

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



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

**Audience publique**

**Public Hearing**

**Commissaire**

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

**Commissioner**

**Tenue à:**

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

le mardi 6 juillet 2004

**Held at:**

Government Conference Centre  
Sussex Room  
2 Rideau Street  
Ottawa, Ontario

Tuesday, July 6, 2004

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Tuesday, July 6, 2004

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

4 6 juillet 2004 à 10 h 00

5 THE COMMISSIONER: Mr. Cavalluzzo.

6 PREVIOUSLY SWORN: GARRY JAMES LOEPPKY

7 MR. CAVALLUZZO: Thank you,

8 Commissioner.

9 Commissioner, for the remainder of  
10 my examination of Deputy Commissioner Loepky I  
11 will continue to refer to Exhibit 12, if you have  
12 that Book of Documents in front of you.

13 THE COMMISSIONER: Thank you.

14 MR. CAVALLUZZO: However, prior to  
15 commencing my examination, there is one point that  
16 I would note for the record, and that is yesterday  
17 I received a letter from the Syrian government in  
18 which it advised the Commission that it would not  
19 be cooperating with the Commission in respect of  
20 evidence we wished to call from them relating to  
21 the treatment of Mr. Arar while he attended in  
22 Damascus at the Palestine Branch Detention Centre.

23 However, I wish to point out, and  
24 specifically point out to the Syrian government,  
25 that we will be calling evidence, in particular we

1 will be calling evidence in the week of July 26th  
2 of a young Canadian who was detained in the  
3 Palestine Branch in Damascus between December 12,  
4 2003 and January 13, 2004. The young Canadian's  
5 name is Muayyed Nureddin.

6 He will testify that during his  
7 interrogation at the Palestine Branch -- which I  
8 point out is the very same detention centre that  
9 Mr. Arar was detained at in 2002 and 2003.  
10 Mr. Nureddin will testify that during his  
11 interrogation there that he was tortured, contrary  
12 to international law.

13 He will also testify that from the  
14 questioning by Syrian officials it became apparent  
15 that information may have come to the Syrian  
16 officials from Canada or Canadian officials.

17 This evidence will be given, once  
18 again in the week of July 26th, and what I want to  
19 state for the record is that if the Syrian  
20 government wishes to reconsider its position we  
21 would certainly entertain any request for them to  
22 come before this Commission in order to respond or  
23 reply to the serious allegations which will be  
24 made by Mr. Nureddin in his testimony in the week  
25 of July 26th.

1                   In other words, the fact that they  
2                   have stated by their letter that they will not  
3                   cooperate with the Commission is not necessarily  
4                   the last position they may want to take, but we  
5                   are willing to welcome them with the full  
6                   opportunity to respond to those allegations. In  
7                   respect of that, the decision is theirs.

8                   Thank you.

9                   THE COMMISSIONER: Thank you.

10                  EXAMINATION / INTERROGATOIRE

11                  MR. CAVALLUZZO: Deputy  
12                  Commissioner Loepky, at the break of the last day  
13                  we started to discuss with you information  
14                  sharing. In particular, we started with general  
15                  principles on information sharing.

16                  In order to give us context for  
17                  your questioning today, why don't we just start  
18                  where we left off at, and that is at Tab 31 of  
19                  your Book of Documents.

20                  Tab 31, once again, is the  
21                  operational manual on information sources. In  
22                  particular we refer to paragraph M.3, if you can  
23                  find that.

24                  THE COMMISSIONER: "M" as in  
25                  Michael?



1 MR. CAVALLUZZO: "M" as in  
2 Michael. That is correct. Unfortunately, there  
3 are no page numbers.

4 THE COMMISSIONER: I have it.

5 MR. CAVALLUZZO: We referred,  
6 Deputy Commissioner Loepky, to M.3.a which  
7 provides, for those who do not have this record:

8 "The RCMP will not become  
9 involved or appear to be  
10 involved in any activity that  
11 might be considered a  
12 violation of the rights of an  
13 individual, unless there is a  
14 need to comply with the  
15 following international  
16 conventions..."

17 Then there are five conventions  
18 which are set out under that paragraph.

19 You recall reference to that,  
20 Deputy Commissioner?

21 MR. LOEPPKY: Yes.

22 MR. CAVALLUZZO: We also, just  
23 before we completed our questioning on the  
24 previous day, last Wednesday, we also referred you  
25 to Tab 23, which is the "Ministerial Directive on

1 RCMP Agreements".

2 MR. LOEPPKY: Yes.

3 MR. CAVALLUZZO: Of course that  
4 directive contemplates sharing of information or  
5 providing services or assistance to other  
6 departments, agencies of municipal, territorial or  
7 indeed even foreign governments.

8 What I would like to do this  
9 morning is to commence with the previous tab which  
10 is a Ministerial Directive relating to police  
11 assistance to foreign nations because I think it  
12 is quite useful and instructive in terms of the  
13 kinds of considerations that at least at this  
14 point in time the RCMP took into account when  
15 dealing with foreign governments/agencies.

16 As you can see from paragraph 1.1,  
17 the directive:

18 "...provides Ministerial  
19 direction relating to the  
20 provision of police training,  
21 consultative assistance and  
22 investigative assistance to  
23 foreign countries by the  
24 RCMP."

25 Can you see that?

1 MR. LOEPPKY: Yes.

2 MR. CAVALLUZZO: And it:

3 "...establishes routine  
4 procedures to be followed in  
5 reviewing such requests..."

6 And it sets out the necessary  
7 considerations to be taken into account.

8 MR. LOEPPKY: Yes.

9 MR. CAVALLUZZO: We don't need any  
10 explanation on police training.

11 Could you just help us,  
12 "investigative assistance". What does that mean,  
13 that you will assist them in investigations being  
14 conducted in their own country?

15 MR. LOEPPKY: For example, at an  
16 international heads of state meeting, if there was  
17 some type of expertise that Canada had that could  
18 assist in protecting the heads of state that were  
19 attending there, then with the concurrence of  
20 Foreign Affairs we would provide that type of  
21 assistance.

22 MR. CAVALLUZZO: Okay. The third  
23 kind of assistance that is referred to in this  
24 directive is "consultative assistance".

25 What is that, just briefly?

1                   MR. LOEPPKY: During many of our  
2 international criminal operations we deal with  
3 countries that may not have the level of expertise  
4 that exists in Canadian law enforcement and this  
5 provision provides us the opportunity to provide  
6 consultative assistance to enhance their skills  
7 which will ensure that evidence is admissible in  
8 Canada.

9                   MR. CAVALLUZZO: I think the  
10 directive is quite instructive because it talks  
11 about giving assistance to countries which may not  
12 have the same kind of democratic record as Canada.  
13 In particular, I am referring to page 3,  
14 paragraph 4.1 under "Police Assistance,  
15 Objectives" and making reference in particular to  
16 the third sentence, which states that:

17                   "Since provision of any  
18 police assistance to a  
19 repressive or otherwise  
20 unpopular regime or the  
21 provision of inappropriate  
22 assistance to any country  
23 could be harmful to Canada's  
24 reputation and the reputation  
25 of the Royal Canadian Mounted

1                   Police, procedures are  
2                   established herein to ensure  
3                   the careful review of all  
4                   requests and the effective  
5                   administration of the  
6                   assistance provided."

7                   As far as that is concerned, I  
8                   assume that you would agree with this directive,  
9                   and that is that if Canada, or indeed the RCMP,  
10                  was to give assistance to a repressive regime, or  
11                  a regime which does not respect human rights and  
12                  democratic ideals, that this could be injurious  
13                  not only to the reputation of the RCMP but to the  
14                  reputation of Canada.

15                  Isn't that correct?

16                  MR. LOEPPKY: Yes.

17                  MR. CAVALLUZZO: If we move on in  
18                  this directive to the next page, page 4, it  
19                  provides for certainly restrictions or controls  
20                  which might be imposed. I am referring to the  
21                  second paragraph on page 4. It states;

22                  "Finally, the nature of  
23                  assistance being provided  
24                  requires that the Government  
25                  and the responsible Minister

1 be assured that all  
2 assistance provided satisfies  
3 any control requirements  
4 imposed by either party to  
5 the assistance agreement."

6 We will come back to that later in  
7 the agreement.

8 Then in the next paragraph,  
9 paragraph 5, it talks about the "Approval  
10 Criteria" under the first subparagraph "Political  
11 Considerations".

12 We need not read all of it, but  
13 just three lines from the bottom up, just picking  
14 that up, it states:

15 "Should standard forms of  
16 assistance be provided to  
17 repressive or otherwise  
18 unpopular regimes or should  
19 inappropriate assistance  
20 (e.g. assistance which is, in  
21 fact or in appearance,  
22 related to internal security)  
23 be provided to any country,  
24 irreparable harm could be  
25 done to the international

1 reputation of both Canada and  
2 the RCMP."

3 Then it sets out considerations.

4 It says:

5 "Such considerations point to  
6 the need to evaluate all  
7 requests in light of the  
8 following political  
9 considerations:

10 (1) The benefits to Canada  
11 in the conduct of its foreign  
12 affairs;

13 (2) The extent to which the  
14 country enforces its statutes  
15 in accordance with the rule  
16 of law and recognition of  
17 citizens' rights;

18 (3) The political stability  
19 of the country."

20 Once again I think you would agree  
21 with me that these are very relevant  
22 considerations which should be taken into account  
23 before any Canadian agency, including the RCMP, is  
24 about to give assistance to any regime which is a  
25 repressive regime in the sense that it doesn't

1           respect democratic ideals and human rights.

2                           Would you agree with that?

3                           MR. LOEPPKY:   Yes.

4                           MR. CAVALLUZZO:  I am not going to  
5           refer to all of the considerations, but just a  
6           couple of other areas of this directive which I  
7           think are important.

8                           If you refer to page 10 we come  
9           back to what we referred to earlier as the  
10          "Control Considerations".  This is page 10,  
11          paragraph 5.4.  It states:

12                                   "Some of the technical  
13                                   assistance provided by  
14                                   Canada, involves devices that  
15                                   have the potential for abuse  
16                                   if not carefully controlled."

17                           Then it goes on in the next  
18          paragraph:

19                                   "In reviewing requests for  
20                                   assistance that include  
21                                   access to sensitive equipment  
22                                   or easily abused methods and  
23                                   techniques, the possibility  
24                                   of a favourable decision  
25                                   shall require firstly, that



1                   the risks of potential abuse  
2                   have been identified and,  
3                   secondly, that feasible  
4                   measures of control devised  
5                   by the RCMP and acceptable to  
6                   both parties are instituted  
7                   by agreement so as to  
8                   minimize these risks."

9                   The question I have in respect of  
10                  this particular paragraph, although it refers to  
11                  "technical assistance" that has the potential for  
12                  abuse, would you not agree with me that similar  
13                  considerations would apply if the RCMP, or any  
14                  other Canadian agency, was to give information  
15                  that it had which might be abused or misused by an  
16                  unpopular or repressive regime?

17                  MR. LOEPPKY: This directive is  
18                  provided by the Minister focusing on training,  
19                  consultative advice, and really focused on the  
20                  exchange of -- or the sharing of technical  
21                  information, if we were to share intercept  
22                  equipment in furtherance of a Canadian  
23                  investigation, to ensure that appropriate  
24                  consideration is given beforehand. So it is very  
25                  much focused on that type of police assessments.

1 MR. CAVALLUZZO: Right. My  
2 question to you is that it would seem to me, if we  
3 are concerned about giving technical assistance to  
4 a repressive regime which may be abused and you  
5 should take into account those control  
6 considerations, I would put it to you that it  
7 would seem to be even more important than when you  
8 are providing information to another regime that  
9 does not respect democratic ideals, particularly  
10 in respect of a Canadian citizen, that similar  
11 control considerations should be taken into  
12 account when the RCMP is about to give such  
13 information, if it does.

14 MR. LOEPPKY: I would agree with  
15 counsel, but this directive is not focused on  
16 that. This is focused on technical assistance.

17 MR. CAVALLUZZO: I agree with  
18 that. I was just reasoning by analogy, suggesting  
19 to you that once again -- and you have answered  
20 yes, in the affirmative; that is, that similar  
21 consideration should be taken into account when  
22 such information is given.

23 The only other aspect perhaps I  
24 would refer to is at page 14.

25 I point to this because it

1           contemplates a very active role of the Department  
2           of Foreign Affairs in respect of dealings which  
3           the RCMP has with foreign countries.

4                           In particular, I refer to  
5           paragraph 6.4 which states that:

6   "The Department of External  
7   Affairs ..."

8                           Which is now Foreign Affairs.

9   "... shall review all  
10    requests and forward to the  
11    Commissioner of the RCMP any  
12    recommendations and all  
13    information it considers  
14    pertinent to the request in  
15    relation to general Canadian  
16    foreign policy  
17    considerations."

18    Although this once again relates  
19           to police assistance, consultative assistance and  
20           investigative assistance, would you not agree with  
21           me that the Department of Foreign Affairs has an  
22           important role to play in respect of any  
23           agreements or arrangements the RCMP enters into in  
24           regard to the sharing of information with foreign  
25           governments?

1                   MR. LOEPPKY: Foreign Affairs is  
2 consulted when we are dealing with foreign  
3 governments, and this directive provides some  
4 direction to Foreign Affairs in terms of how they  
5 process requests from foreign countries for  
6 Canadian police assistance.

7                   MR. CAVALLUZZO: Right. I assume  
8 by your answer that you would agree with me that  
9 Foreign Affairs does have an important role to  
10 play in respect of arrangements entered into by  
11 the RCMP respecting the exchange of information  
12 with foreign agencies.

13                  MR. LOEPPKY: Foreign Affairs is  
14 very much involved, but they are not involved in  
15 day-to-day police-to-police operational  
16 information exchanges.

17                  MR. CAVALLUZZO: In terms of the  
18 original or the initial agreement which authorizes  
19 the day-to-day contacts that you are referring to,  
20 you would agree with me that Foreign Affairs has  
21 an important role to play.

22                  MR. LOEPPKY: In terms of requests  
23 to Canada or to where Canada will be providing  
24 some international assistance or international  
25 cooperation in terms of the deployment of Canadian

1 assets, Foreign Affairs is very much engaged.

2 MR. CAVALLUZZO: You say Canadian  
3 assets. Would that also include information?

4 MR. LOEPPKY: No. I am including  
5 things like peace-keeping deployment to Haiti,  
6 technical assistance to provide security at an  
7 international event, those types of assistance.

8 MR. CAVALLUZZO: Let me put it as  
9 concretely as I can.

10 Let us assume that in the year  
11 2000 we have the country of Iraq when Saddam  
12 Hussein was still in power, and the Iraqi  
13 intelligence agency approached the RCMP to enter  
14 into an information-sharing arrangement, the  
15 question I have for you is: In that hypothetical,  
16 do you not agree with me that the Department of  
17 Foreign Affairs may have some useful input into  
18 the ultimate decision which was made by the RCMP  
19 respecting that arrangement?

20 MR. LOEPPKY: Foreign Affairs  
21 would be very much engaged, but I have to say that  
22 if the Iraqi intelligence contacted the RCMP we  
23 would refer them to CSIS who have the security  
24 intelligence function. I would suggest that CSIS  
25 would obviously deal very closely with Foreign

1 Affairs, as would we if we were contacted.

2 MR. CAVALLUZZO: Let us change the  
3 hypothetical a little bit.

4 Take out the words "Iraqi  
5 intelligence" and put in the "Iraqi police force",  
6 the "Iraqi law enforcement agency". If they  
7 contacted the RCMP in the year 2000, would you not  
8 agree with me that before entering into such an  
9 arrangement the RCMP should get the input of  
10 DFAIT, of the Department of Foreign Affairs?

11 MR. LOEPPKY: We would consult  
12 with DFAIT in those cases.

13 MR. CAVALLUZZO: I would like to  
14 move on, Deputy Commissioner.

15 Perhaps before I move on, there  
16 was some confusion from reading your transcript.

17 This agreement that we were just  
18 referring to at Tab 22, is that agreement still in  
19 operation?

20 THE COMMISSIONER: That is a  
21 directive?

22 MR. CAVALLUZZO: A directive;  
23 excuse me.

24 MR. LOEPPKY: Yes. It has not  
25 been rescinded.

1 MR. CAVALLUZZO: Can you help us?  
2 Do you know the year of that? I looked for the  
3 date on the directive, and I couldn't find it.

4 If you can't now, that's fine. We  
5 will get that information.

6 MR. LOEPPKY: Most of them are in  
7 the index dated...

8 I'm sorry, that one is not dated.

9 MR. CAVALLUZZO: That's fine. We  
10 will get that information.

11 I would like to move on to another  
12 area of questioning. It is related to the giving  
13 of information. I am going to break down the  
14 sharing of information into two parts, as we did  
15 with the CSIS witnesses: initially, the giving of  
16 information by the RCMP; and secondarily, the  
17 receiving of information by the RCMP.

18 I am dealing first with classified  
19 information and making reference to the RCMP  
20 policy at Tab 26.

21 Do you have that?

22 MR. LOEPPKY: Yes.

23 MR. CAVALLUZZO: If we refer to  
24 pages 7 and 8, at the bottom of the page in  
25 paragraph "N", as in Nicholas, page 7 of 11 --

1 MR. LOEPPKY: Yes.

2 MR. CAVALLUZZO: I says in N.1:

3 "CLASSIFIED/DESIGNATED  
4 information may be released  
5 only to an individual who has  
6 a need to know and possesses  
7 a security clearance or  
8 reliability status  
9 commensurate with the  
10 sensitivity of the  
11 information being released."

12 You made reference to that  
13 earlier. This is the need to know basis that you  
14 were referring to?

15 MR. LOEPPKY: Yes.

16 MR. CAVALLUZZO: Then it goes on  
17 in N.2 and states:

18 "When sensitive information  
19 CLASSIFIED in the national  
20 interest is shared with or  
21 released to other  
22 governments, departments or  
23 organizations not covered by  
24 the Security Policy and  
25 Standards of the Government



1 of Canada, the RCMP must  
2 ensure, through written  
3 agreements, e.g. MOU, that  
4 appropriate safeguards are  
5 established for the  
6 safekeeping of the  
7 information. For appropriate  
8 statements, see App. XI-1-5."  
9 Which we will come to in a minute.  
10 I assume that the FBI, the CIA or  
11 other foreign enforcement or intelligence agencies  
12 are not covered by this security policy and  
13 standards of the Government of Canada.  
14 MR. LOEPPKY: That is correct.  
15 They would have their own security standards.  
16 MR. CAVALLUZZO: Let me go back to  
17 my example of Jim Jones. I just want to  
18 understand the kind of information we are talking  
19 about there.  
20 We talked and discussed last day  
21 about a hypothetical where Jim Jones is not  
22 suspected of any unlawful or illegal activity but  
23 is on your radar screen or is in your databank  
24 only because he has been periodically seen with  
25 John Smith, who is a primary target of your

1 investigation.

2 Do you recall that hypothetical?

3 MR. LOEPPKY: Yes.

4 MR. CAVALLUZZO: The information  
5 we have there related to Jim Jones in the SCIS --  
6 which is of course the national security databank.  
7 The information we have relating to Mr. Jones,  
8 would that be considered to be sensitive  
9 information classified in the national interest?

10 MR. LOEPPKY: If we are conducting  
11 a criminal investigation on national security, it  
12 would be classified information, and therefore all  
13 of the information within that file would be  
14 categorized at that level.

15 MR. CAVALLUZZO: What this policy  
16 seems to suggest to me is that if you are going to  
17 give information on Jim Jones to a foreign agency,  
18 then through written agreements appropriate  
19 safeguards be established for the safekeeping of  
20 the information.

21 MR. LOEPPKY: That the information  
22 that is shared be appropriately protected.

23 MR. CAVALLUZZO: Right, by written  
24 agreements.

25 I guess the question I have is:

1           Would there be a written agreement -- for example,  
2           if the FBI were to ask the RCMP INSET for  
3           information about Jim Jones and that information  
4           was transferred to the RCMP, would there be a  
5           written agreement safeguarding that information?

6                           MR. LOEPPKY:  There are written  
7           agreements, a number of MOUs, that speak to the  
8           protection of information in terms of the  
9           exchanges with respect to technical data: things  
10          like DNA information, that type of thing.  They  
11          just speak broadly to ensuring that information is  
12          protected.

13                          MR. CAVALLUZZO:  Would these  
14          written MOUs also apply to the kind of information  
15          we are talking about, which is information about  
16          Jim Jones who is not suspected of any illegal  
17          activity but is seen periodically with a prime  
18          target?

19                          MR. LOEPPKY:  The agreements speak  
20          generally to respecting the security of  
21          information and protecting it.

22                          Specifically on an operational  
23          case-by-case basis, it wouldn't refer to that.  
24          But clearly the understanding is that there is a  
25          respect for the level that information is

1           classified at, and that that information is not  
2           disclosed for a whole lot of reasons. It  
3           jeopardizes relationships. It may impact on the  
4           integrity of an individual that is not clearly a  
5           suspect.

6                               So there are a lot of reasons why  
7           that is respected.

8                               MR. CAVALLUZZO: Certainly we  
9           would agree with that. The only question that I  
10          have, once again, is that if there is a written  
11          understanding to that effect, or whether there is  
12          just an oral understanding, for example, between  
13          the FBI and the RCMP, that this kind of  
14          information will be protected and will not be  
15          disclosed by the FBI in a way not contemplated by  
16          the RCMP.

17                              Is it an oral understanding or is  
18          it a written understanding?

19                              MR. LOEPPKY: It is an oral  
20          understanding, but it may be included in a broader  
21          agreement where we talk about the need to respect  
22          the need to protect information, in terms of a  
23          broader context where we share things like DNA,  
24          things like interfaces for various types of  
25          databases.

1                   MR. CAVALLUZZO: I am not talking  
2 about DNA. I want to be sure that I understand  
3 your answer.

4                   When we are talking about the kind  
5 of information that is encompassed within a  
6 national security investigation related to the  
7 kind of Canadian like Jim Jones, there is just an  
8 oral understanding between the two entities that  
9 the information will not be misused.

10                  MR. LOEPPKY: Certainly that is a  
11 cornerstone of sharing information; that it will  
12 not be disclosed inappropriately.

13                  MR. CAVALLUZZO: But it is an oral  
14 understanding and not a written one.

15                  MR. LOEPPKY: As I said, it may be  
16 covered under a broad umbrella agreement, but  
17 there is nothing specific, no specific agreement  
18 that I am aware of.

19                  MR. CAVALLUZZO: If at any time  
20 you discover that broad written agreement,  
21 certainly bring it to us and we will advise the  
22 Commissioner.

23                  The appendix that is referred to  
24 in that paragraph that we just read, Appendix  
25 XI-1-5, can be found in the last two pages of this

1 tab, Deputy Commissioner.

2 That states "Statements to be  
3 Included when Sharing Classified/Designated  
4 Information". Do you have that?

5 MR. LOEPPKY: Yes.

6 MR. CAVALLUZZO: Paragraph 1 deals  
7 with your relationship with CSIS, which we will be  
8 coming to very shortly, and it states:

9 "The following statement must  
10 be included on all outgoing  
11 correspondence, messages and  
12 documents being passed to  
13 CSIS ..."

14 And other departments, and so on.

15 And it states:

16 "This document may be subject  
17 to mandatory exemption under  
18 the Access to Information and  
19 Privacy Acts. If access is  
20 requested under that  
21 legislation, no decision  
22 should be taken without prior  
23 consultation with the  
24 Departmental Privacy  
25 Coordinator of the RCMP."

1                   The second paragraph deals with  
2 when you are giving such classified or designated  
3 information to foreign entities. It states:  
4                   "The following statement must  
5 be included on all outgoing  
6 correspondence, messages and  
7 documents being passed to  
8 other domestic and foreign  
9 law enforcement agencies...  
10                  1. `This document is the  
11 property of the RCMP. It is  
12 loaned to your agency/  
13 department in confidence and  
14 is not to be reclassified or  
15 further disseminated without  
16 the consent of the  
17 originator.'  
18                  2. `This document is the  
19 property of the Government of  
20 Canada. It is provided on  
21 condition that it is for use  
22 solely by the intelligence  
23 community of the receiving  
24 government and that it not be  
25 declassified without the

1                   express permission of the  
2                   Government of Canada'."

3                   Coming back to the hypothetical,  
4 obviously if on a day-to-day basis the FBI asks  
5 for information about Jim Jones from the RCMP and  
6 the RCMP gives them that information, would it  
7 normally be in writing or would it be orally?

8                   How would that information  
9 be transferred?

10                  MR. LOEPPKY: If it is a written  
11 exchange of correspondence, as happens in the  
12 first instance, it would bear a stamp on it that  
13 caveats that information and provides the  
14 restrictions that are noted in this page.

15                  If it was an oral exchange of  
16 information that I have spoken about earlier, you  
17 know, the expectations of the caveats are still  
18 implied. So in that case they are not written  
19 down, but there is a clear understanding that you  
20 respect the source of the information and the  
21 restrictions that go with that.

22                  MR. CAVALLUZZO: So if the  
23 information is exchanged orally, then what you  
24 are saying is that these caveats are implicit in  
25 the exchange?



1 MR. LOEPPKY: Yes.

2 MR. CAVALLUZZO: Okay.

3 Now, in terms of specifically  
4 national security information, if we refer to the  
5 next tab, Tab 27, and in particular the last page  
6 of Tab 27, we see Appendix I-3-8. It talks about  
7 "Conditions For The Dissemination of National  
8 Security Information" and basically contains the  
9 same paragraphs. For example, in paragraph 2 it  
10 says:

11 "The following conditions  
12 must also be included in all  
13 outgoing correspondence,  
14 messages and documents being  
15 passed to other domestic and  
16 foreign law enforcement  
17 agencies/departments."

18 Then the first one is the third  
19 party will require your consent before it is  
20 disseminated and the second one setting out that  
21 it is the property of the Government of Canada,  
22 et cetera?

23 MR. LOEPPKY: Yes.

24 MR. CAVALLUZZO: Obviously the  
25 same is true in respect of your last answer, if

1 national security information is given in writing,  
2 then these two caveats, if it is to a foreign  
3 agency, would be put in the correspondence or  
4 document. If it is exchanged orally, what you are  
5 saying is these two caveats are implicit?

6 MR. LOEPPKY: It should be stamped  
7 on written documents. I mean, there could be  
8 occasions, but the understanding is always  
9 implicit that you respect the caveats of  
10 information sharing.

11 MR. CAVALLUZZO: I would like to  
12 move on to what you have referred to earlier as  
13 the Privacy Act considerations in respect of the  
14 release of information. If we can stay in Tab 27  
15 and refer to paragraph "L".

16 At the top of the page it is "L.  
17 Release of Information".

18 Do you have that?

19 MR. LOEPPKY: Yes.

20 MR. CAVALLUZZO: The general  
21 principles are set out in L.2, where it says in  
22 paragraph 1:

23 "The disclosure of personal  
24 information must be made in  
25 accordance with the Privacy

1 Act.  
2 2. Subsection 8(1), Privacy  
3 Act, forbids disclosure of  
4 personal information without  
5 the consent of the person to  
6 whom the information  
7 relates."

8 I just want to be clear, if we  
9 could come back to our hypothetical of Jim Jones,  
10 if, for example, you were exchanging information  
11 on Jim Jones, that would be considered to be  
12 personal information within the meaning of the  
13 Privacy Act?

14 MR. LOEPPKY: I need to put the  
15 Jim Jones example into a little bit of context.

16 MR. CAVALLUZZO: Right.

17 MR. LOEPPKY: Jim Jones may be an  
18 individual that meets with the subject of an  
19 investigation, somebody who is of significant  
20 interest to the law enforcement community. It may  
21 be a one-time meeting, it may be a number of  
22 meetings, but you have to understand what the  
23 context is of that meeting. In fact, is there a  
24 commonality between those two individuals? Is  
25 there some background that links them? Is it just

1 an innocent meeting? If so, then obviously that  
2 individual is no longer investigated.

3 But it is critical that that  
4 information be reported, because if at some point  
5 we end up with a criminal prosecution then it is  
6 critical that all of the information be in the  
7 file rather than that which the police want to put  
8 forward and have vetted out the rest as a result  
9 of Stinchcombe. So having that information in the  
10 file is important from the judicial process  
11 perspective.

12 Before that information is shared,  
13 obviously the appropriate judgment, the  
14 appropriate picture is drawn by the organization  
15 before that information is shared. So it is not a  
16 judgment based on that one meeting that  
17 information is shared, there has to be context  
18 around it.

19 MR. CAVALLUZZO: So what you  
20 are saying, for example, if it was just one  
21 chance meeting that information should not have  
22 been exchanged?

23 MR. LOEPPKY: That one meeting may  
24 in fact be very critical. It is not a -- it may  
25 in fact -- the individual may have met a key

1 target, a key person of interest here to law  
2 enforcement, they may also show up in another  
3 country and meet with somebody there who is of  
4 critical importance.

5 That is how investigations are  
6 ultimately put together, by finding all those  
7 little pieces and ultimately having the whole  
8 picture that that actually allows you to move  
9 forward and determine whether in fact that person  
10 is a key player or whether in fact a peripheral  
11 player or not a player at all.

12 MR. CAVALLUZZO: Let's come back  
13 to the question that I posed, and that is: Is the  
14 information about Jim Jones personal information  
15 within the meaning of the Privacy Act?

16 MR. LOEPPKY: It is personal  
17 information that clearly -- it is personal  
18 information in terms of referring to him, but it  
19 may not be a breach of his personal rights if it  
20 is not disclosed by the law enforcement community,  
21 if it is in the pursuit of an investigation.

22 I'm not explaining that well,  
23 but --

24 MR. CAVALLUZZO: No. Let me put  
25 it to you that if I discovered that the RCMP had

1 given information about me because I had met with  
2 one of your suspects or prime targets, and you  
3 gave that information about me to the FBI or any  
4 other foreign agency when I have committed no  
5 wrongdoing whatsoever, I can tell you that as a  
6 citizen I would be terribly offended?

7 MR. LOEPPKY: And there are  
8 provisions under the Privacy Act and the Privacy  
9 Commissioner frequently looks at situations where  
10 individuals do have a concern and we comply fully  
11 with those investigations.

12 MR. CAVALLUZZO: That comes back  
13 to the question: So that the information relating  
14 to Jim Jones is personal information within the  
15 meaning of the Privacy Act?

16 MR. LOEPPKY: Yes.

17 MR. CAVALLUZZO: Okay.

18 Now obviously there are exceptions  
19 which are set out in the Privacy Act respecting  
20 when the RCMP or other law enforcement agencies  
21 can disclose information, personal information.

22 The first one can be found in  
23 paragraph L.2.b on the same page.

24 MR. LOEPPKY: Yes.

25 MR. CAVALLUZZO: Of course that is

1           called "Consistent Use Disclosure", and it states:

2                                "As law enforcement is  
3                                considered one broad  
4                                consistent use, the RCMP may  
5                                collect personal information  
6                                for one law enforcement  
7                                purpose and release it for  
8                                another law enforcement  
9                                purpose."

10                           Then it goes on:

11                                "A member must not seek or  
12                                collect personal information  
13                                solely for the purpose of  
14                                facilitating inquiries or  
15                                investigations undertaken by  
16                                another law enforcement  
17                                agency...

18                                2. In such a case, a law  
19                                enforcement or government  
20                                agency should be advised to  
21                                seek direct access to the  
22                                desired information."

23                           I just want to ask you a question  
24           here in terms of consistent use disclosure for my  
25           understanding, and that is, it talks about

1 collecting personal information for one law  
2 enforcement purpose and releasing it for another  
3 law enforcement purpose, presumably to another  
4 agency, whether it be foreign or not.

5 The question that I have: Would  
6 the information which you have collected on Jim  
7 Jones, once again where he is not alleged to have  
8 committed or is suspected to have committed any  
9 illegal activity, would that be collecting  
10 personal information for a law enforcement  
11 purpose?

12 MR. LOEPPKY: Well, the  
13 hypothetical situation that you have outlined is  
14 that Jim Jones is meeting with someone, and your  
15 hypothetical situation is based on the presumption  
16 that Jim Jones is innocent. At that point it is  
17 not --

18 MR. CAVALLUZZO: That is one that  
19 is given us by the Charter, isn't it?

20 MR. LOEPPKY: That's correct, but  
21 it may be an investigative lead that paints part  
22 of the picture in terms of the investigation which  
23 may be very complex.

24 So I think that if the police were  
25 to discard in the first instance, without any



1 further checks, those people who come into a major  
2 investigation, organized crime, murder  
3 investigation, and not pursue them further, that  
4 is not -- I'm not sure that the public would have  
5 confidence in the police if they did those types  
6 of shoddy investigations.

7 MR. CAVALLUZZO: And the public  
8 wouldn't have confidence in the police on the  
9 facts that you have just given, but let me refer  
10 to the facts which underlie my question.

11 That is, once again: You have  
12 information on Jim Jones, not suspected of any  
13 illegal activity, happens to be seen with a prime  
14 suspect. The fact of that meeting or any other  
15 contact, all I want to know is whether that would  
16 be considered to be collecting personal  
17 information for a law enforcement purpose so as to  
18 be excepted or excluded from the Privacy Act if  
19 you were to exchange that information?

20 MR. LOEPPKY: I think it is  
21 certainly information that needs to be collected  
22 and documented because you are involved in the  
23 course of a lawful investigation. Whether that  
24 information is exchanged or not becomes a question  
25 of judgment of the organization based on the

1 nature of the request internationally, based on  
2 the context that you have been able to put around  
3 that meeting subsequent to the meeting, other  
4 factors that you have been able to uncover.

5 MR. CAVALLUZZO: Right. But you  
6 are not answering the question, and the question  
7 is: Would that information be considered to be,  
8 in your view, personal information for a law  
9 enforcement purpose so as to be excluded by the  
10 Privacy Act?

11 MR. LOEPPKY: If Mr. Jones -- and  
12 perhaps I'm not answering your question. Perhaps  
13 I'm not understanding your question.

14 But if Mr. Jones comes into the  
15 picture and forms part of the file and there is  
16 subsequent investigation that may lead to  
17 conclusions, then that is certainly a consistent  
18 sharing of information under the Privacy Act.

19 MR. CAVALLUZZO: Right. But once  
20 again -- this is the last time I'm going to ask  
21 this question.

22 It is a situation where you don't  
23 suspect that he has engaged in any unlawful  
24 activity, the only point is one of association  
25 with one of your prime targets, and you have

1 stored away information about Jim Jones in your  
2 databank. Is that personal information for the  
3 purposes of law enforcement?

4 MR. LOEPPKY: It is personal  
5 information, yes.

6 MR. CAVALLUZZO: For the purposes  
7 of law enforcement?

8 MR. LOEPPKY: Because you don't  
9 know at that point what role he plays. He may in  
10 fact be a suspect. As long as you share that  
11 information, putting the appropriate context  
12 around it, that he was seen in the company of a  
13 target but you have nothing to support anything  
14 else because in fact that individual -- there may  
15 be other pieces that the other organization has  
16 that actually tie that in very closely and it is a  
17 critical piece of information to them --

18 MR. FOTHERGILL: Commissioner, if  
19 I might say something.

20 I think perhaps the difficulty is  
21 that the witness has been asked to offer a legal  
22 conclusion rather than simply to explain the  
23 practice that he follows.

24 I think the evidence is clear that  
25 the information about the hypothetical Jim Jones

1 would indeed be collected, would indeed be stored.  
2 We can argue at the end of the day whether that is  
3 consistent with the Privacy Act, but this --

4 THE COMMISSIONER: If that is the  
5 explanation as to why he can't answer the  
6 question, it wasn't the explanation he gave.

7 What he is being asked about is a  
8 provision that is in an operation manual of the  
9 RCMP. It would seem to me that the witness could  
10 answer one of three ways: yes, no or I don't  
11 know. He hasn't answered any of those yet.

12 If the answer is this is a legal  
13 conclusion and he is not qualified to tell us what  
14 this operational manual means, let's hear that  
15 from the witness.

16 MR. CAVALLUZZO: Is that the case,  
17 Deputy Commissioner, that --

18 MR. LOEPPKY: I consider it  
19 personal information and I consider that it's  
20 appropriate to share that with the judgment that  
21 has to guide that --

22 THE COMMISSIONER: With respect,  
23 that is not the question. He is not asking about  
24 whether it is appropriate to share. He is simply  
25 asking you whether or not within the meaning of

1           this procedure it is personal information for law  
2           enforcement purpose.

3                           MR. LOEPPKY:   Yes.

4                           THE COMMISSIONER:  As I say, the  
5           answer has to be one of three:  yes, no or I don't  
6           know.

7                           MR. CAVALLUZZO:  And the answer  
8           is?

9                           MR. LOEPPKY:   Yes.

10                          MR. CAVALLUZZO:  Thank you.

11                          Let us go to the other exception  
12           which I think is relevant, and that can be found  
13           in paragraph L.2.d.  It is under the exception  
14           relating to a disclosure under an agreement or  
15           arrangement.  That is paragraph 8(2)(f) of the  
16           Privacy Act.

17                          It is L.2.d.  Unfortunately, there  
18           are no pages on it.

19                          This exception provides that:

20                                   "Under an agreement or  
21                                   arrangement, this provision  
22                                   of the Act allows the  
23                                   exchange of information  
24                                   between federal police,  
25                                   security and investigative

1                   bodies and their Canadian and  
2                   international counterparts  
3                   for law enforcement  
4                   purposes."

5                   Then paragraph 2 talks about  
6                   formal written agreements between Canada and other  
7                   governments.

8                   Paragraph 3 is important. It  
9                   provides that:

10                    "It is not an obligation to  
11                    release personal information  
12                    under this provision:  
13                    disclosures should be  
14                    restricted to only that part  
15                    of the record actually  
16                    required, and the information  
17                    condensed to a synopsis  
18                    wherever possible."

19                   The question that I have for you,  
20                   Deputy Commissioner, is once again the  
21                   relationship between the FBI or another law  
22                   enforcement agency, where information is shared  
23                   for law enforcement purposes. You have answered  
24                   that the information relating to Jim Jones would  
25                   be for law enforcement purposes, but the question

1           that I have is that it says "under an agreement or  
2           arrangement this provision of the Act permits",  
3           and I assume that your answer relating to the FBI  
4           would be that you do have an oral arrangement with  
5           the FBI about sharing of information.

6                                Is that correct?

7                                MR. LOEPPKY:   Yes.

8                                MR. CAVALLUZZO:  All right.

9                                There is one other question  
10           relating to this particular exception to the  
11           privacy legislation.

12                               It says in paragraph 3 about not  
13           an obligation to release personal information, and  
14           then it says:

15                               "... disclosures should be  
16                                restricted to only that part  
17                                of a record actually  
18                                required ..."

19                               Where it says "that part of the  
20           record", and if I can bring you back to Jim Jones,  
21           how would you interpret giving information about  
22           Jim Jones when obviously you don't have a record  
23           on him but he may be part of a larger  
24           investigation?

25                               How would I interpret that?

1                   MR. LOEPPKY: It would just be a  
2 very brief summary of information that you might  
3 have.

4                   MR. CAVALLUZZO: On Jim Jones?

5                   MR. LOEPPKY: Yes.

6                   MR. CAVALLUZZO: I guess there is  
7 a question that flows from that, and that is:  
8 When you are talking about sharing information  
9 from the RCMP with, for example, the FBI or any  
10 foreign agency, and you said that the decision  
11 being made by the officer has to be a thoughtful  
12 one in the sense that he must or she must take  
13 into account a number of considerations -- and  
14 what you are talking about are all of these  
15 policies that we are just reviewing -- when a  
16 question is posed concerning information on a  
17 Canadian, these are the policies and guidelines  
18 that the officer must operate under in making  
19 those crucial decisions.

20                   Isn't that correct?

21                   MR. LOEPPKY: These are the  
22 guidelines.

23                   MR. CAVALLUZZO: I want to move  
24 quickly now to receiving information; that is,  
25 when the RCMP receives information from another



1           entity.

2                                If we could go to the previous  
3           tab, at Tab 26, this is an administrative manual  
4           and the chapter is "Organizational and  
5           Administrative Security.

6                                MR. LOEPPKY:   Chapter 26?

7                                MR. CAVALLUZZO:  No; Tab 26.

8                                MR. LOEPPKY:   Tab 26; sorry.

9                                MR. CAVALLUZZO:  I am referring to  
10          page 4, paragraph J.6.

11                               This really regulates or  
12          prescribes what an officer should do when  
13          receiving classified information.  I just point  
14          this out for the record.

15                               J.6 provides that:

16                                "When CLASSIFIED information  
17                                is received from another  
18                                federal institution or  
19                                agency ..."

20                                And that would include CSIS, would  
21          it not?

22                                MR. LOEPPKY:   Yes.

23                                MR. CAVALLUZZO:  "When CLASSIFIED  
24                                information is received from  
25                                another federal institution

1 or agency, a provincial,  
2 municipal or regional  
3 government, foreign  
4 government, or from an  
5 international organization of  
6 nations or one of its  
7 institutions, it must be  
8 protected at the  
9 CONFIDENTIAL, SECRET or TOP  
10 SECRET levels or, if  
11 applicable, in accordance  
12 with an agreement between the  
13 RCMP and the government or  
14 institution concerned."

15 And then it goes on:

16 "The written permission of  
17 the originator is required to  
18 release or downgrade  
19 CLASSIFIED information."

20 So obviously this is the  
21 regulation which applies when an RCMP officer is  
22 receiving confidential information from, say, CSIS  
23 or any other government agency?

24 MR. LOEPPKY: Yes.

25 MR. CAVALLUZZO: Okay. let us

1           move on then to some of the relationships that we  
2           have talked about in terms of the general  
3           questions. The first relationship that I would  
4           like to deal with is the relationship between CSIS  
5           and the RCMP.

6                            If you refer to Tab 49, this is  
7           the MOU or the memorandum of understanding between  
8           CSIS and the RCMP, dated 1990?

9                            MR. LOEPPKY: Yes.

10                           MR. CAVALLUZZO: And there are --

11                           MR. LOEPPKY: I think it is dated  
12           1989, if I am not mistaken.

13                           MR. CAVALLUZZO: Doesn't it say  
14           revised April of 1990 on the front page? It is on  
15           the one that I have.

16                           Do you see the face page?

17                           MR. LOEPPKY: Yes, I do.

18                           MR. CAVALLUZZO: And it does say  
19           revised 1990?

20                           MR. LOEPPKY: I'm sorry, it does.  
21           I was looking at the signature block on the back.

22                           MR. CAVALLUZZO: The first thing  
23           that I would like to refer to is the guiding  
24           principles underlying this relationship, and that  
25           can be found at page 3.



1 intelligence on national  
2 security offences;"

3 MR. LOEPPKY: Yes.

4 MR. CAVALLUZZO: Fifth:  
5 "the RCMP and the CSIS will  
6 consult with each other with  
7 respect to the conduct of  
8 security investigations;"

9 MR. LOEPPKY: Yes.

10 MR. CAVALLUZZO: Just stopping  
11 there, would there be any situations where both  
12 agencies would be conducting a security  
13 investigation at the same time or concurrently?

14 MR. LOEPPKY: CSIS could be  
15 conducting an investigation that is consistent  
16 with their mandate where there may be an issue  
17 that is of concern to the Government of Canada but  
18 that is clearly not criminal, while at the same  
19 time they might be involved in serious criminal  
20 activity that we would have an interest in.

21 So there is the possibility that  
22 you could end up with both organizations involved  
23 in an investigation.

24 MR. CAVALLUZZO: One question I  
25 have related to that, just for the information of

1 the Commissioner, and that is: In such a  
2 situation does the RCMP ever provide assistance to  
3 CSIS in respect of its security investigations?

4 For example, is it possible that  
5 CSIS might ask the RCMP to conduct surveillance on  
6 a particular individual?

7 MR. LOEPPKY: We would generally  
8 work within our mandate, but there are occasions  
9 when you are working in a very integrated way in  
10 terms of protecting Canada that we could provide  
11 assistance consistent with the agreement and  
12 consistent with the relationship that exists  
13 between our two organizations. So we work very  
14 closely, and we would keep them apprised of the  
15 progress of our criminal investigation.

16 MR. CAVALLUZZO: And that would  
17 include, as I said before, surveillance of an  
18 individual if requested?

19 MR. LOEPPKY: If they absolutely  
20 were strapped and required some support.

21 MR. CAVALLUZZO: Okay. The final  
22 principle set out on page 3 is that:

23 "the RCMP and the CSIS will  
24 conduct security  
25 investigations in accordance

1 with the guidelines,  
2 standards and directions  
3 provided by the Solicitor  
4 General."

5 That obviously is true?

6 MR. LOEPPKY: Yes.

7 MR. CAVALLUZZO: If we move on, we  
8 come to when both entities exchange information or  
9 give information to each other, in paragraph 3 at  
10 page 4.

11 It says that:

12 "The CSIS and the RCMP agree  
13 to adhere to certain  
14 fundamental principles  
15 governing the retention, use  
16 and disclosure of information  
17 and intelligence received  
18 from the other agency and  
19 agree further to the  
20 establishment of specific  
21 mechanisms to facilitate  
22 cooperation. These  
23 principles and mechanisms are  
24 set out in Part III of the  
25 Memorandum of Understanding."

1 I will come to that.

2 Just stopping at this point, I  
3 want to be clear. I asked you this before but I  
4 want to be crystal clear on this, and that is if  
5 CSIS was to give information to the RCMP which it  
6 qualified as being of doubtful reliability and the  
7 RCMP was then to give that information to a  
8 foreign agency, I believe you said last day that  
9 that information should be similarly qualified as  
10 CSIS did, and that is that it is unknown  
11 reliability.

12 Is that correct?

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: The security  
15 related responsibilities of each agency are set  
16 out at pages 6 and 7, and I just refer to one at  
17 page 6 in respect of the security related  
18 responsibility of the RCMP.

19 In paragraph i) it sets out the  
20 statutory mandate that we have referred to  
21 earlier:

22 "the prevention, detection,  
23 investigation and laying of  
24 charges in relation to any  
25 offence referred to in



1 section 2 of the Security  
2 Offences Act ..."

3 And that there are other  
4 responsibilities such as:

5 "the protective security  
6 measures to safeguard  
7 VIPs ..."

8 And so on.

9 MR. LOEPPKY: Yes.

10 MR. CAVALLUZZO: As to the kind of  
11 information that CSIS should provide the RCMP, we  
12 have provision for that at page 8 under paragraph  
13 6. About halfway down paragraph 6 it says:

14 "... the CSIS agrees to  
15 provide on a timely basis, or  
16 upon specific request,  
17 information and intelligence  
18 in its possession that may  
19 assist the RCMP in fulfilling  
20 its security-related  
21 responsibilities, including:  
22 a) general threat assessments  
23 and briefing notes and other  
24 background or base papers ...  
25 b) investigative leads which

1                   may assist the RCMP in the  
2                   investigation of an offence,  
3                   or the apprehension of the  
4                   commission of an offence ..."

5                   And so on and so forth.

6                   MR. LOEPPKY:   Yes.

7                   MR. CAVALLUZZO:  There is one  
8                   question that I have relating to this.

9                   You will note that obviously in  
10                  paragraph 6 it talks about "information and  
11                  intelligence".  Last day we talked about the  
12                  difference between information or raw information  
13                  and intelligence which is analyzed, and so on and  
14                  so forth, and is disseminated.

15                  The question that I had is more of  
16                  a general one and it goes beyond CSIS.  That is:  
17                  Does the RCMP share only intelligence with foreign  
18                  agencies such as the FBI, or will the RCMP share  
19                  information as well with a foreign agency such as  
20                  the FBI?

21                  MR. LOEPPKY:  There may be cases  
22                  where you share information that comes to your  
23                  attention on an urgent basis without having the  
24                  opportunity to put it through the full  
25                  intelligence process, to do all the background

1 work. If it is a serious threat or an eminent  
2 threat, then obviously you pass that on  
3 immediately. That would be a case of exchanging  
4 information that perhaps you haven't had the  
5 opportunity to do the due diligence on.

6 MR. CAVALLUZZO: Okay. So that I  
7 would think from your answer that if it wasn't an  
8 emergency situation, then information which is not  
9 analyzed and produced into intelligence, should  
10 not be exchanged with a foreign agency?

11 MR. LOEPPKY: There may be  
12 information that you do some limited background  
13 on. It doesn't form -- you don't have the  
14 opportunity to form, to create a full intelligence  
15 picture. You do it as completely as you can, but  
16 it may not have -- it may not have all of the  
17 pieces that a full intelligence profile on an  
18 individual. It might just be pieces of  
19 information that you have that aren't  
20 comprehensive in themselves because you haven't  
21 had -- you aren't able to put them together.

22 MR. CAVALLUZZO: Well, that is a  
23 very complicated answer. I guess the question  
24 that I would have resulting from that answer is:  
25 How would the -- if we can call them the cop on

1 the beat, the RCMP officer, the municipal officer  
2 or the provincial officer in the INSET for  
3 example, how would they know how to guide their  
4 discretion as to whether to provide information or  
5 whether to provide intelligence or whether to  
6 provide something halfway between information and  
7 intelligence?

8 Where would they get guidance in  
9 terms of exercising that discretion?

10 MR. LOEPPKY: Sharing information  
11 internationally?

12 MR. CAVALLUZZO: Yes.

13 MR. LOEPPKY: The information  
14 exchange, during an ongoing case it takes place on  
15 a case-by-case need-to-know basis, but in the  
16 initial instance, if there is an information that  
17 comes to our attention that may require follow-up  
18 in a foreign country, there is a process where  
19 that is coordinated by headquarters and that is  
20 the role of the liaison officer in the foreign  
21 country to make those inquiries, that initial  
22 contact on our behalf.

23 The same is true with information  
24 coming in in terms of the role of the foreign  
25 liaison officers that are here from foreign

1 departments. The requests come to them, then to  
2 us and then we provide the response.

3 So it is only if there is an  
4 ongoing case that requires organizations to work  
5 together that there is that direct  
6 investigator-to-investigator contact. It is  
7 important to understand that in the initial  
8 instance there is a very formal process, as laid  
9 out in the policy, to have that sharing.

10 MR. CAVALLUZZO: But my question  
11 is: Once again we are talking about the  
12 investigator-to-investigator contact?

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: I am a member of  
15 an INSET in Ottawa or Toronto or Montreal or  
16 Vancouver and I get a contact from the FBI saying,  
17 "Give me this information". The question that I  
18 have is: We are talking now of fairly complicated  
19 things like information as opposed to intelligence  
20 and the question was: Well, do they give  
21 information or do they give intelligence? You are  
22 saying there are situations where they may give  
23 information and the question that I have is:  
24 Well, where does this officer get any guidance in  
25 terms of exercising his discretion or her

1 discretion in making that determination?

2 MR. LOEPPKY: There are a  
3 couple of issues. One is, your question about  
4 information and intelligence. The second one is  
5 this contact to this officer on the street.

6 If there is an inquiry, from the  
7 U.S. for example, it will come to the FBI legal  
8 attaché and into headquarters and the response  
9 will then either be -- the preparation of the  
10 response will be assigned out if it is a specific  
11 area that it needs to be addressed in, or it will  
12 be done by headquarters and then the information  
13 flow is to the FBI legal attaché and back to his  
14 counterparts in the U.S.

15 We have the same process in Canada  
16 with respect to our LOs that are in Washington and  
17 a number of locations around the world.

18 But in terms of information, if it  
19 is just one piece of information that the FBI has  
20 requested, or if it is information that the FBI  
21 has requested through the legal attaché and we  
22 have just the one piece of information, then we  
23 will provide that through the appropriate  
24 headquarters and the LO, putting it in context  
25 that is the only information we have. It is

1 perhaps maybe unsubstantiated.

2 If, on the other hand, we have a  
3 number of pieces of information that have been put  
4 through the analytical process, then that is more  
5 of an intelligence package and that would be fed  
6 back through the same way.

7 MR. CAVALLUZZO: Maybe I will ask  
8 the question.

9 It seems to me that your answer  
10 that if it goes through headquarters, the question  
11 or request goes through headquarters from the  
12 United States to Canada, that there are controls.  
13 You are talking about that there is a some kind of  
14 central headquarters there where there is data  
15 where decisions can be made.

16 But the question that I have is  
17 not the one that is directed toward  
18 headquarters -- or are you saying should all  
19 requests -- let me ask it this way then: Should  
20 all requests for information from RCMP officers go  
21 through headquarters?

22 MR. LOEPPKY: They go  
23 through, yes, headquarters, to the liaison  
24 officer in the foreign country, to our liaison  
25 officers in Washington who then make the inquiry

1 on our behalf.

2 MR. CAVALLUZZO: So that if we  
3 were to discover that information was shared  
4 between FBI officers and members of an INSET, then  
5 that would be inappropriate and improper.

6 Is that what you are saying?

7 MR. LOEPPKY: In the first  
8 instance the information flows through the liaison  
9 officer and through headquarters. As the  
10 operation moves forward, the joint investigation,  
11 then naturally there will be direct interaction  
12 between the officers to facilitate the  
13 investigation, but there is supervisory oversight  
14 and those types of things within those units.

15 MR. CAVALLUZZO: Okay. Then  
16 let me ask you the question again: That is,  
17 assuming your premise that the investigation has  
18 moved on and there is direct contact between the  
19 FBI officer and the RCMP officer, once again  
20 where does this RCMP member of the INSET get  
21 any guidance in terms of whether he should be  
22 giving the information that is being requested  
23 by the FBI?

24 Is it these guidelines that we  
25 have been reviewing? Is that the extent of the



1 guidance that this person is going to get in terms  
2 of making a decision?

3 MR. LOEPPKY: The investigation is  
4 ongoing, there will be direct exchanges between  
5 them, and it will be within the environment of the  
6 INSET where there is supervision in terms of  
7 exchanging information.

8 So it is not a case where  
9 individuals are exchanging information without any  
10 background. They are working collaboratively on a  
11 file and, obviously, those files are reviewed by  
12 supervisors subject to audit. So there is a  
13 process where we make sure that there are controls  
14 in place to monitor that.

15 MR. CAVALLUZZO: If that process  
16 isn't followed, then the exchange of information  
17 is improper?

18 MR. LOEPPKY: Well, the  
19 information may be very consistent with furthering  
20 the investigation, but we expect our supervisors  
21 to supervise and review files. If that is not  
22 happening, then there is an issue there.

23 MR. CAVALLUZZO: As far as the  
24 supervisor is concerned, you are talking about the  
25 supervisor of the INSET?

1 MR. LOEPPKY: There is a  
2 supervisor of the INSET, there are team leaders  
3 underneath the INSET supervisors, then there is --  
4 so there are multiple layers of supervision that  
5 actually monitor the progress of a file, that  
6 review it, that make sure it is in compliance with  
7 the policy. So there are checks and balances that  
8 are built in to make sure that things are done  
9 appropriately and within the law.

10 MR. CAVALLUZZO: Right. But I  
11 just want to understand you, and that is that if  
12 such an exchange is made that the supervisor of  
13 the INSET can approve the exchange?

14 MR. LOEPPKY: On day-to-day  
15 ongoing --

16 MR. CAVALLUZZO: Day-to-day --

17 MR. LOEPPKY: -- integrated  
18 operations, yes.

19 MR. CAVALLUZZO: Okay. If the  
20 supervisor doesn't approve the ongoing exchange,  
21 is that inappropriate?

22 MR. LOEPPKY: It is not in keeping  
23 with his duties as a supervisor. "Inappropriate"  
24 is a strong word. I mean, it is something that we  
25 expect our supervisors to do.

1 MR. CAVALLUZZO: Right. And if  
2 they don't do it, then there is something amiss,  
3 if we don't want to use the word "inappropriate"?

4 MR. LOEPPKY: That is part of  
5 their accountability framework to do that.

6 MR. CAVALLUZZO: Okay. Coming  
7 back to the relationship with CSIS, there are just  
8 a few other items that I would refer to, in  
9 particular at page 10. This is the information  
10 and intelligence which will be provided to the  
11 CSIS by RCMP. That is set out in paragraph 10 at  
12 page 10.

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: Okay. We see  
15 information and intelligence coming into your  
16 possession that may assist CSIS in investigating  
17 activities, et cetera:

18 "...detailed case-related  
19 information relevant to the  
20 security-related  
21 responsibilities of the CSIS;  
22 c) time-sensitive  
23 information or intelligence  
24 which may assists the CSIS in  
25 carrying out its

1 (responsibilities)..."

2 MR. LOEPPKY: Yes.

3 MR. CAVALLUZZO: A couple of other  
4 references which I think will be of assistance to  
5 the Commissioner.

6 At page 13, in paragraph 20,  
7 between those redacted portions, it states:

8 "The RCMP and the CSIS  
9 undertake to provide mutual  
10 assistance and support  
11 abroad, particularly as it  
12 relates to liaison with  
13 foreign agencies on security  
14 related matters."

15 Is that still true today?

16 MR. LOEPPKY: Yes.

17 MR. CAVALLUZZO: Then if we go to  
18 page 14 we see the "Principles of Cooperation".

19 We see in paragraph "A" of  
20 paragraph 24:

21 "All information,  
22 documentation or material  
23 provided under this  
24 Memorandum of Understanding  
25 shall be fully protected and

1 any caveats imposed by either  
2 party shall be fully  
3 respected to the extent  
4 provided by law."

5 So that the third party rule  
6 applies in respect of information that RCMP  
7 receives from CSIS?

8 MR. LOEPPKY: Yes.

9 MR. CAVALLUZZO: Paragraph "B":  
10 "National security  
11 investigative files shall be  
12 maintained separately from  
13 other investigative records  
14 and access to these files  
15 shall be strictly governed by  
16 the `need to know'  
17 principle."

18 Is that principle maintained at  
19 the RCMP today?

20 MR. LOEPPKY: Yes.

21 MR. CAVALLUZZO: Then in  
22 paragraph 25, at the bottom of the page, we have  
23 the liaison program wherein CSIS provides liaison  
24 officers to the RCMP and vice versa?

25 MR. LOEPPKY: That has been

1 replaced by the exchange program that I eluded to  
2 the other day at the headquarters level.

3 MR. CAVALLUZZO: Then there is  
4 reference to a number of items. For example, on  
5 page 16 it talks about:

6 "cooperation and coordination  
7 with respect to the  
8 investigation of targets of  
9 mutual interest;"

10 Then (e):

11 "the establishment of  
12 combined operations."

13 I guess we asked you about that  
14 earlier on.

15 Paragraph 28 on page 17. I just  
16 want to ask you about this. It provides that:

17 "Liaison officers shall not  
18 disclose information obtained  
19 or accessed in their liaison  
20 role unless the agency in  
21 possession of such  
22 information authorizes  
23 disclosure."

24 Does that mean that, for example,  
25 the RCMP liaison officer at CSIS cannot disclose

1 any information he or she obtains at CSIS to the  
2 RCMP without the okay of CSIS?

3 MR. LOEPPKY: Yes.

4 MR. CAVALLUZZO: On page 19 it  
5 provides in paragraph 33:

6 "the CSIS shall, for the  
7 purpose of complying with the  
8 monitoring function of the  
9 Security Intelligence Review  
10 Committee, as designed in  
11 subparagraph 38(a)(iii) of  
12 the CSIS Act, maintain  
13 written records of the  
14 provision of information  
15 pursuant to this Memorandum  
16 of Understanding."

17 I note that there is no similar  
18 obligation on the RCMP to maintain such a written  
19 record. Is that correct?

20 MR. LOEPPKY: All of our exchanges  
21 would be documented in the respective files that  
22 relate to an information exchange.

23 MR. CAVALLUZZO: So that all  
24 information exchanges with the CSIS, you are  
25 saying there is a written records of those

1 exchanges?

2 MR. LOEPPKY: There would be a  
3 note in the file, yes.

4 MR. CAVALLUZZO: I am not going to  
5 spend much time on this, but just to complete the  
6 record here. The RCMP policy itself in effect  
7 implements this MOU at Tab 27?

8 MR. LOEPPKY: Yes, I believe it  
9 does.

10 MR. CAVALLUZZO: In particular,  
11 Mr. Commissioner, it is at paragraph E.

12 I really need not take you through  
13 that because in effect it really implements the  
14 MOU with CSIS.

15 I would like to move on quickly to  
16 the relationship between the RCMP and the  
17 Department of Foreign Affairs.

18 MR. LOEPPKY: Yes.

19 MR. CAVALLUZZO: If we could move  
20 to Tab 50, this is the MOU between the RCMP and  
21 DFAIT. It is dated October 12th of 1988.

22 MR. LOEPPKY: Yes.

23 MR. CAVALLUZZO: It regulates the  
24 relationship -- and I will take you quickly  
25 through this.



1                   It regulates the relationship, for  
2           example, starting at page 2 in paragraph 4, where:

3                   "The RCMP undertakes to  
4                   inform Department of External  
5                   Affairs of proposed visits  
6                   abroad ..."

7                   And it sets out what you are to  
8           do.

9                   Then in paragraph 5 it talks about  
10          visits to the United States with consultation.

11                  Then there is a detailed appendix  
12          or annex which sets out the terms of reference for  
13          RCMP foreign liaison officers.

14                  Maybe at this point you could  
15          explain what a foreign liaison officer is and how  
16          many of them we have today.

17                  MR. LOEPPKY: We have 35 liaison  
18          officers that are located in 25 locations around  
19          the world. Some of those obviously have  
20          multi-country responsibilities. Their role is to  
21          facilitate the operations, the inquiries that need  
22          to be conducted abroad by Canadian law  
23          enforcement.

24                  Before I go into their full role,  
25          perhaps I should also mention that Interpol, the

1 160-some countries in Interpol serve as an  
2 information exchange broadly based. Each country  
3 has an Interpol office and we in fact have  
4 Canada's office here in our headquarters.

5 It looks after general information  
6 exchange, international warrants, those types of  
7 things.

8 The liaison officers are there to  
9 facilitate inquiries abroad in consultation with  
10 Foreign Affairs if the country is not one they are  
11 resident in. So it is to facilitate  
12 investigations. It is to build relationships with  
13 the foreign law enforcement agency to enhance  
14 cooperation. It is to support the embassy, the  
15 ambassador or the head of mission.

16 And it is to provide support, both  
17 outreach and feedback to Canada, in terms of a  
18 foreign organization that might have an inquiry  
19 that they want to have take place in Canada. They  
20 would deal with our foreign liaison officer who  
21 would then relay that request back to Canada here,  
22 back to headquarters, and it would be farmed out  
23 to the appropriate place.

24 MR. CAVALLUZZO: In the United  
25 States, how many foreign liaison officers do we

1 have?

2 MR. LOEPPKY: We currently have  
3 three in the United States: two in Washington and  
4 one in Miami.

5 MR. CAVALLUZZO: Two in Washington  
6 and one in Miami?

7 MR. LOEPPKY: Yes.

8 MR. CAVALLUZZO: Do we have any  
9 foreign liaison officers in Syria?

10 MR. LOEPPKY: No, we do not. It  
11 is covered out of Rome.

12 MR. CAVALLUZZO: And do we have  
13 any foreign liaison officers in Jordan?

14 MR. LOEPPKY: We did not at the  
15 material time. We are placing one there this  
16 month.

17 MR. CAVALLUZZO: In Jordan.

18 MR. LOEPPKY: In Jordan, yes.

19 MR. CAVALLUZZO: What about at the  
20 material time, in particular 2002-2003. Did we  
21 have a liaison officer in Tunisia?

22 MR. LOEPPKY: No.

23 MR. CAVALLUZZO: Was Tunisia  
24 covered by Rome as well?

25 MR. LOEPPKY: Tunisia is either

1 covered by Rome or by Spain. I am not sure  
2 without doing some checks.

3 MR. CAVALLUZZO: In any event,  
4 Syria is covered by Rome?

5 MR. LOEPPKY: Yes.

6 MR. CAVALLUZZO: In terms of the  
7 functions and responsibilities, I would refer you  
8 quickly to the annex here where the principles are  
9 set out.

10 It states in paragraph 1:

11 "RCMP liaison with foreign  
12 police and law enforcement  
13 intelligence agencies will be  
14 carried out if, in the  
15 opinion of the RCMP and the  
16 Department of ..."

17 We will say Foreign Affairs.

18 "(a) the character of our  
19 relations with and the  
20 political situation in the  
21 country concerned make such  
22 liaison appropriate and  
23 desirable; and  
24 (b) the information likely to  
25 be obtained from such liaison

1 relates to the  
2 responsibilities of the RCMP  
3 for maintaining law and order  
4 in Canada and to the  
5 furtherance of the  
6 established international  
7 agreements."

8 That is true today, obviously.

9 MR. LOEPPKY: Yes.

10 MR. CAVALLUZZO: Second, in  
11 paragraph 2 it says:

12 "Such liaison may cover the  
13 exchange of information  
14 concerning ..."

15 And then I would highlight the  
16 words in paragraph (a):

17 "... the criminal aspects of  
18 politically motivated  
19 crime ..."

20 I think that we could say that  
21 terrorism, for example, would fall under the words  
22 "the criminal aspects of politically motivated  
23 crime"?

24 MR. LOEPPKY: Yes.

25 MR. CAVALLUZZO: Third, in

1 paragraph 3 it states:

2 "Liaison in the criminal  
3 field will be covered by  
4 agreements in writing unless  
5 unwritten understandings are  
6 considered desirable by  
7 either party. Such  
8 agreements or understandings,  
9 which will be negotiated  
10 through diplomatic channels,  
11 will indicate the subject  
12 areas for exchanges of  
13 information, a list of the  
14 local organizations with  
15 which liaison may be  
16 maintained, the channels to  
17 be followed for the conveying  
18 of information, and the  
19 security protection to be  
20 afforded it."

21 That is still true today?

22 MR. LOEPPKY: Yes.

23 MR. CAVALLUZZO: All right.

24 I guess the only other reference  
25 would be in paragraph 5. It says:

1 "When it is considered  
2 desirable for an RCMP officer  
3 to respond to ad hoc requests  
4 or situations outside the  
5 provisions of the liaison  
6 arrangements agreed upon with  
7 the country concerned, such  
8 action will be carried out  
9 only after consultation  
10 between the RCMP ..."

11 And Foreign Affairs. Is that true  
12 today?

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: I think that may  
15 be it.

16 Perhaps the final references in  
17 terms of information the RCMP receives is if you  
18 refer to page 4 of the annex, to the last sentence  
19 of paragraph 7 at the top of page 4.

20 It says:

21 "The Head of Mission will  
22 ensure that the Liaison  
23 Officer is kept fully  
24 informed of Canadian  
25 assessments of political,

1 economic, and social  
2 developments in the country  
3 concerned."

4 For example, what that would mean  
5 in Washington is that the Ambassador in Washington  
6 would keep the RCMP liaison officer fully informed  
7 of their assessment of political, economic and  
8 social developments in the United States?

9 MR. LOEPPKY: It would apply  
10 across the board, but it would be less critical in  
11 that environment than it would be in some areas  
12 around the world where you are dealing with very  
13 unstable political regimes, where you might be  
14 sending an officer into that environment and  
15 Foreign Affairs could give you a significant  
16 amount of advice in terms of safety, in terms of  
17 the broader issues that the officer needs to think  
18 about.

19 MR. CAVALLUZZO: All right.

20 Commissioner, I am now about to  
21 move on to the RCMP's relationship with U.S. law  
22 enforcement and intelligence agencies, which is a  
23 discrete area. Perhaps this may be an appropriate  
24 time to break.

25 For counsel's purposes, I am going



1 to be a little longer than I thought, but I  
2 certainly will try to be completed by the lunch  
3 break at 1 o'clock.

4 THE COMMISSIONER: All right. We  
5 will rise for 15 minutes.

6 --- Upon recessing at 11:27 a.m. /

7 Suspension à 11 h 27

8 --- Upon resuming at 11:46 a.m. /

9 Reprise à 11 h 46

10 MR. CAVALLUZZO: Deputy  
11 Commissioner Loepky, I am going to move now to  
12 relationships with U.S. law enforcement and  
13 intelligence agencies.

14 Before doing that I just want to  
15 make sure that we understand that the RCMP has a  
16 liaison officer with the Department of Foreign  
17 Affairs?

18 MR. LOEPPKY: There are two  
19 liaison officers in Washington. I'm sorry; at  
20 Foreign Affairs, yes.

21 MR. CAVALLUZZO: At Foreign  
22 Affairs in Ottawa.

23 MR. LOEPPKY: I'm sorry. Here,  
24 yes, correct.

25 MR. CAVALLUZZO: Foreign Affairs

1 has a liaison officer with the RCMP. Is that  
2 correct, or is it just --

3 MR. LOEPPKY: I'm not sure if  
4 there is anyone in our building right now.

5 MR. CAVALLUZZO: If we move to the  
6 relationship with U.S. agencies, let us look at  
7 Tab 27, which is the operational manual respecting  
8 your relationship with U.S. agencies. In  
9 particular, at paragraph "I". Once again there is  
10 no pagination.

11 Under the title "U.S.  
12 Law-Enforcement and Other Agencies" it says:

13 "Requests Received by  
14 National Headquarters  
15 1.a If a request for  
16 assistance on other than  
17 security matters is received  
18 by National Headquarters, it  
19 must be sent direct to the  
20 unit concerned for action.  
21 In serious cases, a copy of  
22 the request must be sent to  
23 the division headquarters."

24 As far as that is concerned, it  
25 deals with matters other than security matters, so

1 that it is clear as to the rule there.

2 What is the rule when we are  
3 talking about a request for assistance on  
4 security matters?

5 MR. LOEPPKY: When the request  
6 comes in it is forwarded to the national security  
7 investigations area of CID for processing.

8 MR. CAVALLUZZO: Okay, so just let  
9 me understand now.

10 If I am a part of the FBI and I am  
11 making a request or I want some information from  
12 the RCMP, how would that request come in?

13 MR. LOEPPKY: In terms of  
14 national security?

15 MR. CAVALLUZZO: National  
16 security.

17 MR. LOEPPKY: It would be from the  
18 FBI legal attaché who is attached to the United  
19 States Embassy here in Ottawa. The request from  
20 the U.S. would flow through to him. He would  
21 bring that request or send that request to our  
22 headquarters. It would then be provided to the  
23 national security area for evaluation and  
24 preparation of a response.

25 MR. CAVALLUZZO: Would the request

1 go back -- or would the fulfilment of the request  
2 or the answer to the request go back from  
3 headquarters to the FBI legal attaché in the  
4 embassy in Ottawa?

5 MR. LOEPPKY: Yes.

6 MR. CAVALLUZZO: So that is the  
7 appropriate relationship as far as national  
8 security matters are concerned?

9 MR. LOEPPKY: Yes.

10 MR. CAVALLUZZO: You talked before  
11 about day-to-day contacts. Would there be  
12 contacts other than that flow that you have just  
13 described from the attaché in the embassy through  
14 headquarters?

15 MR. LOEPPKY: Following the  
16 initial contact, if there was a joint  
17 investigation that was undertaken, as the  
18 investigation progressed, as it unfolded, there  
19 would be direct contact between the investigative  
20 units with advice to headquarters especially in  
21 terms of national security.

22 MR. CAVALLUZZO: Okay. When you  
23 say "contact between the investigative units",  
24 could that, for example, be between FBI officers  
25 working in New York City and INSET members working

1 in Ottawa?

2 MR. LOEPPKY: If it was a joint  
3 investigation that had been ongoing where the  
4 initial contact had been made through the  
5 appropriate channels with the appropriate  
6 guidelines, yes.

7 MR. CAVALLUZZO: I will come  
8 back to that in a bit, but if we say stay at  
9 section "I", in I.5 at the bottom of the page  
10 it says:

11 "U.S. Agencies Conducting  
12 Investigations in Canada"

13 Am I to understand that the FBI  
14 could conduct an investigation in Canada?

15 MR. LOEPPKY: It would be a joint  
16 investigation. It would not be an isolated  
17 investigation and we would always have the lead  
18 role subject to our legislation, our expectations  
19 of admissible evidence.

20 MR. CAVALLUZZO: Okay.

21 MR. LOEPPKY: The scenario that I  
22 envision is, if you were conducting a joint  
23 investigation, for example on a murder, and you  
24 had a FBI source that was able to meet with a  
25 suspect who was in Canada, then there might be

1 occasions where that source comes to Canada with a  
2 FBI agent, but the investigation is always done  
3 under the supervision of the RCMP or the Canadian  
4 law enforcement community.

5 MR. CAVALLUZZO: That is described  
6 at the next page. If I could take you to the next  
7 page, I.5.b, it says:

8 "If the RCMP is the host  
9 agency, and no unusual  
10 circumstances exist, the  
11 (commanding officer)/delegate  
12 may approve the request."

13 Then it goes on for the  
14 conditions:

15 "If there are unusual  
16 circumstances, the request  
17 must be referred to the  
18 appropriate National  
19 Headquarters directorate for  
20 a decision.

21 2. All U.S. agents  
22 conducting investigations or  
23 interviews within the RCMP  
24 jurisdiction must be  
25 accompanied by an RCMP

1 member."

2 MR. LOEPPKY: Yes.

3 MR. CAVALLUZZO: Then, thirdly:

4 "The (Assistant Commissioner)  
5 Criminal Intelligence  
6 Directorate must approve all  
7 national security  
8 investigations."

9 I point out to the counsel and  
10 Commissioner that is new. That was not in  
11 existence in 2002, paragraph numbered 3.

12 MR. LOEPPKY: Yes.

13 MR. CAVALLUZZO: Then, finally:

14 "No U.S. agent entering  
15 Canada may carry a restricted  
16 weapon, even if pursuing a  
17 cooperative investigation or  
18 security arrangement."

19 So that sets out the ground  
20 rules if they are to participate in an  
21 investigation in Canada?

22 MR. LOEPPKY: Yes.

23 MR. CAVALLUZZO: Now let us move  
24 to foreign travel. If we move to Tab 29, which is  
25 our "Investigation Guidelines" which were in

1 effect at the appropriate time, and we go to  
2 section "I" at page 4 of 14.

3 This applies to when an RCMP  
4 officer engages in foreign travel in pursuit of  
5 his or her duties. It states:

6 "A member will not undertake  
7 any investigational activity  
8 in a foreign country without  
9 the knowledge of the Liaison  
10 Officer and the explicit  
11 consent of the foreign  
12 country."

13 Okay?

14 MR. LOEPPKY: Yes.

15 MR. CAVALLUZZO: So that if I am  
16 an RCMP officer and I want to travel to the United  
17 States, then I can't do this without the knowledge  
18 of the liaison officer in Washington and the  
19 express consent of the Americans?

20 Is that fair?

21 MR. LOEPPKY: Yes.

22 MR. CAVALLUZZO: Then it goes on:

23 "A member has no legal  
24 authority to conduct  
25 enquiries in the country



1 being visited unless  
2 authorized by the country.  
3 2. A member must be  
4 accompanied by a  
5 representative of the foreign  
6 country during the course of  
7 the investigation.  
8 3. In many countries it is  
9 an offence for an agent of a  
10 foreign government to conduct  
11 enquiries."  
12 Then it sets out:  
13 "Travel to a foreign country  
14 for investigational  
15 purposes..."  
16 In I.1.b.  
17 MR. LOEPPKY: Yes.  
18 MR. CAVALLUZZO: In I.2.b, at the  
19 bottom there, I just want to cover the relevant  
20 portions.  
21 "If the travel request  
22 requires National  
23 Headquarters approval, submit  
24 your request to division  
25 immediately upon knowing the

1                                   need to travel to a foreign  
2                                   country."

3                                   So, once again, if I am an INSET  
4                   member and I want to travel to the United States,  
5                   then I have to get national headquarters approval  
6                   to do that?

7                                   MR. LOEPPKY:   Yes.  As a matter of  
8                   fact, approximately two years ago -- I spoke  
9                   initially about my responsibilities -- we created  
10                  the International Travel and Visit Section.  That  
11                  particular area is responsible for being the first  
12                  recipient of travel requests internationally and  
13                  ultimately has contact with the policy area  
14                  involved and either supports or denies the travel  
15                  authorities to make sure that we have that central  
16                  coordination.

17                                  MR. CAVALLUZZO:  Okay.  Just  
18                  finally on that point, it is important to note up  
19                  at the top portion of that page in respect of  
20                  I.1.b in terms of the purpose of such a visit, it  
21                  states:

22   "Travel to a foreign country  
23   for investigational purposes  
24   is restricted to:

25   1.  Canadian investigations

1 requiring evidence or  
2 information to be gathered in  
3 a foreign country, or  
4 2. foreign cases of  
5 enforcement interest to  
6 Canada requiring evidence or  
7 information to be gathered in  
8 the foreign country by the  
9 RCMP personnel or technical  
10 equipment."

11 There are other regulations that I  
12 would just point out to the Commissioner and  
13 counsel at page 7 of 14. You should be aware of  
14 these guidelines. In particular, paragraph I.2.g.  
15 It states:

16 "Do not contact or interview  
17 Canadians in custody in a  
18 foreign country unless:  
19 1. the interview was  
20 requested through a Canadian  
21 government representative, or  
22 consent to the interview is  
23 given in writing, and  
24 2. the interview has been  
25 approved by the head of the

1 foreign post."

2 Let me just ask you a few  
3 questions about this.

4 Assume that there is a Canadian  
5 who is being detained in the United States,  
6 according to this particular guideline or  
7 regulation it says that I should not conduct an  
8 interview of that Canadian who is detained in the  
9 United States unless the request comes through a  
10 Canadian government representative.

11 What does that mean?

12 MR. LOEPPKY: Canadian government  
13 representative could be a member of the RCMP,  
14 could be a member of Foreign Affairs. It is a  
15 representative of the Canadian government.

16 MR. CAVALLUZZO: What if I'm a  
17 member of an INSET and I get a call from the FBI,  
18 if we take an American agency, and they say to  
19 me -- I'm using the words of this regulation --  
20 "Would you like to come here and interview a  
21 Canadian that we are detaining?"

22 Should I get approval from  
23 anybody?

24 MR. LOEPPKY: Well, as I outlined  
25 a little bit earlier, the information flows. In a

1 case like that it would go through the liaison  
2 officer and to headquarters. Then there would be  
3 the -- in an ongoing file there would be a  
4 discussion, but the initial contact would  
5 obviously be through formal channels.

6 MR. CAVALLUZZO: Let us assume  
7 that the initial contact has already been made and  
8 I am a member of an INSET and I get a call from  
9 the FBI in the United States, "We have a Canadian  
10 that we are detaining here. Would you like to  
11 interview him?"

12 Can I do that has a member of the  
13 INSET without approval from headquarters?

14 MR. LOEPPKY: You need to get  
15 approval to travel outside of the country.

16 MR. CAVALLUZZO: Okay. The  
17 approval I want -- this is very important -- where  
18 should this approval come from?

19 MR. LOEPPKY: The approval would  
20 be provided at headquarters. It would be a  
21 request to the Criminal Operations Officer, the  
22 INSET supervisor. In terms of doing an interview  
23 abroad, there would also be a consultation with  
24 headquarters and it would involve the approval of  
25 the International Travel and Visit Section.

1 MR. CAVALLUZZO: Okay. Now, let  
2 us assume that I do accept the invitation, that I  
3 get the appropriate approvals and I go down and  
4 interview the Canadian who is being detained.

5 From a legal perspective, if  
6 the interview is being conducted in the United  
7 States or a foreign country, what is the position  
8 of the RCMP?

9 Does the Charter of Rights apply  
10 at that point in time?

11 MR. LOEPPKY: Yes, it does. We  
12 would not undertake the investigation or the  
13 interview unless it was Charter compliant.

14 The purpose of going to do an  
15 interview is obviously to collect evidence in  
16 furtherance of an investigation, and we would want  
17 to ensure that that is in place; that the  
18 conditions that would support such an expenditure  
19 in terms of enhancing the investigation can be  
20 justified.

21 It would have to be important. We  
22 would evaluate the request. Does it really meet  
23 the criteria of requiring international travel,  
24 the expense, the potential benefit? And then if  
25 it met those standards, we would approve them.

1                   MR. CAVALLUZZO:  What if the  
2                   foreign agency rather than asking for you to come  
3                   for an interview asked you to provide -- an RCMP  
4                   member once again of an INSET -- a list of  
5                   questions to be put to the Canadian who is being  
6                   detained.  Is that appropriate?

7                   MR. LOEPPKY:  If it furthers the  
8                   investigation in Canada, then it could be  
9                   appropriate to provide a list of questions that  
10                  you might want clarification on, whether to  
11                  further your investigation or whether to in fact  
12                  eliminate the individual from further  
13                  investigation.

14                 MR. CAVALLUZZO:  Really, the  
15                 criteria or the rationale behind that would be to  
16                 further the Canadian investigation.  Is that  
17                 correct?

18                 MR. LOEPPKY:  That is correct.

19                 MR. CAVALLUZZO:  What about  
20                 furthering the American investigation, if that was  
21                 the purpose of the list of questions?

22                 MR. LOEPPKY:  Well, our primary  
23                 objective is to gather evidence and information  
24                 that assists the prosecution of an offence in  
25                 Canada.

1                   As I mentioned earlier, most of  
2                   our investigations are international in scope,  
3                   whether they are focused on criminal activities  
4                   concerning national security or organized crime.  
5                   Therefore, it is important that you have a  
6                   collaborative approach in terms of dealing with  
7                   these investigations and in fact you work together  
8                   very closely to enhance public safety.

9                   MR. CAVALLUZZO:  Would I need any  
10                  approval as a member of the INSET to pass that  
11                  list of questions down to the Americans who were  
12                  detaining a Canadian?

13                 MR. LOEPPKY:  The scenario that  
14                 you have described is an ongoing investigation  
15                 where there has been interaction back and forth on  
16                 a regular basis, and I would expect that  
17                 investigators are working together.  I would  
18                 expect that if you were looking at a list of  
19                 questions, there would be consultation with a  
20                 supervisor in the unit.

21                 MR. CAVALLUZZO:  And just throwing  
22                 a further hypothetical:  If the RCMP had reason to  
23                 suspect that the particular country you were  
24                 dealing with engaged in practices such as torture,  
25                 or rendition, then before you sent that list of



1           questions very serious consideration must be given  
2           to that assistance you are given.

3                               Is that correct?

4                               MR. LOEPPKY:   Very much so.   That  
5           is consistent with our policy earlier on where we  
6           talked about assistance to those countries who  
7           might practise torture.

8                               I do think it is important to set  
9           the context: that the United States and Canada  
10          have a long history of working cooperatively.   We  
11          share many common systems, our justice systems.  
12          We have democratic governments.   And we have a  
13          common objective to deal with public safety and  
14          prevent terrorism.

15                              Having said that, Canada is a  
16          sovereign country.   We have differences in our  
17          laws.   We don't have capital punishment here; they  
18          do in the United States.   We have our own foreign  
19          policy objectives that may not be aligned.

20                              I think it is important that we  
21          don't equate the United States with a country that  
22          clearly practises torture.

23                              MR. CAVALLUZZO:   We certainly  
24          weren't suggesting that.   What I would make  
25          reference to once again is that perhaps at a

1 particular point in time, like 2002, the United  
2 States was engaging in a practice called  
3 rendition, where a person may be sent to another  
4 country for further investigative purposes.

5 It would seem to me that an RCMP  
6 officer who is aware of that practice in the  
7 United States should be very careful before he or  
8 she gave such information to the United States who  
9 are engaged in that practice.

10 MR. LOEPPKY: If the officer had  
11 any suspicion that that might occur, clearly it  
12 would be something that he or she would need to  
13 take into consideration.

14 MR. CAVALLUZZO: In terms of  
15 liaison assistance the U.S., if you continue on in  
16 Tab 29 -- this is just to complete the record  
17 here -- paragraph J or section J deals with  
18 liaison assistance to liaison authorities.

19 I will not take you through that  
20 other than to point out that that should be  
21 reviewed in terms of the full record regarding  
22 assistance given in foreign countries.

23 In closing on the United States, I  
24 want to be very crystal clear. Once again, I am  
25 going to focus on the exchange of information.

1                   Dealing first with the FBI, you  
2                   have told us that there is an oral understanding  
3                   between the FBI and the RCMP concerning the  
4                   exchange of information; that after the initial  
5                   contact is made through headquarters from the  
6                   legal attache in the embassy, then there may be  
7                   day-to-day contact, if it is a national security  
8                   situation, between the INSET member and somebody  
9                   in the FBI in the United States.

10                   There are some specific questions  
11                   I want to ask you regarding that.

12                   First of all, would the FBI person  
13                   in Ottawa, a legal attache coming out of the  
14                   embassy, have access to the INSET office in  
15                   Ottawa?

16                   MR. LOEPPKY: They would visit  
17                   there, much like our liaison officer in Washington  
18                   would visit the various offices that he deals with  
19                   on a day-to-day basis.

20                   MR. CAVALLUZZO: All right.

21                   The second question: Does this  
22                   FBI officer or legal attache who has access to  
23                   the -- it is the "A" INSET office in Ottawa. Does  
24                   the FBI person have access to the RCMP databank  
25                   which is found in the office of the "A" INSET?

1 MR. LOEPPKY: No.

2 MR. CAVALLUZZO: The next  
3 question: If the FBI agent does not have access  
4 to the databank in the "A" INSET office, how would  
5 he -- or if it is a woman, she -- get information  
6 from the databank, the SCIS databank?

7 MR. LOEPPKY: In an ongoing  
8 operation, as I mentioned, going beyond the  
9 initial contact, an operation that is ongoing,  
10 that is dynamic and changing, the FBI agent would  
11 deal with the investigating unit and would be  
12 provided access with information about the file as  
13 it evolved and the issues within the file to  
14 support their investigation, and vice versa.

15 MR. CAVALLUZZO: When you say  
16 "would have access" to the file, could the FBI  
17 agent get a copy of the file?

18 MR. LOEPPKY: There might be  
19 portions that would be disclosed if it was  
20 relevant. But as a matter of course, they would  
21 be provided with an overview and summaries.

22 MR. CAVALLUZZO: Right.

23 MR. LOEPPKY: There are MLAT  
24 processes that allow for access to files for  
25 evidentiary purposes.

1 MR. CAVALLUZZO: But you say there  
2 could be situations where they may get copies of  
3 portions of the file if requested?

4 MR. LOEPPKY: If it was something  
5 very specific like a specific like a specific  
6 statement that they needed to understand the  
7 context of. But as a general matter of course,  
8 they would not be provided with access to the  
9 file.

10 MR. CAVALLUZZO: Now, if --

11 MR. LOEPPKY: Access to the file.  
12 They would be provided with summaries and  
13 overviews.

14 MR. CAVALLUZZO: If they were --  
15 and I am talking about the FBI agent. If the FBI  
16 agent were to get a copy of the file from the "A"  
17 INSET office in Ottawa, would that be improper and  
18 contrary to RCMP operational guidelines and  
19 policies?

20 MR. LOEPPKY: It would not be  
21 consistent with the policy of information sharing;  
22 to provide full access to a file.

23 MR. CAVALLUZZO: Vice versa, does  
24 the RCMP have access to foreign databases such as  
25 an American computer database?

1 MR. LOEPPKY: Indirectly through  
2 U.S. liaison officers, but no direct access.

3 MR. CAVALLUZZO: So if you wanted  
4 something from a U.S. databank, you would make the  
5 request through the liaison officer in the United  
6 States.

7 MR. LOEPPKY: It is really exactly  
8 the same process that they use here. They ask us,  
9 and we have people assigned to do those types of  
10 checks and provide that information as they do  
11 down there.

12 MR. CAVALLUZZO: The next question  
13 relates to the CIA, which is obviously the  
14 security intelligence agency of the United States.

15 Does the RCMP have a similar  
16 arrangement with the CIA for the exchange of  
17 information?

18 MR. LOEPPKY: Where there might be  
19 information of criminal activity, there could be  
20 an exchange, if it is relevant to our  
21 investigation and if it will further our  
22 investigation.

23 MR. CAVALLUZZO: And is this a  
24 written arrangement or agreement?

25 MR. LOEPPKY: It is oral.

1 MR. CAVALLUZZO: It is oral.

2 In respect of the responsibility  
3 for liaising with the CIA, who has primary  
4 responsibility? Is it the RCMP or is it CSIS?

5 MR. LOEPPKY: CSIS.

6 MR. CAVALLUZZO: And is it fair to  
7 say that all information passed to the CIA and  
8 requests for information from the CIA to the RCMP  
9 must be channelled through CSIS?

10 MR. LOEPPKY: We provide all the  
11 information to CSIS that we would share.

12 MR. CAVALLUZZO: Well, just let me  
13 ask: If the CIA wanted information that the RCMP  
14 had, should they pass that request through CSIS to  
15 the RCMP?

16 MR. LOEPPKY: CSIS would clearly  
17 be involved. They would be aware of the  
18 information. But if it is something that is very  
19 specific to a criminal activity that they might  
20 have an interest in, that they might want to  
21 provide information, then there could be direct  
22 contact. But CSIS would be advised.

23 MR. CAVALLUZZO: If I am a member  
24 of an INSET, say the "A" INSET in Ottawa, and I  
25 get a request for information from the CIA, how

1 would I know what the rules of the game were, so  
2 to speak? How would I know whether it would be  
3 proper or not if I gave information?

4 Where is it in writing or in these  
5 manuals that prescribes or regulates that  
6 relationship?

7 MR. LOEPPKY: There is clearly an  
8 understanding that our primary dealings are with  
9 the law enforcement community and our  
10 investigators are aware of that. We talk about  
11 that in a number of training courses that we  
12 provide.

13 In terms of criminal  
14 investigation, criminal activity, again, it would  
15 go through the -- there is this ongoing  
16 consultation with headquarters that I talked about  
17 even beyond the initial contact that ensures that  
18 the information exchange is appropriate and within  
19 the guidelines.

20 MR. CAVALLUZZO: You are saying  
21 that if I am, for example, a member of an INSET  
22 that I have training on this?

23 MR. LOEPPKY: All of the INSET  
24 members are fully experienced, fully qualified  
25 police officers. We do not send junior members to



1 the INSET teams. The law enforcement community  
2 that provides officers send very competent police  
3 officers who understand the law, who have a  
4 significant amount of experience and they  
5 understand the issues around sharing of  
6 information and doing that on a case-by-case basis  
7 where it is appropriate to do so.

8 MR. CAVALLUZZO: We will come to  
9 that training course at the end.

10 Let us move on to relationships  
11 with other foreign law enforcement agencies apart  
12 from the United States. That is regulated at  
13 Tab 27 by the RCMP policy, if I could take you  
14 there.

15 In particular at section "J" where  
16 it talks about "Foreign Law-Enforcement Agencies  
17 Other Than U.S."

18 I'm not going to take the witness  
19 through this. I am just pointing this out to  
20 counsel and the Commissioner. The only point  
21 that, once again, you should be aware of is that  
22 in J.2.a.3 where it says:

23 "The (Assistant Commissioner  
24 CID) must approve all  
25 national security

1 investigations."

2 That is new. It was not in the  
3 guideline in 2002.

4 The only other reference to this  
5 policy, Commissioner -- and I won't take the  
6 witness through this -- is section M. That just  
7 deals with -- excuse me. That is in Tab 31,  
8 section M, and that is just mutual legal  
9 assistance. I won't take you through that but you  
10 should be aware of that area of regulation.

11 A couple of final questions  
12 regarding relationships with foreign agencies  
13 other than the United States.

14 Does the RCMP have an agreement or  
15 arrangement with Syria concerning the exchange of  
16 information?

17 MR. LOEPPKY: No.

18 MR. CAVALLUZZO: Does the RCMP  
19 have any agreement or arrangement with Jordan  
20 concerning the exchange of information?

21 MR. LOEPPKY: No. We have  
22 20 police officers there at the current time  
23 training Iraqi police officers in policing in the  
24 democracy and there may be some type of written  
25 agreement between Foreign Affairs and the

1 government to facilitate their presence there that  
2 I am not aware of, but there are no operational  
3 agreements.

4 MR. CAVALLUZZO: Okay. Now, you  
5 have told us that there is no agreement or  
6 arrangement with Syria concerning the exchange of  
7 information. I just want to understand.

8 Even though there isn't such  
9 an arrangement or agreement, would there be or  
10 could there be any contacts between a Syrian  
11 enforcement agency or a Syrian intelligence agency  
12 with the RCMP?

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: How does  
15 that come about? If there is no arrangement  
16 or relationship or agreement, how does that  
17 come about?

18 MR. LOEPPKY: Primarily through  
19 the liaison officer or Foreign Affairs, depending  
20 on the nature of the request. For example, if the  
21 Syrian law enforcement community was investigating  
22 a drug trafficking cartel that was going to be  
23 sending drugs to Canada, then through the liaison  
24 officer there would be that initial contact made  
25 to facilitate the cooperation in the

1 investigation.

2 MR. CAVALLUZZO: So if Syrian  
3 authorities wanted the cooperation of the RCMP,  
4 then that contact would be done through the  
5 liaison officer in Rome?

6 MR. LOEPPKY: Yes, or they could  
7 go direct to Foreign Affairs if it was a general  
8 type of request for assistance that touched on law  
9 enforcement but perhaps didn't engage law  
10 enforcement in the initial instance.

11 MR. CAVALLUZZO: Okay.

12 That gives us now the opportunity  
13 to move to a completely other area. I want to  
14 deals with INSETs to understand what INSETs are.

15 We saw earlier at Tab 17 the  
16 Website of the RCMP which describes -- these  
17 are the "Integrated National Security  
18 Enforcement Teams.

19 MR. LOEPPKY: Yes.

20 MR. CAVALLUZZO: I'm just going to  
21 ask you a few questions regarding this.

22 You told us before that the  
23 development of INSETs started immediately  
24 after 9/11?

25 MR. LOEPPKY: The formation of

1 integrated teams. They became known as INSETs  
2 when there was additional funding provided to  
3 increase the size of them.

4 MR. CAVALLUZZO: You told us about  
5 the increased funding and I'm not going to take  
6 you through that. It is set out in this Website.

7 But could you give us an idea in  
8 terms of time, because you told us before that we  
9 do presently have four INSETs, one in C Division  
10 in Montreal, one in A Division in Ottawa, one in  
11 O Division in Toronto, and one in E Division in  
12 Vancouver. In terms of timing, when were these  
13 INSETs created?

14 MR. LOEPPKY: There was an  
15 integrated team created very shortly after 9/11,  
16 but the actual teams started to be formally  
17 created in the months following 9/11 as we started  
18 to get some additional resources to ramp up those  
19 particular teams.

20 They were not created all at the  
21 same time. We wanted to ensure that we had the  
22 appropriate resources to put in there, so the  
23 teams in central Canada were really up and running  
24 before the one out in Vancouver.

25 MR. CAVALLUZZO: When was that?

1           When were they up and running? Was it in 2002?

2                           MR. LOEPPKY: Yes, they were  
3 up and running by then. It was in the early  
4 winter of 2002, late fall of 2001, that we started  
5 to do the work in terms of creating those teams.

6                           MR. CAVALLUZZO: The mandate of  
7 the INSET are set out at page 2 of that Website.  
8 It is to:

9   "Increase the capacity to  
10 collect, share and analyze  
11 intelligence among partners,  
12 with respect to targets ...  
13 that are threat to national  
14 security.  
15 2. To create an enhanced  
16 enforcement capacity to bring  
17 such targets to justice.  
18 3. Enhance partner agencies'  
19 collective ability to combat  
20 national security threats and  
21 meet specific mandate  
22 responsibilities."

23   You told us before that there were  
24 a number of partners on these INSETs, not just  
25 RCMP officers but officers from other police

1 forces whether they be province or municipal.

2 Are there other people, other than  
3 law enforcement officers?

4 MR. LOEPPKY: There are members of  
5 the Canadian Border Services Agency, there are  
6 CSIS liaison people on those teams.

7 MR. CAVALLUZZO: In terms of the  
8 relationship and the reporting structures within  
9 the INSET, we have one example with us and that is  
10 the "A" INSET at -- maybe if you would go to  
11 Tab 52 you will see a draft agreement, which I  
12 understand is about to be signed or executed.  
13 --- Pause

14 MR. CAVALLUZZO: Do you have that  
15 in front of you?

16 MR. LOEPPKY: Yes.

17 MR. CAVALLUZZO: This is the one,  
18 as I say, the "A" INSET between the Ottawa Police  
19 Service, the OPP, the Sûreté du Québec, the Hull  
20 Police Service, the Gatineau Police Service and  
21 the Royal Canadian Mounted Police.

22 In terms of reporting structures I  
23 would ask you to refer to page 2. In  
24 paragraph 1.01 it talks about:

25 "A multi-organizational Task

1 Force will be established in  
2 the National Capital Region  
3 and will be comprised of  
4 employees of (those police  
5 forces) and housed on RCMP  
6 premises."

7 Just give us an idea, in terms of  
8 the "A" INSET in Ottawa, is that located at the  
9 headquarters facility out in Ottawa?

10 MR. LOEPPKY: No. It is located  
11 down the road a little way in what we call the  
12 A Division Headquarters building.

13 MR. CAVALLUZZO: Okay. Then in  
14 paragraph 1.03 it says:

15 "The RCMP officer in charge  
16 of IPOCS..."

17 What is IPOCS?

18 MR. LOEPPKY: Integrated Proceeds  
19 of Crime.

20 MR. CAVALLUZZO: All right.

21 "... will supervise the  
22 activities of the peace  
23 officers and administrative  
24 support will be responsible  
25 to ..."



1                   And then it goes on, for example:  
2                   "establish IPOCS operational  
3                   priorities;  
4                   report to the RCMP "A"  
5                   Division Commanding  
6                   Officer ..."

7                   Does that mean that the RCMP  
8                   officer or an RCMP officer will be in charge of  
9                   the INSET, whether it be in Toronto, Ottawa,  
10                  Montreal, et cetera?

11                  MR. LOEPPKY: Yes.

12                  MR. CAVALLUZZO: So we have an  
13                  RCMP officer in charge.

14                  And then if we go to paragraph  
15                  301, we see that it states:

16                  "To ensure that the [other  
17                  police forces] have the same  
18                  authority to work in a  
19                  multi-provincial area, all  
20                  parties agree that for this  
21                  Task Force, non-RCMP peace  
22                  officers will be appointed  
23                  Supernumerary Constable, as  
24                  stipulated in Section 7(1)(c)  
25                  of the RCMP Act. He/She will

1 then be designated as a Peace  
2 Officer according to Section  
3 7(1)(d) ..."

4 And then it goes on:

5 "All parties agree and  
6 understand that as  
7 Supernumerary Constables, the  
8 appointed non-RCMP peace  
9 officers will fall under the  
10 Public Complaint Commission,  
11 as stipulated in ... the RCMP  
12 Act."

13 So it appears to be an attempt to  
14 ensure that non-RCMP people will be subject to the  
15 complaints process of the Public Complaint  
16 Commission?

17 MR. LOEPPKY: Yes.

18 MR. CAVALLUZZO: There is no  
19 reference in this agreement, but I understand from  
20 what you are saying that it is understood that a  
21 non-RCMP officer would be subject to all of those  
22 guidelines, policies and manuals that we have been  
23 discussing for the last two days?

24 MR. LOEPPKY: Yes.

25 MR. CAVALLUZZO: All right.

1                   If we could see that graphically  
2           in terms of what an INSET is, we can refer to Tab  
3           12.

4                   There is a new diagram that should  
5           be inserted there which is a little clearer.

6                   This is the INSET structure that  
7           was in effect in April of 2002?

8                   MR. LOEPPKY:   Yes.

9                   MR. CAVALLUZZO:  If we look at the  
10          structure in terms of the lower box, it talks  
11          about investigators?

12                  MR. LOEPPKY:   Yes.

13                  MR. CAVALLUZZO:  And that would  
14          for the most part be the investigators no matter  
15          what force they come from:  RCMP, OPP, Ottawa,  
16          et cetera?

17                  MR. LOEPPKY:  They would be spread  
18          throughout the organizational chart.  So there are  
19          some there, there are some immediately to the left  
20          of it.  Depending on their skillsets, they would  
21          be appropriately integrated in the entire team.

22                  MR. CAVALLUZZO:  And then it  
23          refers to group leaders?

24                  MR. LOEPPKY:   Yes.

25                  MR. CAVALLUZZO:  The next box

1 would be they would report to group leaders. They  
2 could be from RCMP, OPP, or municipal?

3 MR. LOEPPKY: Yes.

4 MR. CAVALLUZZO: Then they would  
5 report to the officer in charge of the INSET?

6 MR. LOEPPKY: Yes.

7 MR. CAVALLUZZO: And would that  
8 always be an RCMP person?

9 MR. LOEPPKY: Yes.

10 MR. CAVALLUZZO: And then the  
11 reporting structure would be up to the Officer in  
12 Charge of Criminal Operations, as well a lateral  
13 relationship with the Officer in Charge of NSOB?

14 MR. LOEPPKY: Yes, and that is  
15 consistent with the policy direction in terms of  
16 the role of headquarters.

17 MR. CAVALLUZZO: Okay.

18 MR. LOEPPKY: The coordination  
19 role, national security.

20 MR. CAVALLUZZO: And the next  
21 person up would be the Officer in Charge of  
22 Criminal Operations, and that person would report,  
23 a Mr. Proulx, the Assistant Commissioner, and at  
24 the same time have a lateral relationship with the  
25 Director General of National Security Branch?

1 MR. LOEPPKY: Yes.

2 MR. CAVALLUZZO: And is that  
3 Mr. Dan Killam?

4 MR. LOEPPKY: Yes.

5 MR. CAVALLUZZO: And then  
6 Mr. Proulx would also have a lateral relationship  
7 with the -- that is the same person, is it not?  
8 Or am I confused?

9 MR. LOEPPKY: Chief Superintendent  
10 Dan Killam, Director of National Security Branch,  
11 reports directly to Assistant Commissioner Proulx  
12 who is in charge of Criminal Intelligence  
13 Directorate.

14 MR. CAVALLUZZO: Both of those  
15 boxes at the top would be Mr. Proulx?

16 MR. LOEPPKY: No. The box on the  
17 left would be Assistant Commissioner. At that  
18 time it was Dawson Hovey. Today it is Gessie  
19 Clément. She is the Commanding Officer of  
20 A Division.

21 MR. CAVALLUZZO: Of A Division;  
22 excuse me.

23 That Commanding Officer would have  
24 a lateral relationship as well?

25 MR. LOEPPKY: Yes.

1 MR. CAVALLUZZO: With Mr. Proulx.  
2 Just for reference purposes, at  
3 Tab 13 we have the same A Division INSET which was  
4 in effect on July 24, 2003?

5 MR. LOEPPKY: Yes.

6 MR. CAVALLUZZO: The only  
7 difference -- and I am not going to ask you about  
8 this, but just for the Commissioner's purpose and  
9 counsel.

10 The only difference that I could  
11 find is on the left-hand side we see something  
12 called Risk Manager and Administrative NCO and on  
13 the right-hand side we have something called CSIS  
14 Secondment Detachment?

15 MR. LOEPPKY: Yes. They were  
16 reflected in the previous one.

17 MR. CAVALLUZZO: I would like to  
18 ask you some questions about Project O Canada.  
19 Could you tell us what Project O Canada is?

20 MR. LOEPPKY: It was a project  
21 established shortly after 9/11. It was a  
22 multi-disciplinary, multi-jurisdictional,  
23 multi-functional team that was dealing with  
24 criminal activity in relation to national  
25 security.

1 MR. CAVALLUZZO: You say  
2 multi-disciplinary team. What do you mean by  
3 that?

4 MR. LOEPPKY: You might have  
5 people who came with the background from the  
6 financial investigation perspective. You might  
7 have people that -- we wanted different skillsets  
8 in there to have all the pieces that were required  
9 in undertaking an investigation, and that is  
10 really the direction that we undertake all of our  
11 investigations in terms of our integrated policing  
12 philosophy.

13 MR. CAVALLUZZO: This project  
14 O Canada was created in response to 9/11?

15 MR. LOEPPKY: Yes, it was.

16 MR. CAVALLUZZO: And Project  
17 O Canada, is it just that? Is it a project that  
18 crosses jurisdictional lines?

19 MR. LOEPPKY: It is  
20 multi-jurisdictional.

21 MR. CAVALLUZZO: It involves  
22 Toronto, Montreal, Ottawa. Does it cross the  
23 country or is it just central Canada?

24 MR. LOEPPKY: It has a number of  
25 jurisdictions that includes -- in this

1 environment, I am not sure -- it is an ongoing  
2 investigation -- that I want to be specific about  
3 where.

4 MR. CAVALLUZZO: That is fine. I  
5 just want to understand this.

6 I just want to make sure we  
7 understand this. Project O Canada was created  
8 before the creation of the INSETs. Isn't that  
9 correct?

10 MR. LOEPPKY: Yes.

11 MR. CAVALLUZZO: So it wasn't  
12 concurrent. You didn't create O Canada at the  
13 same time. These INSETs were created after  
14 O Canada was created?

15 MR. LOEPPKY: Yes, it was an  
16 ongoing investigation.

17 MR. CAVALLUZZO: In respect of a  
18 project called "A" O Canada, what is that?

19 MR. LOEPPKY: Projects are  
20 traditionally entitled by the different  
21 jurisdictions where they are centred. So  
22 A Division would use the number "A" in front of  
23 the name of the project. So it would simply  
24 denote where part of the investigation is taking  
25 place.



1 MR. CAVALLUZZO: So if it was  
2 taking place in Toronto, what would it be  
3 called -- "O" O Canada?

4 MR. LOEPPKY: It would be "O"  
5 O Canada, yes.

6 MR. CAVALLUZZO: If it was taking  
7 place in Montreal, it would be called "C" Canada?

8 MR. LOEPPKY: "C" O Canada.

9 MR. CAVALLUZZO: So that in  
10 respect of this particular project, there could be  
11 investigations being done in Montreal, the INSET  
12 in C Division, in Toronto the INSET in the  
13 O Division, or in Ottawa, the National Capital  
14 Region, A Division?

15 MR. LOEPPKY: As I mentioned  
16 earlier, investigations are rarely confined to one  
17 community. Any type of investigation generally  
18 crosses jurisdictional boundaries. It may only be  
19 municipal boundaries, but most will cross not only  
20 provincial boundaries; they will cross  
21 international boundaries.

22 Organized crime and national  
23 security investigations are global in nature, and  
24 therefore they will involve many organizations  
25 working together to contribute what they can to

1 the success of that investigation.

2 MR. CAVALLUZZO: I would like to  
3 move on to the other integrated team, the IBET.  
4 That can be found at Tab 18, another RCMP Website.

5 This is the Canada-U.S. Integrated  
6 Border Enforcement Team?

7 MR. LOEPPKY: Yes.

8 MR. CAVALLUZZO: Were these  
9 created around the same time as the INSETs?

10 MR. LOEPPKY: They were created  
11 around the same time as the INSETs, but I think it  
12 is important from contextual point of view to  
13 reflect how we came up with the notion of  
14 integrated INSETs.

15 The philosophy of the RCMP over  
16 the last six years has been integrated policing  
17 being a vision where you have shared priorities,  
18 you have shared information exchange,  
19 interoperable systems, to deal with issues like  
20 the complaints about Bernardo where there wasn't  
21 information shared; economies of scale so that we  
22 capitalize on the 60,000 police officers we have  
23 in Canada working towards common objectives; and  
24 seamless service delivery in terms of avoiding  
25 redundancy, avoiding duplication; breaking down

1 the jurisdictional stove pipes so that the  
2 Canadian public understands there are 60,000  
3 police officers working for public safety rather  
4 than just each individual little department.

5 So the integrated concept started  
6 approximately eight, maybe nine years ago with the  
7 integrated proceeds of crime, where it was  
8 recognized that bringing in a variety of  
9 skillsets, a variety of organizations that can  
10 contribute to greater public safety was the way to  
11 go.

12 So when we moved down the road  
13 there, it was recognized that if you bring in  
14 those players they understand their local  
15 communities. There is a lot of areas that the  
16 RCMP doesn't police, some provinces. They bring a  
17 knowledge of the local environment. They bring a  
18 knowledge of the community and provide feedback to  
19 the community.

20 So there is a lot of advantages in  
21 terms of very integrated approach.

22 When we talk about the INSETs or  
23 the IBETs, it was really founded on a philosophy  
24 that had been in place for some time.

25 So the Integrated Border

1 Enforcement Teams were created to bring together  
2 the partners that have an interest in protecting  
3 our borders -- at that time it was Canada Customs,  
4 Canada Immigration, CSIS, the RCMP -- to create  
5 these border teams that would work together.

6 MR. CAVALLUZZO: If we look at the  
7 Website itself in terms of who the members are so  
8 that we understand what an IBET is, it says:

9 "The original core agencies  
10 from Canada and the U.S.  
11 which have a direct interest  
12 in the IBET are:  
13 - Royal Canadian Mounted  
14 Police  
15 - U.S. Customs and Border  
16 Protection  
17 - Citizenship and Immigration  
18 Canada  
19 - U.S. Immigration and  
20 Customs Enforcement  
21 - The Canada Border Services  
22 Agency  
23 - U.S. Coast Guard"

24 Have the number of agencies  
25 increased from that time, or is this still the

1 core agencies of the IBET?

2 MR. LOEPPKY: There was a joint  
3 management team created that these agencies  
4 originally sat on. But there has been other  
5 agencies.

6 Clearly the Canada Border Services  
7 Agency isn't reflected there. There is --

8 MR. CAVALLUZZO: CSIS isn't  
9 reflected there.

10 MR. LOEPPKY: CSIS isn't reflected  
11 there, and obviously we have some municipal  
12 departments where they have very much day-to-day  
13 enforcement responsibility on border areas where  
14 we include them in those IBET teams as well.

15 MR. CAVALLUZZO: Then the mandate  
16 and the purposes are set out throughout this  
17 Website, and I won't take you through that.

18 Just a couple of questions  
19 regarding the IBETs.

20 This is a situation where American  
21 and Canadian forces work together on a team?

22 MR. LOEPPKY: The original concept  
23 was that there would be IBET teams in Canada, IBET  
24 teams in the United States. They would be  
25 offsetting in terms of working in their

1           jurisdictions and working together to ensure that  
2           the border was not exploited for organized crime  
3           or terrorist activity, but that it would be open  
4           for trade.

5                               We have moved to the point now, as  
6           I mentioned the other day, where we have two areas  
7           where there is some collocation in the province of  
8           Ontario, where we have some liaison  
9           representatives from U.S. agencies working with  
10          those IBET teams. They do not have a police  
11          officer role but they are there to add to the  
12          picture that is required.

13                           MR. CAVALLUZZO: Just so that I  
14          understand, are they working side by side,  
15          American and Canadian officers?

16                           MR. LOEPPKY: If they have a joint  
17          project, they will work on the same project, but  
18          we will not exercise police officer authority. We  
19          have no authority in the United States, nor do  
20          they here. So it is a matter of working together.

21                           But as a matter of course they  
22          have their own officers except for those two  
23          collocations.

24                           MR. CAVALLUZZO: The question I  
25          have, when you are working so closely together and

1 the RCMP is a member of the IBET, would the other  
2 members of the IBET have access to RCMP  
3 information and data?

4 MR. LOEPPKY: They would have  
5 information on a need-to-know basis, but the IBET  
6 teams do not have access to the SCIS system.

7 MR. CAVALLUZZO: If somebody --

8 MR. LOEPPKY: That is classified  
9 information.

10 MR. CAVALLUZZO: So if somebody  
11 from the IBET wanted information from the SCIS, it  
12 would go through the process that you described  
13 earlier?

14 MR. LOEPPKY: Yes.

15 MR. CAVALLUZZO: In terms of  
16 working together, I have two questions related to  
17 that.

18 I have heard the expression  
19 "lookout" at the Canadian border, and I want to  
20 know, first of all, what that is.

21 Let me give you my understanding  
22 of that. If you suspect, for example, that  
23 Cavalluzzo is a bad actor, you will or somebody  
24 will make him a lookout, his name a lookout at the  
25 Canadian border.

1                   Could you explain what that  
2           process is?

3                   MR. LOEPPKY:  Yes.  I just want to  
4           provide a point of clarification to my earlier  
5           comment --

6                   MR. CAVALLUZZO:  You said the  
7           clarification is that Cavalluzzo isn't a bad  
8           actor?

9                   MR. LOEPPKY:  Clarification taken.  
10                   With respect to access to SCIS,  
11           the IBETs have no access.  But we are looking  
12           at -- we are providing certain supervisory people  
13           with access given their role in terms of border  
14           security.  I want that clear.

15                   MR. CAVALLUZZO:  When did that  
16           come about, that the supervisory --

17                   MR. LOEPPKY:  It is just coming  
18           about now, I believe.

19                   MR. CAVALLUZZO:  It wasn't in  
20           effect in 2002?

21                   MR. LOEPPKY:  No.

22                   MR. CAVALLUZZO:  All right.

23                   If we could come back to the  
24           question on the lookout at the Canadian border.

25                   MR. LOEPPKY:  There would be



1 occasions, if we were interested in someone's  
2 travel and we had justification in law to pursue  
3 it, where we were pursuing an investigation, where  
4 we could ask that there be a lookout placed on a  
5 system.

6 MR. CAVALLUZZO: And who --

7 MR. LOEPPKY: Along with many  
8 other Canadian agencies.

9 MR. CAVALLUZZO: And who would you  
10 give that direction to, Customs of Canada?

11 MR. LOEPPKY: It would be done in  
12 conjunction with the Canada Border Services  
13 Agency.

14 MR. CAVALLUZZO: I guess in 2001  
15 and 2002 was the Canada Border Services Agency in  
16 existence or was it something else at that time?

17 MR. LOEPPKY: It was Canada  
18 Customs at that point.

19 MR. CAVALLUZZO: So that if the  
20 RCMP felt that there was someone that should be  
21 watched for at the border, then a direction would  
22 be given to Canada Customs and this person's name  
23 would be on the computer system or data system at  
24 Canada Customs so that when he or she came across  
25 the border there would be a lookout, so to speak,

1 for this person.

2 Is that correct?

3 MR. LOEPPKY: I am not sure it is  
4 direction. I think a better word would be a  
5 request would be made to Canada Customs to place  
6 that information. Obviously they would want some  
7 assurance that it was there for legitimate reasons  
8 in terms of pursuing an investigation; that it was  
9 not a fishing trip. And we would provide that.

10 MR. CAVALLUZZO: As an RCMP  
11 officer, before I sent the name of somebody to  
12 Canada Customs to be on the lookout for this  
13 person when they cross the border, what is the  
14 threshold? Do I have to have engaged in an  
15 illegal activity?

16 MR. LOEPPKY: You have to be the  
17 subject of an investigation that is ongoing.  
18 There must be a purpose why, to further the  
19 investigation, you might want to monitor that  
20 travel. Then there is the appropriate supervisory  
21 oversight to ensure that it complies with that  
22 requirement.

23 MR. CAVALLUZZO: And you are aware  
24 that the Charter of Rights guarantees mobility  
25 rights. So that before an RCMP officer should

1 place a lookout on an individual Canadian, there  
2 should be very serious reason for doing that.  
3 Would you agree?

4 MR. LOEPPKY: Yes.

5 MR. CAVALLUZZO: On the other  
6 side, on the American side, I have heard of  
7 something called a watch list. Do you know what I  
8 am talking about? What is that?

9 MR. LOEPPKY: The only context  
10 that I can put to that is the knowledge that I  
11 have about a watch list, a U.S. terrorist watch  
12 list that I believe is provided to the airline  
13 industry for travel purposes, those types of  
14 things.

15 MR. CAVALLUZZO: Could the RCMP.  
16 or any other Canadian agency, give the Americans a  
17 name, a name of a Canadian who it suspects as  
18 perhaps being associated with terrorists?

19 MR. LOEPPKY: For inclusion in the  
20 watch list?

21 MR. CAVALLUZZO: Yes.

22 MR. LOEPPKY: No. Our objective  
23 would be, and our mandate requires, that we would  
24 put that name on the watch list with Canadian  
25 authorities. We have no authority to ask a U.S.

1 agency to put a name on a U.S. watch list. That  
2 is their decision.

3 MR. CAVALLUZZO: Right. Let's  
4 come back to Jim Jones.

5 Is it possible that an RCMP  
6 officer could share information with the Americans  
7 and suggest that maybe Jim Jones should be on the  
8 American watch list?

9 MR. LOEPPKY: No.

10 MR. CAVALLUZZO: How would it come  
11 about that -- if Jim Jones ends up on a watch  
12 list, how would that come about? Is this just  
13 purely an American act?

14 MR. LOEPPKY: The United States  
15 makes their own decisions in terms of law  
16 enforcement and their investigations and that is  
17 really beyond our control.

18 MR. CAVALLUZZO: It is beyond your  
19 control, but it is possible, I would assume, that  
20 the RCMP or any other Canadian agency could  
21 suggest a name for their watch list. If you are  
22 working closely together, you told us that the  
23 sharing of information is the lifeblood of law  
24 enforcement?

25 MR. LOEPPKY: But we would

1 generally -- we would have no interest in terms of  
2 whether someone transitted through the United  
3 States. We have no authority there. What we  
4 would be interested in is if that individual was  
5 transitting into Canada or travelling out of  
6 Canada. That is our interest.

7 MR. CAVALLUZZO: What are  
8 you saying, that if a Canadian is detained in  
9 the United States that the RCMP would have no  
10 interest in that?

11 MR. LOEPPKY: If the individual  
12 was the subject of an investigation in Canada  
13 that was being pursued Canada might have an  
14 interest, but Canada would not put someone on a  
15 U.S. watch list.

16 MR. CAVALLUZZO: I'm not  
17 suggesting that. Canada can't put somebody on a  
18 U.S. watch list because it is an American watch  
19 list. I'm just suggesting to you that it is  
20 possible that an RCMP officer may suggest a  
21 Canadian be put on the American watch list?

22 --- Pause

23 MR. LOEPPKY: Our concern is with  
24 Canadian watch lists. I mean, as you work in a  
25 very integrated investigation there might be

1 discussion about if someone is coming into the  
2 United States, but it really has no interest to us  
3 in terms of furthering our investigation in  
4 Canada, unless the individual comes to Canada. So  
5 I can't imagine a case where somebody phones up  
6 from Canada and says, "Put so and so on the watch  
7 list to see if he comes into the United States".

8 MR. CAVALLUZZO: So that if it  
9 does happen, and we discover that it does happen  
10 or has happened, it would be totally  
11 inappropriate.

12 Is that correct?

13 MR. LOEPPKY: The sharing of  
14 information is not inappropriate if it is in  
15 furtherance of the investigation.

16 MR. CAVALLUZZO: The question that  
17 I have: If an RCMP officer suggests to the  
18 Americans that a particular Canadian be put on an  
19 American watch list, is that improper or not?

20 MR. LOEPPKY: It is their decision  
21 whether they choose to do that.

22 MR. CAVALLUZZO: Who? Whose  
23 decision?

24 MR. LOEPPKY: The Americans.

25 MR. CAVALLUZZO: But is it proper

1 or improper for the RCMP officer to make that  
2 suggestion to the American authorities?

3 MR. LOEPPKY: As a general rule it  
4 is not proper, but I am trying to think of an  
5 example where the individual, if he was coming  
6 into the United States -- and where it would in  
7 fact be appropriate.

8 If the individual, for example, is  
9 a suspect in a murder and he is in a country where  
10 we do not have an extradition treaty and he is  
11 coming -- we believe that he might be coming into  
12 the United States where we might be able to  
13 extradite him, under those circumstances it might  
14 be appropriate to say, in the interests of being  
15 able to have this person face justice in Canada,  
16 this is an opportunity. So those kinds of  
17 examples or circumstances could exist.

18 MR. CAVALLUZZO: Let's get back  
19 to Mr. Jones.

20 Mr. Jones has not engaged in any  
21 unlawful activity, is on your radar screen only  
22 because of a contact he has with a prime target.  
23 If an RCMP officer was to recommend to American  
24 authorities to put Mr. Jim Jones on the U.S. watch  
25 list, would that be proper or improper?

1 MR. LOEPPKY: As a rule it would  
2 be improper, but you would have to understand the  
3 context of why that request is being made.

4 MR. CAVALLUZZO: We will look  
5 at that context.

6 I would like to move now  
7 quickly to training. That can be found at Tab 44,  
8 which you have given us the training -- excuse me.  
9 Tab 45.

10 This is a training course for  
11 national security investigations. It is approved  
12 as of, I think the date is sometime in -- it says  
13 "Date(s) course was revised: February 2002 (Name  
14 Change) July 2003. Mr. Dan Killam is the Chief  
15 Superintendent, Director General of Security and  
16 he has approved this particular course?

17 MR. LOEPPKY: Yes.

18 MR. CAVALLUZZO: Okay. This is a  
19 course that is given to anyone who is going to  
20 participate in a national security investigation?

21 MR. LOEPPKY: That is going to be  
22 attached to a national security investigation  
23 section or an INSET.

24 MR. CAVALLUZZO: Or an  
25 INSET, okay.



1                   Is it fair to say that every  
2 non-RCMP officer who participates in an INSET  
3 takes this national security course, enforcement  
4 course?

5                   MR. LOEPPKY: They would be taking  
6 it, yes.

7                   MR. CAVALLUZZO: Okay.

8                   MR. LOEPPKY: They might not have  
9 it when they first arrive, but as soon as possible  
10 thereafter.

11                  MR. CAVALLUZZO: So they may not  
12 have it when they arrive on the INSET, but they  
13 would take it as soon as possible.

14                  I understand, if we are taking you  
15 through this quickly, at page 5, that it is a  
16 10-day course?

17                  MR. LOEPPKY: Yes.

18                  MR. CAVALLUZZO: The syllabus of  
19 the course is set out, really from pages 9  
20 through 13, starting with an "Overview of the  
21 National Security Program", "Criminal Intelligence  
22 and the Threat Assessment Process",  
23 "Anti-Globalization/Criminal Protest Movements",  
24 "The Psychology of Terrorism", "Cultures: Middle  
25 East and Islamic Perspectives", "The Roots of

1 Terrorism", and so on and so forth, through  
2 terrorist financing, and so on and so forth.

3 The one thing that I couldn't find  
4 in going through this syllabus in terms of the  
5 training courses is that there doesn't appear to  
6 be anything on the exchange of information between  
7 RCMP officers and other agencies, unless I have  
8 missed something?

9 MR. LOEPPKY: No. There is no  
10 specific session that I see in this particular  
11 course that speaks to information exchanges.  
12 However, as I mention, the police officers that  
13 come onto these units are not new police officers,  
14 they have a significant amount of training in  
15 terms of professional police practices and,  
16 therefore, you know, I would expect coming from an  
17 organized crime unit, coming from a major  
18 investigative IPOC unit, that they are fairly  
19 comfortable with information exchanges.

20 MR. CAVALLUZZO: Are there any  
21 courses on civil liberties or political dissent,  
22 legitimate political dissent, in regard to this  
23 training program?

24 MR. LOEPPKY: In addition to this?  
25 Included in this course? I'm sorry.

1 MR. CAVALLUZZO: Yes, included as  
2 part of that course?

3 MR. LOEPPKY: As part of this  
4 course?

5 MR. CAVALLUZZO: Yes.

6 MR. LOEPPKY: Outside of what the  
7 syllabus says -- I haven't sat through the course  
8 so I don't know.

9 MR. CAVALLUZZO: Okay. Now, are  
10 there any other training programs for national  
11 security that we don't have in front of us?

12 MR. LOEPPKY: Yes.

13 I just might put a little bit of  
14 context around why this course was upgraded in  
15 July of 2003. It was formerly known as a  
16 "National Security Enforcement Course" up until  
17 the revisions caused as a result of the amendments  
18 to the law under C-36. Prior to 9/11 we had  
19 trained a significant numbering of RCMP officers,  
20 350, but very few outside agencies, but since  
21 post-9/11 we have trained an additional 172 RCMP  
22 and 50 outside agencies in terms of this course.

23 In addition to this course, there  
24 is had a two-and-a-half day workshop on Bill C-36  
25 that speaks about the new legislative issues that

1           came out of that, the processes that have to be  
2           put in place before it can be utilized, some of  
3           the mechanisms that I spoke about the other day in  
4           terms of where the authority rests before they can  
5           be forwarded to the Attorney General. So it is a  
6           two-and-a-half day program that focuses very much  
7           on new legislation.

8                           Those are the two specific courses  
9           that relate to national security.

10                          MR. CAVALLUZZO: Now, I want to  
11           refer to the next tab, Tab 46, which is, I  
12           understand, a think-tank or a planning session as  
13           to the future of terrorism, which was a seminar or  
14           I guess a group met in May of 2003.

15                          Let's look at page 2 just to  
16           ensure we know what we are talking about here. It  
17           says:

18                                   "The views in this document  
19                                   do not represent any official  
20                                   position, by any  
21                                   organization; they summarize  
22                                   the discussion during a  
23                                   scenario planning workshop on  
24                                   the future of terrorism."

25                          Then at the bottom of the page,

1           about three paragraphs up, it says:

2                               "The purpose of this report  
3                               is to describe four scenarios  
4                               developed by a group of 25+  
5                               participants from the RCMP, a  
6                               number of government  
7                               departments and external  
8                               experts at a workshop in  
9                               Ottawa on February ... 2003,  
10                              organized and hosted by the  
11                              Criminal Intelligence  
12                              Directorate."

13                             Then there are participants from  
14                             RCMP, CSIS, Defence, Transport Canada, CIC, DFAIT,  
15                             Solicitor General, CCRA, CCMD, Justice Canada,  
16                             OPP, Montreal Police, Québec Provincial Police and  
17                             Carleton University.

18                             So I understand that what we are  
19                             talking about here is a think-tank presenting  
20                             scenarios which will or might exist in 2013.

21                             The first reference I would make  
22                             is to page 12 where it talks about "Canada-US  
23                             Differences". Just let me read it for those who  
24                             do not have it.

25                             This is one of the four scenarios:

1 "This global environment was  
2 particularly harmful on  
3 Canada-US relations.  
4 Canadians felt much less  
5 threatened than Americans.  
6 This was reflected in  
7 diverging views between the  
8 Canadian and the US  
9 Government. While deploying  
10 forces in Afghanistan, Canada  
11 was unsupportive and critical  
12 of US policy on Iraq. Canada  
13 was seen as a weak link in  
14 fighting terrorism and an  
15 `open door' for terrorists to  
16 enter and attack the US.  
17 There was pressure on Canada  
18 to bolster security from the  
19 military to immigration to  
20 cross-border controls. While  
21 there was cooperation in  
22 creating `smart border'  
23 technology and controls, the  
24 US pushed for the presence  
25 and authority of US security

1 forces to operate in Canadian  
2 ports and airports. Some  
3 forces were granted access  
4 but with limiting conditions  
5 on operations. They must  
6 work with Canadian police and  
7 intelligence services and  
8 within Canadian law. There  
9 was concern that sovereignty  
10 was being eroded as US policy  
11 yet again reached into  
12 Canadian territory."

13 The question that I have comes  
14 back to questions I asked you earlier. Although  
15 this would appear to be a description of 2003 it  
16 looks a lot like what occurred in Canada shortly  
17 after 9/11.

18 MR. FOTHERGILL: I'm sorry,  
19 Commissioner. I think it is a hypothetical  
20 scenario set in 2013 as opposed to 2003.

21 MR. CAVALLUZZO: I grant that. I  
22 prefaced my question saying that although it is a  
23 description of a scenario in 2013 --

24 MR. FOTHERGILL: Yes. I heard you  
25 say 2003. I'm sorry.

1                   MR. CAVALLUZZO: I'm putting it to  
2 the witness that it looks an awful lot like 2001,  
3 shortly after 9/11.

4                   The question that I have is:  
5 Weren't some of these pressures that are  
6 described in this scenario present in 2002 so that  
7 perhaps RCMP officers may have felt pressure from  
8 American authorities when they were seeking the  
9 assistance of the RCMP or were seeking information  
10 from the RCMP.

11                  MR. LOEPPKY: It is important that  
12 this exercise be seen for what it is. It was a  
13 hypothetical think-tank that brought together a  
14 number of different members of the community to  
15 look at what are the different scenarios that  
16 could evolve in the next 10 years in terms of the  
17 world environment.

18                  This is an exercise that we  
19 undertake with respect to criminal, to organized  
20 crime, to First Nations communities, to all  
21 components of our work so that it forces us to  
22 think about all of the potential directions that  
23 the world could take in any one of those areas and  
24 to start thinking strategically about our  
25 responses. This was an exercise that was



1           undertaken by Criminal Intelligence Directorate  
2           with a number of partners to do exactly that.

3                           I would agree that some of those  
4           points that you have made could be interpreted as  
5           reflecting today's environment, but this is a  
6           hypothetical planning exercise to force people to  
7           think long term.

8                           MR. CAVALLUZZO: Well, let me give  
9           you a concrete question then.

10                           Is it fair to say that in 2002  
11           RCMP officers working on national security  
12           investigations would have felt pressured by  
13           American agencies who were seeking information,  
14           because of the general atmosphere at that point in  
15           time that Canada was considered to be, as  
16           described here, the weak link, that Canada was  
17           considered to have let terrorists come through its  
18           borders to the United States, all these other  
19           features that most Canadians are aware of in terms  
20           of the pressures?

21                           Isn't it fair to say that an RCMP  
22           officer may have felt pressured in 2002 because of  
23           these external pressures?

24                           MR. LOEPPKY: I don't think our  
25           officers felt pressures from the Americans. I

1 think that they felt pressure from the senior  
2 management of the Force, from the other partners  
3 who have an interest in public safety, to work  
4 together to deal with the environment that we were  
5 facing at that point in terms of their potentially  
6 being another threat, in terms of some of the  
7 information that individuals had been in Canada.

8 So, you know, there was increased  
9 tension throughout the world, and clearly we put  
10 significant pressure on our people to work hard  
11 and to follow up on every lead, to use almost a  
12 zero-risk based approach in terms of those  
13 investigations.

14 And yes, there was  
15 international concern. The U.S. had been the  
16 subject of the attacks and they were concerned  
17 about another one, but we had rightful concerns in  
18 Canada that we were subject to threat as well. So  
19 we put a tremendous amount of pressure on our own  
20 people, as we did on 9/11 when we redeployed over  
21 2,000 people.

22 MR. CAVALLUZZO: What are you  
23 saying, that senior management in the RCMP felt  
24 pressure from the Americans and that, as a result  
25 of that, you pressured the RCMP officers --

1 MR. LOEPPKY: Not at all.

2 MR. CAVALLUZZO: Not at all?

3 MR. LOEPPKY: Not at all. In  
4 fact, my pressure came from my duty as a public  
5 officer to ensure public safety in Canada, to  
6 ensure that Canadian public was confident that law  
7 enforcement was working in an integrated way. The  
8 Commissioner appeared on television the day after  
9 9/11 to assure the Canadian public, and my  
10 pressure that I exerted on my people came from a  
11 sense of duty that I feel.

12 MR. CAVALLUZZO: Okay. Let's look  
13 at the next page, page 13, it is called a  
14 "Multicultural Divide". It says:

15 "The most critical issue,  
16 however, was Canada's  
17 multicultural society. The  
18 US was suspicious of ethnic  
19 groups in Canada. They  
20 viewed Arabic, (North)  
21 African, Pakistani, Irani and  
22 Iraqi groups as potential  
23 sources of terrorists and  
24 wanted the Canadian  
25 Government to increase

1                   surveillance and  
2                   investigation of these 'high  
3                   risk' groups."

4                   And it goes on and on and on.

5                   Was there any pressure felt from  
6                   the Americans as a result -- even though this is a  
7                   2013 hypothetical, was there any pressure from the  
8                   Americans because of our multicultural society  
9                   that we have in this country?

10                  MR. LOEPPKY:  No, not that I am  
11                  aware of.

12                  MR. CAVALLUZZO:  So this is  
13                  just speculation as to what may happen 10 years  
14                  from now?

15                  MR. LOEPPKY:  Yes.

16                  MR. CAVALLUZZO:  The only other  
17                  question is in terms of the next title,  
18                  "Compromise".  There is an interesting statement  
19                  in the third line.  It says:

20                         "Similarly, Canadian  
21                         intelligence was reticent to  
22                         share information with the US  
23                         who was prone to over react  
24                         and might compromise  
25                         intelligence sources and

1 methods."

2 That is very interesting that  
3 these Canadian officials would posit in 10 years  
4 that Canada would be reticent to share information  
5 because the U.S. is "prone to over react".

6 Once again, did you feel any of  
7 that in 2002 that if we shared information with  
8 the Americans they may overreact, or is this just  
9 another speculation as to what may be in 10 years  
10 from now?

11 MR. LOEPPKY: This was just part  
12 of the scenario. I didn't have that perception.

13 MR. CAVALLUZZO: The final area of  
14 questions -- Mr. Chairman, I will just be another  
15 five minutes. I don't know if you want to break?

16 THE COMMISSIONER: No. Are you --

17 MR. LOEPPKY: I'm fine, sir.

18 THE COMMISSIONER: -- content for  
19 another five minutes?

20 MR. LOEPPKY: Yes.

21 THE COMMISSIONER: Thank you.

22 Then why don't you finish.

23 MR. CAVALLUZZO: Okay.

24 The final area of questioning,  
25 Deputy Commissioner -- Mr. Commissioner, I was

1 going to deal with accountability and review, but  
2 that is really a legal question where the Charter  
3 of Rights is applicable. The judiciary obviously  
4 is involved in terms of warrants, and so on, and  
5 we have reviewed the ministerial directives.

6 The only other aspect that counsel  
7 and you should obviously refer to is section 45.45  
8 of the RCMP Act which deals with the Public  
9 Complaints Commission, and obviously which is very  
10 relevant to your mandate in respect of the policy  
11 review. That can be garnered from the legislation  
12 itself.

13 Finally, Deputy Commissioner, I  
14 want to briefly deal with the relations of the  
15 RCMP with the community generally.

16 First of all, refer to Tab 47  
17 which is a brochure entitled -- I can't read that.  
18 it is "Islam &"

19 MR. LOEPPKY: "Muslim"

20 MR. CAVALLUZZO: Is it "Muslim,  
21 What Police Officers Need to Know".

22 MR. LOEPPKY: Yes.

23 MR. CAVALLUZZO: Is that correct?

24 MR. LOEPPKY: Yes.

25 MR. CAVALLUZZO: If we look at the

1 "Introduction" on the first page, it states that:

2 "This booklet is designed to  
3 aid police officers in better  
4 understanding the Muslim  
5 community, their faith and  
6 culture."

7 I leave this to the parties to  
8 read, but there is, it seems to me, an attempt to  
9 give a better understanding to police officers to  
10 understand the culture and mores of the community  
11 with which you are dealing.

12 If we look at the last page  
13 we will see that there are certain  
14 acknowledgements in respect of this brochure or  
15 booklet. For example, we see that the executive  
16 director of CAIR-CAN, Mr. Saloojee, participated  
17 in, I assume, the creation of this booklet. For  
18 example, it says:

19 "For more information please  
20 contact:  
21 Islamic Social Services  
22 Association,  
23 Council on American Islamic  
24 Relations-Canada..."

25 I guess there are a few questions

1 I have with respect to there booklet, Deputy  
2 Commissioner.

3 Is this booklet begin to members  
4 of the RCMP who deal generally with the Muslim and  
5 Arab community?

6 MR. LOEPPKY: I'm not sure how  
7 widely this booklet is distributed.

8 MR. CAVALLUZZO: Right. Is it a  
9 creation, though, of the RCMP?

10 MR. LOEPPKY: It is one of the  
11 initiatives that the RCMP has been involved in.  
12 This particular booklet was put together in  
13 Manitoba, with some support from our people in  
14 terms of review, driven very much by the Muslim  
15 community.

16 If I just might comment that this  
17 is really just one of the small pieces of outreach  
18 I think that has taken place post-9/11. I know  
19 the Commissioner immediately post-9/11 met with a  
20 significant number of the Muslim community in  
21 Toronto in conjunction with his Commissioner's  
22 Advisory Committee on Visible Minorities.

23 We have, in virtually every  
24 division, an outreach program with the Muslim  
25 community to ensure that we understand their



1 concerns, that they understand our mandate. So  
2 those are in place. I can be more specific, but  
3 they are in place in every one in different forums  
4 and different venues.

5 I think the other point that I  
6 would make is that outreach is not a new business  
7 to us. We have been involved in it since 1986  
8 when the Commissioner of the day established the  
9 Visible Minority Advisory Committee.

10 There are similar committees in  
11 the provinces, but the Commissioner's National  
12 Advisory Committee, he meets with them twice a  
13 year. They are made up of representatives from  
14 different visible minorities communities across  
15 Canada and they bring concerns forward about are  
16 there sensitivities within communities that we  
17 need to adjust to, that we need to be aware of in  
18 terms of maintaining the confidence and the  
19 ability to police those communities.

20 They provide guidance in terms of  
21 how we can do a better job of recruiting and  
22 retaining visible minorities that we have in the  
23 organization. They bring a community perspective  
24 in each one of those meetings, where there is a  
25 community meeting with the community that the

1 Commissioner attends.

2 So it is a forum that has been in  
3 place for 18 years to really bring together the  
4 broad knowledge and the concerns of those  
5 communities and, as a result, we have amended our  
6 policy on a number of occasions in terms of  
7 recruitment and retention. I mean, for example,  
8 we recruited -- we allowed the East Indian to wear  
9 the turban as part of the significant uniform of  
10 the force. So we have been very responsive to  
11 various issues that they have raised over the  
12 years and we continue to be.

13 MR. CAVALLUZZO: Finally, I just  
14 want you to identify that Tab 48 is the mandate of  
15 the advisory committee that you were just  
16 referring to. Just ensure you identify that.

17 MR. LOEPPKY: Yes, that is  
18 correct.

19 I guess the only further comment I  
20 would make is we have come out with a very strong  
21 statement about bias-free policing that has been  
22 provided to every member of the organization and  
23 it speaks to respect, it speaks to providing  
24 professional service in conjunction with,  
25 obviously, the law and in conjunction with our

1 values as an organization.

2 MR. CAVALLUZZO: Right. I am  
3 going to just finally ask you these questions  
4 because they came up in the questioning of CSIS.  
5 That is, I assume if you were aware that some of  
6 your officers were asking questions to members of  
7 the Muslim faith as: Do you consider yourself  
8 religious? How many times per day do you pray?  
9 What mosque do you belong to? That you would feel  
10 that these questions are totally inappropriate?

11 MR. LOEPPKY: There is no  
12 correlation between religious observance and  
13 terrorist activity or criminal activity, and that  
14 is very clear. So as a matter of trying to  
15 establish religious practices for personal  
16 information, it would be totally inappropriate,  
17 but there could be occasions where to further an  
18 investigation a question could be asked --

19 MR. CAVALLUZZO: All right.

20 MR. LOEPPKY: -- that could tie  
21 them together.

22 MR. CAVALLUZZO: Okay. Deputy  
23 Commissioner, it has been a long day and-a-half  
24 and I thank you for your answers.

25 Mr. Commissioner, that would

1 complete --

2 THE COMMISSIONER: Thank you,  
3 Mr. Cavalluzzo.

4 It is 1:15. We will break  
5 until 2:30.

6 Ms Edwardh, do you know how long  
7 you will be? Can you give us --

8 MS EDWARDH: I certainly hoped  
9 originally to be finished today, but the  
10 92 minutes have been expanded somewhat. So I  
11 think it unlikely that I will finish, although I  
12 will still try, but then of course Ms McIsaac has  
13 questions.

14 THE COMMISSIONER: Right.

15 MS EDWARDH: I think it prudent  
16 that we plan that we may have to sit at least  
17 tomorrow morning.

18 THE COMMISSIONER: Okay.

19 MR. FOTHERGILL: Commissioner,  
20 that may raise a difficulty from the perspective  
21 of this particular witness, because I am told that  
22 over the next couple of days he is chairing  
23 meetings involving senior members of other police  
24 forces, some of whom are flying in from other  
25 jurisdictions.

1                   Our understanding initially was  
2                   that he might be finished the first day and, if  
3                   not, then certainly the second. I appreciate that  
4                   the questioning has gone on longer than expected,  
5                   but our very strong preference would be to finish  
6                   today if at all possible, even if it meant sitting  
7                   late and, failing that, to start quite a bit  
8                   earlier tomorrow morning so that he could attend  
9                   to his other responsibilities.

10                   THE COMMISSIONER: I am open to  
11                   either one of those suggestions, sitting late or  
12                   starting early.

13                   Why don't we resume at 2:30 and we  
14                   will see how it goes?

15                   --- Upon recessing at 1:16 p.m. /

16                   Suspension à 13 h 16

17                   --- Upon resuming at 2:28 p.m. /

18                   Reprise à 14 h 28

19                   THE COMMISSIONER: Ms Edwardh.

20                   MS EDWARDH: Thank you very much,  
21                   Mr. Commissioner.

22                   THE COMMISSIONER: Do you want to  
23                   remain seated for this?

24                   MS EDWARDH: I think so. I have  
25                   quite a number of materials, and we are hoping

1           that some kind of smaller version of this podium  
2           can be eventually arranged and we will just move  
3           it, if that is possible.

4                         THE COMMISSIONER:   That seems to  
5           be a good idea.

6                         Just to help us -- and I am not  
7           setting out to rush you -- what do you estimate  
8           the length will be so that people know about their  
9           schedules for today?

10                        MS EDWARDH:   I had said to you  
11           that I thought I would take half a day.

12                        THE COMMISSIONER:   Right.

13                        MS EDWARDH:   I don't know that  
14           that expectation or that evaluation of time is  
15           incorrect.  It does depend a little bit on how the  
16           cross-examination proceeds.

17                        Certainly Mr. Cavalluzzo covered  
18           this morning a number of areas I was going to.  I  
19           will certainly try to finish within three to four  
20           hours.

21                        What I was suggesting we might  
22           consider is letting me aim for that and then take  
23           a brief break for dinner and then proceed  
24           thereafter so that the officer can get back to his  
25           business.

1 THE COMMISSIONER: That is what I  
2 am getting at; that we will aim to finish tonight,  
3 barring the unforeseen.

4 MS EDWARDH: The last plane leaves  
5 at 10.00.

6 THE COMMISSIONER: Is that  
7 agreeable to you Mr. Fothergill?

8 MR. FOTHERGILL: Yes, very much  
9 so; thank you.

10 THE COMMISSIONER: And you, Deputy  
11 Commissioner?

12 MR. LOEPPKY: Yes, Your Honour.

13 THE COMMISSIONER: You in  
14 particular let me know. If the length of the  
15 hearing at all is affecting anything, then you be  
16 sure and draw it to my attention.

17 MR. LOEPPKY: Thank you.

18 THE COMMISSIONER: For everyone  
19 else, we will proceed on that basis.

20 MS EDWARDH: Thank you very much,  
21 Mr. Commissioner.

22 Before I begin the  
23 cross-examination, I would like, sir, to file a  
24 book of documents. They are styled "Documents -  
25 Cross-Examination of Garry Loepky", and I would

1 ask, sir, that they be marked as the next exhibit.

2 THE COMMISSIONER: That will be  
3 14.

4 EXHIBIT NO. P-14: Book of  
5 Documents entitled  
6 "Documents -  
7 Cross-Examination of Garry  
8 Loepky"

9 MS EDWARDH: We do have a copy for  
10 the witness, if I could ask Ms Davies to give it  
11 to him.

12 We have one other copy, if anyone  
13 would benefit from one.

14 THE COMMISSIONER: If anybody  
15 wants one, put up their hands.

16 MS EDWARDH: My co-counsel would  
17 appreciate one.

18 THE COMMISSIONER: Okay, he wins.

19 MS EDWARDH: Thank you very much.

20 EXAMINATION / INTERROGATOIRE

21 MS EDWARDH: Deputy Commissioner,  
22 let me just take a moment to introduce myself. My  
23 name is Marlys Edwardh and I represent Maher Arar.

24 I do apologize if I jump around a  
25 bit, but I have tried to reorganize things in



1 order to not to duplicate some of the questions  
2 Mr. Cavalluzzo has put to you.

3 I would like, however, to explore  
4 some of the same issues but from a different  
5 perspective or add on to what has been said.

6 You have referred to and discussed  
7 Tab 46 of the Commission materials, which were the  
8 scenarios. Do you recall that?

9 MR. LOEPPKY: That is correct.

10 MS EDWARDH: You don't need to  
11 turn to them, sir, but essentially the proposition  
12 was put to you that there was pressure from the  
13 Americans.

14 I want to first stop before we  
15 talk about pressure placed on policing agencies.

16 Certainly you would agree, sir,  
17 that there was loud spoken criticism in the United  
18 States about some of Canada's policies. Is that  
19 correct?

20 MR. LOEPPKY: There were certainly  
21 media articles that I am aware of, yes.

22 MS EDWARDH: I am going to take  
23 you to one in a moment that I submit is of  
24 significance.

25 But as I understood your version

1 of the pressure that you felt you were under, it  
2 was that as a police officer you took it very  
3 seriously to send down through the ranks of the  
4 Royal Canadian Mounted Police the message that  
5 everyone would have to do everything they could  
6 and, as you pointed out, I think in an unusual  
7 turn of phrase, you approached what is a zero  
8 risk-based approach.

9 Do you recall that phrase you  
10 used?

11 MR. LOEPPKY: Yes.

12 MS EDWARDH: I am going to put to  
13 you, sir, that a zero risk-based approach meant  
14 that, from the perspective of the Royal Canadian  
15 Mounted Police, there were several consequences to  
16 that.

17 One was to the extent humanly  
18 possible, all leads would be investigated?

19 MR. LOEPPKY: Yes.

20 MS EDWARDH: To the extent that  
21 would facilitate joint force operations, whether  
22 in Canada or with our ally United States, as much  
23 facilitation should occur as is possible,  
24 cooperation and facilitation?

25 MR. LOEPPKY: To work together,

1 certainly domestically, in an integrated way.

2 MS EDWARDH: And domestically of  
3 course would include any kind of activity that  
4 would be trans-national in scope?

5 MR. LOEPPKY: Activity that came  
6 to our attention for whatever reason.

7 When I talked about a minimal  
8 risk-based approach, taking into consideration the  
9 general nature of police work, if a front line  
10 police officer in Surrey had a call about a lost  
11 bicycle, he might not attend that. But if it was  
12 related to national security type concern, then we  
13 would do appropriate follow-up.

14 So that is what I meant by minimal  
15 risk.

16 MS EDWARDH: When I used the  
17 phrase zero risk-approach in my question, sir,  
18 what I am talking about is a national security  
19 matter.

20 MR. LOEPPKY: Yes.

21 MS EDWARDH: And it is fair to say  
22 that what that meant was that no stone, if  
23 possible, would be unturned, no investigative lead  
24 simply ignored. And there was a tendency in that  
25 process to also raise the index of suspicion for

1           policing entities. Is that fair?

2                           MR. LOEPPKY: There is a limit to  
3           the extent with which you can apply that. I mean,  
4           you minimize the risk, but clearly you don't have  
5           the resources to do everything that you would  
6           like. So you need to put an element of judgment  
7           in there, too, in terms of how far you take each  
8           piece of information that is provided to you or  
9           each complaint.

10                          MS EDWARDH: I appreciate there  
11           has to be an element of judgment. But as one  
12           moves to a zero-risk approach in national security  
13           matters, I understand that to dictate that, to the  
14           extent possible, the resources were dedicated to  
15           follow through with those investigations?

16                          MR. LOEPPKY: Yes.

17                          MS EDWARDH: The pressure, if I  
18           can just go back to that as a concept for a  
19           moment, I am going to suggest to you actually  
20           didn't begin with 9/11. The pressure began with  
21           the case of Ahmed Ressay, who we know in December  
22           1999 endeavoured to pass through the  
23           Canadian-American border in British Columbia  
24           entering the United States.

25                          MR. LOEPPKY: Yes, that is

1 correct. That was a particular case that I  
2 alluded to earlier in my testimony. I also spoke  
3 about earlier incidents involving the Turkish  
4 diplomats, Air India. So there was a pattern.

5 MS EDWARDH: I want to talk about  
6 the American officials.

7 To the best of my knowledge, the  
8 Air India disaster and the actions of individuals  
9 culpable in that action were not suggested to be  
10 Americans, nor was the American government  
11 directly involved in that.

12 Is that correct?

13 MR. LOEPPKY: That is correct.

14 MS EDWARDH: And with respect to  
15 the actions in Ottawa resulting, first of all, in  
16 the injury to Mr. Kani Gungor, the commercial  
17 attaché, leading up to the third event, it is my  
18 understanding that there was no suggestion that  
19 the American authorities were directly involved in  
20 those three events.

21 MR. LOEPPKY: That is right.

22 MS EDWARDH: So let's turn to our  
23 American allies, then.

24 The case of Mr. Ressam was an  
25 incident that I am going to suggest to you, sir,

1 was an embarrassment to both the Royal Canadian  
2 Mounted Police and also to security agencies in  
3 this country.

4 Would you agree with that?

5 MR. LOEPPKY: I wouldn't  
6 characterize it as an embarrassment. I would  
7 characterize it as a joint investigation that  
8 ultimately resulted in his apprehension.

9 Clearly we learn from every one of  
10 those experiences in terms of what are the issues  
11 we need to address.

12 MS EDWARDH: Certainly one of the  
13 lessons learned is that intelligence had failed to  
14 predict his departure from Canada and entry into  
15 the U.S. in such a way as to permit you to alert  
16 U.S. authorities; correct?

17 MR. LOEPPKY: Yes.

18 MS EDWARDH: I am going to suggest  
19 to you that the Americans, or at least American  
20 commentators in the media, et cetera, viewed this  
21 as an example of an extremely serious crime,  
22 targeting American citizens, and that they were  
23 critical of the intelligence failure that that  
24 event represented.

25 MR. LOEPPKY: They were certainly

1 concerned. They were critical, as they were in  
2 their own country of their own failures.

3 MS EDWARDH: Right. But this one  
4 was aimed at intelligence agencies in this country  
5 or the failure of those agencies or policing  
6 agencies to notify them that this man was leaving  
7 Canada and headed for the United States.

8 There was criticism about that  
9 fact.

10 MR. LOEPPKY: Yes.

11 MS EDWARDH: The criticisms  
12 generated in United States, both by politicians  
13 and by persons who had been involved in either  
14 policing and/or intelligence activities, were  
15 aimed at Canadian immigration policies that opened  
16 the door so easily to persons from around the  
17 world and granted citizenship within a mere three  
18 years.

19 Do you recall those criticisms?

20 MR. LOEPPKY: Yes.

21 MS EDWARDH: And do you recall  
22 criticisms of the inadequacy of Canadian border  
23 controls?

24 MR. LOEPPKY: I don't recall  
25 specific criticisms about the security on the

1 border.

2 MS EDWARDH: I am going to suggest  
3 to you -- and I am going to point you to an  
4 article that may assist you -- that generally  
5 there were criticisms about the underfunding of  
6 intelligence agencies in Canada.

7 MR. LOEPPKY: We operate within  
8 the funding limits that were provided and we make  
9 the best use of resources we can with those  
10 people.

11 MS EDWARDH: And our American  
12 friends didn't think that was enough; correct?

13 MR. LOEPPKY: I think it is fair  
14 to say that they had some concerns about the level  
15 of resource deployment.

16 MS EDWARDH: I have an article I  
17 would like to share with you that kind of captures  
18 these criticisms, and indeed I am going to suggest  
19 is very close to the scenario put to you this  
20 morning.

21 MR. FOTHERGILL: Commissioner, do  
22 we not have a practice where documents to be put  
23 to witnesses are provided to counsel in advance?

24 THE COMMISSIONER: Yes, that is  
25 certainly the practice and in the rules.



1 MR. FOTHERGILL: Certainly I have  
2 never seen this article, I don't believe.

3 MS EDWARDH: Mr. Commissioner, it  
4 is not a document; it is a commentary. It is my  
5 fault if the witness had not been given it. We  
6 have been hustling with a lot of documents.

7 It is observations of the kind  
8 that were put forward in the scenario by an  
9 author. It is not that I expect him to be able to  
10 authenticate it; it is just an example.

11 I would ask to be permitted to put  
12 this media report to him. It comes off the  
13 Internet.

14 MR. FOTHERGILL: I think we will  
15 have to proceed and see what the questioning is  
16 and where it leads us.

17 MS EDWARDH: If there is any  
18 unfairness to the witness, I will take him through  
19 the article and my friend can draw this to your  
20 attention.

21 THE COMMISSIONER: All right.

22 Is there a copy for me?

23 MS EDWARDH: Yes. Sorry,  
24 Mr. Commissioner.

25 THE COMMISSIONER: Thank you.

1 MS EDWARDH: This is being  
2 referred to you, Deputy Commissioner, as an  
3 example of the kind of commentary that has been  
4 made post-9/11.

5 There is a description about  
6 Mr. Coffman, a man by the name of Dick Coffman. In  
7 the third paragraph on the right-hand side it  
8 suggests that he has served 31 years in the CIA  
9 where he formed and managed the agency's first  
10 counterterrorism analytic organization and served  
11 as Chief of Staff to the Director of Clandestine  
12 Service Coordinator of major worldwide covert  
13 intelligence program and CIA representative to the  
14 NATO commander.

15 Do you see that description in the  
16 third paragraph?

17 MR. LOEPPKY: Yes.

18 MS EDWARDH: Do you know of a man  
19 by the name of Dick Coffman?

20 MR. LOEPPKY: No, I do not.

21 MS EDWARDH: In any event, in his  
22 article he makes the observation -- and this is  
23 just an example of what I am going to suggest was  
24 certainly a part of the dialogue going on in the  
25 United States.



1                   especially among Canadian  
2                   political leaders. This  
3                   poses a monumental problem  
4                   for homeland security, given  
5                   that Canada is America's  
6                   largest trading partner and  
7                   the two countries are  
8                   intertwined culturally,  
9                   politically, socially and  
10                  militarily." (As read)

11                  Over on the next page, referring  
12                  to the area -- the Blaine area is part of the  
13                  frontier between B.C. and Seattle.

14                  I am going now down to the fourth  
15                  full paragraph, beginning with the words "It was  
16                  near Blaine".

17                  Do you see that, Deputy  
18                  Commissioner?

19                  MR. LOEPPKY: Yes.

20                  MS EDWARDH: It says:

21                  "It was near Blaine that  
22                  America's eyes were opened to  
23                  the mortal threat to the  
24                  homeland posed by al-Qaeda  
25                  terrorists in Canada. In

1 December 1999, U.S. customs  
2 officers caught Algerian  
3 terrorist Ahmed Ressam at a  
4 ferry landing in Port  
5 Angeles, Washington,  
6 attempting to smuggle  
7 explosives for millennium  
8 attacks against the Los  
9 Angeles International  
10 Airport." (As read)

11 And then jumping down one full

12 paragraph:

13 "In a pattern to be repeated,  
14 Ressam was a member of the  
15 violent Algerian Armed  
16 Islamic Group who, exploiting  
17 permissive and lax Canadian  
18 immigration, migrated and  
19 resided in Canada while  
20 seeking refugee status  
21 there."

22 Next paragraph:

23 "Fast forward to December  
24 2002. When acting on  
25 intelligence developed by the

1 U.S. war on terrorism,  
2 Canadian authorities arrested  
3 Mohamed Harkat after he made  
4 telephone calls to suspected  
5 al-Qaeda operatives in the  
6 U.S. Now in U.S. custody,  
7 Harkat is also a member of  
8 the Algerian Armed Islamic  
9 Group and trained with Ressay  
10 in the same camp. Harkat  
11 arrived in Canada in 1995  
12 carrying a fake Saudi  
13 passport which is favoured by  
14 terrorists because Saudis  
15 travelling to Canada don't  
16 need entry visas. Harkat  
17 then applied for asylum,  
18 claiming Algerian government  
19 persecution. Despite the  
20 well-known fact that his  
21 terrorist group was trying to  
22 overthrow the Algerian  
23 government, Canada granted  
24 refugee status in 1997 and he  
25 applied for permanent

1 residence three weeks later.  
2 The Ressam and Harkat cases  
3 have laid bare terrorist use  
4 of Canada as a base of  
5 operations. Former Director  
6 of the Canadian intelligence  
7 Reid Morden says that  
8 Canadians believe Harkat is  
9 an al-Qaeda sleeper and that  
10 he was in contact with  
11 sleepers in the U.S."

12 (As read)

13 If I can jump down to the next  
14 paragraph, halfway through that there is the  
15 observation:

16 "Moreover, Canadian passports  
17 appear to be a terrorist  
18 travel document of choice as  
19 several terrorists overseas  
20 have been arrested carrying  
21 such documentation."

22 (As read)

23 I won't take you through any more  
24 of the article. The tone of it is pretty obvious  
25 I suggest. Is that correct?

1 MR. LOEPPKY: It is one person's  
2 perspective.

3 MS EDWARDH: Yes. But that  
4 criticism and those kinds of criticisms were the  
5 types of things that certainly Canada's Members of  
6 Parliament and political leaders were hearing from  
7 the media in United States.

8 Is that fair?

9 MR. LOEPPKY: I will speak from a  
10 personal perspective. I am not sure what they  
11 were hearing.

12 These are comments from one  
13 perspective that were made by one individual. I  
14 am aware of other views that would not support  
15 this view. I also recognize that he is retired  
16 from the CIA. He is working for a private  
17 company. I don't know what the motivation is.

18 It is a perspective, I agree, but  
19 it has to be balanced.

20 MS EDWARDH: Certainly there was a  
21 genuine and bona fide concern, both in senior  
22 levels of the Royal Canadian Mounted Police and as  
23 discussed in the House of Commons, that American  
24 attitudes and concerns about our border could  
25 result in a serious shutdown of trade over that



1 border?

2 MR. LOEPPKY: Yes.

3 MS EDWARDH: I would like to take  
4 you to a document that you hopefully have had an  
5 opportunity to read. It is in the book of  
6 materials.

7 If you turn, sir, to Tab 6, you  
8 will see excerpts from the Standing Committee on  
9 Citizenship and Immigration. If I ask you, sir,  
10 to turn to page 27, I want to refer you to a  
11 question from the Liberal Member, Mr. Tony Valeri.

12 Do you see that question?

13 MR. LOEPPKY: Yes.

14 MS EDWARDH: He starts:

15 "I have two quick questions.  
16 A lot of questions have been  
17 asked, and I want to thank  
18 you for coming before the  
19 committee this morning."

20 And of course he is addressing  
21 both Mr. Ward Elcock and also Commissioner  
22 Zaccardelli. Would you agree with that?

23 MR. LOEPPKY: Yes.

24 MS EDWARDH: It goes on:

25 "With respect to border

1 issues, I want to look at  
2 this from an economic  
3 perspective. Security really  
4 is the underpinning of a  
5 strong economy. We have seen  
6 the impact of September 11th.  
7 There is a wide range of  
8 options we can look at. Some  
9 say simply strengthening and  
10 coordinating our immigration  
11 and security policies will be  
12 sufficient. Others say we  
13 need a continental security  
14 perimeter. Do we need one?  
15 Secondly, not only do we need  
16 to secure the border but I  
17 think we need to be seen to  
18 be securing the border. The  
19 Chamber of Commerce has set  
20 up a working group. A whole  
21 bunch of organizations have  
22 this sense; that the number  
23 one priority for us now is to  
24 dispel the perception that we  
25 are not securing our borders,

1                   that we are an access point  
2                   for terrorists." (As read)  
3                   Do you agree that was the question  
4           posed, sir?

5                   MR. LOEPPKY: Yes.

6                   MS EDWARDH: The questioner goes  
7           on:

8                   "I understand you have taken  
9                   some measures and you have  
10                  made comments to that effect,  
11                  Mr. Elcock, but you mentioned  
12                  earlier that you don't have a  
13                  communications budget to get  
14                  out there and talk about what  
15                  you are doing. Do you need a  
16                  communications budget? Can  
17                  you stand shoulder to  
18                  shoulder with your American  
19                  counterpart and say Canada is  
20                  not the problem? I  
21                  understand what Mr. Elcock is  
22                  doing and I support that, and  
23                  in fact we are doing the same  
24                  thing. Our borders are not  
25                  the problem." (As read)

1                   Jumping down, Mr. Elcock makes his  
2 response, and I don't need to take you to that.  
3 Just when Mr. Valeri interrupts again at page 28  
4 to clarify, he turns then again to the question of  
5 dispelling the perception that we are in fact  
6 still the problem.

7                   He then turns halfway down that  
8 page to Mr. Zaccardelli.

9                   Do you see that, sir?

10                  MR. LOEPPKY: Yes.

11                  MS EDWARDH: Mr. Zaccardelli, with  
12 regard to perception, and the Commissioner states:

13                         "I am really disappointed to  
14 hear that members of the  
15 committee haven't been  
16 watching on TV during my news  
17 conferences, because I think  
18 I have spoken quite a bit  
19 about this. I say this in  
20 all seriousness. It is a bit  
21 of a joke, but I often get  
22 accused by some of my  
23 colleagues in government that  
24 I take too much air space.  
25 You make a good point. It's

1 important that we assure  
2 Canadians. As you know,  
3 right after September 11th I  
4 did a news conference and I  
5 was on TV talking about that.  
6 I believe that this is an  
7 important role I have as  
8 Commissioner of the RCMP and  
9 a role that other public  
10 officials have. I think I  
11 have done that. Can I do  
12 more? Yes, probably I can  
13 always do more but it is  
14 important to keep doing that  
15 so I understand your point.  
16 We have to be out there  
17 talking to people."

18 (As read)

19 And down at the last paragraph:  
20 "On the question of the  
21 border from a law enforcement  
22 perspective, obviously we  
23 respect sovereignty and  
24 jurisdiction but more and  
25 more in law enforcement, as

1 we move toward this global  
2 alliance of law enforcement  
3 and policing, we are in  
4 effect operating to protect  
5 all the citizens of the  
6 countries affected by this.  
7 So we respect the border and  
8 jurisdiction but we really  
9 operate at times as if there  
10 isn't that border. Not  
11 because we don't know it is  
12 there, but in terms of  
13 exchanging information and  
14 working together  
15 collaboratively so that we  
16 protect the citizens on the  
17 continent here." (As read)

18 Certainly you will have to agree  
19 with me with respect to two observations. The  
20 questions posed to Mr. Zaccardelli or Commissioner  
21 Zaccardelli were about the need to dispel the  
22 perception that Canada was the problem.

23 Is that fair?

24 MR. LOEPPKY: Yes.

25 MS EDWARDH: It was, in my view,

1           and I am going to suggest this to you, a theme  
2           that you as a police officer and the Commissioner  
3           had to face, as well as Mr. Ward Elcock for CSIS,  
4           that politicians wanted you to be able to show  
5           that you were standing shoulder-to-shoulder.

6                                Is that fair?

7                                MR. LOEPPKY: I think that is a  
8           scenario in every type of initiative that we are  
9           involved in. In public safety, strong economy go  
10          hand-in-hand and obviously the borders play into  
11          that. That is part of the greater mandate of law  
12          enforcement, is to provide a safe environment  
13          where there is investment, where people feel  
14          secure.

15                               So those are all part of a broader  
16          public safety agenda that the Commissioner was  
17          speaking about.

18                               MS EDWARDH: And since 9/11, to  
19          show the Canadians and the government that you are  
20          standing shoulder-to-shoulder with your  
21          counterparts to face this threat?

22                               MR. LOEPPKY: As I mentioned in my  
23          testimony earlier, most of our investigations are  
24          international and require an international  
25          response because that is the nature of criminal

1 activity.

2 MS EDWARDH: I am not sure that  
3 answers directly my question. I am interested  
4 this in both the practical reality and the need to  
5 project the image that the Commissioner clearly  
6 felt in saying: Yes, we stand  
7 shoulder-to-shoulder.

8 MR. LOEPPKY: And the Commissioner  
9 was absolutely correct, in standing  
10 shoulder-to-shoulder while also respecting our  
11 laws and our sovereignty while the U.S. does  
12 likewise in the United States.

13 MS EDWARDH: It is clear when one  
14 talks about pressure, if I can for a moment, that  
15 there was criticism that generated concerns  
16 politically that actions could be taken on our  
17 border that could have significant consequences  
18 economically for Canada; correct?

19 MR. LOEPPKY: Yes.

20 MS EDWARDH: It was also clear  
21 that the political figures in the country, of  
22 which Mr. Valeri is a mere example, were very  
23 concerned to convey to the community, both in  
24 Canada and outside Canada, that all steps were  
25 being taken.



1 MR. LOEPPKY: Yes.

2 MS EDWARDH: And that Canadians  
3 weren't the problem; fair enough?

4 MR. LOEPPKY: Yes.

5 MS EDWARDH: And that that  
6 translated into this internal pressure within the  
7 Force to do everything possible approaching the  
8 task from an almost zero tolerance perspective?

9 MR. LOEPPKY: As I mentioned  
10 earlier, the law enforcement community is quite  
11 different from the security intelligence  
12 community. We are independent of political  
13 direction. We are accountable to the courts. Our  
14 mandate is public safety.

15 In terms of the pressure that we  
16 felt, that I felt, it was to provide that  
17 reassurance to Canadians that the law enforcement  
18 community was working shoulder-to-shoulder in the  
19 interests of public safety.

20 Obviously we wanted to be seen as  
21 working very closely with our allies. Shortly  
22 after 9/11 there were a number of United Nations  
23 resolutions passed that obligated us to share  
24 information which Canada signed. But the message  
25 was that we wanted to be seen as working in the

1 interests of public safety while working within  
2 our mandate and within our legal framework.

3 MS EDWARDH: When Commissioner  
4 Zaccardelli is answering these questions, if he  
5 had been in the office of the Solicitor General  
6 discussing the commitment of the RCM police as to  
7 what they were doing, he would have said the same  
8 thing, would he not?

9 MR. LOEPPKY: Yes.

10 MS EDWARDH: That is not political  
11 interference is what I am establishing.

12 MR. LOEPPKY: That is correct.

13 MS EDWARDH: Let me just make this  
14 observation, sir.

15 Commission counsel read to you the  
16 scenario, and I am going to suggest to you that  
17 while it may be an attempt to project in a world  
18 far away from the world we sit in today by a  
19 decade, it sounds awfully similar, in the  
20 criticisms I have described of Canada, to the  
21 article written by Mr. Dick Coffman, a former  
22 person employed by the Central Intelligence Agency  
23 in its criticism, does it not?

24 MR. LOEPPKY: One could draw that  
25 similarity. But this was a scenario-based

1           hypothetical training exercise to have people  
2           think broadly and think out 10 years and look at  
3           different options and what our strategic approach  
4           might be to respond to that.

5                           MS EDWARDH: I am sure the  
6           Commissioner will find for himself what  
7           similarities there may be.

8                           There was another series of  
9           questions posed to you by Commission counsel, and  
10          I thought I would come at it from the perspective  
11          of the criminal defence lawyer, if I could for a  
12          moment.

13                           You were given a number of  
14          scenarios in respect of Mr. Jim Jones. You made  
15          the following observation -- I think I took it  
16          down fairly carefully -- when you were discussing  
17          with Commission counsel why material remains in  
18          the SCIS database.

19                           One of the things you said was we  
20          have to be mindful that there could be a  
21          prosecution of Jim Jones and our obligations under  
22          Stinchcombe requires that we keep this information  
23          as it may be something that has to be handed over.

24                           Do you recall that statement, sir?

25                           MR. LOEPPKY: Yes.

1 MS EDWARDH: At the risk of  
2 sounding testy, I don't know that the criminal  
3 defence counsel in this country have ever received  
4 information from SCIS in the sense that it forms a  
5 database that is widely viewed by the RCMP as  
6 being subject to the kind of privilege that would  
7 result in the exclusion of information.

8 MR. LOEPPKY: At the point that it  
9 would become a prosecution, then it would  
10 obviously form part of the brief, the prosecution  
11 brief, and the data that exists within that file  
12 that needs to be disclosed would be taken out of  
13 SCIS as part of evidence. It is part of  
14 disclosure package that would be provided.

15 MS EDWARDH: Are you aware, sir,  
16 of any circumstance where that kind of data was  
17 removed and put into an investigative brief other  
18 than perhaps in Air India?

19 MR. LOEPPKY: You referred to the  
20 Ressay case. That would have been information  
21 that was originally stored within SCIS, and  
22 ultimately parts of that were used to support a  
23 prosecution in the United States and at that point  
24 it would have been taken out and utilized.

25 MS EDWARDH: So that is one case.

1           Would you agree with me it would be a rare event  
2           that Stinchcombe would dictate that information on  
3           SCIS had to be produced?

4                       MR. LOEPPKY:   Well, where there  
5           is a criminal prosecution, and if the data  
6           originally resided on SCIS, when you get to the  
7           point of prosecution it would be extracted and put  
8           into a brief.

9                       MS EDWARDH:   It is your evidence,  
10          sir, that even the intelligence part of that  
11          information would get into a brief?

12                      MR. LOEPPKY:   Well, the  
13          evidentiary part of it would certainly be there.  
14          The information that resided on there, because,  
15          you know, defence may want to look at that and use  
16          that -- that might be part of their defence  
17          process.

18                      MS EDWARDH:   All right.   Then let  
19          me go just to one other area that Commission  
20          counsel asked you about.

21                      You agreed, sir, that  
22          observations or surveillance conducted of Jim  
23          Jones on the occasion of meeting your target  
24          constituted personal information gathered for the  
25          purposes of law enforcement.   You finally answered

1           yes to that.

2                           I just want to explore the  
3 reasons why Jim Jones remains in the database for  
4 a moment. I want to understand the mind-set of  
5 police officers conducting the investigation of  
6 such a target.

7                           I take it, from what you have  
8 said, that it doesn't matter a whit that there is  
9 no evidence to indicate that Jim Jones may be  
10 involved in criminal wrongdoing, or suspected of  
11 criminal wrongdoing -- let me just finish the  
12 question -- but that the mere fact of that  
13 coincidental meeting not only puts him on a  
14 database, it keeps him on the database because you  
15 may acquire, or someone may acquire, information  
16 at some later date that makes that meeting  
17 relevant?

18                           MR. LOEPPKY: As I explained  
19 earlier, you have to put it into context as to the  
20 background. I mean, was it an observation that  
21 was made through surveillance, through technical  
22 intercept? What was the background of the two  
23 people that met? Had they had contact before? I  
24 mean, there is a lot of context material that  
25 needs to be put into that.

1                   But to get to your question, if  
2                   the meeting was one that took place and it was  
3                   determined that there was nothing to -- we could  
4                   not substantiate any criminal linkage, then the  
5                   information would reside in the file until it was  
6                   slated for purging or removal from the system.

7                   So those guidelines and those  
8                   protocols are in place to address them.

9                   MS EDWARDH: But that means,  
10                  in effect, that assuming you don't gather any  
11                  further evidence in respect of Mr. Jim Jones,  
12                  that his encounter, which is put into the  
13                  database, simply remains on the database as it was  
14                  initially entered?

15                 MR. LOEPPKY: I guess --

16                 MS EDWARDH: Until it is purged?

17                 MR. LOEPPKY: Yes. The analogy  
18                 would be that in an investigation where there is a  
19                 Part VI intercept, individuals call the subject  
20                 who is the target of the intercept. They may be  
21                 absolutely innocent participants and once they are  
22                 identified they are moved off to the side. They  
23                 are still in the -- their names still reside there  
24                 until they are purged because of the disclosure  
25                 obligations, but in the absence of anything

1 further we would not conduct any further  
2 investigation on them.

3 MS EDWARDH: So let's talk about  
4 this notional moving off to the side. They are  
5 not then removed from the SCIS database and put  
6 into a low level base, or they are not somehow  
7 flagged as being cleared, they are simply left on  
8 the database in the context of having had this  
9 encounter and you don't do anything more with it.

10 MR. LOEPPKY: In the absence of  
11 any further information beyond the example that  
12 you have talked about and the context that I tried  
13 to explain, and we have no further information,  
14 there would be no further investigation take place  
15 on that individual, but he could, he or she, could  
16 surface again in another investigation. So that  
17 would form part of the file.

18 And I think it is incumbent upon  
19 the community to retain that type of information.  
20 As I talked about in my evidence, there are many  
21 cases where innocuous pieces of information later  
22 become important and there is no authority for the  
23 police to arbitrarily make a decision when to  
24 purge a file of information beyond the retention  
25 records that are set for us.



1 MS EDWARDH: So I draw from that  
2 the develop simple conclusion that once Jim Jones  
3 is on your database, and once you conduct the  
4 investigation you have described earlier, and have  
5 not added anything to point to criminal wrongdoing  
6 on his part, he still remains on the database and  
7 there is nothing to flag him as someone who has  
8 really now become of inactive interest because you  
9 may well activate that interest at any time before  
10 the file is purged.

11 Fair enough?

12 MR. LOEPPKY: No further  
13 investigation would take place. If there was an  
14 inquiry about him, once it was deemed appropriate  
15 to share any information it would be that we  
16 really didn't have any -- there was no information  
17 to support any activity that was inappropriate.

18 MS EDWARDH: However, if you were  
19 asked for information, or asked what you had on  
20 Jim Jones, I take it you made it clear in answer  
21 to the Commission questions posed to you the other  
22 day, you wouldn't simply just give them your  
23 conclusion, you would provide the information?

24 MR. LOEPPKY: Once you have  
25 satisfied yourself that it was in fact appropriate

1 to share the information.

2 MS EDWARDH: You would give the  
3 information, after you have decided?

4 MR. LOEPPKY: If they were able to  
5 provide rationale as to why they needed the  
6 information, what was their interest in that. We  
7 wouldn't share it unless they were able to  
8 convince us that it was important from an  
9 investigative perspective.

10 MS EDWARDH: The reference  
11 that my friend made to the presumption of  
12 innocence really has nothing to do with how you  
13 inform the gathering of information, the placing  
14 it on SCIS and the leaving it on SCIS. That just  
15 doesn't enter into how the police are operating at  
16 that time?

17 MR. LOEPPKY: We gather  
18 information in a criminal investigation. We  
19 always work on the presumption of innocence. But  
20 in a case where an individual might meet with  
21 somebody that is of significant interest, that  
22 would peak our interest in terms of the nature of  
23 the meeting and of why that occurred. I think  
24 that is good law enforcement practice to follow up  
25 on various leads when appropriate.

1 MS EDWARDH: So the presumption of  
2 innocence, though, doesn't operate at that level  
3 to cause you to say, "We don't have evidence of  
4 probable involvement of any crime, and we don't  
5 have the kind of evidence that would allow us to  
6 draw any inferences other than contact, and  
7 therefore the presumption of innocence tells us we  
8 are not going to put this on the database." That  
9 is what I am trying to get at. It simply --

10 MR. LOEPPKY: The presumption of  
11 innocence always applies. Guilt is up to the  
12 court to find, but our role is to collect  
13 information and ultimately evidence for criminal  
14 prosecution, and that could form part of evidence  
15 if ultimately it resulted in a charge.

16 MS EDWARDH: So it is your view it  
17 applies even in circumstances where someone who  
18 then is not involved in any identifiable  
19 wrongdoing, is someone who gets entered onto the  
20 database and whose information, and the personal  
21 information of which can then go down to a foreign  
22 police agency if you decide it is appropriate?

23 MR. LOEPPKY: I have explained the  
24 checks and balances around sharing information and  
25 since we use case-by-case need-to-know, and if it

1 was a question about a certain individual, had  
2 that individual come to our attention, we would  
3 use judgment as to whether it was appropriate to  
4 share and what was appropriate to share.  
5 Obviously, if there was nothing on our file, that  
6 is what would be conveyed in terms of background  
7 of the individual.

8 MS EDWARDH: And if there was  
9 something on file you would share it?

10 MR. LOEPPKY: If it was something  
11 that would further the investigation, then it  
12 would be appropriate to share it.

13 MS EDWARDH: I'm going to go to  
14 another topic, if I could. I want to go to the  
15 mandate of the Royal Canadian Mounted Police in  
16 the area of security investigations and explore  
17 with you a number of observations you made the  
18 other day.

19 --- Pause

20 MS EDWARDH: I would like to deal  
21 with, if I could, sir, the time period between the  
22 McDonald Commission and the passage of Bill C-36.

23 MR. LOEPPKY: Yes.

24 MS EDWARDH: I'm going to try to  
25 abbreviate taking you through a lot of these and

1 if there are some sections you want to review  
2 please stop and we can review them.

3 Essentially, as I understand  
4 your evidence, the Security Offences Act was  
5 passed to clarify and, I am going to suggest,  
6 narrow the role the RCMP played in intelligence  
7 gathering so that it could be more precisely  
8 defined in respect of a new agency that was  
9 being created.

10 Is that fair?

11 MR. LOEPPKY: Yes.

12 MS EDWARDH: The whole idea was to  
13 repose the national security intelligence  
14 gathering really into separate institutions. Back  
15 then that was the idea?

16 MR. LOEPPKY: To have national  
17 security intelligence responsibility within CSIS  
18 accountable to government while criminal law  
19 enforcement of criminal activities remained with  
20 the RCMP and was enshrined in statute.

21 MS EDWARDH: Fair enough.

22 My friend took you to some of  
23 these this morning and I don't really want to do  
24 it again with respect to the Memorandum of  
25 Understanding, but certainly it was embedded

1           within the memorandum that we reviewed this  
2           morning that the RCMP were to be the primary  
3           recipients of certain kinds of information and  
4           CSIS was to carry on its function as an  
5           intelligence gathering entity passing on  
6           information that would fall within the rubric of a  
7           criminal investigation.

8                           Fair enough?

9                           MR. LOEPPKY:   Yes.

10                          MS EDWARDH:   It is interesting,  
11           because as one looks at what has transpired, I am  
12           going to suggest to you that since 1990 or 1991  
13           that there has been a significant reconsideration  
14           by the RCMP of what the proper components of  
15           policing are and that there has been -- let me see  
16           if I can't take you to a couple of prongs of what  
17           you said the other day.

18                          Certainly, the idea of moving away  
19           from Mounties who are legless first of all  
20           reflects the need for community policing as it was  
21           identified in the 1980s?

22                          MR. LOEPPKY:   It was a new  
23           initiative in terms of engaging communities,  
24           getting back to joint problem solving, joint  
25           identification of issues.

1 MS EDWARDH: So one of the  
2 premises of community policing, as you have  
3 articulated it, was that you needed to be in the  
4 community sufficiently not only to know what its  
5 concerns were, but also to know what the threats  
6 facing it were?

7 MR. LOEPPKY: That's correct.

8 MS EDWARDH: And it requires  
9 you to have two feet on the ground in the  
10 community in effect?

11 MR. LOEPPKY: Yes.

12 MS EDWARDH: Then slowly -- not so  
13 slowly perhaps -- but eventually this evolves into  
14 a view of policing which I'm going to describe  
15 much the same as you did, but is premised on  
16 intelligence. You called it intelligence-led  
17 policing.

18 MR. LOEPPKY: Yes.

19 MS EDWARDH: That really is a much  
20 more sophisticated way of describing community  
21 policing, but it has the same core or concept?

22 MR. LOEPPKY: It is the next  
23 generation of community policing in terms of  
24 dealing with issues.

25 MS EDWARDH: So in 1989 -- no, I'm

1           sorry. In 1991 when the Criminal Intelligence  
2           Division was reinvigorated, it was reinvigorated  
3           expressly to infuse it with the authority to build  
4           a kind of policing entity that was based on  
5           intelligence-led policing.

6                           Fair enough?

7                           MR. LOEPPKY: It was focused  
8           primarily on the organized crime and those types  
9           of things.

10                          MS EDWARDH: But the whole theory  
11           behind it was to create an organizational  
12           structure, to resource an organizational  
13           structure. Organized crime may have been the  
14           priority at that time, but to build an  
15           organizational structure that would have the  
16           intelligence necessary to fight organized crime or  
17           things like that?

18                          MR. LOEPPKY: It was to do that  
19           and it was to promote the concept that becomes a  
20           way of operating for police officers -- the  
21           cultural change in terms of using the information  
22           that you have to make good decisions at the very  
23           front line level and of course going right up to  
24           the top of the organization so that you have the  
25           big picture focusing resources in the right areas.



1 MS EDWARDH: So a simple way of  
2 saying this is that intelligence was to provide  
3 for both the planning functions and basic  
4 operational decisions both high and low?

5 MR. LOEPPKY: Both tactical and  
6 strategic, correct.

7 MS EDWARDH: Now, was the RCMP a  
8 leader in forces in developing the notions and the  
9 principles and policies behind intelligence-led  
10 policing in this country?

11 MR. LOEPPKY: I think it probably  
12 was. I know that it was something that we had  
13 advanced and discussed with our partners but I  
14 think that in terms of trying to ingrain it in the  
15 day-to-day working habits of our frontline people  
16 we were probably near the front.

17 MS EDWARDH: And certainly you  
18 advanced this view of policing or this component  
19 of policing as most consistent with your duties  
20 and mandate?

21 MR. LOEPPKY: Yes.

22 MS EDWARDH: And I want to take  
23 you then to the notion of the preventive mandate  
24 that you have. Because not only are you there to  
25 detect crime and prosecute persons who are viewed

1 as culpable in the commission of criminal acts you  
2 have a mandate of preventing crime and I am going  
3 to suggest to you, sir, that that part of the  
4 mandate is discharged also through  
5 intelligence-led policing according to the model  
6 that has been created?

7 MR. LOEPPKY: Yes.

8 MS EDWARDH: And so that brings us  
9 to the observations you made in your testimony,  
10 and I can point it to you with the transcript if  
11 you care to see it, Deputy Commissioner, it is at,  
12 for the benefit of counsel, pages 784 and 785, but  
13 essentially it's my understanding of what you were  
14 saying that the only difference between the  
15 intelligence you gather for your purposes and the  
16 kind that CSIS gathers for its purposes is in  
17 respect of the end product, that the processes of  
18 planning it, gathering and analysis are really the  
19 same, but it is the end product that is different.  
20 Do you agree you said that?

21 MR. LOEPPKY: Yes.

22 MS EDWARDH: So what we are back  
23 then to is a very different world, I am going to  
24 suggest to you, than one that was anticipated in  
25 1984 when CSIS was created, that once you redefine

1           policing to be intelligence-based, proposition  
2           one, once you redefine the important -- no, you  
3           don't redefine it, you acknowledge the important  
4           mandate of prevention, and that is also  
5           intelligence-based, then it does seem to me,  
6           Deputy Commissioner, that what we are left with is  
7           a situation that the intelligence-gathering  
8           function in support of prevention is not any  
9           different than it was in 1984?

10                           MR. LOEPPKY:  The notion of  
11           intelligence-led policing is focused very much on  
12           the frontline work that we do day in and day out  
13           and in 1991, I think is the date that you  
14           referred, where we really looked at what do we  
15           need to do in terms of revitalizing our criminal  
16           intelligence process, we had approximately at that  
17           time maybe 15,000 frontline police officers  
18           working in the public safety area.  It was in that  
19           context that we recognized the need to revitalize  
20           our criminal intelligence program.  We had  
21           approximately 140 people working in the entire  
22           national security area at that point and while it  
23           would benefit from being intelligence-led, I mean  
24           the focus for revitalizing our program was we  
25           recognized that organized crime was prevalent in

1 Canada, that Criminal Intelligence Service Canada  
2 was trying to deliver on its mandate and it was  
3 important that the RCMP as a national police force  
4 did a better job of having a good solid  
5 intelligence program to support our criminal  
6 investigation activities.

7 MS EDWARDH: I appreciate that the  
8 national security component was significantly  
9 smaller in those years, but even prior to the  
10 passage of Bill C-36, certainly given the  
11 components of policing as you have described them,  
12 and given the right or given the perception of the  
13 need for intelligence I am going to suggest to you  
14 that if you sat down and asked yourself, is there  
15 a piece or pieces of information that CSIS could  
16 legitimately acquire in its function that the  
17 Mounties couldn't in the discharge of a  
18 preventative mandate, you couldn't think of one,  
19 sir.

20 MR. LOEPPKY: I am sorry I want to  
21 make sure I understand the question.

22 MS EDWARDH: That over time, with  
23 the focus on prevention and intelligence within  
24 the Royal Canadian Mounted Police, even without  
25 Bill C-36, there is such an overlapping of what

1 kinds of intelligence could be collected that I  
2 couldn't think of a single type of or piece of  
3 information that CSIS could collect that you  
4 couldn't collect in pursuance of discharging your  
5 national security mandate, focusing on prevention.

6 MR. LOEPPKY: We would collect  
7 information consistent with our mandate which is  
8 to undertake criminal investigations and  
9 intelligence as it relates to criminal  
10 investigations. We would not collect security  
11 intelligence that is within the mandate of CSIS.  
12 In fact, within their mandate of collecting  
13 security intelligence when they determine that  
14 there is evidence of criminality that needs a law  
15 enforcement approach, then they would provide that  
16 to us. That's the arrangement that existed then  
17 and exists today.

18 MS EDWARDH: But you certainly  
19 have not suggested that it is not entirely  
20 appropriate to collect intelligence for the  
21 purposes of preventing national security offences.

22 MR. LOEPPKY: And we focus on  
23 criminal intelligence to do that.

24 MS EDWARDH: By criminal  
25 intelligence, though, it would be my

1           understanding -- I don't want to confine it to the  
2           Criminal Code, sir, because it's my understanding  
3           a national security offence can be much broader  
4           than a Criminal Code offence. It is a violation  
5           of any law, any federal law.

6                         MR. LOEPPKY: Yes.

7                         MS EDWARDH: And that is much,  
8           much broader than the Criminal Code.

9                         MR. LOEPPKY: I would agree with  
10          you.

11                        MS EDWARDH: Thank you.

12                        I want to spend just a few moments  
13          on the reports, if I could, that have been filed  
14          over the years. You will find the first under Tab  
15          1. Perhaps you might just describe for the  
16          Commissioner's benefit what these performance  
17          reports are. They appear annually. I have  
18          included a number of them.

19                        MR. LOEPPKY: Performance reports,  
20          Your Honour, are tabled annually. It is an  
21          accountability framework by the organization of  
22          government in terms of the initiatives that the  
23          organization has undertaken and the things that  
24          they want to accomplish in terms of their mandate  
25          and it is tabled before government.

1 MS EDWARDH: If I could ask you,  
2 sir, to just turn to the first of these  
3 performance reports, we have several discussions  
4 under different headings, but one of the headings  
5 is "Strategies and Expectations". Would that  
6 reasonably be where the organizations  
7 strategically hope to go?

8 MR. LOEPPKY: I am sorry, are you  
9 on page 1.

10 MS EDWARDH: Yes, I am. The first  
11 tab is actually page 32 of the report. Under  
12 "Effective and timely sharing of criminal  
13 intelligence". Do you see that?

14 MR. LOEPPKY: Yes.

15 MS EDWARDH: This would be kind of  
16 the targeted strategy of the organization?

17 MR. LOEPPKY: Yes.

18 MS EDWARDH: And this document is  
19 prepared for the years 1999-2000?

20 MR. LOEPPKY: Yes.

21 MS EDWARDH: If I could just  
22 review with you what the organizational strategy  
23 was. If you see on the left-hand side of the page  
24 under "Strategies and Expectations":

25 "(1)Providing avenues for the

1                   sharing of intelligence  
2                   among all Canadian law  
3                   enforcement agencies and  
4                   promoting interagency  
5                   cooperation." (As read)

6                   That is a goal of the  
7                   organization. Right?

8                   MR. LOEPPKY: Yes.

9                   MS EDWARDH:

10                   "(2) Gathering and sharing  
11                   timely, accurate  
12                   intelligence on organized  
13                   crime with partners to  
14                   enable informed decisions  
15                   regarding organized crime  
16                   investigations." (As  
17                   read)

18                   That's the second goal.

19                   MR. LOEPPKY: Yes.

20                   MS EDWARDH: Certainly, security  
21                   or intelligence seems to be distinguished from  
22                   organized crime there. Is that fair?

23                   MR. LOEPPKY: Yes.

24                   MS EDWARDH: And the third one,  
25                   "Promoting the automated



1 criminal intelligence  
2 information system as a  
3 national database for  
4 criminal intelligence on  
5 organized crime groups." (As  
6 read)

7 Now, is that a reference to SCIS  
8 or is that a different national database?

9 MR. LOEPPKY: No, this is in  
10 reference to -- these three points that you have  
11 made are in reference to Criminal Intelligence  
12 Service Canada. Which I think I pointed out the  
13 other day was created pursuant to a  
14 federal-provincial meeting in 1966. It was  
15 created in 1970 as part of a broader national  
16 police services that provides services to the  
17 Canadian law enforcement community.

18 The RCMP is probably about a 25  
19 per cent user of those although we are tasked with  
20 stewardship of those national police services. So  
21 things like the DNA data bank, the criminal  
22 records system, those are provided to the broader  
23 law enforcement community in support of integrated  
24 law enforcement.

25 Criminal Intelligence Service

1 Canada was one of those pieces that was created at  
2 that time. It was created to bring together the  
3 information from the various organizations on  
4 organized crime to ensure that there was one area  
5 that would have the bigger picture of organized  
6 crime in Canada, and I think as I mentioned the  
7 other day it resulted last year in the first  
8 national threat assessment on organized crime in  
9 Canada.

10 So the ACIIS system, the short  
11 answer is it is the system that supports Criminal  
12 Intelligence Service Canada.

13 MS EDWARDH: The reference to just  
14 general -- the first one, the sharing of  
15 intelligence among all Canadian enforcement  
16 agencies, would that be criminal intelligence with  
17 respect to national security investigations as  
18 well?

19 MR. LOEPPKY: No, criminal  
20 intelligence on organized crime. CISC is very  
21 much focused on criminal intelligence on organized  
22 crime.

23 MS EDWARDH: Now, one of the  
24 things that is referred to, if I could just take  
25 you to another area, on the second page is

1 geographic and criminal profiling. Do you see it  
2 is in a box on the right-hand side of the page?

3 MR. LOEPPKY: Yes.

4 MS EDWARDH: It says:

5 "Geographic and criminal  
6 profiling were instrumental  
7 in the arrest of a serial  
8 bomber who sent bombs to  
9 three targets in Western  
10 Canada, one of which exploded  
11 and injured a bystander."

12 (As read)

13 Then there is a reference to  
14 geographic profiling. Then again, "Criminal  
15 profiling provided offender characteristics that  
16 were 90 per cent accurate." Do you see that?

17 MR. LOEPPKY: Yes.

18 MS EDWARDH: Now, I understand  
19 that the RCMP as well as the FBI use criminal  
20 profiling.

21 MR. LOEPPKY: We do.

22 MS EDWARDH: And that indeed the  
23 art, if I may say that, of criminal profiling was  
24 first developed by Quantico in the FBI?

25 MR. LOEPPKY: I believe so.

1 MS EDWARDH: I am also going to  
2 ask the question, sir, is this tool, criminal  
3 profiling, used in respect to national security  
4 investigations?

5 MR. LOEPPKY: I don't know of any  
6 specific cases but it would be one tool that might  
7 be used if the circumstances were appropriate.

8 MS EDWARDH: We heard from Mr.  
9 Elcock that there was a -- he may not have used  
10 the word profile but there were certainly ascribed  
11 characteristics to those that were considered  
12 likely to be involved or members of organizations  
13 such as al-Qaeda and I am just wondering whether  
14 or not within SCIS the tools of criminal profiling  
15 or profiling at all have been used as part of the  
16 intelligence analysis that goes on to SCIS?

17 MR. LOEPPKY: No.

18 MS EDWARDH: If I can just then  
19 flip you to Tab 2 in this volume and take you to  
20 the second page in this tab which is page 10 of  
21 the performance overview.

22 MR. LOEPPKY: Page 10, yes.

23 MS EDWARDH: Yes. It is perhaps  
24 worth noting that this "Performance Overview"  
25 speaks of the RCMP as an organization in

1 transition.

2 Do you see that on the  
3 left-hand side?

4 MR. LOEPPKY: Yes.

5 MS EDWARDH: One of the things  
6 that it talks about on the right-hand side is a  
7 component of those changes are integrated  
8 policing.

9 Do you see that reference?

10 MR. LOEPPKY: Yes.

11 MS EDWARDH: Included in that is  
12 the notion of promoting partnerships, to leverage  
13 resources and share crime priorities?

14 MR. LOEPPKY: Yes.

15 MS EDWARDH: It says:

16 "We will take a leadership  
17 role in the development and  
18 application of intelligence  
19 and law enforcement tools to  
20 manage transnational issues  
21 and achieve seamless  
22 policing, both within Canada  
23 and internationally"?

24 MR. LOEPPKY: This was part of the  
25 vision that -- the reason it was called "RCMP in

1 Transition", it was the year that Commissioner  
2 Zaccardelli was appointed. He had a vision, that  
3 remains had a vision of the RCMP today, to be an  
4 organization of excellence. That is what the  
5 transition component speaks to there. Integrated  
6 policing was a cornerstone of the vision.

7 MS EDWARDH: I think that is  
8 important to understand, because certainly  
9 when you say it is a cornerstone, it is central to  
10 the Commissioner's view of how the RCM Police  
11 should operate?

12 MR. LOEPPKY: Yes.

13 MS EDWARDH: One sees that, I  
14 suppose, just reinforced, if I could take you to  
15 one more tab, just going on to the next year,  
16 2001-2002, Tab 3. Turning just a few pages in on  
17 the tab, but page 14 of the report.

18 It would appear to me that if one  
19 looks to the discussion of September 11, 2001, the  
20 second paragraph it says:

21 "September 11th underscored  
22 the need for strong  
23 collaboration within and  
24 among governments and their  
25 agencies to combat and

1 prevent terrorism."

2 (As read)

3 Then over at the top of that

4 next column:

5 "The events of September 11th  
6 reconfirmed the RCMP's  
7 vision, intelligence-led  
8 integrated law enforcement.

9 Intelligence being more  
10 strategic and focused  
11 knowledge and the capacity to  
12 better share and work with  
13 that intelligence.

14 Integration means law  
15 enforcement agencies the  
16 world over working together  
17 towards common objectives."

18 (As read)

19 That is certainly the  
20 Commissioner's vision?

21 MR. LOEPPKY: Yes.

22 MS EDWARDH: There is a reference  
23 at tab -- perhaps I should just take you. If you  
24 would just turn a few pages on there is -- it is a  
25 reference to page 30 in the left-hand.

1 MR. LOEPPKY: Yes.

2 MS EDWARDH: We have selected  
3 certain portions of this report.

4 Certainly by this time the  
5 strategies -- are we talking about the RCMP or are  
6 we talking about the other group you were  
7 referring to, Federal Policing Services?

8 MR. LOEPPKY: We are talking about  
9 the RCMP there I believe.

10 MS EDWARDH: Okay. Under  
11 "Strategies and Expectations", again if you look  
12 at the second bullet on the left-hand side:

13 "Working with partners to  
14 promote intelligence-led  
15 policing within the RCMP  
16 nationally and  
17 internationally." (As read)

18 MR. LOEPPKY: Yes.

19 MS EDWARDH: And:  
20 "Preventing, detecting  
21 investigating and prosecuting  
22 criminal activities that  
23 present a threat to national  
24 security." (As read)

25 MR. LOEPPKY: Yes.



1 MS EDWARDH: There are then a long  
2 lists of partners who are, I think, clearly  
3 contemplated to be part of this integrated  
4 initiative.

5 Is that fair?

6 MR. LOEPPKY: They are not active  
7 members of the actual operations, but their input  
8 would certainly be solicited in terms of how they  
9 see the world as far as priorities and concerns.  
10 So clearly the Solicitor General portfolio would  
11 not be involved in active ongoing investigations,  
12 but we would want to do a fairly thorough  
13 environmental scan to ensure that we had a good  
14 picture of what the broader issues were.

15 MS EDWARDH: But certainly the  
16 whole idea of working both nationally and  
17 internationally would embrace working  
18 shoulder-to-shoulder and very closely with your  
19 counterpart agencies in the U.S., England and  
20 Australia, as is stipulated there?

21 MR. LOEPPKY: Yes.

22 MS EDWARDH: There is also a  
23 commitment to the development of five-year  
24 strategic plan. Do you see that under "Outputs",  
25 which I take it to be an important operational way

1 of --

2 MR. LOEPPKY: Yes.

3 MS EDWARDH: -- identifying this  
4 as a goal?

5 The promotion of the RCMP threat  
6 measurement model?

7 MR. LOEPPKY: Yes.

8 MS EDWARDH: Of course that is all  
9 fed on intelligence.

10 Correct?

11 MR. LOEPPKY: Yes.

12 MS EDWARDH: Then the statement  
13 about the development of INSETs.

14 So if one looks to this document  
15 it is quite clear that over a period of two or  
16 three years you see a very clear movement and  
17 emphasis toward promoting integration and  
18 intelligence-led policing for the Mounties?

19 MR. LOEPPKY: It was to achieve  
20 those things that I spoke about this morning,  
21 those five key points, inter-operability.

22 MS EDWARDH: I understand.

23 But structurally, to some extent,  
24 the reorganizations that you have described have  
25 in part been designed to accommodate those

1 objectives? The creation of a CID for example,  
2 its growth over the years has been an example of  
3 the accommodation of those objectives?

4 MR. LOEPPKY: The five-year  
5 strategic plan for criminal intelligence was to  
6 modernize the program and look to the future. So  
7 that was part of the intelligence-led policing  
8 approach and certainly a part of integrated  
9 policing. It is an internal change to the  
10 organization in terms of it did not involve other  
11 partners, that strategic plan.

12 MS EDWARDH: I see. All right.

13 Then let me take you to page  
14 32 for a moment, if I could, sir. This is one  
15 that Mr. Cavalluzzo touched on this morning. I  
16 have to tell you I am terribly confused about  
17 these watch lists.

18 It is clear that we have a  
19 Canadian watch list.

20 Is that correct?

21 MR. LOEPPKY: The watch list --  
22 are you referring to the watch list articulated  
23 in here?

24 MS EDWARDH: Yes. For those who  
25 don't have this document in front of them, there

1 is a little bullet and it says:

2 "Sharing intelligence to  
3 fight against terrorism."

4 Under that it says:

5 "In the wake of the  
6 September 11, 2001 terrorist  
7 attacks, Interpol Ottawa  
8 played a key role in  
9 facilitating the inclusion  
10 and updating of the terrorist  
11 watch list on the Canadian  
12 Police Information Centre."

13 (As read)

14 Which I translate as CPIC.

15 Correct?

16 MR. LOEPPKY: Yes.

17 MS EDWARDH: CPIC is a police  
18 computer --

19 MR. LOEPPKY: Yes.

20 MS EDWARDH: -- that ordinary  
21 policemen, not INSETs -- although they would have  
22 access too --

23 MR. LOEPPKY: Yes.

24 MS EDWARDH: But ordinary police  
25 officers have access to CPIC, okay.

1                   So what is this referring to?

2                   MR. LOEPPKY: This refers to the  
3 Interpol terrorist watch list that is coordinated,  
4 that is put together by Interpol in Leon, France.  
5 It includes what they refer to as "red notices",  
6 the outstanding warrants for international -- for  
7 terrorists who are wanted by any country. That  
8 country provides that watch list to the Interpol  
9 headquarters in Leon and then that watch list is  
10 fed out to the various Interpol offices around the  
11 world. What this refers to is the receipt of that  
12 Interpol watch list from France and placing it on  
13 our system.

14                   MS EDWARDH: So if you could go  
15 back to some of the questions that were asked of  
16 you, is that watch list, to the best of your  
17 knowledge, composed by information provided by  
18 various policing agencies and gathered together  
19 and collected by Interpol?

20                   MR. LOEPPKY: This watch  
21 list is outstanding warrants for terrorists and it  
22 is coordinated by Interpol in France -- at  
23 Interpol headquarters, let me put it that way --  
24 and then it is provided to the Interpol outlets  
25 around the world.

1 MS EDWARDH: Is it your evidence,  
2 sir, that this watch list, unlike the one we were  
3 talking about this morning, only includes  
4 information about persons for which there are  
5 proper warrants or other legal process out where  
6 they are identified and they are required in some  
7 jurisdiction to stand a trial?

8 MR. LOEPPKY: That is what this  
9 refers to.

10 MS EDWARDH: I took also from your  
11 comments this morning though that there was a  
12 Canadian watch list. For example, if you were  
13 interested in knowing, as a police officer  
14 conducting a criminal investigation, when someone  
15 returned to this jurisdiction, crossed the border  
16 into Canada, that you could -- or there could be  
17 some information conveyed somewhere that would  
18 allow a lookout for that person.

19 MR. LOEPPKY: Yes. I wouldn't  
20 characterize it as a watch list, I would  
21 characterize it as on a case-by-case basis where  
22 we might have an interest in monitoring travel  
23 where we would make that request to that agency  
24 that does the border work, such as now CBSA, to  
25 advise us if that individual came through the

1 border.

2 MS EDWARDH: Would you have any  
3 knowledge, sir, of whether you get that  
4 information from American officials in respect of  
5 Canadians transitting to Canada from other ports  
6 of entry?

7 MR. LOEPPKY: Transitting through  
8 the United States?

9 MS EDWARDH: Through United  
10 States, before they arrive at the Canadian border.

11 MR. LOEPPKY: Whether we would put  
12 that name on their watch list or whether we would  
13 be advised if somebody was on their watch list and  
14 notified us?

15 MS EDWARDH: No, would you put  
16 that name on their watch list --

17 MR. LOEPPKY: No.

18 MS EDWARDH: -- so they could give  
19 you a heads-up that someone was coming through?

20 MR. LOEPPKY: No. Because  
21 the individual ultimately, if he is destined  
22 to Canada, would clear customs when he came  
23 into Canada.

24 MS EDWARDH: Since persons can  
25 enter United States by transitting through this

1 country, do you receive their watch list? In  
2 other words, do they ask you for a heads-up if you  
3 identify someone of interest to them that may be  
4 moving through Canada, or transitting through  
5 Canada on their way to United States?

6 MR. LOEPPKY: There might be -- I  
7 can't answer your question specifically because it  
8 is not our role to be checking passports when  
9 people arrive here in Canada and doing that --  
10 having that system that would allow that to  
11 happen. So I can't answer your question.

12 MS EDWARDH: Maybe my question  
13 was badly put.

14 If the Americans were interested  
15 in knowing if Jim Jones, who wasn't in Canada, was  
16 coming into Canada and passing through the United  
17 States, could they give that information on the  
18 expectation or hope that they might get a heads-up  
19 from some agency in the government?

20 MR. LOEPPKY: I don't believe  
21 that we would take information and put it on our  
22 watch list for their benefit.

23 I think that is what you  
24 are asking?

25 MS EDWARDH: Yes. Even in respect



1 of a national security investigation?

2 MR. LOEPPKY: Certainly not on the  
3 list that would be checked at the border. I mean,  
4 that is not within our mandate to actually perform  
5 that function.

6 So I don't believe that that  
7 would be the case, that we would provide that  
8 information.

9 MS EDWARDH: Even in an  
10 investigation that might have joint features?

11 MR. LOEPPKY: I'm not sure that  
12 I -- I'm not sure. That's the best answer.

13 MS EDWARDH: Okay. Fair enough.  
14 --- Pause

15 MS EDWARDH: I just want to  
16 take you to one reference, if I could. I think  
17 you have been quite candid, sir, in saying that  
18 certainly since 9/11 -- and I'm going to suggest  
19 before that -- there was every emphasis within the  
20 RCMP to share information.

21 I am going to suggest to you that  
22 the culture that developed after the case of Mr.  
23 Ressay and through and after 9/11 was one where  
24 the belief was that information withheld from an  
25 ally was a matter of very serious concern and

1 would be treated very harshly by the Commissioner  
2 if it came to his attention, information --  
3 failure to share would be a problem?

4 MR. LOEPPKY: It would not be  
5 viewed as appropriate buy the Commissioner if it  
6 wasn't shared when there was legal authority and  
7 justification to do so in furtherance of an  
8 investigation. Deliberate withholding of  
9 information that should have been shared would not  
10 be viewed favourably.

11 MS EDWARDH: So if there was a  
12 reason and there was a bona fide statement that an  
13 investigation was going on south of the border,  
14 the culture within the service at this time was it  
15 should be shared?

16 MR. LOEPPKY: While respecting  
17 our laws --

18 MS EDWARDH: Yes.

19 MR. LOEPPKY: -- and our policies.

20 MS EDWARDH: Yes. I think that is  
21 captured, if I could, in some comments made by the  
22 Commissioner.

23 Again I am referring to one of the  
24 committees of the House. It is in Tab 6. It is  
25 the Standing Committee on Citizenship and

1           Immigration again.

2                           I would ask you to turn, first of  
3 all, to page 6. This is a statement made by the  
4 Commissioner, and it is in respect of a series of  
5 questions that have been posed.

6                           Again Mr. Elcock is there, and the  
7 Commissioner starts to talk about trying, if you  
8 look down about halfway on the page, to talk about  
9 working together with the Americans, the sharing  
10 of information, not in Canada but also outside.

11                           Do you see that reference?

12                           MR. LOEPPKY: Yes.

13                           MS EDWARDH: And down at the  
14 bottom of that page he says:

15                                   "Our relationship with the  
16 Americans, for example, is  
17 also changed. We now have  
18 joint forces with Americans  
19 who are actually working with  
20 us at the borders in a way  
21 they weren't before. They  
22 are able to respond much more  
23 quickly. The sharing of  
24 information and intelligence  
25 is going back and forth a lot

1 more quickly. That has also  
2 been extended to our allies  
3 and key friends around the  
4 world. So those are some of  
5 the steps that have been  
6 taken." (As read)

7 Certainly there was an increase in  
8 the volume of material shared; fair enough?

9 MR. LOEPPKY: The information  
10 sharing increased and it increased -- I think I  
11 referred to a number of reasons. The UN  
12 resolutions in 1373 on a commitment to work  
13 together were some of the things where Canada  
14 committed to work together in a more integrated  
15 way in sharing information.

16 MS EDWARDH: Getting to the point,  
17 sir, that I wanted to draw your attention to, I  
18 would take you to page 10, starting at about the  
19 fourth full paragraph.

20 "The events of September 11th  
21 forced us to reevaluate how  
22 we look at that, and I can  
23 assure you it is something we  
24 do on a regular basis."

25 This is the Commissioner again.

1 "People like myself as the  
2 Commissioner and Ward as the  
3 Director talk about this  
4 constantly. We are always  
5 trying to ensure that our  
6 organizations, in  
7 collaboration with other  
8 organizations, are maximizing  
9 the sharing of information  
10 and intelligence. On what  
11 you referred to as the  
12 bikers, I can assure you that  
13 is done on a regular basis  
14 all the time and we insist  
15 upon it." (As read)

16 And then going down to the  
17 paragraph just under the numbers 940:

18 "We are committed to ensuring  
19 that so we can provide better  
20 security to Canadians. We do  
21 that on a continuous basis.  
22 We meet on a regular basis to  
23 talk about these  
24 technologies. This new  
25 technology that we are going

1 to get is going to enable us  
2 to enhance that. So it is  
3 something we are always  
4 doing. And as the  
5 Commissioner, I can assure  
6 you that I insist and I hold  
7 people accountable. If that  
8 information isn't shared, if  
9 there is an example of  
10 non-sharing of information,  
11 there are consequences for  
12 people who do not do that.  
13 So as the Commissioner and as  
14 leader in Canadian policing,  
15 I can reassure you that this  
16 is done regularly and we do  
17 the best we can." (As read)

18 So it is fair to say that within  
19 the boundaries you have already discussed, there  
20 was enormous pressure and expectation that  
21 information would flow once there was an  
22 identified need.

23 MR. LOEPPKY: Yes. This was in  
24 response to a question where a Member of  
25 Parliament gave an example of police departments

1 not sharing information on an outlaw motorcycle  
2 gang file and complained about the stovepipes that  
3 existed and the duplication.

4 What the Commissioner was saying  
5 here was that it is critical that we work  
6 together, that we share information, and that  
7 where there is lawful authority, if people are  
8 protecting turf that won't be tolerated.

9 MS EDWARDH: But his answer is  
10 bigger than just the biker gangs. It includes the  
11 biker gangs, if you read it carefully, but then he  
12 turns to the events of September 11th.

13 MR. LOEPPKY: Yes.

14 MS EDWARDH: It is quite clear  
15 that he is saying, in answer to the question:  
16 Yes. And biker gangs, yes, of course we do, but  
17 we do as a matter of general principle. And  
18 post-9/11 we do it as extensively as we can; fair  
19 enough?

20 MR. LOEPPKY: Yes.

21 MS EDWARDH: Certainly if the  
22 Commissioner is going to state publicly in this  
23 context that persons will be punished for not  
24 sharing in appropriate cases, it sets the tone for  
25 the agency.

1 MR. LOEPPKY: Yes.

2 MS EDWARDH: One last reference.

3 I want to understand the perception I have from  
4 the Commissioner's comments and ask you to explain  
5 it with respect to the policies.

6 In Tab 7, again this is before the  
7 Standing Committee on Justice and Human Rights,  
8 and at page 3 the Commissioner again speaking.

9 There is page 3, in the third  
10 paragraph, at the very end of that paragraph,  
11 again a reiteration of sharing intelligence,  
12 whenever we can with our international, national,  
13 local partners.

14 And at page 15 there is a  
15 statement of Mounties working all throughout the  
16 world.

17 If you look halfway down that  
18 page, in respect of a question that generally I  
19 think raises issues about operating elsewhere, the  
20 Commissioner states:

21 "We are based in Canada ..."

22 Do you see that reference?

23 MR. LOEPPKY: Yes.

24 MS EDWARDH: "... but we operate  
25 all around the world. We



1                   have carried out criminal  
2                   investigations in cooperation  
3                   with law enforcement agencies  
4                   everywhere around the world  
5                   based on the legal authority  
6                   we have here in Canada. I  
7                   constantly have people all  
8                   over the world carrying out  
9                   criminal investigations."  
10                  (As read)

11                 MR. LOEPPKY: Yes.

12                 MS EDWARDH: Would you know, sir,  
13                 at any single point, how many members of the Royal  
14                 Canadian Mounted Police could reasonably be  
15                 regarded as acting abroad carrying out  
16                 investigations?

17                 MR. LOEPPKY: Well, we have the 35  
18                 liaison officers -- that is one of the areas that  
19                 he would be referring to there -- that are  
20                 facilitating investigations, facilitating  
21                 relationships, supporting the embassy in their  
22                 day-to-day role. That would be one component of  
23                 it.

24                 I think I have said that 80 per  
25                 cent, perhaps even higher, of our major files are

1 international in scope. They very often require  
2 that our people travel abroad, consistent with the  
3 policy that we have talked about earlier of  
4 gathering evidence, information, working with the  
5 local law enforcement community there.

6 To put a number on it, it would  
7 vary depending on the scope of the nature of the  
8 day. But it would be the 35 liaison officers  
9 abroad, and there might be five to ten abroad at  
10 any one time. If there was a major drug file that  
11 was taking place in six or seven countries, you  
12 would need to have that coordination.

13 But it is all within the scope of  
14 the investigation and always in compliance with  
15 the local law enforcement community's cooperation.

16 MS EDWARDH: I would take it that  
17 it would be reasonable, at least as a general  
18 statement to make, that if the RCMP in conducting  
19 an investigation that was operating really on our  
20 side of the border and also a similar one being  
21 operated in the United States by American  
22 officials, if the RCMP had an interest in  
23 observing or participating in the interrogation of  
24 someone it is not something that would be rebuffed  
25 by your American counterparts?

1 MR. LOEPPKY: As I mentioned  
2 earlier, we would need to satisfy ourselves that  
3 the investigation was appropriate, the environment  
4 was consistent with Canadian values and Canadian  
5 laws; that there was a rationale for sending  
6 somebody abroad, given the cost-benefit analysis  
7 and the value to our investigation.

8 So each one of those would be  
9 judged on its own merit. And that is why the  
10 travel authority rests at the centre.

11 MS EDWARDH: So assuming  
12 appropriate approvals, there would certainly be no  
13 objection, and I guess this is where we get to the  
14 next question.

15 Let's suppose you have an INSET  
16 team and you also have on that team conducting an  
17 investigation a member of metro intelligence.

18 MR. LOEPPKY: A member of?

19 MS EDWARDH: Metro Toronto  
20 intelligence.

21 MR. LOEPPKY: All right.

22 MS EDWARDH: And let us suppose  
23 that the Mounties decided that they didn't want to  
24 fund an activity such as sending someone down to  
25 observe or participate in the interrogation of

1 someone in the States, even though that person was  
2 the subject of an investigation here.

3 Is it the case that all of the  
4 INSET activities are controlled by the RCMP so  
5 that if the RCMP isn't going to fund them, then  
6 they are simply not going to be undertaken? Or  
7 could you have an approval from the RCMP that  
8 permitted, for example, Toronto intelligence  
9 officers to simply use that force money to go  
10 down?

11 MR. LOEPPKY: No. It works very  
12 much under an accountability framework. In terms  
13 of the INSET, the commander of the INSET  
14 ultimately has to be involved in those kinds of  
15 decisions, and it would be an RCMP decision  
16 whether we decide to send somebody or not.

17 MS EDWARDH: And that would bind  
18 the member from Toronto?

19 MR. LOEPPKY: That is part of that  
20 INSET team.

21 MS EDWARDH: If I could just make  
22 one clarifying correction here, I got confused by  
23 the document Mr. Cavalluzzo pointed out as an  
24 agreement. I think it was at the very end of the  
25 Commission materials. It was a draft agreement.

1 I believe it is at Tab 52.

2 This is a document that is  
3 described as a draft MOU between Ottawa police,  
4 OPP, Sûreté du Québec, et cetera, down to the  
5 Royal Canadian Mounted Police?

6 MR. LOEPPKY: Yes, this is a draft  
7 agreement.

8 MS EDWARDH: Respecting Project  
9 A-O Canada?

10 MR. LOEPPKY: Yes.

11 MS EDWARDH: Sir, in reading this  
12 agreement, I viewed it as being a draft of a  
13 proposed agreement that would have come into being  
14 some time when the OCRPS were formed for people  
15 were trying to bring it into agreement during the  
16 eight or nine years those groups have been around?

17 MR. LOEPPKY: Although the date at  
18 the end of it is 2001, it is a rough draft. After  
19 seeing it in the material here, I myself have  
20 concerns about it.

21 MS EDWARDH: Right. When I looked  
22 at it I know that the -- perhaps you might again  
23 for our benefit describe to the Commissioner what  
24 the OCRPS are. Organized Crime --

25 MR. LOEPPKY: I am sorry, I am

1 just --

2 MS EDWARDH: You see it on page 2,  
3 paragraph 1.02.

4 MR. LOEPPKY: Yes. It doesn't  
5 speak to -- OPS would be the Ottawa Police  
6 Service, Ontario Provincial Police, Quebec  
7 Provincial Police, Gatineau Police Service, Hull  
8 Police Service.

9 MS EDWARDH: Right. Go down to  
10 the fourth line, the reference to the IPOCS,  
11 Integrated Proceeds of Crime. Isn't that what it  
12 is?

13 MR. LOEPPKY: Yes.

14 MS EDWARDH: And isn't that what  
15 this agreement is about?

16 MR. LOEPPKY: This agreement --  
17 and it is probably why it hasn't been signed. It  
18 was a draft agreement that was drawn up to be put  
19 in place but, in my view, it was a cut and paste  
20 from the Integrated Proceeds of Crime agreement  
21 that does exist.

22 I think it was probably one that  
23 in its very early stages was drafted up but never  
24 signed because it had a number of issues in it  
25 that clearly haven't been resolved.

1 MS EDWARDH: Okay. That helps me  
2 because I became quite confused when I was reading  
3 this document at Tab 52.

4 So there is an agreement between  
5 various agencies with respect to the Integrated  
6 Proceeds of Crime integrated teams.

7 MR. LOEPPKY: Yes.

8 MS EDWARDH: This is a version of  
9 a patched together document that was designed to  
10 perhaps provide the basis of some discussion for  
11 the INSETs; correct?

12 MR. LOEPPKY: This was an attempt  
13 to put together an agreement for that.

14 MS EDWARDH: I take it that, in  
15 reading this agreement, can we at least agree with  
16 this; that this draft doesn't really represent any  
17 final form of an agreement that is about to be  
18 signed by anyone.

19 MR. LOEPPKY: I would agree with  
20 that.

21 MS EDWARDH: Then the reality is  
22 with respect to the operation of the INSETs,  
23 unlike the integrated organized crime unit, there  
24 is yet to be a clear set of guidelines governing  
25 the conduct and relationships of the members?

1 MR. LOEPPKY: Yes. There is no  
2 agreement in place. It is under the command  
3 structure of the RCMP with RCMP policies. But in  
4 terms of things like the liability, if someone  
5 from another police department drives one of our  
6 vehicles, who is liable, those types of things  
7 need to be fleshed out.

8 MS EDWARDH: So, too, do  
9 accountability relationships. For example, this  
10 agreement endeavoured to provide a basis for  
11 concluding that members of the proceeds of crime  
12 units would be subject to the complaint mechanisms  
13 within the Royal Canadian Mounted Police?

14 MR. LOEPPKY: That was one of the  
15 issues that I -- hasn't been resolved.

16 MS EDWARDH: Of course that would  
17 be because the other police force have their own  
18 discipline mechanisms.

19 MR. LOEPPKY: Yes.

20 MS EDWARDH: And their own codes  
21 of conduct and their own chain of command.

22 MR. LOEPPKY: Yes. Their own  
23 codes of conduct I would agree with for their own  
24 chains of commands. They report within the INSET  
25 team for chain of command for operational



1 decisions.

2 MS EDWARDH: What if you have  
3 someone on the INSET team, if you will excuse the  
4 expression, who goes offside and does something,  
5 other than tossing them off the team I would  
6 expect that there would be a report made to the  
7 OPP or Metro or to the Ottawa Police Force and  
8 that person would be held accountable through  
9 their own chain of command and their own  
10 discipline procedures.

11 MR. LOEPPKY: There is a joint  
12 management team in place in each area. In this  
13 particular area, it's made up of the chief of the  
14 Ottawa Police Service, the commanding officer of A  
15 Division, and the chiefs from the other  
16 departments that are represented there. It is a  
17 senior body that would look at issues and resolve  
18 them at that level.

19 MS EDWARDH: But that is not part  
20 of INSET.

21 MR. LOEPPKY: No. But they do  
22 have a role to play in terms of the management of  
23 the INSET and the conduct of their employees.

24 MS EDWARDH: So this management  
25 organization I take it is really one that we have

1 not heard about yet?

2 MR. LOEPPKY: It's not one that  
3 meets every day. It is there to resolve issues,  
4 to promote integration, deal with concerns that  
5 might come up. That would be their role.

6 MS EDWARDH: And they are  
7 precisely the kind of committee who should be out  
8 and about the business of resolving outstanding  
9 issues that could lead to a memorandum of  
10 understanding.

11 MR. LOEPPKY: It would be within  
12 their mandate to have something like that  
13 developed.

14 MS EDWARDH: Right.

15 MR. LOEPPKY: Along with the  
16 appropriate legal review from each much their  
17 departments to ensure that it satisfied their  
18 concerns.

19 MS EDWARDH: And other than this  
20 issue of discipline, or of complaints, without  
21 telling any tales out of school, can you broadly  
22 characterize for us, for the benefit of  
23 Commissioner, what you understand to be the  
24 outstanding unagreed upon issues that have  
25 resulted in not being able to come to some

1 agreement?

2 MR. LOEPPKY: I haven't been  
3 directly involved in negotiating these particular  
4 agreements. There are agreements in place in a  
5 variety of other areas; but with respect to this  
6 particular one I know that that is one issue, but  
7 I am not sure of what the other ones are. I know  
8 that it is being worked on to meet the  
9 individual's concerns, but I don't know all of the  
10 issues beyond that.

11 MS EDWARDH: I suppose if we  
12 wanted to ask what kind of issues were preventing  
13 agreement or were barriers to agreement, who would  
14 that question be addressed to, sir?

15 MR. LOEPPKY: It would ultimately  
16 be the signatories of the agreement that would  
17 sign off at the end of it.

18 MS EDWARDH: So it would be the  
19 commanding officer A Division on behalf of the  
20 RCMP and then the various chiefs of the forces who  
21 were involved, so it would be the chief of the  
22 Ottawa Police Service, and it would be the head of  
23 the OPP?

24 MR. LOEPPKY: In terms of the  
25 particular issues that are still being resolved I

1 think that the commanding officer of A Division  
2 could provide that information.

3 MS EDWARDH: Fair enough.

4 I wanted to ask if I could -- we  
5 have talked about directives --

6 THE COMMISSIONER: I am just  
7 wondering if you are moving to a new topic.

8 MS EDWARDH: I am, sir.

9 THE COMMISSIONER: It is now five  
10 past four. I think what we will do with this, if  
11 it suits you, Ms Edwardh and the Deputy  
12 Commissioner, is deal with him in hour and a half  
13 chunks.

14 MS EDWARDH: Sure. That's fine.

15 THE COMMISSIONER: So after we  
16 have done an hour and a half we will take a  
17 15-minute break, an hour and a half -- until we  
18 get it done, if that suits you. Again, let me  
19 know if there is difficulty with that. Okay?

20 We will rise for 15 minutes.

21 --- Upon recessing at 4:04 p.m. /

22 Suspension à 16 h 04

23 --- Upon resuming at 4:24 p.m. /

24 Reprise à 16 h 24

25 MS EDWARDH: Thank you very much,

1 Mr. Commissioner.

2 If I could, Deputy Commissioner, I  
3 would like to go to the issue of political input  
4 and where it comes.

5 You have certainly made it clear  
6 that the Minister, now the Minister of Public  
7 Safety, has used -- and indeed the Solicitor  
8 General used the directive system. They are  
9 described at Tab 21, this system of sending out  
10 general directives which constitute one of the  
11 ways that there is political input in the proper  
12 form into the policing service.

13 Correct.

14 MR. LOEPPKY: That's correct.

15 MS EDWARDH: I did not understand  
16 you to say it was the exclusive means whereby the  
17 Minister's input can be effected?

18 MR. LOEPPKY: No. The ministerial  
19 directive system is one process that can be used.  
20 I think I talked about the three objectives, the  
21 policy, the standards, the reassurance to the  
22 public that the Minister has an accountability  
23 framework with the Commissioner.

24 There are also letters that can be  
25 sent to the Commissioner that are a form of

1 accountability process.

2                   There are meetings where, you  
3 know, expectations can be provided, but clearly,  
4 in the broad governance, from a broad governance  
5 perspective.

6                   MS EDWARDH: Fair enough. So I  
7 didn't want to leave any impressions that both  
8 those meetings did not occur and might occur even  
9 fairly regularly where expectations were  
10 established within broad perspectives. And one of  
11 the kinds of expectations that could readily have  
12 been given, and I'm going to suggest was given,  
13 was about the need to cooperate with the U.S.  
14 after 9/11. That is reflected in Commissioner  
15 Zaccardelli's comments?

16                   MR. LOEPPKY: I think he certainly  
17 made a commitment on behalf of the organization.  
18 I wasn't at the meetings, but I could agree that I  
19 think there was certainly interest in working  
20 together at all levels.

21                   MS EDWARDH: And there is also a  
22 commitment that has been more currently stated as  
23 a commitment to seamless intelligence sharing.

24                   Do you recall that language? It  
25 is a statement that has been made by a number of

1 persons, including I think most recently Anne  
2 McLellan when she was Deputy Prime Minister -- no,  
3 she was Minister of --

4 THE COMMISSIONER: Public Safety.

5 MR. LOEPPKY: Yes, Public Safety.

6 I wish they would quit changing the names,  
7 Mr. Commissioner. Minister of Public Safety.

8 MR. LOEPPKY: I think in the  
9 context that I spoke of in terms of integrated  
10 policing in the five key areas, it was seamless  
11 service delivery.

12 MS EDWARDH: I am going to suggest  
13 to you that if language like "seamless  
14 intelligence sharing" was the language also used,  
15 that is not inconsistent as long as one is mindful  
16 of the jurisdictional boundaries that still exist?

17 MR. LOEPPKY: That's correct.

18 MS EDWARDH: I just want to  
19 understand a little bit more about the issues of  
20 targeting a person. I am going to use it in the  
21 context where one were exercising one's  
22 jurisdiction to conduct a criminal investigation  
23 into a national security offence.

24 I am going to suggest, sir, that  
25 someone working in an INSET would be quite

1 entitled to target a person pursuant to their  
2 policing mandate to prevent the commission of  
3 an offence?

4 MR. LOEPPKY: Yes. All police  
5 officers are certainly independent to respond to  
6 issues and to investigate, but clearly there is  
7 quite a difference between -- and I think it is  
8 important to differentiate -- a response to a very  
9 straightforward inquiry from the public, or from  
10 another organization where there is a rationale to  
11 provide support, to undertaking a major  
12 investigation where there is an accountability  
13 process, a commitment of resources, a chain of  
14 command that ultimately becomes engaged.

15 MS EDWARDH: I understand that,  
16 but my question is about targeting someone for  
17 an investigation at a low level -- let's not get  
18 into resource deployment for a moment -- but the  
19 decision to target someone in an exercise of a  
20 preventative jurisdiction or mandate can be made  
21 by a member of INSET?

22 MR. LOEPPKY: But an individual  
23 police officer would not take a decision to target  
24 someone. There would have to be a discussion with  
25 the supervisor, there would have to be



1 intelligence. So there is a chain of command  
2 process that would become engaged in that.

3 MS EDWARDH: But what you don't  
4 need, what the supervisor doesn't need, the  
5 supervisor certainly doesn't need reasonable and  
6 probable grounds or even suspicion that person has  
7 been involved in criminal activity. The  
8 supervisor, or the consensus of the team, may be  
9 that person should be targeted pursuant to a  
10 preventive jurisdiction or mandate?

11 MR. LOEPPKY: There must be a  
12 reason for undertaking an inquiry. We don't have  
13 the capacity, nor is it appropriate, that we would  
14 just arbitrarily pick someone and say we are going  
15 to investigate that person. There has to be  
16 something that brings that individual to our  
17 attention before a police officer would deploy  
18 time and resources to that.

19 MS EDWARDH: Yes, but there is a  
20 long way between nothing and reasonable and  
21 probable grounds?

22 MR. LOEPPKY: Yes.

23 MS EDWARDH: All I'm really  
24 suggesting, sir, is that the team could decide,  
25 based on some perception of threat, to cause a

1 criminal offence to occur in the future in  
2 respect of a matter of national security and that  
3 would be sufficient to justify the targeting of  
4 that person?

5 MR. LOEPPKY: Once you get to the  
6 point where you are going to dedicate resources,  
7 significant resources, that is when it becomes an  
8 investigation that engages the headquarters area.  
9 I think we talked earlier about the approval of  
10 the Commissioner or the Assistant Commissioner of  
11 Criminal Intelligence to approve an investigation.

12 MS EDWARDH: It is my experience,  
13 sir, that a member of the Force can do a great  
14 deal of low-level investigation without involving  
15 significant resources, and that significant  
16 resources in the world I come from means  
17 commitment for wiretaps, the need to have people  
18 sometimes monitor the wiretaps, the need to  
19 transcribe conversations, they involve  
20 surveillance activities that may have to go on for  
21 some time. Those take huge resources.

22 MR. LOEPPKY: Yes.

23 MS EDWARDH: And a great deal of  
24 investigation can go on before anyone has to spend  
25 those resources.

1 Fair enough?

2 MR. LOEPPKY: Yes.

3 MS EDWARDH: So if one is seeking  
4 to target a person because of a concern that  
5 targeting them may be useful in preventing crime  
6 in respect of national security offences, one can  
7 do that with mere approval.

8 Is that fair enough?

9 MR. LOEPPKY: With the supervisory  
10 approval there you could undertake an  
11 investigation, yes.

12 MS EDWARDH: Sure. I want to just  
13 establish that there is no -- other than, I  
14 suppose operational reasonableness, there is no  
15 set criteria nor real approval mechanism inside  
16 the decision-making structure that determines  
17 someone could be targeted for relatively low-level  
18 resource investigation. You notify -- it is a  
19 security investigation, you would notify  
20 headquarters, but you don't have to go through:  
21 These are my reasons. This is why it is  
22 important. This is what I expect to find. It is  
23 not an approval process as it is with SIRC?

24 MR. LOEPPKY: There is a certain  
25 element of independence that is accorded to the

1           INSET unit, absolutely, because the INSET unit  
2           commander at the end of the day must make  
3           decisions about where they are going to focus  
4           their resources.

5                           As any investigation, whether it  
6           is against organized crime or I talked earlier  
7           about minimal risk that we try and attach to  
8           criminal investigations on national security, you  
9           may not have the resources to run everything down  
10          to the last piece of information, therefore, the  
11          supervisor must make decisions about what they are  
12          actually going to do.

13                          MS EDWARDH:   Sure enough.   But  
14          you and I know what an approval process is.   If  
15          you want a search warrant you have to go to a  
16          Justice of the Peace who will evaluate your  
17          grounds and determine whether there is a basis for  
18          its issuance; if you want and wiretap  
19          authorization you have to set details of the  
20          investigation and justify the conclusion; if you  
21          want to just target somebody, you don't have to do  
22          any of those things.

23                          Fair enough?

24                          MR. LOEPPKY:   You just need to  
25          have the internal agreement that that is the

1 direction you are going to go.

2 MS EDWARDH: All I want to  
3 establish, sir, is that agreement is based on a  
4 fairly low-level threshold of interest on the part  
5 of a member of the Force if it doesn't take a lot  
6 of resources?

7 MR. LOEPPKY: That's correct. But  
8 it is not the individual police officer that would  
9 make those kinds of operational decisions to  
10 undertake a low-level project. It would be done  
11 in conjunction with the supervisor of the unit,  
12 and depending on the level of commitment then of  
13 course it would go up.

14 MS EDWARDH: It would have to go  
15 higher?

16 MR. LOEPPKY: Yes.

17 MS EDWARDH: Fair enough.

18 This goes back to this issue of  
19 how a person gets on and off the database in the  
20 INSET unit. Some police forces once they launch a  
21 criminal investigation when it is concluded clear  
22 the investigation. Do you know what I am talking  
23 about? It has an end and it can be cleared by the  
24 laying of a charge.

25 MR. LOEPPKY: Yes.

1 MS EDWARDH: Or it can be cleared  
2 by determining that no charge will be laid.

3 MR. LOEPPKY: Yes.

4 MS EDWARDH: In these INSET  
5 investigations, might I take it that one of the  
6 unusual features of them is that once a person is  
7 added to the database because they, for example,  
8 come in contact with a target, that as you pointed  
9 out assuming no criminal charges are laid against  
10 the target or the other person, they are going to  
11 stay on that database and because of the  
12 intelligence nature of what is going on they will  
13 never be cleared until the file is purged?

14 MR. LOEPPKY: Their name would  
15 remain on the database until such time as it's  
16 purged. Immediately post-9/11 when I talked about  
17 the 1500 inquiries, I mean those will all come up  
18 for purge dates if they are concluded, so  
19 ultimately the names will disappear from the  
20 system.

21 MS EDWARDH: But they are not  
22 purged because they are cleared or not cleared.  
23 They just get too old in effect, they are no  
24 longer have ongoing interest.

25 MR. LOEPPKY: That is the same in

1 every criminal investigation where you -- that may  
2 not result in a charge. It is no different. At  
3 some point there is an expiry date, the file is  
4 then purged and it is removed from the system.

5 MS EDWARDH: But one of the  
6 features of the INSET mandate, when they conduct  
7 investigations into national security offences,  
8 and when they are particularly conducting them in  
9 order to prevent the occurrence of national  
10 security offences, if I were to ask you, for  
11 example, sir, what is the purge time line for such  
12 an offence, would you be able to say that it's six  
13 months, if we haven't done it in six months they  
14 fall off the system, is it a decade, or really is  
15 it a much, much longer time period on the premise  
16 that international pieces of information may have  
17 to come together over years before any final  
18 conclusion can be drawn?

19 MR. LOEPPKY: There are specific  
20 time lines that are put in place that are mandated  
21 by the Government of Canada in terms of when  
22 information is purged from the system. It depends  
23 on OSR codes which are provided by Statistics  
24 Canada. So in the case of, perhaps, an inquiry  
25 about a registered owner of a licence plate, it

1 might be a year or two years. I don't know the  
2 exact date.

3 In the case of a murder file it  
4 would be longer, following the conclusion of the  
5 file.

6 So it depends on the situation.

7 MS EDWARDH: Well, we have now  
8 cold cases coming forward, using DNA data banks,  
9 that have been around for 25 years.

10 MR. LOEPPKY: Yes.

11 MS EDWARDH: Those files remain  
12 intact?

13 MR. LOEPPKY: Because they were  
14 not concluded.

15 MS EDWARDH: And because no one  
16 was charged?

17 MR. LOEPPKY: That is correct.

18 MS EDWARDH: Fair enough. Are you  
19 saying that files are only purged when they are in  
20 fact concluded by way of a criminal charge?

21 MR. LOEPPKY: No. They can be  
22 concluded any number of ways. If that was the  
23 case none of the files would ever be purged from  
24 any of our 3 million contacts that we have a year  
25 with Canadians, whether that is a stolen bicycle,



1 a lost dog, whatever the complaint might be. So  
2 those files can be concluded in any number of  
3 ways, criminal charge being one, a lost child is  
4 found, concluded, so there is no further  
5 investigation possible. There is a number of ways  
6 that it can be concluded.

7 MS EDWARDH: As best you can  
8 remember, could you describe how files can be  
9 concluded and then purged?

10 MR. LOEPPKY: As I started I think  
11 I mentioned a file can be concluded in any number  
12 of ways: there is no further investigation  
13 possible; you have exhausted all the leads; you  
14 can't pursue it for a variety of reasons; there is  
15 a charge laid; the file has been satisfactorily  
16 concluded that maybe it isn't criminal. There is  
17 a number of ways that a file can actually be  
18 concluded.

19 MS EDWARDH: Now, if you were to  
20 have an investigation like one Mr. Cavalluzzo  
21 described where you have a target who you believe  
22 may be involved or may become involved in an  
23 offence, a national security offence, and you pick  
24 up through your surveillance of him or her a  
25 contact, I am trying to find out how that file can

1           be concluded if there are no criminal charges  
2           laid. I suppose you could learn that the target  
3           had died.

4                       MR. LOEPPKY: At some point you  
5           will get to the stage in a file where there is no  
6           further investigation possible; the individual who  
7           is a suspect may have passed away, a number of  
8           factors would come into it. Then, at a  
9           supervisory level, there will be a decision made  
10          that there is nothing further that can be done and  
11          the file will be concluded and ultimately every  
12          file, except, perhaps, some rare files where there  
13          are unsolved murders and those types of things,  
14          those will not be concluded.

15                      MS EDWARDH: And are they then  
16          designated as concluded and removed from the  
17          system by way of purging?

18                      MR. LOEPPKY: Following the purge  
19          date they will be removed from the system.

20                      MS EDWARDH: And if they were  
21          designated concluded and had not been purged, that  
22          is the kind of situation --

23                      MR. LOEPPKY: When the file is  
24          concluded for whatever reason, at that point there  
25          is a set period of time after which the file will

1 be electronically purged from the system or if it  
2 is a hard copy file it will be disposed of.

3 MS EDWARDH: So if we could get  
4 from you, sir, assuming that the target in the Jim  
5 Jones hypothetical is not arrested and is not  
6 dead, to the best of your knowledge, can you give  
7 us some sense as to how long Jim Jones remains at  
8 risk of having information sharing with a foreign  
9 policing agency before you decide that it should  
10 be a file that is closed?

11 MR. LOEPPKY: Well, first of all,  
12 information on Jim Jones won't be shared in a  
13 negative context if we have not been able to  
14 establish any negative inference, but he will stay  
15 as a subject in that file, as will everybody else  
16 until such time as the file is concluded. But the  
17 proper context is put around the information  
18 sharing that relates to Jim Jones.

19 MS EDWARDH: And that could be  
20 decades. Fair enough?

21 MR. LOEPPKY: That could be...?

22 MS EDWARDH: Decades.

23 MR. LOEPPKY: It could be, yes.  
24 It is rare, except in unsolved murders, those  
25 types of things but, yes, it could be.

1 MS EDWARDH: We have learned this  
2 morning that with respect to the data on the  
3 computer, that it includes both raw data or  
4 information and intelligence, which is in essence  
5 analysis of data. Fair enough?

6 MR. LOEPPKY: The operational case  
7 files will have pieces of information. As the  
8 investigation proceeds those will be recorded and  
9 documented. That will be part of it.

10 MS EDWARDH: And that will be on  
11 the computer system --

12 MR. LOEPPKY: Yes.

13 MS EDWARDH: And you have said to  
14 us that it does not include profiling information?

15 MR. LOEPPKY: No.

16 MS EDWARDH: And so as I  
17 understand, sir, it would be your evidence today  
18 that the RCMP has not its own profile that it uses  
19 nor does it use the CSIS criteria for profiling or  
20 matching persons to the criteria of possible  
21 membership in al-Qaeda?

22 MR. LOEPPKY: Not specifically for  
23 membership in an organization. We have a  
24 behavioural sciences unit that does profiling  
25 based on criminal activity, based on a number of

1 criteria that serve to be used as a tool for the  
2 investigators that are undertaking an  
3 investigation.

4 MS EDWARDH: No, but I am  
5 interested -- for example, we were told that  
6 persons could, when we are looking at issues for  
7 example of commonality which you of course  
8 described as matters relevant to ascertain the  
9 nature of a connection, you might ask: one, are  
10 they persons who are, I don't know, between the  
11 ages of 25 and 40 who have had considerable --  
12 spent considerable time in Pakistan or in  
13 Afghanistan, have they ever trained in  
14 Afghanistan; if so, have they trained in any  
15 particular camps in Afghanistan; if so, where were  
16 they -- you know?

17 Those kinds of criteria or  
18 characteristics, those aren't plugged into the  
19 analysis that you are talking about as moving raw  
20 data to intelligence?

21 MR. LOEPPKY: In the process of  
22 profiling, and I am not an expert in profiling but  
23 I do know a little bit about it in terms of its  
24 application in criminal investigations, there  
25 might be an occasion where there is a specific

1 criteria that clearly is a part of the profile.  
2 For example, if you had an organization that was  
3 involved in activities and they only had people  
4 from a particular background, then that could be a  
5 criteria that you would think about, but it is  
6 just one of the many.

7 MS EDWARDH: All right. Do I draw  
8 from that, though, that there is no kind of  
9 working profile of what someone is supposed to  
10 look like or be like or have done in their life if  
11 they are a member of al-Qaeda?

12 MR. LOEPPKY: No.

13 MS EDWARDH: Now, I want to just  
14 go back to some questions Mr. Cavalluzzo asked  
15 about the notion of information being  
16 characterized by you as being reliable or no  
17 proven reliability. Again, there were four  
18 categories. I just want to establish that when  
19 there is information as opposed to analysis,  
20 information on the database, does that itself  
21 carry with it a specific level of reliability  
22 attached to it?

23 MR. LOEPPKY: No. Most of the  
24 information that will be on a -- that will be  
25 there will be file information that furthers the

1 investigation. So, for example, something that  
2 was observed through surveillance would not have a  
3 believed reliable or doubtful reliability if it is  
4 firsthand observation from a police officer. That  
5 is part of the evidence that is being gathered in  
6 terms of the investigation.

7 The only time that we would  
8 generally use that type of a terminology in our  
9 organization is where we receive information from  
10 human sources and we would categorize that as  
11 reliable, right down to unknown reliability and in  
12 between.

13 MS EDWARDH: Assuming your not  
14 collecting this information directly yourself, and  
15 we will come to human sources that you are dealing  
16 with directly because then you are really dealing  
17 with evaluations from handlers, but what about  
18 information that comes from let's say the FBI?  
19 It, too, could glean information from direct  
20 observations through surveillance. Correct?

21 MR. LOEPPKY: Yes.

22 MS EDWARDH: And would they tell  
23 you that they made direct observations from police  
24 officers' surveillance when they conveyed a fact?

25 MR. LOEPPKY: That would be the

1           accepted procedure.

2                           MS EDWARDH:   So they would tell  
3           you the source of the information, generally, as  
4           to indicate its presumed reliability?

5                           MR. LOEPPKY:   Yes, if you were  
6           working collaboratively on a file, they would tell  
7           you if they observed something versus whether they  
8           heard it from a source or if it was an electronic  
9           intercept.   They would provide that background.

10                          MS EDWARDH:   So that would give  
11           you at least some independent basis to assess  
12           whether this was -- whether you were satisfied  
13           with the characterization of reliable or a proven  
14           reliability?

15                          MR. LOEPPKY:   Yes.

16                          MS EDWARDH:   One of the things  
17           that puzzled me, I reviewed Tab 44, and if you  
18           could just turn to it, in the Commission's  
19           material, in talking about information quality,  
20           this is page 7, it sets out the four categories,  
21           it gives the impression under information quality  
22           that before information is "filed" prior to  
23           filing, that there must be a review of the  
24           information.   It says:

25    "Information/intelligence



1 must undergo a review for  
2 relevance and an evaluation  
3 for source reliability and  
4 information validity prior to  
5 filing." (As read)

6 Do you see that?

7 MR. LOEPPKY: Yes.

8 MS EDWARDH: Just above the  
9 category.

10 Should we draw from this that  
11 there is any kind of review beyond the officer  
12 directing his mind to whether he accepts it is  
13 relevant and he believes it to be of some level of  
14 reliability?

15 Is there anything more than that;  
16 than the individual officer making that decision  
17 before entering it into the computer or prior to  
18 filing it in hard copy, I suppose?

19 MR. LOEPPKY: He will file that in  
20 hard copy, and then it will be reviewed by an  
21 analyst.

22 They will look at is there other  
23 information that can solidify this, that can  
24 support it, to either support the initial  
25 evaluation or to perhaps add to it.

1 MS EDWARDH: Am I correct that  
2 that means that no piece of information, raw  
3 information, goes into the computer, goes into  
4 SCIS, prior to passing through the hands of an  
5 analyst?

6 MR. LOEPPKY: No. I was referring  
7 here specifically -- and I thought you were  
8 referring specifically -- to source information  
9 that had been obtained from a human source.

10 In that case, the source  
11 debriefing reports are provided. They are  
12 reviewed and compared to other information the  
13 source may have provided or information received  
14 from other sources.

15 MS EDWARDH: So my  
16 misunderstanding, then, because when I read the  
17 words "for relevance and an evaluation for source  
18 reliability", I did not confine that only to an  
19 assessment of relevance and evaluation of human  
20 sources. I thought it could be --

21 MR. LOEPPKY: Information that is  
22 gathered during the course of an investigation,  
23 surveillance reports, technical intercepts, those  
24 are not evaluated by someone who is reading the  
25 surveillance report to say: Well, yes, I am

1 confident that what our investigator saw is  
2 actually accurate.

3 Those are pieces of evidence that  
4 are put in the file.

5 MS EDWARDH: And they are presumed  
6 to be reliable?

7 MR. LOEPPKY: They are presumed to  
8 be reliable.

9 MS EDWARDH: So what someone saw  
10 could be presumed to be reliable, as you have  
11 explained it. And certainly what someone heard,  
12 if it is a police officer listening to an  
13 intercept or having overheard a conversation, that  
14 would be presumed to be reliable as well?

15 MR. LOEPPKY: Yes.

16 MS EDWARDH: One of the things I  
17 wanted to ask you, if I could, is about  
18 admissions.

19 If a police officer has  
20 interviewed someone and they have made an  
21 admission, would you agree that that as well would  
22 be presumed to be reliable, both because the  
23 officer observed it and because in theory people  
24 don't admit things they didn't do, because they  
25 have a self-interest in presenting themselves in

1 the best light?

2 MR. LOEPPKY: Generally that is  
3 the case, but I have been a police officer for a  
4 long time and I have seen people admit to things  
5 that they didn't commit, for a number of reasons.

6 So you always have to draw on your  
7 skills as an investigator, your knowledge, what is  
8 motivating an individual to admit something, what  
9 are the conditions under which they might admit  
10 something.

11 If an admission was made under  
12 conditions that would not meet the test of  
13 admissibility, that obviously taints it. So there  
14 is a whole host of factors that need to be  
15 considered. The objective is to get a statement  
16 that will be admissible.

17 MS EDWARDH: Now I want to take  
18 those concerns, sir, because I think everybody in  
19 this room is alive to the fact that professional  
20 policing requires that you be alive to them. If  
21 you get a piece of information from the FBI and  
22 they are passing on to you, for good and  
23 legitimate reasons -- let's say there is a joint  
24 investigation -- the fruits of an interrogation  
25 and they are describing what the person said in

1 the context of their own record of the  
2 interrogation, would that not be presumed  
3 reliable?

4 How would you answer all the  
5 questions you just raised about context,  
6 overbearing interrogation, all the subtle things  
7 that you know that could distort the products of  
8 an interrogation and not just render it  
9 inadmissible but potentially unreliable?

10 MR. LOEPPKY: I think your  
11 question was if we received a statement that was  
12 taken by United States law enforcement?

13 MS EDWARDH: Yes.

14 MR. LOEPPKY: We would consider it  
15 reliable. They are professional law enforcement  
16 bodies that adhere to similar types of judicial  
17 processes that we do.

18 MS EDWARDH: I think it is fair to  
19 say that you would assume that that statement was  
20 given pursuant to methods of questioning that  
21 reflected your understanding of professional  
22 policing, coupled with things like Miranda and  
23 other things that go on in the United States.

24 MR. LOEPPKY: That clearly met the  
25 standards laid out by the United States courts.

1 MS EDWARDH: When you come to  
2 accepting admissions -- let's suppose, for  
3 example, that the United States receives the  
4 products of questioning or interrogation from  
5 another police agency. You have a large  
6 investigation that may cover five or six  
7 countries. It may be a huge drug investigation.

8 So you know that the Canadian  
9 police are involved, the American police are  
10 involved, the Mexican police are involved, the  
11 Columbian police are involved. It is a big  
12 transnational investigation.

13 The Colombian police have  
14 conducted a number of questioning of persons who  
15 may be involved or may have evidence to offer, and  
16 they send up the products of those statements to  
17 their U.S. counterparts, who are then shared with  
18 you.

19 How do you go about the process,  
20 sir, of evaluating whether the product of the  
21 interrogation in Colombia is the same or different  
22 in reliability than the one in the U.S. that you  
23 presume to be reliable?

24 MR. LOEPPKY: There is a number of  
25 steps we would take.

1                    Obviously we would consult with  
2                    our U.S. counterparts to determine the nature of  
3                    the statement, to determine the circumstances  
4                    surrounding the statement, especially if we were  
5                    looking at using that in terms of evidence in a  
6                    prosecution.

7                    If it came to our attention that  
8                    the statement had been provided to them from  
9                    another country, such as Colombia, then through  
10                  our liaison officer we would make some inquiries.  
11                  If it was our intention to use that statement in  
12                  any way, we would do our due diligence through our  
13                  liaison officer to establish the circumstances  
14                  under which it was taken and in fact probably  
15                  follow up with the investigative unit there to  
16                  ensure that are it would meet our expectations.

17                  MS EDWARDH: Let's take this same  
18                  issue and transpose it into an investigation of a  
19                  national security offence, and let us suppose that  
20                  you are receiving the products of interrogation  
21                  from a number of different countries in respect of  
22                  an offence or possible offence that you are  
23                  investigating, sir.

24                  Let's begin with this assumption:  
25                  If in fact a statement is made, we can agree, can

1 we not, that unless you are satisfied that the  
2 conditions of that statement comport with some  
3 pretty basic principles, it could be highly  
4 unreliable.

5 Is that fair?

6 MR. LOEPPKY: Yes.

7 MS EDWARDH: So even though it  
8 appears to be an admission, it may be of no value  
9 to you either as evidence or as intelligence in an  
10 investigation if the circumstances render it  
11 unreliable.

12 MR. LOEPPKY: If the circumstances  
13 are such that it is taken under conditions that  
14 would not meet our standards in Canada, then we  
15 would obviously question its validity.

16 MS EDWARDH: And that would be for  
17 both purposes, though. It is not just for the  
18 purposes of offering it to Crown counsel to tender  
19 in the criminal prosecution; it is for putting it  
20 on a database, acting on it, seeing it as  
21 reliable, letting it govern other investigative  
22 choices.

23 You wouldn't do that if you didn't  
24 believe --

25 MR. LOEPPKY: No. It is certainly



1 of questionable reliability.

2 MS EDWARDH: Right. Now that we  
3 have this potential offence in respect of national  
4 security, a multi-national investigation, we know  
5 it may or may not be reliable depending on the  
6 circumstances. If you know that you have one  
7 statement from United States and another  
8 statement, either directly or through the United  
9 States, from a third country, do you not use it at  
10 all until you can satisfy yourself it is reliable,  
11 even for intelligence purposes?

12 MR. LOEPPKY: Well, if a statement  
13 is provided that was obtained by law enforcement  
14 in the United States, we work on the assumption  
15 that it was obtained under the appropriate  
16 guidelines, that it would meet the rights of the  
17 Constitution in the United States. And obviously  
18 it would have more value.

19 If there was a statement obtained  
20 from another country where there might be human  
21 rights abuses, we would really have significant  
22 concerns about the validity or the value of that  
23 statement because it would not meet our tests.

24 MS EDWARDH: Right. So now let's  
25 suppose you have one in hand from United States

1           and another one in hand from a third country that  
2           has serious issues with respect to human rights  
3           abuses, and that you as a professional police  
4           officer know it raises profound questions about  
5           reliability.

6                           Do you enter the information from  
7           the statement that you have reason to question the  
8           reliability of onto the SCIS computer?

9                           MR. LOEPPKY:  If that information  
10          came to our attention, we would certainly make a  
11          note of it, because it is information that came  
12          into the possession of law enforcement.  But it  
13          would have the appropriate comments with that  
14          statement that speaks to the questionable validity  
15          or worthwhile nature of the statement.

16                          MS EDWARDH:  Would it simply be  
17          cast as a statement of proven unreliability, or  
18          would it be cast in your data system as a  
19          statement with serious questions about  
20          reliability?

21                          I don't see that category.

22                          MR. LOEPPKY:  No.  I think before  
23          that assessment is made, you need to do the work  
24          around the background of that through our liaison  
25          officers, through the Foreign Affairs office in

1 the country where that statement may have  
2 originated.

3 You simply don't take a statement  
4 under those conditions and provide it any value  
5 until you actually do something.

6 If you can't establish that in  
7 fact it can be substantiated, then very little  
8 weight would be put on anything like that.

9 MS EDWARDH: But what concerns me,  
10 sir, is that it would go on the database.

11 MR. LOEPPKY: It would go on the  
12 database with the appropriate notation on it.

13 MS EDWARDH: I take it, sir, that  
14 you would expect it to come from -- let's assume  
15 this country with a bad human rights record  
16 transferred this information first to United  
17 States, who was then sharing it with you.

18 Would you expect United States to  
19 tell you in detail what they knew about the  
20 circumstances of the alleged statement, or do they  
21 simply characterize it by way of reference to a  
22 degree of reliability?

23 MR. LOEPPKY: Relationship between  
24 law enforcement in Canada and the United States is  
25 based on trust. It is based on professional

1           expectations. I would expect that when we are in  
2           the process of gathering evidence, they would  
3           provide accurate information to us.

4                           MS EDWARDH: But they may not know  
5           necessarily. And what I am curious about, though,  
6           is whether in the ordinary course an admission of  
7           this kind would come to you simply with a  
8           designation reliable, believed reliable, unknown  
9           reliable or doubtful reliability, or whether it  
10          comes with admission made blah and serious  
11          questions as to circumstances or propriety of  
12          interrogation.

13                           How much data do you get and --  
14          start with that question.

15                           MR. LOEPPKY: If a statement was  
16          shared under those conditions, I would expect that  
17          the circumstances of how the statement was  
18          obtained and the validity of the statement, that  
19          there would be some context around the sharing of  
20          that information.

21                           MS EDWARDH: And that of course  
22          would depend on whether the country with the  
23          reputation for human rights violations was honest  
24          enough to cough up the manner in which the  
25          interrogation took place or how it was done; fair

1           enough?

2                           MR. LOEPPKY:  I would expect there  
3           would be an assessment done by the organization  
4           who is sharing it with us in terms of its  
5           reliability.

6                           MS EDWARDH:  I take it you simply  
7           adopt -- you have no independent way of getting  
8           additional information, other than what the  
9           Americans would have been giving you from this  
10          third country, and no independent way to verify it  
11          except maybe some inquiries through the liaison  
12          office?

13                          MR. LOEPPKY:  That is why a  
14          statement under those conditions is of no  
15          evidentiary value and would be of little interest  
16          to us.

17                          MS EDWARDH:  But my real question,  
18          sir, was that it goes on the computer.  It could  
19          be considered to be of intelligence interest in  
20          the course of an investigation.  The problem is  
21          whether or not it should ever be acted on and  
22          whether people would know not to act on it.

23                          MR. LOEPPKY:  And that is where I  
24          would expect that the appropriate documentation is  
25          placed on the file that reflects that.

1 MS EDWARDH: What that leads me to  
2 are the following three conclusions, if I could  
3 just for a moment.

4 I am going to assume, and you can  
5 agree or disagree, that in some circumstances  
6 information in a criminal investigation is  
7 purchased in the sense that money is provided to  
8 the person who is giving the information, in some  
9 cases -- not often but in some cases.

10 Would you agree with that?

11 MR. LOEPPKY: I think you said  
12 "evidence"?

13 MS EDWARDH: In return for  
14 cooperation, money is given to the person.

15 MR. LOEPPKY: Yes.

16 MS EDWARDH: In return for  
17 cooperation, benefits are given to the person that  
18 are not by way of money, but other benefits?

19 MR. LOEPPKY: Benefits that fall  
20 within the legal framework of our country, or if  
21 they impact on other components in the Canadian  
22 community, then with their concurrence.

23 MS EDWARDH: Leaving aside  
24 the money issue, some of those benefits relate  
25 to no charges, even though they were

1 criminally involved.

2 Correct?

3 MR. LOEPPKY: With the appropriate  
4 authorities in the organization to stay charges,  
5 those are options that exist.

6 MS EDWARDH: Reduced sentences,  
7 should they cooperate.

8 Correct?

9 MR. LOEPPKY: We don't set the  
10 sentencing guidelines. That really is within the  
11 jurisdiction of the courts.

12 MS EDWARDH: Yes. But  
13 certainly you have been involved, sir, in cases  
14 where Crown counsel and defence have made a joint  
15 submission to a judge --

16 MR. LOEPPKY: Yes.

17 MS EDWARDH: -- on the basis of  
18 cooperation of a person?

19 MR. LOEPPKY: Yes.

20 MS EDWARDH: That is not  
21 considered improper in our system. I'm not  
22 suggesting it is. I am just talking about the  
23 benefits that may be embedded behind the flow of  
24 information. That's all I'm doing.

25 MR. LOEPPKY: Yes.

1 MS EDWARDH: So you will  
2 agree with me, sir, that we now know that from  
3 time to time when persons can obtain a significant  
4 advantage that we have been confronted with the  
5 fact that they provide very unreliable information  
6 and/or evidence.

7 MR. LOEPPKY: That is precisely  
8 the reason why we have very strict controls over  
9 resource recruitment and source handling.

10 MS EDWARDH: It led to perhaps  
11 some of the strongest language ever used by a  
12 well-known Supreme Court Justice in this country,  
13 Justice Cory, when he described the rush to sell  
14 information in the Sophonow inquiry.

15 Are you familiar with his  
16 remarks, sir?

17 MR. LOEPPKY: I recall he  
18 made some remarks. I don't recall the  
19 specific remarks.

20 MS EDWARDH: If I could just for  
21 one moment take you to Tab 22. This is of our  
22 materials of course.

23 There is a discussion at the very  
24 beginning. Perhaps some of the most colourful  
25 language that Justice Cory has written. At the



1 very beginning of his discussion of jailhouse  
2 informants who are inevitably trying to barter an  
3 advantage for their evidence he makes the  
4 following observation, in the first four lines:

5 "Jailhouse informants  
6 comprise the most deceitful  
7 and deceptive group of  
8 witnesses known to frequent  
9 the courts. They are  
10 notorious. The more  
11 notorious the case, the  
12 greater the number of  
13 prospective informants they  
14 rush to testify like vultures  
15 to rotting flesh or sharks to  
16 blood. They are smooth and  
17 convincing liars." (As read)

18 That is quite an indictment of  
19 that category of person who is seeking a benefit?

20 MR. LOEPPKY: Yes.

21 MS EDWARDH: So in the areas where  
22 people are receiving money or receiving benefits  
23 and are giving information in a criminal  
24 investigation, including a national security  
25 investigation, is there a special designation to

1 mark them as the human source? Is anything done  
2 specially to deal with that kind of person?

3 MR. LOEPPKY: All the sources are  
4 provided -- are identified through covert means,  
5 obviously, to protect their identity. If there is  
6 a case where a financial payment or a benefit is  
7 to be extended to a source, then that has to be  
8 elevated in the organization for approval levels.  
9 Depending on the seriousness of the charge that  
10 might be under consideration, obviously it goes  
11 ultimately to a very high level in the  
12 organization. In terms of wanting to be --  
13 your comment to be identified, I mean, they  
14 clearly are --

15 MS EDWARDH: I'm sorry, I misled  
16 you, sir. Can I interrupt you just to rephrase  
17 the question?

18 MR. LOEPPKY: Yes.

19 MS EDWARDH: Identified in the  
20 database is what I'm talking about. In other  
21 words, when a source gives information which is  
22 somehow purchased through a benefit or money on  
23 this database that we have heard so much about,  
24 SCIS, and I may be an officer in an INSET who  
25 wants to access information, would I know that the

1 information that I'm looking at comes from that  
2 kind of source?

3 MR. LOEPPKY: Yes, you would. You  
4 would not know the identity.

5 MS EDWARDH: Of course. I'm not  
6 suggesting that.

7 Would you know if the information  
8 flowed from United States whether that kind of  
9 arrangement had been made with a source? Would it  
10 be available and readily seen if I was accessing  
11 that computer?

12 MR. LOEPPKY: The context of the  
13 information sharing would likely include some  
14 reference to the motivation of the individual, but  
15 it might not be very specific.

16 MS EDWARDH: So you may not  
17 know specifically?

18 MR. LOEPPKY: That's right.

19 MS EDWARDH: I think we can also  
20 agree that one of the things you -- and let's  
21 leave that kind of affect on a source and go to  
22 another one.

23 One of the things you would not  
24 know is if the information was coming from an  
25 American source, an American policing entity like

1 the FBI, you would never know whether the  
2 interview techniques they use pass muster the  
3 scrutiny that you would expect. In other words,  
4 you would never know whether there was a leading  
5 interrogation, where witnesses were led; whether  
6 intimidation maybe used. You couldn't tell. You  
7 expect them to comply with their law.

8 Is that fair enough?

9 MR. LOEPPKY: Yes. We expect them  
10 to be professional, to have standards that they  
11 adhere to, and I believe they do. But unless you  
12 are there, you don't know what the actual tone of  
13 the interview was or how it took place.

14 MS EDWARDH: For example, I mean  
15 it is not so long ago that we had the Commission  
16 of Inquiry conducted by Justice Kaufman,  
17 Commissioner Kaufman, into the wrongful conviction  
18 of Guy Paul Morin. I would take it, sir, in your  
19 position you would be generally familiar with  
20 that?

21 MR. LOEPPKY: Yes.

22 MS EDWARDH: Indeed, one of  
23 the issues -- and certainly when one says you  
24 expect the Americans, there are lots of U.S.  
25 police officers.

1 Fair enough?

2 MR. LOEPPKY: Yes.

3 MS EDWARDH: One would have  
4 expected police officers in a large metropolitan  
5 area like Toronto to use proper interviewing  
6 techniques as well.

7 Correct?

8 MR. LOEPPKY: Yes. We are all --  
9 we have to be compliant with the Charter to ensure  
10 admissibility.

11 MS EDWARDH: One of the things  
12 Justice Kaufman found was that bad interviewing  
13 techniques, which were in fact use in some cases,  
14 resulted and had a direct impact on the content of  
15 the statement and resulted in things that were  
16 false being in the statement.

17 Do you recall that finding?

18 MR. LOEPPKY: I recall that, yes.

19 MS EDWARDH: So my difficulty or  
20 my concern, sir, is pretty narrow. It is that  
21 this information flow that comes to you is not  
22 sufficient to allow you to make the judgment.  
23 What you do is you presume reliability because of  
24 the nature of the Force that has obtained the  
25 information.

1                   Is that fair?

2                   MR. LOEPPKY:  Yes.  You know, with  
3                   respect to the Guy Paul Morin case, those are  
4                   examples of how organizations change their methods  
5                   to ensure that they don't repeat the same  
6                   mistakes.  Clearly, we learn from every one of  
7                   those and we adjust our way of approaching things.

8                   With respect to receiving  
9                   statements that are taken within the United  
10                  States, we do expect that they are taken at --  
11                  that they will be compliant and admissible and  
12                  they have the same expectations here.  In fact, we  
13                  have many cases where we have been involved in  
14                  cross-border prosecutions where Canadian police  
15                  officers have taken statements here and admitted  
16                  those in the United States and vice versa.

17                  MS EDWARDH:  But my point was  
18                  about your ability to make judgments as opposed to  
19                  assume things.  I think we have established that  
20                  you are obliged really to assume things?

21                  MR. LOEPPKY:  Yes.

22                  MS EDWARDH:  With respect to  
23                  governments providing you information that do not  
24                  have the record that you attribute to the United  
25                  States, I take it we can agree that all you can do

1 is approach that with caution, but you are not  
2 able to truly make an independent judgment?

3 MR. LOEPPKY: That's correct.

4 MS EDWARDH: Is it the case, then,  
5 that any statement taken by authorities in a  
6 jurisdiction with a poor human rights record would  
7 be viewed by the RCMP, when it came to acting on  
8 it or putting it on the database, as presumptively  
9 unreliable?

10 MR. LOEPPKY: Yes.

11 MS EDWARDH: I want to just turn  
12 to one other issue, if I could, in respect -- I'm  
13 sorry, that's not true -- one immediately at hand  
14 by way of other issues, and that deals with the  
15 issue of torture.

16 You made an interesting comment,  
17 Deputy Commissioner, this morning that I think  
18 probably captures the sentiment of most Canadians  
19 in many respects. You made a statement when my  
20 friend was asking you a question, and you said  
21 something to the effect -- I'm sorry, if you will  
22 just give me a moment -- we cannot assume after  
23 many years of cooperation, a long history of  
24 working cooperatively with the United States, our  
25 common desire to prevent terrorism, we cannot and

1 do not equate the United States with a country  
2 that practices torture.

3 Do you recall that statement  
4 this morning?

5 MR. LOEPPKY: Yes.

6 MS EDWARDH: It must have been  
7 quite horrifying as a professional police officer  
8 to have viewed the pictures of the detainees in  
9 Abu Ghraib.

10 Is that a fair statement?

11 MR. LOEPPKY: I think that those  
12 photographs absolutely were unacceptable and --

13 MS EDWARDH: Shocking?

14 MR. LOEPPKY: Yes.

15 MS EDWARDH: Indeed, leaving aside  
16 whether there was a complete disintegration in  
17 command in that institution, I am going to suggest  
18 to you that some of the discussion around the  
19 maintenance of the detainees at Guantanamo  
20 certainly do not and does not comport with any  
21 standard of policing that you would be aware of in  
22 your practice as a professional police officer in  
23 this country?

24 MR. LOEPPKY: We would not take  
25 that approach in this country.



1 MS EDWARDH: One of the emerging  
2 topics that has come out in the last -- and more  
3 and more in the last two or three months -- has  
4 been discussions of this practice of extraordinary  
5 rendition.

6 Now, sir, you said you were not  
7 aware of it until quite recently, certainly not at  
8 the time that these events developed in respect of  
9 Mr. Arar?

10 MR. LOEPPKY: That is correct.

11 MS EDWARDH: You are aware of  
12 it now?

13 MR. LOEPPKY: Yes.

14 MS EDWARDH: Indeed, George Tenet,  
15 the Director of the CIA, testified at the 9/11  
16 Commission that some 70 renditions had occurred  
17 prior to 9/11.

18 Did you note that in his  
19 testimony?

20 MR. LOEPPKY: Yes.

21 MS EDWARDH: And these special  
22 renditions are really nothing more than snatching  
23 of human persons without the exercise of lawful  
24 authority, and if they are lucky they end up in  
25 the United States to stand trial; if they are

1           unlucky they end up somewhere else where they may  
2           never see the light of day.

3                           Is that fair?

4                           MR. LOEPPKY: That is my  
5           understanding of the process.

6                           MS EDWARDH: I did give the  
7           witness this page last night. I hope you had a  
8           chance to look at the one page in the book  
9           "Against All Enemies" by Richard Clarke?  
10          --- Pause

11                          MS EDWARDH: Deputy Commissioner,  
12          could I --

13                          MR. LOEPPKY: I did read it, but I  
14          have to make sure I brought it with me. I think I  
15          did. Yes.

16                          MS EDWARDH: Of course, just for  
17          the record, I would assume that most of us recall  
18          Richard Clarke. Do you know who he is, sir?

19                          MR. LOEPPKY: Yes.

20                          MS EDWARDH: He of course recently  
21          testified before the 9/11 Commission in the United  
22          States.

23                          MR. LOEPPKY: Yes.

24                          MS EDWARDH: He wrote a book,  
25          which I have produced one page of to you, page

1 143, a book entitled "Against all enemies". Is  
2 that your understanding?

3 MR. LOEPPKY: Yes.

4 MS EDWARDH: Mr. Clarke is a  
5 gentleman who is described as someone who has  
6 managed to not only work with and continue through  
7 numerous administrations from democratic to  
8 Republican administrations. Is that fair?

9 MR. LOEPPKY: He has an extensive  
10 career. I don't know exactly how long, but he has  
11 been there a long time.

12 MS EDWARDH: He certainly has a  
13 long and rich history in national security matters  
14 and counterterrorism in the United States. Is  
15 that fair?

16 MR. LOEPPKY: Yes.

17 MS EDWARDH: He makes an  
18 interesting observation, and while we have so far  
19 used the word "extraordinary rendition", the word  
20 he describes or uses in this book is "snatches".  
21 Is that correct?

22 MR. LOEPPKY: That is the word  
23 that he uses, yes.

24 MS EDWARDH: And he says:  
25 "Snatches, or more properly

1           `extraordinary renditions,'  
2           were operations to apprehend  
3           terrorists abroad, usually  
4           without the knowledge of and  
5           almost always without public  
6           acknowledgement of the host  
7           government. One terrorist  
8           snatch had been conducted in  
9           the Reagan administration,  
10          Fawaz Yunis, who had  
11          participated in a hijacking  
12          of a Jordanian aircraft in  
13          1985 in which three Americans  
14          were killed, was lured to a  
15          boat off the Lebanese shore  
16          and then grabbed by FBI  
17          agents and Navy SEALs. By  
18          the mid-1990s these snatches  
19          were becoming routine CSG  
20          activity. Sometimes FBI  
21          arrest teams, sometimes CIA  
22          personnel, had been regularly  
23          dragging terrorists back to  
24          stand trial in the United  
25          States or flying them to

1                   incarceration in other  
2                   countries. All but one of  
3                   the World Trade Center  
4                   attackers from 1993 had been  
5                   found and brought to New  
6                   York. Nonetheless, the  
7                   proposed snatch in Khartoum  
8                   went nowhere."

9                   Then he discusses a specific  
10                  snatch that was not successful.

11                  I understand, sir, from your  
12                  evidence that despite the observed concern for  
13                  assuming that the Americans will be involved in  
14                  the abuse of detainees, and not wanting to go  
15                  there because of a long and trusted relationship,  
16                  it seems pretty evident that in respect of  
17                  national security investigations involving  
18                  al-Qaeda or al-Qaeda-related operatives that this  
19                  practice has been in operation for over a decade.

20                  MR. LOEPPKY: If I could just  
21                  comment on the book, I mean this Mr. Clarke's  
22                  perspective. I don't know, I can't attest to the  
23                  accuracy of what he has written here so I am  
24                  really not in a position to comment on that.

25                  I do know that when we deal with

1 U.S. law enforcement we do so on a professional  
2 basis and that is what we base our relationship  
3 on.

4 MS EDWARDH: I am going to suggest  
5 that when you deal with the FBI and the CIA you  
6 now have to, because people like George Tenet did  
7 testify under oath about this process, you now  
8 have to assume that in respect of some national  
9 security investigations, particularly as they  
10 relate to the "war on terror", there is at least a  
11 record of willingness to transport human persons  
12 to foreign nations where they are abused. You  
13 have to assume that.

14 MR. LOEPPKY: Yes.

15 MS EDWARDH: Otherwise we turn our  
16 face away from history.

17 So what I am interested in, sir,  
18 is how we go about a process, as Deputy  
19 Commissioner, of ensuring, since it is your view I  
20 take it, that, number 1, you didn't know it, but  
21 how do you ensure now that the appropriate  
22 controls and caveats are in place, and what  
23 caveats need to be in place on these kind of  
24 national security investigations so to ensure that  
25 this does not happen to any Canadian citizen.

1                   MR. LOEPPKY: We undertake the  
2 investigations, the criminal investigations, joint  
3 investigations with the objective of gathering  
4 criminal evidence for prosecution in Canada and  
5 they have to meet that test.

6                   Is this a process that we would  
7 support in Canada? Absolutely not. It is not  
8 within our values to operate in that regard.  
9 Therefore, we would certainly be very cautious  
10 about that.

11                   Having said that, I mean, we need  
12 to -- I think if your question was: Would you  
13 continue to cooperate? You need to put it in  
14 context of the investigation that you are involved  
15 with.

16                   MS EDWARDH: Let's assume, for  
17 example, there is an investigation into the  
18 activities of a man who there are reasonable and  
19 probable grounds to believe is a member of  
20 al-Qaeda, let's start with that, but you don't  
21 have him in your jurisdiction in order to lay a  
22 criminal charge after Bill C-36, but you have  
23 information about him, and he is a Canadian  
24 citizen. He happens to walk on American soil for  
25 the moment.

1                   They know you have been  
2           investigating him and you know they have been  
3           investigating him, so there is at least mutual  
4           investigations going on, but no one has reasonable  
5           and probable grounds to actually lay an  
6           information and proceed to a trial. Let's just  
7           assume that is the case for the moment.

8                   So what you are faced with is a  
9           request from a foreign nation, the United States,  
10          a close ally, in respect of a subject matter in  
11          which they have used special rendition and in  
12          which persons have been tortured in respect of a  
13          Canadian citizen that you can't prosecute here, in  
14          other words, arrest, detain, lay charges, and  
15          adduce the evidence before a competent tribunal.

16                   Do you cooperate? Do you say no  
17          we can no longer cooperate? What caveats before  
18          cooperation are necessary if you don't want them  
19          to act on your information and result in the  
20          exchange -- the sending of that person to a  
21          jurisdiction that will abuse them?

22                   MR. LOEPPKY: Well, I think my  
23          comments, my evidence the first day was that we do  
24          not support torture in any form. It is contrary  
25          to law in Canada. It is contrary to the values of



1           Canadians and our values.  If we in the course of  
2           an investigation, a joint investigation, where we  
3           are working together on a subject, sharing  
4           information in furtherance of the criminal  
5           investigation and furtherance of gathering  
6           evidence, at any point had any reason to believe  
7           that the individual would be subject to less than  
8           acceptable standards in -- to less than acceptable  
9           standards, then we would expect in Canada that we  
10          would have very serious concerns about that and  
11          obviously it would come to the highest levels.

12                            If in fact we had reason to  
13          believe that in that particular case there was  
14          going to be an abuse made of that information,  
15          then we would not share it.

16                           MS EDWARDH:  And you would not  
17          share it even with the United States.

18                           MR. LOEPPKY:  If we felt that the  
19          information was going to be used in a way that was  
20          going to infringe on the human rights of the  
21          individual, then we would not.  But having said  
22          that, I also pointed out that United States is a  
23          democratic country that has, by and large, very  
24          professional police standards.  So it would be  
25          case specific, where we had knowledge or reason to

1 believe.

2 MS EDWARDH: That it was a  
3 reasonable possibility?

4 MR. LOEPPKY: Reason to believe  
5 that the information would be put to purposes that  
6 did not meet our expectations of respecting  
7 people's rights.

8 MS EDWARDH: Does it not shift the  
9 burden on you now to make inquiry into  
10 investigations involving persons who are alleged  
11 to be both members of al-Qaeda and also who are  
12 known to you to be Canadian citizens?

13 MR. LOEPPKY: I think that it is  
14 an obligation on Canadian law enforcement. We  
15 share information to ensure that it is going to be  
16 used for consistent use and in an appropriate way.

17 MS EDWARDH: Let's assume that you  
18 can identify special rendition at least in some  
19 cases as the almost formal use of powers to deport  
20 someone, so there is a law enforcement component  
21 but the effect is to place someone in jeopardy of  
22 torture it's still a law enforcement. If you take  
23 consistent use without putting a caveat on it, on  
24 the basis of the current policy, it's something  
25 you can do.

1                   MR. LOEPPKY:  As I pointed out, if  
2                   there was any indication that the information was  
3                   going to be put to a use that was inappropriate in  
4                   our view, that was not consistent with law  
5                   enforcement principles, which was not consistent  
6                   with respecting the rights of individuals we would  
7                   not share the information or we would certainly  
8                   evaluate to what extent we would share.

9                   MS EDWARDH:  One of the reasons I  
10                  am going to suggest to you, sir, is if one were to  
11                  share information and know that it was to be used  
12                  in the course of a special rendition, you would be  
13                  party to the offence of torture under our Criminal  
14                  Code.

15                 MR. LOEPPKY:  That is correct.

16                 MS EDWARDH:  While it is the case  
17                 that the Government of Canada has seen fit to  
18                 repose in the RCMP the unusual potential, if I can  
19                 put it that way, to commit crime within the  
20                 context of a legal framework, and I will come to  
21                 legal framework in a minute, that falls far short  
22                 of countenancing being a party to torture.

23                 If that didn't make sense I will  
24                 go at it in three pieces.

25                 Okay.

1                   Prior to amendment to the Criminal  
2 Code, section 25.1, generally as a matter of law,  
3 members of the Royal Canadian Mounted Police could  
4 not commit crimes even in the course of  
5 investigation. Correct?

6                   MR. LOEPPKY: That is correct.

7                   MS EDWARDH: As a result, there  
8 were very significant limits on your  
9 participation, for example, in undercover activity  
10 there were things that couldn't be done or if they  
11 were done it was difficult.

12                  MR. LOEPPKY: Yes, for example, we  
13 could no longer be involved in things like  
14 counterfeit money investigations where we would  
15 actually buy the counterfeit money from the target  
16 and take it out of circulation because there was  
17 no immunity for the police officers in those cases  
18 to possess that money therefore as a result of the  
19 Campbell and Shirose decision.

20                  MS EDWARDH: So, even prior to  
21 Campbell and Shirose we can agree it wasn't clear  
22 just what the scope of authority was for officers  
23 to be involved in any kind of criminal activity.  
24 It was really not a very clear standard.

25                  MR. LOEPPKY: I think Campbell and

1           Shirose clearly clarified the law.

2                           MS EDWARDH:   Okay.   On the  
3           negative side.

4                           MR. LOEPPKY:   Yes.

5                           MS EDWARDH:   As a result of which  
6           there was an amendment to the Criminal Code 25.1.

7                           MR. LOEPPKY:   Yes.   That is  
8           correct.

9                           MS EDWARDH:   And we had included  
10          that in the materials under Tab 19, and it is at  
11          the very back of the materials.   We have set out  
12          the definition of "universal jurisdiction", the  
13          definition of "torture".   It is at 269.1.   I am  
14          sorry.   We also have section 25.1 in the middle of  
15          this.   Do you see that, sir?

16                          MR. LOEPPKY:   Yes.

17                          MS EDWARDH:   And for those who may  
18          not be alive to this provision, it certainly is a  
19          provision that, under the general authority of the  
20          law now, certain conduct that would otherwise be  
21          criminal is permissible.

22                          MR. LOEPPKY:   Yes.

23                          MS EDWARDH:   But we can agree that  
24          that falls short of conduct that would cause  
25          serious physical harm or physical harm or even

1           psychological harm to a victim?

2                           MR. LOEPPKY:  Yes.  It provides  
3           parameters that clearly it can't -- the law  
4           enforcement justification cannot be used in areas  
5           which would obstruct or defeat the course of  
6           justice where there would be injury caused to  
7           someone.  There is certainly limitations on that,  
8           appropriately so.

9                           MS EDWARDH:  And if one is to  
10          engage in activities that would otherwise  
11          constitute crime, without the protection of  
12          section 25.1, there is a mechanism of  
13          accountability built into this provision.  Perhaps  
14          you could just describe it.  To whom do you have  
15          to report and what has to be done when such  
16          conduct is undertaken?

17                           MR. LOEPPKY:  There is a  
18          designation process for police officers that are  
19          going to be involved in a section 25.1  
20          justification.

21                           The ones that are designated have  
22          met certain training criteria in terms of  
23          understanding their limitations, understanding the  
24          law.  There is a record kept of the particulars of  
25          each use of that provision and there is an annual

1 report filed to the Minister in terms of the times  
2 that it was used, so there is an accountability  
3 framework built in that way.

4 MS EDWARDH: I want to draw one  
5 other observation. I think you have outlined that  
6 accountability framework, section 25.1, does not  
7 indeed exempt someone from liability, criminal  
8 liability, if one were a party to the offence of  
9 torture.

10 If you turn to the definition of  
11 torture, which is the last page of Tab 19, it  
12 would seem very clear that we have adopted a  
13 definition of torture that mirrors that of the  
14 Convention Against Torture. I may be going beyond  
15 your expertise or your knowledge, Officer. If I  
16 am, just stop me.

17 I want to draw this to everyone's  
18 attention and I am going to do it through you:  
19 that in Canada there is no defence to the  
20 commission of an act of torture.

21 MR. LOEPPKY: That is correct.

22 MS EDWARDH: Even if you are  
23 ordered to do it by your superior?

24 MR. LOEPPKY: Yes.

25 MS EDWARDH: Even if there is a

1 national emergency, including a state of war or a  
2 threat of war, internal political upheaval in the  
3 country. There is just no excuse.

4 MR. LOEPPKY: Torture is a  
5 criminal offence. We gather evidence for  
6 prosecution, and anything obtained under torture  
7 would not be admissible. So it is just not on.

8 MS EDWARDH: This is unlike other  
9 criminal offences that might get committed in the  
10 course of an investigation and produce evidence.  
11 Clearly what is reflected here is an abhorrence  
12 both for the conduct and for any use of the  
13 conduct in the administration of criminal justice.

14 MR. LOEPPKY: Yes.

15 MS EDWARDH: And also to the  
16 absence of a defence for justification for the  
17 conduct.

18 MR. LOEPPKY: Yes.

19 MS EDWARDH: I want to just go --  
20 because we are kind of in that zone. If you were  
21 in a situation, sir, where information that had  
22 been shared -- and this is a question that  
23 Mr. Cavalluzzo asked you -- and there had been a  
24 bona fide careful decision made, but that you  
25 subsequently learned that the information was not



1 properly used and was used to abuse a person, I  
2 want to ask what you mean by "we would protest".

3 That was your answer when you were  
4 asked: What would you do in those circumstances?  
5 "We would protest."

6 Could you just explain to me a  
7 little bit more about what you mean by protest and  
8 then I will ask you a few questions about that.

9 MR. LOEPPKY: If there was a  
10 situation where there was information sharing that  
11 took place consistent with furthering a criminal  
12 investigation and it came to our attention in some  
13 form or another that there had been an  
14 inappropriate use of that information sharing,  
15 then it would be elevated in the organization to  
16 the executive level. We would then have a  
17 dialogue in terms with the senior executive of the  
18 other organization.

19 Depending on the seriousness of  
20 it, it would go right to the most senior levels of  
21 the organization in terms of the inappropriate use  
22 of the information.

23 MS EDWARDH: I take it that's  
24 tantamount to saying it would have to be reported  
25 up the chain of command?

1 MR. LOEPPKY: If it came to our  
2 attention, if it came to someone's attention that  
3 there had been a clear violation of the use of  
4 that information, then there would be a process in  
5 place where the issue would be raised to a higher  
6 level.

7 MS EDWARDH: And a violation of  
8 that information doesn't mean that the information  
9 was simply wrong if it was transmitted. It means  
10 that it was used by the foreign entity who got it  
11 in a way that contributed to the human rights  
12 abuse of a person, a Canadian citizen.

13 MR. LOEPPKY: Yes, if it was used  
14 for an inappropriate purpose.

15 MS EDWARDH: We have agreed that  
16 is inappropriate?

17 MR. LOEPPKY: Yes.

18 MS EDWARDH: I take it there is no  
19 directive, or there is nothing in any of the  
20 directives that I could see that speaks to the  
21 issue of if information sharing has occurred and  
22 there is a breach of any caveat, there is a  
23 specifically identified route of reporting a  
24 breach of a caveat in order that some action may  
25 or may not be taken depending on the decision?

1                   MR. LOEPPKY: Breaches of caveats,  
2 those are not issues that are contrary to the law.  
3 They are issues, though, that have the potential  
4 to impact on the relationship between the  
5 organization that shared the information with you,  
6 if you do not respect the caveat, and those are  
7 the issues that can create tension within  
8 organizations and that ultimately have to be dealt  
9 with.

10                   MS EDWARDH: Yes, I understand  
11 that. I understand they are different in  
12 character or may be different in character,  
13 because a breach of the caveat could result in the  
14 use of the information for a human rights  
15 violation.

16                   So they could be the same, one  
17 could involve the other or they could be separate.  
18 What I am asking is a very simple question: If an  
19 officer in an INSET were to know or believe, had a  
20 reasonable basis to believe that there has been  
21 either a breach of the caveat or information  
22 flowing that resulted in a human rights abuse, is  
23 there any directive or policy as to where that  
24 officer has to go with that concern or that  
25 complaint? And how high up the chain of the

1 command must it go, if at all?

2 MR. LOEPPKY: That is a violation.  
3 It is contrary to the information sharing  
4 agreement. Depending on the nature of it, the  
5 individual that became aware of it would raise it  
6 within their accountability framework. If it was  
7 a very minor issue, then clearly it would be dealt  
8 with, perhaps, at the unit level.

9 But if it was something that I  
10 think you are alluding to, where information was  
11 used in an inappropriate way to impair the rights  
12 of an individual or subject him to a situation  
13 where it might involve torture, then clearly that  
14 is raised higher up in the organization.

15 MS EDWARDH: Might I just draw  
16 from that, sir, the conclusion that we don't have  
17 in the materials any directive or policy that  
18 provides or counsels members of INSET or members  
19 in the field that should this event occur, either  
20 event, that there is an accountability by  
21 reporting up through the chain of command to  
22 specific persons about this event, or these  
23 events.

24 In other words, they don't have to  
25 go anywhere with it. They can raise it with their

1 superior. The superior is not obliged to bring it  
2 forward.

3 MR. LOEPPKY: I don't recall if it  
4 is in policy or if it is not. What I am very  
5 clear about is that information sharing takes  
6 place on a case-by-case basis. It takes place  
7 between professional law enforcement, and there is  
8 an expectation that it will be used appropriately.

9 If that is not the case, then  
10 clearly it will be addressed, and depending on the  
11 seriousness of it, it may go to the very senior  
12 levels of the organization. The trust that has to  
13 exist within the law enforcement community is  
14 critical. Once that is breached, then steps need  
15 to be taken to rebuild the trust.

16 MS EDWARDH: All I am interested  
17 in, sir, is establishing what must be reported. I  
18 obviously understand that the breach could give  
19 rise to serious concerns at all levels.

20 MR. LOEPPKY: Yes.

21 MS EDWARDH: But I am wanting to  
22 know, for example, in situations where information  
23 is passed resulting in a human rights violation,  
24 whether or not it must be provided to the  
25 Minister; whether the Minister is entitled and

1           should know and must know if these events have  
2           occurred.

3                           MR. LOEPPKY: I don't have all of  
4           the policy books in front of me. There may well  
5           be policy that outlines that specific  
6           non-compliance with policy has to be reported up.  
7           That is part of the accountability that would be  
8           exercised by the Commissioner.

9                           If there was an incident that was  
10          going to result in issues that concern Canada,  
11          then at a high level the Commissioner would brief  
12          the Minister in terms of broad issues around that  
13          and steps that he was taking to address it.

14                          MS EDWARDH: If there is, sir, a  
15          policy that requires a member of the Force to  
16          report a breach of the caveat or indeed the misuse  
17          of information by a partner or an agency that you  
18          are working with, perhaps you at a later time  
19          would draw it to our attention through your  
20          counsel as I believe it could be significant.

21                          But as I understand it, it is  
22          really an operational decision. If it is serious,  
23          maybe it should go up the chain of command, and  
24          the Commissioner may ever hear about it and he may  
25          decide, exercising his good discretion, this is a

1 matter for the Minister or it is not.

2 MR. LOEPPKY: Serious cases such  
3 as you have alluded to would clearly come to my  
4 level in our organization.

5 MS EDWARDH: Well if you can find  
6 any policy that is so directs, we would appreciate  
7 it.

8 I understand as a matter of  
9 operations you are saying that you believe it  
10 would. But I am asking: If there are any written  
11 directives that would confirm that it would, I  
12 would appreciate that, sir.

13 MR. FOTHERGILL: If there is one,  
14 we will certainly provide it.

15 MS EDWARDH: Thank you.

16 Is there any kind of committee in  
17 the RCMP that reviews on, I don't mean a regular  
18 basis but at least on an ongoing basis, the  
19 caveats that are placed on the transfer of  
20 information?

21 MR. LOEPPKY: That reviews the  
22 caveats?

23 MS EDWARDH: Yes. Is there anyone  
24 looking at them saying: We are sending this  
25 document to this kind of category of agency. Is

1           this sufficient? Have we had good compliance?  
2           Are we being specific enough?

3                           Is there any body, person or  
4           group?

5                           MR. LOEPPKY: Before it is shared,  
6           it would go through a supervisory command  
7           structure within the unit to look at it and deem  
8           if it was appropriate to share it, consistent with  
9           the mandate of the organization that is requesting  
10          the information.

11                          MS EDWARDH: I am more concerned  
12          with the caveat that we have seen referred to this  
13          morning. We have put in the context of a document  
14          we filed, which is the letter written to  
15          Ms Heafey.

16                          For ease of reference to the  
17          language of the caveat, if you turn to Tab 10,  
18          page 5, again it is a reference to the RCMP  
19          Operational Manual.

20                          We might come to this document a  
21          little later.

22                          This is the language that you were  
23          referred to this morning. I have some problems  
24          with it, and let me see if you can help me.

25                          The language says:



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9 2. `This document is the  
10 property of the Government of  
11 Canada. It is provided on  
12 condition that it is for use  
13 solely by the intelligence  
14 community of the receiving  
15 government ..."

16 Let me just talk about some  
17 concerns that I have.

18 When I read this caveat -- and  
19 maybe I have been a lawyer too long, sir -- it  
20 does look to me that what is protected is the  
21 document. What is not protected necessarily is  
22 the information.

23 The document would disclose its  
24 provenance. It would disclose perhaps its author.  
25 It would disclose all sorts of things. But this

1 language speaks to the document, not the  
2 information.

3 You look at me with some surprise,  
4 or is that not a surprise to you?

5 MR. LOEPPKY: I guess I take a  
6 different view.

7 MS EDWARDH: All right.

8 MR. LOEPPKY: The document to me  
9 is a piece of paper that has information on it.  
10 That is the interpretation I take from document.

11 MS EDWARDH: So your  
12 interpretation of this is that it is not confined  
13 to the document but rather is really speaking and  
14 addressing the information being provided in the  
15 document, and the document as well?

16 MR. LOEPPKY: And the document as  
17 well.

18 MS EDWARDH: And then it says  
19 "that it is for use solely by the intelligence  
20 community of the receiving government".

21 That would imply to me, sir,  
22 that -- and we have frequently drawn the  
23 distinction between intelligence and criminal law  
24 enforcement -- that when a document is used solely  
25 for the purpose of intelligence, it does not fall

1           into or become part of the record of the  
2           administration of the law. It is not evidence.  
3           It is not acted on. It provides intelligence as  
4           opposed to evidence.

5                           Do you read that the same as I do?

6                           MR. LOEPPKY: There are a number  
7           of different caveats that are in existence. The  
8           caveats are broad statements that talk about who  
9           the document belongs to, the use to which it can  
10          be put. The caveat that that applies to sharing  
11          with a provincial government, for example, would  
12          still have the same themes: who it belongs to,  
13          the information, and the restrictions around using  
14          that.

15                          MS EDWARDH: I may have missed it.  
16          There was a discussion, then, of the caveat with  
17          respect to foreign law enforcement agencies this  
18          morning.

19                          Do you recall that discussion with  
20          Mr. Cavalluzzo?

21                          MR. LOEPPKY: Yes.

22                          MS EDWARDH: Could you show us --  
23          or maybe perhaps someone can assist me -- where in  
24          our binder the specific -- I think it is  
25          Exhibit 12, Tab 27. In the binder.

1 MS McISAAC: I believe it is  
2 Tab 26.  
3 --- Pause

4 MR. CAVALLUZZO: It is Tab 26, the  
5 last two pages, and then the caveat is the last  
6 page of Tab 27.

7 MS EDWARDH: Yes. The last page  
8 of Tab 27. Thank you very much. I appreciate  
9 that.

10 MR. LOEPPKY: The last page of  
11 Tab 27?

12 MR. CAVALLUZZO: Yes.

13 MS EDWARDH: So this deals with  
14 the sharing of information.

15 Am I correct, sir, that it deals  
16 with the sharing of information and is the caveat  
17 that is directed to be applied to all documents  
18 that are provided to a foreign police agency.

19 MR. LOEPPKY: Yes.

20 MS EDWARDH: All right.

21 MR. LOEPPKY: There are additional  
22 caveats. This is dated in 1993 and I know there  
23 are different wordings for -- I'm not sure that  
24 this one would cover, for example, the provincial  
25 government. So there are different wordings for

1           them, but they essentially convey the same  
2           message.

3                           MS EDWARDH: Well, my difficulty  
4           is, then, are you aware of any caveat that is  
5           provided for with respect to foreign law  
6           enforcement agencies where the language is used,  
7           it is to be used solely for or by the intelligence  
8           community of the receiving government, is any  
9           different?

10                           MR. LOEPPKY: No, the purpose  
11           that you would share the information with and  
12           the caveat on it is to further the investigation  
13           and this is the restrictions that you are putting  
14           on it.

15                           MS EDWARDH: For example, if you  
16           are involved in an investigation on this side of  
17           the border that is paralleled in respect of the  
18           other side of the border, you don't necessarily  
19           think you are only giving it to the FBI for the  
20           purposes of intelligence?

21                           MR. LOEPPKY: If you are providing  
22           information to the FBI?

23                           MS EDWARDH: Yes.

24                           MR. LOEPPKY: You are providing it  
25           in terms of it being used consistently for the

1           purpose for which it was shared under the  
2           appropriate legislation and that it will be used  
3           appropriately in terms of the conditions under  
4           which you share it.

5                           MS EDWARDH:   Okay.  So I am  
6           confused.  I assume, sir, that this caveat would  
7           be attached to a document forwarded to the FBI in  
8           respect of a criminal investigation that was kind  
9           of going on both north of the border and south of  
10          the border, from what you said this morning?

11                          MR. LOEPPKY:   This type of caveat  
12          would be on information.  That is part of the way  
13          that information exchanges take place.

14                          MS EDWARDH:   But when you provide  
15          a document to the FBI, you don't tell them they  
16          can only use it for intelligence when you are  
17          giving it to them as part of a criminal  
18          investigation that you are both conducting in  
19          respect to a huge drug trafficking.  You don't say  
20          that, surely?

21                          MR. LOEPPKY:   Well, it may be  
22          necessary.  If you receive the information from  
23          another organization who is not prepared to have  
24          that disclosed in court, then you might need to  
25          have that wording in the caveat to send the

1 message that this is not a document that can be  
2 used in evidence but it can be used to further the  
3 investigation.

4 MS EDWARDH: I understand there  
5 may be an occasion when you are saying to them:  
6 This is a different category of information, it is  
7 not to be used except by way of intelligence.

8 But this document we are looking  
9 at says:

10 "The following condition must  
11 be included in ...  
12 correspondence, messages and  
13 documents..."

14 So my difficulty with it, sir,  
15 is it seems to contemplate an extremely limited  
16 sharing of information. It seems to contemplate  
17 by reference to the fact that the use must be  
18 solely by the intelligence community, that the  
19 sharing of information described here is very,  
20 very narrow, compared to the law enforcement  
21 sharing that we thought you described the  
22 other day?

23 MR. LOEPPKY: It is used to  
24 further the investigation. If you get to the  
25 point where there is going to be -- information

1 will be used as an evidence exchange, then there  
2 are other mechanisms that can be put in place, the  
3 MLAT process, those types of vehicles, to exchange  
4 evidentiary information.

5 But the message here is that  
6 before you use this information to table as  
7 evidence there has to be, obviously, further  
8 discussion with the provider of the information.

9 MS EDWARDH: Okay. So if you were  
10 to provide information, making a bona fide  
11 decision to do so -- and going back to 2002 -- in  
12 respect of an INS investigation of a Canadian  
13 citizen, you don't really mean that the  
14 information is only to go to the intelligence  
15 component of INS and to be used by them. What you  
16 really mean is: You can have this information,  
17 but before it is used in any way in a proceeding,  
18 for evidence, to be acted on outside of  
19 intelligence action, they must come back to you?

20 MR. LOEPPKY: Yes. This is  
21 specific to the organization that it is shared  
22 with. In your example, if information was shared  
23 by a Canadian law enforcement community with the  
24 INS, then clearly this caveat is specific to them  
25 and to binding them to that understanding --



1 MS EDWARDH: Well, you would have  
2 to have this caveat.

3 MR. LOEPPKY: -- that they would  
4 not share further without it -- without  
5 concurrence.

6 MS EDWARDH: Or used further.  
7 This is what is really important, Deputy  
8 Commissioner, because it is not just sharing it,  
9 it is using it in another way other than in  
10 respect of --

11 --- Pause

12 MS EDWARDH: -- other than in  
13 respect of use by the intelligence community.  
14 Because you see I am going to put to you a series  
15 of propositions.

16 If they filed it in a courtroom,  
17 that is not consistent.

18 MR. LOEPPKY: They need our  
19 authority. They need to come back to us before  
20 this happens.

21 MS EDWARDH: Yes. If they rely on  
22 it in a courtroom, they need your authority?

23 MR. LOEPPKY: Yes.

24 MS EDWARDH: Even if they don't  
25 file it, they do it in camera, but it is evidence

1 in a courtroom?

2 MR. LOEPPKY: The expectation is  
3 that they would consult with us before that  
4 occurred.

5 MS EDWARDH: So any use other than  
6 an intelligence use is what is prescribed here?

7 MR. LOEPPKY: You know, when I  
8 read that, it does include intelligence to further  
9 the investigation, but I think clearly the  
10 evidentiary issue is another matter.

11 MS EDWARDH: And other than this  
12 document that we have before us, that my friend  
13 has kindly found for me, can you tell me, sir, is  
14 there any other formal manual, operating policy or  
15 directive, that identifies the necessary caveats  
16 that must be attached to documents forwarded to  
17 the U.S., to U.S. agencies with whom you regularly  
18 cooperate, FBI, INS?

19 MR. LOEPPKY: This would be the  
20 standard caveat.

21 MS EDWARDH: I see.

22 --- Pause

23 THE COMMISSIONER: Is this a  
24 convenient time to take a break, Ms Edwardh?

25 MS EDWARDH: Yes, it is.

1 THE COMMISSIONER: That completes  
2 our second block of time and we will take a  
3 15-minute break.

4 I don't want to push either the  
5 counsel examining --

6 MS EDWARDH: I'm sorry.

7 THE COMMISSIONER: No, I'm asking  
8 you just how you are bearing up, and the witness.  
9 I am prepared to sit, and feel able to sit, at  
10 least as I contemplate what the time will be. On  
11 the other hand, I know it is difficult for both  
12 counsel and the witness and I don't want to impair  
13 your ability to carry on. But I'm happy to do it.

14 If we take a 15-minute break, I  
15 would suggest that we would sit for another hour  
16 and a half.

17 Is that going to do it?

18 MS EDWARDH: I need to review my  
19 notes to answer this question, Mr. Commissioner.  
20 I think it would, but it doesn't give Ms McIsaac  
21 time.

22 THE COMMISSIONER: Well, who is on  
23 this side?

24 MS EDWARDH: Oh, I'm sorry.

25 MR. FOTHERGILL: If we have any

1 questions at all, they will be very brief.

2 THE COMMISSIONER: Right.

3 MS EDWARDH: Then I'm sure I can  
4 do that.

5 --- Laughter / Rires

6 THE COMMISSIONER: And you are  
7 content to do that?

8 MS EDWARDH: We haven't heard from  
9 the witness yet, but I take it the witness is  
10 content. He has that stoic look about him.

11 THE COMMISSIONER: Are you fine,  
12 Deputy Commissioner?

13 MR. LOEPPKY: I'm fine. That  
14 would be my preference.

15 THE COMMISSIONER: Certainly.  
16 That should play an important role.

17 MS EDWARDH: Fifteen minutes would  
18 be appreciated.

19 THE COMMISSIONER: Okay. We will  
20 take 15 minutes.

21 --- Upon recessing at 5:55 p.m. /

22 Suspension à 17 h 55

23 --- Upon resuming at 6:12 p.m. /

24 Reprise à 18 h 12

25 MS EDWARDH: Thank you, Mr.

1 Commissioner.

2 I have looked at my notes. I do  
3 think I can complete hopefully within an hour and  
4 fifteen minutes.

5 I have talked to Ms McIsaac and  
6 her colleague who think that should they need to  
7 ask any questions we can do it in that timeframe.

8 With that I'm going to speak  
9 quickly.

10 THE COMMISSIONER: No, no.

11 MS EDWARDH: But I truly think I  
12 can.

13 THE COMMISSIONER: Okay.

14 MS EDWARDH: Deputy Commissioner,  
15 if we could just then revisit.

16 You described the operational need  
17 to bring this information up the chain of command  
18 if there is a serious breach or use of the  
19 information that results in a violation of human  
20 rights. I have a couple of questions.

21 I take it that you would expect  
22 that any use of the information that resulted in  
23 that would also result in a protest made to the  
24 Force or the institution that had misused the  
25 information, yelling at your colleague across the

1 border if they had done it.

2 MR. LOEPPKY: Yes, there would be  
3 that type of discussion.

4 MS EDWARDH: I expect that there  
5 would be not only perhaps an exchange through an  
6 actual meeting with colleagues but an exchange at  
7 the higher level of the organizations involved.

8 MR. LOEPPKY: Yes.

9 MS EDWARDH: I suppose, depending  
10 on how serious it is, a mutual consideration of  
11 whether or not further agreements or caveats would  
12 have to be considered and must be clearly  
13 understood by everyone involved.

14 MR. LOEPPKY: Yes. A failure to  
15 respect a caveat is really a -- touches on the  
16 level of trust between organizations to respect  
17 the guidelines and, depending on the seriousness  
18 of it, obviously it impacts that level of trust  
19 and you need to rebuild that.

20 MS EDWARDH: We have certainly  
21 established I think, sir, you have been very  
22 candid, that a breach of a caveat or the misuse of  
23 information resulting in a serious human rights  
24 violation would be a very serious matter.

25 MR. LOEPPKY: Yes.

1 MS EDWARDH: I wanted to just ask  
2 this question.

3 You are involved mostly in the  
4 work of conventional policing, if I could put it  
5 that way, so I wouldn't expect you, sir, to spend  
6 your days or members of your Force to spend your  
7 days pondering on the conduct of our allies, but I  
8 would expect that to fall more within the mandate  
9 of CSIS.

10 MR. LOEPPKY: Clearly, where we  
11 deal with the international law enforcement  
12 community, we are very concerned about conduct,  
13 about behaviour, because that really speaks to the  
14 admissibility of evidence that we jointly collect  
15 on investigation, so that is of concern to us.

16 MS EDWARDH: If one looks, for  
17 example, at those extraordinary renditions, that  
18 have not resulted in bringing persons to trial  
19 within the United States but that category  
20 referred to by Mr. Clarke, where persons simply  
21 are placed in countries and in custodial  
22 situations where they are held for interrogation,  
23 it is obvious to me that somehow this kind of  
24 information needs to come to your attention,  
25 because if in the ordinary course of law

1 enforcement one of your agencies -- one of the  
2 agencies that you have occasion to work with does  
3 this kind of thing, you need to know about it.  
4 Fair enough?

5 MR. LOEPPKY: Yes.

6 MS EDWARDH: So, I want to figure  
7 out, with your assistance if I could, who one  
8 would reasonably turn to say, if in fact  
9 Mr. Clarke is correct and that in 1985  
10 extraordinary renditions began to occur, why  
11 didn't Commissioner Zaccardelli and the Deputy  
12 Commissioner know that this was the case so they  
13 could take appropriate steps.

14 Who should have known and who  
15 should have told you?

16 MR. LOEPPKY: First of all, the  
17 process of rendition, as you call it,  
18 extraordinary rendition of sending people to areas  
19 that have less than acceptable human rights  
20 records is not a process that we condone or that  
21 we support. It would not result in evidence being  
22 admissible in Canada. It goes against the Charter  
23 and the rights of individuals.

24 In terms of pre-9/11 this was, as  
25 I think I pointed out, we had about 150 people in



1 the organization working on criminal  
2 investigations on national security and we had not  
3 experienced the type of environment that 9/11  
4 brought.

5 If you are asking me should I, in  
6 my overall responsibilities, have known that this  
7 type of thing was taking place, perhaps, and I  
8 accept the accountability for that.

9 If however it was not something we  
10 were aware of, it's not something that would ever  
11 cross our mind in Canada in terms of conducting  
12 criminal investigations and collecting evidence to  
13 proceed with charges, and so it was an element  
14 that I was not familiar with.

15 There may have been areas that  
16 specialize in the national security investigations  
17 area that may have been familiar with that and --

18 MS EDWARDH: So that would be the  
19 area under the control and direction of Dan  
20 Killam.

21 MR. LOEPPKY: Yes.

22 MS EDWARDH: Proceed.

23 MR. LOEPPKY: That may have been  
24 familiar with that term and that practice. But I  
25 certainly don't want to offload my accountability.

1 I didn't know at that point and I became aware of  
2 it afterwards.

3 MS EDWARDH: All right. So while  
4 there may have been persons working in the RCMP  
5 who were alive to the practice, and for the most  
6 part it is referred to as covert practice on the  
7 part of American authorities, you are unaware of  
8 any persons who did know. Is that correct, sir?

9 MR. LOEPPKY: I am not in position  
10 to say if they did or did not. I mean, they  
11 are -- I am focused at an executive level in terms  
12 of ensuring accountability in a broad, broad  
13 mandate and I hold my assistant commissioners  
14 accountable. I expect that they will be the  
15 subject matter experts in particular areas and so  
16 I would anticipate they may have known, but again,  
17 it was not something that we discussed.

18 MS EDWARDH: That's a fairly  
19 strong statement in the sense that your  
20 expectation then, sir, is there were people in the  
21 chain of command who did know and did not inform  
22 you, that's what I understand you to be saying,  
23 who you reasonably believe knew and did not inform  
24 you.

25 MR. LOEPPKY: I'm not making that

1 conclusion. I am simply stating that the subject  
2 matter experts in each particular business line  
3 will have greater in-depth knowledge and I expect  
4 to be informed of controversial issues that are  
5 taking place that impact on my accountability to  
6 the Commissioner. So it may have been known but  
7 may not have been raised to me because the  
8 potential of it transpiring in Canada was minimal,  
9 the potential of Canada being involved was  
10 minimal.

11 So there may have been general  
12 knowledge. I just can't answer the question  
13 because I don't have personal knowledge if anybody  
14 knew.

15 MS EDWARDH: Certainly you will  
16 agree with me that if anyone did know they failed  
17 to discharge their duty to you in respect of  
18 providing you with essential information insofar  
19 as it is apparent there was no reason to assume  
20 that this procedure of extraordinary rendition  
21 will be or was applied to a Canadian citizen? You  
22 ought to have known that.

23 MR. LOEPPKY: If someone knew that  
24 Canadian information was going to be used for that  
25 purpose, then clearly that was the point at which

1 we would have objected and it would have been  
2 brought to my level.

3 MS EDWARDH: Now, that is who  
4 should have told you inside the RCMP.

5 There are institutions in the  
6 government that I assume from time to time provide  
7 you with important information in respect of  
8 matters of concern to policing and the RCMP. So  
9 let me give you an example.

10 I take it if you were undertaking  
11 the training of police officers in Haiti, which  
12 you have done in the past, and there was important  
13 information about the reality of on-the-ground  
14 conditions in Haiti that was in the possession of  
15 another governmental department that directly  
16 impacted on your ability to perform the policing  
17 functions that you have been told to undertake or  
18 that you were undertaking. You would expect  
19 assistance from that department of the Government  
20 of Canada, would you not?

21 MR. LOEPPKY: That's what the  
22 discussion we had a little earlier about  
23 integrated approaches and sharing of information  
24 to make good strategic decisions was about.

25 MS EDWARDH: Right. So that if

1 the Department of Foreign Affairs, through either  
2 it is political charge of affairs in embassies  
3 throughout the world or in particular in  
4 Washington or through the consular service  
5 division of foreign affairs were alive to this  
6 practice and saw any possibility of it is -- well,  
7 I am going to just say it was alive to this  
8 practice, you would have reasonably expected them  
9 to draw it to your attention. Fair enough?

10 MR. LOEPPKY: We would be aware  
11 of the -- that would be one of the areas that  
12 would provide information in terms of situations  
13 around the world, along with our liaison officers  
14 on the ground.

15 MS EDWARDH: I am talking about  
16 this practice of extraordinary rendition, that had  
17 the liaison officer in Washington or the political  
18 attaché to the embassy in Washington or anybody  
19 else who dealt with the American authorities as  
20 part of DFAIT been alive to this, because it bore  
21 upon information sharing that was going on, you  
22 know, extensively post-9/11, you would have  
23 expected it to be a matter that was brought to the  
24 attention of the RCMP, would you not?

25 MR. LOEPPKY: In any case that

1 touched on a Canadian citizen, yes.

2 MS EDWARDH: No. I am not just  
3 talking about any case. In order that the burden  
4 of inquiry fall on you appropriately if Canadians  
5 are at risk, you needed to know what was going on  
6 in the world let alone the Canadian citizens. You  
7 don't want to be sitting there waiting for the  
8 first Canadian citizen. You want to know of the  
9 practice that jeopardizes human rights so you can  
10 see it when it's coming, do you not, Deputy  
11 Commissioner?

12 MR. LOEPPKY: Yes, our concern is  
13 with the protection of Canadian citizens, their  
14 rights. If practices are being put in place that  
15 do not respect those then we should have been  
16 aware.

17 MS EDWARDH: One of the entities  
18 in the Government of Canada that has the  
19 responsibilities of sharing information like that  
20 is the Department of Foreign Affairs in one of its  
21 specific divisions, even if I have got the wrong  
22 division. That's the kind of thing they are  
23 obliged to draw to your attention, are they not?

24 MR. LOEPPKY: Yes.

25 MS EDWARDH: Now let's turn to

1 CSIS.

2 CSIS, as an intelligence agency  
3 might be reasonably assumed to have more  
4 information about the activities of other  
5 intelligence agencies that it deals with. Is that  
6 correct?

7 MR. LOEPPKY: Yes.

8 MS EDWARDH: So CSIS as an  
9 intelligence agency, and I want to tell you that  
10 it is my understanding of Mr. Elcock's evidence in  
11 respect of a series of questions posed by Mr.  
12 Waldman, that he was aware of the practice of  
13 extraordinary rendition.

14 I take it, sir, to the best of  
15 your knowledge, at no time, either prior to 9/11  
16 or after 9/11 did CSIS bring this matter to the  
17 table to draw attention to extraordinary rendition  
18 so that the RCMP was aware of it.

19 MR. LOEPPKY: It was not brought  
20 to my attention.

21 MS EDWARDH: Do you have any  
22 information that it was brought to the  
23 Commissioner's attention or to anyone else's  
24 attention as a matter of importance that the  
25 Mounties needed to know about?

1 MR. LOEPPKY: No. I don't know.

2 MR. CAVALLUZZO: Just if I might  
3 interject. To be fair to Mr. Elcock, what he did  
4 is that he was unaware of any situations similar  
5 to this where an individual was taken from the  
6 United States to a foreign country. He did say he  
7 was aware of snatches being made from a foreign  
8 country to another foreign country, to the United  
9 States, but not a situation similar to that of Mr.  
10 Arar's.

11 MS EDWARDH: Thank you, Mr.  
12 Cavalluzzo

13 I am going to say, sir, that from  
14 my perspective and a human rights perspective, if  
15 Mr. Elcock is aware that the American authorities  
16 are snatching people from one country and putting  
17 them in another country where they are  
18 interrogated under circumstances that would never  
19 be acceptable, let alone under torture, that that  
20 practice by the American government places at risk  
21 the information sharing that you engage in.

22 MR. LOEPPKY: I think I mentioned  
23 earlier that when we share the information it is  
24 to further criminal investigations it is case  
25 specific. We did not contemplate and we have no



1 knowledge if any information is used for that  
2 purpose. I mean, we share it for a consistent  
3 purpose, evidence gathering.

4 In term of knowledge within our  
5 organization of this practice, as I have said, I  
6 wasn't aware of it, and someone in our  
7 organization may have been aware of it simply by  
8 reading material, but certainly we had no  
9 knowledge and were not aware of the practice and  
10 its application to anybody that was a Canadian  
11 citizen. Obviously, that is unacceptable.

12 MS EDWARDH: I take it you would  
13 agree with me that to -- I just want to find an  
14 example.

15 Leave aside someone being snatched  
16 from the United States and but somewhere else as a  
17 Canadian citizen, it would be equally of concern  
18 had you passed information to an American entity,  
19 let's say the CIA or the FBI, and that entity had  
20 used the information to snatch someone from South  
21 Africa and deposit them in Syria, that would be  
22 where they were tortured. That would be raise the  
23 same concerns if that person were a Canadian  
24 citizen, taking your information and using it as  
25 intelligence to snatch someone and send them to a

1 place where they were interrogated under torture.

2 That's a distinction without a  
3 difference --

4 MR. LOEPPKY: Using your example,  
5 that would not be a consistent use for which --  
6 for the reason that the information was shared and  
7 therefore it would create concern for us,  
8 significant concern.

9 MS EDWARDH: It would also be a  
10 basic violation of your obligation to ensure that  
11 Canadian citizens are treated in accordance with  
12 the rule of law and obligations.

13 MR. LOEPPKY: Yes.

14 MS EDWARDH: So if CSIS knew that  
15 this practice was occurring, I am going to suggest  
16 to you, sir, that it would have both been easy and  
17 very appropriate, if not absolutely important,  
18 that CSIS would bring to your attention and to the  
19 Commissioner's attention that this practice was  
20 ongoing.

21 MR. LOEPPKY: CSIS has quite a  
22 different mandate than the RCMP and they are very  
23 much involved in dealing with the international  
24 and security intelligence community. We are  
25 involved internationally in terms of gathering

1 criminal evidence for prosecution.

2           The fact that the mandates are  
3 significantly different in terms of our role in  
4 criminal prosecution, it wouldn't necessarily be  
5 incumbent upon them to inform us of the status of  
6 every country and the situation. We would  
7 obviously do that ourselves if in fact we were  
8 looking at sending people there, at gathering  
9 evidence there, at trying to further an  
10 investigation.

11           We have an internal responsibility  
12 to ensure that what we do is compliant with the  
13 law and the expectations of our organization.

14           MS EDWARDH: I accept what you are  
15 saying and I just want to ask this question: We  
16 have been told that one of the primary  
17 distinctions between your law enforcement and the  
18 CSIS mandate is that CSIS advises the Government  
19 of the Canada; fair enough?

20           MR. LOEPPKY: Yes.

21           MS EDWARDH: In that respect --  
22 perhaps I posed the question incorrectly -- it  
23 would be equally apposite to ask: Ought CSIS then  
24 to have advised the Government of Canada that  
25 there were circumstances that might impact on

1 Canadian policing practices, that circumstance  
2 being extraordinary extradition or rendition?

3 MR. LOEPPKY: I am not a member of  
4 CSIS. I really can't comment on what their  
5 obligations are to inform the Government of  
6 Canada.

7 I understand our mandate, but I  
8 don't think it is within my responsibility to  
9 comment on their accountability relationship to  
10 the government.

11 MS EDWARDH: In any event, you  
12 know of no information that trickled down as a  
13 result of information flowing from CSIS that was  
14 used to inform the RCMP. We know that. We know  
15 you didn't get any.

16 Nothing trickled down from the  
17 government to the RCMP?

18 MR. LOEPPKY: I am saying that I  
19 don't have any in my possession. I am not saying  
20 that there wasn't that knowledge within our  
21 organization, within the national security area.

22 I simply can't -- I don't want to  
23 go on the record and say "yes" or "no", because I  
24 am not sure.

25 MS EDWARDH: All right. If it

1           were concluded that the RCMP had provided  
2           information, that was correct information, that  
3           resulted in a human rights abuse, and therefore  
4           fair enough to say the information was abused, in  
5           addition to raising it up the chain of the  
6           command, protesting it to the organization that  
7           may have misused the information, what, sir, if  
8           any, do you see as the duty of the RCMP to the  
9           person who is a Canadian citizen, whose human  
10          rights have been abused by the misuse of the  
11          information?

12                           Is there anything that the RCMP  
13          then ought to do in respect of that person?

14                           MR. LOEPPKY: Your hypothetical  
15          question has many questions within it: if  
16          information was shared; if we knew; if we knew  
17          that it was being put to a purpose that would not  
18          meet human rights standards and if that resulted  
19          in the infringement of a Canadian's rights.

20                           If that comes to our attention,  
21          clearly we would have an obligation to not only  
22          express our concerns about the inappropriate  
23          information sharing, but that is based on the  
24          assumption that we in fact knew that it had been  
25          used and to what degree it had been used. So it

1 would obviously include Foreign Affairs who has  
2 the international relations component to address.

3 MS EDWARDH: Obviously. I know  
4 there were a lot of hypothetical points in that  
5 process, but I am going to ask you just to go with  
6 me there one more step.

7 Assuming that after the  
8 information occurred and subsequently you were  
9 satisfied or there was a reasonable basis to  
10 conclude there was a human rights abuse that had  
11 occurred, in addition to protesting, et cetera,  
12 what would you expect the Royal Canadian Mounted  
13 Police to do, if anything, with DFAIT or any other  
14 agency of the Government of Canada in respect of  
15 the citizen whose human rights were abused?

16 MR. LOEPPKY: We clearly have a  
17 role to play in terms of the initial exchange of  
18 information, assuming that all those steps that  
19 you have talked about are accurate.

20 And I think as well, in terms of  
21 the role that Foreign Affairs would play, we would  
22 dialogue with them to ensure that they had the  
23 accurate information that we were in possession  
24 of.

25 Then they would undertake consular

1 processes to address those issues.

2 MS EDWARDH: I take it you would  
3 recognize a special duty to have full and frank  
4 and candid discussions with Foreign Affairs so  
5 they could give their best shot at discharging  
6 their mandate under consular services?

7 MR. LOEPPKY: Based on all of the  
8 assumptions that you have said, information  
9 shared, specifically used -- that is the  
10 hypothetical situation that you put.

11 MS EDWARDH: Yes.

12 MR. LOEPPKY: There are a lot of  
13 "ifs" in there.

14 MS EDWARDH: Yes, I know there  
15 are.

16 Assuming those "ifs" to be the  
17 case, I take it you are saying that there would be  
18 full, frank, candid disclosure and discussion with  
19 Foreign Affairs with respect to the issues that  
20 had occurred, both the information as well as the  
21 sharing, as well as whatever else you knew?

22 MR. LOEPPKY: We would provide  
23 them the information they needed to comply with  
24 their mandate.

25 MS EDWARDH: That is different

1 from saying there would be a full, frank and  
2 candid sharing of information.

3 Foreign Affairs may need a lot  
4 less information, perhaps, than you have in the  
5 SCIS computer.

6 Let's suppose that this person is  
7 on the computer. I am asking: Do you then open  
8 the channel of communication so Foreign Affairs  
9 can get all the necessary information they want on  
10 the situation?

11 MR. LOEPPKY: We would give them  
12 the relevant information that they require to  
13 pursue the processes that they have in terms of  
14 international communication and registering any  
15 concern that they have.

16 MS EDWARDH: I read that as you  
17 won't give them all the information necessarily.

18 MR. LOEPPKY: We would give them  
19 all the relevant information they require.

20 You are not talking --

21 MS EDWARDH: Who decides?

22 MR. LOEPPKY: You are talking  
23 about a file. If you are talking about a file  
24 that is four inches thick that has hundreds of  
25 names in it, they don't need to know all of that



1 information. They need to know what is relevant  
2 to the case at hand, and that is what they would  
3 be provided with.

4 MS EDWARDH: I take it they would  
5 be provided fully with the information that was  
6 shared?

7 MR. LOEPPKY: They would be  
8 provided with a summary of the information that  
9 was shared. That would be it.

10 MS EDWARDH: And that would be  
11 shared by you and shared by the agency as well  
12 that abused the information. So they would have a  
13 full picture going into it?

14 MR. LOEPPKY: They would be  
15 provided with the relevant information that they  
16 require to undertake their mandated  
17 responsibilities, and it wouldn't be a situation  
18 where we simply say this is all you get.

19 There would be a dialogue. What  
20 do you need to comply with your mandate to  
21 register your concerns, to undertake your  
22 diplomatic initiative? It is that type of a  
23 process where there is a discussion and agreement.

24 MS EDWARDH: I take it, then, you  
25 would be at least responsive and sensitive to

1           their view of the information they need to  
2           discharge their mandate?

3                           MR. LOEPPKY:   Yes.

4                           MS EDWARDH:   One last question  
5           about SCIS, if I can.

6                           Have you ever received  
7           information, to your knowledge, that you believed  
8           to be reliable that subsequently you decided or it  
9           came to pass that it was determined to be  
10          unreliable?  And if so, what procedures and  
11          mechanisms are there for both removing that  
12          information from the computer and communicating to  
13          other agencies who you have passed it on to?

14                          MR. LOEPPKY:   I can't think of a  
15          specific example, but if there was information  
16          that came in that was believed to be reliable and  
17          subsequently additional information was received  
18          that would disprove its reliability, that would be  
19          reflected in the file and would obviously form  
20          part of record and set the record so that it was  
21          accurate.

22                          MS EDWARDH:   My concern is, to  
23          take that one step further, sir:  If you have  
24          passed on information in April of 2001 that  
25          included the information that you believed to be

1 reliable and subsequently learned it was  
2 unreliable, in addition to correcting it on the  
3 database, or making the proper notation, do you go  
4 back and notify those you passed it on to and say  
5 "we have now learned this is unreliable"?

6 MR. LOEPPKY: If we establish that  
7 the information that we had passed on was not  
8 reliable, it would be incumbent upon us, upon  
9 confirming that fact, to go back and set the  
10 record straight, as we would expect in any  
11 organization that provides us information.

12 MS EDWARDH: And might I expect,  
13 sir, that there is a record kept of any  
14 information that is provided to an entity outside  
15 the RCMP, whether it is a municipal police force,  
16 a provincial police force, a foreign entity? Is  
17 there a log book, a record of who extracted it,  
18 what the request was, what went, the date and  
19 time, et cetera?

20 MR. LOEPPKY: It forms part of the  
21 file record, so there would be a notation in there  
22 about information that was shared and who it was  
23 shared with and why.

24 MS EDWARDH: Would I know, if I  
25 had access to that file record -- if I opened up

1 the page, would I be able to tell what  
2 specifically was the inquiry that was received?

3 MR. LOEPPKY: Any operational  
4 file, as good file management, will document the  
5 events of the investigation as it proceeds so that  
6 you end up with a complete picture of how the file  
7 evolved, of what transpired.

8 So when something occurs that  
9 touches on that file, it is standard practice that  
10 it will be recorded.

11 MS EDWARDH: I take it from  
12 that -- and I am interpreting your answer -- that  
13 the kind of log that I might be asking, which is  
14 the date of the inquiry, that would be generally  
15 reflected; fair enough?

16 MR. LOEPPKY: Yes.

17 MS EDWARDH: The entity that made  
18 the inquiry would be reflected?

19 MR. LOEPPKY: Yes.

20 MS EDWARDH: It may not be  
21 precisely clear what the nature of the inquiry  
22 was, other than "re so-and-so"?

23 MR. LOEPPKY: There would be a  
24 reference in there in terms of the contact.

25 The law enforcement community has

1           been criticized over the years if there is a  
2           shoddy investigation, and it is critical that we  
3           document things clearly and systematically to  
4           create that picture. Consequently, it is an  
5           accepted practice that information, developments  
6           in a file are recorded appropriately and subject  
7           to review by the supervisor, to monitor the  
8           progress of the file.

9                           MS EDWARDH: For example, if it  
10           was a U.S. INS investigation, would I expect that  
11           to be noted in the file? Inquiry: U.S. INS, re  
12           so-and-so.

13                          MR. LOEPPKY: Any development in a  
14           file would be recorded to document the file.

15                          MS EDWARDH: I am not sure that  
16           answers my question, but I take it you are saying  
17           the agency may or may not be specifically  
18           identified.

19                          It is a development, sure, but I  
20           am asking for --

21                          MR. LOEPPKY: They would be  
22           identified always in the first instance. If, as  
23           you were working on a file for a period of time  
24           and you know that you are dealing consistently  
25           with John Smith, the investigator, at some point

1           it may become just John Smith because there is a  
2           recognition of who that individual is.

3                         The point is that contacts,  
4           developments are documented in a file, and must  
5           be.

6                         MS EDWARDH: One last question  
7           about this.

8                         If you disclosed to the agency  
9           nine precise pieces of information that you  
10          determined were relevant, if I were the supervisor  
11          of INSET and I wanted to know what this field  
12          officer disclosed to the INS, could I open up the  
13          record and identify what pieces of information  
14          were shared?

15                        MR. LOEPPKY: Just so that I  
16          understand your question, if there were certain  
17          specifics that the investigative unit wanted to  
18          have followed up in terms of an investigation,  
19          then that would certainly be accessible to the  
20          supervisor.

21                        MS EDWARDH: No, that is not my  
22          question.

23                        If the FBI picks up the phone in  
24          an ongoing investigation and says, "All right, I  
25          want to ask you about Jim Jones. Can you tell me

1 something about Jim Jones?" And you have Jim  
2 Jones -- let's take an organized crime  
3 investigation.

4 Jim Jones has met with a Mafia  
5 boss in Montreal and what is being asked of you  
6 is -- or the person is saying, "Well, we have Jim  
7 Jones having a casual encounter but lunch with a  
8 member of organized crime in New York", and you  
9 are hearing that query, my question to you is:  
10 Would I know by looking at the file that when you  
11 shared the information about his luncheon date  
12 with someone involved with organized crime in  
13 Montreal, you had sent that precise information,  
14 that he went so and so, at such and such a time,  
15 perhaps was under surveillance, this is what was  
16 seen?

17 Would I know that was shared?

18 MR. LOEPPKY: There would be a  
19 note in the file about what was shared, but again  
20 it has to be put in the context if it was actually  
21 even appropriate to share that, and if it was  
22 appropriate to share it in furtherance of an  
23 investigation that the context around what was  
24 shared. If it had been a one-time meeting and  
25 there was nothing further to substantiate criminal

1 involvement, that too would be provided.

2 MS EDWARDH: And it would be noted  
3 in the file?

4 MR. LOEPPKY: Yes.

5 MS EDWARDH: So both what was  
6 shared and why it was shared is in the file for  
7 review by the supervisors?

8 MR. LOEPPKY: I mean, there might  
9 not be exact precise points. There would be a  
10 summary of the exchange.

11 MS EDWARDH: But it would be at  
12 least a summary of what was exchanged or what was  
13 provided by way of information and the  
14 justification for it?

15 MR. LOEPPKY: It is assumed  
16 that when information is shared under those  
17 circumstances, an ongoing file that is shared  
18 appropriately within the law, that there would  
19 be a file notation when there is a development on  
20 the file.

21 MS EDWARDH: Well, that is  
22 different, sir, I'm sorry. I thought you just  
23 said and the context and justification would be  
24 noted. So I took from that the context and  
25 justification would be recorded as part of the



1 memorandum that was to file about the inquiry.

2 I take it you are not saying  
3 that now?

4 MR. LOEPPKY: Perhaps I wasn't  
5 clear.

6 MS EDWARDH: Forgive me, it is  
7 late. Why don't you try again.

8 MR. LOEPPKY: What I was saying  
9 was that if information is shared there will be a  
10 note in the file in terms of who it was shared  
11 with. There will be a generally a brief summary  
12 of what was shared in furtherance of the  
13 investigation.

14 MS EDWARDH: Not much more than  
15 that then?

16 That is not a criticism.

17 MR. LOEPPKY: In a direct  
18 information exchange -- I mean if it was an  
19 extremely complex issue, then there would be more  
20 detail. It is a judgment of the officer to make  
21 sure that as the supervisor is reading through it  
22 that it makes sense, that he can follow the flow  
23 of the investigation. So it would depend on the  
24 nature of the exchange.

25 MS EDWARDH: I think we have

1 exhausted that area. I am going to move to  
2 another one, Deputy Commissioner. Thank you.

3 I just want to understand the  
4 current rules with respect to entering into a  
5 national security investigation.

6 In Tab 39 of the materials,  
7 page 3, am I reading this correctly, that -- and  
8 you have referred again several times today that  
9 authorization to -- notification really, of such  
10 an investigation when undertaken must be given to  
11 headquarters.

12 Do you recall that?

13 MR. LOEPPKY: Yes, when you are  
14 undertaking a national security investigation.

15 MS EDWARDH: There must be  
16 notification.

17 If you look to this Tab E.2.a.4, I  
18 read this as not requiring notification of any  
19 national security investigation. Rather, I read  
20 this as notification -- I am looking particularly  
21 to point 4 -- of a national security investigation  
22 if it is into a sensitive sector.

23 MR. LOEPPKY: This particular one,  
24 that is exactly what it is in reference to. It is  
25 to ensure that we are compliant with the

1 ministerial directive.

2 MS EDWARDH: Maybe you will have  
3 to point me. I may have missed the reference,  
4 Deputy Commissioner.

5 Is it the case that all  
6 investigations that are undertaken that fall under  
7 the rubric "national security investigation" are  
8 investigations about which there must be  
9 notification to headquarters?

10 MR. LOEPPKY: There is a policy  
11 approval process in here where sensitive  
12 investigations -- pardon me, not sensitive --  
13 where major national security investigations will  
14 be submitted to headquarters for approval.

15 I am just trying to find  
16 the reference.

17 MS EDWARDH: Maybe I can help you.

18 What I see here at point 6 is  
19 operational plans must be submitted to  
20 headquarters.

21 "all operational plans for  
22 national security  
23 investigations, including  
24 undercover operations;"

25 That is a resource issue, is

1 it not?

2 MR. LOEPPKY: A resource issue is  
3 a small part of it. I mean the resource  
4 deployment is a responsibility of the Criminal  
5 Operations Officer. It is a process to ensure  
6 that Criminal Intelligence Directorate is aware of  
7 and engaged in national security investigations on  
8 criminal activity.

9 MS EDWARDH: Well, perhaps help me  
10 with the distinction.

11 I see sub 4 as being confined to  
12 this national security sensitive sector and the  
13 next point under point 6 being send us all  
14 operational plans.

15 Why not just say -- I mean, what  
16 difference is captured there? Can you help us  
17 with that?

18 MR. LOEPPKY: Yes. Just give me a  
19 minute here.

20 MS EDWARDH: Sure. Take a moment.

21 MR. LOEPPKY: I'm just looking for  
22 the authority.

23 MS EDWARDH: If your counsel can  
24 help you, please, I don't mind.

25 MR. FOTHERGILL: I am looking at

1 Tab 39, which is the policy on national security  
2 investigations.

3 MS EDWARDH: That is where we are.

4 MR. FOTHERGILL: I'm sorry. Are  
5 we there already?

6 MS EDWARDH: Yes. Tab 39, E.2.a  
7 point 4 and point 6.

8 This is the current policy. That  
9 is my understanding, sir?

10 MR. LOEPPKY: Yes.

11 MS EDWARDH: I pause to note that  
12 if I compare the current policy with the old  
13 policy that what is changed is that it is now more  
14 limited in terms of notification, as I read them,  
15 sir. Before there had to be notification of a  
16 national security investigation. Now, it is  
17 notification in respect of sensitive sector  
18 national security investigations?

19 MR. LOEPPKY: Well, that  
20 particular component, as I mentioned, is to  
21 comply with the ministerial directives on  
22 sensitive areas.

23 I just can't find it, but  
24 clearly -- there is a component in here and I will  
25 find it -- it speaks to the approval of --

1 MS EDWARDH: Take your time.

2 MR. LOEPPKY: -- the criminal  
3 intelligence area in terms of investigation  
4 approval.

5 --- Pause

6 MS EDWARDH: Perhaps we can do  
7 this, sir -- I don't want to burden you with any  
8 other requests, but let's leave that.

9 It is my reading of these  
10 materials that notification is only required in  
11 the context of this limited class of sensitive  
12 sector investigation, although operational plans  
13 have to go up. If that is a mistake -- maybe you  
14 can make a note of this -- and I am reading it  
15 incorrectly, perhaps in the next day or so, when  
16 you have had a moment, you might, with the  
17 assistance of your counsel, just bring that  
18 information to all of our attention, if that is  
19 okay, Mr. Commissioner, rather than keep the  
20 witness?

21 THE COMMISSIONER: I think that is  
22 a good idea.

23 Mr. Fothergill, you can undertake  
24 to do that.

25 MR. FOTHERGILL: Yes, we will

1 do that.

2 MR. LOEPPKY: This is a general  
3 comment. For investigations that have significant  
4 impact for the RCMP national security  
5 investigations are ones that have a potential for  
6 significant concern to the Government of Canada.  
7 There is a requirement that those be approved by  
8 Criminal Intelligence Directorate.

9 That is the reference that I was  
10 searching for and one that we will table.

11 MS EDWARDH: Fine. Thank you. We  
12 will deal with it then, and I appreciate your  
13 assistance in identifying it. We did spend some  
14 time trying to look for it earlier.

15 --- Pause

16 MS EDWARDH: Sir, at any time  
17 after -- no, let's try it another way.

18 Was there a period of time in  
19 November and December of 2002, and January,  
20 February, March and April of 2003, that you were  
21 aware of any RCMP officers authorized to discuss  
22 issues publicly in respect of special rendition or  
23 Mr. Arar?

24 MR. LOEPPKY: No.

25 MS EDWARDH: Now, I want to spend

1 a moment on INSETs.

2 Are there any operational  
3 guidelines for -- I mean, we have seen the  
4 discussion of dealing with the Muslim community,  
5 which is general information to anybody dealing  
6 with them, but I want to know whether there are  
7 special guidelines to them in, for example, their  
8 investigations or are they generally governed as  
9 ordinary police officers who are experienced  
10 conducting investigations?

11 MR. LOEPPKY: There is a component  
12 in the national security training program that  
13 speaks about cultural issues in various  
14 communities. I think I alluded a little bit  
15 earlier to outreach in the various communities  
16 throughout Canada. Those by and large have been  
17 made by the INSET units themselves to understand  
18 the culture, to grow their awareness, to hear the  
19 concerns and interact with the community.

20 MS EDWARDH: But the type of  
21 investigation, the courtesies extended to people  
22 in the course of investigations, if you are  
23 interviewing someone whether you let them use the  
24 washroom, there is nothing specific about INSET as  
25 opposed to basic criminal investigations? Good



1 police practice governs both?

2 MR. LOEPPKY: It is good police  
3 practices, but clearly there is an expectation as  
4 you embark on investigations that you understand  
5 the cultural issues.

6 MS EDWARDH: Of course. So there  
7 may be different cultural sensitivities, but  
8 basically -- and you will understand my  
9 question -- it has become, I'm going to say, a  
10 notorious fact in the community that in the course  
11 of INSET investigations there is generally a  
12 reluctance to permit the person who is to be  
13 interviewed, if there is an interview that is  
14 going to take place, to either permit them or even  
15 encourage them to have the benefit of counsel.

16 Before I ask you to comment on  
17 that directly, I am aware, sir, that these  
18 persons, for example that I am concerned about,  
19 aren't facing criminal charges and are not  
20 detained, so one would not be in a situation where  
21 you are dealing with a constitutional right to  
22 counsel. Let's start from that.

23 But are you aware that INSET teams  
24 operate on what we have heard to be the lawyering  
25 down process?

1 MR. LOEPPKY: I guess as I listen  
2 to your question I reject the premise of the  
3 question that it is a notorious fact that we would  
4 treat people that way. I don't support that.

5 MS EDWARDH: Fair enough.

6 MR. LOEPPKY: We undertake  
7 investigations. We operate based on the public  
8 trust, based on earning the respect of people, and  
9 respecting their rights while also being mandated  
10 under the section 18 of the Act to carry out a  
11 variety of duties from prevention right through to  
12 criminal law enforcement.

13 So if an individual  
14 requests a lawyer, then I would expect that  
15 would be respected.

16 MS EDWARDH: I will go one step  
17 further. It is completely unacceptable for a  
18 policeman who wants to conduct an interview,  
19 whether it is with an accused or not, to, by  
20 design or trickery, get around the fact that  
21 person wants to have counsel present, is it not?

22 MR. LOEPPKY: Yes. If the  
23 individual wants counsel present, they are  
24 entitled to it.

25 MS EDWARDH: And no INSET officer

1 operating would have the blessing of the RCMP if  
2 they were to undertake courses of action designed  
3 to undermine and get around express requests for  
4 the assistance of counsel by someone the Mounties  
5 wanted to talk to? That would never be authorized  
6 by the force?

7 MR. LOEPPKY: What you are  
8 suggesting is that we would authorize  
9 inappropriate behaviour that is not compliant with  
10 the law --

11 MS EDWARDH: I am suggesting  
12 you wouldn't.

13 MR. LOEPPKY: -- and we would not.  
14 We would not condone that.

15 MS EDWARDH: I have to at least  
16 stop here, because there is one other matter that  
17 fits in here.

18 I don't want to leave this inquiry  
19 with the impression that the Royal Canadian  
20 Mounted Police in a criminal investigation can  
21 only conduct itself by rules that are premised on  
22 extreme delicacy of either accused persons or --  
23 the Marcus of Queensbury Rules, as they have been  
24 referred to, are rules which you don't have to  
25 prescribe to; fair enough?

1 Do you know where that phrase  
2 comes from?

3 MR. LOEPPKY: No.

4 MS EDWARDH: Justice Lamer would  
5 be disappointed.

6 In any event, what it is is a  
7 recognition that the work of policing can be very  
8 taxing, and that the communities in which  
9 inquiries are made may be difficult communities  
10 and aggressive communities.

11 If you are dealing with bikers,  
12 then sometimes the methods and the operations are  
13 not the most delicate. How about that?

14 MR. LOEPPKY: But do not confuse  
15 the challenges of conducting law enforcement  
16 appropriately with a breach of the law. We act in  
17 compliance with the legislative framework that's  
18 acceptable in Canada.

19 MS EDWARDH: I understand that.  
20 But I don't want to leave the impression here that  
21 in doing so there is any timidity. If anyone has  
22 read the decisions of the Supreme Court of Canada  
23 in Mentuk or is familiar with the case of  
24 Sebastien Burns and Atif Rafey, we do know in the  
25 course of conducting interrogations the law, the

1 framework that you work in allows you to lie;  
2 correct?

3 MR. LOEPPKY: Those are  
4 investigative techniques that in fact I think in  
5 Rafey and Burns were accepted by the courts.

6 MS EDWARDH: They certainly were  
7 accepted with enthusiasm in Seattle. Leave aside  
8 acceptance. Let's assume they are accepted.

9 What goes on is there is lying,  
10 lying and deceit; fair enough?

11 MR. LOEPPKY: That may be a  
12 technique that is used in order to further an  
13 investigation.

14 MS EDWARDH: Yes.

15 MR. LOEPPKY: But it is not done  
16 that is going to breach an individual's privacy  
17 rights -- sorry, their Charter rights. We do it  
18 to collect admissible evidence.

19 MS EDWARDH: I see. But I don't  
20 want anybody in this room or any member of the  
21 public left with the impression that in the course  
22 of a lawful investigation that there are not, for  
23 example, in the case of Burns and Rafey, the  
24 officers who were members, and respected members,  
25 of the Royal Canadian Mounted Police developed a

1 scenario which was a tissue of falsehood in  
2 respect of their efforts to get the accused to  
3 make a statement; right?

4 MR. LOEPPKY: These are  
5 investigative techniques that ultimately fall  
6 under the scrutiny of the courts.

7 MS EDWARDH: Yes.

8 MR. LOEPPKY: And either they are  
9 accepted or they are rejected. If they are not  
10 accepted, we know the consequences of losing the  
11 case. Therefore, that is why we put so much focus  
12 on training, on acting within the scope of the law  
13 and acting appropriately.

14 MS EDWARDH: Certainly I want this  
15 on the record, sir.

16 In an effort to obtain information  
17 from a person who was a target, the conduct of the  
18 police force, first of all, can be premised on  
19 deceit and, furthermore, you need not make  
20 yourself known to the target as a police officer.

21 That is the state of the law in  
22 this country.

23 I am not saying you are doing  
24 anything wrong because that is the state of the  
25 law, but that is the reality?

1 MR. LOEPPKY: Well, investigative  
2 techniques must meet the standards of the courts.  
3 They must meet the standards of Canadians who look  
4 at things on balance and ultimately is reflected  
5 through the judicial process.

6 MS EDWARDH: All right. Given  
7 what goes on in that kind of situation, I just  
8 want to underscore your view that anyone who knows  
9 that the person at the door is a police officer  
10 and who wants to have counsel is going to be  
11 facilitated by a member of the RCMP, and there  
12 will be no efforts made to subvert that request.

13 That is your position?

14 MR. LOEPPKY: They have the right  
15 to counsel at their discretion.

16 MS EDWARDH: And no steps to  
17 subvert it will be taken, or should be taken?

18 MR. LOEPPKY: That is correct.

19 MS EDWARDH: Who is Brobank(ph)?

20 MR. LOEPPKY: Who is?

21 MS EDWARDH: Sorry. It's late in  
22 the day.

23 Just give me a moment. I will  
24 look for this in a moment, but I am obviously  
25 saying it incorrectly. So let me go on to my last

1 area.

2 I want to deal for a few minutes  
3 with the accountability processes in the RCMP and  
4 the public complaints process. My friend touched  
5 on them very briefly by referring us to the  
6 sections this morning, but there are a couple of  
7 issues that I want to develop, if I could.

8 MR. LOEPPKY: Yes.

9 MS EDWARDH: Mr. Commissioner, I  
10 did put into our materials the letter written by  
11 the Commanding Officer of A Division, Clément, and  
12 I also had a copy that was redacted.

13 Yesterday, late in the day, the  
14 RCMP kindly provided us with an unredacted copy  
15 and I assume the witness has had a chance -- we  
16 just had it xeroxed.

17 I would like to give the  
18 unredacted copy to everyone. We have the redacted  
19 version in our materials that was provided by  
20 access, and I think it is fair to say that I was  
21 told that while there may be some objection to me  
22 dealing in detail with this matter, there was  
23 certainly a desire, if I am going to deal with at  
24 all, that I should have the full report before  
25 you.



1                   I do have the full report copied  
2 now, so if I may. I take it the witness or  
3 counsel have no objection to us filing it instead  
4 of the redacted version?

5                   MR. FOTHERGILL: Just so we are  
6 clear, because this is a letter which describes  
7 the conclusions reached in the internal RCMP  
8 investigation into the very matter, Commissioner,  
9 that you are investigating now, our understanding  
10 is that the purpose of the questioning will be to  
11 address the process of the CPC investigation and  
12 their oversight as opposed to the specific subject  
13 matter that is in the letter.

14                  MS EDWARDH: To a large extent  
15 that is true, although I may have to comment on --  
16 well, let's proceed on that basis.

17                  It is not my intention to deal at  
18 length with anything, but this is the only example  
19 of such a document I have. So it may trench upon  
20 my friend's concerns. But I will try to keep it  
21 at the level that is general.

22                  I also will touch upon -- and  
23 perhaps this is where I am going to trench. I  
24 would like some comment on the nature of the  
25 deletions.

1 MR. FOTHERGILL: Can we just  
2 confirm that the witness has the unredacted  
3 version?

4 MS EDWARDH: I am about to provide  
5 it to him. I trust his counsel gave it to him  
6 yesterday when I got mine.

7 MR. FOTHERGILL: I believe we did.

8 MR. LOEPPKY: Yes, I do have a  
9 copy of it.

10 MS EDWARDH: In fairness to this  
11 document -- and I don't want to make it something  
12 it is not -- it needs some explanation by way of  
13 the process, and it might be helpful for you to  
14 have the legislation in front of you.

15 I understand that in this  
16 particular case there are a number of ways a  
17 complaint can come forward. It could be a member  
18 of the public or it could be someone like  
19 Ms Heafey.

20 Is that fair?

21 MR. LOEPPKY: Yes.

22 MS EDWARDH: If we can just move  
23 to summarize this.

24 I also understand that there are  
25 possible informal dispositions of a complaint that

1 the Commissioner may consider, with the consent of  
2 the complainant and the member, before any formal  
3 investigation has to take place?

4 MR. LOEPPKY: Yes. I can provide  
5 some context, if you will.

6 MS EDWARDH: I am trying to hurry  
7 so your counsel has more time. But if it is  
8 necessary context, of course you must provide it  
9 then.

10 MR. LOEPPKY: The process is such  
11 that a complaint can be made in the performance of  
12 the duty of a member of the RCMP, and that  
13 complaint can be made to the RCMP directly or to  
14 the Commission for Public Complaints. I will just  
15 go through the process very quickly.

16 The investigation is done by the  
17 RCMP and the results are provided to the  
18 complainant and copied to the Commission. Ninety  
19 per cent are actually resolved at that stage.

20 If the complainant is not happy  
21 with the outcomes, then the Chair of the  
22 Commission for Public Complaints can ask for  
23 further investigation, can undertake her own  
24 investigation, can hold an inquiry if she so  
25 chooses.

1 MS EDWARDH: If we were to stop so  
2 that no one is misled about this document for the  
3 moment, it's part of a process really that just in  
4 a sense the investigation is done at the first  
5 level and this is being provided to Mrs. Heafey as  
6 the complainant in effect. But she then could  
7 direct the whole series of things to happen.

8 Is that fair?

9 MR. LOEPPKY: This is the very  
10 first step. There are a number of additional  
11 steps that can be taken.

12 MS EDWARDH: I didn't want anyone  
13 to think this was advanced beyond the internal  
14 processes or internal investigation of the RCMP.  
15 This is the internal investigation that is  
16 forwarded to her. She can accept it or reject it  
17 or have her own inquiry; fair enough?

18 MR. LOEPPKY: Yes.

19 MS EDWARDH: And it is also  
20 probably important for the record to establish  
21 that that process is not going to happen because  
22 she has in a sense stood aside on the basis that  
23 this Commission of Inquiry is going ahead?

24 MR. LOEPPKY: My understanding is  
25 that that is her decision.

1 MS EDWARDH: Just so we don't  
2 think this is a more sophisticated version of  
3 anything.

4 THE COMMISSIONER: Should we mark  
5 this as Exhibit 15?

6 MS EDWARDH: I think this should  
7 be marked as Exhibit 15. Thank you very much,  
8 Mr. Commissioner.

9 EXHIBIT NO. P-15: Letter  
10 dated 7 April 2004 from G.  
11 Clément, Assistant  
12 Commissioner, Commanding  
13 Officer "A" Division to S.  
14 Heafey, Chair, Commission for  
15 Public Inquiries against the  
16 RCMP re Complaint of the  
17 Chair initiated pursuant to  
18 section 45.37(1) of the RCMP  
19 Act

20 MS EDWARDH: I want to make some  
21 general observations about this document on the  
22 basis that it is quite clear that what Mrs. Heafey  
23 got -- leave aside that this is about Mr. Arar for  
24 a moment.

25 Because there is a complaint in

1       respect of a national security investigation,  
2       relating to a national security offence, there was  
3       limited information provided to her for her  
4       review, and that is reflected in the last  
5       paragraph of page 1.

6                       "Due to the sensitive nature  
7                       of criminal investigations  
8                       having links to national  
9                       security, I am restricted as  
10                      to the level of detail and  
11                      extent to which I may  
12                      disclose information obtained  
13                      from certain sources, that is  
14                      the subject of sealing orders  
15                      in the Court, and that may be  
16                      the subject of Notice by the  
17                      Attorney General under  
18                      section 38 of the Canada  
19                      Evidence Act."

20                      Clearly, what Mrs. Heafey would  
21       get, I take it, first of all, is only this report  
22       at first instance?

23                      MR. LOEPPKY:   In the initial  
24       instance, this is what she would be provided with.

25                      MS EDWARDH:   She is not given a

1 full investigative brief, for example, which would  
2 include the actual interviews of witnesses, the  
3 documents inspected, the constables' notes who  
4 were involved, or any other documentary record?

5 MR. LOEPPKY: Not in the initial  
6 instance.

7 MS EDWARDH: Right. And if she  
8 were to be satisfied and did not continue on by  
9 calling her own investigation or in fact holding  
10 an inquiry, it is my understanding that the Act  
11 contemplates the resolution based upon this  
12 report.

13 It contemplates it. She doesn't  
14 have to take it, but its contemplates it.

15 MR. LOEPPKY: She could us to do  
16 further investigation before she undertakes her  
17 own investigation.

18 Based on the results of the  
19 initial investigation, she then makes a  
20 determination as to what her next step will be.

21 MS EDWARDH: But obviously one of  
22 the difficulties she faces when coming to the task  
23 of a complaint in respect of an investigation  
24 involving a national security offence is that it  
25 is hard to figure out what questions to ask -- I

1 think Mr. Waldman and I know this very clearly --  
2 when you don't have all the data or all the  
3 information. It is much harder; fair enough?

4 MR. LOEPPKY: Yes. But now that  
5 the issue is on the table, if she requests  
6 additional information in terms of the  
7 investigation, that option is open to her.

8 MS EDWARDH: What was interesting,  
9 and I think for the record in terms of the process  
10 of reviewing matters, is Mrs. Heafey is treated or  
11 Ms Heafey is treated as an outsider to the  
12 Mounties.

13 In other words, despite the fact  
14 that there is a complaint she must investigate,  
15 the person writing this letter limits the  
16 information on the basis that there may be  
17 restriction imposed by court order or, in the  
18 alternative, the obligations under section 38 of  
19 the Canada Evidence Act.

20 MR. LOEPPKY: Well, she is  
21 independent of the RCMP and accountable to the  
22 minister.

23 But in the initial instance, in  
24 complaints that are investigated and are provided  
25 to her, she is provided with a summary and then if



1 she requests further information or wishes further  
2 information, she can request that.

3 MS EDWARDH: She, however, is not  
4 attached as a schedule or annexed as an entity  
5 under the Canada Evidence Act as the Commissioner  
6 is with respect to the disclosure of --

7 MR. LOEPPKY: I believe you are  
8 right, yes.

9 MS EDWARDH: And she has no  
10 independent powers of kind of rolling in and doing  
11 her own audit as she sees fit.

12 MR. LOEPPKY: As I mentioned a few  
13 minutes ago, she can initiate her own  
14 investigation. She can ask for a whole inquiry as  
15 she did during the APEC inquiry in British  
16 Columbia. So there are additional steps that she  
17 can take.

18 MS EDWARDH: Right, but she  
19 doesn't have the kind of audit power -- perhaps I  
20 should be more precise -- that you see in SIRC.

21 MR. LOEPPKY: In terms of having  
22 access to the information, we will provide -- turn  
23 over all the material that is required by the  
24 statute that is consistent with the law to allow  
25 her to do her job.

1 MS EDWARDH: For example, we know  
2 SIRC reviews every information. Every occasion  
3 there is information sharing by CSIS, it is  
4 reviewed by SIRC as to its propriety. There is no  
5 suggestion that that kind of review mechanism is  
6 engaged by Mrs. Heafey or indeed she has the power  
7 to do so. That is not her function. She is  
8 responding to specific complaints. Is that --

9 MR. LOEPPKY: That part is  
10 correct, but I believe that the law enforcement  
11 community is subject to a number of other review  
12 mechanisms that exist doing investigations  
13 compliant with the Charter. The review mechanisms  
14 embedded within legislation such as C-36 that  
15 require the consent of the Attorney General.

16 The ministerial directives is an  
17 accountability framework. The Auditor General  
18 recently did an audit and criticized the RCMP for  
19 not sharing sufficient information, so there are a  
20 number of other mechanisms that are in place that  
21 we are subjected to.

22 MS EDWARDH: Yes. I am sure that  
23 the Commissioner will spend considerable time  
24 looking at those eventually.

25 But in respect of her powers, as

1 an outsider, she will never be able to process a  
2 complaint by reviewing information that is or  
3 should be the subject of a claim under the Canada  
4 Evidence Act, information that falls within the  
5 rubric of national security confidentiality  
6 because she can't review herself if she wants to.

7 MR. LOEPPKY: She can initiate her  
8 own investigation, she can initiate her own  
9 complaint and we will cooperate fully with her.

10 MS EDWARDH: No, but my point very  
11 simply, sir, is that if she says okay I want to  
12 see this and this and this and it all falls within  
13 the rubric of matters that should be the subject  
14 matter of an assertion of national security  
15 confidentiality or, you know, basically what we  
16 have been talking about here, you are going to  
17 have to say to her, I'm sorry, Mrs. Heafey, you  
18 are not listed, we can't do anything but object to  
19 that and that information will not be given to  
20 you, or you have to go to Federal Court.

21 MR. LOEPPKY: This is the first  
22 instance where this issue has come up and we will  
23 certainly work with her to ensure that she has  
24 access to the relevant information that she  
25 requires to make a decision as to the whether the

1           behaviour of members of the RCMP in the conduct of  
2           their duty was appropriate or not.

3                       MS EDWARDH:   So I take it, though,  
4           that the short answer to my question, under the  
5           current legislative regime, as an outsider she is  
6           simply not entitled to see information that you  
7           are not entitled to hand over to her.  You are  
8           duty bound to object.  You can't give her things  
9           even if they are relevant?

10                      MR. LOEPPKY:   If she had a top  
11           secret security clearance that would meet the  
12           provisions of the information, then I would  
13           suggest that if she needed that information it  
14           would be provided to her, if she met the standards  
15           in terms of storage and confidentiality.

16                      MS EDWARDH:   And as long as she  
17           didn't tell the complainant.  I mean, there would  
18           have to be a whole new regime to give her the kind  
19           of access you are talking about.

20                      MR. LOEPPKY:   We will provide the  
21           information that she requires and then she would  
22           be bound by the same restrictions that everyone  
23           else is in terms of national security.

24                      MS EDWARDH:   Yes, but it is very  
25           simple, sir.  As the matter stands, this report is

1 written not from the perspective of here, Mrs.  
2 Heafey, here is everything I reviewed, because it  
3 is clear that the person who is the author of this  
4 report felt that they could not -- and I read the  
5 language, "I am restricted as to the level of  
6 detail and extent." They could not provide a more  
7 fulsome description because of the nature of the  
8 complaint process, her position as outsider, the  
9 fact that she is not annexed as a schedule, I mean  
10 there are just a whole series of reasons.

11 So when you say you will give her  
12 everything that is relevant, let's suppose she is  
13 really nosey and says I want to see every  
14 officer's notebook, I want to see every officer's  
15 log of communication, we are talking about Jim  
16 Jones, I want to see every piece of information  
17 you exchanged. What are you going to say?

18 MR. LOEPPKY: This is a fairly  
19 standard response in the initial instance. It  
20 gives a summary of what the findings were of the  
21 investigation that was conducted. There are  
22 additional steps. I am not aware if she has  
23 chosen to exercise those next steps or if she -- I  
24 believe she has deferred to this inquiry and the  
25 purpose of this inquiry is to explore exactly

1 these issues that are identified in this letter.

2 MS EDWARDH: Yes, but, you know,  
3 if we were contemplating the future and we wanted  
4 the Complaints Commissioner to have is an adequate  
5 mandate, it is of concern that the person  
6 reporting the results of the investigation is so  
7 circumscribed, and let me go on. You take my  
8 point, sir, and we can't go any farther with that.

9 Are you familiar with the Access  
10 Act and the --

11 MR. LOEPPKY: I know there are  
12 provisions for access to information and it's  
13 coordinated in an area that does not fall under my  
14 responsibility. I am generally aware. I don't  
15 get into the specifics.

16 MS EDWARDH: But there is a  
17 dedicated unit in the RCMP, civilian or  
18 otherwise --

19 MR. LOEPPKY: Yes.

20 MS EDWARDH: -- that is there to  
21 answer access requests, and they are employees of  
22 the Royal Canadian Mounted Police. Correct?

23 MR. LOEPPKY: Yes.

24 MS EDWARDH: What they do is they  
25 get an access request and to the best they can

1           they process that access request by either tasking  
2           it out and gathering the documents but inevitably  
3           bringing whatever they have together and deciding  
4           what, if anything, can or should be released.  
5           Fair enough?

6                           MR. LOEPPKY:   In compliance with  
7           the legislation.

8                           MS EDWARDH:   That is correct.

9                           Then if it can it can be released  
10          or some portions of it can be released they just  
11          send it out.   Correct?

12                          MR. LOEPPKY:   Yes.

13                          MS EDWARDH:   And if in fact the  
14          access requester is unhappy, then what happens  
15          very simply is there is a complaint made and an  
16          investigation conducted by the Office of the  
17          Information Commissioner.

18                          MR. LOEPPKY:   Yes.

19                          MS EDWARDH:   That Information  
20          Commissioner, what he does is he, from time to  
21          time in conducting an investigation, sits with you  
22          or sits with the persons who work with access and  
23          he says, well I disagree or I agree, often there  
24          is consensus, sometimes there is not, but you are  
25          entitled to accept his advice or reject it and

1 then there may be further Federal Court.

2 MR. LOEPPKY: Yes.

3 MS EDWARDH: Okay. So that is the  
4 basic way access works.

5 So your department, sir, provided  
6 a redacted form of the report. You may not be on  
7 line with it --

8 MR. FOTHERGILL: Commissioner, can  
9 we just confirm that this redacted version did in  
10 fact come from the RCMP as opposed to from the  
11 Public Complaints Commissioner?

12 THE COMMISSIONER: This is the one  
13 at Tab 10?

14 MR. FOTHERGILL: Yes. Because my  
15 understanding is that this was released by the  
16 Public Complaints Commissioner, not by the RCMP,  
17 so this witness would not be able to comment on  
18 the wisdom of the redactions.

19 THE COMMISSIONER: The redactions  
20 were done at the Public Complaints --

21 MR. S. FOTHERGILL: That's my  
22 understanding, but it could be that my friend has  
23 other information.

24 THE COMMISSIONER: Do you know,  
25 Deputy Commissioner?



1 THE WITNESS: My understanding,  
2 sir, is that this letter that has been tabled  
3 today is a letter that we provided to the  
4 Commission for Public Complaints and the redaction  
5 was done by the Commission for Public Complaints.

6 MS EDWARDH: That is of some  
7 assistance, but then I am going to ask you whether  
8 you agree, I am only interested --

9 MR. FOTHERGILL: With respect, I  
10 don't think that is an effective use of your time,  
11 Commissioner, or anybody else's. This witness is  
12 not here as an expert in the Access Act and I do  
13 not know what possible assistance it would be to  
14 you to hear his view on whether these are proper  
15 exemptions or not.

16 THE COMMISSIONER: I think it  
17 would be of very limited value to pursue that line  
18 of questioning with this witness, particularly at  
19 this hour.

20 MS EDWARDH: Yes, I think it is  
21 the hour that persuades me, Commissioner.  
22 Flogging a dead horse here.

23 MR. S. FOTHERGILL: One final  
24 point I might make is that the unredacted version  
25 was provided by the government to your Commission.

1 THE COMMISSIONER: Yes, that is  
2 true.

3 MS EDWARDH: To me, for which I  
4 thank you.

5 If I could just have one moment  
6 then.

7 --- Pause

8 MS EDWARDH: Sir, if I had a  
9 complaint with respect to an INSET member who was  
10 a member of the OPP, and I wanted to make a  
11 complaint, and a vociferous one, do I take it that  
12 currently the absence of any agreements would mean  
13 that Mrs. Heafey and the Complaints Commission  
14 would have no jurisdiction over those persons?

15 MR. LOEPPKY: The policy of the  
16 home unit would apply.

17 MS EDWARDH: So the home unit  
18 would be the OPP. So what Mrs. Heafey would say  
19 is while there is a chain of command and the RCMP  
20 are in control here, if you have a problem with  
21 this OPP officer you can report to the OPP  
22 complaints process?

23 MR. LOEPPKY: If it was a  
24 complaint about the conduct of the unit of members  
25 within that unit, of the supervisory personnel who

1 are RCMP, clearly she would have jurisdiction in  
2 that.

3 MS EDWARDH: While you can't  
4 comment on the complaints, and let's see if there  
5 is an objection to this question, it is clear --  
6 do you know, sir, whether the RCMP has released  
7 this document under access to anyone. I know this  
8 one came from the complaints -- do you know  
9 whether it has been released by the Mounties yet  
10 to any access requester?

11 MR. LOEPPKY: I am not aware of  
12 it. This was a letter that was prepared by  
13 Assistant Commissioner Clement for the chair of  
14 the Commission for Public Complaints. I am not  
15 aware if it has been released in any form.

16 MS EDWARDH: And, clearly, if I am  
17 reading it correctly, in the full unredacted  
18 version that I have there is a concern expressed  
19 about caveats. Is that fair?

20 MR. LOEPPKY: That is correct.

21 MS EDWARDH: And that concern  
22 relates to whether or not the caveats were either  
23 applied or followed, I am not quite sure which  
24 from the language.

25 MR. LOEPPKY: Yes, that some of

1 the caveats on the information that we received  
2 were not appropriately followed by our personnel.

3 MS EDWARDH: Is it the information  
4 that you received or is it information that was  
5 provided by you?

6 MR. LOEPPKY: It was information  
7 that we received and prior to transmission that we  
8 did not get the concurrence of the providing  
9 agency.

10 MS EDWARDH: Was that a Canadian  
11 agency that is being referred to?

12 MR. LOEPPKY: It is.

13 MS EDWARDH: That helps me  
14 understand what was said. I actually took it from  
15 the opposite perspective.

16 And the conclusion, and this is  
17 typical of these reports, there is a  
18 recommendation as to resolution. Is that fair?

19 MR. LOEPPKY: That's correct.

20 MS EDWARDH: You would expect that  
21 when a report goes forward of this kind that after  
22 the investigation there is an identification of a  
23 problem or no problem and then a proposed  
24 resolution, and you see that at page 5 -- I am  
25 sorry, page 6. That resolution is the need for

1 further education. Is that fair?

2 MR. LOEPPKY: That is correct.

3 Those recommendations are followed up in terms of  
4 a period of time after which we do a quality  
5 assurance check to make sure the recommendation  
6 flowing out of any investigation such as this is  
7 implemented.

8 MS EDWARDH: I take it from what  
9 we have learned today with respect to the courses  
10 that were -- the two that you have already  
11 described, that is in addition to those two  
12 courses?

13 MR. LOEPPKY: Yes, it is.

14 MS EDWARDH: So there is no  
15 current orientation program available for those  
16 members who come into INSET?

17 MR. LOEPPKY: Beyond the fact that  
18 they are experienced police officers who bring  
19 with them the skills from their day-to-day jobs  
20 and the subsequent training that they will take.  
21 This is really meant to give them that orientation  
22 before they actually might have the national  
23 security training or the C-36 training.

24 MS EDWARDH: There is a big  
25 difference when you move from one policing agency

1 to another. There may be differences in reporting  
2 and differences in the quality of note-taking and  
3 differences in the rules around how you do things?

4 MR. LOEPPKY: Within our own  
5 organization we need to ensure that the people  
6 who are working in that area have the appropriate  
7 training. I don't want to single out other  
8 agencies. We need to do our own housework  
9 as well.

10 MS EDWARDH: If I could have your  
11 indulgence?

12 --- Pause

13 MS EDWARDH: Deputy Commissioner,  
14 I'm glad it is 7:30. Thank you very much, sir,  
15 for your patience. Those are my questions. I'm  
16 sorry it took so long, but I do thank you.

17 THE COMMISSIONER: Thank you,  
18 Ms Edwardh.

19 Any re-examination?

20 MR. FOTHERGILL: Nothing from me.  
21 Thank you.

22 THE COMMISSIONER: Okay. It has  
23 been a long day.

24 MR. CAVALLUZZO: I just have one  
25 question.

1 THE COMMISSIONER: Yes. No, you  
2 don't.

3 He takes instructions from me.

4 --- Laughter / Rires

5 Yes, Mr. Cavalluzzo.

6 EXAMINATION / INTERROGATOIRE

7 MR. CAVALLUZZO: It is Tab 44,  
8 Deputy Commissioner. I hate to bring you back to  
9 the program, but you were going to get us some  
10 information, in particular relating to page 10.

11 MR. LOEPPKY: Yes.

12 MS EDWARDH: The question relates  
13 to the "Intelligence Review Board Process". You  
14 told us that applied to reviewing ordinary  
15 criminal matters and the question was whether this  
16 process, this intelligence review board process,  
17 also applied to national security investigations.

18 MR. LOEPPKY: The Intelligence  
19 Review Board conducts a review of the various  
20 products, the strategic threat assessments that  
21 are put out by Criminal Intelligence Directorate  
22 in both the national security investigation and  
23 the criminal investigation area.

24 It is a quality assurance process.  
25 It is not a board that sets priorities. Those are

1 set by myself and the criminal operations officers  
2 in conjunction with CID. But this is a review  
3 process to look at the quality of the  
4 documentation.

5 MR. CAVALLUZZO: Both national  
6 security and regular --

7 MR. LOEPPKY: To ensure that they  
8 meet high standards, yes.

9 MR. CAVALLUZZO: Thank you.

10 MR. LOEPPKY: Thank you.

11 THE COMMISSIONER: Thank you,  
12 Mr. Cavalluzzo.

13 Well, let me thank you, Deputy  
14 Commissioner, for the time and the effort that you  
15 have put in to giving evidence and the patience  
16 that you demonstrated in answering the questions.  
17 I don't mean any criticism of any of the  
18 questioners by that, but it has been a long  
19 process. Your evidence has been very helpful and  
20 given in a professional way and I appreciate the  
21 time and effort that you devoted.

22 Again, thank you, Ms Edwardh for  
23 obviously the time and care you put into preparing  
24 your cross-examination. I appreciate that  
25 assistance.



1 MR. LOEPPKY: My thanks to  
2 everyone in the room for indulging me because I  
3 was the one who had the commitments tomorrow and  
4 the next day. So I appreciate it.

5 THE COMMISSIONER: I understand  
6 that.

7 Yes, then, we will rise and we  
8 will be resuming on Monday the 19th.

9 MR. CAVALLUZZO: Can I add  
10 something before you do rise?

11 THE COMMISSIONER: Yes, you may.

12 MR. CAVALLUZZO: That is, there  
13 were two documents that were submitted by counsel  
14 for Mr. Arar, one being the page 143 from the  
15 Richard Clarke book, and this Richard Coffman  
16 article.

17 I don't know, perhaps we should  
18 file these as exhibits as we did with the --

19 THE COMMISSIONER: Okay. The page  
20 from the Clarke book will be the next one,  
21 Exhibit 16.

22 EXHIBIT NO. P-16: Page 143  
23 of Richard A. Clarke's book  
24 titled "Against All Enemies"

25 THE COMMISSIONER: The other one

1 was the --

2 MR. CAVALLUZZO: The Richard  
3 Coffman article, "Oh Canada".

4 THE COMMISSIONER: That will be  
5 Exhibit 17.

6 EXHIBIT NO. P-17: Richard  
7 Coffman article titled "Oh  
8 Canada..."

9 THE COMMISSIONER: Okay. We will  
10 rise then.

11 --- Whereupon the hearing adjourned at 1935,  
12 to resume on Monday, July 19, 2004 at 1000 /  
13 L'audience est ajournée à 1936, pour reprendre  
14 le lundi 19 juillet 2004 à 1000

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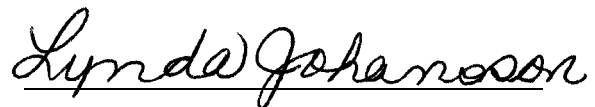
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Lynda Johansson,

C.S.R., R.P.R.

StenoTran