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Chair

The Honourable Maxime Bernier

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• (1530)

[Translation]

The Chair (Hon. Maxime Bernier (Beauce, CPC)): Good afternoon, everyone. Welcome to the 34th meeting of the Standing Committee on National Defence. On the agenda, pursuant to Standing Orders 110 and 111, we will proceed with the review of the Order in Council appointment of Robert Décary to the position of Commissioner of the Communications Security Establishment. This order was referred to the committee on September 24, 2010. So it is a pleasure to have Mr. Décary with us.

Thank you for being with us. You have 10 minutes to make your presentation to committee members. Then they will ask you questions. Go ahead, please.

Hon. Robert Décary (Commissioner, Office of the Communications Security Establishment Commissioner): Thank you, Mr. Chairman, ladies, gentlemen, members of the committee.

First I would like to thank you for giving me the opportunity to meet with you so soon after taking this job.

Let me tell you a few things about myself. I am 66 years old, a retired judge of the Federal Court of Appeal and, since June 18 of this year, Communications Security Establishment Commissioner. I am a jurist by training but my more recent experience is as an appeal judge for some 20 years. I am a Montrealer by birth, London educated and now adopted by Gatineau.

I have devoted a good part of my life to public service. For two years I served as an assistant to the Honourable Mitchell Sharp, who was at the time Secretary of State for External Affairs. Incidentally, it was with some emotion that I crossed the threshold of the East Block. Forty years ago this December, I took up my new duties with Mr. Sharp, and my office was on the first floor of the East Block. So there is a little emotion involved in my appearance here today. I haven't been back here for 38 years.

Then, for one year, I served as executive assistant to Yvon Beaulne, Under-Secretary of State of Cultural Affairs. I practised law with a firm in Montreal and returned to Ottawa as assistant director of research with the Task Force on Canadian Unity, the Pépin-Robarts Commission. I returned to private practice at an office in Hull and combined that with a career as a legal and political columnist on the editorial pages of *Le Devoir* and *La Presse* as well as on numerous public affairs programs on Radio-Canada and TVA. I have authored several books and magazine articles.

Thanks to my law practice in Hull, I appeared more often than any other Quebec lawyer at the time before the Supreme Court of

Canada, serving for more than 10 years as an agent of the Attorney General of Quebec and some 30 law firms.

[English]

In March 1990 the Honourable Kim Campbell, Minister of Justice at the time, appointed me to the Federal Court of Appeal, the second highest court in Canada. I heard some 2,060 cases and drafted reasons in over 700 of them. I sat in every Canadian province and the Northwest Territories, from St. John's to Vancouver, with many appearances in Montreal, Ottawa, and Toronto.

There are few areas of federal law that have escaped my attention. Other than my daily bread and butter, consisting of immigration, employment insurance, and income tax issues, I had the privilege, in particular, of being the first appeal judge to rule on the status of the Official Languages Act, on the constitutional validity of the Anti-terrorism Act, and on the scope of the Personal Information Protection and Electronic Documents Act.

I retired in July 2009, my sole plan at the time being to volunteer at the Olympic Games in Vancouver. I was assigned the pleasant task of being the assistant to Canadian dignitaries, which enabled me to serve as a guide to Premier Jean Charest and Premier Danny Williams.

Don't worry, luckily for me, I was not asked to guide them at the same time.

Some hon. members: Oh, oh!

• (1535)

[Translation]

Hon. Robert Décary: On June 18 of this year, the Honourable Peter MacKay, Minister of National Defence, appointed me Commissioner of the Communications Security Establishment. I must admit that it was with some apprehension and trepidation that I agreed to return—part time, I should specify—to public life. There was apprehension because I was asked to fill the shoes of great jurists like Antonio Lamer, Claude Bisson, Charles Gonthier and Peter Cory, and trepidation because trying to reconcile the rights of Canadians to privacy with the need to gather foreign intelligence and ensure Canada's security represents an utterly fascinating challenge.

My role, as you well know, is defined in the National Defence Act. Generally speaking, it involves reviewing the activities of the CSE so as to ensure their compliance with the law, conducting any investigations I deem necessary in response to complaints about the CSE, and informing the Minister of National Defence and the Attorney General of Canada of any CSE activities that I believe may not be in compliance with the law.

[English]

To understand my role, one must first have a clear understanding of CSE's mandate, as well as its limitations. Since the Anti-terrorism Act came into effect in December 2001, the functions of the CSE have basically been as follows—and you will understand that I'm reducing them here to their essentials: to gather foreign signals intelligence; to help ensure the protection of electronic information and information infrastructures of importance to the Government of Canada; and to offer technical and operational assistance to federal law enforcement and security agencies, such as the RCMP and the Canadian Security Intelligence Service.

[Translation]

Regarding the first two of these mandates, CSE's activities are subject to three legislative limitations of the utmost importance. Firstly, CSE is not authorized to conduct activities that target Canadians, wherever they might be in the world, nor can they target people here in Canada.

With regard to the second limitation, since situations may arise where, in conducting these two activities, CSE may unintentionally intercept a one-end Canadian communication or obtain information about Canadians, and since such information may prove essential to international affairs, defence or security, the act permits this information to be used and retained, but only if measures are in place to protect the privacy of Canadians.

And with regard to the third limitation, to provide a formal framework for the unintentional interception of private communications, the act requires express authorization by the Minister of National Defence once he or she is satisfied that specific conditions provided for in the act have been met. These are known as ministerial authorizations.

[English]

Within this context, my mandate first is to ensure that the CSE in its operational approach only targets foreign entities outside Canada; second, to ensure that the activities conducted by CSE under ministerial authorization are those authorized by the minister, and to report on this review to the minister; and third, to ensure that in all the activities it undertakes, CSE puts in place, and effectively applies, measures to protect the privacy of Canadians.

Regarding its third function, that of helping federal law enforcement and security agencies, CSE operates as an agent of the organization in question and its activities are subject to the limitations that govern that same organization under the laws that apply to it. Once again, my role consists of ensuring that the activities of CSE comply with the law. The job of monitoring the lawfulness of the activities of these other agencies is entrusted to other institutions, for example, the Security Intelligence Review

Committee and the Commission for Public Complaints Against the RCMP.

Each year, the commissioner submits a report to the minister on his activities, which the minister is then required to table in Parliament. In addition, during the year, the commissioner presents the minister with classified reports containing the results of reviews of CSE activities. Here I would like to note that two years ago, the commissioner's office became an autonomous and independent agency with its own appropriation from Parliament.

● (1540)

[Translation]

Mr. Chairman, members of the committee, in December 2001, when the Anti-Terrorism Act was adopted, Parliament was faced with a dilemma. Within Canada, every individual has a quasi-constitutional right with respect to his or her privacy. And every person has a constitutional right with respect to security of the person. In addition, the state has an obligation to protect each of these individual rights and to ensure the country's security as well. These rights and obligations are not easy to reconcile: what in fact would the right to privacy mean, or the right to security of the person, in a society where security was no longer taken for granted or that was no longer free and democratic. In the Anti-Terrorism Act, Parliament tried to walk a fine line; it adopted a solution it deemed just, necessary and appropriate under the circumstances so as to allow the state to ensure its security and that of Canadians while at the same time respecting the right of every Canadian to privacy. Parliament conferred on the Commissioner, which is my role now, with respect to the activities of the CSE, the mandate to ensure that CSE fulfils the obligations imposed on it by Part V.1 of the National Defence Act, as that act was amended by the Anti-Terrorism Act, and by all other Canadian laws, including the Charter of Rights and Freedoms. Parliament has invested the Commissioner with extraordinary powers to perform his functions. I will not hesitate, where necessary, to exercise them.

In conclusion, I hope you will allow me to praise the wonderful work being done by the members of my team, who are small in number but of the highest quality. Competent, hard-working, conscientious, dedicated to their mission, these men and women ably facilitated my entry into the fascinating, but hugely complex, world of foreign intelligence. I am grateful also to the chief of CSE, John Adams, who staged a series of briefings that gave me a better understanding of the role and activities of CSE. I am fully aware, however, that my learning has just begun.

Thank you. I would be happy at this time to answer any questions you may have.

The Chair: Thank you very much, Mr. Décaré.

I have had the privilege of reading a number of your articles and books. I definitely appreciated them since I am a lawyer myself. Thank you. I know a little about your curriculum vitae and your experience. I'm very pleased that you have accepted the position that was offered to you by my government. Thank you for being with us.

I would now like to hand over to Mr. Malo, from the Bloc Québécois, who has seven minutes.

Mr. Luc Malo (Verchères—Les Patriotes, BQ): Thank you very much, Mr. Chairman.

Good afternoon, Mr. Décarry.

Hon. Robert Décarry: Good afternoon, Mr. Malo.

Mr. Luc Malo: Thank you for being with us.

As you know, the Communications Security Establishment has contracted out maintenance of its premises and of the centre as a whole to the private sector.

In view of the confidential nature of the information there, don't you see that as a problem?

Hon. Robert Décarry: It would be better to put that question to Mr. Adams. In my view, what you're telling me is a matter that is really the responsibility of CSE, and I am not in a position today to give you an answer on that point.

Mr. Luc Malo: Is it a question to which you will try to find an answer or on which you will make a judgment?

Hon. Robert Décarry: I'll speak to my team about it. I'm making a note of your question. If necessary, I can send you a brief answer to let you know my attitude on the subject.

Mr. Luc Malo: Very good.

You concluded your presentation by saying that your learning has just begun. What aspects would you perhaps have to pay more attention to as you continue to learn what the Communications Security Establishment is and about the role you have to play there?

• (1545)

Hon. Robert Décarry: When I say my learning is beginning, that's because the field in which I am now involved is absolutely enormous. I visited CSE's offices and I saw how the interception of foreign communications worked. There are all kinds of information that I fundamentally had absolutely no idea about and which I'm beginning to learn about. For example, just learning the acronyms, what each acronym means. It's an environment full of acronyms.

It's an absolutely indescribable computer environment, at least for someone of my generation. I'm still looking at all the work that's being done and how it's being done. With my team, I went twice to see about how our offices there work. We have offices within the CSE that give us access to all their computers.

I'm talking about learning, but it's really much more about understanding exactly how each of the activities is conducted.

Mr. Luc Malo: It's more an operational learning process—

Hon. Robert Décarry: Absolutely, yes.

Mr. Luc Malo: —and a process of learning the role you have to play in it.

Hon. Robert Décarry: Yes.

Mr. Luc Malo: You also pointed out that, two years ago, the Office of the Commissioner of the Communications Security Establishment became an autonomous and independent agency with its own appropriation from Parliament.

Do you think that appropriation is adequate? Should it be reviewed in the context of the budget cuts announced by the government?

Hon. Robert Décarry: Are you asking me whether I agree that our budget should be cut?

Mr. Luc Malo: In fact, do you have to be involved in the budget-cutting exercise? That's more my question.

Hon. Robert Décarry: I'll have to get back to you on that point because I was expecting to be asked if I wanted our budget to be increased. On that matter, I believe—

Mr. Luc Malo: You may also answer that question, if you wish.

Hon. Robert Décarry: Currently, we're satisfied with the budget put at our disposal. Our team is able to properly do the work we have to do. With regard to cuts, if obligations are imposed on us, we will obviously have to act accordingly.

Quite honestly, I wouldn't be able to answer that question today.

Mr. Luc Malo: Mr. Chairman, do I have time to ask a final question?

The Chair: You have two minutes.

Mr. Luc Malo: Excellent! Perfect! In that case, I may perhaps have two.

My colleague Mr. Bachand wanted me to ask you whether members of Parliament are allowed to visit the centre's facilities.

Hon. Robert Décarry: Unfortunately, that's a matter over which I have absolutely no control. You'll have to request permission from Mr. Adams, the chief of the Establishment.

Mr. Luc Malo: Very well.

Perhaps my colleague Ms. Faille can ask a supplementary question.

The Chair: All right, yes.

You have one minute.

Ms. Meili Faille (Vaudreuil-Soulanges, BQ): I'll come back to the question later.

Can you tell us about the cases currently before the court regarding private businesses, threats and complex cyber attacks? With regard to supplies, there are currently cases before the court. Are you required to work on that?

Hon. Robert Décarry: Not technically, at least at this stage.

Ms. Meili Faille: The questions I'll have to ask later are longer and concern Judge Iacobucci's findings and the Maher Arar report.

I may not have enough time to ask my question. I'll come back to it in the next round.

The Chair: Perfect. Thank you very much.

I'll now hand over to Mr. LeBlanc for a few minutes.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chairman.

Welcome to the Standing Committee on National Defence, Mr. Décarry.

I don't really have any questions to ask you. I just want to congratulate you on your appointment and to tell you, on behalf of my Liberal colleagues, that we are pleased that someone of your experience and qualifications has accepted this important position. We frankly wish you every success throughout this important parliamentary mandate.

As I told the Chairman, anyone who attended law school in the 1990s followed the decisions of the Federal Court of Appeal, on which you were an important judge.

I am pleased that you've accepted this position and wish you every success. That's all.

Hon. Robert Décaré: Thank you all the more for those remarks, Mr. LeBlanc, since 40 years ago, I occupied an office on the first floor while your father occupied a much larger office above, and that made a lot of people jealous.

Some hon. members: Oh, oh!

• (1550)

The Chair: Thank you.

Thank you, Mr. Décaré.

I now hand over to Mr. Calkins.

[English]

It's your turn for seven minutes.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Mr. Chairman.

The chairman has already thanked you for coming, and of course I also thank you very much for taking on this role. I wish to extend our gratitude on behalf of our government, on behalf of our caucus colleagues, for your acceptance of this.

Going through your resumé is quite a daunting task in and of itself. I don't think we have any pertinent questions that would in any way judge your qualifications for doing the job, but I think what would be helpful, to me anyway, is if you could help expand a little bit on the breadth of the various organizations that would be affected—the RCMP and obviously National Defence—the breadth of all of the various types of information that you would have a look at.

In your statement here you said:

My role, as you well know, is defined under the *National Defence Act*...to ensure their compliance with the law, conducting any investigations I deem necessary in response to any complaints about CSE....

I would ask you, given the fact that it was established in 2001, can you give us an idea, a ball park number, of how many complaints there are and how many would be dealt with in a particular year?

In your next paragraph, you say:

...the functions of the CSE have basically been as follows (you will understand that I am reducing them to their essentials): a) gather foreign signals intelligence, b) help ensure the protection of electronic information and of information infrastructures of importance to the Government of Canada;

A few years ago, there was an attempted takeover of MacDonald Dettweiler, a private firm. Our government basically turned down that acquisition based on the fact that some of the technology and

information there would have been important. I know it's before your time, but would that have been something that you or the CSE would have advised the government on, something of that nature?

Perhaps you could elaborate for me. On page 3 here, you say:

...every individual has a quasi-constitutional right with respect to his or her privacy. And every person has a constitutional right with respect to security of the person.

I'm not a lawyer. I'm a simple farm boy from Lacombe, Alberta. Could you explain to me what quasi-constitutional means?

Hon. Robert Décaré: Is that all?

Some hon. members: Oh, oh!

[Translation]

First, I must say that I have been in my position for only four months now. So I still have a lot to learn, especially about what happened before I got here.

As regards the matter of the take-over, for example, I must immediately tell you that I don't know the answer to that.

As for the question on the

[English]

breadth of information, I would like to know if you could clarify what it is you're asking me to talk about in the first part of your question.

Mr. Blaine Calkins: Obviously, you refer to the legislative responsibility under the National Defence Act, where the Anti-terrorism Act has made changes. Are there any other acts where the Anti-terrorism Act has made changes? Are any communications going out within...?

I seek a little more clarification on the breadth. You talk about advising the government on electronic...you say "ensure the protection of electronic information and of information infrastructures of importance to the Government of Canada". So are we talking about nuclear reactor facilities? How broad is the mandate that was given by the Anti-terrorism Act and all of the changes that brought about, insofar as the role of the Communications Security Establishment?

This is the first I've ever heard of it as a parliamentarian. I'm a relatively new parliamentarian. We've got something in common; we're both relatively new. Could you help me understand how big this is?

Hon. Robert Décaré: I'll do my best in a matter of minutes.

[Translation]

You would first have to read the text of the act that confers these powers on the CSE. First you would see that the Establishment gathers foreign intelligence. By definition, it cannot gather information on a Canadian, whether that person is in Canada or elsewhere in the world. When we talk about the CSE's activities, it must always be kept in mind that they are extremely limited with regard to objectives and that the number of interceptions related to Canadians is very limited. I'll take this opportunity to go on right away to address the question of complaints.

Since the Office of the Commissioner of the Communications Security Establishment was established, only two complaints have been brought to our attention, and neither has warranted a public hearing. Very little intelligence concerning Canadians is forwarded to the CSE. Furthermore, it is so well controlled, in my opinion, that it can give rise to very few complaints.

As for the government's computer structures, the government decided that certain facilities were more critical than others. It wants to ensure that its computer systems, particularly in the areas of defence and foreign affairs, is protected from any cyber attack. It is up to the CSE to find the technical means necessary to prevent those attacks. This is not a field where I will have to intervene a lot as Commissioner because such attacks will not very likely concern Canadians or Canadians' privacy. In my view, Mr. Adams, the CSE chief, could answer that question better than I.

As for the distinction between quasi-constitutional and constitutional rights, the Canadian Charter of Rights and Freedoms grants every Canadian the right to security. That right is written in the Constitution. That is why I say it is constitutional in nature. The right to privacy, on the other hand, is established by the Privacy Act. The courts have held that this is a quasi-constitutional right. It therefore does not have the same capacity to bring about action, but from the moment it is at issue in a matter addressed by a court, this gives it virtually equivalent status. That's what I did when I was a judge, and that's what I will continue to do as Commissioner.

● (1555)

The Chair: Thank you, Mr. Décarý.

I'll now hand over to Mr. Harris.

[English]

Mr. Jack Harris (St. John's East, NDP): Thank you, sir, for joining us today. I, too, have read your resumé, and I'm impressed by the breadth of your experience and knowledge and by the fact that you have played hockey for Jean-de-Brébeuf and the University of Montreal. I note in one of your comments that you escorted my former law partner, Mr. Williams, who was also a hockey player with Vancouver. We at least share one thing in common: we both attended the University of London to do a master's degree in law.

I, too, am impressed that you would be willing to undertake this important work.

I have a couple of questions about how you see the function of reporting to the minister. I know with the annual report we have in front of us, the most recent one written by your predecessors, there's an appendix B, with a list of 55 classified reports to the minister on various things. I'm assuming you would have access to them.

How are these reports different from the report to the minister that's made public? If, for example, as I see here, one of your obligations is to report to the minister on perhaps deficiencies in compliance with the legislation, where does that lead? If you tell the minister that some individual in CSE hasn't complied with the act in this and that or the other case, what happens then? Do you see any further responsibility, as commissioner, if nothing happens as a result of that? How do you see your role in these circumstances?

Hon. Robert Décarý: First, to take you up on the hockey thing, I must say in those years, 1972, there was a big Canada-Russia series—

Mr. Jack Harris: Oh yes.

Hon. Robert Décarý: —and Ken Dryden was in the net for Canada. I was always mad at him because my dream as a kid was to be the first lawyer playing for the NHL.

Some hon. members: Oh, oh!

Hon. Robert Décarý: I don't think Mr. Dryden is here today.

● (1600)

[Translation]

It is important to point out that I do three kinds of reports. There's the annual report that you have here and which obviously contains no classified information. You'll notice that the 55 reports you referred to aren't identified as such in a very specific way, and that's obviously important for security matters.

The annual report is a report in which I tell the minister what I've done and what my team did during the year. I tell him what kind of review of the CSE's activities I did during the year. It's ultimately an information report, much more than anything else.

The reports referred to in the annual report are confidential reports concerning a specific CSE activity that I have reviewed or that my officers have examined during the year. In those reports, we get to the bottom of things. Our review is conducted on site, on the CSE's computers. We look at how they get their information, how they assess whether a certain piece of information concerns a private communication with a Canadian and how they conserve and use that information. We examine their policies. We have access to all their documents.

Based on that review, I am able to tell the minister whether or not I think the CSE has complied with the act. Thus far in the CSE's history, the conclusion on every occasion has been that, yes, there has been compliance with the act, but there are improvements that should be made to the system. These are obviously not things I can talk about publicly. However, if we believe that a CSE policy could be improved, we make a recommendation to that effect.

To date, as I say in the annual report, 94% of the recommendations we've made have been followed up by the CSE. As for the remaining 6% of recommendations, it's not that they weren't followed up; it's simply that circumstances changed and there was no reason to act on them.

The third point concerns non-compliance. This is very important. It isn't at all related to the reports. If I came to the conclusion, in reviewing a CSE activity, that there had been a violation of the act, my duty would then be to send notice immediately to the Minister of National Defence and to the Attorney General of Canada informing them that there had been a breach of the act and obviously inviting them to take the necessary action.

I obviously can't know what action would then be necessary, but that has never occurred in the history of the office.

[English]

Mr. Jack Harris: I appreciate that, and I'm certainly glad to hear that.

Is there any role beyond that? Suppose you uncovered something...and we've seen cases before, the Almalki case, the ones that have been the subject of inquiries, where the information was wrongly shared, resulting in severe actions against individuals involved, including torture, etc.

If there were violations or situations such as we're talking about, there's no obligation on your part as commissioner to do anything beyond report them to the Minister of Defence and the Attorney General. You have no role in terms of either making that public.... Whether they do anything about that or not is up to the minister of the day. Is that right?

[Translation]

Hon. Robert Décaré: Yes, indeed. That's what I understand from my mandate. My mandate stops when I inform the minister of any illegal acts that have been committed. What happens next is not up to me.

[English]

Mr. Jack Harris: And may never be made public.

[Translation]

Hon. Robert Décaré: Indeed, they might not be made public.

[English]

Mr. Jack Harris: Looking at the mandate to review, it appears to be broad, in the sense that you can review...maybe I can find it here in the report. It spells out the three types of review. This says a review initiated by you as commissioner. I take it you don't have to wait for a complaint.

On another committee we had the representatives of SIRC, the Security Intelligence Review Committee, who advised us of the procedures they could take without a complaint, to look at a particular investigation or activity and go through everything associated with that on their own initiative, to ensure compliance either randomly or because they may think a particular type of investigation ought to be investigated. Do you have a similar role and powers?

•(1605)

[Translation]

Hon. Robert Décaré: In our case, those are two completely separate mandates, thank God. Otherwise, I would be unemployed, and my team as well. As I told you, we've only had two complaints. It isn't complaints that stir us to action, but rather the fact that we have an obligation to monitor the CSE's activities, whether or not there are any complaints, so that all the activities the CSE undertakes are subject to our review, regardless of the impact those activities may have had on any individuals in particular.

Together with my team, I have the power to decide which review in particular I want to conduct in a certain year. I obviously cannot review all activities every year, but I decide every year with my team which activities we must target during that year, and we review them whether or not there are any complaints.

The Chair: Thank you.

[English]

Thank you very much.

Mr. Jack Harris: Can you give us an idea of how many individual reviews might be undertaken each year?

Hon. Robert Décaré: At this time, and they are all in this report, it is between five and nine, I would say, depending on the year.

Mr. Jack Harris: Thank you.

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

Now I'll give the floor to Mr. Braid.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you, Monsieur Décaré, for being here this afternoon and for your very long and distinguished service to Canada. Congratulations on your new role.

I want to start by thanking you for an excellent presentation and a very clear description of the role and the mandate of the CSE. As my colleague mentioned, this is an organization that many Canadians don't know a lot about. I would suggest it's a sign that the CSE does its work quietly and very effectively.

Would you agree with that?

Hon. Robert Décaré: Well, that certainly has been the finding of my predecessors so far. I'm somewhat in the same situation as you are, sir. When I was appointed, I knew very, very little about the CSE, and even less about the commissioner's role, except that it had been filled by people I knew. So I guess it is, to some extent, an illustration that the system appears to be working quite well.

Mr. Peter Braid: Very good.

Now, as I understand your presentation and earlier answers to questions, there are essentially two components of your role. There's an oversight role, to make sure the CSE is complying with the law. There's also an aspect of your job in which you deal with complaints.

Is there a complaints mechanism, and what does that mechanism or process look like, sir?

[Translation]

Hon. Robert Décaré: We have established a mechanism for complaints, which is available on the Internet. It's a mechanism that is very similar to the usual mechanism in the case of organizations that deal with complaints. People have a right to be heard, they have a right to a lawyer, and they have the right to speak, to adduce evidence, but all that's done at in camera hearings. Thus far in the history of the office, we have not had occasion to conduct an investigation of that kind.

[English]

Mr. Peter Braid: Thank you.

What is the rough size of your staff, your team, at the commissioner's office?

[Translation]

Hon. Robert Décaré: Our team consists of eight to 10 persons. We have people who work on contract as well. My team mainly consists of people who have a lot of experience in the field of security and foreign intelligence.

For example, former employees of the Privy Council Office of Canada and former members of the Office of the Auditor General of Canada work for my office on contract. So these are people used to analyzing documents—in this case, it's not documents but computers—and to assessing the work that has been done.

Given the small number of persons on our team, a considerable amount of work is nevertheless done. I believe we're currently able to do a good job of carrying out our mandate.

●(1610)

[English]

Mr. Peter Braid: Does your team include legal advisors?

[Translation]

Hon. Robert Décaré: I'm entitled to an in-house lawyer, if I can use that expression. I don't have one right now because the person who occupied the position has just gone on maternity leave. I'm currently looking for a lawyer, and I can hire any expert I need to help me in my duties. I also have an outside advisor who assists me as necessary.

[English]

Mr. Peter Braid: I would humbly suggest, sir, that it would probably be rather intimidating for that legal advisor to have to report to and work for you, and to provide legal advice and analysis.

In any event, you clearly have significant legal experience and some international experience. How do you think both of those aspects of your background will help you do your job effectively?

[Translation]

Hon. Robert Décaré: One of the things I discovered as a judge was very definitely independent-mindedness. That's the ability to rise above partisan debate. It's the ability to make a decision, regardless of the individuals involved. I obviously think that's important, as Commissioner, because I feel entirely free to do what I want. I even have powers that I didn't have as a judge. I have extraordinary investigation powers. I have the power to summon witnesses and compel the filing of documents. I can go to the CSE any time, and I must say that's an advantage that I find marvellous compared to what I had as a judge.

Internationally, as you saw, I obviously have a quite "politicized" life—"internationalized" and also "politicized". I believe I have a good sense of political reality. I also believe, quite humbly, that I've developed common sense over the years. I was known as a judge who had common sense. With the years, I've realized that, when people talk about justice, law and equity, although those are all different concepts on paper, they are ultimately united by one factor, which is common sense. Ultimately, in positions such as the one I occupy, the essential thing is to have someone who will use common sense before making any judgments.

The Chair: Thank you.

[English]

Thank you very much.

I will now give the floor to Madame Faillie.

[Translation]

Ms. Meili Faillie: Earlier I said I would come back to your mandate with regard to information technologies, particularly in the security field. On page 37 of your report, you say you're going to work on electronic information networks and enable the various departments to comply with the security plan.

In practical terms, at what point do you share your recommendations? What are your interactions with the heads of the various departments?

Hon. Robert Décaré: I'm not sure I understand your question.

Ms. Meili Faillie: Your role is an advisory, research and audit role to ensure the departments comply with respect to security. In fact, I would just like to get a better practical understanding—

Hon. Robert Décaré: Are you talking about the commissioner or the CSE?

Ms. Meili Faillie: About the CSE and your role as well. What is your role at that point?

Hon. Robert Décaré: My role is to ensure that, when the CSE carries on activities concerning the security of computer systems, nothing it does will interfere with the privacy of Canadians.

In technical terms, I'm not sure I could answer your question.

Ms. Meili Faillie: So you don't intervene directly with the various departments?

Hon. Robert Décaré: Absolutely not, no.

Ms. Meili Faillie: That's sort of what I wanted to understand with regard to your role.

Hon. Robert Décaré: No, absolutely not. I'm interested in the methods the CSE uses.

Ms. Meili Faillie: So you don't intervene either with regard to access to information requests.

●(1615)

Hon. Robert Décaré: Absolutely not.

Ms. Meili Faillie: So the disclosure of information contained on tapes for the purposes—

Hon. Robert Décaré: Absolutely. All that is really specific to the CSE, which is subject to the customary rules, but that's not my field.

Ms. Meili Faillie: With regard to security, earlier you said you were slightly intimidated by computers, given your age. You also said you work with former employees of the Office of the Auditor General and people from the Privy Council Office.

Can you explain to us a little about the composition of your team? I see you have a budget of approximately \$1.5 million, including a payroll of approximately \$900,000. Who makes up your team? How many people are there?

Hon. Robert Décary: It consists of the executive director, an assistant executive director; a number of analysts, two individuals constitute the support staff. My *per diem* is nevertheless included in that—although that's not going to break the budget, I must say. And there are people who work on contract. As I said earlier, I have the power to hire people to work on contract if I feel I need additional staff and I can't find any permanent staff for the moment.

Ms. Meili Faille: I had a fear about the IT sector. In fact it was more a complaint. Technology is advancing quite quickly. I worked in the foreign affairs field, installing servers in all the departments, and I worked at Employment and Immigration Canada, in the international sector as well, installing computer systems. I know that the government put standards in place and soon realized that those standards were obsolete. The resources in the departments don't necessarily have all the security knowledge they currently need.

I'd like to have your office's diagnosis. Do the people who accompany you have high-tech training?

Hon. Robert Décary: It's curious that you ask that question today because this week my office organized a training course for the analysts from the various security monitoring agencies in Canada. This is the first time this has been done, and it was my office that took the initiative to make people aware of the new methods for collecting, reporting and analyzing information.

Ms. Meili Faille: I've received comments from the industry to the effect that the various departments are currently in a situation where they're losing their best employees, people who are able to manage cyber attacks and all that. The private sector currently has a much more predominant role to play in that field.

Do you have an opinion on that point? Do you have any recommendations or reservations about the role the private sector could play in this area?

Hon. Robert Décary: It might be premature for me to go into that right now. Perhaps I can get back to you on that in a few months.

Ms. Meili Faille: All right. That's all.

Hon. Robert Décary: Thank you.

Ms. Meili Faille: Thank you.

The Chair: Thank you, Mr. Décary. We do understand that you've just taken up your position. Perhaps the committee will invite you back in a few months or a few years.

In the meantime, I'm going to hand over to Mr. Boughen for five minutes.

[English]

Mr. Ray Boughen (Palliser, CPC): Thank you, Chair.

Let me add my voice to that of my colleagues in welcoming you here, sir, and congratulating you on your new position.

I'm sharing my time, Chair, with LaVar.

In your role as commissioner, have you seen anything you can share with us in terms of trends in Canada? I'm thinking we've kind

of left the farm; we've moved to the cities, and we're now into manufacturing. We have become a world leader in a number of areas. We're well respected militarily. Do you see anything that heads us in a certain direction, or do you see anything that for us as a country is developing into a certain societal strength or weakness? Are you free to comment on any of that?

[Translation]

Hon. Robert Décary: At this point in my activities, I must say I haven't really had a chance to look into those questions. I'm not sure either of the extent to which my role as Commissioner would lead me to examine those assumptions.

• (1620)

[English]

Mr. Ray Boughen: I guess I'm thinking you're pretty close to the action when you're a commissioner, with your field team and everything. I'm wondering if you see a trend evolving at all.

[Translation]

Hon. Robert Décary: What is certain is that there is a globalization of information, that there is an increased interdependence of information, of foreign intelligence, that there is an obvious need for cooperation with certain foreign entities and with entities in Canada.

In that sense, we are headed toward a world where we will have to try harder to harmonize efforts to prevent terrorism or activities that are harmful to Canada's security. And the little I have seen to date leads me to believe that we are headed toward a globalization of those functions.

[English]

Mr. Ray Boughen: Thank you.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Mr. Chair.

Mr. Décary, you have a very impressive resumé. Congratulations on your appointment.

You indicated that your commissioner's role is an independent one. Can you elaborate on why you believe it is very important that it be independent?

[Translation]

Hon. Robert Décary: The reason why I accepted a mandate such as this one is precisely the Commissioner's independence in the mandate he carries out. As I said earlier, I have administrative and budgetary independence. I hire the staff I want, I'm not subject to the rules of the public service with regard to hiring staff. So I have physical independence, which I consider extremely important.

But even more important, I have total freedom of action in the reviews I undertake. No one can obstruct me in any way. It would not even come to the CSE's mind to refuse the things I request, to refuse documents that I want to see or to refuse me permission to meet its employees whom I want to meet.

That helps reassure me—my team and me—that things are being done properly and in accordance with the act. That's what I think is the most important aspect from a professional standpoint, as Commissioner. I know that the reviews my team has conducted were done in an absolutely free manner and that the result must be free. Whether or not the government or the CSE agrees with the result, I just don't care.

[English]

Mr. LaVar Payne: I was interested in your comment that one of the reasons you took the role was because it was on a part-time basis. Has the workload taken it beyond being part-time? I don't know exactly how much time part-time is. Is it 20 hours a week?

Hon. Robert Décary: So far it's been a little beyond my expectations.

[Translation]

In practical terms, I was told that I would have to spend about two days a week over 40 weeks, the equivalent of some 80 days. That's all very relative; it depends on needs. Obviously, since I was appointed in June, I have had a lot of information sessions. I may have spent more time than I will spend in the coming months. There was a considerable backlog at the Office of the Commissioner of the CSE because there was no commissioner. So I had to examine reports that I myself had not prepared. For example, I signed this report, but I didn't prepare it.

So there are a lot of additional things to do, but I think I'll now be able to adopt a more regular pace, and it should take a few days a week. Clearly, I'm here, I'm available, and I'm available 100%, when the need is 100%.

The Chair: Thank you very much.

Ms. Faille, do you have anything to add?

•(1625)

Ms. Meili Faille: I may have a question.

You just answered part of the question. You may not have the answers. Two reports were submitted by Mr. O'Connor and Mr. Iacobucci.

Can you tell us a little about the progress made on implementing the recommendations? I know that a standing committee of the House of Commons has examined that and tabled a report.

Hon. Robert Décary: I believe you probably know a lot more than I do on that subject. All I know is what I read in the papers. To my knowledge, no official mechanism has yet been introduced to gather the views of the various monitoring agencies.

Ms. Meili Faille: That's because you say the Office of the Commissioner of the CSE is prepared to debate those questions.

Hon. Robert Décary: Yes, absolutely. I've just come back from a trip to France, at a time when France and Great Britain had just signed a security agreement. President Sarkozy said some words I

found marvellous. He said the objective is prevention and the means harmonization. The French are very good at the punchy turn of phrase.

We are in Canada, and that's somewhat the meaning of the recommendations of Judges Iacobucci and O'Connor, as I understand them. They're about harmonization, about how we're going to harmonize both intelligence gathering efforts and efforts to monitor intelligence activities.

Ms. Meili Faille: I suppose you'll eventually have to develop an action plan or timetable.

Hon. Robert Décary: In fact, as I said, I already have some ideas about that, but I will have to confirm that when I see the situation, but it's obvious that... Will the solution be a super-structure, a new bureaucracy? For the moment, in my mind, all solutions are possible. I think we're obviously headed toward a new form of harmonization of efforts.

Ms. Meili Faille: We're going to follow you in your thinking. Thank you.

Mr. Robert Décary: Thank you, madam.

The Chair: Thank you very much, Ms. Faille.

Thank you very much for coming, Mr. Décary. On behalf of all committee members, I would like to wish you every success in your new challenge, Commissioner the Honourable Robert Décary. We have been happy to have you.

We will suspend proceedings for five minutes to allow the other witnesses time to settle in.

- _____ (Pause) _____
-
- (1630)

The Chair: We'll resume our proceedings.

Pursuant to Standing Order 108(2), we will hear the study on the Military Police Complaints Commission.

We are honoured to have as a witness the Chair of the Military Police Complaints Commission,

[English]

Mr. Glenn Stannard.

Mr. Stannard, thank you for being with us today. You have 10 minutes, and after that the members of the committee will be able to ask you questions.

You have the floor.

Mr. Glenn Stannard (Chair, Military Police Complaints Commission): Mr. Chairman, members of the committee, good afternoon. I'd like to thank the committee for inviting me to appear today.

I am pleased to have this opportunity to meet with you concerning my appointment as chair of the Military Police Complaints Commission.

I am truly honoured to have been appointed the chair of the MPCC by the Governor in Council on May 14, 2010, and to have been a commission member since September 2007. Immediately prior to my May 2010 appointment as chair of the commission, I had served as acting chair, since December 11, 2009.

I understand that you have all been provided a copy of my CV. I intend to identify the role and function of the MPCC chair as well as the commission as a whole and to provide you with an overview of my background and experience.

The chair and other members of the commission are appointed pursuant to section 250.1 of the National Defence Act on either a full-time or part-time basis. Typically, the chair is a full-time position, and the other appointed members serve on a part-time basis. Currently, the commission has three members, including me. In addition to handling the complaints files personally, I decide on the delegation and assignment of work among the other members. As chair, I am also the commission's chief executive officer and responsible for the supervision and direction of its work and staff.

The MPCC is mandated by Parliament to provide an independent civilian oversight to Canadian military policing through the review and investigations of complaints related either to the conduct of military police members or to alleged interference in military police investigations. The MPCC provides the civilian oversight component of Canadian military policing through its role in the handling of military police conduct and interference complaints.

Most conduct complaints are first transferred for investigation and disposition to the head of the Canadian Forces Military Police, the Canadian Forces Provost Marshal. The MPCC monitors the provost marshal's treatment of complaints and subsequently conducts its own review or investigation at the request of a dissatisfied complainant. In the case of interference complaints, the MPCC has exclusive jurisdiction to investigate.

Exceptionally, the chair may deem it to be in the public interest to initiate an investigation, with or without hearings, into a complaint, effectively bypassing or suspending the investigative obligations of the Canadian Forces Provost Marshal.

The MPCC is now conducting a public interest hearing into a complaint about an alleged failure by certain military police members to investigate the transfer of detainees in Afghanistan to Afghan security forces in the face of an alleged risk of torture. As I am a panel member seized of this complaint, you will understand that it would not be appropriate for me to discuss the case outside the context of the hearing itself.

As both soldiers and law enforcement professionals, the military police fill an important and challenging role within the Canadian Forces. I am honoured to be involved in the important work of military police oversight.

Although we deal with allegations of misconduct, the MPCC is not a disciplinary body. Others in the Canadian Forces system have these responsibilities.

In my view, the complaints process established under part IV of the National Defence Act, in providing an external perspective on the resolution of complaints, is a means of encouraging continual

improvement in the professionalism, integrity, and independence of military policing, and for ensuring confidence in our military police. After all, as I know from my own career experience, the success of the police ultimately depends on the confidence of the community it serves.

As to whether I qualify for the position of chair of the MPCC, that is for you honourable members and others to judge. In addition to my tenure as chair and commission member in recent years, I have had an extensive background in civilian policing at all levels. I have 37 years' experience with the Windsor Police Service in Ontario, with the last 9 years as chief of police, from 1999 to 2008. During my years in policing, I served in all ranks and divisions of our service. As you'll see from my CV, I have taken numerous advanced police training courses in a variety of fields in both Canada and the United States. I have two Bachelor of Arts degrees, in sociology and criminology, from the University of Windsor.

• (1635)

I have always sought to be active in my community, and in addition to being involved in a variety of charitable foundations and service organizations, I have been a member of associations of chiefs of police at the international, national, and provincial levels, and previously served as president of the Ontario Association of Chiefs of Police.

I have maintained memberships and relationships with the federal and provincial chiefs' associations. I am also presently on the board of directors of the Canadian Association for Civilian Oversight of Law Enforcement, CACOLE.

In recognition of my police work, I have been named an officer of the Order of Merit of the Police Forces and was also awarded the Queen's Jubilee award. Although I do not have legal training, I do have previous experience in the conduct of tribunal hearings, having served as a prosecutor and hearings officer at police disciplinary tribunals under the Ontario Police Services Act. In addition, I have had extensive experience with the criminal justice system, both as an investigator and as the officer in charge at all levels of the criminal investigative services.

I have ready access to professional legal advice from our MPCC legal counsel. Moreover, as I mentioned earlier, the MPCC has had only two public interest hearings to date. The vast majority of its cases are handled through investigations and reports without a hearing. The MPCC's findings and recommendations are not binding.

The commission is inquisitorial and investigative rather than adjudicative and adversarial in nature. We are, moreover, charged by Parliament, under the National Defence Act, section 250.14, to address our complaints as informally and expeditiously as possible.

I would be pleased to answer any questions you may have for me.

• (1640)

[Translation]

The Chair: Thank you.

Thank you, Mr. Stannard.

[English]

We will now give the floor to Mr. Malo, from the Bloc Québécois, for seven minutes.

[Translation]

Mr. Luc Malo: Thank you very much, Mr. Chairman.

Mr. Stannard, thank you for being with us this afternoon.

I understand that you have been at the Military Police Complaints Commission since September 2007. So it isn't new for you to sit on the Commission.

Can you tell us what mandates you have been given and how you have performed your work, first of all?

Let's go ahead with that question.

[English]

Mr. Glenn Stannard: Upon my commencement in September 2007, then chair Mr. Tinsley and I decided that I would not start my duties as a part-time member in a formal sense until I retired from the police service on February 29, 2008.

That was when I actually started. Certainly during that in-between period I was able to do a fair amount of research and gather information on the mandate of the organization, on what it was all about, and on what the duties were, and to do a significant amount of reading and understanding. I was forwarded many documents relative to past investigations and the types of activities, and when I started I was able to assist with investigations on a part-time basis.

My role as a part-time member was much different from my role as the acting chair starting in December 2009. At that time I was not involved in any of the investigations relative to the Afghanistan issues, the public interest hearings, or any of the development of reports or annual reports or anything to do with that. In fact, I was strictly assisting in investigations by responding and signing off for acceptance and doing the final report on the investigations.

[Translation]

Mr. Luc Malo: With regard to all the powers conferred on the Commission to conduct investigations, do you believe that the current powers are the powers it should have in order to conduct all the required reviews in the best manner possible?

[English]

Mr. Glenn Stannard: The powers the commission has, including doing a normal investigation once we have received a complaint from a dissatisfied complainant, mean that we obviously oversee the complaints that the Canadian Forces provost marshal is handling. Once we have received a complaint from a dissatisfied complainant, we can make certain decisions in moving forward with an investigation, whether it be a public interest investigation or an investigation that would be done by our investigators, and then a commission member would deal with the potential recommendations and the results of it.

Certainly, the powers differ in the public interest hearings. We have the power of subpoena. There are some issues related to documentation and things of that sort that we are looking at through a five-year review, and there is potentially some additional work that

can be done in those areas in terms of documentation and things like that.

But there are significant powers in doing an investigation. Obviously, the CF member who's being investigated doesn't have to talk to us. There's no compelling piece there for them to respond to us, but in almost all cases they do.

• (1645)

[Translation]

Mr. Luc Malo: More specifically, have you been able to determine what the consequences would be if the possibility of conducting systemic studies were removed from the commission's mandate, as the government appears to want to do?

[English]

Mr. Glenn Stannard: Could you repeat that? I didn't quite get it all.

[Translation]

Mr. Luc Malo: It's currently possible to conduct more systemic studies, to see what, in overall terms, comes from studying systems as a whole.

Do you think it is important for the Commission always to be able to conduct this type of study?

[English]

Mr. Glenn Stannard: Our issues are not necessarily about studies. When our investigations are done and recommendations are made, some of them are very specific. They're not necessarily about studies. They could be specific recommendations about training; they could be about education; they could be about a variety of things. So it's not necessarily about our conducting a study. We're taking a look at the facts of an investigation, seeing if there are any problems with it and if the CF member has breached some mechanisms along the way. Then we make recommendations.

I can tell you that over the past four years, at least, 100% of the recommendations made within the investigative reports have been accepted by the Canadian Forces provost marshal. From that point of view, we then have a mechanism to follow up, because one of the recommendations may be an adjustment to policy or an issue with a change in policy and how you handle securing the mental health of individuals and items like that. We will follow those up to determine whether or not necessary changes have been made to the policies. But 100% of the recommendations in recent years have been accepted.

The ongoing liaison between the Canadian Forces provost marshal and the deputy provost marshal of professional standards is a regular thing. It's ongoing, so there's a constant review of files to ensure that things that are supposed to be happening are happening. It's a two-way street, and that's good.

[Translation]

Mr. Luc Malo: Thank you, Mr. Stannard.

[English]

The Chair: *Merci.* Thank you.

Now I will give the floor to Mr. Harris.

Mr. Jack Harris: Thank you, Mr. Chair.

Welcome, sir, to our committee.

I note that in your introductory remarks you suggested that you would leave your qualifications to us. I don't know if you were referring to this or not, but I remember that when the question of your predecessor not being reappointed arose and that you were potentially to be appointed as chair, there was some public discussion about the fact that your commission was being inundated with a large number of extremely complex legal matters, courtesy of the Department of Justice challenging many matters.

Would you care to comment on how you are in a position to effectively deal with these questions? Don't get me wrong. I happen to be a lawyer, but I don't think lawyers are the be-all and end-all. But I wonder what comments you would have on the situation you find yourself in.

Mr. Glenn Stannard: Thank you, Mr. Harris.

I won't comment specifically on the current public interest hearing, but I will comment on the issues that centre around the issue of legal expertise, if I may.

The way these commissions, and in particular ours, are structured, and this is public information—if you came into our hearing room, you would see it—is that the commission counsel is really my counsel, for the purposes of this public interest hearing. There are a number of lawyers on that council. There are four or five, the lead being Mr. Ron Lunau. They provide and lead the evidence in a public interest hearing. It could be this one or it could be a different hearing. They lead the evidence.

Backing up the four on the commission council.... Whether I were a lawyer or not, I would be seeking my own general counsel's advice that may be required on issues. The Military Police Complaints Commission is blessed to have a very experienced general counsel, along with other counsel.

Whether or not I were a practising lawyer or a sitting lawyer, as an individual I would be seeking the advice of those individuals. And that I do. I am blessed with that kind of expertise around me, both in the commission room and outside, along with my own personal experience in terms of operating in and around a tribunal setting or a courtroom.

It's not us or even our counsel who appear before the Federal Court. When a Federal Court application is made, whether somebody has a lawyer or not, we hire independent federal counsel to appear before the Federal Court. I wouldn't attend, even if I were a lawyer.

• (1650)

Mr. Jack Harris: I realize that you're not acting on behalf of the commission when matters go before the Federal Court or other bodies. I'm thinking more in terms of your sitting at the head of the table when these high-paid fancy lawyers are making.... In my experience, lawyers can certainly argue about anything and make points that are the most indefensible and argue them with the greatest level of confidence you could imagine. A judge with experience could just as quickly dismiss them.

I just wonder if you feel satisfied operating in that circumstance. Are you satisfied that you have sufficient advice from commission

counsel and from your own counsel in terms of handling these situations?

Mr. Glenn Stannard: I would say two things. I'm satisfied that I have more than sufficient advice from counsel, both counsel in the room and our counsel outside. In addition, I'm not intimidated, in any fashion, whether it be through the Attorney General's lawyer or the complainant's lawyer or any other lawyer who is going to appear. I am satisfied and confident in my ability to handle the courtroom.

If I do run into a situation on an objection that I would not be clear about, and one or two times.... We've heard testimony now from more than 20-odd witnesses, and I have thousands of pages of transcripts. I can simply take a break and ask that question, rather than make a rash decision not based on factual knowledge. And that's what I would do.

Mr. Jack Harris: Thank you, sir.

That's the very phrase I wanted to hear, and I thank you for that.

I don't have any further questions.

The Chair: Thank you.

I will give the floor to Mr. Payne.

Mr. LaVar Payne: Thank you, Chair.

My question is, through the chair, to you, Mr. Stannard.

First of all, it is a pretty impressive resumé. Congratulations on your appointment. It looks as though you're the man to fill the job.

Mr. Glenn Stannard: Thank you. I appreciate that.

I tell my staff that. I have some of them here, and I tell them that quite often.

Mr. LaVar Payne: It sounds as though there is a little reinforcement there for you.

I noticed in part of your opening remarks that you talked about your independence. I wonder if you could just sort of elaborate on that a little bit for us, in terms of your independence and how you operate.

Mr. Glenn Stannard: Certainly, we operate under part IV of the National Defence Act, and everything comes out of there.

In terms of independence, even from my own point of view, I can state that from the time I've taken the chair—and I can't comment prior to that—never have I or any of my staff been given any kind of direction, to my knowledge, that we should or shouldn't do anything. Decisions around the public interest hearing were ours.

We take a look at our mandate, our missions, who the complainants are, and make the necessary decisions. Never have we been, to my knowledge, and during my tenure.... When I say independence, it's probably the best example of independence that I've had in my career, in terms of when I think back to my police services board. I wouldn't think of my being independent from them as chief of police, but in this particular position, we clearly are able to operate within the framework of the National Defence Act without any interference. We look forward to discussions with the Canadian Forces provost marshal on a regular basis.

It is encouraging to be able to come to work and know you're not going to get the phone call and have any interference whatsoever. I can say this is the way it operates.

• (1655)

Mr. LaVar Payne: I'm glad to hear that. I think it's very important to have that independence. I'm assuming your staff only take direction from you.

Mr. Glenn Stannard: Yes, and sometimes I listen to them a lot and take direction from them, because the staff there is very experienced and has been through many investigations and a lot of those experiences. I can certainly bring my experience and my demeanour to the office, so we can get the job done that has to be done, whether it be inside or outside the hearing room.

Mr. LaVar Payne: It sounds as if you and your staff have a very collaborative organization.

In terms of some of the investigations, if you are investigating a case and find it's baseless, what steps do you take from there?

Mr. Glenn Stannard: Generally, if it's a baseless investigation, chances are it's not going to come to us, unless the complainant is going to make that complaint. Many investigations go to the Canadian Forces provost marshal, and through their dealings, whether it be with the officers or with the complainants, they will address many of the complaints and we won't see them. We'll monitor them, but we may not get them for the purposes of an "investigation". Seldom do we have an investigation I would call frivolous and vexatious. I haven't had one since I've been there, and I suspect that over the years they may have had a couple, but they would have to deal with it in that fashion.

Mr. LaVar Payne: You did talk in terms of the follow-up on individuals, that you made recommendations to the provost marshal. Could you let us know what other actions you may have had to take in terms of situations where you made recommendations?

Mr. Glenn Stannard: After the recommendations are made, a report would go to the Canadian Forces provost marshal; they would respond that they have accepted the recommendations. I'll take that in the affirmative, that they've accepted those recommendations. Maybe we've made two or three. One might be around the issue of training, the handling of mentally ill persons. Another might be around the issue of how to treat evidence. One of the new issues is when they have in-car cameras and things like that, how to handle those kinds of documentation for safekeeping.

If they accept those recommendations, the ongoing dialogue would be with us in the future and the regular meetings we have with the Canadian Forces provost marshal to discuss recommendations. If it's a policy issue, we would then follow it up with them, but generally, if they've accepted that recommendation that maybe they're going to speak to the officer on additional training, we accept that and we don't get a report back, or we don't ask for a signed-off document. We have to accept from the Canadian Forces provost marshal that the job will be done.

We do get involved in terms of looking to see if policies have been changed so we know that for our future.

Mr. LaVar Payne: Have you had many cases where you've had to follow up on a policy?

Mr. Glenn Stannard: Sure we have. I would say there have been a couple of policy issues. Just this week, our general counsel met with Colonel Grubb. They discussed a variety of issues. I have not discussed issues with Colonel Grubb outside of the hearing. I'm staying away until we finish the hearing, so that there are no issues of.... I try to keep that independence while I'm chairing the hearing.

Mr. LaVar Payne: Are there any issues that you have in terms of those complaints that you haven't been able to resolve?

• (1700)

Mr. Glenn Stannard: It's not an issue with our resolving the complaint. The recommendations have all been accepted. I'm not sure that every military police officer is happy with the recommendations, but they have been accepted and acknowledged. So we move on. Certainly, you learn a little bit with each investigation, and our investigators learn a little bit with each investigation. As that goes on, we're quite satisfied with the processes between us and the provost marshal's office.

Mr. LaVar Payne: Thank you.

The Chair: Thank you.

I will give the floor to Mr. Boughen.

Mr. Ray Boughen: Thank you, Mr. Chair.

Congratulations to you, sir, on your recent appointment.

Mr. Glenn Stannard: Thank you.

Mr. Ray Boughen: I have a couple of questions of interest to me and maybe to other members of the committee. First of all, how is it decided whether a military person appears in civil or military court? Could you share that with us? If a person has done something criminal, and he or she is a military person, it seems that the person appears sometimes in the military court and sometimes in a civilian one. How is that determined?

Mr. Glenn Stannard: You would have to ask the authorities. That's beyond our purview. We don't get involved in that at all. We're not in that function. We don't involve ourselves in the courts. We have hearings, potentially public interest hearings. But we're not involved in the issue of laying criminal charges for disposition in either the civil or military courts.

Mr. Ray Boughen: I didn't know that.

I have another question, on the Afghan show. We've heard everything all over the world on that one. Who are the people who file these accusations of abuse? How does that happen? Is it just that suddenly someone says, "Well, this person was abused"? How do you know that?

Mr. Glenn Stannard: This is very public, so I will answer the question.

The complaints that we're dealing with were filed by Amnesty International Canada and the B.C. Civil Liberties Association. They're the complainants in these matters, which we're hearing in the public interest. Anyone can file the complaints, under the current legislation. It could be you; it could be anybody here.

Mr. Ray Boughen: What's the reverse of that, sir? You file the complaint, and then you find that you filed it against a person who was innocent. Now you're hanging out of the window, are you not?

Mr. Glenn Stannard: We don't find innocence or guilt. We make recommendations. We're not an adjudicative body. So we're not adversarial in that sense.

We make recommendations. In the public interest hearing, the recommendation report will go to the Chief of Defence Staff, because the former Canadian Forces provost marshal is the subject person. So the report would go to the Chief of Defence Staff, with copies to JAG and copies to the minister.

Mr. Ray Boughen: Thank you.

Thank, Mr. Chair.

The Chair: Thank you.

I will give the floor to Madame Faille.

[*Translation*]

Ms. Meili Faille: Thank you, Mr. Chairman.

Earlier my colleague discussed your mandate with regard to systemic problems. Problems have been identified with regard to the Report on Plans and Priorities that your agency has submitted. In particular, specific and systemic problems are associated with assistance provided by military police to persons suffering from mental disorders and the active offer of police services in both official languages.

Could you tell us about the second point? What are you going to do to ensure police services are offered in both official languages?

[*English*]

Mr. Glenn Stannard: Are you referring to the services of the Military Police Complaints Commission?

[*Translation*]

Ms. Meili Faille: Yes.

[*English*]

Mr. Glenn Stannard: Let me start from my point of view, my purposes.

Unfortunately, I am not bilingual, but all of my staff meet the requirements of being bilingual within their positions. Since I am not bilingual, I am currently addressing that through French language training. On how good I will get—it will be some time in the future. But I think it's important for two reasons. I think it's important that my staff see me making that effort, and it's something I want to do.

I can tell you that our staff have an official language champion. The commission has that. Our meetings are in both French and English. We ensure that when a French language investigation is required, we do that.

● (1705)

[*Translation*]

Ms. Meili Faille: I understand that you are making efforts at your office.

I want to ask you how, in general, you are going to go about providing military police service. What concrete actions are you going to take to ensure better services provided in both official languages?

I'll give you an example. It may be specific training in the mental health field. What concrete action do you intend to take to respond to systemic problems?

I'll also ask you the same question my colleague asked earlier. Do you feel any pressure from the government to limit your ability to intervene and to correct systemic problems in the Canadian Forces?

[*English*]

Mr. Glenn Stannard: I have not dealt with the French language systemic issues since I've been in. My time has essentially been spent on the public interest hearing and the other investigations. But clearly I would like to discuss, with my general counsel and chief of staff, researching information you're referring to with the systemic issues. That is a matter I could research. I'm not familiar with that particular piece, but I'll get back to you.

[*Translation*]

Ms. Meili Faille: You can answer us in writing. I didn't want to trap you. I'm a member of the Standing Committee on Public Accounts, and we follow up the reports and priorities that you establish and publish on your Internet site. So that's why I'm asking you questions.

I would like to have a response in writing concerning your action plan in that regard.

[*English*]

Mr. Glenn Stannard: Yes.

[*Translation*]

Ms. Meili Faille: I have no other questions.

[*English*]

Mr. Glenn Stannard: I would be more than pleased to do that.

[*Translation*]

Ms. Meili Faille: Thank you.

The Chair: Thank you, Ms. Faille. I want to thank you.

Thank you very much, Mr. Stannard.

[*English*]

Thank you very much, Mr. Chair, for being with us this afternoon. I wish you success in your new challenge.

[*Translation*]

That completes the business of our Standing Committee on National Defence.

[*English*]

This will end our meeting number 34. We'll see the members next Tuesday.

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