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Chair

Mr. Garry Breitkreuz

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• (0900)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to call this meeting to order.

This is the Standing Committee on Public Safety and National Security. This is meeting number 17, and we are meeting pursuant to Standing Order 108(2) on a study of the report of the commission of inquiry on the events relating to Maher Arar.

Our witnesses today are from the Canadian Security Intelligence Service, Mr. Jim Judd, the director, and Ward Elcock, the former director. We would like to welcome you, gentlemen, to our committee. We look forward to the information that you will convey to us.

The usual practice of this committee is to allow you to have an opening statement of whatever length, usually ten minutes. If you need a little more time, that's not a problem. Then we'll begin with questions from the official opposition and move around to the government.

Thank you very much. If you're ready to begin, we await your statement.

Mr. Jim Judd (Director, Canadian Security Intelligence Service): Mr. Chairman and members of this committee, thank you for inviting me to appear today to provide you with the perspective of the Canadian Security Intelligence Service on the report of Justice O'Connor on the case of Mr. Maher Arar.

As you know, Justice O'Connor did not find any evidence that my organization, or indeed Canadian officials, participated or acquiesced in the decision to detain Mr. Arar or to remove him to Syria. More specifically, Justice O'Connor found no evidence that my organization shared any information about Mr. Arar with the United States prior to his detention in New York and subsequent deportation to Syria. Those findings are consistent with those of the Security Intelligence Review Committee in its review of the service's involvement in Mr. Arar's case.

I would note as well that while some of the recommendations in Mr. Justice O'Connor's report refer to the service and our institutional practices and policies, they do so in the broader context of departments and agencies involved in national security. In fact, there are a number of very positive comments in his report regarding the policies and practices of CSIS generally. However, despite these central findings of Mr. Justice O'Connor in respect of our role in this manner, there were several criticisms of the service and some other issues that I would like to address this morning.

While there is little if anything to add to the findings of the report, I believe it is important for the committee to understand how we are responding to the report and for us to provide some background on our activities in this case. Before I do so, I should say that I very much regret the ordeal Mr. Arar and his family were subjected to as a result of his deportation to Syria.

Number one, Justice O'Connor found that CSIS did not do an adequate reliability assessment as to other information received from Syria that was likely the product of torture.

Justice O'Connor made it clear in his report that intelligence-sharing with foreign partners is essential for CSIS to collect information related to threats to Canada. We are very much aware that this can present a challenge for us in dealing with countries with poor human rights records. It is an unfortunate reality that many terrorist threats to the security of Canada originate in or have connections with countries that have poor human rights records. That is one of the reasons why the CSIS Act requires that two ministers approve any foreign liaison arrangement we might propose.

In considering any such arrangement, ministerial directives to the service and our own policy require us to specifically "address the human rights record of the country including any possible abuses by the security or intelligence organizations". Moreover, any such arrangement will only be considered where contact is required to protect the security of Canada. We have an obligation to ensure that everything possible is done to identify threats before they materialize on our shores, and we must therefore make use of all available sources of intelligence, but always subject to reasonable safeguards.

This is obviously a difficult issue. We have arrangements with organizations and countries where there is suspicion of torture, and there are times when certain restrictions are placed on any interactions with those services. As Justice O'Connor himself observed in his report:

Decisions about how to interact with a country with a poor human rights record... can be very difficult and do not lend themselves to simple or prescriptive rules.

It is never a simple matter to determine whether information received from a foreign government with a poor human rights record was obtained as a result of torture. It does not necessarily follow, because a country has a poor human rights record, that any information received from it was the product of torture. Moreover, our normal practice with respect to the receipt of information of any kind is to seek corroboration of it from other sources prior to coming to any determination on it.

Our information exchanges with foreign organizations are reviewed annually by the Security Intelligence Review Committee to ensure that we comply with ministerial directives in our own policies, and in some instances the committee has made recommendations, a number of which have been implemented by the service.

● (0905)

For example, in its report on Mr. Arar, SIRC made a number of recommendations, re-stated by Justice O'Connor, regarding the need to amend CSIS's operational policies governing information-sharing and cooperation to ensure that we take into account the human rights records of foreign countries. These recommendations have already been implemented by the service.

As Minister Day noted during his appearance before this committee, we have also developed a new caveat to accompany information we share with foreign agencies. It seeks assurance that any Canadian citizen detained by a foreign government

...will be fairly treated within the accepted norms of international conventions, that he is accorded due process under law and afforded access to Canadian diplomatic personnel if requested.

Justice O'Connor also recommended that the Department of Foreign Affairs share its assessments on the human rights records of other countries to ensure a uniform appreciation of the situation in these countries. We agree with the recommendation and will be working with the Department of Foreign Affairs to ensure its implementation.

Number two, Mr. Justice O'Connor noted that CSIS and the RCMP were not supportive of an initiative by the Department of Foreign Affairs to send the letter to Syrian authorities to convey the message that Canada spoke with one voice in seeking Mr. Arar's release.

As you may know, officials from my organization were questioned on this issue extensively, both in public and in camera. There was reluctance in CSIS to proceed with the proposed letter—to be “endorsed” by the then Solicitor General—and there was among others one reservation in this regard; that is, the service's longstanding policy to neither confirm nor deny that any given individual is or is not a subject of investigation. As you know, the Solicitor General of the day expressed before this committee his own reservations about signing such a letter at that time.

Mr. Justice O'Connor has recommended that a single, coherent government approach and coordination be developed to deal with Canadian detainees in foreign countries. We accept that recommendation and will be working with Foreign Affairs and other government agencies to implement it.

Number three, Mr. Justice O'Connor was critical of both the process and the impact of the claims made by the government to protect national security confidences. While he was critical, Mr. Justice O'Connor conceded that the overall process worked well and did not prevent him from arriving at his findings in this matter.

By way of clarification for members of this committee, our organization has traditionally sought to maintain national security confidentiality in a number of areas. These include, among others: whether or not an individual is or is not under investigation by the service; the identification of individual foreign agencies with whom

we have any relationship; the identification of human sources used in CSIS investigations; the identification of CSIS personnel involved in covert operations; and specific investigatory techniques used by the service in its investigations.

There are a number of reasons for this approach, including provisions in our own legislation, the Privacy Act, operational security and effectiveness, the personal safety of our employees, and others. And as you know, the issue of national security confidence claims related to this report is now before the courts.

Fourth, Mr. Justice O'Connor was very critical of the anonymous and damaging leaks that were made during his inquiry. When classified government information appeared in the public domain, CSIS conducted its own internal investigations and also participated in investigations convened by the Privy Council Office on several occasions. Mr. Justice O'Connor was unable to identify the culprits, and I understand that the RCMP's criminal investigation remains ongoing. However, none of the investigations conducted to date has suggested that CSIS personnel caused any unauthorized disclosure of information.

● (0910)

Let me conclude by saying that I and the service take the findings and recommendations of Justice O'Connor's report very seriously. We are, and will be, adjusting our policies in some areas in response to the report and we'll be working with other federal organizations to ensure the effective development of responses to other recommendations in that report.

Thank you, Mr. Chairman. I'd be happy now to take any questions that members of the committee may have.

The Chair: Thank you, Mr. Judd.

We will now begin our round of questioning, beginning with the official opposition. Mr. Holland, please, for seven minutes.

Mr. Mark Holland (Ajax—Pickering, Lib.): Thank you, Mr. Chair.

First of all, thank you to both gentlemen for appearing before the committee.

I am going to start off by saying that Justice O'Connor in his report did indicate a number of different ways in which CSIS did make, in his opinion, errors that potentially undermined efforts to bring Maher Arar back as well as potentially contributing to the decision made by the United States to send Maher Arar to Syria.

I would ask you at the outset, because it wasn't in your opening, if you are going to be apologizing today to Maher Arar for any role that CSIS might have had.

Mr. Jim Judd: As you know, in my opening statement I certainly expressed my regret for the ordeal that both he and his family endured as a consequence of this. More broadly, as our minister stated before the committee and as was reiterated by another member of the government yesterday, the broader issue of an apology by the government is under consideration in the context of the negotiations with Mr. Arar and his counsel on an overall settlement.

● (0915)

Mr. Mark Holland: Then you won't be apologizing.

Mr. Jim Judd: As I said, sir, I very much regret what happened to Mr. Arar, but the broader issue of an apology is one that is now before the government in the context of the overall compensation negotiations with Mr. Arar.

Mr. Mark Holland: I would just point out that Commissioner Zaccardelli did, and I understand that the minister hasn't. This committee has taken a position that the minister should.

Perhaps I could move on to the issue of one voice. In May and June 2003 both the RCMP and CSIS, as you mentioned in your opening statement, resisted a united call for the release of Maher Arar. This was cited by Justice O'Connor as playing a role in undermining efforts to have Maher Arar returned to Canada, and what the former Solicitor General had stated to us was that part of his reason for not doing that was the advice that he was getting from CSIS and the RCMP.

Given the fact that he neither had a criminal record nor was the object of a criminal investigation, given the fact that certainly even a Google search would have found that he was most certainly facing human rights abuses in Syria, why was this effort to speak with one voice, this effort of the foreign affairs department, rejected? I know you said that you didn't want to characterize, to take a position, but this was somebody who didn't have a criminal record and certainly was facing human rights abuses abroad.

Mr. Jim Judd: Having read the transcript of the former Solicitor General's appearance before this committee, I believe he said that over and above the advice that he had received from both CSIS and the RCMP, he himself had misgivings for various reasons on signing off on such an approach, which related in part, I believe, to the issue of whether or not it was appropriate for the Solicitor General to be party to such a document where the foreign minister would speak on behalf of Canada in a representation to a foreign government, and also because there may have been an issue as to whether or not Mr. Arar was still a person of interest in an investigation.

Mr. Mark Holland: It's your position then that you disagree with Justice O'Connor in his assertion that not speaking with one united voice calling for Maher Arar to be returned undermined efforts to return him. It is your opinion that Justice O'Connor was wrong in saying that, and you feel you acted properly in that instance.

Mr. Jim Judd: I'm not disputing Mr. Justice O'Connor's conclusions. I'm just trying to explain to you the circumstances at the time that led to the advice being rendered to the Solicitor General at that moment.

Mr. Mark Holland: The other item that I want to come to is the reliability assessment. The individual who conducted the reliability assessment for CSIS, with respect to the intelligence being gotten by the Syrian government, had no experience in torture. Therefore it led to this information being given credibility and the belief that this information was not given under duress.

The first question is why? In Justice O'Connor's report it is very clearly stated that if a proper assessment had been done by somebody with experience in torture—in fact, it wouldn't have taken a lot of work to find out that torture happened in Syria—we would have been able to dispute that information and may have been able to get Maher Arar back sooner. Why was this assessment not done by somebody who had experience in torture?

Mr. Jim Judd: The assessment was done at the time by the individual who had responsibility for the issue at the time. Whether that individual did or did not have the record of expertise is something that certainly Justice O'Connor has commented on. I can't provide you with a ready explanation as to why that individual did not have that level of experience.

• (0920)

Mr. Mark Holland: In retrospect, do you think it would have been important that the individual making that reliability assessment would have had experience in torture? Or do you disagree with Justice O'Connor on that?

Mr. Jim Judd: It's always a very difficult issue, as I tried to point out in my opening comments. One cannot necessarily presuppose that information received from a country with a poor human rights record is necessarily a product of torture.

Over and above that, though, again as I tried to point out in my opening comments, we have adjusted our policies and our operational practices in terms of dealing with information. I would say it would be unlikely that this would happen today.

Mr. Mark Holland: With respect to communication between CSIS and the RCMP, there was certainly discussion about the fact that information from CSIS flowed to the RCMP and then made its way, in selective ways, to U.S. authorities, and in large part, according to Justice O'Connor, that information contributed to Maher Arar being sent to Syria. As you saw these leaks occurring, as you saw CSIS information being sent to the United States—information that you said you didn't release but the RCMP did—what discussions did you have with the RCMP? What did you try to do to stop this? Or did you not have a problem with the RCMP releasing information that you were giving to them?

The Chair: That will have to be your final question, Mr. Holland.

Mr. Jim Judd: As a practical matter, I wasn't the director of CSIS at the time. Perhaps Mr. Elcock could answer.

Mr. Ward Elcock (Former Director, Canadian Security Intelligence Service (CSIS)): Mr. Chairman, with respect to that issue, we reminded the RCMP on a number of occasions throughout their investigation that caveats applied to our information. We were unaware of what information they were or were not sharing.

The Chair: Mr. Ménard, for seven minutes, please.

[Translation]

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

Thank you, Mr. Judd.

I certainly understand that in order to deal with the terrorist threat facing the world today, your organization must work closely with other agencies doing the same work in democratic countries. That is the case, is it not?

[English]

Mr. Jim Judd: That's correct.

[Translation]

Mr. Serge Ménard: Do you in fact have close relations with US authorities?

[English]

Mr. Jim Judd: We have relationships of some kind or another with a number of foreign agencies. As I tried to state in my opening comments, we do not identify specifically which agencies we have contacts with for various reasons, including the generally accepted principle in international dealings of this sort that information is protected.

[Translation]

Mr. Serge Ménard: I understand that very well, but it would be quite unthinkable that you would not have relations with the American authorities.

[English]

Mr. Jim Judd: That would be unlikely.

[Translation]

Mr. Serge Ménard: Would you say you provide the Americans with more information than they provide you, or it is a two-way street?

[English]

Mr. Jim Judd: I would say it is a two-way street, but I think you have the traffic flow reversed. My experience to date at CSIS has been that we are significantly a net importer of information from foreign governments. In part, that is a function of the fact that we have, among other things, responsibility for security screening assessments.

[Translation]

Mr. Serge Ménard: If the American authorities had information about a Canadian citizen's dealing with terrorist organizations, would they provide you with this information so that you could keep a better eye on this individual.

• (0925)

[English]

Mr. Jim Judd: One would hope.

[Translation]

Mr. Serge Ménard: If the American authorities had some information that you did not have and you could not provide to Justice's O'Connor regarding Mr. Arar's involvement with terrorist movement, it is unthinkable that the American authorities would not have passed on this information had Mr. Arar returned to Canada after his time in Syria.

[English]

Mr. Jim Judd: Hypothetically, that would be a reasonable conclusion, but it's not necessarily true in all cases. I don't know that I would be able to confirm absolutely that it would be the case.

[Translation]

Mr. Serge Ménard: I understand that you cannot give us absolute assurance, but this is indeed very likely. Had the American authorities had information about the terrorist involvement of a Canadian citizen such as Mr. Arar, you would expect them to give

you this information so that you would better understand the risk presented by this Canadian citizen. Is that not so?

[English]

Mr. Jim Judd: In an ideal circumstance, that would certainly be an expectation.

[Translation]

Mr. Serge Ménard: Of course, during the review by the O'Connor Commission, you would have informed the judge about the reasons why the American had grounds for thinking that Mr. Arar had terrorist dealings, reasons other than the false information the RCMP gave the American authorities. Is that not the case?

[English]

Mr. Jim Judd: It's a two-part answer, sir.

In conducting his inquiry, I believe Mr. Justice O'Connor had unfettered and full access to any and all information that related to this.

Secondly, as you know, there are some aspects of this matter that are subject to national security confidences. They have not been made explicit in the public report, and they are in fact now the subject of review by the courts. Whether or not there was anything related to Mr. Arar emanating from American authorities in that regard, I don't know.

[Translation]

Mr. Serge Ménard: In my opinion, it is not unreasonable to think that the American authorities used only the information provided by the RCMP to send Mr. Arar to a country they knew use brutal interrogation techniques and whose prisons have about the worse reputation on the planet.

[English]

Mr. Jim Judd: I think Mr. Justice O'Connor made it clear in his report that, absent testimony from representatives of three foreign governments, it was difficult for him to ascertain what, if anything, they knew or did not know about Mr. Arar. My recollection again is that when the former Solicitor General testified before this committee, he noted that he had been informed by an American interlocutor that there was in fact U.S. information that had been partly the basis for the American action in this case, but I don't know that it was ever shared with us.

The Chair: Your final question.

[Translation]

Mr. Serge Ménard: You do not know about this information.

[English]

Mr. Jim Judd: I do not.

[Translation]

Mr. Serge Ménard: It is quite unbelievable that you were not given this information if it concerned a Canadian citizen likely to return to this country.

[English]

Mr. Jim Judd: As a general principle, one hopes we would have information regarding a threat in Canada.

The Chair: Thank you, Mr. Judd.

We will now go to our third questioner, Ms. McDonough.

● (0930)

Ms. Alexa McDonough (Halifax, NDP): Thank you very much, Mr. Chairman.

Joe Comartin, my colleague who is regularly on the committee, is very sorry to not be here today. A family emergency required that he return to his riding.

I don't have the benefit of having been in the committee through much of this testimony, but I have to say that I'm deeply disturbed, Mr. Judd, by two things this morning. One is your refusal in any appropriate, humane way to make an apology to Mr. Arar for the role.... I agree that the findings of Justice O'Connor on the very serious concerns about CSIS's conduct were not as extensive as some of the other actors in this, but it's very disappointing that the apology is not forthcoming. It's a question of understanding that a person's life has to go on, and it would be impossible for any one of us to say that we could get on with our life without that apology forthcoming from all who contributed to this horrendous ordeal.

The second thing I have to say I'm deeply disturbed about is that I'm aware that in Justice O'Connor's findings he indicated he did not feel that CSIS did an adequate reliability assessment as to whether the information about Arar, which certainly condemned him in the public mind and kept him in this horrendous situation, was likely to have been obtained as a product of torture. Justice O'Connor goes on to say that CSIS's assessment was that it probably was not.

I have two questions. Could you be more forthcoming with the committee about what the basis was for coming to the assessment that it was probably not obtained under torture, given that I think it was widely known, believed, and understood by a great many people that it could very well have been?

Second, I'm not the least bit assured by your comments this morning that CSIS is any more impressed today that this was a very serious problem, by what seems to have been—and I don't want to be unfair—rather casual justification several times this morning that we can't assume, and maybe it wouldn't have been....

I guess I'm wondering how you would deal with that differently today. Surely in addition to arriving at an appropriate position of an apology being owed to Arar, the really critical thing is the assurance to Canadians that this situation will not repeat itself. Yet it seems to me there is quite a reluctance on your part to acknowledge even the possibility that this evidence, eked out of Arar and obtained through torture, should be a very serious signal to extremely cautionary behaviour on the part of CSIS.

I wonder if you could address those two questions.

Mr. Jim Judd: I think Mr. Justice O'Connor has dealt with the issue of the reliability assessment at some length and come to his conclusions on that. Some were based on the fact that he judged that the individual responsible for that at the time did not have the appropriate training or background to recognize this as having been the case in respect of this information.

I tried to convey in my opening comments that since then the organization has taken a number of steps to ensure this would not happen now or in the future. Our policies and practices have been amended, in part in response to earlier reviews of Mr. Arar's case by the Security Intelligence Review Committee.

I think it's fair to say that the organization today is extremely cautious about dealing with information that may come from a country with a poor human rights record. Moreover, as a matter of principle and practice, the organization always seeks to corroborate information, irrespective of its provenance, before coming to any conclusion or any determination on it.

I guess Mr. Justice O'Connor has described the situation as it was in respect of Mr. Arar at the time. It's very regrettable that happened, but I think we have since taken steps to ensure that would not occur in the future.

● (0935)

Ms. Alexa McDonough: I have a follow-up question.

As somebody who doggedly asked questions again and again in the House and outside of the House, it was very shocking to me—I still feel really quite shocked by the fact—that I had a cabinet minister say to me, “Everything I hear is that this guy is really a bad cat, so you may want to be careful about being associated with his case”, which totally missed the point that there was no justice being applied here. Also, because of either deliberate leaks or this kind of casual treatment of the Arar situation, even journalists were saying, “Well, I don't know. From everything I hear, he sounds like a really bad cat, so why are you persisting in this?” In fact on one occasion two embassy personnel—at least people who identified themselves as Syrian embassy personnel—approached me after a meeting at which I had been calling for a full investigation into the Arar inquiry to say, “I think you want to be careful; this guy is really a bad cat.”

With all of that kind of discussion going on, I'd like to understand—because I can't believe that wouldn't have reached CSIS ears, seeing as they are in the intelligence business—why, given all of that, all of the pertinent officials would not have come out as one voice to say there is no possibility whatsoever of justice being brought to bear on this situation unless, as Monia Mazigh, Maher Arar's wife, said publicly again and again, we “bring him home and bring him to justice”.

What would account for the position CSIS took, that rather than bringing this person to justice they let all of this dangle out there with the distinct possibility that the information had been obtained under torture?

The Chair: Ms. McDonough, that will have to be your final question.

Ms. Alexa McDonough: Thank you, Mr. Chair.

Mr. Jim Judd: First of all, neither I nor anybody else in the Canadian government can take responsibility, I think, for anything that Syrian embassy officials tell you about Mr. Arar.

With respect to the issue of leaks, regarding Mr. Arar or his circumstances, I said in my opening statement that they had all been the subject of investigations, both within the service and as part of Privy Council Office investigations, and that there had been no evidence or conclusions arrived at that would suggest that any of these were coming out of CSIS or CSIS personnel.

I think that's the best I can do to respond to your questions on that.

The Chair: Thank you, Mr. Judd.

We'll now go over to the government side. Mr. MacKenzie, go ahead for seven minutes, please.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair.

Mr. Elcock, I think you were director during the time this event took place. I would just ask you this: Did we ever ask the Americans to detain Mr. Arar, and did we ask the Americans to send him to Syria? And is it fair to say that we don't know what information the Americans had on their own?

Mr. Ward Elcock: Clearly, at the end of the day, as Mr. Judd said, the ideal situation is for us to share information with our allies to identify threats, but there are cases in which we would not have all the information that some of our allies might have or other countries might have. So there is never any certainty about what information your allies hold.

With respect to discussions with the Americans at that point in time, we didn't have any discussions with the Americans around that period on those issues.

• (0940)

Mr. Dave MacKenzie: My point is that we don't know why the Americans did what they did, nor did we direct them to do so or ask them to do so.

Mr. Ward Elcock: Certainly the service did not.

Mr. Dave MacKenzie: Okay.

The other issue this committee has dealt with regards the information provided to the former government during that period of time. There's been some dispute about former cabinet ministers not being aware. During that period of time, particularly when it became known, how much information would have been shared with the appropriate ministers? Would they have been briefed on the situation?

Mr. Ward Elcock: Certainly I briefed our minister regularly on issues, including issues around the Arar affair and the broader context. But we were not a primary participant at that point.

Mr. Dave MacKenzie: And about the concern that maybe some erroneous information had been shared?

Mr. Ward Elcock: The first that I became aware that erroneous information might have been shared was I guess from the coverage of the commissioner's statement.

Mr. Dave MacKenzie: Okay, fair enough.

When we talk about what other governments may have on Canadian citizens, is it also fair to say that we may have information on citizens from other countries that we haven't necessarily shared with those countries?

Mr. Ward Elcock: That would be correct.

Mr. Dave MacKenzie: So it's not unusual that somebody may have some information that has not come back to us? I recognize it is a two-way street. I think we've been very clear about that. But from time to time, there will be information held in a country that is not necessarily shared about its citizens?

Mr. Ward Elcock: That's correct.

Mr. Dave MacKenzie: When we talk about this whole issue with Mr. Arar, is it fair to say that the Canadian involvement—I think it was the commissioner who said that we don't know what we don't know about why the Americans made the decision to do what they did—in the whole thing was very small because we simply don't know what they knew?

Mr. Ward Elcock: We were not party to all the information the Americans had.

Mr. Dave MacKenzie: So we may or may not have played a major role in what ultimately happened to Mr. Arar?

Mr. Ward Elcock: Well, I'm not sure what you mean by "we". In this case, I gather information was provided to the Americans. We hadn't provided it.

Mr. Dave MacKenzie: No, but because we did not have the Americans appear before Mr. Justice O'Connor, we don't know what information they had and what they dealt with.

Mr. Ward Elcock: That's correct.

Mr. Dave MacKenzie: Fair enough.

The other issue that has frequently been brought up around the table is identifying the source of the leaks. Having a little bit of background in that area, I recognize the almost impossible task we can go through. I think from time to time we need to look at other places. There was a book written in the United States and about 35 years later the source of the leaks appeared. He identified himself.

Would you suggest that the sources of leaks are extremely difficult to identify?

Mr. Ward Elcock: It is very difficult to identify the source of leaks. In this case, as Mr. Judd said, although we did an internal investigation, there was no suggestion that it was a CSIS source.

Mr. Dave MacKenzie: Okay.

That's all I had, Chair.

The Chair: Thank you, Mr. MacKenzie.

We'll now begin our second round of questioning. This is a five-minute round. We'll begin with the official opposition.

Mr. Alghabra, please, for five minutes.

Mr. Omar Alghabra (Mississauga—Erindale, Lib.): Thank you, Mr. Chair.

Good morning, gentlemen. Thank you for coming here today.

It probably would be fair to characterize the Maher Arar case as probably one of the biggest, if not the biggest, intelligence failure that our country has seen—from targeting an innocent individual in an investigation, to sharing information beyond the normal protocols, to creating leaks, to misleading government officials. It's serious stuff. I think the majority of Canadians are very nervous. They have lost a certain amount of confidence about the intelligence community in our country.

I think what is making Canadians more anxious is the fact that after the findings of Justice O'Connor's report, beyond verbal assurances and pledges, we have yet to see concrete and tangible measures being implemented by any of the intelligence agencies to assure us that these errors are never going to happen again.

Can you comment, Mr. Judd, on some operational and tangible measures that CSIS has taken, beyond making pledges, which are welcome and needed?

• (0945)

Mr. Jim Judd: If I may, I'd like to just clarify a few things about your question. CSIS did not share information with any foreign government about Mr. Arar.

Mr. Omar Alghabra: I was just referring to the collective intelligence community in Canada. I wasn't directing it at CSIS; I was just characterizing the whole situation.

Mr. Jim Judd: I was just trying to be more specific, because I'm here speaking only on behalf of CSIS.

To get to the point of your question, though, I said in my opening comments, in part in response to other reviews that have been done, including the SIRC review of Mr. Arar's case, that CSIS has already changed its policies in respect of information sharing and assessments with foreign governments. We are looking now, in light of Mr. Justice O'Connor's report, at other steps that may be taken to further provide security in respect of information exchanges with foreign governments. We have, I think it's fair to say, modified our policies and practices in that regard over the past several years in light of reviews that have been done.

Mr. Omar Alghabra: Can you be more specific, if you don't mind, about what policies have changed, from what, and what is the outcome of the new policy?

Mr. Jim Judd: Any information that we now provide to a foreign government with respect to an individual is heavily caveated in terms of how it may be used. As I said in my opening comments, we're much more rigorous in terms of doing assessments on a foreign country's records and practices, which in turn has a bearing on whether or not, in the first instance, we would share any information with them.

I think we've made some advances in training and preparation of our staff to deal with these issues. The broader point, too, is that CSIS, as an intelligence agency, is without a doubt the most reviewed intelligence service in the world. We have two external review bodies that throughout the year conduct reviews and assessments on our operations and practices and policies, and we're constantly changing them in response.

Mr. Omar Alghabra: Sorry, I'm running out of time.

My other question is whether you could give us your assessment right now on the involvement of the RCMP in intelligence and information collection, especially after 9/11. It was perceived prior to 9/11 that CSIS was doing the intelligence collection and the RCMP was more of a law enforcement agency, and now there seems to be some dual role or some duplicity in that role.

Can you give us your assessment of that, please?

The Chair: Just a brief response.

Mr. Jim Judd: I think I would agree with Mr. Justice O'Connor's conclusions in that regard, which is to say that both agencies have a role to play in national security areas. Our role tends to be very much more on the intelligence front and the RCMP's tends to be much more in the realm of processes related to criminal prosecutions.

They have, I think it's fair to say, bolstered their efforts on the intelligence side, but in the past several years we've taken a number of steps with the RCMP bilaterally to ensure that there's greater coherence in terms of what each of us does and how we do it in the national security domain.

The minister, when he appeared before this committee, talked about a number of those things, including the renewed memorandum of understanding and a series of other steps that we've taken, including cooperation on targeting investigations, decisions, training, and so on. At the end of the day, I think both organizations do have a role to play in national security, but ours is more—still and only—intelligence-related; theirs is more on the criminal prosecution end.

• (0950)

The Chair: Thank you, Mr. Judd.

Monsieur Ménard, for five minutes, please.

[*Translation*]

Mr. Serge Ménard: Mr. Elcock, if I understood the answer you gave Mr. MacKenzie correctly, you only learned that false information has been passed on to the American authorities by the RCMP when the whole matter was raised during Mr. Justice O'Connor inquiry. Is that correct?

[*English*]

Mr. Ward Elcock: No, I said that I was not aware of it until the commissioner's statement before the committee.

[*Translation*]

Mr. Serge Ménard: That is what I meant. Perhaps something got lost in the interpretation.

[*English*]

Mr. Ward Elcock: No, you said before the O'Connor commission.

[*Translation*]

Mr. Serge Ménard: So before the O'Connor Commission began its work, you were not aware that false information had been passed on?

[*English*]

Mr. Ward Elcock: No, I did not know until the commissioner made his statement before the parliamentary committee that there was some possibility that misinformation had been communicated.

[Translation]

Mr. Serge Ménard: So that had to be after February 2004?

[English]

Mr. Ward Elcock: No. When did the commissioner appear? That's within the last month or so.

[Translation]

Mr. Serge Ménard: So it was even later than the time at which the Commission began its work.

Were you aware of Mr. Arar's claims? You were also aware of his return from Syria, which received a great deal of media attention.

[English]

Mr. Ward Elcock: I was certainly aware of the publication of that information.

[Translation]

Mr. Serge Ménard: I see.

So you knew that this Canadian citizen had been in prison in Syria and tortured because of his first involvement. When he returned to Canada, did he not become a person of interest to your service?

[English]

Mr. Ward Elcock: That's not a subject that I would be able to comment on. It has always been a practice of the service not to comment on the status of any individual.

[Translation]

Mr. Serge Ménard: Of course, I have to go on with what would be reasonable to do. I think it would be reasonable for you to keep a closer eye on him and to obtain information from the American authorities.

Why did they take this extraordinary step of sending him to a country where people are interrogated in much more brutal ways than in Canada or the United States?

[English]

Mr. Ward Elcock: That may be your assumption, sir. I can't comment on that.

[Translation]

Mr. Serge Ménard: I understand that you cannot do that in public. Would you feel more comfortable doing so in camera?

[English]

Mr. Ward Elcock: No.

[Translation]

Mr. Serge Ménard: Assuming you knew before he returned to this country that he had been sent over there because of mistakes made by the RCMP, would it not have been normal to communicate with the Syrian authorities to tell them that this individual had apparently been sent to them by mistake, and that unless they had other information about him, it would be wiser to release him, because he was believed to be innocent?

[English]

Mr. Ward Elcock: If one had such information, that might be a logical assumption.

[Translation]

Mr. Serge Ménard: I imagine it would have been logical for the head of the RCMP to do so, because that is what he believed — namely that Mr. Arar was innocent with respect to involvement with terrorist organizations.

● (0955)

[English]

Mr. Ward Elcock: I can't comment on that. I'm not aware of the information that the RCMP have before them.

[Translation]

Mr. Serge Ménard: Yes, but you do know that Mr. Zaccardelli told us that he was convinced that Mr. Arar was innocent with respect to any involvement with terrorist organizations from the time he reviewed the file, just after Mr. Arar was sent to Syria.

[English]

Mr. Ward Elcock: As I said at the beginning, I didn't become aware of that until very recently.

[Translation]

Mr. Serge Ménard: All right.

[English]

The Chair: A brief question, Monsieur Ménard.

[Translation]

Mr. Serge Ménard: So you cannot tell us whether you were watching Mr. Arar after November 4, 2003, after he returned to the country.

I would like to ask another question. Now that you know that the information was passed on by the RCMP, are you convinced that there should be a single Canadian body to deal with the intelligence services of other countries?

[English]

The Chair: Mr. Elcock.

Mr. Ward Elcock: Mr. Chairman, I'm here with respect to activities at an earlier time. I have a day job as Deputy Minister of National Defence. I'm not a spokesman for CSIS, and it wouldn't be for me to comment on that subject.

The Chair: Mr. Brown.

Mr. Gord Brown (Leeds—Grenville, CPC): I know that many Canadians are keenly interested in what has gone on in the Arar affair. It's broken down into four areas: what went on before Mr. Arar arrived in New York, what occurred in New York, what happened when he was transferred to Syria, and what took place when he returned to Canada.

I have been regularly asking questions having to do with what the Americans knew. I know that other members of the committee are now on to that. Commissioner Zaccardelli was less than clear about what the Americans knew and what impact it had on sending Mr. Arar to Syria. Today we've gotten a bit more into it. Our former minister was a bit more definitive. He believed that there had been some investigation by the Americans. Now we're hearing that there was possibly more than that.

I'm going to focus on what information CSIS gave to the RCMP, which then gave information to the U.S. After that, we'll talk a bit about the return to Canada.

Was the phrase "group of Islamic extremist individuals suspected of being linked to the al-Qaeda terrorist movement" used in the CSIS information originally given to the RCMP? What was the basis for that conclusion? Did CSIS know that Arar was being included in that description?

Mr. Jim Judd: I guess the shortest and most frank reply is that I do not know the answer to that question.

Mr. Gord Brown: Okay.

Mr. Ward Elcock: I'd like to take it a slight step further. I don't think either of us could comment on the information that was shared with the RCMP. It would not be the practice of the service to comment on such information.

Mr. Gord Brown: Was CSIS aware of any of the inaccuracies in the information that was handed over to the RCMP?

Mr. Ward Elcock: As I said, I'm not aware of the issue. The first I became aware of the potential issue of inaccuracies in information was the statement that Mr. Zaccardelli made in public in the last few weeks.

Mr. Gord Brown: After Mr. Arar returned to Canada, information was still being given from the RCMP. I assume they relied somewhat on information from you folks. Some of this information was given to the PCO at the time. Did anyone from CSIS ever question any of the inaccurate information that was moving around from the RCMP to the PCO?

Mr. Ward Elcock: In my time in the organization, I'm not aware of providing inaccurate information to anyone, the RCMP in particular, on this subject. The first I became aware of the possibility of inaccuracies in the information was the commissioner's recent statement.

• (1000)

Mr. Gord Brown: I find it quite extraordinary that this information was still moving around after Mr. Arar had returned to Canada, and that nobody wants to take responsibility for it.

I'm going to move on to what happened upon the return to Canada. Was CSIS privy to any of that RCMP material supplied to PCO? Do you feel that this information is a matter of national security that you don't want to share with this committee?

Mr. Ward Elcock: We were focused on the information we would provide to the PCO. I wasn't focused on the information that the RCMP was providing or not providing.

Mr. Gord Brown: All right. We don't seem to be getting too far. I'll let it go at that. Thank you.

The Chair: Mr. Zed.

Mr. Paul Zed (Saint John, Lib.): Thank you.

Ms. Alexa McDonough: I may be unfamiliar with the allocation of questions, but does the NDP not get a further question?

The Chair: No. The practice at this committee is to give all MPs one opportunity before anybody gets a second, unless someone from your party chooses to give their spot to you.

Ms. Alexa McDonough: So on the third round I get a further—

The Chair: You do not get a turn now until we go through the entire rotation and come back to the NDP.

Go ahead, Mr. Zed.

Mr. Paul Zed: Thank you, Mr. Chair.

Mr. Elcock, Mr. Judd, first of all, I want to say that I'm substituting today for Irwin Cotler, who unfortunately is unable to be here. He was anxious to remind both of you gentlemen of the difficulty of the job you do—and I'm sure you have had some challenges—but also to underscore the importance of public confidence in the CSIS organization.

As a former chair of this committee, I understand the difficulties and challenges you have. My question is pretty simple. Do you believe that any of the activities or actions of CSIS in any way contributed to Mr. Arar's unfortunate and illegal removal from this country and his torture? I would like both of you gentlemen to answer that question.

Mr. Jim Judd: No.

Mr. Ward Elcock: No.

Mr. Paul Zed: Then if you don't think that your organization contributed in any way, what's all the fuss about? Why are we, as members of Parliament, concerned about what CSIS might or might not have known? What did Justice O'Connor have? What about all the things Justice O'Connor said about certain activities of CSIS? Was it just a dream?

Mr. Ward Elcock: Mr. Chairman, from what I'm aware of what Mr. Justice O'Connor said—and it is frankly only from the newspapers, as I have not read the report—my understanding of his comments is that they don't actually go to the question asked about the removal of Mr. Arar from the United States. He wasn't actually removed from Canada; he was removed from the United States.

Mr. Paul Zed: Let's stop playing lawyer and let's start dealing with public confidence. I think that's really what's critical here, gentlemen. I think one of the things you're detecting from members of Parliament, of all parties, is the frustration that CSIS is sticking its head in the sand and not appreciating the importance of having public confidence in a system that demands that the rule of law in our country be followed.

You had the opportunity to correct the record on information. That didn't happen. My colleague Ms. McDonough referenced the one voice of the RCMP. You haven't dealt with that. You failed to apologize to a Canadian citizen after your sister agency, the RCMP, basically said they're sorry. Just some basic public confidence is required here, gentlemen.

That's a question.

Mr. Jim Judd: Let me try to answer.

As Mr. Justice O'Connor concluded in his report, officials of CSIS—the organization and anyone in it—did not provide any information to any foreign government about Mr. Arar. The information provided to the United States was provided by the RCMP. Going back to Mr. Brown's question, I think Mr. Justice O'Connor also concluded that the information the RCMP compiled in the course of its work was based on the RCMP investigation, not necessarily on anything that we had done or not done.

I recognize very much the issue you're getting at of public confidence in an institution such as ours. But I do think that a reading of Justice O'Connor's report would certainly endorse what I've just said. I would also recognize, as I recognized in my opening statement, that he criticizes CSIS on several matters, which I responded to in my opening statement, including the torture assessment and the single-voice letter and the issue of leaks. At the end of the day, we are unfortunately in the position, regrettably, in many instances, of being bound by issues of national security confidences that put limitations on what we can say publicly.

• (1005)

The Chair: Your time is up, unfortunately.

Mr. Paul Zed: I have one short last intervention, if I could.

The Chair: You had five minutes.

Mr. Paul Zed: I just want to ask if this could be put on the record, and then he could respond to the committee at some future point.

The Chair: We still have fifty minutes left, so I don't think that will be a problem.

Mr. Hawn, for five minutes.

Mr. Laurie Hawn (Edmonton Centre, CPC): Thank you, Mr. Chair.

Thanks for being here, gentlemen. I know it's Halloween and some people may be inclined to hunt witches on Halloween, but that's not what I'm trying to do.

However, I do have to say, Mr. Elcock, that I do find it curious that the head of CSIS would not be curious about the period between October 2003 and September 2006. Mr. Zaccardelli spoke to us here about some things that were obviously bubbling up in the public eye and within the purview of CSIS, the RCMP, and whatever goes on in that world.

Mr. Judd, you mentioned that CSIS is the most reviewed intelligence service in the world, and that Canadians have a habit of navel-gazing and so on. I understand that, but is it a strength or is it a weakness?

Mr. Jim Judd: I would say it is generally a strength in some respects, partly because of the recognition by employees of our organization that virtually anything and everything they do is subject to third-party review over the course of the year. That has the effect of generating perhaps a high level of due diligence and caution in how the organization works.

That's not to say the organization is mistake-free. It's an organization of human beings who can err from time to time, but I think the experience over the last 22 years of its existence has been that the review mechanisms—whether it's the Security Intelligence Review Committee, the Inspector General's office, or various other

review mechanisms that exist in respect of CSIS, as they do with respect to any other member of the federal government—have been such as to make it an organization that is adaptive over time to the identification of shortcomings and taking steps to try to rectify those for future action.

On the whole, I think it has been a positive for the organization; and going back to an earlier question, it would hopefully have some impact in terms of public confidence that the organization is functioning as it should, in accordance with directives in law.

• (1010)

Mr. Laurie Hawn: If there's a failure in public confidence, is it a failure of confidence in CSIS for the work or the review that has gone on, or is it a failure in what's done with the information that the reviewers, the overseers, have made of that information?

Mr. Jim Judd: Quite candidly, one of the issues that you face in managing organizations such as ours is that it's very circumscribed in what it can and cannot say publicly. That's a real handicap, quite frankly, because in many instances our protection of national security confidences is actually to our detriment in terms of what the organization has done or has not done.

It's a normal human reaction, certainly in most democratic societies, to be suspicious of organizations that deal with secrets, because secrets make people uncomfortable. As well, people occasionally get nervous in terms of dealing with issues of national security, because they can be uncomfortable issues and do raise dilemmas of various sorts.

Mr. Laurie Hawn: There has been some suggestion that there be a committee of parliamentarians who would oversee matters of national security. Would public confidence be enhanced with an all-party committee such as that, one that would oversee CSIS, RCMP, National Defence, and all that kind of stuff, much like what happens in the U.S.? Do you think that would be a good thing? What are your views on the possibility of that kind of committee?

Mr. Jim Judd: I would hope it would have a positive impact on public confidence. As you know, most western intelligence services do have some form of parliamentary or congressional legislative review. Personally, I think there would be some benefit to having that in terms of, at a minimum, developing a better understanding on the part of parliamentarians as to what organizations such as ours do or don't do, how they do it, and so on, so that the level of conversancy with these matters is better understood. The fact that elected representatives of the people are so informed I would hope would have a positive impact on public confidence as well.

The Chair: We'll get back to you in the next round.

We're going on to our final round now, beginning with Mr. Chan, for five minutes, please.

Hon. Raymond Chan (Richmond, Lib.): Thank you very much, Mr. Chairman.

Thank you, Mr. Elcock and Mr. Judd, for coming to the committee. I just want to share some of my feelings about this issue, and hopefully we can work together to solve some of the issues.

Canada is a country of immigrants. Many of us come from some rude states and have seen human rights abuses to our forefathers or our relatives or are witnesses to such abuses. This is why it is so important for those of us who came to Canada, who came for the protection of human rights, to understand what's going on in this issue.

First, for the years I've been in Canada, I've really appreciated the work of CSIS. During the days when I was a human rights activist, CSIS was very much on alert to the things we faced. They were helpful in giving me and my colleagues confidence in this country.

Now I want to get into the questions.

We expect CSIS to protect Canadian citizens. We talk about sharing information with the States, so this is a question to Mr. Elcock particularly. After the deportation of Mr. Arar to Syria by the U.S. government, I would have expected that the Americans would have shared voluntarily with CSIS what additional information it was that they had on Mr. Arar that led them to make the decision to deport him to Syria. If they didn't do it voluntarily, I would have expected CSIS to ask for that information in order to protect our citizens. Have you asked, or have we asked?

•(1015)

Mr. Ward Elcock: At the time, we expressed interest in having more information, but we were not provided additional information.

Hon. Raymond Chan: It makes me feel a bit more comfortable that you did ask for that information.

I have a question for you, Mr. Judd. You talk about how CSIS will be much more careful about information from countries with poor human rights records. From what I have read in the newspapers for the last few years, since 9/11, the Americans have carried out torture, have detained citizens—up to about 20,000, and most of them innocent—without legal process, have secret jails around the world, and continue to not eliminate using some form of torture on persons of interest. Would you classify the United States as a country with a poor human rights record?

Mr. Jim Judd: If I could, sir, let me just say generally that our practices and policies on information sharing, in terms of the caveats that are attached to them, apply generally to any foreign partner.

The Chair: Make it a brief question, Mr. Chan.

Hon. Raymond Chan: Since the Maher Arar issue, the Americans have not shared the information on Mr. Arar with us. I would say that is really odd. Are they being protective of their liability? Did this incident sour the cooperative relationship between Canada and the United States?

The question is for both gentlemen.

Thank you.

Mr. Ward Elcock: I don't find it odd. There are lots of occasions when countries don't share information with us or we don't share information with other countries. It is not particularly a surprise.

Hon. Raymond Chan: Did it sour the relationship between the two?

Mr. Ward Elcock: No.

The Chair: Mr. Judd, do you have a comment on that?

Mr. Jim Judd: No. I'd just say that, as I tried to state before, our organization has become substantially more conscious about information sharing generally with foreign partners. It remains a pre-eminent consideration for us in our operations. In many instances, we neither accept nor give information to foreign partners. It is very much determined on a case-by-case basis.

The Chair: Thank you.

The last questioner in this fourth round is Mr. Norlock, please.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you, gentlemen, for your presence here today, to answer some very difficult and pointed questions.

Carrying through with some of the questions with regard to information sharing with the United States, in particular, you mentioned at the beginning that you do share information with foreign entities and that this information sharing goes back and forth. Yet in the Arar case, you did not share information with the United States. I suspect some people would think that's because the RCMP said they were going to be the Canadian agency that was going to share this information, that they would take the lead on it.

So first, is it strange for you not to share certain kinds of information that would be going back and forth to Canada? Second, in this case, did the RCMP tell you to stay hands-off because they were handling this one?

•(1020)

Mr. Ward Elcock: Mr. Chairman, it wouldn't have been unusual for information not to have been shared, as Mr. Judd indicated. There are lots of occasions when information is not shared. Certainly, at the time, it was not a case of the RCMP telling us not to share because they were going to share. That certainly wasn't part of the plan.

Mr. Rick Norlock: Going to caution and the changes CSIS has made to its policies, one of the strengths that Mr. Judd mentioned with regard to Canada's information gathering unit, CSIS, was that our standards and our policies are far superior to those of other countries. In other words, we're more open, we're very cautious, etc.

From the standpoint of being able to get the job done, do you feel there is an appropriate balance? This goes to Canadians feeling not only safe that our rights and privileges are being protected, but feeling that we're not being so cautious as to put in jeopardy the safety of Canadians because we're reticent to get involved in the nitty-gritty, the dirt of information sharing, and various information technologies that give us an ability to protect citizens.

It is easy to say yes, but when you compare us to other agencies throughout the world, wouldn't Canada want to have the best not only in protecting our freedoms, but the best in making sure the bad guys out there don't use that as a tool to get us?

Mr. Jim Judd: I think that's a set of determinations that are applied every day in our organization, the balance between the benefit of sharing information versus potential risk of the information being misused. I don't know that I can say we have a handy-dandy formula that applies across the board; we tend to deal with these issues on a case-by-case basis. It's always a matter of trying to get the balance right. But certainly we like to think that we take due diligence with regard to any risk to Canada or Canadians, here or abroad, and act on that. But we're also conscious of the potential downsides from other vantage points of being too collaborative with some foreign partners.

I'm sorry, that's a very awkward answer, but I think it's about the best I can do on that.

Mr. Rick Norlock: Do you feel that in Canada, as opposed to other countries, there may be too much political interference with the ability with which you go about your daily job? In other words, do you find that in our zeal to protect Canada—and I'm not saying this is bad or good, this is a question that I think all Canadians need to hear you answer—there's an overzealous desire by politicians to second-guess your agency?

The Chair: You just have time for a brief response.

Mr. Jim Judd: I'll make two quick points on that, sir, if I may.

I don't believe that we are hampered by anything in the realm of political interference that affects our operations. In respect to the second-guessing, I think you're defining the second-guessing community much too narrowly. It may actually be quite a lot broader than just the political circle.

Mr. Rick Norlock: Thank you.

The Chair: Okay, Rick, thank you.

We will now begin from the beginning again with the Liberal Party for five minutes, followed by the Bloc and the New Democratic Party.

Mr. Holland, please.

Mr. Mark Holland: Mr. Chair, normally I resist the temptation to add commentary through the question process, but I'm not going to right now because this is staggering to me.

First, that you would start off hiding behind a government line in refusing to apologize, and then that you would go one step further in saying, directly in the face of what Justice O'Connor's report said, that CSIS had no role in what happened to Maher Arar, and leading to him winding up in Syria and facing torture, is unbelievable.

But then, Mr. Elcock, for you to say to this committee that you have not read Justice O'Connor's report.... As a former director, as somebody who is a witness before this committee, that you would not even have a passing interest to read that report before appearing at the committee today is deeply upsetting.

I'm going to go back to a couple of questions that I have, the first dealing with the Syrian officials. Syrian officials stated that on three separate times CSIS had provided them with information that they did not want Mr. Arar back. And they relate specifically to perhaps the meeting in November 2002 that took place. Can you tell me what role CSIS may have played in leading to that assumption by the

Syrian government, and moreover what you could have done to prevent that or avoid that interpretation?

• (1025)

Mr. Jim Judd: I think Mr. Justice O'Connor addressed that issue in his report and came to the conclusion that he could establish no basis on which he could determine why the Syrian authorities would have come to that conclusion on the basis of information from anybody in CSIS or anybody in the Canadian government.

With respect to the meeting that took place in Syria, Mr. Justice O'Connor also looked at that matter in some substantial measure and concluded that the meeting with the Syrian authorities was in the circumstances an appropriate one that had been more broadly endorsed by other federal agencies and that CSIS provided absolutely no information whatsoever to Syrian authorities about Mr. Arar or, for that matter, anything else that I can recall.

Mr. Mark Holland: Going back to questions I had earlier on the information exchange, it was stated that CSIS was not aware of the RCMP using its information and sending it to the U.S. Presumably, you found out through this process. What about leaks? Clearly, the information that was being leaked out of the RCMP was being given to the RCMP in many instances by CSIS. What actions did CSIS take at that point in time to discuss these leaks and to discuss how the RCMP was using CSIS information?

Mr. Jim Judd: Can I clarify again? The information that the RCMP had at its disposal in respect of this investigation, if you read Justice O'Connor's report, was to a large extent the result of an RCMP investigation. It had nothing to do with us. The case in point, the investigation at CSIS at the time, you may recall from Mr. Justice O'Connor's report, had in fact been turned over to the RCMP as having potential basis for a criminal investigation. The RCMP then proceeded with its own investigation in that regard, which in turn led to the production of information that they may have shared with the United States authorities.

With respect to the issue of leaks, Mr. Justice O'Connor cites eight instances of leaks that took place in the course of his inquiry. As I said in my opening statement, our organization participated in the investigation of those leaks. They were done internally or as part of an investigation led by Privy Council Office into the leaks. The conclusion, absent the ongoing criminal investigation in one instance, seems to have been that there was no evidence that any of the leaked material emanated from CSIS or CSIS employees.

• (1030)

The Chair: Thank you.

Now we'll go to the Bloc, Ms. Bonsant.

[*Translation*]

Ms. France Bonsant (Compton—Stanstead, BQ): I will ask you one question, and then I will turn the floor over to Mr. Ménard.

I came here to try to understand the role played by the RCMP compared to your role in the Maher Arar matter. I am not familiar with your systems, and the more you talk, the more confused I get..

You say you work with the RCMP, but that you do not share files; you have information that you do not share with the RCMP; you are not responsible for Mr. Arar's deportation, the RCMP is.

Do you work together or not? Do you work in parallel to the RCMP? Are you competitors who are trying to get into the Canadian government's good graces?

[English]

The Chair: Mr. Judd.

Mr. Jim Judd: We occupy some of the same territory. CSIS has a mandate in respect of national security. Our job, among others, is to provide intelligence and information to the government on national security issues. The RCMP has a mandate, obviously, as a police organization for criminal prosecutions and investigations. Twenty-two or twenty-three years ago we were one and the same organization. In fact, there is another public inquiry just launched, headed by a former chief justice of the Supreme Court, whose task, among others, is to determine why CSIS and the RCMP did not cooperate at the time of the Air India inquiry and what should be done going forward to ensure that there are improvements in that cooperation.

It's a difficult distinction to draw for many people, the difference between what we do and what the RCMP does. In general terms, we collect intelligence and we advise the government. If there are circumstances in which we believe an activity could constitute or might constitute a criminal act, that would normally be turned over to a police organization to deal with as a criminal prosecution. In the case of Mr. Arar, there had been a CSIS investigation involving some individuals. That investigation was turned over to the RCMP in the aftermath of the 9/11 incidents and the burgeoning demands on CSIS. But the investigation involving some set of individuals, with whom Mr. Arar subsequently became associated, was then an RCMP criminal investigation.

[Translation]

Ms. France Bonsant: I see. Thank you.

[English]

The Chair: You have a little time left.

[Translation]

Mr. Serge Ménard: Give me at least two minutes, because I would like to make a few comments.

Mr. Judd, I fully understand the position you explained to Laurie Hawn, and I know how sensitive it is to work for a secret organization, but I also know how necessary it is. In fact, I am in complete agreement with the views expressed about this by Mr. Justice Dennis O'Connor.

However, I have noted that in the absence of information, generally, there are rumours, and they are always worse than the truth.

I also think that our security depends a great deal more on the work of your organizations than on the legislation we are amending here.

So I understand the thankless position in which you find yourself, particularly since we are trying to save the lives of potential innocent victims of terrorist activity. I have not lost my old reflexes as a lawyer, and I think that in behaving in this way, we must also avoid having innocent victims suffer an unacceptable fate.

Could you tell me exactly why the United States sent Mr. Arar to Syria? Have you asked that question? If so, did you get an answer or not? If you did get an answer, did it have any impact on your way of handling this matter?

I am asking all these questions at once, because I have very little time. I think it is normal that someone who was sent in Syria by the United States and who returns from there would necessarily be a person of interest to you. However, it does not seem to me that you have dealt with the issue as though that was the case.

• (1035)

[English]

The Chair: A very brief response.

Mr. Jim Judd: I have two quick responses to you, sir. One is that a number of Canadian officials, elected and unelected, made requests to the United States as to what it was they based their decision on. To the best of my knowledge, I do not know of any Canadian official, elected or unelected, who ever got an answer from American authorities on that issue.

With respect to the question as to whether Mr. Arar was or was not a subject of interest, I'm going to do a turtle and retreat into our conundrum on national security confidences, which is that as a matter of principle we neither confirm nor deny whether individuals are or are not subjects of interest to us in an investigation.

I regret saying that, because I understand the frustration that follows it, but that is the general principle that our organization and other intelligence organizations operate on around the world.

The Chair: Ms. McDonough, for five minutes, please.

Ms. Alexa McDonough: Thank you, Mr. Chairman.

It's hard to know, at least on the basis of this morning, whether the frustration that we feel is a function of what you have said about not sharing information or whether it's because some of the problems that were caused by CSIS were more by omission or by inaction than actual acts of commission.

I want to follow up briefly. My colleague Mr. Ménard raised the question of whether you would be more comfortable if you were answering some of these questions in camera. I just want to put the question to you of whether the committee would have reason to believe that we would get more information, on the basis of which we could come to some form of conclusion, if we were meeting in camera. I ask that question recognizing that if it's problematic for you that there are suspicions about an agency that operates on the basis of secrets, it's also a concern for parliamentarians. But I really want to understand whether some of the information that we are desperately seeking would be more forthcoming in camera and therefore that's something that should be considered as a further step.

Mr. Jim Judd: My natural predisposition would be to be more forthcoming. Unfortunately, we do have a set of policies and principles relating to national security confidence that we have followed historically, as do other services of our sort, in terms of what we will or will not convey publicly.

With respect to the issue of whether or not more could be conveyed in camera, I would just quickly say two things. Among my many deficiencies, I'm not a lawyer. Given that the whole issue of national security confidence is before the courts, I would have to seek the advice of legal counsel as to whether or not this would be feasible.

Ms. Alexa McDonough: We have a responsibility to try to get to the bottom of these questions. Today we don't seem to be doing so well. Maybe we need to figure out whether more of that information would be forthcoming in camera.

I want to briefly pursue another line of questioning. Justice O'Connor concluded that for reasons of its own, CSIS preferred that Mr. Arar not return to Canada. He offered evidence for which that seemed to be the case. One reason was that CSIS was concerned that if detainees such as Mr. Arar were returned to Canada, CSIS would require more resources to monitor individuals. The second reason was that CSIS expressed concern that the U.S. government might question Canada's motives and resolve if Mr. Arar were released. I wonder if I could ask you to comment on those two conclusions by Justice O'Connor.

In other words, with the issue of resources, if that did apply at the time, would it still be the case? Secondly, there is the question of whether the information would have been more forthcoming and whether CSIS would have been more proactive if it weren't worried about causing problems with Canada's relationship with the United States.

• (1040)

The Chair: There's one minute left for a response.

Mr. Jim Judd: Very quickly, I gather that Mr. O'Connor came to those conclusions on the basis of both in camera and public testimony by officials of our organization. I personally did not testify before Mr. Justice O'Connor.

With respect to the question related to resources, we always have to do a balancing act in terms of what we do by way of investigatory activity, which for want of a better expression is often referred to as taking a risk management approach to balancing resources and operational priorities.

With respect to the second question, I'm not sure I would personally share that view.

The Chair: Thank you.

Mr. MacKenzie, five minutes.

Mr. Dave MacKenzie: Thank you, Chair.

Mr. Elcock, I know that my friend here was critical of the fact that you hadn't read the report. What is your role right now? You're not involved with CSIS.

Mr. Ward Elcock: No. I have a day job. I am the Deputy Minister of National Defence. We're fairly well occupied at the moment; I just haven't had the chance to read it.

Mr. Dave MacKenzie: I'm not being critical, because I recognize that.

I would question some of my friends opposite as to whether they have read the report. If they read the analysis and recommendations

on pages 162 and 163, they might see that Justice O'Connor is not that critical of CSIS and the role that CSIS played in this. I would perhaps question the demands for apologies from many of them about CSIS's role. When I read Mr. O'Connor's analysis and recommendations, I don't see where he has faulted CSIS a great deal for what transpired.

I think if we look at it on the basis of where fault lies, there are lots of shoulders to bear that responsibility, including political, press, perhaps the RCMP, and perhaps CSIS in some small way. But I don't think it's fair for us to be overly critical of CSIS, when we see what Mr. O'Connor wrote after having the opportunity to hear a lot of testimony.

It's fair that we're here to ask what we can about some of the issues surrounding it. It wasn't our intention with this committee to redo O'Connor. We are concerned about issues surrounding what political people knew and what they should have known, and perhaps what they did to secure Mr. Arar's release from Syria.

I guess that would lead into my question. During that period of time, when there were discussions about the one-voice letter and what was going on in Syria, can you tell us what CSIS's role—not the words—would have been in briefing the political people to work together on that one-voice letter?

Mr. Ward Elcock: Mr. Chairman, I saw the minister regularly throughout that period and throughout my term as director of CSIS on a wide variety of issues.

With respect to that specific issue, it was my view that it was inappropriate for CSIS to be...or that the request was inappropriate, in a sense. Once the request had been made, we had to deal with it. The reality was that it fundamentally offended the principle that we would neither confirm nor deny any inquiry with respect to any individual. Therefore, since the letter would effectively have been public, it would have been beyond the control of the Government of Canada. It was essentially a public letter, and my advice was that we couldn't go there.

Mr. Dave MacKenzie: It would not have mattered whether it was the Arar case or any number of other issues that you would have been dealing with at the same time.

• (1045)

Mr. Ward Elcock: That's correct.

Mr. Dave MacKenzie: And it is also fair to say that CSIS was dealing with a number of other issues, as it does on a day-to-day basis, and that this was not the only issue before CSIS.

Mr. Ward Elcock: That would be right.

Mr. Dave MacKenzie: That's it, Mr. Chair.

The Chair: Thank you, Mr. MacKenzie.

The next round will be our final round. I will have to limit the questioning to approximately four minutes in order to get through the round.

Mr. Alghabra, please.

Mr. Omar Alghabra: Thank you, Mr. Chair.

I want to follow up on what Mr. MacKenzie said. It's true that Judge O'Connor made it clear that he hasn't seen any evidence that CSIS had shared information with the United States, and that CSIS had responded appropriately after the arrest of Mr. Arar. But it's still really unclear, even after today's testimony, what role CSIS played in the investigation into Mr. Arar prior to the detention of Mr. Arar by the United States. That's what we're trying to find out today, and to this minute, with the committee meeting almost over, we still have not received a single clear answer about what role CSIS played in the investigation into Mr. Arar.

I am going to ask this question again: Was CSIS involved in investigating Mr. Arar prior to his detention in the United States?

Mr. Jim Judd: As I said in response to an earlier question, the investigation CSIS had, as is reported in Mr. O'Connor's report, involving a number of individuals was transferred to the RCMP. The RCMP subsequently conducted its own investigation, leading up to certain conclusions that the RCMP came to with respect to the individuals involved in that.

This is not to say that Mr. Arar was or was not a subject of investigation or interest to CSIS before that. I'm sorry, but our principle on identifying whether individuals are or are not subjects of interest to us is one we have to adhere to.

I would just remind you that Mr. O'Connor was quite categorical in laying out in his report how from the time this issue was transferred to the RCMP it became an RCMP investigation.

Mr. Omar Alghabra: We understand that, but it's very important for us to know how we can stop this from happening again. We need to get to the bottom of it, and we're having some difficulties, even today.

One thing Commissioner Zaccardelli said was that he found out prior to the report of Judge O'Connor that Mr. Arar was innocent. Did you find out about his innocence before the release of Mr. O'Connor's report? If not, when did you find out?

Mr. Jim Judd: I think it was at the time of publication of the report of Mr. O'Connor, which I read at some length.

I would remind you that a whole variety of individuals from throughout the federal government, not just CSIS or the RCMP, appeared before Mr. O'Connor in his inquiry. In fact, of all the people in Canada that I know of, Mr. O'Connor and his inquiry staff are the most knowledgeable to be found about the whole case, including who did what.

The fact that Mr. O'Connor comes to certain conclusions or certain findings in his report does not necessarily mean that any one of us knew in advance of publication of the report that those were his conclusions.

Mr. Omar Alghabra: Mr. Zaccardelli said that his own investigation found him to be innocent prior to the release of the report.

The Chair: Your time is up now. Can you keep your point of order until the end? How long would it take?

Mr. Paul Zed: One minute.

The Chair: Quickly, then, what is your point of order?

Mr. Paul Zed: I have backgrounder questions for CSIS arising from the Arar report prepared by Amnesty International. I only have it in English. I ask that it be deposited with the chair, translated, circulated to the entire committee, and given through our committee to Mr. Judd, who, after having an opportunity to review it, would make a reply to the committee.

• (1050)

The Chair: Does the committee consent to this?

Mr. Dave MacKenzie: I question the purpose. This committee was not set up to re-examine O'Connor, contrary to what some folks are saying. I'm not sure I understand what importance this would have.

Mr. Paul Zed: It's because of the short time. There are a series of questions in this document that would be helpful to the committee in its work. Rather than calling a separate committee meeting for Mr. Judd to come back, it would save time if the committee received the document and sent it to Mr. Judd. He would look at the document and prepare his answers to the questions, which would then become part of the record. I'm just trying to save the committee time. If you want to have another meeting, that's fine.

The Chair: Mr. Norlock.

Mr. Rick Norlock: I'm having a hard time understanding this. Mr. O'Connor had an all-encompassing investigative hearing. Absolutely any and every witness who could possibly have added to the Arar case was put in it. We're waiting for his second recommendations.

Amnesty International may well have some concerns, but I can think of any number of agencies who might also have concerns. They would want their questions asked. They would want a crack at Mr. Judd, CSIS, and everybody else. This would be a never-ending thing. It would usurp every other thing the committee does. I fail to see how one organization supersedes all others, why this one is so important that we have to deal with it. I think this committee needs to get on with its job and let Mr. O'Connor finish his.

The Chair: Let me intervene at this point. This discussion is taking more than one minute. We have witnesses before us. We're going to continue to hear from those witnesses, and we'll deal with this issue at another time. We don't have consent right now—there's a lot of discussion. We need to hear from our witnesses.

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: Thank you, Mr. Chairman.

Generally, torture is used to try to get at the truth. I would like to know your service's position on information obtained by torturing people. Do you set it aside completely and consider it unreliable? Do you think such information can be reliable, but that it must be corroborated by other sources? Or, even though torture is a practice you condemn and do not accept, do you nevertheless think that this is information that you would take into account in building a file?

[*English*]

Mr. Jim Judd: I can give you a personal view on that. First, leaving aside the moral issues, I would be suspicious of any information that may have been elicited under torture. People subjected to torture might say anything.

Secondly, as I tried to point out earlier, no matter what the providence of information we receive, it would be extraordinary for us to rely on single-source information. We rely wherever possible on multiple corroboration, irrespective of whether the information may have been obtained through torture. I think that tries to respond to your question.

[*Translation*]

Mr. Serge Ménard: Are you concerned about finding out whether certain services with which you work throughout the world use torture or not?

[*English*]

Mr. Jim Judd: It's obviously a concern for us, an issue for us. We have to take account of that in determining what, if anything, we do with such an agency in terms of either giving or accepting information. But as I tried to point out earlier, because a country may have a human rights record does not necessarily mean that anything and everything that comes out of that country is necessarily a product of torture. The information could have emerged from a communications intercept, or had been provided voluntarily, or any number of other factors.

Secondly, bear in mind that for our organization, given our responsibilities on security screening assessments, a lot of the information that flows back and forth is actually very anodyne—Is this individual who is applying for this, that, or the other who they say they are? Did they live here, there or wherever? Were they in fact a graduate of this university or school? And so on. I think sometimes people believe there is perhaps a lot more information regarding threat-related activities by individuals than there may actually be.

• (1055)

The Chair: Thank you, Mr. Judd.

We'll move to our final questioner, Mr. Brown.

Mr. Gord Brown: Thank you, Mr. Chairman.

I know we're running out of time, so I'll ask one question of Mr. Judd. Clearly, there's frustration around the table from all sides here, and I've been asking this question of our various witnesses: How would you feel about a national security parliamentary oversight committee?

Mr. Jim Judd: As I said in response to an earlier question, that's a fairly common practice in western democracies. Personally, I see some benefits in it in terms of developing a better level of knowledge and understanding by members of Parliament of what organizations like ours do and how they do it, in part to address some of the misconceptions that may exist from time to time.

But I think also that national security issues are obviously a subject of normal great interest for governments and for elected officials of the country and that there is something going back to the issue of legitimacy and public confidence that could perhaps be bolstered through that kind of mechanism.

Mr. Gord Brown: Thank you. That's all.

The Chair: Thank you very much. Our time is up.

I'd like to remind the committee that we're departing from our normal routine of having meetings on Tuesdays and Thursdays. Tomorrow we will be meeting in Room 237-C in the Centre Block at 3:30 in the afternoon.

Thank you very much to the witnesses.

This meeting stands adjourned.

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