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**Chair**

**Mr. Garry Breitkreuz**

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## Standing Committee on Public Safety and National Security

Tuesday, March 31, 2009

• (0905)

[English]

**The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)):** I'd like to bring this meeting of the Standing Committee on Public Safety and National Security to order.

We are dealing with the fairly lengthy orders of the day that you have before you. I won't read them, but we would like to welcome as witnesses the Royal Canadian Mounted Police, the Canadian Border Services Agency, and the Canadian Security Intelligence Service.

We look forward to the meeting and to your testimony, gentlemen. I'm not sure who's going to go first, but I would ask you to introduce yourself and your colleagues, and maybe just give us your position within the organization.

Have you decided who would like to go first?

**Mr. Geoffrey O'Brian (Advisor, Operations and Legislation, Canadian Security Intelligence Service (CSIS)):** Yes. We drew lots and I lost, so I think I get to start.

**The Chair:** Okay, sir.

Mr. O'Brian, if you'd like to go ahead, please begin.

The usual practice is to give you approximately ten minutes and we'd hear from all of you first, and then we'll start our questions and comments after that, if that's all right.

Go ahead, sir.

**Mr. Geoffrey O'Brian:** Thank you, Mr. Chairman.

My name is Geoffrey O'Brian. I'm a member of CSIS. I am, by training, a lawyer, but I have been a manager within the service since it started.

I recognize that my appearance here today follows on that of two CSIS directors, both our current one and our former one, who appeared before the forerunner of this committee in October 2006, which I think was just about a month after the O'Connor commission's first report, its factual report with its 23 recommendations, was made public. More recently, just three weeks ago the executive director of SIRC, the Security Intelligence Review Committee, appeared before you.

Having reviewed their testimony and the questions that were asked there, I frankly didn't think it would be useful simply to repeat what they said. Instead, if you will permit me, I'd like to use this opportunity just to make one sort of general point. That is, as complex as they are, the issues surrounding both the O'Connor and Iacobucci inquiries—information-sharing, human rights, account-

ability—are not new for CSIS. Indeed, what we refer to as the granddaddy of all inquiries, the McDonald commission, which took place in the late 1970s and reported in the early 1980s, whose recommendations of course led to the creation of CSIS, looked at these issues in their August 1981 report.

Among their comments on the subject is the following, and here I'm quoting: "Liaison with foreign agencies raises a number of important policy concerns", one of which "relates to the entering into agreements which may conflict with Canada's foreign policies."

Another issue involves the need for sufficient control over information leaving this country to ensure that the rights of Canadians are adequately protected. It's in part because of the importance and complexity surrounding international information-sharing that unusual safeguards were built into the CSIS act in 1984. And I think members may know that before CSIS can enter into an arrangement with a foreign agency, under section 17 of our act we have to obtain the approval of our minister, the Minister of Public Safety, and he has to consult with his or her colleague, the Minister of Foreign Affairs. So before we can enter into an arrangement, there is an opportunity, indeed a requirement, to consider the foreign policy and human rights implications of such an arrangement and of course direct ministerial accountability, in the sense that our minister approves each proposal.

[Translation]

SIRC also reviews these arrangements, looking in detail at particular arrangements or particular issues under those arrangements. I think I'm right in saying that every one of SIRC's annual reports in the last nearly 25 years has examined and commented on some aspect of these issues.

[English]

For example, in their most recent report, tabled on January 27 in the House this year, SIRC noted that we had some 276 arrangements with agencies in 147 countries.

In particular, during the past year SIRC examined those foreign arrangements where there had been restrictions imposed "because of concerns relating to a country's or agency's human rights record, reliability or ability to protect information provided by the Service". SIRC found that we had stuck to our self-imposed restrictions, and here I quote:

The Service performed well in terms of balancing the need to collect vital security intelligence information, while remaining aware of the potential problems of dealing with a restricted agency.

● (0910)

[Translation]

The same sentiment was echoed by Mr. Justice O'Connor in 2006, when he wrote in his report that "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."

[English]

These decisions "do not lend themselves", in Mr. Justice O'Connor's words, "to simple or prescriptive rules". In practice, what that means, I think, for CSIS is that we have had nearly 25 years of experience working under ongoing review and accountability mechanisms. It is ingrained in our culture. While we don't always agree with SIRC, or always enjoy the SIRC process, our director has noted that the system of review set up under the CSIS Act has, over time, made us a better service.

I used the phrase "over time" on purpose, because it seems to me that virtually everyone who's thought about these issues has concluded there are no simple, easy, and once-and-for-all answers. To me, that's part of the genius of the CSIS Act process, that's it's just that, an ongoing process capable of adjusting to changed and changing operational, legal, and political circumstances.

When she appeared before this committee earlier this month, the executive director of SIRC, Susan Pollak, alluded to this. She stated that her experience, or the experience of SIRC, is that

often our recommendations tend to end up being published after steps have already begun to address the issues that have been uncovered through...[our] reviews.... In other words...through the process of review, issues have become apparent on both sides and the service has already started to implement steps that will address the recommendation. By the time the recommendation is done, they've already partially or completely taken up what we've suggested they do.

Are these difficult issues? Yes. The very existence of these major commissions of inquiry, the O'Connor, Iacobucci, and, I might add, the Air India commissions of inquiry, I think are a testament to that. But we have reacted, and I think will react, to these inquiries, frankly, in the same way we regularly react to the ongoing reviews of our activities by SIRC. As well, I might add that the inspector general of CSIS reports to our deputy minister. That is, we absorb the lessons and insights they offer on how we can improve our policies and practices, including those related to information sharing with foreign states with poor human rights records.

In short, we have become accustomed to such ongoing review, and it results for us in an ongoing process of adjustment and refinement.

[Translation]

In looking at the comments, findings and recommendations of the O'Connor and Iacobucci commissions, I hope that my opening remarks will have provided some added context.

[English]

Thank you for inviting all of us here today. I look forward to your questions with an anxious dose of equal parts anticipation and interest.

Thank you, Mr. Chair.

**The Chair:** Thank you very much.

We'll go over now to the Canada Border Services Agency. Mr. Leckey, please.

**Mr. Geoff Leckey (Director General, Intelligence Directorate, Canada Border Services Agency):** Thank you, Mr. Chairman.

My name is Geoffrey Leckey. My current post is that of director general in charge of the intelligence directorate at CBSA.

[Translation]

Thank you, Mr. Chairman and committee members, and good morning.

On behalf of the Canada Border Services Agency, CBSA, I would like to thank the committee for affording us this opportunity to discuss our role in the government's response to the recommendations made by Justice O'Connor and to answer any eventual questions.

[English]

I'd like to begin with a general comment about the CBSA's role in protecting Canada's national security, which hopefully will clarify the role our agency played in the events that were examined by the O'Connor and Iacobucci commissions.

I'll explain how we work with other Canadian agencies as part of our mandate to maintain the security of Canada's borders, to fight transborder crime, and to protect the integrity of Canada's immigration programs. I'll then discuss steps we have taken since the release of the O'Connor report to improve our policies and procedures for cooperating with other agencies to counter threats to the security of Canada and Canadians, while better protecting human rights in a manner consistent with the expectations of Canadians.

Justice O'Connor identified the CBSA's role in the events surrounding Mr. Arar as consisting primarily of how we share information, particularly the lookouts we place on behalf of other agencies. With this in mind, I'd like to offer some context about lookouts and border screening, before going on to provide details of the different measures we've taken to improve the management and effectiveness of our lookout systems.

● (0915)

[Translation]

CBSA's staff, which consists of more than 13,000 employees, provides services at approximately 1,200 locations in Canada and 39 international locations. CBSA employees administer the Immigration and Refugee Protection Act, the Customs Act and more than 90 other federal statutes.

Visitors, immigrants and asylum seekers are carefully selected to prevent banned individuals from entering or remaining in Canada. This selection is an essential part of the Canadian government's commitment to ensuring Canada's safety and security.

CBSA works in close cooperation with Citizenship and Immigration Canada, the Canadian Security Intelligence Service and Canadian law enforcement agencies to prevent criminals and individuals presenting a security risk from entering Canada.

[English]

Lookouts are alerts in a system designed to identify subjects, businesses, and conveyances that may be of interest for many different reasons. Adverse information based on risk indicators or intelligence is uploaded into systems used by CBSA. This information is used to help prevent the entry of travellers who may be inadmissible to Canada and to help prevent the entry of illegal goods. The CBSA places and maintains lookouts for its own use. However, information from our Canadian partners may also be placed in our lookout database, or we may place lookouts at the request of Canadian partners, such as the RCMP, or international partners, such as Interpol.

The CBSA began a comprehensive review of its policies and procedures regarding information sharing following the release of the Auditor General's report on national security in March 2004. This review was informed by the work we did in cooperation with the O'Connor inquiry and addressed many of the issues that Justice O'Connor ultimately identified in his report.

Of the recommendations made by Justice O'Connor, those of greatest significance for the CBSA related to lookouts and the sharing of information, including recommendations regarding safeguards to prevent information from being shared inappropriately; the use of information received from countries with questionable human rights records; and the perception of racial, religious, or ethnic profiling. Our review resulted in the development of improved policy guidelines and written procedures for the use of lookouts and information sharing, including procedures that will enable the CBSA to respond immediately to situations where its information has been misused, and to prevent further misuse.

These policies and procedures have been implemented. Mandatory training for CBSA intelligence officers on policies regarding the proper use of lookouts and the sharing of information and an integrated information sharing and disclosure course were developed and began to be delivered in fiscal year 2007-2008.

A review and update of the CBSA information-sharing policy for intelligence was completed and implemented in October 2008. This policy establishes a principal basis for sharing information with enhanced safeguards and the regular and unscheduled review of lookouts for accuracy and validity. The information-sharing policy, as is consistent with previous practice, explicitly requires as standard procedure that the CBSA review all information received from outside sources to assess its reliability and to determine whether there is a possibility that the information might have been obtained by means that violate human rights.

Our policy provides guidance to all field officers in national security investigations and emphasizes that targeting and lookouts

are to be based on objective risk assessment formulas. The policy makes clear the CBSA's position—again, this is consistent with previous practice—that race, religion, or ethnicity are not risk factors to be used in targeting calculations or in the production of lookouts.

A review and update of the CBSA lookout policy and procedures was implemented in November 2008. Systems changes to support the update were completed in January 2009. A process allowing our migration integrity officers who are posted overseas and visa officers of Citizenship and Immigration Canada to request lookouts from their locations overseas was added in March 2009.

The lookout policy establishes enhanced internal controls and oversight for the issuance, maintenance, reporting, and closing of CBSA lookouts. The steps I've mentioned, which have made significant enhancements to the way we share information and manage lookouts, meet our commitment to implementing the recommendations of the O'Connor report.

• (0920)

[Translation]

Commissioner Iacobucci reported on CBSA's measures mainly concerning the posting of lookouts for three individuals, at the request of partner agencies, border controls conducted by CBSA officers to support the investigation conducted by Project A-O Canada and the exchange of intelligence that was communicated by CBSA to Project A-O Canada without CBSA's consent.

These issues were raised in the O'Connor report. The measures I have described, which were taken to address the deficiencies detected in the review of our policies on lookouts, intelligence exchange and border controls, were adequate in light of the recommendations made by Justice O'Connor.

[English]

At present, CBSA information-sharing policies and practices are entirely consistent with the findings published by Commissioner Iacobucci. Our legislation, principally section 107 of the Customs Act, provides the CBSA with a principled basis on which to share information within a legal context. It's consistent with the charter and the expectations of Canadians that their personal information will be protected from unjustified intrusions.

The CBSA is committed to the Charter of Rights and Freedoms as the cornerstone of our democracy. We recognize that security measures must strike the right balance between protecting Canadians, their way of life and their freedoms, and upholding the rights and freedoms of all persons in keeping with domestic and international law.

That concludes my introductory remarks, Mr. Chair. Once again, thank you for inviting me to appear before you today.

I'll be pleased to address questions from members of the committee.

**The Chair:** Thank you very much, sir.

We'll now move over to Mr. Michaud, from the RCMP.

[*Translation*]

**Chief Superintendent Gilles Michaud (Director General, National Security Criminal Operations Branch, Royal Canadian Mounted Police):** Good day. Thank you Mr. Chairman, and thank you members of the committee for this opportunity to answer your questions about this very important matter.

[*English*]

My name is Gilles Michaud. I am the director general of national security criminal operations. I've been occupying that position for the last eight months.

I am accompanied this morning by Superintendent Bert Hoskins, who is in charge of our national security legislative affairs branch.

[*Translation*]

First, I would like to emphasize that the RCMP takes the findings of the O'Connor and Iacobucci inquiries with the utmost seriousness.

In the process of implementing all the recommendations directed at the RCMP that Justice O'Connor made in Part 1 of his report, the RCMP has strengthened its policies and governance framework regarding national security criminal investigations.

These enhancements have focused on relations with partner agencies, cultural sensitivity and human rights training, information sharing and central control.

• (0925)

[*English*]

We have provided the committee with a comprehensive document explaining how the RCMP has addressed each of Justice O'Connor's part one recommendations that apply to the force. Last week we invited some of your committee staff members and researchers into our office to further discuss the steps that we have taken to ensure that Justice O'Connor's recommendations help to guide the important work we do to protect Canada's national security. I believe our actions speak to the RCMP's commitment in addressing the important issues raised by Justice O'Connor and Justice Iacobucci. Indeed, O'Connor's part one recommendations are now at the core of how the RCMP conducts national security criminal investigations.

I would like to take a moment to mention some of the key areas in which, from a national security perspective, we have moved forward. In developing the government's framework for increased effectiveness and the policy on national security, we have strengthened our

capacity to centrally monitor, supervise, and direct national security criminal investigations. This is achieved largely through more responsibility and accountability at all levels, in conjunction with a decentralized governance approach. This means, among other things, that our employees have a clear and concise framework within which to operate—one that ensures centralized control and monitoring of national security criminal investigations. Bolstering this framework is the fact that our employees have access to enhanced training that addresses human rights and cultural sensitivities. This training is given by respected citizens representing Canada's diverse communities and is regularly updated to reflect the current environment. The national security program's extensive community outreach activities are intended to build mutual trust and understanding between RCMP personnel and the community members most affected by national security operations.

Regarding information sharing, the RCMP will continue its policy of releasing information to relevant partner agencies, as supported by Justice O'Connor in his report. In adhering to his recommendations, we must ensure that information is shared in accordance with clearly established policies respecting relevance, reliability, and accuracy. In addition, national security criminal investigations consult with the Department of Foreign Affairs and International Trade when assessing the implications of sharing information with a country that has a questionable human rights record.

As stated in our policy, in assessing the implications of sharing information with a country with a questionable human rights record, every attempt is made to ensure there is no support or condonation of torture or other abuse of human rights. Specifically, the RCMP conducts an analysis of the human rights record of a country with which it intends to share information. This analysis is based on DFAIT annual reports assessing that country's human rights record. Reports from other human rights organizations may also be consulted. All decisions to interact with a country with a questionable human rights record are documented, including the importance of supplying or receiving such information and the implication of doing so for Canada's human rights obligations.

I would like to be clear that there is no absolute ban on the use of any information received by the RCMP. However, we do not use information whose reliability, accuracy, and relevance is suspect. Information knowingly extracted under torture would by definition be unreliable. In the real world, the challenge is to make a judgment on the known facts about whether any particular information received is the result of torture. Our policy is based on making such assessments on a case-by-case basis.

[Translation]

I would also like to stress that the RCMP's relationship with the Canadian Security Intelligence Service is as strong as ever. We have updated the RCMP-CSIS Memorandum of Understanding to clarify key aspects of our respective operations, and to establish procedures that help resolve problems in a cooperative manner. This has further strengthened our working relationship by instituting activities such as joint workshops aimed at clarifying the respective roles and responsibilities of the two organizations. We are committed to further changes to our national security criminal operations as we continuously adapt to the ever-changing environment.

In closing, I would like to say that public trust is essential to the RCMP's ability to respond to issues of national security. To this end, the RCMP fully supports enhanced review of its national security criminal investigations, and recognizes the important role it plays in maintaining this trust. Enhanced review, however, can only be implemented by the Government of Canada, and any questions on this issue should be directed to the Department of Public Safety.

The RCMP will work within whatever framework the Government of Canada adopts to establish the necessary oversight structures that will ensure continued transparency and accountability of our national security criminal investigations.

Thank you.

• (0930)

[English]

**The Chair:** Thank you very much.

In accordance with the usual practice of the committee, we will now proceed to seven minutes of questions and comments from the Liberal Party.

Mr. Kania, please.

**Mr. Andrew Kania (Brampton West, Lib.):** Thank you, Mr. Chair.

I will start with Mr. Leckey, please. Regarding the 23 O'Connor recommendations, can you tell us how CSIS has actually changed its policies since those recommendations?

**Mr. Geoff Leckey:** When you say CSIS...?

**Mr. Andrew Kania:** Sorry. I meant the CBSA.

**Mr. Geoff Leckey:** Principally, we have updated, improved, and clarified our information-sharing policies and our policies on the issuance and maintenance of lookouts.

**Mr. Andrew Kania:** I'm going to ask a similar question of CSIS. What I'm wondering is if you would both be good enough to provide the committee with a letter, like the RCMP has, setting out how your policies have changed internally since the O'Connor recommendations.

**Mr. Geoffrey O'Brian:** Certainly. If you don't mind, I can take that back; I know that the director, in October 2006, spoke to a number of those. I think of the 23 recommendations—and that has become sort of a buzz phrase, if I may say—there were only six recommendations that mentioned CSIS specifically. For example, I think recommendation 13 says that we should have the yearly human

rights record assessed by the Department of Foreign Affairs. That's done.

I believe that in the minister's letter, which was tabled before the committee and about which some people didn't say awfully nice things.... But if you go through it, look at the recommendations, and match them, there is quite a lot there, frankly, because I think recommendations 11, 14, and 15 all deal with information sharing. Therefore, if you address information sharing, you address three recommendations.

But certainly, if it would help the committee to have that.... There may well be some repetition, frankly, in terms of responses, depending.... But yes, if that would help the committee, I'd be happy to take that back and see if we can do that.

**Mr. Andrew Kania:** Thank you.

The letter you refer to is this letter of March 9, 2009, to Mr. Neve from the minister. Is that accurate?

**Mr. Geoffrey O'Brian:** That was the letter that I understand the committee.... Yes, I must admit, to be honest, that I wasn't involved and I didn't see it, but when it was mentioned before, I took the occasion to get a copy of it and take a look at it. And yes, I mean.... You'll notice that on page 2 he lists specific examples of progress. What you can do, and if it would help the committee, is that we can just tease out what each one refers to in terms of a specific recommendation, for example.

**Mr. Andrew Kania:** Thank you.

I assume all four panellists have seen the letter of March 9, 2009, from the minister to Mr. Neve. Is that accurate?

**A voice:** Yes.

**Mr. Andrew Kania:** Then I assume as well that all four of you have seen the letter of March 18, 2009, from Assistant Commissioner Bob Paulson to our chair. Have you all seen that as well?

• (0935)

**Mr. Geoffrey O'Brian:** I don't think I have. I'm sorry, which one is that?

**Mr. Andrew Kania:** It's a letter to our chair, dated March 18, 2009, from Assistant Commissioner Paulson, setting out his view of how the RCMP has complied with the O'Connor recommendations. Have you not seen this one?

**Mr. Geoffrey O'Brian:** I don't think I have.

**Mr. Andrew Kania:** No, that's fine. Mr. O'Brian and Mr. Leckey, I'm going to ask you both to provide the committee with your own individual letters on behalf of your organizations, setting out how your own internal policies have changed in light of the O'Connor recommendations. That's the first question.

**Mr. Geoff Leckey:** We'll be happy to commit to doing that.

In response to your initial question, the CBSA finds itself in a situation similar to CSIS's. Of the 23 recommendations, there are six that refer, directly or indirectly, to the CBSA. I could go into that in some detail now, but perhaps you'd prefer that I put it in a letter.

**Mr. Andrew Kania:** I think I would, because of time constraints. If we had all day and they didn't cut me off, I'd be happy to do it now. When you send your letter to us, would you be good enough to attach any internal written documentation you have to support the conclusion in the letter?

Secondly, I'd like you to be provided with a copy of this letter of March 18, 2009, from the RCMP. Once again, it's from Assistant Commissioner Bob Paulson. Would you be good enough to read the letter and provide us with a written response stating whether, and for what reasons, you agree or disagree with the letter's contents? In addition, please accompany your response with any relevant internal documentation that you may have.

**Mr. Geoffrey O'Brian:** I'm sorry. You're asking me to comment on whether I've actually—

**Mr. Andrew Kania:** We will provide the letter to you. These are departmental questions, not individual ones.

**Mr. Geoffrey O'Brian:** Okay.

**Mr. Andrew Kania:** I'm going to go to the RCMP and ask the same question. You say you've already seen Assistant Commissioner Paulson's letter of March 18, 2009. Would you read this and provide us with supporting documentation and evidence? I'm not questioning anything; I just want to read more. Would you please provide this to us, in full, so that we can see evidence to confirm the statements made in respect of each of these recommendations?

**Mr. Geoffrey O'Brian:** With respect to CSIS, I would just put one wrinkle on that. We have four areas of policy: administration, security, human resources, and operations. Many of these are public. Some, however, are not, for reasons of national security confidence that I'm sure you can understand. A lot of our answers are process answers, as opposed to specific answers, because often we can't speak about specific cases.

**Mr. Andrew Kania:** If there is something that is not being provided to us, at least let us know what's not being provided and why.

**Mr. Geoffrey O'Brian:** Okay. That's almost like the question "What don't you know that you wish you'd said if you didn't...?"

[*Translation*]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** I was very interested to read the long letter that the RCMP sent you on how it had followed the O'Connor report's recommendations. I don't want to pass judgment on that, and I have very little time.

Briefly, I realize that it is a bit quite repetitive. Let's say that the subjects addressed were repetitive as well: a lot of training, a lot of workshops, a large number of individuals who completed their training. The point now is to discuss exchanges of secret intelligence that must remain secret or at the very least be classified.

Here we're missing an important player, with whom you no doubt have relations, particularly in determining the passenger protection list, commonly called the no-fly list. And that is the Department of Transport, although I don't see how that department has jurisdiction

to assess the dangers that certain individuals wishing to travel by air present. I believe that authority belongs to the RCMP or to the Canadian Security Intelligence Service.

Could you briefly tell us whether you in fact play a role in establishing that list or whether decisions are made by the Department of Transport? If so, on the basis of what information are those decisions made?

● (0940)

**C/Supt Gilles Michaud:** On behalf of the RCMP, I would say that our role with respect to the no-fly list is to provide the Department of Transport with information that we may have on individuals who might pose a threat to air security.

**Mr. Serge Ménard:** Does the Department of Transport make the decision to put a person on the list based on information that you transmit to them, or do you decide who must be put on that list?

**C/Supt Gilles Michaud:** I wouldn't want to mislead you, but I don't think it's the RCMP that makes the decision. However, I'm not familiar enough with the process to know who makes the final decision whether to put a person on the list. I can promise to check and try to get more details on the subject and forward that information to you later.

**Mr. Serge Ménard:** All right.

I imagine you still have a lot of exchanges with our neighbour, the United States. That's probably the country with which we have the most exchanges of all kinds. Can you tell us whether the Americans have access to Canadians' criminal records.

**C/Supt Gilles Michaud:** You're asking me whether they have access to Canadians' criminal records?

**Mr. Serge Ménard:** Yes.

**C/Supt Gilles Michaud:** Pardon me, but I don't know how to answer you. Perhaps Bert can.

In fact, the RCMP has a diversified mandate and it includes various mechanisms. I'm not familiar enough with the various sectors that have that kind of relationship with American agencies to know to what point they can have access to criminal records. I would prefer not to venture an answer and risk it being incorrect.

[*English*]

**Superintendent Bert Hoskins (Superintendent, National Security Criminal Investigations, Royal Canadian Mounted Police):** Maybe I could just comment.

If you're talking specifically about national security, obviously if the Americans want information on an individual, they have to be able to come to us with a request demonstrating why they have that request. Obviously, if we see that request as being lawful, and they have a legitimate interest in that individual, we would share information on that individual with them.



[Translation]

**Mr. Serge Ménard:** I understand that we have to exchange information with our allies in order to protect ourselves from security threats. However, if there is a most highly restricted list, it is criminal records. I'm not familiar enough with the system to know that a lot of people have committed crimes and may be dangerous without ever having been convicted. If there is one truly objective document, it is the one that cites the legal decisions determining that a person has committed crimes. I wonder if that isn't the first document that is consulted when people want to assess the danger an individual presents. First the criminal record is checked, then other things, no? In any case, you don't know.

The Iacobucci report suggests, once again, that the three persons mentioned be offered the same apologies as those made to Mr. Arar. Was the RCMP consulted or does it have a role to play in preparing those apologies? If so, has that been done?

• (0945)

**C/Supt Gilles Michaud:** First, I would like to inform you that civil actions have been brought over those incidents. Currently, it would therefore be inappropriate on my part to make any comment whatever on Judge Iacobucci's report.

**Mr. Serge Ménard:** All right.

Mr. O'Brian, correct me if I'm wrong, but I'm sure you have access to Canadians' criminal records when you want to consult them. Do you have exchanges with the Americans on that subject?

[English]

**Mr. Geoffrey O'Brian:** I'm sorry I'm having slight difficulty understanding *exactement quelle question vous avez posée*.

Is it simply an issue of yes, we have access to CPIC and the criminal database, which all police officers and a number of investigative agencies in the country do have? When we exchange information with the United States, if there is a reason to exchange information and if there is a reason to give the details about an individual that would assist us, we would do that, and that might include the criminal record of that person. I guess my answer is partly specific, if that's the hypothetical that you ask, but it's also general. Every time we exchange information it is subject to review by SIRC; therefore, if we are exchanging too much, or too little, or not enough, or in a cavalier fashion, we tend to believe that the system will sort that out.

Does that address it? I'm not sure.

[Translation]

**Mr. Serge Ménard:** No, but my time is up.

[English]

**Mr. Geoffrey O'Brian:** I'm sorry.

**The Chair:** Mr. Harris.

**Mr. Jack Harris (St. John's East, NDP):** Thank you, Mr. Chairman.

Gentlemen, listening to Mr. O'Brian, it seems that everything is all right and this was just a learning experience for us. Yet we have the reports before us of Justice Iacobucci, for example, determining that during the inquiry the CSIS officials repeatedly told that inquiry that

they had no evidence that Syria used torture so they didn't consider that the confession that he made may be the product of torture. In fact, CSIS decided to corroborate the confession of Mr. Elmaati, which were extracted under torture, by sending more questions to be asked of him by his torturers.

The RCMP also had this confession as well. Your report that Mr. Ménard gave us today now says that the RCMP now determines whether countries have questionable human rights records by consulting with the annual reports of the Department of Foreign Affairs and International Trade. That seems to me to be as incredible as the statement that the RCMP didn't know that the Syrians engaged in torture. Are you saying that's the extent of your understanding of whether a country engages in torture, by looking at annual reports of the Department of Foreign Affairs and International Trade? Is that what you're suggesting to us, that that's your major source or only source?

• (0950)

**C/Supt Gilles Michaud:** No, not at all. What I'm saying is basically that we are looking. For each country that we want to share information with we will do an assessment. That assessment is based in part on DFAIT's annual report on that country in respect to their human rights records. We also consult through the websites and what not of other NGOs, like Amnesty International. There's a complete review being conducted of each country before we go ahead and share information with them.

**Mr. Jack Harris:** Is that something new?

**C/Supt Gilles Michaud:** It's not something new. It's something that is enhanced. We're documenting it now to make sure we can answer for our actions.

**Mr. Jack Harris:** But are you acknowledging that it wasn't done in dealing with the case of Mr. Elmaati, for example, in 2001?

**C/Supt Gilles Michaud:** I can't comment on what was or was not done at that time. What I can speak about is what we do now.

**Mr. Jack Harris:** I'm talking about the findings of Mr. Iacobucci and the testimony given to him that the RCMP didn't know and CSIS didn't know that Syria was engaged in torture. I know you've only been in the job eight months, and maybe that's why you've been sent here, but can you tell us what the RCMP's reaction to that finding is? Is that something they accept? Because you say you take the results and the findings of O'Connor and Iacobucci with the utmost seriousness. Does that mean you accept them?

**C/Supt Gilles Michaud:** What I'm saying is at this time we cannot comment on the findings of Justice Iacobucci. With the recommendations given by Justice O'Connor on events that occurred about the same time, we have implemented a series of policies. We now exercise central control and we've enhanced our process in which we conduct our national security criminal investigations.

**Mr. Jack Harris:** Mr. Michaud, very shortly after the Arar inquiry report was released, Mr. Justice O'Connor's report was released. The Commissioner of the RCMP appeared before this committee while a case was before the courts by Mr. Arar and apologized to Mr. Arar publicly for the actions of the RCMP in this case. Why are your instructions to tell this committee you're not going to apologize for the actions the RCMP were found to have taken in the case of Mr. Almalki, Mr. Nureddin, and Mr. Elmaati?

**The Chair:** Excuse me. There's a point of order.

**Mr. Dave MacKenzie (Oxford, CPC):** With all due respect, Mr. Chair, when I look at the mandate of this committee, it really has nothing to do with what the RCMP will do. It's what they have done in relationship to those two reports, the O'Connor and Iacobucci. I think asking these members of the RCMP, to push them into a corner to do something that's not within their mandate to do in the first place, goes beyond the scope of the committee and I don't know how it enhances what this committee is doing.

**The Chair:** Okay, thank you.

I think the point is well taken. Let's try to focus on what we agreed to.

**Mr. Jack Harris:** With respect, Mr. Chair, what the agencies have done in response to what has happened includes whether or not they're treating it seriously enough to apologize to these individuals for what the agencies have done. So I believe it is a relevant question. We're asking them what they did to change their procedure so it doesn't happen again. Yes, that's very important, but what they are doing to repair the damage that has been done to these men and their families is also important.

So I'm asking them why they are now saying they're not prepared to apologize or try to repair the damage when in the case of Mr. Arar, the Commissioner of the RCMP came and said they apologized for what they have done and what they have caused. This committee made a recommendation after that, that the government ought to attempt to compensate Mr. Arar for what's happened. I don't know what's changed between now and then, and I respect what Mr. MacKenzie is saying, but at the same time we're trying to find out what these agencies and the government are prepared to do to repair the damage they've done.

• (0955)

**Mr. Dave MacKenzie:** It's outside the scope of the responsibility of the two officers who are here. You're asking these two officers to make some apology that you believe they should make. I don't think it's within the scope of their responsibilities to offer that apology to anybody.

As you well know, there is a very large civil action against the Government of Canada. These matters took place some time ago, certainly before this current government, but to push these officers into a corner and try to make them commit one way or another to something that's outside their scope of responsibility I think is too far from the responsibility of the committee.

**The Chair:** Really, I don't think it's going to be useful to start getting into a big long debate. We have our witnesses here. Let's try to stick as much as possible to the present report.

On a point of order as well, Mr. Holland?

**Mr. Mark Holland (Ajax—Pickering, Lib.):** A point of order.

Apologies were absolutely germane to both reports. In the case of O'Connor the apology to Mr. Arar was absolutely germane, and in the case of Iacobucci the apologies to the other individuals were absolutely germane. If there is somebody put in front of this committee who does not have the clearance or authority to talk on the issue and apologize, then we need somebody in front of this committee who can. I will not accept as an excuse litigation. It was not an acceptable excuse under Arar, and it's not an acceptable excuse now. After what had happened, let's make no mistake. Read Iacobucci's conclusions; it is absolutely germane to his conclusions, as it was to O'Connor with Arar. This committee acted on Arar; we have an obligation to do the same. And if there are individuals who are before the committee who can't answer the questions, that doesn't mean we shouldn't ask them; it means we should have people here who can.

**The Chair:** I think that's future business of the committee. We can discuss it at that point.

I'll give you another minute and a half, Mr. Harris.

**Mr. Jack Harris:** Thank you, Mr. Chairman.

I take it that you were instructed not to deal with any questions related to apology, were you?

**C/Supt Gilles Michaud:** No. Basically, what I'm saying is that because of the ongoing civil litigations, because of the fact that the findings of Justice Iacobucci are still under review, I am in no position to make any statement in relation to Justice Iacobucci's findings.

**Mr. Jack Harris:** I have a question to Mr. O'Brian, CSIS.

There was quite a lot of discussion in both the O'Connor report and the Iacobucci findings that the use of particular language and terms such as "jihadist", "Islamic extremist", etc., can open the door to a slipshod and casual process in which guilt is assigned by association, which is a phrase Mr. O'Connor used. Are these phrases that your organization has stopped using in reports and information-sharing? Is that something that you've avoided, this labelling?

**Mr. Geoffrey O'Brian:** No, I don't think so. We attempt to describe individuals in lots of circumstances, depending on the status of the investigation. If it's early in an investigation, we may be simply seeking information. If it's later in an investigation, we may be able to come up with an assessment, and we will do so.

I must admit—and I have to be careful how I respond to this—Mr. Justice O'Connor in fact in terms of CSIS at page 151 of his report on analysis and recommendations said that he was impressed with the way CSIS generally exchanged information, with caveats, and so on and so forth.

If you are asking me if we make mistakes, I will have to admit we are human and we do make mistakes, but I think my answer to you is that we have a process in place that ensures there is sign-off when things are exchanged. We have of course that process of the approval of agreements first, then constant monitoring of them, and we attempt to properly characterize information every time we describe someone.

**The Chair:** Thank you.

We're going to have to wrap up this round. We're right over time.

Mr. McColeman, please.

**Mr. Phil McColeman (Brant, CPC):** First of all, I'd like to thank you all for taking the time from your schedules to be with us. I think it's important to our study of the recommendations that you came prepared today. I appreciate that.

As a new parliamentarian, I tend to think in terms of the general context of what it is we're trying to achieve here, and of the recommendations put before us by these two reports, their acceptance by the agencies who have to adapt, and the implementation of those recommendations. I believe it's the role, from this seat, to be studying it from a 30,000-foot level initially and then to drill down to see evidence of that having occurred.

Having said that, I'll first address my comments and questions to Mr. O'Brian. If you'll allow me, I want to read a section of your submission. It says:

While we don't always agree with SIRC or, frankly, always enjoy the SIRC process, our Director has noted that this system of review set up under the CSIS Act has - over time - made us a better service. I used the phrase "over time" on purpose because it seems to me that virtually everyone who has thought about these issues has concluded that there are no simple, easy once-and-for-all answers. To me, that's part of the genius of the CSIS Act process; that it's just that - an ongoing process, capable of adjusting to changed and changing operational, legal and political circumstances.

Having been involved in civilian oversight of a police service in my history, it seems to me that this context—and I'd like you to comment—implies there's ongoing training and things that are happening in the implementation as recommendations roll out. We see evidence from the minister that there are issues that have been implemented.

I'd like your comments about some of that, about some of the context of the acceptance and implementation, and in the case of CSIS, the oversight of SIRC and how that works well for you.

•(1000)

**Mr. Geoffrey O'Brian:** Yes, thank you.

I think it's terribly important, in terms of context, to understand that this world of review is with us all the time. It isn't a question of going along and being found out and then suddenly having to adjust. It's a constant thing.

When I was trying to prepare for this today, one of the things I found, which frankly surprised me, was that this year's SIRC report, which I think was tabled in the House two months ago, talking about our operational policy, notes that in 2007 and 2008—those are the years they are reporting—CSIS revised and/or published over 140 policies. And I think they mentioned there were 70 more that were being initiated or were under development.

All I'm saying is that it's a continual process. I think that's a terribly important point to make. We sometimes think, and I think legitimately so, of examples like the O'Connor commission, the Iacobucci commission, and Mr. Justice Major's commission, as negative events because they are pointing out what they consider to be lacks or gaps or whatever in our process.

I think that's one way to look at it. The other way to look at it is that it's a positive process. I can't think of too many countries in the world that actually have the commitment to adjust and correct and try to improve the systems they have. I think we should take some pride in that.

Instead of people saying, gosh, they're out to get us, I would hope they would instead say that these are people doing a difficult job under ministerial control, under judicial control, obviously, for warrants, and constantly being reviewed. Under section 41 of our act, there is the ability for anyone to complain if they believe that CSIS has done something that has affected them in any way—I mean, the wording is very general.

Frankly, I think it's a pretty good system. Are there mistakes? Yes. Do bad things happen from time to time? Yes. Is the system a good system? Frankly, I think it is, and I think we should take some pride in it. I think we should view it as a positive.

•(1005)

**Mr. Phil McColeman:** I appreciate that context, because that's been my sense of things in a very practical and pragmatic way in terms of organizations, be they public, businesses, etc. There are successes and failures, especially as you go through the process of change in organizations. You have both sides, and you learn from the failures. That's what these recommendations are, and you take those to heart and change your operations as a result of that. We talk about specifics in this environment, and I'd like it to be pointed out from at least this person's point of view that the general context of how we operate is the bigger, more important question of oversight and governance, in my mind.

I'll give you another example of this. We've had many witnesses to this committee. Most recently we had U.K. members of Parliament here who developed a highly secretive, highly protected group of senior parliamentarians who actually are not able to share in a public venue such as this some of the specifics we're talking about. So I like our system in the sense that we haven't reached that point—where we've had a crisis in which we've had to develop that layer of oversight.

I also would like to ask Mr. Michaud about your comment in your submission, which says that you are committed to making further changes to your national security criminal operations as you continuously adapt to our ever-changing environment. Can you expand on some of the things that you've witnessed as changes in your eight months in the role you're in?

**The Chair:** Very briefly, please. We're way out of time. Maybe we'll have to wait for the next round. Can you, in just a sentence of two, summarize what you might tell us?

**C/Supt Gilles Michaud:** Basically, since I arrived in national security eight months ago, my observation is that we live this on a day-to-day basis. All employees across the RCMP with the national security criminal investigation live the impact and the adjustments that we've brought to our program on a day-to-day basis.

**The Chair:** Thank you.

Mr. Oliphant, please.

**Mr. Robert Oliphant (Don Valley West, Lib.):** Thank you.

Gentlemen, thank you for appearing before us today. I respect the fact that you are representing the institutions you belong to and that you are senior enough in your organizations that you are appearing before a standing committee of the House of Commons.

I hope you respect the fact that I am representing my constituents, one of whom was detained and tortured, most likely as a result of some of the deficiencies in your organizations. That is why I am here today. Mr. Justice Iacobucci did indeed find that the agencies, particularly CSIS and the RCMP, were deficient in your actions, and most likely those inefficiencies, deficiencies, and failures led to the detention, and likely to the torture, of several men.

I'm wondering if today you are in agreement with Mr. Justice Iacobucci's recommendations.

**Mr. Geoffrey O'Brian:** I am pausing because I am, frankly, listening to the held breath of a number of government lawyers, with whom we have all sat down and....

I do in some ways apologize, because it's not an easy position. But the fact is that three individuals are suing the government and individual agencies for several hundred million dollars. We have been informed that anything we say here that could have the least impact upon those cases will be used.

Frankly, our instructions, therefore, are not only slight, they are completely and utterly clear: we cannot in fact discuss anything that would indicate that the government is either in agreement with all of the findings or comment specifically on any of the findings. That's why, in my opening remarks, I tried to phrase it generally.

With respect to your constituent, with respect to any constituent, I would hope that you, as a member of Parliament, would draw to their attention section 41 of our act, which says that any person can complain to SIRC about any act or thing they believe the service has done. I think that's.... I mean, there are very few countries in the world where you can actually do that.

Now, the reality, of course, is that the person will not necessarily find out the information against them, because that's the nature, again, of our organization. But they can be assured that someone outside the organization, someone hopefully with credibility, with complete access to all of the service records, will examine what the service has done. If that person has been affected, there will be a finding.

• (1010)

**Mr. Robert Oliphant:** I'd like to hear from Mr. Michaud on that.

**C/Supt Gilles Michaud:** I was asked to keep it short. I can only echo the comments made by my colleague from CSIS in respect to the position that I am in this morning.

**Mr. Robert Oliphant:** Commissioner Zaccardelli took advantage of parliamentary privilege and issued an apology at this committee days after the O'Connor commission. Are any of you today willing to take parliamentary privilege, which we extend to you, as the Canadian government does, to make apologies?

**Mr. Geoffrey O'Brian:** I'll do that, because, frankly, that is, if I may say, slightly above my pay grade.

**Mr. Robert Oliphant:** Thank you.

**C/Supt Gilles Michaud:** I'm not in that position this morning.

**Mr. Robert Oliphant:** Okay.

I have a question for Mr. Leckey regarding CBSA.

What changes have been made with respect to training of agents since the O'Connor and Iacobucci commissions?

**Mr. Geoff Leckey:** Thank you for giving me the opportunity to use some of my notes.

In terms of the recommendation that the agency should have written policies stating that investigations must not be based on racial, religious, or ethnic profiling, we've implemented mandatory training on diversity and race relations as part of our port-of-entry recruit training. Every entering officer, every border services officer, receives this training to ensure that all CBSA employees use professional and equitable service when dealing with people and clients in the diverse and multicultural environment within which they operate.

We've developed mandatory online diversity e-training for all border services officers. Many of the CBSA's regions—there are eight of them—develop and deliver diversity-related training events relevant to their specific communities.

We participate in the interdepartmental committee of the cross-cultural round table on security—

**The Chair:** I'm sorry, Mr. Oliphant's time is up.

Mr. Norlock, please.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** Thank you very much.

Thank you very much, gentlemen, for coming this morning; whether you wanted to or not, you're here. I appreciate that. I think we all do.

I'd like to begin with some of the questions that Mr. Ménard asked. The way in which I will put most of my questions will be for the edification of Canadians who may be watching and who might be misled by certain terminologies—not, probably, on purpose, but just because it's just the common nomenclature.

The first question is for Mr. Leckey. It has to do with Mr. Ménard's question concerning Canada Protect. Mr. Ménard referred to a no-fly list. Would I be correct in saying that the no-fly list is the U.S. regulation, and Canada Protect is the Canadian legislation, concerning people who are on a list and we have concerns about?

**Mr. Geoff Leckey:** In terms of general usage, the no-fly list refers to the American list, which is quite large. The Canadian list known as Passenger Protect is a completely different list. Incidentally, CBSA has no input into the composition of that list.

• (1015)

**Mr. Rick Norlock:** Who would have compilation of the list?

**Mr. Geoff Leckey:** I'm not the final authority on this, but as I understand it the decision is taken by Transport Canada, acting on advice from CSIS and the RCMP.

**Mr. Rick Norlock:** Would that be correct, Mr. O'Brian, Mr. Michaud?

**Mr. Geoffrey O'Brian:** Yes, it would be.

**C/Supt Gilles Michaud:** Yes. It clarifies my answer from this morning as Transport Canada having the final authority.

**Mr. Rick Norlock:** Thank you.

There were some questions that you were answering concerning checks on people. These have to do with NCIC checks and CPIC checks. For the edification of the folks at home, NCIC is the U.S. equivalent of the Canadian Police Information Centre, is it not?

**C/Supt Gilles Michaud:** Yes, it is.

**Mr. Rick Norlock:** When police officers make checks on people, when they do a CPIC check they can request an NCIC check at the same time. What happens is that the Canadian data bank is searched and at the same time, through an agreement with the United States, we check their data bank as to the criminality, or not, of a person who is checked. Is that not correct?

**C/Supt Gilles Michaud:** I would believe so.

**Mr. Rick Norlock:** Okay.

Also, when people do a check, because there was a suggestion that somebody might have been charged but not convicted.... In the CPIC regime there is a classification of a person who is charged but not convicted, and the person who is making that check is advised that the person is on the charged list but not convicted. Is that not correct?

**C/Supt Gilles Michaud:** That I can't confirm.

**Mr. Rick Norlock:** Well, I can. You might want to bring yourself up to speed on that.

There is also a list in the CPIC notification that a person might be a person of interest—was not necessarily charged and does not have a criminal record. Would I not be correct in saying police would have that information as a result of the CPIC check?

**Supt Bert Hoskins:** I believe you are referring to the observation category.

**Mr. Rick Norlock:** Yes. And for police or other investigative agencies who would have access to CPIC, it makes sense they would need to know that information in order to help them do their job, their job being to protect Canadians.

Thank you.

We had some desire on the part of members of Parliament to extract apologies and to extract information that you're not prepared—or some of you don't feel disposed—to give, and that's because there have been two exhaustive judicial investigations into these matters that we're discussing today, matters that occurred under a previous government. But would I not be correct—and I am throwing this out to all three of you—in saying it really doesn't matter who the government was at the time? Any Canadian government would never knowingly wish to infringe on anyone's human rights or knowingly instruct their agencies to do that. However, in the course of their business, sometimes agencies make errors or mistakes, and we have recourse to civil litigation. Would I not be correct in saying that we wouldn't want to score any political points when we're dealing with things that occurred under other governments or even this government, that we just want to get to the bottom of things and make things right? Would that not be what your agencies want to do?

**Mr. Geoffrey O'Brian:** I'm not sure why they're looking at me.

**Voices:** Oh, oh!

**A voice:** You gave the apology.

**Mr. Geoffrey O'Brian:** With some caution, because I'm not sure if I want to accept the premise of your question about scoring political points...and of course as a public servant at that point I'm supposed to tug my forelock, if I have one, and hide.

Seriously, I cannot imagine any member of Parliament, any member of the government, any head of any agency, any employee of our agency purposively engaging in something that they knew was going to result in inappropriate treatment for someone. Somehow one gets the idea that if you become an employee of CSIS you suddenly leave and park Canadian values at the door. We are a mosaic of Canadian society. Last week I think in the House our employment equity program was tabled, which I think is fairly impressive. The bottom line is that with those reservations, I agree with you.

•(1020)

**The Chair:** Ms. Mourani, please.

[Translation]

**Mrs. Maria Mourani (Ahuntsic, BQ):** Thank you, Mr. Chairman.

Thank you for being here today, gentlemen.

Mr. O'Brian, I would like to continue along your lines. You say you can't imagine that staff at your agency deliberately mistreated a Canadian citizen. I'd like to know your opinion on the examination of the young Omar Khadr, who was taken to Guantanamo in 2003. The images of that interrogation that we saw last summer on the Internet show CSIS employees and a Foreign Affairs employee asking him questions about faith, that is Islam, and about Al-Qaeda members. He was asked whether he had met any. As he was 16 years old, one may assume that he had met them at the age of approximately 10. That young man showed injuries below his sweater.

[English]

**Mr. Dave MacKenzie:** On a point of order, Mr. Chair, we're still talking about these reports. We're not talking about what's going on with the United States. This is about the O'Connor and Iacobucci reports. I don't know how this has gone off.

**The Chair:** Just a brief explanation, Ms. Mourani.

[Translation]

**Mrs. Maria Mourani:** I'll continue. That young man said he had lost an eye and his feet. The Federal Court of Canada—so we're not in the United States—found that he had been tortured by American guards. We taxpayers paid for the salaries, plane tickets and travel of the CSIS employees. I'd like to know whether you think there was an appearance of torture. When they arrived at the site of the interrogation, did they see that that young man, a Canadian citizen—

[English]

**The Chair:** How does that relate? I asked you to relate this to the study that we're doing. Could you explain how this relates to what we're studying?

[Translation]

**Mrs. Maria Mourani:** I'm talking about torture, Mr. Chairman. I'm going to come to my question, if you'll allow me. I've been interrupted three or four times. My question is this: does the Canadian Security Intelligence Service still use information obtained under torture?

[English]

**Mr. Dave MacKenzie:** Point of order. I'm not sure the member understands.

[Translation]

**Mrs. Maria Mourani:** Look, Mr. Chairman, we're talking about torture here.

[English]

**The Chair:** Mr. MacKenzie, please finish your point of order.

**Mr. Dave MacKenzie:** Mr. Chair, the point of order is we're dealing with these particular two inquiries. The member is off to some other area that has nothing to do with the two reports we're dealing with. I'm not sure any part of that has anything to do with these reports. That's what this committee is supposed to examine. That's what we should be doing. If she wants to go on some other sort of a fishing trip, that's one thing, but she should stick to the matters at hand.

•(1025)

**The Chair:** Ms. Mourani, can you explain how this relates to the O'Connor and Iacobucci reports?

[Translation]

**Mrs. Maria Mourani:** Mr. Chairman, we want to clarify one point; we want to talk about the use of information obtained through torture. That's also part of these reports. I don't understand what the problem is if I cite another example to arrive at the same point. We're constantly told that we can't talk about specific cases.

[English]

**The Chair:** Okay, we'll continue, but we're really running out of time here.

[*Translation*]

**Mrs. Maria Mourani:** I'll cite another case because I can't talk about those that are currently before the courts. I'll cite another example of information obtained through torture. You have to know what you want. We can't talk about current cases, so I cite another example, and you tell me that won't work. It works; we're talking about torture, and we want to know whether the agencies dealing with public security use information obtained by torture. I'll cite another example.

[*English*]

**The Chair:** Just a minute. With all due respect to our witnesses, they probably are unable to comment on specific cases—

[*Translation*]

**Mrs. Maria Mourani:** Oh, Mr. Chairman!

[*English*]

**The Chair:** If you have other cases you want them to comment on, it's up to them whether they do.

Mr. Holland, you had a point of order.

**Mr. Mark Holland:** Mr. Chairman, I'm not sure you're understanding Ms. Mourani's point.

In both the Iacobucci and O'Connor reports, one of the chief concerns was.... And I'll quote directly from page 145 of the analysis of recommendations in Justice O'Connor's report, where the 14th recommendation states that "Information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture."

This is a central point to the proceedings of this committee. I believe what Ms. Mourani is trying to establish is whether or not this practice has continued, as we saw in the instance of Mr. Almalki and Mr. Arar, and in other examples. That is central to the point.

**The Chair:** Okay. Mr. Rathgeber, briefly, and then we'll go back to Ms. Mourani.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you, Mr. Chair.

I think you understand Ms. Mourani's question perfectly, and with all due respect to Mr. Holland, the line of questioning deals with a situation on which these witnesses cannot possibly be prepared to provide answers. It happened in Guantanamo Bay in Cuba by American officials, allegedly.

The order of the day, under Standing Order 108(2), is a review of two committees of inquiry, the Iacobucci inquiry and the O'Connor inquiry. I agree with my friend Mr. MacKenzie that questions ought to be limited to those two reports and recommendations.

**The Chair:** Monsieur Ménard, do you have a point of order here?

[*Translation*]

**Mr. Serge Ménard:** Yes. We're here to talk about the action taken on the Iacobucci and O'Connor reports. It was recommended that information obtained by torture no longer be used. Mr. Mourani is right when she tells you that we can't question them about the El-Maati case, for example, because it's before the courts. However, we want not only to know whether the officers received training or attended workshops and so on, but also to see whether, in practice,

they have stopped using information obtained by torture. She cited a known example. I want to respect my colleague Mr. Rathgeber when he says that they aren't prepared to respond to that. I hope there aren't tens of cases or alleged cases in which torture was used to obtain information. There's only one that's known to the public; they therefore had to consider it in their preparation in order to convince us that they have taken the recommendations seriously and that they no longer use information obtained under torture even when it comes from the Americans.

[*English*]

**The Chair:** Okay, thank you. I think you've made your point.

I think the witnesses have heard the discussion.

Ms. Mourani, you still have two minutes left. Go ahead.

[*Translation*]

**Mrs. Maria Mourani:** I'd like to know how much time I have left.

[*English*]

**The Chair:** You have two minutes and 20 seconds.

[*Translation*]

**Mrs. Maria Mourani:** Very well.

Sir, it would be nice if you could answer me. Please, sir.

**Mr. Geoffrey O'Brian:** Perhaps I could try. I could try to answer in French, but, if I do, I believe we'll miss the nuances. So I'm going to answer in English.

[*English*]

If I may say, it seems to me that the introduction to that question and the reaction it evinced, if they do nothing else, show that this is a loaded, difficult question. It's a question that involves policy and operations. There is a moral aspect, and there is a legal aspect. I would love to give a black-and-white, once-and-for-all answer. The simple answer, frankly, is to say we will never use information that we know comes from torture or from mistreatment. I cannot say that, for three reasons.

•(1030)

[*Translation*]

**Mrs. Maria Mourani:** I don't understand your answer. You use the future tense. Are you telling me that, currently, you no longer use information obtained by torture? Even if it comes from the United States, do you check the information?

[*English*]

**Mr. Geoffrey O'Brian:** No. Excuse me. I'm sorry—

[*Translation*]

**Mrs. Maria Mourani:** I'm sorry, but I didn't understand.

[English]

**Mr. Geoffrey O'Brian:** Let me start.... I'm trying to find a good way to start and to come at this. Perhaps I can start with what Susan Pollak said. She was here a few weeks ago. I think you asked the same question of her and she replied that CSIS does use information. Frankly, I'm tempted to say that there are four words that can provide a simple answer, and those four words are either "yes, but" or "no, but", and the "yes, but" is, do we use information that comes from torture? And the answer is that we only do so if lives are at stake.

And there is a premise to that. The premise to that is, first of all, it happens rarely in the exchanges of information that we have. Second of all, information that may have been extracted by methods which are less than the kinds of methods we would like applied to people—citizens, dual citizens, whatever, whether citizens or not.... Normally, the recipient of that information doesn't know how that information was obtained.

So with those first two points—"happens rarely" and "don't necessarily know"—there's been a general answer, which is that every bit of information we get we attempt to assess in terms of its reliability, but in trying to get at this debate, one of the best discussions I've ever seen of this, and I don't know whether the committee's had a chance to read the House of Lords decision, the famous—at least for us famous—House of Lords decision in 2005 called, in shorthand, the torture decision, but that was dealing with their SIAC process. Their security—

[Translation]

**Mrs. Maria Mourani:** Pardon me, Mr. O'Brian, I'm simply going to finish.

[English]

**Mr. Geoffrey O'Brian:** Perhaps if I can try to wrap it up—

**Ms. Maria Mourani:** *Oui*.

**Mr. Geoffrey O'Brian:** —the import of the House of Lords decision was the following. In the common law, and for hundreds of years, information where there is reason to believe it comes from torture can never be used in judicial proceedings, ever. That's the law. The issue is how you do that.

The second point is, can the executive use that information to protect the security of the country in certain instances? The House of Lords went into that. I'm sorry, I've gone on, but I'm drawing a distinction between law enforcement and use by the executive.

**The Chair:** Mr. Rathgeber, please.

**Mr. Brent Rathgeber:** Thank you, Mr. Chair.

Thank you very much to all four witnesses. I'd like to thank you and your respective agencies for providing security to our borders and to our country.

I'm following up on some questions that my friend Mr. Norlock posed and some comments that you made, Mr. O'Brian, borrowing from Justice O'Connor and indicating that no Canadian agency or likely no Canadian would knowingly subject another Canadian citizen to indignity or torture. When you quoted Justice O'Connor, the quote you used was "interact with countries with poor human rights records".

Mr. Michaud, you used similar phraseology in your briefing paper when you talked about "decisions to interact with a country with a questionable human rights record", and then you went on.

I'm curious. Is there a concise or pithy definition of what is and what is not "questionable" or "poor human rights", and who makes that decision?

Mr. O'Brian first, perhaps.

• (1035)

**Mr. Geoffrey O'Brian:** I think my answer would be that it has to be a process, and it's an ongoing one. The fact that a country has been identified as one by Amnesty International, or by the U.S. State Department, or by our own foreign affairs department, or even by us—and we do yearly assessments of each of our posts—that engages in practices we don't approve of would not necessarily mean that particular information that we get from them would be extracted by those means. That's the first point.

My short answer is that there is no finite list. Perhaps if I can put it another way, I know we are looking for a way in which we can say green light in all of these cases but red light in these kinds of cases. Frankly, my perhaps unsatisfactory answer to you or to some of the members here has to be that by and large our response is neither a red nor a green but in a lot of instances an orange light, which means proceed but proceed with caution.

**Mr. Brent Rathgeber:** Mr. Michaud.

**C/Supt Gilles Michaud:** Basically, we don't rely on a definition per se to define what is and what is not. Our assessment process is such that if there are any indications that individuals in that particular country are treated in a way that does not meet our standards, then we proceed with caution. We would be very careful in our dealings with this country.

**Mr. Brent Rathgeber:** As a follow-up to your green and amber analogy, are there categories for some countries that you or your agency believe have abysmal human rights records and ought to be treated one way, and perhaps other categories for countries with poor human rights records for which maybe less concern or caution ought to be exercised?



**Mr. Geoffrey O'Brian:** The simple truth is that I don't know all of the details of that. What I can say is we have agreements that are in three parts: there is an agreement to exchange information for security intelligence purposes; there are agreements for security screening purposes; and then there are technical exchanges that we do. We will have agreements or arrangements with agencies that will be in one or all of those categories. The SIRC report, which I quoted in my opening remarks, indicates that there are certain agencies with which we do business in which there are restrictions, where certain kinds of information are not exchanged.

**Mr. Brent Rathgeber:** And greens and reds and ambers and yellows...?

**C/Supt Gilles Michaud:** There's no category, per se. We look at each country on a case-by-case basis. It evolves with time as well. In some instances we see countries that had been reported as having poor or questionable human rights being reported over the last year as doing better, though there are still concerns. So it's not a question of green or red.

• (1040)

**Mr. Brent Rathgeber:** Thank you, Mr. Chair.

Thank you for your answers.

**The Chair:** Thank you.

Mr. Holland, please.

**Mr. Mark Holland:** Thank you, Mr. Chair.

Thank you, witnesses.

I'm disturbed by what I heard on this issue of torture. I'm disturbed because while I'm hearing from you that there's a lot of grey and ambiguity, and that it's a difficult question for which there's no clear answer, Justice O'Connor—and I read the section of his report that was relevant to this—is very clear when he says, “Information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture.” That's what I was expecting to hear today. Particularly, Mr. O'Brian, that's not what I heard from you.

Let me be very specific. In the case of Mr. Elmaati, we now know that the confession was extracted using torture. CSIS and RCMP officials repeatedly told the inquiry that they had no evidence that Syria used torture, so they didn't consider that a confession would have been a product of torture. We're obviously studying this. No one ever wants to see a Canadian citizen put in this position again.

Very specifically to you, with respect to both Egypt and Syria, where there had been problems in the cases we as a committee are looking at, would you share information with those jurisdictions today—yes or no?

**Mr. Geoffrey O'Brian:** I'm going to answer your question in three ways. You've expressed that you were disappointed, and I'm afraid I'm going to disappoint you more.

First point: you refer to the specific findings of Mr. Justice Iacobucci, which I cannot comment on for the reasons I have explained.

Second point: you said that you were disappointed because I could not give a categorical answer about the use of information. I'm sorry I

disappointed you on that, and you may wish to take that question up with our director, the minister, or whoever. I attempted to give a substantive answer that explained why the situation, for us in the intelligence world, is a nuanced one. I'm old enough that I go back to the McDonald commission, and it was the McDonald commission that talked about the challenge of any intelligence service meeting both the requirements of security and the requirements of democracy. I'm naive enough to think that we can do that in our country and that we have created a system that actually—

**Mr. Mark Holland:** But we have individuals who were detained and tortured. These were Canadian citizens. That information was used by Canadian intelligence officials. What I was looking for, what I was hoping for today, was a response that said exactly what was in Justice Iacobucci's report, namely, that we would never use information if there was a credible risk that torture had been present. I'm being told that there are amber lights, and maybe we're going to use it and maybe we're not going to. How do we know that this will not happen again? Let me be specific and direct. Would we today, knowing what we know, having gone through what we've gone through, share information in the same way with Egypt or Syria? Please answer yes or no.

**Mr. Geoffrey O'Brian:** I'm sorry, Mr. Holland, I'm tempted to respond in the way that a previous Solicitor General, Herb Gray, always used to put forward in the House of Commons—that I don't accept the premise of your question. I cannot speak, as I've said, to Mr. Justice Iacobucci's report. I can speak to Mr. Justice—

**Mr. Mark Holland:** Answer the question. Do we share information with Egypt and Syria?

**Mr. Geoffrey O'Brian:** Excuse me, I'm trying to. I can answer your question in reference to Mr. Justice O'Connor, who said that CSIS exchanged no information with the Americans before the terrible events that happened to Mr. Arar, and that we did not provide information on Mr. Arar to the Syrians. Now, that I can speak to. When you make sweeping statements, which say that we engage in undesirable practices, I frankly reject those sweeping statements. We have a system—

• (1045)

**Mr. Mark Holland:** We are talking about a simple, direct question. After knowing everything we know, after seeing Canadian citizens tortured abroad and having that information used by Canadian officials, I want an assurance that isn't going to happen again. I want an assurance that we aren't continuing to share information in the same way that we did previously. My question is simply this—and it can be answered with a yes or no—do we continue to share information in the same way with Egypt and Syria?

**Mr. Geoffrey O'Brian:** I can't comment on specifics, but yes, we continue to share information with agencies from 147 countries, and the vast majority of those countries have human rights records that are not as glowing as ours.

**The Chair:** Mr. MacKenzie.

**Mr. Dave MacKenzie:** Thank you, Chair.

My thanks to the panel for being here today.

Mr. O'Brian, your red, yellow, and green lights might have got us into a big grey area. Do you have the O'Connor report in front of you?

**Mr. Geoffrey O'Brian:** I don't have the full report. I have a copy of the recommendations from the factual findings.

**Mr. Dave MacKenzie:** Okay.

Recommendations 14 and 15 are pretty explicit with respect to the sharing of information and talking about human rights and torture. Recommendation 14 talks about reviewing your records and supplying information to countries with questionable human rights. Recommendation 15 talks about Canadian agencies accepting information from countries with questionable human rights.

I would like it if you could explain to Canadians, everybody who's watching here today, what you do with respect to recommendations 14 and 15, because I think there's been some confusion that somehow Canadian agencies accept torture. I think these are pretty explicit, that there is a difference today in what we do from what we might have done prior to this O'Connor report. I would really like it if you could tell Canadians what CSIS does with respect to recommendations 14 and 15.

**Mr. Geoffrey O'Brian:** Thank you, sir.

I believe when the director appeared before the committee...and I believe, again, SIRC has commented on the fact that we now have, and we've been using it for several years, a new caveat that we use when there is an indication or a risk that someone may be detained abroad. The caveat we use on any information that we exchange says that we ask that this person be.... I've got the exact wording here, but I'm not going to find it; I'm sorry. The director spoke to that: we have a new caveat.

There have been memoranda of understanding that have been signed by both the RCMP and CSIS with Department of Foreign Affairs, which was one of the recommendations of Mr. Justice O'Connor, to deal with exactly that situation, when someone ends up

**Mr. Dave MacKenzie:** If I could interrupt, because time is important, in recommendation 14 it says: "Policies should include specific directions aimed at eliminating any possible Canadian complicity in torture, avoiding the risk of other human rights abuses and ensuring accountability." And in recommendation 15 it says: "Information received from countries with questionable human rights records should be identified as such and proper steps should be taken to assess its reliability."

Does CSIS do those things now?

**Mr. Geoffrey O'Brian:** Yes.

**Mr. Dave MacKenzie:** And that's not a grey area; it's not a red, yellow, or green light?

**Mr. Geoffrey O'Brian:** Once again, I'm attempting to.... I apologized to my friend Mr. Holland several times, because it is tempting to give a simplistic yes-or-no answer to what I consider to be a complicated question, but we have a legal answer, an

operational answer, a systemic answer, and that's what I've tried to do.

Frankly, when you read recommendations 14 and 15, and if you read the SIRC report of three years ago, in which we gave those exact assurances to the Minister of Foreign Affairs when we signed agreements, the Security Intelligence Review Committee pointed out that it was very difficult for the service to give those kinds of assurances. How can it give those assurances that it will never receive that when it doesn't know where the information comes from, and so on and so forth?

So in fact we have adjusted that, and it becomes a best-efforts process. And I would....

I'll stop there. Thank you.

• (1050)

**Mr. Dave MacKenzie:** Are you telling us that CSIS does not condone torture and that's—

**Mr. Geoffrey O'Brian:** Absolutely. Good heavens!

**Mr. Dave MacKenzie:** I think that's the answer Canadians want to hear, that CSIS does not condone torture, nor does it faithfully use the evidence obtained by torture.

**Mr. Geoffrey O'Brian:** Some of the best words that I've read on this, as I say, come from the House of Lords decision. Lord Brown said:

Torture is an unqualified evil. It can never be justified. Rather it must always be punished... But torture may on occasion yield up information capable of saving lives, perhaps many lives, and the question then inescapably arises: what use can be made of this information?

The court concludes you can never use it in criminal proceedings, you can never use it in judicial proceedings. But Lord Brown goes on to say:

Generally speaking it is accepted that the executive may make use of all information it acquires: both coerced statements and whatever fruits they are found to bear. Not merely, indeed, is the executive entitled to make use of this information; to my mind it is bound to do so. It has a prime responsibility to safeguard the security of the state

**The Chair:** Thank you.

We'll have Mr. Kania, please.

**Mr. Andrew Kania:** Mr. O'Brian, recommendation 14 of Justice O'Connor's report says, "Information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture." Do you think there's any ambiguity in that?

**Mr. Geoffrey O'Brian:** I seem to be apologizing a lot.

I would make two comments. If I could add the word "knowingly", I would feel more comfortable, because the reality is that in many cases, you don't know. That's the first point.

The second point is that I would reserve, on the side, that one-in-a-thousand or one-in-a-million—whatever it is—case that we all talk about and that I don't raise simply for simplistic, argumentative, and legalistic.... The simple truth is that if we get information that can prevent something like the Air India bombing, the twin towers, or whatever, frankly, that is the time we will use it, despite the provenance of that information. Those are minuscule. Everything else is for building in a system that ensures that we respect and follow Canadian values.

So with those two caveats—knowingly and in that one instance—yes.

**Mr. Andrew Kania:** So in essence, from what you've just indicated, you agree with me that you are modifying the 14th recommendation of Justice O'Connor's report.

**Mr. Geoffrey O'Brian:** You might conclude that. I confess if I have done so. I may go back to my office and find that my director has a word to say to me or that the minister does. But if you have concluded that, that's....

**Mr. Andrew Kania:** As you know, this is a public committee, and this is being televised today, and you are representing CSIS. From the response you've just given in terms of this 14th recommendation, would you not agree with me that in essence, what you're doing is encouraging people, letting them know that if there is credible information that might somehow be useful in some circumstance that is gained through torture, you'll use it?

**Mr. Geoffrey O'Brian:** No, excuse me. You said—and forgive me—some circumstance, some instance, or some whatever. No. I attempted in my answer to give a substantive answer that there will be those occasional, unusual, almost once-in-a-lifetime situations when that kind of information can be of value to the national security of the country.

•(1055)

**Mr. Andrew Kania:** If somebody is watching this....

**Mr. Geoffrey O'Brian:** What I am telling the Canadian public is that we are subject to a huge number of controls. How we exercise our judgment will be commented on by the Security Intelligence Review Committee, by the Inspector General, and so on and so forth. If we've made the wrong decision, it will be pointed out, and the Canadian public can rest assured that information will come to light.

**Mr. Andrew Kania:** But by giving this response, in essence you are condoning the use of torture. Because somebody watching on television right now in Syria, or with ties to Syria or some other country, will know that if they find something, we may use it. They've heard in this public committee and they've seen on

television that CSIS has said that if we find it, we might just use it, so why wouldn't they try? The purpose of the recommendation was to stop the use of torture and to say that we will not cooperate with those countries that might use it.

What you're saying now is that we don't agree with the recommendation, and we're condoning it.

**The Chair:** There's a point of order here, so we'll have to stop.

**Mr. Geoffrey O'Brian:** I'm sorry that you've drawn that conclusion. I agree with—

**The Chair:** Mr. O'Brian, we have a point of order, so I'll just....

**Mr. Mark Holland:** My point of order is that there is a motion I introduced last week. I'd like the opportunity to debate it before we adjourn today.

**The Chair:** Okay. Well, if that's the case, then this meeting will suddenly come to an end. We'll have to suspend. We'll have to clear the room.

I'm sorry. I had no notice that this was coming.

**Mr. Mark Holland:** In fairness, I did present the motion last week, Chair.

**The Chair:** I know, but it would have to be brought up, and you'd have to notify me so that we could put it on the agenda.

**Mr. Mark Holland:** Okay.

**The Chair:** Since you didn't do that, we will now suspend this meeting for one or two minutes. We have to clear the room here at eleven o'clock.

I thank our witnesses for what we've done.

Where's my gavel?

We will suspend. Any future business of the committee will be in camera.

**Mr. Mark Holland:** Yes, but my point is that we don't need to wait a minute or two.

**The Chair:** We'll have to wait a minute or two, yes. We have to clear the room.

**Mr. Mark Holland:** Why?

**The Chair:** You have to clear the room if you go in camera.

**Mr. Mark Holland:** Sorry; you don't have to go—

**The Chair:** This meeting is suspended for two minutes.

*[Proceedings continue in camera]*





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