

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



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

**Examen de la Politique
Audience publique**

**Policy Review
Public Hearing**

Commissaire

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

Commissioner

Tenue à:

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

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Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Friday, November 18, 2005

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Mr. Gary Filmon Ms Susan Pollack	Security intelligence Review Committee
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Ms Joanne Weeks	Office of the CSE Commissioner
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Mr. Giuliano Zaccardelli	Royal Canadian Mounted Police
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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Friday, November 18, 2005
3 at 8:50 a.m. / L'audience reprend le vendredi
4 18 novembre à 8 h 50

5 THE COMMISSIONER: We will get
6 underway then. Good morning and welcome to our
7 fourth day of submissions for the policy review.

8 Our first presenters today are
9 from the Office of the CSE Commissioner
10 represented by Mrs. Joanne Weeks and Ms Colette
11 D'Avignon. Welcome.

12 I have had an opportunity of
13 reading the material you have presented. I
14 understand that you have met with counsel from the
15 Commission on occasion and I appreciate very much
16 your interest in the inquiry and the assistance
17 that you have given to us.

18 MS WEEKS: It has been my
19 pleasure, Commissioner.

20 THE COMMISSIONER: I understand,
21 Mrs. Weeks, you have a presentation you wish to
22 start with.

23 MS WEEKS: If I may.

24 THE COMMISSIONER: You may indeed.
25 Then I will have some questions and possibly

1 counsel will have questions as well.

2 MS WEEKS: Fine. Thank you.

3 THE COMMISSIONER: All right.

4 Go ahead, please.

5 SUBMISSIONS

6 MS WEEKS: Thank you,

7 Commissioner O'Connor. Thank you for this

8 opportunity to provide input into your examination

9 of options for review mechanisms for the RCMP

10 national security activities.

11 I am accompanied today by our

12 in-house counsel, Maître Colette D'Avignon.

13 My comments this morning are in

14 addition to those presented by the Communications

15 Security Establishment Commissioner, the Right

16 Honourable Antonio Lamer, retired Chief Justice of

17 Canada, dated last January 2005.

18 By way of introduction, I have

19 been a review practitioner for close to 20 years.

20 First, for two years I was an operational auditor

21 at the Office of the Auditor General. Following

22 that, I was eight years at the Canadian Security

23 Intelligence Service, four of those as Director

24 General of Audit and Review. Latterly, I have

25 been the senior public servant for the last nine

1 years at the Office of the CSE Commissioner.

2 During this period I have had
3 ample time to contemplate the role and functions
4 of review generally and, in particular, the
5 government's approach to reviewing Canada's
6 security and intelligence agencies.

7 Let me add, for greater certainty,
8 that when I use the term "review", I mean ex post
9 review and not oversight. To my mind, oversight
10 can influence operational decision-making and
11 risks diluting managerial responsibility for the
12 outcome of those decisions.

13 Based on my own experience, I
14 would like to leave you with one overall message
15 today, and that is the model in place for
16 reviewing Canada's security and intelligence
17 agencies is a good one and it works.

18 Its main features were first set
19 out in 1984 in the Canadian Security Intelligence
20 Service Act in the provisions that established and
21 created the Security Intelligence Review
22 Committee.

23 In 1996 most of these features
24 served as a basis for the inaugural CSE
25 Commissioner's mandate which was established by

1 Order in Council pursuant to the Inquiries Act.
2 Later, in 2001, they were captured in law through
3 omnibus anti-terrorism legislation that introduced
4 Part V.1 of the National Defence Act, legislating
5 both CSE and the Commissioner's office.

6 The high points of these features
7 include a fully independent review function
8 specific to the agency under review headed by a
9 person or persons appointed by Order in Council
10 for a fixed term with appropriate security
11 clearances;

12 authority to hire staff, legal
13 counsel, subject matter experts, and all with
14 appropriate security clearances;

15 broad, unfettered access to
16 personnel and information under the possession of
17 the agency under review;

18 authority to review all
19 operational activities and to investigate
20 complaints;

21 authority to issue classified
22 reports to the minister responsible as required;
23 and

24 finally, a requirement to provide
25 the same minister with a public annual report for

1 tabling in Parliament.

2 I believe that the Canadian model
3 is flexible and can be readily adapted to
4 particular circumstances, including an appropriate
5 review mechanism for the RCMP's national security
6 activities.

7 Let me state that I am not arguing
8 uniquely in favour of the status quo. What I am
9 saying is that I believe the current model must be
10 recognized for its strengths, which include
11 appropriateness, accountability and effectiveness.

12 Taking appropriateness first, the
13 current model has three essential elements:
14 independence, authority, and access. To my mind,
15 these elements are the cornerstone of any
16 effective intelligence review environment and they
17 must be preserved.

18 The benefit of maintaining the
19 full independence of a review agency is obvious:
20 The agency must be allowed to operate free from
21 interference from anyone, be it the government,
22 the agency under review, complainants, or any
23 other stakeholders.

24 Effective review also requires
25 having the authority and unimpeded access to

1 people, information and operational activity. In
2 the case of the CSE Commissioner, he also still
3 has the Inquiries Act powers conferred in 1996
4 which give him the authority to enter any premises
5 and examine all papers and documents. He may also
6 summon any person and compel the production of
7 evidence. He may also administer an oath and
8 issue a subpoena.

9 In his January submission,
10 Commissioner Lamer wrote, and I quote:

11 "The most important aspect of
12 establishing an independent
13 review function for an
14 organization has, in my
15 opinion, not as much to do
16 with what other review
17 functions do, or how they
18 interact, but rather more to
19 do with the activities and
20 risks associated with the
21 organization to be reviewed.

22 End of quote.

23 Commissioner Lamer, in that
24 comment, was referring to the importance of
25 adapting the review model to fit the mandate,

1 responsibilities and activities of the agency
2 under review. The agency's in the security and
3 intelligence community operate under quite given
4 mandates and legislation, therefore their
5 activities and risks associated with these
6 organizations also differ significantly.

7 CSIS, for example, maintains
8 contact with Canadians on a daily basis through
9 programs of varying degrees of intrusiveness
10 designed to collect information about threats to
11 the security of Canada.

12 Accordingly, SIRC's mandate must
13 be broad and reflect the fact that the
14 relationship between CSIS and the people in Canada
15 is constant, potentially intrusive and at the core
16 of their activities.

17 CSE, on the other hand, has no
18 such relationship with people in Canada. Overall
19 its activities serve Canadian interests by
20 collecting information and intelligence outside
21 Canada's borders, using an array of sophisticated
22 technologies. CSE and the lives of people in
23 Canada intersect only in those instances where CSE
24 intercepts a private communication and handles it
25 in accordance with the law. Appropriately,

1 therefore, the CSE Commissioner's mandate is
2 focused on lawfulness of CSE's activities,
3 particularly as they relate to the privacy of
4 Canadians.

5 I believe effective review only
6 comes about as the reviewing body acquires and
7 constantly improves knowledge of the agency under
8 review by gaining an understanding of its context,
9 including its policies, its practices and its
10 activities. A dedicated review agency can hire
11 specialized staff, establish priorities and
12 procedures, and set work plans as appropriate to
13 the agency under review.

14 In the CSE Commissioner's office,
15 we had the flexibility to shape our policies and
16 procedures and activities to fulfil the
17 Commissioner's mandate within the context of the
18 Communications Security Establishment. This
19 flexibility to mold review activities to the
20 nature of the agency under review is a clear
21 benefit of the current review model and deserves
22 to be protected.

23 I would like to move now to
24 another valuable feature of the existing review
25 model. The model supports good governance by

1 maintaining clear lines of accountability.

2 Under the existing model, the
3 review function supports the minister responsible
4 for the agency under review. In our case, the
5 Commissioner sends his reports to the Minister of
6 National Defence. The accountability of the
7 minister to Parliament for the activities of CSE
8 is clear and uncompromised. By providing the
9 minister directly with assessments of CSE's
10 operational activities, identifying problems and
11 recommending action to correct them, the review
12 function serves to strengthen the minister's
13 ability to exercise his responsibility for the
14 direction and management of CSE as well as to
15 account to Parliament.

16 Ministerial accountability is
17 supported by, among other things, the tabling in
18 Parliament of the Commissioner's public annual
19 report.

20 Review successes are not always
21 evident to the outside observer. The review
22 function in government tends to fly somewhat under
23 the radar and its contributions to effective
24 governance and accountability, like many good news
25 stories, often fail to capture attention. This

1 makes it difficult for outside observers to
2 develop a foundation of detailed knowledge on
3 which to assess the effectiveness of review
4 agencies.

5 The Commission for Public
6 Complaints Against the RCMP is not of course an
7 external review agency. It is solely a complaints
8 function. It does not fit the model I describe.

9 However, I believe that the review
10 model established by Parliament with its
11 characteristics of appropriateness, accountability
12 and effectiveness could be used as a template to
13 build a review function for the RCMP.

14 For this reason, Commissioner, I
15 would encourage you to consider with great care
16 any alternative models that are proposed to you.
17 I would particularly encourage you to look
18 critically at any model that would affect the
19 well-running review function for the CSE.

20 According to the consultation
21 paper that this Commissioner distributed in
22 October, some people have suggested the creation
23 of a super agency to review all security and
24 intelligence activities in the Government of
25 Canada. The disadvantages of such an approach

1 would, I believe, far outweigh the advantages and
2 I would like to name a couple of them.

3 The first one is inconsistency,
4 inconsistency with the logic behind the
5 organization of Canada's security and intelligence
6 community into a number of separate or
7 organizations.

8 The issue of access. The super
9 agency would potentially have access to more
10 information about methods and sources of operation
11 than any one agency within the security and
12 intelligence community itself, which would fly in
13 the face of the need to know principle.

14 There would be a lack of clarity
15 about accountability. In reviewing the activities
16 of organizations reporting to several ministers,
17 to whom would the super agency report? If it were
18 to report to Parliament, what would the
19 implications be for ministers to account in
20 Parliament for the activities of the intelligence
21 agencies reporting to them?

22 Finally, the creation of a super
23 agency would be highly disruptive to the community
24 as a whole. Such disruption should, in my view,
25 only be introduced if there is a compelling need

1 for them; in other words, if the existing model is
2 not clearly working. As I have said before, I
3 believe the existing model not only works, but
4 that it works well.

5 To conclude, I would like to
6 reiterate the views CSE Commissioner Lamer
7 expressed also in his submission last January.

8 In that submission he said he
9 believed the preferred option would be for one
10 body to review the national security activities of
11 the RCMP and to investigate public complaints. He
12 wrote, and I quote:

13 "To my mind, this is the most
14 effective and logical
15 approach: effective, because
16 it recognizes the unique
17 mandate of the RCMP, and
18 provides for a corresponding
19 review body with the required
20 expertise; and logical,
21 because it limits the
22 anticipated change to the CPC
23 and the RCMP, the two
24 organizations that are
25 directly affected. It does

1 not impact on other
2 organizations or review
3 groups in Canada's security
4 and intelligence community
5 where change is neither
6 sought after nor required."

7 That is the end of the quote.

8 That is the end of my prepared
9 remarks, Commissioner, and I would be pleased to
10 answer any questions you may have.

11 THE COMMISSIONER: Thank you very
12 much, Mrs. Weeks.

13 Let me start by just asking you
14 about the review functions of your office. When
15 we say "review" here we are most often talking
16 about both complaints and what some people call an
17 audit function. I think the latter you probably
18 refer to as a review function.

19 MS WEEKS: Yes, I would.

20 THE COMMISSIONER: Okay, I will
21 use that word to describe it.

22 MS WEEKS: Anybody who has
23 done any work at the Office of the Auditor
24 General tends to be a little bit purist about
25 the term "audit".

1 THE COMMISSIONER: Do they? Okay.
2 We will use "complaints" and "review" then to
3 describe the two functions.

4 MS WEEKS: Thank you.

5 THE COMMISSIONER: What percentage
6 of the work that your office does would relate to
7 complaints?

8 MS WEEKS: The CSE Commissioner
9 receives very few complaints, and that is because
10 the target or the focus of the operational
11 activities of CSE is foreign.

12 We get a couple of complaints a
13 year, and we have never had to resort to a formal
14 complaint resolution or dispute resolution
15 mechanism. All of them have been resolved
16 informally, and we get a number of them that are
17 unfounded and not particularly well-reasoned.

18 THE COMMISSIONER: So the bulk of
19 your work, then, comes within the review function?

20 MS WEEKS: That is right. In the
21 Commissioner's first mandate, or the inaugural
22 Commissioner's first mandate, he did not have the
23 authority to review -- he had the authority to
24 review complaints but not to get back to the
25 complainant, which was a bit awkward. That was

1 corrected in a second mandate, and at that time we
2 went through all the process to establish policy
3 and procedures for a complaints function so it is
4 in place in the event of a complaint.

5 THE COMMISSIONER: And
6 Commissioner Lamer recommended in his earlier
7 submission to me that a review function for RCMP's
8 national security activities, in his view, would
9 best reside with the CPC where complaints are
10 currently being addressed.

11 MS WEEKS: I think what he said is
12 that in the end, I think it was your A and B
13 models --

14 THE COMMISSIONER: Right.

15 MS WEEKS: -- would result in the
16 same thing: an integrated review and complaints
17 function.

18 Whether it was a question of
19 increasing the capacity of the CPC or developing a
20 new review function, that would subsume the CPC.

21 THE COMMISSIONER: One way or the
22 other, in his mind it would reside in one
23 location.

24 MS WEEKS: That's right.

25 THE COMMISSIONER: The two

1 operations.

2 Is that your experience not only
3 with your current position but in your earlier
4 positions, that there is a wisdom to combining a
5 complaints and review function?

6 MS WEEKS: Yes, there is,
7 Commissioner, from two standpoints, because review
8 can inform a complaint and complaint can inform a
9 review. That is number one.

10 And number two, it controls the
11 information, some of which can be very sensitive
12 in one group.

13 THE COMMISSIONER: Right. What
14 about the skillset that is required for review?
15 To this point the CPC has not done reviews. They
16 have just handled complaints from the public.

17 Is there a significant difference
18 in skillsets and the processes that are involved
19 in handling a complaint from those that are
20 involved in conducting a review?

21 MS WEEKS: I think probably with a
22 review function one would want good, strong
23 analytical skills. I think in respect of a
24 complaints function one would want to add to good
25 analytical skills good investigatory skills as

1 well.

2 THE COMMISSIONER: On that notion,
3 one who was a good complaint receiver and
4 investigator would necessarily have the skills to
5 conduct a review. That is included in what would
6 be required to handle complaints properly?

7 MS WEEKS: I would think one would
8 want a combination of the two, yes.

9 THE COMMISSIONER: One of the
10 options, as you will have noted, that is put
11 forward, one of the models, is that SIRC, who
12 already conducts reviews of CSIS, has the skillset
13 to conduct reviews in the national security area
14 and that there would be some advantage to having
15 SIRC do it, because they have done reviews in the
16 national security area, rather than the CPC which
17 to this point has not done reviews.

18 Can you comment on that?

19 MS WEEKS: I think I would just
20 leave it by saying I thought Mr. Kennedy was quite
21 eloquent on that topic yesterday.

22 THE COMMISSIONER: Okay. That's
23 fine.

24 If I were to recommend a review
25 function with respect to the RCMP's national

1 security activities -- and, as you are aware, my
2 mandate focuses me on their national security
3 activities -- it will likely involve drawing a
4 line between what would be considered to be
5 national security activities of the RCMP, falling
6 within the review function, and what would not,
7 falling outside of it.

8 Do you have any thoughts on how a
9 national security dividing line would be
10 established? Does your experience give you any
11 ideas on that?

12 MS WEEKS: I think that is
13 probably, Commissioner, an issue that would have
14 to be worked out over time. I think the issue is
15 to start slowly and to define it carefully.

16 I think sometimes it would be very
17 difficult to draw the line between national
18 security and the RCMP's policing and criminal
19 intelligence activities, because I think sometimes
20 they must run very close, one to the other.

21 I am afraid I haven't given much
22 thought to that. I am sorry, I am not
23 particularly well equipped to answer that.

24 THE COMMISSIONER: That's fine.

25 MS WEEKS: I don't see it as a

1 drawback. I think it is manageable.

2 THE COMMISSIONER: If a line needs
3 to be drawn, the suggestion that I have heard from
4 some at least is that the body that should draw
5 the line would be the review body itself.

6 MS WEEKS: I think I would not go
7 that far, because in my experience review bodies
8 drawing lines by themselves do not lead to
9 successful review. I think many of these things,
10 many of these lines can be drawn together in
11 discussion, in negotiation, with some degree of
12 harmony.

13 I think of a review body and the
14 agency reviews somewhat like France and Germany:
15 they share a common border and they have to live
16 together, so they have to at some degree get
17 along.

18 THE COMMISSIONER: Good example.

19 You would think that if there is a
20 difficult jurisdictional line like that to be
21 drawn, then one should develop at least in the
22 first instance a consultative approach to drawing
23 the line?

24 MS WEEKS: I think when one has to
25 draw any line between a review body and the agency

1 under review, the consultative approach in the
2 first instance is always the way to go.

3 THE COMMISSIONER: Right. Some
4 suggest that the CPC in conducting its complaints
5 function needs enhanced powers. Indeed, if you
6 heard Mr. Kennedy or are aware of his presentation
7 yesterday, he strongly urges me to strengthen the
8 investigative powers of the CPC.

9 I would like your commends, if I
10 could, on the need for a body like the CPC to have
11 compulsory powers of subpoena, documents,
12 compelling people, if necessary, to be interviewed
13 and perhaps to give evidence under oath.

14 MS WEEKS: I think the greatest
15 strength that the CSE Commissioner has rests in
16 the powers under the Inquiries Act. It is like
17 having a big stick. You don't necessarily have to
18 use it, but it's there.

19 I believe, in fact, that the CSE
20 Commissioner is the only reviewer who has those
21 powers right now for review. I am not talking
22 about the complaints side.

23 I think absolutely it is essential
24 to have the tools necessary, and I believe the
25 Inquiries Act tools are necessary.

1 THE COMMISSIONER: And does the
2 Commissioner's powers now extend to following the
3 trail to wherever it may lead outside of the CSE?

4 MS WEEKS: Yes. I would say yes,
5 and I will explain why.

6 Under CSE's mandate, what is
7 referred to as the (c) mandate -- I have the
8 wording here:

9 "CSE is empowered to provide
10 technical and operational
11 assistance to federal law
12 enforcement and security
13 agencies in the performance
14 of their lawful duties."

15 How this works is that we conduct
16 periodic reviews of those activities that CSE
17 undertakes. We do not look at the activity that
18 the law enforcement agency or the security service
19 might asked. We do not look at the outcome of
20 that activity on the basis of CSIS or the RCMP.
21 We examine what CSE has been asked to do and
22 whether CSE has the power or the authority to
23 undertake that activity. We also examine whether
24 or not the requesting authority had the authority
25 to make that request.

1 That being said, the activity is,
2 on its face, lawful.

3 We then examine more closely CSE's
4 activities. We do not go beyond the lawfulness of
5 the request, and there is a very good reason for
6 that. We are all permanently bound to secrecy
7 under the Security of Information Act and have no
8 right to access classified information from CSIS
9 or the RCMP. Nor do I believe we should access
10 it, unless for some extraordinary reason.

11 THE COMMISSIONER: I think that is
12 the question, though. If it is necessary for you
13 to properly fulfil your mandate, if the facts
14 develop that that is the case, then as I
15 understand what you are saying, you do have the
16 authority to go outside of CSE in order to obtain
17 information, documents or evidence in order for
18 you to fulfil your mandate.

19 MS WEEKS: We would not go behind
20 the request to ensure the lawfulness of the
21 request. We would not seek documentation from the
22 RCMP.

23 There has been no requirement, no
24 need to do it to this date.

25 THE COMMISSIONER: If there was an

1 issue about the lawfulness of the request, yours
2 would not be the agency that would address that.

3 MS WEEKS: It would be to the
4 extent that the Commissioner would say CSE either
5 did or did not respond to an unlawful request.

6 THE COMMISSIONER: But if you
7 don't go behind the lawfulness of the request, are
8 you able to determine if the request itself was
9 lawful?

10 MS WEEKS: Yes, because it would
11 hinge on whether it was consistent with the
12 requester's mandate.

13 THE COMMISSIONER: So does the
14 sole test about the lawfulness of the request
15 depend on the mandate of the requesting agency?

16 MS WEEKS: It depends on whether
17 the requesting agency had the authority to make
18 the request.

19 THE COMMISSIONER: Right.

20 MS WEEKS: We have had no need to
21 go further than that.

22 THE COMMISSIONER: Right. All I
23 am thinking of is that there could be
24 circumstances that go behind that mandate, the
25 facts of a particular case, that may present a

1 problem about the lawfulness of the request.

2 What I hear you saying is if that
3 was the case, that is not your concern. Your
4 concern is to look at the lawfulness of the
5 request as against the mandate, satisfy yourself
6 and move on?

7 MS WEEKS: No. I would say
8 unlawful activity is very much our concern, but we
9 have not encountered an unlawful request. So we
10 haven't had to deal with this yet.

11 THE COMMISSIONER: If did you have
12 to deal with it -- and perhaps we are moving off
13 into something that is very unlikely to happen.
14 But if you did, do you have the authority to
15 follow the trail there?

16 MS WEEKS: No. What the
17 Commissioner has is a duty to inform the minister
18 and the Attorney General of any unlawful activity
19 or any activity he believes to be unlawful.

20 In so doing, the Chief of CSE and
21 the National Security Advisor would also be
22 informed. Also, through the CSE justice people,
23 the Department of Justice would be informed.

24 Presumably -- again this is a
25 hypothesis at this point. Presumably the minister

1 would inform his ministerial colleague that there
2 is concern that an unlawful act has occurred. And
3 I would be likely, again hypothetically, to
4 contact my colleague, my opposite executive
5 director or head of review agency, without
6 divulging information about CSE, because that
7 again would place me in conflict with the Security
8 of Information Act.

9 I would suggest that individual
10 look at some aspect that has concerned us that we
11 suspect to be unlawful.

12 Again, as I mentioned, this is a
13 hypothesis because we haven't encountered this
14 situation.

15 THE COMMISSIONER: I understand.
16 When you are seeking information
17 in the course of a review, who determines if
18 information is relevant to the investigation and
19 therefore you have access to it?

20 MS WEEKS: We do. We have full
21 access to files, records, documents. We can
22 search CSE's collection, electronic collection,
23 the databases. We have unfettered access.

24 THE COMMISSIONER: And do you run
25 into any issues with respect to claims of

1 privilege when you seek access to documents?

2 MS WEEKS: No. We see
3 solicitor-client information. We have not had any
4 experience with a cabinet confidence to this date,
5 we have not been denied access on the basis of
6 privilege.

7 THE COMMISSIONER: One of the
8 issues that you will know that confronts me in
9 making recommendations here arises from the fact
10 that the RCMP's national security activities are
11 increasingly integrated on an operational level
12 with the activities of others, including CSIS,
13 other police agencies, and I guess potentially
14 with the CSE.

15 Can you speak to the amount of
16 integrated activity that takes place, in the
17 national security field obviously, between the CSE
18 and the RCMP?

19 MS WEEKS: Other than the mandated
20 area that I referred to earlier, none. CSE is not
21 part of INSETs or IBETs or any of those integrated
22 activities. CSE's activity is collection of
23 foreign intelligence.

24 As I understand it, IBETs and
25 INSETs are largely integrated enforcement

1 functions, and CSE has no role whatsoever in
2 enforcement.

3 THE COMMISSIONER: Right.

4 MS KRISTJANSON: Commissioner,
5 perhaps I could ask a question.

6 You referred to the (c) mandate,
7 where they provide operational assistance to the
8 RCMP.

9 Do they ever in the context of
10 that mandate participate in an integrated team?

11 MS WEEKS: Never.

12 MS KRISTJANSON: Are they then
13 specific requests that CSE responds to and does
14 whatever logical things it does and then --

15 MS WEEKS: All in the context of
16 its foreign intelligence mandate, yes, but not as
17 part of an integrated activity.

18 THE COMMISSIONER: You mentioned
19 in your presentation that some have suggested
20 there be an overarching super agency that would
21 have responsibility for reviewing all of Canada's
22 national security activities. You will see in our
23 material we have identified that there are
24 potentially 24 departments or agencies, at least,
25 that in one way or another would at least touch

1 occasionally national security matters.

2 Those that argue for the
3 overarching super agency say that it is necessary,
4 as I read it, for at least two reasons.

5 One is that when reviewing any of
6 Canada's national security activities, it is
7 essential that nothing falls between the cracks.
8 So a reviewing agency that is focused on one
9 agency only won't be reviewing the activities of
10 another agency, and there is a potential that they
11 won't get the full story, and that the reviewing
12 agency that is reviewing the second agency
13 wouldn't get the full story because they wouldn't
14 be reviewing the first.

15 So they say there is a danger of
16 falling between the cracks.

17 They also say that having more
18 than one review agency, the super review agency,
19 would lead complainants potentially when there has
20 been an integrated operation to have to go to more
21 than one place to pursue their complaint.

22 I suppose a third point they make
23 is they say: And by the way, in this emerging
24 world dealing with national security, there is a
25 big advantage to having one agency thinking about

1 all of Canada's national security concerns from a
2 review standpoint and bringing a coordinated
3 well-informed view to it of advising government.

4 That is a long introduction, but I
5 have heard you suggest that you are against a
6 super agency of that sort.

7 How do you suggest we address
8 those three concerns that are raised by those that
9 argue for it?

10 The first is the falling between
11 the cracks.

12 MS WEEKS: I have difficulty
13 imagining a circumstance where an issue would fall
14 between the cracks of a magnitude that a super
15 agency is going to be able to do anything about
16 it.

17 I think, Commissioner, we have to
18 be clear about what our expectations are in terms
19 of what review can accomplish.

20 Review, or even oversight, is not
21 going to obviate the possibility of an error, of
22 mistakes being made. Short of having a guardian
23 angel on everybody's shoulder saying these people
24 are nice and trying hard, it is pretty difficult
25 to expect review to -- review should not be used

1 to replace or in any way to dilute the
2 decision-making that managers ought to do to
3 manage their activities properly. Review cannot
4 intercede or in any way, I don't think, block the
5 minister's capacity to manage and direct and
6 report to Parliament.

7 I think a super agency does that.
8 I think there are mechanisms. I have encountered
9 mechanisms that exist informally when there is a
10 concern in the community that something may have
11 gone wrong.

12 I think sometimes maybe we forget
13 what we are dealing with here. And what we are
14 dealing with is national security.

15 You can be sceptical about
16 national security or you can take it at its face.
17 In my own family we have some fine sceptics, I can
18 assure you, who feel the need to second guess.

19 National security exists because
20 Parliament and government has stated that Canada
21 has a policy to collect information, to
22 participate, to safeguard our information, our
23 assets. And that is very real.

24 The Security of Information Act is
25 very real and is very necessary. Those of us who

1 have laboured in this particular corner of Her
2 Majesty's vineyard will tell you that we are very
3 conscious of the need to know principle, and we
4 take it very much to heart.

5 I am not saying that secrets are
6 kept for the sake of secrecy, but I do believe
7 when people talk about secrecy, there is a good
8 reason.

9 THE COMMISSIONER: Let me come
10 back to the falling between the cracks and give
11 you a specific example.

12 Let's assume there is an
13 integrated investigation with CSIS and RCMP
14 officers both participating. They are intricately
15 involved. Somebody has a complaint. They go to
16 the RCMP and the CPC. They have a complaint and
17 the evidence is called, and so on, and the RCMP
18 officers all say we didn't do it. It was them.
19 The CPC looks at it ask says the evidence I have,
20 RCMP officers didn't do it, you better go
21 somewhere else.

22 The complainant is now frustrated.
23 Okay, well, I guess I will go to SIRC and goes
24 over to SIRC. Unfortunately, he has to go to a
25 second place, but he goes to SIRC.

1 He goes to SIRC and they say we
2 didn't do it. They did it. SIRC says okay, they
3 did it.

4 I am making it more dramatic than
5 it would be, but that is a falling between the
6 cracks. So the complainant walks out of SIRC and
7 says now I have been to two places and it didn't
8 work out. The complainant scratches his head and
9 says if I had gone to one place, I would have had
10 one reviewer sitting there. As sometimes happens
11 in court, people go like that, the judge says here
12 is what the situation is.

13 Any judge sitting on a review like
14 that would say yes, I would like to hear both
15 sides of it. I would like to have authority over
16 both pieces.

17 So the argument is that
18 integration of operations is essential; everybody
19 accepts that. The argument goes, if you are going
20 to integrate operations, does it not make logical
21 sense that you would also integrate the review to
22 avoid falling between the cracks?

23 MS WEEKS: I am not being
24 difficult, Commissioner, but I simply can't
25 conceive of that. It is really not in my

1 experience to see two government agencies give
2 people the run-around on a matter of national
3 security.

4 I would, in my own experience,
5 suggest that when such a situation arises, there
6 is every desire to satisfy a complaint and move on
7 and close the file.

8 I don't think, however, that
9 national security -- that a complainant is a good
10 reason not to safeguard classified information.
11 And I don't know how classified information can be
12 safeguarded with a super agency.

13 THE COMMISSIONER: If you assume
14 that in an integrated operation the information
15 can be safeguarded as between the operating
16 agencies -- so those that are involved in my
17 example, CSIS and the RCMP, they were operating
18 together, they shared it; obviously there was
19 enough confidence in them to protect it, because
20 we as a system let them integrate and operate
21 together -- should we have less confidence in
22 those people that have to review that integrated
23 activity that they would be able to keep
24 confidential the same information?

25 MS WEEKS: When you are talking

1 about integrated activity, Commissioner, you are
2 not talking about integrated organizations. They
3 are stand-alone organizations.

4 Yes, I believe there could be a
5 mechanism for the two affected review agencies to
6 review an integrated activity. I don't think it
7 requires the superstructure that is being
8 discussed.

9 I don't know right now how it
10 would be done, given the Security of Information
11 Act, but I do believe it could be done and I
12 believe Mr. Kennedy yesterday indicated that in
13 extreme circumstances, if two review agencies had
14 to be engaged because of the seriousness of the
15 situation that is giving rise to concern, that
16 there are ways to do that.

17 I don't think that just because
18 organizations are conducting certain interactive
19 activities that it warrants a superstructure to
20 review all activities from the standpoint of the
21 superstructure.

22 THE COMMISSIONER: The point you
23 are making, it seems to me, is that if the
24 integrated activities are being reviewed, then it
25 makes some sense to have a coordinated review of

1 the integrated activity.

2 MS WEEKS: I wouldn't say that it
3 makes good sense to have coordinated review of all
4 integrated activity, because I still think the
5 need to know must prevail. But if there is cause
6 for concern about an integrated activity, if there
7 is a question of lawfulness, for example, then I
8 do believe some mechanism could be set up to
9 review that integrated activity that is giving
10 rise to concern.

11 I don't think there is need for
12 integrated review of all integrated activity, nor
13 do I believe there should be integrated review of
14 activities that are not integrated.

15 THE COMMISSIONER: Certainly I
16 understand the latter point.

17 Your primary concern, as I listen
18 to you, about integrated review of integrated
19 activities and of expanding it too much, if I can
20 put those words into your mouth, is the concern
21 about the protection of information and the need
22 to know?

23 MS WEEKS: Yes.

24 THE COMMISSIONER: So it is that
25 to the extent that we have any integrated

1 review -- and correct me if I don't say it
2 properly -- it then presents another avenue that
3 confidential information could be treated
4 improperly.

5 MS WEEKS: Yes, classified
6 information.

7 THE COMMISSIONER: Is there any
8 basis for concern that review bodies of any sort
9 in the past who have handled classified
10 information have shown themselves to be less than
11 up to the mark in maintaining the classification
12 and protecting the information?

13 MS WEEKS: I don't have any
14 knowledge. I know the areas that I have been
15 involved in review, but I can't vouch for the
16 whole review net work, no. I am sorry.

17 THE COMMISSIONER: I must say --
18 and I don't want to be quarrelsome at all. But I
19 must say I would have thought that the type of
20 people who we would engage in the review
21 activities would be the gold stars in terms of
22 people who we can trust to properly handle
23 classified information. Indeed, I would be
24 alarmed if we had people involved in these very
25 important review activities if there was even the

1 slightest concern that they would not
2 appropriately handle the information.

3 That is how it hits me.

4 MS WEEKS: I am quite sure that
5 would be the case, Commissioner, but I think the
6 law of averages would tend to indicate that the
7 more people who know classified information, the
8 more classified information is going to become
9 known. I believe it is human nature.

10 There is another point that I have
11 not made, and I think it merits my just
12 mentioning. It was a lesson I learned from a
13 former director of CSIS.

14 There is a high cost to review,
15 and there must be equilibrium between the risk of
16 the activity and the degree of review. You do not
17 review for the sake of review. You review on the
18 basis of risk, because no matter how concerned or
19 how diligent a reviewer can be, the time one takes
20 in an agency in terms of review comes out of
21 operations.

22 There isn't a department or agency
23 in the Government of Canada today, including the
24 community, the security intelligence community,
25 that will tell you that they have resources to

1 spare.

2 I think that is worth mentioning.

3 THE COMMISSIONER: No question. I
4 think everybody would recognize that in this day
5 and age resources are an issue everywhere. I
6 think some would say, in response to that, that is
7 true, we wouldn't want to have sort of review run
8 amuck for sure, but that a review is important to
9 maintain the confidence of the public in what are
10 very often very non-transparent activities.

11 MS WEEKS: They are not
12 transparent to the public, but that doesn't mean
13 they are not accountable and it doesn't mean that
14 they aren't transparent to the people to whom they
15 ought to be transparent.

16 And in this case I am thinking the
17 minister responsible.

18 THE COMMISSIONER: I was speaking
19 of transparent to the public and the public
20 confidence.

21 MS WEEKS: To some of us there
22 might be construed somewhat of contradiction in
23 terms in terms of transparent national security.

24 THE COMMISSIONER: One of the
25 things you may have heard discussed yesterday with

1 Mr. Kennedy, in addressing the integrated
2 operations problem for review, was the possibility
3 of establishing a coordinating committee among the
4 chairs of the existing review bodies. It would be
5 yours and SIRC and CPC, perhaps with an
6 independent chair of that coordinating committee,
7 which would have the mandate of dealing with the
8 integrated problems.

9 The coordinating committee
10 wouldn't have investigative powers or review
11 powers. What it would do is it would address
12 situations where there was integration problem and
13 would then craft the review by the appropriate
14 agency or combination of agencies so that there
15 would be a single review when the problem
16 warranted and have the review bodies work in a
17 cooperative, coordinated way.

18 Does that idea make sense to you?

19 MS WEEKS: Are we setting aside
20 the Security of Information Act for this
21 discussion? Right now, to do that would be
22 unlawful. That is point number one.

23 The difficulty is if you take the
24 three agencies that we are discussing, CSE, CSIS
25 and the RCMP -- and I have to tell you that my

1 knowledge of the first two is considerably better
2 than the RCMP.

3 THE COMMISSIONER: Right.

4 MS WEEKS: And my knowledge of
5 CSE -- my knowledge of CSIS is now quite dated.
6 So I have to put that caveat out there.

7 When you take the three of them,
8 the three don't really fit together. You can
9 align two up in some issues; you can align two up
10 in other issues. You can align the RCMP and CSIS
11 from a domestic standpoint. You can align them
12 from a human intelligence standpoint or human
13 involvement with people in Canada. You take CSE
14 and you look at it and they aren't involved with
15 HUMINT. They are involved with SIGINT. They are
16 highly technologically oriented. They do not deal
17 with Canadian product. They deal with foreign
18 intelligence.

19 The only thing they have in common
20 is the three of them are collectors.

21 The difficulty I had with your
22 broad list of agencies is I thought there failed
23 to be a distinction between the collectors and the
24 users, and I just add that parenthetically.

25 I don't know what the head of the

1 review agency, the proposed review agency for the
2 RCMP, what the head of SIRC and what the
3 Commissioner would say to each other, because I
4 can't see of an activity that would involve the
5 three of them.

6 THE COMMISSIONER: I suppose some
7 activities would involve the RCMP and the CSE and
8 some would involve combinations of two of them.

9 MS WEEKS: Yes. But again, they
10 aren't integrated.

11 THE COMMISSIONER: Certainly the
12 RCMP and CSIS are. And if I accept what I am
13 told, it is that there is going to be more
14 integration. They have formal INSETs and IBETs
15 now and that integration in fighting global terror
16 is the wave of the future, and that if Canada
17 doesn't integrate its national security activities
18 we are going to be doing a huge disservice to
19 Canadians.

20 MS WEEKS: I agree wholeheartedly,
21 but I can't see full integration. I don't that
22 will ever happen.

23 THE COMMISSIONER: No. One of the
24 challenges is that there are different functions.
25 That is why we have different agencies. If that

1 wasn't the case, then we would just have one
2 agency doing everybody.

3 MS WEEKS: That is right.

4 THE COMMISSIONER: That is not the
5 model at the operational level.

6 Perhaps I am repeating, but the
7 thought is if there are going to be integrated
8 operations -- I hear what you are saying, that the
9 CSE if it is integrated is usually with only one
10 agency at a time.

11 MS WEEKS: But it is not
12 integrated. CSE's activities are limited to the
13 collection of foreign intelligence and to certain
14 information technology security activities, but
15 they don't do them together. They do them for.
16 They don't do them with. This is not a
17 collaboration.

18 THE COMMISSIONER: They provide a
19 service.

20 MS WEEKS: That's right.

21 THE COMMISSIONER: Right.

22 Those are all the questions I
23 have. Are there any questions from my right?

24 MR. FORESTER: Mrs. Weeks, on the
25 point you were making before about the cost of

1 review, I want to be sure I have all of the
2 elements of the cost of review.

3 You have obviously spoken about
4 secrecy implications and you have spoken about
5 resource allocations.

6 Is there anything else that you
7 would direct us to consider carefully in
8 connection with the costs of a review mechanism?

9 MS WEEKS: I think I would just
10 reiterate the comment I made before, that review
11 is a burden, a very necessary burden, on the
12 agency being reviewed.

13 I am not suggesting for a second
14 that review should not take place because it is a
15 burden on the agency. What I am saying is that
16 review must be conducted in a manner that is
17 commensurate with the risk that the agency poses.
18 You don't review for the sake of review, because
19 every hour that you take in an agency on review,
20 you are taking an operational person away from
21 operations.

22 That doesn't mean that that
23 shouldn't be done. It means that the reviewer
24 must be cognizant of it and be aware of it and
25 review based on risk, not review for review.

1 MR. FORESTER: Do you agree -- and
2 we had heard previously -- that in addition to the
3 burden, and perhaps balancing the burden you just
4 spoke of, there is a benefit to the agency and not
5 necessarily just a benefit to the public from
6 review?

7 MS WEEKS: Absolutely, because the
8 fact of review often creates positive change. If
9 you are reviewing properly and informing the
10 agency or that section of the agency under review
11 of your findings as you progress, often by the end
12 of a review you find that the recommendations you
13 might have made have been implemented throughout
14 the process.

15 Absolutely there is a benefit.
16 That is the joy of it. That is the joy of it.

17 MR. FORESTER: Thank you.

18 MS KRISTJANSON: Hello, Ms Weeks.
19 I just have a few questions. The first relates
20 again to the scope of the Commissioner's power,
21 which are extraordinary in the review community.

22 Just to confirm, if it were
23 necessary in the course of a complaint
24 investigation, for example looking at the conduct
25 of a CSE employee and there were concerns about

1 her interaction with an RCMP member, just in
2 whatever realm, you would have the ability, would
3 you not, to subpoena what might be relevant
4 records from the RCMP or to compel that RCMP
5 constable to give testimony before the
6 Commissioner?

7 MS WEEKS: I don't know. I would
8 assume, but I have not looked at it. The power is
9 there. Whether it would be used to get in the
10 door of another agency has not been tested and,
11 quite frankly, I haven't had reason to give proper
12 consideration to that question.

13 MS KRISTJANSON: Thank you.

14 The second one relates to the (c)
15 mandate again, the technical and operational
16 assistance to be offered by CSE to agencies such
17 as the RCMP or CSIS in their domestic activities--

18 Is that a fair summary of your
19 (c) mandate.

20 MS WEEKS: Yes.

21 MS KRISTJANSON: -- or your (c)
22 mandate to assist them.

23 Does that not allow CSE to
24 intercept-- or does it not allow CSE to provide
25 assistance at a purely domestic level, i.e., Where

1 there is no foreign contact?

2 MS WEEKS: CSE's mandate is the
3 collection of foreign intelligence. No.

4 MS KRISTJANSON: But it might
5 relate to a Canadian resident with respect to a
6 foreign contact.

7 Is that fair? A telephone call
8 from a country abroad to a Canadian resident?

9 MS WEEKS: CSE may intercept a
10 communication entering or exiting Canada, provided
11 that the foreign end is the end being intercepted.

12 MS KRISTJANSON: Okay.

13 MS WEEKS: That is the (a)
14 mandate, by the way.

15 MS KRISTJANSON: Yes.

16 THE COMMISSIONER: Is that it?

17 MS KRISTJANSON: Yes.

18 THE COMMISSIONER: Then that
19 completes the presentation. Thank you very much,
20 Mrs. Weeks. It has been most helpful.

21 MS WEEKS: Thank you,
22 Commissioner.

23 THE COMMISSIONER: I appreciate
24 you coming and answering the questions. We
25 certainly appreciate the effort that you have

1 given to us over the preceding months.

2 Thank you, Ms D'Avignon for
3 coming.

4 MS WEEKS: Our pleasure,
5 Commissioner. Thank you.

6 THE COMMISSIONER: Thank you.

7 I think if the next group, the
8 British Columbia Civil Liberties Association are
9 ready, we will just carry on without a break, if
10 everybody is fine. I do this so the smokers can
11 go outside.

12 --- Pause

13 THE COMMISSIONER: Good morning.

14 MR. GRATL: Hello.

15 THE COMMISSIONER: Came in from
16 Vancouver yesterday, did you?

17 MR. MOLLARD: We did, yes.

18 MR. GRATL: We did too.

19 THE COMMISSIONER: Great.

20 Welcome.

21 MR. MOLLARD: From the sunshine
22 to snow.

23 THE COMMISSIONER: How do you like
24 this weather? This is great.

25 Was it raining in Vancouver?

1 MR. GRATL: No, it was gorgeous
2 yesterday. It was gorgeous, and today is
3 gorgeous.

4 THE COMMISSIONER: I have never
5 met anyone from Vancouver who has ever experienced
6 rain actually.

7 MR. GRATL: I had to dust off my
8 overcoat from my time in Montreal, so I was happy
9 to see a little snow actually.

10 --- Laughter / Rires

11 THE COMMISSIONER: Thank you for
12 coming.

13 Let me say to you that I have had
14 an opportunity of reading your written
15 presentations and obviously you have put a great
16 deal of effort and thought into it. Very helpful.

17 MR. GRATL: Thank you,
18 Commissioner.

19 THE COMMISSIONER: I am very
20 appreciative of your participation in the inquiry.

21 MR. GRATL: Thank you.

22 By way of introduction,
23 Commissioner--

24 THE COMMISSIONER: Go ahead if you
25 will then, please.

1 SUBMISSIONS

2 MR. GRATL: Sure. My name is
3 Jason Gratl, I am the President of B.C. Civil
4 Liberties Association. With me is Murray Mollard,
5 the Executive Director of the Association.

6 THE COMMISSIONER: Your name is
7 pronounced Gratl?

8 MR. GRATL: That's correct.

9 THE COMMISSIONER: Thank you.

10 MR. GRATL: We are delighted to
11 have the opportunity to come and make
12 presentations to the Commission and hopefully
13 contribute in some small way to the substantive
14 portion of the policy review.

15 Bearing in mind that we prefer to
16 leave the questions to you and answer any
17 questions you might have, I have a very brief
18 preliminary remarks on the core question that
19 appears to have revealed itself, namely whether
20 there is a preference for a functional review, an
21 agency that does a trans-agency, that reviews
22 across agencies, or rather an agency-by-agency
23 separate set of review bodies or complaints
24 bodies.

25 It strikes us that the context in

1 which national security review might take place is
2 of great importance in considering that question.
3 What has been revealed, it appears on the factual
4 side of this review, is that in the case of
5 Mr. Arar, Mr. Almalki, Mr. El Maati, Mr. Nureddin,
6 multiple agencies have been involved in a more or
7 less chaotic ad hoc basis. Plainly there are
8 relationships between actors within these agencies
9 that have the capacity to call each other up and
10 join forces whenever it is necessary.

11 National security investigations
12 in that sense can be practically differentiated
13 from ordinary police work. They involve a high
14 level of information-sharing between domestic
15 agencies, a high level of information-sharing
16 between foreign agencies, and personnel exchanges
17 and of course those relationships, as I mentioned.

18 So there is a high level of
19 integration. There is an intention to carry on
20 and perhaps even enhance the level of integration
21 that is already existing. That includes
22 technological sharing and exchange, mutual access
23 to databases perhaps, integration of databases.
24 The buzzword is interoperability. So that level
25 of integration can only be expected increase over

1 the next 20 years.

2 In addition to those factors,
3 there appear to be a couple of trends that
4 differentiate national security investigations
5 from ordinary police work.

6 The first is that the targets of
7 these investigations are often foreign nationals,
8 refugee and immigration claimants, permanent or
9 temporary residents of Canada. These people often
10 have language barriers, cultural gaps between
11 greater Canada and smaller groups, recent
12 immigrant groups.

13 There is a diminished likelihood
14 of complaints. The complaint function is a little
15 bit hampered by that context.

16 Also of course coming with that
17 are issues of international politics and issues
18 involving cultural sensitivity.

19 Aside from that,
20 intelligence-gathering is prioritized over the
21 prosecution of offenses. That radically
22 differentiates ordinary police work from national
23 security investigations.

24 What we have seen is, the
25 intelligence is gathered for the purpose of

1 supporting security certificates or extradition
2 requests or otherwise administering warnings or
3 conducting investigations. The emphasis is on
4 neutralizing threats rather than bringing evidence
5 into court to prove beyond a reasonable doubt the
6 commission of an offence.

7 If the evidence is brought into
8 court, it is brought into court under diminished
9 standards, diminished standards of scrutiny, the
10 evidence isn't looked at for its credibility;
11 Charter rights are radically diminished in these
12 contexts, all of which feeds into the larger point
13 that judicial accountability by way of judicial
14 review is also very hampered.

15 So within that context it is plain
16 to us that the context is not simply a police
17 context. We were a little surprised to review the
18 submissions of the Chiefs of Police and of the
19 RCMP Complaints Commissioner that there is
20 virtually nothing to distinguish these contexts,
21 because factually speaking there is an enormous
22 practical difference those two areas.
23 Functionally speaking-- and that is not an
24 analytic categorical difference, but it is just a
25 predominant tendency for the investigations to

1 take those forms.

2 There has also been a concern that
3 it might be practically or logically impossible to
4 define the functional jurisdiction of a larger
5 review board that has the capacity to review any
6 agency provided the agency is engaged in national
7 security work.

8 We don't believe that defining the
9 functional jurisdiction represents any kind of
10 obstacle. In the first place, we are very much in
11 agreement with the submission of Mr. Arar's
12 counsel that internal classification by the
13 various agencies under review would do a lot, not
14 only in terms of the efficacy of investigations
15 within those agencies, but also in terms of
16 defining the review jurisdiction so that agencies
17 would, in the first place, be required to classify
18 national security investigations as such and, in
19 the second place, in so doing they would tacitly
20 acknowledge the functional jurisdiction of that
21 review board.

22 In integrated cases classification
23 by any one agency would prompt at least a
24 consideration of that issue by any other agency
25 involved in the same investigation.

1 Aside from that functional
2 jurisdiction, in terms of assessing functional
3 jurisdiction a national security review committee
4 could of course look at whether special national
5 security powers have been invoked, such as
6 warrants or security certificates or
7 anti-terrorism powers under the Criminal Code.

8 In addition any claim to special
9 national security secrecy would be an indication
10 that the file would fall under the review
11 jurisdiction of a National Security Review
12 Committee, so the Security of Information Act,
13 section 38 of the Canada Evidence Act, Access to
14 Information Act treatment of information, that
15 would all feed into whether or not the National
16 Security Review Committee could take jurisdiction.

17 Lastly, of course, there would be
18 recourse to statutory definitions. Statutory
19 definitions, regrettably-- we have made
20 submissions to the House of Commons Committee and
21 the Special Senate Committee regarding the
22 definitions of "national security" and
23 "terrorism". We find them excessive and over
24 broad.

25 That being said, any National

1 Security Review Committee would have to have at
2 least the potential to review any potential
3 exercise of powers by agencies under review.

4 So the functional definition-- the
5 legal definition of the functional jurisdiction
6 would have to be at least as broad, as the
7 broadest definition of national security or
8 terrorism exercised by any agency below.

9 Practically speaking, though,
10 these powers are not being exercised as often as
11 they could possibly be exercised. So from a
12 pragmatic level, there would appear to be an
13 informal system of classification for terrorism or
14 national security files, in any event. That
15 internal classification system, however informal,
16 however inconsistent as between agencies, that
17 internal classification system is de facto or
18 practically limiting the jurisdiction, or would
19 serve to practically limit the jurisdiction of
20 national security.

21 THE COMMISSIONER: Wouldn't you be
22 concerned about that, though? If you are going to
23 leave the primary focus to an internal
24 classification, and assuming you have an increased
25 type of review for national security activities,

1 will not the inclination of the classifying agency
2 to be "We will classify this as a non-national
3 security. We will, therefore, escape increased
4 review"?

5 MR. GRATL: Well, in our view, our
6 fervent belief and hope would be that any agency
7 that might be subject to enhanced review wouldn't
8 be so fearful of that review so as to compromise
9 any ongoing investigation. The mandate to
10 investigate would certainly have to trump any
11 concern or fearfulness of enhanced review.

12 THE COMMISSIONER: As you have
13 heard from the CPC, but also I can say that some
14 of the research that we have done has shown is
15 that the easy cases might be the INSETs or the
16 IBETs, they are there, or an investigation that is
17 looking specifically into a "anti-terrorism"
18 offence. There are those cases.

19 But what the research also shows
20 is that there is a large number of other cases--
21 "large number", I'm not sure. There are a number
22 of them that don't involve the INSETs or NSIS, the
23 specialized units, that look into ordinary crime,
24 credit card fraud, money laundering, but that are
25 connected to potential national security offenses,

1 or committed offenses.

2 So that it would be an
3 oversimplification, if one is drawing a line, to
4 say "We are only going to take the dedicated
5 officers or those investigating the specific
6 offenses, Security Offenses Act or whatever.

7 MR. MOLLARD: Let me jump in here.

8 I think you need more than one
9 criteria. Certainly organizational structure is
10 one touchstone. Explicit and external legislation
11 about what is national security assists internal
12 policies with respect to national security.

13 To go to Jason's point, we are
14 very concerned that when we looked, with the
15 assistance of your Commission counsel, when we
16 found out the RCMP's definition of "national
17 security", that is the social, economic and
18 political stability of Canada, gee, that is a
19 pretty broad definition. It allows some
20 considerable amount of discretion I think for the
21 RCMP.

22 That is one of the issues with
23 respect to review and audit. Right? We need some
24 ability to assess whether those kind of internal
25 definitions are appropriate.

1 But ultimately it shouldn't be
2 left alone, I think, to just simply--
3 institutional structure to determine the
4 jurisdiction of a review agency.

5 THE COMMISSIONER: But ultimately
6 aren't you driven to the fact, assuming it has
7 enhanced review, the review agency itself is going
8 to have to make a determination as to whether a
9 particular fact situation or pattern falls within
10 national security or not. It seems to me--

11 MR. GRATL: Yes. There is no
12 getting around that and we consider that a virtue
13 rather than a fault.

14 THE COMMISSIONER: Right.

15 The concern that is put against
16 that, as I'm sure you are aware, is that drawing
17 that line will be difficult and if the increased
18 review is something that some are not pleased
19 about it could lead to triaging difficulties,
20 legal challenges, and the like.

21 MR. GRATL: They are growing pains
22 for any institution. We don't think the
23 possibility of litigation over jurisdiction should
24 be an obstacle to putting in place a review agency
25 that has the powers necessary in order to achieve

1 its mandate.

2 We have seen lots of that type of
3 litigation, and provided the agency has the
4 fortitude to carry through with that litigation it
5 shouldn't be an obstacle.

6 Most cases, though, in our
7 submission, will be relatively straightforward,
8 especially if an internal classification system is
9 imposed. It would be a shocking and alarming
10 thing that any agency that had internally
11 classified a file as a national security file
12 would object to the jurisdiction of a National
13 Security Review Committee.

14 THE COMMISSIONER: In your
15 comments you referred to integrated
16 investigations, integrated investigations being
17 the trigger for the need for the integrated
18 review.

19 When we look at the list that is
20 set out in the further questions of federal
21 agencies that in one way or another put their
22 finger on something connected with national
23 security, they can be divided into those that
24 collect, i.e., investigate national security, and
25 those who may have, from time to time,

1 incidentally possession of information that could
2 be said to be connected to national security.

3 MR. GRATL: That is not that sharp
4 an analytic distinction.

5 THE COMMISSIONER: Let me just ask
6 you the question then, that it has been put to me
7 in submissions that there is a difference between
8 collectors and consumers, that the enhanced review
9 we are talking about here is concerned about the
10 problems that emerge from investigations and
11 collection.

12 What comment do you make on that?

13 MR. GRATL: In our submission, the
14 distinction isn't that sharp. There are many
15 agencies, many of the listed agency, in fact most
16 of the key agencies are both collectors and users
17 of information.

18 THE COMMISSIONER: In national
19 security investigations?

20 MR. GRATL: That is correct.

21 THE COMMISSIONER: Things like
22 the Ministry of the Environment and Treasury
23 Board, Finance?

24 MR. GRATL: Those are peripheral
25 players in these investigations, but certainly the

1 Border Services Agency, CSIS, RCMP, Immigration,
2 both collectors and users of information.

3 THE COMMISSIONER: Are we
4 concerned here, though, in terms of designing a
5 system that doesn't sink under its own weight?

6 MR. MOLLARD: I believe that
7 probably all these organizations now from time to
8 time may collect and pass on information, may have
9 tips that they want to pass on. Maybe it is not
10 their mandate, but they have tips, but by and
11 large the focus is going to be the reception of
12 intelligence and application to their own
13 particular mandate. The focus of a National
14 Security Review Committee will be on the major
15 players. I don't think it is going to collapse
16 under the weight.

17 Ask this question to the Auditor
18 General of Canada, ask it to ombudsmen in
19 provinces. They audit and review the activities
20 of all governmental agencies. They have to set
21 priorities, they make choices about where they are
22 going to spend their efforts and their time in a
23 given year.

24 I don't think they collapse. I
25 think they provide excellent review and

1 accountability to citizens of Canada. They don't
2 collapse, and yet they have a very large mandate.

3 THE COMMISSIONER: Would this
4 super agency, as you see, then require each of the
5 24 agencies, departments, to internally separate
6 anything that they come into possession of or any
7 operations that they have that are considered to
8 be national security so that they would have a
9 classification system internally, if you will, to
10 divide out the national security related
11 activities from the rest of its mandate?

12 MR. GRATL: We were extremely
13 surprised to find out that there is no formal
14 system of classification within organizations such
15 as the RCMP currently. One would think that such
16 classification would be necessary at the very
17 minimum to protect classified information.

18 One would think that such a system
19 of classification would be necessary in order for
20 the investigating officers to understand fully
21 what they are doing and how many resources are to
22 be deployed in the course of that investigation.

23 To our mind, a system of internal
24 classification of that kind doesn't harm or
25 diminish the efficacy of any investigation. It

1 would enhance those investigations aside from
2 serving the ancillary function of assisting
3 jurisdictional classification.

4 THE COMMISSIONER: In terms of
5 those agencies that just basically handle
6 information -- I take your point that one may have
7 difficulty drawing a line which they are. But
8 let's just assume that there is a body of them
9 that just handle information that may have
10 national security implications.

11 How would the role of the super
12 agency, as you envision it, differ from what the
13 Privacy Commissioner now does?

14 MR. MOLLARD: My understanding --
15 and I happened to watch CPAC, I guess two days
16 ago -- is I am not sure presently that she is
17 doing a lot in the area of national security.
18 That is what I understand her to be saying.

19 She is burdened by a lack of
20 resources just starting to audit, doing audits
21 herself. And I think she was pretty clear that
22 there would be great advantages of having one
23 agency to do national security review.

24 So I think that in that sense we
25 would endorse that sort of an approach.

1 THE COMMISSIONER: Come back to
2 the question. I heard what she said, too, about
3 her resources and so on, but let's take her
4 mandate for the moment.

5 Let's assume she could carry out
6 her mandate, if she chose, with respect to the
7 information flow, she described it as: "I deal
8 with the information flow."

9 For a lot of these agencies, when
10 you get into national security, the concern will
11 be the information flow of "national security"
12 information.

13 If we already have one federal
14 official looking at the information flow of an
15 agency, do we need another one looking at the
16 information flow because it's "national security"
17 information?

18 MR. GRATL: It is difficult to see
19 how the Privacy Commissioner could do anything
20 about what has occurred to Mr. Arar.

21 THE COMMISSIONER: I can't say too
22 much about that, but what I can say from the
23 public record at least is that none of these
24 information flow agencies are implicated.

25 I am not suggesting in this

1 question that with respect to investigations and
2 joint operations there is not some way of
3 addressing an integrated review. I am not
4 suggesting that at all.

5 What I am suggesting is that when
6 you look at this long list of 24, the Ministry of
7 the Environment and Treasury Board, and so on,
8 yes, I guess you could say they may occasionally
9 handle a piece of information that has national
10 security implications. To put them subject to a
11 super agency and require them to set up an
12 internal mechanism to sort through all of their
13 information to see when it engages the review
14 agency -- and I am making arguments somebody else
15 has made to me -- but say is grossly impractical,
16 an enormous waste of money and would not do
17 anything that the Privacy Commissioner couldn't
18 already do.

19 MR. GRATL: In our submissions it
20 is highly likely that if there are any sensitive
21 national security related files at the Ministry of
22 the Environment, they are probably in a room.
23 They are probably with a small number of employees
24 of that agency.

25 We don't think it would be

1 necessary to go through all the files of the
2 Ministry of Environment to classify the files.
3 They are probably already marked in some way as
4 sensitive.

5 What we are talking about in an
6 internal file classification system would simply
7 formalize what we think is already in place in
8 some informal way, and subjected to review. There
9 would be some written standards, probably internal
10 review of the application of the review and then
11 external review of the classification system.

12 That would be of assistance to
13 establishing functional jurisdiction.

14 THE COMMISSIONER: To what extent
15 would you think that if the review bodies or body
16 for the investigators, collectors, the main
17 players, the RCMP, CSIS, CSE I guess to some
18 extent, perhaps CBSA, Immigration, whatever, to
19 the extent that they had power to follow the
20 trail, which I think you would accept doesn't
21 necessitate a super agency if an existing review
22 body has the investigative power conducting a
23 review investigation, can follow the trail
24 anywhere, can go into the Ministry of Environment
25 or Treasury Board if that is where the trail

1 leads, has compulsory powers to get the documents,
2 to follow the trail, to compel people to give
3 evidence, and so on.

4 To what extent does that address
5 the concern?

6 MR. GRATL: I am sorry, I am not
7 clear on exactly the form of the agency you are
8 proposing.

9 THE COMMISSIONER: Well, not one
10 or the other. Let's assume, then, the existing
11 review agencies. We have CPC with enhanced
12 powers. This would be one of them. We have SIRC
13 and we have the CSE Commissioner. They are
14 conducting a review. Let's say it is the CPC.
15 They are conducting a review of the RCMP's
16 national security activities. The trail leads
17 them to the Ministry of the Environment. They go
18 there. They actually have authority to take
19 documents, put MOE officers under subpoena and
20 oath, and to examine. They have the authority to
21 determine what is relevant, what is necessary for
22 their review and to follow the trail.

23 To what extent does that alleviate
24 the concern of the need for a super agency to
25 review the Ministry of Environment?

1 MR. MOLLARD: In my submission,
2 not at all, in the sense that though they might be
3 able to gather information, the limit of their
4 mandate is to focus on their particular agency.
5 They can only find if there are problems with the
6 particular members that they have responsibility
7 over. That is the limit of their jurisdiction.
8 They can't say anything about what other agencies
9 and whether the members in other agencies may have
10 contributed to what ultimately was perhaps a
11 wrong --

12 THE COMMISSIONER: And in the
13 course of following the trail and preparing the
14 report they had the authority to make
15 recommendations to the Deputy Minister of
16 Environment, if that is what he is called, dealing
17 with what they came across, they would obviously
18 be limited, in their own jurisdiction, to dealing
19 with the RCMP.

20 To what extent does that address
21 your concern?

22 MR. MOLLARD: It strikes me as a
23 recipe for jurisdictional rivalry and mud
24 slinging, quite frankly. I would see it as a big
25 problem in that it is one agency commenting on

1 another without, I think, the coordinated approach
2 that would give the moral authority of an
3 integrated unit the ability to understand more
4 fully and have the expertise.

5 We have talked a lot about
6 expertise here. I am not sure there would be
7 expertise necessarily with respect to those
8 agencies except on a one-off basis.

9 So I would see that as not nearly
10 the solution as what we see as an integrated
11 approach would provide.

12 THE COMMISSIONER: You mention
13 expertise. One of the strong arguments or at
14 least people feel strongly about that is put
15 against the super agency is the loss of expertise.
16 And they say that those that propose a super
17 agency haven't really looked into this because
18 they don't understand -- we will take the CPC --
19 that the CPC has developed over years experience
20 in reviewing law enforcement activities.

21 And I think, as we lawyers know,
22 there is a lot to that.

23 They say that is significantly
24 different, both in terms of the standards and the
25 content of what is involved in reviewing security

1 intelligence activities. They would point back to
2 McDonald and say McDonald told us what the
3 difference is, and we should have recognized that.

4 And they say the super agency is a
5 recipe to get rid of the expertise and, I think as
6 we have just heard from Mrs. Weeks, the
7 understanding of the culture of the agency being
8 reviewed. They say that is critical. It is not
9 enough to know the law; you have to know the
10 culture of the agency.

11 They say you will forgo that
12 because what you will now be doing is reviewing 24
13 agencies, so we will have a field of generalists
14 who will skim across the surface. I think as you
15 just mentioned, expecting an agency to have
16 expertise in the way 24 agencies operate and the
17 culture ever the 24 agencies, there is going to be
18 a huge loss of having dedicated experts of review
19 and individual agencies.

20 MR. GRATL: In our submission the
21 national security investigation front is
22 particularly, practically, delimited area that is
23 distinguishable from other areas of police work.

24 In terms of the development of
25 expertise, it is not plain to us the CPC currently

1 has expertise in that area, that particularly
2 integrated area. Much of their attempt to gain
3 expertise has been blocked by the RCMP, according
4 to the former CPC head.

5 We think, of course, that there
6 will be an uphill battle in the formation of any
7 organization. There will be an uphill battle, but
8 it is very easy to overstate how steep and how
9 treacherous that terrain will be.

10 I think ultimately any agency will
11 have growing pains.

12 MR. MOLLARD: Let me just add that
13 we are not tossing away the expertise of anyone
14 here. I would expect with a new integrated agency
15 you would have people from the CPC who have that
16 expertise about policing generally, either could
17 be seconded, may come over to a new agency. You
18 would have people from SIRC who would be very
19 interested in being a part of a very exciting new
20 accountability venture in Canada and for
21 Canadians, to build public confidence.

22 I don't understand the idea that
23 would lose this expertise, far from it. I think
24 we carry on from where we have and we build on it.

25 MR. GRATL: Again, Commissioner,

1 there seems to be repeated reference to the phrase
2 super agency. In our submission, it wouldn't be a
3 super agency any more than that inquiry is a super
4 inquiry. It is just an agency that has functional
5 jurisdictional over a number of other agencies.
6 That doesn't make it super in any comic book way.

7 In our view, it should be
8 considered to be a national security review
9 committee that has some of the powers and
10 experience of the CPC and some of the powers and
11 experience of SIRC, some of the powers and
12 experience of the CSE.

13 THE COMMISSIONER: What underlies
14 it, I think, as I hear you saying it, is the need
15 to have integrated review. The whole thrust of
16 this seems to come from the fact that there are
17 integrated operations and I think there is going
18 to be more, and therefore we need integrated
19 review.

20 MR. GRATL: Well, it doesn't make
21 sense to unify investigative agencies but to
22 fragment the review agency.

23 MR. MOLLARD: Can I just answer
24 that question?

25 THE COMMISSIONER: Yes, go ahead.

1 MR. MOLLARD: I think this
2 confusion that we still have -- I have tried to
3 follow the factual inquiry, but it still seems to
4 me I am not sure there is an answer to the
5 question, a clear answer to the question where
6 CSIS' security intelligence function ends and the
7 RCMP's criminal intelligence begins.

8 THE COMMISSIONER: Good point.

9 MR. MOLLARD: I am very not clear
10 about that.

11 One function of an integrated
12 agency -- and this goes back to the McDonald
13 Commission and we have that debate, and some of us
14 wonder if despite the attempt for CSIS to take the
15 RCMP's intelligence function out of the RCMP's
16 role, we probably never thought the RCMP would
17 give it up so easily.

18 But one of the functions of an
19 integrated agency would help answer that question;
20 I think look at those kinds of macro analysis
21 questions and help to also separate the functions
22 of the agencies, provide advice to the government
23 generally about where these agencies' mandates
24 should begin and end.

25 THE COMMISSIONER: It is

1 interesting you make the point because some make
2 the exact opposite point. They say McDonald's
3 distinction -- I don't know if it is a fair
4 comment, but they say the McDonald distinction has
5 become blurred in recent years because RCMP has
6 started to do intelligence gathering within its
7 preventative mandate, particularly if its
8 preventative mandate is not related to a specific
9 threat. When they do that, it becomes to look
10 more like a CSIS-type of intelligence probe.

11 They say the preventative mandate
12 is related to a specific threat or if they are
13 doing an investigation because they are going to
14 prosecute, then it looks more like a law
15 enforcement.

16 MR. MOLLARD: My point is simply
17 to use that as an illustration that an integrated
18 agency would, I think, help.

19 THE COMMISSIONER: But is that the
20 case? Some would say what Justice McDonald
21 recommended was separation operationally and to
22 draw the bright line between a civilian security
23 intelligence agency and what a law enforcement
24 agency does.

25 A law enforcement agency prevents

1 specific threats, some would say, and takes cases
2 to trial. They collect evidence. They don't use
3 information. They use powers of arrest and
4 detention, and all the things we all know about.
5 That is very different. CSIS doesn't do anything
6 of that.

7 Now your point, as I understand,
8 is they have started to blend back. Whether that
9 is true or not, some would argue against you and
10 say in one way you can further the blending back.
11 Disrespect McDonald's division is to put a common
12 review agency, and that maintaining separate
13 review agencies, one that focuses on the law
14 enforcement and insists on the RCMP doing what is
15 law enforcement, and CSIS, is a way of actually
16 maintaining the division that McDonald thought was
17 important.

18 MR. GRATL: It is possible that
19 there might be a temptation to blend those
20 mandates, but the difficulty is that there is no
21 review committee at the current moment that would
22 have the mandate to investigate the extent to
23 which intelligence-led policing is now at the
24 forefront of the RCMP's perceived mandate.

25 If there were multiple review

1 committees, there might never be such a --

2 THE COMMISSIONER: Unless one of
3 the review committees or two of the review
4 committees, if it is the blending between RCMP and
5 CSIS that one is concerned about -- unless the
6 distinction that McDonald made is reaffirmed and
7 it now becomes a specific part of a review mandate
8 that going forward one respects that distinction.

9 Again, in making that comment I am
10 not suggesting that it is not. There is a
11 perception that it has been blurred again and that
12 it is going the wrong way.

13 I am not quarrelling with you. I
14 am just say that some have made the point and what
15 I am doing to you is putting against you arguments
16 that are made against your position.

17 MR. GRATL: It is definitely
18 possible to do that in that specific area, to
19 impose a mandate on either one of two separate
20 review bodies to look into that issue.

21 However, that is just an example
22 of one area in which a unified review body might
23 have an advantage over multiple review bodies.
24 There are undoubtedly many other issues that have
25 not been identified.

1 THE COMMISSIONER: Let me put
2 another argument --

3 MR. MOLLARD: Let me quickly
4 answer that one.

5 THE COMMISSIONER: Right.

6 MR. MOLLARD: Within an integrated
7 agency I think there will be people who have
8 particular focuses on particular agencies as well.

9 THE COMMISSIONER: Yes.

10 MR. MOLLARD: That will want to
11 argue for and maintain these kinds of distinctions
12 and debates internally within an integrated
13 agency.

14 THE COMMISSIONER: Another
15 argument that is made against the super agency or
16 the national security -- I take your point on the
17 terminology -- is that this is a body that is
18 being designed to deal with integration. But when
19 one looks at the activities of the three main
20 bodies that now have review bodies -- we just
21 heard from the CSE Commissioner; I am not sure if
22 you heard it or not.

23 Basically Mrs. Weeks would say we
24 have no integrated operations. We are asked to
25 provide a service. We do it and they get an

1 answer.

2 I don't know the amount of this,
3 but if one looked at CSIS's operations, the
4 majority of them aren't going to involve an
5 element of integration. When they do integrate it
6 would be primarily with the RCMP. I don't know, I
7 can't remember if anybody knows, but I think it is
8 a relatively small, certainly well under 50
9 percent.

10 I think the same is true with what
11 you would broadly classify as the RCMP -- as
12 national security activities. Look at the
13 hypothetical questions we posed. If you sweep in
14 that type of thing -- and I will be asking
15 questions later today about percentages, but for
16 this question assume that it is a relatively small
17 percentage that are integrated activities of what
18 would be overall included.

19 If you create a body to respond to
20 the integration problem, is the integration tail
21 wagging the dog? Because that body, the super
22 agency, will be reviewing -- let me, for the sake
23 of argument, say the 75 percent of the RCMP
24 activities that don't deal with integration. So
25 accepting the need to deal with integration, we

1 have let it drive the whole deal so that we are
2 now going to create an integrated body. Those who
3 argue against it would say: In doing so, by the
4 way, you gave up these other benefits of
5 expertise, knowing the culture and the things that
6 Mr. Kennedy talked about.

7 MR. MOLLARD: I think one response
8 to that would be -- I think Mr. Waldman put it
9 quite well -- that integration is just part of the
10 issue here, with an agency that can step back and
11 take a look at national security activities
12 generally.

13 It has a function beyond, I think,
14 simply complaints in a particular case, it has a
15 function beyond an audit necessarily in a
16 particular case, although both of these functions
17 lend itself to an agency that can at times step
18 back and try to take a look at the bigger picture
19 in terms of our national security policies, our
20 national security apparatus writ large, and I
21 think that is -- I mean quite frankly, we see
22 review and complaints and audits as being
23 something that improves our ability in national
24 security.

25 I mean, B.C. Civil Liberties

1 Association is not opposed to a vigorous apparatus
2 to have national security. We think it has to
3 come with the kinds of accountability mechanisms.
4 I think one of your experts, Mr. Wark perhaps,
5 suggested that there is an efficacy function --

6 THE COMMISSIONER: Yes, he did.

7 MR. MOLLARD: -- that an agency
8 can provide, not in the sense of telling them how
9 to do it upfront, but in retrospect advising the
10 government on a variety of levels, human rights
11 levels, civil liberties levels, competency levels,
12 that the government should be considering these
13 sorts of things.

14 Historically national apparatus'
15 differ from country to country, as your staff has
16 so ably presented and your papers have so ably
17 presented. It seems to be where we are at today
18 is so historically driven I think it would be
19 incumbent on an agency that has a larger ability
20 to look at the big picture to, from time to time,
21 take a step back and provide advice that way.

22 THE COMMISSIONER: Go ahead.

23 MR. GRATL: This concern over
24 cross-contamination, violations of a need to know
25 principle, there is a sense in which one can be

1 overly concerned, overly obsessed with secrecy,
2 Within a review agency because there are benefits
3 to the distribution of information.

4 One has to be mindful of course
5 that when information is distributed that the
6 benefits outweigh the cost, but obsession with
7 secrecy must be avoided in this context.
8 Information isn't a virus, it doesn't have a life
9 of its own, it can be controlled and
10 compartmentalized.

11 THE COMMISSIONER: Another point
12 that is made in this discussion, to me on several
13 occasions it has been made, is take an incremental
14 approach.

15 You have three existing review
16 bodies. I think by anybody's standards, or by
17 most people's standards, two of them are seen to
18 work very well. There have been difficulties with
19 the CPC. I'm not saying anything that hasn't been
20 in the newspaper. There are proposals Mr. Kennedy
21 made yesterday to significantly enhance the powers
22 of the CPC so it could get at everything. It
23 could follow the trail wherever it took them, to
24 all integrated operations, and so on.

25 I'm not sure these are necessarily

1 his words, but I have heard this thought come from
2 a number of different people and let me just try
3 to capture what it is.

4 It is: You shouldn't interfere
5 with existing institutions if they are working
6 well -- they can be made to work well -- just by
7 holus-bolus changing everything, jumping from
8 point A down to point Z, that rather than doing
9 that a more prudent and a more reasonable way,
10 more likely to be achieved way -- I'm not sure
11 what role that plays in it, but more likely to be
12 achieved way is to improve things and put in place
13 a system to try to address the problems, the
14 integration problem, I think the point that
15 Mr. Waldman made and you now make, the need for an
16 overview of Canada's national security activities,
17 but to do it in a measured way. I think some
18 would add to that, with an opportunity to see how
19 it develops. So rather than taking a huge leap
20 across the St. Lawrence River, just try to wade
21 across the Credit River.

22 MR. GRATL: It is tempting. It is
23 tempting to take a smaller incremental approach to
24 deal with what can be characterized as small
25 isolated crises, but in our view the crises aren't

1 small and they are not necessarily isolated.
2 There are a lot of complaints that haven't been
3 made and functionally can't be made.

4 There aren't only three agencies
5 involved in these types of crises. The CBSA is
6 often involved, DFAIT, municipal police forces,
7 and so forth. There are multiple agencies
8 involved and so sticking with the current
9 structure doesn't allow for that higher level of
10 integration.

11 Plus, in addition to that,
12 Commissioner, this inquiry represents an
13 opportunity that doesn't come a long very often.
14 It is an opportunity not only to assess what has
15 gone before, but to attempt to some degree to
16 predict what lies before us. By all accounts what
17 lies before us is an age of enormous operational,
18 human and electronic integration the likes of
19 which we haven't seen. The change from 10 years
20 ago until the present is enormous and the pace of
21 change is accelerating, not decelerating.

22 In light of that possibility, in
23 our submission any recommendations you make
24 regarding review bodies and institutional
25 structure for review bodies has to be equally

1 forward-looking and, if it is not, more palatable
2 perhaps, but a limited approach will serve to do
3 nothing but actually exacerbate the problem.

4 Now is the moment to seize the
5 opportunity, to put into place the democratic
6 structures of accountability that are necessary in
7 order to enhance values of this country.

8 MR. MOLLARD: Let me just add, I
9 don't want the next increment to be in 25 years.
10 My worry is the spotlight shifts very quickly.
11 You can build in a five--year review to your
12 recommendations, or perhaps what government
13 implements after your recommendations, but we see
14 that things don't change much in those five years,
15 after those five-year reviews.

16 That is my biggest worry. As
17 Jason says, it is seize the moment.

18 I want to just make a couple
19 of quick comments about Mr. Kennedy's proposal.
20 Unfortunately, we were on a plane so I don't
21 think I can understand it fully and correct me if
22 I am wrong.

23 THE COMMISSIONER: We have an
24 outline of it he left with us, if you would --

25 MR. MOLLARD: We are actually

1 meeting with him today.

2 THE COMMISSIONER: Are you? Good.
3 All right.

4 MR. MOLLARD: So we will be able
5 to get it from him directly.

6 Maybe if I have understood it --
7 if I have misunderstood it you can let me know
8 where I have gone wrong -- my understanding is he
9 is suggesting an approach in which where the
10 problem the arises about integration you bring the
11 players together and then you get them sitting and
12 talking to each other to figure out the approach
13 to respond to that problem.

14 Am I right?

15 THE COMMISSIONER: I think in
16 fairness, the suggestion was one that I made that
17 he responded to. It wasn't in his proposal.

18 I was going to go to that, so I
19 would like your comments on it.

20 MR. MOLLARD: Okay.

21 THE COMMISSIONER: This
22 suggestion -- yet another model -- is for a
23 statutory-based coordinating committee whose
24 mandate would be to deal with integrated review of
25 integrated operations so that they would have a

1 statutory authority. You would say: "How would
2 they do that?"

3 In the composition of it, the
4 initial thought would be the Chairs of the three
5 existing review bodies; an independent Chair, who
6 would be a prominent person, acceptable, and so
7 on, with star quality presumably.

8 But what they would do is, they
9 would have responsibility for ensuring that
10 reviews, complaints or audit-type reviews, were
11 fulsome and that the fact that any operations had
12 been integrated in any way would not be an
13 impediment to a review. They would also have the
14 obligation of assuring that when a complainant
15 made a complaint with respect to an integrated
16 operation that they didn't have to bounce around
17 from two or three places, that it would be dealt
18 with.

19 The coordinating body, though,
20 would not be the review body or investigative
21 review part of the body, they would make use of,
22 as they saw fit in a particular case, the
23 expertise in the different review agencies. So
24 they would be cooperated, there would be like a
25 review INSET -- a "RINSET" or something -- so that

1 it would custom-make review to deal with the lack
2 of integration. That body could also charged with
3 the responsibility for looking at trends, civil
4 liberties issues, and so on, larger issues, the
5 idea being that the three Chairs of the
6 independent review bodies by definition are
7 independent, are qualified, and would work in a
8 coordinated way.

9 The final thought on it is, if
10 integration truly is a smaller part of the overall
11 national security activities, a much smaller part,
12 then rather than stripping away the review bodies
13 themselves just to deal with the integration
14 problem you try to deal with it in a way that
15 nothing does fall within the cracks, complainants
16 go to one place and so on.

17 That I think is the idea you were
18 referring to.

19 In fairness to Mr. Kennedy, I
20 think he said the idea was workable and had some
21 appeal. I don't think, in fairness, it originated
22 with him.

23 MR. MOLLARD: Thank you. I'm
24 sorry, yes. Not being here yesterday, yes.

25 THE COMMISSIONER: Yes.

1 MR. GRATL: I have two comments in
2 relation to that proposal.

3 THE COMMISSIONER: Sure, please
4 do.

5 MR. GRATL: The first is that
6 perhaps that proposal might make sense to the
7 extent that integration is only a very small
8 fraction.

9 THE COMMISSIONER: I think "small
10 fraction" would be overstating what it is. I'm
11 not trying to play it down, and I don't know the
12 number. I have probably been told, but I don't
13 know the numbers.

14 MR. GRATL: In my submission, that
15 institutional structure would only work as long as
16 the level of integration didn't increase, and by
17 all accounts the ambition is to integrate.

18 THE COMMISSIONER: Why would you
19 say that, though?

20 Let's assume that it increased to
21 50 percent of it, and they said, "Okay, from now
22 on in 50 percent of our reviews we are going to do
23 it in a coordinate way, the way they coordinate
24 the operations."

25 MR. GRATL: To that extent, that

1 leads me to my second comment. That proposal,
2 that institutional structure is dependent on
3 cooperation between institutions.

4 THE COMMISSIONER: Right.

5 MR. GRATL: The flaw in that
6 proposal is that it may well be like herding cats.
7 These are independently minded agencies,
8 independently minded review bodies perhaps.
9 Certainly you have heard submissions from the CPC
10 and from the CSE review body that would tend to
11 indicate that they are extremely reluctant to
12 cooperate, that they are very secrecy-minded. It
13 is of enormous concern to us that there would
14 appear perhaps to be a kind of territoriality, not
15 only over the agency but also over the information
16 that is divulged in the course of a review.

17 This need to know principle that
18 seems to be interfering with the mandate of the
19 CPC, and seems to be a predominant concern of the
20 CSE review agency, would tend to interfere with
21 that cooperation. So in order for that proposal
22 to work there would have to be a long-term shift
23 in the culture of those review agencies and that
24 doesn't appear to be in the cards.

25 THE COMMISSIONER: What you are

1 saying is, it sounds wonderful that people who
2 were conducting reviews would actually have the
3 public interest first and foremost, but you are
4 concerned that other factors would come into play?

5 MR. GRATL: There is a bit of
6 vulcanization I think.

7 MR. MOLLARD: Can I just to give
8 you an example of in British Columbia where we
9 have Mr. Ryneveld, who I believe you have met and
10 had the opportunity to hear his tremendous
11 insights and the experience he has.

12 THE COMMISSIONER: I have, yes.

13 MR. MOLLARD: We also have what is
14 the Ministry of Public Safety now, but the
15 Solicitor General's ministry there, and I can tell
16 you from my own experience I see
17 interjurisdictional rivalry between the
18 bureaucrats in that ministry feeling like
19 Mr. Ryneveld is stepping on their turf.

20 So I think it is somewhat built
21 into human nature there is going to be that kind
22 of problem. I worry about underestimating it.

23 To give a couple of comments on
24 your proposal, it assumes of course that all these
25 difference agencies have similar powers now. We

1 would have to coordinate their powers between
2 them.

3 Am I correct? Or is there somehow
4 now going to be some sort of a new mandated,
5 integrated, coordinated agency that can impose
6 powers?

7 THE COMMISSIONER: I think on that
8 proposal it would be the review bodies using their
9 own powers. I think the thought is, in fact one
10 of the strong submissions I received from many is
11 that the powers of the review agency should be
12 similar and they should all be taken to the
13 highest level, not down.

14 MR. MOLLARD: Right. So that
15 assumes that you would move it up, because it has
16 to be.

17 THE COMMISSIONER: Yes.

18 MR. MOLLARD: Otherwise it
19 can't work.

20 I think the concern I have about
21 that is that each and every complaint that comes
22 forward that involves an integration issue may be
23 treated differently. From a fairness point of
24 view, I would have real concerns about one
25 complaint being treated in a particular way

1 because the Chairs get together and say "Well,
2 this is the way we are going to deal with this
3 one", and perhaps -- one can never know. Right?
4 All off a sudden there are budgetary issues in one
5 of the agency's that makes them more reluctant to
6 pursue it in a particular way than they have
7 previously pursued.

8 I think if you are going to go
9 that far, it doesn't seem to me there is that much
10 step further in taking it to a level in which you
11 are properly mandating the agency, you are
12 properly resourcing the agency, you are properly
13 giving it jurisdiction to do what it needs to do
14 and can avoid, I think, the problems that we have
15 suggested here.

16 THE COMMISSIONER: Yes.

17 MR. GRATL: In terms of reviewing
18 internal policy as well, you can imagine three
19 areas in which there might be problems in which
20 such a coordinating agency would be hindered in
21 ensuring the appropriate policy is in place.

22 Consider, for example, the extent
23 to which there is intelligence-led policing
24 conducted by RCMP. One issue.

25 Second, receipt of information.

1 So receipt and use of information derived from
2 torture.

3 Third is internal classification.

4 THE COMMISSIONER: Right.

5 MR. GRATL: On each of those
6 three issues, one would hope that those three
7 agencies, CSE, CSIS and RCMP, would have the same
8 policy. But the power of the coordinating
9 committee to impose such policy, or to recommend
10 such policy even, would be severely limited by the
11 fact that there would be this intermediate level
12 of review. Presumably the intermediate level of
13 review would --

14 THE COMMISSIONER: Isn't what
15 would happen in that case, if there were those
16 allegations, there would be a review conducted,
17 there would be reports made, and to the extent the
18 report affected the way the RCMP did it, go
19 through to the RCMP and they would have to deal
20 with it, if it was CSIS, they would go to CSIS.

21 The investigating bodies would,
22 first of all, have whoever did it -- and it may be
23 a combination or it may be one -- have the power
24 to follow the trail to get all the evidence. When
25 I look at it on the ground I always equate to what

1 happened in my inquiry.

2 The fact of the matter is, I was
3 able to get all the evidence. Okay? So I make a
4 report. I won't sort of foreshadow that, but in
5 theory at least my report could go --

6 MR. GRATL: We look forward to it.

7 THE COMMISSIONER: -- if I wasn't
8 a public inquiry and I was doing one of these, my
9 report could go to the RCMP, it could go to CSIS
10 or to somebody else.

11 What strikes me, again -- and I
12 take your point about cooperation by the way. I
13 am not arguing for this, I am testing your ideas.

14 But it strikes me, if one accepts
15 cooperation -- it may be a big acceptance -- then
16 yes, you could tailor it, with goodwill and
17 intention, so that it would work, but within the
18 milieu of the three agencies that have review
19 bodies. You have another issue about CBSA and
20 Immigration and so on.

21 MR. MOLLARD: Sure.

22 THE COMMISSIONER: I don't know,
23 that is --

24 MR. MOLLARD: Just could I ask on
25 the model --

1 THE COMMISSIONER: Sure.

2 MR. MOLLARD: -- what would the
3 reporting -- maybe I missed this, but what would
4 be the reporting relationship be.

5 THE COMMISSIONER: Once the review
6 was done, then the reports would go to the
7 respective review bodies who would handle those
8 and come to reporting from there on where it goes,
9 because that is one of your issues.

10 Insofar as the report dealt with
11 RCMP activity, it would go through the CPC;
12 insofar as it dealt with CSIS, it would go through
13 SIRC.

14 MR. MOLLARD: From a reporting
15 point of view -- maybe this anticipates where you
16 want to ask us some questions on it. I think we
17 feel very strongly that from a reporting point of
18 view the reports should be to Parliament.

19 THE COMMISSIONER: That was my
20 next question. That is the next level of
21 reporting. I was talking at the review stage, but
22 let's now talk about whatever body reviews the
23 RCMP's national security activities.

24 MR. MOLLARD: Sure.

25 THE COMMISSIONER: I understand

1 your recommendation to be that that body should
2 report to Parliament, not to the Minister.

3 MR. GRATL: Yes. Commissioner, we
4 would regard that as being of the highest
5 importance, for two reasons.

6 The first is an independent
7 officer of Parliament would have the status
8 required to bring the RCMP to heel. I think the
9 last 30 years are indicative that that type of
10 status is necessary.

11 The second issue relates to police
12 independence; police independence conceived not as
13 a principle that suggests that the police should
14 have free run to do whatever they want, but rather
15 police independence as a principle that opposes
16 the politicization of police activity.

17 The minister in this case seems to
18 have some power to direct, command power, over the
19 RCMP.

20 THE COMMISSIONER: With respect
21 to policy.

22 MR. GRATL: With respect to policy
23 and also, as I understand it, there are some
24 ministerial directives that provide the minister
25 with some direct command and control over the RCMP

1 in certain areas.

2 THE COMMISSIONER: For example,
3 the minister might direct there be more
4 centralization in the way that national security
5 investigations are conducted.

6 MR. GRATL: Certainly I think
7 there are some sensitive areas in which the
8 minister has directed that the RCMP must provide
9 her with a veto.

10 THE COMMISSIONER: In national
11 security, that is right.

12 MR. GRATL: In national security.
13 And those powers threaten to politicize the
14 activities, the investigations of the RCMP. By
15 having an independent officer of Parliament who
16 reports directly to Parliament as part of the
17 review agency, that neutralizes that threat of
18 politicization.

19 Indeed, it is the independent
20 officer of Parliament that is consistent and
21 enhances police independence.

22 THE COMMISSIONER: Some would
23 argue the area contrary and would say that having
24 the intermediate step of ministerial
25 responsibility and control increases

1 accountability, because the minister is
2 ultimately responsible to Parliament. But don't
3 give the minister a pass.

4 MR. GRATL: The minister's
5 accountability is key democratic control.

6 THE COMMISSIONER: Why wouldn't
7 the report go to the minister then?

8 MR. GRATL: Well, we don't say it
9 shouldn't go to the minister, but we say it should
10 go to Parliament.

11 THE COMMISSIONER: I see, okay.

12 MR. GRATL: Because of the
13 potential for the minister's involvement to
14 politicize the activities of the RCMP, ensuring
15 reporting to Parliament can neutralize that.

16 THE COMMISSIONER: In making your
17 comments, are you objecting to ministerial
18 directives?

19 MR. GRATL: No. We are saying
20 that ministerial directives should also be
21 effectively subject to criticism by the National
22 Security Review Committee, and without that
23 control police independence is threatened.

24 THE COMMISSIONER: Mr. Borovoy
25 would say that the minister should be able to even

1 direct the RCMP with respect to operational
2 matters as long as he or she put their directions
3 in writing.

4 MR. GRATL: With all due respect
5 to Mr. Borovoy, I think he has overlooked the
6 enhancement of police independence in this
7 context.

8 MR. MOLLARD: Could I just make a
9 comment about status.

10 Organizations like us are actually
11 interested in national security. It is difficult
12 for us to go through some of the reports that we
13 see, in terms of SIRC reports, and really
14 understand what exactly they are up to. It is
15 very much a trust-us scenario, and it has to be in
16 the context of national security. It has to be to
17 a certain extent. Sometimes we would like to see
18 a little more.

19 One of the things we see an
20 officer of Parliament bringing to this issue is a
21 spotlight that we don't think is there at the
22 moment. We would like the reports when they are
23 submitted in Parliament to have the same kind of
24 response from the public interest that the Auditor
25 General would --

1 THE COMMISSIONER: Would this be a
2 different officer than the civil liberties
3 ombudsman you propose?

4 MR. MOLLARD: We are saying that
5 the National Security Review Committee would
6 report to Parliament, so I think that is what I am
7 answering right now.

8 And would it be different than the
9 civil liberties ombudsman?

10 THE COMMISSIONER: Yes.

11 MR. MOLLARD: Yes. We can talk
12 about that, if you want us to talk about it.

13 THE COMMISSIONER: We will do it
14 briefly.

15 Let's do that, because we are
16 coming toward the end of the time.

17 The civil liberties ombudsman you
18 propose, how do you see that officer's role would
19 interact with the Privacy Commissioner and the
20 Canadian Human Rights Commission?

21 MR. MOLLARD: We are carving out I
22 think an area for national security here. We see
23 that as an important part of what is going on
24 here. We see the office of the civil liberties
25 ombudsman -- it is an attempt to be innovative.

1 We are attempting to be creative here, to bring
2 another element of ability, for example, on the
3 education side for Canadians who now we know feel
4 very much concerned about coming forward to the
5 bodies that exist; are very concerned about that.
6 We are very concerned about that.

7 We make efforts to go into the
8 community, and it is really hard.

9 What we want to do is create a
10 status, an organization that has an appeal to
11 Canadians generally; that it is in a sense someone
12 attempting to make sure that when we get the
13 balance right, there is an advocate there. There
14 is an advocate for civil liberties and human
15 rights that isn't necessarily there right now.

16 So I think the educational side is
17 certainly one of the aspects that we want the
18 civil liberties ombudsman to provide.

19 It would in a sense be the
20 in-house expertise on the civil liberties side to
21 government generally and to the national security
22 agencies themselves.

23 Again, we see review as being
24 something that enhances these agencies' ability to
25 provide national security, not undermine it.

1 MR. GRATL: Some of the
2 difficulties in terms of projecting an
3 institutional image that enhances public
4 confidence in the process is that whenever it
5 comes to national security concerns, secrecy is
6 always emphasized, and many of the virtues of
7 those agencies are cloistered.

8 The civil liberties ombudsman
9 would have an opportunity to present to the public
10 a more public face, would allow for liaison with
11 the public, particularly vulnerable communities,
12 and provide some benefit at low cost in terms of
13 enhancing public confidence in the various
14 institutions.

15 THE COMMISSIONER: Any questions
16 from over here?

17 MS WRIGHT: Just on the civil
18 liberties ombudsman idea.

19 There are a number of arguments
20 that one could make against this number of
21 agencies. Let's say they could review RCMP
22 national security activities, if we could focus on
23 that.

24 So in your proposal there would
25 still be a CPC. There would be the National

1 Security Review Committee. There would be the
2 civil liberties ombudsman. There would be the
3 Privacy Commissioner, and there is still a number
4 of accountability bodies at the federal level.

5 MR. MOLLARD: The word is there is
6 a proliferation of organizations.

7 MS WRIGHT: There is that. There
8 is a proliferation, so there is an argument that
9 there is a burden on the taxpayer. There is also
10 an argument that there is a burden on the subject
11 organizations because there are so many bodies to
12 whom they have to answer. There is a potential
13 for a proliferation of standards that might apply.
14 There is also an argument that there a burden on
15 the individual citizen who might go to one of
16 these organizations; that there is confusion,
17 there is dilution.

18 We also heard an argument abroad
19 that if you proliferate the accountability bodies
20 and if they all have too much jurisdiction, there
21 is a risk that everyone will think the other body
22 is the one taking care of a crisis or an issue or
23 an event that comes up.

24 I wonder if you could speak to
25 those concerns.

1 MR. MOLLARD: I think our position
2 on civil liberties ombudsman is that it doesn't
3 actually have review function over the subject
4 agencies. It is not meant to do that. It is not
5 meant to duplicate the NSIRC, as we have
6 suggested. It really is sort of a check on the
7 audit body. It is a further check on the audit
8 body.

9 Again SIRC, it is hard to know --
10 I will relate this example.

11 It is such a cloistered world, I
12 think. It is surprising to me. I attended the
13 conference here in Ottawa in the spring where SIRC
14 had their 20th anniversary bash, so to speak, and
15 I had a chance to sit down with some of the SIRC
16 folks and I said look, it's a trust-us scenario.
17 You want us to trust that you are looking out for
18 Canadians and civil liberties and human rights and
19 making sure that the rule of law is respected.

20 Let's think creatively about how
21 to do that. One way to do that is I would be
22 interested in knowing the people on your staff, a
23 little bit of bios of who you employ and what
24 their backgrounds are.

25 I was a bit surprised. I got a

1 reaction that said no, no, we wouldn't want to do
2 that. And I said why, and they said that would
3 raise employment issues. I said employment
4 issues, I don't understand. Well, people would be
5 jealous about who got the job.

6 It just didn't make any sense. I
7 said well, if you told me there would be security
8 concerns, then I might understand. And so the
9 answer was oh, yes, there would be security
10 concerns.

11 It just struck me that it is a
12 very cloistered world and being in that cloistered
13 world promotes that sort of desire to keep things
14 quiet.

15 We want this to come out of the
16 shadows in a certain sense. Of course respect
17 national security confidentiality but take this
18 out of the shadows. We see the idea of a civil
19 liberties ombudsman doing that.

20 As far as problems of where
21 complainants go and confusion, if somebody has a
22 complaint and there is a civil liberties
23 ombudsman, that is not the intake responsibility
24 of that. They would point them in the right
25 direction, so I don't see that as a big problem.

1 THE COMMISSIONER: Thank you,
2 Mr. Gratl and Mr. Mollard. That has been a very
3 useful session. I have enjoyed the opportunity to
4 ask you questions, and your answers are very
5 helpful. You have obviously given a great deal of
6 thought to these issues, and you are to be
7 commended for that. I appreciate it very much.

8 MR. MOLLARD: We very much thank
9 you for the opportunity to come again, and we look
10 forward to your report. Indeed, we believe it
11 will be an important legacy in this area and wish
12 you best wishes in producing it.

13 THE COMMISSIONER: Thank you very
14 much.

15 We will take a break for 10
16 minutes.

17 --- Upon recessing at 10:55 a.m. /

18 Suspension à 10 h 55

19 --- Upon resuming at 11:10 a.m. /

20 Reprise à 11 h 10

21 THE COMMISSIONER: Let's resume
22 again.

23 On our next panel we have three
24 very distinguished presenters: Commissioner
25 Zaccardelli from the Royal Canadian Mounted

1 Police; Commissioner Gwen Boniface from the
2 Ontario Provincial Police; and Chief Vince Bevan
3 from the Ottawa Police Services.

4 Let me formally welcome you to the
5 inquiry and thank you very much for coming today
6 to make the presentations that I am very
7 interested in listening to.

8 Let me take this occasion publicly
9 with the three of you here to express my
10 appreciation to each of you and, through you, to
11 your organizations for the participation and
12 involvement they have played throughout the
13 inquiry, throughout both aspects of the inquiry.

14 It was obviously very important to
15 me that all three of the forces be involved and to
16 provide assistance, and I have found throughout
17 the inquiry that there has been unfailing
18 cooperation; that officers from each of your
19 forces have been supportive and that when
20 submissions have been made, particularly in the
21 policy review part, they have been carefully and
22 thoroughly done and very helpful to me and those
23 that are working with me.

24 So a very genuine and sincere
25 thank you to all of you for the assistance that

1 you have provided.

2 The format for this session is
3 relatively informal. I understand that each of
4 you may wish to make an opening presentation, and
5 please feel free to take as long as you wish to do
6 that. Then following that, I will no doubt have
7 some questions and counsel who are here with me
8 may also have questions.

9 The purpose of our questions
10 really is to elicit as much information and draw
11 upon your particular experience and expertise to
12 help us as we move forward toward the
13 recommendations.

14 So that is the course we will
15 follow.

16 With that, I turn it over to you.
17 Commissioner Zaccardelli?

18 SUBMISSIONS

19 MR. ZACCARDELLI: Good morning,
20 Commissioner. It is a real honour and a pleasure
21 to be here this morning before you with my
22 colleagues, Commissioner Boniface and Chief Bevan.

23 We would like to give you maximum
24 time to ask questions, but we thought we would
25 make some very short comments at the beginning

1 just to put a little bit of perspective on this
2 issue.

3 We are going to talk from the
4 position of trying to understand what we mean in
5 law enforcement when we talk about integrated
6 policing or the philosophy of integrated policing.

7 I guess I must caution you that
8 the philosophy of integrated policing for us is
9 very much a work in progress, and I think it will
10 always be a work in progress.

11 I guess there has always been
12 integration as far back as you want to go in
13 policing, indeed in society. Everything is
14 interdependent. A number of us in policing, and
15 especially the three of us here, but we have many
16 other police chiefs and other police officers
17 throughout this country and throughout the world,
18 when we look at the modern challenges or the
19 modern context of policing, a number of us came to
20 the realization that we had to maybe look at a
21 different way to tackle the modern challenges of
22 public safety, public security and policing.

23 It is from that context, and it is
24 important that we understand every one of us has
25 to deal with the context that we live in and

1 operate in. So a number of years ago when we
2 started looking at the changing environment
3 because of globalization, technology and so on,
4 the fact that more and more what happened in one
5 part of the country affected another part of the
6 country, what happened indeed in one part of the
7 world affected us or what we did here affected
8 another part of the world, we realized that we had
9 to make some changes in our approach to law
10 enforcement.

11 We did tend to be in the past. We
12 tended to work together from time to time. We
13 reacted to issues or challenges that we faced in
14 public safety or public security. We reacted, but
15 then we would go back and sort of work more or
16 less in our silos, in our own jurisdictions, in
17 our own environment. And that was okay in those
18 days where we could actually say that organized
19 crime basically took place in three major centres
20 in this country.

21 But we quickly started to realize
22 in this world of globalization, use of technology,
23 and so on, that criminal organizations not only
24 could be set up in Toronto and have an impact on
25 Carrot River, Saskatchewan, but they could be set

1 up somewhere in Africa and affect Toronto or
2 affect Canada, and so on.

3 So we realized that if the
4 challenges were coming at us in a global sense, or
5 the challenges were coming at us in a
6 multi-dimensional sense, we needed to respond to
7 this challenge and understand it in a way that we
8 would be the most effective and efficient law
9 enforcement agencies we could be, so that we would
10 minimize the risk to society and maximize the
11 security.

12 So we said if the challenges are
13 coming at us in multi-dimensional, we need to get
14 our resources together, act together in a
15 coordinated, thus integrated, way because as many
16 resources as I have -- and people will tell you
17 the RCMP has a lot of resources. But actually I
18 still don't have enough resources. And in Ontario
19 they will say that Commissioner Boniface has all
20 the resources but she doesn't have enough.

21 So we basically said what if we
22 leverage our collective resources where there is a
23 need to respond in common to a threat. That is
24 the basis of the philosophy of integrated
25 policing.

1 And, you know, if we get it right
2 in Toronto or if we get it right in Ontario, and
3 then we get it right in Canada, well what about
4 internationally because these challenges are
5 coming at us internationally.

6 So there is a world-wide movement
7 toward integration at a global level, simply
8 because we are reading the environment and we are
9 trying to respond to that environment.

10 That is the fundamental reason why
11 we have moved to this integration, is to be able
12 to leverage our collective resources.

13 There is another element of
14 integration that often doesn't get discussed,
15 which is equally important, and that is when we
16 talk about integration, we don't talk about just
17 law enforcement; we talk about other sectors,
18 other values that can add to the discussion or to
19 the solution of a problem.

20 For example, Commissioner Boniface
21 and I, as the Commissioner for the RCMP, have a
22 huge responsibility to police aboriginal
23 communities throughout this country. Now, what we
24 talk in simple terms about is we want to help make
25 those communities safer and healthier. Obviously

1 we have a role to play, but do other agencies have
2 a role to play? Does Indian Affairs have a role
3 to play, other social agencies?

4 So when we talk about integration
5 in trying to deal with this challenge, we talk
6 about inviting those other agencies to the table.

7 Historically we have tended not to
8 do that as much as we could, but in today's world
9 we recognize that valuing those perspectives
10 enables us to come up to a better solution for the
11 huge challenges that we are facing.

12 So integration is not just about
13 law enforcement; it is about who can add value.
14 And it is not about absorbing smaller
15 organizations, as we need different types of
16 organizations, different perspectives to come up
17 with the best possible answer.

18 When you talk about integration we
19 quickly realize, those of us who have been really
20 focused on this, that you can't do good integrated
21 proactive work if you are not intelligence led.
22 So when we talk about intelligence led, we talk
23 about informing ourselves, informing ourselves in
24 the best possible way, because if you are not
25 informed you can't position yourself to react or

1 deal with the problems in the most proactive way.

2 I know you have heard much
3 testimony over the months, Commissioner, and I
4 have watched with some curiosity and some
5 frustration as I have read and heard people try to
6 describe what they think we mean by integrated
7 policing or intelligence led policing.

8 It is simply intelligence led
9 policing means we want the best information so we
10 can position ourselves to be proactive and not
11 always be reactive. It is not about getting into
12 somebody else's area of responsibility or
13 encroaching on somebody else's mandate. It is
14 being informed. In today's world, if you are not
15 informed, you can't possibly position yourself to
16 better respond.

17 How can we together leverage our
18 resources and act if we are not intelligence led.
19 Intelligence led is not about being in the
20 security business; it is about being in the
21 policing business and providing the best possible
22 answer that we can give.

23 So we basically are talking about
24 understanding our environment and collaborating in
25 an integrated way to best respond.

1 When we talk about integration,
2 sometimes I will hear, and Chief Bevan and
3 Commissioner Boniface will also hear, you will say
4 well, we have always been integrated. We have
5 always worked well together. Look at all those
6 joint forces operations that we did last year.
7 And that is true, Commissioner. We do wonderful
8 operations. We work together. But if the truth
9 be known, a lot of those operations have tended to
10 be reactive in nature and we come together on an
11 ad hoc basis.

12 The modern philosophy of
13 integration, intelligence led, is about always
14 being integrated where we need to be, and bringing
15 the resources together when we need them and to be
16 able to react.

17 At the tactical level, it works
18 unbelievably well and there are huge successes at
19 all levels.

20 But the area that is a challenge
21 for us, is a challenge for me in particular in a
22 lot of ways, is that we believe that the true
23 meaning of integrated policing must move from the
24 tactical, reactive mode to the strategic mode.

25 By that I mean I go back to the

1 example I gave about Commissioner Boniface and
2 myself working with aboriginal communities and
3 working with other agencies. The fact is if that
4 is a common challenge for all of us, I need to be
5 able to do more than simply from time to time
6 integrate some of my people with Gwen's people or
7 with some of Indian and Northern Affairs people,
8 or other social agencies together, to react to a
9 problem.

10 I need at the strategic level to
11 sit down with Commissioner Boniface, sit down with
12 deputy ministers at the federal and provincial
13 level who have a mandate and responsibility to
14 solve some of these very protracted, difficult
15 aboriginal issues, and sit down at a strategic
16 level and say we share a common responsibility.
17 Can we work out common strategic priorities?

18 If you are able as organizations
19 and different levels of government to understand
20 the need to integrate at the strategic level, you
21 can imagine the richness, what will flow down from
22 that, to the mid-level and tactical level.

23 That is the greatest challenge, is
24 operating at the apex of the triangle. That is
25 why I said this is still very much a work in

1 progress. If we can reach that, Commissioner, we
2 will minimize the threats and we will maximize the
3 benefits.

4 So it is great, when I take to my
5 investigators at the front end, they say "Boy, we
6 did 10 more percent operations last year in an
7 integrated way and that is great". Then I say,
8 "Well, how much were we integrated? How much time
9 did we spend at the strategic level so that we can
10 provide that real leadership? How much do we
11 spend at the strategic level with our other key
12 partners through out Canada at the provincial and
13 federal level?"

14 And then, "How much time do I
15 spend with the FBI and the Australian Federal
16 Police integrating where we have common challenges
17 and common concerns?" In today's world when we
18 talk about national security, organized crime,
19 some of these major challenges, there is a need to
20 move in that direction.

21 Commissioner, I want to give you a
22 flavour of why we are excited about this, because
23 we believe this is the modern challenge of
24 national security law enforcement and we all have
25 a role to play. We are all on this spectrum.

1 It is not about who is more
2 important and who is less important, it is about
3 that we all have a role. Security agencies have a
4 role, law enforcement, other social agencies,
5 which will move us to a civic security state where
6 we maximize security and minimize the threat.

7 I will now turn it over to my
8 colleagues. I guess Commissioner Boniface.

9 THE COMMISSIONER: Thank you,
10 Commissioner Zaccardelli.

11 Yes, Commissioner.

12 SUBMISSIONS

13 MS BONIFACE: Thank you. Good
14 morning.

15 Again, it is also my pleasure to
16 be here and I thank you for the opportunity.

17 International terrorism threatens
18 public security in an unprecedented fashion and
19 calls for unique and innovative responses from law
20 enforcement and security agencies.

21 The tragic events of
22 September 11th were not an anomaly of the modern
23 era but indicative of security challenges that are
24 with us for the foreseeable future. Indeed, the
25 bombings in London in the summer of 2005, the

1 continued loss of life in Jordan and Iraq, and the
2 targeting of Spain and Indonesia underscore the
3 reality that terrorism poses a threat to
4 jurisdictions in all corners of the globe.
5 Preventing incidents such as this in Canada will
6 not be easy and this is indeed our challenge.

7 In constructing our response we
8 must be mindful of several factors. A successful
9 strategy is not a zero-sum game to be won at any
10 cost. A comprehensive response must be built on
11 several factors.

12 Most importantly, our efforts must
13 always respectfully consider the delicate balance
14 of protecting individual civil liberties while
15 confronting the challenges of combatting
16 international terrorism.

17 As a representative of a
18 provincial police force, I would like to offer our
19 perspective on a viable response to these
20 contemporary challenges. In doing so, I will
21 comment on the roles and responsibilities of the
22 OPP as they pertain to terrorism, the necessity of
23 an integrated law enforcement response to this
24 challenge in Ontario, our participation in joint
25 Force initiatives aimed at terrorist-related

1 activity, and the overarching concern of ensuring
2 civil liberties.

3 I believe it is these issues that
4 frame the debate which is the focal point of our
5 discussion today: How best to ensure that our
6 goals are realized in an accountable way.

7 I will just begin with a brief
8 comment echoing the points made by the President
9 of the CACP yesterday.

10 Law enforcement has changed
11 demonstrably in the past 10 to 15 years, a direct
12 reflection of the face of criminality today.
13 Crime has truly become a global cooperative
14 venture and this trend will become increasingly
15 complex.

16 Law enforcement's response to
17 this variant of sophisticated crime, including
18 terrorism, has become increasingly integrated
19 via the design and use of Joint Force Operations
20 or JFOs.

21 Whether one considers the INSET in
22 Toronto or drug enforcement JFO in North Bay, this
23 integration is a strategic response to the
24 complications arising out of jurisdictional
25 issues, the compartmentalization of information,

1 disparate expertise, and the financial burden to
2 be shared in complex investigations.

3 From our operational perspective,
4 this integration of policing efforts has done much
5 to alleviate these complications. It is a
6 necessary step to combat organized crime or
7 terrorism, one that allows for optimal
8 communication, cooperation and coordination. We
9 in the OPP have a great deal of experience in the
10 establishment and, in some cases, leadership of
11 JFOs throughout the approach.

12 While the JFOs may pose some
13 complication from the perspective of any number of
14 review mechanisms, without them police services
15 would be remained disorganized in the face of a
16 very organized adversary.

17 I would like to now turn
18 specifically and elaborate on the OPP's
19 involvement in matters before you today.

20 As you know, the OPP is an
21 organization of approximately 7,000 members and
22 polices an area of over one million square
23 kilometres, including direct policing
24 responsibilities for 400 communities, as well as
25 the task of policing all areas that do not have

1 their own police service.

2 The OPP is mandated to provide
3 investigative expertise, provincial police
4 services and a variety of specialized services
5 throughout Ontario. As such, we have a
6 communication, transportation and deployment
7 capacity to deliver effective services in each
8 corner of the province.

9 In the course of activities it
10 has forged a tight link with Ontario's
11 communities, a vital necessity in community and in
12 intelligence-led policing. In this general way,
13 the OPP, like the RCMP in its contra provinces, is
14 well situated, together with its partner agencies,
15 to participate in the frontline component of
16 combatting terrorist-related incidents in the role
17 of community police officers and first responders.

18 The direct participation of the
19 OPP in matters relating to national security can
20 generally be ascribed to two main components:
21 participation in INSET and IBET, which are
22 federally led; and in the Provincial
23 Anti-Terrorism Section, which I will refer to
24 as PATS.

25 In defining national security

1 activities in the role of law enforcement, the OPP
2 absolutely recognizes the primacy of the RCMP in
3 the investigation of matters relating to national
4 security as enshrined in the Security Offenses
5 act, and indeed the RCMP's leadership in matters
6 relating to threats to Canada as defined in the
7 CSIS Act.

8 We have agreement with RCMP
9 stipulating the roles and responsibilities of the
10 provincial-municipal forces in relation to
11 offenses under the Security Offenses Act. An MOU
12 to this Act was approved in Ontario in November
13 2003.

14 The OPP and municipal police
15 forces have a significant interest in preventing
16 acts of terrorism in Ontario. Crime prevention in
17 fact is the first mandate of all police services
18 in Ontario. To this end, the Government of
19 Ontario established the multi-jurisdictional JFO
20 known as PATS in 2002 to collect criminal
21 intelligence in Ontario pertaining to public
22 security threats. The PATS consists of 25-member
23 OPP-led teams centred in the greater Toronto area
24 and in fact is collocated with the RCMP INSET but
25 deployed throughout the province and comprises

1 10 police services, including the RCMP.

2 The OPP views national security
3 activities as primarily comprised of the four
4 threats to Canada detailed in the CSIS Act. PATS
5 is not mandated, nor does it engage in matters of
6 national security, except for the collection of
7 criminal intelligence relating to terrorist acts
8 in Ontario.

9 So for the purpose of
10 clarification, PATS does not enter into or lead
11 national security criminal investigations unless
12 requested to do so under an RCMP leadership,
13 recognizing the primacy of the RCMP.

14 The rationale is that all
15 terrorist acts and their support activity are
16 criminal acts defined by the Criminal Code of
17 Canada. Should security intelligence be received
18 in the course of the PATS operation, it is
19 disseminated to INSET and/or CSIS as is
20 appropriate.

21 It should also be noted that not
22 all acts of terrorism necessarily affect the
23 national security of Canada. By way of example,
24 the efforts of a criminal extremist group to
25 sabotage. For instance, a private research

1 project via ideologically motivated violence may
2 fit the definition of terrorism, but not affect
3 national security.

4 The focus of PATS is
5 intelligence-led approach to terror-related
6 activity. The collection of information, the
7 analysis of that information, the subsequent
8 dissemination of the resultant intelligence, with
9 the end result of informed decision-making in law
10 enforcement.

11 All information is collected and
12 possessed with the aim of criminal prosecution and
13 subject to the same standards as the collection of
14 evidence.

15 In executing its duties, PATS
16 works in close cooperation with the RCMP. By way
17 of example it is a standard operational practice
18 that is currently being drafted into policy that
19 PATS engage in its annual prioritization and
20 tasking initiative together with the RCMP.
21 Together they establish intelligence requirements
22 and operational directions, and once an operation
23 is under way the RCMP INSET is a client of PATS
24 intelligence, a factor facilitated quite clearly
25 by their collocation of the two entities.

1 This dissemination occurs by
2 electronic submission of reports in a close and
3 cooperative relationship with the INSET. They
4 meet monthly, discuss operational initiatives,
5 ensure there is no duplicity and ensure joint
6 interests where appropriate.

7 The rationale is simple, PATS
8 affords the maintenance of a province-wide
9 capacity to collect and receive relevant
10 information because Ontario has 61 police services
11 and a variety of intelligence sources to assure an
12 awareness of the challenges to public security
13 with the goal of prevention.

14 While the RCMP is a primary client
15 of our intelligence products, this is not always
16 the case. If the intelligence security aspect to
17 the occurrence is not evident, the file is then
18 turned back to the police service of jurisdiction
19 for the purpose of what would normally be just an
20 ordinary criminal investigation.

21 Now if I can turn to sharing and
22 security of information.

23 In relation to any law enforcement
24 initiative of this type, especially one with grave
25 implications of terrorist activities, there are

1 several guiding principles that must be adhered
2 to.

3 As has been highlighted in several
4 reviews, notably the 9/11 Commission, and will be
5 underscored by Chief Bevan today, none is more
6 important that the open sharing of information.
7 In relation to terrorism, past incidence have
8 illustrated both the crippling tendency to
9 compartmentalize and the absolute necessity to
10 share information. The need to share must take
11 primacy over the need to know if we are to
12 succeed.

13 In our efforts to combat terrorist
14 activities there has been concern expressed over
15 the protection of civil liberties. It must be
16 understood that the police are the guardians of
17 the Charter of Rights and Freedoms in Canada, a
18 fact that is ensured by a variety of oversight
19 mechanisms.

20 Since national security
21 investigations for a variety of reasons tend to
22 result in less criminal prosecutions or judicial
23 review, some favour the establishment of a form of
24 review mechanism to solidify the public trust and
25 ensure an accountability mechanism for law

1 enforcement efforts in this regard.

2 If one were to move towards the
3 establishment of a review mechanism there appears
4 to be two primary requirements. First, the
5 assurance of law enforcement accountability; and,
6 second, the construction of a workable solution,
7 one that assures police functionality and the
8 maintenance of principle and practice of police
9 independence.

10 As we forge forward in the molding
11 of the law enforcement role in matters of
12 terrorism, national security activity, one must be
13 cognizant of the propensity for government
14 direction. Here we must make clear, law
15 enforcement does not engage in the collection of
16 security intelligence to advance governmental
17 prerogatives. It is exclusively involved in the
18 independent and responsible collection of criminal
19 intelligence to engage in crime prevention and law
20 enforcement.

21 In this regard, the police are led
22 by the Criminal Code and their capacity to develop
23 reasonable grounds to suspect or believe that a
24 threat to the public exists.

25 Therefore, if one were to consider

1 the establishment of review a mechanism, I would
2 suggest the following guiding principles:

3 It is important that this function
4 respect the security implications of the
5 information with which it must deal.

6 An entity able to acquire the data
7 to render judgments, but endowed with the
8 integrity and knowledge to ensure security.

9 That any review mechanism provide
10 a workable solution, one that ensures civil
11 liberties, increases public confidence, but must
12 not place national security in jeopardy by
13 impeding police operations.

14 That any review mechanism respect
15 the constitutional division of policing
16 responsibilities in Canada and the principle of
17 police independence that underlines the law
18 enforcement function.

19 Finally, given the joint Forces
20 nature prevalent in policing today, this central
21 mechanism considers avenues to access required
22 information via legislated gateways, whether
23 federal, provincial or municipal, and
24 consideration on reciprocal legislation to ensure
25 the accountability of all members of their home

1 agencies.

2 In conclusion, we have a heady
3 task a head of us. As articulated by yourself,
4 Mr. Commissioner, in the preliminary consultation
5 ace paper, we must strive to balance the needs of
6 public security with the rights and
7 responsibilities inherent in a democratic state
8 such as ours. Our zeal must not be such that
9 civil liberties are ever viewed as second
10 consideration. Striving together in an integrated
11 environment, governed by principles of cooperation
12 and collaboration, we will achieve our first goal
13 in assuring public confidence and accountability
14 we can then achieve our second.

15 Thank you.

16 THE COMMISSIONER: Thank you,
17 Commissioner Boniface.

18 Chief Bevan.

19 SUBMISSIONS

20 MR. BEVAN: Thank you very much,
21 Mr. Commissioner. Thank you for that warm welcome
22 this morning.

23 I am pleased to be here with my
24 colleagues. We have been to a number of forums
25 together to talk about issues and I hope that what

1 we have to say today will represent and
2 demonstrate to you the value of integration,
3 because certainly among us that is what we
4 practice.

5 By being here today to answer
6 those questions, we want to relay to you how
7 important we think this is to the policing
8 community.

9 I have some remarks that have been
10 prepared as a work product of discussion of
11 members who have been here monitoring the work of
12 the Commission and representing the Ottawa Police
13 Service where it is appropriate. I would like to
14 follow my comments as a start, and we can
15 certainly send over a copy of the remarks to you.

16 THE COMMISSIONER: Sure.

17 MR. BEVAN: I will not duplicate
18 the remarks of my colleagues made before me but,
19 Mr. Commissioner, the remarks that I do have will
20 touch on information-sharing, investigative chill
21 and investigative activities.

22 Mr. Commissioner, law enforcement
23 agencies are subject to various pieces of privacy
24 legislation, notwithstanding the many restrictions
25 on disclosure permit the sharing of information

1 amongst themselves. While such exchanges may be
2 permissible under statute, information has not
3 always been readily accessible, either because of
4 cumbersome bureaucratic processes or differing, if
5 not to say incompatible, records management
6 systems. Overall, for some time
7 information-sharing was characterized by a lack
8 thereof, leading to a stinging criticism against
9 policing.

10 The Campbell report remarked on
11 the fundamental need for law enforcement agencies
12 to share information about investigative and other
13 law enforcement activities. The response to this
14 report, and others, has been systems such as
15 ViCLASS, the sex offender registry, and major case
16 management.

17 In fact, these systems have been
18 legislated in Ontario through a regulation under
19 the Police Services Act, Adequacy and
20 Effectiveness of Police Services. This regulation
21 sets mandatory standards with respect to training,
22 requires certification for investigators, and
23 iterates the principles applicable to the systems.

24 With respect to oversight of the
25 RCMP, as the Commission considers the manner in

1 which to hold officers accountable to certain
2 standards, it must also insist that the standards
3 be clearly established and articulated, ensuring
4 fairness and consistency.

5 In the last few weeks, police
6 agencies from across Canada have agreed on a
7 framework to share information collected in the
8 course of law enforcement activities. The police
9 information portal, as it is known, is a
10 significant achievement and an initiative driven
11 by the policing community. Undoubtedly, we have
12 moved a significant step towards eliminating
13 artificial barriers to information-sharing in an
14 era of instant communication.

15 I urge the Commission to be
16 careful so such a leap forward does not suffer a
17 setback through any findings that this Commission
18 might make.

19 Investigations are fluid and are
20 developed on the information available or that
21 becomes available. What at one time may seem
22 insignificant suddenly may become pivotal, just as
23 pocket litter found on one suspect can be the
24 keystone of a separate criminal investigation.

25 Irrespective of the interest or

1 importance attached at any given time or by any
2 given agency, of universal significance is the
3 ability to share information among law
4 enforcement.

5 Any investigative activity
6 undertaken, whether characterized as a criminal
7 investigation by the Ottawa Police Service, or a
8 national security investigation by CSIS, is
9 dependent on quality information. A national
10 security investigation concerned with potential
11 terrorist acts will require not only solid
12 information, but immediate access.

13 Again, in looking at oversight
14 mechanisms the Commission must not lose sight of
15 the intrinsic importance of information to the
16 work of law enforcement in preserving the peace,
17 prosecuting criminals, essentially fulfilling our
18 statutory and common law duties.

19 Oversight of national security
20 activities must fundamentally recognize that an
21 unduly heavy and intrusive process will result in
22 investigations that are stalled, rendered moot, or
23 that are so contaminated that prosecutorial
24 success is irredeemably compromised.

25 Oversight or review, whichever

1 approach is recommended by the Commission, must
2 also bear in mind that integrated teams rely on
3 the willingness of parties from other agencies to
4 work with the RCMP. The mechanism designed must
5 not be one where partner agencies are penalized
6 and subjected to forum shopping inconsistent
7 results, such that officers will not be willing to
8 assume additional jeopardy.

9 It is important not to interpret
10 this comment as being opposed to accountability.
11 Indeed, police in Ontario are accustomed to having
12 their actions reviewed through Public or Chief's
13 Complaints, the Ontario Civilian Commission on
14 Police Services, the Special Investigations Unit,
15 and others, which offer varying forms of redress
16 or remedies.

17 The statement is made as a
18 reminder of the need for fairness to the parties
19 whose expertise, training and skill are being
20 called upon for assistance and whose contribution
21 to the work of the team will be invaluable.

22 On the same theme, the Commission
23 must be mindful that officers do not become
24 intimidated by the mechanisms put in place whereby
25 the appropriate vigour is not brought to

1 investigations meriting serious inquiry.

2 Finally, the Commission ought to
3 consider procedural safeguards, such as the stay
4 of oversight proceedings, pending disposition of
5 criminal or other court matters flowing from the
6 investigation.

7 Indeed, such charges or other
8 output ought to be viewed as having primacy over
9 other proceedings. Where there is no prejudice, a
10 stay would preserve the integrity of the
11 investigation and evidence, not to mention reduce
12 the likelihood of cross-contamination.

13 The necessity of the stay could be
14 a matter subject to periodic review.

15 When does it a criminal
16 investigation satisfy the criteria under the
17 Security Offences Act and Canadian Security
18 Intelligence Service Act, thus triggering section
19 6 of the SOA? Even once someone has judged it
20 prudent to provide notice to the RCMP, is the
21 local police service ousted? Is it possible to
22 draw a bright line? Is it prudent to draw a
23 bright line?

24 Allow me to illustrate the above
25 issues with an example.

1 The Ottawa Police Service receives
2 a 911 call reporting a suspect with a firearm in a
3 downtown building. The information received
4 indicates that this 20-floor building houses a
5 number of businesses and several federal
6 government departments, including the office of
7 the minister for immigration.

8 The police service response is to
9 immediately deploy its assets to assess and to
10 respond to the threat. The Ottawa Police Service
11 will alert the RCMP as this building has dual
12 jurisdiction implications. The OPS jurisdiction
13 is the building as a whole with exception of the
14 minister's office. Should the minister be
15 present, then the safety and security of the
16 minister is the responsibility of the RCMP.

17 There is no information to
18 indicate that this matter falls within the SOA.
19 As officers respond in the normal course, further
20 information is received that the suspect has
21 entered the ministerial offices where staff are
22 present. Motive is still unknown. There is no
23 information as to the presence of the minister.
24 The SOA threshold has not yet been met but is
25 getting very close. Contact with the RCMP

1 continues.

2 OPS may seek the assistance of the
3 RCMP in discharging its own municipal public
4 safety mandate to take immediate measures,
5 evacuation, street closures, public notices,
6 et cetera.

7 Information is now received that
8 the minister is in the garage. The SOA is still
9 not formally triggered as there is no information
10 that the threat is against the minister.

11 Now, depending on what further
12 information is received and then confirmed, the
13 jurisdictional issues and the application of the
14 SOA will become much easier to determine. A
15 politically motivated hostage-taking involving the
16 minister falls squarely within the SOA. However,
17 a domestic dispute which escalates into a
18 hostage-taking never falls within the SOA.

19 Until the information is
20 confirmed, it is impossible to predict where
21 matters will settle. As information is corrected
22 and updated, it is entirely possible that primary
23 responsibility will shift back and forth.

24 The key to navigating these
25 situations is flexibility and cooperation founded

1 on long-standing relationships of trust among law
2 enforcement partners.

3 Another aspect the Commission must
4 be attuned to is that while the RCMP may have been
5 notified as well as the INSETs operating and
6 working together, the police service of local
7 jurisdiction will still have responsibilities and
8 statutory obligations to fulfil both locally and
9 provincially.

10 Accordingly, while there may be a
11 clear SOA and national security character to the
12 activities, such a bright line cannot hamper the
13 responsibility of other parties, nor should
14 officers in such circumstances be subject to the
15 national security oversight regime. An example of
16 this is officers executing a judicially authorized
17 search warrant in the context of a criminal
18 investigation into credit card fraud. If the
19 suspects are also subject of an INSET
20 investigation with national security overtones,
21 does the status of the suspects result in the
22 fraud investigation and the officers who are
23 conducting that investigation being subject to
24 national security oversight?

25 What will happen to the criminal

1 prosecutions? What of the responsibility that the
2 local police service has to the local population
3 who are victims of the frauds? Should their
4 interests be ignored or hampered because the
5 suspects may also have broader ambitions?

6 I would offer the suggestion that
7 flexibility is key in order to ensure fairness to
8 all parties and also allow the normal functioning
9 of law enforcement.

10 With respect to the questions I
11 posed earlier, I would suggest that yes, it is
12 possible in some cases but not all to draw a
13 bright line. However, even when this line is
14 discernible, it is not necessarily prudent to draw
15 it.

16 Mr. Commissioner, in conclusion,
17 the eyes of the policing community are focused on
18 the work of this Commission and await with
19 interest the conclusions which will be drawn from
20 the submissions of the various participants in
21 this important component of your mandate. The
22 complexity of the issues make the distilling and
23 analysis of all the submissions a daunting but
24 important task, and we will all anticipate the
25 Commission's recommendations with the hope that

1 they provide a workable and commonsense regime for
2 oversight for national security investigations.

3 Thank you very much for the
4 opportunity.

5 THE COMMISSIONER: Thank you very
6 much, Chief. I appreciate that.

7 Thank you for those submissions
8 and let me start out the questions.

9 The first one has to do with the
10 nature of law enforcement activities in national
11 security investigations. As you all know, the
12 McDonald Commission drew a distinction between the
13 roles that CSIS would play in collecting security
14 intelligence and what the law enforcement agency,
15 the RCMP, would do in the future.

16 We read often now comments made
17 publicly that the RCMP have got back into
18 something that they weren't in. I don't say I
19 endorse it, but there certainly is a perception
20 there.

21 As I listened to your submissions
22 and as I have listened to the evidence in this
23 inquiry, it strikes me that given the new
24 challenges and threats that the RCMP, but other
25 police forces as well, are quite understandably

1 collecting criminal information and intelligence
2 relating to security threats and that they are
3 doing so furtherance of their preventive mandate,
4 given that is the case, is it, to use Chief
5 Bevan's phrase, possible to draw a bright line
6 between what law enforcement agencies do in this
7 area and what CSIS does?

8 Why don't I ask that, and then I
9 will have some other questions about it.

10 MR. ZACCARDELLI: Well,
11 Commissioner, obviously that is one of the
12 fundamental questions here. Law enforcement, I
13 think the common law traditionally has been very
14 clear in terms of the responsibility of the Chief
15 of police, of the Commissioner of police to
16 decide, after proper evaluation of whatever
17 information they have, to determine how do proceed
18 or if to proceed in terms of investigations, how
19 to deal with preventive measures required to
20 prevent crime and how to deal with subsequent
21 events following from a crime.

22 I think the common law has been
23 very good in the sense that they haven't been too
24 prescriptive in that area. They leave that
25 responsibility to us to decide, and we are clearly

1 held accountable through a whole series of
2 processes, most importantly through the courts, of
3 course.

4 I think if we try to frame it or
5 try to predict all the possibilities or try to
6 determine every event before you start, it becomes
7 very difficult from a practitioner's point of
8 view. I think it would be very dangerous to go
9 down that road, as Chief Bevan has clearly stated.

10 On the criminal side sometimes you
11 have the same issues but it is probably a little
12 easier, if I could say that -- and I say that
13 lightly. When we talk about national security
14 issues, it requires a lot of effort and a lot of
15 senior judgment by people who are experienced in
16 the field, and not just law enforcement people.
17 Obviously we work very closely with our security
18 agencies, CSIS and other partners, in this area,
19 this very complex area, and often it is a question
20 of getting the information, consulting,
21 re-examining and re-evaluating as we go along,
22 because the situation or the context can change.
23 The facts may stay the same, the context can
24 change and it ultimately requires a judgment call
25 after serious consultation by the very best people

1 we have.

2 Even then, we are not always
3 totally sure. It is just the nature of this
4 business.

5 I would be very cautious, as my
6 colleagues have said, to try and be prescriptive
7 here. Clearly guidelines and principles would
8 very helpful and beneficial to us.

9 But I think if we narrow that
10 road -- because this is an area where you will
11 come up with an exception before we walk out of
12 this room.

13 THE COMMISSIONER: Go ahead. Just
14 answer as you see fit and then I will pose further
15 questions.

16 MR. BEVAN: Thank you,
17 Mr. Commissioner.

18 Certainly reflecting back on the
19 period of time when the McDonald Commission did
20 its work, much has changed in the world. And the
21 question of national security at that time was
22 very much one of spies and of the influence that
23 that has.

24 Our world has really changed.
25 Globalization has rendered somewhat irrelevant

1 what we formerly saw as our jurisdictions. When
2 my career in policing began, we had a firm
3 definition of the territory, the geography that we
4 were responsible for. And if there was a highway
5 that ran through it that was policed by the OPP,
6 you dare not give a ticket or investigate an
7 accident that occurred on that highway.

8 Much has changed in the past
9 30-some-odd years, and the public expectations
10 have changed. The effect of globalization on us
11 has been very interesting.

12 In my community, 21 percent of the
13 people who live here are foreign born. That
14 brings many, many issues and we constantly have to
15 work with our partners to scan other events here
16 in Canada and abroad to determine how that is
17 going to impact on our constituency here.

18 One of the things that I think we
19 need to focus on is with all of that change in the
20 world, the nature of national security has also
21 changed. Very often now, as we have found with
22 the events that have happened elsewhere in the
23 world, this focus on criminal acts, it is not just
24 the spying that was the thrust of former concern
25 around national security. Right now it is actual

1 criminal acts and they will remain criminal acts
2 where they are carried out. That is our approach
3 to dealing with them, and I think that is why it
4 is so important for law enforcement to remain
5 engaged in that.

6 THE COMMISSIONER: Yes,
7 Commissioner Boniface.

8 MS BONIFACE: I would just
9 reinforce two points.

10 One I think that is really
11 important is that the length of investigations,
12 and as Commissioner Zaccardelli said, the pieces
13 of information you get will shift often. And that
14 should be expected. That is the complexity of
15 investigations today.

16 And secondly, in the global
17 nature, I think as a country Canada has to be well
18 informed in terms of understanding how police need
19 to work together, but particularly how we need to
20 work together at the local, provincial and federal
21 level. I think it is significantly different than
22 the era that you refer to.

23 THE COMMISSIONER: In the McDonald
24 report, yes.

25 MR. ZACCARDELLI: If I can pick up

1 on that, I think McDonald may not have been the
2 greatest friend of the RCMP at the time that he
3 rendered his decision, but I think time has shown
4 that what he said was absolutely bang on.

5 He said yes, there is a need.
6 There are different mandates, clear different
7 areas, but he clearly spoke strongly of the need
8 to be integrated and to share and recognize that
9 you have two sides to this coin.

10 National security is one side of
11 the coin. The law enforcement responsibility or
12 need to investigate those crimes related to
13 national security are critical, and law
14 enforcement is mandated to do that. That is our
15 responsibility.

16 As Chief Bevan said, in this
17 country we didn't have to think about that all
18 that much in the early years, post-McDonald, but
19 as the context of the world we live in has
20 changed, now we know, especially post-9/11.

21 The mandate didn't change. It was
22 always there and it was always recognized, and the
23 foresight of Justice McDonald I think has to be
24 recognized.

25 THE COMMISSIONER: One way I have

1 begun to think about it, listening over the last
2 several months, is that when it comes to
3 collection of information in the national security
4 area, it is like a continuum. You start at the
5 most general level with the civilian security
6 agency, and at the other end of the extreme would
7 be something happened, an offence was committed.
8 Clearly it is a law enforcement matter and there
9 is going to be a prosecution.

10 Then as you move towards the
11 centre, as you come from the law enforcement side,
12 you say well an offence hasn't been committed, we
13 are just investigating, collecting information in
14 furtherance of our prevention mandate.

15 So the question is: Is there a
16 bright line?

17 I hear what you say, that when you
18 move from one to another, there isn't. That said,
19 I would like to sort of hear your thoughts about
20 looking at the law enforcement preventive mandate,
21 should it be triggered only when there is a
22 specific threat or should the law enforcement
23 preventive collection of information, part of that
24 mandate, be to survey the lay of the land, just to
25 collect information generally that may help with

1 the assistance of its prevention mandate?

2 MR. ZACCARDELLI: Again, that is a
3 very important question, and I think it really
4 speaks to the different mandates. Clearly, as you
5 said, if you look at both ends of the spectrum, it
6 is easy. The event happens. July 7th happened in
7 London. We know what has to done.

8 The problem is as you move towards
9 the middle. And for law enforcement, again it has
10 always been there is an event, a piece of
11 information that is tangible. Something happens,
12 there is an exchange, something that we can refer
13 to that gives us some reason to believe something
14 might take place.

15 CSIS of course works away out on
16 the other end and that is part of their -- the
17 relationship is critical, because at some point
18 they also have to pass judgment on where and if
19 they share that information.

20 For us it is an event. It is a
21 set of circumstances that come to our attention
22 that we can clearly focus and identify and
23 justify.

24 But when is that event the event?
25 That is why I go back to this issue of the

1 judgment that has to be brought to bear and in
2 this issue we bring this judgment to bear not in
3 isolation. We consult and go back and we talk to
4 our lawyers, more than we want to, and we talk to
5 our partners, and so on.

6 And I say that with the greatest
7 respect to our lawyers, of course.

8 I think the common law has always
9 looked at that and given the chief or the
10 commissioner the responsibility and the leeway to
11 make that decision: Where is the trigger?

12 THE COMMISSIONER: I raise the
13 issue with you because some have submitted to me
14 that in making recommendations for a review
15 mechanism for the RCMP that there is a role for a
16 review mechanism, whatever it turns out to be, in
17 this area, in the national security area, to
18 exercise some authority, whether it is
19 recommendations or whatever, but to deal with this
20 issue of the dividing line.

21 I hear what you say about the
22 difficulty of the bright line, but in any event to
23 address that issue, do you see that as any review
24 agency having any role to play in that area of
25 national security?

1 MR. ZACCARDELLI: Well, I really
2 welcome the comments of my colleagues, but I would
3 think that would be a fundamental infringement of
4 the common law independence of the police in terms
5 of criminal matters: when to initiate a criminal
6 investigation and what steps they will take.

7 I think the difficulty and the
8 challenge with that is somebody would tell us when
9 to do that, and in common law you actually can't
10 tell -- I can't tell, a police officer -- this is
11 an offence and I have to be very careful about how
12 we do that. And to be told now this is an
13 offence, they would be taking that step into that
14 operational area, which is the responsibility and
15 the accountability of us as leaders of law
16 enforcement.

17 THE COMMISSIONER: Anybody else on
18 that?

19 MR. BEVAN: Mr. Commissioner, I
20 can give you an example that very much parallels
21 things that we often become involved in.

22 Late one afternoon we get a call
23 from the U.S. Embassy who are concerned by someone
24 who has been in the vicinity. The interpretation
25 is the individual has been pacing back and forth,

1 and it may be interpreted that a person was
2 measuring a distance and they seem to be taking
3 some photographs. Suddenly the person disappears
4 but what was left in that area is a package. And
5 it is quite often that we are called upon to deal
6 with that.

7 So we bring resources to scene.
8 We begin to interview people. We begin to
9 interview witnesses to find out what the source of
10 this package was or what the nature of the
11 activity was.

12 At what point do we begin to turn
13 our minds to the fact that there is a different
14 review mechanism that needs to be applied here?

15 In that particular situation is it
16 a potential criminal act? Is it something that
17 falls within the SOA? And in all of those cases,
18 simply because of the working relationship that we
19 have with the RCMP and our other partners in this
20 area, the RCMP and INSET is engaged from the start
21 because there are a number of people who need that
22 kind of information as it is actually unfolding.
23 And it is the immediacy of the responsibilities
24 that we have to execute that I think we need to
25 keep some focus on in situations like this,

1 because, Mr. Commissioner, those kinds of things
2 in Ottawa, because of the nature of the community
3 and the national capital, happen on a very
4 frequent basis.

5 THE COMMISSIONER: One of the
6 submissions that is made to me by several
7 different parties is that because of the nature of
8 national security activities, it requires more
9 than just a complaints process; that there should
10 be a review process -- and for simplicity, let me
11 say a SIRC-like review process. The features of
12 national security activities are such that often
13 they don't result in prosecutions, so you don't
14 have the same judicial scrutiny and because of the
15 classified nature of information, complainants
16 don't know, and so on.

17 Those arguments are all put
18 forward.

19 Can you give me any observations
20 from your experience whether or not you think the
21 concerns that underlie those concerns are valid.

22 Secondly -- and I know you dealt
23 with, Commissioner Boniface, in your
24 submissions -- as to whether or not a review
25 mechanism like that could work effectively.

1 MR. ZACCARDELLI: Commissioner,
2 obviously whether it is a review or audit
3 function, I am not against review at all. I have
4 no problem with having a review or an audit
5 function. I think we have to be careful about how
6 we sculpt that.

7 This is the challenge. How do you
8 ensure that whatever system is put in place takes
9 into consideration I think a number of the things
10 that have been articulated here by Commissioner
11 Boniface and Chief Bevan? So the exact nature of
12 the review mechanism is obviously up for
13 discussion and people have different views on
14 that.

15 THE COMMISSIONER: Chief Bevan?

16 MR. BEVAN: Mr. Commissioner, just
17 a couple of comments.

18 Certainly I have been educated in
19 the past couple of months about the operation of
20 SIRC, and one of the features of SIRC is it
21 operates within a fairly closed environment. Any
22 review process that is to be applied here needs to
23 be one that takes into account the transparent and
24 fairly open nature of the work that gets done in
25 policing, because all of it is intended at some

1 point to be presented by way of prosecution. That
2 is what sets us apart from a system that is very
3 much closed.

4 One of the concerns I would have
5 is that in the operation of the SIRC-like function
6 that some of information that is collected may
7 become, through the operation of the agency,
8 subject to disclosure challenges and take a
9 prosecution off on a different course just because
10 that agency at some point during the overall
11 investigation has exercised its mandate.

12 So certainly I think as far as
13 practical application and review of investigations
14 that are ongoing, that is a challenge,
15 Mr. Commissioner.

16 THE COMMISSIONER: And you
17 mentioned the need for possibly a stay in order to
18 protect the integrity of ongoing
19 investigations, and so on.

20 Leaving that to one side -- and I
21 will come back to that because I would welcome all
22 of your thoughts on that. That is very much a
23 concern that is in my mind.

24 Dealing with the need for a review
25 process, at least as I am told -- and it may just

1 relate to the RCMP; I'm not sure. But there has
2 only been, since 9/11 or the Anti-Terrorism Act,
3 one prosecution. And that is not by way of
4 criticism to say that the investigations aren't
5 successful. On the contrary, they may be a sign
6 of success.

7 Nevertheless, the point that is
8 made is because typically a lot of them don't
9 result in prosecutions or if they do, it could be
10 many years down the road -- Air India being the
11 first one that people mentioned. That would be
12 one of a couple of reasons why you need the review
13 process. It is just that national security, I
14 guess it is argued is in some ways unique or among
15 a small type of investigations where these factors
16 are present, and complainants may not know about
17 it, and so on.

18 Those are the thoughts. You
19 probably read the material, but those are the
20 thoughts that people put forward to me.

21 MR. ZACCARDELLI: Commissioner,
22 you are right and that has been said. But even
23 though there has only been one prosecution, in
24 these types of complex investigations there are
25 obviously a number of steps that can be taken or

1 procedures that are still subject to internal and
2 external reviews.

3 Obviously where we go to the
4 courts to obtain authorities to do certain things,
5 those are subject to strict judicial review.

6 If we use any of the new
7 provisions, the detention provisions and so on,
8 that is subject to Attorney General approval and
9 the judge must direct that activity.

10 So there are reviews in the
11 process, even though some of these cases do not
12 end up in the normal prosecutorial process,
13 although a lot of criminal investigations don't
14 end up in prosecutions either.

15 So I think there is a balance, and
16 for us in particular, there is the ability to ask
17 for that information and review all of that
18 information, and it doesn't have to be
19 complaints-driven or initiated. So any activity
20 that we might be involved in in this area, we
21 believe strongly is accessible and available for
22 review.

23 If we want to maybe change the
24 nature of that review, obviously that is something
25 that you have probably spent a lot of time

1 thinking about.

2 THE COMMISSIONER: I have heard a
3 lot of people make suggestions, yes.

4 Let me move, if I can, then, to
5 integrated policing.

6 As I look at the issue of
7 integrated policing -- and I have heard a good
8 deal about it over the last several months -- it
9 seems to me in the context of RCMP, the focus of
10 my mandate, there is integration in national
11 security with CSIS, with other federal agencies
12 and IBETs and INSETs, and so on, and there is also
13 integration with the other police forces, OPP, the
14 Ottawa Police Service, and so on.

15 So in a sense there is integration
16 going many ways, as you suggested, Commissioner
17 Zaccardelli. And that is the reality.

18 I can say here, without sort of
19 prejudging the report, I accept what I hear from
20 you about the importance of integrated policing.
21 And I think that anything that I do in this report
22 must clearly accept that reality and accept also
23 what you say looking forward: that this is the way
24 and to do otherwise I think would be a very
25 backward step.

1 That, for me, at this stage, is
2 indeed a given.

3 My mandate, as you know, is then
4 to look at the review, specifically for the RCMP
5 and indeed my mandate is limited to the RCMP.

6 Given integrated operations, then
7 the question arises: How do we have integrated
8 review? Do we need it? And if so, how do we have
9 it?

10 I will just make a couple of
11 points that are commonly made to me and then I
12 will have some specific questions for you.

13 Those that say that we need
14 integrated review, whatever model it takes, say
15 you need it first of all to avoid the reviewer of
16 the RCMP bumping into a wall, saying well I can
17 only find out what happened in the RCMP, but the
18 reality is that they work with the Ottawa Police,
19 CSIS, OPP. So I have to be able to get beyond the
20 wall, otherwise it is meaningless.

21 Those that argue for an integrated
22 review say secondly, they say yes, and there
23 should be integrated accountability so that we
24 have a single body looking at the integrated
25 operation where people all work together and would

1 be able to apply a consistent standard to the
2 integrated operation. It should mirror the
3 integrated operation.

4 And the third thing they say is
5 that a complainant who is confronted with an
6 integrated operation should be able to have
7 one-stop shopping and shouldn't have to go to all
8 of the constituent members.

9 They all sort of more or less add
10 up to the same thing: that there has to be some
11 sort of integrated review model. I wouldn't go
12 beyond that.

13 My question at this point is
14 simply: At a conceptual level do you have any
15 comments to make about integrated review mirroring
16 integrated investigations?

17 MS BONIFACE: As you recall, we
18 had some of this discussion at the domestic round
19 table and it seems to me that there are some --
20 and I would never hang on my legal skills on these
21 comments. But I would think there are some
22 constitutional issues that one would have to be
23 able to work through. And I suggest there might
24 be barriers to it.

25 The second piece I think is

1 important is that when you deal with matters of
2 conduct, you don't deal with matters of conduct as
3 a team, although that may be a comment you make,
4 but you actually deal with individual conduct.
5 And so the individual members who would be part of
6 an INSET are really subject to the conduct under
7 their own legislation, the Police Services Act.

8 So the only way that I could then
9 get to a point that would say how do you do an
10 integrated review would be to say this they are
11 subject to two different activities, or two
12 different legislations, one at a review level and
13 one at a provincial level.

14 And I think that is problematic.

15 Whether you can create a review
16 mechanism for a purpose that would be compellable
17 for information or otherwise, again, I don't know
18 how the constitutional framework would accept that
19 or how you could make it work.

20 I think in fairness to individuals
21 who would be working in an integrated the fashion,
22 firstly they need to be subject to one regime, not
23 two. And secondly I would think the principles of
24 administrative law must in some way frame over the
25 way, procedural fairness and such like.

1 So if it would be subject to two
2 different regimes, I think has problems associated
3 with it when in fact I would think administrative
4 law has an ability to overarch both of them. You
5 could take the findings of the review in whatever
6 form that would be done at a federal level and in
7 some way have that dealt with or shared with the
8 other investigative body --

9 THE COMMISSIONER: The provincial
10 civilian review body, yes.

11 MS BONIFACE: That would be a way
12 of doing it.

13 I guess it goes back to my other
14 comments -- and this is very complex, as complex
15 as integrated policing. It is really from an
16 individual officer's perspective. You have to
17 understand what your actions are subject to, and
18 consequently I think it is very difficult to say
19 to an individual officer you are subject to two
20 different regimes that may find two different
21 findings, both in the context of the same conduct.

22 THE COMMISSIONER: Chief Bevan.

23 MR. BEVAN: Mr. Commissioner,
24 certainly this is a very interesting question and
25 one that here in Ottawa we have been wrestling

1 with for about seven years now, firstly in the
2 context of the Cross-Border Policing Act that I
3 believe Chief Ewatski discussed yesterday.

4 THE COMMISSIONER: Right.

5 MR. BEVAN: For us it is an issue
6 on a daily basis because we police a good portion
7 of a very large urban area separated by five
8 bridges, and criminality knows no boundaries.
9 Indeed, they play on that jurisdictional issue.
10 We need agreements in place to ensure that our
11 officers can operate across on the Quebec side of
12 that large urban area.

13 For us, we have had to turn our
14 minds to how we bring back that accountability and
15 make sure that there is a review possible on an
16 operation. It is still possible to hold
17 individual members responsible for their conduct.

18 I would suggest to you that in
19 looking at this conduct and the discipline that
20 may flow from that is really, by its nature,
21 something that needs to be governed within the
22 employer-employee relationship.

23 I think that brings it back to the
24 jurisdiction where the police officer works in
25 this case. Certainly that has been the

1 recommendation that we took forward to the Unified
2 Law Conference of Canada when they considered and
3 worked out some of the detail around the
4 Cross-Border Policing Act, which I might add is
5 not yet in place in Ontario. We are very hopeful
6 that it is going to be.

7 THE COMMISSIONER: We heard about
8 that.

9 MR. BEVAN: As well, when we took
10 the whole notion of how to hold officers
11 accountable who were working in other
12 jurisdictions, it is something that the Canadian
13 Association of Civilian Oversight on Law
14 Enforcement found to be a very persuasive
15 argument.

16 I would suggest, Mr. Commissioner,
17 that a review has the opportunity to look at the
18 whole conduct of the investigation and that file.
19 If there are issues of discipline or conduct that
20 come out of that, the recommendations need to be
21 passed to the governing body to which the officer
22 reports.

23 As far as the review of that
24 investigation, it is made entirely possible
25 because we have taken the approach -- and it is

1 written into memorandums of understanding that we
2 have between us. When I send officers to the RCMP
3 or to another organization to conduct an
4 investigation, all of the work product of that
5 investigation stays within the RCMP. So it makes
6 it permissible to do that review and nothing is
7 lost. There is no need for the review to then
8 come over to the Ottawa Police Service to see if
9 there is other information that needs to be
10 brought to the attention of the review.

11 THE COMMISSIONER: What about the
12 RCMP reviewing body, whatever it is, being able
13 to, as people say, follow the trail? If there is
14 integrated policing, the notion here is that the
15 RCMP review body who is investigating, assuming
16 just jurisdiction to review the RCMP, but in the
17 course of it they come across an integrated
18 operation which leads them to other police
19 departments, other police officers -- leaving
20 aside a constitutional problem, because I am not
21 sure on this one there is.

22 Would there be any objection to
23 the RCMP review body then being able to, for
24 purposes of its mandate, collect information from
25 within those other police bodies relevant to the

1 integrated operation?

2 Let me just say this before you
3 answer, because I am posing questions and not
4 intentionally making them awkward.

5 They are important questions, and
6 if there are answers to any questions that I ask
7 that you would like to think about, I absolutely
8 don't take that as being evasive.

9 What I would like are very careful
10 thoughts on it. So feel free to say that is
11 something you would like to think about.

12 Go ahead. Sorry to interrupt,
13 Commissioner.

14 MR. ZACCARDELLI: Commissioner,
15 what is actually remarkable is that we have been
16 doing integrated operations for years and years
17 and years, and this issue comes up so rarely with
18 us in terms of our normal policing operations, our
19 organized crime operations, and so on. And in the
20 few cases where it has come up, as has been
21 described, it has never been an issue because what
22 is recognized is those people that are working in
23 that integrated unit know that their work belongs
24 to whoever leads. Often it might be the OPP that
25 is leading it or it might be Ottawa that is

1 leading, so everything belongs to that.

2 When there is an issue of conduct
3 or complaint or whatever, then that has normally
4 been channelled through the appropriate agency
5 that is responsible, that has jurisdiction there.

6 I wouldn't see a great amount of
7 concern -- and maybe I am stepping in unknown
8 waters here -- in terms of the different agencies
9 being able to talk to each other or share some
10 information between the federal and the municipal
11 or provincial levels, if that was required. But
12 what has happened in the past is the agency
13 usually has the information they want to deal
14 with, the particular subject matter or the
15 complaint to get that information.

16 THE COMMISSIONER: All I think
17 that is being spoken of here, Commissioner, is
18 that the review body, to repeat the phrase, have
19 the ability to follow the trail, if need be, and
20 quickly those that make this argument point to
21 this inquiry and say one of the reasons we ended
22 up with a public inquiry was because the
23 complaints body or SIRC didn't have jurisdiction
24 to do what I end up having.

25 This idea doesn't necessarily

1 involve the RCMP review body having a mandate over
2 the other police forces. It is just the
3 information gathering process from the integrated
4 operation is the extent of it.

5 MR. ZACCARDELLI: I guess on that
6 point, Commissioner, there are those of us -- and
7 I will say it -- that believe the complaint
8 process, I would humbly submit, gave that body or
9 has the ability to give that body access to all
10 the information that was there.

11 THE COMMISSIONER: Right.

12 MR. ZACCARDELLI: So I think there
13 is that other aspect.

14 I respect the fact that there are
15 some people that say that the system now is
16 deficient in some ways and hopefully this
17 Commission of inquiry will shed some different
18 perspective on it.

19 THE COMMISSIONER: Let me, if I
20 can, just shift gears slightly -- just before I do
21 that, there is one other question on the
22 integrated operations.

23 Is it possible that when a
24 formalized integrated operation is established
25 that members of other police forces are seconded

1 to the RCMP -- I know that happens -- and that as
2 part of the secondment they accept the review
3 process for the RCMP? Has that type of
4 arrangement ever taken place when officers move
5 over? Is it practical; and if not, why not?

6 MR. ZACCARDELLI: I don't think
7 that has ever happened. I think the agreements
8 are such that we work together and the information
9 and all that they do belongs to the lead agency
10 and then the memorandums of understanding are
11 clear that anything dealing with the individual or
12 their conduct reverts back to the appropriate
13 authority from which that person comes.

14 THE COMMISSIONER: Yes, Chief
15 Bevan.

16 MR. BEVAN: Mr. Commissioner, I
17 think in those circumstances where we have
18 seconded members to the RCMP and our members have
19 received supernumerary constable status, in those
20 particular situations, then members of the Ottawa
21 Police Service are subject to the RCMP discipline
22 process.

23 THE COMMISSIONER: Both the
24 command structure within the force and to the
25 discipline process itself?

1 MR. BEVAN: That's correct.

2 THE COMMISSIONER: Okay. If one
3 were to establish a review mechanism for the
4 RCMP's national security activities -- which is
5 the mandate is to look at the "national security
6 activities" -- one of the issues that arises is
7 how do you define them.

8 We have sort of struggled with
9 this issue, you have probably heard, as to how you
10 would put your arms around or draw a bright line.
11 I have heard what people said about the difficulty
12 of bright lines.

13 The issue is if one does that and
14 gives jurisdiction to a body which is different
15 for the rest of the RCMP, then how would you go
16 about defining what is a national security
17 activity?

18 Is there any wisdom for me on
19 that?

20 MR. ZACCARDELLI: Well, I don't
21 know if I can give you anything you haven't heard
22 already, Commissioner.

23 There is at least a couple of ways
24 you could look at it. Obviously the fact that we
25 have a very specific structure, operational and

1 command structure, that is responsible for the
2 activity, you could give them all activity that
3 falls within that structure. Clearly that is one
4 way of doing it.

5 You can also look at the activity
6 itself. For example, the A-OCANADA team was not
7 actually an INSET team. It was a team that was
8 put together outside of the structure, although it
9 still falls under the command of that structure.
10 So you might look at the individual activity.

11 Once you determine that at some
12 point when we have determined to call something a
13 national security file, then whoever investigates
14 or however it is investigated could be subject to
15 that review. Of course, that raises the obvious
16 question, people would say: What if you decide to
17 call it something else to avoid that?

18 But I think the facts will clearly
19 demonstrate.

20 THE COMMISSIONER: And you have a
21 set of policies that apply to national security
22 investigations.

23 MR. ZACCARDELLI: Absolutely.

24 THE COMMISSIONER: So any
25 investigation that fell within that policy

1 would --

2 MR. ZACCARDELLI: I think the big
3 challenge for us is often not what is, but how do
4 you keep things. In today's environment it is
5 very tempting to over classify things as national
6 security issues.

7 As Commissioner Boniface has said,
8 there are situations where a terrorist situation
9 may not be a national security issue, so you have
10 to deal with that particular issue also.

11 Again, that is why I go back to
12 this issue of this is an area where the serious
13 judgment of a number of people is often brought to
14 bear and a decision is made about what is or isn't
15 or what we should do. I think the review body
16 then should have access and have enough
17 flexibility to look at that area and say in our
18 view this belongs in this area, and we should err
19 on the side of giving them more latitude than less
20 latitude.

21 THE COMMISSIONER: That answers my
22 next question.

23 I was going to shift gears and ask
24 you your personal experience having dealt with
25 civilian review bodies.

1 I am again, as you probably know,
2 confronted with a variety of proposals ranging on
3 the one hand that the review body for the RCMP
4 should be a body that is dedicated solely to the
5 RCMP, extending to a review body in its broadest
6 sense that would review all national security
7 activities of the federal government, which at
8 today's count would involve 24 departments or
9 agencies.

10 My question is this: In your
11 experience in having dealt with review bodies, is
12 there an advantage or is it necessary to have a
13 review body that has a specific expertise and
14 experience in reviewing law enforcement and police
15 activities?

16 Is there anything that is special
17 about that? And let me, to finish the question,
18 say the choice being is it more important in this
19 case to have a review body that has an expertise
20 in national security?

21 I suppose you could ideally have
22 one with both, but I have certainly heard a strong
23 submission from the CPC yesterday, from
24 Mr. Kennedy, that they have the experience and
25 expertise and that it should be an

1 agency-dedicated review body. Others have said
2 the complete opposite.

3 I just wonder if you could help me
4 on that.

5 It is not necessarily something
6 you need to comment on.

7 MR. ZACCARDELLI: Commissioner, I
8 would say you could argue both ways. If I was to
9 be cautious on any side, I would be cautious on
10 over-complexifying this issue and making this an
11 over-elitist type of review or expertise that
12 would be necessary.

13 We fundamentally believe that a
14 criminal offence is a criminal offence is a
15 criminal offence. The context or the nature might
16 change, but fundamentally what we do, whether we
17 are working in a situation that we call a national
18 security issue or an organized crime issue, we
19 still have to have reason to believe there is
20 something there. We have to gather the evidence.
21 The legal procedures are the same in terms of the
22 processes we have to follow.

23 So for us it is basically the same
24 thing. The context changes somewhat but the core
25 stays the same.

1 I would think people with good
2 judgment and some good background experience could
3 look at either field, sophisticated organized
4 crime areas or national security areas. If they
5 have some reasonable background, reasonable
6 experience, I think they would do very well.

7 I think it is dangerous to be
8 overly knowledgeable or overly expert in an area,
9 because the danger might be that you might tend to
10 actually think you know more than the agency and
11 might want to presume to be running the agency, if
12 I can say that.

13 I think people that have broad
14 experience and knowledge in the law, and so on, I
15 think they could more than make their way through
16 these cases.

17 THE COMMISSIONER: Do the others
18 have any points?

19 Yes, please.

20 MR. BEVAN: Mr. Commissioner, I
21 don't want to at all intrude on Commissioner
22 Zaccardelli's point because ultimately it is going
23 to be looking at the RCMP, but I go back to
24 earlier comments that were made by this panel.

25 The one thing that any body that

1 is put in place needs to ensure that they
2 differentiate from say a review on CSIS or any
3 other government agency, is the closed nature of
4 those other reviews, whereas with law enforcement,
5 there is always that possibility that the activity
6 is going to have to be disclosed. And during
7 criminal proceedings if that disclosure has also
8 wandered into CSIS or elsewhere, it is going to
9 provide an opportunity, and I think an obligation,
10 to be able to discern what information was purely
11 law enforcement and what part of the review looked
12 at the same set of facts but from the viewpoint of
13 CSIS or CBSA, or any other government agency.

14 So the review mechanism has to, I
15 think, make special allowance for the nature of
16 law enforcement and the fact that we collect this
17 information and we do these investigations with a
18 view of furthering a criminal prosecution.

19 I think that sets it apart from or
20 creates maybe a bit of a special situation that
21 may not be the case on other applications across
22 the federal government.

23 THE COMMISSIONER: Ms Boniface, do
24 you have a point to make?

25 MS BONIFACE: Just to add,

1 Commissioner, I think to go back to my original
2 points in my opening submission to make sure that,
3 one, that the process for law enforcement is
4 already in other areas before the courts or
5 whatever when a review mechanism may look at
6 something. So understanding and recognizing that
7 is really important.

8 Second, having legislation that is
9 extremely workable and has thought through those
10 implications around law enforcement and the other
11 areas that kick in.

12 My concern is making it overly
13 complex and not having it solution-based that
14 allows the investigations to continue or to come
15 to fruition or new investigations to start without
16 constantly being concerned about where the review
17 may involve it, particularly around issues of
18 disclosure, I think are extremely important.

19 So I think that is number one.

20 And then secondly in terms of how
21 that body is made up, I think it is important to
22 have a combination of the skill to be able to look
23 from above without the inclination to try to be
24 the operation.

25 THE COMMISSIONER: I think what we

1 ten to be talking about virtually in everybody's
2 submission is when they use the word review, they
3 tend to talk about looking back at something that
4 has already occurred and distinguish that from
5 oversight, which would be managing ongoing.

6 As I hear the wide range of
7 proposals made to me, none of them argue for
8 oversight.

9 That does raise the question about
10 ongoing investigations, as you have mentioned.

11 It would be the ability of the
12 review body, I think as you suggest, to stay a
13 review, whether it is a complaint or another type
14 of review, if there was a concern that it would
15 either interfere with the investigation or I guess
16 create evidentiary problems should there be a
17 prosecution.

18 Have you had experience with
19 existing review bodies making those types of
20 decisions to stay out of the way or not to stay
21 out of the way? Have there been experiences where
22 review bodies have tainted either an investigation
23 or a prosecution?

24 MR. ZACCARDELLI: I have never had
25 that. We have obviously had deferral to another

1 body, as we have had in this case.

2 THE COMMISSIONER: Right.

3 MR. ZACCARDELLI: But never a
4 situation to my knowledge.

5 THE COMMISSIONER: Where something
6 got fouled up by that.

7 MS BONIFACE: I can't think of
8 one, but I would like to get back to you on that.
9 I was thinking of the role of SIU in Ontario and
10 whether or not --

11 THE COMMISSIONER: I was going to
12 ask you about that.

13 MS BONIFACE: I can't think of it
14 off the top.

15 THE COMMISSIONER: Because they do
16 investigations before prosecution.

17 MS BONIFACE: Absolutely. And I'm
18 sort of racking my brain, as I sit here, to go
19 through the number of issues we may have run
20 across.

21 I can certainly provide something
22 back to you and think about it.

23 THE COMMISSIONER: That would be
24 great, because to the extent that it has been
25 successful, if that is the case, then when one

1 looks for guidance it would be useful to see how
2 it is that they have managed that success.

3 MR. ZACCARDELLI: In our present
4 process there is nothing to prevent a complaint
5 triggering an investigation, but I just can't
6 think of one where we have had any problems in
7 terms of doing our job or continuing.

8 THE COMMISSIONER: But you can see
9 the potential problems there. I think it is a
10 valid point. If they go out and start, in
11 furtherance of the complaint, interviewing the
12 witnesses and take statements, and so on, then you
13 are going to have disclosure issues.

14 MR. ZACCARDELLI: We do have a
15 situation where the Hell's Angels have been
16 actually using the complaints process in certain
17 cases to try and get access to information. We
18 know that is a particular case.

19 THE COMMISSIONER: Let me raise
20 the issue of police independence.

21 Most commonly we think of police
22 independence as being the independence of the
23 police from political interference.

24 Is there anything about a review
25 body -- and I hear the general comment that we

1 should be careful about police independence. But
2 is there anything about a review body along the
3 lines that we have been discussing that you
4 envision would in any way tread upon police
5 independence?

6 MR. ZACCARDELLI: Commissioner,
7 from what I have seen, I don't believe so. As
8 long as I believe we continue with the position
9 that the review bodies make recommendations to the
10 Chief or to the Commissioner as in, in our
11 particular case, 85 to 90 percent of the
12 recommendations are accepted.

13 MR. BEVAN: Mr. Commissioner,
14 certainly as I have heard you define the
15 difference between oversight and review I don't
16 think there is an issue. There may have been an
17 issue if we were talking about oversight, because
18 it is still an active process. I would have had
19 had some concerns. But as I have heard you
20 differentiate between the two, I don't see an
21 issue there.

22 THE COMMISSIONER: Commissioner
23 Zaccardelli raises the next issue, and that is the
24 question with respect to the remedies or the
25 powers of the review body. You make the point

1 that they should be recommendations rather than
2 binding orders.

3 Some suggest that even if they are
4 recommendations, they should have the jurisdiction
5 to make recommendations for the payment of
6 compensation in appropriate cases.

7 I'm wondering if you have any
8 experience or observations on that suggestion?

9 MR. ZACCARDELLI: Well, maybe I
10 will venture a little bit.

11 Again, it is a bit of a slippery
12 slope, because then really put the Commissioner or
13 the Chief of Police in a position where you may
14 narrow some of his or her discretion to deal with
15 the matter. I think the recommendation should be
16 that if the action was inappropriate, whatever,
17 and that is accepted, then I think it is for the
18 organization to deal with whatever other actions
19 should be taken. Because as soon as you make the
20 recommendation that compensation should be paid,
21 then that becomes the focal point of everything
22 else from there on in. I would be cautious about
23 that.

24 THE COMMISSIONER: Do the others
25 have anything?

1 MR. BEVAN: Mr. Commissioner, the
2 only parallel that I can draw on that suggestion
3 is perhaps the operation of, for example, the
4 Ontario Human Rights Commission, where it has the
5 opportunity to make an assessment. But again,
6 that has done more on an organizational basis so
7 it would be an assessment that was made based on
8 the review at all. I would think if that was
9 going to occur, there would still be conduct
10 issues that would by definition fall out of that.

11 So there might be a bit of a
12 conflicting regime set up there if there was that
13 capacity and the review body could deal with that
14 but still reference conduct issues and send those
15 back to the appropriate Chief or Commissioner to
16 be dealt with. There may be some conflict that
17 arises in all of that.

18 THE COMMISSIONER: Yes. All
19 right.

20 MS BONIFACE: It seems to me that
21 would be distinctly different between the two for
22 the exact reasons that Vince has said.

23 First, if it is a recommendation
24 to pay money it is very hard as leader of an
25 organization to take a different position, number

1 one. So I don't find it as a recommendation,
2 where in the Human Rights Commission environment I
3 believe it is actually a finding. So they
4 actually make it as a finding.

5 THE COMMISSIONER: Yes.

6 MS BONIFACE: So it is a different
7 decision-making process I think. So it seems
8 contradictory to me.

9 Then flowing from that would still
10 be that you would be leaving the leader of the
11 organization in a position to still deal with the
12 conduct issue, separate and apart from what the
13 organization would then compensate for, whatever.
14 It just seems a little contradictory to me.

15 THE COMMISSIONER: Yes. Is there
16 any wisdom to including in a review mechanism a
17 specific option of alternate dispute resolution?

18 In one of the submissions we
19 received from SIRC, they suggested that for their
20 process they thought that actually, I think,
21 putting in place a regime whereby complainants
22 could be streamed into some sort of alternate
23 dispute resolution.

24 I don't know if that is a feature
25 of any existing review mechanisms. It probably

1 can be done informally, but is that something that
2 has an appeal or does it have problems?

3 MR. ZACCARDELLI: Commissioner, I
4 think that is a great idea. We do have that in
5 the system now.

6 THE COMMISSIONER: On an informal
7 basis, yes.

8 MR. ZACCARDELLI: Again, of all
9 the millions of interactions, about 200 or 250 of
10 those million interactions actually end up before
11 the Public Complaints Commissioner for the RCMP.

12 THE COMMISSIONER: Right.

13 MR. ZACCARDELLI: Because most of
14 those, and there are about 2,000 to 3,000 that are
15 actually complaints that people aren't satisfied
16 at the beginning, but they get resolved through
17 the interaction. And the Public Complaints
18 Commission does, in some cases, recommended an
19 alternate dispute. We are always open to that and
20 I think it is an excellent way if you can get it
21 out of the process.

22 THE COMMISSIONER: It seems to
23 make sense, doesn't it?

24 MR. ZACCARDELLI: Yes.

25 THE COMMISSIONER: Yes.

1 MR. BEVAN: Mr. Commissioner,
2 certainly in Mr. Justice LeSage's review of the
3 complaints process in the Province of Ontario we
4 made representations to him that there is room for
5 mediation in that. Certainly in our processes in
6 Ottawa we have used that and it gives the
7 opportunity for complainants and police officers
8 to resolve the matter in a very timely way, and
9 quite often to a higher degree of satisfaction
10 than when the whole formal process kicks in and
11 becomes a very timely and sometimes protracted
12 exercise. At the end of that quite often neither
13 party is satisfied with how it has gone.

14 THE COMMISSIONER: It tends to
15 become adversarial. We see it in the judicial
16 process too. Once you move beyond a certain
17 stage, people start going to the mats and
18 fighting, it becomes so much harder to get
19 satisfaction for anybody.

20 MS BONIFACE: If I can just add,
21 going back to Chief Bevan's comments on the
22 employer-employee relationship, it also allows
23 that process to be brought back a lot easier if
24 you had been able to deal with it in that matter.

25 THE COMMISSIONER: It seems like a

1 good idea to spell it out. I'm sure it works
2 informally, but to really have the formal
3 recognition of it.

4 Those are my questions I had. Are
5 there some questions from my right-hand side here?

6 MR. FORESTER: I just have one
7 question actually that is a point of clarification
8 on how integration works. It relates to the
9 comment that was made that the documents -- the
10 suggestion that the review be taken by the lead
11 agency and the documents -- in the same way that
12 the file is kept with the lead agency and how that
13 is the way it is done now in integrated
14 operations.

15 Is that the case with integrated
16 national security investigations, ones that are
17 recognized as section 6 investigations? Is it the
18 case that sometimes a provincial or a municipal
19 police force is not only seen as the lead in those
20 investigations, but is the sort of custodian of
21 the file currently?

22 MR. ZACCARDELLI: I am not aware
23 of any. There are protocols that have been signed
24 throughout the country which recognize the RCMP as
25 the lead agency.

1 Again integration, the whole issue
2 of integration, was not something that was
3 mandated or legislated, it was what we recognized
4 was a better practice in how to work.

5 MR. FORESTER: I understand that.

6 MR. ZACCARDELLI: To my knowledge
7 there is no other agency that is leading.

8 The other thing that is important
9 to remember, you really are talking about a few
10 police forces at the end of the day, that out of
11 all of the police forces in Canada you have the
12 major centres and the major police forces which
13 are relatively few. The INSETs, as you know, are
14 beyond just law enforcement, they have CSIS and
15 other agencies that are a part of that, as we see
16 fit to bring in people who we believe might add
17 some value.

18 MR. FORESTER: Thank you.

19 MS KRISTJANSON: I just have a few
20 questions.

21 The first is, with respect solely
22 to national security policing work that you
23 undertake, each your Forces, what percentage of
24 that work would be integrated or cooperative with
25 other police or other agencies?

1 The reason we ask that is that one
2 of the primary reasons a number of groups have
3 raised this question of a super SIRC or super
4 agency is the spectre of integrated teams. So we
5 would like to get a handle on the percentage of
6 national security work that might be integrated.

7 MR. ZACCARDELLI: You know, most
8 of the national security work is done by INSET --
9 well, all. It is all done by INSET and every
10 INSET is a multidisciplinary integrated unit.

11 MS KRISTJANSON: There might be
12 occasional for example -- never mind.

13 So you are saying that primarily
14 for the RCMP you regard it as all being integrated
15 national security work?

16 MR. ZACCARDELLI: That's right.
17 That is not to say that if something was to come
18 up that we wouldn't strike an ad hoc team or group
19 or whatever. Again, that would depend on the
20 workload, and so on.

21 So I can't say that it would
22 never -- we wouldn't have an outside INSET team
23 doing that, but again that is a managerial
24 decision that would have to be taken at the time.

25 MS KRISTJANSON: Chief Bevan, you

1 raised some examples earlier today of ones that
2 aren't necessarily integrated. Your example of
3 the Minister and the scare at the Minister's
4 office. Would it be possible for you to say what
5 percentage of your national security work is --

6 MR. BEVAN: Just to explain what
7 happens in our organization, we work so closely
8 with the Royal Canadian Mounted Police now, we
9 have at any given time perhaps 10 of our members
10 seconded out to the work in the RCMP and we have a
11 comparable number of RCMP officers seconded back
12 into the Ottawa Police Service.

13 It is to the extent where it is
14 not unusual to see an officer in the uniform of
15 the RCMP driving an Ottawa Police cruiser, doing
16 work of the Ottawa Police Service. We currently
17 have an inspector from the RCMP who is Divisional
18 Commander within our hierarchy.

19 So it has become so natural that
20 any time there is something like that that arises,
21 the RCMP are automatically consulted.

22 Going back to the question about
23 how do you identify what is an SOA matter, in
24 discussions with our duty inspectors and staff who
25 would be in a position to make that call, we

1 wanted to ensure that any time it got close and
2 they were uncertain they make the call. We go
3 back to the old adage that if it looks like a duck
4 and it walks like a duck, it is probably a duck.

5 So we provide some guidelines
6 there, but we do not do any independent work in
7 that area whatsoever. We may be different from
8 other organizations across the country, other
9 municipal policing organizations, but it is
10 because of that trust and confidence that we have
11 in each other as partners that we take that
12 approach. Again it is just a factor of integrated
13 policing.

14 MS KRISTJANSON: Just to follow
15 up, your seconded officers that you refer to,
16 would they all be involved in national security or
17 would they also be involved in other aspects?

18 MR. BEVAN: No, they would be
19 involved in other activities. I'm not sure today
20 what the number would be of our members who would
21 be assigned to an INSET for instance, but all of
22 the RCMP officers who are assigned within our
23 organization are engaged in other duties. They
24 wouldn't be national security files.

25 MR. ZACCARDELLI: Just to add a

1 little more mix into it, my Chief Information
2 Officer for the whole of the RCMP is an OPP
3 officer, thanks to Commissioner Boniface.

4 MR. FORESTER: Actually, a
5 follow-up on what Ms Kristjanson just asked and
6 your point of it looks like a duck it probably is
7 a duck.

8 What if it originally does look
9 like a goose and it is a -- you gave the example a
10 non-national security investigation, think of
11 anything -- but then it becomes apparent during of
12 the course of that investigation that it is a
13 national security investigation.

14 For the Ottawa Police, what is the
15 sort of process that you would go through at that
16 point? It is at the point where you are satisfied
17 it is now a duck.

18 Could you elaborate on that just
19 a little?

20 MR. BEVAN: Actually, we have
21 examples that we can point to inside the
22 organization where during the course of an
23 investigation that was purely a criminal matter it
24 becomes apparent that there are other things at
25 play. When it starts to look like something else,

1 right away INSET is engaged.

2 Again, I think it is expected, it
3 is a case of protocol that we have established
4 within our organization, recognizing that the RCMP
5 INSET is the agency to be called and the fact that
6 we have members who are currently assigned to do
7 that work with INSET.

8 MR. FORESTER: On what basis --

9 MR. ZACCARDELLI: Can I add to
10 that, because I think this is a very important
11 point?

12 MR. FORESTER: Yes.

13 MR. ZACCARDELLI: It is tempting,
14 Commissioner, to be prescriptive here and try to
15 lay out as many rules as you can, but in the RCMP
16 we have 13,000 pages of rules and frontline people
17 don't have all the time in the world to read all
18 those rules. So what we do is, we teach and we
19 make sure people understand and we make sure that
20 people have good judgment and we reinforce this
21 all the time.

22 So something like this, when Chief
23 Bevan talks about a bag that is found somewhere,
24 the system is now that it quickly moves right up
25 through the system and people apply judgment along

1 the way and those decisions are made almost
2 instantaneously and always err on the side of
3 caution in this area.

4 I can tell you, the practice, the
5 day-to-day -- because, as Chief Bevan said, it
6 happens every day here, many times a day
7 sometimes, but also through out the country -- it
8 gets done and it gets gone very well.

9 MR. FORESTER: Just to follow up
10 on it specifically, Chief Bevan, you would report
11 to INSET and then I take it, given what Commission
12 Zaccardelli said, would there be a discussion or a
13 consultation with INSET or would it at that point,
14 if INSET said this is something that should be
15 transferred to us, there would be no further
16 consultation, there would be no further
17 discussion?

18 How would that generally happen?
19 I recognize each situation would be different and
20 you can't make rules, but if you can give us a
21 sense about the sort of normal course of how that
22 might happen?

23 MR. BEVAN: Actually, that is a
24 very good question, because typically if for
25 example our investigators are already engaged with

1 the file and it becomes a situation that is
2 recognized under SOA, the INSET would want to
3 engage them as such as possible to get all of the
4 information and ensure that there is continuity,
5 because there is still a criminal activity to be
6 looked after, there is still the interest of the
7 community, the victims and all of the other things
8 that are the mandate of the local police service.
9 All of the information and all of the intelligence
10 that is associated to that file has to be passed
11 very quickly and then clearly the RCMP and the
12 INSET become the lead agency on it.

13 To go back to pick up on the
14 Commissioner's reference to the packet, probably
15 the ones that cause us the most difficulty are
16 those white powders. We get those calls on a
17 regular basis, and as I'm sure many policing
18 agencies do, and they are not always things that
19 reference national security, but the protocol and
20 the attention, especially the media attention
21 around it all, requires that we notify INSET and
22 that all of the other government agencies who are
23 interested in national security issues are also
24 notified.

25 So there can be some coordination

1 around that, even though typically if, for
2 instance a business or a professional office gets
3 it and the intent is just to target against that
4 particular business, has no national security
5 overtones, it is because of that pattern and that
6 coordination that they really must be engaged. I
7 think you would be surprised to find out how
8 frequently that actually happens.

9 MR. ZACCARDELLI: Again, going
10 beyond Ottawa, because we have to think there is
11 a place outside of Ottawa in the rest of the
12 country --

13 --- Laughter / Rires

14 MR. FORESTER: I am not from
15 Ottawa. I understand that fully.

16 MR. ZACCARDELLI: We have to go
17 outside of Canada, because in today's world this
18 type of information quickly has a global
19 connection. When July 7th happened in London,
20 Canadians were there. We were already
21 immediately: What can we learn? How do we share
22 information? CSIS, everybody, we were very much
23 on this.

24 So that little package can
25 literally travel around the globe in terms of its

1 possible implications. So it is critical that we
2 feed that system, because the down side, or the
3 potential down sides are so potentially
4 devastating that you simply have to be able to
5 react instantly and again bring your best judgment
6 to bear in a very, very short period of time.

7 MS KRISTJANSON: If I might change
8 the subject.

9 Another issue which seems to be
10 driving these calls for a super agency relates to
11 the federal national security landscape. The PCO
12 has identified 24 agencies and departments of
13 government which they say have some security and
14 intelligence role.

15 My question for you as members of
16 police forces is: There may be different kinds of
17 roles, there are collectors of information, and
18 obviously police forces exemplify that. You have
19 contact with individual citizens, you have powers
20 granted to you by statute, and some would say it
21 is because of the intrusiveness of those powers
22 that you should be subject to review.

23 So we have collectors of
24 information, we have creators of intelligence,
25 police forces are also creators, and we have mere

1 consumers of intelligence, general government
2 departments who need information but don't create
3 or contact Canadians.

4 In your experience, what federal
5 departments would you identify as collectors of
6 information that might be in the position of
7 providing police forces with information or tips
8 or working with you at that primarily level?

9 MR. ZACCARDELLI: You mentioned
10 there are over 20. The obvious ones are the
11 Border Agency obviously, Canada Immigration,
12 Transport, and so on, and then it really does
13 start to drop off in terms of being actively
14 involved.

15 But you never discount those
16 others because there is the potential in terms of
17 operating at that more strategic level or policy
18 level, and they are involved from time to time in
19 giving us different perspectives and they are
20 involved in some of things we do.

21 But obviously the main agencies,
22 obviously CSIS, the RCMP, law enforcement, I said
23 the Border Agency, Immigration, the military
24 obviously have some role, Coast Guard now is
25 having a bigger role and so on. So those are the

1 five or six sort of main ones.

2 THE COMMISSIONER: Is that it?
3 Okay, well that brings us to the end.

4 Let me express my appreciation
5 again. I think it has been an extremely useful
6 and informative session. I appreciate very much
7 the time, your coming and sharing your thoughts
8 and observations in this way.

9 So thank you very much.

10 MR. ZACCARDELLI: Thank you,
11 Commissioner/

12 THE COMMISSIONER: We will break
13 now until 2:15.

14 --- Upon recessing at 1:04 p.m. /

15 Suspension a 13 h 04

16 --- Upon resuming at 2:10 p.m. /

17 Reprise à 14 h 10

18 THE COMMISSIONER: We are ready to
19 resume.

20 Good afternoon, everyone. Welcome
21 back, Commissioner.

22 I understand you have a statement
23 that we will begin with.

24 SUBMISSIONS

25 MR. ZACCARDELLI: Yes. Good

1 afternoon, Commissioner.

2 Before I start, obviously we were
3 here this morning and I know we covered a number
4 of issues that I had intended to cover this
5 afternoon, but I think it would be appropriate if
6 I was able to put a number of issues that I
7 believe are important to me as Commissioner, and
8 to the RCMP, to put on record.

9 So if you would indulge me, I
10 would like to start with that.

11 THE COMMISSIONER: Please do and
12 don't concern yourself if we touched on some of
13 them this morning. That is fine.

14 MR. ZACCARDELLI: Thank you,
15 Commissioner.

16 I appreciate being here and having
17 the opportunity to discuss the issue of
18 independent arm's length review of RCMP national
19 security activities.

20 What I would like to do this
21 afternoon is to take a few minutes to try and put
22 the question of review into context, both public
23 and internal to the RCMP.

24 I would also like to outline a few
25 suggestions for what I believe would be positive

1 elements of any future approach to review
2 mechanisms.

3 As we begin, I want to state that
4 I and my colleagues in the RCMP are cognizant of
5 the difficulty of the task you have been given.
6 Both phases of this inquiry have been challenging.

7 In many ways the inquiry itself
8 represents a metaphor for the complexities, the
9 horizontality and the integration of national
10 security issues. I have been personally impressed
11 by the thoroughness of your examination of these
12 issues and look forward to reading your final
13 report and its recommendations.

14 I would also like to state now,
15 without reservation, that the RCMP recognizes the
16 vital importance of this process and the need for
17 appropriate review. Our core values of
18 accountability, professionalism and integrity
19 depend upon our deep commitment to serve Canadians
20 in an open and just manner.

21 The Royal Canadian Mounted Police
22 will naturally support any and all recommendations
23 that are adopted by Parliament.

24 As stated in the first line of
25 "Securing an Open Society", Canada's national

1 security policy, there is no conflict between the
2 commitment to security and a commitment to our
3 most deeply held values. At heart, both speak to
4 strengthening Canada.

5 As you know, Commissioner, the
6 organization I lead has a long and honourable
7 history. For more than 132 years it has protected
8 Canadians, their neighbourhoods, their
9 institutions and their way of life.

10 Its motto, "Maintiens le droit",
11 has been with us since the early days and spells
12 out the obligations to the people we serve. It is
13 a vow members have sometimes kept with their
14 lives. The history of the Royal Canadian Mounted
15 Police has been built upon a combination of
16 leadership and a deep determination to work with,
17 and learn from, the people of this country. And
18 yet over time, we have seen significant changes in
19 relationship between the state and its
20 institutions and individuals.

21 As I remarked in a recent speech,
22 no more will citizens sit back and let
23 institutions like law enforcement, the military or
24 other government entities operate unilaterally
25 without transparency, accountability or

1 consequence.

2 The people of Canada are better
3 informed and more challenging to even traditional
4 sacrosanct training like ours than any generation
5 before. Rather than decry or resist these
6 developments, I believe we need to embrace and
7 adopt the active involvement of individuals in
8 governance and even some elements of operations.
9 We need to respond so the new paradigm around
10 accountability, knowing that doing so will only
11 enhance our ability to achieve our goals.

12 For this reason, I welcome the
13 opportunity that this inquiry offers to bring
14 thoughtful and intelligent analysis to the
15 question of how we can better meet the
16 expectations of Canadians while maintaining the
17 integrity of our national security systems and
18 entities.

19 This policy review process has
20 provided an excellent looking glass through which
21 to examine and reflect on this wider social
22 movement towards greater accountability.

23 As Justice Patrick LeSage has
24 rightly noted in his report on police complaint
25 systems in Ontario, police realize they are far

1 from immune to this current.

2 Ideas about civic society, active
3 citizenship, social capital, corporate
4 responsibility and shared environmental
5 stewardship are contributing to these shifting
6 expectations between individuals and the state. I
7 believe that in this new era, we will need to seek
8 and embrace the active involvements of individuals
9 in what I refer to as civic security.

10 A move towards civic security will
11 entail and indeed require new thinking about
12 management, review and transparency of the full
13 range of players involved in the task of keeping
14 our society, our country secure. Participants in
15 your inquiry have called for an assurance that the
16 rights and freedoms of Canadians will always be
17 respected. Nothing could be more important, not
18 only in keeping with shared values and guarantees
19 that are enshrined in law and in the Charter, but
20 also to maintain one of the most precious
21 resources available to society: trust.

22 At the RCMP we are viscerally
23 aware that without trust we cannot work with and
24 for the Canadians and the Canada we are mandated
25 to serve. Without trust Canada is at risk, and no

1 amount of review or oversight would be able to
2 restore the confidence of a nation.

3 In the end we all want and need
4 the same thing: the comfort of knowing that if
5 and when any machinery of public service should
6 fail, that fault will be found, responsibility
7 accepted, repairs and changes made.

8 I can assure you that our
9 organization is deeply committed to these same
10 objectives.

11 I suppose I might come before you
12 today and argue that the checks and balances that
13 have made the RCMP a model for policing around the
14 world are sufficient. I could also assert that no
15 changes are required, although that is not why I
16 am here, as I have indicated.

17 On the other hand, I am certain
18 that it is important that the perspective of law
19 enforcement and the men and women who work in our
20 sector be brought into these discussions.
21 Effective and appropriate review is essential, not
22 only for the public but for our organization as
23 well. It reassures all of us that members are
24 holding true to our shared values and standards,
25 and it ensures that we continue to provide a

1 high-quality service that Canadians expect and
2 that protect the reservoir of trust on which we
3 all depend so much.

4 Good review mechanisms also
5 empower the RCMP to spot problems and take action
6 to strengthen operations. Of course, any review
7 process needs to be tailored to fit the specific
8 functions, size, culture and customs of RCMP
9 national security operations.

10 At this point, Commissioner, I
11 would like to take a few moments to discuss, if I
12 may, the evolution of the RCMP's role in national
13 security and to briefly touch on two existing and
14 important review mechanisms already in place.

15 Ever since it was created in 1873
16 as the Northwest Mounted Police, the RCMP has had
17 a central role in ensuring the security of Canada.
18 This role continued even after the creation of the
19 Canadian Security Intelligence Service in 1984.
20 At that time, as you may know, the RCMP security
21 intelligence function was transferred to the new
22 agency. However, we continue to be the lead
23 domestic agency for criminal investigations
24 related to national security and for protecting
25 Canadian officials and internationally protected

1 persons.

2 The McDonald report which led to
3 the establishment of CSIS explicitly reaffirmed
4 the role of the RCMP in enforcing national
5 security. It described how the agencies should
6 work together and that information on criminal
7 activities should and must be passed on to police
8 and others who require it.

9 In the event that such reporting
10 might be detrimental to Canada's security, it said
11 that the Solicitor General should make decisions
12 about disclosure.

13 CSIS and the RCMP operations are
14 today different and complementary. CSIS collects,
15 analyzes and retains information on potential
16 threats to national security in order to inform
17 government policy or strategy or for immediate
18 responsive reasons unrelated to law enforcement.
19 The RCMP on the other hand collects, analyzes and
20 retains information for very different reasons: to
21 prevent crime and prosecute criminals.

22 The CSIS-RCMP relationship
23 dovetails well within our overarching commitment
24 to integrated policing. The fundamental goal of
25 integration being to work with a range of partners

1 to establish a shared framework and shared
2 strategic priorities to the end of a seamless
3 system of law enforcement and security.

4 It goes without saying that
5 bombings, hijackings, kidnappings, targeted
6 assassinations, require both security analysis and
7 response and police work. And just as police are
8 called upon to counter criminal groups seeking
9 illicit profit, we are also called upon to counter
10 criminal terrorist organizations seeking
11 ideological ends through criminal means.

12 In the end, the only difference
13 between ordinary police investigations and
14 national security ones is that the latter have
15 implications for the security of Canada as a
16 whole, its public institutions, its place in the
17 world.

18 And of course the risks and
19 consequences are severe, immediate and
20 cross-cutting.

21 We saw a vivid example of this
22 reality following the bombing in London last
23 summer. The role of the police was very clear:
24 to prevent, respond and to follow up on criminal
25 behaviour, although ideologically driven, of the

1 individuals involved.

2 However, well before July 7th, the
3 U.K.'S Newton Committee of Privy Councillors took
4 the view that investigation and prosecution by the
5 criminal justice system is the preferred approach
6 to preventing terrorism.

7 Canada's own Anti-Terrorism Act
8 was progressive in moving in this direction four
9 years ago, providing law enforcement with
10 additional counterterrorism tools with built-in
11 checks and balances proportional with the tools
12 themselves, including the ongoing and mandatory
13 review of the entire Act. As Justice Minister
14 Cotler recently stated:

15 "Our commitment to democratic
16 values compels us to respond
17 to the threats of
18 transnational terrorism."

19 He said:

20 "In this response police, as
21 the embodiment of law in
22 action, have a crucial role
23 to play. In the context of
24 these and other changes to
25 the scope of

1 responsibilities, the RCMP
2 has simultaneously developed
3 a number of internal review
4 mechanisms and has seen the
5 introduction of external ones
6 as well." (As read)

7 I would like to preface my
8 comments on where we might go in future regarding
9 review with a brief comment on two of these.

10 As you know, our legal system
11 allows for the review of evidence prior to its
12 being introduced in a criminal proceeding. If a
13 court does not approve the methods by which it was
14 collected, it may be ruled inadmissible.
15 Ultimately, judicial review means at a trial
16 charges must be proven beyond a reasonable doubt,
17 but long before charges are even laid judicial
18 review comes into play at every significant point
19 where intrusive investigative tools are exercised.

20 Every step taken within the
21 investigative prosecution model is made with the
22 understanding that it could end up in open court,
23 subject to judicial scrutiny and comment.

24 This is, of course, particularly
25 true where tools granted under the Anti-Terrorism

1 Act are used. In these cases, there may be
2 requirements for future checks, further checks
3 often including Attorney General approval.

4 Contrary to the view of some,
5 complex, lengthy and sometimes preventive
6 investigations are generally subjected to
7 increased rather than less pre-charge review and
8 authorization than more straightforward cases.

9 The Commission for Public
10 Complaints Against the RCMP has a clear mandate
11 allowing it to investigate all complaints again
12 RCMP employees. This includes the mandate to
13 investigate complaints related to issues of
14 national security. I won't go into detail in
15 describing the CPC here, but I would like to
16 comment on one issue that I believe remains cloudy
17 for some.

18 Claims have been made that the CPC
19 cannot, under the current system, adequately
20 review national security.

21 The crux of this argument appears
22 to be twofold.

23 One, that it doesn't receive all
24 relevant information in national security cases,
25 and, two, that it needs audit power.

1 Regarding the first point, the
2 RCMP is legislated to provide all relevant
3 information to the CPC regarding complaints it is
4 investigating. The only exception to the rule is
5 where a legal impediment precludes such sharing.
6 Examples include police informer privilege,
7 Cabinet confidence, solicitor-client privilege,
8 and sections of the Canada Evidence Act.

9 In terms of the second concern,
10 the CPC arguably already has audit powers.
11 Section 45.37(1) Of the RCMP Act clearly allows
12 the CPC to initiate its own complaints and to
13 therefore delve into RCMP conduct when it feels it
14 is in the public interest to do so. As a matter
15 of fact, the CPC has commenced two such
16 investigations in 2004/2005 and concluded five of
17 them during the same period.

18 According to subsection 45.43(1),
19 complaints investigations do not have to be
20 conducted by the Force and CPC can make
21 recommendations on any area of the organization it
22 sees fit including in areas related to policy.
23 For this reason, I believe the concern that audits
24 cannot be undertaken by the CPC because a
25 complaint is required do not fully reflect what

1 actually occurs.

2 The CPC has proven itself to be an
3 effective review mechanism for the RCMP. Our
4 employees have literally millions of contacts with
5 Canadians each year. Out of these, the RCMP and
6 the CPC together, a little more than 2,200
7 complaints each year. The overwhelming majority
8 of these are resolved to the complete satisfaction
9 of all parties.

10 In those few instances where the
11 CPC must make recommendations, they are almost
12 always implemented. In short, the track record of
13 CPC/RCMP cooperation in resolving complaints is
14 exceptional and I am very proud of the work we
15 have done together to improve accountability and
16 enhance performance.

17 I would like to make one final
18 comment on our current review mechanisms before I
19 move into my concluding thoughts.

20 Between judicial review, review
21 via the CPC and other checks and balances, the
22 overwhelming majority of RCMP national security
23 activities fall under some form of review.
24 However, as we have seen, not all activities are
25 reviewed through the courts.

1 Furthermore, given that the law at
2 times does forbid the sharing of RCMP information
3 with the CPC, there are some activities that are
4 beyond the purview of that organization. If, for
5 example, information relevant to a CPC complaint
6 falls under police informed privilege, the RCMP
7 has an obligation to protect it. That is
8 recognized by law and, as you know, the courts are
9 equally bound by this.

10 As Justice Russell recently stated
11 in the Royal Canadian Mounted Police Public
12 Complaints Commission versus the Attorney General
13 of Canada:

14 "The law says that when
15 informer privilege is at
16 issue, and provided innocence
17 at stake exception does not
18 arise, I cannot engage in a
19 weighing of interest and have
20 no discretion. I must apply
21 privilege." (As read)

22 It is true, therefore, that there
23 is a thin slice of RCMP national security
24 activities that at times may not be subject to
25 full external review. I say "at times", because

1 ad hoc review bodies such as this inquiry can
2 always be engaged. It must also be remembered
3 that no RCMP activities ever stand outside the
4 scope of our ultimate check and balance., i.e.,
5 the Canadian legal system and the Charter of
6 Rights and Freedoms.

7 However, if we accept that some of
8 our national security activities may at times not
9 be subject to full review, two questions arise:
10 Should these areas be made subject to full review,
11 and, if so, how?

12 I believe that the answer to the
13 first question is an unequivocal yes. There
14 should indeed be full review, so long as it does
15 not hamper the RCMP's ability to carry out its
16 primary mandate of protecting the safety and
17 security of Canadians.

18 The answer to the second question
19 is of course the subject of this inquiry and under
20 consideration by yourself and in a number of other
21 quarters.

22 I would like to now conclude my
23 remarks by, with your permission, sharing what
24 might be considered a wish list, or perhaps a list
25 of cautions as you move forward in your

1 consideration of appropriate review mechanisms.

2 One, both the organization and the
3 Canadian public want a review that strengthens our
4 investigations and enhances our ability to achieve
5 our mission.

6 Two, our key factors need also to
7 be considered. That review mechanism recognizes,
8 as Canada's national security policy and UN
9 Resolution 1373 do, the importance of
10 information-sharing and integration with other
11 agencies that it is post facto or, at the very
12 least, does not interfere with active ongoing
13 investigations; that it does not disclose secrets
14 which would harm our nation.

15 Obviously, review is of no value
16 to the RCMP or those we serve if it places the
17 safety and security in jeopardy or destroys
18 relationships with those we depend upon for vital
19 national security information.

20 Review must also not overburden
21 investigators, it must not distract their
22 attention from operational duties, tying them up
23 in red tape and creating an aversion to risk with
24 the organization. This is something the 9/11
25 Commission warned against and the ability of law

1 enforcement to allow and encourage appropriate
2 innovation and creative solution seeking is an
3 ongoing challenge.

4 Four, any oversight and review
5 mechanism should be proportional to the relatively
6 limited scope and size of the RCMP's involvement
7 in national security.

8 Five, any additional review of
9 our national security activities should
10 acknowledge the critical, common-law principle of
11 police operational independence. Review should
12 acknowledge the assurance that this principle
13 provides that police will always be empowered to
14 stop crime wherever it occurs, even in government.
15 It is important to note that the Government of
16 Canada has already said that any new national
17 security review mechanism will respect this
18 principle.

19 Six, appropriate review will take
20 into consideration Canada's unique legal,
21 political and cultural systems, traditions and
22 context.

23 Seven, it should bring problems to
24 the attention of government, without usurping
25 ministerial authority or managerial

1 responsibility.

2 Eight, and lastly, it should not
3 needlessly duplicate the RCMP's other mechanisms
4 of review or those of other agencies.

5 I would like to conclude my
6 comments, Commissioner, but before we move into
7 questions I would like to quote Janice Stein, who
8 has suggested that:

9 "In a modern headlong rush
10 for accountability we can at
11 times lose the older language
12 of responsibility."

13 She warns:

14 "This disappearance of the
15 concept of responsibility has
16 serious consequences for the
17 way we think about public
18 life." (As read)

19 I agree. It is terribly important
20 that we maintain the ethos of responsibility to
21 our organizations, to the public and to our
22 country.

23 On the other hand, I acknowledge
24 the key importance of review, that when designed
25 and implemented appropriately, can reassure the

1 public that its police are acting as they should
2 and that corrections will be made, if and when
3 they are needed.

4 This will of course assist us to
5 do our job better. More importantly it will lead
6 us to maintaining our covenant with citizens to
7 serve, protect and be held to account by them and
8 for them.

9 I would like to wrap up with a
10 comment that is more personal than the rest of
11 these remarks.

12 Thirty-five ears ago I made a
13 decision to serve the greater good, to take on the
14 role, accept the responsibilities and work within
15 the parameters of the Royal Canadian Mounted
16 Police. I have been prouder than I can say to be
17 part of this incredible organization and to work
18 alongside tens of thousands of others who took on
19 the same commitment.

20 It isn't always an easy job being
21 a police officer, especially in times of
22 cataclysmic change, shifting expectations and in
23 the face of modern development in technology,
24 globalization, terrorism and crime, but it is more
25 rewarding and more meaningful than anything I can

1 think of.

2 There isn't one Mountie today who
3 isn't proud to wear the red serge, and we know, we
4 are told over and over again, that together we
5 represent the very essence of Canada, steadfast,
6 dependable, trustworthy.

7 It is that is which does and must
8 inspire our organization. At the heart of our
9 commitment and at the centre of our ability to
10 keep this country and its citizens safe, is the
11 relationship of trust that we maintain.

12 In August, Commissioner, I spoke
13 to the Canadian Association of Chiefs of Police on
14 this issue. I would like to close by repeating
15 what I said there:

16 "Without adequate levels of
17 trust we can't possibly
18 address issues around
19 security in Canada. We may
20 find ourselves battling
21 erroneous perceptions of
22 police action, facing audits,
23 reviews and investigations
24 that utilize precious
25 resources, or dealing with

1 the imposition of checks and
2 balances that only serve to
3 even further endanger trust
4 levels. The only answer, it
5 seems to me, is to embrace
6 the accountability
7 environment, while of course
8 remaining vigilant of its
9 potential to put our core
10 values of independence and
11 efficiency at risk.

12 You know, when
13 discussions first began in
14 Ottawa circles about the need
15 for greater oversight for the
16 RCMP, I was the first to feel
17 an inclination to resist.
18 But my thinking has evolved
19 on all of this. I now
20 believe that the resource of
21 trust is so precious, so
22 necessary to our ability to
23 maintain order and security,
24 that I am much more open to
25 such possibilities.

1 Accountability is not the
2 enemy, nor is it the panacea
3 for all that does or might go
4 wrong inside law enforcement
5 or other security efforts.
6 Trust, on the other hand, may
7 well be the saving foundation
8 of our sector and indeed our
9 society. I believe the way
10 forward will be found in the
11 space that exists between
12 trust and accountability so
13 that both factors are
14 understood, managed and
15 utilized to enhance our
16 fundamental goal of safe
17 citizens and secure
18 communities." (As read)

19 Commissioner, I would like to
20 thank you again for this opportunity to put forth
21 both my personal response and the views of the
22 Royal Canadian Mounted Police on this very
23 relevant issue of review.

24 I now look forward to your
25 questions and I look further forward to your

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1 recommendations when they come out.

2 Thank you.

3 THE COMMISSIONER: Thank you very
4 much, Commissioner Zaccardelli. I think that was
5 very well said. I appreciate it.

6 I thought your comments about
7 trust are very appropriate. I think that really
8 is what -- because I have a thought about the
9 issue too and is it at the core of all of this.
10 It is the trust that all our institutions need
11 from the public that is so important. So I
12 appreciate that.

13 Let me just pick up on some of the
14 things that you said with a few questions.

15 One of them was in one of your
16 points about a review mechanism. You indicated
17 that a review should be proportionate to the scope
18 and size of the RCMP's national security
19 activities. We talked about that earlier today,
20 some of that, about the size.

21 Do you have anything specifically
22 in mind with respect to that? The national
23 security activities, however one measures them,
24 are a relatively small portion of everything that
25 the Force does. Is there room for a separate

1 review mechanism, either complaints or whatever
2 else, audit, for national security activities that
3 doesn't apply to the Force as a whole?

4 Is that the thought that
5 underlay that?

6 MR. ZACCARDELLI: Yes. I believe
7 that the review has to be proportional and of
8 course it has to cover all of our activities in
9 terms of national security, all the resources.

10 I think if I can maybe clarify, if
11 there was any confusion, this morning I said
12 everything we do in an integrated fashion related
13 to national security comes in under the ambit of
14 the IBETs or the INSETs.

15 THE COMMISSIONER: The INSETs or
16 the IBETs, yes.

17 MR. ZACCARDELLI: The INSETs are
18 the major thrust, but there are some other units
19 in the organization, especially at the
20 Headquarters level, that are supportive of that.
21 They do work for the INSETs and for the strategic
22 thinking that goes on in this area. So there are
23 other units and there are some other units around
24 the country that involved or their activities are
25 closely related to this and I didn't want to leave

1 the perception that only INSETs do this work.

2 The other issue, as I said,
3 because you can't predict these, we are not
4 producing widgets, something may happen that I
5 have to put a unit together or somebody else may
6 be involved, that is why I believe strongly we
7 could look at the structure in terms of reviewing
8 the structure, but I think it has to be open
9 enough that anything outside of that structure is
10 also subject to review and if there is any doubt
11 it must be brought into the review. I have no
12 problem with that.

13 THE COMMISSIONER: Let me put the
14 question this way.

15 If the CPC, just assume for the
16 moment, continues to be the body that reviews all
17 of the RCMP's activities, including all law
18 enforcement, but including national security as
19 well, and if the CPC were to have its powers
20 clarified so that it is clear -- I guess a number
21 of things -- that it could compel the production
22 of documents, could determine what it needed as it
23 saw it to be relevant, could follow the trail
24 wherever it needed to go, those types of powers
25 that some have suggested that it if they are not

1 there now, they should be or should be clarified
2 if they are there now, if I were to recommend
3 that -- and my mandate is for national security
4 activities -- would it make sense, though, that
5 those types of powers would apply across the
6 board?

7 My concern is having a review body
8 that has one set of powers for one type of
9 activity, national security, and lesser or
10 different powers for others.

11 I don't know what I would do about
12 that, but it strikes me as an anomalous or unusual
13 situation.

14 MR. ZACCARDELLI: It is an issue
15 that you will have to deal with. Obviously there
16 is a series of options and they can all work.
17 Some can work better than others.

18 If it is the CPC with an enhanced
19 review capacity, although, as I said, I believe if
20 we look closely at what is there, I think there is
21 lots there. But if we were to enhance that, does
22 it apply right across the board or is it limited
23 to the national security?

24 I believe the public complaints
25 system is working very well. This is a special

1 area. So I think it would be one of the -- the
2 option of course is to leave it just there, just
3 limit it to there.

4 Of course, there is a whole series
5 of other options. The work that we do in this
6 national security area is very closely linked to
7 certain other partners, in particular CSIS. So
8 the whole area of our relationship with CSIS is
9 very closely tied to this area.

10 Is there another body that could
11 better handle this or another model that could
12 work there? I think there is a number of models
13 that could work.

14 Some people could say there are
15 some advantages to having everything under
16 national security looked at from one area.

17 THE COMMISSIONER: Some say that.

18 MR. ZACCARDELLI: I think all
19 models will work. The question is which one is
20 the best one.

21 The trick, of course, is it is
22 easy to draw a model. The question is how will it
23 work 10 years from now.

24 THE COMMISSIONER: And quite
25 frankly, that is what I have been saying all this

1 week. One of the difficulties in looking at the
2 different models is trying to envision, from a
3 practical standpoint so that it actually works on
4 the ground. Everybody wants it to work.

5 MR. ZACCARDELLI: You have heard
6 me speak about integration. I believe that if
7 issues are coming at you from different
8 perspectives but they all basically touch on the
9 same thing, it is good to be able to have a
10 response that is all-inclusive as opposed to
11 breaking up the response in terms of different
12 organizations or possible different review bodies.
13 I think there are pros and cons to each one.

14 I know things will come out of
15 this that we will not probably have anticipated.
16 I say that with the greatest respect. I think
17 about people who discuss the Charter these days.
18 Who imagined where the Charter would have gone
19 when it came in. I think that is just the nature
20 of the way these things are.

21 THE COMMISSIONER: In relation to
22 the integrated work with CSIS, we have heard a lot
23 about the INSETs. When CSIS comes in an RCMP-led
24 investigation like an INSET, does the CSIS officer
25 or officers typically become involved in

1 investigative steps so that if the RCMP was
2 involved in detentions, arrests, searches and the
3 things that police officers do, does the CSIS
4 officer get involved in that role?

5 MR. ZACCARDELLI: No, not at all,
6 Commissioner. Again, when we put a
7 multi-disciplinary team together, it is not to
8 make them something that they are not. When we
9 bring somebody in from the Border Agency or
10 another, what they do is they bring their value,
11 their information, their perspective to bear.

12 Obviously anything that we do, it
13 is hard to think of -- well, I don't think there
14 is anything we do in national security that CSIS
15 isn't aware of or that we are involved with them
16 because it is national security. They are the
17 primary organization in this country, so they are
18 there for two reasons. They might add value.
19 They can provide information or intelligence or
20 whatever, plus it is important for them to know
21 what we are doing so that they can factor that
22 into their responsibility.

23 They are not there to be police
24 officers or to make arrests or exercise peace
25 officer responsibilities. They are simply there

1 to add value, information or intelligence or give
2 us a perspective, what do they think, how do they
3 view it. That is the critical component. When
4 you have those different perspectives, you can
5 come up with a better answer.

6 THE COMMISSIONER: What I hear you
7 saying, sticking with CSIS for the moment, they
8 would share information, bring expertise,
9 analytical expertise coming from them, and also by
10 being there they are going to receive information.

11 MR. ZACCARDELLI: Absolutely.

12 THE COMMISSIONER: So their role
13 is more of receiving, giving information or
14 analyzing it, but dealing with information whereas
15 when it comes to the operational part, the law
16 enforcement part -- and this is why it is a police
17 law enforcement investigation -- they don't do
18 that. The police officers do that.

19 MR. ZACCARDELLI: That's right.
20 Yes, Commissioner.

21 THE COMMISSIONER: Would the same
22 hold true with other federal agencies who become
23 involved in the integrated operation? It is on
24 the information expertise exchange?

25 MR. ZACCARDELLI: And they would

1 exercise whatever authority they might have,
2 whether it is the Border Agency or Canada
3 Immigration. If they have powers under their Act
4 that they can use or information that they can
5 get, the whole objective is to bring all that to
6 bear.

7 THE COMMISSIONER: But they again,
8 as part of the integrated operation, wouldn't be
9 carrying out any of the RCMP types of powers or
10 law enforcement types of powers.

11 MR. ZACCARDELLI: No. But if they
12 have police officer status, like some of them do,
13 then they might participate in an operation in
14 greater detail.

15 THE COMMISSIONER: Pursuant to
16 their own mandate.

17 MR. ZACCARDELLI: Exactly.

18 THE COMMISSIONER: So they may be
19 asked, pursuant to their mandate or out of the
20 INSET, to do something under their mandate to
21 further the investigation?

22 MR. ZACCARDELLI: Exactly. I
23 mean, at the border we may need somebody to be
24 checked at the border. Of course, the Border
25 Agency people are there, so they can mandate their

1 organization or people in their organization to
2 put on the lookout or to do something to enhance
3 our operation.

4 The same thing with Immigration.
5 They bring that expertise and that value to the
6 operation.

7 THE COMMISSIONER: If the model
8 eventually became one where the RCMP's national
9 security activities for purposes of a review were
10 lifted out of the RCMP and put over here into some
11 would suggest SIRC, or an enhanced SIRC, or
12 whatever it is over here, it's something else, how
13 would that affect the officers involved?

14 It seems to me that depending on
15 which side of line they fell, they would stay
16 within an RCMP review operation or they would all
17 of a sudden be in a separate one, which may have
18 functioned differently over time. It may have
19 different standards and so on.

20 Is that something that is going to
21 be of concern to RCMP officers?

22 MR. ZACCARDELLI: No, I don't
23 believe so. If the review body is mandated to
24 look at that type of activity, I don't believe
25 that will be a concern.

1 I may have misunderstood your
2 question. I don't understand when you say if
3 officers go to another unit.

4 THE COMMISSIONER: To another
5 review body.

6 MR. ZACCARDELLI: Oh, yes.

7 THE COMMISSIONER: So that because
8 they are carrying out a national security
9 activity, whatever that happens to be, when it
10 comes for those activities to be reviewed, they
11 would be within the jurisdiction --

12 MR. ZACCARDELLI: Of somebody
13 else.

14 THE COMMISSIONER: Of somebody
15 else and they wouldn't fall under the jurisdiction
16 of the CPC, presumably.

17 MR. ZACCARDELLI: That's true.
18 Obviously they would fall under that jurisdiction.
19 To an investigator, to us, if somebody is
20 mandated, regardless of who has the mandate, if
21 they have the mandate they will get our
22 cooperation and we will provide them with what
23 they need. Whether it is a lawyer from SIRC or
24 somebody from SIRC or somebody from the CPC or
25 another body, it would not make any difference to

1 us.

2 THE COMMISSIONER: And I think as
3 you indicated earlier in terms of drawing the line
4 as to what would be considered national security,
5 the body that was reviewing it would be able to
6 look and if they thought so then you would err on
7 the side of --

8 MR. ZACCARDELLI: Absolutely. We
9 start from the principle that if the review body
10 is there, we will do everything we can to
11 cooperate and make ourselves available to that
12 review. We will accept that review.

13 Commissioner, I go back to this
14 and that is why I said at the CACP conference my
15 thinking has evolved and I think a number of
16 leaders in policing have evolved their thinking on
17 this. I think what has clearly happened to us
18 over the last while, rightly or wrongly there has
19 been a perception of law enforcement, other
20 agencies, and officials in general, public
21 officials in general, that somehow we have not met
22 that high test of trust. We have not met that
23 high test of transparency and accountability.

24 Whether I agree with that or not
25 is irrelevant. If that perception is there and I

1 hear that from people, I have to deal with that
2 and I will not sacrifice the question of trust for
3 anything. Therefore, I accept the review. I
4 accept whatever accountability is there. I
5 believe if it is the right accountability and the
6 right review, it will enable me to do my job
7 better as the Commissioner of the organization and
8 it will rebuild or maintain that trust that is so
9 vital. I cannot sacrifice that.

10 I am not sure that I totally
11 understood that when I started this process,
12 because your human inclination is to say I have
13 enough review, or do we need more time to spend
14 there.

15 What I said is I have evolved on
16 that, and I need that review if it helps me do my
17 job better and if it helps alleviate some of the
18 possible perceptions out there that are negative
19 towards us or some of the misconceptions about
20 what we do.

21 I welcome people coming in to see
22 what our men and women do, because I know what
23 they do. I am proud of what they do and I think
24 most Canadians are. So I think the sooner we open
25 up, the better people will see what we do and we

1 will we get on with rebuilding whatever trust has
2 been lost over a very difficult number of years
3 here.

4 THE COMMISSIONER: That is
5 interesting.

6 How much integration is there
7 between the RCMP's national security activities
8 and the CSE?

9 How does that sort of work?

10 MR. ZACCARDELLI: There is a
11 relationship. We do deal with them but on a very
12 limited basis. It is an ad hoc basis. They are
13 not our primary organization that we interact
14 with. We do get information from them from time
15 to time. They are aware of some of our needs, but
16 we do not rely on them for our day-to-day
17 information that we need, for example, as we do
18 with CSIS and some other agencies.

19 THE COMMISSIONER: If you were
20 looking, Commissioner, at those agencies which are
21 the prime partners in integration, federally, the
22 federal agent -- clearly CSIS' national security
23 is number one. What would be the other agencies
24 in which you have any sort of significant
25 interaction and integration with? The CBSA?

1 MR. ZACCARDELLI: The Border
2 Agency, Immigration, although with the creation of
3 the Border Agency a number of the functions that
4 were done out of Immigration have now been moved
5 to the Border Agency.

6 The Border Agency would be the
7 third.

8 Immigration. Transport also is
9 very, very important agency for us. More and more
10 it is becoming an important agency.

11 The military are becoming more and
12 more involved with us, again because of the
13 transnational nature of organized crime. They are
14 positioning around the world. So the military, I
15 see us enhancing our relationship.

16 The Coast Guard has been given
17 certain new mandates in terms of our coastal
18 waters and our internal waters. Where we are
19 working with them, we provide the policing
20 capacity with the Coast Guard to respond --

21 THE COMMISSIONER: On national
22 security matters?

23 MR. ZACCARDELLI: On national
24 security. There is an evolution here taking
25 place, so there is a number of these agencies that

1 are important.

2 The day-to-day are CSIS, our law
3 enforcement partners, the Border Agency, then
4 Immigration, the military and the Canada Coast
5 Guard.

6 THE COMMISSIONER: Okay.

7 MS KRISTJANSON: Commissioner, if
8 I might just ask since we are on the topic, what
9 about DFAIT, foreign affairs?

10 MR. ZACCARDELLI: Yes, we do deal
11 with foreign affairs, absolutely, from time to
12 time. I guess the reason I didn't mention them is
13 because we don't do operations with them, so I'm
14 thinking of all the other ones.

15 THE COMMISSIONER: You share
16 information.

17 MR. ZACCARDELLI: We do share
18 information with them and obviously we get advice
19 from them in terms of situations around the world
20 and how deal with certain countries, and so on.
21 So we do work closely with them also.

22 THE COMMISSIONER: Let me move
23 back to whatever the review agency is and the
24 collection of evidence.

25 It struck me from answers that I

1 heard in the earlier session that whatever the
2 review body is, it would make sense that that body
3 have the capacity and authority to follow the
4 trail, the evidentiary trail.

5 You spoke this afternoon,
6 Commissioner, that there should be no impediments
7 to that with certain exceptions. The one you
8 mentioned was the police informer objection.

9 Can that be handled in some cases
10 by simply not naming the informer, which is most
11 often irrelevant, I would have thought to a
12 review, who the informer was, or even indicating
13 any factors that would tend to identify the
14 informer? Most often I would have thought what
15 was relevant is not who it is but what was learned
16 and the reliability.

17 Is that a type of approach that is
18 open in some cases?

19 MR. ZACCARDELLI: Commissioner,
20 you are absolutely right. Obviously the common
21 law is very clear and that has been affirmed right
22 up through the Supreme Court.

23 I think when you apply good
24 judgment to these, it can be worked out. I have
25 no question whatsoever on that. The key question

1 is relevance. The relevance is what happened.
2 The person is complaining. Now, if the innocence
3 of the person is at stake, I understand that.

4 But in most cases that is exactly
5 right. I believe very firmly that it can be
6 worked out.

7 As a matter of fact, in one
8 particular case we did provide a summary of the
9 information, but it didn't work out because
10 obviously there was an attempt to make a point or
11 prove a principle. It went to Federal Court and
12 the Federal Court ruled in our favour.

13 In my view, it didn't have to go
14 there because it was totally irrelevant. We did
15 offer what I thought was more than reasonable
16 circumstances or information without getting to
17 that critical point.

18 So I believe it can work. If we
19 have goodwill on both sides, I have no question in
20 my mind. We tried. We really did.

21 THE COMMISSIONER: And
22 solicitor-client privilege, has that been an
23 issue?

24 MR. ZACCARDELLI: It has never
25 been an issue. Again, I'm willing to really

1 stretch it and go as far as I can on that. Short
2 of my lawyers telling me absolutely you can't, I
3 would err on the side of doing it.

4 THE COMMISSIONER: Most times what
5 your lawyers tell you isn't worth that much, in
6 any event. Isn't that what you find?

7 MR. ZACCARDELLI: If I really want
8 to do something, I usually don't ask them. But
9 no, I understand what you are saying.

10 Again there, we have never
11 actually had a case, and I just don't see a case
12 that would be such that I couldn't at least share
13 the contents or a summary of it.

14 If somebody wants to prove the
15 point that they can get the document from me, then
16 I have no chance of meeting them halfway.

17 THE COMMISSIONER: Just shifting
18 gears again, I heard a concern -- I have heard it
19 I think twice at least -- that if you had an
20 integrated review body, therefore a review body
21 that is reviewing more than one agency, you are
22 going to run a very serious risk of
23 cross-contaminating classified information.

24 The point, as I understand it,
25 goes like this: that each agency itself has

1 information that it only shares with others on a
2 need to know basis.

3 So when you are reviewing an
4 integrated operation and you go up here, you now
5 have the review body having access to the
6 classified information of all of the underlying
7 agencies, and that this is somehow an
8 unacceptable -- the word is cross-contamination.

9 I am not dismissing it all. It is
10 put forward as a serious concern.

11 Do you have any observation or
12 concern along those lines?

13 MR. ZACCARDELLI: You know, there
14 is only room for one Commissioner in the RCMP,
15 Commissioner, so I think that really falls to me
16 to look after.

17 I would certainly welcome
18 recommendations. Recommendations that would help
19 me better manage the Force, I would welcome them.
20 I said that a little bit in jest, but --

21 THE COMMISSIONER: I think clearly
22 this suggestion, when it was made, was made in
23 that context. It didn't see somebody managing the
24 Force after the fact by directing how resources be
25 spent.

1 Let me just check here. I don't
2 think I have any further questions.

3 I will turn to those on my right.
4 They may have a few questions.

5 MS KRISTJANSON: I understood you
6 to say to Commissioner O'Connor that you don't
7 think it would be a problem if the national
8 security actors within the RCMP were subject to a
9 different set of review, perhaps conducted by a
10 body like SIRC with different powers.

11 Is that correct?

12 MR. ZACCARDELLI: I'm sorry, the
13 national security, members involved in national
14 security, if they were --

15 MS KRISTJANSON: Subject to review
16 by a different body than the CPC, with different
17 standards, et cetera.

18 MR. ZACCARDELLI: No. Again, as I
19 have said in my comments, to me the most important
20 thing that I am worried about is the fact that the
21 appropriate review be there, whatever form it
22 takes, so that this review is effective and
23 efficient and allows me to do my job better and
24 allows me to demonstrate to the public that we are
25 worthy of their trust.

1 That is the most important thing
2 to me.

3 So where it goes, I have done a
4 lot of thinking on this from my first reaction to
5 saying we don't need it, to -- I think there are
6 pros and cons to any review system.

7 MS KRISTJANSON: Is one of the
8 cons of having two different systems that might
9 apply to your officers being adding to the
10 existing 13,000 pages of rules and having
11 different standards that might govern their
12 conduct of an investigation depending on where it
13 is situated?

14 That is a disadvantage?

15 MR. ZACCARDELLI: Well, yes, but
16 there is advantage and disadvantage to all of
17 them. If I put on my integrated philosophy hat,
18 which I passionately believe in, I would say that
19 you could argue that reviewing all national
20 security issues on this spectrum might benefit
21 from one body reviewing all of it, all of the
22 actions.

23 I think I could argue that very
24 well.

25 You could also argue, as you say,

1 if we looked at the CPC and whether we clarify
2 what is there or add to what is there, you could
3 clearly argue that also.

4 The downside to that is that it is
5 a small slice of what we do. So they would be
6 mainly looking at non-national security issues and
7 once in a while they would have to go into this
8 national security issue, whereas if you argued
9 under the other body, a SIRC, who are constantly
10 working in this area, you might argue that since
11 they are doing this all the time they could just
12 expand their spectrum, since they are already on
13 that spectrum.

14 I am not arguing either for one or
15 the other. I am just saying you have to consider
16 that.

17 MS KRISTJANSON: One significant
18 difference, for example, between the form of
19 review, SIRC looks at human source information and
20 it does reviews of human source handling
21 essentially, and it gets the details that you now
22 say are covered by police informer privilege and
23 that aren't provided to the CPC.

24 Would that kind of significant
25 disparity in power between review bodies, both

1 applied to the one force, would that be of concern
2 to you?

3 MR. ZACCARDELLI: No, it wouldn't
4 be of concern to me as long as I was assured that
5 that information was protected and the right
6 people were looking at that. That is not a
7 concern.

8 As I said to the Commissioner, I
9 think we would go as far as we could go to
10 accommodate, whether it is a direct disclosure or
11 a summary or whatever. I think we could work with
12 that as long as it is protected. That is the main
13 thing.

14 MR. FORESTER: Commissioner
15 Zaccardelli, just one question relating to the
16 concept of criminal intelligence.

17 As I understand it, in
18 non-national security context, in organized crime,
19 for example, part of the purpose of gathering
20 criminal intelligence is to get a better
21 understanding of the organizations that may be
22 involved in the crimes. And similarly, as I
23 understand it, in reading about it from RCMP
24 material, that in its growth out of the community
25 policing concept one of the ideas behind it was to

1 get a better understanding of the community so
2 that the Force, the RCMP, has a better
3 understanding of the context that they are
4 operating in.

5 Is there something analogous to
6 that in the national security side?

7 In other words, is some of the
8 national security intelligence gathered for the
9 purposes of the RCMP getting a better appreciation
10 of the national security landscape?

11 What I am getting at here is
12 consequently not perhaps necessarily aimed at a
13 specific event. Is there some element of that
14 there?

15 MR. ZACCARDELLI: Absolutely. We
16 have had a philosophy of being a strategically
17 focused organization for a number of years. We
18 believe very strongly in strategic scanning. So
19 what we do is we do sophisticated scanning to
20 understand the areas, the world around us, and
21 specific different elements of different areas
22 that have a direct impact on us.

23 We do it about organized crime.
24 We do it about social issues, the economy, and so
25 on.

1 In the area of national terrorism,
2 there is body of information that is out there
3 that needs to be understood, culturally and
4 otherwise, about why this phenomena has taken
5 place. That has nothing to do with criminal
6 intelligence relative to national security, but
7 our people need to have that broad perspective and
8 understanding. Why do we have a phenomena of
9 terrorism today? What is this ideology all about?
10 What is driving people to this?

11 Understanding that has nothing to
12 do with specific operations. It is about
13 understanding the environment that we work in so
14 that we come down to our specific mandate, we can
15 be aligned to understand and better to carry out
16 our mandate.

17 Could you imagine if you didn't
18 know what was going on and tried to do a national
19 security investigation? So it is part of the
20 training. It is part of us understanding this
21 phenomena.

22 MR. FORESTER: So that I
23 understand this, is part of the collection of
24 information work that the RCMP does in this area
25 to get that type of information, or is that

1 something that you rely, for example, wholly on
2 CSIS for?

3 MR. ZACCARDELLI: Actually, we
4 rely on a whole bunch of sources. Most of this
5 source is open source. Understanding the
6 phenomena of terrorism, you don't need a secret
7 report. What you need is to understand what is
8 going on. And there are so many scholars and so
9 many people that are writing about it.

10 If I want a specific threat
11 assessment about a particular group, and so on,
12 then I would go to CSIS. That is the first source
13 of that very specific information.

14 But the broader context, which is
15 so essential to understand, because then you know
16 where you position yourself, some of that comes
17 from CSIS because they do report.

18 You see, one of the interesting
19 things about integration is not about doing
20 everything yourself. It is about leveraging your
21 resources. If there are experts and there are
22 academics and so on who are out there working in
23 the field and providing excellent top-notch
24 quality information, why would I duplicate that?
25 Why wouldn't I get that from somebody else? I

1 take that and learn from it.

2 CSIS provides information to us.
3 Other groups do that. So we take that and bring
4 that in and leverage it so we are better
5 positioned to respond.

6 MR. FORESTER: And sometimes -- I
7 don't want to be too persistent in this. But
8 sometimes the RCMP goes out and collects some of
9 that information itself as well.

10 MR. ZACCARDELLI: That's true. If
11 we believe there is a specific need for us to
12 certain types of information, we do that. We have
13 offices and we have experts in this area that
14 provide a certain amount of this information or
15 collate a lot of this information for us so that
16 it is moulded for our particular needs.

17 MR. FORESTER: Thank you,
18 Commissioner.

19 MS WRIGHT: Commissioner
20 Zaccardelli, just a further question on police
21 informer privilege. You mentioned the
22 possibilities of summaries and that sort of thing.

23 SIRC has full access to human
24 source information in CSIS hands, and human source
25 information that CSIS collects can be some of the

1 most sensitive, classified, top secret stuff they
2 have.

3 Is there any reason that a review
4 body for the RCMP's national security activities
5 should have any lesser access to police informer
6 privilege information than SIRC has to CSIS human
7 source information?

8 MR. ZACCARDELLI: I think that was
9 touched upon this morning. First of all, the
10 principle has been in law for hundreds of years,
11 so I think the test of time is something we want
12 to respect and be very careful about trying to
13 alter.

14 But I think most importantly is
15 the CSIS information or the CSE, they are
16 organizations that again work within that closed
17 loop. We are much more subject to outside review
18 and scrutiny, and if that information was to leak
19 out, the possibility of leakage is much greater
20 with us. Remember, once we get close to the court
21 process, disclosure comes into play and then you
22 have some serious challenges there.

23 That is the big difference. We
24 are a much more open organization, transparent
25 organization, subject to a lot more reviews or

1 different types of reviews. That is the main
2 difference with us.

3 MS WRIGHT: Presumably, to use
4 Commissioner O'Connor's language from this
5 morning, if we had a review body with the same
6 sort of gold star candidates as are found in SIRC
7 and you could trust the review body to sort out
8 the issues of risk of leakage, what I hear you to
9 say is the only difference then is that there is a
10 greater potential for disclosure and a potential
11 prosecution?

12 MR. ZACCARDELLI: I would also add
13 in there, you know, I wouldn't discard the issue
14 of relevance. I think the Commissioner raised
15 that. The cases that we have dealt with, our
16 opinion was that before you get to asking for
17 something, you have to demonstrate relevance. If
18 it is not relevant, then why would you want to
19 look at that?

20 So I would include that in the
21 process of review.

22 I would be willing to look at
23 something that is offered that is reasonable, but
24 I would be very careful about protecting that
25 principle.

1 THE COMMISSIONER: Finished?

2 Thank you very much, Commissioner
3 Zaccardelli. It has been a long day but it has
4 been of great assistance to me. It was an
5 excellent session again this afternoon and I
6 appreciate it.

7 And through you, let me express
8 formally our thanks again to all the members of
9 the RCMP who cooperated throughout the inquiry. A
10 number of them are here now. It has been greatly
11 appreciated and of enormous help.

12 So thank you.

13 MR. ZACCARDELLI: Thank you very
14 much, Commissioner. It has been a pleasure being
15 here and I look forward to your report.

16 THE COMMISSIONER: Thank you.

17 Before we stand adjourned, there
18 are two people I want to thank that I didn't thank
19 the last time in the public hearings. That is our
20 court reporter, Lynda Johansson, who has been here
21 throughout at the public hearings; and our sound
22 technician, Joe Garzouzi, who has done a terrific
23 job over the months. So to both of you, thank you
24 very much.

25 That, all things going as

1 currently scheduled, completes the hearing process
2 for this public inquiry. I think it was
3 appropriate that the last party to appear was the
4 RCMP, playing a central role as they do in the
5 inquiry.

6 We stand adjourned. I don't think
7 we will be resuming in any further hearings.

8 Thank you.

9 --- Whereupon the hearing concluded at 3:37 p.m. /
10 L'audience s'est terminée à 15 h 37

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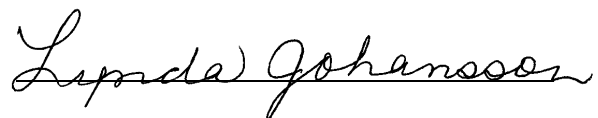
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Lynda Johansson,

C.S.R., R.P.R.

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