

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



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

**Audience publique**

**Public Hearing**

**Commissaire**

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

**Commissioner**

**Tenue à:**

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

le mercredi 30 juin 2004

**Held at:**

Government Conference Centre  
Sussex Room  
2 Rideau Street  
Ottawa, Ontario

Wednesday, June 30, 2004

## APPEARANCES / COMPARUTIONS

Mr. Paul Cavalluzzo Me Marc David	Commission Counsel
Mr. Lorne Waldman Ms Marlys Edwardh	Counsel for Maher Arar
Ms Barbara A. McIsaac, Q.C. Mr. Colin Baxter Mr. Simon Fothergill	Attorney General of Canada
Ms Lori Sterling Mr. Darrell Kloeze Ms Leslie McIntosh	Ministry of the Attorney General/ Ontario Provincial Police
Mr. Faisal Joseph	Canadian Islamic Congress
Ms Marie Henein Mr. Hussein Amery	National Council on Canada-Arab Relations
Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
Mr. Emelio Binavince	Minority Advocacy and Rights Council
Mr. Joe Arvay	The British Columbia Civil Liberties Association
Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture

**APPEARANCES / COMPARUTIONS**

Colonel Me Michel W. Drapeau	The Muslim Community Council of Ottawa-Gatineau
Mr. David Matas	International Campaign Against Torture
Ms Barbara Olshansky	Centre for Constitutional Rights
Mr. Riad Saloojee Mr. Khalid Baksh	Canadian Council on American-Islamic Relations
Mr. Mel Green	Canadian Arab Federation
Ms Amina Sherazee	Muslim Canadian Congress

TABLE OF CONTENTS / TABLE DES MATIÈRES

	<b>Page</b>
<a href="#"><u>SWORN: GARRY JAMES LOEPPKY</u></a>	686
<a href="#"><u>Examination by Mr. Cavalluzzo</u></a>	690

LIST OF EXHIBITS / PIÈCES JUSTICATIVES

<b>No.</b>	<b>Description</b>	<b>Page</b>
P-12	<a href="#">Book of Documents - Garry Loepky</a>	687
P-13	<a href="#">Document prepared by Philip Rosen, Senior Analyst, Parliamentary Research Branch, re creation of CSIS</a>	725

1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Wednesday, June 30, 2004

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

4 30 juin 2004 à 10 h 00

5 THE COMMISSIONER: You may  
6 sit down.

7 THE COMMISSIONER: This looks a  
8 little better. More space here for the lawyers.

9 MR. CAVALLUZZO: Good morning,  
10 Mr. Commissioner.

11 THE COMMISSIONER: Good morning.

12 MR. CAVALLUZZO: Our next witness  
13 is Deputy Commissioner Garry Loepky from the  
14 Royal Canadian Mounted Police.

15 Do you wish to be sworn or  
16 affirmed?

17 MR. LOEPPKY: Sworn is fine.

18 SWORN: GARRY JAMES LOEPPKY

19 THE COMMISSIONER: You can be  
20 seated, Mr. Loepky?

21 MR. CAVALLUZZO: Mr. Commissioner,  
22 in the first part of Mr. Loepky's evidence I will  
23 be referring to the Book of Documents with about  
24 52 tabs. I wonder if that might be the next  
25 exhibit.

1 THE COMMISSIONER: What number?

2 Exhibit 12.

3 EXHIBIT NO. P-12: Book of  
4 Documents: Garry Loepky

5 MR. CAVALLUZZO: I will also be  
6 referring to the book of Legislation.

7 --- Pause

8 MR. CAVALLUZZO: With that, we can  
9 proceed, with your permission?

10 THE COMMISSIONER: Go ahead.

11 MR. CAVALLUZZO: Mr. Commissioner,  
12 the purpose of Mr. Loepky's testimony this  
13 morning and this afternoon -- and I assume that my  
14 direct examination or examination in chief will  
15 likely last the day, if not maybe go on into the  
16 next day. I have spoken to counsel and it would  
17 appear that the next day for the continuation of  
18 Mr. Loepky's evidence will be Tuesday, July 6th.

19 THE COMMISSIONER: Okay.

20 MR. CAVALLUZZO: The purpose of  
21 Mr. Loepky's evidence is to provide a  
22 comprehensive description and overview of the  
23 RCMP's national security responsibilities, mandate  
24 and powers.

25 In regard to that particular

1 overview, we will be highlighting the following:

2 We are going to initially talk  
3 about the organizational structure of the RCMP, in  
4 particular focusing upon the Criminal Intelligence  
5 Directorate and the National Security Branch.

6 We will be discussing, as we did  
7 with representatives of CSIS, definitions of  
8 security intelligence, criminal intelligence, and  
9 we will be looking at a concept called  
10 intelligent-led policing.

11 We will review and give a  
12 comparative description of the RCMP and CISC who,  
13 as a result of the enactment of Bill C-36, appear  
14 to have overlapping jurisdictions at certain  
15 points in time.

16 We will be reviewing RCMP policies  
17 and practices relating to national security  
18 investigations.

19 We will be looking at the impact  
20 of 9/11 on national security operations, including  
21 the establishment of integrated investigation  
22 teams or the so-called INSETs.

23 We will be spending a great deal  
24 of time on relevant information-sharing agreements  
25 and arrangements with both domestic agencies and



1 foreign agencies, both law enforcement agencies  
2 and security intelligence agencies.

3 We will be looking at the training  
4 of RCMP officers engaged in national security  
5 investigations subsequent to 9/11.

6 We will be looking at  
7 accountability and review mechanisms of the RCMP.

8 Finally, we shall refer to  
9 community relations of the RCMP post-9/11.

10 MR. CAVALLUZZO: At the outset,  
11 let me introduce you to Mr. Loepky and give you a  
12 description of his professional background.

13 I understand that we have a new  
14 curriculum vitae to be filed.

15 --- Pause

16 THE COMMISSIONER: Thank you.  
17 Should we mark that as the next exhibit?

18 MR. CAVALLUZZO: I would,  
19 Mr. Commissioner.

20 THE COMMISSIONER: Just insert it  
21 in the --

22 MR. CAVALLUZZO: I would prefer to  
23 insert it in Tab 1 of the Exhibit book..

24 THE COMMISSIONER: Tab 1, okay,  
25 of Exhibit 12.

1 EXAMINATION

2 MR. CAVALLUZZO: Mr. Loepky, you  
3 joined the RCMP in April of 1972?

4 MR. LOEPPKY: That's correct.

5 MR. CAVALLUZZO: You held a number  
6 of positions, and then in September of 1990 you  
7 were commissioned to the rank of Inspector?

8 MR. LOEPPKY: Yes.

9 MR. CAVALLUZZO: At that time you  
10 assumed the position of Travel Officer?

11 MR. LOEPPKY: That is correct.

12 MR. CAVALLUZZO: In respect of  
13 that position, what were your responsibilities?

14 MR. LOEPPKY: I was assigned the  
15 responsibility of coordinating security for the  
16 Governor General of Canada for the Foreign  
17 Minister during foreign visits abroad, and for the  
18 Chief Justice of the Supreme Court of Canada  
19 during visits abroad.

20 MR. CAVALLUZZO: In September of  
21 1992 you assumed responsibility as the Officer in  
22 Charge of the Security Engineering Branch?

23 MR. LOEPPKY: Yes.

24 MR. CAVALLUZZO: What were your  
25 responsibilities in respect of that position?

1                   MR. LOEPPKY: Security Engineering  
2 Branch is the area that is tasked with developing  
3 government security standards for things like the  
4 locks and those types of things. It also does  
5 research for our explosives research program with  
6 respect to armoured vehicles, and ultimately the  
7 covert entry section.

8                   MR. CAVALLUZZO: I understand that  
9 during that tenure that you worked with a number  
10 of national and international law enforcement  
11 departments and government agencies?

12                   MR. LOEPPKY: We had a significant  
13 number of international partnerships, primarily  
14 with the United States in terms of explosive  
15 research on armoured vehicles, along with the  
16 United Kingdom and several other allied countries.

17                   MR. CAVALLUZZO: In February of  
18 1994 you became the Executive Officer to the  
19 Commissioner?

20                   MR. LOEPPKY: Yes.

21                   MR. CAVALLUZZO: Just for our  
22 interest, who was the Commissioner at that time?

23                   MR. LOEPPKY: I worked with  
24 Commissioner Inkster for a period of six months.  
25 Following his retirement I worked with

1 Commissioner Murray for the next 14 months.

2 MR. CAVALLUZZO: At that time,  
3 after 14 months, in 1996 you accepted a  
4 promotional transfer and assumed the position of  
5 Officer in Charge of Criminal Operations in  
6 "J" Division, which is New Brunswick.

7 MR. LOEPPKY: Yes.

8 MR. CAVALLUZZO: Then in 1997 you  
9 became Commanding Officer in "J" Division and were  
10 responsible for all policing activities provided  
11 to the province by the RCMP?

12 MR. LOEPPKY: Yes.

13 MR. CAVALLUZZO: When did you  
14 assume your position as Deputy Commissioner of  
15 Operations?

16 MR. LOEPPKY: I was transferred to  
17 Ottawa in Human Resources for a period of a year  
18 and a half, and in October of 2000 I was appointed  
19 to the position of Deputy Commissioner of  
20 Operations. At that time it was called the Deputy  
21 Commissioner of Organized Crime and Operational  
22 Policy, as the initial CV reflects, but to  
23 properly identify the functions of the role the  
24 title was changed shortly thereafter. That is one  
25 of the things that the new CV tabled today

1 reflects.

2 MR. CAVALLUZZO: You continue in  
3 that position today as Deputy Commissioner of  
4 Operations?

5 MR. LOEPPKY: Yes, I do.

6 MR. CAVALLUZZO: You do belong to  
7 and are a member of a number of professional  
8 associations. I understand that you are a member  
9 of the Executive of the International Association  
10 of Chiefs of Police?

11 MR. LOEPPKY: Yes.

12 MR. CAVALLUZZO: You are a member  
13 of the Canadian Association of Chiefs of Police

14 MR. LOEPPKY: Yes.

15 MR. CAVALLUZZO: And Co-Chair of  
16 the National Coordinating Committee on Organized  
17 Crime?

18 MR. LOEPPKY: Yes.

19 MR. CAVALLUZZO: In respect of  
20 your education, you hold a college diploma in  
21 mechanical engineering and you have attended the  
22 University of British Columbia in the Business  
23 Administration program?

24 MR. LOEPPKY: Yes.

25 MR. CAVALLUZZO: You have

1           successfully completed the Queen's University  
2           Executive Program?

3                           MR. LOEPPKY:   Yes.

4                           MR. CAVALLUZZO:   In addition, you  
5           have taken and completed a number of leadership  
6           programs and training courses?

7                           MR. LOEPPKY:   Yes.

8                           MR. CAVALLUZZO:   Finally, you have  
9           been awarded the RCMP Long Service Medal with  
10          silver bar.

11                           Is that correct?

12                           MR. LOEPPKY:   Yes, that's correct.

13                           MR. CAVALLUZZO:   And the 125  
14          Canada Anniversary Medal?

15                           MR. LOEPPKY:   Yes.

16                           MR. CAVALLUZZO:   The Queen's  
17          Golden Jubilee?

18                           MR. LOEPPKY:   Yes.

19                           MR. CAVALLUZZO:   And the Order of  
20          Merit of Police Forces Officer's Medal?

21                           MR. LOEPPKY:   Yes, that's correct.

22                           MR. CAVALLUZZO:   I would like to  
23          move on from your professional experience and deal  
24          with the first issue that we want to look at  
25          today, and that is the mandate of the RCMP.

1                   In this regard, Deputy  
2           Commissioner, I would ask you to refer to our  
3           Legislation Book.

4           --- Pause

5                   MR. CAVALLUZZO: In particular,  
6           behind Tab 5 you will see the Royal Canadian  
7           Mounted Police Act.

8                   MR. LOEPPKY: Yes.

9                   MR. CAVALLUZZO: What I intend to  
10          do here, Commissioner, is take Mr. Loepky quickly  
11          through the relevant provisions of the legislation  
12          so that we are grounded in the mandate of the  
13          RCMP, particularly related to national security.

14                   The first section I would refer  
15          to, Deputy Commissioner, is section 3, which in  
16          effect continues the RCMP as a national police  
17          force for Canada.

18                   MR. LOEPPKY: Yes.

19                   MR. CAVALLUZZO: Section 4 is  
20          interesting because it states that:

21                               "The Force may be employed in  
22                               such places within or outside  
23                               Canada as the Governor in  
24                               Council prescribes."

25                   MR. LOEPPKY: Yes.

1 MR. CAVALLUZZO: We are going to  
2 be looking at later situations where the RCMP may  
3 travel abroad and be employed outside of Canada.  
4 We will come back to that.

5 MR. LOEPPKY: Yes.

6 MR. CAVALLUZZO: But that is  
7 obviously the statutory authority for being  
8 employed outside of Canada.

9 MR. LOEPPKY: Yes.

10 MR. CAVALLUZZO: The fifth point  
11 is a very important provision, because it provides  
12 for the accountability structures. It states  
13 that:

14 "The Governor in Council may  
15 appoint an officer, to be  
16 known as the Commissioner of  
17 the RCMP, who, under the  
18 direction of the Minister,  
19 has the control and  
20 management of the Force and  
21 all matters connected  
22 therewith."

23 Obviously the Minister there at  
24 the relevant time was the Solicitor General?

25 MR. LOEPPKY: Yes.



1 MR. CAVALLUZZO: At this point in  
2 time, what is the new Minister called?

3 MR. LOEPPKY: It is the Minister  
4 of Public Safety and Emergency Preparedness  
5 Canada.

6 MR. CAVALLUZZO: So the  
7 Commissioner has control and management of the  
8 Force but under the direction of the Minister.

9 MR. LOEPPKY: That is correct.

10 MR. CAVALLUZZO: In respect of the  
11 officer ranks in the RCMP, we see in section 6  
12 that apart from, or in addition to, the  
13 Commissioner we have a number of officer  
14 positions, from Deputy Commissioner down to  
15 Inspector.

16 MR. LOEPPKY: Yes.

17 MR. CAVALLUZZO: In respect of  
18 members of the Force, that is provided for in  
19 section 7, where it provides that the Commissioner  
20 may appoint members of the Force other than  
21 officers.

22 MR. LOEPPKY: Yes.

23 MR. CAVALLUZZO: One question I  
24 have there. We see elsewhere in the legislation  
25 that the RCMP may appoint or employ a civilian

1 staff. The reference to "members of the Force",  
2 would that include the civilian staff or would it  
3 just be the police officers?

4 MR. LOEPPKY: It includes the  
5 civilian members that are subject to the RCMP Act.

6 MR. CAVALLUZZO: In respect of the  
7 authority of members of the Force, that is  
8 provided for in section 9 on the next page. It  
9 provides that:

10 "Every officer and every  
11 person designated as a peace  
12 officer ... is a peace  
13 officer in every part of  
14 Canada and has all the  
15 powers, authority, protection  
16 and privileges that a peace  
17 officer has by law until the  
18 officer or person is  
19 dismissed or discharged ..."

20 So most officers exercising lawful  
21 authority in Canada are peace officers?

22 MR. LOEPPKY: Yes.

23 MR. CAVALLUZZO: In regard to the  
24 qualifications, that is set out in section 9.1,  
25 wherein the person has to be a Canadian citizen of

1 good character and have the necessary physical  
2 qualities. There may be exceptional  
3 circumstances. If there are not enough Canadian  
4 citizens available, we can hire other people who  
5 have the necessary qualifications.

6 Is that correct?

7 MR. LOEPPKY: Yes.

8 MR. CAVALLUZZO: The important  
9 provision of the legislation in respect of your  
10 mandate is found in section 18.

11 MR. LOEPPKY: Yes.

12 MR. CAVALLUZZO: Why don't you  
13 describe the three aspects that are important  
14 which are set out in section 18(a) of the  
15 legislation.

16 MR. LOEPPKY: The basic duties of  
17 members of the RCMP are to preserve the peace, to  
18 prevent crime and offences against the laws of  
19 Canada and the laws enforced in any province of  
20 Canada and to apprehend criminals and offenders  
21 and others who may have broken the law;  
22 essentially to conduct investigations, conduct  
23 criminal investigations.

24 MR. CAVALLUZZO: In respect of  
25 those three aspects of the statutory mandate,

1 where would much of the responsibility for  
2 national security investigations fall?

3 MR. LOEPPKY: Within which  
4 component of the organization?

5 MR. CAVALLUZZO: No, within which  
6 component of this? Is it related to preserving  
7 the peace, preventing crime or apprehending  
8 offenders?

9 MR. LOEPPKY: It really is not in  
10 any one particular area. It is spread across all  
11 three. Obviously our key focus is always on  
12 prevention.

13 MR. CAVALLUZZO: In 18(d) it  
14 provides that the officers will:

15 "perform such other duties  
16 and functions as are  
17 prescribed by the Governor in  
18 Council or the Commissioner."

19 MR. LOEPPKY: Yes.

20 MR. CAVALLUZZO: I understand  
21 there are regulations which set out additional  
22 duties.

23 MR. LOEPPKY: That is correct.

24 MR. CAVALLUZZO: We may come back  
25 to that.

1                   In regard to the responsibilities  
2 of the RCMP apart from being a national police  
3 force, if we refer to section 20, we see in  
4 subsections (1) and (2) that the RCMP can enter in  
5 to arrangements with provincial governments, as  
6 well as municipal governments in respect of  
7 policing.

8                   Could you describe those  
9 provisions, please.

10                  MR. LOEPPKY: The RCMP provides  
11 contract policing services to eight out of the ten  
12 provinces in Canada and to the three territories.  
13 It also provides police services under contract to  
14 over 200 municipalities across Canada. This  
15 provision is to authorize that to take place.

16                  MR. CAVALLUZZO: If we refer to a  
17 couple of other provisions which I think are  
18 important, the first is at section 37.

19                  Unlike many other employees, the  
20 standards of members of the RCMP are set out in  
21 statute. In section 37 there are three which I  
22 would refer to which I think are important for the  
23 Commissioner in terms of his mandate.

24                  It provides in section 37:

25                         "It is incumbent on every

1 member ..."

2 And this would obviously include  
3 officers, would it not, Deputy Commissioner?

4 MR. LOEPPKY: Every employee of  
5 the organization.

6 MR. CAVALLUZZO: All right.

7 "It is incumbent on every  
8 member

9 (a) to respect the rights of  
10 all persons;

11 (b) to maintain the integrity  
12 of the law, law enforcement  
13 and the administration of  
14 justice;

15 (c) to perform the member's  
16 duties promptly, impartially  
17 and diligently, in accordance  
18 with the law and without  
19 abusing the member's  
20 authority;"

21 The only other provision that I  
22 think we would refer to at this time is section  
23 38, which sets out what is called the code of  
24 conduct.

25 That, Deputy Commissioner, I

1           assume is the code which basically regulates and  
2           prescribes how RCMP officers and members should  
3           act.

4                           MR. LOEPPKY:   It sets the  
5           standards for the acceptable conduct of the  
6           members.

7                           MR. CAVALLUZZO:  There is another  
8           aspect to your mandate, particularly related to  
9           national security, that I would like to refer to  
10          now.

11                           In particular, if you refer to Tab  
12          7 of the legislation book, we see something called  
13          the Security Offences Act.

14                           MR. LOEPPKY:   Yes.

15                           MR. CAVALLUZZO:  As we will see  
16          later on, this legislation was passed as a result  
17          of the McDonald Commission, and it was enacted in  
18          1984.  It sets out in section 2 an offence and  
19          gives authority to the Attorney General.

20                           Just let me read it to you.

21                           "... the Attorney General of  
22                           Canada may conduct  
23                           proceedings in respect of an  
24                           offence under any law of  
25                           Canada where

1 (a) the alleged offence  
2 arises out of conduct  
3 constituting a threat to the  
4 security of Canada within the  
5 meaning of the Canadian  
6 Security Intelligence Service  
7 Act, or  
8 (b) the victim of the alleged  
9 offence is an internationally  
10 protected person ..."

11 And then it goes on:

12 "... and for that purpose the  
13 Attorney General of Canada  
14 may exercise all the powers  
15 and perform all the duties  
16 and functions assigned by or  
17 under the Criminal Code to  
18 the Attorney General."

19 In respect of your mandate in the  
20 RCMP, if you refer to section 6, what does section  
21 6(1) do in respect of your mandate relating to  
22 offences under the Security Offences Act?

23 MR. LOEPPKY: It provides the RCMP  
24 primary responsibility to perform the duties that  
25 are assigned to peace officers in relation to any



1           offence under section 2 of the Security Offences  
2           Act.

3                           MR. CAVALLUZZO: Finally,  
4           subsection (2) of section 6 seems to contemplate  
5           arrangements which the RCMP may enter into with  
6           provincial governments concerning work of the RCMP  
7           and members of provincial and municipal police  
8           forces with respect to the performance of duties  
9           assigned by section 2.

10                          MR. LOEPPKY: Yes.

11                          MR. CAVALLUZZO: Is this the  
12           statutory provision which authorizes arrangements  
13           such as we will see in respect of INSETs or other  
14           kinds of joint investigative teams?

15                          MR. LOEPPKY: It facilitates it.  
16           While there are arrangements in place with most  
17           provinces, there are not arrangements in place  
18           with every province. We have an option to swear  
19           people in as supernumary special constables under  
20           the RCMP Act.

21                          MR. CAVALLUZZO: Where you have  
22           such arrangements, it is certainly authorized by  
23           section 6(2).

24                          MR. LOEPPKY: Yes.

25                          MR. CAVALLUZZO: The only other

1 reference to a statute that I would make regarding  
2 the responsibility or mandate of the RCMP relating  
3 to national security would be the enactment of  
4 Bill C-36, the Anti-Terrorism Act, in December of  
5 2001, wherein the Parliament of Canada expanded  
6 the scope of what we call terrorist offences.

7 I would ask you whether that  
8 legislative change in 2001 had an impact on your  
9 responsibilities regarding national security.

10 MR. LOEPPKY: The passage of C-36  
11 in December of 2001 contained a number of  
12 provisions that criminalized certain activities  
13 that had not been criminalized before. It did by  
14 and large not provide new authorities for the RCMP  
15 or for the law enforcement community. Things such  
16 as facilitation, terrorist fundraising became  
17 criminal offences where they had not been criminal  
18 offences before.

19 There are two provisions that did  
20 provide limited new authority. One was the  
21 investigative hearing provision, and the other one  
22 was preventative arrest.

23 Both of those provisions are in  
24 place. They are unable to be considered to be  
25 used unless they come to my level for my personal

1 approval before they are forwarded to the Attorney  
2 General of Canada for consent. It requires the  
3 consent of the Attorney General before they can be  
4 implemented.

5 If they are implemented, if they  
6 are used, the individual who is subject to those  
7 particular provisions is entitled to  
8 representation and is entitled to appear before a  
9 judge within 24 hours.

10 There are a number of provisions  
11 with respect to C-36. It is subject to an annual  
12 report which must be tabled in Parliament in terms  
13 of the usage of C-36, those two provisions.

14 It also is subject to a three-year  
15 review and it is subject to a five-year sunset  
16 clause at the end of five years, 2006, unless  
17 Parliament decides otherwise.

18 I think the key issue is that  
19 contrary to belief, they criminalized activities  
20 that were not criminalized before. They did not  
21 provide significant new authorities for the RCMP.  
22 They simply clarified our mandate with respect to  
23 activities that related to terrorism and  
24 activities that supported terrorism.

25 MR. CAVALLUZZO: What you are

1 saying, I guess, is that the Mounties have been  
2 always in the game of criminal law, and once  
3 Parliament makes something a criminal offence,  
4 that is just part of your mandate.

5 MR. LOEPPKY: That has been part  
6 of our mandate since 1873.

7 MR. CAVALLUZZO: Out of interest,  
8 you have mentioned two new tools, we can call  
9 them, the preventative arrest and the  
10 investigative hearing, which have been provided by  
11 Bill C-36 or the Anti-Terrorism Act.

12 Could you tell us how often those  
13 new tools have been utilized by the RCMP?

14 MR. LOEPPKY: The preventative  
15 arrest has never been used. The investigative  
16 hearing has been used on one occasion.

17 I am free to talk about it. It  
18 was used in the Air India trial, and there was a  
19 recent decision by the Supreme Court of Canada  
20 which upheld the constitutionality of that  
21 provision.

22 MR. CAVALLUZZO: That came down  
23 last week.

24 MR. LOEPPKY: Yes.

25 MR. CAVALLUZZO: I would like to

1           move from the mandate of the RCMP to look at the  
2           organization and structure of the RCMP, because  
3           the Commissioner will have to understand this in  
4           order to do the job he has been given by the  
5           government.

6                               We have heard that the head of the  
7           RCMP is the Commissioner, and it is right now  
8           Mr. Zaccardelli.

9                               MR. LOEPPKY: That is correct.

10                              MR. CAVALLUZZO: He has direction  
11           and control of the RCMP under the direction of the  
12           Minister.

13                              I would like to refer to the book  
14           of documents, to Tab 14, which will give us an  
15           idea of the structure.

16                              From a geographic perspective, I  
17           understand that the Force is divided into four  
18           regions, 15 divisions, with headquarters in  
19           Ottawa.

20                              MR. LOEPPKY: That is correct.

21                              MR. CAVALLUZZO: If we look at  
22           this map, I believe the white portion on the left  
23           side does not have a letter. That should be "M",  
24           where the Yukon is and "E" where British Columbia  
25           is.

1                   The four regions are the Pacific  
2                   region; is that correct, including Yukon  
3                   Territory, which is Division "M" and Division "E"?

4                   MR. LOEPPKY:    Yes.

5                   MR. CAVALLUZZO:  The northwest  
6                   region which includes Divisions "G", "V", "K", "F"  
7                   and "D"?

8                   MR. LOEPPKY:    And Depot, our  
9                   Training Academy in Regina.

10                  MR. CAVALLUZZO:  The Atlantic  
11                  region, which includes Divisions "B", "J", "L"  
12                  and "H"?

13                  MR. LOEPPKY:    Yes.

14                  MR. CAVALLUZZO:  These divisions  
15                  fairly well approximate provincial boundaries?

16                  MR. LOEPPKY:    Very closely.

17                  MR. CAVALLUZZO:  Okay.  The  
18                  divisions and the region that we are interested in  
19                  in terms of the conduct of Canadian officials  
20                  relating to Mr. Arar, is the central region, which  
21                  includes the "C" Division, which I understand is  
22                  Quebec?

23                  MR. LOEPPKY:    Yes.

24                  MR. CAVALLUZZO:  The "O" Division,  
25                  which I understand is Ontario?

1 MR. LOEPPKY: Yes.

2 MR. CAVALLUZZO: And the  
3 "A" division, which I understand is Ottawa?

4 MR. LOEPPKY: The National Capital  
5 Region, yes.

6 MR. CAVALLUZZO: Under the  
7 Commissioner -- maybe it might be helpful if we  
8 went to the next tab, Tab 15. We see in terms of  
9 the hierarchical or bureaucratic structure here,  
10 under the Commissioner, what are there, eight  
11 Deputy Commissioners, including yourself, four for  
12 each region and four for functional operations?

13 MR. LOEPPKY: There is one in each  
14 region. I am the only uniform Deputy in  
15 headquarters. There are some that have Deputy  
16 Commissioner equivalent who are civilian members.

17 MR. CAVALLUZZO: If we refer to  
18 the next page, I would focus upon, once again, the  
19 relevant region and divisions. It is at the top  
20 of the page.

21 We have the Deputy Commissioner of  
22 the Central Region.

23 Who was that during the period  
24 2001 through 2003?

25 MR. LOEPPKY: It was Deputy

1 Commissioner René Charbonneau.

2 MR. CAVALLUZZO: Okay?

3 MR. LOEPPKY: He was replaced by  
4 Deputy Commissioner Pierre Lange approximately one  
5 year ago.

6 MR. CAVALLUZZO: In 2003?

7 MR. LOEPPKY: In 2003. I'm sorry.

8 MR. CAVALLUZZO: Okay. Then we  
9 have the "A" Division, which is the National  
10 Capital Region.

11 Divisions are headed by  
12 Assistant Commissioners?

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: Who was the  
15 Assistant Commissioner during the material time --  
16 and when I say the material time, once again,  
17 Deputy Commissioner, I am referring to, say,  
18 September of 2001 through December of 2003?

19 MR. LOEPPKY: Assistant  
20 Commissioner Dawson Hovey, H-O-V-E-Y.

21 MR. CAVALLUZZO: Okay. The  
22 "O" Division in Ontario.

23 Who would be the Assistant  
24 Commissioner there during the material time?

25 MR. LOEPPKY: Assistant



1 Commissioner Freeman Sheppard.

2 MR. CAVALLUZZO: Okay. And the  
3 "C" Division, Quebec?

4 MR. LOEPPKY: It would have been  
5 Assistant Commissioner Pierre Lange before he was  
6 promote to the Deputy of the Central Region.

7 MR. CAVALLUZZO: Now, the only  
8 other aspect of this table that I would refer to  
9 is your position itself. It is the left-hand  
10 column obviously. It states "Deputy Commissioner,  
11 Operations"?

12 MR. LOEPPKY: Yes.

13 MR. CAVALLUZZO: There are  
14 about six areas that I'm going to ask you about.  
15 We are going to focus most of your evidence today  
16 on Criminal Intelligence Directorate, which is  
17 the directorate in which the National Security  
18 Branch falls, so that we won't deal with that  
19 at this time, but if you could just give us a very  
20 brief description of your responsibilities in  
21 respect to these other functions.

22 First, Federal and International  
23 Operations?

24 MR. LOEPPKY: Federal and  
25 International Operations includes four key

1 components.

2 One is the border integrity area,  
3 which includes Customs, Immigration and federal  
4 services.

5 The second one is organized crime  
6 and drugs. That obviously speaks to the organized  
7 crime and drug programs.

8 The third area is the  
9 international operations, international liaison,  
10 and that takes in Interpol, our liaison officers,  
11 our peacekeeping personnel that we have deployed  
12 in a number of countries, and our international  
13 visits and travel program.

14 The fourth area of federal and  
15 international operations is our financial crimes  
16 area. That includes commercial crime, the  
17 integrated proceeds of crime program, and the  
18 integrated market enforcement teams which were  
19 created in the last year to look at market  
20 integrity. So the is federal and international  
21 operations.

22 MR. CAVALLUZZO: What about  
23 Protective Policing Services?

24 MR. LOEPPKY: Protective policing  
25 is responsible for the protection of the Prime

1 Minister and other Canadian VIPs; international  
2 dignitaries who visits here; diplomats in Canada  
3 who, based on a threat and risk assessment, are  
4 afforded protection. They are also responsible  
5 for major event planning such as the G8 that was  
6 held in Alberta two years ago. They are  
7 responsible for the Canadian Air Carrier  
8 Protective Program which was implemented post-9/11  
9 to look at airline safety.

10 MR. CAVALLUZZO: We will come back  
11 to that briefly.

12 Thirdly, Community, Contract and  
13 Aboriginal Police Services?

14 MR. LOEPPKY: That includes the  
15 direction for the 10,500 people we have involved  
16 across the country in terms of doing frontline  
17 uniform policing in eight of the ten provinces and  
18 three territories and the municipalities.

19 They set the policy, they monitor  
20 investigations, those types of things.

21 They are also responsible for the  
22 Critical Incident Program, responding to various  
23 types of hazards, emergency response.

24 Finally, they are responsible for  
25 the Aboriginal Policing Program. We police over

1           600 Aboriginal First Nations communities across  
2           the country and we set the policy and the  
3           strategies in terms of ensuring that we provide  
4           the appropriate services in those areas.

5                           MR. CAVALLUZZO: Okay. Technical  
6           Operations. I assume it is just that?

7                           MR. LOEPPKY: It is a variety of  
8           support services, Canadian bomb data centre, the  
9           air support services that we have, and the  
10          explosives research program, a number of other  
11          technical programs that support policing  
12          throughout the country.

13                          MR. CAVALLUZZO: Okay. And then,  
14          finally, Criminal Intelligence Service Canada.

15                          What is that?

16                          MR. LOEPPKY: Criminal  
17          Intelligence Service Canada was created as a part  
18          of national police services following a 1966  
19          conference where elected leaders decided that  
20          Canada needed a more strategic approach in terms  
21          of dealing with organized crime at that point.  
22          Consequently Criminal Intelligence Service Canada  
23          was created.

24                          It currently has, I believe, just  
25          in excess of 160 participating law enforcement

1 agencies within CISC, and its mandate is to serve  
2 as one central point for criminal intelligence  
3 focusing on organized crime, to provide a broad  
4 strategic intelligence overview to the Canadian  
5 police community and, consequently, allow the  
6 Canadian police community to work together to  
7 address the highest levels that are identified by  
8 Criminal Intelligence Service Canada.

9 They table an annual report at the  
10 Chiefs of Police conference which speaks to that  
11 threat assessment that they do on a yearly basis,  
12 and it forms the basis of a very integrated  
13 approach toward organized crime.

14 MR. CAVALLUZZO: That, as you say,  
15 that is focused on organized crime and has nothing  
16 to do with national security?

17 MR. LOEPPKY: That is correct.  
18 And there are a variety of secondments that work  
19 in CISC from a number of other departments.

20 MR. CAVALLUZZO: Right. Okay.

21 I would like to just briefly take  
22 you through some of the organizational charts  
23 themselves, starting at Tab 2.

24 MR. LOEPPKY: Yes.

25 MR. CAVALLUZZO: The boxes that we

1 would be interested in, starting with the  
2 Commissioner, flowing down through you Deputy  
3 Commissioner, Operations, wherein you are named.  
4 Then in respect of the box under your Executive  
5 Assistant we would be concerned with the Assistant  
6 Commissioner, Criminal Intelligence and that is  
7 Richard Proulx?

8 MR. LOEPPKY: He was there at the  
9 material times. He has just retired.

10 MR. CAVALLUZZO: Okay. Then I  
11 would make reference over to the right-hand  
12 column, that box we would be interested in. That  
13 is the Deputy Commissioners, and in particular the  
14 Central Region and at that time was Mr. Lange?

15 MR. LOEPPKY: At that time was  
16 Mr. Charbonneau. It is Mr. Lange today.

17 MR. CAVALLUZZO: Excuse me. It is  
18 Mr. Lange today, it was Mr. Charbonneau then.  
19 Thank you.

20 Then if you would refer to Tab 3,  
21 that just gives a much more focused reference to  
22 the Commissioner and all of the Deputy  
23 Commissioners that we have just talked about.

24 Then Tab 4 is Criminal Operations.  
25 Once again, the flow of authority we would look at

1 would be the Deputy Commissioner, Operations,  
2 which is yourself. Then the line flows down once  
3 again to what we would be looking at now is the  
4 Criminal Intelligence Directorate, which is the  
5 third box from the right?

6 MR. LOEPPKY: Yes.

7 MR. CAVALLUZZO: Then, finally if  
8 we can bring in national security if we go to  
9 Tab 5, we see the organizational structure of the  
10 CID -- which I am going to refer to the Criminal  
11 Intelligence Directorate as the CID throughout  
12 from now on. This is the structure that was  
13 created in April of 2003.

14 Focusing now on national security,  
15 we would come, in terms much flow of authority,  
16 from yourself to Mr. Proulx and then along to  
17 Mr. Dan Killam?

18 MR. LOEPPKY: Yes.

19 MR. CAVALLUZZO: Who is called the  
20 Director General, National Security Branch?

21 MR. LOEPPKY: Yes.

22 MR. CAVALLUZZO: The National  
23 Security Branch has three branches within it, the  
24 first being the National Security Intelligence  
25 Branch?

1 MR. LOEPPKY: Yes.

2 MR. CAVALLUZZO: Affectionately  
3 known as the NSIB?

4 MR. LOEPPKY: Yes.

5 MR. CAVALLUZZO: The National  
6 Security Operations Branch?

7 MR. LOEPPKY: Yes.

8 MR. CAVALLUZZO: Otherwise known  
9 as the NSOB?

10 MR. LOEPPKY: Yes.

11 MR. CAVALLUZZO: And Policy  
12 Planning and Development?

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: Okay.

15 At this time can you briefly tell  
16 us, what is the difference between the NSIB, the  
17 intelligence branch, and the NSOB, the operations  
18 branch?

19 MR. LOEPPKY: The National  
20 Security Intelligence Branch essentially brings  
21 together the various components of the  
22 organization that produce threat assessments in  
23 terms of certain kinds of activity. So it would  
24 have a component in there that looks at the threat  
25 assessment process, or the threat with respect to



1           airline safety, with respect to critical  
2           incidents, with respect to Canadian executives and  
3           the threats against those or against diplomats who  
4           are in Canada.

5                                They essentially bring together  
6           the threat assessment from the international  
7           community, considering that we deploy people in  
8           peacekeeping missions. It is to bring together  
9           all of the various components of the intelligence  
10          part to look at the threat.

11                               I can go into more detail if you  
12          wish, but that is --

13                               MR. CAVALLUZZO: No. That's fine.

14                               MR. LOEPPKY: The National  
15          Security Offences branch --

16                               MR. CAVALLUZZO: You said  
17          "offence". You mean "Operations"?

18                               MR. LOEPPKY: I'm sorry.  
19          Operations Branch. Correct.

20                               MR. CAVALLUZZO: Okay.

21                               MR. LOEPPKY: They have  
22          responsibility for the monitoring and review of  
23          ongoing criminal investigations that touch on  
24          national security. There is very much of a  
25          centralized coordination that is in place with

1           respect to criminal investigations on national  
2           security and their role is to monitor, provide  
3           direction, and evaluate the progress of those  
4           particular investigations.

5                           There is also a terrorist  
6           financing section in there which does work with  
7           respect to financing issues and investigations in  
8           that regard.

9                           MR. CAVALLUZZO:   Okay.  Now, at  
10          the material time, did Inspector Rick Reynolds  
11          hold a position in the NSIB?

12                          MR. LOEPPKY:   At that point it  
13          wasn't quite structured this way.  I think there  
14          is a chart in here, sir, that does reflect how it  
15          was structured.  It was Superintendent Wayne  
16          Pilgrim that was in charge of the NSOB under  
17          Assistant Commissioner Proulx.

18                          MR. CAVALLUZZO:   We will come  
19          back to those two charts that you have made  
20          reference to.

21                          Just before we close off on the  
22          organization of the RCMP, I would like to just  
23          deal briefly with some numbers.

24                          I understand that as of today  
25          the RCMP has something like 22,339 employees

1 across Canada?

2 MR. LOEPPKY: That is correct.

3 MR. CAVALLUZZO: And within  
4 operations, your responsibility, there are  
5 approximately 16,000 employees?

6 MR. LOEPPKY: Between 15 and  
7 16,000 that are involved in operations.

8 MR. CAVALLUZZO: I would like to  
9 focus in at headquarters the CID, the Criminal  
10 Intelligence Directorate.

11 I understand that at headquarters  
12 there are 167 full-time equivalents in that  
13 directorate?

14 MR. LOEPPKY: Yes.

15 MR. CAVALLUZZO: Of those 167,  
16 approximately 60 would be engaged in the National  
17 Security Branch?

18 MR. LOEPPKY: That is correct, in  
19 the branches that we have just discussed.

20 MR. CAVALLUZZO: In respect of  
21 national security across the country, that is in  
22 the INSETs and the NSISs that we will come to,  
23 there are approximately 230 members engaged in  
24 respect of national security functions. Is that  
25 correct?

1 MR. LOEPPKY: That includes all  
2 the resources in 14 locations across Canada, the  
3 NSIS units and the four INSETs, which we will talk  
4 about later.

5 So the total number of people that  
6 are involved in criminal investigations on  
7 national security in the organization is  
8 approximately 290, including the 60 at  
9 headquarters.

10 MR. CAVALLUZZO: Right. Let's  
11 then move to the national security mandate of the  
12 RCMP.

13 Initially I would like to just  
14 give an overview since we are going to be spending  
15 a great deal of time today on your mandate.

16 I would like to file an article at  
17 this point in time, Mr. Commissioner.

18 THE COMMISSIONER: Should we mark  
19 this, Mr. Cavalluzzo?

20 MR. CAVALLUZZO: I don't think it  
21 is necessary, Mr. Commissioner, but it is a very  
22 useful guide to some of the questions I am going  
23 to be asking Deputy Commissioner Loepky.

24 --- Pause

25 MR. CAVALLUZZO: Why don't we mark

1 it. Then we can locate it if it is so useful.

2 I have just been admonished by  
3 government counsel, and I apologize.

4 MS McISAAC: Keeping track of the  
5 papers, sir.

6 THE COMMISSIONER: Exhibit 13.

7 EXHIBIT NO. P-13: Document  
8 prepared by Philip Rosen,  
9 Senior Analyst, Parliamentary  
10 Research Branch, re creation  
11 of CSIS

12 MR. CAVALLUZZO: Mr. Commissioner,  
13 at the outset let me advise you what this is.  
14 This is a paper which was prepared by Philip  
15 Rosen, who is a Senior Analyst with the  
16 Parliamentary Research Branch, and it deals with  
17 the creation of CSIS, the removal of national  
18 security responsibilities from the RCMP as a  
19 result of the McDonald Commission.

20 It is a very good description of  
21 the events leading up to the McDonald Commission,  
22 as well as the -- if we can call it -- the  
23 legislative fallout of the McDonald Commission. I  
24 think it is a useful tool for us to deal with in  
25 terms of Deputy Commissioner Loepky.

1 Deputy Commissioner, I understand  
2 that there was an organization, and we heard  
3 evidence of this from CSIS witnesses: that there  
4 was something called the Security Service of the  
5 RCMP which was created in 1970 with national  
6 security responsibilities.

7 Is that correct?

8 MR. LOEPPKY: That is correct.

9 MR. CAVALLUZZO: And I understand  
10 as well -- and we heard some of this from  
11 Mr. Elcock -- that in 1969 there was a Royal  
12 Commission called the Mackenzie Report and that  
13 Mr. Mackenzie recommended a separate civilian  
14 security agency.

15 Is that correct?

16 MR. LOEPPKY: Yes.

17 MR. CAVALLUZZO: And although the  
18 government of the day, which I guess would have  
19 been headed by Mr. Trudeau, rejected  
20 civilianization, they did decide and were  
21 determined to ensure that the national security  
22 functions of the RCMP were in a separate branch  
23 and will become civilian in nature as time went  
24 on.

25 Is that correct?

1 MR. LOEPPKY: Yes.

2 MR. CAVALLUZZO: And in response  
3 to the Mackenzie Commission, I understand that the  
4 first director of the security service was a  
5 civilian?

6 MR. LOEPPKY: Yes.

7 MR. CAVALLUZZO: Who was that?

8 If you don't recall, was it  
9 Mr. John Starnes?

10 MR. LOEPPKY: John Starnes, sorry.

11 MR. CAVALLUZZO: Then the paper by  
12 Mr. Rosen describes there was a political crisis  
13 that occurred in October of 1970, of course, and  
14 that is what we refer to as the October crisis,  
15 where you may recall that Mr. Laporte, who was a  
16 member of the Quebec Cabinet, was murdered and  
17 Mr. James Cross was kidnapped?

18 MR. LOEPPKY: Yes.

19 MR. CAVALLUZZO: Mr. Rosen -- and  
20 I am going to ask you this -- states that in  
21 response to the October crisis, the government  
22 asked the RCMP to take a number of proactive steps  
23 in respect of certain nationalist groups.

24 Is that correct?

25 MR. LOEPPKY: That is what I read

1 in the article. I haven't done any historical  
2 research to confirm that, but I accept what is in  
3 the paper.

4 MR. CAVALLUZZO: I understand that  
5 as a result of this proactive strategy which the  
6 government had requested to obtain advance  
7 information on these nationalist groups, the RCMP  
8 engaged in a number of illegal acts, including  
9 barn burning, illegal entries or break and  
10 entries, on these groups, and so on and so forth.

11 Do you recall that?

12 MR. LOEPPKY: I don't recall the  
13 incidents. I was a very junior member in British  
14 Columbia at the time involved in front line law  
15 enforcement.

16 But certainly there has been a lot  
17 of material pursuant to that; so, yes.

18 MR. CAVALLUZZO: And even being a  
19 lowly member in British Columbia, you must have  
20 read about what were called at the time  
21 affectionately the "dirty tricks" of the RCMP.

22 MR. LOEPPKY: Yes.

23 MR. CAVALLUZZO: In fact, if we  
24 can call them these illegal acts in effect led to  
25 the creation of the McDonald Commission in 1977?



1 MR. LOEPPKY: That is correct.

2 MR. CAVALLUZZO: We went through  
3 the process of the McDonald Commission with  
4 Mr. Elcock, and I just want to ask you a few  
5 questions about that.

6 First of all, the McDonald  
7 Commission, like Mr. Mackenzie's report,  
8 recommended a separate civilian security agency?

9 MR. LOEPPKY: Yes.

10 MR. CAVALLUZZO: And, as a result  
11 of that, recommended that the security service or  
12 the national security responsibilities of the RCMP  
13 be removed from the RCMP?

14 MR. LOEPPKY: The component  
15 dealing with security intelligence and security  
16 screening be created within a new agency.

17 MR. CAVALLUZZO: We understand  
18 from Mr. Elcock that with the creation of CSIS in  
19 1984, about 80 per cent of the employees of CSIS  
20 initially were former members of the security  
21 service of the RCMP. Do you recall that?

22 MR. LOEPPKY: There was a  
23 significant number. Eighty per cent would  
24 probably be right.

25 MR. CAVALLUZZO: Then in 1984, at

1 the same time that Parliament took away those  
2 national security or security intelligence  
3 responsibilities from the RCMP, it also enacted  
4 what we referred to earlier as the Security  
5 Offences Act?

6 MR. LOEPPKY: That is correct.

7 MR. CAVALLUZZO: In 1984. So that  
8 was part of the arrangement. We created a new  
9 civilian agency, removed these responsibilities  
10 from the RCMP, but also enacted the Security  
11 Offences Act, which gave the RCMP primary  
12 responsibility for offences under that Act?

13 MR. LOEPPKY: For criminal  
14 offences; that is correct.

15 MR. CAVALLUZZO: Perhaps if we now  
16 refer to tab 20, we have a document entitled  
17 "National Security for the 1990s".

18 MR. LOEPPKY: Yes.

19 MR. CAVALLUZZO: This document,  
20 Mr. Commissioner, was the government's response to  
21 a report which had been created by the House of  
22 Commons special committee on the review of the  
23 CSIS Act and the Security Offences Act. It is  
24 dated, as you can see, February 1991.

25 In regard to the RCMP, you can see

1 in Chapter VI there is a chapter entitled "The  
2 National Security Mandate of the RCMP".

3 I would like to at this point  
4 focus in on page 46, which sets out the provisions  
5 of the Security Offences Act that we have referred  
6 to.

7 It states in the opening  
8 paragraph:

9 "The RCMP's responsibility  
10 for the enforcement of  
11 criminal law relating to  
12 security offences, and for  
13 protective security, has been  
14 continuous. But the  
15 legislative changes which  
16 occurred in 1984 did have an  
17 impact on the Force's  
18 security mandate."

19 And these are the impacts:

20 "First, responsibility for  
21 security intelligence and  
22 security screening passed  
23 from the RCMP to the new  
24 security intelligence  
25 service. Secondly, the RCMP

1                   was accorded, for the first  
2                   time in legislation, primary  
3                   responsibility for  
4                   investigating offences which  
5                   arise out of conduct  
6                   constituting a threat to the  
7                   security of Canada or where  
8                   the victim of an offence is  
9                   an internationally protected  
10                  person."

11                   Do you recall that one of the  
12                  criticisms of the McDonald report in respect of  
13                  the security service of the RCMP was that its  
14                  mandate was too diffuse, too ambiguous; there was  
15                  nothing in legislation which clarified what its  
16                  responsibilities were.

17                   Do you recall that?

18                   MR. LOEPPKY: Yes.

19                   MR. CAVALLUZZO: And this was an  
20                  attempt presumably to deal with that situation?

21                   MR. LOEPPKY: That is correct.

22                   MR. CAVALLUZZO: Staying with the  
23                  overview, if we can go back to 1984 and 1985, I  
24                  assume there were some growing pains with the new  
25                  clarified statutory mandate of the RCMP relating

1 to national security?

2 MR. LOEPPKY: The McDonald  
3 Commission found, as you correctly stated, that  
4 security intelligence and criminal law enforcement  
5 would be separated. There was certainly, I think,  
6 growing pains as you establish a new agency, but I  
7 think those were quickly overcome in terms of the  
8 relationship.

9 I refer specifically, Your Honour,  
10 to some criticisms that have been levelled during  
11 the Air India trial, but those were in early,  
12 early days, and certainly those have been dealt  
13 with a long time ago.

14 MR. CAVALLUZZO: The criticisms  
15 you are referring to -- and let's once again do an  
16 historical perspective here.

17 The Air India incident occurred in  
18 1985?

19 MR. LOEPPKY: Yes.

20 MR. CAVALLUZZO: In regard to  
21 terrorist activity, do you recall how many people  
22 were killed on the Air India flight?

23 MR. LOEPPKY: I believe it was 329  
24 on Air India, and I think there was three baggage  
25 handlers at Norita in a related explosion.

1 MR. CAVALLUZZO: If we look at it  
2 from a comparative level, if we look at 3,000  
3 Americans killed in 9/11, what occurred in 1985 in  
4 terms of that terrorist attack would have had the  
5 same comparative impact on Canada, being 10 per  
6 cent of the population of the United States.

7 You would agree with that?

8 MR. LOEPPKY: It certainly had a  
9 significant impact on Canada.

10 MR. CAVALLUZZO: And this occurred  
11 the first year after the enactment of the Security  
12 Offences Act.

13 You have referred now to certain  
14 criticisms that were levelled as a result of the  
15 Air India trial, and I assume you are talking  
16 about the level of cooperation between the newly  
17 created CSIS and the RCMP.

18 Is that what you were referring  
19 to?

20 MR. LOEPPKY: Those criticisms are  
21 well known in terms of, you know, perhaps there  
22 could have been better information sharing.  
23 Perhaps there could have been different processes  
24 in place for retaining evidence, those types of  
25 things, tapes.

1 MR. CAVALLUZZO: This may be a  
2 good point in time to look, at that point in the  
3 1980s, at your relationship with CSIS.

4 If you stay at Tab 20, and refer  
5 to maybe page 48.

6 Why don't we go to the previous  
7 page, just to give you full context here.

8 It is said at the second paragraph  
9 from the bottom:

10 "In July 1984, at the time of  
11 the separation, Ministerial  
12 direction was issued  
13 describing the expected  
14 relationship between the RCMP  
15 and CSIS; and in August 1986  
16 a further Ministerial  
17 direction established the  
18 RCMP/CSIS Liaison Officer  
19 Program."

20 Then it goes on:

21 "The Minister also approved a  
22 Memorandum of Understanding  
23 between the two agencies..."

24 Which we will come back to.

25 Then it attempts to describe --

1           maybe you can help us -- the interrelationship  
2           between CSIS and the RCMP.

3                               In the first bullet it says  
4           the MOU:

5                               "...reaffirms the role of  
6                               CSIS in investigating  
7                               suspected threats to the  
8                               security of Canada, and that  
9                               of the RCMP in preventing  
10                              security offences and  
11                              enforcing the law;"

12                             MR. LOEPPKY:   Yes.

13                             MR. CAVALLUZZO:  So that even at  
14           that point in time, back in 1984, there was an  
15           important preventative aspect to the  
16           responsibilities of the RCMP?

17                             MR. LOEPPKY:   Yes.

18                             MR. CAVALLUZZO:  Then it goes on  
19           and it says:

20                              "it outlines the specific  
21                              security related  
22                              responsibilities of each  
23                              agency;"

24                             We will be coming back to that.

25                             It goes on:



1 "it reaffirms the principle  
2 that the RCMP is the primary  
3 recipient of security  
4 intelligence on national  
5 security offences and,  
6 indeed, relies primarily on  
7 CSIS for such intelligence"

8 MR. LOEPPKY: Yes.

9 MR. CAVALLUZZO: Just stopping  
10 there, would that statement be true today after  
11 9/11:

12 ...that the RCMP is the  
13 primary recipient of security  
14 intelligence on national  
15 security offences and,  
16 indeed, relies primarily on  
17 CSIS for such intelligence"?

18 MR. LOEPPKY: That statement would  
19 be true today. A large percentage of our cases  
20 are as a result of disclosure letters.

21 MR. CAVALLUZZO: Okay. Then it  
22 goes on. This is the part that I think is  
23 important for our historical overview or  
24 perspective.

25 Under "Security Investigations" it

1 states that:

2 "The security investigations  
3 mandates of the RCMP and CSIS  
4 differ, but they share a  
5 common objective. This, in  
6 turn, replaces a premium on  
7 effective cooperation between  
8 the two agencies.

9 Just as valid today as it was back  
10 in 1991 when it was written?

11 MR. LOEPPKY: Yes.

12 MR. CAVALLUZZO: It goes on:

13 "The RCMP's mandate is to  
14 investigate individuals who  
15 may be engaging in criminal  
16 activity, whereas the CSIS  
17 mandate is to investigate and  
18 analyse security threats."

19 True today?

20 MR. LOEPPKY: Yes.

21 MR. CAVALLUZZO: It goes on:

22 "These different mandates,  
23 however, do not result in  
24 mutually exclusive areas of  
25 investigative activity."

1                   Is that true today? I assume even  
2 more so today.

3                   Is that correct?

4                   MR. LOEPPKY: I would suggest that  
5 the need for information sharing and integration  
6 is greater today than -- I mean, this document was  
7 written just after the end of the Cold War.  
8 During that period of time the issues were more  
9 clearly defined than they are today and,  
10 therefore, certainly the need to work closely  
11 together is even more important today than ever.

12                   MR. CAVALLUZZO: Okay. It goes  
13 on:

14                   "At times, therefore, the  
15 RCMP and CSIS have to work  
16 side by side in discharging  
17 their respective mandates."

18                   That is true today?

19                   MR. LOEPPKY: Yes.

20                   MR. CAVALLUZZO: In fact we will  
21 see on INSETs, each INSET has had a CSIS officer  
22 involved?

23                   MR. LOEPPKY: That is correct.

24                   MR. CAVALLUZZO: Then it goes on:

25                   "In addition, though the two

1 agencies' operational  
2 mandates may differ, their  
3 investigative activities have  
4 much in common. Both employ  
5 similar investigative methods  
6 and techniques to acquire  
7 information on the activities  
8 of individuals and groups,  
9 the RCMP to enable the Force  
10 to prevent crime or to lay  
11 charges, CSIS in order to  
12 report and advise the  
13 Government with respect to  
14 threats.

15 That is very true today, is  
16 it not?

17 MR. LOEPPKY: It is very true, but  
18 the key difference is that the RCMP gathers  
19 criminal intelligence with the objective of  
20 criminal prosecution. That evidence must be  
21 gathered so that it meets the Charter, the  
22 compliance with the Charter, and meets our  
23 internal policies.

24 So it is rare that CSIS would go  
25 to court. They do not collect -- their mandate is

1 not to collect evidence; it is to collect security  
2 intelligence.

3 MR. CAVALLUZZO: Okay. Actually  
4 the next area that we are going to deal with is  
5 trying to compare criminal intelligence as opposed  
6 to security intelligence and we will come to that.

7 The report goes on. It says:

8 "Because of these overlaps,  
9 special care is required to  
10 ensure that the RCMP and CSIS  
11 understand their respective  
12 roles and responsibilities,  
13 and that understandings exist  
14 to regulate their  
15 interaction."

16 Finally:

17 "It is particularly important  
18 there be a common  
19 appreciation of respective  
20 rights and obligations  
21 concerning the sharing,  
22 protection and use of  
23 security information."

24 You would agree with me that there  
25 was an arrangement entered into between CSIS and

1 the RCMP which would deal with the  
2 security-related responsibilities of each.

3 MR. LOEPPKY: Yes.

4 MR. CAVALLUZZO: We will come back  
5 to that in due course.

6 I would like to move on. We are  
7 still in the early 1990s with the creation of the  
8 CID, the creation of the Criminal Intelligence  
9 Division in which the National Security Branch  
10 finds itself.

11 Now, that directorate was created  
12 in -- established in May of 1991?

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: I understand that  
15 one of the problems which gave rise to its  
16 creation was that the RCMP was not engaging in  
17 advance knowledge of problems which will might  
18 occur in terms of a sophisticated criminal  
19 intelligence strategy.

20 Is that correct?

21 MR. LOEPPKY: There were a number  
22 of drivers that led to a revitalization of our  
23 Criminal Intelligence Directorate program.

24 First of all, the RCMP had  
25 embarked on a new type of policing initiative

1 in the late 1980s early 1990s called "Community  
2 Policing", which was a program to engage the  
3 communities in problem-solving and problem  
4 resolution.

5 At the same time, we changed our  
6 approach in terms of training our frontline police  
7 officers. We adopted a program that is referred  
8 to as CAPRA and it speaks to working with the  
9 community, acquiring information in terms of what  
10 are the community's needs and ultimately doing  
11 problem solving.

12 A combination of the community  
13 policing initiative, the change in direction of  
14 the Force that was introduced by Commissioner  
15 Inkster, the change in direction of policing with  
16 our cadets in terms of problem-solving, led us to  
17 the conclusion that we needed to have a lot better  
18 sense in terms of what was our environment, what  
19 were the issues, what were the threats, what was  
20 the nature of the things that we were facing.  
21 That led to the concept of intelligence-led  
22 policing, which I think we will probably cover  
23 in some --

24 MR. CAVALLUZZO: We are going to  
25 come to that, but let's initially deal with the

1           problem which gave rise to the creation of the  
2           Criminal Intelligence Directorate.

3                           If we refer to Tab 42 of the  
4           Book of Documents.

5                           MR. LOEPPKY:   Yes.

6                           MR. CAVALLUZZO:  There is  
7           something called "Criminal Intelligence Program,  
8           Planning and Direction, Implementation Guide, June  
9           1991".

10                          This is a RCMP document and the  
11           references that I would point to would be in the  
12           first page under "Introduction".  We see in the  
13           first paragraph, middle sentence:

14                                   "The Headquarters Criminal  
15                                   Intelligence Directorate  
16                                   became operational on  
17                                   May 31, 1991."

18                          MR. LOEPPKY:   Yes.

19                          MR. CAVALLUZZO:  In respect of the  
20           problem it states in the next paragraph:

21                                   "Up to this time, the failure  
22                                   to develop a sophisticated  
23                                   strategic as well as tactical  
24                                   intelligence capability  
25                                   within the RCMP has seriously



1 hindered the Force's ability  
2 to accurately measure and  
3 prevent crime having an  
4 organized, serious or  
5 national security dimension  
6 in Canada, or internationally  
7 it affects Canada."

8 Then it goes on in the second  
9 sentence from there:

10 "The Oka crisis last summer  
11 provided an example of what  
12 can result from the failure  
13 to have a capacity to predict  
14 future problems (strategic  
15 intelligence). A  
16 well-developed national  
17 criminal  
18 information/intelligence  
19 program within the RCMP will  
20 provide both Headquarters and  
21 Division senior management  
22 and enforcement officers with  
23 the means to develop more  
24 effective and efficient as  
25 well as proactive crime

1 control policy and  
2 strategies."

3 Then, finally:

4 "The success or failure of  
5 the RCMP's crime control  
6 strategies is dependent on  
7 accurate and timely criminal  
8 intelligence."

9 The only other reference in terms  
10 of the text would be at page 6 of Tab 42 in the  
11 paragraph 2.1. About halfway down it talks about  
12 the Task Force which was created and which made  
13 these recommendations. It says:

14 "The mandate of the Task  
15 Force was to determine the  
16 need for the establishment of  
17 a national Criminal  
18 Intelligence Program within  
19 the Force, having a  
20 centralized component to more  
21 effectively and efficiently  
22 manage the flow of criminal  
23 information/intelligence into  
24 and within the RCMP. This  
25 mandate also extended to the

1 functions of a newly created  
2 Criminal Intelligence Program  
3 as well as how the program  
4 should be structured, at both  
5 the Division and Headquarters  
6 levels."

7 Now, in terms of headquarters,  
8 the recommendations which were accepted can be  
9 found at page 13 and I would ask you some  
10 questions about that, Deputy Commissioner.

11 MR. LOEPPKY: If I might just try  
12 to put that in some context.

13 MR. CAVALLUZZO: Please do.

14 MR. LOEPPKY: It does build on --  
15 I realize we are going to talk about  
16 intelligence-led policing, but it does tie in at  
17 this point and it might be helpful to just outline  
18 how that ties together.

19 One of the things that was  
20 recognized was that you could change your way of  
21 trying to deliver policing services in conjunction  
22 with the community; you could change your training  
23 program in Depot to make sure we will have  
24 problem-solvers going out into the field based on  
25 the information that they had at their hands to

1 solve all kinds of frontline policing problems.

2 That was the thrust of this.

3 That is where the intelligence-led  
4 policing initiative came from, but it was  
5 recognized that having an intelligence-led  
6 approach without having there sophisticated way of  
7 managing, bringing together information and  
8 intelligence when we were expected to deal with  
9 major national organized crime threats, having an  
10 unsophisticated program where you would have  
11 pockets of information being collected at a  
12 divisional basis and not having a national  
13 program, bringing all that information together,  
14 and ultimately setting your priorities on what was  
15 the number one crime threat, organized crime  
16 threat in Canada perhaps.

17 So as we evolved down the road of  
18 intelligence-led policing we recognized that if  
19 you are truly going to be intelligence led, if you  
20 are truly going to attack the highest priorities,  
21 then you need a sophisticated process centralized  
22 coordination that will actually, at the end of the  
23 day, be able to tell you which organized crime  
24 group poses the highest threat.

25 We don't have the resources to do

1           them all and this is a way of trying to address  
2           the ones that actually have the most impact on  
3           Canadian society and the biggest threat to  
4           Canadians.

5                           MR. CAVALLUZZO:  What you have  
6           just stated is really captured in the Mission  
7           Statement, which can be found at page 13 in  
8           paragraph 4.1, that is the Mission Statement of  
9           the Criminal Intelligence Directorate.

10                           It says:

11                                   "The mission of the Criminal  
12                                   Intelligence Directorate is  
13                                   to provide a national program  
14                                   for the management of  
15                                   criminal information and  
16                                   intelligence which will  
17                                   permit the RCMP to detect and  
18                                   prevent crime having an  
19                                   organized, serious or  
20                                   national security dimension  
21                                   in Canada, or internationally  
22                                   as it affects Canada."

23                           Then it recommends -- which was  
24           accepted -- the Director of the Criminal  
25           Intelligence Directorate -- and just for our

1 purposes it creates something called the Security  
2 Offences Branch. That is referred to in 4.5.

3 What was that branch, Deputy  
4 Commissioner Loepky?

5 MR. LOEPPKY: That was the branch  
6 that was tasked with the coordination of criminal  
7 investigations that touched on national security.  
8 Up until 9/11 I think it had 21 people in total in  
9 that area.

10 MR. CAVALLUZZO: This is  
11 the branch, the Security Offences Branch -- it  
12 may have been renamed -- that existed right up  
13 to 9/11?

14 MR. LOEPPKY: Yes, and beyond  
15 until we had additional resources.

16 MR. CAVALLUZZO: Right. At the  
17 same time the report also recommended structures  
18 at the divisional level. Is that correct?

19 MR. LOEPPKY: Yes. It resulted in  
20 the creation of the headquarters Criminal  
21 Intelligence Directorate. It also resulted in the  
22 creation of criminal intelligence sections in  
23 provinces, who would bring together various pieces  
24 of information and put them through the  
25 intelligence process, the analysis, collation and

1           that type of analytical process, and then feed  
2           that to headquarters.

3                           Ultimately what you would have  
4           then is a very good picture of the crime  
5           environment in that province, allowing the  
6           resources to target those, but also having at the  
7           end of the day a national picture which would  
8           allow you to focus on the highest threats to  
9           Canada.

10                           Organized crime does not respect  
11           boundaries and obviously our program needs to be  
12           sophisticated enough to be able to look at that.

13                           MR. CAVALLUZZO:  If you refer to  
14           page 21, you will see the Division Criminal  
15           Intelligence Branch organization structure.  I  
16           won't read that to you but will refer to page 22  
17           where there is a new section that appears to be  
18           created in paragraph 5.4.  It is called the  
19           National Security Investigations Sections, which  
20           we will see referred to throughout as NSIS.

21                           Could you tell us what that is?

22                           MR. LOEPPKY:  Those were  
23           relatively small sections that were located in the  
24           divisions to deal with the criminal aspect of  
25           national security matters.  They had a more

1 centralized reporting function than the division  
2 criminal analysis section, which focused much more  
3 on the organized crime activities.

4 MR. CAVALLUZZO: Can we say these  
5 sections were the precursor of the INSETs that we  
6 have today?

7 MR. LOEPPKY: Out of the 14  
8 sections that we had at that point, four were  
9 subsequently converted to INSETs post 9/11.

10 MR. CAVALLUZZO: And those are in  
11 Vancouver, Toronto, Montreal and Ottawa?

12 MR. LOEPPKY: Yes.

13 MR. CAVALLUZZO: And this is the  
14 integrated force that we will be coming back to,  
15 the INSET.

16 MR. LOEPPKY: Yes.

17 MR. CAVALLUZZO: The only other  
18 aspect of this task force report that I think is  
19 important would be certainly at page 27.

20 It just confirms what you have  
21 said: that the task force recognized the need for  
22 a centralized database. You would agree with  
23 that, obviously.

24 MR. LOEPPKY: Yes.

25 MR. CAVALLUZZO: And then there is



1 reference that I would like to ask you about so  
2 you can identify it for us at this point in time.

3 In the second paragraph under  
4 "Stage 1", it says:

5 "Maximum utilization of  
6 existing computer systems  
7 including ..."

8 Then it goes on.

9 The SCIS, or the SCIS, is an  
10 important system that we will hear about.

11 "The SCIS, in place in  
12 Headquarters Security  
13 Offences Branch, using  
14 WordPerfect as a front-end is  
15 being used as a model to  
16 design a centralized database  
17 for the national Criminal  
18 Intelligence Program. This  
19 would ensure that national  
20 security data is stored in a  
21 separate database while  
22 providing a centralized  
23 national database for  
24 criminal information that  
25 does not require the same

1 level of security."

2 Is that still true today? The SCI  
3 system provides us with a separate database for  
4 national security information?

5 MR. LOEPPKY: Yes. It is a  
6 database that is at the classified level as  
7 opposed to the protected level which is recognized  
8 in the federal government. So it contains secret  
9 information.

10 MR. CAVALLUZZO: It is secret  
11 information, and we will come to the policies  
12 which deal with releasing or exchanging that  
13 information later on.

14 At the last couple of sentences in  
15 that paragraph it says:

16 "Access to the systems will  
17 be limited to the Criminal  
18 Intelligence Program  
19 personnel at Headquarters and  
20 in the Divisions and  
21 controlled by password. This  
22 stage should be reached  
23 within the first year of  
24 operation."

25 In terms of access, is that still

1 true today?

2 MR. LOEPPKY: It is role-based  
3 access, and it is limited access based on a need  
4 to know.

5 MR. CAVALLUZZO: Moving on in  
6 terms of the overview of our history relating to  
7 the national security mandate, I want to move now  
8 to the impact of 9/11 on the RCMP in respect of  
9 its national security responsibilities.

10 I understand that initially as a  
11 result of the impact of 9/11 something like 2200  
12 officers were deployed to prevent potential  
13 attacks on Canada?

14 MR. LOEPPKY: Yes. There was  
15 immediate deployment of 2200 resources.  
16 Approximately one-tenth of our workforce was  
17 redeployed to a variety of duties, whether those  
18 were in managing aircraft in Newfoundland or  
19 providing additional protection to VIPs, airport  
20 security, investigations of significant number.

21 This was not the first time that  
22 the RCMP had been involved in a national security  
23 type of investigation that criminality was  
24 involved.

25 Over the last 20 years we have had

1 several attacks on Turkish diplomats in the City  
2 of Ottawa. We had the Air India file that we  
3 spoke about.

4 In 1999, Mr. Ahmed Rassam was  
5 arrested going into the United States with the  
6 intention of placing a bomb at the Los Angeles  
7 airport. That was an investigation that required  
8 close collaboration between ourselves, CSIS, a  
9 variety of United States agencies and the  
10 international community, and was an example, I  
11 think, where that integrated approach, that close  
12 collaboration, resulted in the prevention of what  
13 could have been a significant activity at the Los  
14 Angeles airport.

15 So 9/11 was not the first time we  
16 had experienced an incident like that in North  
17 America. But it was certainly unprecedented in  
18 terms of the scope of what happened on 9/11.

19 We did redeploy 2200 people, but  
20 the environment of the day was such that I recall  
21 a significant level of concern and anxiety that  
22 this was not the end of the incidents.

23 As you mentioned earlier, sir,  
24 over 3,000 people were killed in New York,  
25 including 25 Canadians. There was an environment

1           that certainly put a significant amount of  
2           pressure on all of us to work collaboratively, to  
3           work in a very integrated way to ensure that  
4           Canadians and Canadian interests, in fact North  
5           American interests, were secure because we live  
6           next to a country that we share a common border of  
7           over 5,000 kilometres.

8                           There were a number of allegations  
9           that the terrorists had either come through  
10          Canada, had done their planning in Canada, or were  
11          from Canada.

12                           MR. CAVALLUZZO:  Where were these  
13          allegations coming from?

14                           MR. LOEPPKY:  They were primarily  
15          coming from a variety of sources in the United  
16          States.  I think an example is that Hillary  
17          Clinton made a comment that in fact some of the  
18          terrorists may have come from Canada.

19                           So the environment was such that  
20          it was an unprecedented scenario in terms of the  
21          pressure to work together to really collaborate.  
22          At that point we had had approximately, in total,  
23          156 resources dedicated to criminal investigations  
24          on national security, including all of the 21 at  
25          headquarters.  So our bench strength across the

1 country was somewhat low.

2                   However, we brought together  
3 certainly a number of competent investigators. We  
4 worked together very closely.

5                   I think it is fair to say that in  
6 every bit of that work, the one overriding factor  
7 was that we as a law enforcement community were  
8 investigating potential criminal offences, and  
9 whatever we did and whatever we collected had to  
10 meet the test of the Charter so that we respected  
11 people's rights and collected admissible evidence  
12 in those files.

13                   MR. CAVALLUZZO: I am going to  
14 lead you through each and every item in respect of  
15 the enhanced resources that were received by the  
16 RCMP, but I want to come back to what you refer to  
17 as a number of allegations. I want to know what  
18 was going on in the mind of an average RCMP  
19 officer.

20                   Would you agree with me that there  
21 was a great deal of pressure coming from the  
22 United States in respect of Canada's response to  
23 9/11?

24                   MR. LOEPPKY: I think that we put  
25 a significant amount of pressure on our own people

1 to make sure --

2 MR. CAVALLUZZO: That is not the  
3 question, Deputy Commissioner.

4 The question is: Do you feel that  
5 there was a lot of pressure from the United States  
6 on Canada in respect of its response to 9/11?

7 MR. LOEPPKY: It was clear that  
8 the United States was relying on us to do our part  
9 in terms of ensuring security of North America.

10 MR. CAVALLUZZO: And in doing our  
11 part there were certain arrangements that were  
12 entered into -- and we will come to this later  
13 on -- between Canada and the United States in  
14 respect to the kind of pressure that was being  
15 imposed from the United States?

16 MR. LOEPPKY: There were -- sorry,  
17 I just want to make sure I understand the  
18 question.

19 I can talk about the volume of  
20 requests that we addressed in the short period of  
21 time, but I don't think that is your question.

22 MR. CAVALLUZZO: No, it is not.

23 What I am trying to determine at  
24 this point in time, in a contextual way, is to  
25 determine what might be going on in the mind of an

1 average RCMP officer after 9/11.

2 You have told us that there was  
3 some pressure being imposed by the United States.  
4 In fact, you said there were allegations that some  
5 of the 15 hijackers came through Canada.

6 MR. LOEPPKY: Yes.

7 MR. CAVALLUZZO: This was the kind  
8 of atmosphere that prevailed at that point in  
9 time, was it not?

10 MR. LOEPPKY: Yes. I just wanted  
11 to make sure it was clear on the record that our  
12 front-line investigators were -- we were asking a  
13 lot of our investigators ourselves. They were not  
14 responding to direction from the United States.  
15 They were responding to direction from within our  
16 organization to follow up on leads to address  
17 issues, because obviously the environment was that  
18 things needed to get done very quickly.

19 MR. CAVALLUZZO: I am not  
20 suggesting that the front-line people were taking  
21 direction from the United States. What I am  
22 suggesting is that there was a great deal of  
23 pressure imposed by the United States on Canada to  
24 respond in their view appropriately to what  
25 happened on 9/11.



1                   Isn't that correct?

2                   MR. LOEPPKY: The environment was  
3 such that there was a significant amount of  
4 interest in making sure that we worked together  
5 and dealt with any potential threats that might  
6 still be out there.

7                   MR. CAVALLUZZO: And that would be  
8 common knowledge within the Force?

9                   MR. LOEPPKY: Well, the situation  
10 was such that we were providing the direction.  
11 The inquiries were coming in, and we were  
12 providing the direction and tasking our people to  
13 make sure they dealt with questions and issues  
14 expeditiously.

15                  MR. CAVALLUZZO: Let's look at the  
16 amount of increased volume of requests from the  
17 United States as a result of 9/11 or shortly  
18 thereafter.

19                  Do you have any statistics on  
20 that?

21                  MR. LOEPPKY: In the months  
22 following 9/11 we responded to approximately 1500  
23 inquiries, requests for follow-up, requests for  
24 inquiries, and of course we tasked the U.S. as  
25 well.

1                   But, certainly the net flow of  
2 work was south-north.

3                   MR. CAVALLUZZO: And you say you  
4 tasked the United States. Can you give us an idea  
5 of how many requests you made to the United States  
6 during that same period?

7                   MR. LOEPPKY: I don't have the  
8 exact number. Perhaps several hundred.

9                   MR. CAVALLUZZO: The 1500 you  
10 talked about, I assume that that was a significant  
11 increase in volume from the U.S.?

12                   MR. LOEPPKY: Yes, it was.

13                   MR. CAVALLUZZO: Can you give us  
14 an idea of how much of an increase that would be?

15                   MR. LOEPPKY: It currently sits at  
16 approximately 150 a month. Prior to 9/11 it would  
17 have been significantly less than that, perhaps  
18 less than 50.

19                   MR. CAVALLUZZO: That 1500 that  
20 you talked about, was that over a period of one  
21 month or a couple of months?

22                   MR. LOEPPKY: No, it was several  
23 months.

24                   MR. CAVALLUZZO: If you refer to  
25 Tab 19 you set out the specific responses of the

1 RCMP to 9/11 or the fight against terrorism.

2 Mr. Commissioner, I note that it  
3 is 11:30 now. I wonder if this may be an  
4 appropriate time to break?

5 THE COMMISSIONER: It is a good  
6 time.

7 We will take the break for 15  
8 minutes.

9 MR. CAVALLUZZO: Thank you.

10 --- Upon recessing at 11:30 a.m. /

11 Suspension à 11 h 30

12 --- Upon resuming at 11:45 a.m. /

13 Reprise à 11 h 45

14 THE COMMISSIONER: Mr. Cavalluzzo.

15 MR. CAVALLUZZO: Thank you.

16 Deputy Commissioner Loepky, we  
17 were at the point of describing the response of  
18 the RCMP to 9/11, and in particular I am referring  
19 now to Tab 19.

20 MR. LOEPPKY: Yes.

21 MR. CAVALLUZZO: Which is the  
22 backgrounder from the RCMP entitled  
23 "Post-September 11th - The Fight Against  
24 Terrorism". Let me just highlight certain  
25 portions in respect of what is set out there.

1                                   In the second bullet it talks  
2           about:  
3                                   "Canadian law enforcement,  
4                                   security and intelligence  
5                                   organizations continued and  
6                                   enhanced their efforts to  
7                                   share timely relevant  
8                                   information and intelligence  
9                                   that could result in the  
10                                  identification of  
11                                  terrorists."

12                                 That is just stating the obvious  
13           there.

14                                 In terms of the specifics, if you  
15           refer to the second bullet down, it says:

16                                 "On October 12, 2001, the  
17                                 RCMP received an investment  
18                                 of \$59 million in support of  
19                                 its fight against terrorism."

20                                 What was the purpose of this new  
21           investment?

22                                 MR. LOEPPKY: The initial  
23           investment of \$59 million was in large part to  
24           deal with the overtime costs, the redeployment of  
25           the 2200 people for a period of time that I talked

1           about.  Some of it was for enhancements in terms  
2           of a bit of technology, but it was primarily O&M  
3           dollars for overtime.

4                           MR. CAVALLUZZO:  Then it goes on  
5           in the next bullet and says:

6    "That investment was  
7    supplemented in the December  
8    10, 2001 Federal Budget.  The  
9    RCMP received a total  
10    investment of \$576 million to  
11    fund 17 initiatives dedicated  
12    to national security  
13    efforts."

14    Why don't you describe some of  
15           those initiatives -- not all of them but just some  
16           of them that you think are the important ones.

17    MR. LOEPPKY:  We received  
18           \$576 million over five years to fund a variety of  
19           initiatives.  Some of the key ones that you might  
20           be interested in were the INSET program that we  
21           will talk about.  We received \$47 million  
22           additional over five years.

23    The IBET program, the Integrated  
24           Border Enforcement Teams, which were integrated  
25           teams that were subsequently set up along the

1 Canada-U.S. border.

2                   There were some technology  
3 enhancements, such as an upgraded operational  
4 records system.

5                   There were systems to enhance our  
6 efficiency to manage exhibits flowing out of  
7 investigations like laboratory information and  
8 management systems, those types of support.

9                   There were some dollars for some  
10 frontline chemical, biological, radiological  
11 nuclear training for frontline people and  
12 equipping them with some equipment.

13                   MR. CAVALLUZZO: Then it goes on  
14 to say that that budget, the 2001 budget:

15                   "... allocated more than  
16 \$7 billion overall to  
17 support, coordinate and  
18 implement national security  
19 activities ..."

20                   That obviously presumably went  
21 beyond the RCMP but indicates the kind of response  
22 that Canada had to 9/11?

23                   MR. LOEPPKY: That is correct.  
24 Included in that our portion was \$576 million, but  
25 we did receive a small portion of that additional

1 funding. Things like the Air Carrier Protective  
2 Program were funded beyond the \$576 million.

3 But by and large that went to  
4 other departments to enhance their capacity to  
5 deal with the new environment.

6 MR. CAVALLUZZO: It says:

7 "Also, on December 11, 2001,  
8 Canada and the United States  
9 announced the Smart Border  
10 Declaration, a 30-point plan  
11 aimed at fighting terrorism."

12 MR. LOEPPKY: Yes.

13 MR. CAVALLUZZO: You referred to  
14 that earlier but --

15 MR. LOEPPKY: It commonly became  
16 known as the Manley-Ridge plan in terms of a  
17 number of initiatives that Canada and the United  
18 States committed to work together on to enhance  
19 border security.

20 A few of those fell within our  
21 mandate, such as the agreements to establish IBET  
22 teams and for the U.S. to do the same. Some of  
23 them dealt with other agencies, such as  
24 preclearance at the border and those types of  
25 things. But they were all focused primarily on

1 border issues, border integrity and security.

2 MR. CAVALLUZZO: Indeed, the INSET  
3 itself is described on page 2.

4 It says, just reading it into the  
5 record:

6 "INSETs gather information to  
7 prevent, detect and prosecute  
8 criminal offences against  
9 national security. The  
10 mandate of these integrated  
11 units is to increase the  
12 capacity for the collection,  
13 sharing and analysis of  
14 intelligence among partners  
15 with respect to targets that  
16 are a threat to national  
17 security. INSETs also create  
18 an enhanced enforcement  
19 capacity to bring such  
20 targets to justice."

21 And then it goes on:

22 "The integrated approach  
23 between intelligence/  
24 enforcement, from the very  
25 early stages of the criminal



1 activity has proven to be a  
2 highly effective model for  
3 successful prosecution."

4 Just out of interest, we heard  
5 that in respect of these INSETs -- and we will  
6 come back to that -- there is the participation of  
7 the RCMP, municipal police forces, provincial  
8 police forces, CSIS members.

9 Is there any participation in  
10 these INSETs from the United States?

11 MR. LOEPPKY: No, there is not.

12 MR. CAVALLUZZO: The next one is  
13 what you have called the IBETs, the Integrated  
14 Border Enforcement Team.

15 It just says:

16 "The IBETs represent a  
17 proven, highly effective  
18 model, operating within the  
19 framework of existing  
20 agreements. They enhance and  
21 complement existing security  
22 and safe trade measures nor  
23 cross-border human, vehicle,  
24 vessel and domestic air  
25 traffic along the shared

1 Canadian-U.S. border."

2 Is there joint participation in  
3 the IBETs with Americans and Canadians?

4 MR. LOEPPKY: If I could put a  
5 little bit of context with the IBET program, the  
6 IBET initiative was created as a pilot project in  
7 British Columbia, approximately -- it was before  
8 9/11. It was to deal with a lot of the issues  
9 along Zero avenue, where you have just a ditch  
10 between our two countries and it was frequently  
11 exploited for drug importations, those types of  
12 things.

13 There was a recognition that we  
14 needed to work together in a more sophisticated  
15 way to deal with common problems on both sides of  
16 the border. That model was in place had when 9/11  
17 took place, and it had demonstrated significant  
18 benefits to both law enforcement in the United  
19 States and in Canada.

20 So this is an expansion of that  
21 initiative, and they are located in 25 locations  
22 now.

23 We have recently two locations  
24 where we actually have collocation, where we have  
25 several liaison persons from the U.S.

1 organizations working with our IBET teams. They  
2 do not have law enforcement status. They have no  
3 enforcement authority, but they are there as  
4 liaison to provide a perspective. Those two  
5 locations that are currently in place where we  
6 have collocation are in Cornwall and in Windsor, I  
7 believe.

8 MR. CAVALLUZZO: The Canadian  
9 participation in the IBET would be RCMP and who  
10 else?

11 MR. LOEPPKY: RCMP; quite often  
12 local law enforcement where they have law  
13 enforcement responsibility in that area; formerly  
14 Customs and Immigration at that time, but since  
15 December 12th of last year now the Canadian Border  
16 Services Agency.

17 Those are the key bodies that make  
18 up the IBETs.

19 MR. CAVALLUZZO: The only other  
20 reference I would make to an initiative in  
21 response to 9/11 is described as the Canadian --  
22 you mentioned this -- the Canadian Air Carrier  
23 Protective Program. What is that?

24 MR. LOEPPKY: The Canadian Air  
25 Carrier Protective Program is a program which

1 authorizes the deployment of armed police officers  
2 on selected flights that are deemed to be high  
3 risk, and they are an added preventative measure  
4 in addition to the enhanced airport security  
5 initiatives that were put in place post-9/11, the  
6 enhanced security screening and all those things.

7 This was seen as essentially the  
8 last resort in terms of ensuring that the aircraft  
9 was not compromised in flight as had occurred  
10 during 9/11.

11 It is a program that we deliver  
12 under contract to CATSA -- the Canadian Air  
13 Transport Security Authority -- who in fact have a  
14 relationship with Transport Canada.

15 MR. CAVALLUZZO: Finally, I want  
16 to confirm what you said earlier: that is, prior  
17 to 9/11 there were approximately 21 persons at CID  
18 headquarters dealing with national security?

19 MR. LOEPPKY: That is correct.

20 MR. CAVALLUZZO: And that there  
21 are currently now 65 or 67?

22 MR. LOEPPKY: Approximately 60.  
23 It varies with vacancies but approximately 60 in  
24 there today.

25 MR. CAVALLUZZO: And there are

1           also increases in terms of the INSETs that we will  
2           be coming to, INSETs in the field, that were not  
3           created until 2002 but certainly were involved in  
4           integrated teams in the field prior to that time?

5                       MR. LOEPPKY:  Yes and before the  
6           formalized INSET.

7                       MR. CAVALLUZZO:  I would like to  
8           move on to another area, and that is trying to  
9           understand the difference between law enforcement  
10          and security intelligence activities.

11                      We heard some evidence in this  
12          regard from Mr. Ward Elcock, who is the former  
13          Director of CSIS.  He testified that there were a  
14          number of differences between police work and  
15          security intelligence agencies' responsibilities  
16          or work.  I want to throw out some of the  
17          differences that he told us about and see whether  
18          you would agree with his analysis.

19                      First of all, he said that police  
20          work is reactive, whereas security intelligence  
21          work is preventative.  Would you agree with that?

22                      MR. LOEPPKY:  No.  I think that  
23          our primary role in society is to preserve the  
24          peace and to prevent crime before it happens.  It  
25          is only as a last resort that we end up doing a

1 criminal investigation and moving ultimately to  
2 prosecution.

3                   If I think of an example, sir,  
4 when we look at some of the significant  
5 telemarketing scams that are going on in our  
6 country where the victims are primarily in the  
7 United States, there is really little point in  
8 trying to do a criminal prosecution after all of  
9 the seniors have been victimized and lost their  
10 money. The objective is to prevent the crime from  
11 taking place, to protect Canadians and to protect  
12 their interests.

13                   I think that we have a very clear  
14 preventative role and so many of our mandates  
15 speak to prevention: the significant resources we  
16 dedicate to drug prevention and to prevention in a  
17 number of other areas, our youth programs, and  
18 that.

19                   So I think that prevention is a  
20 key component of the law enforcement mandate and  
21 role.

22                   MR. CAVALLUZZO: It is interesting  
23 in terms of the wording of section 18, which is  
24 your mandate. It is prevention as a peace  
25 officer.

1 MR. LOEPPKY: Yes.

2 MR. CAVALLUZZO: Correct? The  
3 wording of section 18(a) is peace officer in  
4 prevention apprehension and so on.

5 In your view, the words  
6 "peace officer", does that limit your  
7 responsibilities as far as prevention is  
8 concerned?

9 MR. LOEPPKY: No, I think  
10 "peace officer" is a designation that is given to  
11 us, but I think that the role of the peace  
12 officer -- I think it has changed significantly  
13 over the last 20 years because our focus today is  
14 much more in a different direction in terms of  
15 ensuring safe communities before crime happens.

16 When I talked earlier about our  
17 CAPRA program and our direction, our change in how  
18 we deliver police services, that is really what  
19 that is focused on.

20 MR. CAVALLUZZO: Okay. The next  
21 point he made is somewhat related and you probably  
22 answered that. He said police work is after the  
23 fact kind of activity, whereas security  
24 intelligence, it is in advance of what occurred.

25 I guess you would have the same

1 answer to that. You would disagree with that?

2 MR. LOEPPKY: I think that  
3 prevention is what we focus on and that is what  
4 society expects, that we will prevent things from  
5 happening.

6 MR. CAVALLUZZO: Okay. Thirdly,  
7 he said that police work is very results-oriented,  
8 you are taking a prosecution, whereas in security  
9 intelligence it is a long-term open-ended kind of  
10 investigation.

11 MR. LOEPPKY: I would agree with  
12 Mr. Elcock in terms of his characterization of  
13 security intelligence in terms of being a long  
14 process.

15 In terms of being  
16 results-oriented, clearly our mandate and our role  
17 is to deal with issues so that we resolve things  
18 quickly, we prevent crimes, we preserve peace, and  
19 ultimately if a crime is committed then we want to  
20 address that quickly so that can restore the  
21 confidence of the community. So in those terms we  
22 are results-oriented.

23 MR. CAVALLUZZO: He went on  
24 fourthly and said that police work is highly  
25 decentralized, whereas in security intelligence it



1 has to be a centralized management with a  
2 centralized information system.

3 MR. LOEPPKY: General police work,  
4 when I spoke about the broad areas that report to  
5 me, are decentralized. The police officer must  
6 use his judgment on each and every case when he  
7 goes to a complaint in a province in terms of how  
8 he will deal with that issue, how we will respond  
9 and how he will address the concerns.

10 But in terms of criminal  
11 investigations touching on national security, they  
12 are much more centralized in the RCMP than any  
13 other investigation. We talked a little bit  
14 earlier about the one database SCIS -- that we  
15 will perhaps come back to -- that focuses on  
16 national security investigation material.

17 Post-9/11 we clearly recognize  
18 that there was a need for additional coordination  
19 and I will be referring to that later, sir.

20 MR. CAVALLUZZO: Okay. The fifth  
21 point he said is that police work, you are  
22 involved in gathering or collecting evidence,  
23 whereas in security intelligence you are involved  
24 in collecting information which need not meet the  
25 requisites for evidence.

1                   Would you agree with that?

2                   MR. LOEPPKY: Beyond preventing  
3 crime, if we get to the results-oriented approach  
4 that you spoke about, then obviously our objective  
5 is if a crime has been committed to gather the  
6 facts, gather the information, ensure it is  
7 sustainable in court and ultimately tender it as  
8 evidence.

9                   MR. CAVALLUZZO: So what you would  
10 say to that, you would qualify that description or  
11 comment of Mr. Elcock and say that in your  
12 preventative role you are also engaged in the game  
13 of collecting information?

14                  MR. LOEPPKY: Yes.

15                  MR. CAVALLUZZO: Okay. We will  
16 come back to that.

17                  The final point he raised is  
18 that in respect of security intelligence there is  
19 a great deal of political control from the  
20 Minister, whereas in respect of police work there  
21 should be no political interference.

22                  Would you agree with that?

23                  MR. LOEPPKY: The security  
24 intelligence community responds to government,  
25 where our accountability ultimately is to the

1 courts and ensuring that that accountability is  
2 maintained. Perhaps we will expand on that later,  
3 but clearly that is a different type of  
4 accountability, independent from political  
5 direction in terms of our criminal investigations  
6 and accountable to the courts.

7 MR. CAVALLUZZO: I will just maybe  
8 ask you, what about your role in terms of national  
9 security responsibilities when you are collecting  
10 information on national security threats as part  
11 of your role in your role and your national  
12 security mandate.

13 Is there any political direction  
14 there?

15 MR. LOEPPKY: There is no  
16 political direction. We are collecting  
17 information with the objective of that ultimately  
18 resulting in a criminal prosecution and meeting  
19 the court's expectations.

20 MR. CAVALLUZZO: We will come  
21 back to this and spend some time on it, but what  
22 about dealings with foreign agencies? Would the  
23 RCMP get any political direction as far as that  
24 is concerned or would you do it on your own in  
25 terms of any kind of arrangements that you may

1 enter into?

2 MR. LOEPPKY: There are some  
3 ministerial directives that will speak to that  
4 issue which we may cover later.

5 MR. CAVALLUZZO: We will, yes.

6 MR. LOEPPKY: But on a  
7 case-by-case, need-to-know basis, we exchange  
8 information with foreign law enforcement where it  
9 will further our investigation where it is in our  
10 interests.

11 But it is important to understand  
12 that information exchange does not take place in a  
13 vacuum. It is case-specific, need-to-know, and  
14 obviously there is an expectation that the  
15 information will be used for the purpose for which  
16 it was shared.

17 MR. CAVALLUZZO: Okay, we  
18 will come back to the specifics of that because  
19 there are many directives and guidelines dealing  
20 with that.

21 Before we move on to the RCMP  
22 intelligence process, you have talked about  
23 intelligence-led policing. If we refer to the  
24 Book of Documents at Tab 16 there is a definition.

25 Why don't you explain to the

1 Commissioner what intelligence-led policing is?

2 MR. LOEPPKY: Intelligence-led  
3 policing involves the collection of information,  
4 whether about a particular group, whether about  
5 the environment, a local situation, a preventing  
6 crime in a playground. It is having the ability  
7 to be able to collect information to inform good  
8 operational police decision-making so that you are  
9 not making decisions in a vacuum. It is based on  
10 the principle that hopefully you can prevent crime  
11 rather than react to it.

12 It flows out of the comments that  
13 I made a little bit earlier on about community  
14 policing. I think it is fair to say that in the  
15 1980s the RCMP -- in fact I have heard them  
16 characterized as the legless force because they  
17 were never out of their vehicles -- they were  
18 driving around communities.

19 We have changed 180 degrees from  
20 that in terms of engaging communities, knowing  
21 more about their concerns, their environment,  
22 learning about the issues that are going on in the  
23 community, collecting the information and then  
24 making good operational police decisions, both at  
25 the strategic level, long-term, and at the

1 tactical level.

2 So intelligence-led policing is  
3 really a mind-set. It can be as sophisticated as  
4 focusing on the biggest organized crime threat in  
5 Canada through a sophisticated analysis process,  
6 but it has to reside in the minds of the  
7 individual police officer. So when he goes to  
8 work in the morning in a small detachment, we want  
9 him to have a mind-set: What is my environment  
10 telling me today? What does the community expect?  
11 Where are the trends and threats, so that I am not  
12 aimlessly driving around hoping to stumble across  
13 something but actually preventing crime and making  
14 our communities safer.

15 MR. CAVALLUZZO: That brings us to  
16 the RCMP intelligence process.

17 If we refer to Tab 44 we have  
18 a very good description of the different aspects  
19 of, if we can call it, the intelligence cycle of  
20 the RCMP.

21 --- Pause

22 MR. CAVALLUZZO: This is a  
23 document entitled "Criminal Intelligence Program  
24 Guide, Working Together to Ensure Our Success".

25 MR. LOEPPKY: Yes.

1 MR. CAVALLUZZO: It is dated  
2 May 2001?

3 MR. LOEPPKY: That is correct.

4 MR. CAVALLUZZO: This is the  
5 latest update from the earlier documents we looked  
6 at back in the early 1990s.

7 Isn't that correct?

8 MR. LOEPPKY: Yes. It is the most  
9 recent edition, but I would point out, sir, that  
10 there has been some changes in terms of the names  
11 of the sections as a result of changes post-9/11,  
12 so perhaps we will be going through those.

13 MR. CAVALLUZZO: When we go  
14 through we will point out those differences.

15 MR. LOEPPKY: Thank you.

16 MR. CAVALLUZZO: If you refer to  
17 page 1 it defines "Information" in the  
18 definitional part. It defines information as:

19 "...unprocessed data of every  
20 description which may be used  
21 in the production of  
22 intelligence."

23 Then it goes on to define  
24 "Intelligence" as:

25 "...the end product of

1 information that has been  
2 subject to the intelligence  
3 process: planning/direction,  
4 collection/evaluation,  
5 collation, analysis and  
6 reporting/dissemination."

7 I'm wondering just at this point  
8 in time -- we accept those definitions -- if you  
9 could help us with the difference, if there is any  
10 difference, between "criminal intelligence" and  
11 "security intelligence"?

12 MR. LOEPPKY: I guess the key  
13 difference that I would see is -- the planning  
14 process I think is very similar between the two,  
15 but the end result I think is perhaps somewhat  
16 different.

17 I think the end result of a  
18 security intelligence planning process such as  
19 that we would see in CSIS would be to inform  
20 government.

21 In our case, it would be to bring  
22 all of that information together through this  
23 process, through these various steps, and end up  
24 with a sense as to what is the biggest threat in  
25 terms of organized crime, human smuggling rings, a



1 variety of types of criminal activity, and then  
2 make an informed decision about where you dedicate  
3 and allocate your limited resources.

4 So I think ours is focused very  
5 much on to what use will we put this in terms of a  
6 tactical law enforcement approach.

7 MR. CAVALLUZZO: Why don't we just  
8 come to the intelligence process itself. The  
9 first phase of the cycle is at page 4. That is  
10 what you refer to as "Planning/Direction".

11 Certainly at this stage in  
12 the CSIS cycle, or the security intelligence  
13 cycle, in terms of planning that there was some  
14 direction given from government in terms of  
15 priorities -- and I am looking at your planning  
16 cycle -- it says:

17 "In June of each year, the  
18 RCMP Criminal Operations  
19 (CROPS) Officers meet to  
20 establish national organized  
21 crime priorities.:

22 Is that how the priorities  
23 are developed in the RCMP at this planning  
24 direction stage?

25 MR. LOEPPKY: Essentially, yes. I

1 can go include it very quickly if you wish.

2 MR. CAVALLUZZO: I don't think  
3 there is a need to unless you want to --

4 Do you feel we need it to  
5 understand the process?

6 MR. LOEPPKY: No. We bring  
7 together the information at the June conference.  
8 We then look at building on that in terms of what  
9 type of tactical plans are required to execute  
10 that. We had have a mid-year check-up and then  
11 ultimately the following year we move forward.

12 MR. CAVALLUZZO: Just one question  
13 as far as that is concerned. I can see that in  
14 terms of organized crime. What about national  
15 security priorities now since 9/11? Does this  
16 same body of CROPS officers meet to set the  
17 planning direction, priorities for national  
18 security?

19 MR. LOEPPKY: They are informed by  
20 the National Security Intelligence Branch and they  
21 are provided with a presentation.

22 MR. CAVALLUZZO: Who is now?

23 MR. LOEPPKY: The CROPS officers.  
24 We have a presentation both on the organized crime  
25 side and if there are in fact any priorities on

1 the national security side with respect to  
2 criminal activities.

3 MR. CAVALLUZZO: That presentation  
4 being given by the National Securities Branch,  
5 then the CROPS officers decide if there are any  
6 priorities in the national security field?

7 MR. LOEPPKY: They would  
8 ultimately be responsible for resource  
9 identification and so they are involved in that  
10 process.

11 MR. CAVALLUZZO: Would there be  
12 any political direction at all as far as the  
13 national security priorities are concerned that  
14 would be presented to the CROPS?

15 MR. LOEPPKY: No.

16 MR. CAVALLUZZO: Now we move to  
17 the second phase of the cycle, which is  
18 collection/evaluation. The description there is:

19 "Collection of criminal  
20 information and the analysis  
21 of this accumulating body of  
22 knowledge produces  
23 perspective and  
24 understanding."

25 Why don't you just generally

1 describe what this second phase of the cycle is?

2 MR. LOEPPKY: This is the process  
3 to have a more comprehensive picture in terms of  
4 activities. For example, if we have group X that  
5 is involved in organized crime activities, are  
6 there other opportunities to gather more  
7 information in terms of their activities, their  
8 dealings with funds flow, that type of thing?

9 So it really is to look at what  
10 gaps exist in terms of the information we have  
11 today and what is required before really would be  
12 the subject of a tactical operation.

13 MR. CAVALLUZZO: What about  
14 national security information. How is that  
15 collected?

16 We heard had a great deal from  
17 CSIS as to how they do it. How do you collect  
18 information related to national security  
19 investigations?

20 MR. LOEPPKY: The large majority  
21 of our national security investigations, as I  
22 mentioned, are undertaken pursuant to disclosures  
23 from CSIS, in terms of their criminal activity and  
24 then we move on with the criminal investigation  
25 from that point.

1                   In fact, a lot of our decisions  
2                   are based on those referrals.

3                   There may be cases where we get  
4                   some information where we then decide that we  
5                   don't have the big enough picture to do anything  
6                   or we may need to collect more information to try  
7                   and put the picture together more completely.

8                   MR. CAVALLUZZO: Is there a  
9                   committee that determines whether the RCMP is  
10                  going to collect information? I am talking about  
11                  national security information respecting a  
12                  particular group or a particular individual.

13                  MR. LOEPPKY: Within the criminal  
14                  intelligence area, within the National Security  
15                  Intelligence Branch, they would look at what do we  
16                  have on this particular area? Are there gaps that  
17                  we think we can fill in order to make it something  
18                  that would be a viable project? And they would  
19                  identify what that might be.

20                  As I said, the majority of our  
21                  information is provided by CSIS.

22                  MR. CAVALLUZZO: Once again I want  
23                  to ask you, I want to understand this. Certainly  
24                  CSIS has, as you know, what is called a TARC, a  
25                  targeting committee which has three levels. In

1 fact, prior to the elimination of the security  
2 service from the RCMP, the RCMP had a four-level  
3 committee system in respect of targeting national  
4 security threats or investigations.

5 I just want to know: Is there a  
6 formalized structure, committee, consisting of  
7 whoever, that will sit down and say, "Yes, we  
8 should collect national security information on  
9 this target", whether it be an individual or an  
10 organization, or not?

11 MR. LOEPPKY: There isn't a -- the  
12 committee that we use is the committee that I  
13 spoke about a little earlier, which is the  
14 Criminal Operations Officers, a committee that is  
15 chaired by myself, that has the involvement  
16 obviously of CID and our process in terms of  
17 looking at what are the areas that we want to get  
18 into.

19 With respect to organized crime  
20 investigations -- and I will get to the point in a  
21 minute -- a number of years ago we decided that it  
22 was very hard to balance what was the capability  
23 of group X versus group Y and we developed a model  
24 called SLEIPNIR, which evaluates 17 different  
25 characteristics. It is a model shared with a

1 number of other countries and adopted around the  
2 world, which speaks to the capability of an  
3 organized crime group.

4 For example, it will speak to  
5 their propensity for violence, to corrupt, to  
6 undermine, you know, to launder money. There are  
7 17 criteria.

8 We evaluate the information we  
9 have on all those groups, and we decide which one  
10 actually poses the highest threat, the highest  
11 risk to Canada. That is where we direct our  
12 enforcement efforts across the country on  
13 organized crime.

14 We have just developed a similar  
15 model, but the criteria have very slightly  
16 different because perhaps making money profit is  
17 not a motivator. So we have moved in that  
18 direction, to use a more sophisticated way of  
19 trying to identify what, if any, threats there  
20 are, what information we have and what we are  
21 lacking in terms of being able to undertake an  
22 investigation. So it is a much more sophisticated  
23 way than guessing.

24 MR. CAVALLUZZO: Let me give you a  
25 very concrete example. I am an officer and an

1           INSET, and in the course of my investigation I see  
2           something that I suspect may be a national  
3           security threat and I want to prevent something  
4           from happening. I want to surveil this person. I  
5           want to follow him or her.

6                           What do I do? Is there a  
7           committee I go to in order to get authority to  
8           follow this individual?

9                           MR. LOEPPKY: The scenario you  
10          have described would dictate to me that you were  
11          about to embark on an actual investigation, more  
12          than a licence number check or something like  
13          that.

14                          In that case, it would go from the  
15          individual to their INSET or NSIS commander, and  
16          ultimately to the CROPS officer, because it is  
17          important that he be in the loop. He is  
18          responsible for criminal operations in that area.  
19          But as importantly, he is responsible for all the  
20          support areas. If a surveillance team was  
21          required or something, he would be the one that  
22          would have to make that decision, whether he takes  
23          it off an organized crime target and puts it on  
24          another one.

25                          At the same time there is a



1 reporting relationship to headquarters, because  
2 before a national security investigation is  
3 undertaken it requires the provision of that  
4 advice to headquarters and the support of the  
5 Assistant Commissioner in criminal intelligence.

6 MR. CAVALLUZZO: That is the way  
7 it is today. What about before 2003?

8 MR. LOEPPKY: Prior to 2003,  
9 post-9/11 but before 2003, we had, as I mentioned,  
10 21 people in headquarters and we had 156 across  
11 the country in NSIS units, and our ability to  
12 coordinate to that degree was limited.

13 But I would say that any  
14 investigation that required that type of resource  
15 commitment, surveillance and that, would  
16 immediately be provided to headquarters and  
17 obviously the investigation conducted in  
18 compliance with evidentiary rules and in  
19 compliance with the Charter.

20 MR. CAVALLUZZO: So it seems to be  
21 more of a resource feature than a civil liberties  
22 feature.

23 You said one of the reasons why it  
24 would go to headquarters would be because of the  
25 resources that would be required to engage in such

1 an investigation.

2 MR. LOEPPKY: The resources  
3 component. Plus it is a national security  
4 investigation, and those have a higher level of  
5 sensitivity and a higher level of centralized  
6 involvement and coordination.

7 MR. CAVALLUZZO: So what you are  
8 saying, if I can understand it: If I am a mountie  
9 in the field, in Toronto for example, and I wanted  
10 today to start a national security investigation,  
11 I would have to get authority through my division,  
12 through the Criminal Operations Division, and at  
13 the same time there would be some coordination at  
14 headquarters in the National Security Intelligence  
15 Branch.

16 I don't know if they would give me  
17 authority or they would be in the know as to the  
18 investigation.

19 MR. LOEPPKY: Any time that there  
20 is --

21 MR. CAVALLUZZO: Before you go on,  
22 is that true? Have I fairly characterized the  
23 reporting relationship there?

24 MR. LOEPPKY: Yes. I just wanted  
25 to clarify that not every call to an NSIS unit or

1 an INSET unit would qualify as a major  
2 investigation. They will all be documented but  
3 they will be on a case-by-case basis.

4 For example, if somebody called up  
5 from an another unit and said "could you find out  
6 the owner of this licence number" or "could you  
7 find out who lives here", that is information  
8 exchange in the pursuit of an investigation, but  
9 it is not necessarily something that would come to  
10 the attention of headquarters. Those are  
11 frontline, low-level police-to-police exchanges  
12 where the information is exchanged in a consistent  
13 way. Those things take place.

14 MR. CAVALLUZZO: That leads to my  
15 next question, and that is that you have an  
16 investigation going on. You have a target, and  
17 the target is John Smith. In the course of that  
18 investigation you see Jim Jones talking to John  
19 Smith or on the telephone with John Smith. Does  
20 Jim Jones become part of your security  
21 intelligence information system?

22 MR. LOEPPKY: Most major  
23 investigations, in fact all major investigations,  
24 will have people that will show up in that  
25 investigation from time to time and ultimately may

1 be found to be not involved, may be found to be  
2 low-level players, or sometimes may be found to be  
3 actually the key person.

4 So if an individual shows up in  
5 one of our investigations, whatever kind of  
6 investigation that is, and is associated to  
7 someone that we are interested in, then obviously  
8 we would do some due diligence because in fact  
9 that might be the key player.

10 MR. CAVALLUZZO: Let's assume you  
11 haven't determined he is the key player. He is a  
12 minor player because he speaks to John Smith  
13 periodically, not a lot. The question is once  
14 again: Is Jim Jones, his name, part of your  
15 security information data system?

16 MR. LOEPPKY: It would be entered  
17 on the data system.

18 MR. CAVALLUZZO: If I am the  
19 officer in the field and I enter Jim Jones' name  
20 in the data system, would I need approval from  
21 anybody?

22 MR. LOEPPKY: No. It is part of  
23 file management.

24 MR. CAVALLUZZO: So it is just  
25 part of file management. Jim Jones is on the

1 security information system.

2 Staying with Jim Jones. Somebody  
3 in a U.S. agency gives me a call in Toronto or  
4 wherever I am and says, "Listen, I have a few  
5 questions about this guy Jim Jones. Do you have  
6 anything on him?" Would you share that  
7 information with the American agency?

8 MR. LOEPPKY: We would share that  
9 information if there was a reason to share it. If  
10 it was consistent with the Privacy Act in terms of  
11 consistent use, if we were satisfied that on that  
12 particular case there was a reason why it should  
13 be shared, and if there was an operational reason  
14 that might further an investigation then that  
15 information would be shared.

16 MR. CAVALLUZZO: Okay. And I am  
17 once again the officer in Toronto and I am just  
18 about to share this information with the American  
19 agency. Do I need the approval of anybody before  
20 I do that?

21 MR. LOEPPKY: The information  
22 would -- you know, there are caveats that are  
23 applied to information, whether written caveats or  
24 oral, an understanding that information is  
25 exchanged and will be used for the purpose for

1           which it was requested.

2                           We would also provide to the  
3           degree possible an assessment of the reliability  
4           of any information that was available.

5                           MR. CAVALLUZZO:  You haven't  
6           answered my question, though.

7                           The question is:  Would I need the  
8           approval of anybody before I passed on that  
9           information to the American agency?

10                          MR. LOEPPKY:  If it's a very  
11           straightforward question, non-controversial, the  
12           owner of a licence number in Ontario, then you  
13           would not need the approval.  It would be on a  
14           police-to-police sharing of information.

15                          MR. CAVALLUZZO:  Right.  Would  
16           that be with a law enforcement agency in the  
17           United States?

18                          MR. LOEPPKY:  Yes.

19                          MR. CAVALLUZZO:  What about a  
20           security intelligence agency in the United States.  
21           Could I pass on that information to it?

22                          MR. LOEPPKY:  A security  
23           intelligence agency in the United States.  We pass  
24           information on law enforcement, consistent use.  
25           If they were involved in an investigation where we

1           were satisfied that it was in the interests of  
2           Canada respecting the rights of the Canadian  
3           citizens, then there might be occasions where you  
4           would pass on information.

5                           MR. CAVALLUZZO:   Final question.  
6           Do you know what the INS is in the United States?

7                           MR. LOEPPKY:   Yes.

8                           MR. CAVALLUZZO:   Immigration and  
9           Natural Services?

10                          MR. LOEPPKY:   Yes.

11                          MR. CAVALLUZZO:   What if they  
12           requested information on Jim Jones.   Could I pass  
13           that information on to the INS without approval?

14                          MR. LOEPPKY:   The information  
15           sharing arrangements, by and large we deal with  
16           the FBI.   If the INS called and said that they  
17           were interested in a particular piece of  
18           information that we might have, obviously we would  
19           review it.   We would determine whether it was  
20           actually sharable in terms of the Privacy Act, and  
21           on a case-by-case basis, where it was appropriate,  
22           we would share information if it furthered an  
23           investigation.

24                          MR. CAVALLUZZO:   So that in fact  
25           so long as the RCMP guidelines are complied

1 with -- and we will come to those guidelines -- as  
2 an officer in Toronto, I could share information  
3 with the FBI, with the CIA, or with the INS, if a  
4 question was asked of me and I was satisfied that  
5 it was part of an investigation. And so long as  
6 the guidelines were met, I would need no formal  
7 authority beyond complying with the guidelines.

8 Is that correct?

9 MR. LOEPPKY: I think it is  
10 important to point out that there is a liaison --

11 MR. CAVALLUZZO: Could you  
12 just answer the question first before you explain  
13 the answer?

14 MR. LOEPPKY: There is direct  
15 information sharing on a case-by-case basis.

16 MR. CAVALLUZZO: Okay. Now you  
17 can explain that, if you want.

18 MR. LOEPPKY: There are liaison  
19 officers, both FBI liaison officers here and we  
20 have liaison officers in the United States, and  
21 very often inquiries will go through that level.

22 But where police officers are  
23 working very close to each other, sharing a file  
24 across the border, it would not be inconsistent  
25 that if they were working on a common file, common



1 targets -- I mean virtually all of our organized  
2 crime files are international and there comes a  
3 point where there must be officer-to-officer  
4 direct contact due to the urgency of the  
5 situation, somebody crossing the border at a  
6 moment's notice, and so the environment is such  
7 that you couldn't have a system where you would  
8 have it all through one funnel in Ottawa or  
9 Washington. You need that direct information  
10 sharing to get the job done, but always respecting  
11 the rights of Canadians.

12 MR. CAVALLUZZO: Okay. We will  
13 come back to that in terms of the express  
14 guidelines.

15 The only other question on  
16 collection I would ask you about is at page 7  
17 where it talks about "Information Quality".

18 It says:

19 "Information/intelligence  
20 must undergo a review for  
21 relevance and evaluation for  
22 source reliability and  
23 information validity prior  
24 to filing."

25 Then it says:

1                   "The following categories  
2                   must be used to grade sources  
3                   and information:  
4                   - Reliable ...  
5                   - Believed Reliable...  
6                   - Unknown Reliability...  
7                   - Doubtful Reliability..."

8                   The question I would pose to you  
9                   is a specific one coming back to: I am an officer  
10                  in Toronto, I have this information on Jim Jones,  
11                  who is not the target of the investigation, I see  
12                  him periodically with the target, and once again  
13                  one of these three American agencies, the FBI the  
14                  CIA or the INS, asks for me about information  
15                  about Jim Jones.

16                  Is one of the conditions that I  
17                  have, before giving that information to the  
18                  Americans, is rating the reliability of this  
19                  information along the lines set out at page 7?

20                  MR. LOEPPKY: The ratings set out  
21                  at page 7 refer to information that we would have  
22                  received from a source. In most of our files,  
23                  behind every entry or every notation, you know,  
24                  we -- "Police Officer "X" observed this incident",  
25                  you will never find "believed reliable" or

1 "reliable". That is a piece of evidence and we  
2 don't categorize it that way.

3 These are categories that we  
4 assign to information that we received from  
5 sources and the handler is the one that is best  
6 placed to actually put that information on.

7 So in your example --

8 MR. CAVALLUZZO: What do you mean  
9 by "the handler"?

10 MR. LOEPPKY: The individual who  
11 receives the information from that human source  
12 who knows their background, the validity of the  
13 information they have provided in the past.

14 MR. CAVALLUZZO: Okay. Let's  
15 assume that the person who got the information  
16 from the source feels that the source is  
17 unreliable and then he gives it -- he put it in  
18 the system.

19 Is that what they do?

20 MR. LOEPPKY: Yes.

21 MR. CAVALLUZZO: And presumably in  
22 the system it says: Jim Jones did this, but it is  
23 unreliable?

24 MR. LOEPPKY: It is unknown  
25 reliability.

1 MR. CAVALLUZZO: Unknown  
2 reliability.

3 MR. LOEPPKY: You can't  
4 confirm it.

5 MR. CAVALLUZZO: Coming back to me  
6 in Toronto. I get a call from one of the three  
7 American agencies and then I'm giving information  
8 to one of these agencies about Jim Jones. I  
9 assume that I should tell the American agency  
10 whatever the rating is, that it is unknown  
11 reliability, it is unreliable or whatever.

12 Is that fair?

13 MR. LOEPPKY: That would be the  
14 standard practice, to convey that.

15 MR. CAVALLUZZO: We come to the  
16 third phase of the cycle and that is "Collation".  
17 What is that?

18 I'm sorry. It is at page 8.

19 MR. LOEPPKY: Yes.

20 THE COMMISSIONER: Do you want to  
21 just briefly describe what that is, Deputy  
22 Commissioner?

23 MR. LOEPPKY: A lot of the  
24 information that comes in is just that, various  
25 pieces of information, some of greater value than

1 others, and collation is really just the  
2 cross-referencing of that information, putting all  
3 the pieces together to see if you can actually  
4 make the complete picture of the puzzle.

5 MR. CAVALLUZZO: Okay. Then we  
6 see this reference -- and I want to ask you about  
7 this -- to the system itself on page 9, the Secure  
8 Criminal Information System, which we have  
9 referred to as SCIS.

10 MR. LOEPPKY: Yes.

11 MR. CAVALLUZZO: Can you tell us  
12 what SCIS is?

13 MR. LOEPPKY: We essentially have  
14 two systems in the organization, one is the  
15 National Crime Data Bank which manages all  
16 organized crime information that is not  
17 classified. In other words, it is categorization  
18 that the government uses, Protected "A", "B"  
19 or "C", and that is our National Crime Data Bank,  
20 organized crime investigation.

21 SCIS is the information that  
22 contains the secure criminal intelligence data,  
23 material that we would be provided, for example,  
24 from CSIS that is of a classified level. It is on  
25 a standalone system. It is has much tighter

1 controls in terms of access and it is not  
2 accessible by the frontline investigators because  
3 of the sensitivity of the information on it.

4 MR. CAVALLUZZO: You say "the  
5 frontline investigator", that is the member of the  
6 INSET?

7 MR. LOEPPKY: The INSETs would --  
8 I'm sorry. Thank you.

9 The INSETs would have access to  
10 it, but the General Duty Constable in Thompson,  
11 Manitoba would not have access to it. It is  
12 restricted to the area of responsibility.

13 MR. CAVALLUZZO: Would an American  
14 agency have access to SCIS?

15 MR. LOEPPKY: No.

16 MR. CAVALLUZZO: So that  
17 the American database is not linked to SCIS in  
18 any way?

19 MR. LOEPPKY: No.

20 MR. CAVALLUZZO: What if I am an  
21 American agent and I want information which is  
22 contained in SCIS. How would I get that  
23 information?

24 MR. LOEPPKY: You would need to  
25 satisfy the Canadian police officer that there is

1 a legitimate reason to further an investigation.  
2 We would obviously want to ensure that the sharing  
3 was appropriate in terms of the Privacy Act and  
4 then they would have to get that through the  
5 Canadian police officer.

6 MR. CAVALLUZZO: So if I am a  
7 member of INSET in Toronto I do have access to  
8 SCIS. If an FBI officer was to ask me for  
9 information which was contained in SCIS, so long  
10 as I complied with the RCMP guidelines I could  
11 give the American officer that information?

12 MR. LOEPPKY: On a case-by-case  
13 basis --

14 MR. CAVALLUZZO: On a case-by-case  
15 basis.

16 MR. LOEPPKY: -- if you are  
17 satisfied that it is appropriate.

18 MR. CAVALLUZZO: And I need no  
19 higher approval than that, so long as I am  
20 satisfied that these conditions are met?

21 MR. LOEPPKY: That's correct. If  
22 it becomes a major -- if it is a major  
23 investigation obviously there would be  
24 coordination with CID.

25 MR. CAVALLUZZO: Okay. Which is

1           headquarters in other words?

2                           MR. LOEPPKY:   Yes.   Sorry.

3           Headquarters.

4                           MR. CAVALLUZZO:   The fourth phase  
5           of the cycle was analysis.   Why don't you just  
6           tell us where the analysis is done, who it is done  
7           by, whether it is done in the field or at  
8           headquarters?

9                           Why don't you just give us a brief  
10          description of that, once again focusing on  
11          national security?

12                          MR. LOEPPKY:   I will focus just on  
13          national security.

14                          The analysis, this whole process  
15          for the National Security Program takes place  
16          within headquarters, within the National Security  
17          Intelligence Branch.   The analysis component is  
18          really the final product of bringing together  
19          these various pieces of perhaps untested  
20          information, looking at what corroborative  
21          information can be found to either support or  
22          refute that and then ending up with an end product  
23          that actually tries to paints as complete a  
24          picture as possible.

25                          MR. CAVALLUZZO:   This would be an



1 analyst in the NSIB?

2 MR. LOEPPKY: In NSIB there are  
3 analysts. They also use the expertise of the  
4 analysts in the Criminal Analysis Branch for  
5 organized crime, because really when you are  
6 trying to draw that picture it is very similar  
7 skill-sets.

8 MR. CAVALLUZZO: Okay. The final  
9 part of the cycle, the final phase of the cycle,  
10 is "Reporting/Dissemination".

11 Why don't you briefly tell us  
12 what that is?

13 MR. LOEPPKY: That is essentially  
14 putting that product into the hands of the police  
15 officers who are going to implement a tactical  
16 plan to address the issue.

17 MR. CAVALLUZZO: Okay. So that is  
18 another clear distinction with CSIS, because at  
19 the end of the day CSIS reports to the government  
20 at that phase of the cycle, whereas you would be,  
21 in effect, using this information in respect of  
22 your statutory mandate in regard to criminal law?

23 MR. LOEPPKY: That's correct.

24 MR. CAVALLUZZO: Okay. Now, the  
25 next page sets out the principles of intelligence.

1 I don't think we have to get a description of  
2 these because they are so clear.

3 "Centralization" is important,  
4 "Timeliness" obviously is important, "Systematic  
5 Exploitation", "Objectivity", "Accessibility",  
6 "Responsiveness/Satisfaction", "Source Protection"  
7 and "Continuous Review".

8 This is May 2001. Have those  
9 principles changed as a result of 9/11?

10 MR. LOEPPKY: No, they have not.

11 MR. CAVALLUZZO: Okay. Then on  
12 the next page we have reference to the NSIB?

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: We have talked  
15 about that. Unless there is something else you  
16 want to say for context, then I think we will  
17 move on.

18 MR. LOEPPKY: The only change,  
19 sir, is that as pursuant to the publication of  
20 this book of course the structure of the National  
21 Security Intelligence area changed somewhat to  
22 have the two, the Intelligence and National  
23 Security Offences Branch -- or operations branch,  
24 I'm sorry. So it is a little bit more -- there  
25 are a few more resources in there than this

1 reflects.

2 MR. CAVALLUZZO: Okay.

3 --- Pause

4 MR. CAVALLUZZO: It may be useful  
5 at this time just to flesh out the relevant  
6 organizational charts briefly. If you refer to  
7 the earlier tabs, in particular why don't we  
8 initially refer to Tab 9?

9 MR. LOEPPKY: Yes.

10 MR. CAVALLUZZO: Do you have that?

11 That is the "Pre 9-11 situation  
12 where we have the National Security Investigations  
13 Branch; under that we have the Operations Section;  
14 and then we have these national security related  
15 sections that we have talked about?

16 MR. LOEPPKY: That's correct.

17 MR. CAVALLUZZO: That changed as a  
18 result of 9/11? If we refer to at Tab 10 --

19 MR. LOEPPKY: Yes, we --

20 MR. CAVALLUZZO: Go on. You can  
21 you tell us what the differences are there?

22 MR. LOEPPKY: We included a  
23 Financial Intelligence Branch through some  
24 redeployments, and of course we moved to the INSET  
25 model in the four areas that we spoke about.

1 MR. CAVALLUZZO: Right. The  
2 reporting relationship, once again, of the INSET,  
3 similar to the NSIS, is through division criminal  
4 operations?

5 MR. LOEPPKY: Yes.

6 MR. CAVALLUZZO: Okay. Then the  
7 present situation is set out at Tab 11?

8 MR. LOEPPKY: That's correct.

9 MR. CAVALLUZZO: This is as of  
10 April of 2003?

11 MR. LOEPPKY: Yes.

12 MR. CAVALLUZZO: The differences  
13 there would be, obviously we have a new Minister  
14 involved; we have a position called Director  
15 General, National Security, and then we have those  
16 three branches within the national security?

17 MR. LOEPPKY: Yes.

18 MR. CAVALLUZZO: NSIB, NSOB and  
19 Policy and Planning. Once again, the INSETs and  
20 the NSISs will report through criminal operations  
21 at the division level?

22 MR. LOEPPKY: With relationship to  
23 the National Security Operations Branch in terms  
24 of monitoring and coordinating ongoing  
25 investigations.

1 MR. CAVALLUZZO: Right. Now, the  
2 other charts that the Commissioner should be aware  
3 of, the first one would be at Tab 6 which is much  
4 more detailed in terms of what we looked at. This  
5 is the National Security Investigations Branch.  
6 This was as of May 2001 through April of 2003.

7 MR. LOEPPKY: That's correct.  
8 That reflects the 21 resources we had in that area  
9 at that time.

10 MR. CAVALLUZZO: Right. Then the  
11 change as of April 1, 2003 can be found at Tabs 7  
12 and 8?

13 MR. LOEPPKY: Yes, that's correct.

14 MR. CAVALLUZZO: At Tab 7, really  
15 this is the NSIB; and Tab 8 is the NSOB, with the  
16 structures set out that way?

17 MR. LOEPPKY: Yes, that's correct.

18 MR. CAVALLUZZO: But  
19 importantly for our purposes, if we are looking  
20 at, say September, October, November 2002, the  
21 relevant organizational chart would be the one  
22 behind Tab 6.

23 Is that correct?

24 MR. LOEPPKY: That's correct.

25 MR. CAVALLUZZO: Okay.

1                   MR. LOEPPKY: That would be the  
2 appropriate organizational chart. Obviously, we  
3 have brought in some secondments to deal with the  
4 issues that I spoke about earlier in terms of  
5 demands.

6                   MR. CAVALLUZZO: I would like to  
7 move on now to these operational policies that you  
8 were talking about before, and just let me explain  
9 to counsel and the Commissioner what they are.

10                   These can be found commencing at  
11 Tab 34.

12                   We are focusing at this point in  
13 time on national security investigation, and the  
14 operational policy at Tab 34 is the most material  
15 one from our perspective, Mr. Commissioner. This  
16 is the policy that was in effect between April 20,  
17 2000 and February 4, 2003.

18                   The subsequent tabs are amendments  
19 to this policy. It may save some time if I tell  
20 you what the dates of these are.

21                   At Tab 35, it is February 5, 2003;  
22 36 is February 19, 2003; 37 is August 25, 2003; 38  
23 is November 26, 2003; and 39 is the current  
24 policy.

25                   I would like to ask you certain

1 questions about these policies starting with the  
2 one that was in effect between 2000 and 2003, Tab  
3 34.

4 First of all, what is this? What  
5 is an operational policy or manual?

6 MR. LOEPPKY: An operational  
7 policy or manual is direction to the organization,  
8 to its employees, in terms of how investigations  
9 are to be conducted, the expectations of the  
10 organization on those investigators and the rules  
11 around investigations, the broad direction in  
12 terms of what is to be done obviously within the  
13 parameters of the law.

14 MR. CAVALLUZZO: Once again if I  
15 am that officer in the INSET in Toronto, am I  
16 bound by these policies?

17 MR. LOEPPKY: The policies are to  
18 provide that direction, right.

19 MR. CAVALLUZZO: So I am bound by  
20 them?

21 MR. LOEPPKY: Yes.

22 MR. CAVALLUZZO: If I violate  
23 these policies, I should be disciplined.

24 MR. LOEPPKY: Well, not every  
25 violation of a policy would automatically result

1 in discipline. If there is a very minor violation  
2 it might be a case of -- for example, if policy  
3 says you should not escort a juvenile female  
4 without another member in the vehicle and because  
5 of some operational necessity you have to do that,  
6 and can outline why that was necessary, that  
7 wouldn't automatically result in discipline.

8 MR. CAVALLUZZO: It is a  
9 case-by-case basis?

10 MR. LOEPPKY: It is a case-by-case  
11 basis. This sets out the expectations.

12 MR. CAVALLUZZO: Let us look at  
13 the policy on national security investigations.

14 On the first page it talks about  
15 the MOU or the memorandum of understanding between  
16 CSIS and the RCMP as one of the references?

17 MR. LOEPPKY: Yes.

18 MR. CAVALLUZZO: And also talks  
19 about the national counterterrorism plan.

20 What I would like to ask you about  
21 is under "Policy".

22 It says:

23 "Members will not gather  
24 information on or investigate  
25 organizations engaged in



1                                 lawful activities."

2                                 MR. LOEPPKY:  That is absolutely  
3                                 correct.

4                                 MR. CAVALLUZZO:  So the admonition  
5                                 there is if I am engaged in a lawful activity, the  
6                                 RCMP better not be collecting information on me?

7                                 MR. LOEPPKY:  That is right.

8                                 MR. CAVALLUZZO:  That is clear?

9                                 MR. LOEPPKY:  That is one of the  
10                                reasons that the McDonald Commission made the  
11                                finding that we were investigating legitimate  
12                                dissent and consequently the recommendations that  
13                                came out of that.

14                                MR. CAVALLUZZO:  And then it goes  
15                                on in C.2 and says:

16                                "Members will restrict  
17                                investigations to persons  
18                                within organizations  
19                                allegedly committing criminal  
20                                acts and will not  
21                                unnecessarily expand  
22                                investigations to the  
23                                organizations themselves."

24                                I have trouble understanding that.  
25                                What does that mean?

1                   MR. LOEPPKY: That investigations  
2 will -- we simply don't go out and commence an  
3 investigation without some basis on which to take  
4 action upon. We do not target indiscriminately.  
5 There has to be a basis for why we would undertake  
6 an investigation; that it would be a criminal  
7 investigation in pursuit of gathering evidence and  
8 would be done appropriately.

9                   MR. CAVALLUZZO: In respect of  
10 that policy, I want to ask you a couple of  
11 concrete questions, and let's go back to Jim  
12 Jones.

13                   You are targeting John Smith, who  
14 is the target of the investigation, the person  
15 under investigation, and John Smith happens to be  
16 seen with Jim Jones on occasion, perhaps a  
17 telephone call, or whatever.

18                   Will you collect information on  
19 Jim Jones who appears to be engaged in lawful  
20 activity?

21                   MR. LOEPPKY: We will would do  
22 some initial investigation to determine whether it  
23 was a lead that was worth following up.

24                   MR. CAVALLUZZO: And what if you  
25 decide that you don't have sufficient information

1 to follow through with the lead. What would you  
2 do with that information on Jim Jones?

3 MR. LOEPPKY: That would be the  
4 end of the investigation on Jim Jones, and it  
5 would continue to form a part of the file  
6 material.

7 MR. CAVALLUZZO: So even though  
8 you have determined that I am not a target or I am  
9 not under investigation, the fact is that my name  
10 would continue on in the SCIS?

11 MR. LOEPPKY: That is correct.

12 MR. CAVALLUZZO: Even though I  
13 haven't engaged in any unlawful activity?

14 MR. LOEPPKY: You may not have  
15 engaged in any known unlawful activity at that  
16 point. But as I reflect on my career over the  
17 years, in terms of some very serious murders that  
18 that I have been involved in, people that  
19 ultimately have become the suspect and been  
20 convicted have actually become known to the police  
21 much earlier. So it is not information that is  
22 actively perhaps pursued, but it may have  
23 relevance at some point down the road.

24 MR. CAVALLUZZO: But the policy  
25 doesn't say engaged in known lawful activity or

1 known unlawful activity. It says "engaged in  
2 lawful activity".

3 So if you just see Jim Jones  
4 speaking to John Smith periodically, it sounds to  
5 me like despite that policy, my name as Jim Jones  
6 is going to be in your SCIS?

7 MR. LOEPPKY: He will be  
8 identified for a period of time, perhaps, as  
9 somebody that has come into contact with the key  
10 subject of the investigation who we may have a lot  
11 of information on --

12 MR. CAVALLUZZO: Is there a time  
13 limit as to how long my name is going to remain in  
14 the system?

15 MR. LOEPPKY: For SCIS there are  
16 audit guidelines. There are guidelines in terms  
17 of how long information stays in the system. I am  
18 not sure what those are just in front of me.

19 MR. CAVALLUZZO: And then it goes  
20 on and says -- this is at D1:

21 "For an effective National  
22 Security Investigation  
23 Program, all information  
24 concerning real and national  
25 security threats must be

1 entered promptly into the  
2 SCIS."

3 I think we would all agree with  
4 that. That is pretty clear.

5 MR. LOEPPKY: That is the  
6 immediate part of the process in terms of keeping  
7 the system current.

8 MR. CAVALLUZZO: Then it goes on  
9 under "National Security", the title in paragraph  
10 E:

11 "National security is the  
12 defence and maintenance of  
13 the social, political and  
14 economic stability of  
15 Canada."

16 Then reference is made to the  
17 Security Offences Act, which we have referred to  
18 earlier, wherein you have primary jurisdiction.

19 And then it says:

20 "The RCMP also has the  
21 mandate to collect criminal  
22 intelligence."

23 There is the interesting phrase to  
24 me. It says "has the mandate to collect criminal  
25 intelligence". It doesn't say "has the mandate to

1 collect security intelligence". Is that fair?

2 MR. LOEPPKY: That is fair.

3 MR. CAVALLUZZO: So would you  
4 agree with me that the RCMP does not have the  
5 mandate to collect security intelligence?

6 MR. LOEPPKY: And we do not  
7 collect security intelligence. We collect  
8 criminal intelligence in pursuit of criminal law  
9 enforcement purposes.

10 MR. CAVALLUZZO: Let me come back  
11 to Jim Jones.

12 Once again I am Jim Jones.  
13 Periodically you see me with John Smith who is the  
14 target of the investigation. You have my name in  
15 the SCIS. Is that security intelligence  
16 information or is it criminal intelligence  
17 information?

18 MR. LOEPPKY: It is criminal  
19 intelligence information because we are  
20 investigating the primary target as a result of  
21 criminal activities.

22 MR. CAVALLUZZO: But you have  
23 nothing on me, Jim Jones. I am engaged only in  
24 lawful activities. I just happen to see this guy  
25 once in a while.

1                   MR. LOEPPKY:  And those situations  
2                   arise every day in files where unknown persons  
3                   come into the picture and move out of the picture  
4                   and ultimately are never accorded any further  
5                   attention.  That is the nature of those types of  
6                   criminal activities or criminal investigations.

7                   MR. CAVALLUZZO:  I am going to  
8                   return to this once again.  I am working in  
9                   Toronto and I get a call from the FBI, the CIA or  
10                  the INS who say, "I want some information on Jim  
11                  Jones."

12                  Clearly, Jim Jones has never  
13                  engaged, to your knowledge, in any unlawful  
14                  activity.  His name, unfortunately, is in the  
15                  SCIS.  Should I be handing that information down  
16                  to the Americans if you feel it is part of an  
17                  investigation?

18                  MR. LOEPPKY:  On a case-by-case  
19                  basis, you would have to apply judgment as to why  
20                  that information is being requested.  Will it  
21                  violate anyone's rights?  Is it shared  
22                  appropriately?

23                  The scenario could be that they in  
24                  fact are investigating somebody that is very  
25                  closely associated with Jim Jones in Canada and

1 suddenly somebody else may show up there that  
2 plays into that. These are not black and white  
3 situations. They are investigations that change  
4 and move and have linkages.

5 MR. CAVALLUZZO: One of the  
6 important things I would have thought that you  
7 should take into account as being an officer and  
8 an INSET would be who I am giving it to. In other  
9 words, I would say which country am I dealing  
10 with, which agency am I dealing with? Is their  
11 human rights record consistent with Canada's human  
12 rights record?

13 Is that a fair consideration?

14 MR. LOEPPKY: That is correct.

15 MR. CAVALLUZZO: And would an  
16 INSET officer in September of 2002 have an idea  
17 that the Americans may have been implementing a  
18 policy of extraordinary rendition wherein -- let  
19 me just explain what that is, and see if you are  
20 aware of it.

21 That is where sometimes they would  
22 extract an individual from whether it be in the  
23 States or a foreign country and send that  
24 individual to a country where they thought  
25 investigation methods may be pursued which would



1 be illegal in the United States.

2 Are you aware of that rendition  
3 policy?

4 MR. LOEPPKY: It has come to my  
5 attention after 9/11.

6 MR. CAVALLUZZO: So after 9/11 and  
7 before September of 2002?

8 MR. LOEPPKY: The first time that  
9 I heard the term was when it was utilized or when  
10 it came out in media that has led to this inquiry.  
11 So it wasn't a term that I was personally familiar  
12 with.

13 MR. CAVALLUZZO: If you weren't  
14 aware of the term, were you aware of the practice?

15 MR. LOEPPKY: No, I wasn't.

16 MR. CAVALLUZZO: Okay. If you  
17 were an officer in the field and you had a  
18 suspicion that the agency to which I was going to  
19 give information may be sending a Canadian to a  
20 foreign country, should I share that information?

21 MR. LOEPPKY: Again, the officer  
22 has to be satisfied that it is appropriate to  
23 share it to further a case; that it is consistent  
24 with our legislation, our policy, in terms of our  
25 duties under section 18 of the Act to prevent

1 crime, preserve peace; to share information  
2 appropriately under the Privacy Act.

3 I think you alluded to the sharing  
4 of information with someone from the United  
5 States. Was that the scenario?

6 MR. CAVALLUZZO: Yes. Sharing it  
7 with someone from the United States with a  
8 reasonable suspicion that the person they have in  
9 custody may be sent to a country which clearly  
10 does not have the human rights record of this  
11 country.

12 MR. LOEPPKY: I can't speak for  
13 what is in the minds of people that share  
14 information.

15 MR. CAVALLUZZO: But what would  
16 the expectation be?

17 MR. LOEPPKY: The expectation  
18 would be that if any information that was going to  
19 be shared was going to result in a breach of that  
20 person's rights, or in terms of what we expect as  
21 Canadians, the Charter rights of individuals, then  
22 we would be very, very reluctant to share that  
23 kind of information, if we knew that is what the  
24 purpose it was going to be used for. In fact, we  
25 wouldn't share it.

1 MR. CAVALLUZZO: You said  
2 "reluctant". You wouldn't share it?

3 MR. LOEPPKY: That's right.

4 MR. CAVALLUZZO: Because under the  
5 RCMP Act, particularly in section 35, one of the  
6 key duties of a RCMP officer is that they respect  
7 the rights --

8 MR. LOEPPKY: The rights of  
9 individuals.

10 MR. CAVALLUZZO: -- of  
11 individuals.

12 MR. LOEPPKY: Yes.

13 MR. CAVALLUZZO: If an individual  
14 Canadian was going to be sent to a country which,  
15 for example, may have engaged in torture, that  
16 information should not be shared if you were aware  
17 of that.

18 You will agree?

19 MR. LOEPPKY: Yes, if you were  
20 aware of that when you shared it at that point.

21 MR. CAVALLUZZO: Okay.

22 Mr. Commissioner, it is  
23 one o'clock.

24 THE COMMISSIONER: Okay. We  
25 will take a lunch break now and we will rise

1           until 2:15.

2                               MR. CAVALLUZZO:   Excuse me.  
3           Mr. Commissioner, just before you break,  
4           Ms Edwardh has a comment to make respecting  
5           documents.

6                               MS EDWARDH:   I wonder if I could  
7           just indicate, Mr. Commissioner, that we have  
8           produced certain documents and I might like to  
9           just record for the record that they have been  
10          handed out to persons who are parties and who are  
11          interested.

12                               The first is a volume in respect  
13          of this witness' cross-examination. The next is a  
14          volume and a tape which is in respect of the  
15          motion which will be argued on Monday, and that  
16          has been provided to everyone.

17                               THE COMMISSIONER:   Okay. Thank  
18          you very much for doing that.

19                               MS EDWARDH:   Thank you.

20                               THE COMMISSIONER:   Until 2:15.

21          --- Upon recessing at 1:02 p.m. /

22                               Suspension à 13 h 02

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

24                               Reprise à 14 h 18

25                               THE COMMISSIONER:   Mr. Cavalluzzo.

1 MR. CAVALLUZZO: Mr. Commissioner,  
2 at the outset, in light of the fact that I  
3 understand that certain people have to get back to  
4 Toronto at a certain point in time, i.e. myself --  
5 --- Laughter / Rires

6 THE COMMISSIONER: "Certain  
7 people", yes.

8 MR. CAVALLUZZO: I am wondering if  
9 I could ask that we break at 4 o'clock but we  
10 continue through without a break. Is that  
11 possible?

12 THE COMMISSIONER: That is fine.  
13 Then we will resume, as you said  
14 earlier, on Tuesday, July 6th, with this witness,  
15 with the Deputy Commissioner.

16 MR. CAVALLUZZO: Yes.

17 THE COMMISSIONER: All right.

18 MR. CAVALLUZZO: Deputy  
19 Commissioner Loepky, we were at Tab 34 and we  
20 were going through the national security  
21 investigation policy. I haven't quite completed  
22 this particular policy, which was the policy in  
23 effect at what I call the material time.

24 We were moving through now to page  
25 3, which is the reporting structures.

1                   In regard to paragraph E, it would  
2 appear that the reporting structure is to the  
3 criminal operations officer or -- why don't you  
4 explain to us what paragraph E.2, one, two, three  
5 and four mean?

6                   MR. LOEPPKY: The policy in place  
7 at that time was that the national security  
8 investigations section would report to the  
9 criminal operations officer. If in any case where  
10 there was a potential threat to national security  
11 or those types of things, it would immediately be  
12 transmitted to headquarters, to the national  
13 security area within Criminal Intelligence  
14 Directorate.

15                   It outlined the types of incidents  
16 that should be reported and required a follow-up  
17 report within 14 days beyond the initial report,  
18 and then monthly updates thereafter.

19                   MR. CAVALLUZZO: So if I am in the  
20 field as an officer, then the reporting structure  
21 is straight up through the criminal operations  
22 officer. And if there are certain incidents, like  
23 a potential threat to national security, suspected  
24 criminal extremists or incidents affecting  
25 national security, then the officer in charge of

1 the Security Offences Branch should be notified as  
2 well at headquarters.

3 MR. LOEPPKY: Yes.

4 MR. CAVALLUZZO: So there is that  
5 kind of coordination going back and forth?

6 MR. LOEPPKY: Yes.

7 MR. CAVALLUZZO: The next item is  
8 what is referred to as the "Foreign Liaison  
9 Officer". The guideline or expectation is to:

10 "Maintain close liaison with  
11 CSIS foreign Liaison Officers  
12 to avoid duplication of  
13 effort or dual tasking of  
14 foreign information sources."

15 First of all, what is foreign  
16 liaison officer of CSIS and how does it  
17 interrelate with the RCMP?

18 MR. LOEPPKY: We have 35 foreign  
19 liaison officers in 25 locations around the world.

20 MR. CAVALLUZZO: These are RCMP  
21 people?

22 MR. LOEPPKY: RCMP personnel who  
23 are deployed for a certain period of time to  
24 facilitate furtherance of criminal investigations,  
25 establish relationships. They have a number of

1 duties: support the head of mission in the  
2 embassy.

3 They are deployed in consultation  
4 with the chief or the head of the mission and  
5 function within that environment.

6 CSIS has liaison officers as well  
7 in terms of some locations around the world, and  
8 this policy really provides direction to make sure  
9 that there is no working at cross purposes, that  
10 they know which investigations we might be  
11 involved in, and having that integrated approach  
12 where necessary.

13 MR. CAVALLUZZO: The next item is  
14 "RCMP/CSIS Liaison Officers". Now, that is  
15 obviously operating in Canada. What is that  
16 reference to?

17 MR. LOEPPKY: There was a liaison  
18 officer exchange program between CSIS headquarters  
19 and the RCMP headquarters. It was to facilitate  
20 information exchanges dealing with concerns, those  
21 types of issues.

22 That has been replaced by the  
23 exchange program where we actually have exchanged  
24 people with CSIS and the criminal intelligence  
25 national security area to actually function as a



1 part of that management team in the other  
2 organization to build an understanding, build  
3 relationships.

4 MR. CAVALLUZZO: In terms of the  
5 material time -- this is once again say in 2002 --  
6 would there be a CSIS liaison officer working  
7 within the RCMP?

8 MR. LOEPPKY: I believe in 2002,  
9 or shortly thereafter, about that time, we started  
10 with the exchange program. The liaison program  
11 still exists in the field units, Montreal,  
12 Toronto, where they have liaison officers working  
13 with our teams and we have liaison officers in  
14 their areas.

15 MR. CAVALLUZZO: At the present  
16 time would there be a CSIS liaison officer on each  
17 of the four INSETs that have been created since  
18 2002?

19 MR. LOEPPKY: Yes, there are.

20 MR. CAVALLUZZO: I will leave the  
21 remainder of this particular policy. There is  
22 nothing else I want to ask you about.

23 I want to take you through some of  
24 the subsequent policies to ask you some questions  
25 as to particular changes that have occurred, or

1 certain amendments.

2 The first is Tab 36, which came  
3 into effect on February 5 of 2003.

4 MR. LOEPPKY: Is that Tab 35, sir,  
5 or Tab 36?

6 MR. CAVALLUZZO: Tab 35. There  
7 are some changes, for example, at page 2 of Tab  
8 35, which is the policy.

9 For example, I believe at the top  
10 of the page paragraph 4 has been added in terms of  
11 the national security functions. It refers to:

12 "4. related terrorist  
13 activities as defined in the  
14 anti-terrorism provisions in  
15 the Criminal Code."

16 That is obviously a response to  
17 Bill C-36, which was enacted in December of 2001?

18 MR. LOEPPKY: That is correct.

19 MR. CAVALLUZZO: Then in terms of  
20 the "Reporting", I notice a change. It says:

21 "Immediately notify National  
22 Headquarters, ATTN: OIC  
23 National Security  
24 Investigations Branch ..."

25 That is just I guess the change in

1 the instruction?

2 MR. LOEPPKY: Instruction.

3 MR. CAVALLUZZO: Okay. One  
4 significant change I think occurs in terms of  
5 paragraph E.2.a, which is the reporting.

6 It says you immediately notify  
7 headquarters and 4 says:

8 "before starting any national  
9 security investigation."

10 MR. LOEPPKY: Yes.

11 MR. CAVALLUZZO: So that it would  
12 appear that as of February 2003, there is a new  
13 requirement, and that is before you start a  
14 national security investigation you better get the  
15 approval of headquarters?

16 MR. LOEPPKY: That is correct.  
17 That you coordinate and advise headquarters that  
18 there is an investigation starting up.

19 MR. CAVALLUZZO: Was there reason  
20 for that or was it just a question of better  
21 coordination?

22 MR. LOEPPKY: It was a reflection  
23 of our increased capacity to better coordinate  
24 investigations at the centre. It was a reflection  
25 of wanting to ensure that investigations were very

1 much managed consistent with the way  
2 investigations are managed within the CSIS  
3 environment; so centrally coordinated.

4 That is why that policy amendment  
5 was made.

6 MR. CAVALLUZZO: Also, there is a  
7 specific reference, which is somewhat different.  
8 In paragraph 3 it says:

9 "Open and update ongoing  
10 investigations on SCIS."

11 MR. LOEPPKY: Yes.

12 MR. CAVALLUZZO: Which is more  
13 direct than the previous arrangement. That is,  
14 once, again the centralized data system.

15 MR. LOEPPKY: That is correct.

16 MR. CAVALLUZZO: I would like to  
17 take you to, just to point out the changes, Tab  
18 37, which is the major change I think of the  
19 policies. This came into effect on August 25th of  
20 2003.

21 Do you have that?

22 MR. LOEPPKY: Yes, I do.

23 MR. CAVALLUZZO: The first  
24 question I have is: I have noted under "Policy"  
25 that words have been added to paragraph 1. Before

1           it said:

2                                 "The RCMP will not gather  
3                                 information on or investigate  
4                                 organizations engaged in  
5                                 lawful activity."

6                                 Then there was a period there and  
7           I asked you about that, you may recall. Now words  
8           have been added to that:

9                                 "... unless allegation or  
10                                 intelligence justifies such  
11                                 actions."

12                                 MR. LOEPPKY: Yes.

13                                 MR. CAVALLUZZO: Why the addition  
14           of those words?

15                                 MR. LOEPPKY: The policy was  
16           created in support of C-36, the bill that --  
17           before, things that might not have been criminal  
18           activities, like fundraising, participation, those  
19           types of things, this particular change was made  
20           to ensure that types of activities that might on  
21           their own appear very innocuous could in fact be  
22           part of a larger type of criminal investigation.

23                                 If I can just put some context on  
24           that, when I think back to the 9/11 incidents, I  
25           am not sure that anyone suspected that simply

1           trying to learn how to fly an airplane had any  
2           linkage to an incident and yet subsequently that  
3           became a key part that there was criticism had  
4           been missed.

5                           This was to ensure that we had the  
6           policy support for that.

7                           MR. CAVALLUZZO: I guess relating  
8           to that learning how to fly a plane, if you just  
9           wanted to fly the plane without landing or taking  
10          off would be an indication of something.

11                          MR. LOEPPKY: Yes.

12                          MR. CAVALLUZZO: There are  
13          additional words as well in C.2. Once again, the  
14          reference is anti-terrorism legislation as defined  
15          in the anti-terrorism provisions of the Criminal  
16          Code, and that once again is in response to Bill  
17          C-36. I assume?

18                          MR. LOEPPKY: Yes.

19                          MR. CAVALLUZZO: There is a new  
20          item here concerning INSETs. If you look at D.1  
21          for the first time we see the reference to INSET.

22                           It says:

23                                   "National Security

24                                   Investigation Section ..."

25                           That is the NSIS.

1                                    "... or Integrated National  
2                                    Security Enforcement Team  
3                                    (INSET) will conduct  
4                                    anti-terrorism  
5                                    investigations."

6                                    MR. LOEPPKY: Yes.

7                                    MR. CAVALLUZZO: So that these two  
8                                    integrated teams are expressly given the  
9                                    jurisdiction or responsibility for these  
10                                    investigations.

11                                    That was the way it was before,  
12                                    was it not?

13                                    MR. LOEPPKY: That is the way it  
14                                    has always been, is that NSIS and now the four  
15                                    INSETs have that responsibility for criminal  
16                                    investigations on national security.

17                                    MR. CAVALLUZZO: Okay. There are  
18                                    other new provisions, for example the reference to  
19                                    sensitive sector. As you know, a sensitive sector  
20                                    is defined in a directive that I will be taking  
21                                    you to shortly, there are universities, trade  
22                                    unions, religious organizations, media outlets,  
23                                    and so on.

24                                    What is the reference here to a  
25                                    "Sensitive sector"?

1                   MR. LOEPPKY: This was a  
2 policy change that was internally driven. It  
3 was actually created before the Ministerial  
4 Directive. It was created with regard to concerns  
5 that we knew existed in the communities that we  
6 might be doing investigations in sensitive areas,  
7 such as religious institutions and those types of  
8 things, and we just wanted to ensure that we had  
9 the appropriate policy guidelines in place to  
10 address that.

11                   MR. CAVALLUZZO: Okay. Then there  
12 seems to be a new paragraph at the bottom there.  
13 It says:

14                               "National security  
15                               investigations are one of the  
16                               highest priorities within the  
17                               RCMP."

18                   Is that just upping the ante a bit  
19 or has that always been the case?

20                   MR. LOEPPKY: I think it was to --  
21 well, I know it was to highlight that the risk  
22 tolerance for not conducting an investigation, a  
23 criminal investigation on national security, the  
24 consequences could be significantly higher than  
25 the failure to not fully investigate a criminal



1 investigation on an organized crime group that was  
2 importing drugs in terms of the harm to people,  
3 the safety issues. This was really to emphasize  
4 that national security investigations are an  
5 extremely high priority where risk is minimized.

6 MR. CAVALLUZZO: There is also  
7 another key difference, isn't there, between  
8 national security investigations and criminal  
9 investigations in respect of organized crime. For  
10 example, organized crime usually results from  
11 greed, whereas national security investigations  
12 sometimes are related to political, religious and  
13 ideological objectives.

14 You would agree with that  
15 distinction?

16 MR. LOEPPKY: That's correct.  
17 Yes.

18 MR. CAVALLUZZO: And there are  
19 certain problems there, because our society  
20 tolerates political beliefs advocacy, religious  
21 beliefs and advocacy, and so on, so that we have  
22 to find a balance there between legitimate dissent  
23 and what is referred to as terrorism?

24 MR. LOEPPKY: That's correct.

25 MR. CAVALLUZZO: And that is a

1 very important --

2 MR. LOEPPKY: Important  
3 distinction.

4 MR. CAVALLUZZO: Okay.

5 In terms of the items that you are  
6 focusing on at the bottom of that page, it says:

7 "For directives concerning:"

8 This is D.4 --

9 "...high profile  
10 investigations..."

11 We are going to take you to some  
12 of these, that particular appendix.

13 We are going to take you to "c"  
14 as well:

15 "foreign agencies (other than  
16 the U.S.) conducting  
17 investigations in Canada..."

18 We are also going to take you to:

19 "4.d U.S. agencies  
20 conducting investigations in  
21 Canada..."

22 We are also going to take you to:

23 "4.h the conditions for  
24 disseminating national  
25 security information..."

1                   Which is a separate appendix and  
2 we will be coming back to that.

3                   On the next page, in terms of the  
4 reporting structures, there has been a significant  
5 change here because when the field is going to  
6 notify headquarters you have upped the ante here  
7 and you have said you no longer go to the head of  
8 the National Security Branch but you had better go  
9 to the Assistant Commissioner, Criminal  
10 Intelligence.

11                   Is that correct? This is at  
12 page 3 of 10.

13                   MR. LOEPPKY: Yes.

14                   MR. CAVALLUZZO: So that you have  
15 made it a more responsible officer that they would  
16 be reporting to at headquarters.

17                   MR. LOEPPKY: Yes.

18                   MR. CAVALLUZZO: Then it refers to  
19 the kinds of issues to which you have to notify  
20 the Assistant Commissioner. For example, 4, 5 and  
21 6 are new:

22                   "before starting any national  
23 security sensitive sector  
24 investigation;  
25 5. during the course of an

1 investigation when you become  
2 aware that a sensitive sector  
3 may be involved;

4 And 7:

5 "when it is believed that  
6 incident or information will  
7 generate media interest".

8 MR. LOEPPKY: Yes.

9 MR. CAVALLUZZO: At the bottom of  
10 the page there is this exchange program that you  
11 have made reference to, the RCMP/CSIS Officer  
12 Exchange Program?

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: Which is new and  
15 that is dealt with as well. I need not take you  
16 through that.

17 Then at the back of the policy  
18 there are, for example at page 6 of 10:

19 "Counter-Terrorism Incident  
20 Notification"

21 Page 8 of 10:

22 "National Security at Major  
23 Events."

24 These items are new as well and  
25 I'm not going to ask you questions about those,

1 just to point out to counsel that those are  
2 additions --

3 MR. LOEPPKY: Yes.

4 MR. CAVALLUZZO: -- to the policy.

5 Then we have Tab 38, which is  
6 November 26, 2003. Nothing of import there in my  
7 view, and then we have the current policy.

8 Before moving on to another area,  
9 I would like to ask you a few questions concerning  
10 these policies and the INSET, these integrated  
11 teams that we have in Vancouver, Toronto, Ottawa  
12 and Montreal.

13 The first question is: Who is  
14 responsible to ensure that the INSET complies with  
15 these operational policies?

16 MR. LOEPPKY: The INSETs are  
17 really part of the National Security Investigation  
18 Section that has existed for many, many years.  
19 The four were enhanced -- I don't know if you want  
20 to talk about that later on, but they were really  
21 the enhanced NSIS units in the four major centres,  
22 in Toronto, Montreal, Ottawa, Vancouver, and they  
23 work under the command of is someone who is in  
24 charge of that INSET unit.

25 There may be a number of project

1 teams within that INSET unit. It is not that you  
2 would have everyone work on the same project  
3 necessarily; but ultimately there is a chain of  
4 command that exists within that INSET unit. They  
5 report to the Criminal Operations Officer --

6 MR. CAVALLUZZO: At the division?

7 MR. LOEPPKY: At the division.

8 MR. CAVALLUZZO: Right?

9 MR. LOEPPKY: For the support they  
10 require to conduct their investigations, technical  
11 support, surveillance support. During these  
12 investigations they also have a functional  
13 reporting relationship to the NSI -- sorry, the  
14 National Security Operations Branch in CID for  
15 that coordination process that I spoke about  
16 earlier.

17 MR. CAVALLUZZO: But in terms of a  
18 reporting relationship, it would seem that the  
19 reporting relationship is at the divisional level.  
20 There is coordination with headquarters through  
21 the NSOB, but the reporting relationship would be  
22 through criminal operations at the divisional  
23 level?

24 MR. LOEPPKY: In national security  
25 our investigations, criminal investigations, are

1 somewhat different, though. In terms of a  
2 day-to-day criminal operation in a province, the  
3 criminal operations officer would obviously make  
4 all the decisions about the next steps. In a  
5 national security investigation, given the central  
6 coordination function of CID, there would be a lot  
7 more input in terms of the next steps in that  
8 investigation.

9 MR. CAVALLUZZO: You have told us  
10 that these operational guidelines are binding on  
11 the members of the Force. They are expectations,  
12 they are standards, and so on, that are expected  
13 to comply with.

14 MR. LOEPPKY: Yes.

15 MR. CAVALLUZZO: Is the same true  
16 of -- I try to get as simple as I possibly can  
17 because I'm not very bright, but if we look at  
18 Toronto, the INSET in Toronto, if I am a Toronto  
19 cop and I become part of an INSET and I am  
20 involved in national security investigations, am I  
21 bound by these guidelines since I'm not a member  
22 of the Force?

23 MR. LOEPPKY: These are the  
24 guidelines that we work under in terms of how  
25 national security investigations are conducted and

1           those teams are under the command of the RCMP and  
2           this is the policy that is utilized.

3                         MR. CAVALLUZZO:  It is the policy  
4           that is utilized, but where does it say that this  
5           policy is binding, legally binding on a municipal  
6           police officer or a provincial police officer that  
7           engages in national security investigations?

8                         MR. LOEPPKY:  There are a number  
9           of agreements that are under development in terms  
10          of what the expectations are of the police  
11          officers, but clearly when they become part of an  
12          integrated team that is led by the RCMP with a  
13          primary mandate, there is an understanding that  
14          the policies and guidelines of the RCMP will be  
15          utilized.

16                        MR. CAVALLUZZO:  Okay.  You say  
17          that these agreements are in process.  There is  
18          nothing in writing yet.  We have a draft agreement  
19          that I will take you to, but has nothing been  
20          signed yet as far as the "A" Division is concerned  
21          in the National Capital Region?

22                        MR. LOEPPKY:  No.  Those are still  
23          being addressed through -- to ensure that the  
24          appropriate legal issues are addressed.

25                        MR. CAVALLUZZO:  Right.  Okay.



1 But as it stands, without that agreement  
2 crystallized or signed, there is really nothing in  
3 law that says that the municipal officer or the  
4 provincial officer is bound by these guidelines?

5 MR. LOEPPKY: These are  
6 operational policy guidelines of the RCMP. The  
7 INSETs are under the ultimate command of the RCMP  
8 and, therefore, if the policies were not being  
9 complied with, given the command structure that  
10 would come to the attention of the INSET commander  
11 and remedial action would be taken.

12 MR. CAVALLUZZO: Okay. Just  
13 out of interest, as a labour lawyer I am  
14 interested, if you were to find that that a  
15 municipal officer was violating the RCMP guideline  
16 on national security, who would discipline the  
17 municipal officer?

18 MR. LOEPPKY: A violation of  
19 policy does not necessarily result in discipline.

20 MR. CAVALLUZZO: Assuming it  
21 is a gross violation of policy so that it is  
22 worthy of discipline, who would discipline the  
23 municipal officer?

24 MR. LOEPPKY: The discipline  
25 process goes back to the home agency.

1 MR. CAVALLUZZO: Would be the  
2 municipality?

3 MR. LOEPPKY: That is my  
4 understanding, yes.

5 MR. CAVALLUZZO: Okay. Just some  
6 related questions to that.

7 You have told us about SCIS, the  
8 central database for national security  
9 information. Once again, I am the Toronto cop  
10 coming on to an INSET as a municipal officer, as a  
11 provincial officer.

12 Would I have access to SCIS?

13 MR. LOEPPKY: Yes. Certain  
14 components. I mean, it is a layered process so  
15 that there are certain components that only very  
16 much on a need-to-know basis would have access to.

17 MR. CAVALLUZZO: Assuming once  
18 again I am either a Toronto police officer or an  
19 Ontario Provincial Police person coming on to one  
20 of these INSETs, do I get any training as to when  
21 I can release this kind of sensitive information  
22 from the SCIS system if I am, for example, called  
23 by another agency?

24 MR. LOEPPKY: There is training  
25 that is provided -- and I think we will get to

1           that later on in terms of how the operations are  
2           conducted.

3                               But it is important to acknowledge  
4           that all of these individuals ultimately work  
5           under the command of the RCMP, under the  
6           supervisory command and before information is  
7           shared in any event, in any context, and thinking  
8           back to the is there a one-to-one sharing  
9           relationship on a case-by-case urgent situation  
10          type of scenario, that could happen, but there is  
11          clearly always a supervisory function that takes  
12          place within the unit and ultimately rises to the  
13          top if there is an issue about inappropriate  
14          disclosure.

15                           MR. CAVALLUZZO: Right. But what  
16          you are saying, I think what you have just said,  
17          is although there may be accountability the fact  
18          is that a municipal officer, or a provincial  
19          officer that becomes a member of this INSET, could  
20          give information to, say, an American law  
21          enforcement or security intelligence agency on  
22          their own without any approval whatever, assuming  
23          they complied with the guidelines?

24                           MR. LOEPPKY: Yes.

25          --- pause

1 MR. CAVALLUZZO: I want to move on  
2 to another area, but there are a few points,  
3 Deputy Commissioner, that I just want to clarify.

4 If I could bring you back to the  
5 document book, Tab 44.

6 This, once again, is the May 2001  
7 Criminal Intelligence Program, and there is  
8 something that I should have asked you about, just  
9 to clarify, and that is, in respect of the fourth  
10 phase of the intelligence cycle at page 10, which  
11 is "Analysis", I didn't ask you about the  
12 reference here to something called the  
13 Intelligence Review Board process, wherein it  
14 says:

15 "The purpose of  
16 the Intelligence Review Board  
17 (IRB) process is to review  
18 the content of all finished  
19 intelligence assessments  
20 produced..."

21 -- at headquarters

22 "... to ensure compliance  
23 with Force policy (both  
24 operational and  
25 administrative) ..."

1 -- and so on and so forth.

2 This Intelligence Review Board  
3 process, does it also apply to national security  
4 investigations or is it just criminal  
5 investigations, for example, organized crime?

6 MR. LOEPPKY: I believe it applies  
7 to both. But I am not 100 per cent certain.

8 MR. CAVALLUZZO: Can you find that  
9 out over the weekend --

10 MR. LOEPPKY: Yes.

11 MR. CAVALLUZZO: And then we can  
12 find out on Tuesday morning. Thank you.

13 The only other aspect to this that  
14 I would make reference to is at page -- it is in  
15 the same tab -- at page 19.

16 This is something called  
17 targeting. It says:

18 "The development of  
19 intelligence should not be  
20 confused with traditional  
21 investigative work. Although  
22 the two are related, they are  
23 only cousins in the police  
24 and law enforcement system.  
25 Investigative reporting is

1                   evidentiary in nature.  
2                   Intelligence reporting is  
3                   like an early warning  
4                   system -- what are the  
5                   capabilities,  
6                   vulnerabilities, limitations  
7                   and intentions of criminal  
8                   organizations or individual  
9                   criminals?"

10                   And then you have three  
11                   categories: Threat assessment, target selection  
12                   and target tracking.

13                   Is this analysis, this kind of  
14                   threat assessment, target selection and target  
15                   tracking applied to national security  
16                   investigations as well as other criminal  
17                   investigations such as in relation to organized  
18                   crime?

19                   MR. LOEPPKY: Generally, it is,  
20                   but I just want to clarify this.

21                   MR. CAVALLUZZO: Certainly, please  
22                   do.

23                   MR. LOEPPKY: What we do here --  
24                   what the notion is is we bring together a variety  
25                   of different pieces of information that may, in

1 and of themselves, not mean anything and we bring  
2 that together and we actually come up with an  
3 intelligence product. That gives us the threat  
4 assessment; what is the potential threat?

5 And then, as I mentioned earlier,  
6 we go through a process where we say, well this is  
7 a greater threat than this one so this is where we  
8 must dedicate our resources and we identify the  
9 priorities, the highest priorities, in terms of  
10 risk to the country, to Canada. Those are the  
11 ones that we would address our resources to.

12 The term "target tracking" is not  
13 one that -- I have heard it before -- but it is  
14 not one that we commonly use.

15 MR. CAVALLUZZO: In terms of  
16 the -- you have told us before that many of  
17 your national security investigation comes from  
18 information from CSIS.

19 MR. LOEPPKY: Yes.

20 MR. CAVALLUZZO: And if CSIS gives  
21 you something, I assume that you don't go through  
22 the same process. In other words, you rely on  
23 CSIS' assessment; is that correct or how does that  
24 happen?

25 MR. LOEPPKY: When there is a

1 disclosure made to us by CSIS then obviously that  
2 would dictate to us that a particular organization  
3 or a particular individual or whoever has crossed  
4 the line from just being a simple security  
5 intelligence concern to CSIS and the Government of  
6 Canada and it is actually a criminal activity or  
7 the potential of a criminal activity that will  
8 result in an incident.

9                   So we would obviously take the  
10 information we get from CSIS, we would try and  
11 ensure that if we had any information, it was  
12 added to that so that we had a more comprehensive  
13 picture but, clearly, they provide us with a  
14 fairly comprehensive package.

15                   MR. CAVALLUZZO: Now, we heard  
16 from CSIS, when they give out information, they  
17 also rate it. For example, it is unreliable, they  
18 will specify that this information we are giving  
19 you is from an unreliable source. Is that true?

20                   MR. LOEPPKY: They will generally  
21 categorize their information, yes.

22                   MR. CAVALLUZZO: And if you were,  
23 as the RCMP, were to transfer that information  
24 that CSIS had given you to, say, another agency,  
25 whether it be a domestic or a foreign agency,



1 would you maintain that label? In other words,  
2 would you also inform the receiving agency that  
3 this information is from an unreliable source?

4 MR. LOEPPKY: That is the way that  
5 information is exchanged. You know, you try and  
6 ensure that the level is -- the level of the  
7 information is conveyed the way that it was  
8 conveyed to you.

9 MR. CAVALLUZZO: And that is  
10 clearly the expectation of an RCMP officer in  
11 exchanging information, isn't that correct?

12 MR. LOEPPKY: We would want to  
13 give the most appropriate rating that we could.

14 MR. CAVALLUZZO: Okay.

15 MR. LOEPPKY: If that is how it  
16 was relayed to us that is how we would relay it.

17 MR. CAVALLUZZO: We are going to  
18 deal with the relationship between CSIS and the  
19 RCMP at length but just -- it may be appropriate  
20 now if you could clarify for us the distinction  
21 between receiving an advisory letter from CSIS and  
22 a disclosure letter from CSIS.

23 MR. LOEPPKY: A disclosure letter  
24 is a letter that provides background information  
25 that we would look at and work on to analyze. An

1 advisory letter, which is more directly related to  
2 actual criminal activity. They are all related,  
3 but one is more of an evidentiary type of process.

4 MR. CAVALLUZZO: So if I can try  
5 to interpret what you have said, an advisory  
6 letter from CSIS likely means that there is a  
7 criminal offence here or a criminal offence about  
8 to be committed; you guys had better look after  
9 this.

10 MR. LOEPPKY: It is more concrete  
11 in terms of activity. That would be that advisory  
12 letter. A disclosure letter has, certainly,  
13 indicators of criminal activity but it may not be  
14 quite as concrete.

15 MR. CAVALLUZZO: Okay.

16 Deputy Commissioner, I would like  
17 to move now to a completely different area. I am  
18 going to be taking you through a number of  
19 relationships that the RCMP has with CSIS, with  
20 DFAIT, with other Canadian agencies and with a  
21 number of foreign agencies.

22 But I first want to deal with the  
23 relationship between the RCMP and the minister.

24 MR. LOEPPKY: And?

25 MR. CAVALLUZZO: The minister.

1           Whether it be the Solicitor General at the  
2           material time or the Minister of Public Safety as  
3           it is today.

4                           I am not going to take you to it  
5           again but we saw in Section 5 of the *RCMP Act* that  
6           the control and management of the RCMP is under  
7           the direction of the Commissioner, who is then  
8           under -- expressly under the direction of the  
9           Minister himself or herself as it is today.

10                           You have something that the RCMP  
11           called the "Directives System" and I would like to  
12           take you to that now.

13                           If you would refer to Tab 21, we  
14           have a document entitled "The Directives System".  
15           Unfortunately, there is no date on this. I was  
16           wondering if maybe counsel for the government, if  
17           they know or could find that out.

18                           And what the Directives System  
19           memorandum or instruction states is that -- it  
20           talks about its purpose. It says:

21   "Solicitor General Directives  
22   set standards for the RCMP in  
23   selected areas of policing  
24   activity. The Directive  
25   procedure is one of the most

1                   important means by which the  
2                   Minister exercises his (or  
3                   her) responsibility over the  
4                   Royal Canadian Mounted  
5                   Police."

6                   It goes on:

7                   "Effective policing requires  
8                   the continued confidence and  
9                   support of the public. In  
10                  order to ensure that that  
11                  confidence is maintained, the  
12                  Solicitor General must  
13                  establish certain standards  
14                  which balance individual  
15                  rights with effective  
16                  policing practices."

17                  So there is a recognition at the  
18                  outset in the directives system that there is an  
19                  important balance which has to be struck in  
20                  respect of the RCMP, and that is individual rights  
21                  versus effective policing.

22                  The legislative authority is set  
23                  out at the bottom of the page. And then the roles  
24                  of each, the Minister and the RCMP, is set out.

25                  I want to deal first with

1 paragraph 4.1 which deals with the RCMP role.

2 It says:

3 "The Solicitor General's  
4 Directives are issued to the  
5 Commissioner of the RCMP. It  
6 is left to the discretion of  
7 the Commissioner to  
8 incorporate the standards of  
9 the Directives in appropriate  
10 RCMP operational or  
11 administrative policies,  
12 Standing Orders or by other  
13 means promulgated under his  
14 authority."

15 And one of the operational  
16 policies we just referred to is that national  
17 security investigation that we saw.

18 It goes on:

19 "It is the responsibility of  
20 the Commissioner of the RCMP  
21 to ensure the conformity of  
22 Force policies, procedures  
23 and methods to these  
24 Directives."

25 So what we have here -- it

1 basically says that in order to maintain public  
2 confidence in the RCMP, there is a directive  
3 system from the Minister and it is up to the  
4 Commissioner to incorporate or to ensure that  
5 these directives are incorporated in policies,  
6 whether they be operational or administrative and  
7 so on. So it is a fairly clear relationship.

8 MR. LOEPPKY: That is correct,  
9 ministerial directives are to set broad policy  
10 guidelines, certain standards, demonstrate to the  
11 public that there are certain types of controls in  
12 place, while also recognizing the independence to  
13 the courts or the police.

14 MR. CAVALLUZZO: I would like to  
15 refer to a very recent directive which  
16 specifically deals with national security. If you  
17 would refer to Tab 24.

18 There are three directives, which  
19 I will take you through, all dated November 4,  
20 2003.

21 MR. LOEPPKY: Yes.

22 MR. CAVALLUZZO: I guess if we  
23 look at the summary on the front page, it says  
24 it's dated October 31, 2003. However, they seem  
25 to be signed on November 4, 2003 by Mr. Easter,

1 who was the Solicitor General at the time.

2 MR. LOEPPKY: I think the first  
3 one is an internal covering letter to the  
4 Minister.

5 MR. CAVALLUZZO: Okay.

6 Let's go then to the first  
7 direction. It is entitled "Ministerial Direction  
8 National Security Responsibility and  
9 Accountability".

10 There are a couple of paragraphs  
11 on which I would ask you questions.

12 It says:

13 "This direction outlines the  
14 responsibilities and  
15 accountabilities of the  
16 Solicitor General of Canada  
17 and the Commissioner of the  
18 Royal Canadian Mounted Police  
19 (RCMP) in matters related to  
20 RCMP investigations that fall  
21 under subsection 6(1) of the  
22 *Security Offences Act* and  
23 investigations relating to a  
24 terrorist offence or a  
25 terrorist activity."

1                   Then in response to the -- or in  
2                   relation to the responsibilities of each if we go  
3                   to the next page, in paragraph "D", it says:  
4                   "It is the responsibility of  
5                   the Commissioner of the RCMP  
6                   to ensure that operational  
7                   policies are in place to  
8                   guide members. It is also  
9                   the responsibility of the  
10                  Commissioner to ensure that  
11                  all investigations with  
12                  respect to matters that fall  
13                  under subsection 6(1) of the  
14                  *Security Offences Act* and  
15                  investigations related to a  
16                  terrorist offence or  
17                  terrorist activity, as  
18                  defined in section 2 of the  
19                  *Criminal Code of Canada* be  
20                  centrally coordinated at RCMP  
21                  National Headquarters. Such  
22                  central coordination will  
23                  enhance the Commissioner's  
24                  operational accountability  
25                  and in turn, will enhance



1                   ministerial accountability,  
2                   by facilitating the  
3                   Commissioner's reporting to  
4                   the Minister."

5                   Now, this new direction, what was  
6                   the problem that the direction was attempting to  
7                   deal with? What we are talking about here is  
8                   ensuring that operational policies are in place to  
9                   guide members in, really, national security  
10                  investigations; and, secondly, a direction that  
11                  these national security investigations be  
12                  centrally headquartered -- centrally located at  
13                  headquarters.

14                  Was there a problem that this  
15                  direction was attempting to deal with in demanding  
16                  this new direction?

17                  MR. LOEPPKY: Prior to 9/11 we had  
18                  not experienced the type of an incident that 9/11  
19                  produced. We had had some investigations touching  
20                  on criminal investigations dealing with national  
21                  security. But in terms of a catastrophic event  
22                  such as this, 9/11 was the first time.

23                  We had a small core of people  
24                  working in headquarters on 9/11; 21, as I  
25                  mentioned. We were not as effective at that point

1 in terms of having the national coordination that  
2 was required to truly have a very comprehensive  
3 picture in terms of the situation out there.

4 We have heard in a variety of  
5 venues, 9/11 Commission in the United States,  
6 where they didn't bring the information together  
7 enough. We had started to do a lot more central  
8 coordination.

9 But this was in response to the  
10 concern that the coordination of these high risk,  
11 highly sensitive investigations be very much  
12 coordinated from the centre to ensure that we are  
13 addressing the right threats but also to ensure  
14 that it was more of a hands-on approach.

15 MR. CAVALLUZZO: The date of the  
16 direction is November 4, 2003, which is the very  
17 same date that Mr. Arar held a press conference  
18 upon his return from Syria. So some would suggest  
19 that this direction is more in relation to that  
20 incident rather than 9/11.

21 Could you elaborate on that?

22 MR. LOEPPKY: The discussion  
23 around the creation of these ministerial  
24 directives had been ongoing between various staff  
25 personnel within my organization and the

1 Minister's area for approximately nine months, I  
2 would say. It was to ensure that the direction  
3 was something that was appropriate.

4 MR. CAVALLUZZO: So nine months  
5 would be some time early in 2003 that you started  
6 discussing this.

7 In paragraph F in terms of  
8 "Accountabilities", it says:

9 "As part of the  
10 accountability process, the  
11 Minister will be advised or  
12 informed regarding certain  
13 RCMP investigations with  
14 respect to matters that fall  
15 under subsection 6(1) of the  
16 Security Offences Act, and  
17 investigations related to a  
18 terrorist offence ..."

19 And then it goes on:

20 "The Commissioner of the RCMP  
21 shall exercise his judgment  
22 to inform the Minister of  
23 high profile RCMP  
24 investigations or those that  
25 give rise to controversy."

1                   Would you say that the Arar  
2                   situation is a high profile investigation?

3                   MR. LOEPPKY:   The investigation  
4                   obviously is high profile, became high profile,  
5                   but this was really designed to provide direction  
6                   so that government would have a high level  
7                   understanding if there was a major threat to the  
8                   security of Canada that could have national  
9                   impact, without involving the Minister in  
10                  day-to-day operational decision-making with  
11                  respect to the actual next steps in that  
12                  operational investigation, to avoid the perception  
13                  of political interference.

14                 MR. CAVALLUZZO:   The next  
15                  ministerial directive deals with agreements and  
16                  cooperation with other agencies, including foreign  
17                  agencies.

18                 I am referring now to the second,  
19                  the directive entitled "Arrangements and  
20                  Cooperation".

21                 MR. LOEPPKY:   Yes.

22                 MR. CAVALLUZZO:   Once again, as  
23                  well, signed November 4, 2003?

24                 MR. LOEPPKY:   Yes.

25                 MR. CAVALLUZZO:   In paragraph A it

1           says:

2                           "This direction establishes  
3                           the process for RCMP to  
4                           follow when entering into an  
5                           arrangement with foreign  
6                           security or intelligence  
7                           organizations for the purpose  
8                           of performing its duties and  
9                           functions with respect to  
10                          matters that fall under  
11                          subsection 6(1) of the  
12                          Security Offences Act, and  
13                          those related to a terrorist  
14                          offence or terrorist  
15                          activity ..."

16                         It goes on:

17                           "The RCMP may, with the  
18                           Minister's prior approval,  
19                           enter into a written or oral  
20                           arrangement, or otherwise  
21                           cooperate with foreign  
22                           security or intelligence  
23                           organizations. This  
24                           direction is in addition to  
25                           the Ministerial Directive on

1 RCMP Agreements, dated April  
2 5, 2002."

3 What was this direction in  
4 response to? What problem was the Minister  
5 attempting to cure, if any, by requiring, first of  
6 all, prior approval of the Minister before the  
7 RCMP entered into any arrangement with a foreign  
8 security intelligence agency?

9 MR. LOEPPKY: This direction was  
10 provided to ensure that before the RCMP entered  
11 into any new arrangements with a foreign  
12 intelligence agency, the Minister would be advised  
13 and would provide his or her approval.

14 Security intelligence  
15 relationships between Canada and foreign countries  
16 rightfully fall under the domain of CSIS, and this  
17 was to ensure that where it was necessary or where  
18 there might be a need to establish a relationship  
19 with a foreign security intelligence agency, the  
20 Minister would be advised that the input of  
21 Foreign Affairs could be sought about the  
22 appropriateness of establishing that type of  
23 relationship and to ensure that the lines were  
24 clear.

25 MR. CAVALLUZZO: So what this was

1           saying into the RCMP was that if you are going to  
2           enter into any kind of arrangement, whether it be  
3           written or oral, with the CIA for example, you  
4           needed the Minister's approval?

5                           MR. LOEPPKY: This document refers  
6           to new arrangements that we would enter into. And  
7           if we were entering into a new arrangement, that  
8           would apply.

9                           MR. CAVALLUZZO: It goes on in B  
10          and says:

11                                   "The Commissioner will manage  
12                                   such arrangements or  
13                                   cooperation subject to any  
14                                   conditions imposed by the  
15                                   Minister."

16                           MR. LOEPPKY: Yes.

17                           MR. CAVALLUZZO: And then C says:  
18                                   "This direction does not  
19                                   pertain to any arrangement or  
20                                   cooperation with foreign law  
21                                   enforcement agencies or  
22                                   organizations."

23                           MR. LOEPPKY: That's right.

24                           MR. CAVALLUZZO: What it means is  
25          if we apply it to the United States, this

1 directive applies to the CIA but not the FBI.

2 Is that correct?

3 MR. LOEPPKY: Generally. I just  
4 want to provide a little bit of clarification.

5 The recognition in this directive  
6 that law enforcement needs to work together to  
7 share on a case-by-case basis where critical time  
8 is of the essence, those are appropriate  
9 arrangements as long as they are consistent with  
10 the Charter, with the Privacy Act, and respecting  
11 the rights of individuals.

12 So that is why law enforcement  
13 arrangements were deliberately excluded.

14 This direction relates to new  
15 agreements. So in terms of ongoing arrangements,  
16 I am not sure it was meant no apply to that.

17 MR. CAVALLUZZO: I am just going  
18 to take you to that.

19 If we go on to the next page, it  
20 talks about the considerations that will be taken  
21 into account if you are going to enter into an  
22 arrangement with a foreign intelligence agency.

23 It says:

24 "The following guidelines  
25 will be adhered to when



1 entering into an  
2 arrangement."

3 First of all:

4 "Arrangements may be  
5 established and maintained as  
6 long as they remain  
7 compatible with Canada's  
8 foreign policy towards the  
9 country or international  
10 organization in question,  
11 including consideration of  
12 that country or  
13 organization's respect for  
14 democratic or human rights,  
15 as determined in ongoing  
16 consultations with the  
17 Department of Foreign Affairs  
18 and International Trade  
19 (DFAIT)."

20 So as the first consideration, you  
21 are going to consult with DFAIT, and you are going  
22 to ensure that who you are dealing with has  
23 reasonable respect for democratic or human rights.

24 MR. LOEPPKY: And I neglected to  
25 mention it, but obviously we would consult or

1           liaise with CSIS as well.

2                           MR. CAVALLUZZO: Okay. It goes  
3           on. Secondly:

4                           "Arrangements may be  
5                           established and maintained  
6                           when such contacts are in the  
7                           interests of the security of  
8                           Canada, further to the RCMP  
9                           investigations relating to  
10                          subsection 6(1) of the  
11                          Security Offences Act ..."

12                          And so on and so forth. That is  
13           the second consideration that is in the interests  
14           of security of Canada?

15                          MR. LOEPPKY: Yes.

16                          MR. CAVALLUZZO: And then finally:

17                          "Arrangements will respect  
18                          the applicable laws and  
19                          practices relating to the  
20                          disclosure of personal  
21                          information."

22                          That is the privacy laws that we  
23           will come to. Is that right?

24                          MR. LOEPPKY: Yes.

25                          MR. CAVALLUZZO: Then it goes on

1 and talks about the role of CSIS.

2 It says:

3 "On matters related to  
4 threats to the security of  
5 Canada, as defined by the  
6 CSIS Act, CSIS is the lead  
7 agency for liaison and  
8 cooperation with foreign  
9 security or intelligence  
10 agencies. In this regard,  
11 the RCMP will inform CSIS of  
12 any and all exchanges between  
13 the RCMP and a foreign  
14 security or intelligence  
15 service, unless the foreign  
16 party precludes such  
17 notification."

18 So what this says is that CSIS is  
19 the lead agency with foreign intelligence agencies  
20 and, secondly, if the RCMP has any exchange of  
21 information with the foreign security intelligence  
22 agency, you must notify CSIS?

23 MR. LOEPPKY: Yes.

24 MR. CAVALLUZZO: Unless there is a  
25 caveat otherwise.

1                   What is the problem here? Why is  
2 the Minister giving in direction at this point in  
3 time?

4                   MR. LOEPPKY: It was designed to  
5 accommodate a situation where there might be a  
6 rare exception, where an organization might want  
7 to share information with the law enforcement  
8 community but not share that information if we  
9 were going to be sharing it further.

10                  While I can't imagine that kind of  
11 situation where we would not share with CSIS,  
12 where they would not be involved, if it was a  
13 situation where the option was that if we give you  
14 this information and you pass it on, we are not  
15 giving it to you and it could have serious  
16 implications, significant consequences for Canada,  
17 then in those circumstances it was felt  
18 appropriate that there be that exception. But it  
19 clearly is an exception.

20                  MR. CAVALLUZZO: The way I read  
21 it, it seems to me -- and I am just a layperson in  
22 this regard. The way I read it, it seems to be  
23 saying, okay, when a Canadian agency is dealing  
24 with a foreign security intelligence agency, CSIS  
25 is to take the lead.

1 MR. LOEPPKY: That is correct.

2 MR. CAVALLUZZO: And RCMP, if you  
3 have any exchanges with that foreign agency, you  
4 better tell CSIS about it.

5 MR. LOEPPKY: That is correct.

6 MR. CAVALLUZZO: Am I interpreting  
7 that correctly?

8 MR. LOEPPKY: Yes.

9 MR. CAVALLUZZO: And once again I  
10 am saying: Was there a problem which gave rise to  
11 this particular directive which expressly deals  
12 with the problem I have stated?

13 MR. LOEPPKY: The direction was to  
14 ensure that there was clarity of mandate and  
15 relationships.

16 MR. CAVALLUZZO: So there was no  
17 clarity prior to that time?

18 MR. LOEPPKY: There was. The  
19 issue was where situations might arise where  
20 information of a criminal nature that would  
21 further a criminal investigation was relayed to  
22 the police, there was a recognition that CSIS was  
23 the lead agency for security intelligence and that  
24 they should be clearly involved in that.

25 MR. CAVALLUZZO: Okay. It goes on

1 in the last page to provide that:

2 "The RCMP will maintain  
3 records relating to foreign  
4 arrangements, including a  
5 written record of terms and  
6 understandings of oral  
7 arrangements. The RCMP will  
8 indicate its means of  
9 periodic evaluation or audit  
10 of the arrangement, and the  
11 provision for its  
12 cancellation. The  
13 Commissioner will report  
14 annually to the Minister on  
15 the status of the RCMP's  
16 written and oral arrangements  
17 with foreign security or  
18 intelligence organizations."

19 MR. LOEPPKY: Yes.

20 MR. CAVALLUZZO: So this is a new  
21 requirement now saying that if you are going to  
22 have any arrangement whatever, oral or written,  
23 with a foreign intelligence agency, you had better  
24 maintain records of it and on an annual basis you  
25 had better report to the Minister about it.

1 MR. LOEPPKY: We will be providing  
2 an annual report.

3 MR. CAVALLUZZO: Was there any  
4 particular problem which gave rise to this new  
5 requirement?

6 MR. LOEPPKY: No. I think it was  
7 just a clear picture that the Minister would have  
8 in terms of the arrangements that might exist  
9 between the RCMP and any security intelligence  
10 organizations.

11 MR. CAVALLUZZO: The final  
12 direction is that:

13 "Should any potentially  
14 controversial issue arise  
15 from such arrangements, the  
16 Commissioner shall advise the  
17 Minister in a timely  
18 fashion."

19 MR. LOEPPKY: Yes.

20 MR. CAVALLUZZO: The final --

21 THE COMMISSIONER: Before you  
22 leave that, you mentioned several times that this  
23 only applies to new arrangements.

24 MR. LOEPPKY: New arrangements,  
25 yes.

1 THE COMMISSIONER: After the date  
2 of the directive?

3 MR. LOEPPKY: Yes.

4 THE COMMISSIONER: So whatever  
5 existing arrangements are out there, either  
6 written or oral, there is no record of those kept  
7 as is required by paragraph G here. Is  
8 that right?

9 MR. LOEPPKY: That is correct,  
10 although there are extremely few, if any,  
11 arrangements that existed before. This is to look  
12 at new arrangements.

13 I would be prepared, Your Honour,  
14 to respond to that in camera.

15 THE COMMISSIONER: Okay.

16 MR. CAVALLUZZO: Just stopping  
17 there, it does talk about -- and it may be unfair  
18 to you not being a lawyer, but -- it is not unfair  
19 you not being a lawyer, but in any event --  
20 --- Laughter

21 MR. CAVALLUZZO: The RCMP will  
22 maintain records relating to foreign arrangements,  
23 including a written record of the terms and  
24 understandings of oral arrangements.

25 That seems to indicate to me that



1           it applies to all arrangements, whether you  
2           entered into it prior to this directive or not.

3                       MR. LOEPPKY: We will be reporting  
4           on those.

5                       MR. CAVALLUZZO: Okay. Just so I  
6           understand, you will be reporting on existing  
7           understandings that you have --

8                       MR. LOEPPKY: Yes.

9                       MR. CAVALLUZZO: -- even those  
10          that predated November 4, 2003?

11                      MR. LOEPPKY: Yes.

12                      MR. CAVALLUZZO: Okay.

13                      THE COMMISSIONER: Sorry to  
14          interrupt.

15                      Is an arrangement, as it is  
16          contemplated in this directive, something that is  
17          more formal than just a simple exchange of  
18          information of the type that Mr. Cavalluzzo  
19          mentioned before the lunch break?

20                      MR. LOEPPKY: This directive  
21          contemplates an ongoing relationship where we  
22          might be having an exchange of information with a  
23          security intelligence agency and that is what  
24          would be reported.

25                      Am I answering your question?

1 THE COMMISSIONER: No. We heard  
2 there are situations where an individual officer  
3 might exchange and provide information to a  
4 foreign agency. Is that considered to be an  
5 arrangement as is contemplated by this directive,  
6 or is that something that the individual officer  
7 can go ahead and do regardless of this directive?

8 MR. LOEPPKY: No. Our points of  
9 contact are law enforcement-to-law enforcement,  
10 case-by-case.

11 But if I could use an example, if  
12 there was some information provided to us from a  
13 security intelligence agency, we would notify  
14 CSIS; but if it related to a criminal type of  
15 event that was about to happen, we would respond  
16 to it. So that, in my view, would qualify as a  
17 contact. It is not really an ongoing arrangement;  
18 it is a case-by-case type of response.

19 MR. CAVALLUZZO: Maybe I can help  
20 you, Commissioner, this way.

21 MR. CAVALLUZZO: What I  
22 contemplate this means -- and help me if I'm  
23 wrong -- is that if you are going to have an  
24 arrangement with a foreign intelligence agency,  
25 whether oral or written, there will be an initial

1           arrangement that says: Okay, in the future we  
2           will cooperate exchanging this kind of  
3           information, subject to conditions, and so on and  
4           so forth. Then on a day-by-day -- that is what  
5           would have to be encaptured by this direction.

6                           But on a day-by-day basis under  
7           that arrangement, officers may be exchanging  
8           information at the field level which wouldn't  
9           require the okay of the Minister

10                          MR. LOEPPKY: That's correct.

11                          MR. CAVALLUZZO: Is that the way  
12           it works?

13                          MR. LOEPPKY: In compliance with  
14           the law and with the privacy rights.

15                          MR. CAVALLUZZO: Yes. So that is  
16           what it means?

17                          MR. LOEPPKY: Yes.

18                          MR. CAVALLUZZO: It is the initial  
19           understanding or arrangement which must be  
20           approved and which is captured by this direction,  
21           but on an ongoing or ad hoc basis operating under  
22           that arrangement the individual officer wouldn't  
23           require approval, so long as the exchange of  
24           information complies with all the other  
25           guidelines?

1 MR. LOEPPKY: That's correct.

2 But I think it is important to  
3 point out, as I think Mr. Elcock might have  
4 mentioned the other day, that not all  
5 organizations are receptive to actually entering  
6 into a written agreement, but it would still be  
7 reported on.

8 MR. CAVALLUZZO: Right. And you  
9 said that -- in fact Mr. Elcock, I think said, and  
10 correct me if I'm wrong, that most arrangements  
11 with foreign intelligence agencies are not in  
12 writing.

13 Is that your understanding?

14 MR. LOEPPKY: I believe that's  
15 what he said. I didn't watch him, but I think  
16 that's what he said.

17 MR. CAVALLUZZO: Okay. Well,  
18 let's forget about what he said.

19 Is that your understanding that  
20 most arrangements that the RCMP have, if any, with  
21 foreign intelligence agencies, are not in writing?

22 MR. LOEPPKY: That's correct. But  
23 we have very little -- very few dealings with  
24 security intelligence agencies.

25 MR. CAVALLUZZO: Okay, then let's

1 deal with arrangements or agreements or  
2 understandings you have with foreign law  
3 enforcement agencies.

4 Are most of those not in writing?

5 MR. LOEPPKY: Most of those are  
6 police-to-police, case-by-case sharing of  
7 information, case specific compliance with the  
8 Privacy Act and --

9 MR. CAVALLUZZO: But you haven't  
10 answered the question.

11 Are they not in writing, the  
12 majority of those not in writing?

13 MR. LOEPPKY: The majority are not  
14 in writing.

15 MR. CAVALLUZZO: Okay.

16 MR. LOEPPKY: But it would be  
17 impractical to have an agreement where the police  
18 officer working in Surrey, British Columbia has to  
19 have an agreement in place to deal with somebody  
20 in Blaine, Washington three miles away.

21 Information, it's not something  
22 that you can -- we would like to live in a perfect  
23 world, but we live in a world of law enforcement  
24 where there is urgent demands to respond to public  
25 safety and so information is exchanged consistent

1 with the law, consistent with the Charter and in  
2 compliance with the greater needs of public  
3 safety, and that's important.

4 MR. CAVALLUZZO: Okay. The final  
5 direction is related to this description we saw  
6 earlier, "Sensitive sectors". What that states  
7 is: This direction will guide investigations of  
8 the RCMP in relation to security offences and  
9 terrorist offences.

10 Then it goes on it says: special  
11 care is required with respect to RCMP  
12 investigations conducted relating to those kinds  
13 of offences.

14 Then it goes on:

15 "... which have an impact on,  
16 or which appear to have an  
17 impact on, fundamental  
18 institutions of Canadian  
19 society. Primary among these  
20 institutions are those in the  
21 sectors of the academia,  
22 politics, religion, the media  
23 and trade unions."

24 Then it goes on in "C"  
25 relating to university or post-secondary campuses.

1           It says the RCMP shall:

2                                 "...not impact upon the free  
3                                 flow and exchange of ideas  
4                                 normally associated with an  
5                                 academic milieu.

6                                 Furthermore, the activities  
7                                 of the RCMP shall not  
8                                 adversely affect the rights  
9                                 or freedoms of persons  
10                                associated with academic  
11                                institutions."

12                               Then, finally:

13                                "It is the responsibility of  
14                                Assistant Commissioner,  
15                                Criminal Intelligence  
16                                Directorate at the RCMP  
17                                National Headquarters ... to  
18                                approve all RCMP  
19                                investigations involving  
20                                these sensitive sectors of  
21                                Canadian society."

22                                We saw that reflected in that  
23                                guideline which was an amendment which  
24                                specifically stated that?

25                                MR. LOEPPKY:   The policy

1 amendment.

2 MR. CAVALLUZZO: The policy  
3 amendment.

4 MR. LOEPPKY: That's correct.

5 MR. CAVALLUZZO: These, once again  
6 directions, were in November 2003 and they are  
7 still in effect today?

8 MR. LOEPPKY: They are.

9 MR. CAVALLUZZO: I would like to  
10 come to the next topic which will be agreements  
11 and arrangements that we have just been talking  
12 about.

13 MR. LOEPPKY: Yes.

14 MR. CAVALLUZZO: I would like to  
15 refer initially to the Ministerial Directive on  
16 RCMP Agreements, Tab 23.

17 --- Pause

18 MR. CAVALLUZZO: This is dated  
19 April 5, 2002?

20 MR. LOEPPKY: Yes.

21 MR. CAVALLUZZO: It is the  
22 directive that is referred to in the National  
23 Security Directive that we just referred to, the  
24 very first one --

25 MR. LOEPPKY: Yes.



1 MR. CAVALLUZZO: -- that said:  
2 This will be in addition to the RCMP directive  
3 April 5, 2002.

4 What this says, in paragraph "B"  
5 it says:

6 "This directive deals with  
7 agreements entered into by  
8 the RCMP to provide  
9 services..."

10 And I would ask you to underline  
11 the word "information":

12 "...to provide ...  
13 information, assets, or  
14 assistance to, or receive  
15 same..."

16 Which is including information:

17 "...from, other departments,  
18 agencies and institutions of  
19 municipal, territorial,  
20 provincial, federal or  
21 foreign governments, or with  
22 international organizations."

23 Okay? So that is a very broad  
24 sweep that includes exchanging information, either  
25 giving or receiving, with foreign governments,

1 foreign institutions, agencies, and so on.

2 It goes on:

3 "The purpose of this  
4 directive is to provide  
5 ministerial guidance to the  
6 RCMP regarding accountability  
7 and consultation requirements  
8 for RCMP agreements."

9 It then goes on to define  
10 "agreement". It says:

11 "For the purpose of this  
12 directive, the term  
13 `agreement' shall be  
14 understood to include the  
15 terms `arrangement',  
16 `understanding', or any other  
17 similar term, and to exclude  
18 commercial or contracts or  
19 other licensing  
20 arrangements."

21 Then in "E" it says:

22 "These agreements may take  
23 any written form, including  
24 an exchange of letters.

25 In terms of the principles and

1 standards that are applicable it is provided for  
2 on the next page, and it says:

3 "The following principles  
4 shall govern RCMP  
5 agreements:"  
6 1. ... shall be supported by  
7 legal advice.  
8 2. Advice, from the  
9 Department of Foreign Affairs  
10 based on Canadian foreign  
11 policy considerations, must  
12 accompany any RCMP agreement  
13 with a foreign agency.  
14 3. Where the Department of  
15 Foreign Affairs advises that  
16 it would not be in the best  
17 interest of Canada's foreign  
18 policy either to enter into a  
19 proposed agreement or to let  
20 an existing RCMP agreement  
21 continue in effect with a  
22 foreign entity, the RCMP  
23 Commissioner..."

24 shall raise that with the Solicitor General.

25 "4. The RCMP is to keep an

1 inventory of all RCMP  
2 agreements, amendments  
3 thereto, audit reports and  
4 any other correspondence  
5 relating to an agreement in a  
6 records system so that the  
7 above correspondence can be  
8 easily reviewed.  
9 5. Except as provided for  
10 hereinafter, all RCMP  
11 agreements shall be signed by  
12 the Commissioner of the RCMP  
13 or his/her delegate."

14 Then the next page, on page 3:

15 "RCMP agreements must be in  
16 written form and contain..."

17 a number of things such as:

18 "A statement of the purpose  
19 and/or objectives of the  
20 agreement.

21 2. A full description of the  
22 obligations..."

23 And so on and so forth.

24 Then the final part deals with  
25 consultation between the Commissioner and the

1           Solicitor General in respect of certain agreements  
2           such as with elected officials.

3                                 "Where the RCMP Commissioner  
4                                 determines that consultation  
5                                 is required for any reason  
6                                 including the possibility  
7                                 that an agreement may receive  
8                                 attention in Parliament or  
9                                 from the media."

10                                The questions that I have for you,  
11           Deputy Commissioner, are: The way I read this  
12           directive dated April 5, 2002 is that RCMP  
13           agreements must be in writing and there must be an  
14           inventory or a record of these RCMP agreements  
15           maintained.

16                                The question that I have is: From  
17           what you are saying, if most of our agreements  
18           with foreign, either enforcement agencies or  
19           intelligence agencies, are not in writing, does  
20           that not fly in the face of this clear directive?

21                                MR. LOEPPKY: This agreement was  
22           issued in 2002 to replace an agreement, a very  
23           lengthy agreement that had been issued I believe  
24           in 1981, that dealt with the RCMP entering into  
25           agreements for the sharing of a variety of things,

1 training, technology, those types of things.

2 This particular agreement is not  
3 focused on the day-to-day information,  
4 case-by-case police exchanges of criminal law  
5 enforcement information. This is focused on  
6 entering into agreements that would bind the  
7 Government of Canada to an obligation, thus the  
8 need for legal advice and those types of things.

9 MR. CAVALLUZZO: Where does it say  
10 that? I haven't read that.

11 MR. LOEPPKY: I will just -- there  
12 are a couple of more points, if I may

13 MR. CAVALLUZZO: I'm sorry.

14 MR. LOEPPKY: It outlines what  
15 should be in an agreement and it takes into  
16 consideration the political considerations that  
17 must be considered. It relates to the multitude  
18 of agreements that exist where, in fact, there  
19 could be an obligation.

20 This particular directive was  
21 created to replace a much more complex one and I  
22 believe it says this replaces the previous  
23 agreement.

24 Where this agreement came out of  
25 was that there was a discussion about sharing our

1           paint chip data bank with the U.S. and the  
2           question became: Did the Minister in fact need to  
3           sign that?

4                               Consequently, a new directive was  
5           issued that provided broad guidelines where the  
6           Force would be required to -- what they would need  
7           to consider before entering into an agreement that  
8           would bind the organization. Whether that was an  
9           information exchange like providing access to our  
10          DNA data bank or that type of thing.

11                              And also taking into  
12          consideration the sensitivity around providing  
13          training to countries that perhaps Foreign Affairs  
14          felt did not meet with our Foreign Affairs policy  
15          and to ensure that we were aligned with the  
16          Government of Canada.

17                              MR. CAVALLUZZO: Let me read once  
18          again, and I am going to cut out the unnecessary  
19          verbiage in paragraph 1.B.

20                              It says:

21                                        "This directive deals with  
22                                        agreements entered into by  
23                                        the RCMP to provide ...  
24                                        information ..."

25                                        Or receive information.

1                    "... from other departments,  
2                    agencies and institutions of  
3                    ... foreign governments, or  
4                    with international  
5                    organizations."

6                    MR. LOEPPKY: The reference in  
7                    this particular directive is to databanks, to  
8                    information exchanges that are outside of the  
9                    day-to-day operational police contacts that take  
10                   place on a daily basis along the 5,000-mile  
11                   border. These are focused on the content, what an  
12                   agreement should include when it is contemplated;  
13                   the issues that need to be addressed and how it  
14                   should be structured.

15                   MR. CAVALLUZZO: So what you are  
16                   saying is that any kind of arrangement, for  
17                   example, you had with an American law enforcement  
18                   agency could just be oral, and on a day-to-day  
19                   basis you could have a law enforcement agency in  
20                   the United States phoning an RCMP officer and  
21                   saying, "I need this information", and the RCMP  
22                   officer will make the decision as to whether he or  
23                   she will provide that information?

24                   MR. LOEPPKY: The information is  
25                   not exchanged in a vacuum. It is on a



1 case-by-case basis where there is a specific  
2 reason why that information is requested. Then  
3 the test is applied, the judgment of the  
4 individual, and the knowledge in terms of: Is it  
5 appropriate to share that information? Is it  
6 consistent with our laws? Is it consistent with  
7 the protecting the rights of individuals?

8 And then if those tests are met,  
9 and there is some need to share case-specific  
10 information, that will take place. But of course  
11 there are checks and balances in place such as  
12 supervisors, audits and those types of things.

13 MR. CAVALLUZZO: And what we are  
14 talking about, now that the RCMP's  
15 responsibilities have been significantly increased  
16 as a result of the anti-terrorism legislation, we  
17 could be talking about not just criminal  
18 intelligence that is being exchanged but security  
19 intelligence as well, since that is in your  
20 bailiwick as a result of having to prevent  
21 terrorist activity?

22 MR. LOEPPKY: Well, prevention may  
23 very well include information about potential  
24 criminal activity, and security intelligence is  
25 clearly the role of CSIS to exchange that with

1 foreign security agencies.

2 Our role is the exchange of  
3 criminal intelligence or pieces of information  
4 that help to build or may in fact support a  
5 criminal investigation.

6 MR. CAVALLUZZO: Let me stop you  
7 there.

8 Is it fair to say then, if I can  
9 go back to Mr. Jim Jones, that if Mr. Jim Jones  
10 was not under investigation for any criminal  
11 activity -- right? The RCMP officer has  
12 information on Jim Jones because once again he may  
13 have been seen with the target of the  
14 investigation.

15 Would it be improper for the RCMP  
16 officer to give information about Mr. Jim Jones  
17 because that is not criminal intelligence?

18 MR. LOEPPKY: It depends on the  
19 context in which that information is exchanged.

20 While a casual contact of a  
21 particular organized crime target, just that  
22 simple contact might not lead to the inference  
23 that he or she is involved in criminal activity.  
24 But then if that individual showed up in the U.S.  
25 and was seen in the presence of a major organized

1 crime target, our information would be very much  
2 reflective of we have no information on this  
3 individual but he was seen in the company of  
4 somebody that is a very high profile target here.

5 So it is done in that context.

6 MR. CAVALLUZZO: You are not  
7 listening to the question. We haven't reached  
8 that stage.

9 We are at the stage where Jim  
10 Jones appears in SCIS, in the centralized  
11 database, and the only reason that Jim Jones is  
12 there is because he may have been seen with a  
13 target. So clearly Mr. Jim Jones is not engaged  
14 in any criminal activity whatever or even  
15 suspected of engaging in criminal activity.

16 Would it be improper in those  
17 circumstances for an RCMP officer to give  
18 information about Jim Jones to a foreign  
19 enforcement agency if requested for such  
20 information?

21 MR. LOEPPKY: It would require the  
22 officer to put the appropriate judgment to that  
23 information that is passed on; the fact that his  
24 entry in our file does not reflect any criminal  
25 behaviour or activity on his part.

1                   It has to be put in the proper  
2                   context to ensure that the right message is  
3                   conveyed: Jimmy Jones is not a criminal. There  
4                   is nothing that we have that is criminal.  
5                   However, this is the context in which his name  
6                   showed up in the file.

7                   MR. CAVALLUZZO: If you agree that  
8                   even with all those qualifications, aren't you  
9                   infringing upon the rights of Mr. Jones?

10                  Mr. Jones is engaged in no  
11                  criminal activity, is not suspected of having  
12                  engaged in any criminal activity. Why should a  
13                  Canadian organization give that information to a  
14                  foreign agency?

15                  MR. LOEPPKY: Information sharing  
16                  is the lifeblood of successful investigations, and  
17                  pieces of information need to be put together and  
18                  may ultimately result in putting that complete  
19                  picture together about some activity.

20                  On the other hand, as I mentioned  
21                  earlier, there are investigations where many  
22                  people may come in contact with someone and they  
23                  are found to be non-players and they drift out of  
24                  the picture.

25                  MR. CAVALLUZZO: But the problem,

1 Deputy Commissioner, is that when you may have  
2 found out that Mr. Jones was a non-player, in the  
3 interim something may have happened to Mr. Jones  
4 as a result of that exchange of information.

5 MR. LOEPPKY: But the information,  
6 when it is exchanged, it is exchanged with the  
7 proper context: that Mr. Jones may have come to  
8 somebody's attention but that there is no  
9 inference that he in fact is involved in any kind  
10 of activity.

11 It is the context, the  
12 case-by-case scenario that has to be taken into  
13 consideration.

14 MR. CAVALLUZZO: I would like to  
15 move on to Tab 25. This is your policy on  
16 agreements. It is called "Administrative Manual -  
17 RCMP Agreements".

18 MR. LOEPPKY: Yes.

19 MR. CAVALLUZZO: This, I guess, is  
20 what the Commissioner's responsibility is in terms  
21 of incorporating the directives.

22 It provides under "Policy":

23 "All agreements ..."

24 And then it says:

25 "... other than personnel

1                   secondment ... whereby the  
2                   RCMP undertakes a commitment  
3                   with another party to provide  
4                   or receive services or  
5                   assistance or engage in joint  
6                   activities, will conform to  
7                   the Ministerial Directive on  
8                   RCMP Agreements ..."

9                   Which is what we just referred to.  
10                  It refers to:

11                   "Agreement/Understanding  
12                   means a signed or unsigned  
13                   written record of  
14                   understanding, other than a  
15                   contract ..."

16                  It then refers to the kinds of  
17                  agreements that it applies to: memorandum of  
18                  understanding, letter of understanding, and so on  
19                  and so forth.

20                  Once again, this would appear to  
21                  suggest that agreements that the RCMP enters into,  
22                  where you undertake a commitment with another  
23                  party to provide or receive services or assistance  
24                  or to engage in joint activities, must comply with  
25                  the directive which says it must be in writing.

1                   I guess your position would be  
2           that this does not apply to any arrangement you  
3           may have with a foreign agency?

4                   MR. LOEPPKY:  These are very much  
5           the technical sharing arrangements on a variety of  
6           police support areas that exist.

7                   MR. CAVALLUZZO:  What you are  
8           saying is that it would not apply to an agreement  
9           for sharing information?

10                  MR. LOEPPKY:  No.  Again, these  
11           are written agreements, obligations where  
12           liability may very well be attached in terms of  
13           training databanks, DNA.  There are many areas  
14           where we have agreements in place that commit the  
15           Government of Canada, and those are the ones that  
16           need to be in writing and have the benefit of that  
17           need to be in writing and have the benefit of that  
18           legal review to make sure that we are not  
19           obligating the government to something that may  
20           not be acceptable.

21                  MR. CAVALLUZZO:  The final area  
22           that I want to take you through -- we have moved  
23           from agreements and you have explained the  
24           position that these agreements do not apply.  I  
25           want to deal now with general principles on

1 information sharing.

2 The first question I have is:  
3 Could you tell us the impact of 9/11 on the number  
4 of foreign arrangements which the RCMP has in  
5 respect of sharing information? Did it increase  
6 substantially?

7 MR. LOEPPKY: No.

8 MR. CAVALLUZZO: So it didn't  
9 increase at all?

10 MR. LOEPPKY: It depends on how  
11 you characterize arrangement. A case-by-case  
12 exchange of information where information that we  
13 receive assists and benefits our criminal  
14 investigation, certainly those increased. But  
15 those are case-specific exchanges where because of  
16 the file load, they would naturally go up, given  
17 that most of our investigations are international  
18 in nature.

19 MR. CAVALLUZZO: But you say a  
20 case-by-case. What about if out of the blue an  
21 officer in an INSET gets a call from some law  
22 enforcement agency in Tahiti, and the Tahitian law  
23 enforcement agency says, "I would like some  
24 information on this particular individual. Can  
25 you help me out?"



1                   Would the RCMP officer on a  
2 case-by-case basis respond?

3                   MR. LOEPPKY: Most international  
4 sharing in those terms takes place through  
5 Interpol. Interpol is an organization that serves  
6 160 nations. The objective of Interpol is to  
7 share information in the interests of public  
8 safety.

9                   So with a country like Tahiti,  
10 criminal law enforcement would almost certainly  
11 come in through the Interpol channel. It is  
12 almost certain that a direct inquiry from Tahiti  
13 to a police officer would not take place. If it  
14 did, we would ensure that it came through our  
15 headquarters.

16                   So Interpol is always the first  
17 avenue. If it was something urgent, then they  
18 would deal with our liaison officer that is  
19 responsible for Tahiti, who would then make an  
20 assessment in conjunction with Foreign Affairs:  
21 is it appropriate that we try to assist, given the  
22 human rights record, given a variety of other  
23 factors?

24                   MR. CAVALLUZZO: Let's look at  
25 your policy.

1                   If you refer to Tab 31, this is  
2 the Operational Manual and it says "Information  
3 Sources".

4                   MR. LOEPPKY: Yes.

5                   MR. CAVALLUZZO: I understand that  
6 this is the current policy.

7                   I would refer to paragraph M.

8                   Unfortunately, the page number on  
9 the top right can't be see, but if you go behind  
10 page 17 of 19 it would be page 18 of 19.

11                   This is a policy of the RCMP?

12                   MR. LOEPPKY: Yes.

13                   MR. CAVALLUZZO: Dealing with  
14 services.

15                   Paragraph M.3's title is  
16 "Enquiries from Foreign Governments that Violate  
17 Human Rights".

18                   MR. LOEPPKY: Yes.

19                   MR. CAVALLUZZO: It says in M.3.a:  
20 "The RCMP will not become  
21 involved or appear to be  
22 involved in any activity that  
23 might be considered a  
24 violation of the rights of an  
25 individual, unless there is a

1                   need to comply with the  
2                   following international  
3                   conventions:"

4                   Then those conventions are set  
5                   out, such as the Conventions on the Prevention and  
6                   Punishment of Crimes Against Internationally  
7                   Protected Persons.

8                   It goes on in M.3.b and says:

9                   "The disclosure of  
10                  information to an agency of a  
11                  foreign government that does  
12                  not share Canada's respect  
13                  for democratic or human  
14                  rights may be considered if  
15                  it:  
16                  1. is justified because of  
17                  Canadian security or law  
18                  enforcement interests,  
19                  2. can be controlled by  
20                  specific terms and  
21                  conditions, and  
22                  3. does not have a negative  
23                  human rights connotation."

24                  Is this the guideline, the  
25                  expectation that is required of an RCMP officer

1           who gets an inquiry from a foreign government in  
2           terms of disclosing information?

3                           MR. LOEPPKY:  The issue of human  
4           rights, dealing with countries who do not have  
5           good human rights records is an extremely  
6           important one.  I want to ensure that it is on the  
7           record that the RCMP, you know, condemns any form  
8           of human rights abuses.  It is contrary to the  
9           Charter.  It is contrary to the values of  
10          Canadians.  It is contrary to the values of the  
11          RCMP.  I think that is absolutely critical that --  
12          and our members are trained from day one about  
13          respecting human rights.

14                           This particular policy, we would  
15          be reluctant to share any type of information.  We  
16          would make sure that the appropriate consultation  
17          was done with Foreign Affairs in terms of seeing  
18          what the human rights record was with our liaison  
19          officer who could perhaps provide a perspective  
20          with CSIS.

21                           But we spoke a little earlier  
22          about policy breaches, and this is to accommodate  
23          that rare exception where, if it was consistent  
24          with our obligations under section 18 to preserve  
25          the peace, to prevent crime, and it took into

1           consideration the implications of human rights  
2           violations, then there might be -- there might  
3           be -- a need at some point to deal with a country  
4           that had less than a perfect human rights record.

5                         If I could perhaps give an  
6           example? If we had a Canadian that was kidnapped  
7           in a country that had a less than acceptable human  
8           rights record and we were in a position to be able  
9           to assist through working with that law  
10          enforcement community, I think -- we would  
11          obviously do the appropriate consultation with  
12          Foreign Affairs, but I think Canadians would  
13          expect that we would do what we could to address  
14          the rights of a Canadian.

15                        The alternative is, if a foreign  
16          country with a less than perfect human rights  
17          record wanted to provide some information about a  
18          catastrophic events that was going on in Canada,  
19          obviously we would regard that information very  
20          carefully. We would consult with others who have  
21          a perspective, such as Foreign Affairs, CSIS. We  
22          would put the appropriate judgment to that  
23          information. But if it meant that not using the  
24          information resulted in a major incident, I think  
25          that we would be in breach of our duty as a peace

1 officer and a public officer not to have at least  
2 responded in some way to that kind of a situation.

3 MR. CAVALLUZZO: Well, let me give  
4 you two hypothetical examples which are more daily  
5 in feature rather than catastrophic events. What  
6 I am referring to here is the policy which says:

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

14 those conventions.

15 I would say, first of all, what  
16 that means to me is that a RCMP officer better not  
17 give any information to a foreign agency where he  
18 or she knows or reasonably suspects that a  
19 Canadian's human rights may be violated.

20 Would you agree with that?

21 MR. LOEPPKY: That's correct.

22 MR. CAVALLUZZO: Now, let me take  
23 you to the next question, and that is: If as an  
24 RCMP officer I have given information on a  
25 Canadian, and after giving that information I

1           subsequently find out that the foreign agency may  
2           use that information to violate the human rights  
3           of a Canadian, what would you expect an RCMP  
4           officer to do in those circumstances?

5                         MR. LOEPPKY:   Just so that I  
6           understand the question, you are suggesting that  
7           the RCMP gave that information directly to that  
8           country?

9                         MR. CAVALLUZZO:  Directly to that  
10          country, not knowing that the information would be  
11          used by that country which would result in a  
12          violation of the human rights of a Canadian.

13                        Upon discovery of that, what would  
14          we expect a RCMP officer to do?

15                        MR. LOEPPKY:   Before the  
16          information is given to that country the  
17          appropriate judgment needs to be applied, the  
18          appropriate background needs to be conducted.  
19          Obviously the potential impacts to the safety of  
20          Canadians, to a violation of Charter rights, those  
21          things need to be considered before the  
22          information is given.

23                        What I was trying to do was  
24          to paint a picture that while it would be nice  
25          to have a black and white situation there may

1 be a case where the potential impact on Canada,  
2 it would be in Canada's interest to work with  
3 that country.

4 MR. CAVALLUZZO: You are not  
5 answering my question. Let me just put it this  
6 way, maybe I am confusing you.

7 This is a situation where the RCMP  
8 officer applies all of the considerations you  
9 talked about.

10 MR. LOEPPKY: Yes.

11 MR. CAVALLUZZO: -- evaluating the  
12 human rights record, and so on -- gives the  
13 information to the foreign country on a Canadian,  
14 subsequently finds out that that foreign country  
15 will or might use that information in a way which  
16 would violate the human rights of that Canadian.

17 What should that RCMP officer do  
18 in those circumstances?

19 MR. LOEPPKY: Well, I would expect  
20 that the due diligence will have been done  
21 beforehand to mitigate any human rights violations  
22 resulting from that information flow, including  
23 passing it through Foreign Affairs or through a  
24 number of other venues that would mitigate that.

25 MR. CAVALLUZZO: But as you say,



1 life is not perfect. What if the RCMP officer  
2 discovers that this information may be used in a  
3 manner which could violate the rights of a  
4 Canadian? What should he or she do?

5 MR. LOEPPKY: First of all, in a  
6 situation like that it would not be a frontline  
7 officer that would be making that kind of  
8 decision. It would be subject to review by  
9 supervisors. It would go through a very thorough  
10 analysis to ensure that the risks of sharing the  
11 information were minimized to the extent possible.

12 It is only the test of what  
13 are the impacts if it doesn't take place? What is  
14 the likelihood of something happening? If on  
15 balance that test wasn't met, the information  
16 wouldn't be shared.

17 MR. CAVALLUZZO: You are not  
18 listening, Deputy Commissioner. I will put it to  
19 you again.

20 This is a situation where all of  
21 the relevant considerations were taken into  
22 account; the risk assessment and so on and it was  
23 decided: Yes, we will give this foreign country  
24 the information. Then subsequent to giving that  
25 information the RCMP officer discovers that that

1 information may be used in a manner which would  
2 violate the human rights of a Canadian, what  
3 obligation at that point in time does the RCMP  
4 officer have, if any?

5 MR. LOEPPKY: Well, I think  
6 the obligation of Canada and the RCMP is certainly  
7 to express -- to register our concern and our  
8 protest.

9 MR. CAVALLUZZO: Thank you.  
10 --- Pause

11 MR. CAVALLUZZO: Mr. Commissioner,  
12 I am moving to another area which I refer to as  
13 giving information and then we are going to deal  
14 with receiving information. This may be an  
15 appropriate time --

16 THE COMMISSIONER: It is five  
17 to 4:00. Well, we are going to then adjourn for  
18 the day.

19 We will be resuming on Monday,  
20 July the 5th. That is the day that we will be  
21 dealing with the disclosure motion that has been  
22 brought by Ms Edwardh on behalf of Mr. Arar.

23 I take it we expect that will take  
24 the better part of the day. I am just trying to  
25 budget our time.

1 MS EDWARDH: I think that would be  
2 a wise estimate.

3 THE COMMISSIONER: Okay. So we  
4 would resume with this examination on Tuesday,  
5 July 6th at 10 o'clock.

6 MR. CAVALLUZZO: That's correct.

7 THE COMMISSIONER: Just so we can  
8 plan ahead, do you have any idea how much longer  
9 you will be, Mr. Cavalluzzo?

10 MR. CAVALLUZZO: I will be  
11 approximately 92 minutes.

12 --- Laughter

13 MR. CAVALLUZZO: I hope to be  
14 finished around the break, the morning break.

15 THE COMMISSIONER: Do you have  
16 any idea, Ms Edwardh, how long you will be at  
17 this stage?

18 MS EDWARDH: The more  
19 Mr. Cavalluzzo does, the more my task shrinks  
20 Mr. Commissioner.

21 I had reasonably expected to be  
22 half a day.

23 THE COMMISSIONER: Okay. Then  
24 Ms McIsaac would be the only -- it is difficult  
25 for you are at this stage to estimate.

1 All I'm thinking of is, in terms  
2 of planning there is some prospect we will finish  
3 on Tuesday with this witness though, it seems to  
4 me, from what I have heard.

5 MR. CAVALLUZZO: I certainly  
6 hope so.

7 THE COMMISSIONER: We will rise  
8 and resume Monday morning, July 5th.

9 --- Whereupon the hearing adjourned at 1552,  
10 to resume on Monday, July 5, 2004  
11 at 1000 / L'audience est ajournée à 1552,  
12 pour reprendre le lundi 5 juillet 2004  
13 à 1000

14

15

16

17

18

19

20

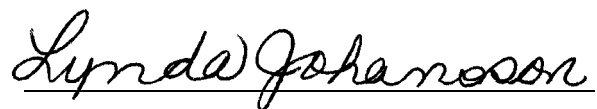
21

22

23

24

25



Lynda Johansson,

C.S.R., R.P.R.