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Chair

Mr. Paul Zed

Subcommittee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

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● (1530)

[*English*]

The Vice-Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): We want to welcome you here today on this Tuesday, March 22.

Pursuant to the order of reference of December 9, 2004, this committee is studying the Anti-terrorism Act, formerly Bill C-36. We're pleased to have with us today the Honourable Minister of Public Safety and Emergency Preparedness, Ms. McLellan.

I'm not certain, Madam Minister, how long your presentation will be. Ten to 15 minutes is usual.

Hon. Anne McLellan (Minister of Public Safety and Emergency Preparedness): It will be 15, maybe 20 minutes.

The Vice-Chair (Mr. Kevin Sorenson): So we welcome you here and we look forward to that. We will then follow up with questions.

I just want to remind the committee that we may be closing this committee down, adjourning about ten or fifteen minutes early, because of votes. The bells will begin at 5:15, and we'll conclude the meeting at that time.

Ms. McLellan.

Hon. Anne McLellan: Thank you, Mr. Chair.

I am pleased to be here with this subcommittee today and to participate in this important review of the Anti-terrorism Act. I welcome this opportunity to examine our experience with this legislation and to determine whether adjustments are necessary either because of changing circumstances or because of emerging challenges.

This, as all of you know, is an important exercise. The Anti-terrorism Act forms part of a carefully calibrated response to the dangers of terror and addresses those dangers in a way that is consistent with our values. I would hope, therefore, that our focus today will be on the Anti-terrorism Act so we can conduct the kind of careful, comprehensive, and considered review such an important law merits. The legislation itself directs it, fairness demands it, and Canadians deserve it.

[*Translation*]

While I believe that our first responsibility is to discharge the legislated obligation to review the Anti-Terrorism Act, I also appreciate that this committee has chosen to broaden the discussion to include security certificates and section 4 of the Security of Information Act. I will also touch on security certificates in my remarks. On the issue of section 4 of the Security of Information Act, I will defer to my colleague, the minister of Justice, who has primary responsibility in that area and who will appear before you tomorrow.

[*English*]

Before addressing the legislation, let me briefly review the environment in which we find ourselves. As you have heard from Mr. Judd, the director of CSIS, the global threat has not diminished with the passage of three years. Terrorism continues to evolve. Canada remains a target named by al-Qaeda. While our efforts in Afghanistan have destabilized al-Qaeda's base of operation, the organization clearly remains a major threat. New technologies are extending the reach of terrorist cells, and terrorists worldwide continue to engage in acts of violence.

Since September 11, 2001, there have been terrorist attacks in more than 30 countries, including at a nightclub in Bali, a train in Madrid, and a school in Beslan. Frequently, new intelligence reveals plans for other attacks in other parts of the world, demonstrating the reach and complexity of the threat. We cannot afford to doubt for a moment the determination of terrorists or misinterpret any period of calm as the end of their objectives. As we have seen in many cases, attacks are many years in the planning. The hard truth is that the danger has not diminished. We must remain alert and we must be prepared.

Being prepared, staying ahead of these dangers and preventing their occurrence is what the Anti-terrorism Act is all about. It is a vital cornerstone of our national security and an important instrument of our international engagement. There are other tools and laws that we rely on in this context, including security certificates. Members will know that these certificates have been available under immigration legislation for many years. They predate the Anti-terrorism Act by more than two decades; however, they are part of the national security framework. Certificates issued under the Immigration and Refugee Protection Act can only be used with respect to foreign nationals and permanent residents, and even then, only in very limited circumstances. They are used where there are reasonable grounds to believe an individual is involved in terrorist activities or in such things as violations of human rights, espionage, subversion, serious criminality, or organized crime.

In such circumstances, the need to act is paramount, and these certificates provide us with a means of removing inadmissible individuals who pose a threat to Canada and undermine the integrity of Canada's immigration and refugee system, and as you know, the Supreme Court of Canada has upheld the security certificate process as being a fair judicial proceeding in light of the requirements of national security.

While a Federal Court judge hears all or part of the evidence in the absence of the individual named, the judge also determines how much can be made available to that individual through an unclassified summary. The summary must include sufficient information to enable the individual to be reasonably informed of the circumstances that gave rise to the certificate, but it does not include anything that in the opinion of the judge would be injurious to national security or to the safety of any person if disclosed. The judge will also hear evidence and testimony from the person named in the certificate.

Since 1991, as you may be aware, there have only been 27 certificates issued; and since 2001, only five certificates have been issued. Their use has been carefully considered and judiciously applied. By comparison, through our immigration and refugee system, we remove some 10,000 people a year by other means. So you can see there is a recognition of the serious implications of issuing a certificate, and they are used sparingly, as obviously they should be. They are an extraordinary tool.

Let me now turn to the Anti-terrorism Act and remind honourable members of the events that preceded it. Much of what is now part of the act actually reflects work that had begun in advance of September 11, 2001. When we developed the act, we were building on a solid foundation and experience gained through many years of engagement on the issue of terrorism. The attacks of September 11 accelerated those efforts, but they did not initiate them.

In crafting anti-terrorism legislation, work had already been undertaken both at home and with our international partners. All told, some 12 UN instruments had been signed by Canada, and all but two had been codified in our domestic laws. In fact, I was Minister of Justice and Attorney General at the time, and a great deal of work, some five years worth of work, had been done in relation to ensuring that we would be able to respond, through our domestic law, to all 12 of these conventions. And as I say, we were particularly concerned about the last two in terms of making sure our domestic law reflected our international obligations.

● (1535)

The Anti-terrorism Act did allow us, as a nation, to continue to be a leader. That's the other thing, Mr. Chair; we were viewed as a leader in this area. We signed on to these conventions quickly, when they were available for signature. We had introduced ten into our domestic law, but two—two that were truly important and spoke to the growing concern at the United Nations and in the international community around the scourge of terrorism—we signed, but in fact we had to make the necessary changes in our domestic laws. Those were, of course, the UN International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.

In light of September 11 and other events, you can see how absolutely crucial those two conventions are to a global and international effort to deal with the horror of terrorism. Of course, after September 11 the UN Security Council passed resolution 1373. That called on all member states to undertake a wide range of measures aimed at combatting terrorism.

We should also recall that Canada, regrettably, had firsthand experience with terrorism before 2001. Tragically, we have been dealing with this issue for 20 years—tragically for the families. The horror of terrorism—and I can't underscore this enough—had visited our country and hundreds of Canadians long before September 11. That obviously was in the context of Air India. Over 300 individuals and hundreds and hundreds of family members who lived with the loss of loved ones were involved in that incident.

With the arrest of Ahmed Ressam in 1999—another event we're all aware of—we learned much more about the extent of terrorist plotting within Canada. I would stress that the Anti-terrorism Act contributes not only to Canadian efforts to combat terrorism at home, but also to the international fight against terrorism. It is part of a much wider effort. The UN conventions we signed and ratified stand as obligations we must fulfill.

● (1540)

[*Translation*]

As honourable members know, this law was, quite rightly the subject of much lively debate when it was introduced three years ago.

[*English*]

The hearings on the bill were extensive, and its provisions were closely scrutinized by members of Parliament, as they should have been.

[*Translation*]

More than 100 witnesses appeared before the House committee examining Bill C-36.

[*English*]

The Senate also heard witnesses—more than 75—during its study of the bill.

[*Translation*]

All of this public discussion and debate was both welcome and helpful, resulting in a number of amendments that were subsequently adopted.

[*English*]

Perhaps equally important, it provided Canadians with the opportunity to contribute to the fundamental question of how we balance the rights of the individual with the security of our society. In light of the clear dangers vividly illuminated by the September 11 attacks, what was the appropriate response by democratic societies? What is the right balance? This is a profoundly important issue, and obviously one you will be engaged in in your review of this legislation.

The formula is not a scientific equation, but in a free and democratic society it is absolutely essential that we debate it, discuss it, and decide it. I believe that in the Anti-terrorism Act we have struck the right balance.

Canadians actually, Mr. Chair, seem to agree. Recent public research shows a vast majority of Canadians approve of the government's response to date in relation to terrorism.

Of course, Canada is not the only nation wrestling with this question of balance. Around the world open societies are discussing the best way to achieve that desired balance. Their approaches may differ, but the fundamental considerations will be the same. For our part, the act represents a made-in-Canada response, reflecting Canadian values and consistent with Canadian law and the Charter of Rights and Freedoms.

One of the key attributes of the Anti-terrorism Act is the review mechanisms it contains. As minister, I am accountable to Canadians through Parliament. But the law also contains requirements for annual reports and sunset clauses for two of its provisions, as well obviously as the mandatory review we are now undertaking. All of this speaks eloquently to the desire to be open, transparent, and accountable to Canadians.

With respect to the arrest without warrant power, I am required as minister to prepare and submit to Parliament an annual report pertaining to its use. Amendments to the Criminal Code also require the minister responsible for policing in every province to make available to the public an annual report pertaining to the use of the arrest without warrant power, the period of detention, and the number of cases where a person was arrested without warrant and subsequently released. Moreover, the various portfolio agencies that apply the act are subject to their own review mechanisms, including those that were in place before the act was adopted.

Such transparency assures Canadians that we have not sacrificed our values in order to fight our adversaries, that we have remembered and respected the differences between them and us. By “them” I mean terrorists. That is the focus of this legislation: terrorism, terrorist activities, and terrorist groups. The act targets no community, singles out no religion, and focuses on no nationality. Its objective is the protection of Canadians and the prevention of terrorist acts—nothing more, but nothing less.

Prevention is a key part of our efforts. As I have said many times and will say again, if the terrorists are on the plane, it's too late. We will have failed not only Canadians but our allies. We need to be ahead of their actions, understand their plans, and frustrate their designs. Mr. Chair, I believe profoundly that if we do not do that, we will have failed.

The thrust of the act, therefore, is forward-looking, designed to prevent terror, not simply respond to it. In undertaking this review, that character of the law must be clearly understood.

How does it work in practice, and how might we improve it going forward? There have already been achievements, particularly in cutting off sources of funding for terrorism. Since September 11, 2001, some $147 million in terrorist-related funds have been frozen internationally, from nearly 400 individuals and entities. This is vital, and we must be part of the international effort. Terrorism may be inspired by ideology and hate, but it is fuelled by dollars and cents. Without money, terrorists cannot undertake their activities to achieve their aims.

The act has enabled Canada's financial intelligence unit, FINTRAC, to detect, prevent, and deter the financing of terrorist activities. Between 2001 and 2004, FINTRAC disclosed 73 cases to law enforcement and intelligence agencies related to suspected terrorist financing.

● (1545)

The act has also made it possible for Canada to broadly meet again its global obligations to the Financial Action Task Force on Money Laundering. That is an international body that promotes international policies to fight money laundering and terrorist financing. This act helps to ensure the integrity of Canada's charities by preventing organizations that support terrorist activities from obtaining registered charitable status.

The act has created a way to publicly identify groups or individuals associated with terrorism, through its listing provisions. This helps to deprive terrorist organizations of access to certain assets, curtail their ability to raise funds, and prevent their establishing a base here in Canada. So far, 35 entities have been listed.

Let me just briefly touch on two measures contained in the legislation, because they are the two that often attract the most attention. They are the investigative hearing provision, and the recognisance with conditions provision, generally known as preventive arrest. In both cases, the concerns expressed at the time the bill was proposed have proven to be unfounded. There has been only one use of the investigative hearing, and that of course was in the Air India prosecution. It is also worth noting that the Supreme Court of Canada has ruled that these hearings are fully consistent with our charter. The arrest without warrant provision has not been used, and one person has been arrested on terrorism charges.

The fact that these provisions have been used so exceptionally, or not at all in the case of preventive arrest, has led some to conclude that the powers are unneeded. In fact, I would suggest the opposite. I would suggest that it means they are being used appropriately and being judiciously applied, and that law enforcement officials in our country take their commitment to the rule of law seriously. The important point is to be ready and have those tools at our disposal when and if they are needed.

Let me turn now to some of the lessons learned during the brief time the law has been in place.

I said a moment ago that I believe we have struck the right balance in terms of individual rights and collective security. But I am also aware that there are those who have felt unfairly singled out or set apart. We need to be sensitive to the concerns raised by certain communities, perhaps most especially the Muslim and Arab communities. We need to make it clear that terrorism is the target, and terrorists come in all colours, speak all languages, and practise every religion. No group should be singled out, and no group should be made to feel left out.

This act is about protecting all Canadians. It is not about dividing Canada into communities we trust and those we suspect. The national security policy, released almost a year ago, recognized the fact that ethnocultural communities must be engaged in a meaningful dialogue with the government on matters of security.

I am pleased that the membership of the government's cross-cultural round table has recently been announced, and they have held their first meeting. Minister Cotler and I had the pleasure of meeting with the round table, and I am confident that it will provide insight to policy-makers on how national security measures may impact Canada's diverse communities.

I look forward to continuing to work with Canadians from all parts of our country to make sure we administer the act in a way that is sensitive to their concerns and consistent with our values.

● (1550)

[*Translation*]

Let me again thank you for your attention here today.

Dear colleagues, thank you very much.

[*English*]

I look forward to our discussion, our dialogue, your questions and concerns.

Thank you.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Madam Minister.

We'll go to the first seven-minute round and begin with Mr. MacKay.

Mr. Peter MacKay (Central Nova, CPC): Thank you, Mr. Chair, and I want to thank the minister and her officials for being here.

This is of course going to be a very comprehensive review, as the minister would know. As she has stated herself in her comments, this is an area in which Canadians have great concerns and should have great concerns.

We heard from the newly appointed CSIS director, Mr. Jim Judd, who was with us a short time ago. He outlined in quite frank and somewhat alarming detail the amount of activity that has already been identified in Canada and the number of individuals who have actively engaged in terrorist activity. Most of them, thankfully, are in custody either here or in other countries.

The minister also referred to the security certificates in particular, and I believe—I stand to be corrected—the nine individuals, although it may be eight now, who are currently being held on certificates were in fact taken into custody prior to the enactment of this anti-terrorism legislation. Firstly, I wonder if she could confirm that.

Secondly, in her remarks the minister referred to the use of both investigative hearings and the preventative arrest provisions as tools for anti-terrorism. I have a couple of questions on that. With respect to investigative hearings, it's my understanding that individuals taken into custody under those provisions can be compelled to give self-incriminating evidence. That is to say, the normal rules of evidence would be suspended. The Canada Evidence Act of course permits a person to essentially declare silence. This provision requires the answering of questions.

Secondly, with respect to the broader question of security certificates and the use of these provisions, investigative hearings and preventative arrest have not been used since the enactment of the legislation, and the minister spoke of the need for balance in that regard. I'm wondering, if the current Criminal Code provisions allow for similar types of protections and similar Criminal Code sections pertain directly to terrorist activity, if in fact she feels the balance has been struck. These two provisions in particular can be described as quite extraordinary and are similar to provisions they have hotly debated in Great Britain. I'm wondering whether there may be in fact a need to put in place some form of limitation or outlet, as we saw in Great Britain, as a control on these types of provisions, which suspend the civil liberties that would normally apply to these individuals.

Hon. Anne McLellan: First of all, Mr. MacKay, we have in relation to security certificates, I believe, six cases that are outstanding, six individuals under certificate presently. Five of them were post-9/11, after 9/11. That's just to make sure the record is correct.

● (1555)

Mr. Peter MacKay: My question related to their being in custody prior to the enactment of this legislation. Is that correct?

Mr. Paul Kennedy (Senior Assistant Deputy Minister, Department of Public Safety and Emergency Preparedness): Possibly I can answer that.

By the way, just by way of background, I had occasion with some colleagues to spend two hours yesterday with the Senate committee, going over in detail the security certificate process with them. We're quite happy to do that in detail to put it into perspective for you, because there's a significant degree of misunderstanding.

There are six cases outstanding; five of those individuals were arrested subsequent to 9/11, and those are the cases that are currently before the court. There were seven, of course, but Mr. Zundel was removed a number of weeks ago.

Mr. Peter MacKay: So other than for Mr. Zundel, in terms of the timing, these security certificates have not been used since this legislation was enacted. I'm not equating the two; I'm just asking about the timing.

Hon. Anne McLellan: No. Security certificates have nothing to do with this legislation.

Mr. Peter MacKay: I know that. I'm asking about the timing.

Mr. Paul Kennedy: We've used the security certificate process—first of all, it goes back to 1978, the numbers you heard—from 1991 to the present, 27 times for 26 individuals. We used it five times after the events of 9/11. Then with respect to the current legislation, IRPA was passed around January 2002, I believe, although the provisions existed before that. So it has been used subsequent to the introduction of Bill C-36, if you're using that as a benchmark, on five occasions, and those are still before the court.

Mr. Peter MacKay: On five occasions?

Hon. Anne McLellan: That's right, yes.

Mr. Peter MacKay: And separate now from that, what is the number of times in which investigative hearings or preventative arrest—

Hon. Anne McLellan: Investigative hearing has been used once, and it was used in the context of Air India. We could pursue that in more detail if you want, but investigative hearing has been used once in the context of a witness before the Air India trial, and preventive arrest not at all.

Mr. Peter MacKay: And with respect to this issue of the compellability of self-incriminating evidence?

Hon. Anne McLellan: The legislation makes it plain that under the investigative hearing, evidence that is provided cannot be used against the individual. You probably don't want all this information. Investigative hearings are in subsection 83.28(10), paragraphs (a) and (b).

Mr. Peter MacKay: The point is that this suspends the normal protection a person would have to not give self-incriminating evidence.

Hon. Anne McLellan: I'm sorry, for some reason—I don't know whether the microphones aren't working today—I didn't hear you.

Mr. Peter MacKay: The question is with respect to the self-incriminating aspect, the normal protections under the Evidence Act that would allow a person to maintain silence. They're suspended, as I understand. Is that correct?

Hon. Anne McLellan: The purpose of the investigative hearing is to ask questions and get answers, but that evidence cannot then, as I've indicated, be used against that individual.

Mr. Paul Kennedy: I'm going to add something that might help round out the picture. Those provisions are somewhat modelled upon provisions you find in the Competition Act, I believe, in the Income Tax Act, and in the Mutual Legal Assistance in Criminal Matters Act. In the United States, for instance, they have similar powers under the grand jury provisions. It's designed to give to Canada the kind of aid we could give if you were Germany and were to ask Canada, for instance, to provide evidence in relation to an investigation in Germany from an individual who was here; you ask us. That process allows you to have a subpoena issued for a person to attend before a judge, testify, and give evidence under oath with counsel. That same provision is now available to the Canadian government to avail itself of in a similar situation.

Mr. Peter MacKay: With respect to a recent case the minister would be aware of involving an individual by the name of Fateh Kamel, who returned to Canada after being incarcerated in Paris, as I understand it, for his involvement, or his.... Well, he was convicted of a plot to blow up an underground. He has now returned to this country. There were questions raised at the time as to the need to investigate his original immigration application, with a mind to determining whether there were grounds for what I understand is referred to as “denaturalization” or revocation of citizenship. Can you confirm whether that investigation has begun or will begin?

● (1600)

Hon. Anne McLellan: I in fact asked that this investigation be undertaken, and to date I have received no information that leads me to believe we could make the case under the immigration legislation to revoke his citizenship. As members of the committee know, you cannot receive Canadian citizenship—or dare I say the citizenship in any other democracy—on the basis of fraudulent misrepresentation in relation to your material circumstances.

Mr. Peter MacKay: Thank you, Minister.

As a last, very quick question, have you had the opportunity yet to meet with your counterpart in the United States, Mr. Chertoff?

Hon. Anne McLellan: I have indeed, last week. I met with Mr. Chertoff last Thursday.

Mr. Peter MacKay: Did you discuss border issues at that time?

Hon. Anne McLellan: We did. Mr. Chertoff very graciously came to Ottawa last week. This was his first trip outside the United States since becoming homeland security secretary, and we had a very detailed discussion, obviously in anticipation of the Prime Minister's and my and others' trip to Texas tomorrow to meet with Presidents Fox and Bush and my counterparts.

We were able to talk about the border. We were able to talk generally about the challenges we both face in creating new departments like Homeland Security and Public Safety, where you're bringing together a significant number of agencies and entities. We also at that time announced publicly the next major exercise, which we, the United States, and the U.K. will participate in. It's called TOPOFF 3 in the U.S., TRIPLE PLAY here in Canada, and Atlantic Blue in the United Kingdom. We were joined by our U.K. counterpart by video. In the world in which we live, exercises—simulations—are so important in terms of understanding capacities, determining how agencies within a government work together, as well as working with agencies from other countries.

Mr. Peter MacKay: Thank you, Minister, and Mr. Chair.

The Vice-Chair (Mr. Kevin Sorenson): Thank you.

Mr. Ménard, for seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chairman.

Ms. McLellan, I believe you were professor of law before your outstanding political career.

[*English*]

Hon. Anne McLellan: Yes.

[*Translation*]

Mr. Serge Ménard: Would you have imagined then that Canadians, one day, would be jailed based on evidence they cannot know?

[*English*]

Hon. Anne McLellan: Are you referring to security certificates? In fact, they've existed for two decades. Security certificates do not exist because of September 11 or this legislation. Such certificates have existed as part of our law for over two decades.

[*Translation*]

Mr. Serge Ménard: If I understand correctly, you are comfortable with the fact that people can be held without knowing what evidence has been put forward to obtain their detention.

[*English*]

Hon. Anne McLellan: If you're talking about security certificates.... Is that specifically what you're referring to, Monsieur Ménard?

[*Translation*]

Mr. Serge Ménard: I am talking about all the provisions in the legislation that allow for the holding of people in custody without them knowing on what evidence this is based.

[*English*]

Hon. Anne McLellan: I'm sorry, I misunderstood. Security certificates have nothing to do with this legislation. That's a separate issue.

Maybe, Mr. Pentney, you'd like to explain.

You must be referring, then, to the preventive arrest provision in the legislation.

[*Translation*]

Mr. Serge Ménard: There are several. I am talking about the general principle. Being a lawyer, when you studied law or when you taught law, did you accept the fact that people could be kept in jail without knowing on what evidence this is based?

[*English*]

Hon. Anne McLellan: I come back to the fact that if you are talking about security certificates, the named individual has the opportunity. The state has to come forward after a certificate is signed by two ministers—in this case, presently, by me and the Minister of Immigration. We are under statutory obligation to provide to a judge of the Federal Court all the information on which we have based the certificate. The judge then hears all that evidence and decides how much of it he provides directly to the named individual and his or her lawyer and how much he will summarize, but there is an obligation to ensure that the Federal Court judge provides to that individual all the information necessary to know the case, the allegations made against him or her. Then that individual and his or her lawyer have full opportunity, as they would in any proceeding, to make their case before the judge.

That is how the security certificate process operates. That process has been found to be constitutional, over and over again, both by the Federal Court and by the Supreme Court of Canada.

● (1605)

[*Translation*]

Mr. Serge Ménard: If I understand correctly, the judge is not required to provide all the evidence that has been introduced in order to convince him to detain that person.

[*English*]

Hon. Anne McLellan: Not all. He may summarize it.

[*Translation*]

Mr. Serge Ménard: Therefore, these people will be held in custody based on evidence they do not know and that they are unable to contest.

[*English*]

Hon. Anne McLellan: Again, if you're talking about security certificates, the judge, upon hearing the information put by the Crown, may say that—indeed, this may often be the case—that evidence they're not providing directly to the individual or his or her counsel, they're summarizing. But there is an absolute obligation that the judge provide information to the named individuals so that the person knows what is being alleged against them.

Is that right, Mr. Pentney?

Mr. Bill Pentney (Assistant Deputy Attorney General, Department of Public Safety and Emergency Preparedness): Yes, it is. There's a statutory obligation on the judge to provide the foreign national or the permanent resident "with a summary of the information or evidence that enables them to be reasonably informed of the circumstances giving rise to the certificate".

We won't go into details here. As Mr. Kennedy said, there's another presentation available.

Hon. Anne McLellan: Yes.

Mr. Bill Pentney: In the case of Mr. Zundel, for example, that amounted to several hundred pages of documentation. So the press reports that indicate that hearings are secret, that the individual has no information, are simply not accurate.

Hon. Anne McLellan: They're simply not true.

[*Translation*]

Mr. Serge Ménard: I did not use the words "no information", but nevertheless the individual is detained based on evidence he does not know.

Mr. Bill Pentney: It is possible he does not get access to some evidence, but I should emphasize that we are dealing with an administrative process and not a criminal process.

Mr. Serge Ménard: But is the evidence that is kept from him not precisely that which will convince the judge to detain him? And if that evidence is not material...

Mr. Bill Pentney: The issue we are faced with is one that the European Community had to tackle also: how to deal with evidence that involves national security issues.

[*English*]

These are cases in which some of the evidence could literally lead to an individual who had provided that evidence being killed. This is not window dressing. Some of this evidence goes to the heart of our national security interests and goes to the heart of information we've shared with our allies, or obtained from our allies, or have obtained here through covert means. The judges are under a very heavy obligation—which, as the judgments of the Federal Court indicate, they take very seriously—to probe that evidence carefully and to provide as adequate a summary as they can to the individual of what that evidence is. If you see some of the decisions, the judges go into some detail to explain that what is of great concern to them, and what they're seeking answers to, is certain specific things that have been put in evidence, even though the individuals haven't seen all the evidence.

So it is a difficult balance. It isn't full disclosure, as might happen in other circumstances, but it's not because of the whim of the state that the disclosure is not being made; it's because there are very significant interests on the other side that need to be balanced.

Hon. Anne McLellan: And potentially very serious consequences.

Mr. Ménard, I think Mr. Kennedy wanted to provide just a bit more information.

Mr. Paul Kennedy: Possibly it is additional context that you'll relate to, in light of your prior responsibilities. If you look at section 38 of the Canada Evidence Act, if you had a civil or a criminal trial and evidence of this nature was going to be disclosed, the objection would be taken by the Crown—whether it's provincial or federal Crown—to prevent the disclosure of that evidence, which is evidence leading to the identity of the sources or techniques or third-party relationships. As a matter of fact, we've actually expanded it to be more generous than it was prior to December 2001, because we've authorized the judge to provide a summary. That exact same procedure you see being played out in the Immigration Act is the same procedure you'd use for a Criminal Code prosecution or a civil prosecution—no difference.

● (1610)

[*Translation*]

Mr. Serge Ménard: Mr. Chairman, I believe you understood why I suggested to amend our rules in order to include only our questions in the seven minutes we are allowed. When a member asks a very important question and the witness does not want to answer, he or she needs only to beat around the bush to use up all the time allowed and to keep the member from asking more questions. At any rate, not answering is already an answer. I believe that many people understand this.

Allow me to quote one of those judges you mentioned, Justice Hugessen, who said a number of things regarding this legislation.

[*English*]

He complained that he—and other judges of the court, presumably—were being made into a fig leaf for the government:

> I can tell you because we [the judges of the Federal Court] talked about it, we hate it. We do not like this process of having to sit alone hearing only one party and looking at the materials produced by only one party and having to try and figure out for ourselves what is wrong with the case that is being presented before us and having to try for ourselves to see how the witnesses that appear before us ought to be cross-examined. If there is one thing I learned in my practice at the Bar...it is that good cross-examination requires really careful preparation and a good knowledge of your case. And by definition, judges do not have that...we do not have any knowledge except what is given to us and when it is only given to us by one party we are not well suited to test the materials that are put before us.

Now, as an ex-professor of law, do you understand the concern of the judge of the Federal Court? And I would add my concern.

Hon. Anne McLellan: Yes, and let me say, first of all, that I'm fully aware of the comments of Mr. Justice Hugessen. I believe that's who you're quoting. In fact, there have been a fair number of judgments since those comments were made, and those comments, I believe, were not made from the bench, but in the context of a conference somewhere.

In fact, since that time there have been a number of judgments rendered by compatriots of the judge in question, in which they've gone through a very detailed analysis of security certificates—the purpose of the certificate; the protections provided to the named individual; the commitment to the rule of law, to the Charter of Rights; and the balance that must be struck between national security and individual rights. I'm sure, Mr. Ménard, knowing your background, you've had the opportunity to read those judgments. Some of them, especially the Federal Court of Appeal, are actually very eloquent in terms of talking about the balance that is struck, and why they believe the appropriate balance is struck in the context of this process.

Monsieur, I'm a little concerned you would suggest that we did not answer your questions. You may not like the answers, but that is not then to suggest we didn't answer, Mr. Chair.

Mr. Serge Ménard: The answer was yes. I'm at ease with that.

Hon. Anne McLellan: Mr. Chair, as fully—

Mr. Serge Ménard: That was the answer. Everybody understood that.

Hon. Anne McLellan: —and as accurately as we could, we answered. I would like the record to show that.

The Vice-Chair (Mr. Kevin Sorenson): All right, we want to make sure that as we continue to question, we put our questions through the chair to the minister, and that the answers from the minister also come back through the chair. I think that will cut back on some of that.

Monsieur Ménard, you were at ten minutes, so we'll go to Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Am I going to get ten minutes as well, Mr. Chair?

The Vice-Chair (Mr. Kevin Sorenson): We'll try to be as fair as we can, Mr. Comartin. You know we are.

Mr. Joe Comartin: Yes, thank you.

Madam Minister, based on your comments, it's not clear to me that you appreciate that the security certificates are in fact before this committee at this time, and that part of the legislation is being reviewed as well.

Hon. Anne McLellan: Yes, although that's not part of the Anti-terrorism Act. Security certificates predate this legislation by twenty years.

Mr. Joe Comartin: I'm aware of all that history. I just wasn't sure you were aware that the security certificates were in fact in front of the committee, given your comments so far today.

Hon. Anne McLellan: That's up to the committee. The committee can determine its own jurisdiction.

Mr. Joe Comartin: I'm going to pursue Mr. Ménard's line of questioning. You appear to be placing a great deal of emphasis on the determinations of some of the judges in specifically the Federal Court of Appeal. In their last decision, they called on Parliament to review the security certificates. I don't know how you can interpret their position as being something other than that they're very uncomfortable with the security certificates and whether the proper balance has been struck in this country.

Hon. Anne McLellan: As I say Mr. Comartin, I have read a number of judgments, including the Federal Court of Appeal decision in Charkaoui.

Mr. Paul Kennedy: And Chiarelli in the Supreme Court of Canada.

Hon. Anne McLellan: Yes, and Chiarelli.

In fact, it's very clear to me that the courts.... Keep in mind that nobody here is denying that this isn't an extraordinary process. Of course it is. And the protection of national security, the collective safety and security of Canadians, is also paramount. It is the foundational obligation of government, because without it people live in fear. All you have to do is look around the world at failed and failing states to see the effect of civil authority not being able to provide that level of safety and security.

Consequently, the security certificate absolutely is an extraordinary measure—we've all said that—but we believe it is an appropriate tool in limited circumstances, as the courts have said it is an appropriate tool in limited circumstances. It strikes the right balance between our paramount obligation to the collective security of Canadians and the individual rights that we take very seriously in relation to the Charter of Rights and Freedoms.

● (1615)

Mr. Bill Pentney: Perhaps I can clarify that the Court of Appeal decision suggested some technical amendments in Almrei that related to the protection of information on appeal, but at the same time it upheld the constitutionality of the certificate regime.

Mr. Joe Comartin: I'm also aware of that. The point is that the decision clearly called on Parliament to review the security certificates. I don't think there's any other way of interpreting that decision.

Hon. Anne McLellan: We do that. If there were technical issues that the court has in fact identified in relation to evidence, then clearly we would take up that request.

Mr. Joe Comartin: Have you made a determination of the way the certificates have been used post-9/11 versus the way they were used pre-9/11, particularly in terms of how long people were held in custody?

Hon. Anne McLellan: There have only been five since 9/11.

Again, if you want, yesterday Mr. Kennedy spent two hours in front of the Senate on the whole question of security certificates, Mr. Chair. He is more than happy to come back and go through security certificates in detail.

Mr. Joe Comartin: Let me respond to that, Mr. Chair, by saying that if we are in fact going to do that, we should have some of the counsellors here who were present for these hearings and have been defending the people who were subject to those certificates, rather than just getting the one side from the government that we're going to get.

If we could just go back, could I have an answer to the question? Have you done that analysis of pre and post?

Mr. Paul Kennedy: There's no analysis done pre and post, but I'd indicate to you that if you look at the statistics from 1991 to the present, they indicate an average of about 1.5 certificates per year that are used. In the context of 95 million people coming to the country, about 45 million of those returning, we have about 200,000 to 300,000 people who have acquired status in the country, with about 9,000 people being removed, and one and a half of those is a security certificate case.

Mr. Joe Comartin: What about the length of time they were held in custody?

Mr. Paul Kennedy: The length of time varies around two to three years. The longest was Mr. Ahani, who was eight years. That was the chap who was alleged to be an assassin for the Iranian intelligence service.

Hon. Anne McLellan: When was that certificate issued?

Mr. Paul Kennedy: That was issued—

Hon. Anne McLellan: Of course, it would be way before September 11.

Mr. Paul Kennedy: Way, way before.

Mr. Joe Comartin: Is that the case where you had to go at it two times?

Mr. Paul Kennedy: No. As a matter of fact, the use of the certificates statistically is bordering almost on the insignificant, if you look at it numerically. And the average use is about consistent—about one to one and a half per year, if you can average it out.

One of the things to bear in mind is that the individuals are in custody because they're deemed to be a threat. If you're a permanent resident, there has to be a warrant issued and the judge determines whether or not you remain in custody, whereas if you are a person who is not a permanent resident, you step into custody and you have to be reviewed. Obviously, if the certificate is quashed, you're released. If the certificate is upheld, it is automatically reviewed 120 days after that. The individual, of course, can leave at any time they wish. They are not Canadian citizens. They can leave any time they wish. They are in custody because they wish to maintain status in this country and fight that particular issue.

Mr. Joe Comartin: To a country where they may be eligible for torture and even death.

Hon. Anne McLellan: We do not and we have never—

Mr. Joe Comartin: The Supreme Court of Canada has made it quite clear that in certain circumstances you, in fact, would be able to send people back.

Hon. Anne McLellan: No, no—

Mr. Joe Comartin: Are you comfortable with that, Madam Minister?

Hon. Anne McLellan: Look, let me be absolutely clear. We have never deported anyone to a country where they faced a substantial risk of torture. In fact, the Supreme Court indicated in the Suresh case that there may very well be extraordinary circumstances. I think, in fact, the Supreme Court did the judicious thing in that case, providing for the possibility of extraordinary circumstances. But clearly, there would be an enormous burden on the state to ever be able to make that case, and the Supreme Court again, I say, was probably quite judicious in Suresh.

There are other means by which we and other countries, of course, seek assurances on a straight extradition case—for example, to the United States, where in fact an individual might face the prospect of the death penalty. We seek assurances that that person will not in fact be put to death, that the death penalty will not be sought. We don't extradite unless that assurance is forthcoming. I can assure you we then make darn sure that we follow up on that undertaking.

● (1620)

Mr. Joe Comartin: You didn't answer the question. Are you comfortable with the situation?

Hon. Anne McLellan: I am comfortable with the decision of the Supreme Court of Canada in Suresh, where they suggested that there might be extraordinary circumstances, with the burden of proof on the Crown to establish them, where you might deport. I am happy with what our final court of appeal has said in relation to that question.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Madam Minister.

Do you have another short one? We're at seven and a half minutes.

Mr. Joe Comartin: Yes, just a quick one, on your visit with the new homeland security chief. There's been some speculation that we may be faced again with the application of the U.S.-VISIT program to our citizens. Did you get any assurances from him that this in fact would not happen?

Hon. Anne McLellan: In fact, there is no intention of applying U.S.-VISIT to Canadian citizens. We and American citizens are the only people in the world who presently are not subject to U.S.-VISIT. The United States of America is a sovereign nation. They could obviously make any decision they want at any time in relation to the application of that program. But it speaks to the strength of the relationship between the two countries, the mutual trust, and the shared practices and procedures in relation to identifying high-risk people and high-risk goods, that the United States of America would treat us identically to their own citizens in relation to the application of that program.

Mr. Joe Comartin: They don't treat our landed immigrants the same way.

Hon. Anne McLellan: No, we're talking about citizens.

The Vice-Chair (Mr. Kevin Sorenson): Thank you.

We'll move to the government side.

Mr. Wappel, seven minutes.

Mr. Tom Wappel (Scarborough Southwest, Lib.): Thank you, Mr. Chair.

Madam Minister, I want you to know that I personally find it exceedingly difficult to be reviewing this legislation. One of the reasons that it's so difficult for me is because of the number of acts that are amended and the constant book-turning and page-turning and referencing that one has to do in order to make some sense of this. I don't envy that huge briefing book you have, and I appreciate that you have some officials around to help you.

I want to ask about three things: list of entities, Security of Information Act, and the Canada Evidence Act. But before I do, I want to be crystal clear about something. We have a briefing note from our researchers that tells us that the investigative hearing procedure has never been used, and was in fact not used as it's related to the Air India investigation.

Hon. Anne McLellan: Actually, it was going to be, but as I understand it, the hearing did not take place. But the hearing was in fact scheduled, and the Supreme Court of Canada determined the investigative hearing was constitutional. The actual hearing itself, as I understand it, did not take place, for reasons we do not need to get into here.

Mr. Tom Wappel: I thought you said that the procedure had been used once.

Hon. Anne McLellan: If so, I apologize. The investigative hearing had been invoked. It had been set up, and the final determination was made, for reasons we don't need to get into here, that the hearing would actually not proceed.

Mr. Tom Wappel: Thank you very much.

Let's turn to the list of entities, if we may. It's my understanding that, as you said, there are 35 entities now, and there's a procedure that has to be followed. As I understand it, you're the minister who recommends to cabinet that an entity be placed on the list. I wonder if you could tell us what kind of evidence or material you put before cabinet.

Hon. Anne McLellan: I'm going to let Mr. Kennedy give you the details.

In fact, what we do is receive detailed information from CSIS, potentially from the Royal Canadian Mounted Police, and potentially from other sources in terms of reviewing the situation regarding the particular entity. After reviewing all that and discussing that with my relevant officials, I make a determination as to whether it is appropriate to then move forward to make a recommendation to my cabinet colleagues.

We have listed under the provisions in the Anti-terrorism Act, which is separate and apart from the listing provisions of the United Nations, which we also obviously are subject to. We have listed 35 entities. All of those entities are well known globally and have been listed, I believe, in all other western democracies—the United States, the U.K., western Europe, and so on.

● (1625)

Mr. Tom Wappel: Okay. You've answered my question, which is what—

Hon. Anne McLellan: Do you want more detail?

Mr. Tom Wappel: I think you've given me a general idea of what I'm looking for.

What I'd like to ask you now is, in that process of identifying those 35 entities, is there an entity that has been proposed to be listed that the cabinet has chosen not to list?

Hon. Anne McLellan: Based on my time—and that's all I can speak to—since becoming Minister of Public Safety, I have not made a recommendation that cabinet has not accepted.

Mr. Tom Wappel: Do you have any knowledge of previous ministers?

Hon. Anne McLellan: I do not. No.

Mr. Tom Wappel: Do any of your officials know whether any entity has been proposed but not accepted?

Hon. Anne McLellan: Actually, I guess Mr. Kennedy is right. It would be a cabinet confidence and one that I could not reveal here.

Personally, I have no problem saying, because I'm speaking of my conduct as—

Mr. Tom Wappel: I'm not asking for the name of any entity, but just in theory, if there has been something proposed that has been turned down.

Hon. Anne McLellan: The only thing I can say, Mr. Wappel, is that based on my knowledge and my time in this office, I have not made a recommendation that has been turned down. I think I can't speak for other cabinet colleagues at other times.

Mr. Tom Wappel: May I ask you if there has ever been an application to you, under subsection 83.05(2), in writing by the listed entity? It says: "On application in writing by a listed entity, the Solicitor General shall decide whether there are reasonable grounds to recommend to the Governor in Council that the applicant no longer be a listed entity".

Has there ever been such an application to you?

Hon. Anne McLellan: Not during my time as minister. I have not received a request to review, or what we call delisting.

Mr. Kennedy, are you...?

Mr. Paul Kennedy: No. That is correct.

As a matter of fact, as part of a two-year cycle—there's another provision that requires every two years—the minister has looked at all 35 of those that are currently listed.

Hon. Anne McLellan: That took place in November.

Mr. Paul Kennedy: And those in fact have been confirmed.

Mr. Tom Wappel: Thank you.

So that I understand it, is it correct that the judicial review subparagraph cannot be invoked unless and until the application in writing to the Solicitor General is invoked and a decision made?

Mr. Paul Kennedy: That is correct.

If an individual wishes to be delisted, they make an application to the minister, because the minister can also look at it and decide, for whatever reason, that the facts have changed, and then make a recommendation to the Governor in Council to delist. If the minister decides that no, her decision stands, or that of her predecessor stands, then the issue goes to the Federal Court. If the judge in that instance rules that the individual ought to be delisted, then the minister is obliged to take the matter to the Governor in Council and the individual organization would be delisted.

Mr. Tom Wappel: Thank you.

May I turn your attention, then, to the Security of Information Act? I'm curious about this because.... It's in part 2 of the act that we're reviewing. I'm particularly interested in...I guess it's subsection 27. I can't even read this act, Madam Minister. It's on page 59 of the act, at least the copy I have, inserting section 3 into what used to be the Official Secrets Act.

I have a copy of this act taken off the Department of Justice website, and section 3 has been placed under the title "Offences". I wonder if you can tell me whether any of the things listed in section 3 are in fact offences against the Security of Information Act.

● (1630)

Hon. Anne McLellan: As I said during my presentation, speaking *en français,* on the Security of Information Act, the lead is the Minister of Justice. I think we have someone here, Mr. Normand, who might be able to help you, but in fact, I think Minister Cotler would be much better equipped, since this is his responsibility.

Mr. Tom Wappel: Minister Cotler is coming tomorrow. I'm happy to defer the question until tomorrow.

Hon. Anne McLellan: Do you want to provide...?

Mr. Gérard Normand (General Counsel and Director, National Security Group, Department of Justice): I might say for the moment, Mr. Wappel, that this is a concept, a notion, that is used elsewhere, that has been defined here, but in my recollection, it is used in section 4, for instance, of that act.

Mr. Tom Wappel: I wonder if you could take a look at it tonight, and I'll ask the same question tomorrow. You'll see that sections 4, 5, and 6 outline specific offences, and they use the phrase that's defined in section 3.

I find, in my limited analysis, that section 3 should not have been placed under the word "Offences," because I think you'll see that there are no offences in section 3. There are only offences in sections 4, 5, and 6, and section 3 is in fact really a definitional section.

That's what I would suggest. So maybe you could look at that tonight. I'll ask the same question tomorrow, and maybe we could get an answer, because if I'm right, then I think we should, as part of our review, clean that up, if I could put it that way.

How's my time, Mr. Chair?

The Vice-Chair (Mr. Kevin Sorenson): You have 30 seconds.

Mr. Tom Wappel: I have one real quick question, then, on the Canada Evidence Act.

Is that under your purview, Madam Minister, or should I ask this of the Minister of Justice as well?

Hon. Anne McLellan: It's Mr. Cotler's.

Mr. Tom Wappel: Very good. I'll wait until tomorrow.

Thank you.

The Vice-Chair (Mr. Kevin Sorenson): Madam Minister—

Hon. Anne McLellan: But if you could give us a heads-up, we could call Mr. Cotler and Mr. Normand—

Mr. Tom Wappel: My heads-up would be that in the briefing book, under tab 25, page 1, there's a statement in the fourth paragraph that says as follows: "Since the certificate can only be issued under section 38.13 of the CEA 'after an order or decision that would result in the disclosure of the information,' a certificate can only be issued where this occurs in an ATIA, PA, or PIPEDA proceeding".

Good luck to those watching this.

My heads-up would be that I don't agree with that statement. I think the minister can issue a certificate under other circumstances, and I'm going to ask the minister if the briefing note is or is not correct. It makes it very difficult for me to review the act if we have briefing notes that are not correct.

The Vice-Chair (Mr. Kevin Sorenson): Thank you.

Hon. Anne McLellan: From whom did you get the briefing note?

Mr. Tom Wappel: I believe this is from the Department of Justice.

Hon. Anne McLellan: Oh, okay.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Wappel. We will certainly look forward to that answer tomorrow.

Just before we go back to Mr. MacKay, Madam Minister, in 2001 we were talking about the investigative matters, and you appeared as the justice minister before the Senate committee. In making reference to investigative matters, you said, “Our review of the records would indicate this power has been used fairly frequently for other countries”. So as I understand it, for investigative hearings, there is a model in other countries. What other countries use this tool, and how frequently are these used?

Hon. Anne McLellan: There are actually even models in our own country, as Mr. Kennedy just indicated. This is not a foreign concept, when you look at the basic purpose and principle of an investigative hearing. In fact, I think in the United States a grand jury would be a very good example.

The Vice-Chair (Mr. Kevin Sorenson): You went on and said, “Evidence gathering of this nature is frequently used in Canada”. So I take it that the information they would gather in other countries, or maybe now even here, as Mr. Kennedy as suggested, is frequently used in Canada. However, the investigative hearing, you say, has never been used here.

If we're getting information from other countries, and we're using that information here—-

Hon. Anne McLellan: There are similar processes under other pieces of legislation—for example, the Mutual Legal Assistance in Criminal Matters Act, and you also mentioned the Competition Act —so in fact the nature of this is not unknown to our law at all. It is used in other contexts fairly regularly.

Do you want to give the example of the mutual legal assistance? Well, you did with Germany, for example. Do you want to maybe take people through that again briefly?

● (1635)

Mr. Paul Kennedy: I think what you have to be aware of is with the provisions we talked about, mutual legal assistance applies as between countries dealing with any kind of criminal matter where they require assistance, because a lot of crime is transnational—some of the witnesses may well be in Canada—so you're going to frequently have more uses there.

The particular provision that we've talked about that has not yet been used in Canada, other than the one instance we talked about, is restricted to terrorism offences, whereas the other applies to criminal offences at large, which is a broader category. That's why you have greater frequency there.

The Vice-Chair (Mr. Kevin Sorenson): More specifically, what other countries have very similar powers as the investigative hearing?

Mr. Paul Kennedy: We could get back to you. We indicated to you that the U.S. grand jury has a thing where, prior charges having been laid, individuals are brought in and can be examined. That would be one. I indicated to you that my understanding.... I certainly know that years ago in the Income Tax Act individuals could be brought in and could obviously at a later date have criminal tax evasion charges laid, which are indictable offences, I think, punishable up to five years.

The Competition Act has ones where officers of companies can be brought in and be examined in those cases. You can have restriction of competition actions. Mutual legal assistance is used. I talked about the United States. We can look and see. There are two things in that case. There's the concept at large where this concept is used. I guess the other one is, does someone else have a provision that is as narrow as ours that deals with terrorism? I don't think we have the statistics at this stage as to how frequently it is used in those instances.

Hon. Anne McLellan: I think actually Mr. Pentney has some other information for you in that regard.

The Vice-Chair (Mr. Kevin Sorenson): The basic question is, which other countries? You've cited the United States.

Hon. Anne McLellan: Mr. Pentney can tell you.

Mr. Bill Pentney: The United Kingdom has an offence of withholding material information in relation to a terrorist investigation. Australia has the equivalent to an investigative hearing, about the same level of safeguards for procedural protections that Canada has. South Africa's anti-terrorism bill, which has passed through Parliament but has not yet come into force, also has an investigate hearing-type procedure.

I don't want to say that's an exhaustive worldwide list, but those are some examples of other, broadly speaking, similar countries that have adopted the investigative hearing procedure in addition to the U.S. grand jury system that was mentioned earlier.

The Vice-Chair (Mr. Kevin Sorenson): Thank you.

Mr. MacKay.

Mr. Peter MacKay: Thank you, Chair.

With respect to the Anti-terrorism Act, it also impacted on the Official Secrets Act. One of the consequences of that, as I understand it, was to expand the number of people and departments affected by the Official Secrets Act. The government as a result of that legislation designated, I believe it was, up to an additional 5,000 or 6,000 persons working in the civil service since 2003.

I've seen reports recently that the government intends to expand or widen this application even further to include foreign and defence policy secretariat of the Privy Council Office, legal service branches of CSIS and CSE, and the national security group at the Department of Justice. Again, perhaps this may be more appropriate for Mr. Cotler, but I'm wondering what the reasoning behind that is. Is there any rationale at this time? Is there any heightened security threat that would lead to the broadening of the net, if you will, of the provision of permanent secrecy to these employees? How many will it include?

Hon. Anne McLellan: I think actually you could ask Minister Cotler that question. Mr. Kennedy is more than happy to at least introduce the discussion and respond to your question in an abbreviated form.

Mr. Paul Kennedy: The former Official Secrets Act, which you now know as the Security of Information Act, actually resulted in a significant narrowing of the scope of the old Official Secrets Act. It is legislation based in the late 1800s and amended before the first and second world wars. It bound all civil servants to confidentiality of information. Disclosure of information that could result in an offence under that provision wasn't triggered by a harms test, in terms of whether it was secret or top secret information; it was very broad, which made it very unwieldy and quite inappropriate.

When the Security of Information Act came in, it was narrowed down to special categories of information that were deemed to be highly sensitive, such as whether you have knowledge of encryption techniques or decryption techniques, or sources and techniques that are using targets of intelligence services. What you've said is that these are the crown jewels you have to identify, and that the crown jewels are what we will criminalize if you improperly disclose the information.

This requires you to sit back to ask who has access to the crown jewels. Then you end up having to go through and look at organizations, and there were organizations that were identified. Clearly, if you're an intelligence officer at CSIS, part of your duty involves having access to these kinds of things. Likewise, at the Communications Security Establishment you're going to have it. And there will be other components that were identified. In our department, my national security directorate is identified.

I have received a notice as well and I am bound. That is because we have access to the most sensitive information the government has, and therefore we have to be. The same thing would apply: you look at this narrow category of information and who has access to it, and those people who have access are notified that if they disclose it —of all the public servants who are out there, the 250,000—this group is bound by this act.

● (1640)

Mr. Peter MacKay: So you've more or less gone back and determined that the categories that had been put in place were not broad enough in the first instance?

Mr. Paul Kennedy: In some areas it's because the nature of the work the institutions conduct is in total that kind of activity. In others it would be restricted to people who, because of the job they had, would have access to it to perform the job, so you'll have a few individuals in any given organization. Those are the ones where you don't take the entire department; you name those individuals who have access to the sensitive information and say “You're bound not to disclose this”.

Mr. Peter MacKay: That leads me to another question, Mr. Chair, with respect to reassessing where we are now compared with the timing of the introduction of the legislation, which is what this hearing is very much about. With the expanded powers that were given to officers, and similarly the expanded legal and legislative measures that result, I guess I'm asking whether, as part of your presentation today, you can accurately assess the impact of this legislation. Has there been sufficient resourcing, personnel, and training to respond to these new expanded powers? Have you been able to gauge? Can you give us any kind of reading on whether the resources match the legislative powers that have been granted, and whether the individuals in the field—including judges, agents, all of the support staff around the implementation of this legislation—are adequately resourced and are doing the job in response that can give Canadians some sense of satisfaction that we've moved in the right direction?

Hon. Anne McLellan: I think that's actually a very good question. There's absolutely no question that we are moving in the right direction. We have come a long way in terms of being able to reassure Canadians, as they should expect from their government, that we are doing the right things in being able to protect their collective security and safety and to be able to respond to emergencies, be they man-made or natural, if they were to occur.

Agencies, for example, within my department benchmark constantly against similar agencies either at other levels of government or around the world. There is absolutely no question that if you are asking me could CSIS use more resources and put more people in the field, could the RCMP use more resources, could the CBSA use more resources, yes, of course they could, because there is always something more we could be doing. That's not alarming. If my colleague Secretary of Homeland Security Chertoff were here, he would tell you the same thing, as would my counterpart in England, Mr. Clarke.

We are constantly assessing the risk and determining whether we have the right tools, legislative as well as program, as well as fiscal resources. We certainly, as have others in the United States, the U.K., and western Europe, have all been learning in terms of what is required in this world of ever-increasing complexity of threat. We are constantly working together, both at home and around the world, with like-minded countries to benchmark and determine what we need—training, technology, how it's used, whether we have the balance right in terms of protecting individuals' privacy. Those things are an ongoing dialogue both within the country and globally with like-minded countries.

We have come a long way, but if you're asking me if we could use more resources, yes, of course we could.

● (1645)

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Minister.

Mr. Macklin.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you, Chair.

Thank you, Madam Minister, for being with us today.

Following up on Mr. MacKay's thoughts, I was looking at it from the perspective of our having defined the threat and having put multilateral tools into our toolbox that will allow us to deal with international areas of cooperation, and so forth. At the end of the day, though, has there been any comparative analysis done with other countries—and you mentioned a handful of countries—as to how effective their processes have been as it relates to what we have?

I know it's very difficult when we've had such limited need.

Hon. Anne McLellan: Thank God.

Hon. Paul Harold Macklin: We don't know whether that's good or bad in terms of the fact that they haven't been used. It's very difficult to assess. Do you do some type of comparative analysis to see whether in fact we have put the best model in place? Do you see, as a minister, that you would like to bring forward potential changes in the modelling that we have, based on that international experience?

Hon. Anne McLellan: Actually, ours is a model that is viewed, I think it's fair to say, by most other countries around the world as a model of effectiveness and moderation—in terms of the commitment to getting the balance right, for example, living in a country where we have privacy protection, where we have a Charter of Rights and Freedoms. It is fair to say that a lot of other countries are very interested in the approach we have taken in our anti-terrorism legislation. They have looked at how we have done things such as define the act of terrorism—which speaks then to the scope of the legislation—our listing provisions, and the review mechanisms around listing under the code.

You find a continuum of approaches both to making operational the 12 UN conventions as well as to dealing with some of the things we have learned over these years, whether that be learning from 20 years ago or learning from September 11. On that continuum, not surprisingly, you probably find us having spent more time than many in trying to get the balance right.

If you are asking me whether we have done some scientific evaluation of this, no, but we meet and we talk—officials as well as ministers and secretaries, whether in a G-8 gathering, an OAS gathering, or an APEC gathering—to assess whether we share the same kinds of challenges in this complex threat environment we live in, and how we have gone about those challenges. Then, of course, intelligence-gathering agencies—the RCMP and others—are constantly benchmarking with each other around what the challenges are and how they're meeting them.

You might want to say something, since you are the one who seems to get to travel around the world to a lot of these exercises.

Mr. Paul Kennedy: That's because the airways are so safe.

The minister is quite accurate. If you look at legislation around the world, there has been a certain amount of symmetry. Some of the provisions you see in our legislation appear in other legislation as well. We are certainly very well benchmarked when looked at in the context of the traditional western countries—the United Kingdom, Australia, New Zealand, and so on. I think we have a very balanced model.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Kennedy.

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: The Anti-Terrorism Act provides for preventive arrests. Would it be correct to say that we have never used this provision?

[*English*]

Hon. Anne McLellan: The provision allowing for preventive arrest? No.

[*Translation*]

Mr. Serge Ménard: It was never used?

[*English*]

Hon. Anne McLellan: No.

● (1650)

[*Translation*]

Mr. Serge Ménard: Would it be worthwhile to abolish it?

[*English*]

Hon. Anne McLellan: You don't eliminate it simply because it hasn't been used. In fact the anti-terrorism legislation, as far as I'm concerned, should be largely directed at the prevention of terrorist activities. My own view, based on discussions with law enforcement agencies, is that it is important that the provision continue, that it be there in a circumstance that would call for it.

Are you asking me if I hope we never have a circumstance where it is used? Yes, of course. That speaks, in some part at least, I would hope, to the relative safety and security of our country. But does one, hopefully, have the tools necessary if a situation arises? You have to have the tools; otherwise you'd be the first—you people in this room—to say, "Minister, why didn't you give the Royal Canadian Mounted Police the tools necessary to protect Canadians?"

It doesn't mean it has to be used, and I would hope circumstances in this context would not arise. But are you asking me if I want to have those tools available if necessary? Yes, I do.

As you know, it is a sunsetting provision, so this review.... The review of the whole act is done after three years, but for the two sunsetting provisions there have to be resolutions of the House of Commons and the Senate to continue them at the end of five years, so those two periods are a little bit out of sync. You as a committee can choose whether you want to deal with them now and review them and make a recommendation or whether you want to defer it until the end of five years, when clearly they're going to have to be reviewed and the House of Commons and the Senate both decide, through resolution where members stand and vote, whether they should be sunsetted or should continue.

If you're asking me today whether they should continue, my answer is yes.

[*Translation*]

Mr. Serge Ménard: Why?

[*English*]

Hon. Anne McLellan: As I've said, because they are part of the tool kit. I hope they won't be needed. But I do not want to be in a situation where something happens and we do not have the reasonable tools necessary to help prevent a tragedy. That provision, as you know, also has safeguards built into it—and I'm sure you're aware of the section—but again it has to be used in appropriate ways and respectful of the rule of law, and that's how it was designed.

[*Translation*]

Mr. Serge Ménard: In summary, if I understand correctly, in order to combat terrorism, you plan on needing a purely discretionary power that would allow you to incarcerate people without having to give a reason. Is that it?

[*English*]

Hon. Anne McLellan: I certainly take umbrage with "purely discretionary". It is not arbitrary, and I would think, Mr. Ménard, you know that, as a former Minister of Justice and Attorney General in the province of Quebec.

Mr. Kennedy, do you want to add something?

Mr. Paul Kennedy: Again, this is unfortunately misportrayed as being something that's quite radical. In fact, we have provisions that already exist. If you have a situation with spousal abuse, you don't wait for the spouse to be beaten; there's intervention, and the individual is brought before a magistrate. At that time the individual is frequently released on peace bonds with terms that would adjust what the behaviour should be in terms of association—not carrying weapons and things of that nature. If it can be used in that kind of context.... The law is quite clear that you have to have reasonable grounds to believe there's a terrorist incident and you have to have reasonable grounds to believe the individual is suspected of being involved. The individual is brought before a magistrate, and it is the judge then who releases the individual on terms and conditions. In a terrorist case, it would be, for instance, that you don't carry weapons or you don't associate with individuals who would be involved in terrorist activity—

[*Translation*]

Mr. Serge Ménard: It seems to me that we are quite far from terrorism here.

I hope that you acknowledge that your answer could apply in virtually all cases where we would give the police a purely discretionary power. If ever an incident were to occur, we would be the first ones to blame you for not having used these powers. What it boils down to is that you are for the moment unable to imagine any situation which might justify purely arbitrary incarceration through preventive arrest.

● (1655)

[*English*]

Hon. Anne McLellan: I'm sorry, I disagree with your characterization of it as a discretionary power. In fact, as Mr. Kennedy has outlined, you don't get to take someone off the street and bring them in front of a judge. In fact, there are requirements, as one would expect. If you look at this, I don't want the record for one minute, from my point of view, to stand that this is discretionary. It is not a discretionary power, as I understand the use of that language.

[*Translation*]

Mr. Serge Ménard: What I am saying is that...

[*English*]

The Vice-Chair (Mr. Kevin Sorenson): Mr. Ménard, you're at six minutes now, so we have to go back to Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair, and thank you, Madam Minister, Mr. Kennedy, and Mr. Pentney.

Minister, I'd like you to, if you could, try to contrast the world we live in today versus the world 20 years ago, or even beyond. In fact, if you go back 35 years ago, I lived in Montreal during the civil terrorism within the province of Quebec, the terrible events of the FLQ. If we contrast, let's say, the world of today, even going back 20 years, from the perspective of the world of public safety, national security, terrorism, and the changes that have taken place....

But before I do that, I'd like to come back to security certificates, because they seem to have captured the imagination of our colleagues opposite. I'd like to ask this question. We hear your argument and we all agree, I think, that it's an instrument that would only be used and is used under very judicious circumstances and as a last resort. If security certificates were not instruments available to the Government of Canada, what would that mean for Canadians? Are there other instruments that could be used, or what would that mean in terms of the public security and safety of Canadian citizens?

Hon. Anne McLellan: As I say, the security certificate is an exceptional tool that is used when we believe the national security of the country is at risk or there is risk of serious criminal activity like, for example, organized criminal activity, espionage, subversion, and so on.

People have to come to grips with the fact that the world in which we live is one where the threat environment is more dangerous and complex than probably at any other time most of us can remember. Those who would do harm are more sophisticated and have more resources at their disposal in this global, technologically connected world than we have ever seen before. We simply have to ensure that, as a country, we have the tools required to protect the collective security and safety of Canadians. The security certificate is one of those tools, as is the Anti-terrorism Act itself.

I think it is in a sense a good thing, a promising thing, that we've only had to use that extraordinary power in this country in such a small number of situations over this past number of years—15 or 16 years since 1991, if that's when you want to start counting. But we simply have to come to grips with the fact that there are people who will do us harm, and that sometimes we have put in place, say, through CSIS or in partnership with others, complex operations that collect information, where you have informants, where you have people who.... If you don't have a tool like a security certificate, you may not be able to deal with the risk to our national security without endangering the lives of others, without endangering operations, either in this country or globally, that have been put in place and are absolutely key to our ability to gather intelligence to protect Canadians.

I am always open to reviewing the tools we have and to placing those tools against what we know the threats are and the risks are, in order to be able to make sure I can tell Canadians that we have the right tools to protect their collective security in the world in which we live. We strive to get the balance right between my obligation in relation to the collective security of Canadians and the obligation to ensure that we are protecting, to the greatest extent possible, individual rights.

Of course that balance is a balance I struggle with. I would hope that we all struggle with this balance, because there's not some scientific equation that magically gives you the answer. As I indicated in my comments, all countries are struggling with this, and it's good that we're having these discussions, because they help us all to clarify and understand what the risks are, what's at stake, and what is needed.

● (1700)

Hon. Roy Cullen: Do I have any more time?

The Vice-Chair (Mr. Kevin Sorenson): You have fifteen seconds.

Hon. Roy Cullen: I think you've partially answered my first question in any case. Contrasting the world we live in today with the world of twenty years ago, we can all remember times when we would get on aircraft without going through security. How many times recently have you been asked to leave an airport and wait until they off-load all the suitcases because there's a suitcase in the belly of the aircraft and there is no passenger?

So we've made institutional changes here and abroad, and I think —

Hon. Anne McLellan: More importantly, Mr. Cullen, if you look at the views of Canadians and a lot of the polling work and focus groups and things that are being done here in this country, Canadians are making the culture change, too. They continue to believe—and rightfully so, I believe—that in their individual families and in their individual communities they are safe. Canadians are in fact reflecting the reality that they believe the world is a much more complex and dangerous place and that there are people who would do harm. But it is also very clear that they see the foundational obligation of government as being to protect them against that harm.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Madam Minister.

We'll go back to Mr. Comartin.

Mr. Joe Comartin: Since the minister wants to put her position on the record, I have to put one on as well.

Let me assure you, Madam Minister, that there is a full segment of our population—and I'm referring to the Muslim population—that is not more secure in this country as a result of this legislation. They don't feel more secure. And that's everyone from the student at the university who is constantly being harassed by the RCMP or CSIS to become an informant, to one businessman who is a multi-millionaire and who has gotten legal opinions from some of the large Bay Street law firms that could not assure him that they could protect him from the use of this legislation against him. I'll put that on the record.

Now let me go to a question. You were extolling the virtues of FINTRAC in your opening comments.

Hon. Anne McLellan: I made some comments in relation to FINTRAC.

Mr. Joe Comartin: You specifically said there have been 73 referrals. The Auditor General was less than generous in her criticism of the use that has been made of those referrals, both by CSIS and the RCMP, and of the lack of coordination between the three agencies involved, meaning the Border Services Agency and those two agencies.

When you were before the justice committee in, I think it was late 2004, I put some questions to you, Commissioner Zaccardelli, and the interim director of CSIS. I have to say to you that none of you were able to give me satisfactory answers. Have the criticisms that came from the Auditor General in fact been reviewed, and is that information now being adequately used?

Hon. Anne McLellan: That is a very important question. First of all, we take very seriously what the Auditor General has said and we are moving toward dealing with some of the concerns that she identified.

I believe, Mr. Kennedy, that we're going to begin a major review of our money laundering legislation in June.

Mr. Paul Kennedy: If I could just put it on record, I was involved in the development of that legislation in the first instance. It was developed by the Department of the Solicitor General and then it was transferred to the Department of Finance when the legislation was put in place. There was an issue and a concern, of course, as to how large or significant the money laundering problem actually was.

You're all familiar with the Oakes test, which says you can't put legislation in place that isn't proportionate to the problem. It was clearly anticipated by us that we had to put something forward that met the constitutional charter standards at the time. We were hoping our history of experience with FINTRAC in place would give us a sense of how extensive the money laundering problem was and, in addition, how adequate the tools are that we've put in place. If you look at other countries such as Ireland and so on, they have much more aggressive models than we have.

When Parliament comes up to review that legislation in June 2005, this will be an opportunity for us to address some of the problems that the Auditor General addressed. Those problems actually go to the legislation itself and the kind of tombstone data that currently is made available to CSIS and the RCMP, either on terrorism or organized crime. You might very well find now that in light of the magnitude of the problem, it is apportioned to actually strengthen some of those provisions, but it was designed that way at the time because we had to have a factual basis to see if our response was proportionate.

So we welcome that review, as a matter of fact, and I'm sure our colleagues at Finance will as well.

● (1705)

Mr. Joe Comartin: According to the Auditor General's report, you spent $31 million that effectively wasn't being used, so I don't know about the proportionality in that argument, Mr. Kennedy.

Hon. Anne McLellan: What's not being used?

Mr. Joe Comartin: That's academic, that's theoretical. I'm asking about the practical aspect. Is it being used?

Hon. Anne McLellan: Yes.

Mr. Joe Comartin: That's not what the Auditor General found.

Mr. Paul Kennedy: It is not practical or academic. Your power comes in terms of the information you collect and analyze and what, by law, you're allowed to share with investigative agencies. Clearly, the less you're allowed to share, the more they're in the dark.

Hon. Anne McLellan: And this is an important issue.

Mr. Joe Comartin: They're already sharing that, but they're not using it.

Hon. Anne McLellan: Part of what the Auditor General indicated —and she made the statement even more generally, Mr. Comartin, in her report of about a year ago.... She made this point. I'll put it on the record here, and I will encourage you all to remember it perhaps if we come back with certain kinds of reforms, be they to this legislation, our money laundering legislation, or in other areas. She expressed a frustration about our existing privacy provisions standing in the way of the real-time transfer of key information to deal with either money laundering or other aspects of crime, be it alleged terrorist financing or whatever the case may be.

It's always a question of the balance. I think what Mr. Kennedy has tried to explain here is that we're conscious of the balance. We didn't want the original money laundering legislation struck down on the basis that we didn't have the balance right, so now we've accumulated a lot of very useful information, Mr. Comartin, about just how insidious and pervasive money laundering is here and around the world, and about what our international obligations are. For organized crime and those who would commit terrorist acts, money laundering is in part their lifeline.

Therefore, we're going to come back to you, and I'm going to remind you, or the Minister of Finance will remind you, of this discussion around what we need in the way of tools to actually deal with the problem.

Mr. Joe Comartin: You've already got that, but you're not using it.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Madam Minister.

We'll go to Mr. Wappel.

Mr. Tom Wappel: I'm just curious about a couple of unrelated issues, Madam Minister.

You have 35 entities listed, as you've indicated. You also made reference to the United Nations suppression of terrorism regulations. I've done a little count here, and it's more or less 135 agencies listed under the UN. I'm just wondering why there's such a discrepancy in numbers between the organizations listed under the UN suppression of terrorism regulations and our own.

Hon. Anne McLellan: Part of it is just the basic fact that we know some of those entities listed by the UN do not exist in this country. They don't carry on any of their notorious business here. Therefore, under the anti-terrorism legislation, CSIS would have no case in relation to activity or their existence here. They are global organizations that are listed by the UN, and we are part and parcel of the UN.

So yes, they're listed; therefore, for the purposes of our membership in the UN and that particular listing tool, they're listed. We treat them as listed. But no, in some cases, simply because they don't exist here, we did not use the Anti-terrorism Act provisions to list them here. But there are other reasons.

Mr. Tom Wappel: But Madam Minister...excuse me, I'm sorry.

Mr. Paul Kennedy: Can I try to help you, sir?

When the UN Security Council puts them on, then by operation of regulations that we have here, they're automatically put on the list and we're obliged under the UN.... I forget what the act is called, but it's the UN that puts them on as part of a global effort, because they don't want money to move.

The thing is that if you close down one jurisdiction, they can electronically send money to another, so it's part of a coordinating international effort. When the UN Security Council, at the request of any one country in the world, says this organization should be listed, we then act as part of the international community and the organization is on our list. That's so the money has nowhere to hide.

● (1710)

Hon. Anne McLellan: But they're not on our list under the Anti-Terrorism Act. You're quite right, Mr. Wappel.

Mr. Tom Wappel: I'm trying to figure out why that is.

Hon. Anne McLellan: One reason is the reason I've just given.

Mr. Tom Wappel: Which is, as I understand it, that they're not likely to commit a terrorist act in Canada. Is that what you said? They're doing it elsewhere, but we don't expect them to be acting here. I thought that's what—

Mr. Paul Kennedy: Maybe I can help you a little bit.

We clearly have organizations that do things internationally. They have money in terrorist acts. They may not be present in Canada themselves, but they may want to send money here. As part of an international effort, when the UN puts them on, we put them on the list. The effect of being on the list under domestic Canadian legislation is that the money is frozen. If it's in any account here, it cannot be moved. Under those acts, it would be a criminal offence in Canada for anyone to move that money.

So it's part of a worldwide freezing of assets of any organizations that have been listed by the UN. And you are quite right, it may be an organization that never appears here, but what we have done as part of an international effort is take away an opportunity for them to move their money. It freezes.

Mr. Tom Wappel: So the UN regulations deal with the attempt to stop money from moving between countries and between organizations, whereas our list attempts to identify terrorist organizations that may commit terrorist acts in Canada.

Mr. Paul Kennedy: Yes, and there are additional sanctions if you're listed under ours. You are listed and the behaviour of anyone who has anything that deals with a terrorist organization in Canada would be criminalized. If you do any supporting activity, it's a ten-year maximum. If you commit an indictable offence while aiding them, it's a life maximum. We can freeze your money. We can also turn around and have civil proceedings to forfeit it as well. They're unique powers for the ones that we list in Canada.

Mr. Tom Wappel: My chairman tells me I have very limited time, so I just want to confirm that when we're talking about preventative arrest, we are talking about what the Criminal Code calls recognizance with conditions, section 83.3, for which there are very specific criteria and very limited grounds upon which to arrest without going for recognizance.

Hon. Anne McLellan: Yes, that's right. That is absolutely essential.

Mr. Tom Wappel: So I understand that. Thank you.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Mr. Wappel.

Mr. MacKay, very quickly.

Mr. Peter MacKay: I have a couple of very quick questions, Madam Minister.

You've indicated your willingness to perhaps re-examine the subject of foreign intelligence gathering, or perhaps you've even changed your opinion on it. I've seen recent commentary in which you quite correctly describe that the best ability we have to prevent terrorism here is to go to the source. I want to question you about where you are today on that.

Specifically on the issue of security certificates, again, as I understand it from the act, the security certificate application is strictly limited to permanent residents and foreign nationals but not Canadian citizens.

Hon. Anne McLellan: That is exactly right.

● (1715)

Mr. Peter MacKay: What a lot of people want to know and what new Canadians—and Muslim Canadians in particular—are concerned about is whether this is a discriminatory practice and whether it can be justified.

My final question is at more of a micro than macro level, but it pertains to correctional officers. Their concerns surround high-risk escorts in a most recent incident on December 18, 2004. I'd say generally that they have concerns. They're part of your department, although I understand there was an advertising campaign that they were left out of on a poster, that they weren't specifically noted on it.

With respect to this incident, a high-risk escort for a person involved in the Air India bombing, they weren't notified. That is, the individuals who were going to escort this individual were not notified of this individual's risk factor, if you will, and whether they were given the appropriate notice and the appropriate protections involved in that type of escort activity.

Could you address that? Perhaps it may be a case you need to look into, as opposed to something you can respond to today.

Hon. Anne McLellan: I have no knowledge of this specific incident. We will follow up on that for you and get the information to the committee.

As it relates to foreign intelligence, I think the Prime Minister and I have both been clear that we think it is important to collect additional foreign security intelligence. In fact, there are additional resources that were received in the most recent budget to permit us to move forward on that initiative.

Having said that, no final decision has been made around the modality by which one would do that. As I know you are aware, there are different theories in terms of whether that foreign security intelligence should be collected by CSIS or whether there should be some separate entity that does foreign security intelligence gathering, as opposed to domestic.

Mr. Peter MacKay: Have you formulated an opinion on that, Minister?

Hon. Anne McLellan: I basically think it's an issue on which reasonable people of good faith can disagree, but I don't think I'm divulging any national secret here if I suggest that I don't see convincing reasons at this point for why you would create a security intelligence gathering entity separate and apart from CSIS. However, that is a decision that has not been made. Therefore, I want to make it clear that while I do not think a compelling case for a separate entity has been made, it is absolutely an issue on which informed people can disagree.

Mr. Peter MacKay: On parliamentary oversight, are we there yet?

Hon. Anne McLellan: Do you mean the committee? We're getting there. I hope to be able to release the report with our framework, in terms of moving forward very soon.

Mr. Peter MacKay: Thank you, Mr. Chairman.

The Vice-Chair (Mr. Kevin Sorenson): Thank you, Madam Minister. That is a promise we've been looking forward to, especially those of us who served on that committee.

Hon. Anne McLellan: Those of you who worked so hard all last summer.

The Vice-Chair (Mr. Kevin Sorenson): Yes, we did.

I have one very quick question, but I know you're in a rush.

The Anti-Terrorism Act provided the RCMP with powers to gather intelligence that they've not had for many years, since the CSIS Act came online and since the McDonald commission. There have been some concerns raised, particularly by the Commission for Public Complaints Against the RCMP, regarding the lack of oversight. Are the concerns justified in your opinion, given that they now have the ability to gather?

Hon. Anne McLellan: There are no specific incidents that would cause me particular concern at this point. What I would say is that because the commitment was made by the Prime Minister on December 12, when he came to office, we would provide additional oversight for the Royal Canadian Mounted Police as it relates to their national security activities.

In the context of the Maher Arar inquiry, as a part-two aspect of that, I asked Mr. Justice O'Connor to make recommendations to me in relation to what an appropriate oversight mechanism would be for the Royal Canadian Mounted Police as it relates to their activities regarding national security. So we certainly will be looking at additional oversight, and I look forward to Mr. Justice O'Connor's recommendations on that regard—and any that this committee might wish to make as well, as far as that goes.

The Vice-Chair (Mr. Kevin Sorenson): Thank you for your attendance here today, Madam Minister.

We stand adjourned until tomorrow.

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