specific
13 questions that you posed to us in the remainder of
14 my submission and also will be willing to address
15 and answer any additional questions you have
16 regarding the super agency option, which we feel
17 is essential given the increased intersection of
18 bodies that are engaged in national security.

19 We would submit that certain
20 principles must guide the design of the agency.
21 The Canadian Muslim Lawyers Association has
22 proposed that national security matters be managed
23 on a lifecycle model which aims at the continuous
24 improvement of the national security system. The
25 current system is based on a simple

1 one-dimensional model of self-governance and
2 self-review.

3 The lifecycle approach would add
4 an extra dimension in the form of an independent,
5 non-partisan and centralized review agency with
6 the following features:

- 7 - jurisdiction over all national
8 security agencies and functions;
- 9 - full access to all national
10 security information;
- 11 - the ability to initiate
12 investigations and to subpoena witnesses;
- 13 - the ability to hear third party
14 complaints, robust public complaints and redress
15 process, including the ability to order remedies,
16 in particular financial compensation,
17 legislatively mandated audit power, a permanent
18 budget funded by Parliament and safe from
19 executive tampering, public and civil society
20 participation and input to build confidence and
21 trust;
- 22 - the ability to undertake an
23 annual audit and assessment of Canada's national
24 security sector in order to determine
25 effectiveness and efficiency -- in effect, an

1 audit of value for money;

2 - and lastly, that it be staffed
3 with full-time civilian experts in national
4 security law, policy and practice.

5 In defining the agency's
6 jurisdiction over all national security
7 activities, reference may be made to legislation,
8 organizational structure and policies and
9 procedures. So we would advocate a functional
10 definition of national security in this instance.

11 I would now like to briefly speak
12 to two issues relating to the agency: one would be
13 the importance of a vigorous audit power; and
14 second, the agency's remedial powers.

15 Both audits and complaints are
16 important in effective review and must be
17 undertaken by the same agency. We do submit,
18 though, that any mechanism that is driven by
19 complaints will be unable to provide a true review
20 of the actions of our security agencies. It has
21 been our experience that Muslims and Arabs are
22 loathe to come forward and file complaints against
23 security agencies.

24 This aversion stems from many
25 factors: concerns about confidentiality, concerns

1 about anonymity, lack of a feeling of safe space
2 to complain, linguistic challenges and of course
3 the fear of reprisals.

4 In addition, many hail from
5 political and social cultures where interaction
6 with security agencies is non-existent or simply
7 hostile. Add to this mix institutional barriers,
8 such as a lack of advocacy resources, and the
9 result is a clear demonstration of why a
10 complaints driven process can only be deeply
11 flawed.

12 The most central indispensable
13 feature of any review agency must be a
14 legislatively mandated, robust audit power. An
15 audit power is essential in a field where secrecy
16 is the norm, where investigations are covert and
17 where much of the going-ons occur outside the
18 light of public scrutiny.

19 Audits are thus the only
20 sustained, in-depth manner to ensure conformity
21 with the rule of law and civil liberties.

22 We would also submit that another
23 benefit of vigorous auditing is in fact increased
24 confidence in the complaints process. When
25 potential complainants see the review body as

1 self-identifying with critical and topical issues
2 and being concerned actively with the rule of law
3 and civil liberties, this will embolden them to
4 come forward with renewed confidence.

5 Certainly this is a long-term
6 effect, but I think a very beneficial one, that
7 will bolster civic confidence in the review agency
8 and make it over the long term that much more
9 effective. A thorough audit may also, for
10 example, lead to class complaints.

11 In passing, I would note that the
12 agency should also be able to review security
13 certificates. As an expert body, it should be
14 able to conduct a merit review and not simply a
15 reasonableness review. The review criteria would
16 depend on constitutional standards, legislation,
17 case law and policy, and the review agency would
18 be engaged in examining legality, proportionality
19 and reasonableness of national security
20 activities.

21 Furthermore, we would submit that
22 the doctrine of police independence should not
23 affect the audit power of the agency. There are
24 three reasons.

25 First, intelligence led policing

1 represents a significant departure from
2 traditional policing.

3 Second, the public record
4 indicates, at least to our mind, that the
5 investigations of many individuals were quite
6 politicized to begin with.

7 I think the idea that
8 investigations are politics neutral in some cases
9 is a fiction. The investigation of numerous
10 individuals, especially those who were stigmatized
11 post-9/11, appear to be driven in some cases by
12 political considerations.

13 And lastly, and probably most
14 importantly, the auditing function is not an
15 oversight function, but rather a post facto review
16 that would not be underpinned, if you like, by
17 political considerations.

18 Lastly is the issue of remedies.

19 Experience with the CPC shows that
20 a significant portion of its recommendations to
21 the RCMP are flatly rejected. We think that a
22 review agency will have significant expertise,
23 experience and will be in a front line position to
24 examine the facts of the case. And given these
25 factors, we believe that a review agency that does

1 not have the teeth to make binding judgments with
2 respect to compensation will be ineffective.

3 The litany of cases of those who
4 were mistakenly stigmatized by security agencies
5 as terrorists and had their lives ruined is a
6 cause for great public alarm. In many, if not
7 most, cases individuals were not appropriately
8 compensated for the harm they suffered. A review
9 mechanism must incorporate this power and use it.

10 Indeed, we would submit that when
11 monetary judgments are issued in such cases, this
12 will provide a unique incentive for security
13 agencies to pursue investigations that both
14 respect the rule of law and civil liberties.

15 Those are my oral submissions,
16 Mr. Commissioner. I look forward to your
17 questions.

18 THE COMMISSIONER: Just dealing
19 with the last point first, if I can, is there a
20 concern that if the review agency has the
21 authority to order compensation, not just
22 recommend compensation -- even that perhaps -- and
23 has therefore the authority to investigate the
24 issue of damages, that the review proceedings
25 themselves will become a type of an adversarial

1 proceeding?

2 What I am wondering is: Is there
3 a legitimate concern that going ahead, that the
4 agency that is being reviewed, or the members of
5 the agency who are being reviewed, knowing that at
6 the end of the day one of the outcomes may be in
7 effect a compensation order, I guess to be paid by
8 the government, I'm not sure by the individual,
9 that you are going to import into it all of those
10 components of the adversarial system that we
11 lawyers and judges know so well and that may not
12 serve very well the type of audit review function
13 I think that you and many others would envision?

14 So in a sense it will put the two
15 at war more than would be desirable. Is that a
16 concern, do you think?

17 MR. SALOOJEE: I think that may be
18 a concern, Mr. Commissioner. Our concern actually
19 is frankly that the national security review
20 system is not adversarial at present and that
21 certainly in many instances the complainant is
22 barred or does not have proper and full access to
23 the evidence.

24 So although the adversarial system
25 poses its deficiencies, I think it would be a

1 welcome fixture, given the inadequacies of the
2 current system that are simply not adversarial
3 enough and don't I think give a proper and
4 effective opportunity for the complainant to
5 cross-examine the evidence, to see the evidence,
6 don't incorporate, for example, the issue of
7 special advocates.

8 So I don't see this potential
9 adversarial quality as being necessarily
10 detrimental. I think it would be much better,
11 given the inadequacies of the current system.

12 I would also submit that I think
13 the importance of actually allowing the agency to
14 order compensation cannot be overstated, because
15 where individuals are stigmatized and have their
16 lives ruined either by being fired from their jobs
17 or making their employability, as in the case of
18 Mr. Arar, very, very difficult, I think it is
19 essential to address some of those harms by
20 investing in the agency the power to order
21 compensation.

22 THE COMMISSIONER: All right.

23 You speak about the need for a
24 function-based review agency as opposed to an
25 agency-based one. We had some discussion

1 yesterday about this.

2 There is a list in the further
3 questions that the inquiry sent out, in question
4 16, there is a list I think of 24 agencies that
5 are in some way associated with, I think the word
6 is, security and/or intelligence. I think some
7 who propose a super agency propose that that is
8 the function, all 24's national security
9 activities should fall within the realm of this
10 new super agency.

11 Some of the questions I asked
12 yesterday went to the question as to whether or
13 not this is a practical approach, or are we just
14 creating something that will die under its own
15 weight if the reach is so far?

16 As I thought about it last night
17 and when I look at the list of 24, it strikes me
18 that four and perhaps five of them are actually
19 involved in national security investigations. The
20 other 19 or 20 may have a different mandate. They
21 don't have a mandate to conduct national security
22 investigations. They may incidentally come into
23 possession of information that has a national
24 security implication.

25 I guess my question to you is:

1 When we look at the function that needs to be
2 subject to an independent arm's length review
3 agency, the type that we are talking about, does
4 not the function that we are concerned about,
5 national security investigations and the threat to
6 individual liberties, result primarily from that
7 type of investigative action, the collection of
8 information, the things that you have mentioned?

9 Is that the type of function that
10 we should be looking at coordinating or
11 integrating the review for, or is it everybody who
12 may incidentally even have their hand on a
13 national security document?

14 MR. SALOOJEE: I think it would be
15 primarily the investigative thrust of the agency's
16 mandate that would bring it under the jurisdiction
17 of the reviewing agency. I think to the extent
18 that others deal only incidentally and only
19 tangentially with national security information,
20 they wouldn't necessarily be brought under the
21 purview of the security agency.

22 So I think for all practical
23 purposes we are looking at a number of core
24 agencies: the RCMP, CSIS, the Border Services
25 Agency, for example.

1 THE COMMISSIONER: Some suggest
2 CSE.

3 MR. SALOOJEE: And CSE as well,
4 although we would not, I think, be looking too
5 intensively at the other agencies whose mandate is
6 not to investigation and who would deal only
7 incidentally with this sort of information.

8 I think probably in defining the
9 jurisdiction of the agency, there is going to have
10 to be some time and focus devoted to exactly what
11 is the threshold that would bring the agency under
12 the purview of the reviewing agency.

13 THE COMMISSIONER: In the point I
14 think that you are making is when you look at
15 things like the Department of Finance, Treasury
16 Board, Natural Resources Canada, Environment
17 Canada, and so on, it would seem to be a rather
18 difficult fit to put them under a national
19 security review board.

20 I think a point you make -- and I
21 will ask you to respond to it -- is that whatever
22 the review body or bodies may happen to be, some
23 have said at least that they should be able to
24 follow the information, follow the trail, I think
25 is how some have put it; in any event, that the

1 review body or bodies should have sufficient
2 powers that if the trail leads to Treasury Board
3 or to the Department of Finance, they should have
4 the ability to reach out and bring that
5 information within their purview so that they can
6 look at it. They don't bump into a wall at some
7 government department.

8 MR. SALOOJEE: Yes, we would agree
9 with that. In all likelihood, I think complaints
10 are going to begin with investigations. I think
11 it is unlikely they will begin with simply data
12 collection. Most individuals don't know whether
13 there is data collected about them or whether
14 there is information about them. It will likely
15 begin with either a perceived or actual
16 misconduct, or misconduct will likely be the
17 grounds for the complaint.

18 And that being the case, I think
19 that the agency should have the jurisdiction to
20 investigate and go with where the trail leads.

21 Certainly if they find that the
22 Department of Finance has its fingers in national
23 security in a way that is more than simply
24 incidental, they should be able to review that as
25 well.

1 THE COMMISSIONER: Right. One of
2 the things you mentioned, and I think it is useful
3 to hear from you on, is the interaction between a
4 review body or bodies with the communities that
5 you represent. You have commented to some extent
6 on the existing situation.

7 What role do you see looking ahead
8 in a reconfigured review body, if you will? What
9 role do you see that that body would play in
10 interacting with the communities? Do you have any
11 specific ideas about that?

12 MR. SALOOJEE: Well, I think it
13 would have to be a very vigorous role. One of the
14 current problems I think with the review agencies
15 is that they are not well-known in the broader
16 community.

17 Certainly I can only speak on
18 behalf of my community, Arab and Muslim community,
19 which is that many individuals in these
20 communities have no clue that there exist review
21 agencies and, if they do, what those review
22 agencies do and what their mandates are; and that
23 indeed there are legitimate options in filing
24 complaints with these review agencies.

25 So there has been I think a very

1 large gulf of education between the community and
2 between the review agencies.

3 Now if you add to that the fact
4 that certainly in the case of CPC, it is
5 complaints driven, that means that the review
6 agency will not be able to effectively deal with
7 the community's concerns. There is going to be a
8 disconnect that is going to make accountability
9 virtually non-existent, certainly the
10 accountability of the RCMP.

11 We hope for a number of things, I
12 think. One that I mentioned earlier is that with
13 a vigorous audit mechanism this is going to be a
14 way to signal to communities to come forward and
15 it is going to I think increase confidence and
16 trust in the review agency.

17 I think other activities do need
18 to be done. It has been mentioned before that the
19 objective of a review agency is not to solicit
20 complaints, to actively solicit complaints, and
21 certainly we would not call for that. At the same
22 time I think the review agency needs to be
23 involved in a public education process whereby it
24 is reaching out into these affected communities.
25 It is explaining what it does, and it is

1 explaining its commitment to the rule of law and
2 civil liberties and I think also taking pains to
3 mention and to allay the fears that typically
4 would prevent individuals from filing complaints
5 in the first place, such as concerns about
6 confidentiality, anonymity, the fear of reprisals,
7 resources.

8 One of the examples that we are
9 toying with, or recommendations, is some kind of
10 legal fund or some kind of Legal Aid program that
11 might be instituted so as to ensure that
12 socioeconomic obstacles are not a barrier to
13 people coming forward.

14 I think certainly in many cases
15 that have come to our attention, individuals are
16 reluctant to come forward because they don't have
17 the resources to do that. They feel that they do
18 need legal assistance and I think in many of these
19 instances, I think having a lawyer is quite
20 important because if you are faced with linguistic
21 obstacles or if you are a new-comer to Canada or
22 don't have citizenship status, you may very well
23 need a lawyer to help you navigate through the
24 review agency itself. So perhaps some kind of
25 legal fund or Legal Aid program to make it

1 accessible for individuals to be able to come
2 forward and file complaints; but certainly I think
3 some measure of outreach in the broader community.

4 Also the recommendation that
5 perhaps there might be an advisory council built
6 into the review agency that does comprise members
7 of affected communities, that might be a way of
8 bridging the disconnect between these communities
9 and the review agencies. And also bringing to the
10 attention of the review agencies the on-the-ground
11 realities of these communities, for example, with
12 regard to operational methods and field practises
13 that it does not appear to date have made their
14 way into the attention of the current review
15 agencies.

16 THE COMMISSIONER: Mr. Saloojee,
17 with respect to the RCMP you have the ongoing
18 complaint system for complaints generally against
19 the RCMP and then you have a separate agency that
20 deals with complaints from a national security
21 investigation. Is there a concern about
22 stigmatization, that if something has a complaint
23 and they then say okay I'm going to bring my
24 complaint, either they bring it to the national
25 security complaints body or it gets streamed there

1 because it flows out of a national security
2 investigation -- is there a concern that that
3 person then will be stigmatized as a person who is
4 subject to a national security investigation and
5 it sort of in a sense would be counterproductive?

6 If that is a concern, do you have
7 any ideas as to how it might be addressed?

8 MR. SALOOJEE: I think that
9 looking back, looking back into the past, many of
10 the individuals who I think would have been likely
11 to file complaints with this broad agency, had it
12 existed in the past, would have been those who
13 were already stigmatized publicly as having links
14 to terrorism.

15 So at one level I think you will
16 find in those cases those individuals wouldn't
17 have anything more to lose in filing a complaint.

18 With regard to those who, for
19 example, have not been publicly linked or in some
20 way stigmatized to terrorism, I don't think it is
21 an insurmountable concern, because I think that
22 the procedure ought to be confidential until a
23 final determination is made. And then in that
24 determination or in that resolution names could be
25 omitted, names could be filtered out, other

1 essential information about the complainant's
2 identity could be filtered out.

3 So I don't think it is an
4 insurmountable concern. I think there are ways we
5 can mitigate some of those challenges, and I don't
6 see it as being something which is insurmountable.

7 THE COMMISSIONER: I don't know if
8 you have anything to add to this, but the whole
9 notion of stigmatization within the community, I
10 think it probably happens generally when people
11 are being investigated for anything and others
12 become aware of it, that there is a certain sort
13 of where there is smoke, there is fire type of
14 thinking that goes on.

15 I take it that is something that
16 your community has experienced.

17 MR. SALOOJEE: Yes, there is
18 certainly stigma when, for example, somebody gets
19 visited by the RCMP or CSIS. So some of these
20 operational methods that we spoke to in our
21 national survey really do exacerbate the stigma
22 and publicize the stigma.

23 The case of workplace visitations,
24 for example, 25 percent of those who were visited
25 were visited at work. They were visited at work

1 and in many instances the agents or the officers
2 spoke to their supervisors and indicated that they
3 were from the RCMP or from CSIS and they were here
4 to visit and speak to the individual.

5 So the current operational methods
6 and field practices do stigmatize individuals I
7 think in numerous ways.

8 Having that individual then
9 complain to an agency -- and let's assume that
10 that is known that the complainant says I was a
11 subject of an improper investigation, I don't
12 think that would be as stigmatizing as simply
13 being visited by the RCMP or CSIS.

14 As a matter of fact, individuals
15 might even want to boast about the fact that yes,
16 I was visited and I did file a complaint and now
17 I'm waiting to see what happens.

18 So I would think that to the
19 extent that it is a credible agency that that
20 individual has confidence in, that would reduce
21 the stigma even if it was known that they were
22 filing a complaint.

23 THE COMMISSIONER: That is very
24 helpful.

25 Those are all the questions I

1 have. Are there any other questions?

2 MS KRISTJANSON: It arises from
3 something we discussed yesterday as well. If we
4 were to look at the expertise which is required in
5 the review body, to what extent would you think
6 that representativeness of various communities
7 would be important and what other kinds of
8 expertise should be reflected in that review body?

9 MR. SALOOJEE: I guess the general
10 argument is that where the bureaucracy does not
11 reflect the broader society, it won't be able to
12 serve that society. And I think to a certain
13 extent that is relevant with the review agency as
14 well.

15 I think part of the disconnect has
16 perhaps been the fact that the Arab and Muslim
17 community is not well represented within the
18 review agency. Certainly it is our concern with
19 respect to the RCMP and CSIS that there are very
20 few field officers or national security
21 investigators or individuals involved in security
22 policy that are part of the RCMP and CSIS, and
23 this can only lead to a disconnect.

24 It will mean reduced confidence
25 and it will also mean that there is increased

1 possibility that the agencies misread or
2 misunderstand or misperceive cultural or religious
3 elements in the community when they are doing
4 their investigations.

5 So I do think it is important,
6 although I think obviously there needs to be some
7 caveats.

8 We would never advocate simply
9 willy-nilly packing the review agency with Arabs
10 and Muslims. It would have to be merit based.
11 And whether it would be in the form of an advisory
12 body, an advisory council, whether it might be
13 simply regular consultations, whether it would
14 actually be to try to solicit employees that do
15 have the experience and the know-how and the
16 policing and intelligence expertise from the
17 community, that might also be valuable.

18 Certainly I think it can only help
19 the review agency to ensure that the affected
20 communities are brought into the body in various
21 capacities, have a say in decision-making and will
22 be able to inform the policy and procedures of
23 that agency.

24 MS WRIGHT: And just a related
25 question.

1 You mentioned the possibility of
2 an advisory council. Do you see that as a
3 separate set of qualifications and appointments
4 and roles to what might be the composition of the
5 actual review body, or do you think that those
6 roles and sets of qualifications and appointments
7 could be the same?

8 Are you proposing that there be
9 members of the review body and then an advisory
10 council on the side?

11 MR. SALOOJEE: To be honest, I
12 haven't given this very, very much thought.

13 What comes to mind is that there
14 could certainly be an advisory council which would
15 be separate from the review body, meaning not
16 participating in the investigations, not
17 deliberating, et cetera, but that could be of use
18 and consulted regularly by the review agency in
19 its cases.

20 I can give you, for example, I
21 guess a comedic but also tragic example.

22 In the case of the 23 Pakistani
23 individuals who were caught up in Operation
24 Thread, when you read the RCMP backgrounder the
25 indicia that were used to look at and scrutinize

1 these individuals closely as a possible terrorist
2 cell were quite unusual: that they pursued their
3 studies in a dilatory manner; that they didn't
4 really have very good cooking skills; that they
5 lived together and, if you like, aggregated
6 together in the same apartment; and that they came
7 from a part of India that was noted for,
8 quote/unquote, Sunni Extremism.

9 I would probably fall within all
10 of those categories, especially pursuing my
11 studies in a, quote/unquote, dilatory manner.

12 One of the ways I think in which
13 the advisory council could help would be to say
14 really these aren't really strong indicators of a
15 link to terrorism or a possible terrorist cell.
16 This might account for many ethnic trends or
17 demographics within the Canadian Muslim family.

18 That would be, I would think at
19 first instance, the sort of information and
20 benefit that might come from an advisory council.

21 In addition to that, simply links
22 with the community. Who are the activists in the
23 community? Who are the leaders? What are the
24 concerns that we are fielding in our community?

25 I think that sort of openness and

1 that sort of consultation could only help the
2 review agency and not hinder it. It would
3 certainly be a win-win situation. I certainly
4 don't see it as being a zero sum gain.

5 MR. FORESTER: Just one more
6 question on the advisory council.

7 We heard yesterday about the
8 possibility or the fact that when you go the
9 representative route, so that there are
10 representatives of the community either on the
11 review body or on an advisory council, that there
12 is a danger that the representative is not
13 necessarily representative of the community. The
14 community has many voices and it would be hard to
15 distil all those into one.

16 Do you have any suggestions about
17 how that issue might be addressed?

18 MR. SALOOJEE: I think in any
19 other community, and the Arab Muslim community is
20 no exception, there is always internal politics
21 about who represents the community and to what
22 extent they represent the community.

23 I think some of those are
24 legitimate concerns. Obviously you would want to
25 find someone who is truly representative or

1 representative of a large sample, and also a
2 diverse sample of the Arab and Muslim family
3 because both communities are not homogenous.
4 Muslims comprise over 44 different ethnicities, so
5 it is a very heterogenous family.

6 Nevertheless, I don't think that
7 should be a barrier or that should be the
8 limitation in moving forward and trying to consult
9 with representatives of the community. That
10 should not I think deter the agency from trying to
11 outreach.

12 I think there are ways around
13 that. You could look at established
14 organizations. You may have an advisory body that
15 is not static but fluid, that changes every year
16 for example, such that individuals who would
17 clamour to be on the board or that they are not
18 represented might be able to be accommodated over
19 a period of time.

20 So there are ways to do that and
21 not freeze the advisory council and make it open
22 to criticisms that it is not representative.

23 I certainly think, at least from
24 my community, speaking again as a representative
25 of that community, with that disclaimer, that I

1 think you would find that there would be very
2 much -- I think the idea of an advisory body would
3 be very much welcomed by the community.
4 Individuals may have their own particular
5 idiosyncrasies, but I think the idea would be
6 welcomed.

7 I think that such an agency would
8 find that the community would be open to working
9 with that agency in creating a fluid advisory
10 body, for example.

11 THE COMMISSIONER: Do you have
12 anything else you wish to add?

13 MR. SALOOJEE: I think that is it,
14 Mr. Commissioner.

15 THE COMMISSIONER: This I think
16 will be the last opportunity that you will be
17 appearing before the Commission. Let me thank you
18 for your presentation today but also you
19 personally and the organizations that you have
20 spoken for throughout the inquiry, for the
21 contribution you have made. It has been very
22 valuable. It was a very important part of both
23 aspects of the inquiry to have that type of
24 involvement. I thought that your involvement
25 throughout, your participation was done in a very

1 professional and very helpful way. I am very
2 appreciative.

3 MR. SALOOJEE: Thank you very
4 much, Mr. Commissioner, for giving us the
5 opportunity to be here.

6 THE COMMISSIONER: You are
7 welcome.

8 Mr. Filmon is here and Ms Pollak.
9 We are 10 minutes early. Are you
10 ready to carry on?

11 Why don't you come forward then.

12 You are welcome to just sit; it is
13 your choice. The only requirement is to speak
14 into the microphone.

15 For the record, the next
16 presenters are from the Security Intelligence
17 Review Committee, represented by the chair,
18 well-known to many, Mr. Gary Filmon, and the
19 Executive Director, Ms Susan Pollak.

20 Welcome and thank you for coming
21 today.

22 As I understand it, you don't
23 propose to make a statement. You are just here
24 and prepared to answer questions.

25 Is that right?

1 MR. FILMON: Yes, Your Honour, we
2 are happy to respond to any questions. I just
3 preface with a few caveats.

4 I have just been in the chair for
5 about five months, and secondly I am not a lawyer.
6 So with the support of Ms Pollak and some of our
7 legal staff, we will hopefully be able to respond
8 to all of your questions.

9 THE COMMISSIONER: Sure. If there
10 are any questions for sure. This isn't sort of a
11 contest trying to surprise anybody. If there are
12 any questions that we ask that you want to think
13 about or that you consider aren't appropriate or
14 whatever, fine, let us know. It is really an
15 informal exercise to try to help me.

16 Let me start with what is one of
17 the most difficult issues that emerges from all of
18 the submissions that I have received and what I
19 have heard in the oral presentations so far, and
20 that has to deal with the integrated nature of
21 some of the national security investigated
22 operations and the question as to how the review
23 agencies -- or agency as some would propose a
24 single agency -- should deal with the integrated
25 the nature of operations.

1 I note in reading your last annual
2 report there is reference to the number of
3 interactions, if you will, between CSIS and the
4 RCMP, of an informal nature but also what appears
5 to be an increasing amount of involvement in
6 organized INSETs. I suppose the same could be
7 sort of formalized, if you will, integrated
8 operations.

9 So that, as you are probably
10 aware, one of the issues that confronts me is that
11 in making recommendations for an independent
12 review body for the RCMP I would be putting my
13 head in the sand if I didn't address the fact that
14 some of what that review body will be looking at
15 will involve integrated operations, informal or
16 formal, with CSIS, maybe with CSE, with CBSA,
17 Canada Customs, and so on.

18 I will have a number of questions
19 arising from this subject, but let me start by
20 just asking for your general comments in the
21 course of SIRC's reviews over recent years.

22 Have you noted an increase in the
23 amount of integrated activities between CSIS and
24 other investigative bodies?

25 MR. FILMON: There is no question

1 about that. Indeed SIRC made comments, I think
2 when we appeared before the parliamentary
3 committee that was looking at the anti-terrorism
4 legislation, with the changes that were going to
5 be made, or intended and that are now in place,
6 that there was a new role or a renewed role for
7 the RCMP in the security and intelligence field
8 after 9/11 and that some of the proposed agencies
9 would be an integration of CSIS and RCMP
10 personnel, and in some cases with a number of
11 others that you have mentioned. I think of INSET
12 and IBET and now ITAC.

13 The difficulties of course are
14 that in some cases the lead agency is the RCMP,
15 whereas in the case of ITAC the lead agency is
16 CSIS. So it does impact the way in which we can
17 examine the things that are being done when there
18 is this combination of personnel.

19 In ITAC we are comforted that CSIS
20 is the lead agency and all secondees are
21 considered to be employees of CSIS. Therefore,
22 that makes it clear as to our jurisdiction on that
23 and other cases. I think we made comment of that
24 in our own investigation into the matter that you
25 are investigating on the other half of this

1 Commission, that we could only examine the issues
2 that were within the gamut of CSIS's
3 responsibility.

4 So it has been a concern to us and
5 we have indicated in a variety of different ways
6 that it would be better to have a clarification of
7 jurisdiction that allowed us, in some cases
8 perhaps, to go beyond what we do.

9 I will say that in the course of
10 this discussion I don't want to in any way imply
11 that we are critical of the current colleagues who
12 are in the review or oversight process within the
13 whole area of security and intelligence, nor do we
14 want to be seen to be trolling for more work for
15 SIRC. But the fact of the matter is that we
16 believe, just from a straight viewpoint of
17 effectiveness -- and I am a pragmatist at heart
18 and so I think that the solution would be better
19 if it were done under one umbrella.

20 THE COMMISSIONER: Do you have any
21 sense as to what percentage of what you do, of
22 what SIRC does in reviewing CSIS, would engage, if
23 I can call it, the integrated problem?

24 MR. FILMON: That is a good
25 question and I'm not sure that we could take a

1 guess at it. It might be 20 percent. I'm not
2 sure if it would be --

3 MS POLLAK: I would say 20 to
4 30 myself, somewhere in that ballpark, so I agree
5 with the Chair.

6 THE COMMISSIONER: Ms Pollak, that
7 would include both the formalized, IBET, the
8 INSETs that Mr. Filmon mentioned, and also --

9 MS POLLAK: Joint investigations.

10 THE COMMISSIONER: -- joint
11 investigations, the sharing of information, and
12 so on.

13 MR. FILMON: We can understand the
14 reasons why this integration is necessary in
15 today's environment, today's security environment.
16 It is, I think, the way of the future.

17 But the question then becomes: To
18 what extent is it necessary and how do you assure
19 that there is the same level of review when some
20 are subject to the kind of review that CSIS is
21 under SIRC and other parts of it are not?

22 THE COMMISSIONER: That raises
23 another question I think. It is a good point.

24 If there is going to be review of
25 integrated activities, it seems that there is an

1 advantage that the review be consistent, so that
2 one of the integrated actors is either not subject
3 to review at all or is subject to a different
4 quality of review or something.

5 MR. FILMON: That is certainly our
6 conclusion, yes. We expressed that, I believe, in
7 our appearance before the parliamentary committee
8 some time ago.

9 THE COMMISSIONER: Yes. I
10 understand that.

11 What about the other actors that
12 CSIS conducts joint investigation or is involved
13 in some sort of way that give rise to this
14 problem? The RCMP would seem to be the most
15 frequent.

16 What other ones? I had mentioned
17 earlier, but what other ones would you include in
18 that? How far does the reach have to go to deal
19 with the integrated operations situation?

20 MR. FILMON: Again, we are not
21 here promoting ourselves for more work.

22 Having said that, we think that
23 you have to look at the difference between those
24 who are gathering intelligence, and that involves
25 CSIS and the intelligence side of the RCMP, and

1 the CSE. Then you separate that by suggesting
2 that the CSE of course is only doing so on foreign
3 interests, and so that can easily be seen as a
4 dividing line should you choose to do that, and
5 Parliament has done that.

6 Having said that, we also know
7 from our meetings with and interactions with
8 counterparts who have an oversight or review
9 responsibility in other countries, that they
10 typically do have the counterparts of all three
11 under their purview -- that includes places like
12 Norway and the U.K. -- but in their cases they
13 have different mechanisms, parliamentary reviews.
14 They are not really exactly the same as SIRC, nor
15 do they have the extensive powers that SIRC does,
16 and they easily suggest that, that we have powers
17 that are much greater in our review than they do.

18 So theirs perhaps would be more
19 akin to the proposed parliamentary oversight and
20 review that is now being talked about by the
21 federal government.

22 THE COMMISSIONER: Yes. Do you
23 have a sense when it comes to review as to the
24 expertise that is required? Let's just for the
25 moment stay with reviewing CSIS on the one hand

1 and the RCMP on the other.

2 In their written submissions to
3 me the CPC have made a significant point in
4 stating that when they come to review the RCMP --
5 and it is only in the context of complaints now,
6 the RCMP investigations relating to national
7 security matters -- that their experience is that
8 the expertise that is required primarily relates
9 to law enforcement and policing and that is -- I
10 think I'm perhaps slightly overstating what they
11 say, maybe not -- that is a very specialized,
12 unique type of training that they have built up
13 expertise over the years.

14 This is not in any way throwing up
15 a competition as between the two, I am simply
16 trying to figure out what the best solution is.

17 But do you have any sense as to
18 the difference, if there is some, in the expertise
19 required to review a security intelligence agency
20 like CSIS and the RCMP on the other hand?

21 MR. FILMON: We are not experts on
22 all of the things obviously that the RCMP is
23 responsible for. We readily acknowledge that
24 there is no place for this kind of body in the
25 review of police work per se.

1 What we Are talking about is the
2 security and intelligence functions which have now
3 been turned over to the RCMP since 9/11, since the
4 Anti-Terrorism Act. We believe that that part of
5 their responsibilities is very, very similar to
6 what CSIS's activities involve and, therefore, it
7 can and should be separated in a different kind of
8 review structure.

9 We think that certainly we have no
10 interest nor would it be wise to get a review body
11 involved with the police work and there would
12 still be a need for some kind of complaint
13 mechanism about their actions in that realm.

14 But we think that the security and
15 intelligence work is very, very similar and
16 parallel to what CSIS is doing and there are the
17 synergies and the considerations there of having
18 all of our staff needing to be top secret rated,
19 the kinds of analytical review that they do we
20 believe would be very, very similar for the RCMP's
21 security and intelligence functions.

22 We can't say that with absolute
23 authority because we have not been involved with
24 the RCMP operations.

25 THE COMMISSIONER: Is there a

1 concern if a single review body is to review both
2 the RCMP's security intelligence functions and
3 CSIS of cross-contamination of information, that
4 within the review body it would become a new
5 avenue that potentially information from one
6 agency would be shared with another?

7 Is that something that one needs
8 to be alive to?

9 MR. FILMON: I think we do. We
10 would have to be alive to it, but I do believe you
11 could set up fire walls or various types of means
12 of assuring that there wouldn't be a
13 cross-contamination, that information from one
14 wouldn't somehow inadvertently be transferred to
15 the other. I don't see that as being
16 insurmountable.

17 THE COMMISSIONER: As you know,
18 the CPC now is just a complaints function and one
19 of the suggestions I hear from many is that
20 wherever it ends up residing, the RCMP's national
21 security function, collection of intelligence, and
22 so on, needs as well an audit function. People
23 often say an audit function that looks like the
24 SIRC audit function, so all that that encompasses.
25 They say because it is national security

1 complainants don't know what is going on and all
2 the reasons that gave rise to the creation of SIRC
3 in giving it its audit authority.

4 Do you think that it is desirable
5 or even necessary that the complaints function
6 with respect to the RCMP's national security
7 activities reside in the same body, whatever it
8 is, as an audit function?

9 Assuming there is going to be
10 an audit function, should the two be in the
11 same place?

12 MR. FILMON: Again, that will be
13 a decision of Parliament and the Government of
14 Canada, but we have found it to be advantageous
15 for us to be both an auditor, reviewer and also
16 a complaints body. We learn more about perhaps
17 the pressure points or the areas that we ought to
18 be paying close attention to through the
19 complaints function and -- and probably learn more
20 about the details of the operational functions of
21 CSIS through the complaints function and we think
22 that it's been very useful to have responsibility
23 for both.

24 I don't imagine that it is
25 essential that if there remains a separate

1 complaints commissioner for the RCMP it wouldn't
2 be essential that the audit of the security and
3 intelligence functions also include the
4 complaints, but we think it probably would work
5 just fine, as it has with CSIS.

6 THE COMMISSIONER: It would be to
7 bring the complaints --

8 MR. FILMON: Yes.

9 THE COMMISSIONER: The complaints
10 and the audit to stay together about the same
11 matters.

12 MR. FILMON: As long as you can
13 determine what area of their operations the
14 complaint deals with.

15 THE COMMISSIONER: If it is a
16 national security matter.

17 MR. FILMON: Right.

18 THE COMMISSIONER: This may be a
19 difficult question for the people from SIRC to
20 answer, but one the great challenges in designing
21 a system that would remover the complaints
22 function, I guess even an audit function, over
23 some of the RCMP activities, would remove it from
24 CPC, will be: Where do you draw the
25 jurisdictional line.

1 MR. FILMON: Precisely, yes.

2 THE COMMISSIONER: As I said to
3 somebody yesterday, this has the potential of
4 keeping a whole generation of lawyers employed.

5 MR. FILMON: Is that a good thing?

6 THE COMMISSIONER: I don't know.
7 I used to think so.

8 --- Laughter / Rires

9 THE COMMISSIONER: When one looks
10 at the set-up what is different from the RCMP from
11 CSIS or CSE is, CSIS and CSE are entirely devoted
12 to one function.

13 MR. FILMON: Correct.

14 THE COMMISSIONER: The fact of the
15 matters is -- I don't know what the percentage is,
16 but say 5, probably less than that, of the RCMP's
17 work actually would be classified as national
18 security investigation. So as soon as one starts
19 contemplating the notion -- and I'm not arguing
20 against it by any means -- of moving that to
21 another body than the one that deals with the rest
22 of the RCMP, you immediately for the first time
23 create the need to draw a jurisdictional boundary.

24 As you probably saw in the
25 hypothetical questions that we posed, which were

1 designed to highlight this, it is difficult
2 because matters move in and out. They start as
3 national security, now they are not, now they are.

4 MR. FILMON: Yes. We agree with
5 you, so it is a conundrum.

6 THE COMMISSIONER: So a new body,
7 if one were to do that -- that's helpful.

8 MR. FILMON: I'm not being
9 helpful, am I?

10 THE COMMISSIONER: I'm glad you
11 agree.

12 MR. FILMON: That is the advantage
13 of not being a lawyer, I can't give you a straight
14 answer on that.

15 --- Laughter / Rires

16 THE COMMISSIONER: I am looking at
17 some of the people who work at SIRC that are here,
18 that if a new body is to do that, is to take it on
19 along the lines we are talking, that type of
20 model, the new body will be fashioned with a
21 challenge going ahead of drawing lines.

22 I have had suggestions. There are
23 all sorts of different ways we can do it and I
24 don't think we would sort of need to pursue the
25 legal niceties of it, but it is clearly something

1 that worries me as I think about what the best way
2 to go would be.

3 MR. FILMON: You would certainly
4 would have to set up a process by which SIRC would
5 go through an evaluation -- sorry, not SIRC,
6 whatever is the review body --

7 THE COMMISSIONER: Right.

8 MR. FILMON: -- would go through
9 an evaluation to say if these things are the case
10 then it is a matter of national security,
11 therefore the complaint shall be dealt with by
12 this review body, separate from the Complaints
13 Commissioner if that continues to exist, and I
14 assume it probably would have to.

15 So it is just a matter of who
16 makes that judgment and what is the process for
17 arriving at that judgment.

18 We have to go through a process to
19 determine whether or not we undertake a hearing
20 for complaints and there is a variety of different
21 things that have to be met in order for that
22 decision to be made.

23 So I would think that you could
24 set up a process. The question is: Who makes the
25 ultimate decision?

1 THE COMMISSIONER: Yes. I suppose
2 ultimately the courts do because people will
3 judicially challenge no matter how you try to
4 preclude that.

5 MR. FILMON: Sure.

6 THE COMMISSIONER: It strikes me
7 if one were to remove the complaints -- let me
8 just put it in the form of a question: If one
9 were to remove the complaints function for
10 national security activities to another body from
11 the CPC, would it be preferable that the CPC then
12 have the same type of powers and the same type of
13 whatever remedy powers the national security
14 review body had?

15 The concern that's raised is, if
16 within the RCMP -- particularly given drawing the
17 line between the two types of activities may be
18 difficult -- but if you have, on the one hand over
19 here, a review body that has very strong powers,
20 investigative powers and remedy powers, and over
21 here you have what is seen to be a weaker
22 complaint body, it somehow would seem, some would
23 say at least, to create a difficult problem
24 because RCMP officers, or those who in the RCMP
25 who might be subject to the complaint or the

1 review, would be subjected to a different system
2 depending which side of the line their activities
3 fell on.

4 So that it seems to me it is yet
5 another challenge as one looks at it. It would
6 seem to me that the reviewing body that is outside
7 of the CPC, if that is the model, would probably
8 be best served if there was at least a
9 consistency, they didn't have to deal with the
10 inconsistency of approaches, depending which side
11 a case went.

12 MR. FILMON: Certainly the former
13 Complaints Commissioner has been very vocal about
14 the powers needing to be changed, but that is a
15 separate issue for us.

16 THE COMMISSIONER: Yes. I am
17 going to come to asking you about the powers that
18 you now have and some of your thoughts on that,
19 but I will come back to that.

20 Before I leave the integration
21 issue, in terms of the model -- let me preface it
22 by saying I understand exactly what you said and I
23 think it bears repeating that you are not here
24 proposing any model or anything. I appreciate
25 very much the spirit in which SIRC has come

1 forward to cooperate and to assist. We are all
2 trying to get to the best solution.

3 MR. FILMON: Right.

4 THE COMMISSIONER: As you can tell
5 by the questions, there is no absolutely correct
6 answer. There are some difficult issues. So I
7 understand that.

8 Let me just put a couple of the
9 propositions that people have put to me.

10 Some have said that there should
11 be the creation of a super agency, a super agency
12 being a review body that has jurisdiction to hear
13 complaints and conduct audits with respect to all
14 federal actors, departments or agencies, that are
15 in any way associated with national security
16 activities. We have included in our list of
17 questions 24 of them -- we talked about this --
18 and most of them don't have anything to do with
19 conducting national security investigations.

20 Do you have any sort of reaction
21 to the super agency concept, whether it be SIRC or
22 some other body, sort of the extent of the reach
23 of the jurisdiction?

24 MR. FILMON: I will say that the
25 committee hasn't discussed this, but my reaction

1 would be that it does strike me that we are
2 setting up a fair sized bureaucracy that might put
3 more hoops for somebody to go through in order to
4 try to get at a problem or an issue.

5 There is clearly, as I alluded to
6 earlier, different functions, the three gatherers
7 of information, the big three we talked about, and
8 then all of the others have some use for the
9 information, obviously Border Services and so many
10 other functions that utilize the intelligence
11 information and obviously could be in a situation
12 where they misuse the information and you have
13 challenges or issues to deal with.

14 You have the question of foreign
15 information, you have the issues that is we deal
16 with, which are of course threats to Canada. So
17 every one of them has slightly different
18 responsibilities.

19 There is of course the new
20 parliamentary group that is being talked about and
21 that may be the area in which they take
22 responsibility under that umbrella from a
23 standpoint of all of the issues that they have to
24 deal with. That may be the ultimate body that
25 takes a look at all of them.

1 But to just put in place another
2 level of somehow review over and above the
3 existing agencies, I'm not sure that we would be
4 advocating that at this time.

5 Susan is pointing out of course
6 the danger of diluting the review of those
7 agencies, because of course our powers are so much
8 more intrusive than any other review, even in the
9 rest of the world. Our counterparts throughout
10 the world would dearly love to have the kinds of
11 powers that we do to get right into the files and
12 the communications and every single aspect of
13 CSIS's operations. Nobody else that I know of in
14 the world has that.

15 So you know you may not want that
16 for all of these different groups and agencies.

17 THE COMMISSIONER: Who aren't
18 really conducting national security
19 investigations.

20 MR. FILMON: Exactly.

21 THE COMMISSIONER: The point you
22 are making is, you need your type of powers, those
23 for the investigative agency.

24 Have you experienced a frustration
25 in any of your investigations, in your files,

1 because of an inability to not have jurisdiction
2 over these other agencies?

3 MR. FILMON: We are not looking
4 for jurisdiction, but when you follow a chain that
5 leads to a wall that is the separation between
6 CSIS and another agency with which it has been
7 interacting, sharing information, and in a joint
8 operational environment that we are in today, we
9 are going to run into that more often.

10 We made our commentary on that in
11 the case of our investigation into the Arar matter
12 and I would venture to guess that is going to
13 happen more and more often. So that is the sense
14 of frustration that we say, that we have
15 expressed.

16 THE COMMISSIONER: Yes. Many
17 urge --

18 MR. FILMON: Air India was another
19 one that goes back.

20 THE COMMISSIONER: Air India.

21 As you know, my mandate directs me
22 to make recommendation was respect to the RCMP,
23 but for an effective review body I should be
24 recommending that they have the power and the
25 authority, I think as you might put it, to follow

1 the trail, so that you don't bump into a wall in
2 following the information to where it might have
3 ended up.

4 MR. FILMON: Right.

5 THE COMMISSIONER: That would seem
6 to make sense.

7 Would that be necessary, given
8 the type of integration we have to not only be
9 able to follow the trail to other federal actors,
10 agencies and departments, but also to people
11 outside of the Federal Government, I suppose,
12 including, if there is not a constitutional
13 problem, to provincial actors, municipal actors,
14 and even private citizens so that you could get
15 the information to do the job?

16 MR. FILMON: Well, it hasn't been
17 so much of an issue with us, because as we have
18 dealt with complaints everything that is in CSIS
19 files from the other actors -- and oftentimes it
20 is other departments of the federal government or
21 even of other provincial or municipal agencies --
22 is subject to our review. So we generally have
23 the information we need from within the CSIS files
24 of any communication, any joint efforts that they
25 have had.

1 So it hasn't been a concern of any
2 proportion at this point, unlike the one major one
3 with respect to RCMP and joint operations.

4 THE COMMISSIONER: Right. Yes.

5 One of the other suggestions for
6 dealing with the integration problem is not to
7 have a single review body that would deal with the
8 investigative agencies -- let's just talk RCMP and
9 CSIS for the moment -- but continue to have two
10 review bodies, enhance the powers of the CPC so
11 that with respect to national security activities
12 they could deal with complaints and they could
13 also have the audit function similar to SIRC, but
14 to have an overarching coordinating committee, if
15 you will, composed of the Chairs of the review
16 bodies, I think CSE typically -- those who make
17 the suggestion would include them in it and I'm
18 not sure which other agencies, but let's for the
19 moment even say the three with an independent
20 Chair.

21 But the purpose of the
22 coordinating body would be to direct the
23 integrated review when necessary, the
24 coordination, integration of reviews between the
25 reviewing agencies -- somebody yesterday mentioned

1 even secondments between the reviewing bodies
2 where necessary -- and maybe designate one of the
3 reviewing bodies as a lead, and so on. I suppose
4 one could use a good deal of imagination in
5 working out how the coordination would work.

6 Do you have any response to that
7 type of suggestion as to whether that would be
8 realistic or practical?

9 MR. FILMON: I suppose, given an
10 atmosphere of respect and trust amongst the
11 various bodies one could assume that that model
12 can work.

13 Having spent 25 years of my life
14 in public office, I know that it is often
15 difficult to have that kind of coordination and
16 cooperation between agencies that in some ways are
17 rivals.

18 One of our constant questions and
19 areas of examination is the relationship between
20 CSIS and its other agencies with whom it has to
21 cooperate, whether it is municipal, police, RCMP
22 or others. Are the lines of communication open?
23 Are we always attempting to cooperate in
24 investigations? SO that we don't step on each
25 other's feet or, worse still, run into some of the

1 challenges that have been run into in the past
2 where things that should have been done don't get
3 done because of inter-agency rivalry.

4 I'm not suggesting -- it has been
5 much more professional and I think we are much
6 more satisfied with the answers that we have been
7 getting over recent years about that, but that
8 always leaves open the possibility of lack of
9 cooperation or lack of will to really do things in
10 the proper way, you know, boundaries get set up.

11 That is the only thing you would
12 have to be concerned about. It is a major thing,
13 but I think given a will and a cooperative,
14 respectful relationship, it could work.

15 THE COMMISSIONER: One of the
16 things that I think triggers the thoughts is that
17 the Association of the Chiefs of Police -- who
18 will be appearing tomorrow I think or later
19 today -- they advocate a national statutory
20 framework for integrated policing. One can
21 understand in this day and age why so.

22 MR. FILMON: Sure.

23 THE COMMISSIONER: So that they
24 are arguing that there should be increased
25 cooperation at the operations level amongst police

1 forces and I think they would make the same
2 point -- the RCMP certainly would and I'm sure the
3 others -- that that type of cooperation should
4 take place within the security intelligence
5 community as well. It should be.

6 So that those who make this
7 argument say: Well, if you can have INSETs and
8 IBETs and ITACs at the operational level, so that
9 you have different agencies cooperating at the
10 operational level, one would hope that they
11 cooperate at the review level. I'm not suggesting
12 they wouldn't, but that is sort of the consistency
13 of the notion, if you will, is to match at the
14 review level what happens at the operation level.

15 MR. FILMON: In a perfect world
16 there is going to be more integration of their
17 activities, more sharing of the knowledge of their
18 operations, and other issues. So then you need to
19 have all sorts of caveats and fire walls and other
20 things in place, but you know that it is going to
21 happen.

22 I think that seems to be the trend
23 and there seems to be good rationale for it.

24 So I agree with them that if it is
25 possible to be done at the operational level, why

1 not at the review level.

2 THE COMMISSIONER: One other
3 thought along that line, somebody submitted
4 somewhere that to move to an integrated, sort of
5 even coordinated, whatever, review mechanism is a
6 departure from the principles that Justice
7 McDonald laid down when he recommended
8 establishing CSIS and SIRC and so on, that it will
9 be seen as -- and I don't say I agree with this,
10 but in any event -- it will be seen as taking a
11 step backwards. I wouldn't want to be fastened
12 with that.

13 MR. FILMON: No.

14 THE COMMISSIONER: That's right.
15 It has sort of been the Bible in Canada for
16 25 years and I come along and say no more. I
17 think that is an overstatement.

18 In any event, people say that
19 if there was a coordinated review of some sort,
20 then it is no longer paying respect to the
21 distinction that Justice McDonald spoke so
22 eloquently about that really underlies the whole
23 establishment at this point.

24 MR. FILMON: I believe we referred
25 to that in our presentation to you, that should

1 any of this take place all of us are going to have
2 to ensure that we convince the public that we are
3 not going back to what was there before, that
4 things are different and that there is a solid
5 rationale for us doing it this way.

6 THE COMMISSIONER: Yes. It is a
7 big point, isn't it, making sure that there is
8 public -- that it is the case, but that there is
9 public perception.

10 MR. FILMON: Yes.

11 THE COMMISSIONER: Because I sense
12 from doing this inquiry that people say, "Well, we
13 have moved back. The RCMP has come back in to do
14 something inappropriately and now there is just
15 the blending.

16 MR. FILMON: Yes.

17 THE COMMISSIONER: I think that
18 is a challenge as we go ahead, because that is not
19 the fact.

20 MR. FILMON: Yes. I don't think
21 that we have been critical of the integrated
22 operations --

23 THE COMMISSIONER: Right.

24 MR. FILMON: -- but we have
25 suggested that it has caused us difficulty with

1 respect to being able to get at all of the matters
2 in following a chain of information to a
3 conclusion.

4 THE COMMISSIONER: Right.

5 MR. FILMON: That is our challenge
6 that we want to overcome.

7 THE COMMISSIONER: Right.

8 MR. FILMON: We aren't suggesting
9 that these integrated operations are a bad thing.

10 THE COMMISSIONER: Right. Okay.

11 I think we are just going to take
12 a 10-minute break.

13 MR. FILMON: Sure.

14 THE COMMISSIONER: We started
15 at 9 o'clock. Then maybe we will come back and
16 finish up.

17 MR. FILMON: Okay. Thank you.

18 THE COMMISSIONER: A 15-minute
19 break I am told. Okay.

20 --- Upon recessing at 10:25 a.m. /

21 Suspension a 10 h 25

22 --- Upon resuming at 10:50 a.m./

23 Reprise à 10 h 50

24 THE COMMISSIONER: Let's get back
25 under way.

1 I have some questions about some
2 of the practical aspects that might come into play
3 if SIRC were to take on this responsibility for
4 the RCMP's national security activities, and
5 certainly that is one of the options that has been
6 proposed from the outset in our various discussion
7 papers.

8 In reading the submissions of the
9 CPC and the CSE Commissioner, they both speak,
10 perhaps in different language but the same
11 thought, of the special expertise that is required
12 in the review body in reviewing the activities of
13 a specific agency. So they speak of the
14 agency-specific expertise.

15 They also talk about the
16 agency-specific culture for those two
17 establishments, and I suppose one could say the
18 same about the CSIS culture, and the experience
19 that is gained over time by a review body, both
20 with respect to the activities, but also the
21 culture, the operational protocols and practices,
22 and so on.

23 With your experience of having
24 done that for CSIS, I am wondering how great a
25 challenge this would provide to SIRC as a review

1 body, should it take on, to start with, the RCMP.

2 MR. FILMON: I think that is a
3 good starting point, because I believe that there
4 are significant differences if we go over to CSE.
5 Starting with the RCMP, I think that it would be a
6 relatively gentle learning curve because I think
7 that the national security matters in which they
8 are engaged are very similar to the work that CSIS
9 is doing.

10 No question the culture is
11 different, and that would be a matter for not only
12 our analysts and staff to be aware of, but for the
13 committee itself to be aware of. We wouldn't
14 assume that we could just step in and it would be
15 exactly the same, but we think that the learning
16 curve would be gentle because they really are in
17 the same field.

18 Staff have to be of course all top
19 secret rated and the kind of work that they are
20 doing as analysts and going into the CSIS files
21 and doing their investigations we believe would be
22 as similar as any two groups that you would put
23 together in this whole realm.

24 THE COMMISSIONER: Is it a fair
25 statement to say that what they are doing is

1 similar to CSIS, because CSIS collects
2 intelligence, information, and turns it into
3 intelligence relating to national security.

4 RCMP, at least as the model is set
5 up, should only become involved when it becomes a
6 law enforcement matter, either because there is
7 the prospect of prosecution, but at least
8 prevention. So to harken back to McDonald, one
9 would expect that the RCMP would not be involved
10 in pure collection of information or intelligence;
11 that it would only be involved when there is a
12 specific threat that needs to be prevented or if
13 there is a prosecution on the horizon.

14 So what I am concerned about, I
15 guess, is the blurring again of that distinction.
16 And to expand the thought, is not what is being
17 reviewed for the RCMP while it is in the national
18 security milieu, but when you look at what they
19 actually do are the exercise of law enforcement
20 powers and that is often leading to the collection
21 of "evidence" for a prosecution and all that that
22 entails as criminal procedure and the laws of
23 evidence and cases, and the Charter and everything
24 else.

25 I am just wondering if it is as

1 neat as saying well they are basically in the same
2 field. Some might respond and say if that is the
3 case, if that is what the RCMP is doing, we should
4 know about it because CSIS should be doing that
5 and the RCMP shouldn't be doing that.

6 MR. FILMON: There is no question
7 that that is a point that we constantly remind
8 ourselves of. And also when we have had some
9 discussions, as we have in the past with for
10 instance the Commissioner of the RCMP, we talk
11 about the differences; that the evidentiary
12 standards to which they have to work in their work
13 are entirely different from what CSIS' job is in
14 collecting and analyzing intelligence for purposes
15 of attempting to predict or keep track of
16 potential threats to the security of Canada.

17 The common standard or at least
18 the common theme we would be dealing with is one
19 of focusing the review on compliance. In the case
20 of CSIS, it is their Act, their ministerial
21 direction and their policy directions.

22 The same thing would be true of
23 looking at the national security functions of the
24 RCMP. It would be a matter of whether or not they
25 are complying with all of the things that they are

1 required to do.

2 THE COMMISSIONER: They have very
3 different -- and I am not being quarrelsome at
4 all. They have very different standards, though.
5 For example, section 12 of the CSIS Act is unique
6 to CSIS. That doesn't apply to the RCMP.

7 The targeting standard, it strikes
8 me, if one can even use that word in the context
9 of a law enforcement force, is not set out in a
10 statute, but for good reasons, it strikes me, is
11 very different than it is for a security
12 intelligence agency.

13 I am sort of wondering out loud,
14 but it does strike me that one has to be
15 careful -- and perhaps you can respond to it -- to
16 the fact that the rationale for getting the RCMP
17 involved in any particular investigation is
18 because it is different than what CSIS does. It
19 is not because it is the same.

20 So what I am concerned about --
21 and this comes back to my McDonald point -- is
22 blurring the distinction in the context of setting
23 up a unified review mechanism.

24 MR. FILMON: I think we all have to
25 be concerned with that blurring, and that is where

1 the rubber hits the road, as to whether or not the
2 public will support this blurring and whether or
3 not the public is convinced that there is a review
4 body with teeth that will ensure that each is
5 doing the job that they are intended to do in the
6 public interest.

7 THE COMMISSIONER: Certainly an
8 audit function wherever it rests within the RCMP,
9 and I would have thought the audit function within
10 CSIS, whether it is in the same review body or
11 not, one would hope would be directed and have
12 regard to that line. And maybe it would be more
13 appropriate that the audit function within the
14 RCMP would look at the RCMP's activities in the
15 national security area to make sure that they are
16 law enforcement related and continue to be.

17 If one accepts that principle,
18 that value as being important, that underlay the
19 whole establishment of it --

20 MR. FILMON: We are not suggesting
21 that the job is going to be exactly the same. The
22 skillsets, the kind of people who would be doing
23 the work, the knowledge of the manner in which
24 these processes take place would be similar.

25 At the top obviously the review

1 body will have to certainly be very knowledgeable
2 and understanding of the differences. But they
3 would hold them to account in the review process
4 to ensure or to, as much as possible, assure the
5 public that they are complying with all of their
6 various requirements.

7 THE COMMISSIONER: Would it be
8 necessary to have -- and maybe this is getting
9 into too much detail -- two separate sort of
10 groups of staff in separate branches, one with
11 expertise in law enforcement and one with
12 expertise in CSIS?

13 MR. FILMON: I would think so.

14 THE COMMISSIONER: And what about
15 the commissioners themselves? The commissioners
16 now --

17 MR. FILMON: What I am thinking of
18 in terms of two separate -- I don't think you
19 would send the same analysts in to do the review
20 on the RCMP as go into CSIS. So your analysts
21 would perhaps become much more specialist in that
22 area.

23 At the top the administration, and
24 ultimately the committee, could certainly handle
25 that. Sorry, I interrupted.

1 THE COMMISSIONER: No, that's
2 fine. I am just thinking of practical things as
3 to how that might work.

4 And the volume, I guess you at
5 this stage wouldn't have a feel for the volume
6 of --

7 MR. FILMON: We didn't even
8 predict the volume after 9/11 where we thought
9 there would be a tremendous increase in the work
10 that we had to do. There has been some increase
11 but not nearly as great as we anticipated.

12 THE COMMISSIONER: I don't know if
13 you have given any thought to this, but in terms
14 of the RCMP's "national security activities",
15 certainly part of what they do is collect
16 information; it is intelligence gathering. As we
17 read what the CPC says it reviews, and indeed as
18 we look into what the RCMP say they do, they tie
19 that then to law enforcement activities which come
20 under scrutiny, like their powers of arrest and
21 the use of firearms or the use of dogs. All sorts
22 of other police-type of activities quickly get
23 fastened on to the intelligence-gathering
24 exercise.

25 So when one comes to complaints

1 and review, the point that I am making is that it
2 quite often and very quickly moves into a review
3 that looks like a review of normal police work.
4 It happens to have been a police activity,
5 allegedly let's say kicked in a door or something,
6 but police activity that happened in the context
7 of a national security investigation, but it could
8 have happened in the course of a break and enter
9 case or something like that.

10 This comes back to the
11 jurisdictional bedeviling question. Would you
12 think that all national security related
13 activities should be dealt with by the same body,
14 or have you given any thought or do you have any
15 suggestions as to whether or not there would be a
16 further parsing of what they were doing?

17 That almost asks the question --
18 makes one scratch.

19 MR. FILMON: The devil is in the
20 details for sure. That is why I think it is
21 important for you to consider all of these
22 matters.

23 I believe that where it involves
24 national security issues, the work that comes
25 under the RCMP can be reviewed effectively by a

1 body such as SIRC, but there would certainly have
2 to be lines of delineation about how and when and
3 why it became a matter for the review body, the
4 joint review body, and under what circumstances it
5 is a pure policing matter and should be dealt with
6 in the normal course of a complaints
7 commissioner's responsibility.

8 I believe that those things could
9 be laid out, but it would be very important that
10 ahead of time all of the policies and procedures
11 be enunciated so that there is no ability for this
12 just to become blurred and people confused.

13 THE COMMISSIONER: Would there be
14 any concern if it was a joint body -- and let's
15 just assume that it is dealing with the RCMP and
16 CSIS -- that the effectiveness of the body insofar
17 as say CSIS was concerned or the RCMP was
18 concerned would be hampered because the body was
19 dealing with both?

20 Would one swamp the other or is
21 there any concern about one having sort of a more
22 important position, if you will, in terms of the
23 review itself?

24 MR. FILMON: I have thought about
25 that, and I think it would be very important that

1 no favouritism be implied or seemed to be
2 happening; that one group feeling they were being
3 dealt with less favourably than the other.

4 I think that any review body would
5 have to be very, very careful to make sure of
6 that, and as well that one group wouldn't be --
7 you know, the information transferred from one to
8 the other that might be harmful to the interests
9 of the other.

10 I think those are all important
11 things that a review body would have to be
12 conscious of.

13 THE COMMISSIONER: The firewall
14 that you mentioned before so that the lack of
15 cross-contamination or flow of information between
16 the two branches within the review body would be
17 almost like --

18 MR. FILMON: But the objective
19 should surely in the end be that they are both
20 treated to a similar standard.

21 One of the concerns I think we
22 expressed before the Senate committee when they
23 were doing the review of the Anti-Terrorism Act
24 was in these joint operations, if there are
25 certain things that CSIS, because of its policies

1 and its constraints, its legislative constraints,
2 can't do that would be inappropriate for them, but
3 the other group that they are working with, or one
4 of the other groups, could do, I mean could you
5 move over those operations, things that you really
6 would like to do but can't do and let somebody
7 else do it because they are not being reviewed to
8 the same standard of scrutiny.

9 This would overcome that,
10 hopefully; that when they are in joint operations
11 together, they are subject to the same standards
12 and the same scrutiny.

13 THE COMMISSIONER: But would that
14 be the case? And again I'm not being quarrelsome.

15 For example, the targeting
16 standard is going to be different. CSIS is
17 section 12 and I think that it is the case that
18 the law enforcement like the RCMP, when it comes
19 to sharing information in the context of a
20 criminal investigation, albeit with national
21 security implications but still a criminal
22 investigation, may share information differently,
23 and perhaps understandably differently, than a
24 security intelligence agency that is just
25 gathering information when there is no prosecution

1 or criminal offence on the horizon.

2 So they would have different
3 standards. The same body would look at them and
4 say --

5 MR. FILMON: Different
6 requirements for sure, yes.

7 THE COMMISSIONER: It certainly
8 presents a lot of challenges.

9 MR. FILMON: It does. I don't
10 envy you your task.

11 THE COMMISSIONER: Some days I
12 don't either.

13 The other idea I mentioned before
14 the break, Mr. Filmon, was the idea of the
15 possibility, if there were separate review
16 bodies -- and again I come back to the three
17 existing ones -- and assuming that the CPC was
18 enhanced for the purpose of this question so that
19 it had equivalent type of powers to those that
20 SIRC has.

21 If there was a coordinating
22 committee and if one was concerned that it
23 actually not just work on paper, that the reviews
24 be integrated when they needed to be and there be
25 a full spirit of cooperation, would establishing

1 such a body as a statutory body with a specific
2 mandate be a first good step in sharing
3 cooperation?

4 MR. FILMON: From a personal
5 standpoint, I almost think that the less formal,
6 the better. If you set up a bureaucracy to sort
7 of oversee the overseers, it maybe starts to
8 dilute the effectiveness of each of the
9 individuals.

10 However, if there is an
11 understanding that where a review is to take place
12 that involves more than one of these agencies,
13 that there is a mechanism by which they get
14 together and agree upon how they conduct it, that
15 would be the ideal: relatively informal but
16 effective and understanding of why you are doing
17 it in the best interests of getting to the bottom
18 of something.

19 THE COMMISSIONER: The suggestion,
20 as I understand it, isn't to oversee the
21 overseers. On the contrary, the suggestion would
22 say the overseers in the three review bodies would
23 be there and have their authorities to deal with
24 complaints and audits.

25 The suggestion would be, as you

1 mention, that when in the operations there has
2 been integration, formal or informal, and in order
3 to carry out effective review the purpose of this
4 body would be to identify those situations and
5 then to design the review model that would make
6 sense in the context of that particular situation.

7 The chairs of the three review
8 bodies being on the coordinating committee, if I
9 can call it that, would then have the authority to
10 say to their people SIRC is going to take the lead
11 on this, but RCMP is involved and we need that
12 expertise, so we are going to have one person from
13 the CPC there, but CSE is involved, and we will do
14 this and they will share.

15 MR. FILMON: That makes sense to
16 me.

17 THE COMMISSIONER: I mean the idea
18 would be -- and I am very conscious of what you
19 say, and without suggesting it would happen or
20 being critical. But experience would tell us that
21 if you take agencies and all of a sudden you just
22 say isn't it nice everybody is going to
23 cooperate --

24 MR. FILMON: It doesn't always
25 happen.

1 THE COMMISSIONER: -- and say we
2 did our job and left it, all I am thinking of --
3 and perhaps you could give it a bit of thought.

4 In that model, as I have begun to
5 think about it, my main concern would be the one
6 that you identified: that a lot of ideas sound
7 good, but they don't recognize the way things
8 actually work.

9 So if there are any thoughts that
10 people had. One occurred to me -- and I don't
11 know if it would be a good idea. If the
12 coordinating committee was at the senior level,
13 the chairs, and it had a specific mandate,
14 integrated problems, the chairs are going to
15 dictate how their agency would deal with the
16 integrated problem with the others, and at least
17 we would be getting the people where the buck
18 stops.

19 MR. FILMON: I hate to get into
20 all the logistics of it, but we are very much of a
21 part-time body. We come to Ottawa once or twice a
22 month and then you say well, if that is true of
23 the other review agencies -- and maybe it isn't --
24 but even then when do you get together. It is as
25 simple as that. When do you get together to sort

1 these things out?

2 Obviously all these things can be
3 overcome, but it does become a little bit
4 complicated.

5 THE COMMISSIONER: I suppose if
6 you -- and this is getting into too much detail,
7 but you could probably have the executive
8 directors do it.

9 MR. FILMON: Yes, that is a better
10 way.

11 THE COMMISSIONER: Subject to
12 direction from the chair.

13 MR. FILMON: Yes.

14 MS POLLAK: And they do have
15 contact with one another.

16 MR. FILMON: And as Susan is
17 pointing out, they do have ongoing contact and
18 discussions from time to time, but it is not about
19 integrating any of our efforts.

20 THE COMMISSIONER: When we studied
21 the international models of review, we found -- I
22 can't remember which country it is now -- a system
23 of statutory gateways between review bodies. What
24 that term apparently means is that by statute they
25 recognize that there may be integrated operations

1 and they provide gateways between the review
2 bodies in terms of sharing information and joint
3 reviews, and so on, so that there is some model
4 for that type of approach.

5 Mind you, there is a model for
6 every type of approach. And as you pointed out,
7 none of them fit perfectly into our situation.

8 MR. FILMON: That's right.

9 THE COMMISSIONER: I started out
10 with the hope that when we looked at all these
11 other models, that out there there would be a
12 system that works perfectly and it is exactly like
13 Canada's, so I could just copy it; would have
14 given it attribution, but in any event.

15 MR. FILMON: What is it? For
16 every complex problem, there is a simple solution
17 that can be easily applied and 99 percent of the
18 time it's wrong.

19 THE COMMISSIONER: That's right,
20 exactly. We have looked everywhere, and there is
21 nothing that actually just fits.

22 One other area I wanted to ask you
23 about was the question of reporting.

24 I think at some point you had
25 indicated that the reporting of this body would be

1 ideally to Parliament rather than through the
2 minister. Can you help me on that?

3 MR. FILMON: I am not suggesting
4 that it needn't be through the minister, but it is
5 to Parliament and that is what our mandate is.

6 It is obviously through a
7 minister, and that has not been a difficulty for
8 us.

9 THE COMMISSIONER: So you would
10 think that the same line of reporting that exists
11 is a good line of reporting.

12 MR. FILMON: Sure.

13 THE COMMISSIONER: Would you think
14 that was the case whichever model is ultimately
15 adopted? Have you been satisfied with that?

16 MR. FILMON: I think that the
17 practicality of having a minister to deal with is
18 probably important in the whole thing, but
19 ultimately we are responsible to Parliament and
20 that is where we think any body should be.

21 THE COMMISSIONER: And the role of
22 the new committee of parliamentarians in this
23 area, do you see any --

24 MR. FILMON: That is getting
25 beyond my ability to speak on.

1 We know that the government is
2 intent on having that committee of
3 parliamentarians. We don't know what the intended
4 relationship is with the review body or bodies, or
5 commissioners or anything else.

6 We are waiting to be informed more
7 on that.

8 THE COMMISSIONER: So you
9 haven't -- I am not asking you here to take a
10 position you haven't otherwise, but you haven't
11 taken a position publicly or formally as to the
12 relationship to your reporting structure.

13 MR. FILMON: No. We regard that
14 as a political decision. The only thing we have
15 indicated is that it might be the ultimate body
16 that if you wanted to bring all elements of
17 national security from every area of government
18 under the scrutiny of one body, that might be it,
19 because they certainly are going to have a much
20 broader mandate.

21 THE COMMISSIONER: Right. Let me
22 ask you a little bit about the Inspector General's
23 role as it relates to SIRC.

24 I have at least one submission
25 that suggests that I should recommend for the

1 RCMP's national security activities an inspector
2 general à la the SIRC inspector general.

3 I don't know if this is fair or
4 not; I think it is accurate certainly. The RCMP
5 now have 300 officers who are solely dedicated to
6 national security activities. There would also be
7 other officers not within the NSIS or the INSETs,
8 or at headquarters within NSOB, who would become
9 involved in investigations, as our hypothetical
10 questions show, that might have a national
11 security aspect to it.

12 In any event, they have 300
13 officers specifically dedicated, as I understand
14 it, to doing nothing else other than national
15 security activities.

16 The question that I have is: Do
17 you have any observations about the inspector
18 general's role? I understand the responsibility
19 is to report to the minister. And do you have any
20 observations as to whether or not that is
21 something that makes sense for the types of
22 recommendations I am making for the RCMP?

23 Go ahead, Ms Pollak.

24 MS POLLAK: Thank you.

25 At moment, of course, the

1 inspector general for CSIS is not external. She
2 or he -- at the moment it is a she -- is not
3 independent of government.

4 THE COMMISSIONER: So that would
5 fall outside my mandate in that sense.

6 MS POLLAK: You would have to
7 consider whether or not you would want to adapt
8 the recommendation to address that.

9 The role of the inspector general
10 is clearly a very important one, but she serves in
11 the colloquial as the eyes and ears of the
12 minister. So I see, among other things, that
13 their role is to serve as an early-warning device
14 for the minister and ministry about matters that
15 perhaps the political level needs to be informed
16 of before they become major issues.

17 It is a more limited role than
18 SIRC's too, because they do not have the quasi
19 judicial function than we have. So you would have
20 to consider how complaints would continue to be
21 handled in the national security realm of the
22 RCMP.

23 Anything is doable, and I think
24 that it is a possibility, but it is not external
25 and it is not independent.

1 THE COMMISSIONER: Thank you.

2 Let me just move to another area.
3 This has to do with the collection of information
4 from CSIS.

5 How do you satisfy yourself that
6 you have everything?

7 MR. FILMON: We have asked
8 ourselves that from time to time. The good thing
9 is that SIRC has always been non-partisan and
10 having people from many decidedly different
11 perspectives. The trick is usually knowing
12 whether or not we have asked all the right
13 questions.

14 I can think of one particular
15 study that we did just over a year ago in which we
16 thought we had asked all the right questions, at
17 least our analysts did, and the Committee came
18 together and added another 75 questions. There
19 just seemed to be gaps in understanding and all of
20 those.

21 So we never know whether we have
22 really got to the bottom of it all, except that
23 when you get a thorough review by our staff and
24 they have gone in and done all of the things that
25 they are capable of doing and they come back and

1 we still have questions or issues that we don't
2 believe they have probed deeply enough on,
3 certainly management gets their run at it before
4 the administration does, before we do as a
5 committee.

6 You are never sure. You only hope
7 that in the end you have anticipated everything
8 that Parliament or the public might want you to
9 do. We are only I suppose limited by our own
10 capabilities and the capabilities of everybody on
11 staff.

12 THE COMMISSIONER: So the first
13 point is that you ask for everything you want, and
14 that obviously then goes to the capacity of the
15 reviewer, if you will, to ask the right questions.

16 I am not suggesting that that
17 wouldn't happen.

18 What about any limits that are
19 imposed on what is turned over in response to the
20 questions? And we move into the area of claim of
21 privileges.

22 Are there any limits other than
23 the claims of cabinet privilege and other types of
24 privileges that are imposed?

25 MR. FILMON: In my four years on

1 the Committee -- and I think we may have
2 historically also asked that question.

3 In my four years on the Committee,
4 other than cabinet confidences, we have not been
5 denied any information for which we have asked.

6 Is that right?

7 MS POLLAK: That is right.

8 THE COMMISSIONER: You raised the
9 issue of cabinet confidences in one of your
10 reports.

11 MR. FILMON: Yes, the terrorist
12 entity listing process.

13 THE COMMISSIONER: Right. And the
14 situation on that as it now exists is that the
15 cabinet confidence prevails so you don't get
16 access that information?

17 MS POLLAK: That is correct.

18 MR. FILMON: We have a response
19 from the minister which I haven't read yet, but
20 subject to that, the answer is yes, cabinet
21 confidence. And we have always respected that.

22 This is a unique situation, as you
23 know, in the terrorist entity listing process in
24 which all of the material leading up to the actual
25 cabinet recommendation has been examined by us.

1 THE COMMISSIONER: Right.

2 MR. FILMON: The question is
3 whether or not the actual recommendation is
4 consistent with everything. We believe that to be
5 the case, but we are not able to see it because of
6 that cabinet confidentiality issue.

7 We are not suggesting that we have
8 grave concerns that something is going amiss, but
9 just simply that to really finish our job we
10 believe that we have to see what is the actual
11 document that recommends to cabinet, or some way
12 of understanding it to make sure that we could
13 give our sort of stamp of authority to it.

14 THE COMMISSIONER: What about the
15 issue of solicitor-client privilege? Do you bump
16 into that?

17 That would be something that, when
18 I look at review body for the RCMP, I think
19 would -- I mean not all the time, but would
20 certainly arise from time to time.

21 MR. FILMON: We haven't run into
22 that. I think there has been a convention that we
23 don't ask things that might be subject to
24 solicitor-client privilege, but again I have not
25 seen any reference in any of our reviews to that.

1 MS POLLAK: We don't actually ask
2 to see the documents or the opinions and the
3 advice that are given by the lawyers to CSIS.
4 They will often paraphrase or provide us with a
5 summary of what the advice constituted, and we
6 find ourselves satisfied with that.

7 THE COMMISSIONER: Some would say
8 that in a law enforcement review, I guess -- I'm
9 not sure if this is correct -- that
10 solicitor-client privilege with respect to advice
11 that was given at the time the event is under
12 review might play a more paramount role in the
13 review of law enforcement activities.

14 I can see it certainly could be an
15 important facet of a law enforcement review.

16 MR. FILMON: I think that's fair.

17 THE COMMISSIONER: I don't know
18 how to compare it.

19 Let me see what else. I have a
20 couple other questions here, I think.

21 Maybe I don't. Do you have any
22 questions? Go ahead.

23 MR. FORESTER: In terms of the
24 possibility of SIRC taking on the review function
25 in the case of the national security activities of

1 the RCMP, have you given any thought or do you
2 have any comments in terms of SIRC's powers, if
3 there are additional powers or different powers
4 that might be necessary for the purpose of the
5 RCMP review?

6 I recognize that might be getting
7 a little far down the road, but I wondered whether
8 you had given any preliminary thought to it.

9 MR. FILMON: I think primarily
10 because we haven't really gone beyond the notion
11 that this would be an efficient way of handling
12 it, that the resources and the expertise are
13 somewhat similar, I don't think we have gone, to
14 be honest with you, to any detail to say well,
15 this is what we would be looking for.

16 As I said earlier, we aren't
17 wanting to be seen to be arguing for more work,
18 more power, whatever. We stand ready to do it if
19 the mandate were given. We think that there are
20 probably reasonable reasons why we would do it, we
21 would be asked to do it.

22 We haven't gone to that extent of
23 saying we would need this, this and this.

24 MS POLLAK: I'm going out on a
25 limb here. We have pretty wide-ranging powers

1 already, as you know, and I don't know that we
2 would necessarily need anything greater than that
3 in terms of our capacity to review.

4 If there were to be also some
5 investigation of complaints by this new body, I
6 could see possibly a situation where the RCMP,
7 having powers of arrest and detention, the new
8 body might need to have the capacity to award
9 costs or to have remedial powers of some sort.

10 That is the only thing that comes
11 to mind.

12 I am not a lawyer either, so as I
13 say, I am going out on a bit of a limb. But I
14 could see that perhaps the impact of their
15 activities might be such that you would want to
16 award those kinds of powers.

17 MR. FORESTER: On the complaint
18 side, one of the suggestions that have been made
19 and one of the questions that have been raised in
20 the questions that the Commission has sent out
21 deals with the role of a special advocate or an
22 amicus, especially but not exclusively on the
23 complaints side.

24 Do you have any views on the
25 utility of that in the process?

1 MR. FILMON: Throughout our
2 complaints process SIRC counsel acts as amicus,
3 and we do from time to time hire outside counsel
4 for whatever special reasons or simply workload or
5 wanting to separate the matter from staff.

6 So there is that role there and we
7 believe it is being fulfilled with the intent of
8 being an amicus for the complainant.

9 MR. FORESTER: Thanks.

10 MS KRISTJANSON: Thank you.

11 This morning we heard from
12 Mr. Saloojee representing Canadian Arab Federation
13 and CAIR-CAN, and he referred to an advisory
14 council as being advisable in part to inspire
15 public confidence in a review body.

16 He was admittedly speaking about a
17 super agency.

18 My question is, based on
19 experience at SIRC and understanding the
20 importance of maintaining confidentiality with
21 respect to certain of your work -- obviously you
22 try to be as transparent as possible, but it is
23 important to maintain confidentiality -- do you
24 think an advisory council for a national security
25 review body would work? And how could it

1 contribute to what you do and to public
2 confidence?

3 MR. FILMON: Coming from my
4 political background -- and a number of us on the
5 Committee do come from that background -- I think
6 we are always sensitive to trying to find ways to
7 both engage the public and assure the public that
8 we are doing the job that we are intended to.

9 Certainly within our minority
10 communities in Canada -- and of course we all come
11 from minority communities. But in particular in
12 this environment in terrorism, I think it is
13 important for them to know that there is a body
14 that is there to address and deal with appeals
15 that may be to the actions of CSIS. And that will
16 be true, as well, of the other various different
17 agencies and groups who are involved in national
18 security.

19 I think we would be open to a
20 suggestion that maybe there should be a body.

21 We have talked about going out,
22 shall we say, to the public and then it looks as
23 though we are soliciting complaints against the
24 body that we are reviewing. I think it puts us in
25 a very difficult position. Then we have said then

1 how do we assure ourselves that people know about
2 us, that they even know that we exist?

3 I think there is a fair body of
4 information to suggest that they don't know that
5 we exist in any large numbers; that the public
6 awareness of SIRC and its responsibilities is
7 quite small.

8 So does that mean then that we are
9 doing as much as we ought to be doing?

10 Then the question becomes: How do
11 you do it without looking as though you are just
12 simply soliciting business or complaints for SIRC?

13 The advisory council might be a
14 good intermediate step, where it keeps us away
15 from dealing with a specific complaint but dealing
16 with the general concerns of a community or people
17 at large.

18 I think that would be an
19 interesting thing that SIRC would certainly look
20 at.

21 MS KRISTJANSON: Turning, then, to
22 my next question, which is about
23 representativeness of committee members.

24 If there would be to combined body
25 or a super body, Mr. Saloojee this morning

1 mentioned the importance of representative, and
2 that is diversity of viewpoints and committees.
3 Right now the statute which governs SIRC requires
4 one to be a Privy Councillor but doesn't require
5 any expertise beyond that.

6 Can you think or would it be
7 desirable to have statutory enumeration of
8 expertise for a larger or a joint review body and
9 what kind of expertise?

10 MR. FILMON: This may be an insult
11 to many who have specific requirements and skills,
12 but I think commonsense and judgment are probably
13 the key deciding -- or most important ingredients
14 for somebody to serve in this capacity. The
15 minute that you start trying to be inclusive of
16 some, then you exclude others.

17 I think it has been a credit to
18 SIRC, it is certainly not of my doing, but right
19 from its inception in 1984 it has included people
20 of all different philosophical and political
21 persuasions so that there is a broad cross-section
22 of views. We vigorously debate and oftentimes
23 disagree with each other's viewpoint and try to
24 arrive at a consensus on issues.

25 MS POLLAK: It's true.

1 MR. FILMON: So that is very, very
2 important.

3 We have certainly somebody from
4 the visible minority community in Mr. Chada, who
5 is a Sikh. Coast-to-coast we try to have people
6 from representation of all the regions of Canada.
7 But there were only five, so in the end it is a
8 rotating sort of thing where people come on and go
9 off and there is the sense that they do represent
10 a broad cross-section of the Canadian public.

11 If you went to this bigger group,
12 then some notion of representativeness in terms of
13 our various communities in Canada would probably
14 be helpful, but again that is a decision that
15 ultimately is a political one. You know that the
16 selection to SIRC is done by the Cabinet after
17 consultation with the leaders of all of the
18 opposition parties, so there is a certain sense
19 that there is an input to it by more than just the
20 government of the day.

21 Those kinds of things I think are
22 very, very important and helpful in terms of
23 maintaining public respect and confidence in what
24 you are doing.

25 MS KRISTJANSON: Referring now to

1 your 25 years experience in government, I have a
2 machinery --

3 MR. FILMON: I try to forget it.

4 MS KRISTJANSON: That's right -- a
5 machinery of government question, and that is, in
6 part: Should there be a split of some officers be
7 subject to the jurisdiction of a different review
8 body? Some complainants would then be able to go
9 to a different review body which has broader
10 powers, and so on.

11 So it would be arguably different
12 rights and remedies available for those who happen
13 to have run afoul of RCMP national security
14 activities rather than other activities.

15 From a machinery of government
16 perspective, is it wise to do so, to create that
17 kind of division within one organization?

18 MR. FILMON: Probably ideally not,
19 but if they are performing different functions, if
20 there is, as Susan says, a possibility of wanting
21 to assess some sort of costs or damages to
22 whatever actions happened wrongly to a person,
23 then there may have to be some nuances. There may
24 have to be some differences in order to make it
25 fair and reasonable.

1 But ideally you would want to have
2 as few differences as possible so that people
3 don't go shopping for -- I'm not a lawyer so I can
4 say I'm told that when people go out for warrants
5 they shop judges and they know which ones they
6 want to go to.

7 There is perception and there is
8 reality. I believe that those things are probably
9 exaggerated and anything you do that sets up
10 different standards or different intrusiveness in
11 the review process would probably leave you open
12 to criticism, so you would want to be very careful
13 about that. But, as we have talked about, it may
14 be necessary in the end and you have to
15 judiciously do that.

16 MS KRISTJANSON: My final question
17 actually relates to a submission recently made by
18 a number of the provincial ombudsmen to the Gomery
19 Inquiry suggesting that there be a federal
20 ombudsman to deal with a variety of departments.

21 At the outset of today the
22 Commissioner referred to 24 agencies and
23 departments which arguably have some role in
24 security and intelligence, though not the most
25 intrusive collection role.

1 Do you think that a federal
2 ombudsman that might respond to issues regarding
3 Department of Transport or Environment Canada
4 security intelligence issues would be an addition
5 to the review landscape that would be of any
6 value?

7 MR. FILMON: I think there is a
8 sense, from all of your work here on the
9 Commission, that there are so many elements of
10 government that are involved with -- if not
11 gathering certainly analyzing and utilizing all of
12 this intelligence that is floating out there and
13 that somebody ought to be keeping an eye on it.

14 A variety of different mechanisms
15 have been put forward, whether it is the
16 parliamentary committee, whether it is some super
17 body or whether it is individual review agencies,
18 now the ombudsman.

19 I don't know whether an ombudsman
20 would be the best solution, but I think it is fair
21 to say that there is a growing consensus that we
22 ought to be starting to look at how many different
23 areas we are utilizing this intelligence and ways
24 in which it could be misused obviously need to be
25 examined.

1 MS KRISTJANSON: Thank you.

2 MS WRIGHT: I have a follow-up to
3 one of Mr. Forester's questions.

4 Can you elaborate on the role that
5 an amicus plays? I am interested in particular in
6 the extent to which, if any, there is advocacy of
7 a complainant's position.

8 It has been suggested to the
9 Commission that there should be some form of
10 complainant advocacy in hearings or in
11 investigations and there is quite a spectrum of
12 possibilities there in terms of whether it is
13 assistance to the fact finder or whether it is
14 assistance to the complainant.

15 MR. FILMON: We did give some of
16 that information in response to your questions,
17 but I'm wondering if I could just ask Marion
18 McGrath, our lead counsel for SIRC, to respond to
19 that.

20 MS MCGRATH: In terms of advocacy
21 I would like to express the view that we maintain
22 a neutrality, a position of neutrality. I act as
23 counsel to the committee and I act as an amicus as
24 well, as you could say that in my function, but I
25 am attempting in my role to make sure that the

1 committee is fully informed as it carries out its
2 investigation.

3 When we have an ex parte in camera
4 session such that the complainant is not present
5 and is not aware of the information that for
6 instance a witness from CSIS may be presenting,
7 then I would act in the interest of that
8 complainant, as well as in the interest of the
9 committee, to test the reliability of the
10 information, to test the credibility of that
11 witness, but I say to the complainant, "I am not
12 your advocate as such, my interest is the
13 interests of the committee, but while you are not
14 present I will advocate your interest, I will
15 advance your interest as well as the interests of
16 the committee."

17 It is a delicate role. I don't
18 know if I can express it any more clearly. But I
19 will tell the complainant in advance of that
20 session, that in camera ex parte session:, "What
21 concerns do you have? What questions would you
22 like me to put to the committee on your behalf?"

23 It could be the complainant's
24 counsel as well will provide me with a list of
25 questions.

1 I don't always tell them what
2 questions I actually asked and I can't always tell
3 them what answers we have received, but I will
4 ensure that those questions are put to the
5 committee and that those interests are advanced.

6 But it is a delicate balance in
7 the sense that we have to be impartial and
8 objective and to make sure that the integrity of
9 the committee is protected. I say "I am not your
10 advocate as such, but I will advance your interest
11 in that particular situation."

12 MS WRIGHT: Just a quick
13 follow-up. So the role would be limited to asking
14 questions on reliability, et cetera. You wouldn't
15 call extra witnesses on behalf of the complainant
16 or that sort of thing? You wouldn't go any
17 further?

18 MS MCGRATH: Actually, there have
19 been situations where CSIS has provided us with a
20 witness. The witness testifies, provides
21 information, and then we examine the information
22 or the evidence that has been presented, we
23 provide a summary of that evidence to the
24 complainant.

25 This has happened, where the

1 complainant's counsel will say -- and I will agree
2 with the complainant's counsel -- "Yes, but those
3 issues weren't addressed" or "Those questions
4 weren't addressed because it was not within the
5 knowledge or expertise or experience of that
6 particular witness".

7 In which case we go back to
8 CSIS -- we have gone back to CSIS and said, "Could
9 you please produce a witness who will speak to
10 this issue?" And CSIS has done that for us.

11 So we can, in fact, call extra
12 witnesses on behalf of the complainant.

13 MS WRIGHT: Thank you.

14 MS McGRATH: You are welcome.

15 THE COMMISSIONER: Anything else
16 over here?

17 Thank you, Ms McGrath. Thank you
18 for helping out.

19 Is there anything further you wish
20 to add?

21 MR. FILMON: No, just that we
22 thank you for the courtesy and the opportunity and
23 we look forward to your report.

24 THE COMMISSIONER: Well, thank
25 you. The thanks should go the other way. Thank

1 you for coming, Mr. Filmon and Ms Pollak, I
2 appreciate it.

3 Ms Pollak, I can indicate to those
4 who haven't been directly involved in the process
5 that the people from SIRC have cooperated
6 throughout. They have been a great deal of
7 assistance to us.

8 I know that some of our requests
9 for information in doing our research have been
10 onerous and put strains on a very busy body --

11 MR. FILMON: It was a pleasure.

12 THE COMMISSIONER: -- but we
13 appreciate the way everybody has cooperated and it
14 certainly has advanced the work of this inquiry.

15 Thank you again and thank you for
16 coming today.

17 MR. FILMON: You are welcome and
18 thank you.

19 THE COMMISSIONER: We will break
20 until 1 o'clock and then we have the Commission
21 for Public Complaints Against the RCMP.

22 --- Upon recessing at 11:40 a.m. /

23 Suspension à 11 h 40

24 --- Upon resuming at 12:55 p.m. /

25 reprise à 12 h 55

1 THE COMMISSIONER: Okay, I think
2 we can get under way.

3 The first presentation for the
4 afternoon's program is the Commission for Public
5 Complaints Against the RCMP, Mr. Paul Kennedy, who
6 is the Chair, and Mr. Steven McDonnell, the senior
7 general counsel.

8 Welcome, and thank you for coming.
9 I appreciate the involvement, first of all, that
10 your Commission has had with our Commission.
11 There has been a good deal of interaction, just
12 for those who haven't been directly involved I
13 should explain, and it has been enormously useful
14 for us to be provided with all of the information
15 that you have.

16 The cooperation that has been
17 shown by the Commission has been very much
18 appreciated and been very helpful. So thank you
19 very much.

20 I understand, Mr. Kennedy, that
21 you have a presentation initially and then we will
22 have a time for questions and answers.

23 SUBMISSIONS

24 MR. KENNEDY: Yes. Thank you very
25 much, Commissioner.

1 What I will be doing is, I suppose
2 avoid confusion for everyone, I will be referring
3 to you as the Commission. I will be referring to
4 ourselves as just the CPC, the acronym.

5 THE COMMISSIONER: Okay, good.

6 MR. KENNEDY: I think that will
7 help people, at least if there is a transcript, to
8 be able to disentangle the parties.

9 THE COMMISSIONER: Right.

10 MR. KENNEDY: First of all, I
11 would like to very much thank the Commission for
12 an opportunity to make this submission. I think
13 it clearly is a very, very important topic. It is
14 top of the mind in terms of the Canadian public
15 and we probably see its manifestation elsewhere in
16 the western world in terms of how we address this
17 challenge. So I consider it certainly to be very
18 important.

19 As you have alluded to, in
20 addition to the ongoing cooperation of the staff
21 at the CPC, we have had an opportunity to make two
22 submissions in writing, one of course on the 5th
23 of February 2005 and a supplementary one on
24 October 18th.

25 In addition, I have had occasion

1 to read those submissions, because clearly I was
2 appointed on October 21st so I thought I should
3 bring myself up to speed. I have read most if not
4 all of the submissions filed by the other
5 interested parties.

6 Just by way of a bit of
7 background, because I clearly do have prior
8 experience with the government, in excess of 35
9 years, I am also very familiar with the public
10 safety area writ large. That includes law
11 enforcement and national security. I am quite
12 familiar with the roles and responsibilities of a
13 whole host of departments and agencies that would
14 come within the ambit of what you are looking at
15 here, and of course I'm familiar with the review
16 mandates of the various bodies that are currently
17 in place.

18 Based upon my own personal
19 knowledge, experience and, as I indicated, having
20 read most of -- I don't say all, you can probably
21 find something I haven't read, but certainly I
22 think I have read most of the file -- I would be
23 seeking to offer for the consideration of this
24 Commission an additional model.

25 You have a plethora of models and

1 this is just to add to the variety of what you
2 will have to intellectually consume. So it is not
3 definitive, but hopefully it will enrich the
4 discussion.

5 The other thing is, when I started
6 this presentation I have to have a goal myself in
7 mind as to what a civilian review model would be
8 like. Clearly two hallmarks are it has to be
9 independent and it has to be effective.

10 In addition, when it performs its
11 duties it has to be objective, fair, constructive,
12 and knowledgeable. There are probably other
13 attributes but those are ones that certainly came
14 to my mind.

15 In addition, when one has this
16 there are stakeholders that are out there that
17 have an interest in whether or not this particular
18 model would work, therefore who has an interest.
19 As I have approached this, I have approached it
20 from the basis that it is the Canadian public. I
21 include in that various non-governmental
22 organizations that play key roles, a number of
23 which I'm sure have or will be making
24 presentations to you.

25 The complainants themselves will

1 come forward.

2 The RCMP, because they in fact are
3 the body of that, will be subject to this review.

4 Important to me as well is other
5 review bodies, because it is clear, as your
6 particular work has pointed out, there are a
7 number of agencies that are in place and of course
8 there are different review bodies, the Minister,
9 in my particular case the Minister of Public
10 Safety, Parliament but, in addition to that,
11 international partners.

12 The reality is, a lot of the
13 information that these agencies possess comes from
14 international partners, so they will be looking
15 over to see what mechanism we have in place and
16 how their information in fact is going to be
17 treated.

18 In addition to that, Canada
19 actually does play a leadership role in the world
20 in terms of legislative models and others will be
21 looking to see how are we addressing this
22 challenge. So I think we will be surprised in
23 years to come that Whatever flows out of this will
24 in fact influence other countries.

25 The intent of a civilian review

1 body is actually twofold. One is to address not
2 only the points of friction that arise between
3 individual cases, in our case where officers come
4 in contact with citizens, but also to add value in
5 terms of larger, systemic issues.

6 If you look at the work of the
7 Commission to date, the CPC, they have put papers
8 out for instance on police pursuits. There is a
9 systemic issue.

10 One that is topical today that
11 people might be interested in would be the use of
12 tazers by police forces.

13 Of course there is the general
14 concern of racial profiling, in other words what
15 is driving the behaviour of various enforcement
16 agencies.

17 This kind of thing requires an
18 examination of relevant laws, policies,
19 guidelines, practices and ministerial directives
20 that in fact inform the conduct of officers in the
21 discharge of their duties.

22 To situate this issue, though, I
23 think it is important for us to realize that
24 policing generally has significantly changed in
25 the past number of years. I would put a line

1 under in fact the past 5 to 10 years it has been
2 fairly dramatic.

3 There are factors that have driven
4 this kind of behaviour. First and foremost is
5 globalization, which in fact has resulted in a
6 worldwide rapid movement of goods and people.
7 That can manifest itself into forms of
8 criminality. One of those new forms of
9 criminality is transnational organized crime.

10 We also have the widespread
11 availability of sophisticated communications. The
12 world has shrunk significantly.

13 We also have challenges such as
14 publicly available encryption. Things that at one
15 time were the prerogative of the State in terms of
16 sophistication encryption is readily available off
17 the Internet where you can download as a citizen.

18 The internet. It is ubiquitous
19 now in terms of its presence, it is all over the
20 place. I know when I initially retired in May and
21 I went to meetings, the first things people asked
22 me for is "What is your e-mail address". So it is
23 a reflex. Not what is my phone number, but what
24 is my e-mail address.

25 In addition, there have been

1 modifications of criminal behaviour. We find old
2 crimes being committed in new ways. If you go
3 back, the idea of frauds and how frauds were
4 conducted, they used to be face-to-face. You
5 would have to get there and trick the person.
6 Then we had more sophisticated models as people
7 used mail-outs and then used phones. Well, now
8 you can have the equivalent of Hudson Bay or
9 something like that, but your entrée is not the
10 bricks and mortar but it is a screen on your
11 computer. Now your audience is not one person,
12 but your audience is six billion people in the
13 world.

14 Partnerships are occurring in
15 terms of what were previously disparate groups,
16 particularly in the organized crime areas that
17 used to be silos of traditional groups of
18 organized crime. We now see them forming together
19 and breaking that.

20 We see the emergence of what I
21 call new threats. By this clearly we are looking
22 at terrorism, but I put it in the context of
23 saying terrorism isn't new. If you go back to
24 Confederation, D'Arcy McGee, the Fenians, we had
25 terrorism and its manifestations historically,

1 We had Air India of course, a very
2 significant event in this country in 1985, but we
3 actually see it now in a much proliferated and a
4 much more virulent and sinister form.

5 So modern policing reality is that
6 some of these challenges can't be addressed by
7 individual police forces acting alone. That is
8 just the reality. There is an obvious need for
9 police to combine resources, both human and
10 financial, and to maximize unique skillsets. If
11 you are going to do a crime on the Internet, not
12 every officer can do it.

13 To address these challenges police
14 forces have integrated their operations and they
15 have adopted intelligence-led policing models
16 which engage multiple partners at the municipal,
17 provincial, federal and international level. This
18 is the new norm. This isn't an aberration. This
19 is the new norm.

20 This inter-agency cooperation
21 finds expressions at all levels of the public
22 safety framework. In other words, it isn't just
23 police doing this. If you look out, you see
24 legislatively Mutual Legal Assistance Treaties
25 between countries as how to cooperate.

1 Extradition has been modified to do things. There
2 is reciprocal enforcement of forfeiture orders.

3 We even see the United Nations
4 Security Council putting in processes saying: We
5 expect countries to do the following and we are
6 going to monitor what they do. If you look at
7 terrorist financing, they are driving some of the
8 behaviours in terms of who gets listed for
9 financial terrorism crimes.

10 Some of these institutional
11 responses which I have indicated, integrated
12 multi-agency teams, cooperation at the local and
13 international levels and the shared skillsets are
14 present also in the national security area,
15 subject to some distinguishing characteristics.

16 The national security community --
17 and I made these comments before I read some of
18 your materials and I am glad to see it is
19 resonating during these hearings as well -- in
20 fact can be divided into the collectors and the
21 consumers. This was the way I approached it and
22 wrote it and I see it appearing elsewhere, so
23 hopefully I am on the right track.

24 Clearly the collectors are CSE,
25 the Communication Security Establishment, focuses

1 on foreign intelligence. The Canadian Security
2 Intelligence Service, CSIS, focuses on threats to
3 the security of Canada. And the RCMP, which has
4 primarily responsibility for criminal
5 investigations relating to national security
6 offenses.

7 There are a host of consumers.
8 Principal consumers though would be the Border
9 Agency, CBSA, and Transport Canada, just as an
10 example. But they do break down I think fairly
11 easily into these big clusters.

12 The three major federal collectors
13 have in fact review bodies. I think that isn't
14 just by accident, it is there because the system
15 recognized that they are the ones that are
16 involved in this activity with intrusive powers,
17 the Commission clearly, for the Communications
18 Security Establishment, SIRC for the intelligence
19 service, and ourselves for the RCMP.

20 The review mandates and
21 legislative powers of each are different and, of
22 course, we are subject to recent comment by the
23 Office of the Auditor General.

24 Just to paraphrase some the
25 comments that the auditor general made, they

1 talked about there are widely varying levels of
2 independent review and of course the reports
3 provide varying levels of degrees of detail.

4 I think the comment they said: We
5 would have expected that intrusive powers would be
6 subject to a level of review proportionate to the
7 level of intrusion. These I think are very sound
8 observations, that while the mandates may differ,
9 there should be more consistency.

10 In particular they made the
11 following comment:

12 The Commission for Public
13 Complaints Against the RCMP,
14 in comparison to Security
15 Intelligence Review
16 Committee, does not undertake
17 reviews aimed at
18 systematically determined
19 compliance of the law, nor
20 does its mandate provide for
21 unrestricted access to all
22 information. (As read)

23 I agree with those observations of
24 the Auditor General that the CPC lacks some of the
25 tools available to the other review bodies.

1 Each of CSE, CSIS and the RCMP
2 play a distinct role in their collection
3 activities. I believe that they fulfil different
4 functions and for that reason their review bodies
5 serve different purposes.

6 CSE's primary task is the
7 collection of foreign intelligence. That
8 obviously would suggest that it doesn't have a lot
9 of contact with the Canadian public.

10 CSIS, amongst other roles,
11 collects information or intelligence on threats to
12 the security of Canada, as defined in section 2 of
13 their legislation. It is to be noted that if one
14 looks at that definition, that threats do not have
15 to in fact be unlawful activities. They just
16 don't have to be. It is intended to be an earlier
17 trip wire.

18 You also look at one of the
19 definitions there under 2(b) and it talks about
20 activities that are detrimental to the interests
21 of Canada. It doesn't have to be unlawful to be
22 detrimental.

23 Likewise under section 16, it has
24 the ability to collect foreign intelligence in
25 Canada at the request of the Minister of Foreign

1 Affairs or the Minister of Defence. Again,
2 nothing there suggests any unlawful activities.
3 It is purely the intentions, capabilities, and so
4 on, of foreign states, actors or their
5 representatives.

6 As well, CSIS collects only to the
7 extent that it is strictly necessary. In other
8 words, it is designed to focus upon information or
9 intelligence. It doesn't collect evidence. It
10 has to do to strictly necessary, so there is no
11 evidentiary burden. I think those words are
12 important: information or intelligence.

13 The activities carried out by both
14 of those organizations, CSE and CSIS, are in fact
15 expressions of the royal prerogative that the
16 crown has in terms of the defence of Canada and
17 the conduct of international affairs.

18 Accordingly, because that is what
19 they are carrying out, there is considerable
20 ministerial involvement in their activities. You
21 see that, in the context of CSE, for provision for
22 ministerial warrant. Any other activity that we
23 do in terms of electronic interceptions is clearly
24 judicial warrant regime. There, there is actually
25 ministerial warrant regime. It is quite distinct.

1 As well, if you look at the CSIS
2 Act, before the intelligence agency can even apply
3 to get a judicial warrant, they have to get the
4 approval of the minister. So the minister can say
5 no, you are not going to do that. There is also
6 mandatory consultation with the deputy minister.
7 Quite unusual.

8 I believe there is even a
9 ministerial directive that would require the
10 minister's approval before investigation can be
11 commenced with reference to 2(d) activities, which
12 is counter-subversion.

13 So you see there is very tight
14 control by the minister.

15 That is significantly different
16 from the role that in fact is played by the RCMP.
17 At common law and by statute, the primary role of
18 the police is to preserve the peace, prevent crime
19 and apprehend criminals. This traditionally and
20 necessarily is important. Independence has been a
21 hallmark of police activity, particularly in
22 regards to the conduct of criminal investigations.

23 It is widely recognized that the
24 police decide who is investigated, when and in
25 respect of which offences.

1 As well, if you compare the
2 criminal offences that are described in the
3 Criminal Code or other federal statutes -- I don't
4 want to get to statutory interpretation and do
5 Driedger and all the rest, but clearly because it
6 is a criminal offence and sanctions, the detail
7 that has to be there is quite remarkable.

8 That is why we have an
9 ever-growing thick Criminal Code.

10 Contrast that to section 2 of the
11 CSIS Act, the generality of that language, as I
12 say, espionage, undefined, activities detrimental
13 to the interests of Canada. And of course
14 terrorism itself is not defined there. It is
15 defined in the Criminal Code but not defined
16 there.

17 That is a standing contrast. As a
18 matter of fact, one was designed in terms of its
19 breadth. I believe there was a minister of the
20 Crown at the time -- it was probably Kaplan; I
21 would have to check my memory -- when the CSIS Act
22 went through, and they said shouldn't we define
23 activities like espionage. They said no, you want
24 to keep that as broad as possible. You want the
25 minister of the day to be able to interpret that,

1 because it is a political accountability. These
2 aren't criminal offences. You want it to be a
3 live document.

4 So it was designed to be broad and
5 to be subject to interpretation that fits the
6 realities of the day. That is probably why
7 20-some-odd years after the fact, you don't see
8 them going back to change those definitions. They
9 work.

10 As well, there is significant
11 judicial guidance in terms of police conduct, use
12 of investigative powers and techniques,
13 evidentiary standards of proof and continuity of
14 evidence.

15 I think it would be trite to say
16 that there are thousands of judicial decisions
17 that bear upon the conduct of the police.

18 THE COMMISSIONER: You don't need
19 to persuade me of that one.

20 MR. KENNEDY: I remember on the
21 10th year anniversary of the Charter, I think
22 there was in excess of 25,000 decisions. God know
23 what is they are now.

24 By contrast, I can think of only
25 one judicial case, I think it was in 1987 the

1 Federal Court of Appeal dealing with an
2 interpretation of a CSIS thing, an adult with a
3 section 21, the judicial power, and what the
4 standard was in comparison to section 8, and was
5 it a statutory complaint. I can't think of any
6 other for the contrast.

7 The RCMP are armed. They have
8 powers of arrest, to detain, to use force and of
9 course to lay criminal charges. CSE and CSIS do
10 not carry arms and they don't have the kinds of
11 powers that I have just spoken to.

12 And as well, although the mandates
13 of all three touch on edges -- and I say that
14 because you will see a reference, I believe, in
15 the CSE legislation that came down that they have
16 stuff that relates to terrorism, that they can
17 pass that along, because it is clear that they
18 will inadvertently during the course of their
19 foreign intelligence collect something that is
20 relevant.

21 Although they touch on the edges,
22 the reality is that the vast bulk, the mandates of
23 each of these organizations, stands alone.

24 As well, even though some
25 information flows from one collector to the other,

1 I believe there is a risk that one exaggerates the
2 overlap or interplay between these agencies.

3 If you look at the CSIS Act, they
4 clearly have an ability under section 19. It is
5 their discretion as to what they disclose. They
6 can disclose information related to indictable
7 offences. It is discretionary.

8 If you look at the mandate, as I
9 say, we are only looking at 2(c), terrorism, but
10 they have espionage, counter-subversion,
11 activities detrimental. There is also activities
12 they have on the immigration side.

13 So if you look at it, it is fairly
14 small.

15 I intended to try and address that
16 interplay, though, because it is an issue that has
17 to be addressed by this Commission in the model I
18 will put forward later.

19 I think generally speaking there
20 are mechanisms that are currently in place to
21 address individual complaints of wrongdoing and to
22 identify larger systemic problems. I am going to
23 focus, though, on the CPC itself and I will leave
24 SIRC to speak for itself, as well as the CSE
25 Commissioner's Office.

1 The CPC's legislative mandate was
2 enacted in 1988. I think the date is significant.
3 When I speak to the fact that it was in the last
4 five or ten years that a lot of dramatic changes
5 have occurred, not only in terms of how police
6 carry out their behaviours, but the kinds of
7 topics that they are now engaged in and of course
8 the public's concern. And that goes to whether or
9 not the mechanism in place for review is
10 sufficient and adequate.

11 The characteristics of the
12 Commission itself were described, I think, at
13 pages 25 and 26 of the February 5th submission.

14 I think the question that we must
15 wrestle with today is: What are the weaknesses in
16 the current review model that in fact have
17 occasioned the challenges that we are dealing with
18 today?

19 From my perspective, I would say
20 they are a lack of clarity, in this particular
21 case, as to what information the CPC may access to
22 fulfil its mandate. The previous chair, again at
23 pages 28 to 30 of our February 5th submission,
24 outlined some of the information that there were
25 challenges getting. Either it wasn't given or it

1 was inconsistently provided; in one case not
2 provided, in another case a good deal of
3 confusion.

4 The other aspect is who decides
5 what is relevant. Is it the Commissioner of the
6 RCMP or is it the chair of the CPC?

7 I think, in fairness, some of the
8 debate that has occasioned these difficulties goes
9 back to the legislation. I went over it last
10 night again and I have to admit I came out of it
11 scratching my head. As to challenge and as to
12 draft legislation, there are inconsistencies in it
13 and structural weaknesses that have probably
14 occasioned some tension between the review body
15 and the RCMP each saying well, do you in law have
16 the capacity to do this or not?

17 So there is a clarity issue.

18 The other parts is it is a
19 complaints-driven process and as such it is
20 reactive. There is an ability obviously to
21 trigger a complaints process by the chair. I can
22 do that independently. But I think that creates
23 an optics problem, at least in my mind, because
24 the Commission should sit back as an objective
25 arbiter, the characteristics I described at the

1 beginning, and yet to trigger something myself, it
2 is the chair has a complaint about the RCMP.

3 I would think, if I was an RCMP, I
4 would say so much for your objectivity. And even
5 if I was objective, the process would cast I think
6 a different pale over that.

7 The other thing is the process is
8 largely paper based. The reality is, what I tried
9 to do when I came to the job is I wanted to see
10 some of the cases, so I jumped right in and I
11 dealt with some of the cases to see what the
12 weaknesses were.

13 The reality is the current one
14 being paper-based, there are some you can't
15 resolve because there are issues of credibility.
16 And just as a judge on a trial, perfect as it is,
17 you have to listen to the person testify and,
18 based upon their demeanour and so on, make your
19 best human guess as to who is telling the truth
20 when you have two contested versions and they are
21 contradictory.

22 In the current process some issues
23 are not resolved because there is no way to assess
24 the credibility effectively.

25 Likewise, unless I invoke the

1 power to convene a public interest hearing --
2 because there are various powers that are there --
3 key tools, such as the ability to take testimony
4 under oath and the compelling production of
5 documents, are not available to the CPC when I am
6 just doing a regular review or investigating
7 complaints.

8 So there are powers there, but in
9 fact I have to go to this other step of public
10 interest hearing that then triggers it.

11 Recourse to that power, certainly
12 in the past, has resulted in protracted and
13 expensive hearings. The cost incurred was not
14 always proportionate to the issues involved. And
15 that was in fact the comment made by the Auditor
16 General when they looked at this back in I believe
17 1997.

18 So you sit back saying once I
19 start that process, it takes on a life of its own
20 and say what have I accomplished, and sometimes it
21 really isn't really worth the candle.

22 As well, there is no specific
23 authority to complain about policies, practices or
24 guidelines that are followed by the RCMP. It is
25 the conduct of individual officers. Although

1 these issues in the past have been considered in
2 the context of a complaint, so police pursuits,
3 that requires one to sort of play around a bit
4 with the legislation. But the clarity to do that
5 isn't there.

6 As well, because it is a
7 complaint-driven process, certain activities do
8 not surface. And this lack of profile I believe
9 is occasioned by possibly the nature of the
10 investigation; clearly national security would be
11 one. But there can be people that, for instance,
12 are -- it could be a long term organized crime
13 investigation where all the small fish really
14 don't count because you are after Mr. Big. So
15 there are lots of people that might be subjected
16 to surveillance and others that are not. They
17 don't come in contact, so they don't know this has
18 happened to them.

19 In addition, the information that
20 is essential to a successful prosecution may in
21 fact be subject to a caveat. In other words, it
22 could be an informer privilege where the informer
23 doesn't wasn't to waive it. There have been
24 wiretaps, as you know, that would have failed
25 because the affidavit in the first instance is

1 issued based on informer information. If you pull
2 out that informer information, there isn't enough
3 left to survive a Wilson application, so it fails.

4 So various things like that can
5 impact, and these things may prevent the laying of
6 criminal charges. That could happen if the
7 information is from another country and it doesn't
8 want to allow its information to be used.

9 In both of these instances
10 individuals would not necessarily know that they
11 are subject of a police investigation. In
12 addition -- and we have heard submissions to this
13 effect -- there may be a reluctance to complain by
14 individuals for cultural or other reasons. So
15 these things are combined.

16 Looking at that aspect, what are
17 the improvements that could be made to address
18 these weaknesses? I would offer the following
19 then for your consideration.

20 Dealing with the areas of
21 complaint -- and I break this up into complaint
22 and review.

23 So looking at complaint in the
24 first instance, the agency should have access to
25 all information in the possession of the RCMP

1 relevant to the complaint other than cabinet
2 confidences. I say that in the context that I
3 look at the RCMP and I look at the Auditor General
4 or the Privacy Commissioner, and they have that
5 access. They might access to information that I
6 need that I don't have access to and yet mine
7 would be the one that would deal with a complaint.

8 It is not as if that information
9 is so holy that no one looks at it, because other
10 review agencies are looking at it.

11 The issue is, as well, the review
12 agency is the one that has to determine what is
13 relevant to the complaint.

14 As well, it should have the power
15 to summons witnesses and to subpoena documents. I
16 put that in the following context. I think if the
17 legislation was clear, you wouldn't have to go
18 around issuing subpoenas. The current reality of
19 the Auditor General or the Privacy Commissioner,
20 the information is made available because they
21 have the power to do it. So you don't have to use
22 it. But the fact that it is there, you get that
23 cooperation.

24 I believe that should extend not
25 only to serving RCMP officers -- because that is

1 an issue as well -- but to other employees of the
2 RCMP. The audience there is there is
3 approximately 20,000 staff, I will call them, with
4 the RCMP. They have about 16,500 that are
5 uniformed officers, there is about 2,000 or so
6 civilian employees and then there are public
7 servants. So you want to make sure that the
8 entire group is covered.

9 It should also apply to retired
10 officers and employees, because there is nothing
11 to do something. They might not be there and say
12 I can't bring you forward. Whoever was there at
13 the time relevant to that investigation, we should
14 be able to talk to.

15 And such other federal employees
16 who may have information relevant to the
17 investigation. By that, in this particular
18 context, I would include employees of the
19 Communications Security Establishment, as an
20 example, CSIS, the Border Agency, to the following
21 extent, that their testimony was required to fully
22 investigate RCMP conduct.

23 So yes, you would follow the trail
24 because if the officer dealt with someone else and
25 then based upon that conduct the officer did

1 something in return, the only way I can assess the
2 propriety of the officer's conduct is by following
3 the trail and seeing what the interface is. That
4 is not to lead one into a general review of CSIS
5 for CSE. You just follow it to the extent that it
6 is relevant to your complaint and the focus upon
7 the officers involved.

8 A necessary corollary, though, to
9 this unfettered access to information have to be
10 adequate safeguards for any confidential
11 information that is given to the review agency.
12 That would entail an ability to hold in camera, ex
13 parte hearings where appropriate.

14 And I say where appropriate
15 because you have to justify. This is a public
16 process and you have to justify why it should be
17 there.

18 I have here role of amicus curiae
19 where testimony has to be heard in the absence of
20 a complainant. And I believe some debate has
21 occurred, what are we talking about there.

22 What I envisage is someone who in
23 fact would step into the shoes of a representative
24 for the complainant to test or challenge any
25 evidence which is heard in camera. In other words

1 if there was an examination, the adjudicator
2 shouldn't be there cross-examining the witness.
3 This person could sit there and challenge it. The
4 RCMP could have its counsel leading and then there
5 should be a challenge.

6 Likewise, I think any information
7 that is heard in that forum has to be summarized,
8 if it is possible, and put back into the public
9 portion again. That is the only way you can have
10 faith in the system.

11 So there would be a bit of a
12 challenge in there: Have you got it right?

13 Certainly if you look at the
14 provision under 38 of the Canada Evidence Act,
15 that is the model that is there in terms of
16 judicial summaries: to respect all the
17 sensitivities. But the gist of it there certainly
18 can be made available.

19 Clearly any draft report that
20 would be prepared, interim or final report, would
21 be shared with the Commissioner of the RCMP
22 clearly to ensure that the confidential
23 information is not inadvertently disclosed.
24 The objective here is to strengthen public safety,
25 not to weaken it. Clearly there are public

1 privileged information that is recognized but
2 there are ways you can draft around that. I think
3 that has been done in the past, certainly with
4 SIRC, I know, and with others, and the Commission
5 here probably is acquiring in-depth experience in
6 that area. It is difficult but it can be done.

7 Information provided to the review
8 agency would be held subject to any existing
9 privilege. In other words, access by the agency
10 would not constitute a waiver of privilege. That
11 has to be cleared.

12 These safeguards are important
13 because in turn the RCMP, with its partners, have
14 to give assurance that disclosure to us isn't
15 disclosure to the world. We have to be able to
16 protect their capacity to maintain that flow of
17 information because that is what allows them to
18 advance public safety in this country.

19 Information or reports, where
20 appropriate, would be shared with the complainant,
21 the Commissioner, the minister, the head of review
22 bodies for CSIS or CSE or other federal review
23 bodies, as appropriate, and with concerned deputy
24 ministers.

25 This last one I put on the table

1 because, for instance, if we had a Border Agency
2 employee and during the course of investigation
3 everything was quite proper by the RCMP, but there
4 is a concern that something is wrong over at CBSA,
5 there is not a review body there but clearly there
6 is a president for that organization -- they share
7 the same minister here as the RCMP do -- to share
8 with that person and say by the way, you may want
9 to look at this so you are alert and therefore you
10 should do appropriate follow-up action.

11 Some features certainly of this
12 information or report-sharing are found in your
13 background paper of May 2005, wherein there is an
14 examination of various international models -- and
15 I looked at that portion -- and reference in
16 particular the creation of statutory gateways.

17 I was thinking of this and I went
18 back to my learned counsellors and said you may
19 want to read this, because you are reinventing
20 wheel here. There are various models as to how
21 strong they are.

22 I believe the statutory gateway is
23 important because currently the Privacy Act would
24 prohibit my sharing of some of that information.
25 Is it a use defined by statute or is it a

1 consistent use? If it isn't, you in fact run into
2 privacy issues.

3 So there have to be statutory
4 gateways that would allow the various agencies,
5 for the purpose of their various mandates, to do
6 that.

7 Conversely, the CPC could be the
8 beneficiary. It might be the Privacy Commissioner
9 finding something during the course of her review
10 that she may want to bring to our attention that
11 we would look at in more depth, because by
12 definition we should have more experience in the
13 area in terms of what police practices are and
14 what is appropriate than the Privacy Commissioner,
15 which has a very broad mandate dealing with
16 information at large.

17 I know this approach was certainly
18 developed in your supplementary questions of
19 October 17th. I look at that. I believe question
20 17 was the question in particular about
21 coordinating the review.

22 I believe that statutory
23 authorities to share information between review
24 agencies would in the appropriate case allow us to
25 address the possible gaps and to deal with common

1 issues.

2 I would also outline that where
3 confidential information is involved, the reports
4 of the complainant will, of necessity, be worded
5 differently than the report going to the
6 Commissioner, let's say, or to the minister. The
7 nature of the complaint might very well in the
8 midst of a very serious ongoing investigation that
9 the police are doing at the time. To look at it
10 might very well, on our part, if we found that
11 everything was in fact proper, cause us to respond
12 without either confirming or denying, if there was
13 such an investigation occurring, that we have
14 looked at it and are satisfied that the activities
15 of the police was proper.

16 At the end of the day you can't
17 have the complaint process frustrating an ongoing
18 investigation, because it is important.

19 This is going to require,
20 obviously, some sophistication on behalf of the
21 agency, but I think you have to be responsible in
22 terms of not having the agency inadvertently doing
23 more harm than good.

24 Likewise, reports provided to
25 other review bodies or deputy ministers will be

1 written so as to alert them to issues that require
2 additional investigation and possible corrective
3 action. In other words, it might not be the same
4 document. There may be things that are very
5 unique to the Commission or the minister has to
6 look at. All you want to do is give the
7 appropriate portions to the other people and say
8 look, here is enough for you. You should go and
9 look because you might have some problems in your
10 department.

11 What I would envisage in this case
12 would be a report, for instance, shared with SIRC
13 where they would look at and investigate in detail
14 the actions or practises within CSIS and make
15 recommendations as appropriate for that
16 environment, which is a civilian intelligence
17 agency as opposed to a police agency.

18 Testimony under oath by an
19 individual could not be used in another proceeding
20 against that individual except for perjury. We
21 have seen that classically in these kinds of
22 hearing things and I think that clearly would be
23 applicable here.

24 In addition to investigation of
25 complaints, because that is one portion that I

1 have dealt with, the review agency does require
2 the power to review generally RCMP conduct,
3 policies, procedures, guidelines, applicable law
4 and ministerial directives. My colleagues here
5 from the RCMP are probably fainting as they heard
6 me say those words, but the reality is we are
7 currently an organization of 44 people. That is
8 including commissionaires and everything else. So
9 what you have to be is obviously you want the
10 power but you have to be targeted as to where the
11 value is.

12 So this isn't in every detachment
13 across the country doing these things. Frequently
14 a lot of these things are headquarters operations,
15 and you can sit there and that is your focal point
16 of entry.

17 In this context I prefer to use
18 the word review instead of audit. I see the word
19 audit there. I suppose if I was the Auditor
20 General I would be comfortable with it, but I
21 really don't know what audit means. I think I
22 know what review means.

23 I noted earlier that there are
24 incidences where individuals may be unaware of the
25 fact that they are in fact under police

1 investigation or where their contact with the
2 police is such that it doesn't result in criminal
3 charges. So it is not going to come up on the
4 complaints side. Therefore, the likelihood of
5 judicial review occurring in these cases is
6 significantly diminished. And national security
7 investigation, which is your primary concern here,
8 would clearly fall into this category.

9 In that particular instance, as
10 things are currently crafted, neither the CPC nor
11 the individual would necessarily know either the
12 nature or the scope of the problem, nor, more
13 importantly, whether the behaviour in question is
14 an isolated incident or whether or not it is an
15 institutionalized practice.

16 So there should be power to review
17 generally the performance by the RCMP of its
18 duties and functions. I can see, for instance,
19 examples where affidavits filed in support of
20 judicial warrant or information exchange practices
21 would fall into that category.

22 There is an issue recently that is
23 in the papers in Ottawa dealing with a judicial
24 warrant quashed, evidence is out, and the issue of
25 whether or not there were two applications with

1 different information, and so on. The reality is
2 once a judge has dealt with an issue, the judge is
3 functus. The judge is not going to do any
4 follow-up. The Crown takes care of the case. The
5 Crown isn't authorized to do any follow-up.

6 So where you have cases with
7 people saying what is going on, the only one who
8 can do it that has independent credibility is a
9 police complaints commission. The police can try
10 themselves as much as they have and as high as
11 their credibility rating in the country is, but at
12 end of the day people say you can't look at it
13 internally when the fault is as described there
14 and say everything is okay. There has to be
15 someone to do it independently, and I believe at
16 the end of the day that actually helps the
17 credibility of the police. It reinforces them
18 when in fact there is no problem or the problem is
19 put in perspective or constructive recommendations
20 are put forward that can be acted upon.

21 Thus, the review of operational
22 activities. There has to be a monitoring of
23 compliance with policies, procedures, guidelines
24 and ministerial directives. I say that because it
25 is great to have things on paper, but if they are

1 sitting on a shelf and not being used, you have to
2 do some random testing just to see it is there,
3 but do the officers in Detachments A, B and C even
4 know it is there and has it in fact influenced
5 their behaviour?

6 Power essential as well for the
7 general review process would include access to
8 files and notes. I think there has to be a power
9 to examine current and former members and to
10 examine other government officials and the power
11 to compel production of documents.

12 I think that is ancillary to
13 looking at these policies, practices and
14 behaviours because if you are doing a monitoring
15 compliance, you may want to see does it show up
16 and you have to follow the paper trail.

17 I know the scope of the review
18 here that you are undertaking it focused upon
19 national security, but I believe if you look at
20 it, the solution for national security in fact is
21 a solution to the CPC mandate just at large.

22 There is, and I think one would
23 fairly have to put on the table, a general concern
24 about interference with ongoing investigations
25 either against individuals or groups. That

1 clearly is, I think, an important and a reasonable
2 concern by the police.

3 I think depending upon the type of
4 case involved, some files would in fact constitute
5 a traditional post facto review. Others clearly
6 would touch upon current or active investigations.

7 I think at the end of the day you
8 are just going to have to rely upon the good
9 judgment of all parties to guide the conduct of
10 parties as to when the timing of that review
11 occurs. We do actually have a live example to us.

12 The Air India case, as I
13 indicated, occurred -- I believe the offence was
14 in the latter part of 1985. The trial took some
15 15 years of investigation, attributed to the RCMP
16 in terms of their tenacity to continue over that
17 period of time to continue to gather evidence and
18 lay a charge. So obviously a very, very long
19 investigation, some 15 years.

20 There were calls during that
21 period of time for review, and as a matter of fact
22 the Security Intelligence Review Committee itself,
23 I think about seven years into the process,
24 actually did a review of the CSIS activities
25 relative to that, which as we know from the trial

1 itself were a significant part in terms of how the
2 prosecution went forward.

3 So there clearly was an ability to
4 do a review of some substance, to produce a public
5 report that gave the public at that time some
6 sense that things were not entirely off track, and
7 to make some positive recommendations.

8 So it is possible with good
9 judgment to -- in this case the judge was excised
10 to defer at least by seven years before the review
11 was done, and clearly that review itself did not
12 impact negatively upon the accumulation of the
13 charges laid and the process.

14 An acquittal was introduced but
15 not because of any improper interference.

16 I think at the end of the day it
17 is more important that the framework be there that
18 allows this and that we put competent people in
19 place with good judgment and that we realize if
20 the pressure is upon us to do a review that we
21 come back and say it is not appropriate in this
22 case to do it.

23 That is the burden that whoever is
24 the chair of this committee is going to have to
25 wear.

1 In addition now in terms of the
2 model, the current model recommendations are not
3 binding, and I would not propose that
4 recommendations be binding.

5 The RCMP is a large police force.
6 There are many competing interests within it.
7 Recommendations by themselves have implications in
8 terms of how policing is carried out and could
9 also have financial implications, and so on. Our
10 force, I think, is to publicly put pressure on
11 these issues to highlight them and, if we do it
12 properly, to have a good solid factual and
13 intellectual foundation to it that would cause the
14 minister and/or the commissioner, as the case may
15 be, to move on it.

16 So I think that is there are and
17 if there is a serious problem, the recommendation
18 is not going to go away. The commission is not
19 going to go away, and things will eventually get
20 done.

21 The power to receive and share
22 information and reports should be common, as I
23 pointed out, to all federal review agencies for
24 the purpose that sharing would better position the
25 relevant review body to initiate more detailed

1 inquiries and to fashion recommendations best
2 suited to its particular area of expertise.

3 It may very well be that in the
4 review stage things may come up that would also
5 occasion some sharing.

6 The CPC with these enhancements
7 and appropriate safeguards would be able to
8 effectively review the national security
9 activities of the RCMP.

10 I think this enhanced model would
11 clarify its access to relevant information, would
12 enhance complainants' rights, would offer a cost
13 effective review model, would respect the
14 different roles played by CSE, CSIS and the RCMP,
15 would permit the development of recommendations
16 tailored to the reality of each organization,
17 authorize the sharing of reports and information
18 between review bodies such that the appropriate
19 follow-up could be done.

20 It recognizes the current
21 jurisdictional realities. And I say that in the
22 context that we clearly have the integrated teams
23 of provincial-municipal representatives on it. I
24 say that is not going to go away. It is part of
25 the challenge we have.

1 The RCMP, though, certainly that
2 being in eight provinces, three territories and
3 over 200 municipalities, by influencing their
4 behaviour certainly influences the behaviour of
5 the other police forces within the jurisdictions
6 that they are present in.

7 In terms of some of the national
8 security models, the INSETs, Integrated National
9 Security ones, in fact is funded federally by the
10 RCMP and the other forces are seconded there. So
11 they are managing those units. I would think by
12 shaping the behaviour of the manager of that, by
13 necessary implication you affect the others that
14 are participating that area.

15 I say that, though, recognizing I
16 believe that both the Sûreté du Québec and the OPP
17 have their own units that perform in that area,
18 but there will be leadership models that flow, I
19 am sure, from recommendations and behaviours.
20 There is a tendency, certainly I think through the
21 CACP, to have some uniform standards, practices
22 and behaviours amongst police. So maybe what you
23 can't do directly you will be doing indirectly. I
24 don't think we can change the Constitution to
25 address some of these realities.

1 I think it also demonstrates to
2 all Canadians that there is an independent and
3 effective capacity to review RCMP activities and
4 ensure not only that it is being carried out as
5 per the rule of law, but also with propriety,
6 because it goes beyond not only what the strict
7 black-letter rules are, but how people are
8 perceiving it. Sometimes your packaging is
9 important as well.

10 I appreciate the patience of the
11 Commissioner in hearing what I have done.

12 THE COMMISSIONER: Not at all.

13 MR. KENNEDY: And as you probably
14 have writer's cramp there, I actually have copies
15 of this in a text format.

16 THE COMMISSIONER: That would be
17 helpful, yes.

18 MR. KENNEDY: What I have, as
19 well, is a proposed model, just sort of boiled
20 down -- I will give you additional copies -- in
21 distilled form that might make it easier for you.

22 THE COMMISSIONER: That is very
23 helpful, Mr. Kennedy, and I appreciate obviously
24 the thought that has gone into your proposal and
25 the care with which you have taken in developing

1 it. I think it is most informative to us.

2 Let me just start. I will have a
3 number of questions that flow from things that you
4 have said.

5 To start, as I understand the
6 suggestions that you are making for, if I can call
7 it, the enhanced powers, they would fall into the
8 two categories that you refer to: the
9 complaints-driven part of the process and the
10 review, which in the paper is sometimes referred
11 to as audit.

12 I think the reason it was referred
13 to as audit -- and it may not be the most
14 felicitous word to describe it -- is because some
15 suggest when they talk about review that that
16 includes complaints and that review is a broader
17 term and there are two subcategories. There is
18 complaints and there is something else.

19 So I think when reference is made
20 to audit, people in very general terms are looking
21 to assert like audit process. I agree with you
22 immediately that it raises spectres of a financial
23 audit and Auditor General, and so on, and that is
24 not what is contemplated.

25 Be that as it may, there are the

1 two enhancements in general terms that you are
2 proposing.

3 As I understand your proposal,
4 those enhancements would cover the CPC across the
5 board, not just with respect to national security
6 activities.

7 MR. KENNEDY: That is correct,
8 sir.

9 THE COMMISSIONER: My mandate, as
10 I know you are well aware, is directed at making
11 recommendations with respect to national security
12 activities.

13 Should I make the recommendations
14 you propose, and making the assumption that I
15 directed them at national security activities
16 only, can you tell me what the difficulties would
17 be for your organization and for the integrity of
18 the process if they weren't also to apply to all
19 of the activities of the RCMP?

20 MR. KENNEDY: Well, certainly the
21 model would be very much asymmetrical --

22 THE COMMISSIONER: Very.

23 MR. KENNEDY: -- in terms of how
24 the public perceived itself.

25 The other thing is I'm not sure if

1 one could tease out, because there is a challenge
2 of deciding what is a national security
3 investigation or complaint. Sometimes individuals
4 think it is a national security concern and it
5 isn't.

6 The other thing is in terms of the
7 continuum of things, an issue may start of in the
8 police mind as national security and look at it
9 and it isn't; it is just money laundering, for
10 instance, or something like that. Or it may be
11 something that they are investigating at one time
12 which is criminal, which at some stage turns out
13 that this activity -- and I am thinking of a
14 particular case in the United States that has gone
15 to trial -- tobacco smuggling operations which
16 actually were generating money to use funds to buy
17 night goggles, night vision equipment to provide
18 to terrorist. So it turned out to be a Hizbollah
19 operation. So you never know. Only when you know
20 the ultimate destination purpose then you go back
21 and colour something: oh, that actually was a
22 national security investigation at some stage.

23 First of all, if you were a member
24 of the public you would say, "Well, how come I get
25 this minor piece and in the other one I get the

1 full monty". In addition, if we are hearing
2 things we can't ask questions because we approach
3 it on the base that it is a non-national security
4 model, it is just a complaint thing, we are not
5 going to be in a position to make inquiries. No
6 one is going to produce information that would
7 identify it as being as potentially a national
8 security file when in fact it is.

9 Part of my concern is, I said you
10 don't know what you don't know. I don't want to
11 be quoting Donald Rumsfeld, but that is one of the
12 realities.

13 Part of the thing with the review
14 model here was: You do have the capacity to go
15 out and find and go back and then inform. There
16 is a cycle where you inform yourself. Complaints
17 inform review, review inform complaints. We might
18 go and find out, by the way, these are things that
19 are going on out there. We look at say, "Oh, now
20 I know how to characterize that case over there."

21 So in addition to the unequal
22 treatment of individuals who come forward there is
23 the problem that we are not able to define a case
24 other than as it is presented to us by a
25 complainant, and we might be dismissive of

1 something that is actual a signal of a longer term
2 operation that is ongoing that may or may not have
3 any propriety attached to it.

4 THE COMMISSIONER: One of the
5 reasons I raise the question is in connection with
6 the review enhancement, if you will.

7 The logic that drives the
8 submission that there should be the
9 review/audit-type of capacity in the review body
10 flows largely from the need to have that for
11 national security activities. The most common
12 basis put forward is that, well, national security
13 activities by their very their very nature are
14 often not transparent. So people whose rights may
15 be affected or may have a valid complaint will
16 often not even know there is an investigation.
17 Therefore, there is this additional requirement
18 that there be a review or audit function to look
19 at the systems, and so on. Others would suggest
20 as well in the national security milieu there is
21 an added concern for intrusion on individual
22 liberties that trigger the need for review
23 mechanism.

24 But the point I'm making is that
25 the proposals for review mechanism are triggered

1 by the national security activities, generally at
2 least, so that in models where there is a review
3 of police forces dealing with things other than
4 national security activities we don't typically
5 see a review or audit function for the review
6 body.

7 Which leads to the question: As
8 viewed from the RCMP's perspective, are they going
9 to say well now because -- assuming it is
10 warranted -- there is a review function for our
11 national security activities, we now have all of
12 our activities potentially subject to such a
13 review, are dealing with break and enters in
14 Whitehorse potentially, where there is no need and
15 historically hasn't been such a function?

16 MR. KENNEDY: I will just respond
17 to it because, as I said, with the limited
18 resources we have we have to be somewhat surgical
19 in terms of what we look at.

20 In my submission I had cast that
21 national security investigations clearly stand out
22 right now, and not least of which, because the
23 legislation was put in place in December of 2001
24 and there has been one charge laid in Canada over
25 that period of time. So that clearly suggests to

1 you that -- and I wouldn't suggest for a second
2 that the RCMP not engage in those activities.
3 They are not sitting back like the Maytag man,
4 they are doing work, but the reality is the
5 complexities and various factors at play. There
6 is one case that is before the court that would be
7 subject to the normal judicial review.

8 But if you look over at a host of
9 other kinds of crimes that are going here, when I
10 talked about the changed environment, if you are
11 looking at the money laundering operations, the
12 flow of money back and forth, organized crime
13 activities and transnational organized crime, the
14 Internet crimes, whether it is paedophile and
15 things like this, a drug case, even traditional
16 drug cases could be multi-year investigations.

17 You look at the provisions in the
18 Criminal Code dealing with wiretap, the wiretap
19 provisions were changed. You remember they use to
20 be 30 days for an order, then it was changed to
21 60 days. For organized crime it is up to a year.
22 The reason is that if you are dealing with an
23 organized crime group it is very similar to a
24 terrorist group, that the individual players come
25 and go, but these institutional groups stay there.

1 So it is multi-year-long
2 investigations, not even getting into how long the
3 trials are.

4 So those kinds of cases are very
5 much like a national security case, because you
6 are dealing with partners that might be in many
7 parts of the world.

8 We had a recent arrest, I believe
9 in Ottawa. There were hundreds of arrests in the
10 United States and Canada, but one operation was
11 coordinated in the two jurisdictions -- I think it
12 was on a big ecstasy production operation --
13 across Canada and across the United States
14 coordinated arrests. So there could be
15 multi-agency binational organizations coordinated,
16 obviously very long term.

17 The same phenomena that you might
18 be dealing with here, a national security case
19 where the individual in fact is not charged in
20 Canada, they are arrested and charged outside of
21 Canada and Canada may actually, through MLAT,
22 share information.

23 That is going to happen on
24 organized crime files as well, whether it is
25 cocaine coming from Columbia, transiting the

1 Caribbean or going to the U.K. and coming back
2 here, you have a multi-jurisdictional -- you may
3 not even see what the Canadian connection was.

4 So you need review to look at
5 these new kinds of crimes, just because of the
6 complexity. In terms of some of the problems with
7 child pornography, there are international efforts
8 to share internationally data holdings to find out
9 what is occurring, where are the children, how do
10 we cooperate to identify these people.

11 So crime has gone from local and
12 national to international and your participation
13 in those things doesn't necessarily mean that you
14 are not working on them just because charges are
15 not laid in Canada.

16 So you are seeing one aspect of
17 national security, but I think it is just how
18 policing has changed and how international
19 cooperation has changed.

20 THE COMMISSIONER: The point
21 you make is that because of that change, the many
22 factors related to it, then lead to the need for
23 this type of review function that you are
24 referring to.

25 MR. KENNEDY: Exactly.

1 THE COMMISSIONER: The review
2 function that you envision, Mr. Kennedy, is it
3 markedly different from the review function that
4 SIRC carries out over the CSIS operations?
5 Conceptually. I know the subject-matter is
6 different, I understand that.

7 MR. KENNEDY: Yes. Conceptually,
8 in terms the powers, the power would be very
9 similar because SIRC also, under section 41, hears
10 individual complaints and then they have certain
11 other powers.

12 THE COMMISSIONER: Yes.

13 MR. KENNEDY: Actually, I was
14 influenced -- and some of my language, if you look
15 at it, it tracks back to combining some of the
16 activity that is done by the IG. The language I
17 think is under section 38 of their Act for the IG:
18 Does the monitoring compliance with --

19 THE COMMISSIONER: Right.

20 MR. KENNEDY: I think scooping
21 that in, rather than set someone else up, I think
22 if you scoop those powers in together a lot of
23 what they could look at quite clearly we should
24 being looking at as well.

25 THE COMMISSIONER: Right.

1 MR. KENNEDY: The other thing is
2 that even though -- because I think part of the
3 challenge is -- I see this from the super agency
4 and I will be quite candid, it has no appeal to me
5 because I don't think it has the answer for you.

6 The reality is, we currently have
7 oversight review bodies that look at activities
8 who come up sometimes with contradictory
9 solutions. I will give you an example, and it
10 isn't to cause mischief, but when I saw it it did
11 cause a bit of mischief in my mind.

12 Information-sharing practices.
13 For policing the sharing of information is the
14 lifeblood, because everything they have is people,
15 what are people doing.

16 The previous Privacy Commission
17 came out very stridently against inter-agency
18 sharing of information, that this was diminishing
19 individual privacy, creating big brother states
20 and things of that nature.

21 The follow-up audit by the Auditor
22 General in terms of efficiencies post-9/11 in
23 terms of budget and how agencies were cooperating
24 indicated they weren't cooperating enough, weren't
25 sharing information enough and that there was a

1 bit of almost pre-emptive capitulation in terms of
2 trying to assert their legal rights. So two
3 review bodies that had very unique mandates
4 commenting upon the same thing, which is you were
5 receiving the recommendations you would be left in
6 a puzzle as to what to do.

7 so I say that to the extent that
8 everyone can look at it and there would be shades
9 of difference.

10 Yet I have seen complementary
11 behaviour. The Privacy Commissioner I believe is
12 looking at sharing agreements between, let's say,
13 Canadian enforcement agencies and foreign partners
14 and that is in place in terms of are they in
15 writing and are they consistent.

16 Yet I looked back historically and
17 I saw that Security Intelligence, SIRC has in fact
18 looked at it historically and said they found
19 CSIS' foreign sharing of information appropriate,
20 where you do if there are appropriate safeguards.

21 So you can have things where you
22 occupy the same field where there is some
23 congruency in terms of what you do at a high level
24 and then specifics and others where there can be
25 some clashes even between ones that do it.

1 So part of my concern here is, if
2 someone else was looking at police behaviour and
3 conduct, I don't know how they could fashion
4 recommendations to address that conduct that
5 wouldn't touch upon the core characteristics of
6 what police activity is, which I have defined.

7 You come into contact because of
8 your use of powers, search warrants, wiretaps,
9 investigative techniques, arrest, use of force,
10 all these things. How do you avoid creating
11 possible conflict in terms of the general
12 direction that is flowing, let's say from CPC to
13 the RCMP in this area, and then someone else who
14 might come in and say things?

15 Having been a person who has
16 gotten seemingly two contradictory ones and you
17 just throw your hands up, I think it is easier to
18 deal with one person who has expertise in what you
19 are doing and is crafting something specific to
20 what you are doing.

21 I pointed out that the behaviours
22 are different. Part of the strength of the SIRC
23 model as an example is historically it has been
24 largely staffed by former politicians, not
25 exclusively, but significantly.

1 THE COMMISSIONER: Yes.

2 MR. KENNEDY: And there is a
3 reason, because those are non-arm's-length from
4 the government. There is a political
5 accountability. The membership is selected from
6 consultation with the opposition members and
7 frequently there is representation there from all
8 three parties. Someone says "Yes, I am with the
9 Liberal, Conservative or NDP party", so there is
10 that mix there. So everyone in the government
11 says, "We have comfort in those agencies are
12 there."

13 The kinds of judgments that are
14 brought to bear are different, I would submit --
15 appropriate but different -- than what CPC would
16 be saying vis-à-vis the police in terms of that
17 arrest where you did an arrest without a warrant,
18 you had to get a warrant because there are
19 different ones as to when you need it, the whole
20 ball of wax that touches upon how the police
21 performs different, I would submit, than on the
22 other side.

23 THE COMMISSIONER: If I were to
24 recommend or the government were to implement the
25 review enhancement for the CPC, would that require

1 significant additional staffing, resources and
2 expertise in the body than now exists?

3 Let me just develop the thought.
4 Is there something, first of all, about conducting
5 that type of review exercise that is different
6 than handling complaints, which has been the fare
7 of CPC to this point?

8 Second, it seems to me in part
9 from what you are saying is, the amount of review
10 that would take place might be dependent on the
11 amount of staffing and funding. I'm not being
12 critical of the thought, but it strikes me that
13 that is a bit of a flexible way, if you will, of
14 going at the matter.

15 It really brings me back in part
16 to where I start. I say: My mandate is to make
17 recommendations for a review of national security
18 activities, and I guess if the spillover of my
19 recommendation, if accepted, was that yes, there
20 would be a huge amount of new staffing and
21 resources and now a different way of reviewing the
22 other 95 percent of the RCMP activities, I just
23 wonder how that reads.

24 MR. KENNEDY: Okay. I wouldn't
25 say it's huge.

1 Maybe to preface it, like I said,
2 I have over 31 years experience, almost all of it
3 with public safety as a prosecutor, and in
4 national security at least 19 years of exposure of
5 that have been counsel to the Communications
6 Security Establishment and chief counsel for CSIS
7 I say that in the context that I was justice
8 counsel -- and making sure there was compliance
9 with the law -- and continuous involvement after
10 that for five years to coordinate legal advice by
11 all the intelligence agencies. I have a
12 background. I know policing as I know what
13 national security is.

14 I don't really see -- and clearly
15 there are people I know that I could hire that
16 would bring in -- that would be complementary.
17 One of the things that I have put in train since I
18 arrived was looking at what are the security
19 clearances of my current people, who has a
20 background in national security. Because there
21 are some that actually were on staff that have
22 backgrounds in national security.

23 So it is not a case of building
24 something new, it is a case of taking the people
25 you have and then putting a layer on top of their

1 knowledge base. That is not unusual. We do the
2 same thing when following passage of the
3 Anti-Terrorism Act, together with the Department
4 of Justice.

5 We brought the Chiefs of Police in
6 for two days and took them through and had to
7 teach them what that legislation was and what its
8 implications were. There were CDs prepared to
9 train officers. So it is not as if it is that
10 complex in terms of knowing what it is.

11 I think you are easier to have an
12 iceberg that you put another layer on top of --
13 and that is all you are doing because basically
14 what you have is policing in that area as opposed
15 to trying to say "Here is what an intelligence
16 officer does", which is different because they are
17 not police officers.

18 THE COMMISSIONER: What about the
19 review function though, is there a new skillset
20 that is required to do reviews or audits?

21 MR. KENNEDY: There is a new
22 function, but from my perspective, as I made in my
23 submission, I think I should be doing that writ
24 large, because that is the appropriate
25 preventative behaviour. Complaints are the

1 products of something that has gone wrong.

2 With my current model dealing with
3 complaints, someone keeps bringing back the little
4 toy that is not working and you keep saying "Well,
5 it's not working". Well, you get to the point of
6 "Why isn't it working?" and try to fix it.

7 I pointed out the policy
8 guidelines directives. These are the things that
9 control the behaviour. So I want to get out of
10 dealing with the problems and sit back and say
11 what is driving this problem. It might be the
12 policy direction, or whatever, or maybe how the
13 Force is structured in terms of what they are
14 doing.

15 So I think I have to do that
16 function if I can anyways. You are one forum
17 where I can speak to it and hopefully that comes
18 to Parliament's attention.

19 I would say that there is some
20 augmentation, you are not talking a huge
21 augmentation at all. I think we are talking a
22 couple of -- well, not a couple, I would say 5 or
23 10 resources, the appropriate resources.

24 I currently have the ability, in
25 any event, under my legislation to hire additional

1 resources. A current example, there is a review
2 of public interest investigation that is ongoing
3 now with the Kingsclear incident in New Brunswick
4 dealing with various abuses. Well, I go to
5 Treasury Board, I have got a whack of money, I
6 bring in very, very experienced police
7 investigators, former Crowns, and have them work
8 on that. So that is how it is run.

9 There are skillsets that you have
10 to develop that are core and then depending on the
11 particular challenge you have, you bring in
12 additional skillsets to supplement it.

13 This isn't empire building. When
14 I have looked at this, my view is enhancements and
15 the enhancement has to be a regime that is
16 proportionate and responsive and builds on the
17 strengths that you have.

18 THE COMMISSIONER: Tell me,
19 currently, or would you envision in the future,
20 that those who that would deal with complaints or
21 the review of national security activities within
22 the CPC would have special expertise or training
23 in order -- is there sufficient difference in
24 those reviews that it requires specialization?

25 MR. KENNEDY: Well, there are what

1 I have asked already is for people in the
2 continuum from the complaints stage on through to
3 be identified in terms of skillsets and security
4 clearances because there are more behaviours. You
5 have to have the right security clearances, you
6 have to develop the trust of people, you have to
7 know how to handle the information that you have
8 and you want your best people doing it.

9 Clearly there is no need, in my
10 perspective, to bring all the staff up to speed on
11 national security issues. What you do is you take
12 this group that you want to have work on those
13 files and tell them what the issues are. That
14 goes to what questions they ask so that they know
15 what the proper connectors are.

16 So to that extent, that is how I
17 would approach it. So I train those who would be
18 required do it. That doesn't mean they would
19 necessarily be doing it all the time, but when a
20 case came up they are the ones who think in terms
21 of national security, they know what the issues
22 are, they would know the role played by
23 headquarters, they would be familiar with the
24 three ministerial directives that are out there,
25 and they would know, obviously, INSETs and models

1 like that. So there are those skillsets that they
2 have that you don't want to have to start someone
3 off the ground with, and then who the community
4 is.

5 That is one of the things I
6 suppose that -- well, I know I will to be doing
7 right now, is using my skill and knowledge and my
8 contacts to bring in the right people to train
9 these people to say, "This is what you should be
10 looking at and this is why you should be looking
11 at it."

12 THE COMMISSIONER: Do you have any
13 idea at this point what percentage of the matters
14 that you deal with would have a national security
15 aspect?

16 MR. KENNEDY: I think there was
17 some information that was shared -- I don't want
18 to put it into percentages.

19 This is the confusion, I mean
20 people sometimes say it is national security
21 when -- it is in the eye of the beholder --and it
22 isn't. So there might be I think 40-some-odd
23 files where people made comments of that nature.

24 There are a couple clearly where I
25 think some of the people who attended before your

1 inquiry are also pursuing avenues with us and I
2 have to assume that those might be bona fide
3 national security cases from their perspective.
4 So I wouldn't get into a percentage. If you did,
5 that is 45 out of 200-and-some-odd, that is 20
6 percent is it?

7 I'm trying to think, 45 out of --
8 is it 2000?

9 Okay. My colleague says 45 out
10 of 2000.

11 THE COMMISSIONER: So you are
12 looking under 5 percent. Right?

13 MR. KENNEDY: Right. So the thing
14 is people don't know.

15 THE COMMISSIONER: That is right.

16 MR. KENNEDY: I think the proper
17 question is what is the reality in terms of
18 contact that ought to be looked at and behaviours
19 that are looked at as opposed to who is
20 complaining, because if you don't know, you are
21 not going to complain.

22 That is where I think the review
23 function is so important, because you wanted to
24 make sure that things are being done right.
25 Ideally, if the police are doing their job right,

1 there won't be any complaints. The complaint
2 again is a problem; it is not a solution. So I
3 don't know what kind of a marker it is.

4 THE COMMISSIONER: In terms of the
5 model as you envision it, would you see that there
6 would be a continuation of the RCMP investigates
7 complaints first, the first line of investigation?

8 MR. KENNEDY: That is a
9 significant issue. I currently have the ability,
10 under legislation, to instigate my own
11 investigation and my own hearing, if need be.

12 Looking at the system at large,
13 there is considerable merit in terms of the RCMP
14 doing the first tranche. The process right now --
15 and I use it generally for complaints -- has a
16 provision for informal ADR by the police, or the
17 individuals can do that just informally.

18 A lot of the complaints are fairly
19 minor and it really is a relationship issue in
20 terms of impoliteness, quality of service and
21 things like that. So those in fact can be
22 satisfactorily resolved.

23 Then there is the part where the
24 police themselves do the investigation and collect
25 the evidentiary trail. The RCMP, as I pointed

1 out, are in eight provinces. Well, actually they
2 are in all the province and all the territories,
3 so we are dealing with a national phenomenon,
4 which meant for us, if we had to go and do it, we
5 would need an augmentation of nothing else but our
6 travel budget to cover that off.

7 I think when you look at the
8 number of complaints that come in that are
9 winnowed out that actually go on for review, it is
10 quite a drop off. So a lot of people can be
11 satisfied.

12 The other thing is the RCMP, I
13 think, is different than other police forces to
14 the following extent. They are able, if they
15 construct it right, to bring in an independent
16 officer or group of officers to follow up and look
17 at something. It is harder if you are a smaller
18 provincial police force; it is all in-house,
19 particularly if the complaints are dealing with
20 the senior ranks, whereas being a national police
21 for, they do have the flexibility to bring someone
22 in.

23 I think the model where they start
24 to do it, but where I have the ability in the
25 appropriate case, because we mutually may agree

1 that there is no credibility in the police doing
2 it and therefore I will have to do it and bring in
3 the people to do it. There are cases like that.
4 The run of the mill I think they can do, but I
5 have to have the ability to do it, and more
6 importantly I have to have the powers I talked
7 about, which is to bring people in and to get them
8 to testify under oath and to compel the production
9 of documents.

10 So I think it is a marriage of
11 two.

12 One of the things I said, I want a
13 cost efficient model. If you want to set
14 something up where we are flying from Newfoundland
15 to British Columbia, and Tuktoyaktuk and so on, it
16 can be quite awkward.

17 So as long as one had that
18 balance, recognizing in some cases that I would
19 have to say I have to step in -- and clearly those
20 would be cases where my own judgment would inform
21 that or the public would inform me or the media
22 would inform me that it is at a point where there
23 is a lack of faith in the RCMP doing it and they
24 would probably realize that themselves and be
25 quite happy to hand it over.

1 THE COMMISSIONER: Also on the
2 question of powers, you mentioned that you would
3 propose that there be powers to bring all the
4 people in from federal actors, federal agencies or
5 federal departments. Is there any reason why you
6 wouldn't extend that beyond federal government
7 departments or agencies if the trail led
8 elsewhere?

9 I am thinking here to possibly the
10 private sector or to provincial or municipal
11 police forces or other provincial entities.

12 MR. KENNEDY: I think certainly
13 when a public interest hearing is held, it says
14 any person. And although I think there have been
15 cases in the past where other jurisdictions -- I
16 think it is not a problem with private
17 individuals. You would want them in there, if
18 they are impacted upon, definitely. It may be a
19 bit more of a challenge (because I am not sure
20 what the answer to this is), for instance,
21 bringing in someone from the OPP or Sûreté du
22 Québec to participate and whether or not they
23 would say you don't have jurisdiction.

24 THE COMMISSIONER: There would be
25 two things, I guess, and we can come to the second

1 one.

2 There would be the issue as to
3 whether you could bring them in for the purposes
4 of conducting your review, because say they were
5 involved in an INSET and you thought in order to
6 effectively review the RCMP's conduct within the
7 INSET it was necessary to hear from the provincial
8 actor who was in the INSET. So it would be the
9 power of subpoena, for example.

10 MR. KENNEDY: Yes.

11 THE COMMISSIONER: I guess the
12 second thing, which we can talk about later, I'm
13 going to come to it, is the question of how one
14 would work out a coordinated review so that
15 nothing slipped between the cracks.

16 Absent a constitutional problem
17 for the subpoenaing action, would there be any
18 reason from your standpoint that if the trail led
19 you to a provincial actor, you wouldn't want to
20 bring him or her in with their documents?

21 MR. KENNEDY: No. The logic would
22 apply I guess certainly in terms of when I said
23 looking at CSIS or looking at CSE and the
24 integrated model, if they are there. It would
25 certainly result in a better quality product.

1 THE COMMISSIONER: Yes, no wall in
2 terms of obtaining the information.

3 MR. KENNEDY: That's correct.

4 THE COMMISSIONER: Leaving aside
5 the recommendation or the remedy to later on.

6 MR. KENNEDY: Yes.

7 THE COMMISSIONER: Let me ask you
8 this: If, because of my mandate or otherwise, I
9 were inclined to recommend that the review/audit
10 power would only apply to the RCMP's national
11 security activities -- and I have read the earlier
12 submissions you made -- do you see the problem of
13 drawing the line as to where national security
14 ends and other things start as being something
15 that, while difficult, is manageable, or as being
16 unmanageable?

17 MR. KENNEDY: Like any problem,
18 you add a new element and by adding a new element,
19 you add complexity to it. So it obviously is
20 going to make things more complex.

21 As I say, who decides if it is
22 national security? If the individual complainant
23 says they cast it in that fashion, does it go to
24 the other body, and the other body says no, it
25 isn't and they decline jurisdiction and say go

1 away? Or is the underlying conduct abusive
2 behaviour that is unrelated to a national security
3 investigation, does it get addressed or not
4 addressed?

5 THE COMMISSIONER: Let me clarify
6 my question. I am assuming your model where
7 everything remains in the CPC so that
8 complaints -- I am assuming the complaints system
9 would be uniform for all types of cases, national
10 security and otherwise.

11 MR. KENNEDY: Yes.

12 THE COMMISSIONER: I am saying
13 when it comes to your self-initiated review/audit,
14 if that was just limited to RCMP national security
15 activities, for example -- and let me add one more
16 rider to it -- and if one were to add to that and
17 the Commissioner of the CPC shall have the
18 authority to determine for purposes of review what
19 constitutes a national security activity, okay,
20 then let me ask you the question: Is that
21 something that is manageable and what are the pros
22 and cons of doing that?

23 MR. KENNEDY: That is manageable.
24 As you point out, you have the model where I have
25 generic powers on the complaints side and I am

1 happy with that, and then the review. I could see
2 that the review would be easier there because you
3 have narrowed an area on its face so you would
4 look at headquarters, you would look at the
5 INSETs. There are definable areas of inquiry that
6 one could look at. So that would be doable.

7 I would, I suppose, have to do
8 what I currently do, which is use the complaints
9 anyways to look at broader issues such as police
10 pursuits. That would have you on the review bit
11 doing the monitoring of compliance in a defined
12 area.

13 THE COMMISSIONER: It wouldn't
14 exclude what other powers you had.

15 MR. KENNEDY: No.

16 THE COMMISSIONER: I am just
17 testing ideas out. You can understand I am
18 wrestling with these issues.

19 MR. KENNEDY: Yes.

20 THE COMMISSIONER: As I listen to
21 people come forward with different models, new
22 questions arise.

23 What strikes me, if I can make an
24 observation, is that drawing that line, which
25 everybody seems to concede is going to be

1 difficult. Some say more difficult than others
2 do.

3 Drawing that line, if the
4 complaints go to another review body, is going to
5 be more problematic simply because drawing the
6 national security line is going to determine the
7 jurisdiction of which body can deal with the
8 complaint.

9 MR. KENNEDY: Yes.

10 THE COMMISSIONER: In the model
11 you have been discussing, everything is staying
12 within the single body so that we don't have an
13 inter-review body jurisdictional battle.

14 MR. KENNEDY: What you then do is
15 you are taking the review portion and you are
16 contracting it down to say, okay, national
17 security. Certainly for review purposes that is
18 easier because there are spots you go to. There
19 might be outriders, but I think those outriders
20 would feed things into the main centres because
21 the INSETs would be in fact taking the lead on
22 cases. So yes, it would work.

23 THE COMMISSIONER: And the
24 disadvantage, I think, that you mentioned or that
25 has come up before is that if within the RCMP you

1 have officers potentially subject to two different
2 complaints processes, depending on which side of
3 the line it falls upon, that same problem doesn't
4 arise with a review in that you are not dealing
5 with a complaint about a specific alleged
6 misconduct, so to speak?

7 MR. KENNEDY: That's right.

8 THE COMMISSIONER: That is
9 something for me to dwell upon.

10 You have touched on this and I
11 don't know if you want to add anything more to
12 both what you have said now and what you have said
13 in the written submissions. I have read both of
14 the earlier written submissions.

15 Is there anything else you wanted
16 to say about the difference, as you would put it,
17 between the security intelligence activities, the
18 standards which apply to it -- this is the CSIS
19 milieu -- and the expertise needed to review it,
20 from that that relates to the RCMP and its law
21 enforcement actions with respect to national
22 security?

23 MR. KENNEDY: Well, no, I think I
24 have tried to shed some light in terms of the
25 clarity, particularly I guess with the degree of

1 independence of the function the police play and
2 the appropriateness or otherwise. When you sit
3 down, if you are doing a review or an analyst, you
4 have a different reflex as to well, they should or
5 shouldn't be doing this type of thing, whereas the
6 officer would say, well wait a sec, I'm an
7 officer, I'm sworn it uphold the peace, I'm going
8 to do my things and there should be no
9 interference with how I'm doing it. And I am
10 ultimately accountable.

11 I think but for the fact that many
12 of those investigations have not found themselves
13 expressed in criminal charges, we wouldn't be
14 having the review that we are having here. I
15 think is the fact you have presumably a couple
16 hundred, let's say, RCMP officers doing that work
17 and we have one case, so what is going on.

18 THE COMMISSIONER: No judicial
19 scrutiny, no effective judicial scrutiny.

20 MR. KENNEDY: Precisely. And that
21 is what we are trying to address, is that lack of
22 judicial scrutiny and the inherent nature of this.

23 I think if you are looking at it
24 as an analyst on the CSIS side, the things you
25 formulate will be far, far different. You would

1 be trying to control behaviours; that you would
2 not be authorized, I would think, to formulate
3 recommendations to try and control on the policing
4 side.

5 I don't know how it is possible to
6 do that mind change and say it doesn't apply here
7 and I am allowed to actually do something.

8 THE COMMISSIONER: You mentioned
9 about the ongoing investigation and the difficulty
10 that a review body may encounter in looking into
11 something that is the subject matter of an ongoing
12 criminal investigation.

13 Has that, in the experience of
14 your commission, been a significant problem in the
15 past?

16 I take it you haven't always
17 waited until the prosecution is finished.

18 MR. KENNEDY: I briefed myself on
19 this point, so the files I have looked at I have
20 had total cooperation, but you are asking for
21 historical.

22 I know there is an issue about
23 ongoing investigations, and one of the criteria
24 where, for instance, the commissioner when there
25 is a complaint that goes over, whether or not they

1 launch an investigation is whether or not it would
2 impact an investigation.

3 So if we had an ongoing one as
4 things presently stand, if I went over there, they
5 would say well, it is an ongoing investigation,
6 this would have an impact on it and it is not
7 timely for us to do it. And they would not be
8 instigating an investigation or review of their
9 own.

10 THE COMMISSIONER: If you applied
11 that to the national security field, that means
12 that you would never have an investigation except
13 in one case, because those cases, the
14 investigations go on indefinitely. I am not being
15 critical, but they seem to.

16 MR. KENNEDY: Oh, definitely. If
17 you looked at the IRA, I believe they have been
18 around in their current configuration for 70 or 80
19 years, so presumably the investigations, if one
20 were engaged in that kind of area, would be fairly
21 long.

22 I think you would have to merely
23 sit down and, if you had the power, say we are
24 going to go in and do a review. We are going to
25 do a review, and we are going to look at those

1 practices. It can be done in the fashion I have
2 talked about with the safeguards. It is not going
3 to result in public disclosure. My interest would
4 be more thematic as opposed to case-specific as to
5 what is going on, what the practice is.

6 I use information sharing as an
7 example, and things of that nature.

8 So I think you could do it without
9 impacting on the -- clearly a concern of the
10 police would be we have an investigation and
11 continuity of evidence. What are you going to
12 look at?

13 Clearly what you could do is get
14 copies of things so you are not interfering
15 with --

16 THE COMMISSIONER: Is there a
17 Stinchcombe problem with your work product?

18 MR. KENNEDY: I could never say
19 no, because I've seen some applications by defence
20 counsel for materials that were quite sweeping.
21 Clearly there is a significant participation by
22 CSIS in the Air India one and that flowed from
23 certainly the Stinchcombe application.

24 To my understanding, we haven't
25 experienced that in terms of anyone coming to us

1 for those materials. Any materials that we had
2 would be generated by the RCMP, which itself would
3 be the originator of the Stinchcombe application.
4 Anything after that would be our own assessment
5 and comments upon that information.

6 MS KRISTJANSON: If I could just
7 ask a question, is it not possible in the course
8 of an investigation or review that you might
9 interview witnesses who are involved in the piece,
10 and wouldn't that then create potentially a
11 Stinchcombe issue?

12 MR. KENNEDY: Potentially.
13 Anyone. Any time you do a document.

14 That is what I say, you can't say
15 no to Stinchcombe because it is not statutory; it
16 is constitutional and subject to interpretation by
17 the courts. It is something that has no bounds at
18 this stage.

19 Whether or not that would have to
20 be addressed or could be addressed, I'm not sure.
21 That is our current reality because statements are
22 currently taken from officers, from complainants,
23 and things like that.

24 The most obvious one is whether or
25 not an individual would self-incriminate, and that

1 is why I address that in specific.

2 THE COMMISSIONER: I suppose one
3 possibility is that you would have a statutory
4 prohibition, and then whether or not it would
5 survive section 1.

6 MR. KENNEDY: Precisely.

7 THE COMMISSIONER: I see one of my
8 colleagues back there smiling at me.

9 MR. KENNEDY: That is why I said I
10 am the last one to say -- amongst other things, I
11 was also responsible for five years at the
12 Department of Justice in trying to sort out
13 Stinchcombe issues on disclosure. So I am
14 familiar with it.

15 THE COMMISSIONER: You are more
16 familiar than I am.

17 MR. KENNEDY: Yes.

18 THE COMMISSIONER: Tell me, what
19 about the reporting of the enhanced CPC and the
20 model that you suggest, where you have indicated
21 that there would be copies of the reports sent to
22 the different individuals that you have said?

23 Have you had any thoughts -- and
24 this may be premature -- about the role if any
25 that the new parliamentary committee dealing with

1 national security might play in a reporting
2 structure when the matter related to national
3 security investigations?

4 MR. KENNEDY: Clearly we will have
5 to see what the legislation actually provides,
6 because my understanding is they are not sitting
7 as Members of Parliament so it would be a
8 statutory body which presumably would have
9 obligations and security clearances or some
10 obligations in terms of holding of information.

11 Depending on how it is structured,
12 it might very well be that the model would be
13 crafted by Parliament so that they could in fact
14 receive those reports.

15 When I am looking at the reports,
16 it would be in the context of different audiences.
17 Clearly, in our particular case, the Minister and
18 the Commissioner should receive exactly the same
19 copy and it should be unvarnished. It should be
20 much more detailed because you could provide them
21 with the classified documents. Others that would
22 go to other fora would be tailored differently
23 because you have to be aware of the security
24 classification, but I gather if they had a
25 parliamentary model, if there was a committee

1 there that had appropriate security clearances,
2 the Minister could clearly turn around and say,
3 "Yes, you should be prepared to share it with
4 them" or it might be -- but that is a political
5 decision and I don't know how they are going to
6 structure the Act.

7 THE COMMISSIONER: Right.

8 MR. KENNEDY: But I would
9 anticipate, just as now, they would be requested
10 to appear, in any event -- the Justice Committee,
11 the Subcommittee on National Security, the Senate
12 has a committee -- and you appear before them and
13 they will ask questions.

14 The challenge to date is that you
15 cannot discuss any classified information. This
16 committee I believe is designed in part, or will
17 be designed in part to address that hurdle.

18 THE COMMISSIONER: Yes. Right.

19 Let me just turn to the
20 integration issue. Just by way of background,
21 obviously, as you pointed out, there is an
22 increasing integration in the national security
23 field -- others as well, but we will deal with
24 national security -- between the RCMP and other
25 law enforcement agencies, but also between the

1 RCMP and CSIS and other federal actors who are in
2 the area.

3 As you mentioned, some have
4 suggested need, in the federal realm, a super
5 agency which would govern all national security --
6 which would review all national security
7 activities.

8 I take it that you, from your
9 experience, are not particularly enamoured of
10 that.

11 Short of that we have a couple of
12 proposals, a couple of options on the table.

13 One is that SIRC take over the
14 review, both the complaints and the audit/review
15 process of which we have spoken, for the RCMP's
16 national security activities and would continue
17 its current jurisdiction with respect to CSIS.

18 I am not putting this in sort of a
19 confrontational way at all, but I'm wondering
20 whether you have anything to say, from your
21 perspective, about the feasibility or desirability
22 of that type of model?

23 MR. KENNEDY: Well, actually,
24 without knowing what position SIRC took, my
25 analysis, as you have heard it, indicates that

1 there are different functions that are served by
2 them, different reflexes, different perspectives.
3 If you actually had that -- I can't see how you
4 could deal with complaints or audits without
5 dealing with the core mandate that happens with
6 the CPC in its everyday dealings with the RCMP. I
7 just can't see how that would be addressed. So
8 you would have the possibility of a conflict.

9 One of my colleagues advised me
10 that there would be a gentle learning curve.
11 Having been in the criminal law area a long time,
12 as well as national security, I think it would be
13 an understatement to describe a gentle learning
14 curve to find out the law enforcement milieu and
15 the culture that is there and the constraints that
16 are there. That would be probably like describing
17 the Himalayas as a gentle rolling hill, slope,
18 yes. It is much more significant.

19 So I think the impact on SIRC
20 would be much more dramatic than they think. I
21 think at the end of the day inadvertently it would
22 cause mischief in terms of what are you being told
23 to do and how are you going to action those
24 things.

25 I already pointed out the

1 difficulties: What is a complaint? Who thinks a
2 complaint is what it is? So I don't think that --
3 that to me isn't attractive.

4 But there is the very issue that
5 has caused the government to give birth to the
6 inquiry that currently exists, which is: How do
7 we then get further advanced than the current
8 model that we have? That is where I think the
9 gateways is the approach, because I don't think
10 the overlap is as dramatic as we talked about.

11 When you talked about various
12 players we did talk about the collectors. My
13 understanding, for instance if you look at the
14 INSET model, I believe there is a CSIS employee
15 who was an INSET model.

16 THE COMMISSIONER: Right.

17 MR. KENNEDY: My understanding is
18 that employee is not there as a representative of
19 the intelligence agency. What that is is a
20 borrowed skillset of someone who knows how to
21 interpret information. So you don't have CSIS
22 sitting there, but they have seconded personnel
23 and said "There it is, there is a skillset for
24 you."

25 Likewise, the other actors who

1 there are there fore different purposes. They are
2 consumers or they take product and then they
3 action that in terms of enforcement activity.

4 That is why I described it as
5 these mandates touch, they don't overlap and we
6 can exaggerate in terms of the what pool of
7 information is. If one I suppose could actually
8 have a bird's eye view looking down at the
9 totality of the activity, let's say collective
10 activity by CSE as an example and CSIS and then
11 see how much actually flows to the RCMP from that,
12 I would suspect it would be more akin to a trickle
13 than even a stream.

14 In other words, they have to be
15 judicious in terms of what their primary mandates
16 are and then to the extent of what is relevant and
17 therefore what would be shared with the RCMP to
18 assist them. Because the RCMP is --

19 THE COMMISSIONER: Is CBSA,
20 though, or Customs properly a consumer or a
21 collector, or both?

22 MR. KENNEDY: In terms of
23 intelligence product they would be a consumer. I
24 mean you could say you are sitting there and you
25 receive it and you think you are collecting it,

1 but I think they are a consumer of that kind of
2 product.

3 They would have their own -- I
4 believe, and you can have experts from that area
5 come, but clearly there would be product that they
6 would receive from their counterpart agencies in
7 other countries as well that provide similar
8 functions.

9 THE COMMISSIONER: They might
10 that, but wouldn't they with people who are
11 presenting themselves at the Canadian border
12 potentially be collectors of information in that
13 context?

14 MR. KENNEDY: Yes. The fact that
15 you have crossed the border, you have presented
16 yourself, and that could be relevant information,
17 because every time you cross the border you are
18 leaving a trail of coming and going.

19 I think that is far different,
20 though, in terms of substance than someone
21 conducting surveillance or running an undercover
22 operation or doing wiretaps or search or seizures.

23 THE COMMISSIONER: We know in the
24 drug milieu, for example, Customs would be
25 collectors of information in certain

1 circumstances.

2 MR. KENNEDY: Yes.

3 THE COMMISSIONER: They would
4 detain people and conduct searches and do those
5 things -- some of the types of things that the
6 RCMP do, albeit in a different context.

7 MR. KENNEDY: Yes. I did eight
8 years of prosecutions in that area and you are
9 right, because there are unique powers in terms of
10 the Customs Act when you enter the country.

11 THE COMMISSIONER: Yes, they do.
12 The courts have now had to deal with it and there
13 is a body of jurisprudence, and so on.

14 MR. KENNEDY: Yes.

15 THE COMMISSIONER: It just struck
16 me -- again I'm not quarrelling -- but when you
17 divided the collectors and the consumers it struck
18 me that Customs or CBSA may be a bit of both.

19 MR. KENNEDY: I tried to do it in
20 terms of just starkness, in the sense that the
21 raison d'être for the three that I mentioned is
22 fairly clear. There are clearly some others that
23 you would quite probably put a little bit here.

24 I would suspect that National
25 Defence, although we haven't talked about National

1 Defence here, clearly would be doing work on its
2 own behalf that would be unique to National
3 Defence might have other uses. So you could say
4 that is the case.

5 But certainly looking at one of
6 your questions, there was a list of a good 20,
7 which I know is divined from, in the broadest
8 sense, the public almost national security
9 audience, but those who might be interested in a
10 product. Many of those would have zero. I mean,
11 the Department of Justice doesn't have an
12 intelligence capacity and doesn't do it, but there
13 might be some interest in the product.

14 Public Safety and Emergency
15 Preparedness Canada, obviously would, because they
16 have to do consequence management if there is a
17 terrorist event to coordinate behaviours and
18 threats and things like that.

19 So there are others that are
20 classically consumers, others that have something
21 that you say, "Well, that goes into the mix and
22 milieu."

23 To the same extent that the police
24 officer offer a beat doing a case dealing with a
25 forged document, many of the groups that

1 historically have been looked at have been
2 involved in petty crime activities and forged
3 documents and things like that. That information
4 at some stage may find its way into the bigger
5 picture as well, but that was not necessarily the
6 driver, it is just that the information was there,
7 someone did the matrixing and said, "Oh, these
8 pieces fit together into this hole."

9 So I think at the end of the day
10 you can still have, for our discussion purposes,
11 the broad categories of the three that we call
12 collectors and then the others which are
13 consumers.

14 THE COMMISSIONER: Accepting the
15 model you propose where the three review bodies
16 stay in place and are responsible for their own
17 agencies -- and I hear what you say about
18 statutory gateways which it seems to me are
19 primarily designed at exchanging information to
20 assist one another's review -- could there be
21 something that is more than that in cases where
22 there has been integration operation.

23 Some point to this inquiry, as an
24 example, they would say, I think what is in the
25 public realm is that I have reviewed the conduct

1 of both, and indeed SIRC and the CPC found that
2 under the existing regime they couldn't do a
3 complete study so I had a broader jurisdiction
4 than either one.

5 Could one look at a model in
6 integrated operation cases, where it is warranted,
7 there would actually be a review conducted that
8 would involve more than one review agency as
9 necessary? You touched on it in one of the
10 questions in our "further question" paper, refers
11 to the possibility of establishing what I would
12 suggest would be a statutory body composed of the
13 chairs of the three review agencies, perhaps with
14 an independent Chair, who knows, but whose mandate
15 wouldn't be broad. It would be limited to
16 ensuring that there was proper review of
17 integrated operations within the federal collector
18 environment.

19 I can't think of all of the
20 various ways, clearly sharing information would be
21 one of them, but in addition to that, it would
22 look upon, depending on the case, there could be
23 secondments from one to another or actually
24 establishing an ad hoc review body to deal with
25 the integrated matter which would draw upon the

1 expertise and the resources of each of the
2 individual review bodies.

3 But whatever the model, the
4 overarching committee would have the
5 responsibility to make sure when there was
6 integrated operations, either formal or informal,
7 that nothing fell between the cracks in the review
8 exercise.

9 I don't know what sort of staff
10 would be necessary. It doesn't strike me
11 initially it would be a big staff, because they
12 are only dealing with preventing things falling
13 between the cracks.

14 I will come back to another idea
15 of something else that somebody else put forward,
16 but is that an approach to the integration problem
17 that strikes you as sensible?

18 MR. KENNEDY: Yes. I will go back
19 to why I made my submission, I said I wanted to
20 enrich your options, so I am going to be the last
21 one who is going to take away one of your options.

22 I think what we have to do is have
23 something that at the end of the day is a bit like
24 a rheostat in the sense of you gently turn the
25 light up as opposed to a switch that is flipping

1 off and on, because clearly there will be issues,
2 like I say, that are standalone that we can just
3 look at.

4 There are ones where there is a
5 peripheral involvement, and using the model I have
6 talked about where you can call in some folks from
7 the other side -- so that is where the edges are
8 addressed and you can send the alerts. That is
9 the gateway ones.

10 I have already seen some requests
11 for us that say, "By the way, will you and SIRC
12 commit to parallel review, to the two of us. So
13 people are already asking us in some cases "Will
14 you start to do a parallel review?"

15 The very fact that your inquiry
16 was established means that at some stage if we
17 don't successfully have a model to address
18 something that the gateways model or standalone
19 model doesn't work for, someone is going to say,
20 "Well, we have to come back and we will call in
21 someone who has experience in the area and Justice
22 O'Connor will have another job."

23 THE COMMISSIONER: He will be
24 retired to northern Canada by then I think.

25 --- Laughter / Rires

1 MR. KENNEDY: No, they will just
2 have to pay you a lot more money.

3 So I guess at the end of the day
4 you have to have a model that says: Are we going
5 to end up where we were?

6 So if the cutout is some capacity
7 written in the legislation for the respective
8 chairs to get together where there is a common
9 theme or it is of such a nature that the
10 standalone or the reports are inadequate, that
11 they can, in fact, get together and do something.

12 So I don't see that as somebody
13 has to sit up there all the time. I see what it
14 is as: Chairs, you are acting in a responsible
15 fashion. This is one where you are going to do
16 it, you are going to do it. If we don't
17 cooperate, there is a possibility that we are
18 going to come to different conclusions, different
19 findings and different recommendations.

20 So in those cases, where hopefully
21 they are a rarity, I have nothing to oppose an
22 idea that resolves it, because if we don't it we
23 will be back here again.

24 THE COMMISSIONER: I'm not sure
25 the extent of the concern, but some say with the

1 increase of integration of activity there is a
2 very real concern of things falling between the
3 cracks. They would posit, they would say: Why
4 would you have two or three separate
5 investigations, why not have one like the Arar
6 Inquiry and do it?

7 I think those who argue for that
8 would say: Well, that at least in going forward
9 you should have a permanent structure that is
10 there that is available to satisfy that need as it
11 arises.

12 MR. KENNEDY: I'm in favour of
13 less is more in the sense that you already have
14 structures that are in place. It is a proven
15 human reflex or instinct once you start something
16 to build. I can see the first submission, "I
17 don't have sufficient resources.

18 THE COMMISSIONER: Right.

19 MR. KENNEDY: I have already
20 talked about the mischief already of large review
21 bodies now looking at the same thing and almost
22 coming up with contradictory solutions.

23 You have bodies that are there. I
24 think the thing is to try to create a catalyst
25 that allows them to work better. That is why I

1 have talked about the enhanced powers. Then I
2 think what you have to do through the gateways,
3 I'm talking about allowing those bodies to do
4 something.

5 I have certainly heard in the
6 past submissions from heads of agencies that
7 say -- I already have 10 or 12 that are sort of
8 looking at me now and you are talking about a
9 thirteenth. I'm not sure if you are better off
10 creating a thirteenth as you are trying to look at
11 the 12 you have.

12 THE COMMISSIONER: As this
13 suggestion goes, this wouldn't be looking at the
14 agencies. This wouldn't be creating any new
15 review bodies. It would be simply a coordination.
16 There would be nothing new in terms of a further
17 examination of CSIS or the RCMP. It would just be
18 simply saying: Rather than having two or three
19 ongoing investigations let's have one, and the
20 only way we can do that is to get these people to
21 work together rather than working separately.

22 MR. KENNEDY: Well I, in
23 principle, have no problem with that. It would be
24 ones where the heads would sit together and say
25 this is the appropriate case.

1 I have currently, under the
2 legislation for instance, a model that says if
3 there is an issue of the public interest hearing I
4 can put a panel in place, so it is more than one
5 person. So you could have mixed -- obviously more
6 than one person. So you could have one of those
7 persons would be SIRC and the CPC.

8 THE COMMISSIONER: Another role
9 that is suggested that there should be either for
10 a super agency, or a coordinating committee agency
11 like we just spoke or some other group, is that we
12 in Canada should have somebody who sits on top of
13 the entire security intelligence apparatus within
14 the federal government and who can look too see
15 from sort of a higher level as to what issues are
16 developing and, in particular, what trends are
17 developing which have the potential to infringe
18 upon individual liberties, and so on. The
19 argument would be that the Chair of the each of
20 the review bodies and people within the specific
21 departments will tend to focus on their own
22 terrain and the problems that arise within their
23 body, and that we need somebody who is
24 independent, who has a mandate to take, on a
25 regular basis, a look at what is going on.

1 I'm not sure, with your knowledge
2 the machinery of Canadian government, whether you
3 have any ideas as to whether that is an idea that
4 has merit and, if so, what would be a good way to
5 go about it?

6 MR. KENNEDY: Well, if the
7 agencies are doing their job in terms of the
8 thematic issues they are identifying, it will come
9 out in their recommendations and their reports to
10 Parliament -- to the Minister and then the
11 Minister tables with Parliament.

12 The focal point may very well be
13 the parliamentary committee as opposed to
14 somewhere else, because you get to a level where
15 you should be dealing with the macro, not micro
16 issues.

17 THE COMMISSIONER: Yes.

18 MR. KENNEDY: We are doing our
19 things that are coming up. Just by looking, I
20 would think, across the board at those reports you
21 are going to start to see trend lines that either
22 the Chairs themselves should be talking about or a
23 parliamentary committee that is looking at it is
24 going to see the trend lines. So there may be
25 enough mechanisms that are in place that would

1 cause that to occur.

2 In terms of the immediate cluster,
3 we are looking at two of the major players
4 obviously go to the Minister of Public Safety, so
5 you can see there what is going on. CSE doesn't
6 because it is over to the Minister of Defence.

7 Nothing would be necessarily
8 generated by the larger cluster of groups that we
9 have identified, which are the consumers, so I'm
10 not sure what would be surfaced there that one
11 could look at.

12 THE COMMISSIONER: The argument to
13 me, as I understood it, or the submission was that
14 there was advantage to having an independent look
15 at this and that the independent Chairs of the
16 three review bodies, as an example, stand apart
17 from the political process and would be sort of
18 uniquely positioned, or somebody else, to take
19 this type of independent look at trends and
20 practices, and so on.

21 MR. KENNEDY: One of the things
22 that I certainly saw when I looked at the CSIS
23 legislation was there as was an ability to task,
24 that SIRC can task the IG to look at things and
25 certainly the Minister can task the IG or the

1 Minister can SIRC to do certain kinds of review.

2 If it you had an ability to have
3 some statutory collegiality amongst the three
4 chairs, they may look and see trends and when they
5 do their review activities of what are we going to
6 look at for the year, there can be some discussion
7 there, let's look at this item.

8 When I also talked about other
9 review bodies, if the Privacy Commissioner is
10 looking at stuff, she should be signalling to us.
11 Rather than going off and trying to do a separate
12 audit, they should be working with these Chairs
13 and we could put that on our agenda as to what
14 reviews we would be conducting.

15 I think that would be more
16 informed than having someone else sitting up there
17 trying to do this and I think that would address
18 the commonalities.

19 THE COMMISSIONER: The advantage
20 of that is that it makes use of the existing
21 institutions and the existing chairs.

22 MR. KENNEDY: There seemed to be
23 in one of the submissions a suggestion that
24 somehow if you are a chair looking at an
25 organization, you get captured by the culture of

1 the organization. You can keep going ad infinitum
2 and I guess everyone gets captured at some stage.

3 I would prefer to say that you are
4 developing some expertise and know what to look
5 for and what to do. In any event, the mandates
6 are generally prescribed by statute in terms of
7 what their terms are, so there is a refreshing of
8 anyone who is captured.

9 I haven't seen too much capturing.
10 Most of the behaviour is fairly independent in
11 terms of asserting what they think should or
12 shouldn't be done.

13 I would prefer to build on that
14 and try to fashion the collegiality that you might
15 need and an ability to coordinate what they are
16 going to look at so that thematically if there is
17 an issue, that they are all looking at that, share
18 the reports and maybe come up with a common
19 report.

20 THE COMMISSIONER: We are drawing
21 towards the end of the time. My counsel have a
22 few questions.

23 MS WRIGHT: Mr. Kennedy, on that
24 point, this might be a good moment to put a
25 thought to you that was raised this morning: that

1 you could very well empower review bodies or
2 people, public authorities, to work together, to
3 cooperate, but either due to human nature or
4 resources or capacities, or whatever -- and we
5 heard this abroad as well -- that there may not be
6 cooperation; that it may not actually happen as
7 robustly as you would like.

8 One thought could be that if there
9 were a statutory mandate there, that if that was
10 the charge that they had, that there might be more
11 cooperation in that event.

12 Do you in all your public
13 experience have any thoughts on that?

14 MR. KENNEDY: I don't it would
15 probably be a lack of willingness to cooperate.
16 The human dynamic is each organization has its
17 priorities, so there might very well be, if I use
18 SIRC, a major issue they are looking at, and they
19 say yes, Paul, we agree with you, but I have a
20 major one I am doing now and it is consuming my
21 resources. That is probably more the reality than
22 anything else.

23 I find realistically you can't
24 force anyone to do anything. People respond to
25 pressure. Clearly one of the issues here is

1 public interest, accountability. Post-9/11, even
2 back to 2000 with Ressayre it started but certainly
3 post-9/11, even higher, the accountability for
4 organizations such as our review body is the
5 likelihood of appearing either before the Senate
6 or a Commons committee saying what's going on.

7 Certainly Parliament has increased
8 and strengthened its role there and its profile.

9 Those are the things that are
10 going to happen. They will be saying are you guys
11 cooperating or not?

12 I am looking at the Senate
13 committee. It has been very high-profile in terms
14 of articulating its concerns in many of these
15 areas, not just going away but being a strong
16 advocate and saying there should be a change. You
17 haven't changed. How come there isn't change?

18 I could well envisage appearing in
19 those forums saying are you guys cooperating or
20 not, assuming the framework provides for that.

21 I think it is more to get rid of
22 the inhibitors and the process after that drives
23 itself, and people I don't think will be acting in
24 bad faith. If they are saying we are not working
25 on that, it is because there is a bigger issue

1 they are working on. You always have to triage
2 everything. That is just life.

3 MR. FORESTER: Mr. Kennedy, you
4 touched on this a little bit when you were talking
5 to the Commissioner about the expertise in
6 national security matters that would be required.
7 When you add to that considerations of secrecy and
8 confidentiality that national security matters
9 raise, do you envisage a separate subgroup in the
10 CPC to handle these matters or is it something you
11 envisage every member of the CPC potentially being
12 involved in RCMP national security investigations?

13 MR. KENNEDY: No. I believe that
14 there is expertise, and the expectations are very
15 high. In respect of the powers I have asked for,
16 I said access to everything except for cabinet
17 confidences. So separate from national security
18 it is something that, in theory, would mean in an
19 appropriate case you might have human source
20 information. You would certainly have information
21 that would be sensitive in terms of ongoing
22 investigations.

23 The very fact that you have
24 personal information on people that are
25 investigated for serious crimes in and of itself

1 requires the greatest adherence to security, both
2 on policing and national security matters. The
3 information exchange from foreign partners, those
4 relationships are very, very important and can't
5 inadvertently describe them.

6 So there has to be within the
7 institution itself an awareness and a culture as
8 to what you have and how it is kept and it is
9 there.

10 Separate from that, you don't want
11 to have an expert who is not doing something. So
12 you focus on -- and I think the very high profile
13 national security -- developing someone who has
14 in-depth knowledge in that area.

15 That doesn't mean every one. I
16 would say I want the best team and I want enough
17 depth in it so that through the normal rotation of
18 people who leave and stuff like that, you are not
19 handicapped. But you have to focus through this
20 whole continuum cluster of people that develop a
21 working knowledge and expertise in it.

22 MR. FORESTER: One brief
23 follow-up.

24 You talked before about less than
25 5 percent of the current number of cases the CPC

1 has that touch on the RCMP's national security
2 mandate. When you look at it from the point of
3 view of the resources or the percentage of CPC
4 resources used, does that same figure hold true?

5 What I am trying to get at here is
6 there anything from your experience to date about
7 national security investigations which may suggest
8 they are more resource intensive than other
9 investigations?

10 MR. KENNEDY: When I talked about
11 the numbers, the percentages, it was the context.
12 I think there was something like 2,000 cases, so
13 your percentage is relative to your base. So if
14 the base is a lot of complaints -- where I would
15 suspect maybe with SIRC using the same numbers the
16 percentage would be greater because the base is
17 large. There is a very large base here.

18 What I would think is -- and part
19 of the problem here is you are dealing with the
20 unknown. I don't think it is necessarily going to
21 be a lot of complaints as such, because the
22 dynamic would continue to exist that people don't
23 know, and people who don't know aren't going to
24 complain.

25 So I think the capacity is to

1 address that phenomenon, and that is through your
2 research side. And to that extent you are a
3 dealing, as I said, more with systemic issues and
4 practices than you are individuals. The
5 individuals are merely symptomatic of something
6 else.

7 So you can be much more strategic,
8 therefore, in terms of what you look at.

9 A simple example was the fact that
10 post-9/11 there were three ministerial directives
11 that came out dealing with police activity in the
12 area of national security. Those three are very
13 similar to ones that exist for the security
14 intelligence services, deal with sensitive
15 institutions, and things like that.

16 So what you say there is okay,
17 this is a slightly different ball game than just
18 policing. Therefore, it is appropriate, and those
19 directions then influence behaviours. Here you
20 are dealing with a smaller group of police that
21 involve themselves in this activity.

22 So to that extent I am saying you
23 don't need a huge amount of resources. You can be
24 targeted because you are looking at targeted
25 areas. You are looking at targeted investigations

1 and you are looking at specific policies that
2 apply. And that is using the review model which
3 is, as a subgroup, just looking at national
4 security.

5 So it is doable. Would it require
6 more people? Yes. Would it require maybe a
7 different kind of person and a different kind of
8 knowledge? Yes. But it is also one that builds
9 on top of the base that is there because of the
10 culture that is unique to policing.

11 MR. FORESTER: Thank you.

12 MS KRISTJANSON: I have one
13 question, Mr. Kennedy, and it relates to the
14 implications of your model for the appointment
15 process to the CPC.

16 It is a very unusual statute. I
17 believe there is a potential to have 31 members of
18 that commission, given the reserved rights of
19 contracting provinces to appoint.

20 If a recommendation were made that
21 expanded the powers in the way that you recommend
22 and gave even greater intrusive ability into very
23 private matters, would you think it appropriate to
24 have a potentially 31-member commission being able
25 to access that information, or do you think it

1 would call for another kind of structure?

2 MR. KENNEDY: I think we have to
3 look carefully at what we are looking at here.
4 The contracting aspect deals mainly with work that
5 would be other than what is called national -- the
6 RCMP using its national mandate.

7 I think that is how to appear to
8 approach it. I think they currently view in the
9 drug work that is done in the provinces, certainly
10 for billing purposes, is billed against the
11 national budget and is not billed to the provinces
12 for their provincial budget.

13 So if you are looking at activity,
14 it would be probably not in the contract role but
15 it would be as a national police role.

16 The national security function is
17 carried out under the Security Offences Act, which
18 is the primary one that gives them the lead, would
19 be a national policing role. I would have to look
20 and see.

21 You would have to look at because
22 I think the model says if there is a complaint
23 that originates in B.C., it is a contract policing
24 role. Then the person we appoint to do the
25 hearing is hopefully from that province to give it

1 a local flavour.

2 I think in terms certainly of
3 national policing, if we had national security
4 stuff, that I think should be a smaller group and
5 there would be an exception to that, however they
6 wanted to characterize it, whether it was contract
7 policing or not, that it should be a person with
8 expertise in that area who is looking at it. It
9 isn't a case of giving 31 people access to that
10 kind of information.

11 The reality, too, is there is only
12 the chair and the vice-chair, and the last time
13 they did a hearing it was Mr. Justice Huggeson in
14 British Columbia who was brought in, as a former
15 judge, to hear those things.

16 So I would say yes, you would want
17 to look at it. You would want to see if it is
18 national security. You would want to make sure
19 that you weren't trapped into a model that said I
20 had to go and hire someone from that province to
21 act in the hearing, and you would want to make
22 sure that it was a person with knowledge and
23 experience in the area.

24 THE COMMISSIONER: That brings us
25 to the end of our time.

1 Let me thank you again. It has
2 been very, very helpful. I think it has been a
3 useful discussion, a good exchange of ideas, and I
4 appreciate your thought and the care that you have
5 taken in presenting your ideas.

6 I indicated, not today but I
7 indicated earlier, that there will be an
8 opportunity to reply, to make further submissions
9 up to December 19th, in writing. So if anybody
10 listening wishes to add anything further, they are
11 more than welcome to do so.

12 MR. KENNEDY: Thank you very much.
13 It has been a pleasure.

14 By the way, although my colleague
15 didn't say anything, I can assure you he has been
16 working with my intensely over the last couple of
17 weeks. If there is any substance to what I have
18 said, we can also thank Mr. McDonell.

19 THE COMMISSIONER: Thank you very
20 much, Mr. McDonell. We are aware of that.

21 We will take a 10-minute break.

22 --- Upon recessing at 3:00 p.m. /

23 Suspension à 15 h 00

24 --- Upon resuming at 3:10 p.m. /

25 Reprise à 15 h 10

1 THE COMMISSIONER: Our next
2 presenter is the International Civil Liberties
3 Monitoring Group, represented by Mr. Warren
4 Allmand, who is well-known to everyone.

5 I just was advised his most recent
6 appointment, I guess election, was to the Montreal
7 City Council.

8 Is that right?

9 MR. ALLMAND: Last week.

10 THE COMMISSIONER: Congratulations.

11 MR. ALLMAND: Thank you. A small
12 part of my old constituency.

13 THE COMMISSIONER: That's great.

14 Mr. Allmand, would you like to
15 make a presentation first and then we may have
16 some questions.

17 SUBMISSIONS

18 MR. ALLMAND: First of all,
19 Commissioner, please excuse my uniform, but I
20 can't get my cast through my suit sleeve. So I
21 had to come dressed like this. I apologize.

22 Just to put on the record once
23 again the International Civil Liberties Monitoring
24 Group is a coalition of 34 NGOs, trade unions,
25 faith groups, refugee organizations, environmental

1 groups, and so on, who came together after
2 September 11th, 2001 to monitor and take action
3 where necessary when government policy or
4 legislation would infringe on civil liberties in
5 the aftermath of that terrible disaster.

6 In our written submission of
7 February 21st, 2005 regarding the policy review,
8 we strongly recommended an agency equivalent to
9 Option E in your consultation paper with certain
10 modifications. Such an agency would be based on
11 the SIRC model, one might call it a super SIRC,
12 and its jurisdiction would apply for review
13 purposes to all federally regulated national
14 security operations.

15 So it would have the right to
16 investigate CSIS, RCMP, CSE, the Border Services
17 Agency, the National Risk Assessment Centre, and
18 Departments of Transport, Foreign Affairs, and so
19 on, wherever there was a national security
20 operation of one sort or another which was subject
21 to concern or complaint.

22 It would have the power to audit
23 and to investigate complaints.

24 To point out what we recommended a
25 bit further, all complaints or complainants who

1 felt that their complaint was based on security
2 intelligence would have the right to go to this --
3 I will call it super SIRC and lay their complaint
4 there. There would be an initial sort of
5 committee that would check the complaint to see if
6 it had any aspect of security intelligence. If it
7 had any aspects whatsoever, if there was doubt, it
8 would stick with super SIRC.

9 If it was found that it was a
10 complaint completely dealing with ordinary police
11 work, law enforcement, highway patrol or whatever,
12 it would be sent to the CPC.

13 The decision with respect to the
14 triage would be with the super SIRC.

15 The super SIRC and the triage
16 committee would have with it certain
17 representatives from the CPC, so they could sit
18 and work with the committee of the super SIRC in
19 the triage operation.

20 This agency also could deal with
21 complaints regarding provincial and municipal
22 police forces when they participated in joint
23 operations with the RCMP or CSIS. Our arguments
24 for that are that national security is a federal
25 government responsibility under the Constitution.

1 If provincial or municipal police forces
2 participate in national security work, then they
3 should be subject to overview by a federal agency
4 as well.

5 In addition to receiving
6 complaints, the super SIRC agency would have the
7 right to initiate its own investigations, in other
8 words, audit if they saw patterns developing that
9 concerned them. If there were issues that came to
10 their attention but were not the subject of
11 complaint, they could launch their own audit and
12 investigation.

13 They could also do so at the
14 request of the National Security Committee in
15 Parliament that we also, by the way, supported.
16 We think that is complementary to this new agency,
17 and I will refer to that in a minute.

18 Governments could ask them, as
19 well, the provincial government, to investigate or
20 to do an audit, the federal government, and so on.

21 They would have the right to
22 subpoena documents and witnesses and with full
23 access to all evidence in all the agencies that I
24 referred to.

25 They could also have hearings in

1 camera when they felt it appropriate to do so.

2 And they would issue at the end of
3 their audit or investigation on complaints -- they
4 have the right to submit specific and general
5 reports in both public and confidential versions
6 to the responsible ministers, but the public
7 report would always be laid before Parliament and
8 made available generally. And the confidential
9 report we would hope would be referred to the new
10 National Security Committee of Parliament in order
11 to ensure follow-up.

12 That would be one of the roles
13 that we see the National Security Committee of
14 Parliament doing, is following up on the reports
15 of this super SIRC agency.

16 In addition, we suggest that this
17 agency should have a public education mandate to
18 assure that their reports receive public
19 attention, because what is the good of reporting
20 simply to Parliament and to this committee and to
21 the responsible minister? I think the public has
22 a right to know what happened in particular cases,
23 and they would need a certain mandate in order to
24 do that properly.

25 They would not have the right to

1 make binding orders, but in their findings and
2 recommendations they could include, for example,
3 recommendations to correct documents, records and
4 decisions. They could recommend giving
5 compensation. They could recommend changing
6 directives, practices and protocols. They could
7 recommend release from custody. They could
8 recommend the reinstatement of personnel that
9 might have been fired or let go. They could
10 recommend disciplinary measures for police and
11 security agents, any other matter that justice and
12 our Charter requires.

13 In its annual reports the agency
14 should refer to its previous recommendations in
15 order that there is a follow-up and that nothing
16 is forgotten or lost.

17 We see, as with SIRC, that the
18 members of this super SIRC would also be sworn
19 members of the Privy Council, that they would be
20 persons of high calibre, having a reputation of
21 competence and integrity, nominated by the federal
22 government but approved by the leaders of the
23 officially recognized parties in Parliament,
24 similar in a certain way to how SIRC operates now.

25 They should have total

1 independence and objectivity and they should have
2 sufficient resources to properly accomplish their
3 mandate.

4 As I said earlier, in addition to
5 the creation of this super SIRC, we would also
6 recommend the establishment or going ahead with --
7 because they have already agreed in principle to
8 it -- going ahead with the National Security
9 Committee in Parliament, and a principal mandate
10 of such a committee would be to ensure follow-up
11 on the recommendations of this agency.

12 That was our recommendation last
13 February.

14 Having monitored these hearings
15 since last February, we are now even more
16 convinced and more supportive of such a
17 recommendation.

18 At that time our principal
19 arguments for that recommendation were the
20 following:

21 First, that there are now a large
22 number of government agencies federal, provincial
23 and even municipal, if we count municipal police
24 forces, carrying out security and intelligence
25 activities or operations, some extensive, others

1 limited. The Privy Council recently listed 24
2 such agencies and ministries, most of which are
3 not subject to any oversight or review or any
4 adequate review regarding security and
5 intelligence.

6 Another argument was that the
7 security and intelligence reports and actions
8 which might compromise a citizen's rights, these
9 reports and actions are built up with information
10 which might originate in many places. They might
11 originate with the RCMP, with CSIS, with Foreign
12 Affairs Canada, with Immigration or even with
13 overseas security intelligence agencies, with the
14 FBI or the CIA, or with the British, the French,
15 the Israeli, or whatever.

16 The question is how do you
17 investigate the legality or the reliability of
18 such reports which impact on individuals in Canada
19 if you don't have one agency that can look at
20 every possibility; that can follow the evidence
21 wherever it may lead?

22 A third argument was that many of
23 these agencies share information which may or may
24 not be reliable, and they also participate in
25 joint operations.

1 With respect to joint operations,
2 sometimes they can be formalized, but very often
3 they may be informal. If you give a certain
4 agency just the right to investigate when there
5 are formal joint operations, then I think you are
6 missing a lot and a lot will fall between the
7 cracks.

8 Again, with so much sharing of
9 information and so many joint operations, how do
10 you get to the truth? How do you look at all of
11 these, at every source of information, at every
12 price and every procedure without one
13 comprehensive central agency that has the power to
14 do that?

15 Added to those arguments since
16 last February, we have seen through the hearings
17 that you cannot only look at the past, you cannot
18 only look at what happened to Mr. Arar, but you
19 have to see how things are developing. And the
20 way it is developing is that there are more and
21 more joint operations and there are more and more
22 various agencies involved in security intelligence
23 one way or another.

24 We look at the Department of
25 Transport with respect to the "no fly list". They

1 will enforce that. Yes, they get information from
2 CSIS and the RCMP and other places, but the
3 development is, it appears -- and I say that is
4 regrettable -- to do more and more sharing and
5 more and more joint operations. Consequently, we
6 urge you strongly in making your recommendations
7 not to just look backwards but to look at the way
8 things are developing into the future.

9 Also, if you look at the cases of
10 Mr. Arar and Mr. Almalki, they have been told by
11 the ministries to go to either SIRC or to the CPC.
12 If they had, neither one of them, I don't think,
13 would have had the full ability to get to the
14 bottom of this particular matter.

15 For example, what would happen if
16 your mandate, if your Commission was a Commission
17 of inquiry into the actions of the RCMP in
18 relation to Maher Arar and not into the actions of
19 Canadian officials, if you could only call as
20 witnesses and get papers from the RCMP? You have
21 a pretty wide mandate there. You have called
22 people from Transport, from Foreign Affairs. You
23 had ministers before you. You had people from
24 CSIS. You were free to call whomever Canadian
25 officials is a pretty broad term. That is the

1 kind of mandate that we feel, if you are going to
2 get to the bottom of something, has to be with
3 this new agency, and it can't be divided up into
4 different compartments.

5 On October 17th you asked some
6 supplementary or further questions regarding these
7 same matters, and your staff then asked that the
8 International Civil Liberties Monitoring Group
9 focus on certain specific ones of those questions.

10 As you will see from our
11 supplementary brief of November 11th, we have in
12 fact answered all of your further questions, but
13 this afternoon I will concentrate on those which
14 were recommended for focus.

15 The first one was the further
16 questions, the fact that we are -- excuse me.
17 This makes more noise than my fist.

18 That the review agency that we are
19 proposing would have jurisdiction over all
20 federally regulated national security operations
21 and certain provincial ones. We were referred to
22 questions 14, 16, 17 to 19, and so on.

23 In question 14, this has to do
24 with that if we had such an agency, there would be
25 a possible sharing of information. They used

1 expression --

2 THE COMMISSIONER:
3 Cross-contamination.

4 MR. ALLMAND: Yes,
5 cross-contamination.

6 Our answer to that, in a nutshell,
7 is that there is sharing of information now, quite
8 extensive share sharing of information. I don't
9 see the fact that we have a super SIRC
10 investigating national security operations of the
11 RCMP and CSIS adding to that, I don't see any risk
12 in that at all.

13 There is a reference to the
14 24 agencies listed by the Privy Council: How do
15 we handle something like that? Well, the thing
16 is, if there is a complaint made, the way we look
17 at that, usually the complainant doesn't know --
18 he knows something is happening to him but he
19 doesn't know exactly where. He goes to the new
20 super SIRC and in their investigation they may
21 have to look at something being done in the
22 Department of Immigration or the Department of
23 Foreign Affairs, the consular service, or in the
24 Department of Transport, if it relates to the
25 particular complaint that they are doing. The

1 same with respect to an audit.

2 So I don't see them involving
3 themselves in ordinary complaints with the
4 Department of Transport about somebody being
5 insulted by a stewardess on an airline, that is
6 something else. But if a complainant has a
7 complain which leads -- if the evidence trail
8 leads to any of these 24 agencies, they must have
9 the right to go there, I think just as you have
10 had in pursuing your mandate.

11 A further question under 16 is:
12 Should they have jurisdiction over all the
13 activities of the government relating to security
14 and intelligence?

15 Our answer to that is that the
16 agency must have the right to follow the evidence
17 trail and there shouldn't be barriers and there
18 shouldn't be blockages.

19 With respect to audits or
20 complaints, we think both are necessary and we
21 think they are complementary to each other. We
22 think enhances the expertise of the people within
23 the super SIRC if they have done both audits and
24 complaints because they learn from both. One
25 helps with the other and you end up with an agency

1 that is more expert with respect to the whole area
2 of security and intelligence.

3 --- Pause

4 There was a question under (h) of
5 that question:

6 "Would a super agency review
7 for legality the activities
8 being reviewed or for some
9 other criteria?"

10 I would see there is a possibility
11 that the agency would look first of all if there
12 was any illegalities, if there were any violations
13 of laws, whether it's the Privacy Act or the
14 Charter or the Human Rights Act or whatever, but
15 also there would be questions of appropriateness
16 that might lead to recommendations for amendment
17 to laws or new laws, again just as your Commission
18 might recommend.

19 But I could this super SIRC from
20 time to time, in addition to saying "Here was a
21 gap in the law, something awful happened to this
22 individual, we recommend an amendment" or "we
23 recommend new legislative initiative."

24 We see this new super SIRC
25 replacing the present SIRC and also replacing the

1 CSE Commissioner and certainly looking at, as I
2 said earlier, the security and intelligence
3 operations of the RCMP. So we see them looking at
4 all national security intelligence issues relating
5 to abuse, complaint, everything related to
6 oversight and review.

7 With respect to the referral of
8 complaints between the super agency or the super
9 SIRC and the CPC, I have already dealt with that.

10 The final word would be with the
11 super SIRC, but it would be through a triage
12 committee, if you want to call it that, which
13 would have some representatives from the CPC. We
14 said in our supplementary brief it could be two
15 people from CPC and two from the super SIRC, but
16 the final decision would be with the super SIRC,
17 and if there was any doubt, any grey area, it
18 stays with -- we only shift it back to the -- in
19 other words, in any questionable case the doubt is
20 resolved in favour of the super SIRC.

21 Access to documents. We say first
22 of all the people on the super SIRC are sworn
23 Privy Councillors. They have the right to look at
24 all documents. They should have the right to look
25 at all documents.

1 Those are the principal questions
2 that we were supposed to give special attention
3 to.

4 Just to make some concluding
5 remarks, even if the CPC was given full powers --
6 and we believe it should be given greater powers
7 for ordinary police and law enforcement measures,
8 the powers now just for those things are too
9 limited --ut even if it was given full powers,
10 this would not justify giving it jurisdiction over
11 security and intelligence issues.

12 It is because in security and
13 intelligence, as I have said, there are too many
14 grey areas, there are too many joint operations,
15 there is too much sharing of information. So I am
16 more and more convinced that we need one single
17 competent agency that can look at all security and
18 intelligence operations no matter where they are
19 located.

20 Commissioner, according to your
21 mandate for the policy review, you are -- and I am
22 quoting:

23 "... directed to make
24 recommendations for an
25 independent arm's length

1 review mechanism for the
2 activities of the RCMP with
3 respect to national
4 security."

5 But I wish to point out that there
6 is nothing in this mandate which says that the
7 review mechanism must be exclusively for the RCMP.
8 In other words, they say you must recommend an
9 arm's length independent mechanism for the
10 activities of the RCMP with respect to national
11 security, but they don't say it has to be
12 exclusively for the RCMP. In fact, if such a
13 mechanism was exclusively for the RCMP it
14 couldn't, in my view, do its job, since the RCMP
15 takes part in many joint operations and they
16 exchange information with many other agencies,
17 Canadian and non-Canadian. In these
18 circumstances, how could the mechanism check
19 reliability, legality, check procedures,
20 accountability and responsibility. I don't think
21 they could if they were exclusively looking at
22 RCMP activities or the work of the RCMP.

23 In my view, it is obvious that if
24 we are going to have effective, independent arm's
25 length review mechanism for the activities of the

1 RCMP with respect to national security, then that
2 mechanism must also have the authority to review
3 the operations of all the other agencies with
4 which the RCMP exchanges information and carries
5 on joint operations. Therefore, we must have an
6 agency such as we recommended on February 21,
7 2005.

8 Finally, will such a system be
9 perfect? Will such an agency be perfect? No, it
10 won't. No, it won't. But on balance -- on
11 balance -- considering the errors and the excesses
12 that we have witnessed before this Commission,
13 such a proposal is better than all the
14 alternatives in correcting the abuses that have
15 given rise to this Commission. And we have an
16 obligation to do something better. So this will
17 be better, but no, it won't be perfect.

18 Thank you.

19 THE COMMISSIONER: You mean there
20 is no perfect solution, Mr. Allmand?

21 MR. ALLMAND: No. It may look
22 like that when you recommend it, we all applaud,
23 but probably somewhere down the road we will find
24 there is --

25 THE COMMISSIONER: That there is

1 some shortcoming in it.

2 MR. ALLMAND: But it would be
3 better than some of the other things, in my view,
4 much better than other alternatives that have been
5 proposed.

6 THE COMMISSIONER: Let me ask you
7 a couple of questions, if I might.

8 One has to do with the interaction
9 of a review body that deals with the RCMP with
10 municipal and provincial partners in integrated
11 investigation operations. It strikes me that
12 there are two possibilities.

13 One is that the RCMP review body
14 should be given the authority to follow the trail,
15 and therefore in the course of investigating the
16 RCMP, if that takes them to documents or to
17 personnel of others who were involved from other
18 police forces, say, in the integrated operation,
19 that they should have authority to have access to
20 the documents and to interview and examine the
21 personnel, so that the RCMP's review body is able
22 to obtain the full picture. Nothing falls between
23 the cracks. They have the entire picture. That
24 is the first type of authority.

25 The second type of authority would

1 be that in addition to the RCMP's review body
2 would also have power to review and recommend with
3 respect to the actions of the other police forces,
4 the other police officers. It strikes me that the
5 second type of authority, if for no other reason,
6 may bump into a constitutional problem that might
7 not exist with the first type.

8 Do you see what I'm saying? I'm
9 just wondering if you have any comment on that.

10 MR. ALLMAND: That is possible.

11 For example, I recommended that
12 this new National Security Committee in Parliament
13 would be a follow-up agency for anything falling
14 under the federal government. Obviously they
15 can't do anything about the OPP or the Sûreté du
16 Québec or whatever.

17 But let's say we find that
18 provincial police force XYZ is working on joint
19 operations with the RCMP and the super agency or
20 the super SIRC finds out that the information
21 coming from XYZ provincial police is unreliable,
22 was poorly done and is not reliable at all, they
23 can point that out in their recommendations.

24 They can either recommend -- they
25 can't follow up, the federal government couldn't

1 follow up on it -- that there be an improvement in
2 the work done by the provincial police force.
3 They could also recommend to the RCMP not to deal
4 with these people if they are going provide them
5 with false information.

6 But I agree with you that the
7 enforcement of the recommendations at the
8 provincial level does run up against a
9 constitutional matter. It is true that in the
10 investigation -- but what could happen, since I
11 said that if national security is a matter of
12 federal jurisdiction, and it is, the federal
13 government could instruct its police forces, if
14 they are not getting the right -- if there are
15 continual inadequacies coming from the provincial
16 level, to stop using that source of information or
17 stop cooperating if it is going to cause
18 embarrassment and problems for Canadian citizens,
19 probably in that province

20 THE COMMISSIONER: One thing that
21 occurs as I read some of the submissions is, it is
22 often suggested there should be a statutory
23 framework for integrated policing operations
24 within Canada. It seems it is an idea that seems
25 to make sense.

1 What you seem to be recommending
2 on the other side of integrated police operations
3 is then integrated review of those operations. I
4 don't know how we would do that constitutionally,
5 but certainly from a conceptual standpoint, to the
6 extent that you have an integrated operation, you
7 would say, "Well, if there is to be review,
8 independent review, why wouldn't that be
9 integrated as well?"

10 MR. ALLMAND: I presume that if
11 provincial or municipal police forces are
12 cooperating with CSIS or the RCMP they would
13 generally have the authorization of their
14 provincial governments or ministries and the
15 provincial governments or ministries must realize
16 that they are permitting them to get involved,
17 maybe for good reason, with a federal area of
18 jurisdiction, which both would think would be in
19 their interests I would think.

20 THE COMMISSIONER: Yes.

21 MR. ALLMAND: If something goes
22 wrong, then they should also realize that they are
23 going to be subject to some sort of audit. But I
24 don't --

25 THE COMMISSIONER: But the

1 difficulty with that is, you may need the
2 provincial consent for the review by a federal
3 body. As we know --

4 MR. ALLMAND: That could be
5 difficult, but then that could lead to a lack of
6 cooperation, if they don't, in the future in other
7 areas.

8 THE COMMISSIONER: It would be an
9 unfortunate result if the failure to have some
10 sort of integrated review was seen as an
11 impediment to integrated policing. One thing I
12 have learned through this inquiry is the idea of
13 integrated policing is a good one and is a
14 valuable one.

15 MR. ALLMAND: As a former
16 Solicitor General I can say yes to that.

17 What we are concerned about are
18 the abuses, the situations where people are hurt
19 through unreliable information or through sloppy
20 investigation or through hearsay, and so on.
21 Everything that happened to Mr. Arar, to Almalki
22 and the others. There are many cases. That is
23 the kind of thing we want to stop.

24 We don't want to hinder
25 investigations that will lead to the prevention of

1 some terrorist act that would have taken place and
2 taken thousands of lives, or to proceeding to the
3 arrest and prosecution of people that are really
4 trying to do something that would be espionage or
5 sabotage or whatever. So there it can work.

6 But you have to make sure if you
7 are going to give those powers to the police, you
8 have to have full and proper and adequate
9 oversight and review and a way to counteract any
10 kind of inefficiency in carrying out that kind of
11 work And it does happen, we know it. It does
12 happen.

13 THE COMMISSIONER: In terms of the
14 super SIRC, as you call it, you make the case that
15 it is necessary that the review body, the super
16 SIRC or whatever review body it is, have the
17 authority to follow the trail into all federal
18 departments, Department of Transport, Privy
19 Council Office, wherever national security
20 information is handled.

21 Would there be a problem, assuming
22 you had the independent review body as you now
23 have, one for the RCMP, one for CSIS, one for the
24 CSE, assuming that they had the powers to follow
25 the trail everywhere, do you really need a super

1 SIRC then if any investigation of the information
2 collectors, those three -- there may be one or two
3 more, but those three are the prime ones -- can
4 follow the trail anywhere? Do you really need a
5 super agency beyond that?

6 MR. ALLMAND: Does it make sense
7 if you have a complainant who feels he is being
8 investigated for no good reason and he loses his
9 job because of some report that he is a terrorist
10 or a threat to national security and you have
11 three possibilities, does he start with one and if
12 it doesn't proceed fast enough go to another one
13 and they launch and then there is another one?

14 Then what about the expertise and
15 the coordination of the entire effort in oversight
16 with respect to national security. You might have
17 different levels of approaches, turf wars, God
18 knows what.

19 But what I'm suggesting is that we
20 give this new super SIRC the predominant role in
21 national security and intelligence investigation
22 and oversight and that the CPC be left to do
23 anything with respect to ordinary law enforcement,
24 police work, and so on and the CSE would go all
25 together -- I mean the Commissioner for the CSE.

1 THE COMMISSIONER: And under that
2 model SIRC would go all together.

3 MR. ALLMAND: Yes.

4 THE COMMISSIONER: They would be
5 folded in. Okay.

6 Do you have any questions over on
7 my right?

8 Go ahead.

9 MS KRISTJANSON: In your
10 submissions you have stressed the importance of
11 understanding of domestic and international human
12 rights, but I note that your recommendations in
13 terms of appointments to your super SIRC
14 Commission simply stressed similar kinds of Privy
15 Councillor background, et cetera, rather than a
16 human rights expertise.

17 Would you see that expertise then
18 being primarily among the staff rather than among
19 the Commissioners?

20 MR. ALLMAND: I didn't mean to
21 recommend. I said whoever was chosen to be on the
22 super SIRC would be sworn in as a Privy
23 Councillor, but they need not be former Privy
24 Councillors. As a matter of fact, the ideal
25 situation would be to have people from a

1 broad-based background, from human rights, people
2 who have familiarity with police work and with
3 investigative work. I can see from the various
4 communities too in Canada, from the various
5 cultural communities.

6 So I don't mean to suggest that
7 they should be -- in listening to the previous
8 witness, there was a suggestion that all of the
9 people or nearly all the people with SIRC came
10 from political backgrounds. Well I know some of
11 them didn't. I know James Grant, who was a lawyer
12 in Montreal, had no political experience. I think
13 the Chair, the woman who was Chair of SIRC had
14 no --

15 THE COMMISSIONER: Ms Gauthier.

16 MR. ALLMAND: -- had no political
17 background.

18 I think it is good, though,
19 because when they set up SIRC -- and I was in
20 Parliament at the time -- they wanted to avoid
21 purely partisan political appointments. So they
22 adopted the rule that they would consult with the
23 opposition parties to make sure that it wouldn't
24 be all of one stripe or another or that people
25 wouldn't be on SIRC simply because they had

1 contributed to a particular party or served a
2 party, which was a good thing.

3 I think on the whole, even though
4 some of the people have come from parties, they
5 were pretty competent people.

6 I think the former NDP Attorney
7 General of Manitoba was on one. I think the
8 former Premier of Ontario.

9 THE COMMISSIONER: Bob Rae, yes.

10 MR. ALLMAND: They came from many
11 backgrounds, but they were people that I think
12 served SIRC well.

13 MS KRISTJANSON: Is it your view
14 that those kinds of qualifications should be
15 written into a statute or not?

16 MR. ALLMAND: I think it is very
17 difficult. I didn't read it all, but we simply
18 said they should be sworn members, meaning that
19 they should be sworn once chosen; persons of high
20 calibre having the reputation of competence and
21 integrity.

22 I think it would be difficult. I
23 know with the new International Criminal Court
24 they wrote in that so many had to be men, so many
25 women, so many had to be from different regions of

1 the world. And they have made appointments that
2 have pretty well respected that.

3 I am not into that. It is
4 possible, but I haven't made any recommendations
5 on that, or we haven't. I shouldn't say I
6 haven't. The Civil Liberties Monitoring Group
7 didn't get into the detail on that. We just made
8 these recommendations.

9 MS KRISTJANSON: Also with respect
10 to a super SIRC, one of our presenters this
11 morning, Mr. Saloojee from Canadian Arab
12 Federation and CAIR-CAN, suggested that an
13 advisory council might be useful for a body like
14 that, which could be more broadly diverse and
15 representative of a whole variety of communities.

16 What would your view be of that?

17 MR. ALLMAND: Again, at the
18 International Civil Liberties Monitoring Group we
19 spent considerable time debating what should be in
20 our recommendation and our brief, and that didn't
21 come up. Certainly at first glance it seems to be
22 a good idea, but we don't have that in our brief
23 and we didn't deal with that.

24 As I point out, we are a coalition
25 of 34 groups and we had to present a draft. We

1 debated it, and we decided what should go in and
2 what shouldn't go in. That didn't come up, but it
3 seems like a useful idea.

4 MR. FORESTER: Mr. Allmand, in
5 your material that you have provided to the
6 Commission, the focus of the material in terms of
7 the potential harm that the super SIRC or whatever
8 review body would address, is concerns about the
9 reliability of information.

10 Is it that aspect of the RCMP's
11 activity as opposed to some of the other aspects
12 of the RCMP's national security activities, for
13 example, that are forms of investigation -- you
14 know, knocking down doors are some of the examples
15 that are given in our hypotheticals. Do you think
16 that a review of those types of activities should
17 be conducted by the super SIRC when they occur in
18 a national security context or that those types of
19 activities would be better conducted by a CPC type
20 body with expertise in policing?

21 MR. ALLMAND: Well, when I was the
22 Solicitor General we didn't have CSIS. We had the
23 security service of the RCMP. The cases that went
24 wrong were often due to unreliability of
25 information. I was a witness for three or four

1 days before the McDonald Commission and I
2 documented some of those.

3 You know, where an officer would
4 go into a building and ask neighbours -- and this
5 would be in Toronto -- what do you know about the
6 person living down the hall? Oh, she's a
7 communist and a lesbian. How do you know? Well,
8 she's living with three other girls, you know.

9 But these things ended up in a
10 report and the person didn't get a job.

11 Now, it happened that somebody
12 knew that young woman and complained and we
13 checked it out and she was neither. At the
14 university she belonged to -- this was 10 years
15 after she graduated from university; she was in
16 her 30s. Neither was correct.

17 One might say, whether it was
18 wrong or not, but at that time it was considered
19 enough that the person didn't get a particular
20 job.

21 There are other cases. What this
22 comes back to on reliability -- and I have other
23 cases that I could give you where we happened to
24 find out, we checked, and the RCMP came back and
25 said no, we made a mistake.

1 I am not saying -- there were a
2 lot of cases where they didn't make a mistake. I
3 don't want to leave the impression they were
4 making mistakes every day, but there were mistakes
5 made and it came down, in my view, the type of
6 training that you have for investigations, the
7 kind of directives you have, and also the kind of
8 recruiting, the kind of people you recruit.

9 One of the reasons that McDonald
10 recommended CSIS as opposed to the security
11 service was because he felt you should be able to
12 recruit people purely for security and
13 intelligence work, which is quite different from
14 recruiting people for the RCMP to do policing and
15 law enforcement. That is why they split two off.

16 Still, even within CSIS -- and now
17 with the RCMP doing intelligence-driven work
18 themselves again -- you have to sometimes, if
19 reliability is a problem, find out why are we
20 getting unreliable information. Is it due to lack
21 of training, lack of directives, poor recruiting,
22 the wrong people are coming in and doing that kind
23 of work, and so on.

24 If it is in a security and
25 intelligence area, the auditing should be done by

1 the super SIRC, because the problems seem to be
2 more in that area, in security and intelligence,
3 where you don't go to court.

4 In ordinary policing, when they
5 are doing an investigation, if it is against
6 organized crime or the Mafia, or so on, they are
7 putting together evidence to lay a charge before
8 the courts, a criminal charge. Either they lay it
9 or they don't lay it. And if they don't lay it,
10 they keep their eyes on what is happening.

11 In security and intelligence, it
12 ends up that either you lose a job or you don't
13 get a job or something goes into your record
14 somewhere that hurts you down the line, or you get
15 sent to Syria, really bad; you know, that's the
16 worst sort of thing. There could be even worse
17 ones.

18 So I think all of that has to be
19 subject to the purview of the super SIRC.

20 MS WRIGHT: Mr. Allmand, I have a
21 related question.

22 I noticed in your responses to the
23 further questions that you thought that the RCMP
24 and CSIS should be subject to the same standards
25 for information gathering. Do I have that right?

1 MR. ALLMAND: Well, that was
2 simply --

3 MS WRIGHT: Information sharing.

4 MR. ALLMAND: Although this isn't
5 part of the mandate, we agree that for the CPC
6 they should have increased powers and standards;
7 that in doing the work we think they should do,
8 they shouldn't have lesser powers or lower
9 standards.

10 MS WRIGHT: I am not sure if I was
11 clear.

12 The RCMP and CSIS would have the
13 same standards for information sharing and
14 information collection; that the review body would
15 apply the same standards to those bodies.

16 MR. ALLMAND: Yes, sorry. That is
17 right.

18 MS WRIGHT: Some would argue
19 police should probably have different standards
20 apply because they have a different mandate, and
21 the CSIS Act in section 12 says they shouldn't be
22 sharing unless it is strictly necessary.

23 MR. ALLMAND: We talk about
24 national security and intelligence as if it was
25 black and the law enforcement of the police was

1 white, but most of it is grey.

2 When we had the international
3 experts here, I remember the woman from Northern
4 Ireland telling us the problem with the
5 para-militaries in Northern Ireland, whether the
6 IRA or the Ulster Defence League who are into
7 criminal activities to finance their terrorist and
8 their anti -- well, there are things which are
9 really in the realm of national security.

10 So sometimes they are blurred.

11 I think they have to have the
12 same -- I would like to see CPC, or the RCMP and
13 CSIS meet various standards, but for the police
14 work, you know, beating somebody up as highway
15 patrol is a different matter.

16 We had a case in Montreal just the
17 other day where they showed somebody dragging a
18 woman out of a car and beating her head against
19 the side of the car and everything else. I don't
20 think it had anything to do with national
21 security. But if that happened with the RCMP
22 doing provincial police work out west or in the
23 maritimes and there was a complaint, there might
24 be various different standards for that kind of
25 investigation as opposed to national security work

1 where the RCMP is in national security work.

2 THE COMMISSIONER: Thank you very
3 much, Mr. Allmand, again.

4 Let me express my appreciation to
5 you and to the group of people, your monitoring
6 group.

7 MR. ALLMAND: They have been very,
8 very helpful.

9 THE COMMISSIONER: And really to
10 the 34 agencies. It is quite an undertaking to
11 draw that together. I appreciate your involvement
12 through out the inquiry.

13 As I indicated before, if you wish
14 to respond to any of the other submissions you
15 hear or there are any further thoughts, there is
16 an opportunity to do so, in writing, by December
17 19th. This will be the end of the hearings, I
18 think.

19 MR. ALLMAND: Thank you.

20 THE COMMISSIONER: Thank you very
21 much.

22 MR. ALLMAND: You are welcome.

23 THE COMMISSIONER: Is everybody
24 ready just to carry on? I think we can carry on.

25 The next group is the Canadian

1 Association of Chiefs of Police.

2 Good afternoon.

3 MR. EWATSKI: Good afternoon.

4 THE COMMISSIONER: Let me just
5 explain the process.

6 As you may already know, if you
7 would like to make a presentation, that is
8 certainly more than welcome. I have had an
9 opportunity of reading your written material, and
10 then myself or counsel may ask you questions about
11 the presentation.

12 SUBMISSIONS

13 MR. EWATSKI: First of all,
14 Mr. Commissioner, I will introduce myself and my
15 colleague.

16 THE COMMISSIONER: Please do.

17 MR. EWATSKI: I am Jack Ewatski.
18 I am Chief of Police of the Winnipeg Police
19 Service, but I am serving as the President of the
20 Canadian Association of Chiefs of Police. I am
21 happy to be here this afternoon.

22 Accompanying me this afternoon is
23 Superintendent Gord Schumacher of the Winnipeg
24 Police Service, also a member of the Law
25 Amendments Committee of CACP.

1 I would like to thank you,
2 Commissioner. I would first like to thank you for
3 the opportunity to come here today to discuss what
4 I believe are issues of tremendous importance to
5 police in Canada.

6 On first blush it may not appear
7 obvious as to why members of CACP are interested
8 in participating in this Commission of Inquiry,
9 but as our submission has identified, integration
10 is a concept of policing that without question has
11 become the most substantial influence on how
12 policing in Canada is conducted today.

13 Before I go too far, I would like
14 to identify who we are.

15 The Canadian Association of Chiefs
16 of Police, or CACP, is a non-profit organization
17 founded in 1905 and dedicated to the support and
18 promotion to efficient law enforcement and the
19 protection and security of people of Canada. Our
20 model is leading progressive change in policing.

21 The association is national in
22 character. Its interest and concerns have
23 relevance to police at all levels, including
24 municipal, regional, provincial and federal. The
25 board of directors includes chiefs, commissioners

1 and directors of police services who are
2 representative of the widespread regions within
3 Canada.

4 Through its member police chiefs
5 and other senior executives, the CACP represents
6 in excess of 90 percent of the police community in
7 Canada.

8 Understanding who we are hopefully
9 will underscore why we are here. We represent
10 policing in a broad sense, from the very small
11 police forces in many of our provinces to the
12 largest organizations in our major cities.

13 One of my main goals this
14 afternoon is to talk frankly about integrated
15 policing, about relationships, about why policing
16 has evolved the way it has, and why it is that you
17 should keep the concept of integrated policing in
18 the forefront of your mind when contemplating your
19 mandate of making recommendations towards an arm's
20 length review mechanism for the RCMP with respect
21 to national security investigations.

22 It is important to understand at
23 the outset that protecting national security
24 transcends provincial and municipal boundaries,
25 engaging all police agencies to varying degrees,

1 and this complicates the issues of reviewing
2 simply one police service's responsibilities in
3 such a shared, multi-jurisdictional environment.

4 National security issues and
5 investigations touch every aspect of policing in
6 our country. It is widely held that the
7 development of those who would perpetrate terror
8 in a national security context began through the
9 commission of precursor crimes. Now, this in no
10 way should be construed as an assertion that
11 terror crimes are anything but criminal, but
12 rather to reflect the fact that police at all
13 levels are entrusted and expected to preserve
14 safety and suppress crime in whatever form it
15 comes.

16 It is true that the primary
17 responsibility of national security investigations
18 is concentrated at the federal level, but it is
19 inevitable that other levels of police, integrated
20 or not, will become involved.

21 Canadians are living in a time
22 when the personal safety and security of our
23 communities is threatened by new risks of a global
24 nature. Every Canadian who reads the newspaper,
25 listens to radio, watches television or tracks

1 world events on the internet is aware that
2 September 11th, 2001 shook our illusions and
3 changed our perceptions of risk and public safety.

4 The face of terrorism targets
5 societies that are based on democratic principles,
6 liberal values and tolerance for diversity.
7 Without question our world has changed. Twenty
8 years ago no police officer would have thought
9 that crimes would be and could be committed
10 against Canadians by an individual with a computer
11 working from his basement in eastern Europe.

12 Crime and terror have clearly gone
13 global, and despite the significant resources and
14 sophisticated technology dedicated to controlling
15 this threat, our problems continue to rise. We
16 cannot afford to be complacent about public safety
17 in today's reality.

18 It is clear that criminals and
19 terrorists operate across political boundaries, be
20 they provincial, federal or global.

21 Jurisdictional start and end
22 points are no impediment to criminals, but
23 jurisdictional realities pose challenges for all
24 of those responsible for law enforcement and the
25 prevention of crime. This is not limited to

1 police and includes governments who are
2 responsible for policing policy as well as
3 oversight.

4 In order to beat criminals at
5 their own game, police must be able to operate,
6 communicate and cooperate across those
7 jurisdictional boundaries. An integrated police
8 response to global terrorism and organized crime
9 threats is necessary if criminals are to be
10 brought to justice and if criminal and terrorism
11 acts are to be prevented from occurring.

12 This is about the police community
13 working together to be vigilant and to be able to
14 respond.

15 The nature of modern crime and
16 terrorism demonstrate the need for governments,
17 security and police agencies to work together in
18 ways and at a level exceeding anything done in the
19 past. Crime and terror have become sophisticated.
20 Police must evolve to become at least as
21 sophisticated in how we approach our job. We have
22 to work together. And we are working together
23 more than ever before.

24 Jurisdictions must become more
25 fluid. We have a responsibility to the people we

1 serve. We have to deal with the perception as
2 well as the realities of public fear.

3 How do we do that given the
4 advancements of criminal and terrorist ingenuity?

5 The integrated policing approach
6 must become the normal, accepted and, most
7 importantly, protected way of doing business.
8 Police services at all levels are being stretched
9 far beyond the normality of traditional police
10 work. As crime goes high tech, so must law
11 enforcement response.

12 Unfortunately, that price tag for
13 that response is substantial and, as a result,
14 police agencies across the country are joining up
15 to provide a unified front not only in the
16 provision of direct police services, but also in
17 the area of information and technology sharing.

18 We have to work together in all
19 areas of policing which includes, as probably one
20 of the most important aspects of integration, the
21 multi-jurisdictional sharing of information.

22 Of course information is the life
23 blood of policing, and we need to continue and
24 expand our efforts to share information, in part
25 to keep up with the borderless crime trends. All

1 organizations are changing the way they think and
2 the way we have to think is globally and act
3 locally.

4 We all must have policies and
5 protocols in place to mitigate liability issues
6 and to ensure ourselves that the people using any
7 common system or information meet the highest
8 standards of confidentiality.

9 The police community has
10 recognized some time ago the difficulty of
11 cross-jurisdictional policing and has been working
12 hard to resolve those difficulties.

13 The road has been hard, but we
14 have worked with our criminal justice partners to
15 find a police-made solution that addresses many of
16 the concerns. Of course I am referring to the
17 cross-border police legislation that was developed
18 as a template for all provinces to consider. I
19 will ask Superintendent Schumacher to speak a
20 little bit further on the point a little bit
21 later.

22 We continue to work towards more
23 sophisticated and cooperative integration schemes
24 that in the end would appear to be the best
25 approach to deal with crime and terror as we move

1 forward in the new millennium.

2 But coming back to your mandate,
3 Commissioner and realizing you were looking at a
4 review process only for the RCMP, it is important
5 to emphasize that whatever you choose to recommend
6 that you do so keeping in mind the delicate
7 relationships required at all levels of policing,
8 municipal, provincial and federal. To be
9 effective as needed, to be dealing with the
10 cross-jurisdictional issues, we have to remember
11 that no one level can act alone.

12 We have other information we would
13 like to provide you, Commissioner, in relation to
14 some of the questions that have been posed.

15 I would like to start off by
16 looking at the issue of how a review body of the
17 RCMP's national security activities would be deal
18 with integrated activity. We want to look at the
19 issues, the challenges or the advantages of the
20 various possibilities.

21 First of all, I have to emphasize
22 the fact that integration is not a new concept in
23 policing at all. We have been working together in
24 the police community at various levels forever.
25 It was something that was always done, probably

1 more on an informal basis than a formal bases.
2 However, since the terror attacks in 2001 there
3 has been a need to formalize some of these
4 relationships in a manner that will be able to
5 ensure that our integration efforts and functions
6 do not blur the lines between our law enforcement
7 communities and our intelligence communities. But
8 at the same time we have to recognize that these
9 two functions are essential to protection and
10 safety of our citizens.

11 A review body for the RCMP's
12 national security activities should deal with
13 integrative policing activities by taking a
14 proactive approach and to deal with the realities
15 of integrated policing.

16 It would appear that the issues to
17 overcome will have to be an effective review
18 process in place for which the RCMP has the
19 ability to exercise some control over police
20 officers who also fall outside of federal
21 jurisdiction as the review body will presumably
22 not have the authority over those police offers
23 who are outside of the jurisdiction.

24 So the challenge will be to
25 facilitate a cooperative environment without

1 placing impediments in the area of integrated
2 policing.

3 Without integrated policing we
4 give a clear advantage to those who are involved
5 in criminal activities and police at all levels
6 are, and always will be, involved to some extent
7 in the investigation of national security matters.
8 It will be important that the review body face the
9 challenge of cooperation and in doing so will
10 complement the necessary requirements of
11 integration.

12 I referenced earlier the
13 Cross-Border Policing Act and how that may play
14 into the issue relative to your mandate,
15 Commissioner, and I would ask Superintendent
16 Schumacher to provide some background in that
17 area.

18 MR. SCHUMACHER: Commissioner, in
19 one of the specific questions that you provided to
20 the CACP you asked about the knowledge or
21 observations that we have with regard to the
22 functioning of Part 5 of the Cross-Border Policing
23 Act.

24 Certainly I'm going to go there,
25 but I think it is tremendously important that I

1 give you a little bit of a background of the
2 Cross-Border Policing Act just to put things into
3 perspective for you.

4 I can tell you that integrated
5 policing has certainly been at the forefront of
6 the Canadian Association of Chiefs of Police for
7 many years. Chief Ewatski has mentioned to you
8 that integrated policing is not new. It is not.
9 It has been around for many years.

10 What is new is that over the last
11 10 years or so crime has changed. Maybe that is a
12 little narrow. I guess it has changed beyond
13 that, but certainly it has become much more
14 organized and much more technical and certainly
15 much more fluid.

16 If you talk about organized crime,
17 we have found over the years that our organized
18 crime groups place no regard on our provincial
19 boundaries and clearly they themselves team up and
20 perpetuate crime on the citizens of Canada.

21 So what happened a number of years
22 ago -- specifically 1997 is when a real strong
23 movement took place within the Canadian leaders --
24 was there was an incident in Red Deer, Alberta
25 where there was a number of Hell's Angels that

1 came together for what they call a "patchover",
2 which is a large meeting where the local
3 motorcycle club is patching over to become Hell's
4 Angels. There were hundreds of Hell's Angels at
5 this location. The local police were absolutely
6 overwhelmed.

7 As a result of that, they put out
8 a call to policing across the country and we all
9 responded and we all showed up and we helped in a
10 massive integrated fashion to deal with that
11 particular incident, which of course ended
12 peacefully.

13 From that point forward we really
14 started looking at integration across this country
15 and we realized that more and more policing had to
16 cross provincial borders. So it was at that point
17 that the CACP picked it up and said: Obviously
18 because of the Constitution we have some issues as
19 to how we deal with that.

20 We approached the federal
21 government and asked for help. We said: How are
22 we going to police Canada properly when we have
23 these jurisdictional boundaries that we are having
24 difficulty getting across? The Department of
25 Justice and the Department of the Solicitor

1 General at the time both were anxious to help, but
2 after a time, and after a report that the
3 Department of Justice commissioned with Philip
4 Stenning -- I believe he is from the University of
5 Toronto -- dealing with jurisdictions of police in
6 Canada, and specifically diving into the
7 constitutional issues, how can a provincial police
8 officer or municipal police officer cross into
9 Ontario, for instance, without losing his powers
10 and protections, et cetera, of a police officer.

11 It came back quite clearly that
12 the constitution was an impediment and the federal
13 government really could not do a lot for us and
14 they left it to the provincials to come up with
15 something -- I will step back. They left it to
16 the police to come up with their own solution.
17 So we did.

18 We went back and we put together a
19 substantial group of people who we thought could
20 help in creating a solution. It is a massive
21 undertaking to get all these provincials together
22 and try to figure out a way that a Winnipeg police
23 officer could just cross over that invisible line
24 into Ontario without losing all his power and help
25 the people in Ontario who need it.

1 So we put together a group, and I
2 mentioned it in our submission. The CACP
3 certainly took a lead, the Canadian Professional
4 Police Association, CACOLE was there, Department
5 of Justice was there, Sol-Gen was there,
6 provincial justice officials were there. We had
7 quite a gathering and we had quite a lot of
8 arguments about how this could happen. At the end
9 result the only solution that we could come up
10 with was to create a provincial template. The
11 need was that every province -- it was pretty
12 cumbersome, every single province is going to have
13 to come to the plate and adopt this legislation
14 that is going to allow their police officers out
15 and police officers from other provinces in.

16 So after approximately a year we
17 finally had this template together. In Manitoba
18 it was proclaimed in November 2004. Saskatchewan
19 has now passed it, as has Nova Scotia. New
20 Brunswick is close behind and the other provinces
21 are looking at it and they are at different levels
22 of acceptance. Some are cautious about it and we
23 are hoping to get beyond that. We continue to
24 talk to all our provinces so that we can try and
25 make a fluid arena for our police to operate in.

1 You asked specifically about
2 Part 5 of the Cross-Border Policing Act and that
3 of course deals with oversight.

4 What we have right now is, in
5 Manitoba there have been no opportunities for us
6 to really use Part 5 because there aren't a lot of
7 reciprocal agreements yet. I can tell you how it
8 is going to work and I can tell you the process
9 that we are using right now.

10 Since November 2004, in Manitoba
11 we have sent approximately 45 police officers out
12 of province under differing regimes. Of course
13 they don't have the Cross-Border Policing Act, but
14 there are other avenues that we can pursue to at
15 least get them out of the province. So it is very
16 cumbersome and very difficult, but we need to do
17 that at times.

18 But coming in, we do have the
19 Cross-Border Policing Act. It makes it very easy
20 for people to come into our province. Since
21 November we have done approximately 140 officers,
22 every one of them coming from Ontario.

23 Part 5 of the act deals with
24 Manitoba officers and it deals specifically with
25 police officers who leave. What it says is that

1 the officer -- actually I will back up a little
2 bit because this was quite a contentious section,
3 as you could probably well imagine.

4 We had CACOLE, Canadian
5 Association of Civilian Oversight of Law
6 Enforcement I believe it is. They were concerned.
7 They were saying: Well, if a Manitoba police
8 officer comes into Ontario and does something in
9 Ontario, there should be a hearing, there should
10 be some accountability in Ontario. There are
11 witnesses in Ontario who need to -- or there are
12 complainants in Ontario who need to be involved to
13 get some solace from a hearing that can take place
14 in Ontario.

15 Of course the Association's views
16 were: If a Manitoba police officer goes into
17 Ontario we don't want him being subject to another
18 province's oversight because he is used to his own
19 oversight. He should be able to come back, come
20 to be within a regime from which he is
21 comfortable, which he knows.

22 So as a group we had quite a
23 balancing act to come up with because we have two
24 groups at the table and then there is a group in
25 the middle who just need a solution. The solution

1 was this: We have a process in place now that if
2 a Manitoba police officer goes into Ontario and
3 there is a complaint filed against the Manitoba
4 police officer, there is an ability for the local
5 oversight authorities to hold a hearing, call
6 witnesses and, more importantly, it is
7 specifically codified in the legislation that the
8 Manitoba police officer will be required to
9 disclose any information that is being asked for,
10 and specifically make himself available to be in
11 Ontario to become such a witness.

12 Of course, at the end of the day
13 the way the legislation is reading is that Ontario
14 would not have disciplinary jurisdiction over that
15 officer. What they would have is the ability to
16 provide information back to the Manitoba Law
17 Enforcement Review Agency and they would have the
18 jurisdiction to deal with that officer.

19 So that is how it works if there
20 are reciprocal jurisdictions. Of course today we
21 don't have a lot of reciprocal jurisdictions.

22 THE COMMISSIONER: You do with
23 Saskatchewan.

24 MR. SCHUMACHER: We have
25 Saskatchewan and Nova Scotia. New Brunswick is

1 coming.

2 If it is reciprocal, it is very
3 easy and straightforward. If it is not, such as
4 Ontario, it makes it a little more difficult but
5 not something that we can't overcome. The reality
6 is, we have 160 Ontario police officers coming
7 into Manitoba today.

8 THE COMMISSIONER: What is the
9 regime for review? If there is a complaint
10 against an Ontario police officer in Winnipeg,
11 what is the regime?

12 MR. SCHUMACHER: The way the Law
13 Enforcement Review Agency is looking at it is
14 there are really going to be two regimes, there is
15 going to be the Manitoba regime because he is a
16 Manitoba police officer, and there is going to be
17 the Ontario regime. So there are two regimes that
18 have the hammer, if I can say it so bluntly, over
19 this particular police officer. That is
20 technically.

21 Reality is that our Law
22 Enforcement Review Agency has said that they will
23 turn that jurisdiction back to Ontario. So they
24 will do exactly what the legislation says they
25 will do, if it was reciprocal. They will do some

1 investigation in Manitoba and then they will turn
2 that information back to Ontario.

3 THE COMMISSIONER: When the
4 Ontario officer comes into Manitoba, is he
5 appointed as a peace officer within Manitoba?

6 MR. SCHUMACHER: Yes.

7 THE COMMISSIONER: So there is a
8 specific appointment process, is there?

9 MR. SCHUMACHER: There is a
10 specific appointment process. There are a number
11 of caveats that can go with that. An appointing
12 official is the person who actually signs it off,
13 so it can be a member of an organization. I am an
14 appointing official for the Winnipeg Police
15 Service, as is Chief Ewatski.

16 When somebody makes application to
17 the Winnipeg Police Service to come into Manitoba,
18 there has to be specific reasons why and there are
19 a number of safeguards built right into the
20 legislation. They have to provide us with a whole
21 bunch of information. If we are not satisfied
22 with that information, we certainly ask those
23 things. We have the ability, it says it right in
24 the legislation, to ask anything we want. If we
25 are not satisfied, they just don't come.

1 THE COMMISSIONER: They become
2 part of the command structure within whatever the
3 appropriate Manitoba police force is? They are
4 subject to superior officers, are they?

5 MR. SCHUMACHER: Not really, no.
6 We talked a fair bit about that
7 when we were developing the legislation, but there
8 is no supervisory role. What there is is a
9 notification role. Generally speaking you are not
10 going to have a police officer from Ontario coming
11 into Winnipeg to do a substantial investigation on
12 their own. That wouldn't happen. First off, they
13 wouldn't get the peace officer status to do that
14 because it wouldn't be acceptable.

15 So what they are doing is, they
16 are coming in generally because they have
17 something happening in their own jurisdiction and
18 they need to tie it up in our jurisdiction. So
19 they will come and they will come with the
20 assistance of our people. They will be with them.

21 I think in almost all cases
22 outside of administrative duties, or picking up
23 prisoners and that type of thing, you are always
24 going to see a local jurisdiction police service
25 accompanying somebody from the outside. That

1 brings us to the whole integration piece.

2 THE COMMISSIONER: Right.

3 MR. SCHUMACHER: There are a
4 number of issues. These are just simple examples.
5 I mentioned going to other jurisdictions to pick
6 up prisoners. That has become a substantial issue
7 in our country and 10 years ago it wasn't an
8 issue, they would jump on the plane and they would
9 go and they would pick up their prisoner and they
10 would have their gun and there wouldn't be a
11 second thought. Obviously it is an issue and we
12 can't do that any more.

13 So when we are doing that we have
14 to get status somehow, somewhere. So the RCMP
15 have helped us to some extent in that regard. But
16 the Cross-Border Policing Act in Manitoba, and
17 once it is across this country, will clearly make
18 policing a lot more fluid and much easier.

19 The reality is, if we step back,
20 the police had to come up with something. The
21 world has changed. We sat back, we put our heads
22 together, we worked hard, and we came up with this
23 template and hopefully at the ends of the day all
24 the provinces will have this and we can get down
25 to some real business.

1 THE COMMISSIONER: How does the
2 RCMP fit into that regime ?

3 MR. SCHUMACHER: Right.

4 The RCMP, it is a little bit
5 different. They have a couple of things. They
6 have the ability to swear people in under Special
7 Constable status. They will generally do that if
8 it is a specific RCMP investigation where, for
9 instance, somebody from Ontario, or even Winnipeg,
10 is working with them under their umbrella, under
11 their supervision.

12 Specifically with regard to this,
13 they have the ability -- I believe they are an
14 appointing official through our minister as well,
15 and so if an Ontario police officer wants to come
16 into Manitoba the provincial RCMP have the ability
17 to assign him as if I did as well. So they would
18 assign them as a Manitoba Provincial Police
19 Officer.

20 THE COMMISSIONER: Just listening
21 to you, Superintendent, one thought, to come back
22 to my mandate, is that one of the many bedeviling
23 questions is what happens when there, say, is an
24 INSET and there are provincial or municipal police
25 officers working with the RCMP and there is a

1 complaint and the complaint leads the CPC, the
2 review body for the RCMP, to investigate this and
3 their investigatory trail leads them, the review
4 body, to the provincial members of the INSET?

5 A couple of questions then arise.
6 One question that arises is: Should the
7 provincial police officers be subject to at least
8 producing their documents and cooperating and
9 giving information to the federal review body, is
10 the first question.

11 The second question is, if the
12 answer to that is yes and the federal review body
13 found something that they thought was untoward
14 about the provincial police officer, what, if
15 anything, can they do about it?

16 Do you or the Chief have any
17 observation on either one of those points?

18 MR. EWATSKI: That is an excellent
19 point, Commissioner, because obviously there are
20 some problems relative to accountability
21 mechanisms being put in place when you have
22 integrated policing.

23 If you use that example of an
24 INSET, usually the accountability aspects are
25 spelled out clearly in a memorandum of

1 understanding in terms of how those types of
2 situations would be dealt with. And that is
3 important. I think it is important, first of all,
4 whether it be a municipal police service or
5 provincial police service, that they are
6 comfortable and have a level of comfort in terms
7 of all aspects of an MOU, including issues of
8 accountability and oversight of the operations.

9 I think the basic premise is that
10 if you are entering into an MOU, everybody needs
11 to know the details up front and feel comfortable
12 with it, because if they don't feel comfortable
13 then that is certainly not going to lead to an
14 environment of cooperation, and possibly to a
15 point where a certain police agency may be
16 reluctant to enter into an MOU and work in an
17 integrated fashion, which again goes counter to
18 the whole premise and philosophy of integrated
19 policing.

20 The sharing of information I think
21 is vital and I think that in the policing
22 communities we are not adverse to the sharing of
23 all relevant information in the form of looking at
24 oversight and accountability. I think where the
25 difficulty lies is then what are the mechanisms in

1 place to hold whatever police agency accountable
2 if there is some form of wrongdoing or alleged
3 wrongdoing that comes to the forefront.

4 Obviously the constitutional
5 division of powers comes into play too because of
6 federal jurisdictional and provincial
7 jurisdiction. That certainly comes into play.

8 However, I think we also have to
9 keep in mind the members themselves that are
10 involved from these police agencies, as
11 Superintendent Schumacher alluded to, the fact
12 that there needs to be a sense of comfort in their
13 knowing what type of oversight mechanism would be
14 in place and something that they would be familiar
15 with.

16 I certainly know that police
17 associations or police unions across the country
18 would be very concerned about that point too; to
19 ensure that their members wouldn't be treated in a
20 different manner than they would under the
21 jurisdiction that they would presently serve in
22 itself. So that obviously is a concern.

23 I think it is important to have a
24 regime in place, obviously, that would allow for
25 any type of review body to access information, all

1 the information that is required, but the dividing
2 point would have to be in terms of what then
3 happens in terms of any recommendations to the
4 jurisdiction where the police officers come from,
5 either municipal or provincial, to decide that
6 they should be held accountable under their
7 provisions.

8 There are a number of levels, as
9 you are well aware, of police accountability and
10 oversight in this country. It starts right at the
11 supervisory control level, to the local
12 professional standards, to bodies that are in the
13 provinces that deal with law enforcement review,
14 such as in Manitoba you have the provincial
15 ombudsman. We have, of course, our criminal
16 courts who are the venue of oversight of police
17 action, as well as civil courts and administrative
18 processes.

19 So there are a number of different
20 mechanisms to, what I say, hold police officers
21 accountable for their actions.

22 Again, I think that there has to
23 be that fine balance to ensure that nothing is put
24 in place that would tend to go counter to the
25 whole concept and philosophy of integrated

1 policing, that being cooperation. And that
2 certainly is a point that would be of great
3 concern to municipalities and I know also to
4 provincial police forces.

5 THE COMMISSIONER: I think that is
6 a very good point. Obviously I have to be very
7 sensitive in the recommendations that we are not
8 interfering with the integrated policing that is
9 so important.

10 It struck me, listening to you,
11 Superintendent, in the example that I posited
12 where the recommendations might go, assuming the
13 provincial police officers, municipal police
14 officers, whether it is say in an INSET, if there
15 were some conclusions that the federal review body
16 had reached that they thought there was something
17 inappropriate, the model that you were describing
18 would then just simply have the federal review
19 body forward its conclusions or recommendations to
20 the provincial review body that had jurisdiction
21 to deal with that police officer and let them make
22 of it what they would.

23 MR. SCHUMACHER: In theory, that
24 is correct. Of course, there is the ability
25 through MOUs, and we have to be careful how we use

1 those. MOUs are a tremendous tool for policing in
2 Canada and how we integrate. But if we get too
3 restrictive with regard to what we say in those
4 MOUs, you are going to have municipal police
5 services backing away from those.

6 THE COMMISSIONER: Right.

7 MR. SCHUMACHER: The reality as
8 far as an INSET -- that is a pretty specific
9 group. The reality is you may be able to have an
10 understanding with not only a municipal police
11 service, but the province, to allow the oversight
12 to go with the federal government instead of the
13 province. That is something that is not currently
14 being done.

15 I am not sure how that would be
16 looked at. Right now, I believe it would almost
17 fall into that dual regime, as we talked about.

18 THE COMMISSIONER: Yes. And then
19 indeed there is integrated policing that goes well
20 beyond the formalized INSET.

21 MR. SCHUMACHER: That is where we
22 really get into the difficulties. That is where
23 the difficulties come. You have some control over
24 an INSET, but the reality is integrated policing
25 is far, far more than that.

1 THE COMMISSIONER: Yes,
2 absolutely. It strikes me that anything beyond a
3 regime where the federal review body, if it found
4 something untoward, simply referred its
5 recommendations to the provincial review body, is
6 going to require a federal-provincial agreement.
7 It would require agreement of the police officers,
8 but you are probably getting into some sort of
9 constitutional arrangement that is going to be a
10 good deal of work. You found out about these
11 things, I think.

12 MR. EWATSKI: That is why for the
13 last few years the Canadian Association of Chiefs
14 of Police has been leading a discussion relative
15 to developing a framework for integrated policing
16 in this country, and I think that these are some
17 of the issues that certainly come to the forefront
18 when we look at how we have to police in today's
19 world. We are doing it. We are doing it on many
20 fronts on an informal basis, and we need to
21 formalize a lot of the aspects of policing in this
22 country. By trying to get the three levels of
23 government to come together to discuss this in
24 terms of developing a framework for integration, I
25 think is something that is necessary.

1 That is something, like I say,
2 CACP is certainly promoting and having many
3 discussions with the three levels of government as
4 well as other interested bodies to say that this
5 is something that is needed as our world has
6 changed in policing.

7 THE COMMISSIONER: Do you see the
8 framework eventually, in an ideal world, being
9 legislated, a statutory framework for integrated
10 policing?

11 MR. EWATSKI: It would be
12 difficult to answer that question in terms of how
13 it would be seen by the levels of government. I
14 think it is going to take some time to just have
15 some dialogue relative to it itself.

16 One of the biggest concerns is I
17 think if you put all the interested parties in a
18 room, you would have difficulty in defining what
19 integrated policing actually means.

20 THE COMMISSIONER: Yes.

21 MR. EWATSKI: That is sort of a
22 starting point, is to try to find a definition of
23 what is integrated policing and to take very slow
24 steps to try to look at all the different issues
25 because there are many interests at all three

1 levels of government.

2 THE COMMISSIONER: All right.

3 Any questions?

4 MR. FORESTER: Just on the issue
5 of integrated policing. I heard you talk about
6 increasing MOUs being developed.

7 Does the problem become a little
8 bit simpler or easier to manage if you restrict it
9 to national security?

10 For example, as I understand it,
11 at least in some jurisdictions there are MOUs
12 between the RCMP and municipal forces that spell
13 out or provide a framework for how to approach
14 national security matters.

15 Is it possible, in your view, to
16 include issues of accountability in those MOUs at
17 the time that they are negotiated that relate
18 specifically to the national security issue?

19 MR. EWATSKI: I think I could
20 answer that by first of all starting to try to
21 deal with I guess one of the issues that we try to
22 look at in policing. We try to put things in
23 compartments and make it nice and easy.

24 When you talk about national
25 security, it is very difficult to put it in a box

1 and say this exactly is a national security
2 investigation or issue itself. That line is very,
3 very blurred.

4 A criminal act that takes place in
5 any jurisdiction may end up as a national security
6 investigation. That is where the response to
7 those types of acts begin, which may or may not
8 include a form of integrated policing. It is very
9 difficult to tell at the time whether an act that
10 occurs in my city is a national security issue or
11 not and when does it become a national security
12 investigation.

13 Obviously the cleanest point of
14 demarcation between the two would be when INSETs
15 would become involved in an investigation.
16 However, it is just not clear and simple.

17 However, to answer the question --
18 I think I heard your question correctly -- in
19 those circumstances when an INSET would be
20 involved in an investigation, would that MOU be
21 able to spell specifically an oversight regime?

22 MR. FORESTER: Actually no, my
23 question was outside -- I'm sorry for not being
24 clear -- outside of the INSET concept.

25 As I understand it, one of the

1 first questions that comes up in a national
2 security investigation or something that might
3 possibly be, because under the Security Offences
4 Act, the primary responsibility would go to the
5 RCMP.

6 I understand you completely when
7 you say that there is a big question at the
8 beginning. Is this a national security offence
9 for when you look at questions of who might take
10 the lead in an investigation and what roles the
11 RCMP or a provincial or municipal force might
12 have.

13 I understand that those are
14 difficult issues. But as I understand it, there
15 are MOUs being worked out and some in existence
16 between the RCMP and provincial and municipal
17 forces that operate both in and outside the INSET
18 context, that set up a framework for addressing
19 that problem.

20 Would that framework, is what I am
21 asking, would that be helpful in dealing with the
22 review issue as well in terms of what review body
23 would be the primary review body?

24 MR. EWATSKI: Yes. And for the
25 most part, any other MOU that is set outside of an

1 INSET would clearly set out the accountability
2 processes that are in place and they would be
3 for -- as far as I know, the ones that we have
4 been involved in Winnipeg clearly spell out fact
5 that if a member of the Winnipeg Police Service is
6 to be held accountable, they will be held
7 accountable under the mechanisms we have in place,
8 both internally and under the Manitoba Law
9 Enforcement Review Act, whereas the RCMP would
10 fall under the CPC relative to their oversight
11 bodies.

12 That is clearly spelled out in
13 terms of what would take place.

14 MR. SCHUMACHER: If I can just add
15 one little bit here, the Commissioner and I were
16 discussing that in the sense of MOUs and how
17 useful they may be. The concern is that we just
18 go that one step too far in making those MOUs so
19 tight that municipalities are afraid to go into it
20 them. Once we do that, then we drive a real nail
21 into the whole integrated policing movement.

22 You talk about the Security
23 Offences Act. And that is true, section 6 does
24 give primary responsibility to the RCMP, but it
25 doesn't say sole responsibility to the RCMP.

1 I guess when you look at national
2 security investigations, you are never going to
3 find a clean definition of it. It is just not
4 going to happen. So you have to do as much as you
5 can within the parameters of what you can come up
6 with.

7 I don't know. I can't sit here,
8 unfortunately, and say here is a nice clean
9 definition. This is when it becomes a national
10 security investigation. I don't what the clean
11 answer is for that.

12 MR. FORESTER: Thanks.

13 MS KRISTJANSON: I have just a few
14 follow-up questions about the Cross-Border
15 Policing Act.

16 Do I take it that, for example, as
17 a Winnipeg police officer you are subject to
18 civilian oversight pursuant to the Manitoba Law
19 Review Act?

20 MR. SCHUMACHER: Yes.

21 MS KRISTJANSON: As well as your
22 internal discipline.

23 MR. SCHUMACHER: That's correct.

24 MS KRISTJANSON: So under your
25 statute, if some Winnipeg police officer were to

1 engage in some misconduct in Ontario, would that
2 Ontario information be sent back to both levels
3 i.e., the civilian oversight and the Force?

4 MR. SCHUMACHER: Yes. The
5 civilian oversight in Manitoba is a provincial
6 legislation. As far as the local police, it is in
7 essence a city bylaw and city regulation. It is
8 provincially passed but it is mandated under the
9 city bylaws.

10 So they really go hand in hand.
11 You will never see the Law Enforcement Review
12 Agency and the Winnipeg Police Service
13 Professional Standards Unit coming to disciplinary
14 resolutions, both of them. It will be one or the
15 other.

16 Generally speaking, if it goes to
17 the Law Enforcement Review Agency and they feel it
18 should back to the police service, they will send
19 it back to us.

20 MS KRISTJANSON: It is
21 anticipated, though, it is probably 0 Cops or
22 somebody in Ontario would send it perhaps jointly
23 to both the Force and to the Manitoba, and it
24 would then be resolved.

25 MR. SCHUMACHER: They would send

1 to the Law Enforcement Review Agency and then the
2 Law Enforcement Review Agency would make the
3 decision.

4 MS KRISTJANSON: Would it be your
5 view, if we looked at integrated activity with
6 municipal police officers, that if the CPC or an
7 equivalent review body were looking at an
8 integrated operation. that findings related to a
9 municipal police officer should go to the relevant
10 provincial or the relevant civilian oversight
11 body?

12 Is that the first point of
13 contact?

14 MR. EWATSKI: Exactly. And just
15 to follow up on what Superintendent Schumacher
16 says, the police agencies are mandated, when they
17 receive information of allegations of police
18 misconduct, that would fall under the Law
19 Enforcement Review Act, we are mandated to send it
20 to LIRA itself. So we would be looking at that.

21 We would either get that
22 information firsthand or get it in tandem to LIRA,
23 and it would be acted on. Our first
24 responsibility is to send it to LIRA. We are
25 mandated under the legislation to do so.

1 MS KRISTJANSON: That won't be the
2 same nationally. There will be a patchwork of
3 civilian oversight mechanisms.

4 If we look at the review body for
5 a national police force, which might be
6 interacting with many different police forces, do
7 you think it the best point of contact would be
8 for that national review body to send it to a
9 civilian overseer or to the local force from whom
10 the officer comes?

11 MR. EWATSKI: I could speak for
12 Manitoba because I am certainly familiar with the
13 legislation, what is required.

14 I would assume, though, that in
15 other provinces that have similar legislation the
16 police jurisdictions would have that same mandate
17 to forward that information on to them.

18 Obviously we would want to know
19 what occurred, and we would then take the
20 appropriate steps. I think everybody has to have
21 a sense of comfort that police agencies are
22 comfortable in dealing with those types of issues
23 and allegations and basically trying to find out
24 exactly what happened, whether or not those
25 allegations are justified or not.

1 I think we have come a long way in
2 policing in my 32 years that we welcome those
3 types of inquiries into the conduct of our
4 officers, because it is important for us to
5 maintain the public trust. One way of maintaining
6 the public trust is to say if there are
7 complaints, if there are allegations made, bring
8 them to us and we will be involved in an open and
9 transparent process of accountability for our
10 officers.

11 MR. SCHUMACHER: Just so add one
12 more point to that, the cross-border policing
13 legislation does contemplate information going to
14 the provincial body.

15 MS KRISTJANSON: Is there ever
16 going to be an issue when we look at provincial
17 review bodies or municipal police complaints
18 bodies, for that matter, across Canada, will there
19 ever be an issue that there will not be the
20 appropriate security clearance in place, for
21 example, for the civilian review body? Or have
22 you determined that they would all be
23 appropriately cleared to receive a report, for
24 example, from the CPC or someone else?

25 MR. EWATSKI: Again speaking for

1 Manitoba, our knowledge of that, the individuals
2 involved that are mandated to investigate and deal
3 with issues of police misconduct under LIRA would
4 have that clearance.

5 They presently are provided,
6 obviously, with all the information that is
7 gathered relative to any type of allegation that
8 is made. We again are legislated to turn over all
9 relevant material to the Commissioner of LIRA.

10 MS KRISTJANSON: I appreciate
11 that. I was wondering if you had a broader
12 understanding on a national level.

13 Would there ever be a concern that
14 the civilian review body would not be
15 appropriately cleared to receive, for example,
16 certain information?

17 MR. EWATSKI: I think it would
18 certainly be appropriate to ensure that they are
19 at that level to receive that information. I
20 guess what I'm saying is that any review body
21 would certainly be cleared to a certain level at
22 this point of time, because they are privy to all
23 sorts of information that is passed on during the
24 course of an investigation.

25 MS KRISTJANSON: Are they not

1 cleared differently, federally and provincially?

2 MR. SCHUMACHER: Are you talking
3 about top secret information, that sort of thing?

4 MS KRISTJANSON: That's correct.

5 MR. SCHUMACHER: From the CACP
6 perspective, we are very comfortable in saying
7 review bodies should have all the information that
8 they need.

9 Having said that, we need to have
10 a comfort level that that information is going to
11 be protected. In Manitoba, our Commissioner of
12 the Law Enforcement Review Agency does not have a
13 top secret clearance, but we hold back some
14 information from him, of course, under privilege
15 laws and Canada Evidence Act. We are quite
16 forthcoming with him but on a national scale.

17 I think that might answer your
18 question.

19 MS KRISTJANSON: So there with
20 would be an issue nationally.

21 My last question. One of the
22 presenters, I think yesterday, said that not all
23 police forces in Canada are subject to civilian
24 oversight.

25 Do you know if that is a correct

1 statement? Are there any of which you are aware
2 that are not subject to civilian oversight?

3 MR. EWATSKI: Not that I am aware
4 of.

5 MS KRISTJANSON: Thank you.

6 THE COMMISSIONER: Anything
7 further?

8 Well that is it. Thank you very
9 much, Chief Ewatski and Superintendent Schumacher.
10 It was a very helpful presentation. I appreciate
11 your involvement in the inquiry and your interest.
12 Your remarks I think will be of great assistance
13 to us.

14 Thank you for coming today.

15 MR. EWATSKI: Thank you,
16 Commissioner.

17 THE COMMISSIONER: We will stand
18 adjourned now until 8:50 tomorrow morning, ten to
19 nine.

20 --- Whereupon the hearing adjourned at 4:50 p.m.,

21 to resume on Friday, November 18, 2005

22 at 8:50 a.m. / L'audience est ajournée à

23 16 h 50, pour reprendre le vendredi

24 18 novembre 2005 à 8 h 50

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Lynda Johansson,

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