

**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**

**Table ronde d'experts  
internationaux sur les modèles  
d'examen et de surveillance**

**Roundtable of International  
Experts on Review and  
Oversight**

**Commissaire**

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

**Commissioner**

**Tenue à:**

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

le vendredi 20 mai 2005

**Held at:**

Algonquin Room  
Old City Hall  
111 Sussex Drive  
Ottawa, Ontario

Friday, May 20, 2005

1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Friday, May 20, 2005

3 at 9:00 a.m. / L'audience débute le vendredi

4 20 mai 2005 à 09 h 00

5 THE COMMISSIONER: Good morning.

6 Let's get under way and welcome everybody to this  
7 roundtable. It's of international experts of  
8 policy review for our inquiry which calls upon me  
9 to make recommendations with respect to the review  
10 of the RCMP's national security activities.

11 We have passed out some material.  
12 Has everybody had an opportunity on the way in to  
13 collect the material? There is an agenda and the  
14 bios and so on.

15 We have an excellent panel,  
16 roundtable of international experts.

17 I will start by introducing them.

18 If you want to just look at the  
19 bios, I won't go through it in a great deal of  
20 detail. They all spoke at the recent conference  
21 and were introduced at length there.

22 First is Dr. Hans Born. Dr. Born  
23 is on my immediate left here. He is from the  
24 Geneva Center for Democratic Control of Armed  
25 Forces, DCAF.

1                   And one thing I have learned in  
2                   the national security intelligence field when I  
3                   come here is there is a million acronyms. I go  
4                   home every night and try to figure out all the  
5                   acronyms I have learned that day.

6                   He also is the author of a recent  
7                   book with Professor Ian Leigh, who is in the  
8                   middle on my right. It's an excellent book. I  
9                   understand it was referred to during the course of  
10                  the proceedings at the conference. I had an  
11                  opportunity of reading the manuscript last  
12                  February when I was on holiday and I enjoyed it  
13                  thoroughly. I thought it was a very good piece of  
14                  work. It did cause my wife to say to me, "Why  
15                  don't you get a life?"

16                  But in any event, it was very  
17                  useful and it's something that we are pleased to  
18                  have.

19                  Professor Iain Cameron, who is in  
20                  the middle on my left, is a professor of public  
21                  international law at the University of Uppsala in  
22                  Sweden.

23                  He is a Scot, which leads to an  
24                  interesting story. When I was talking to him last  
25                  night, I asked him how long he had been in Sweden.

1 Twenty years. How did that come about? And  
2 surprise, surprise, he followed his heart.

3 He is a member of the ILA  
4 Committee of the International Criminal Court,  
5 highly regarded, and like everybody on these  
6 panels has written a great deal and spoken  
7 frequently.

8 Next is Marina Caparini, who is  
9 also, like Dr. Born, a senior fellow at the Geneva  
10 Center for Democratic Control of Armed Forces.  
11 She too has written frequently in this area.

12 And interestingly, she is a  
13 Calgarian who now has been living in Geneva for  
14 the past four years or so.

15 Professor Peter Gill, who is on my  
16 far right over here, is a professor in politics  
17 and security at Liverpool John Moores University.  
18 His main research interests relate to the  
19 organization, control and accountability of police  
20 and security intelligence organizations.

21 I had an interesting chat with  
22 Professor Gill last night at dinner. He had  
23 visited Canada to look at our regime for dealing  
24 with security intelligence and the review of  
25 security intelligence 10 or 15 years ago, I think

1       it was, and came back for the conference that was  
2       held over the last two days and has interesting  
3       observations to make about how we have progressed,  
4       or otherwise, and certainly views the Canadian  
5       scene, if you will, with a good deal of interest  
6       and experience. So we are delighted to have him  
7       here.

8                       Next is Professor Ian Leigh, who  
9       is next to Professor Gill. He is a professor of  
10      law at the University of Durham in England and is  
11      head of the Department of Law and Co-director of  
12      the Human Rights Centre. And as I mentioned  
13      earlier, he is a co-author of that recent book  
14      that has been so well received.

15                      And finally on my right is Mrs.  
16      Nuala O'Loan, who is the Police Ombudsman of  
17      Northern Ireland. Mrs. O'Loan brings a  
18      particularly interesting perspective for us. She  
19      is concerned with obviously policing activities,  
20      but because of the circumstances in Northern  
21      Ireland a great deal of what she reviews has to do  
22      with counterterrorism activities. Some of you may  
23      have heard her speak at the conference yesterday,  
24      but in talking to her again last night, I can  
25      assure you that her observations and perspectives

1           are something that will be very useful to all of  
2           us.

3                               With that background, let me just  
4           briefly indicate a bit about the Commission or the  
5           people that are here.

6                               Sitting on my immediate left is  
7           Andrea Wright, who is a lawyer who works on the  
8           policy review part of the inquiry with me.

9           Sitting in the front row here are Ron Foerster and  
10          Freya Kristjanson, who are also lawyers engaged in  
11          the same exercise, and Sanjay Patil is the fourth  
12          person, who is over on my far left.

13                              I am not sure how many of you have  
14          had an opportunity to look at the papers and the  
15          work product, the research the Commission has done  
16          to this point, but these lawyers have worked long  
17          and hard in producing that. And I might say also  
18          with the assistance and direction and indeed some  
19          of the writing of the advisory panel, at least  
20          three of whose members are here today.

21                              Martin Rudner, sitting in the  
22          front row, is one of the members of my advisory  
23          panel. Monique Begin, who is two over from him,  
24          who all the Canadians will know well as a former  
25          Minister of Health and very a distinguished

1 Canadian. And Alphonse Breau, who is sitting in  
2 the third row, who is a retired assistant  
3 superintendent of the RCMP.

4 The other two members of the  
5 advisory panel, Kent Roach, who is a Professor at  
6 the University of Toronto law school, and Reg  
7 Whitaker, who is a political science now at the  
8 University of Victoria, were unable to be here  
9 today.

10 I won't go on about this too long,  
11 but the makeup of our team, if you will, on the  
12 policy review side of it is that I am assisted by  
13 this very distinguished group as an advisory panel  
14 and then internally, if you will, I have the four  
15 lawyers that I mentioned, who have been putting in  
16 prodigious efforts to help keep this going.

17 This, as I said, is the first  
18 roundtable. We have another one scheduled for  
19 June the 10th, and will have present what we  
20 classify as domestic experts, people from Canada  
21 familiar with the Canadian scene and will follow a  
22 somewhat similar format to this.

23 We thought, in conducting the  
24 policy review, that it was extremely important to  
25 look at the experience of other jurisdictions

1           around the world. And recognizing that the  
2           constitutional makeup and the cultures of  
3           different countries will vary significantly, there  
4           is nonetheless a great deal to be learned from the  
5           experiences and observations of others about what  
6           goes on in their own countries and those, like our  
7           experts who are here today, who have made a  
8           career, really, of studying the types of issues  
9           that we are concerned about and have looked at  
10          jurisdictions throughout the world.

11                        I can tell you that I have  
12          referred to the one book, but in reading the  
13          material -- I haven't read it all but I have read  
14          a good deal of the writings of these people --  
15          they have made an enormous contribution and they  
16          have a great deal to offer to us. So I just  
17          express my appreciation not only for them coming  
18          but for the time that they have taken over the  
19          years to devote themselves to these very important  
20          subjects.

21                        The format for today is set out in  
22          the agenda. If you want to take a look at it, I  
23          can quickly lead us through it.

24                        We have posed four questions which  
25          will provide the structure for today's



1       proceedings, and we have allotted an hour and 15  
2       minutes to each of the questions.

3               The format, as we move through  
4       each of the questions, will be that three of our  
5       roundtable members will speak for approximately 10  
6       minutes about the subject raised by the question,  
7       and we have agreed in advance who those will be.  
8       So that would take the first half hour.

9               With the remaining 45 minutes, I  
10       will ask the other three to respond, and then I  
11       will pose questions and try to generate -- and I  
12       am sure it won't be difficult -- a discussion  
13       amongst the group so that we flesh out and get the  
14       benefit of their ideas and all of the questions  
15       that emerge in each of those areas.

16               The first question will be dealt  
17       with by 10:30. We will have a 15-minute break,  
18       deal with the second question, and then at that  
19       point we will open it to the people on the  
20       floor -- there are microphones -- for any  
21       questions for half an hour they wish to pose at  
22       that point about questions 1 and 2.

23               We will then have a lunch break,  
24       and in the afternoon we will follow the same  
25       process with questions 3 and 4, to be followed by

1 a half-hour opportunity for people to pose  
2 questions from the floor.

3 It's not a rigid schedule, if you  
4 will. I am primarily interested in getting as  
5 much help as we can on these important questions  
6 from members of the roundtable. But I think if we  
7 try to stay focussed following the questions, that  
8 should prove to be of most assistance to us.

9 So let me then turn to the first  
10 question.

11 If you look at it, the first  
12 question is: Should review of the national  
13 security activities of a police agency, such as  
14 the RCMP, be conducted by a body which has  
15 jurisdiction over that agency alone? The second  
16 option would be, only the national security  
17 activities of that agency? Or a third option  
18 would be the national security activities of some  
19 or all of the other federal agencies with a  
20 national security function in addition to the  
21 police agency?

22 Let me very briefly speak a little  
23 to this question.

24 This is one of the critical  
25 questions that I must address in the policy

1 review. In short, the question is -- and let me  
2 make one comment before I come to that.

3 I have not at this point  
4 determined that any additional review structure is  
5 necessary. Indeed, the first question that I  
6 posed is: Is the status quo, the review  
7 mechanisms currently in place for the RCMP,  
8 sufficient to handle the national security  
9 activities? I will have to deal with that  
10 question, and I keep an open mind. There are  
11 those that suggest that nothing further is  
12 required.

13 The questions that are being asked  
14 today, however, so that we can draw on the  
15 experience of these panelists, assume that there  
16 is going to be a review mechanism, an additional  
17 review mechanism for the RCMP, and it's those  
18 questions that I think that these panelists can  
19 help us.

20 I think the first question would  
21 take them probably -- whether there should be any  
22 additional review mechanism -- beyond their  
23 expertise, they not having an intimate familiarity  
24 with the landscape as it now exists.

25 So that the first question, which

1 is of critical importance is: If there is a new  
2 review mechanism, should it apply only to the  
3 RCMP? And if so, should it be a review mechanism  
4 that's carved out to apply only to its national  
5 security activities? Are there things that are so  
6 unique about the national security activities that  
7 there should be a separate review mechanism for  
8 those, different than any review mechanisms that  
9 would be available for the RCMP's other  
10 activities?

11 As you know, they have a broad  
12 range of law enforcement activities across the  
13 country.

14 Or does it make more sense, as  
15 some suggest, that rather than having a review  
16 agency for RCMP national security activities,  
17 there be one review mechanism for Canada's  
18 national security activities? We now have SIRC  
19 that reviews CSIS, and does it make more sense  
20 that there should be one? Given a world, some  
21 would say, of integrated activity in the national  
22 security area, does it make more sense to have a  
23 single review agency?

24 And the way I would put it is:  
25 The choices would seem to me, on the one hand --

1       this is in very general terms -- to be should it  
2       be an institution agency based review agency for  
3       the RCMP, or on the other hand should it be a  
4       functional base, one that defines the functions  
5       that need review by this body and then has a body  
6       put in place to review the functions?

7                        So that is the first area of  
8       questioning, and our first speaker on it is  
9       Mrs. O'Loan from Northern Ireland.

10                      Mrs. O'Loan?

11                      MRS. O'LOAN: Thank you. And  
12       thank you for the invitation, Mr. Commissioner, to  
13       be with you today.

14                      The issues with which you are  
15       dealing are issues which affect us all across the  
16       world. I think the first thing we have to bear in  
17       mind, in trying to answer the question which you  
18       have set, is that these are not national issues;  
19       these are international global issues and that any  
20       body which is set up, whether it is an agency  
21       alone, one which deals with only national security  
22       or one which deals with other activities, it must  
23       be very closely linked to the other organizations  
24       which are established across the world, and it  
25       must therefore have ways of working that are

1 compatible with those.

2 Having said that, in order to  
3 answer the question that you have set, I thought I  
4 would think about, well, what are the issues that  
5 we are actually trying to deal with?

6 If we are looking at how the  
7 review body should operate, we need to look at how  
8 the people who deal with security problems  
9 operate. And if we are going to deal with those,  
10 I think we need to consider how do the people that  
11 they are watching operate, because I think that's  
12 the starting place, and then you get the outcome  
13 that you actually need.

14 I guess that we have had terrorism  
15 for 35 years, serious problems, and the question  
16 of "how do those who breach national security  
17 work" can be very clearly answered now, I think.  
18 They work in silos. They very often don't know  
19 what other members of their group or their  
20 organization are doing. They very often will move  
21 into a community or will emerge from a community,  
22 and they will be in that community for many years  
23 before they will become active. So they will be  
24 sleepers in the community. They will bed  
25 themselves into the community.

1                   They will be involved in crime, in  
2 most cases. At least that is our experience in  
3 Northern Ireland. They need to establish roots  
4 and they need to establish mechanisms for doing  
5 things, and crime will provide them with those.

6                   For example, if you are looking at  
7 moving consignments of whatever the material is,  
8 you need a mechanism for doing that, and you need  
9 to have tested and tried it. So they will  
10 establish alliances through which they can  
11 operate.

12                   So I think that is one thing we  
13 need to take into account.

14                   Usually the experience in Northern  
15 Ireland has been that they will closely integrate  
16 themselves into the community, and they will take  
17 possession of the community and they will manage  
18 the community, and they will distance the  
19 community from the security services, if they can.  
20 And if the security services operate in particular  
21 ways, the security services will assist them in  
22 distancing them from the community.

23                   The other thing we have to  
24 remember is that they will use all the processes  
25 which the security services will use against them

1 when they get sophisticated. So they will  
2 actually intercept things. They will attempt to  
3 infiltrate organizations. They will do all those  
4 things.

5 The last thing is, and I think  
6 that the thing that we have seen most recently is  
7 that they will become involved in very, very  
8 serious crime, organized crime, cross-border  
9 crime, and there will be an extent to which it  
10 will feed their financial needs. It will feed  
11 their information needs. It will feed their  
12 network needs. It will do a lot of things.

13 We have seen, for example -- I  
14 think we have had possibly the biggest bank  
15 robbery in the world. We have had money  
16 laundering. We have had drugs, people smuggling  
17 all sorts of things. So that's how they are  
18 operating.

19 So they are operating in a  
20 criminal function.

21 And terrorism is crime. If you  
22 start from that place, it's kind of an important  
23 factor.

24 So how do the security services  
25 manage all that? Bearing in mind that key thing,



1           that they are inextricably linked -- I am  
2           absolutely convinced they are inextricably  
3           linked -- I think there has to be a very close  
4           association between those responsible for crime  
5           management and those responsible for what we might  
6           call terrorism management rather than security  
7           services activities.

8                                When you look at the activities of  
9           the security services, what they are trying to do  
10          is to manage the national interest and perhaps, in  
11          particular, to prevent the kind of atrocity that  
12          we saw in 9/11, which is probably the most  
13          difficult situation to deal with. A situation  
14          like 9/11 is years in the planning, so there would  
15          be opportunities all the way through to deal with  
16          those things.

17                              The crime agencies also govern  
18          intelligence, and that's the important thing.  
19          They gather intelligence to prevent different  
20          kinds of crime, and sometimes to prevent the same  
21          kinds of crime. But the key thing is that the  
22          players very often are represented in both  
23          sectors.

24                              So you have two sets of  
25          organizations following the same people sometimes,

1 and that can become, I think, difficult. It can  
2 lead to lacuna through which bad things happen.

3 So where am I going to, watching  
4 the time?

5 The review, certainly not the  
6 agency alone, I think, and neither do I think it  
7 should be the national security activities of that  
8 agency. I think that there was a time when you  
9 could have review mechanisms, the national  
10 security agency only, but I don't think that time  
11 is with us now because I think the whole scenario  
12 has changed beyond recognition.

13 Therefore I am left, I think, with  
14 the possibility of (a) and the possibility of (c).  
15 Then I think if we reflect on what has happened in  
16 terrorist terms across the world, where there have  
17 been the major failures and where there has been  
18 mass loss of life and major atrocities, major  
19 attacks on economic targets, and where there have  
20 been post-incident consideration of what happened,  
21 it is the fact that intelligence is gathered in  
22 silos, and there is this need-to-know principle  
23 which seems to dominate the thinking and which can  
24 prevent the transmission of intelligence from  
25 those who would be able to use it to convert it

1           into evidence, which is then available to be used  
2           possibly in criminal process.

3                       I think that at the end of the day  
4           the intelligence services and the crime services  
5           must both have the same objective, which is to  
6           prevent the crime in the first place; but if the  
7           crime does occur, to take the operatives and put  
8           them through the criminal process.

9                       Having said all that, therefore, I  
10          am of the view that there must be a very, very  
11          close link between those who review the national  
12          security activities of your agencies, the RCMP and  
13          CSIS, and those who operate it, particularly at  
14          the major crime level.

15                      I do not believe that the RCMP --  
16          I mean, I am not an authority on the RCMP, and I  
17          have to say that. But I do know that they have an  
18          established intelligence unit and they clearly  
19          recognize this. And I think the submissions that  
20          you have had from the Canadian police services are  
21          recognizing this very close link.

22                      The terrorism which you may suffer  
23          may not, of course, be the kind of terrorism we  
24          are talking about with 9/11. It may be economic  
25          terrorism. It may be aimed at the food chain and

1 all sorts of things like that.

2 So my view is the that the review  
3 mechanism must be one which operates across both  
4 the crime function and the security function.

5 Thank you.

6 THE COMMISSIONER: Thank you,  
7 Mrs. O'Loan. We will come back to that.

8 The next speaker will be Professor  
9 Gill.

10 MR. GILL: Thank you, Dennis.

11 First, thank you very much for the  
12 invitation to come here. It's a pleasure to be  
13 here. I first visited here nearly 20 years ago  
14 doing research into what was then the very newly  
15 minted CSIS Act and the review mechanisms with  
16 SIRC. And I was ten years ago back here doing  
17 some research into police intelligence and this  
18 issue of intelligence-led policing which has  
19 cropped up in some of your papers.

20 So it is a pleasure to be able to  
21 come back and try to give something back to  
22 Canada, having sort of taken so many ideas away  
23 from it.

24 Can I just say also that having  
25 looked at review mechanisms here, and in the U.K.

1 and south of the border in the U.S, and also some  
2 in Europe, my remarks are very much based on  
3 thinking about what we might describe as sort of  
4 certain underlying principles or truths about  
5 intelligence and intelligence review that I think  
6 transcend individual borders.

7 I wouldn't presume to try and tell  
8 Canadians what to do. That's obviously your  
9 business.

10 I think there are from the  
11 literature, from the research, that has now been  
12 quite extensively done over the last 20 years  
13 particularly, I think there are certain things  
14 emerging about which I think there is some degree  
15 of consensus amongst observers.

16 Hopefully, my colleagues here  
17 won't come in and immediately criticize everything  
18 I say.

19 On that basis, I have made one or  
20 two assumptions in relation to your questions.

21 It seems to me that the research  
22 would indicate that your (c) is the most realistic  
23 position to pursue.

24 When the CSIS Act was produced 20  
25 years ago and produced institutional oversight of

1 CSIS, I think that kind of fitted with the  
2 understandings at that time of the way in which  
3 the world worked. But as Nuala has pointed out,  
4 we are now 20 years on, and it seems to me that  
5 one of the most significant developments in the  
6 last 10 or 20 years, but much reinforced by the  
7 events of 9/11 -- and this is an issue that you  
8 have picked up in your background papers -- is a  
9 development of what we will call security  
10 intelligence networks.

11                   These operate at three levels.  
12 They operate transnationally, and of course I know  
13 that the incident that gave rise to your  
14 Commission involved a transnational sharing of  
15 information. So we know about that.

16                   We know about the sort of networks  
17 that now spread globally between different  
18 agencies. And the significance there, I think, is  
19 that we know that, for example, intelligence  
20 agencies such as CSIS tend to have better  
21 relations and share information more freely with  
22 their sister organizations in other countries than  
23 they do with, let's say, policing agencies in  
24 their own countries. I mean, Canada and U.K. are  
25 part of the U.K.-U.S.A. treaty which formalizes

1 information-sharing. But this is a generality.  
2 It's shared around the globe very quickly, as you  
3 have seen.

4 But the third area, which is a  
5 problematic one, which I think is touched on in  
6 the papers but we also need to think about, is the  
7 relationships between the state and corporate  
8 sectors. Any student of policing and security now  
9 is aware of the rapid growth of the private  
10 security sector and of the increasing deployment  
11 of private security and private military agencies  
12 in the conduct of surveillance, both domestic and  
13 foreign.

14 So in the context of the  
15 development of security networks, it seems to me  
16 that the idea of institutional oversight really is  
17 dead and buried, or should be buried.

18 Having said that, if I could by  
19 way of sort of answering the question a bit  
20 further make reference in the consultation  
21 paper -- you know, you laid out a number of  
22 options there.

23 THE COMMISSIONER: Right.

24 MR. GILL: Perhaps I could make a  
25 brief observation about how I feel about each of

1           those.

2                           THE COMMISSIONER:   Please do.

3                           MR. GILL:   The first one you refer  
4           to is the status quo with the Commission for  
5           Police Complaints for the RCMP.

6                           Well my sense is that I don't  
7           think anyone I have spoken to in Canada really  
8           thinks this is adequate.  They have had great  
9           difficulty getting information from the RCMP, and  
10          of course it is institutional; it's not  
11          functional.  So I don't think that's viable.

12                          Therefore, I don't think enhanced  
13          powers for the CPC, or your third option, the new  
14          review mechanism for the RCMP national security  
15          activities, I don't think they are a good idea.

16                          The other reason why I am against  
17          institutional review is because the way I would  
18          put it, it compartmentalizes review.  It sort of  
19          structures review in such a way that oversight and  
20          review bodies sometimes have as many difficulties  
21          sharing information as do the agencies that they  
22          are targeting.

23                          I seem to remember when you had  
24          your five-year review of the CSIS Act in 1990,  
25          there were great struggles between the



1       parliamentary review of the Act, SIRC at the time,  
2       battles around trying to get information. You  
3       really don't need, I think, to set up separate  
4       review bodies for different agencies because they  
5       will then engage in possibly protracted turf wars.

6                   The other context -- and this is  
7       something we may have to come back to. I realize  
8       this is not formally part of your mandate, but we  
9       are also aware that while your Commission has been  
10      going on, the government has said it intends to  
11      legislate to establish a committee of  
12      parliamentarians to look at national security. So  
13      in a sense I don't think it's possible to answer  
14      that question entirely without making reference to  
15      the possible role of that committee, although I  
16      realize how it is done precisely is outside of  
17      your terms.

18                   It seems to me the other principle  
19      here is "if it ain't broke, don't fix it". In  
20      other words, you have a mechanism which has  
21      broadly worked very well for 20 years. The SIRC  
22      mechanism had its ups and downs from my  
23      perception, but I think it has worked broadly  
24      well. It seems to me it makes no sense now to  
25      kind of tear that up and establish a committee of

1           parliamentarians that may take over its  
2           investigative functions.

3                       My sense is I don't think that  
4           makes a lot of sense. I can explain why in more  
5           detail.

6                       But it does seem to me therefore  
7           that the logic of building on the strengths that  
8           you have, not disturbing the existing system more  
9           than necessary, not encouraging agencies who are  
10          the targets of review to resist by in a sense  
11          overloading them with different bits of oversight  
12          coming from different directions, it seems to me  
13          that the logic of Canada's position is to develop  
14          the role of SIRC into the review of national  
15          security activities of all of those federal  
16          agencies who have small units for national  
17          security: the RCMP, transportation, immigration,  
18          and so on.

19                      That basically would be the way  
20          that I would seek to deal with (c).

21                      I think I am probably running out  
22          of time.

23                      Obviously this raises the issue of  
24          how does this relate to the new committee of  
25          parliamentarians? A very important issue, but

1 perhaps we can pick it up.

2 THE COMMISSIONER: We will come  
3 back to that. I will make a note of that.

4 Ms Caparini, you are the third  
5 speaker.

6 MS CAPARINI: I think it's  
7 important to remember that the background of this  
8 issue is about changes, fundamental changes that  
9 we are seeing occurring in the policing field and  
10 in the security intelligence field.

11 Policing is increasingly becoming  
12 involved with issues that were more traditionally  
13 considered the domain of intelligence agencies, so  
14 they are increasingly involved in  
15 intelligence-gathering. So it is increasingly a  
16 preventative role, whereas security intelligence  
17 is increasingly moving towards what was formerly  
18 more ordinary policing or, rather, criminal  
19 enforcement issues: organized crime, drug  
20 trafficking, illegal financial transactions.

21 So there is going on, not only in  
22 Canada but internationally, a blurring of the  
23 functions of these two state agencies. It is  
24 occurring in the mandates as well, and since 9/11  
25 this blurring has become accepted. The expansion

1 of police powers to combat crime and terrorism has  
2 become extremely widespread.

3 I think it's important also,  
4 though, to note that there is a dissenting  
5 opinion. There is a view out there that this  
6 linking of terrorism to organized crime,  
7 transnational organized crime, to money  
8 laundering, to drug trafficking, human  
9 trafficking, and also illegal immigration or what  
10 is called illegal immigration, has been criticized  
11 by people with a lot of authority in criminology  
12 and social issues, observers of the police. This  
13 has been criticized as a security continuum,  
14 something that's been accepted, in some cases  
15 promoted, by security agencies, and since 9/11 it  
16 has become the conventional view.

17 But I think it is important to  
18 realize that there are dissenting opinions and  
19 that there are people who believe that in fact  
20 many terrorists, so-called terrorists, do not  
21 necessarily engage in organized crime, do not  
22 necessarily engage in regular crime.

23 The problem that we are facing,  
24 though, is that on the ground in fact police  
25 powers are being expanded and that security

1 intelligence agencies are having an increasing  
2 role in organized crime issues, in former policing  
3 issues. That's the reality, regardless of whether  
4 or not there is this real continuum or false  
5 continuum.

6 So we have to deal with the  
7 expansion of powers and the fact that oversight  
8 agencies are no longer capable of dealing with  
9 that because they were set up at a time when the  
10 boundaries between these institutions were more  
11 clearly defined.

12 So in terms of the options that  
13 you have laid out, I think limiting review to the  
14 RCMP, to a body dealing only with the RCMP, would  
15 be the easiest option. It would require expansion  
16 of the powers of an existing oversight body.

17 I think one of the drawbacks would  
18 be that you would be unable to address actions of  
19 the other bodies that are involved with the RCMP,  
20 and we know that the RCMP is increasingly involved  
21 in international inter-agency cooperation. That  
22 again is a reality on the ground. So by looking  
23 only at one agency, you are not cutting at these  
24 inter-agency relationships which are  
25 proliferating -- proliferating.

1                   I think if you have a review body  
2                   that's limited only to national security  
3                   activities, if there is a connection between  
4                   regular crime, organized crime, and terrorism, if  
5                   the continuum does exist, then looking only at  
6                   national security activities does not allow you to  
7                   actually look at the way these terrorist entities  
8                   supposedly fund themselves, if they are engaging  
9                   in organized crime. So in a way you are limiting  
10                  yourself to the high end of the spectrum without  
11                  being able to address the problem holistically.

12                  It seems to me that the most  
13                  logical option would be the third one, where a  
14                  review of all national security-related activities  
15                  would be most effective.

16                  By looking at national security,  
17                  this functional approach, you address the blurring  
18                  of mandates that is in fact happening, the  
19                  blurring between law enforcement and security  
20                  intelligence.

21                  It's a more holistic approach, and  
22                  it avoids something that we call institutional  
23                  stove-piping; that is, looking only at one  
24                  institution, and having these blinders on, so you  
25                  don't realize the linkages that are going on

1           between agencies, the sharing of information, the  
2           informal networks between them.

3                           But it would require some major  
4           institutional engineering, I think, strong  
5           mandates, very muscular powers, good coordination,  
6           to make sure that there isn't overlap or  
7           unnecessary waste of resources, that there isn't  
8           duplication of functions. And I think it would  
9           take time to actually build up the expertise of a  
10          body that would be capable of dealing with  
11          national security in such a holistic manner.

12                           THE COMMISSIONER: Thank you for  
13          that.

14                           Let me just then pick up on a  
15          couple of points that were made and ask this  
16          question.

17                           The mandate, first of all, directs  
18          me to make recommendations for a review by the  
19          mechanism for the RCMP's national security  
20          activities. The RCMP, as I am sure most know, is  
21          Canada's federal law enforcement agency, has has  
22          been for years, and the large majority of their  
23          activities have nothing to do with "national  
24          security activities". They do traditional type of  
25          policing across Canada. They investigate break

1 and enters in Saskatchewan and impaired driving  
2 cases, and so they carry out all the duties of the  
3 typical police force.

4 I think it's fair to say that the  
5 impetus that gave rise to the government  
6 establishing this Commission with that mandate was  
7 that in recent years -- not just post-9/11, but  
8 particularly since 9/11 -- the RCMP have become  
9 involved in law enforcement activities relating to  
10 national security offences.

11 Now the question that I have when  
12 I look at the mandate -- and I will ask you to  
13 comment on: What is it that's different about  
14 what a law enforcement agency does in relation to  
15 national security activities, or is there anything  
16 different, that calls for a different type of  
17 review mechanism than one would apply to  
18 traditional policing?

19 In Canada, like elsewhere, our  
20 primary focus for a review of police is by way of  
21 a complaints bureau. We have various models of  
22 those. But essentially it tends to be, for  
23 policing activity, complaints-driven and we are  
24 very concerned when we look at police, rightfully  
25 so, about the notion of police independence, not



1 mucking in into the police activities so as to  
2 interfere with them.

3 But the mandate says, and perhaps  
4 assumes, that there is something different once  
5 the police get involved in national security  
6 activities. And no question they are, and there  
7 is no questioning of that. That's the reality,  
8 that they have become involved in that.

9 My question -- and we could start  
10 and I would like to have a discussion of this with  
11 some of the members who haven't spoken yet -- is:  
12 Is there anything that is different, insofar as  
13 the requirements for a review mechanism, for when  
14 a law enforcement agency gets involved in national  
15 security activities as opposed to traditional  
16 policing activities?

17 Professor Cameron?

18 MR. CAMERON: The model in many  
19 ways for national security intelligence activities  
20 is counter-espionage. This is the paradigm; a  
21 small, shall we say, elite pitted against another  
22 small elite and a war that never ended. So there  
23 was never a question of killing the hydra; that  
24 there would always be a new head growing on the  
25 hydra.

1                   And the paradigm, as we all agree,  
2                   has changed now.

3                   But the key really or one of the  
4                   keys to understanding why there has to be a  
5                   special mechanism for national security type of  
6                   operations is, as you have pointed out, the fact  
7                   that normal policing activity, the oversight of  
8                   this is generated largely by complaints and can be  
9                   dealt with largely by judicial process or  
10                  quasijudicial process.

11                  In national security types of  
12                  issues, there is no notification. They don't know  
13                  that the rights possibly have been violated. It's  
14                  very difficult to understand that the original  
15                  idea of criminal process was to protect the  
16                  person's rights; that the case would end up in a  
17                  court, and at the end of the day the court would  
18                  then say yes, these measures taken by the police,  
19                  by other authorities, were justified or they were  
20                  not justified.

21                  In national security matters, to a  
22                  large extent these issues are not ending up in  
23                  court. Intelligence-led policing means looking at  
24                  many, many, many people, the vast majority of whom  
25                  have nothing to do with the target, the terrorist

1 or the espionage officer you are looking at.

2 Another factor is the fact that  
3 national security, the invocation of national  
4 security, still bites very hard on judges.  
5 National security, it's very easy to say: "This  
6 is a question of urgency. This is an area that if  
7 you do not do what we ask you to do, then the  
8 consequences can be appalling."

9 And with the scenario of weapons  
10 of mass destruction, the judge is continually  
11 being faced with this option of should I refuse  
12 the warrant or should I refuse this measure, with  
13 the risk being, you know, nuclear devastation, or  
14 viral devastation, or some terrible event.

15 National security information,  
16 national security intelligence, is also very  
17 difficult to analyze and understand. It's in a  
18 grid pattern, basically. That is how national  
19 security material is produced in most countries,  
20 in which the material is graded on its  
21 reliability, the reliability of the material and  
22 the reliability of the source. It takes a long  
23 time before anybody really is able to understand  
24 this.

25 An ordinary judge dealing with

1       such an issue might get such a problem once in a  
2       blue moon, and he or she is not in a position to  
3       effectively judge the risks of the operation and  
4       the risks of doing what the agency want them to  
5       do.

6                   I think that, as I said, we have  
7       to understand that the model has changed from  
8       counter-espionage. We are speaking about the  
9       vulnerability of an entire society. Modern  
10      societies are vulnerable in a vast number of  
11      different ways, reservoirs, airports, harbours,  
12      and it's not a small elite who are protecting us  
13      against this. It is everybody. It is the  
14      immigration officials. It is the border people.  
15      It is the customs officials. It is private  
16      security guards.

17                   They are all being integrated, as  
18      Marina said, in this continuum, and there is a  
19      great deal of room for abuse of that as well.

20                   I should also like to comment on  
21      this, the crucial distinction is really this area  
22      of organized crime, isn't it? You can say that  
23      organized crime displays similar characteristics  
24      to national security in that the operation goes on  
25      for a long time, or maybe forever, and

1 notification does not occur, and there is the same  
2 difficulty of analyzing the quality of the  
3 material.

4                   However, as Marina pointed out,  
5 there is a very important distinction between  
6 organised crime in theory and terrorism in theory,  
7 though in practice, and as we have seen in  
8 Northern Ireland, the two can be extremely closely  
9 linked.

10                   But the difference in theory is  
11 that the motivation for terrorism is politics.  
12 It's obtaining political power, whereas the  
13 motivation for organized crime is money. That is  
14 a very important distinction. And that's why many  
15 of the mechanisms for dealing with organized crime  
16 do not necessarily work against terrorism.

17                   Now I accept, of course, that in  
18 situations of domestic terrorism -- we should  
19 remember of course that terrorism covers a  
20 multitude of sins as well. It covers  
21 international terrorism, domestic terrorism, a  
22 variety of different forms.

23                   But there is this very important  
24 distinction that political crime cannot  
25 necessarily be defeated by using the mechanisms of

1 dealing with organized crime.

2 I would also agree, I think with  
3 everybody here, that the option which seems to be  
4 most appropriate is the option (c).

5 And also I would agree with what  
6 Pete Gill said that here in Canada you have a  
7 model of oversight which many other countries in  
8 the world admire greatly, I should point out, and  
9 that you should also be attempting to build on the  
10 strengths that you have.

11 THE COMMISSIONER: Just for those  
12 that may not have the material that are watching  
13 this on the television, option (c) is the  
14 functional model. It is the one that, as the  
15 speakers would have it, it would be building upon  
16 SIRC which now reviews CSIS and extending its  
17 powers to review the national security activities  
18 of the RCMP.

19 Do you want to speak next,  
20 Professor Leigh?

21 MR. LEIGH: Thank you, yes. Just  
22 to come briefly and quite specifically to the  
23 question you that raised about what are the  
24 differences between national security and  
25 policing. And I accept all that's been said just

1           now about we are living in a changing world and  
2           some of these boundaries are now beginning to  
3           blur.

4                           But I think you could say, if I  
5           can summarize it quite neatly in terms of three Ps  
6           of differences, my Ps would be the prolonged  
7           nature of national security operations. And I  
8           think Professor Iain Cameron has just spoken about  
9           that in contrast to traditional criminal events  
10          where you had an event, it was detected, and there  
11          was a prosecution that followed archetypically.  
12          National security operations are seen as prolonged  
13          events.

14                           The second "P" is the nature of  
15          the powers that have traditionally been granted to  
16          bodies to combat national security traditionally.  
17          These have been perhaps exercised on a lower  
18          standard other than the powers that we would give  
19          in the investigation of ordinary crime, maybe  
20          because the normal result was not prosecution, so  
21          therefore I am dealing with probability rather  
22          than some higher standard for issuing a warrant,  
23          for example, would seem to be appropriate.

24                           But also the extent of powers  
25          given have traditionally been greater, for

1           example, covert searches of premises, as  
2           contrasted with open public searches under warrant  
3           have for criminality.

4                         The third "P" would be prevention  
5           or, as you might now say, disruption. The  
6           objective of this type of state activity was  
7           typically not to prosecute but was to disrupt and  
8           prevent and to counter terrorism or espionage.

9                         The difficulty is of course that  
10          all of these -- my three Ps -- have changed. Many  
11          of these techniques, certainly in Britain, have  
12          been spread, because they were found to be so  
13          useful in combatting terrorism. Over a 30-year  
14          period, they have spread over other forms of  
15          serious crime, and that makes drawing the  
16          boundary, I think, particularly difficult at the  
17          present time.

18                        I have some thoughts on some quite  
19          specific boundary issues, but you may want to save  
20          those for later on.

21                        THE COMMISSIONER: That was  
22          actually going to be my next question.

23                        MR. LEIGH: Or would you like me  
24          to address that now?

25                        THE COMMISSIONER: I might call



1           upon Dr. Born to see if he has anything to add,  
2           and then I would like to address the boundary  
3           issue.

4                           Is there anything that you wish to  
5           add at this point?

6                           MR. BORN:   Only very shortly:  
7           that I concur with the others that a functional  
8           oversight model would be best.  For example, if  
9           another agency would also take up these type of  
10          activities, and you would set up a review  
11          mechanism which only deals with the agency alone,  
12          then these other activities would escape the  
13          review.

14                          I think a comprehensive oversight  
15          mechanism on a functional basis would be what I  
16          would also recommend, for the reasons which were  
17          said before, which I don't want to repeat.

18                          THE COMMISSIONER:  Let me then  
19          move from that to the boundary issue.

20                          As I said, the mandate says that  
21          the recommendations are for a mechanism to review  
22          the national security activities of the RCMP,  
23          which necessarily implies there is going to be a  
24          boundary drawn.  There is going to be a boundary  
25          drawn no matter whether one adopts either model.

1                   So if one were to adopt a model  
2                   that is directed at the RCMP only, its national  
3                   security activities, then there is going to have  
4                   to be a boundary drawn unless the review body  
5                   covered everything the RCMP does. And as I say,  
6                   95 per cent or more of that has nothing to do with  
7                   national security, I think by even a loose  
8                   definition, perhaps.

9                   Or if you adopt what most of you,  
10                  perhaps all of you, seem to think a functional  
11                  approach is best, you are still going to have to  
12                  draw a boundary as to into what area of the RCMP's  
13                  activities does the functional body have  
14                  jurisdiction. So the boundary issue is critical,  
15                  no matter what overall model is adopted.

16                 Mrs. O'Loan says to me that if you  
17                 are looking at national security -- I am putting  
18                 words in her mouth -- be very careful that you  
19                 don't cast it too narrowly because national  
20                 security is integrated with all sorts of other  
21                 criminal activities, and it would be very hard to  
22                 separate out neatly just something that is  
23                 classified as national security and leave it aside  
24                 for money laundering and the legal break-ins,  
25                 robberies, and so on that they may be resorted to.

1                   So that one way or another, if we  
2 go ahead with a review body, we will be left with  
3 a body that is going to have to somehow within the  
4 RCMP draw a line, a boundary.

5                   I throw that open for discussion.

6                   Perhaps since you raised it,  
7 Professor Leigh, if you wouldn't mind starting and  
8 then we can go around the table?

9                   MR. LEIGH: Yes. I have two  
10 specific thoughts to offer on that.

11                   Obviously, for the reasons that  
12 you have just given, Mr. Commissioner, there will  
13 be a rather messy boundary of that kind.

14                   My two thoughts, one is kind of a  
15 lesson I think from something not to do from the  
16 British experience, and let me explain the  
17 background just a little for it.

18                   In Britain we have in the security  
19 realm what you might call a mixture of  
20 institutionally based review in the sense that  
21 three of our security intelligence agencies are  
22 subject to a statutory scheme involving a  
23 committee of parliamentarians, but alongside that  
24 there is a more functionally based review, quite a  
25 narrow form of review, to do with particular forms

1 of surveillance.

2 The combination is quite a nice  
3 idea, and the judicial commissioners who look at  
4 surveillance don't just look at it in relation to  
5 those agencies; they look at it in relation to the  
6 police and the customs, and so on and so forth.  
7 So that's quite an effective notion.

8 But of course the difficulty is  
9 how the two connect up.

10 What we don't have -- and this is  
11 a lesson to learn from, I think -- is a  
12 satisfactory process for linking the two things  
13 together.

14 For example, the committee of  
15 parliamentarians do not have access to all of the  
16 information that the commissioners have in the  
17 course of their work, and that's a defect in our  
18 scheme. It seems to me very important that if you  
19 were to recommend or to end up with some  
20 combination of these two forms of review agency,  
21 base review, functional review, that you must make  
22 sure that there is some linkage or connection  
23 between them.

24 My second thought perhaps goes  
25 more directly to the problem that you were raising

1 of divided jurisdiction and how to draw the line  
2 within the RCMP's activities to those that are  
3 simply related to national security.

4 My first observation about that is  
5 that perhaps you don't need such a very sharp  
6 line. I mean, a degree of overlap between review  
7 bodies may be acceptable, provided there is some  
8 way of establishing a hierarchy, so that if one  
9 review body has first right of refusal, as it  
10 were, over investigating a particular issue, that  
11 might be a way of dealing with it even if there is  
12 some overlap between review bodies.

13 My second thought -- and of course  
14 I am not at all as familiar with the Canadian  
15 scene as many others will be. But my second  
16 thought is to ask whether there aren't in fact  
17 dividing lines that you have drawn within your  
18 existing arrangements.

19 And as I have read the background  
20 papers, two of those have stood out for me as  
21 possible bright lines that could be used to mark  
22 off the jurisdiction of a review body in this kind  
23 of way.

24 The first one would be the  
25 question of when a ministerial direction applies

1           for centralization and central coordination of  
2           national security activities. I understand there  
3           is a direction of that kind to applies to the  
4           RCMP, and one possible strategy would be to say  
5           that anything falling under that direction  
6           therefore should be subject to this kind of review  
7           body.

8                           The second possibility would be to  
9           say that any police activity that might be  
10          directed towards a detection of prosecution of  
11          offence for which the consent of the federal or  
12          provincial Attorney General would be necessary --  
13          because I understand that under the  
14          counterterrorism legislation that again is a  
15          requirement -- that that might be a place to draw  
16          the line.

17                           THE COMMISSIONER: Right.

18                           MR. LEIGH: Those are just two  
19          thoughts.

20                           THE COMMISSIONER: The other  
21          thought that occurred to me -- and I will call on  
22          others -- is that one could also possibly draw the  
23          line a number of ways to be inclusive of anything  
24          that fell within the two matters that you  
25          mentioned, or look at the operational setup of the

1 RCMP so that they have certain division or  
2 branches that deal with it.

3 MR. LEIGH: Yes. In a sense, you  
4 could follow the way that things are segregated  
5 within the Force itself.

6 THE COMMISSIONER: And even their  
7 data collection system too, if it applies to that.

8 MR. LEIGH: The danger of that, of  
9 course, is that those organizational relationships  
10 may change. And without being conspiratorial  
11 about it, there is a risk that new arrangements  
12 might be devised perhaps with the advantage of  
13 circumventing some review mechanism.

14 THE COMMISSIONER: Do you have  
15 anything to add, Dr. Born?

16 Anybody else on the boundaries?

17 Mrs. O'Loan, do you have any  
18 thoughts?

19 What you said certainly to me  
20 provoked a thought: that your experience is such  
21 that so much of what might be called "regular"  
22 criminal activity is really part and parcel of the  
23 counterterrorism activities, and is it realistic  
24 to think that one can draw a line for purposes of  
25 a review body that won't end up in endless

1 jurisdictional fights -- yes, it is inside/no, it  
2 isn't inside -- and could the review body, by  
3 drawing such a line, be frustrated in that it  
4 would not indeed capture what is intended to be  
5 captured?

6 MRS. O'LOAN: I just have serious,  
7 serious concerns about separating out the police  
8 and the intelligence function.

9 If you look at the gathering of  
10 data, intelligence information, whatever it is,  
11 and you look at how it's packaged, how it's  
12 graded, how the sources are graded, and you look  
13 then at what happens to it, and the analysis which  
14 may or may not occur, and you then consider the  
15 product -- Where does it go? What do they do with  
16 it? -- my experience would be that the failures  
17 which have enabled the terrorists to operate --  
18 and it doesn't matter whether we are talking about  
19 somebody who is trying to interfere with your food  
20 chain, damage your water, or blow up your  
21 electricity stations, because the end result is  
22 going to be significant damage to the community.  
23 You just need an interaction.

24 I think one of the mistakes they  
25 made in Northern Ireland, which they have



1           recognized, was the separation of special branch,  
2           which was the intelligence function -- which was  
3           regarded as a force within a force which didn't  
4           speak to anybody else. So you had a situation in  
5           Northern Ireland where a very senior officer  
6           charged with investigating a serious offence, a  
7           terrorist offence, could ask a constable for  
8           information and the constable could say no to the  
9           senior officer because he was in the intelligence  
10          unit and he had that prerogative. That was not a  
11          helpful process.

12                                That's a very practical  
13          demonstration or analysis.

14                                I suppose all I am saying to you  
15          is be very, very cautious about drawing those  
16          boundaries around national security only.

17                                And I accept all that Marina and  
18          others have said about the motivation that makes  
19          people do things but I still have this feeling  
20          that at the end of the day you are dealing with a  
21          series of activities, and it's your process for  
22          dealing with those activities and the  
23          joined-up-ness of the process fitting with those  
24          activities which is the key to success.

25                                THE COMMISSIONER: Anybody else on

1 the -- yes, Professor Cameron?

2 MR. CAMERON: There is going to be  
3 an overlap, obviously. As Ian pointed out, the  
4 temptation is of course enormous to seek the  
5 investigative methods which give you the most  
6 leeway, which are based on least suspicion, I  
7 imagine can be triggered on least suspicion. I  
8 think about financial transaction reporting for  
9 example, where there is hardly any suspicion  
10 whatsoever.

11 Plus you have greater powers.

12 And a way to deal with this is to  
13 accept that there will be occasions of an overlap  
14 and to give really the investigating teams the  
15 choice to say: Do you want it to go under the  
16 national security type of investigation? Well,  
17 then you will have greater powers. You can  
18 initiate investigations on less suspicion and so  
19 on, but you must expect correspondingly more, much  
20 tougher oversight and the possibility of criticism  
21 afterwards if we consider that you have been using  
22 our national security ground for what really is a  
23 "pure" organized crime investigation.

24 A way of doing it is, as Ian  
25 mentioned, to have the oversight body having sort

1 of first refusal as it were. They will look at it  
2 and decide at the end of the day whether it was a  
3 national security operation or not.

4 THE COMMISSIONER: Anybody else on  
5 the borders? I have another question. Yes?

6 MR. GILL: Just very briefly.

7 THE COMMISSIONER: No, not at all.

8 MR. GILL: I agree with what Ian  
9 Leigh said, and I think actually one can afford to  
10 be fairly relaxed about this because clearly the  
11 agencies themselves when they are choosing to  
12 carry out an investigation, although -- and I  
13 agree strongly with what has been said. I mean,  
14 many of these investigations are not intended to  
15 lead to prosecution; they are intended to lead to  
16 disruption, prevention, and so on.

17 But clearly it is going to be  
18 carried out on some legal basis. If that legal  
19 basis comes within some of your relevant acts, the  
20 Terrorism Act, the Security Offences Act, and so  
21 on, then it seems to me this automatically puts it  
22 within the purview of the review agency. And I  
23 would be fairly relaxed.

24 Also the review agencies, it seems  
25 to me, because their resources are usually less

1           than 1 per cent of the resources of the target  
2           agency, have to set priorities. They can never  
3           possibly do all the things that they would want to  
4           do.

5                                So the chances of a review agency,  
6           I think, wandering around in the sort of general  
7           crime work of the RCMP are pretty remote because  
8           why would they? They will feel they haven't got  
9           adequate resources to do the really important  
10          stuff that is really centrally located within the  
11          mandate.

12                               So I would be quite relaxed about  
13          this.

14                               THE COMMISSIONER: Go ahead.

15                               MRS. O'LOAN: Just one final  
16          observation.

17                               There is an extent to which the  
18          whole discussion is predicated upon the basis that  
19          those who work in the security services are noble,  
20          and I am sure that's true of most of them. But  
21          the reality is that all the research on major  
22          corruption in policing generally indicates that  
23          there is noble cause corruption too. And noble  
24          cause corruption in Northern Ireland was a  
25          significant problem.

1                   And the review agency, such as it  
2                   is, must have a facility which enables it to deal  
3                   with those issues, and an openness and an  
4                   awareness of the possibility of those issues.

5                   I am not moving into this question  
6                   of powers and initiation, but I am thinking that  
7                   that is something that should sort of be located  
8                   in the back of the mind when one is considering  
9                   the functional body that you are going to  
10                  establish.

11                  I don't think it's part of the  
12                  debate and I think it should be.

13                  THE COMMISSIONER: Thank you.

14                  Let me then turn to another  
15                  question that is still within this first question  
16                  and play the devil's advocate.

17                  I hear I think all of you that  
18                  have expressed an opinion saying that the  
19                  functional approach, rather than an institutional  
20                  approach, is to be desired.

21                  Those who would argue the other  
22                  way might make two points.

23                  They would say, first of all, the  
24                  expertise that is required in order to review a  
25                  security intelligence agency like CSIS, the

1 expertise that we would now have vested and find  
2 in SIRC, is different, because what is going to be  
3 necessary to oversee or to review police  
4 activities -- police officers do different things  
5 than intelligence officers. Intelligence officers  
6 collect information to assist government in  
7 forming policy. Police officers actually get  
8 their hands on the deal a little more. They have  
9 arrest powers and more direct powers and they are  
10 there to, admittedly they would say in this area,  
11 disrupt and prevent but also ultimately to perhaps  
12 prosecute, and they certainly collect information  
13 in a different way.

14 Even in the national security area  
15 when they are collecting information, while it's  
16 unlikely many cases would go to prosecution, they  
17 nonetheless collect it in a form that could be  
18 used in prosecution, with an eye to it being  
19 introduced as evidence.

20 So some would say there is a  
21 different expertise required which requires  
22 different bodies. So that would be the first  
23 point to this that I am putting to you and will be  
24 asking you.

25 The second point to that, those

1           that argue for different bodies say: And by the  
2           way, it need not be the disaster the  
3           functionalists think would occur because you can  
4           have statutory gateways between the different  
5           bodies. And they would say look at Belgium,  
6           Committee I, Committee P. They have statutory  
7           gateways, they are called, which require the two  
8           different oversight bodies to communicate, to  
9           conduct joint investigations, I guess even joint  
10          hearings to share information. Statutorily they  
11          are required to do that.

12                        I am told there is some of that in  
13          the United Kingdom, some in Australia. I mean,  
14          there is a number of different models.

15                        But one with imagination could see  
16          two bodies, and to make it simple, one for SIRC,  
17          one for the RCMP national security activities,  
18          recognizing that they often work in an integrated  
19          fashion, the underlying agencies, but require  
20          statutorily communication, sharing investigations  
21          and so on.

22                        To summarize, my question has two  
23          parts. Does it require different expertise that  
24          leads to different bodies? Second, even if it  
25          does or doesn't, can you handle different bodies

1 by statutory gateways?

2 Professor Leigh?

3 MR. LEIGH: If I could briefly  
4 touch on the second one first, then I will come  
5 back to what I have more to say about, which is  
6 the expertise point.

7 I think it's very much a second  
8 best. I can see that if you have different review  
9 bodies -- as I said earlier on, linkages,  
10 gateways, whatever you call them, are very  
11 necessary. But for me the compelling argument for  
12 functional review, if you want to call it that, is  
13 the point that Peter Gill in particular made  
14 earlier on, which is the integrated nature of  
15 intelligence and policing operations in this area;  
16 that it's so much easier to follow the trail as a  
17 review body if you don't have to switch and  
18 coordinate with another institution. And I find  
19 that very convincing as an argument.

20 What I will say more about is the  
21 expertise point, because I think that there is  
22 perhaps something of a generalization behind that  
23 that needs to be unpicked a little bit.

24 We are dealing, aren't we, when we  
25 talk about the police, with a large institution



1           that has a variety of different functions and  
2           modes of operating, and I think one should be wary  
3           of using overall labels and generalizations about  
4           it.

5                           The security function would itself  
6           be segregated, is segregated in the RCMP and other  
7           police forces into particular units, and the  
8           culture and way of working of those units may well  
9           differ to the remainder of the police force.  
10          Therefore, I think this somewhat undermines the  
11          point that the review body, whichever it is, will  
12          become familiar with the overall pattern of  
13          working of the body that it's reviewing. There  
14          may be subcultures, different ways of working  
15          within the police, within CSIS, and so on.

16                          There is a second point as well,  
17          which is this is not a fatal objection to a  
18          functional review body, because I think the  
19          reality is, unless we are talking about a single  
20          person doing the reviewing, any review body itself  
21          is going to specialize and quite possibly track  
22          different agencies and different units. There  
23          will be different investigators who will have  
24          responsibility for CSIS and the RCMP, and so on.  
25          And so within the institution they will develop

1           this type of expertise. This is the important  
2           point.

3                               So I think there are some  
4           misgeneralizations there that need to be unpicked.

5                               THE COMMISSIONER: Anybody else  
6           wish to comment? Yes, go ahead.

7                               MR. GILL: I would reinforce what  
8           Ian Leigh was saying, but I also want to pick out  
9           one point, which is something that Iain Cameron  
10          mentioned earlier.

11                              I think it is possible to  
12          exaggerate the difference between what security  
13          intelligence agencies like CSIS do with respect to  
14          counterterrorism and what a policing agency like  
15          the RCMP does with respect to security offences or  
16          the legislation that they have.

17                              Yes, formally, the police are  
18          looking to prosecutions and the security  
19          intelligence service is looking to advise the  
20          government on threats. But these differences I  
21          think become less significant by the day.

22                              Much of the work of police  
23          counterterrorism is not directed at prosecution.  
24          Clearly it's now directed at prevention and  
25          disruption.

1                   Yes, they may act in such a way  
2                   that the information they develop may at some  
3                   point be used as evidence, and they have different  
4                   procedures than the security intelligence service  
5                   have. Yes, there are those differences. But I  
6                   really don't think we should exaggerate them in  
7                   terms of the impact.

8                   And the other factor is because of  
9                   their increasing cooperation themselves,  
10                  operational cooperation -- and if you look, for  
11                  example, at your integrated national security  
12                  enforcement teams where you have integration  
13                  between police forces at the federal level,  
14                  provincial level, some CSIS involvement, these  
15                  people are working together in multi-agency task  
16                  forces.

17                  The precise point, while these  
18                  multi-agency forces have been established in  
19                  Canada, in the U.K., in Northern Ireland, in the  
20                  States, is to increase the flow of information and  
21                  the networking between these agencies and to  
22                  reduce -- to reduce -- the historic differences in  
23                  their modus operandi. Therefore, I would say one  
24                  really shouldn't overestimate this.

25                  What police and security are doing

1 in terms of counterterrorism is becoming almost  
2 indistinguishable from what they do vis-à-vis  
3 organized crime.

4 With Marina, I want to say I think  
5 we do need to keep these two analytically  
6 separate. But from the practitioners' point of  
7 view, what they actually do in terms of crime  
8 analysis, security analysis and so on, the  
9 differences are very small, very small.

10 THE COMMISSIONER: Anybody else on  
11 that question?

12 Go ahead.

13 MS CAPARINI: It seems to me that  
14 the entire dynamic right now among the security  
15 institutions is increasing coordination and  
16 interagency cooperation, and so why could that not  
17 apply equally to oversight bodies to have  
18 effective oversight?

19 You would need to have input,  
20 regular input, from complaints commissions, from  
21 different parliamentary bodies that are looking at  
22 various aspects of the security issue.

23 So it may be more an issue of  
24 coordination among different bodies than just  
25 optimizing the mechanisms for coordination, rather

1           than making more of a problem of the definitional  
2           issue of the boundary.

3                           THE COMMISSIONER:   Okay, thank  
4           you.

5                           Yes, go ahead.

6                           MRS. O'LOAN:   There is this  
7           question of expertise, because I think you need  
8           different expertise to deal with intelligence  
9           issues from the expertise that you use to deal  
10          some of other issues that policing deals with.

11                          I think that expertise lies around  
12          understanding the terrorist organizations, or the  
13          organizations who are your targets if you are the  
14          security agency, understanding the relationships  
15          that exist between them and understanding their  
16          individual modus operandi, which may be different  
17          depending on which different type of group you are  
18          dealing with.

19                          I think therefore you need an  
20          ability to deal with the organizations, with the  
21          process: you know, how do you get the information  
22          and what do you do with it when you have got it  
23          in, all that sort of thing.   What about warrants,  
24          what kind of warrants, etc?   And you need a very  
25          clear legal capacity.

1                   The other thing I want to say is I  
2                   hear this argument about security services around  
3                   disruption and prevention, and I think you need to  
4                   be very careful around that.

5                   Certainly I think in Ireland and  
6                   in the United Kingdom, and in other jurisdictions,  
7                   the movement is towards let's find ways of dealing  
8                   with people that take them out of circulation  
9                   where they could be operatively dangerous to our  
10                  national security and, if they are engaged in  
11                  crime and other activities, deal with them for  
12                  those things and take them out and weaken the  
13                  links and the chains that enable those things to  
14                  function.

15                  So although I am accepting what  
16                  everybody is saying about prevention and  
17                  disruption -- that is a clear, clear aim and a  
18                  legitimate aim -- be very sure that your  
19                  effectiveness as an intelligence organization  
20                  doesn't just rest on that; that you must have an  
21                  understanding that you must deal with people in as  
22                  many ways as they allow you to do.

23                  So if they are putting themselves  
24                  into positions where they are vulnerable on that  
25                  front, you exploit that vulnerability.

1 THE COMMISSIONER: Okay.

2 Another question I have is dealing  
3 with the functional approach. We have done, as  
4 you have probably seen, some research at the  
5 Commission with respect to the systems in other  
6 countries to see what we can glean from that. We  
7 have tried to be thorough, but we obviously  
8 haven't looked at every regime in the world.

9 Also in reading the literature, I  
10 must say I am not surprised that the comments here  
11 would tend towards saying a functional approach.  
12 That seems to be in the literature. While it's  
13 not a unanimous view, by any means, it seems to be  
14 the more prevalent one.

15 I am wondering if any of you have  
16 observations on examples where a functional  
17 approach is actually in operation, and comments as  
18 to what lessons might be learned, how it's  
19 working, and sort of suggestions and respectful  
20 criticisms, if there are, or suggestions that  
21 might emerge from that?

22 We know that in Norway there is  
23 such a system. But I am just wondering if, with  
24 your collective experience, you have anything to  
25 which you might point or observations you can make

1 on existing functional systems that cross agency  
2 lines?

3 Yes, go ahead, Professor Gill.

4 MR. GILL: I suppose the obvious  
5 case that refers to me is the U.K. intelligence  
6 and security committee. Okay, it's a committee of  
7 parliamentarians, as with your proposal. But it  
8 is functional in the sense that it looks at the  
9 three main agencies: the security service MI5, the  
10 SI MI6 and GCHQ, the equivalent of your CSE.

11 But what is kind of interesting  
12 about what they did -- and I would applaud them  
13 for doing it during the last ten years -- sorry,  
14 they were set up in 1994.

15 Actually they have themselves  
16 chosen to spread their mandate yet more widely.  
17 So that although it doesn't mention it  
18 specifically in the statute, they also now look at  
19 the defence intelligence staff, which is the kind  
20 of intelligence analysis branch of the Ministry of  
21 Defence. They have also looked at the work of  
22 NCIS, which is the National Criminal Intelligence  
23 Service, which broadly might be compared with the  
24 Criminal Intelligence Directorate of the RCMP and  
25 CISC, the Criminal Intelligence Service Canada.



1           It's obviously not a direct equivalent, but more  
2           of less equivalent.

3                         This of course has now been formed  
4           into SOCA, the Serious Organized Crimes Agency, so  
5           it has changed.

6                         But what is interesting is that  
7           they have attempted to have an overall view of  
8           that. So to that extent, I think they have been  
9           quite successful in not being subjected to the  
10          stove-piping that Marina has said. So we do get  
11          that broad oversight.

12                        That's the strength of the system.

13                        If I could take the opportunity  
14          though, while that is encouraging for functional  
15          review, I think there is one aspect of the U.K.  
16          system which I would share. I think Ian's  
17          criticisms, I might state them I think perhaps  
18          more bluntly.

19                        We have a system that was  
20          constructed piecemeal at various points, often  
21          attempting to -- sorry, either reacting to adverse  
22          decisions of the European Court of Human Rights,  
23          that we had inadequate procedures, or, envisaging  
24          that we were about to lose another case before the  
25          European court, legislating in order to preempt

1           it.  And this is how our system has developed.

2                           And the structure of the  
3           commissions and complaints tribunals that we have,  
4           to my mind, are something to be avoided.

5                           I mean, while they have great  
6           access to information, they don't seem to do very  
7           much with it.  Their reports are frankly  
8           minimalist, if not laughable.  They actually do  
9           reports and the errors they find is that two  
10          numbers were mistranscribed in a warrant  
11          application, and somebody had their phone tapped  
12          when we shouldn't have done for 24 hours, but then  
13          it was discovered and everything's sorted out and  
14          no harm was done.  Whew.  This is the limit.

15                          Their reports are catalogues of  
16          clerical errors, and that's it.

17                          The tribunal we know nothing  
18          about, which hears complaints.

19                          And the problem is they do not  
20          cooperate systematically with the committee of  
21          parliamentarians and therefore this is the  
22          compartmentalization of review that you must try  
23          and avoid.

24                          You have a good example here of  
25          the statutory gateways that you mention in the

1 CSIS Act. I thought at the time that the idea of  
2 the IG, the Inspector General's certificates being  
3 sent to SIRC was a very neat device for either  
4 getting a bigger bang for your review buck, as it  
5 were, by reinforcing the kind of knowledge basis  
6 for SIRC. That idea can work.

7 But as with Ian, I would agree  
8 that it's kind of second best.

9 MR. LEIGH: First of all, just a  
10 very blunt comment on the U.K. scheme. There is a  
11 general lesson behind this, which is to look at  
12 how things work in practice rather than just what  
13 the law says. One of the things you need to know  
14 about the U.K. legislation, when considering it,  
15 is that in all of the years that the tribunals  
16 have been in operation they haven't found in one  
17 single instance in favour of the complainant.

18 That may be because there is  
19 nothing wrong and that all of the people who have  
20 complained so far have been deluded and imagine  
21 that they are under surveillance when they are  
22 not, or it may tell you something about a defect  
23 in the legislation and the test that is to be  
24 applied under it.

25 I wanted to come back to Norway,

1           which you had raised as a particular example.

2                               There, the committee set up by  
3           parliament, although they are not  
4           parliamentarians, has a function of largely  
5           inspecting. It carries out a number of,  
6           commonly over 20 or so, inspections in each year  
7           of security and security policing establishments  
8           around the country, and it focuses very much on  
9           the legality of what is being done and also on  
10          human rights protection.

11                              So I think one needs to bear that  
12          in mind in evaluating and comparing how an  
13          institution like this works. The mandate, if one  
14          puts it like that, the remit of that body,  
15          although it crosses institutional boundaries, is  
16          functional, is quite a narrow one. It's not all  
17          singing and dancing kind of review body. So it's  
18          not looking at questions about efficiency so much.  
19          It's really focusing on legality.

20                              THE COMMISSIONER: Right.

21                              Mr. Born.

22                              MR. BORN: Exactly. I think this  
23          oversight committee as it exists in Norway, it is  
24          across the services. But then they have really  
25          asked themselves: What is really important? What

1 do we want to oversee? And they have decided only  
2 to focus on human rights protection and the rule  
3 of law.

4                   Whereas other issues like  
5 efficiency, policy, they didn't take that up.  
6 They leave that to others.

7                   I think that is also a good thing  
8 in terms of building up expertise and not to  
9 overload yourself.

10                   The other issue which I would also  
11 like to address is if you have one or two  
12 oversight bodies for one agency, there is also the  
13 danger that maybe that oversight body gets too  
14 familiar with the agency and that it, as it were,  
15 gets captured by the agency it is supposed to  
16 overview. You might end up with a situation that  
17 a chair of an oversight body behaves as sort of  
18 director general of the service because it is also  
19 trying to protect the interests of that service.

20                   So maybe a functional approach has  
21 less danger.

22                   THE COMMISSIONER: Less danger of  
23 co-option?

24                   MR. BORN: Yes.

25                   Yes, Professor Cameron.

1                   MR. CAMERON: Just very briefly,  
2           if we are competing in being blunt about the  
3           British system. You don't want to go there.  
4           --- Laughter / Rires

5                   MR. CAMERON: You really don't  
6           want to go there.

7                   It serves almost, I would say, an  
8           ideological function. It's the law as a  
9           smokescreen which is really discredibile.

10                  I hope this is all on film in  
11           Britain.

12           --- Laughter / Rires

13                  MR. CAMERON: No, I don't have to  
14           go back there.

15                  Just a word about the Norwegian  
16           system.

17                  In its context, of course, there  
18           is a single national police force in Norway which  
19           makes it a little bit easier; plus judicial  
20           authorization, of course, for investigations. It  
21           is a narrow mandate that they wanted to  
22           concentrate on that.

23                  Just to add a point to what Hans  
24           had said, the Norwegian mandate of course was  
25           formally based on the errors of the past, because

1 the previous Norwegian committee did get drawn  
2 into authorizing. It did get drawn into sort of  
3 being part of the operations, and that's why it's  
4 been very important to give it this narrow  
5 mandate.

6 THE COMMISSIONER: Thank you for  
7 that.

8 Just one last question. We have  
9 five minutes left for this segment.

10 I don't know if any of you can  
11 comment on this. But in looking at the situation  
12 in the United States, they very much have an  
13 institutional approach to review of the agencies.  
14 They have Inspectors General. Our staff has met  
15 with the people who work for the Inspectors  
16 General, and that's very much part of their  
17 culture and I think they see it as being  
18 effective.

19 Unfortunately, Professor Fred Hitz  
20 who was here yesterday, and who was at dinner last  
21 night, had to leave and was unable to be on the  
22 panel today. He did speak to me about it, and I  
23 think I could pass on his comment.

24 He would agree with you who  
25 support a functional approach. He tended to be of

1           that view.

2                           I am just wondering, are any of  
3 you familiar enough with the situation in the  
4 United States to comment with respect to that  
5 approach?

6                           I must say, on reading the  
7 material that came back from our interviews down  
8 there, I was struck by sort of the reasoning that  
9 went behind it and the strength of the views of  
10 those who are operating within that system.

11                          MR. GILL: I think the IG you have  
12 under the CSIS Act -- again it is something I  
13 haven't looked at now for probably ten years, but  
14 certainly looking at the first five or ten years,  
15 as I did, it certainly seemed to me to be also  
16 working quite well. I think there may have been  
17 some problems since.

18                          In general, I think again as a  
19 principle, there needs to be some degree of  
20 oversight to inform ministers within the executive  
21 branch, and therefore the idea of having  
22 Inspectors General operating within the relevant  
23 ministry, your new Public Safety Emergency  
24 Preparedness thing, seems to me very sensible in  
25 relation to national security functions broader



1 than just CSIS. That seems to me very sensible.

2 The issue is what do you do with  
3 the material?

4 Partly their role, as it was put  
5 here 20 years ago, was to be the eyes and ears of  
6 the Minister, because Ministers, no more than  
7 parliaments, want to have scandals dumped in their  
8 laps by security agencies, and they like to have  
9 this official at least keeping an eye. And I  
10 think that's a sensible strategy.

11 I think it reinforces the overall  
12 review if that material is also made available to  
13 this then independent review agency, whether it's  
14 in or outside parliament. That seems to me is the  
15 trick that you brought off 20 years ago, and I  
16 think that's worth keeping.

17 THE COMMISSIONER: All right.

18 MR. LEIGH: I am by no means an  
19 expert on this but I have had the opportunity to  
20 meet and talk with a number of the U.S. Inspector  
21 Generals recently.

22 the first thing -- and I am sure  
23 you are very well aware of this, but maybe  
24 everyone in the audience won't be -- is to realize  
25 just how complex this is. I mean, there are 13

1           Inspectors General, and there is a variety of  
2           different bases on which they operate. Some are  
3           legally established, some are not.

4                         Some, as Professor Gill has just  
5           been saying, primarily report to the executive  
6           branch. Some also report, but not all of them, to  
7           congressional committees, and that's a legal  
8           requirement.

9                         They found it necessary -- and  
10          this perhaps is a defect in this kind of  
11          agency-based review. They found it necessary to  
12          have a forum to meet as Inspectors General rather  
13          than just individually.

14                        Again, without being familiar with  
15          all the detail, I would have thought that if the  
16          overall trend of recent reforms in the U.S. is  
17          toward greater coordination and centralization,  
18          then the review mechanisms will have to track that  
19          as well.

20                        THE COMMISSIONER: Last comment  
21          then?

22                        Yes, Dr. Born.

23                        MR. BORN: Thank you. It seems to  
24          me that the Inspectors General also have another  
25          rule. They are there to ensure executive

1           accountability, whereas the review boards which we  
2           are talking about are more there to assure public  
3           accountability. I think there are different roles  
4           at play.

5                           THE COMMISSIONER: And the point  
6           you are making is that for executive  
7           accountability it may make more sense to have an  
8           agency-based --

9                           MR. BORN: I think also the scale  
10          in the U.S. is massive, and I think many countries  
11          have different types of solutions for that. Some  
12          highest level executives, they have a small  
13          bureau; they don't call it Inspector General. And  
14          also quite a few countries don't know this  
15          phenomenon at all.

16                           But I think for our discussion it  
17          is important to see Inspectors General are there  
18          to ensure executive accountability.

19                           THE COMMISSIONER: All right.

20                           We are going to then wind up this  
21          segment of the program. I am finding it  
22          extraordinarily interesting and helpful, I can say  
23          that for sure. It's a very good discussion.

24                           We will take a break for 15  
25          minutes. There is coffee down the hall for

1 everybody who is here and we will resume in 15.

2 --- Upon recessing at 10:32 a.m./

3 Suspension à 10 h 32

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

5 Reprise à 10 h 50

6 THE COMMISSIONER: We might  
7 resume.

8 We will turn then to the second  
9 question, and let me just read it: How should the  
10 review body be able to initiate a review?  
11 Complaints? Own-motion investigations?  
12 Inspections? Referral from executive,  
13 legislature, or other relevant bodies?

14 Obviously what this question is  
15 directed at is how are reviews initiated, how are  
16 they commenced?

17 The brief background. As I said  
18 earlier, in Canada review of police forces has  
19 been typically complaint-focused; that we have not  
20 in Canada tended to have other types of -- I guess  
21 that's not entirely true. They have tended to  
22 be -- let me just leave it at that --  
23 complaint-focused.

24 The question is: Is that  
25 appropriate for the security intelligence

1 activities of the RCMP?

2 I guess one of the other  
3 subsidiary questions that comes into it: Does it  
4 make sense that if there is to be a review  
5 function that the same agency that carries out the  
6 review function also carries out the complaints  
7 function? Are they compatible? Indeed, does it  
8 make sense and is there a certain logic to having  
9 them together or is there a logic to having them  
10 separate? Do they raise different considerations,  
11 require different expertise, and are there  
12 problems with putting the two of them in?

13 I guess the other subsidiary  
14 question -- and then I will turn it over to the  
15 speakers shortly -- is: Is there an advantage for  
16 the RCMP if there is currently a complaints body?  
17 Is there an advantage to whatever happens in the  
18 review of the security-related activities area to  
19 having one body rather than more than one body?

20 Now, that links us back to the  
21 first question: If there is going to be a  
22 functional based review body, we are probably  
23 looking at two.

24 Part of that thought is if one  
25 were to go to a functional-based review body for

1 the national security activities, what happens to  
2 the complaints portion with respect to national  
3 security activities? Does it stay put?

4 Complaints over all activities,  
5 including national security, are now within what  
6 we call the CPC, or does complaints migrate over  
7 to the new functional body?

8 That is a lot of questions. In  
9 any event, that's what we are looking at.

10 Also, as the question itself  
11 poses: What should be the triggering things for  
12 commencing a review?

13 We will start with Dr. Born.

14 MR. BORN: Commissioner, thank you  
15 very much for your kind invitation for me to  
16 attend here. I think it is a great experience to  
17 be here, and I really have to commend you and your  
18 staff for how you have set this up. I think it's  
19 very good to have this transparent way of  
20 commenting to and advising the government and to  
21 parliament.

22 I read the background papers,  
23 which I think are all of a very high quality, and  
24 I really have to applaud you for the work so far.  
25 I think it's very important indeed.

1                   Yesterday we heard that 71 per  
2                   cent of Canadians find it very important that an  
3                   effective review mechanism exists, and that shows  
4                   that there is not only interest for an effective  
5                   police force but also a police force which is  
6                   legitimate and that Canadians think, as we saw  
7                   yesterday, that a review mechanism plays an  
8                   important role in this.

9                   Coming to the question now, which  
10                  is, as you said: How should a review body be able  
11                  to initiate a review? Complaints, own-motion  
12                  investigations, inspections, referral from  
13                  executive, legislature, or other review bodies?

14                  Let me first say that the review  
15                  body is an oversight body, and you have to think  
16                  about what should be the strategy which the body  
17                  follows in carrying out a review.

18                  What I also want to add before I  
19                  go to this -- I am a bit reluctant to say you  
20                  should do this or you should do that. I find very  
21                  much more value to give some options or some  
22                  doubts than a cookbook recipe.

23                  THE COMMISSIONER: I understand.

24                  MR. BORN: I also think, as I also  
25                  said yesterday, there is no best model for

1       democracy, and I think it is the essence of  
2       democracy that each one chooses its own path.  
3       Otherwise, it wouldn't be a democracy, after all.

4                 Having said these preliminary  
5       remarks, we have to think about what should be the  
6       strategy of this review body. Every agency and  
7       organization has a philosophy, a strategy, and I  
8       think also in those terms we should think about a  
9       review body.

10                A while ago, in the beginning of  
11       the 1880s -- the names escape me -- in the U.S.  
12       some people came up with the distinction between  
13       police controls and fire alarms, when they talk  
14       about two distinctive oversight strategies for  
15       review bodies. Police controls are that you carry  
16       out regular controls, inspections -- actually, as  
17       you also mentioned -- and the other one is the  
18       fire alarm, that you only come into action when  
19       something happens.

20                I think here is what comes into  
21       play, is I think you have to make a decision  
22       whether you want the review board to be proactive  
23       or more reactive. I think complaint-driven is  
24       typically an example of a more reactive policy.

25                To be proactive, of course, has



1 many advantages. The intelligence security  
2 agencies themselves always say, "We shouldn't wait  
3 until a crime happens; we should prevent it."  
4 That also could be a strategy for the oversight  
5 body. These regular inspections to look at  
6 whether everything is in compliance with the law,  
7 is done in an efficient manner, is I think a  
8 proactive way to exercise these regular controls.

9           Being proactive also has its  
10 limits. The more proactive you become as a review  
11 body, maybe you see the more you become like a  
12 co-governing body; that you become also a little  
13 bit co-responsible for what is happening in the  
14 agency. If it is in your mandate to also do a  
15 proactive review, then when things happen, you can  
16 also blame the review agency; that they didn't see  
17 it coming.

18           I think that is important. A nice  
19 example is the U.S. congressional committees.  
20 They have the prior notification requests. So  
21 that agencies, when they go into special  
22 operations, have to notify the congressional  
23 committees before the operation takes place or at  
24 least two days afterwards.

25           I don't want to say that this

1           should be something you should consider, but I  
2           think if you have such a mechanism in place, which  
3           is a proactive mechanism, then you see also easily  
4           coming up that the oversight body is also becoming  
5           co-responsible for the deeds of the agencies.

6                           I think that is a consideration I  
7           would like to offer.

8                           From my point of view, only to act  
9           on the basis of complaints would be too short. I  
10          think oversight should have a certain extent of  
11          proactivity. It should also try to avoid problems  
12          happening in the agencies.

13                          You talk about all these different  
14          types of reviews, the basic complaints, motions  
15          investigated, et cetera. I think it has also to  
16          be seen in the landscape of oversight. I spoke  
17          earlier of maybe four layers of control of  
18          accountability.

19                          One is within the agency. The  
20          second one is executive control, then  
21          parliamentary control and public control. I think  
22          that there already existing, may be existing  
23          layers of accountability and it has to be seen how  
24          all these types of reviews fit within the  
25          landscape.

1                   I don't know exactly that is for  
2                   the situation in Canada, but I think it has to be  
3                   seen in that landscape so that no redundant review  
4                   mechanisms exist, but more are complementary and  
5                   not duplications.

6                   What I also want to say here is we  
7                   talk about oversight and control and review. I  
8                   think the best way to prevent problems is also  
9                   what Ian Leigh called yesterday embedded human  
10                  rights within the agency. You try to promote that  
11                  the agency is committed to democracy and the rule  
12                  of law, and that means that in a way how people  
13                  are trained, are hired, are promoted or demoted,  
14                  this should play a role, this commitment to  
15                  democracy and the rule of law.

16                  I think if you can see it in this  
17                  way it decreases the need for oversight; when it  
18                  already is dealt with on the work floor in the  
19                  first place.

20                  Coming back to these different  
21                  types of reviews, I think in each of them -- so I  
22                  think they should be complaint-driven but also  
23                  next to it there should be all-motion  
24                  investigations. I think this is important.

25                  I think the issue of inspections

1 is also, for me, attractive, that regular controls  
2 take place -- announced, unannounced. I think it  
3 is an interesting point to do.

4 Then from an executive and  
5 legislature -- I think it is important one way or  
6 another that these two political bodies, the  
7 executive and the Parliament, are one way or  
8 another involved in it, and that they can also ask  
9 the review body to carry out an investigation.

10 More from one other point of view,  
11 it should be avoided that the review body becomes  
12 such an institution that politicians can hide  
13 themselves behind it; that they say, "Well, this  
14 is not our task, this is their task, this is not  
15 something for us."

16 So if you talk about the reform  
17 from the executive or legislature, I think you  
18 should -- not ending in this issue, but you should  
19 find ways of how to link it very strongly with the  
20 political authorities.

21 I said already very merrily, in a  
22 happy fashion, that all these types of reviews are  
23 a good thing to do, but of course there are  
24 downsides to it too. I think what would be the  
25 workload; the more inspections you have to do, the

1 more staff you need.

2 For example, I know personally the  
3 people in the oversight committee in Norway, of  
4 this parliamentary oversight committee, who do  
5 indeed these 22 inspections per year, and that  
6 takes nearly all their time. They are so busy  
7 with that. It's incredible.

8 So that has to be taken into  
9 account.

10 Then during the conference the  
11 last two days I also had discussions also with  
12 people working in the agencies and sometimes they  
13 ask themselves whether there is not too much  
14 oversight. So I think that is also something  
15 which has to be looked upon. But I think that  
16 could be avoided when you embed it in these layers  
17 of accountability and if you avoid the  
18 duplications of review will exist.

19 Then I also want to point at --  
20 it's like in the change of views I think it's  
21 important to address the issue of what is the  
22 review board supposed to overview? Is it  
23 legality, efficiency, policy, operations; so what  
24 these inspections and the investigations of  
25 complaints should be about.

1 I think this also should be  
2 considered.

3 Then with the issue of complaints  
4 you have raised, rightly so, in your report the  
5 issue of co-accessibility. And every one of us,  
6 as a private citizen, each of us does that of  
7 course on a regular basis.

8 Government agencies know sometimes  
9 how difficult it is to follow the rationale of  
10 government agencies. But I want to say is it is  
11 like not for everyone very easy to issue  
12 complaints. You need to know where to go, you  
13 need to understand the language.

14 And what I have heard from some  
15 agencies, review bodies who also carry out  
16 investigations on the basis of investigations,  
17 they help the complainant to issue a complaint.  
18 So they help them how to write a letter, actually;  
19 that they sit together with them how to take it  
20 up.

21 That is this issue of  
22 accessibility. How that is taken care of is  
23 another issue, but I think that is very important.

24 I think I will leave it here. I  
25 hope I didn't disappoint you not to have the cook

1 book recipe, but some considerations.

2 THE COMMISSIONER: No, not at all.

3 MR. BORN: And I thank you very  
4 much for the opportunity.

5 THE COMMISSIONER: Those are  
6 excellent points. Thank you.

7 I might indicate for people who  
8 are here and listening, the proceedings are being  
9 transcribed, so we do have a transcript for  
10 ourselves of everything that is being said, which  
11 will obviously be very useful.

12 Professor Cameron next?

13 MR. CAMERON: First of all, I  
14 would also like to join my colleagues in  
15 expressing my appreciation for us all being  
16 invited, but to also applaud the Commission in its  
17 way of working, and I would also like to repeat  
18 what Pete Gill said: that I really think Canada  
19 has given a great deal to the world in this  
20 respect. It has been an excellent model in many  
21 ways, and it is a pleasure to in some small way be  
22 able to help.

23 I really only have two points to  
24 make on this issue.

25 To begin with, I agree with Hans,

1 of course, that the organization, the agency has  
2 to be proactive. I would also like to point out  
3 that the accessibility point is yet another  
4 argument for having one functional agency; that  
5 the accessibility to the public argues also that  
6 you should have one oversight body which is  
7 accessible, instead of the public having to go to  
8 several different institutional bodies.

9 The agency. You have to think,  
10 really, what is the agency there for?

11 Obviously complaints are not  
12 enough. We spoke about this under point 1. There  
13 is no notification that the people who are  
14 affected by national security operations may be  
15 very many. You obviously cannot limit the  
16 agency's function to complaints. There is no  
17 question about that. There is obviously going to  
18 be people who should be able to complain who don't  
19 know enough about the situation and never do  
20 complain, and then of course you have the opposite  
21 situation.

22 You have people -- we heard the  
23 senior counsel for SIRC yesterday explaining about  
24 somebody who complained because he didn't have a  
25 girlfriend to SIRC, and presumably thinking that



1 the only explanation for him not having a  
2 girlfriend was some sinister security conspiracy.

3 So you are going to get these  
4 types of complaints, of course, as well.

5 If I can take a Swedish model  
6 here, the function of the Swedish Ombudsman, which  
7 is a general supervisory body and covers the  
8 entire area of administration, including the  
9 police, the function of this body is  
10 forward-looking. It's to improve an already  
11 relatively well-functioning system of  
12 administration. The function is not to do sort of  
13 justice in that particular case.

14 In the working papers -- and I  
15 would also join my colleagues here in expressing  
16 my appreciation for the working papers published  
17 by the Commission, which are of a very high  
18 standard. You would get the impression that we  
19 are getting paid to say this, but in fact it's  
20 spontaneous.

21 --- Laughter / Rires

22 MR. CAMERON: The working papers  
23 draw a very interesting distinction between  
24 accountability for reassurance, accountability for  
25 control, and accountability for learning. In many

1       ways we are speaking about all three, of course,  
2       in the organization. The oversight body must have  
3       all three.

4                   In relation to complaints, what  
5       the organization is doing is partly control,  
6       partly reassurance, but above all, I would say,  
7       that it's learning from these complaints.

8                   The complaint function. I see no  
9       incompatibility with having the complaint function  
10      within the organization, within the oversight, the  
11      review body, and the Swedish Ombudsman is a good  
12      example of that. The Ombudsman, the five  
13      Ombudsmen are forward-looking, are interested in  
14      improving the system of administration as a whole,  
15      at the same time as they can receive complaints.

16                   Now, the great value of complaints  
17      is that they individualize, they give a human face  
18      to the problem. It reminds the control agency of  
19      the great importance that the human values at  
20      stake in the security area. It gives them a human  
21      face.

22                   And it also of course informs the  
23      agency very much of the effect of security as a  
24      whole. This is the experience of SIRC, as I  
25      understand it. I think it's very important. As I

1           said, I think that the two functions actually  
2           complement each other.

3                         Second, and again very briefly,  
4           the referral -- obviously the agency I think  
5           should be able to receive tasking from the  
6           government. I take Hans' point, that you have to  
7           be very careful of course not to undermine  
8           ministerial accountability and ministerial  
9           responsibility in that respect. But again, I  
10          think that SIRC seems to have found a balance  
11          here.

12                        And again, if I take a Swedish  
13          example, the Swedish Register Board, which deals  
14          with oversight of the security databanks and which  
15          does actually quite a good job, that can be tasked  
16          by the government to look at this particular  
17          issue.

18                        Where I think the problem comes in  
19          is this question of whether it could be tasked by  
20          the Parliament as well.

21                        Obviously we know the Canadian  
22          government is considering very seriously this  
23          issue of a parliamentary body, and this has been  
24          one of the things that has been missing in the  
25          otherwise good Canadian security oversight

1           architecture, I think. So I think that there has  
2           to be some form of parliamentary body.

3                           But you have to be very, very  
4           careful to avoid the agency being used in some  
5           sort of party political function; that it could be  
6           used as a cat's paw, as a tool, in such a  
7           situation to make a party political point. And  
8           that is the thing that makes you a bit dubious  
9           about providing for a referral function for the  
10          Parliament.

11                           At the same time, you cannot  
12          simply guarantee that the government will do what  
13          the parliamentary majority wishes, and if the  
14          parliamentary majority wants the review body to  
15          look at a particular issue, that it would then  
16          issue an instruction to the review body to do so.

17                           So I have no definite conclusion  
18          here. Again, like Hans, I have no cooking recipe  
19          here. It's just that I think that these factors  
20          are to be borne in mind.

21                           THE COMMISSIONER: Thank you.

22                           Professor Leigh?

23                           MR. LEIGH: First of all, can I  
24          formally thank you for your invitation to attend  
25          this event. I think it says a great deal about

1 Canadian democracy, not just that the inquiry is  
2 taking place in this way, but also that you have  
3 chosen this way of working. I am very grateful to  
4 have been invited to come along and to contribute  
5 to the process.

6 On this distinction between  
7 complaints-driven mechanisms for review and  
8 others, I would like to address my remarks, I  
9 think, initially to why I see a complaints-driven  
10 model, although important, as being inadequate,  
11 insufficient in itself. And perhaps I can broaden  
12 out from that.

13 I think the starting point there  
14 has to be to ask oneself the question: Well, what  
15 kind of issue is it that we are seeking to review?

16 Of course, I think there will be  
17 more than one answer, depending upon the context.

18 Is the issue primarily one about  
19 harm to a given individual, such as, for example,  
20 the alleged facts that gave rise to the  
21 establishment of this inquiry? Or is it primarily  
22 about issues of policy, accountability,  
23 responsibility?

24 Those of course, although it's a  
25 useful distinction, there is overlap. And as Iain

1 Cameron has quite rightly just said, in all life,  
2 not just in government but in business as well,  
3 institutions draw lessons for their policies and  
4 practices from complaints, things that go wrong in  
5 specific cases. So the two are obviously  
6 connected.

7 But sometimes there will be harm  
8 to the individual operating mode, if you like,  
9 which is very much complaints-driven, I would  
10 suggest, sometimes. The review mode will be more  
11 policy-oriented, so one needs to have both of  
12 these considerations in mind.

13 As you said I think in your  
14 opening remarks, Commissioner, to this question,  
15 in the field of policing and law enforcement, and  
16 normally -- and this would be true not just in  
17 Canada but in other countries too -- the pattern  
18 has been to focus on the complaints-driven model,  
19 and there are two very good reasons for that.

20 Obviously law enforcement agencies  
21 have the capacity, when things go wrong, to do  
22 serious, specific harm to individuals, and we need  
23 a redress mechanism for dealing with that.

24 The second one is a kind of  
25 negative reason, if you like: that we want to

1       preserve the political independence of police  
2       forces. So the review mechanisms tend to be  
3       focused on complaints in order to ensure that kind  
4       of independence.

5                       However, we come back here to the  
6       problem of the boundary; that we are dealing in  
7       the particular area of policing that this inquiry  
8       is interested in, with national security issues.  
9       And it's precisely there, I would argue, that a  
10      solely complaints-focused model is likely to be  
11      less satisfactory.

12                      The reasons for that are fairly  
13      obvious.

14                      A complaints-driven model depends  
15      upon individuals coming to the review body with  
16      their complaint. And by definition here we are in  
17      a field of activity where most people, hopefully,  
18      will not be aware that anything is happening in  
19      relation to them to complain about, unless  
20      something has gone wrong, or unless it reaches the  
21      state of some formal action they become aware of.

22                      So to put all of one's sort of  
23      review X, if I put it this way, into this single  
24      complaints basket will not make sense in the  
25      national security realm because people will not be

1       aware of what has happened to them in many cases  
2       so therefore this won't be an effective means of  
3       bringing review issues to the fore.

4               Equally, of course, there is a  
5       second problem which is worth mentioning, I think:  
6       that any review mechanism shouldn't be a means by  
7       which individuals can find out, for example,  
8       whether they have been subject to surveillance.  
9       That would clearly be counterproductive, to have a  
10      mechanism that was effectively a route to do that.  
11      So there has to be a balance somehow in the way  
12      that these review mechanisms work.

13              Because of that first reason  
14      particularly, the lack of knowledge, it would be  
15      unwise, I think, to rely solely on the  
16      complaints-driven model, and clearly it has to be  
17      supplemented by some perhaps own-initiative form  
18      of review.

19              I see those two things as  
20      complementary because a review body -- and I think  
21      this has been said already -- can learn more  
22      general lessons from individual complaints but  
23      then can follow them up in a way that goes beyond  
24      the boundaries of the factual issues raised  
25      perhaps by the individual complainant.



1                   Very often -- it's quite likely,  
2                   in any event -- that one person who thinks that  
3                   something has been done to them by the RCMP, let's  
4                   say, that may actually just be the tip of the  
5                   iceberg. It may reveal a systemic problem. It  
6                   may be it has happened because of an institutional  
7                   policy which should be investigated in its own  
8                   right more than just because of the effect on the  
9                   individual.

10                   So I see own-initiative reviews,  
11                   policy reviews, as being complementary to  
12                   complaints reviews. The two can learn from each  
13                   other.

14                   I am not absolutely up to date on  
15                   this, but I did do some interviewing, some work in  
16                   Canada, on precisely this point about a decade ago  
17                   in relation to the Security Intelligence Review  
18                   Committee. One of the conclusions of my research  
19                   was precisely this: that the two ways of working  
20                   that SIRC had were complementary. The review and  
21                   the complaints mechanisms both fed off each other.

22                   That's a model that you have not  
23                   only under the CSIS Act of 1984, as I understand  
24                   it, it's a model that you already also have in  
25                   relation to the Commissioner for the

1           Communications Security Establishment under the  
2           National Defence Act. Both are functions  
3           together, and I think in fact that's the correct  
4           way of doing things.

5                           One final comment, if I may, on  
6           the third question, the accessibility point that  
7           you raise. I think I strongly agree here with --  
8           I think it was Iain Cameron who said this. We  
9           have to remember that complainants are, by and  
10          large, what you might say, one-shotters. They  
11          only have the one complaint. They have to find  
12          their way around the system. Government agencies,  
13          of course, are on the receiving end of complaints  
14          repeatedly.

15                           But for somebody trying to get  
16          redress for something that has gone wrong to them,  
17          there are substantial hurdles to overcome, and we  
18          don't want to add to those by having a sort of  
19          definitional puzzle they have to work through at  
20          the start about which of these various bodies does  
21          my complaint go with. There should be a single  
22          gateway for complainants, so far as we can, to  
23          make it accessible. Otherwise, we will find that  
24          many complainants will be deterred right at the  
25          very start because they find they have written to

1 the wrong body, and then they don't pursue it once  
2 they get an initial rejection.

3 THE COMMISSIONER: Very good.  
4 Thank you, Professor Leigh.

5 Mrs. O'Loan, can I ask to comment  
6 on the question. But in particular, if you could  
7 build two things into your observations, if you  
8 see fit.

9 One is the comment about police  
10 independence. Is there a concern -- certainly you  
11 deal with complaints, but if you have other  
12 broader types of reviews that are initiated  
13 internally by yourself, do you run into a concern  
14 with the concept of police independence -- police  
15 independence being something that we inherited  
16 from England.

17 Second, in running an agency such  
18 as yours, is there a danger that the complaints  
19 process will become all-pervasive and will consume  
20 your resources and energies because they are  
21 things that have to be dealt with, and that  
22 therefore what some might argue the more important  
23 systemic reviews end up inevitably taking a back  
24 seat? Is there a danger to that?

25 MRS. O'LOAN: There is quite a

1 large area of comment here.

2 That first question of whether if  
3 you handle complaints your resources will become  
4 diverted into firefighting rather than looking at  
5 major policy issues, I think that any organization  
6 which is going to review needs to do its business  
7 planning very carefully and, having planned the  
8 allocation of resources, has to ensure that in the  
9 work that it does it actually ensures that the  
10 resources go into those functions.

11 For example, when we are doing it,  
12 we work out how much is going into, you know, the  
13 kind of work that you are talking about now, how  
14 much is going into our ordinary complaints  
15 handling, how much is going into policy research  
16 and that sort of thing.

17 So the business planning process  
18 is very, very important.

19 The second thing that I think is  
20 fundamental to that are the processes that attach  
21 to how the review organization is allowed to  
22 handle complaints, because the common law  
23 jurisdictions' complaints-handling processes, such  
24 as police complaints-handling processes, tend to  
25 be based on parliamentary law, and they tend to be

1           very, very bureaucratic.

2                           Our process is too bureaucratic in  
3           the complaints-handling, and there are things  
4           which could be done which would preserve all the  
5           human rights of all of the parties but which would  
6           enable the thing to be done quickly. So if you  
7           are setting up new systems, it's important that  
8           the processes by which the complaints are handled  
9           are devised to minimize bureaucracy and to ensure  
10          timeliness.

11                          Clearly complaints are one part of  
12          it but in the security function, depending on  
13          where you are, people won't always know. In  
14          Northern Ireland, an awful lot of people think  
15          they are under surveillance. So we get quite a  
16          lot of complaints about this. We all work on the  
17          basis that if we are doing any kind of job,  
18          somebody is listening to us when we are on the  
19          telephone.

20                          There are different reactions to  
21          situations in different countries and different  
22          events which curb or change people's reactions to  
23          the complaints against the intelligence and  
24          security communities.

25                          Another point then. Inspections.

1           You ask about should the review body be able to  
2           initiate inspections.

3                           Inspections, to my mind, have a  
4           different function from review.  Inspections  
5           surround efficiency and effectiveness and use of  
6           resources.  So they are a functional process,  
7           which is totally different.

8                           Then there is something else which  
9           I would call policy and practice review.  If you  
10          are inspecting, you are presumably inspecting  
11          against benchmarks which have been set by the  
12          organization, or state-comparable organizations,  
13          to see do they do what they say they are going to  
14          do in the way in which they should.  And is it  
15          defective?

16                          But if you are talking about a  
17          policy practice review, you might for example be  
18          looking at the way that sources are handled and  
19          managed, and that's a completely different  
20          exercise and a very important exercise.  I think  
21          if you had to limit the activities of your review  
22          body, leave the inspections to somebody else and  
23          allow that analysis of the policy practice  
24          guidance, all that sort of thing, to occur in the  
25          review body.

1                   Some questions asked there around  
2                   referral functions from executive, legislature, or  
3                   other relevant bodies.

4                   An observation here. You could  
5                   have a referral and you could have the discretion  
6                   in the review body as to whether they actually did  
7                   whatever review or investigation was necessary, or  
8                   you can have a situation in which it's mandatory.  
9                   So you make your choices there.

10                  I have referrals from a number of  
11                  organizations. In some cases it's mandatory that  
12                  we investigate and in other cases we have a  
13                  discretion.

14                  THE COMMISSIONER: Are they  
15                  public? If it's the executive or the legislature  
16                  that refers a matter to you for review, is that  
17                  made public that they have done that?

18                  MRS. O'LOAN: That's an  
19                  interesting question. It's not made public. Our  
20                  secretary of state can refer something to me, but  
21                  in so doing doesn't put a notice out saying I have  
22                  referred something to us.

23                  When the reporting back comes,  
24                  that will be made public. So that's on referrals.

25                  I think it would be very useful to

1 the organization under review to have an ability  
2 to refer an issue to the review body. The  
3 organizations which I review do have such an  
4 ability, and I think that would be necessary.

5 On the own-motion issue, clearly  
6 everyone is in agreement that the review body  
7 should be able to investigate because it thinks  
8 it's the right thing to do. You need criteria to  
9 justify what you are doing and why you are doing  
10 it, but we have a breed of investigative  
11 journalists who are very, very effective in  
12 tracking cases and almost investigating cases, and  
13 they will get situations to the point at which you  
14 come to the conclusion that it is necessary that  
15 there be an investigation.

16 So that own-motion review can come  
17 from a variety of circumstances.

18 Referrals from the courts are  
19 another possibility. We have had that. There is  
20 no provision in our law for referral from the  
21 courts, but we have that experience.

22 THE COMMISSIONER: We judges like  
23 to hear that.

24 --- Laughter / Rires

25 MRS. O'LOAN: The prosecution



1 service. I am not familiar with Canadian law  
2 enough to know how this operates, but prosecution  
3 services often become aware of things and I think  
4 there needs to be an ability for the prosecution  
5 service to bring things to the attention of the  
6 review body.

7 And the other group who come  
8 across things that possibly need to come to the  
9 attention of the review body are people we call  
10 coroners. I don't know what you call them here.

11 THE COMMISSIONER: Yes.

12 MRS. O'LOAN: Coroners, yes,  
13 because they become aware of things that you need  
14 to look at and to think about.

15 I think there is a whole raft of  
16 organizations. I think the key to it then is you  
17 allow the review body to have the discretion as to  
18 whether they do handle the issue or don't, or  
19 Parliament decides in what circumstances it wants  
20 the review body to handle them and in what  
21 circumstance it wants to allow discretion.

22 THE COMMISSIONER: Do you have  
23 anything you wish to add to this, Ms Caparini?

24 MS CAPARINI: I wonder about the  
25 issue of accessibility. I question whether it's

1 really that essential to have a complaints  
2 function lodged in the same body that is  
3 responsible for a more strategic review of the  
4 policies and practices of the agency.

5                   If complaints commissions or  
6 bodies already exist, wouldn't it be more  
7 effective to leave it decentralized in that way?  
8 Just create mechanisms whereby the results of the  
9 investigations are transmitted on a regular basis  
10 so that there is good communication between the  
11 two bodies, but to really leave the strategic  
12 function of review to this body.

13                   It goes back to this idea of a  
14 functional body looking at national security  
15 activities.

16                   THE COMMISSIONER: If you have any  
17 observation about police independence,  
18 particularly as it relates to a power of review.  
19 The police independence principle, in its broadest  
20 terms, is that the legislative or executive branch  
21 should not interfere with police investigations,  
22 so that we can avoid the spectre of having them  
23 direct police investigations.

24                   Is there a concern with an  
25 independent review body that is going to carry out

1 the types of reviews we are talking about in any  
2 way intruding upon the principle of police  
3 independence?

4 MRS. O'LOAN: I think police  
5 independence is a very important concept,  
6 operational independence.

7 When you come in an complaints  
8 mode, you come usually after the event, because  
9 the complainant very often doesn't know until a  
10 very long time afterwards that things have gone  
11 seriously wrong, and usually the police have done  
12 what they want to do by that stage. So it doesn't  
13 normally lead to that kind of interruption, if you  
14 like, of police operations.

15 We have had the situation where we  
16 come to police investigations which are ongoing  
17 because the crime is not resolved. But what tends  
18 to happen with police investigations is that they  
19 start, the issue starts to be dealt with, and then  
20 they will get so far and then they will stop and  
21 wait to see if anything else comes out of the  
22 woodwork. In those circumstances when you come in  
23 a year, two years, three years down the line, you  
24 are very often in a position in which you can  
25 identify further investigative opportunities.

1                   The best example I can give to you  
2                   of this is the Omagh bomb explosion in Northern  
3                   Ireland, because that is exactly what we did  
4                   there. We came into a situation where there was  
5                   an investigation of a major terrorist atrocity, in  
6                   which 29 people and two unborn children died,  
7                   hundreds injured, massive impact. We looked at  
8                   the investigation and we did find significant  
9                   investigative failures.

10                   It wasn't about directing the  
11                   police how to do the investigation, but what we  
12                   did say was that there needed to be more  
13                   resources -- we were very clear about that -- more  
14                   resources, particular resources, better  
15                   management, and that these were the investigative  
16                   avenues that we had encountered.

17                   Now, following that, the  
18                   investigation was reinvigorated, shall we say, by  
19                   the police service, and following that, we have  
20                   had the charging of people for an investigation  
21                   which they said had been done.

22                   So I think in that situation it  
23                   doesn't deter the police from doing their job but  
24                   it certainly does enable and assist them.

25                   The other thing that we do is

1 policy and practice investigations, what we call  
2 policy and practice, and that's how looking at the  
3 police do what they do and how the services will  
4 do what they do. So you might look, for example,  
5 at how you handle the information that the  
6 intelligence service gathers, and what you do with  
7 it, and how you make sure you don't end up with  
8 silos and end up with 9/11. That's not a threat  
9 to operational independence. It's an efficiency  
10 effectiveness exercise which is informed by the  
11 knowledge and understanding of all the parties  
12 involved.

13 We are embarking on one at the  
14 moment on search processes, how they go about this  
15 business of searching for whatever they want to  
16 search and in the various circumstances. So I  
17 think there are a lot of things there.

18 The other thing I would say to  
19 address Marina's issue, I can see the debate  
20 around whether you keep minor complaints to one  
21 side with a minor organization, and then you keep  
22 your national security issues separate.

23 The only thing I would say to that  
24 is that that which comes in as a minor complaint  
25 can turn out to be a major national security

1 issue, and the learning and the expertise which is  
2 gathered by the review body in the process of  
3 dealing with some of the things that you might  
4 think are fairly minor actually inform the ability  
5 to develop and to assess the activities of the  
6 intelligence agency.

7 THE COMMISSIONER: Thank you.

8 Professor Gill?

9 MR. GILL: Thank you. Yes, I  
10 agree with what colleagues have said about the  
11 idea of synergy. I mean, synergy is the term that  
12 was used by -- I am sorry, I have forgotten the  
13 senior counsel from SIRC who was talking about  
14 this thing yesterday at the conference. I think  
15 it would be a shame to lose that.

16 I think there is a problem with  
17 complaints-driven review that issues become -- and  
18 I say this as a non-lawyer -- become excessively  
19 legalized sometimes, and the sole concern becomes  
20 the fate of the individual or the individual case.  
21 And while that may be extremely important, I would  
22 support what colleagues have said: that if you  
23 just have a complaints mechanism driving the whole  
24 review, the broader lessons may be lost, and  
25 indeed the agency itself may react very

1           defensively to review driven by complaints.

2                           It's characteristic of both the  
3 police, and I think possibly of some security  
4 officials, to categorize complainants as  
5 troublemakers, mad, bad or whatever. It's vital  
6 to have a mechanism that obliges the agency to  
7 take complaints seriously at the level of policy  
8 and practice, not just "here's an individual  
9 person".

10                           Also, if you have this purely  
11 complaints-driven, it lends itself to what I call  
12 the rotten apple theory of police and security  
13 corruption: "Oh, yes, all the structures, the  
14 processes are fine. Here is a rotten apple. That  
15 shouldn't have been done. Sorry, but we don't  
16 need to change anything else."

17                           And that's problematic.

18                           The second point I would make  
19 again, which relates to my earlier comments, I  
20 think, about how this is all going to fit with a  
21 new committee of parliamentarians, I notice that  
22 the government's proposal says that their proposal  
23 has no effect on existing review agencies by  
24 which, I take it, they are going to leave SIRC and  
25 so on untouched.

1                   But when one reads the paper  
2           written by Derek Lee and his colleague as the  
3           background paper for the committee of  
4           parliamentarians, there they are clearly talking  
5           about carrying out investigative functions and all  
6           the things that SIRC does. This seems to me to be  
7           a recipe for problems. I can foresee problems if  
8           that were to come about.

9                   But that's not the issue here.  
10          The issue here, I think, though, that is relevant  
11          is that if Derek Lee perhaps was to have his way  
12          and SIRC sort of shuffles off into the sunset, I  
13          think there would be a major problem with a  
14          parliamentary group seeking to handle and receive  
15          individual complaints. That I think would be a  
16          real problem.

17                   So I think that's another very  
18          good reason for keeping the kind of independent  
19          review structure.

20                   Just a third point. I was  
21          reminded of this because in the very early days of  
22          SIRC -- I remember because it actually happened  
23          just before I first came over here -- and your  
24          question, Commissioner, of the possibility of  
25          complaints overwhelming the review structure, is I



1 think in about 1984-1985, they almost felt this  
2 happened. But what it was was not a flood of  
3 complaints from members of the public against what  
4 they believe was unlawful surveillance by CSIS, it  
5 was complaints from CSIS employees about the  
6 non-enforcement of official languages policy.

7 SIRC then actually produced a  
8 separate report, as they are empowered to do, on  
9 this whole -- and this was a massive issue that  
10 they had to deal with.

11 That, you see, reminds me of  
12 something, which is that there are another group  
13 of potential complainants here, who we mustn't  
14 forget, and this is whistle-blowers. Nuala made  
15 the point we have to acknowledge we have problems  
16 in the area of secrecy. We have problems of  
17 corruption, we have problems of managerial  
18 pressure on street operatives, on analysts.

19 In my country, we are particularly  
20 conscious of the political pressure that can be  
21 put on intelligence personnel to reach conclusions  
22 that they may not believe they would reach  
23 themselves based on the facts as they read them,  
24 and therefore the mechanism must also be available  
25 for whistle-blowers for employees.

1 THE COMMISSIONER: Mr. Leigh.

2 MR. LEIGH: I certainly agree with  
3 that last point. I mean, it seems to be, first of  
4 all, one of the ways in which the question of  
5 institutional distraction or overload through  
6 complaints can be handled is that there would have  
7 to be -- and this is common the world over -- not  
8 an automatic right that every complaint is taken  
9 up and investigated but a discretion to deal, at  
10 least minimally, with those that appear on first  
11 sight to be vexatious or frivolous in some way,  
12 though I don't categorize any of the things that  
13 have been mentioned as falling into that category  
14 but clearly that is necessary to do that.

15 I just wanted, though, to say  
16 something else about the interaction between  
17 complaints and review, because although I do  
18 accept what Peter Gill has just said to some  
19 degree about not being dominated by complaints,  
20 there is another side of this that needs to be  
21 considered.

22 When operating in review mode,  
23 facts are revealed to a review body that do touch  
24 upon a possible injustice or actions that have  
25 been taken against individuals. There needs to be

1 a facility to move into a more formal process that  
2 has the protections that would have applied for  
3 the benefit of an individual complainant, an  
4 opportunity, for example, to make representations  
5 to -- first of all notice, because the individual  
6 may not be aware of a course, and then to make  
7 representations to the review body.

8 The possibility, perhaps -- and of  
9 course this begs the question we may come to this  
10 afternoon about whether an individual might be  
11 entitled to a remedy out of that process. But  
12 that needs to be handled carefully and maybe there  
13 needs to be a clear staging point at which a  
14 review body would say, "Well, we are now moving  
15 into complaints mode because of what we have found  
16 out in a review."

17 THE COMMISSIONER: Yes? Professor  
18 Cameron, yes?

19 MR. CAMERON: I would also agree  
20 with what Pete Gill said about the appropriateness  
21 of a parliamentary body having this combination of  
22 functions, and also what Ian said now about the  
23 possibility of going into a more formal review  
24 pattern or formal complaints pattern.

25 I would just like to pick

1 up on a point that Nuala made there. I might  
2 have misunderstood, but the question was whether  
3 the agency itself could refer an issue to the  
4 review body.

5 I can, of course, envisage  
6 situations in which the agency would want to focus  
7 the attention of the review body on matters, and I  
8 think that possibility should exist.

9 However, again the Norwegian  
10 experience is very pertinent here, it is very  
11 important not to get the body involved in any way  
12 in authorizing. It has to be very clearly  
13 separate. It has to be a review body and it  
14 shouldn't be dragged into saying, yes, we think  
15 this is fine, in an operational capacity.

16 In a sort of more general  
17 capacity, yes, they could say the sort of general  
18 policy we think is compatible with your mandate,  
19 and so on, but in an operational capacity is  
20 inappropriate.

21 THE COMMISSIONER: Dr. Born, yes?

22 MR. BORN: Maybe it is because I  
23 am from Continental Europe, not from the Isles or  
24 from other places, but actually I disagree with  
25 this opinion which is here about the role of

1 Parliament, because actually after all Parliament  
2 is sovereign. So if you talk about to what extent  
3 Parliament should be involved in these issues, you  
4 should actually talk about to what extent  
5 politicians are prepared to limit their own role.

6 I think in a democratic society it  
7 is very important that our elected representatives  
8 do have a substantive role in these issues. After  
9 all -- I think it was you who said yesterday that  
10 also in Sweden they choose to be governed by the  
11 elected representatives and not by experts or not  
12 by judges -- not you in particular, of course.  
13 Let's be clear.

14 --- Laughter / Rires

15 But there are ways, of course,  
16 more sensible ways and less sensible ways, how to  
17 deal with it.

18 But I think there should be  
19 in Parliament, owned by Parliament and not  
20 in an executive, a forum where these issues can  
21 be discussed. If Parliament thinks that  
22 something should be investigated, they should have  
23 the capacity.

24 But I also think when you see  
25 their oversight body as a good tool, then I think

1 Parliament would be stupid not to use the tool and  
2 to do it in their place. So I think that is  
3 important.

4 But of course often you will hear  
5 that you cannot trust Parliament because they  
6 would have an immature approach. After all, it is  
7 all of us who elect them. So it is a bit of a  
8 strange psychology to think that those to whom we  
9 trust to govern the country, we don't trust them  
10 with these very important issues.

11 I think also in a democratic  
12 society all issues which are essential for our  
13 lives as a citizen, democratic procedures should  
14 be in place and you should exempt them from  
15 democratic procedures.

16 I also think, from the other way  
17 around, sometimes for Parliament it is too easy to  
18 exclude them from these issues, because then you  
19 are excluded. Then they can always excuse  
20 themselves that they don't have a responsibility  
21 in these issues.

22 But of course also political  
23 tradition plays a role, so maybe the political  
24 tradition where I come from, which speaks for a  
25 strong Parliament, and trust Parliament that

1           they are mature enough to limit themselves when  
2           necessary.

3                                 With regards to referral, you  
4           can't have a system then in which the executive  
5           alone and not Parliament can refer things to the  
6           oversight body.

7                                 But we shouldn't forget that the  
8           Minister is the chief responsible for this agency  
9           so sometimes the Minister is him or herself part  
10          of the problem.

11                                So I think in terms of checks  
12          and balances that also the legislature should  
13          have a place.

14                                So I really, truly disagree with  
15          what the others said here.

16                                Then the issue of -- but of course  
17          maybe we agree more than we think, perhaps.

18                                About a mature approach. For  
19          example, for the reasons to guarantee maturity, in  
20          Germany and in Holland, the oversight bodies in  
21          Parliament, they select their more senior  
22          politicians, so not just a newcomer but those with  
23          high legitimacy in the Parliament. To avoid that  
24          you have this immature approach.

25                                I could say more about this, but I

1 think I have made my point.

2                   The last thing about the  
3 whistle-blowers is, I have seen in the German  
4 context, where the review body is called the  
5 control panel, where officials can make complaints  
6 or raise complaints with that body. So if you are  
7 looking for a specific example how this could be  
8 arranged, that whistle-blowers in an agency could  
9 go to the review body, then I think this may be a  
10 good example to look at.

11                   Thank you very much.

12                   THE COMMISSIONER: Thank you. As  
13 you disagreed with your colleagues, hands shot up.  
14 --- Laughter / Rires

15                   THE COMMISSIONER: Professor  
16 Leigh first.

17                   I think all this side of the room.

18                   MR. LEIGH: It is a friendly  
19 disagreement, I'm sure.

20                   It may be just to clarify what  
21 parliamentarians are good at. I think the point  
22 you are making about democracy, of course, is well  
23 taken. I don't suppose anyone would dispute that.

24                   I think the issue would boil down  
25 to whether it is the best use of parliamentarians



1 in fact to have them carrying out these sort of  
2 detailed individual-specific, fact-specific  
3 investigations rather than having possibly the  
4 capacity to refer or to receive reports from a  
5 body that does that.

6 Now, I have to be careful what I'm  
7 going to say next because I am going to say  
8 something blunt about the U.K.

9 In my country at least I am not so  
10 impressed by parliamentary committees,  
11 particularly select committees and the way that  
12 they work. I have the slightest confidence they  
13 would be able to do that in a mature way that got  
14 to the bottom of the facts without being  
15 distracted without political considerations along  
16 the way.

17 It is precisely because of that  
18 that when we have had very controversial issues,  
19 we have tended to go outside of those select  
20 committees, for example, to judicial inquiries of  
21 one kind or another. I don't think that MPs have  
22 the forensic skills -- they are not  
23 investigators -- to carry out this kind of  
24 exercise. That is not why we have chosen them.

25 In the one country that perhaps

1 does appear to have a model a bit like this, the  
2 country that has been mentioned, Norway, of course  
3 the oversight body that is doing the investigating  
4 is not actually comprised of parliamentarians, it  
5 is acting on Parliament's behalf.

6 THE COMMISSIONER: Professor Gill  
7 and then Mrs. O'Loan.

8 MR. GILL: I'm not sure we are  
9 disagreeing, Hans. Compared with Ian's point, I  
10 don't have a problem if there is to be a national  
11 security committee of parliamentarians. I don't  
12 have a problem with them referring issues that  
13 concern them to this new body for their more  
14 detailed examination or operational audit, or  
15 whatever. I don't have a problem with that.

16 My point was simply that I don't  
17 think that the kind of quasi-judicial adjudication  
18 of complaints is an appropriate function for  
19 parliamentarians. That was the very limited point  
20 I was making.

21 THE COMMISSIONER: Mrs. O'Loan.

22 MRS. O'LOAN: I just wanted to  
23 come back to Professor Cameron, if I may. He sort  
24 of was questioning the organizational referral.

25 There were two situations that I

1           sort of had in mind. One was not that the  
2           organization might say: This is how we are going  
3           to do an operation, what do you think of that?  
4           That would be wrong. There would be conflict  
5           there immediately I think.

6                        I give you one example where there  
7           are in the United Kingdom strict rules about the  
8           recruitment of informants, and particularly child  
9           informants because of the risk to children. A lot  
10          of damage is done as a consequence of allegations  
11          of recruitment of child informants.

12                      If, I think, the organization  
13          became aware that some of its operatives were  
14          seeking to get information from people under the  
15          statutory age, then I think that would be a  
16          legitimate thing for referral. It is more of a  
17          conduct issue, but it is a necessary one.

18                      The second thing that I had in  
19          mind when I talked about the organization was the  
20          whistle-blower, because of the many ways in which  
21          you can provide for this. But in the current  
22          process that we have, no member of the  
23          organizations which we investigate can complain to  
24          us or refer matters to us, but if they come as  
25          whistle-blowers I use my own motion powers. So I

1 think it might be more sensible to provide a  
2 process in the first instance.

3 That was all I wanted to say. I  
4 won't make any comment about parliamentary  
5 inquiries. I have just had one.

6 --- Laughter / Rires

7 THE COMMISSIONER: Professor  
8 Cameron?

9 MR. CAMERON: I take this point  
10 about the usefulness, or occasional usefulness of  
11 such a sort of general policy and approach. Of  
12 course, the SIRC system, as I understand it, is  
13 that this is one of the particular areas --  
14 informants, human informants is actually one of  
15 the particular areas of SIRC's attention is drawn  
16 to looking at what the Minister has directed in  
17 this particular area.

18 I know this is an area which is  
19 very topical in Sweden just now and which there is  
20 not really sufficient review at all.

21 But to turn back to Hans' point, I  
22 like to think that I have something of a bit of a  
23 common law and civil law perspective, and of  
24 course Scotland is a mixed state in that sense.

25 But the Swedish system also has

1       parliamentarians of course involved in both the  
2       National Police Board -- which is a general  
3       supervisory function over the National Police  
4       Board and don't really have an idea what is going  
5       on, to be honest -- and the Register Board which  
6       deals specifically with the issue of the security  
7       register. There they have, parliamentarians have  
8       performed well, or relatively well, in that  
9       particular area.

10                   Although it is mainly a  
11       preventative control, it also it receive  
12       complaints, and they have shown themselves to be  
13       capable of doing that on the basis of what Hans  
14       has said, that they pick the senior people, there  
15       is a continuity of membership, they have  
16       sufficient time in which to develop expertise, and  
17       so on.

18                   However, the body is not a  
19       parliamentary body as such, like the Norwegian  
20       body, it is a specialist expert body which has two  
21       parliamentarian members in it. Although the  
22       Register Board has been doing quite a good job, I  
23       think we are seeing now in Sweden demands from the  
24       other political parties.

25                   Because there are only two MPs

1           involved from the two largest parties. All the  
2           others, of course, want to get in on the act as  
3           well, and they all say: Why can't we be in it as  
4           well? You run into all these difficulties of  
5           continuity in membership, of specialization, of  
6           developing sufficient expertise. We have to  
7           remember that there is a long learning curve in  
8           these issues of security.

9                           But I would agree fully with what  
10          Ian has been saying, of course, parliamentarians  
11          must also be able to hear general complaints. But  
12          the very idea behind all the parliamentary  
13          commissions that are established in Britain and in  
14          Canada and of course the original model, the  
15          Swedish Parliamentary Commission, the Ombudsman,  
16          was because the parliamentarians as such aren't  
17          good at dealing with these adjudicative issues.

18                           THE COMMISSIONER: We have five  
19          minutes left in this segment. Let me just pose  
20          the last question.

21                           Accepting if there is to be a  
22          review process and leaving complaints to the one  
23          side for the moment, should there be a  
24          preestablished set of criteria, or a threshold,  
25          directing the review body as to what matters it

1 would take under consideration within the review  
2 part of its mandate?

3 What it seems to me that is at  
4 play there is there could be a concern on one hand  
5 from the agency being reviewed that with no basis  
6 at all we are going to have the review agency just  
7 taking up issues and wandering through our  
8 operations, disrupting our operations, taking too  
9 much of our time and unnecessarily spending money.

10 The other side of that would  
11 be, the review body might say, "Well, no, we  
12 need the discretion. If it is a reference from  
13 outside, somebody is suggesting, whomever, there  
14 be a review, or if it is self-initiated, we  
15 should have the discretion, even the discretion  
16 to do it randomly without basis, in order that we  
17 can ensure ourselves that we have the full power  
18 of review."

19 So that side of the argument would  
20 say, no, there should not be any predetermined  
21 limits as to when you can initiate a review, you  
22 leave it to the sole discretion of the review body  
23 when to do it. I guess there are always going to  
24 be financial constraints.

25 Have you had any experience

1 with models and review body that do set down  
2 criteria as to what could trigger a review, or is  
3 it typically left just wide open and anything is,  
4 in effect -- I don't know mean this in a  
5 derogatory way -- but anything in effect is fair  
6 game for a review?

7 Anybody want to speak to that?

8 MR. GILL: I kind of think it has  
9 to be left like that, because one can think of so  
10 many different places. You just gave us quite a  
11 long list of different places from whence  
12 referrals, complaints, concerns might come to the  
13 review agency.

14 They might come, and I think often  
15 do come from the members of the review agency  
16 reading their newspapers. The media does perform  
17 an important part; not just the domestic media but  
18 also the foreign media. One remembers the famous  
19 case in the United States where the whole Iran  
20 Contra scandal was kicked off by an article in a  
21 Lebanese newspaper, or something like that.

22 On that way it might come from  
23 individual complainants where, as Nuala suggested,  
24 they suddenly realized that there is a much bigger  
25 problem here.



1                   So I think this has to be left  
2                   up to the judgment of the reviewers as to when  
3                   and how they will seek to carry out an  
4                   investigation that is -- a review that is within  
5                   their mandate.

6                   THE COMMISSIONER: Any other  
7                   comments?

8                   Yes? Mr. Cameron...?

9                   MR. CAMERON: Leaving it to the  
10                  review agency to decide when sends a very  
11                  important signal, of course, to the agencies under  
12                  review, that it is the review agency that decides  
13                  when it is going to make the investigation or what  
14                  it is going to investigate.

15                 However, having said that,  
16                 obviously the agency, the review body, has to  
17                 have a large amount of understanding, of course,  
18                 for not disrupting ongoing investigations, for  
19                 not making life difficult, because they know that  
20                 they need a very large degree of cooperation from  
21                 the agency being investigated. I mean, they would  
22                 be very foolish if they adopt an overly  
23                 confrontational approach with the agency being  
24                 investigated.

25                 Without knowing too much about the

1 Canadian experience in this respect, I think that  
2 the SIRC model seems to have functioned -- after  
3 initial teething difficulties, and so on -- seems  
4 to have functioned relatively well.

5 There could be a slight cloud  
6 on the horizon in the sense that if you have one  
7 functional body, it may feel a correspondingly  
8 greater need to show that it is maybe keeping an  
9 eye on things. I think that is a small problem,  
10 nonetheless, in perspective.

11 MR. LEIGH: I think there are a  
12 couple of places to consider looking anyway for a  
13 different type of approach that might be taken.

14 First of all, there is plainly a  
15 fundamental question. If you are having a review  
16 function, it has to be according to a standard,  
17 and clearly that has to be set out in statute.  
18 Now, it could be a standard of legality,  
19 efficiency, the proportional use of powers or  
20 whatever, but it has to be reviewed against some  
21 standard. It can't simply be reviewed at large.

22 The design of the standard of  
23 review must take account, of course, of the  
24 constitutional position and the legal duties of  
25 our actors, for example, the chief of police,

1 ministers, and so on and so forth. You don't want  
2 the review agency trespassing on the territory of  
3 all of those and becoming sort of micro-manager.  
4 I'm sure that is all well understood.

5           The two places that occurred to me  
6 you might look for models apart from it in the  
7 security realm, as it were, for how to do this,  
8 seem to be, on the one hand, statutory Ombudsman  
9 or commissioners where commonly you find in the  
10 statutes establishing them in the U.K. are  
11 certainly exempted categories, places where they  
12 can't go in terms of receiving complaints, for  
13 example, commercial or contractual matters, where  
14 there is otherwise a legal remedy. You find a  
15 whole list of these in the various pieces of  
16 legislation.

17           That is one approach which says  
18 everything to do with the institution, but we take  
19 out a certain number of quite specific areas, to  
20 some extent at the discretion of the review body  
21 as to whether or not it falls under a particular  
22 category in that way.

23           The other place to look, I  
24 think -- maybe this does not solve this on first  
25 sight, but the other types of agencies sometime

1 have this type of combination of complaints and  
2 institutionally -- sorry, own initiative reviews,  
3 is anti-discrimination commissions. The tendency  
4 in that case, in the U.K. bodies like the Equal  
5 Opportunities Commission, the Commission for  
6 Racial Equality, and so on, is to give a very  
7 broad power of own-initiative review.

8 The assumption in the background  
9 is that since the body is limited as to its  
10 resources, it will use the power strategically and  
11 won't over use it because it is quite burdensome  
12 on those being investigated.

13 THE COMMISSIONER: Thank you.

14 Mrs. O'Loan...?

15 MRS. O'LOAN: That whole business  
16 planning and strategic planning thing.

17 I think you need clarity as to  
18 what you mean by review in particular  
19 circumstances, because review can be investigation  
20 leading to prosecution or action of a disciplinary  
21 nature against an individual. Review can be  
22 investigation of apparent process failure leading  
23 to amendment of the process, or it can be testing  
24 against things like human rights legislation,  
25 whether the processes which are adopted by the

1 organization are consistent with the law. So I  
2 think there needs to be clarity around what body  
3 it is you are talking about.

4 But once you have gotten there,  
5 there are tests that you can put in. We operate  
6 effectively a public interest test, a general  
7 public interest test.

8 So then you are looking for:  
9 Well, are we looking at issues of misconduct; are  
10 we looking at breach of an organization's own  
11 operating procedures, and multiple breaches,  
12 having come to your attention, where it hasn't, if  
13 you like, compromised one of its operations, or  
14 something like that, but where there is the  
15 potential for that and therefore there is a  
16 necessity, a national interest protection  
17 necessity, and the kind of things that Ian just  
18 articulated in terms of commercial interests and  
19 things like that.

20 So I think you would need some  
21 process which ensured that there was a legitimacy  
22 of the operation of the review. But I think that  
23 at the end of the day it would be very important  
24 to try and send the message that the power, if you  
25 like, rests in the review body, but that that

1 power must be exercised with significant  
2 responsibility. And of course the way governments  
3 operate is, if you don't operate with  
4 responsibility, the funding diminishes.

5 --- Laughter / Rires

6 THE COMMISSIONER: Right, okay.  
7 Let's bring that segment to  
8 a close.

9 The next half hour has been set  
10 aside for questions from those who are in the  
11 audience.

12 What I would ask you to do, if you  
13 have a question is -- I see Mr. Allmand going to  
14 the microphone -- when you go to the microphone,  
15 if you would identify yourself, and if you are  
16 connected to an organization or a group to make  
17 that known so that the panellists know who you  
18 are, and if you want to direct questions to any  
19 particular person or to the group as a whole,  
20 either is acceptable.

21 Mr. Allmand.

22 MR. ALLMAND: Thank you.

23 Warren Allmand from the  
24 international Civil Liberties Monitoring Group,  
25 which is one of the intervenors before the

1 Commission. That is an umbrella organization of  
2 over 30 human rights, trades unions, faith groups,  
3 and so on, concerned with the impact on civil  
4 liberties after 9/11.

5 To begin with, I want to say that  
6 I was extremely pleased to begin with that there  
7 would seem to be a consensus around the table for  
8 option C, or the "C" option, which we had proposed  
9 to the Commission in a paper earlier, in other  
10 words, an all-inclusive or a comprehensive review  
11 body, sort of an expanded SIRC. I want to say we  
12 were extremely pleased to see that consensus.

13 But my question is this: Judge  
14 O'Connor, at one point you said no matter what  
15 option would be chosen in the options you put to  
16 the panel today there would have to be boundaries  
17 decided upon between, for example, the mandate of  
18 the review agency for security and intelligence  
19 and what would be left for pure law enforcement  
20 questions.

21 Let's presume that you go for the  
22 option C, an expanded SIRC sort of operation that  
23 would have jurisdiction over all security  
24 intelligence matters, including those of the RCMP,  
25 and we end up with mixed cases, of course, mixed

1 law enforcement aspect being carried out by the  
2 RCMP with a security intelligence aspect, what  
3 about, within this expanded SIRC, if we can call  
4 it that, having an intake unit which would  
5 consider all complaints or all matters in the  
6 first place and then decide if there was any  
7 aspect of security and intelligence, they would  
8 keep it, and if they came to the conclusion that  
9 it was purely law enforcement, highway traffic  
10 patrol, family violence, sexual assault, all of  
11 those sorts of things -- by the way, the RCMP in  
12 eight of the ten provinces does provincial  
13 policing -- that those would be referred to the  
14 Commission on Police Complaints, the RCMP  
15 Commission on Police Complaints, but the decision  
16 would be with the expanded SIRC, not with the  
17 other body which has less authority.

18 In other words, all complaints  
19 would go in the first place to SIRC, who would  
20 have the capacity to judge whether or not there  
21 was a security and intelligence aspect. And if  
22 only then they see that it is purely the law  
23 enforcement of the sort of things I referred to,  
24 then they would refer it to what I might call the  
25 more restricted lower body dealing simply with law



1 enforcement matters.

2 We would be extremely concerned if  
3 a case with -- a security intelligence matter, and  
4 Mrs. O'Loan referred to that, she said: Something  
5 could be referred as what might appear as a  
6 minority or a minor sort of complaint in the first  
7 place, but once you look at it could have  
8 implications which were much broader in security  
9 or intelligence. So we wouldn't want the lower or  
10 more restricted body to make the decision. The  
11 right of first refusal, as somebody mentioned,  
12 should be with the body that has capacity of  
13 security intelligence.

14 I would just like to hear what  
15 your reaction is on that.

16 THE COMMISSIONER: I think  
17 Professor Leigh had his hand up to start with.

18 MR. LEIGH: I think you have just  
19 made quite forcefully a point that has been raised  
20 in different ways in the discussion. I think it  
21 was me who used the first refusal metaphor first  
22 of all, and clearly that is a way of handling it,  
23 that you accept that there will be some messy  
24 overlap potentially, but that the national  
25 security questions are, in a sense, the more

1 important ones; and therefore the review body  
2 dealing with that should have first bite at it if  
3 it chooses to do so.

4 I think you make also the point  
5 that came up in discussion of the need for there  
6 to be, for complainants' benefit, a single  
7 gateway, not to be turned away and then told:  
8 Well, you have come to the wrong place to  
9 complain. Where you need to be is over there. So  
10 a single gateway and a referral power are  
11 certainly the way to deal with that, I would have  
12 thought

13 THE COMMISSIONER: Any comments  
14 from the others?

15 Yes, Professor Gill?

16 MR. GILL: Yes, briefly. I agree.

17 I don't think there will be a  
18 problem here because let's imagine a situation in  
19 which there is some expanded SIRC on the one hand  
20 and the existing CPC in some form continuing. The  
21 complainant puts something into the CPC which  
22 clearly has national security implications.

23 Even if the CPC Commissioner  
24 decided, "Oh, this looks interesting, I think I  
25 will really have a look at this", she wouldn't be

1           able to do anything because obviously the agencies  
2           themselves wouldn't respond, she wouldn't have the  
3           cleared staff, she wouldn't have the sort of  
4           special premises and procedures that SIRC  
5           currently employs for its complaints  
6           investigations. She wouldn't be able to get  
7           anywhere and I suspect the complainant and their  
8           advisors would quite quickly be very irritated.

9                       Equally, if something comes into  
10           the expanded SIRC, which in their judgment clearly  
11           has no national security implications, they will  
12           say to the complainant, "Look, this really isn't  
13           for us, we are passing it to the CPC and this is  
14           how it will be dealt with."

15                      THE COMMISSIONER: All right.

16                      MR. ALLMAND: If we had that  
17           system, considering what has been done in the past  
18           with Shirley Heafey, who as the Chair has  
19           complained about the way things have been handled,  
20           I would have fear if these complaints went in the  
21           first place to the Commission on Police Complaints  
22           that it might be buried for quite a period of  
23           time, could be lost.

24                      If it acted like you suggested,  
25           and as soon as they saw it had security and

1 intelligence aspects it would be sent over to the  
2 body that could really deal with it, fine.

3 But my own looking at the  
4 experience so far is that that may not happen and  
5 a lot of time would be lost and maybe the  
6 complainant would lose interest or the whole  
7 situation could change.

8 I would much prefer the  
9 situation where the first refusal was with the  
10 group that had the security and intelligence  
11 expertise and they would say, "No, this is purely  
12 breaking and entering or highway traffic patrol",  
13 or whatever, "drunken driving", and send it off to  
14 the other body.

15 THE COMMISSIONER: Thank you.

16 Yes?

17 MS PARNES: Hi. Brena Parnes. I  
18 am one of the counsel for Mr. Arar.

19 Dr. Born raised the issue that it  
20 is important to be careful not to construct a  
21 review or oversight body that will become captured  
22 by the agency it is reviewing and he suggested  
23 that a functional model is one way to avoid this  
24 from happening.

25 I would be interested in the

1 panel's suggestions of any other mechanisms  
2 that could be put into place to avoid this  
3 potential pitfall.

4 MR. GILL: This raises a good  
5 question. We have more or less agreed with the  
6 preference for functional review in a single  
7 agency. But of course, as you may be thinking of,  
8 the immediate problem here is what if they then  
9 get captured? What if that is the only place  
10 where the citizen can go? And I have thought  
11 about this.

12 Again, it seems to me that  
13 there is a potential here, together again -- I'm  
14 sorry I keep coming back to this, but I think we  
15 can't avoid it -- there is now a potential here  
16 with I think the sort of happy coincidence that  
17 you have of Commissioner O'Connor's Commission  
18 here and his mandate and the proposal for the  
19 National Security Committee of parliamentarians,  
20 because I think this problem -- I worry less  
21 about it if there is that national security  
22 committee of parliamentarians than I would have  
23 done if there wasn't.

24 Because what would happen, let's  
25 assume the expanded SIRC, you know, becomes

1 captured, and they are not interested, and they  
2 get this complaint, and let's say you are advising  
3 someone, you complain, SIRC says, "Nothing doing."  
4 You will have another immediate avenue. You will  
5 go to your MP and you will ask your MP, who  
6 probably won't be on the National Security  
7 Committee, to talk to his colleagues who are.

8 Okay, we haven't talked about the  
9 precise mix of the mandate of the Parliament, the  
10 Committee of Parliamentarians and SIRC, but I  
11 would have thought there there would be a  
12 mechanism for alarm bells to be rung if the  
13 expanded SIRC has been captured.

14 THE COMMISSIONER: Ms O'Loan...?

15 MRS. O'LOAN: It seems to me that  
16 the essence of keeping a review body independent  
17 is to enable it. If you want your review body to  
18 be independent I think you have to give it  
19 extensive powers and sometimes there is a  
20 discomfort for organizations responsible for  
21 national security in the review body having  
22 extensive powers.

23 If the review body is reliant  
24 on the goodwill of the organization which is  
25 reviewing, it will become captured. If, on the

1 other hand, it has a statutory power and a  
2 statutory right to things, then it doesn't have  
3 to try and engage, to the extent that it becomes,  
4 if you like, corrupted, by those that it seeks to  
5 review.

6 To me the answer lies in a proper  
7 allocation of resources and powers. Those are the  
8 things which will enable that to function  
9 properly -- or should.

10 THE COMMISSIONER: Professor Leigh  
11 and then --

12 MR. LEIGH: Briefly, I think there  
13 are several safeguards and two have been mentioned  
14 already. Certainly Parliament was on my list.

15 But I think there are three others  
16 that perhaps we should mention as well.

17 First of all, of course, there  
18 are issues about the composition and appointment  
19 of the body, the right people are chosen, they  
20 have security tenure, that there are all of the  
21 statutory safeguards in place to prevent  
22 interference.

23 There are still issues over  
24 and above that, I realize, but that at least is  
25 a minimum.

1                   The two other safeguards I point  
2                   to are that a body of this kind will have a public  
3                   reporting duty, and although we talk here about  
4                   different governmental and state institutions that  
5                   might be created, we mustn't forget the role of  
6                   the media and the public and connected with that  
7                   Parliament in keeping a review body on the spot in  
8                   terms of accounting for what it does.

9                   Finally, since I'm a lawyer, there  
10                  is a long stop of the courts -- and in deference  
11                  to the Commissioner too -- the courts in terms of  
12                  challenging, albeit at quite a high level, illegal  
13                  policies and practices in an administrative law  
14                  sense the review body might adopt.

15                 THE COMMISSIONER: Mr. Cameron and  
16                 then Dr. Born.

17                 MR. CAMERON: Ian made more or  
18                 less the points I was going to make myself, but it  
19                 is a blend of different mechanisms that you need.  
20                 It is a symbiosis, a blend.

21                 The only thing I would add really  
22                 is that the parliamentary body, of course, you can  
23                 envisage a role for it to play in choosing the  
24                 composition of the independent agency.

25                 At the same time, if the



1 Parliament reacts in an irrational way, in a way  
2 that we know that the public, as either whipped up  
3 by the media or in some other way, also reacts in  
4 an irrational way to the extent and nature of the  
5 terrorist threat, then the Parliament can actually  
6 operate negatively on the independent review body.  
7 They can also be putting pressure on it. You have  
8 to bear that in mind as well.

9 The body must be independent,  
10 there must be a channel with it. But the body  
11 must also be able to withstand these temporary  
12 parliamentary pressures too.

13 THE COMMISSIONER: Dr. Born...?

14 MR. BORN: I agree there should be  
15 a blend of various mechanisms.

16 What I also would like to add is,  
17 to avoid the members of the committee are going  
18 native, so to speak, is that you could maybe also  
19 follow the model which is used in diplomatic  
20 service, that diplomats are appointed for three  
21 years of time in a certain country.

22 So I think this limited  
23 appointment, from that point of view, is very  
24 advantageous. The negative side is of course that  
25 you will lose expertise if somebody goes away

1 after three years.

2 But I think it would be a good  
3 thing to limit this term of service.

4 THE COMMISSIONER: Thank you.

5 MRS. O'LOAN: I have one more  
6 question.

7 THE COMMISSIONER: Sure.

8 MRS. O'LOAN: Just be  
9 cautious around limiting term. I have a seven  
10 year term and that is all right, but it takes two  
11 or three years to learn how the intelligence  
12 community operates so just be cautious.

13 THE COMMISSIONER: This afternoon  
14 we will be talking about the composition in terms,  
15 and so on. So that will be an important  
16 discussion.

17 Ms McIntosh?

18 MS McINTOSH: My name is Leslie  
19 McIntosh and I'm counsel for the Ontario  
20 Provincial Police at the inquiry.

21 Just a couple of observations.  
22 One with respect to Mr. Allmand's point about an  
23 intake committee. There is what might be an  
24 Ontario model. There is something called the  
25 office of the worker advisor which, as I

1 understand it, advises people about whether to go  
2 to employment standards, occupational health and  
3 safety, labour relations, and so on.

4 Another model on the question of  
5 discretion for the review agency that occurred to  
6 me was the provincial auditor, and at least in  
7 respect of policy and practice reviews, the  
8 provincial auditor, by analogy, issues a plan, as  
9 I understand it, to the ministries he's reviewing  
10 to say, this year I'm going to be looking at this  
11 part of your ministry.

12 So I appreciate that some  
13 investigations or reviews wouldn't lend themselves  
14 to that, but policy and practices reviews, to use  
15 Mrs. O'Loan's expression, might.

16 My question, however, concerns the  
17 opinions about the compatibility of the complaints  
18 process and the review process.

19 Again, to use an analogy in  
20 Ontario, there's been some resistance, in the  
21 professional disciplines, to the quality assurance  
22 process precisely because facts uncovered in  
23 what's supposed to be a positive sort of  
24 improve-your-practice exercise migrate over into  
25 complaints.

1 I wonder whether this is not  
2 simply a matter of bureaucracy. It is a matter of  
3 procedural fairness to the person who is both the  
4 subject of the review and potentially of a  
5 complaint and whether that militates against the  
6 compatibility of the complaints process and the  
7 review process being housed in the same agency.

8 THE COMMISSIONER: Good question.  
9 Professor Leigh is first and then Mrs. O'Loan.

10 MR. LEIGH: Yes, this is just a  
11 very, very short point, and I'm not entirely  
12 familiar with the context of your comment.

13 But the type of objection we might  
14 have I think to a personnel practice, for example,  
15 you know, an annual review at work turning into a  
16 disciplinary process and not an uplifting and  
17 positive experience, I don't think that quite  
18 applies in the same way when we're talking about  
19 statutory agencies. I think the context is very  
20 different, but I'm not sure if that's what you  
21 were saying or not.

22 THE COMMISSIONER: Mrs. O'Loan?

23 MRS. O'LOAN: I just wanted to  
24 observe. Again it's a terminological question.

25 We are just proud to do quality

1 assurance work, and we do quality assurance work  
2 in our own process and we've recently done one in  
3 the police. We called it mystery shopper. We  
4 just send people in to make complaints and then  
5 see what happened.

6 --- Laughter / Rires

7 The association of police officers  
8 in England have processes for these quality  
9 assurance exercises. It was done according to a  
10 process.

11 One of the things is that you do  
12 not use that as disciplinary process. So if you  
13 find people who don't do it right, you don't use  
14 that as a disciplinary process. That's one of the  
15 sort of the rules of the game.

16 You can have an  
17 intelligence/integrity test. That's completely  
18 different because you will use that.

19 So that's one thing. So I think  
20 that it's necessary to provide the process and to  
21 ensure that the process does contain procedural  
22 fairness, but I think quality assurance exercises  
23 are a very good thing.

24 THE COMMISSIONER: Professor  
25 Cameron?

1 MR. CAMERON: Coming from the  
2 country of trade unions, Sweden, these  
3 disciplinary issues are being very closely looked  
4 at -- whenever that question arises in the Swedish  
5 police with their own ton of bricks, their trade  
6 union representatives. So it is, I agree with Ian  
7 Leigh, a slightly separate issue from what we were  
8 speaking out.

9 We were speaking more about the  
10 migration the other way, as it were, the migration  
11 of a complaint to the question of overall quality  
12 assurance, that the complaint reveals a systemic  
13 failure. It was more than, I think, we were  
14 interested in, rather than the other way around.

15 But, as I said, it's a  
16 disciplinary issue and there must be obviously  
17 safeguards for the officers concerned, procedural  
18 safeguards.

19 THE COMMISSIONER: Any other  
20 questions from -- yes?

21 MR. GETZ: Thanks. David Getz,  
22 Military Police Complaints Commission.

23 Just following on the last  
24 question, the issue of the compatibility of the  
25 review or, I guess, the more proactive type of

1 review, inspections, what have you, with the  
2 complaint process.

3 I'm wondering, the issue of  
4 co-responsibility struck me that Mr. Born raised,  
5 and if you've got a very proactive -- got the  
6 budget and it's doing inspections and it's going  
7 in there and looking at how things are done and  
8 perhaps giving reports internally saying, this is  
9 good, this is not good, but then they get a  
10 complaint on something that they've already  
11 essentially okayed internally or at least -- or  
12 maybe they just feel that something came up that  
13 they should have caught, and there is this sense  
14 of co-responsibility.

15 I mean, is there a problem with  
16 them then dealing with the complaint? Is there a  
17 sense that they're going to be totally objective?

18 THE COMMISSIONER: Professor  
19 Leigh?

20 MR. LEIGH: That's a very  
21 interesting question that you raise and there are  
22 certainly all points about what in the common law  
23 we traditionally call natural justice in a body  
24 subsequently dealing with a complaint where it's  
25 taken a kind of prior view or maybe to some extent

1           implicated in the facts that give rise to the  
2           complaint.

3                               There has always been, of  
4           course -- I don't want to go too far into the  
5           history of administrative law here -- there's  
6           always been what's called necessity, an exception  
7           to that, that if there's no other body and this is  
8           the statutory body that has to review the  
9           complaints, then it has to do it because  
10          Parliament has mandated it.

11                              A practical way of overcoming the  
12          difficulty, of course, is to use sub-panels for  
13          different functions, so that although the body as  
14          a whole may remain responsible, a particular  
15          sub-panel might take on the particular review  
16          whereas a different sub-panel might deal with  
17          individual complaints, and then at least we're  
18          dealing with different personnel.

19                              THE COMMISSIONER:   Yes,  
20          Mrs. O'Loan?

21                              MRS. O'LOAN:    It's something that  
22          exercises my mind quite a lot, that issue.

23                              We don't inspect, and that's why I  
24          said if you were leaving one area out of Question  
25          2, the inspection might be the one that I think



1           you want to leave out.

2                           But if you kept the inspection in,  
3           yes, you can red circle it and keep it separate.

4                           But I think at the end of the day  
5           if you are doing policy and practice  
6           investigations, which we do, and you're making  
7           recommendations for changes in policy and  
8           practice, police policy and practice, the police  
9           have a duty then to consider those.

10                          They're recommendations, they're  
11           not decisions, and then I think, if you've got a  
12           separate arm of your organization doing that,  
13           there is a benefit, I think, overall, in the  
14           public interest, to do this, and I think you  
15           shouldn't be compromised.

16                          But I think that the organization  
17           doing the review should always have the ability to  
18           say, oops, we made a mistake here. Let's change  
19           it.

20                          THE COMMISSIONER: Any other  
21           questions?

22                          Okay. We're just at 12:30. So  
23           we're going to break for an hour. Let me briefly  
24           say the process.

25                          The panellists have been invited

1 to have a sandwich at a room down the hall. There  
2 is a cafeteria for others which is quite  
3 attractive out here. I know: we have been using  
4 this building.

5 The other comment, I'm sure the  
6 panellists won't mind, is it won't take them an  
7 hour to have a sandwich.

8 And if people are interested in  
9 chatting with them informally, I'm sure they will  
10 be walking down that way and there's lovely  
11 grounds outside, it being a nice day, so that you  
12 should feel free, anybody who is here, to  
13 certainly have a sandwich, but to certainly mingle  
14 with our distinguished guests.

15 So we'll rise now and we'll resume  
16 at 1:30.

17 --- Upon recessing at 12:28 p.m. /

18 Suspension à 12 h 28

19 --- Upon resuming at 1:30 p.m. /

20 Reprise à 13 h 30

21 THE COMMISSIONER: We will get  
22 under way again. Welcome back.

23 We will move to the third  
24 question, which I shall read, which is: What  
25 powers does a review body for national security

1 activities need, and what restrictions -- I  
2 put --should apply?

3 Now, the powers that we're talking  
4 about here would include access to information and  
5 documents, and as part of that, I would pose the  
6 sub-question, access to the information and  
7 documents of the agency being reviewed, of other  
8 government agencies, or of the public, the private  
9 sector as well? So that would be the first power.

10 There is also the question of  
11 power, of remedial powers, whether there should be  
12 recommendations, orders for compensation, other  
13 type of powers that actually direct corrective  
14 activity.

15 And the third is the powers which  
16 I have generally described as police powers, as  
17 we've heard from Mrs. O'Loan, the Ombudsman for  
18 Police in Northern Ireland, has extensive powers  
19 that would fall within that category. So there  
20 are those types of powers we would want to talk  
21 about.

22 Then what sort of restrictions  
23 would apply to the use of the power or the use of  
24 the review body's powers? There could be  
25 restrictions on timing of an investigation. When

1 would it start? After the matter in issue is  
2 completed? How should it relate to that.

3 Secondly, restrictions on  
4 disclosure or reporting. So that we're talking in  
5 this segment on powers and restrictions.

6 I don't think anybody has to deal  
7 with all of those issues in one statement, but I  
8 would like to canvass those over the course of the  
9 discussion.

10 We will start with Ms Caparini.

11 MS CAPARINI: I think, first of  
12 all, that it has to be an independent agency. It  
13 has to be independent of the bodies that it  
14 oversees. I think that's a fairly obvious one. I  
15 think it should have the power to initiate an  
16 audit, that is, initiate investigations on topics  
17 that it deems necessary.

18 I think that also it should have  
19 unconstrained access to all the materials and the  
20 personnel and, if necessary, the facilities that  
21 it also deems necessary.

22 I believe the power to subpoena,  
23 to subpoena documents, is vital. I think it  
24 should have a mandate to review compliance with  
25 both law and ethical norms.

1                   In terms of some of the more  
2                   technical issues, I think senior members obviously  
3                   would have to have top security clearance. Of  
4                   course, they would be bound to secrecy.

5                   They would also need to have the  
6                   infrastructure, that is the technical, the  
7                   physical capacities, to be able to manage or  
8                   contain the classified documents that they do  
9                   receive. So a very practical issue.

10                  My own view is that, while they  
11                  could deal with complaints, I think the sheer  
12                  volume of complaints, of a body that deals with  
13                  national security issues, is going to be enormous.  
14                  I think it would be a huge drain on their  
15                  resources.

16                  For me it would be better to leave  
17                  that compartmentalized to other bodies, just  
18                  making sure that there are these avenues of  
19                  communication between them and regular reporting  
20                  from complaint bodies to the national security  
21                  review agency or committee.

22                  I think that from the lessons that  
23                  we've seen in other countries, with Ombudsmen and  
24                  data commissioners, media relations is a really  
25                  key issue that -- such a committee would have to

1           make a real effort to remain open to media to be  
2           as proactive and engage in the media as possible,  
3           and bringing on public support for the role of  
4           this institution.

5                           In my view, they should issue  
6           recommendations, and not binding decisions. I  
7           think it's important that they give the appearance  
8           and that the agency that's being overseen has the  
9           perception that they're not being -- that their  
10          independence is not being trampled on or reduced,  
11          diminished.

12                          They should report regularly to  
13          Minister and to Parliament. They should also make  
14          reports that are public. But, of course, with  
15          respect to confidentiality of materials.

16                          You mentioned the possibility of  
17          covering or including information from the private  
18          sector.

19                          Now, there is growing involvement  
20          of private military and private security  
21          companies, outsourcing of security functions to  
22          the private sector, but the ability of governments  
23          to get information from corporate entities on such  
24          activities is quite limited.

25                          They have to make a real effort to

1 regulate the sector. And in most countries, that  
2 hasn't been done yet. So that is one very large  
3 area that would have to be dealt with.

4 THE COMMISSIONER: Thank you.  
5 Professor Gill?

6 MR. GILL: I think the access  
7 issue is important. I know that when SIRC was  
8 created 20 years ago, there was some -- a little  
9 bit of controversy at the time where some people  
10 raised the question about just the one exception  
11 that was in the legislation to what was otherwise  
12 their full access, and this was that they would  
13 not have access to Cabinet papers, ministerial  
14 briefings and so on.

15 But I'm not aware that, actually  
16 as things have turned out, that they have seen  
17 that particularly as a problem. So I would have  
18 thought a similar rule would be the minimum, you  
19 know, they need full access, they may not need  
20 that kind of access at that level. Otherwise, I  
21 think the rules, as for SIRC at the moment, I  
22 think that would be good.

23 Following on Marina's point about  
24 private access, as I also mentioned before, this  
25 is important -- I'm not a lawyer, so I don't know

1        what devious means lawyers would work out trying  
2        to get this kind of stuff out of the private  
3        sector, but I notice in the background paper you  
4        sent us that you do refer there to subpoena  
5        powers.

6                    I would have thought that there is  
7        a good chance that this body will at some point  
8        come across an issue that does involve information  
9        transfer with private access, and therefore I  
10       would have thought, if that is the way to do it,  
11       that certainly would be required, so that access  
12       to private corporations could be obtained, if  
13       necessary.

14                   On the police powers issue, I  
15       mean, clearly I defer to -- you all have a sort of  
16       experience of this. I think I would just -- I  
17       would add one comment.

18                   I think that subpoena power is  
19       important, but you note there that she, for  
20       example, has arrest powers. I think my  
21       observation on that would be that, from my  
22       understanding -- I mean, Canada is not Northern  
23       Ireland.

24                   You know, you simply don't  
25       have --despite the current Commission, you don't



1           have the complete absence of legitimacy for the  
2           state and the police that a significant minority  
3           of the Northern Ireland population has had for a  
4           long time.

5                           Therefore, I'm not sure you would  
6           need to give this body arrest powers. I mean, I  
7           suspect Canadians, from what I know, from the  
8           Canadians I know, might be a bit wary of another  
9           body given arrest powers. What is this, you know?  
10          Because it does start -- it can start to seem a  
11          bit kind of another secret police on top of the  
12          secret police.

13                           You know, it could be  
14          misconstrued. I think it could be misunderstood.  
15          I'm not sure it would be necessary. But you,  
16          obviously, can observe on that.

17                           Just one other point I'll make and  
18          then pass it over, is that -- oh, yes, on the  
19          issue of remedies.

20                           Again, this is some time ago now,  
21          but I know that SIRC did get into litigation with  
22          the federal government over the status of their  
23          recommendations coming out, complaints  
24          investigation, and the name Thompson springs to  
25          mind. Does that sound --

1 --- Off microphone / Sans microphone

2 I think that was a case where the  
3 Minister did not follow the recommendation -- I'm  
4 sure you know about this. Then they challenged  
5 it, and I think they lost.

6 I would have thought -- I think a  
7 case could be made -- I'm not going to make it  
8 strongly. This is not kind of my legal area. But  
9 I think a case could be made, if one is having a  
10 body carrying out this quasi-judicial  
11 investigation on the basis of solid investigation,  
12 that I think there would be justification there  
13 for saying that their findings in those individual  
14 cases, for example, individuals should be  
15 compensated, documents should be destroyed -- I  
16 think it would be justifiable for that to become,  
17 you know, a command, an order, rather than a  
18 recommendation.

19 But I think, as against that, if  
20 we're talking about the review function, the  
21 policy and practice review function, there I agree  
22 with Marina.

23 I think recommendations here,  
24 because I think there is a real danger otherwise,  
25 is that it might lead the committee in sort of an

1 area of micro-management almost.

2 If they can actually start laying  
3 down different ways in which, you know, it's  
4 almost as though they're potentially supplanting  
5 the Minister, and that's a dangerous path down  
6 which I don't think you'd really want to go.

7 THE COMMISSIONER: Mrs. O'Loan.

8 MRS. O'LOAN: I think in the first  
9 instance I would want to say that the powers which  
10 the agency will need will depend upon the  
11 functions which it's exercising.

12 So I think there are investigative  
13 functions which are predicated on individual  
14 incidents, such as the one that led to your own  
15 Commission.

16 Then there are, if you like, how  
17 the agency or the organization does its business.

18 And then there are more general  
19 things, like best practice issues, okay, and the  
20 powers required, or necessary, will depend upon  
21 the function that's being exercised.

22 Clearly I think there must be a  
23 right to documentation, all documentation, all  
24 documentation held by any agency under review.

25 Now, you can write that

1           legislation but you have to make it work, and the  
2           key to this is, who decides?

3                           It is necessary to ensure, I  
4           think, if I might offer an observation, that the  
5           legislation is so drafted that it leaves no doubt  
6           that the decision is in the hands of the review  
7           agency.

8                           Then they need access to the  
9           processes of the organization because, you know,  
10          intelligence organizations compile data in a  
11          variety of ways.

12                          The review body needs to be able  
13          to assure itself that it has access to all of the  
14          information and not just like level one, level  
15          two, and level three, and what will level four and  
16          level five? So it needs to be able to actually  
17          access the processes, and that's probably the  
18          information technology.

19                          It needs access to all  
20          documentation in terms of policies and all that  
21          sort of thing, how the agencies do their business,  
22          and it needs, I think, a total right of access to  
23          the buildings and the infrastructure used by the  
24          organizations under review.

25                          I think those rights must be

1           exercisable without a ministerial veto.

2                           In investigation terms, I think it  
3 needs -- I mean, I heard what Peter said, but I do  
4 think that if you're investigating something and  
5 you encounter the fact of very serious misconduct,  
6 if you like, or criminal activity by one of your  
7 operatives, that has to be dealt with and it has  
8 to be dealt with immediately.

9                           And if you bring in -- say it was  
10 an RCMP source handler who had got into bad habits  
11 and if you brought in the RCMP to investigate  
12 that, it would compromise the original  
13 investigation upon which you are involved.

14                           So I do think you need the powers  
15 to deal with that as an ancillary matter, and I  
16 think for that reason you need powers of arrest,  
17 powers of compulsion, witnesses, search, seizure.

18                           They would be limited powers.  
19 They would be limited to arresting those who had  
20 committed an offence, or might be perceived to  
21 have committed an offence, and who are employed by  
22 the agency under review.

23                           I think you would also have to  
24 give them a power which I don't have which is a  
25 power to arrest and process those who have, if you

1           like, conspired with those who are employed in the  
2           agencies.

3                               So if you have a military  
4           operative working with an intelligence agency  
5           operative and they've operated together in a  
6           criminal faction, then I think you'd need to be  
7           able to arrest and deal with those people too.

8                               I think you do need a power to  
9           compel witnesses -- not to answer questions but to  
10          attend and to be interviewed, et cetera.

11                              You need rights of search and  
12          seizure. They must be warranted rights so that  
13          you have to get whatever judicial authority is  
14          appropriate in the national legal system.

15                              So I think all those powers are  
16          very necessary for the investigative function.

17                              I think there needs, as Marina has  
18          said, to be an information/communication reporting  
19          power. That's very necessary because -- I mean,  
20          to me the end game of a review organization is to  
21          ensure that your security service does it right,  
22          to ensure that as a consequence of that it's  
23          effective, but above all, to ensure those  
24          communities within whom it must operate, that it's  
25          safe for them to engage. So you need to be able

1 to feed information out.

2 I think one of my experiences  
3 would be that there will be others who will come  
4 to your review agency seeking information, and I'm  
5 thinking in terms of people who have mandates like  
6 your own mandate.

7 You might, for example, have the  
8 situation where an American tribunal of inquiry is  
9 coming to a Canadian review agency and saying, "We  
10 want some of your information", and I think we  
11 would wish to consider what protocols or what  
12 legal arrangements should be made for the sharing  
13 of information with agencies in other  
14 jurisdictions.

15 I think that there needs to be  
16 protection for the review agency, in law, against  
17 forced disclosure in limited circumstances,  
18 because -- I think I can best articulate this in  
19 terms of an investigation which we did where what  
20 we had to do was examine the source handling files  
21 of informants in order to reach a determination on  
22 the basis of what we were looking at. So we had  
23 to look at who the informants were, et cetera, et  
24 cetera.

25 In that situation you can't be

1           forced to disclose that kind of information to the  
2           public.  So there has to be some protection in law  
3           for the organization itself, and for its process,  
4           to enable people to have confidence in the process  
5           so they'll engage in the process and provide it  
6           with the information, and it has to I think have  
7           the power to make recommendations.

8                           It had never occurred to me that  
9           an agency such as mine would not make  
10          recommendations, but there are jurisdictions in  
11          which investigative agencies are not seen as  
12          having a power to make recommendations.

13                           I think it would have to have --  
14          and I don't know if there are any difficulties at  
15          all with this -- but it would have to have the  
16          powers to vet its own staff and to make the  
17          necessary inquiries and all that sort of thing.

18                           I think there would have to be  
19          restrictions on the release of information, but  
20          only -- only such restrictions as are absolutely  
21          necessary, and it would be very difficult to work  
22          out exactly how that would work and to articulate  
23          that in law.

24                           I think there would have to be  
25          some protection, some provision for protection of



1 the staff of the organization which is under  
2 review. That would go, I think, to -- I envisage  
3 perhaps some primary legislation which would  
4 establish the review agency and then some  
5 secondary legislation which would be more  
6 process-oriented.

7 You talked about remedial powers  
8 in the issue of making recommendations, I think  
9 that's there.

10 I have a power to make a  
11 recommendation that the agency should pay  
12 compensation, but only to a very low limit. It  
13 can be a very telling thing when you use that  
14 power, and I think that might be something that  
15 you would want to consider.

16 In terms of timing of the  
17 activities of the review agency, I do not think  
18 that you would want to put any embargo on them.  
19 My experience would tell me that would not be  
20 helpful to the national interest.

21 I think you would have to give  
22 them the power -- this is very legalistic, maybe  
23 too legalistic for you -- but the power to enter  
24 into inter-agency protocols because there will be  
25 other agencies with whom they will have to

1 interact.

2 So I think if you began think in  
3 those terms, you'd have a legislative --

4 THE COMMISSIONER: Let me, before  
5 I turn it over to the others to have them comment  
6 on the subject generally, just ask you a couple of  
7 questions about your experience in Northern  
8 Ireland.

9 As I understand it, in terms of  
10 timing, you say there should not be no embargo on  
11 the timing. You will on occasion embark upon an  
12 investigation while the underlying police  
13 investigation is continuing. So that you do not  
14 wait -- as I understand it, you don't have to  
15 wait -- until the police activity or investigation  
16 has been completed before you become engaged. Do  
17 I have that correct?

18 MRS. O'LOAN: That's absolutely  
19 right. I mean, we're about to report on a case in  
20 which two young men were in a car engaged in  
21 alleged criminal activity. The police stop them.  
22 At the end of the operation, one of the young men  
23 was dead; the other was injured. The police were  
24 investigating the surviving person in the car for  
25 alleged criminal activity and we are investigating

1           what happened.

2                           THE COMMISSIONER:  In that  
3           situation, when that happens, and assuming there  
4           is a prosecution in the police's investigation, we  
5           in Canada, and I'm sure it's similar in Northern  
6           Ireland, have laws that require the prosecution to  
7           make full disclosure to the defence of not only  
8           the information which would support the charge  
9           they've laid but anything that may be of  
10          assistance to the accused person.  So we have  
11          broad principles of disclosure under our Charter.

12                          In your circumstance, if you've  
13          investigated while the underlying police  
14          investigation is continuing and you obtain  
15          information about that, how does the information  
16          that you obtain, that may affect the underlying  
17          police investigation, what happens to that in  
18          terms of the rights of disclosure for the accused  
19          in the underlying trial?

20                          MRS. O'LOAN:  
21          --- Off microphone / Sans microphone

22                          THE COMMISSIONER:  Yes, the  
23          civilian who the police were investigating when  
24          the problem arose.

25                          MRS. O'LOAN:  The situation is we

1       have a criminal procedures and investigations act  
2       which requires disclosure of matters which may  
3       assist the defence or undermine the prosecution,  
4       much as you describe, and those requirements apply  
5       to us too.

6                       So we will disclose to the  
7       director of public prosecutions and he must then  
8       disclose to the defence lawyers such matters as  
9       may undermine the prosecution or assist the  
10      defence.

11                      We do not disclose our entire file  
12      to the director of public prosecutions, nor do we  
13      disclose our entire files to anybody. If somebody  
14      writes to us and says we believe you have got  
15      something which may assist, we would ask them to  
16      provide us with a skeleton argument in defence and  
17      then we will examine the material we have to  
18      determine whether it should be disclosed.

19                      THE COMMISSIONER: So the result  
20      of that, if I understand it, is then that part of  
21      your file, that part that might assist the accused  
22      in the underlying charge, would be made available  
23      and could be disclosed within the underlying  
24      criminal trial?

25                      MRS. O'LOAN: There are provisions

1 for public interest immunity and those processes  
2 attach too, but generally speaking, yes.

3 THE COMMISSIONER: Is that an  
4 onerous obligation for you to scan your files to  
5 comply with those types of disclosure  
6 requirements?

7 MRS. O'LOAN: No.

8 THE COMMISSIONER: Just one other  
9 question before we move on. The power of arrest  
10 that you have, is that a warrantable power? Do  
11 you obtain arrest warrants?

12 MRS. O'LOAN: We would only use  
13 this power of arrest where we have a serious  
14 arrestable offence. You don't need a warrant. So  
15 we would only use it in those circumstances.

16 My instructions to my staff are  
17 that we will only use it when it is absolutely  
18 essential that we do use it. So we don't use it  
19 in circumstances in which people are prepared to  
20 present themselves. We don't go off and raid and  
21 all that sort of stuff. I think there has to be a  
22 regard of human rights.

23 THE COMMISSIONER: Right. Then  
24 can I call on the other three members of the panel  
25 to respond, and we'll move from there? Who would

1           like to go first? Okay. Dr. Born?

2                           MR. BORN: I think about the  
3           remedy. I think that it would be better that such  
4           a review board only has recommendation power, and  
5           I think -- and I agree with the comment of the  
6           Canadian Civil Liberties Association. If they  
7           would have also the power to order compensation,  
8           or writing of public apologies, or you name it,  
9           then I think it gets a little bit of  
10          decision-making power which I think wouldn't be  
11          good for the independence of the review body.

12                           So to execute the recommendation  
13          should be left to the executive and not to the  
14          review body.

15                           THE COMMISSIONER: There should be  
16          a recommendation for a power to recommend  
17          compensation. I know that one or two of the  
18          submissions that we've received here have -- one  
19          at least says there should be a power to order  
20          compensation, but I think another says there  
21          should be a power to recommend compensation. Do  
22          you have any comment?

23                           MR. BORN: I think the review body  
24          should be able to recommend whatever they think  
25          what they would like to recommend, but it is to

1 the executive whether they want to follow that or  
2 not, I would say.

3 THE COMMISSIONER: Professor  
4 Cameron?

5 MR. CAMERON: First, to follow up  
6 on that point.

7 What we're hopefully speaking  
8 about is a SIRC-type review body, supervising a  
9 relatively well-functioning area already.

10 You can draw a contrast here  
11 between the Ombudsman institute, as it exists in  
12 transitional countries, such as Poland, and the  
13 Ombudsman institute as it exists in  
14 well-established, relatively well-functioning  
15 countries such as Sweden.

16 The Polish Ombudsman has a huge  
17 battery of powers because his or her function is  
18 to sort of punish and push forward developments,  
19 whereas the Swedish Ombudsman is mainly there to  
20 make sure that an already well-functioning system  
21 continues to function well.

22 I think that what we would be  
23 hoping for -- I'd be hoping for, is a -- doesn't  
24 need to be that powerful a body in that sense.

25 In terms of remedies, the

1 discussion, of course, in Europe is coloured by  
2 the European Convention of Human Rights and  
3 article 13 of the European Convention of Human  
4 Rights, which requires the provision of effective  
5 remedies and the court's case law now speaks about  
6 effective remedies at the national level. You are  
7 not bound by this in the same way.

8 I would really say that the  
9 prestige of the body, the competence of the body,  
10 is the best guarantee that its recommendations  
11 will be followed.

12 That's the most important thing,  
13 that the body is competent, that it's expert, and  
14 that when it comes with a recommendation then it  
15 should be followed.

16 But, again, like Hans said, I  
17 think it's up to the executive to implement that.

18 However, here too I can see a role  
19 for the parliamentary committee to follow up on  
20 that, to say, well, this new body has made the  
21 recommendation and have you implemented it?

22 Just as Peter said in areas such  
23 as denial of security clearances and so on, you  
24 could envision a situation where the  
25 recommendation becomes operable in some way. But,



1           again, if SIRC has said these files should never  
2           have been started and this person has suffered  
3           economic loss from that, then it should be enough  
4           for the executive to draw their own conclusions  
5           from that.

6                           In Sweden, I will just give you an  
7           example of how much we trust our officials when  
8           the register board or any other government  
9           official has injured, financially or otherwise,  
10          somebody in the exercise of his or her duties.  
11          You then apply to another government official, who  
12          is called the Chancellor of Justice, and ask that  
13          government official to assess the correct level of  
14          compensation. And the Chancellor of Justice then  
15          says I think you should get so much compensation  
16          and everybody accepts that. That's the level of  
17          trust we have in our officials.

18                           That is also the case in security  
19          police records. On the few occasions in which  
20          security police have been found by the register  
21          board to have collected information in an unlawful  
22          or an incorrect way, then the Chancellor of  
23          Justice has ordered a certain amount of  
24          compensation.

25                           However, in other areas,

1 especially in the area of intrusive measures,  
2 these have been authorized presumably by judicial  
3 order. So who has committed the error here? It's  
4 not necessarily the agency. The agency has sought  
5 and obtained judicial order for the targeting  
6 decision. So it's a question then of who are you  
7 issuing the remedy against?

8                   Basically I think that the  
9 prestige of the body should be enough and the  
10 recommendationary powers should be enough.

11                   On investigative powers, I won't  
12 go into any detail, but I must say I share Pete's  
13 misgivings about the need for a huge battery of  
14 powers. And with all respect for the situation,  
15 the situation of Northern Ireland is rather  
16 different. You know, I can quite understand why  
17 Nuala needs these powers in Northern Ireland, but  
18 I am not certain it's the same situation here,  
19 basically.

20                   There is a price to be paid for  
21 giving the oversight or review body too much in  
22 the way of powers, and that price will be that  
23 instead of attempting to go forward on an arm's  
24 length but non-confrontational approach, they may  
25 be tempted all too often to confront and more or

1           less attack the body that they are supposed to be  
2           keeping an eye on, and they just will not and  
3           should not have the capacity to do that all the  
4           time. They can maybe do it in an extreme  
5           situation, but they shouldn't be tempted to do  
6           that.

7                           THE COMMISSIONER: Thank you.  
8                           Professor Leigh.

9                           MR. LEIGH: There's not much, I  
10           don't think, new for me to say that has not been  
11           said by other people, but I just have one or two  
12           different perspectives, I think.

13                           Hopefully, of course, the use of  
14           coercive powers will be exceptional rather than  
15           normal, but there is a dynamic here in terms of a  
16           relationship that builds up between a review body  
17           and the agency that it reviews, and I think the  
18           point was made quite tellingly this morning that  
19           you don't want to create a situation in which the  
20           review body is beholden to the body, the agency  
21           it's reviewing.

22                           So if it has stringent powers  
23           available to it, it is not that it will need to or  
24           indeed should use them all the time. But the mere  
25           fact that they are there will create a different

1 dynamic, I think, in the relationship.

2 The second issue that I would like  
3 to -- sorry. Therefore, I am in favour of  
4 extended coercive power.

5 The second issue I would like to  
6 comment on briefly -- because I think it's very  
7 valuable and we might lose sight of it -- is  
8 something that Nuala mentioned, which will be an  
9 innovation, I think, but an important one: the  
10 ability to share information with other review  
11 bodies from other countries.

12 The reason I think that is such a  
13 significant idea to consider is because of the  
14 international network and nature of much  
15 intelligence-gathering and sharing that's going on  
16 these days. The defect that the various review  
17 schemes that have been set up in other countries  
18 have quite often is that they stop at the point of  
19 where information is being derived from another  
20 state. And that would -- not to be conspiratorial  
21 about it, but it does create a gap, an oversight,  
22 and I think it would be a very positive move for  
23 Canadian legislation at least to begin to address  
24 that issue which I think is really the next  
25 frontier, as it were, for oversight of security

1 and intelligence.

2 The third point I would like to  
3 make is something that has not been mentioned so  
4 far but I think would be a very useful -- it's not  
5 so much a power but it sets the context for a  
6 power, which is that maybe in some situations  
7 there should be a positive duty upon members of  
8 the RCMP to report a particular illegality of the  
9 reviewing body.

10 Now the reason I put it that way  
11 round is because if such a duty existed, then it  
12 would create a form of cover for whistle-blowing.  
13 It makes whistle-blowing so much easier, and  
14 reversely it makes wrongdoing within the agency  
15 that's being reviewed that much more unlikely  
16 because an officer can always say, in the face of  
17 a request to do something improper, "You know that  
18 I am under a duty to report this to the review  
19 body."

20 So it's not a power, strictly  
21 speaking, but you can see how it's linked to the  
22 question of power.

23 Finally, fourthly on this question  
24 of remedies, I take a somewhat different view on  
25 this, and for some of the reasons that Peter Gill

1           gave earlier on.

2                           I want to distinguish between the  
3           different ways in which a review body could be  
4           operating, whether it's operating in review mode  
5           or whether it's gone into a more formal complaints  
6           mode, and I think there should be a procedural  
7           gateway or a step that it goes through in order to  
8           signal to everyone involved that it has now moved  
9           from the one process to another, in the case of  
10          self-initiated complaints investigations.

11                          Let me briefly run through the  
12          background and then you will see how I reach the  
13          conclusion that I do.

14                          I think you have really two  
15          different ways of working here. The traditional  
16          way of working within Ombudsman-type systems,  
17          particularly in the Westminster world, is that  
18          they have very strong investigative powers but the  
19          trade-off for that is they don't at the end of the  
20          day have coercive powers. So very strong powers  
21          of investigation with very few boundaries, but the  
22          trade-off is that they can't actually harm anyone.  
23          They can report, they can recommend, but that's  
24          all.

25                          They are partly in that way

1           because they are unelected and for the reasons  
2           that Hans Born mentioned, you don't want an  
3           unelected official with very great powers  
4           therefore trespassing on the field of elected  
5           government. So there are policy reasons.

6                         Also partly because they are not  
7           intended as a court substitute. It's a feature of  
8           these statutory schemes that if there is another  
9           legal remedy available, the complainant should use  
10          that and perhaps the Ombudsman should not  
11          investigate.

12                        The one exception to this  
13          principle in the U.K. interestingly is the  
14          Northern Ireland Ombudsman who has always had some  
15          powers to award a remedy, quite different to  
16          England and Wales. That's the one kind of way of  
17          thinking about this.

18                        The other way, of course, is the  
19          court-based adversarial model where you have a  
20          court or tribunal where the role of the tribunal  
21          is to act as an umpire. It's the parties who  
22          bring their case, you prove it if you can, and  
23          then of course at the end of the day the court has  
24          coercive powers.

25                        As soon as you say that, you

1 realize the problem in the realm of national  
2 security, that a plaintiff coming to court to take  
3 on the government in a security case, where will  
4 they get the evidence? How will they prove it?  
5 It's not going to work.

6 And there are all the reasons that  
7 we know about in terms of the world over, how  
8 judges feel ill-equipped in a court setting to  
9 deal with these security-type issues.

10 This is a rather long-winded way  
11 of coming around to my conclusion, which is that  
12 when we are dealing with this type of body in a  
13 complaints-type mode what we are really asking it  
14 to be is a form of court substitute. We are using  
15 it because the courts are really not satisfactory  
16 for dealing with these types of issues affecting  
17 individuals, which drives me to the conclusion  
18 that it is appropriate here to do something  
19 different than we have otherwise done and to give  
20 it coercive powers.

21 THE COMMISSIONER: Thank you.  
22 That's helpful.

23 Mrs. O'Loan.

24 MRS. O'LOAN: A minor observation  
25 in relation to Professor Cameron's comment on the



1           judicial authority for warrants.

2                       The only comment I would make  
3           about that is there may well be issues around the  
4           provision of information upon which the judge made  
5           the decision to issue the warrant and there needs  
6           to be an ability to deal with that issue.

7                       You talk about the price to be  
8           paid for giving an oversight body powers such as I  
9           have.

10                      There are two reasons, two  
11           principal reasons, why oversight bodies fail --  
12           well, this would be my observation.

13                      One is lack of resources and the  
14           second one is lack of powers. And if you have a  
15           single opportunity to get this right, I think  
16           that's to be borne in mind.

17                      We have investigated to date 19 --  
18           well, we have dealt with 19,000 allegations. We  
19           have used our powers of arrest on 16 occasions.  
20           You can't just arrest people willy-nilly. You  
21           have to have cause to do it. And I think it's  
22           very, very important to at least consider whether  
23           you want to be in the position in which you would  
24           compromise what you are trying to do because you  
25           have to bring a third party in to conduct an

1 investigation which you could refer to another  
2 part of the organization which is doing the  
3 review.

4 That is the only observation I  
5 would make there.

6 I think Ian is absolutely right.  
7 We had a discussion this morning about the review  
8 organization becoming too close to the  
9 organization being reviewed and the dynamics of  
10 that, and I said at that point that one of the  
11 things which makes the relationship right is the  
12 fact that the reviewing organization is a very  
13 powerful organization because the organizations  
14 which they are reviewing are the most powerful  
15 organizations in the state.

16 One of the reasons I think in the  
17 investigative structure to provide things like  
18 powers of arrest is that that immediately brings  
19 with it a whole raft of protection for those who  
20 are under investigation, and those protections  
21 must, in law, I think be there.

22 There was mention there of a duty  
23 to report. We have a code of ethics in my own  
24 organization and the police service of Northern  
25 Ireland have a code of ethics, and one of the

1 provisions of that is that there is a duty to  
2 report wrong-doing. So it's an actionable offence  
3 not to do it.

4 The last thing is simple: You  
5 were talking about the duty on the reviewing  
6 organization to report the fact that they are  
7 conducting an investigation if they move, for  
8 example, from some kind of an administrative  
9 review into investigation. I think that's an  
10 entirely appropriate duty to impose, subject only  
11 to the caveat that the duty will not need to be  
12 fulfilled if it would in some way inhibit the  
13 investigation. Thank you.

14 THE COMMISSIONER: Yes, Professor  
15 Cameron.

16 MR. CAMERON: I think we are all  
17 in agreement that the reviewing agency must have  
18 wide powers, and for the reasons I've pointed out  
19 that we all agreed on earlier: that it's a means  
20 of keeping the review body at arm's length and  
21 making it not dependent on the agency it's  
22 supervising.

23 What I think the disagreement  
24 really comes in is in the power of arrest, for  
25 example.

1                   I think the question you have to  
2 ask, really, is it the case that the SIRC powers,  
3 the powers that SIRC has just now, have been  
4 insufficient in any respect? I think that's the  
5 first question you have to ask.

6                   The second question is: If the  
7 body is now going to look at the RCMP as well,  
8 does the RCMP have ways of hiding things, ways of  
9 making life difficult, which CSIS does not have?  
10 And if you come to the conclusion that it does,  
11 then that should also result in the body having  
12 greater powers.

13                   I think the one thing that we have  
14 spoken about earlier during the conference but not  
15 now is in one area where I could be fair to go  
16 along with greater powers and this is problem of  
17 farming out.

18                   If you farm out functions, if  
19 there is any evidence of that, then there must be  
20 some mechanism, some sort of residual capacity to  
21 do something about that, to investigate it.

22                   In general, the organization must  
23 have sufficient powers to make the agency it is  
24 supervising realize it means business. At the  
25 same time, as I have said, the power of arrest I

1 am still dubious about.

2 THE COMMISSIONER: Go ahead, yes.

3 MRS. O'LOAN: If I may come back  
4 just once more?

5 I just want you to envisage this  
6 scene: You have becoming embedded in a part of  
7 your community a group of people who do not intend  
8 to do anything in this country but intend to do  
9 something somewhere else; right? The security  
10 services are aware of them, and the security  
11 services are keeping a very close eye on them.

12 Something happens and one of these  
13 people in this organization that the security  
14 services are keeping an eye on ends up dead;  
15 right? Be it the RCMP or anyone else.

16 Who would handle that? Who would  
17 manage that? Who better than the organization  
18 which is entrusted with the review of the security  
19 service of the RCMP's national security?

20 That would be my view. It would  
21 only be my view as a consequence of what I have  
22 experienced. And it's not to cast any aspersion  
23 on those who are in the security services and it's  
24 not to cast any aspersion on the RCMP or anybody  
25 else. It's simply to say, in pragmatic terms,

1           when you look at the kind of things that can  
2           happen and the kind of things that can go wrong --  
3           and I know that Canada is not like Northern  
4           Ireland. But I do know that international  
5           terrorism does operate internationally and it  
6           finds nice comfortable places to situate itself to  
7           train, to organize, to do all sorts of things.  
8           And you need to be able to deal with those too, I  
9           think.

10                           So I just would caution against  
11           dismissing any powers of investigation.

12                           THE COMMISSIONER: Let me ask this  
13           question.

14                           Everybody seems to be in favour of  
15           broad powers of access to documents and persons,  
16           particularly if they are within the agency that's  
17           being investigated. You may have already  
18           addressed it, but I want to sort of clear it up,  
19           specifically your views.

20                           But what about other agencies? To  
21           some extent if the review body is a functional  
22           body, then some or all of the other agencies may  
23           fall within the mandate of that review body.

24                           But let me posit the question this  
25           way: Assuming that there is activity that could

1 be relevant in other agencies outside those within  
2 the jurisdiction of the review body, should there  
3 then be powers to have access to or to compel  
4 productions of documents and to obtain information  
5 from those agencies?

6 Before I pose the question, let me  
7 say what I think. There are obviously perhaps  
8 advantages to that but there is this disadvantage:  
9 that those other bodies may well be subject to  
10 their own review processes, so that you might now  
11 have them responding to more than one review  
12 process, and at some point the amount of review  
13 that is taking place can become simply too onerous  
14 and interfering with, as I said earlier, the  
15 underlying operations.

16 Have you had any experience or do  
17 you know of any jurisdictions where that type of  
18 access is permitted and whether or not it has been  
19 successful and created the type of problem I think  
20 could happen?

21 MRS. O'LOAN: The obvious agency  
22 where you would want to get information, but you  
23 wouldn't have the power to get information, is the  
24 media.

25 THE COMMISSIONER: Right.

1                   MRS. O'LOAN: The way you have to  
2 deal with that in our jurisdiction, it's through  
3 judicial process.

4                   THE COMMISSIONER: How successful  
5 are you through judicial process? We have a  
6 couple of cases going on in Canada.

7 --- Laughter / Rires

8                   MRS. O'LOAN: I think where I am  
9 coming from is that although there would be a  
10 temptation on the reviewing body to say I should  
11 have all the powers I want, there have to be  
12 constraints, and I think the constraint should be  
13 that you have the powers over the agencies which  
14 you are reviewing but you do not have the power  
15 unless a court, in exceptional circumstances,  
16 gives you the right to seek that information.

17                   I think that will probably be the  
18 kind of route I would anticipate would be fair.

19                   THE COMMISSIONER: All right.

20                   Professor Gill?

21                   MR. GILL: The other way around  
22 this -- it's not around it. The other way that  
23 may help to ameliorate the problem you identify is  
24 to reduce what I referred to earlier as the  
25 compartmentalization of review as far as possible



1           so there aren't so many bodies.

2                           But if the situation still arises  
3 because it happens to be that it's perhaps  
4 documents or arresting in an agency which actually  
5 has nothing to do with national security or  
6 something and it has its own review mechanism, how  
7 do you prevent the sort of burn of oversight and  
8 so on?

9                           You have to try and ensure that  
10 the overseers themselves are engaged in networking  
11 as effective as that of the agencies over which  
12 they have oversight.

13                          I am struck at a very general  
14 level, for example, that overseers in your country  
15 and in my country and in the United States and The  
16 Netherlands and Sweden and various other countries  
17 meet from time to time. They do this. They meet,  
18 they discuss common problems, they network, they  
19 make those kinds of connections, on a kind of  
20 transnational, where the issue is a transnational  
21 one, hopefully might ameliorate some of the  
22 problems that we have there.

23                          It's no panacea, but this is I  
24 think only one of the ways in which overseers have  
25 to educate themselves and that just as agencies

1 are learning that they have to share information,  
2 overseers have to do the same.

3 THE COMMISSIONER: Professor  
4 Leigh?

5 MR. LEIGH: Just a brief and  
6 perhaps blindingly obvious observation that this  
7 trails back to where we started this morning,  
8 doesn't it, and set it right round.

9 The question you raise is a very  
10 good reason for not having split forms of review.

11 THE COMMISSIONER: Yes, Dr. Born?

12 MR. BORN: Of course the access  
13 for classified information is also related to the  
14 mandate of the committee if it is only supposed to  
15 review policy as opposed to legality,  
16 effectiveness -- I think you should link it to  
17 that too.

18 I also think there should be a  
19 responsibility on the agencies who are supposed to  
20 submit information; that they also are responsible  
21 for that and that they submit sufficient  
22 information. So not only that they always wait  
23 for requests but that they also can be held  
24 responsible, not only if they know that this issue  
25 is in play before the review body that they are

1           then also obliged to cooperate fully and not only  
2           to give the specific information that's supposed  
3           to be given.

4                           In the American legislation there  
5           are examples of that. So there is the duty to  
6           keep, as I say, the U.S. to keep the congressional  
7           committee fully and currently informed. So you  
8           put the onus on the agency you are supposed to  
9           overview.

10                           The other thing is that the review  
11           body is allowed to consult external people,  
12           expertise. I don't know whether that is  
13           self-evident or not, but that they are allowed to  
14           involve other third parties in an advisory  
15           capacity to value the quality of the information  
16           obtained.

17                           I think also we should not only  
18           talk about agencies but also the cases that you  
19           referred to, like private security companies with  
20           whom they cooperate, or as I saw in the United  
21           States they work together with all types of  
22           marketing bureaus who collect data of citizens.

23                           I think that should also extend to  
24           those type of organizations.

25                           THE COMMISSIONER: I have one last

1 question on this topic.

2 The Inspector General of the  
3 Department of Justice in the United States has an  
4 express civil liberties mandate, and I am  
5 wondering whether you have any comment as to  
6 whether or not that is a mandate and a power that  
7 should be expressly given to a review body, the  
8 type that we are talking about?

9 MRS. O'LOAN: Could we have  
10 clarification on the question.

11 THE COMMISSIONER: In its mandate,  
12 as I understand it, the Inspector General of the  
13 Department of Justice in the United States is  
14 expressly directed to review the activities that  
15 otherwise come in the mandate with respect to  
16 concerns, possible breaches of civil liberties.  
17 So it's creating in the review body a mandate in  
18 that area.

19 There are other bodies. We have a  
20 human rights commission and so on that arguably  
21 has jurisdiction and there are other avenues in I  
22 am sure all of our countries for redress dealing  
23 with civil liberties issues.

24 But is this something that in this  
25 area, security and intelligence, should be

1 expressly dealt with as part of the mandate, the  
2 way it is at least in the Inspector General in the  
3 United States?

4 MR. LEIGH: I can see some value  
5 in that. I think the underlying issue is really  
6 at the heart, isn't it, of public debate and  
7 concern about national security, a balance between  
8 civil liberties and terrorism, the debate that's  
9 going on the world over.

10 The picture that is commonly used  
11 in these discussions I think is of the need, of  
12 course, to somehow balance the two. I think  
13 lawyers often criticize that picture because one  
14 tends to win out and the other tends to lose.

15 I think what is not so often  
16 appreciated is that a concern for civil liberties  
17 and human rights is something that you, when you  
18 talk to intelligence professionals, is as much a  
19 concern for them as for the public as a whole.

20 But the value of this proposal I  
21 think is partly symbolic but also to give a  
22 definite mechanism by which that commitment to  
23 civil liberties can be audited. It wouldn't be a  
24 substitute for the courts, of course, which are  
25 the primary protector of civil liberties and human

1 rights, but it certainly couldn't harm to have a  
2 review body judging specifically according to that  
3 standard.

4 And I think it would be an  
5 appropriate expression of what I think is a very  
6 commonly held view, that we need to put these two  
7 things in conflict but to bring them together.

8 THE COMMISSIONER: And the review  
9 body being an agency that then would be seen as at  
10 least working towards that balance that people  
11 speak of so often.

12 MR. LEIGH: Yes.

13 THE COMMISSIONER: Professor Gill.

14 MR. GILL: I would say I have no  
15 doubt that it must be made explicit. The reason I  
16 say that is thinking of our experience with the  
17 U.K. intelligence and security committee set up  
18 ten years ago, the formal mandate of that  
19 committee is to examine the expenditure,  
20 administration and policy of the three main  
21 intelligence agencies.

22 Clearly I realize I am a bit  
23 naive, but I kind of assumed that policy, since  
24 certainly in the last few years, since we have had  
25 a Human Rights Act and we apply the European

1 Convention on Human Rights, I kind of assumed in  
2 my naivety that the intelligence and security  
3 committee would see rights and liberties as a  
4 crucial part of their mandate.

5 I have read every one of their  
6 annual reports since 1995 and I have yet to see a  
7 reference, a single reference, to human rights,  
8 which in the security intelligence area I think is  
9 pretty mind-boggling, to be honest.

10 I actually mentioned this in a  
11 brief conversation with a former chair of the  
12 committee, and I was quite surprised, he actually  
13 said, "Yeah, I think perhaps the committee, you  
14 know, perhaps they should start looking at these  
15 issues of rights." I thought, oh well, progress,  
16 you know?

17 --- Laughter / Rires

18 MR. GILL: He is no longer there,  
19 though.

20 I use that example because I was  
21 kind of shocked, you know. I was actually talking  
22 a bit about this yesterday at the symposium we  
23 were at, is that the review committees -- and this  
24 is also a problem for the parliamentary  
25 committee -- must resist being drawn into

1 executive reform and efficiency agendas for the  
2 services. This is a danger that review bodies can  
3 fall into.

4 It's not exactly capture. That's  
5 a slightly different problem. But it's just  
6 becoming subtly used by the executive to pursue  
7 their own reform agendas.

8 One way of doing that is making  
9 the rights element of the mandate absolutely  
10 explicit. So I would certainly encourage that.

11 THE COMMISSIONER: Mrs. O'Loan.

12 MRS. O'LOAN: I think the reason I  
13 asked for clarification is I was kind of surprised  
14 you were asking the question.

15 I think that's because I think in  
16 human rights terms, as we do our work, it's all  
17 human rights reference based, if you like, and I  
18 simply cannot see how you could do this work  
19 properly other than to do it in that context.  
20 That's the only thing I want to add.

21 THE COMMISSIONER: Anyone else on  
22 that?

23 MR. CAMERON: I think we all agree  
24 on this, and I agree fully.

25 The main function really is to



1           buttress the internalizing effect, shall we say.  
2           The main safeguard for respect for human rights is  
3           the democratic sensibilities of the agency's  
4           personnel, the security police and security  
5           officials. That's the main buttress that has to  
6           be internalized. You know, that's a very good way  
7           of doing that.

8                           THE COMMISSIONER: Are there any  
9           other comments on this Question 3? We are a  
10          little ahead of schedule, which is a good thing.  
11          We have Question 4 coming up, but we will take a  
12          break before that.

13                           I think Question 4 promises to  
14          raise a lot of good questions about the  
15          composition of a review committee, how questions  
16          should be addressed, and the reporting and  
17          relationship.

18                           We have touched on some of that,  
19          but I have a number of questions. I think it  
20          should be very interesting.

21                           Why don't we take our 15-minute  
22          break now and we will resume at a quarter to  
23          three.

24          --- Upon recessing at 2:31 p.m. /

25                           Suspension à 14 h 31

1 --- Upon resuming at 2:47 /

2 Reprise à 14 h 27

3 THE COMMISSIONER: We will resume.

4 We will turn now, then, to  
5 Question number 4, which has five parts to it, but  
6 let me read it for those that don't have it in  
7 front of them.

8 What observation/comments do you  
9 have about:

10 The qualifications necessary to  
11 review national security activities?

12 That's the first one. The second  
13 one is: How members of the review body should be  
14 chosen?

15 The third is: How questions of  
16 national security confidentiality should be  
17 addressed?

18 Those are questions with respect  
19 to the need to keep information confidential, so  
20 that it's addressing how do we address the lack of  
21 transparency to the extent there needs to be such?

22 The fourth question is: To what  
23 entities the review body should report.

24 And finally: What form should  
25 reporting take, keeping in mind the sometimes

1 conflicting requirements of secrecy and  
2 accountability/transparency?

3 So there's quite a menu of  
4 questions we've packed into the fourth question.

5 Just a couple of observations  
6 before I turn it over to the speakers.

7 It strikes me, in terms of the  
8 first two, the qualifications necessary to review  
9 national security activities and how members  
10 should be chosen -- or let me ask the question  
11 this way to those that are going to speak to it:  
12 What are we trying to accomplish when we compose a  
13 review body?

14 Just by way of background, in  
15 Canada, at least in terms of numbers, we've taken  
16 a number of different positions and the CPC, the  
17 complaints body for the RCMP, the legislation  
18 permits up to 31 members. It only has two  
19 full-time members but one can only imagine if they  
20 appointed all 31. You'd love to go to those  
21 meetings.

22 --- Laughter / Rires

23 THE COMMISSIONER: SIRC, on the  
24 other hand, has five members, and SIRC, as  
25 probably most of you are aware, the requirement

1           there is that they be Privy Councillors.

2                           The question, it seems to me, the  
3           fundamental question that we start with is, when  
4           we're selecting people, what is it we're trying to  
5           accomplish? Are we trying to get experts in the  
6           area? What sort of backgrounds? Or are there  
7           broader issues that we should be thinking about  
8           that engender confidence in the public.

9                           In any event, those are the  
10          questions, and through the course of the  
11          discussion, we'll get to all of them, I'm sure.  
12          We start with you, Professor Cameron, if that's  
13          all right.

14                          MR. CAMERON: That's fine. As you  
15          say, it's quite a menu, a smorgasbord, I'd say, of  
16          questions here.

17          --- Laughter / Rires

18                          MR. CAMERON: The qualifications  
19          necessary to review national security activities,  
20          to begin with. Well, you can say about lawyers,  
21          you know, the more lawyers you have, the more you  
22          need. This is the problem with them, you know?

23          --- Laughter / Rires

24                          MR. CAMERON: Pretty soon they can  
25          take over.

1 THE COMMISSIONER: Easy, there.

2 --- Laughter / Rires

3 MR. CAMERON: Yes, I will be  
4 leaving the country.

5 THE COMMISSIONER: This is the  
6 last panel you're invited to!

7 --- Laughter / Rires

8 MR. CAMERON: "Lawyers have  
9 certain good qualities", he hastened to add.

10 --- Laughter / Rires

11 MR. CAMERON: They have good  
12 judgment. That's what we're trained to do,  
13 especially judges. We have good judgment. We're  
14 supposed to balance things. We're supposed to  
15 weigh the pros and cons. In the continental  
16 system, judges tend to be -- it's a career  
17 bureaucracy, a career judiciary. They begin as  
18 clerks for courts. They progress through the  
19 hierarchy. In Sweden it's very common that they  
20 work for a number of years in the Ministry of  
21 Justice, you know, the best of them, and then they  
22 return to judging.

23 That's how judges are chosen in  
24 Sweden. In the common law countries, it's an  
25 entirely different thing.

1                   Both types of experience can be  
2                   very useful in the security context, but in very  
3                   different ways. The big advantage of the Swedish,  
4                   or continental, model is that you get a very good  
5                   knowledge of the inner workings of government.  
6                   You understand how the government machine -- you  
7                   spoke about earlier, the symposium, you understand  
8                   how that works.

9                   The advantage of the common law  
10                  system is that if you have, for a large number of  
11                  years, supported yourself financially, working as  
12                  a private lawyer, and then are called to the bar,  
13                  and then are called to the bench, then you have  
14                  developed, shall we say, almost extreme  
15                  individualism, bloody-mindedness, one might say.  
16                  There, you know, you've seen both sides, both  
17                  defence and prosecution, and you also know how to  
18                  go about defending your clients' interests. And  
19                  both systems, I should say, a good judge develops  
20                  this ability to weigh evidence and to ask the  
21                  right questions, I should say.

22                  Well, enough complimenting judges.  
23                  What they're not quite so good at  
24                  perhaps is this -- naturally we lawyers become  
25                  very focussed on certain things. We have a

1 certain type of lawyer-ish tunnel vision. We  
2 don't necessarily have the wide political and  
3 cultural experience that's necessary. We have  
4 good judgment, but we're not critical in the way  
5 really that we should be.

6 What I'm getting at is you really  
7 need a blend of people on the panel. You need  
8 people who -- you need a couple of lawyers and you  
9 need a number of others, basically, who have to  
10 have had a wide experience, especially the world  
11 of politics, I would say.

12 Now, how do you go about choosing  
13 these people? Well, here again I think there is a  
14 role to play for this Parliamentary committee  
15 which is going to be established.

16 In Norway it's the parliament that  
17 chooses the Norwegian committee, and that's very  
18 important. All the more so, I should say, if this  
19 body is going to be reviewing something so much of  
20 a national icon as the RCMP. If the body is an  
21 independent functional committee, which we've been  
22 speaking about on the model of SIRC, which has  
23 this competence to look at, not simply the RCMP,  
24 necessarily -- I know this is not part of your  
25 remit -- but even the other integrated groups

1       dealing with national security, crime, in a sense  
2       you're putting all your eggs in one basket. That  
3       makes it all the more important that there is a  
4       high level of public confidence, a high level of  
5       parliamentary confidence in the members of the  
6       review body. So I think you do need this.

7                   I won't deal with the issue of  
8       national security confidentiality. I think, as I  
9       said, if you're dealing with an independent body,  
10      it's within the ring of secrecy. You don't have  
11      that problem. If it was a parliamentary body, on  
12      the other hand, then there's much more than can be  
13      discussed in those circumstances.

14                   What entities should the review  
15      body report to?

16                   Well, the purpose of reporting  
17      here, if we go back to this idea of what is  
18      accountability, what is the purpose of  
19      accountability, of learning, of reassurance, of  
20      control? The purpose of the reporting really is  
21      both reassurance and learning in the  
22      circumstances. And this reassurance must have  
23      some sort of public outlet, basically. It's the  
24      public that have to be reassured at the end of the  
25      day. So some sort of public outlet is necessary.



1                   At the same time, the natural  
2 focus for that public outlet is through  
3 Parliament.

4                   The learning function, on the  
5 other hand, it's the Minister, surely, who has to  
6 do the learning. The learning has to be directed  
7 to the Minister responsible to make sure that the  
8 Minister responsible, he or she, puts into action  
9 whatever improvements are necessary.

10                  But here again I see a function  
11 for Parliament, in that if the report -- the  
12 learning part of the report is directed to the  
13 Minister, then the parliamentary committee which  
14 is to be established has a very important role in  
15 following up on that. What has been done? What  
16 have you done about the report of the body?

17                  I'll conclude at that point,  
18 but -- oh, yes. There's one other thing I should  
19 say, actually going back to this issue of  
20 qualifications.

21                  Working in this field, and I'm not  
22 a psychologist, but working in this field, from  
23 what I understand, speaking to both the Norwegians  
24 who are involved, and I also had the advantage of  
25 speaking to certain members of SIRC. Now, it's a

1 very psychologically wearing job, very  
2 psychologically wearing. We wish to believe in  
3 the best of each other. Maybe in Sweden we're too  
4 naive in that respect, possibly. But we wish to  
5 believe the best of each other.

6                   And in this job you're constantly,  
7 constantly put in the position of questioning  
8 whether you're getting the whole truth from the  
9 people you're speaking to. They may not  
10 necessarily be lying to you, but they're trained  
11 to only give answers to the questions they were  
12 asked and not anything else, not to volunteer  
13 anything else. So it's a wearing job, quite  
14 simply, it's a wearing job. And it means, of  
15 course, that you can't sit in the job too long.  
16 You get worn down by it, quite simply, and you get  
17 too cynical, perhaps.

18                   At the same time, you have to have  
19 a certain number of years in the job, as we have  
20 spoken about earlier, in order to get up to steam,  
21 basically. We speak of a learning curve in this  
22 respect, and I think part of the -- I think  
23 everybody agrees that part of the success of SIRC,  
24 a large part perhaps of the success of SIRC, has  
25 been due to the continuity of membership, of its

1 support staff. In this respect, it's been very,  
2 very important here. But it's a psychologically  
3 wearing job and you can't expect anybody to do  
4 that for too long, not even a judge.

5 THE COMMISSIONER: Dr. Born?

6 MR. BORN: Actually I couldn't  
7 agree more with my colleague from Sweden, I would  
8 say.

9 I will only address some bits and  
10 pieces here and there.

11 About the composition and the  
12 qualification necessary. I have seen in some  
13 countries that they require that people in such a  
14 body should have a legal degree. Just give some  
15 options.

16 Otherwise I have seen in some  
17 countries, in other ones, they require that these  
18 positions would be filled by former judges, and  
19 then the example from Norway, which we have  
20 already mentioned so many times, which is actually  
21 based on the example of Canada, by the way, is  
22 that they thought it would be good to have a  
23 diplomat chairing the committee. Maybe they think  
24 this whole business is a minefield and you should  
25 have some diplomatic qualities there.

1                   Also in Norway they have like an  
2                   expert committee. I don't know how it is here,  
3                   but from Holland or Switzerland I know a little  
4                   bit better. Also from so-called experts they know  
5                   to a certain extent the political colour. So you  
6                   have an expert that everyone knows he or she is a  
7                   member of that party.

8                   I don't know to what extent here  
9                   these things are also going along party lines or  
10                  not, but, for example, in Norway, they had tried  
11                  to guarantee -- well, you can't deny it, and  
12                  therefore they tried also to have a blend in that  
13                  respect. But it's a bit of a touchy issue,  
14                  perhaps.

15                  In Sweden, I think you told me  
16                  that they have a mixed expert parliamentary  
17                  committee, so you have both parliamentarians and  
18                  experts on the same commission.

19                  Then I have seen, but it's  
20                  especially in post-authoritarian states, that if  
21                  you want to be on such a body you're not to  
22                  supposed to have worked for the last ten years for  
23                  the agency you are supposed to oversee as an  
24                  explicit qualification.

25                  I think you have already spoken

1           about how the member should be chosen. I'm not  
2           going to do that again.

3                           Confidentiality. I also agree.  
4           Because this is an expert body, the whole thing of  
5           vetting and clearance is rather straightforward.  
6           They have to be vetted and they have to be  
7           cleared. But also to a degree they need to have  
8           access to classified information.

9                           Maybe then the last point I would  
10          like to add here is you shouldn't forget the whole  
11          issue of adequate staff, so that you not only  
12          focus on the members but also on the staff.

13                          I think Mrs. O'Loan also said that  
14          one of the reasons why these oversight bodies  
15          sometimes fail is that they have not enough  
16          capacity to deal with complaints, as she said.

17                          So I think the whole issue of  
18          staff, qualified staff, is also very important,  
19          and also that they have access to classified  
20          information, because there are also countries I  
21          know that only the members have access, and not  
22          the staff. But then, that is not a big deal then.

23                          I think I have covered quite a few  
24          things. Maybe the other ones can take up the  
25          other issues.

1 THE COMMISSIONER: Professor  
2 Leigh?

3 MR. LEIGH: First of all, let me  
4 start by saying that, in reference to the previous  
5 speaker, as somebody who is a law professor, I  
6 don't think you can have too many lawyers. I'm  
7 not going to do myself out of a job. In that way,  
8 the more the better.

9 --- Laughter / Rires

10 But to come back to the issue.

11 First of all, to begin with, who  
12 should comprise a review body? I think it's  
13 almost impossible to answer that in the abstract  
14 without having first decided what the task should  
15 be; in other words, what is the standard of review  
16 that's being applied? Is it a legal standard? Is  
17 it a human rights standard? As has been  
18 mentioned, is it an efficiency standard?  
19 Propriety? What is the standard?

20 Once you've decided that, the type  
21 of person that you want to do the work must follow  
22 from that initial decision, not the other way  
23 around.

24 The second variable, which I don't  
25 think is at all within your control, obviously,

1 but I think is a very important part of the  
2 picture here, is whether or not there is a  
3 committee of parliamentarians, and what its role  
4 is.

5 If there were a committee of  
6 parliamentarians, you wouldn't want to duplicate  
7 that by necessarily having a committee with  
8 parliamentary input involved in oversight. That  
9 would make no sense and it would become a natural  
10 forum for the review body to report.

11 If that weren't there in the  
12 picture, then the arrangements that you might  
13 suggest could be completely different and skewed  
14 in a different way, I would have thought.

15 So those are two quite important  
16 variables, which we can't know, I suppose, but  
17 they do seem to me to be an important part of the  
18 picture.

19 Having said that, let me try to do  
20 the impossible and say what -- you know, putting  
21 those aside -- what kind of factors you might look  
22 for. It seems to me there are two key things.

23 First of all is independence, and  
24 second is expertise.

25 Independence can be acquired in

1 two quite distinct ways, I think, depending on  
2 those factors that I've just talked about.

3 It can be looked for in terms of  
4 political cross-section. In other words, you look  
5 for a body that is representative of the range of  
6 opinion. This is very much the thinking that  
7 underlay the composition of SIRC in the way that  
8 it's comprised of Privy Councillors representing  
9 different -- who have a background, anyway, from  
10 different political groups although they're no  
11 longer active in party politics. And in that way  
12 it instills public confidence, you have a  
13 cross-section.

14 The other way, of course, to  
15 create confidence through independence is what  
16 Iain Cameron I think was hinting at, with sort of  
17 legal expertise/judiciary type approach. You look  
18 for figures who have a quality of impartiality for  
19 others reasons. So you're consciously trying to  
20 do the opposite. You're looking for active  
21 disinterest, in a way, or non-engagement in  
22 politics.

23 The second question, the question  
24 of expertise. Well, I agree here with Hans Born.  
25 I think what one doesn't want, for reasons of



1 public confidence, is people who have a background  
2 of expertise in the field, but that of course  
3 presents a difficulty, therefore the expertise has  
4 to be acquired on the job and there would be a  
5 learning curve involved in doing that, and here  
6 again I think the issue of resources is very  
7 important.

8 Now, putting all of that together,  
9 it seems to me that you have in Canada perhaps two  
10 basic alternative models.

11 One is someone or a body  
12 essentially appointed by the government, either  
13 Privy Councillors or a Commissioner or some  
14 variant on that.

15 The second is the model of a  
16 person or an office which is an officer of  
17 Parliament, and whose responsibility is to  
18 Parliament.

19 Now, here I must betray what  
20 perhaps is just sort of a democratic prejudice, I  
21 don't know. I strongly favour the second of those  
22 models just on terms of democratic legitimacy  
23 within a Westminster-style system.

24 It's not what we have in my own  
25 country, I'm very well aware of that, and I know

1           that's not what you have universally here either,  
2           but I do feel it has very distinct advantages in  
3           terms of the ownership of the review process, the  
4           way that it's seen publicly to report to the  
5           legislature.

6                           Of the other issues, I mean, I  
7           think I just wanted to say something about  
8           reporting. But in the process of doing that,  
9           maybe I'll say something also about security,  
10          transparency, and so on.

11                           Now, it seems to me that the  
12          review body will make different kinds of reports  
13          for different functions. I mean, just fairly  
14          obviously, if it's dealing with individual  
15          complaints, you hope that at the conclusion of  
16          those complaints there will be a requirement to  
17          produce a report that the complainant, for  
18          example, and the agency sees. It almost goes  
19          without saying, but perhaps it's just worth  
20          saying.

21                           But on top of that, even if the  
22          primary function of the review body was on  
23          complaints, you would still hope for a duty, for  
24          example, to produce an annual report in the style  
25          of the information or privacy commissioners'

1 reports that explain trends in the complaints, in  
2 particular, bigger issues that have come out of  
3 individual complaints, recommendations for law  
4 reform, and so on.

5 Of course, if we're talking about,  
6 as we were earlier on, a body which didn't just  
7 have a complaints function but also had a distinct  
8 review function, then the scope of those annual  
9 reports would be that much wider.

10 I think it's clear from what I  
11 said earlier on that I think it's appropriate  
12 reports go to Parliament as the proper body to  
13 receive reports.

14 The facility to produce special  
15 reports is of course something that follows from a  
16 duty to initiate your own complaints for  
17 investigation. It makes no sense to do that  
18 without the ability to produce a report on them as  
19 well.

20 There is a thorny question, of  
21 course, once you talk about reporting in public in  
22 this way, which is the whole question of how much  
23 can be said in public about the investigation.

24 On the one hand, the whole  
25 purpose -- or one of the purposes of having review

1 mechanisms is to instil and create public  
2 confidence in the process, but on the other hand,  
3 of course, the reviewers have to have privileged  
4 access to information. Part of the public  
5 confidence is the people who act on behalf of the  
6 public have seen information -- perhaps not all of  
7 which can be revealed -- but we trust them to have  
8 done a good job with it.

9                   It comes down in the end to this,  
10 doesn't it? Who will have the final say over what  
11 material goes into a report for public  
12 consumption?

13                   I think the history in this  
14 country, so far as I've followed events here, has  
15 been to trust the reviewers on that. It seems to  
16 me to have worked well.

17                   The alternative model, which is  
18 one that in the U.K. is much criticized, perhaps  
19 slightly unfairly, is -- our intelligence and  
20 security committee is a committee of  
21 parliamentarians, it's not a parliamentary  
22 committee, it's appointed by the Prime Minister.  
23 It reports to the Prime Minister, and then the  
24 Prime Minister lays the reports before Parliament.

25                   In that scheme, of course, legally

1 speaking, it's the Prime Minister who has the  
2 final say on what is omitted from a report. That  
3 slightly misrepresents it because the dynamic of  
4 the relationship is that there has never been,  
5 we're told, a final disagreement between the  
6 committee and the Prime Minister. There may have,  
7 of course, been negotiation behind the scenes, but  
8 it's never, so far anyway, come down to the Prime  
9 Minister taking something out of the report the  
10 committee insisted should be in it.

11 Those clearly are the two ways to  
12 go. Of them I prefer greatly the first model,  
13 that the reviewing body builds up trust and  
14 confidence with the agency that is being reviewed,  
15 but is entrusted itself with discretion over what  
16 is included in the report. Of course, it will  
17 consult with the agencies over that -- that's good  
18 practice -- but it should have the final say.

19 THE COMMISSIONER: Thank you,  
20 Professor Leigh.

21 Do any of the other three wish to  
22 comment on these issues?

23 Professor Gill?

24 MR. GILL: Qualifications. It's  
25 funny how you interpret things differently. I

1 started writing down a list of words here:  
2 tenacity, curiosity, patience, and then sense of  
3 humour.

4 --- Laughter / Rires

5 Probably picking up on Iain  
6 Cameron's point a moment ago. I mean, he's  
7 absolutely right. This is an extremely difficult  
8 and thankless area to work in, as you're probably  
9 discovering as you carry out this commission.  
10 Nobody thanks you for this stuff.

11 There can be a danger of --  
12 because of the trust problem that Iain mentioned,  
13 you know -- who can I believe? Can I believe  
14 anyone?

15 And then you can't talk to other  
16 people about what you're doing and what you're  
17 seeing because you're sworn to an oath of secrecy.  
18 So you can't do that, apart from your immediate  
19 colleagues.

20 This does put considerable  
21 psychological pressure on people. I'm sure you  
22 can obviously tell us from firsthand. And this  
23 is -- you look remarkably healthy, all things  
24 considered.

25 --- Off microphone / Sans microphone

1 --- Laughter / Rires

2                   So this is a major factor, but I  
3 think also Hans' point is important. It's how you  
4 balance the membership and the staff, because I  
5 agree -- I mean, it would be completely  
6 inappropriate to have one of the main members,  
7 either the commissioner or one of four or five  
8 members, who were sort of former RCMP or former  
9 CSIS, because the great Canadian republic  
10 that's -- republic sorry, oops. The great  
11 Canadian public -- and the Queen's in the country.

12 --- Laughter / Rires

13                   The Canadian public would say,  
14 hey, you know, this is a copout. We can see  
15 what's going on here.

16                   But I would have thought on the  
17 staff, to have some poachers, gamekeepers, can be  
18 very useful, very useful, because then you want  
19 some very bright young -- as the agencies and the  
20 police are themselves recruiting, you want some  
21 very bright, young, able civilian graduates, who  
22 have got great energy and are bright and know how  
23 to research. These are the sort of people you  
24 want. And, yes, I would preface my remark by  
25 saying some of my best friends are lawyers, and,

1       yes, you're going to have to have a couple of  
2       lawyers, I accept that. You can't win them all.

3                   How should the members be chosen?  
4       Iain has put that very well. I think the  
5       principle of parliamentary ownership is one that I  
6       would also favour just from basic democratic  
7       principles. But, of course, the PM appoints SIRC  
8       here. The PM appoints the ISC members in the U.K.

9                   So on one's reading of Anne  
10       McLellan's statement last month when she launched  
11       the idea of a committee of parliamentarians here,  
12       it is clearly what she has in mind to have here,  
13       that the government will appoint even those  
14       members. And so, probably, will want to appoint  
15       anything for any body that we appoint here -- or  
16       suggest here.

17                   But I do think on principle  
18       parliamentary ownership would be superior.

19                   It follows therefore, I think,  
20       that the review body should also report to  
21       parliament.

22                   But here is one other comment I  
23       wanted to make. It partly connects with something  
24       that Ian Leigh just said.

25                   I compare, because I read both



1 every year, the SIRC reports and the Intelligence  
2 Security Committee reports, and I've already  
3 criticized them in one respect.

4 But I'll also criticize them in  
5 another respect, compared with the SIRC reports.  
6 And this is that our ISC reports are written for  
7 other members of the Whitehall village. They are  
8 written in a style, the same as the kind of  
9 bureaucratic memoranda that I'm sure even people  
10 here remember from that famous British series  
11 "Yes, Minister."

12 To understand ISC reports, you  
13 have to ponder them at great length, trying to  
14 work out what is not there. And I've had this  
15 debate with members of the committee. I've said,  
16 look, this is no good for the public. The public  
17 do not live in the Whitehall village. You've got  
18 to write reports which start with the critical  
19 process of public education in intelligence  
20 matters.

21 There's massive public ignorance,  
22 massive public cynicism, even more in the U.K.  
23 since the whole Iraq fiasco, and I said, look you  
24 have to write accessible reports which start to  
25 educate the people.

1                   Now I would say I think, by  
2                   comparison with the ISC, I think this is what SIRC  
3                   is trying to do. We don't know what's missing  
4                   because, of course, they don't have all the  
5                   asterisks in. They kind of leave all that stuff  
6                   out. Otherwise, their reports are far more  
7                   accessible, and I would have thought, whatever  
8                   body was suggested, following that train would be  
9                   very useful.

10                   Thank you.

11                   THE COMMISSIONER: Yes?

12                   MS CAPARINI: Just a comment on  
13                   membership of a review body.

14                   Given the very sensitive nature of  
15                   the topic and the place that anti-terrorism has  
16                   right now on the security agenda and in security  
17                   policy, it would seem obvious to me that you need  
18                   to have a diverse membership, that is diverse in  
19                   terms of ethnic background.

20                   Because if the Muslim population  
21                   in Canada feels that it is being  
22                   disproportionately targeted in terms of intrusive  
23                   surveillance and racial profiling, then if you  
24                   want to achieve public ownership and a sense of  
25                   legitimacy in Canadian society, you have to

1 include that community, whether through the  
2 membership itself or through the staff. I think  
3 that's an essential element.

4 THE COMMISSIONER: Thank you. Do  
5 you want to add anything, Ms O'Loan?

6 MRS. O'LOAN: A couple of minor  
7 points, I think.

8 Qualifications necessary to review  
9 national security issues or activities.

10 I think almost in terms of  
11 competencies. I think that's where Peter was  
12 coming from. It's analytical competencies,  
13 communication skills, some level of education  
14 because people can struggle with the kind of  
15 things that Peter is talking about. So those kind  
16 of general abilities I think must be there.

17 How members should be chosen, I  
18 would sort of hesitate to comment, other than by  
19 saying I think the process of choosing them should  
20 be as open and as transparent as possible.

21 If possible, it should be an open  
22 application process with the decision-making  
23 resting wherever you want it to be, Parliament  
24 or -- but the people should be able to have  
25 confidence in the process.

1                   Questions of national security  
2           confidentiality.

3                   I'm not altogether clear where  
4           that's leading, but if it's in terms of  
5           reporting -- and that's the next question  
6           really -- clearly vetting and all those issues  
7           will have to be taken care of on clearance.

8                   To what entities should the review  
9           body report?

10                   Well, I think it will have to  
11           report to those who have approached it, in  
12           whatever capacity they've approached it. I think  
13           it will have to report to Parliament annually, and  
14           I think that should be a statutory requirement,  
15           and I think the statutory requirement should be to  
16           report within a very short time from the end of  
17           the reporting period, because otherwise you can  
18           get reports delayed and delayed and delayed.

19                   I think that they should report to  
20           a Minister, or whoever has responsibility for the  
21           national security, and again, forgive my  
22           ignorance, and it's getting late, but there should  
23           be a reporting there -- direct reporting there in  
24           terms of formal reports.

25                   I think there should be a process

1 of being accountable to Parliament, to the extent  
2 that a parliamentary committee could call the  
3 security committee and ask them what they're  
4 doing, why they're doing it, and recognizing there  
5 are some things which cannot be discussed in  
6 public.

7 But I think there should be that  
8 level of accountability so that the people can  
9 watch their security committee, their security  
10 review committee being questioned, and can gain  
11 some confidence from that.

12 I think the security committee --  
13 if part of the purpose of the existence of the  
14 review committee is to grow public confidence so  
15 that the public will then cooperate with the  
16 security processes which are necessary to enable  
17 society to function, then there does have to be a  
18 high level of communication, and I think that the  
19 security committee members should be prepared to  
20 go out and to face the public and to talk, within  
21 the terms that they can talk about what they're  
22 doing.

23 And I think that the reporting can  
24 be very detailed reporting to the Minister and to  
25 Parliament, to a parliamentary committee anyway,

1 very detailed reporting.

2 Detailed reporting to the  
3 organization itself to enable the organization to  
4 get better at what it does -- and that's the  
5 organization that's reviewed.

6 And then a different form of  
7 reporting to the public.

8 THE COMMISSIONER: Thank you.  
9 Just a few questions in following up.

10 The mandate almost assumes that  
11 there will be a review body i.e., more than one  
12 person. But I know in the case of the Ombudsman  
13 for Northern Ireland, and I'm sure others, it is a  
14 single person.

15 So that one of the questions that  
16 would emerge, and I'd be happy to hear from  
17 Mrs. O'Loan on this, is there any merit to having  
18 a review person, obviously assuming all the  
19 adequate support staff and so on in the form of an  
20 Ombudsman, or are we better off to have a body?

21 Secondly, that question raises an  
22 issue that Professor Leigh raised, and that's, if  
23 you're to have more than one, is the model to be  
24 that you want people who, on the one hand, are  
25 disinterested?

1                   Clearly if you're having one, you  
2 would select a person who would be seen to be  
3 independent and disinterested, would not be  
4 representing a certain political group or racial  
5 group or other interest. It would have to be  
6 somebody who was so independent and disinterested  
7 that all groups and all political stripes would  
8 have confidence in that person. That's in a  
9 single.

10                   But, if you go to a body, then it  
11 seems to me you have a choice, and I thought that  
12 the way you put it, Professor Leigh, was  
13 particularly thought-provoking. The choice seemed  
14 to me to be: you would have persons who are still  
15 viewed to be completely disinterested, as if you  
16 were appointing a single person. So a collection  
17 of them. Or the other model -- these may be  
18 opposite ends of the extreme -- but the other  
19 model would be, no, we would have people who are  
20 going to represent certain interests, and then the  
21 task would be in appointing -- having an  
22 appointment process so that you could capture  
23 sufficiently different interests that should be  
24 represented.

25                   Now, I don't say because you have

1 a body with disinterested people you couldn't  
2 still have a mix, and have some to represent  
3 certain interests, but it may be that it's  
4 somewhere in between.

5 As I listen to the discussion, it  
6 got me back to, well, is one the answer? Well,  
7 clearly -- so I think there's two questions I've  
8 asked. Is one person an answer? I guess, if not,  
9 how many people? Thirty-one would seem to be  
10 excessive.

11 But then, secondly, if we're  
12 moving away from one -- let me just -- I'm talking  
13 a bit more than I intended to, but let me just  
14 say: it seems to me listening to you that the  
15 object of the exercise is to promote confidence,  
16 to gain the public's confidence -- it's critical  
17 in this, in so many things this body does, because  
18 of the lack of transparency.

19 This, I mean, has to be, even with  
20 judges -- I mean, by and large everything judges  
21 do is done in open court, so that while you want  
22 to have independence and confidence, at least you  
23 have transparency.

24 But as you move away from  
25 transparency in this body, how do you get the



1 maximum bang of public confidence?

2 I'd be interested -- yes? Madame  
3 Begin.

4 MS BEGIN: Can I add to your  
5 questions?

6 THE COMMISSIONER: It's already  
7 one of the longest questions that I have ever  
8 asked. But do you mind using the microphone?

9 MS BEGIN: Monique Begin, Advisory  
10 Panel.

11 Would you please address -- which  
12 is a very Canadian, typical problem -- the notion  
13 of part-time and full-time members if it's a  
14 committee -- if it's more than one person. And if  
15 it's like a board, or like a commission, a Royal  
16 Commission of Inquiry that meets every two weeks  
17 or every three months or whatever. Thanks.

18 THE COMMISSIONER: There's a lot  
19 of questions that we put there. But I think  
20 actually, if we can, and I don't want to unduly  
21 burden you with time, but these actually for us  
22 are critical questions, as they all were, and so  
23 that we would benefit if -- Professor Gill, if  
24 you'll start?

25 MR. GILL: Let me have a shot

1 based on a couple of things.

2 I mean, first here, I'm just  
3 picking up on Marina's very important point about  
4 diversity. My perception of Canada as an  
5 outsider, and, please, that's the basis on which I  
6 say this, is that there would be a problem with a  
7 single commissioner here, because if that single  
8 commissioner were to be appointed by Parliament,  
9 then, you know, one can imagine some rather  
10 complex politics going on in Parliament in order  
11 to come up with a single commissioner.

12 I know you do it with the auditor  
13 general and other roles, but I think we have to  
14 suggest the security area can be particularly  
15 controversial and one in which groups can very  
16 quickly get quite paranoid.

17 So I think my preference or my  
18 suggestion would be that you contemplate a body,  
19 because it does enable you, I think, in a society  
20 which is not only ethnically highly diverse but is  
21 also extremely big.

22 You know, you're going to need  
23 enough people on this who can go to the Maritimes,  
24 and people who can go to B.C., you know, to do  
25 kind of outreach work. And if it's one person, I

1 mean, this person is going to be on their knees.  
2 I mean, Nuala said to me yesterday she can be  
3 anywhere in Northern Ireland in two-hours' drive.  
4 Well, you know, you can't do that here.

5 --- Laughter / Rires

6 That I think is another reason for  
7 sharing the burden, rather pragmatically, of  
8 having a group of people who can simply cover the  
9 country in that way. So I would certainly  
10 recommend a body.

11 And coming to Monique's -- you  
12 know, to your point. I would have thought  
13 part-time. Because I think, again, it seems to me  
14 that the mix of part-time members with full-time  
15 staff on SIRC working to the agenda set down by  
16 the part-time members at their meetings, whether  
17 they're monthly or biweekly, or six-weekly, or  
18 whatever it is, seems to me to have worked quite  
19 well. Again, it seems to me, fitted to the  
20 rhythms of the country, and I think that would be  
21 my first shot.

22 THE COMMISSIONER: We need all  
23 that extra time to travel back and forth,  
24 actually.

25 --- Laughter / Rires

1 THE COMMISSIONER: Professor Leigh  
2 and then Professor Cameron.

3 MR. LEIGH: Yes, just two very  
4 brief points. The one thing you don't want is a  
5 single person who is part-time, of course.

6 --- Laughter / Rires

7 Which is what we have in England  
8 for some of these functions.

9 The other point is to say  
10 something about what I said before about  
11 representativeness because I think it's important  
12 just to unpack that a little.

13 Although, of course, a body like  
14 SIRC is partly chosen to be representative, it's a  
15 bit like the jury, isn't it? I mean, we don't  
16 want people actually going in there and  
17 representing their particular interest.

18 The representativeness is for  
19 public confidence, and it stops at the door.  
20 That's all I have to say, just to make that point.

21 THE COMMISSIONER: Professor  
22 Cameron?

23 MR. CAMERON: I fully agree with  
24 that last point from Ian Leigh.

25 The Swedish board, the register

1 board, is part-time, but with no staff of its own.  
2 This is a weakness, actually, in the system. But  
3 it is part-time, and I think that the part-time --  
4 the blend, just as Pete Gill said, the blend of  
5 part-time members with full-time staff is a good  
6 idea.

7 One point I would like to make  
8 about the representativeness. The political  
9 spectrum, of course, will vary from country to  
10 country, and the ethnic spectrum varies from  
11 country to country as well, and the ethnic  
12 spectrum in Canada is very, very wide. I take  
13 Marina's point especially in relation to the  
14 Muslim community and that there might be a reason  
15 there, but you can't really -- otherwise everybody  
16 is going to want a member on the panel, and that  
17 can't work.

18 The review body, and as I've said,  
19 I've been working all the time really on the model  
20 of SIRC -- I really do think you've got a model,  
21 as Pete Gill said at the beginning, you've got a  
22 model which has worked pretty well in Canada and  
23 that's what you should build on.

24 The nature of the exercise, as we  
25 were speaking about at the symposium a couple of

1 days ago, is risk assessment. You've got some  
2 factors in Canada that are pointed towards major,  
3 serious, risks of terrorist attacks, and you've  
4 got other factors pointing against it, and it  
5 requires a considerable level of maturity to  
6 decide, you know, what's the level of risk?  
7 What's the level of danger? And for that you  
8 really do need people with a very wide spectrum of  
9 experience.

10 THE COMMISSIONER: Did you want  
11 to add anything?

12 MR. BORN: What about political  
13 representativeness, as they did in Norway? But I  
14 have a little bit of feeling that politics should  
15 stay out of such expert bodies. That would mean  
16 also that no former Senators. But what about then  
17 former Ministers?

18 It is a bit I think like -- a  
19 slippery field. At the moment, your appointments,  
20 your body of people would have, like, explicit  
21 political colour. I don't think it would be a  
22 good idea to include that criteria in the  
23 representation issue.

24 THE COMMISSIONER: Did you have  
25 anything to add? How is it being the only one?

1                   MRS. O'LOAN:  It's challenging.  
2           You know, there are advantages to just being one,  
3           because on occasion -- I mean, I've belonged to a  
4           huge range of public bodies, health, energy,  
5           transport, all sorts of things.  And I've seen  
6           commissions or committees that don't work, and  
7           they don't work for a variety of reasons.  So you  
8           have to make sure that if you're going to have a  
9           commission, it will work.

10                   They can have huge difficulty in  
11           agreeing on policy.  They can have political  
12           differences.  It can be all sorts of things.

13                   The most public and difficult  
14           thing that happened in Northern Ireland was the  
15           establishment of our human rights commission,  
16           which was hugely divided in its ideology almost  
17           and that presented a lot of difficulties.  So you  
18           need to bear that in mind.

19                   Northern Ireland went for an  
20           individual for the particular position which I  
21           hold because of the particular circumstances in  
22           which the office was created, and because there  
23           was a view that to get public confidence there  
24           would have to be somebody to whom and to which  
25           they could sort of attach.

1                   I don't think it would work for  
2                   you simply because of the size of the remit. The  
3                   country is big. You have got a lot of agencies.  
4                   The person who will do this job or persons who  
5                   will do this job will have to come to terms with  
6                   different agencies with different processes and  
7                   work out -- there will be a huge, huge learning  
8                   curve there.

9                   So, I guess my view would be that  
10                  you might want to consider a commission, but a  
11                  small commission -- maybe seven, maybe nine. My  
12                  view would be that you would need a chief  
13                  commissioner among them, because if you have  
14                  commissioners and nobody has chief powers, you can  
15                  run into a lot of difficulties, because then the  
16                  commission goes round and round in circles and not  
17                  achieve anything. So you would need a chief  
18                  commissioner.

19                  I think that chief commissioner  
20                  would need to be full-time, because I just think  
21                  that the remit is so big. I don't think you're  
22                  quality-assuring, I don't think you're providing  
23                  reassurance.

24                  I think you're doing a job that is  
25                  much more detailed than that, and I think that if



1       you are going to do the job properly, you will  
2       have to be at it full-time, because otherwise you  
3       will just not be tuned in enough to be effective.

4                   I think you'll need a deputy chief  
5       commissioner too, that would be my view, because  
6       you must provide for the circumstances in which,  
7       you know, things happen.

8                   I think you should appoint them  
9       probably for -- if you don't mind me going into a  
10      bit of detail.

11                   THE COMMISSIONER: No, I should be  
12      interested.

13                   MRS. O'LOAN: -- for a term of  
14      about five years, minimum of five years because of  
15      the learning and because of the difficulties of  
16      appointing.

17                   My view would be that they should  
18      meet probably monthly, minimum of monthly, but the  
19      chief commissioner and the Deputy Commissioner  
20      would be there all the time. They would work  
21      full-time.

22                   What else? I think that's --  
23      sorry, I'm becoming slightly tired.

24                   THE COMMISSIONER: That's okay. I  
25      understand. I've only got one more question

1 myself.

2 MRS. O'LOAN: The other thing I  
3 would say is that my own experience from public  
4 bodies is that having fellow commissioners is  
5 hugely supportive.

6 I have very, very good, very  
7 senior staff, executive staff, who are enormously  
8 supportive, but these are lonely, difficult jobs.  
9 You're quite right, Ian, it's not a whinge, but  
10 they are quite lonely and difficult, and that's  
11 why I think a commission would be good.

12 I think you have to look at why,  
13 when you have provision for a commission of 31,  
14 you only have two people on the commission. I  
15 think there would be questions around that. So I  
16 would be concerned that a commission of a given  
17 number would be defined and there would be that  
18 number of commissioners.

19 Once you've worked out what it  
20 should be, that those number of people would be  
21 there, because that will then provide a corporate  
22 strength for the organization.

23 Thank you.

24 THE COMMISSIONER: The last  
25 question I have has to do with reporting and just

1           whether anyone has comments.  Because what we're  
2           talking about here would be reviewing a law  
3           enforcement agency.  Now, it may be, if one goes  
4           to the functional approach, we're talking about a  
5           review body that covers more than a law  
6           enforcement agency, but we are talking about a  
7           review body for the police agency.  Do you think  
8           that affects the line of reporting?  Is that  
9           material?  And is there any distinction from a  
10          reporting standpoint that one should fasten onto  
11          because it's not a security intelligence agency?

12                         Just to carry on with the thought,  
13          it's one you're well aware of, obviously the  
14          security intelligence agencies are there to  
15          develop intelligence, to help develop policy and  
16          so on and law enforcement is different.

17                         I guess to some extent this  
18          engages a discussion, in part at least, a question  
19          about police independence.  Is there a concern  
20          that we would have these reports, particularly if  
21          the recommendation is going to the legislature,  
22          the executive, or wherever we end up, and having  
23          then decisions coming back from that body to a law  
24          enforcement agency?

25                         Is that something anyone has given

1 any thought to?

2 It occurs to me that one of the  
3 real challenges for the recommendations that I  
4 make that I bump into in a number of places is the  
5 fact that it is a law enforcement agency. Is  
6 there from a political structure standpoint any  
7 problem with that or not?

8 MR. LEIGH: I think not in a way,  
9 because I am assuming the report comes after the  
10 event and I think the concern about police  
11 independence is primarily to do with interference  
12 with the investigative process. If we don't have  
13 some process of review afterwards, then we have a  
14 vacuum and a danger of there being no  
15 accountability mechanisms for people who, after  
16 all, are officers of the state and in an area of  
17 activity that may very well not come within the  
18 control of courts if there is no prosecution that  
19 results from some of these actions.

20 So I think necessity suggests  
21 there should be some form of political review, and  
22 it wouldn't concern me too much provided it is not  
23 active interference with ongoing investigations.

24 Could I raise, while I am speaking  
25 a quite different question but one which I think

1 is problematic and which you can comment on?

2 THE COMMISSIONER: Yes.

3 MR. LEIGH: It is the question of  
4 timing of reports. There I can see a real  
5 difficulty with ongoing investigations and  
6 prosecutions and I am not quite sure how one can  
7 handle that except by some process of delay until  
8 within a reasonable period some matters have been  
9 cleared up.

10 THE COMMISSIONER: Certainly the  
11 suggestion from Mrs. O'Loan, her experience  
12 earlier, is the fact that a police investigation  
13 is ongoing is not a reason not to carry out the  
14 investigation.

15 So the point you are raising may  
16 be --

17 MR. LEIGH: But the reporting --

18 THE COMMISSIONER: Yes, the  
19 reporting. You draw a distinction between doing  
20 the investigation by the review body and actually  
21 then moving to the report.

22 Mrs. O'Loan?

23 MRS. O'LOAN: I have two issues.

24 One is I think you have to have a  
25 reporting mechanism to Parliament. I think that's

1           absolutely vital.

2                           But I think before that, one of  
3           the things that makes the kind of work that your  
4           review committee will do, what makes it effective  
5           is trust. There is trust between the organization  
6           being reviewed and the organization doing the  
7           review and all the other organizations who have a  
8           stakeholder interest. And trust grows where  
9           people don't get unnecessary unpleasant surprises,  
10          if you like.

11                          So I think there should be a  
12          mechanism of some which enables reporting to the  
13          chief officer of whichever organization; if it's  
14          your law enforcement agency, to that chief officer  
15          so that he gets the opportunity to respond to the  
16          recommendations made by the reviewing body.

17                          I think then you move into a  
18          question -- and if the chief officer, if he or she  
19          decides that they are not going to respond or they  
20          are not going to fall in line with the  
21          recommendations, then there must be a process by  
22          which chief officers of law enforcement agencies  
23          are held accountable, and that should be, if you  
24          like, the process by which you manage that.

25                          I think that's a separate issue

1 from reassuring Parliament that there is a process  
2 which reviews the activities of your intelligence  
3 services.

4 I think the decisions as to the  
5 operational processes and the recommendations in  
6 relation to the operational processes must belong  
7 to the organizations being reviewed, not to  
8 Parliament.

9 On the timeliness issue, there can  
10 be problems. Sometimes we have to wait to report  
11 until a trial has taken place. Sometimes we can  
12 report because the content of the report will not  
13 impact on the trial. You actually have to assess  
14 each one and just determine can or can't we  
15 report? Must we wait?

16 Sometimes, of course, if it goes  
17 to trial, you can be waiting years before it's  
18 resolved.

19 But my policy is that we report as  
20 rapidly as we can and it takes longer than I would  
21 wish. But we report as rapidly as we can and that  
22 the view would be that we would report and that  
23 only in exceptional circumstances will we wait.  
24 But the trials, the ongoing trials, are obviously  
25 one of them.

1 THE COMMISSIONER: Anybody else on  
2 these issues?

3 Then we will open it to the  
4 floor -- we will give you a chance to come back.

5 MR. GILL: Sorry. Is that okay?

6 THE COMMISSIONER: Monique Begin  
7 will ask a question, but we will come back,  
8 Professor Gill.

9 It's fine, go ahead.

10 MS BEGIN: It's just that the  
11 reporting business, I don't visualize yet what an  
12 annual report would look like. I imagine it may  
13 be three or four pages. I just don't know that.

14 So in theory, in Canada we make a  
15 lot in government -- we discuss like Jesuits,  
16 endlessly, reporting to a Minister or reporting  
17 through a Minister to Parliament; this one being  
18 the strongest of course of the two, the stronger  
19 of the two. And the ultimate would be an  
20 automatic publication in the Canada Gazette  
21 following the tabling of a report.

22 Several of you have a Commonwealth  
23 knowledge of the functioning of things, and I was  
24 just asking if you see -- the idea being that if  
25 you report to -- if the annual report is sent to a



1 Minister, Parliament for many reasons may not know  
2 it, may not pick it, may wake up six months later  
3 and the report agency may be free from  
4 accountability. I am just using my own words.

5 MR. GILL: It partly connects with  
6 the point I was going to make anyway.

7 Again, I think it partly depends  
8 here what congruent structures are established,  
9 perhaps independently of your commission by the  
10 government in terms of the National Security  
11 Committee.

12 It seems to be one of the running  
13 sores between the five-year review community that  
14 I remember functioning back in 1990, the CSIS Act,  
15 was that that parliamentary committee had not been  
16 cleared, could not get access to CSIS and so on,  
17 and what really wound them up, could not get  
18 access to SIRC reports other than the public  
19 reports.

20 I remember at the time this caused  
21 considerable upset.

22 Now in a sense we are moving now  
23 into a new situation because -- this comes your  
24 point, Monique. It seems to me at the moment the  
25 reporting mechanism is to Parliament via the

1 Minister of CSIS.

2                   Whereas if the National Security  
3 Committee is established with a membership who  
4 have also been cleared, et cetera, then there is  
5 absolutely no reason why the body we are talking  
6 about can't simply report to that committee.

7                   MS BEGIN: Yes, yes, that's the  
8 other.

9                   THE COMMISSIONER: That would be  
10 the other alternative.

11                   Professor Leigh.

12                   MR. LEIGH: I certainly agree with  
13 that and that's part of what I had in mind by what  
14 I said earlier on.

15                   Assuming, though, if that weren't  
16 followed for some reason, and we are back with  
17 your model of reporting through a Minister, then I  
18 think two questions arise, and they are quite  
19 important ones.

20                   One is the issue of timing.

21                   I think the democratic ideal is  
22 that the timing of a report should be in the hands  
23 of the body that makes the report, not a  
24 politician.

25                   But assuming that that's not the

1 case, a fallback position is a statutory  
2 obligation to publish the report in full within a  
3 specified period, say 14 days, 28 days, whatever  
4 it might be, in which case the purpose of  
5 reporting to a Minister is simply so that at the  
6 time that the report is published the Minister can  
7 respond as well.

8 The second issue is the issue that  
9 I raised earlier on, which is the question of  
10 editing.

11 If the purpose of reporting  
12 through a Minister is to enable editing, then I go  
13 back to what I said before, that I come down in  
14 favour of the review body having the final word on  
15 that.

16 THE COMMISSIONER: Professor  
17 Cameron.

18 MR. CAMERON: Just very briefly at  
19 the end of a long day.

20 I certainly don't envy you making  
21 this report, Justice O'Connor, because so much of  
22 this final question is really, as Ian pointed out,  
23 totally dependent on the mandate the parliamentary  
24 committee established.

25 Really you are going to have to

1       produce two alternative final chapters on this  
2       point, saying if it's like this, then the  
3       following thing should apply, and if it's like  
4       this, the following thing should apply.

5                    If it's got security clearance, if  
6       they are all security cleared, then they can get  
7       the report directly, as Peter said. If not, then  
8       they are going to have to get an edited version of  
9       the report.

10                   What I do think is clear, that  
11       they will not satisfy themselves with the same  
12       level of access to information that the public  
13       has. Parliament is going to want something more  
14       than the public gets.

15                   In many ways it's a pity that this  
16       parliamentary dimension, this very important  
17       parliamentary dimension that the Macdonald  
18       Commission identified has taken so long to emerge  
19       because the risk is we are going to get something,  
20       which is, as Ian Leigh pointed out, would be very  
21       unfortunate if you get a duplication of oversight,  
22       if you get the two trampling on each other's toes  
23       and causing problems for each other. That would  
24       be very unfortunate. I think everybody must want  
25       to avoid that.

1                   That is a very real risk, I feel.

2                   I do feel, once again, that the  
3                   best sort of body is a SIRC-type body with  
4                   increased mandate, increased membership and so on.  
5                   But it's going to have to have some mechanism for  
6                   reporting to this parliamentary committee.

7                   And the parliamentary committee --  
8                   now, I have been very hard on the British system.  
9                   The main thing I don't like about the British  
10                  system is the interception commissioners and  
11                  surveillance commissioners, but the actual  
12                  parliamentary committee, as Pete Gill points out,  
13                  has all sorts of problems.

14                  But giving it some sort of mandate  
15                  like that, like the British committee, would be  
16                  okay in such circumstances. And in such  
17                  circumstances you could also give them an edited  
18                  version of the SIRC-type body's report and the  
19                  parliamentary committee would then feel very  
20                  important.

21                  THE COMMISSIONER: Right. Any  
22                  other questions from the floor? Please do.

23                  MRS. O'LOAN: The question of  
24                  reporting is obviously important and it will grow  
25                  the credibility of the public in the organization.

1                   I think you can have different  
2 forms of statement. You can provide in  
3 legislation for different forms of public  
4 statements.

5                   We can make public statements,  
6 which have limited content. We must make annual  
7 reports which must contain statistical and trend  
8 reporting, which I think is important. If I saw a  
9 three or four-page annual report, I would feel  
10 cheated. I would be looking for something much  
11 more than.

12                   We can make special reports on  
13 matters that should be drawn to the attention of  
14 Parliament and they are lodged in Parliament in  
15 the library.

16                   So there is a variety of reporting  
17 mechanisms we have and I am sure you could devise  
18 others which would be appropriate to the  
19 situations. I think what you need above all is a  
20 flexibility that enables you to provide the  
21 information that needs to get to the body or  
22 person to whom it needs to get to enable things to  
23 improve whilst at the same time protecting  
24 national security. And there will be and there  
25 must always be restrictions on information.

1                   For the comfort of those being  
2 reviewed, there should be a general assumption  
3 that names are not named unless it's in the public  
4 interest to name them.

5                   THE COMMISSIONER: Mr. Neve, do  
6 you have a question?

7                   MR. NEVE: Thank you. Alex Neve  
8 with Amnesty International here in Canada.

9                   I wanted to pick up on the point  
10 that Marina made around diversity in composition  
11 of the review agency which, certainly from a human  
12 rights perspective, we think is a critical one,  
13 vitally important, and especially taking account  
14 of the gulf of mistrust that clearly often exists  
15 when a particular ethnic or religious community is  
16 the one most directly impacted by security or law  
17 enforcement agencies.

18                   What I would be interested to hear  
19 from people is how we best achieve that. I think  
20 in the Canadian context of a somewhat analogous  
21 situation where we have long-standing concerns  
22 about that same kind of gulf of mistrust that  
23 exists between Aboriginal peoples in Canada and a  
24 whole variety of justice and law enforcement  
25 mechanisms, and there are recommendations going

1 back years and years now for the Aboriginal  
2 representation on police forces, within the bar,  
3 prosecutorial offices and judges needs to be  
4 increased dramatically and the progress is very  
5 slow, sometimes imperceptible.

6 So is it enough to hope, trust,  
7 expect that the diversity will come, or would  
8 there be some need to mandate it or require it in  
9 some way?

10 I think this comes back to the  
11 point of, obviously in a country like Canada,  
12 especially, where we have such huge diversity  
13 across a number of fronts, you can't have everyone  
14 there, especially if we go to one person, but even  
15 if we go to seven or nine there are going to be  
16 limits on diversity.

17 On the other hand there clearly  
18 are particular communities where the impact is  
19 felt particularly strongly. But can you put that  
20 in legislation given that those communities  
21 themselves may change over time as threats and  
22 concerns morph over a decade or more?

23 I would be interested if anyone  
24 has thoughts if we recognize diversity is  
25 something we want to achieve within an agency like



1           this, how do we best accomplish that?

2                           THE COMMISSIONER: Good question.

3                           MR. CAMERON: All I can say is you  
4           seem to be very aware of both the problems and the  
5           difficulties in finding solutions. I have no  
6           solutions, I am afraid. You put it very well.

7                           MS BEGIN: Can you mandate  
8           judgment?

9                           MR. CAMERON: The problem of  
10          minorities or groups, it's going to be so  
11          difficult to identify particular groups. So the  
12          mandating of these particular groups have been  
13          victimized or these particular groups are  
14          extremely sensitive or these particular groups  
15          have had a pretty tough time of it.

16                           Yes, we all know that, but you  
17          can't put it in the legislation.

18                           In Sweden what you would do is put  
19          it in the travel preparatoire and allow this to  
20          be -- you know, special account should be taken of  
21          the following factors in deciding the composition,  
22          to the extent that it's possible. That's what you  
23          could do.

24                           THE COMMISSIONER: Professor Gill  
25          and Professor Leigh.

1 MR. GILL: Going back to the CSIS  
2 Act, the diversity issue is to some extent  
3 accommodated there through the democratic process,  
4 which is that the Prime Minister must consult with  
5 the leaders of the other main parties in selecting  
6 who is to go on SIRC.

7 So in that sense it's covered  
8 there without using the terms diversity.

9 But looking back, that seems to  
10 have achieved some degree of diversity.

11 In a sense you don't need that  
12 because again if there is a national security  
13 committee, then presumably the appointment of that  
14 will be on the basis of party strengths, and  
15 assuming that they can solve the problem of what  
16 to do with representatives from the Bloc  
17 Quebecois, which I understand is a rather  
18 difficult thing for everyone to get their heads  
19 around in the context of national security. But  
20 leaving that one to one side ..

21 When it gets down to this body,  
22 because you have that sort of political diversity  
23 built in at that level, you don't need to have the  
24 same at this level.

25 It just seems to me basically as a

1 principle that there is no point in denying that  
2 it's an issue or pretending that somehow this body  
3 of five to seven people, they are all just  
4 independent Canadians. They are just there  
5 because they are all independent Canadians.

6 Let's be honest. In contemporary  
7 politics I don't think that's going to wash. I  
8 don't think the people appointing it would believe  
9 that it would wash and therefore probably wouldn't  
10 attempt to do it in the first place.

11 To be honest, Monique, I don't  
12 know the answer to the question. You need a  
13 parliamentary draftsman probably to answer that  
14 question of can you mandate diverse membership?

15 THE COMMISSIONER: Professor  
16 Leigh?

17 Do you wish to go now?

18 MR. BORN: I think I have to go  
19 now.

20 THE COMMISSIONER: Dr. Born has to  
21 leave. On behalf of us all, thank you very much.  
22 We have appreciated having you.

23 --- Applause / Applaudissements

24 THE COMMISSIONER: We will carry  
25 on.

1 Professor Leigh?

2 MR. LEIGH: One flippant point and  
3 two serious ones.

4 In England, of course, diversity  
5 in this context means members of the House of  
6 Lords and not of the House of Commons. I take it  
7 that's not what we are talking about here.

8 --- Laughter / Rires

9 MR. LEIGH: The serious points,  
10 though.

11 Without playing statutory  
12 draftsman -- I am sometimes tempted to do that but  
13 I will resist.

14 Clearly you could device formulae  
15 that require whoever appoints to have regard to  
16 need for diversity without spelling out particular  
17 groups in a way that cuts across possibly equality  
18 legislation apart from anything else.

19 In addition to that, though, it  
20 seems to me that one possibility, not necessarily  
21 a substitute, is to establish in the legislation  
22 some form of consultative arrangement or an  
23 obligation on the review itself to consult with  
24 different groups representing different sectors of  
25 society.

1 THE COMMISSIONER: Mrs. O'Loan?

2 MRS. O'LOAN: I just don't think  
3 it's possible to mandate diversity. I have tried  
4 as a chair of a committee. I have tried to get  
5 diverse committee members with the best possible  
6 qualifications. It's just impossible, I think.

7 I think what you want to do is to  
8 make the process as open as you can and get the  
9 best people to do the job. You need to ensure  
10 that the staff of the organization are also  
11 properly appointed and that the diversity emerges  
12 naturally through a proper appointment process  
13 there.

14 The third thing is I sometimes  
15 think we have the most stringent equality laws in  
16 the world, but we have to equality-proof our  
17 policies and practices. And I think that if you  
18 were to think in those terms so that when your  
19 organization is beginning to think about how it  
20 does what it does, that process of consultation to  
21 which Professor Leigh referred would inform an  
22 outcome which could be reflective of the hundred  
23 and whatever nations -- you know, people who live  
24 in Canada.

25 So I think it's going to be a

1           number of different strategies which will deliver  
2           diversity. It won't be one.

3                           THE COMMISSIONER: Any other  
4           questions?

5                           Yes, Mr. Rodner?

6                           MR. RODNER: Martin Rodner, member  
7           of the Advisory Panel.

8                           I would just like to mention there  
9           is of course under the National Security Policy a  
10          multicultural roundtable which is existent and is  
11          expected to represent all the communities of  
12          Canada. One would see that that would be an  
13          appropriate forum for the insurance of diversity  
14          and national security policy generally, but also  
15          one would expect the policy review organ which we  
16          are talking about to consult with that committee  
17          on issues to do with multiculturalism in Canada  
18          and the particular difficulties or problems facing  
19          any community in Canada which touch on national  
20          security.

21                           THE COMMISSIONER: Good point.

22                           Any other questions? Last  
23          question?

24                           MS PENNINGTON: Ann Pennington.

25          I am a life member of the Royal Commonwealth

1 Society and also of the Loyal Society and so I  
2 have a great interest in the understanding of  
3 civilizations.

4 There is a wonderful book by  
5 Samuel Huntington "The Clash of Civilizations"  
6 which allows us to understand that perhaps you  
7 might consider how members should be chosen and  
8 what are their qualifications.

9 History is something very much  
10 missing in the teaching in many universities and  
11 colleges these days. It is a missing link. If we  
12 do not understand what history has produced, we  
13 are perhaps -- as someone very eloquently said, we  
14 are doomed to repeat it.

15 Particularly in Canada we have a  
16 polyglot society, and all the -- well, the  
17 recommendation here about the adoption of non-West  
18 societies, of Western democratic institutions, is  
19 a democracy paradox and we have to be careful that  
20 we don't misunderstand what we are dealing with,  
21 even when we consult with those bodies because  
22 they always have their opinion within their clan  
23 or tribe.

24 Then the ultimate one is perhaps  
25 the honour of the Crown. That is my personal

1 mandate. That is what I feel is very important,  
2 because then as citizens of Canada we should be  
3 able to contribute.

4 THE COMMISSIONER: Thank you  
5 for that.

6 MS PENNINGTON: Thank you.

7 THE COMMISSIONER: Any other  
8 questions?

9 Well, if not, then let me, on  
10 behalf of us all, thank each of the members of our  
11 roundtable today for what has been a truly  
12 valuable and interesting experience.

13 First of all, from my own  
14 standpoint I found it enormously helpful. I am  
15 deeply appreciative that the people with your  
16 background and experience would come today and  
17 share it with us and help this Commission with the  
18 work we have done.

19 I know in talking to people at  
20 the break and at lunchtime just how much the  
21 people who are here -- how valuable they thought  
22 it was and how honoured we are in Canada, really,  
23 to have people like you come to help us out with  
24 this task.

25 So my very deepest thanks to you.



1 I realize you gave up -- particularly Mrs. O'Loan,  
2 but others -- a day of sightseeing in Ottawa to  
3 come and help us. I'm not diminishing the  
4 beauties of Ottawa, in fact I think it would have  
5 been a lovely day to do that, but that even  
6 increases our appreciation for your coming.

7 So thank you all. On behalf of  
8 everyone, have a safe journey home.

9 --- Applause / Applaudissements

10 That completes our meeting.

11 --- Whereupon the roundtable adjourned at  
12 4:04 p.m. / La table ronde est ajournée  
13 à 16 h 04

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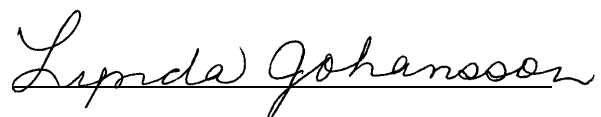
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Lynda Johansson,

C.S.R., R.P.R.

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