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Chair

Mr. Paul Zed

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

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● (1535)

[*English*]

The Vice-Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): I call this meeting to order.

This is meeting number 10 of the subcommittee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness.

We are pleased to have with us a number of witnesses today. Before we get to that and before we introduce them, we're going to ask if we have a consensus to set aside the 10 or 15 minutes we talked about at the last meeting to discuss some committee business.

All right, it sounds like we have a consensus.

We're pleased to have with us today, from the Department of the Solicitor General, Public Safety and Emergency Preparedness, Paul Kennedy, senior assistant deputy minister of emergency management and national security. Also, from Canada Border Services Agency, we have Carolyn Melis, director general, intelligence directorate; from the Department of Justice, Daniel Therrien, senior general counsel; and from the Department of Citizenship and Immigration, Daniel Jean, assistant deputy minister.

Welcome here today.

I understand Mr. Kennedy will begin with some remarks. Let's keep those comments to around 10 to 15 minutes, and then if there are others who would like to speak we would accept that as well.

Mr. Kennedy, go ahead, please.

Mr. Paul Kennedy (Senior Assistant Deputy Minister, Emergency Management and National Security, Department of the Solicitor General (Public Safety and Emergency Preparedness)): Thank you very much.

What we'd like to do here is to try to give you a factual basis that would assist this committee in looking at the issue of security certificates. With that in mind, we had filed previously some material with the clerk. One was a 16-page document in the two official languages that gives you an historical background and so on on security certificates and removals. As well, there was a deck dated April 5, prepared by colleagues at the Department of Justice, that outlines the process. In addition, I've provided a summary to you of the judicial summary that was prepared in one of the cases, the case of Ahani, and I would suggest that would be useful to you in terms of getting a factual assessment as to what was involved.

The legislation we're dealing with has the concept of security certificates involved in it going back to about 1978. There were amendments through the years, but the regime that is currently in place is largely very similar to a regime that has been in place since about 1991—the early nineties—and has found itself expressed in the Immigration and Refugee Protection Act. As you know, that legislation was introduced around 2000. It received royal assent on November 1, 2001, and came into effect in June 2002. Those timelines are merely important so I can underline the fact that this was not legislation that was driven by the events of 9/11; this process goes back decades prior to that particular period of time.

Another issue I'd like to bring to your attention is the fact that it deals with two classes, I gather, of people. One would be permanent residents and the other would be foreign nationals, people who come to the country who may claim refugee status or some such thing.

The big issue in the 1990s...and it was just to address what were actually inefficiencies in the system prior to that, for instance, where permanent residents were looked at by the SIRC, and it would make recommendations that would go to the Governor in Council. Those procedures were pretty regularly challenged and ended up in the Federal Court, and it caused quite a bit of difficulty. In the early nineties the whole thing went directly to the Federal Court, because that's where it was going anyway. It was to make the Federal Court the body that actually sat there to assess the reasonableness of the certificates. The regime you have in place now is that following a decision by the ministers, it goes directly to the Federal Court.

The other issue is the treatment of individuals. If you are a foreign national and a certificate is issued, you are automatically detained, pending a finding by the court as to the reasonableness of the certificate. Clearly, if the certificate is quashed, the person is released. With a permanent resident there has to be an application for a warrant, and then within 48 hours the Federal Court judge decides whether or not the continued detention of that person is required. There's an automatic requirement that for permanent residents, every six months thereafter the court looks to see if the detention of that person is required, prior to a determination on the reasonableness of the certificate.

With reference to a person who is a foreign national, if the certificate is quashed, clearly, the person is released. What happens with an individual who is not a permanent resident is that once the certificate is found reasonable, within 120 days the detention is reviewed by the court and they continue to review the detention of that individual.

In terms, then, of the material you have before you, which is the background briefing—and we've had it updated as of the last decision rendered by the court, on Mr. Harkat—it indicates to you that the constitutionality of that regime has in fact been upheld by the Supreme Court of Canada, and the latest iteration of that, which was passed in 2001, was upheld by the Federal Court of Appeal. They looked at all of the due process aspects and found this regime to be an appropriate balance between the competing interest, which is to inform the individual of the case they have to meet, and the need to protect national security information.

● (1540)

The certificates are used for only the most extreme cases. They are used in reference to allegations that the person is a terrorist or has been involved in terrorist activity, spying activity, war crimes, organized crime, or crimes against humanity.

The other thing to put into perspective is, if the information is of a nature such that it's public, then there's no need to use a security certificate. You can use the other provisions. It's only used if the information has to be vetted by a judge to protect confidentiality.

I can put it in context, using the figures from 1991 on, because those are most of the figures you see out there...in terms of the 27 certificates. There are approximately 110 million individuals who come to Canada annually, half of whom will be returning residents. Approximately 200,000 people become permanent residents of Canada per year, and about 8,000 to 9,000 people are removed from Canada on an annual basis. I think the director of the service has indicated there are about 350 people who are targets of the service; they would be people who are citizens, permanent residents, or foreign nationals.

In the period in question, which is the past 14 years, that would represent about 1.5 billion people who have come to the country, about 3 million people who have become permanent residents, and about 120,000 individuals who were removed from the country. Of those, there are 26 individuals over that period of time with whom it has been necessary to take recourse to the certificate. Since September 11 there have been approximately five certificates used, so we're looking at less than two per year on average over that period of time.

The reason we're making these submissions to you—and you'll have to bear with me, because I have a cold and am trying retain a voice so I can keep on talking—is that there are unique provisions that are really found in the Canada Evidence Act. They have been imported into the provisions of the immigration legislation just to make it easier for reference. Those who have had experience in cases that go before the courts in a civil or criminal matter would be familiar with section 38 of the Canada Evidence Act, which is designed to protect national security, foreign affairs, investigative techniques, and things of that nature. There are some other privileges that are already common-law privileges, such as the human source privilege.

So those things are already there, and they've been well recognized through the decades by the courts in terms of requirement for protection. What you have here are provisions, though, that have been taken and modified and actually put into the legislation to make it clear the judge who is hearing it is the one who prepares it.

One thing to bear in mind as well is that when Bill C-36 was passed, it also amended the provisions of the Canada Evidence Act. One of the main amendments made at that time was to make more information available. Prior to that, if you objected to any disclosure, there was absolute non-disclosure. This was put in to provide a judicial summary so a judge could look at it when a claim was made and make a summary, to have the system opened up. That is the same provision you will see articulating the same philosophy in the Immigration Act.

In terms of structure, there are safeguards in it. There are two ministers who are required to sign it, the public safety minister and the immigration minister. Ministers have to have reasonable grounds to believe something. The matter is automatically referred to the Federal Court, and of course there's an obligation for the judge to consider all the information and evidence that are there and to prepare a summary. That is disclosed to the individual so the individual can be reasonably informed of the basis upon which the certificate was issued.

That matter is then publicly available; there is an open hearing; the public can attend. There are examinations and cross-examinations of CSIS witnesses or any other witnesses who are available, and the individual has the right to call witnesses as well to articulate their position. If the certificate is found to be reasonable, there's a separate hearing that is conducted as well, a mandatory one. It is a pre-removal risk assessment to ascertain if the individual is in fact going to be at risk of torture, which comes up, so that is made.

Part of my concern is that there are two Houses. The Senate as well as this committee is looking at it, and I had an opportunity to make a presentation to their committee.

● (1545)

One of the things that we showed them was the case of Mr. Mansour Ahani. There are issues of whether or not there's an opportunity to testify. I have transcripts of the proceedings plus the leading cases that have been involved. I have the judgments—translated and available to you—of all the decisions rendered in Mr. Ahani's case: Federal Court, the Federal Court of Appeal, and the Supreme Court of Canada. In addition, it went to the Superior Court of Ontario, the Ontario Court of Appeal, and had leave to appeal denied in the Supreme Court of Canada. It also went to a human rights committee at the UN. There are extensive legal vehicles available.

One of the documents I have is the Ahani summary. In the Ahani case, there was a summary provided to him, and it was 17 pages long. That is one of the shorter summaries. There is concern about how much information the individual has. In most cases, as in Mr. Zundel's case, there were hundreds of pages made available. In the recent case of Mr. Harkat, six volumes of material were made available to him. I raise that because there is some suggestion that the process is so secret that the individual does not have an opportunity to know the nature of the case against him. That is not true. What is not made available to the individual is information that would disclose the sources, techniques, intelligence organizations, identities. To give you a sense of what is available, I'll refer to excerpts from Mr. Ahani's case.

The allegation—this is the public one made available to him—appears in the first paragraph:

> With regard to whether Mr. Ahani was informed of the allegations against him, paragraph 1 indicates that the service has reason to believe that Mr. Mansour Ahani is a member of the Iranian Ministry of Intelligence and Security—the MOIS. The MOIS sponsors, and undertakes directly, a wide range of terrorist activities that include the assassination of political dissidents worldwide.

On page three at the top:

> For the reasons set out in the remainder of this Report, the Service believes that AHANI is an inadmissible person within the meaning of these provisions of the Immigration Act. 3. Inter alia, this Report will show that: a) a primary function of the MOIS is the assassination of Iranian dissidents worldwide;

● (1550)

The Vice-Chair (Mr. Kevin Sorenson): Okay. Continue, Mr. Kennedy.

I should point out that I know Mr. Ménard has generously agreed to allow this document to be presented here to committee, and I also know that the department sent it in for translation this morning. But if we can have these documents a little earlier so that we can have them sent for translation, it makes it a lot easier to follow.

You can continue, Mr. Kennedy.

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): *Monsieur le sous-ministre*, I know that you're very familiar with the document, but please, we are not. I see that you attach a lot of importance to this, and I appreciate that. But when you quote from the documents, I would like to be able to read it. If I'm reading it while you're saying something else, and I imagine it's the same case for everyone, we have trouble following. I think this is very important for you, but it is very important for us too.

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

Mr. Kennedy.

Mr. Paul Kennedy: Thank you.

I welcome the opportunity to be invited to slow down.

The reason is because this was a court document filed in that fashion. It wasn't translated. We've translated all the other documents. We're happy to do that. It's only because this was the official document, as long as you bear that in mind.

I had read (a), (b), and (c) on page three. On page four, (d)—

Mr. Tom Wappel (Scarborough Southwest, Lib.): I have a point of order. I'm sorry to interrupt the witness.

I'm looking at this document and I see that it has 17 pages. My information is that the document provided to the Senate committee also had numerous appendices. Why don't we have that document? It included newspaper clippings and things of that nature, which I presume were part and parcel of the record.

Mr. Paul Kennedy: In that case, we gave the same documents that I provided to you. I've made reference to the documents that I have here. I offered to provide these documents to the Senate, and they accepted. If you want these two volumes, they are all of the materials that we've referenced. All the materials that we provided to the Senate, I'm quite happy to provide to you.

The Vice-Chair (Mr. Kevin Sorenson): Mr. Kennedy, I think his question was this. In the presentation of this same document at the Senate, were there any other appendices affixed to the document, rather than the two big volumes that you have?

Hon. Roy Cullen (Etobicoke North, Lib.): Maybe I can clarify something.

Thank you, Mr. Chair.

My understanding is that there were some other documents. They were photocopies of newspaper articles. For some technical reason, they weren't able to be photocopied and be legible. But we'll follow up, and we'll send the full package to all the committee members.

The Vice-Chair (Mr. Kevin Sorenson): Although the Senate has a document, the department is here presenting today. It may not be the same document, but he has referenced this. We'll take note of that. We would appreciate the other articles, and we'll send them on.

Continue, Mr. Kennedy.

Mr. Paul Kennedy: Thank you for that clarification.

By the way, the other documents are public documents that are a foreign report published by *The Economist* and a few others. They were clearly part of it, and we're quite happy to make that available to you. It shows public references to the organization in question and its record for committing murder and mayhem.

Mr. Tom Wappel: Mr. Chairman, the only reason that I bring it up is because it seems to me that a House committee should receive at least the same amount of information as the other place.

The Vice-Chair (Mr. Kevin Sorenson): As I've been led to believe, this document is the document that was given to Mr. Ahani, which included the extra appendices. We would like to see the same document.

That being said, I welcome you to continue.

Mr. Paul Kennedy: It was our intention that you would have exactly the same materials they have.

On page four, I'll make reference in paragraph 4—I'm just highlighting certain portions here—to the fact that the MOIS "came into existence in August, 1983" and, moving down to the next line, "...[and] had been responsible for counter-intelligence and counter-subversion since 1979, [at] the time of the Iranian Revolution."

In paragraph 5—and I was just trying to excerpt here:

> The protection of the Islamic Republic of Iran is of paramount importance to the MOIS. [The targeted groups]...are expatriate Iranians publicly critical of the Iranian regime or its leadership as are, for example, many intellectuals, opposition politicians, and members of either moderate or extremist dissident organizations. Some of the members of these organizations and groups reside in Canada or visit this country.

In paragraph 6: "The top priority of the MOIS at this time is the Mujahedine-E-Khalq (MEK)", and in the second line, "[It's] considered by the MOIS to be the most significant threat to the government of Iran." In the third-last line: "The second priority are right wing groups which oppose the government and the third priority are left wing groups and individuals who also oppose the government."

On page five, in paragraph 7, I'm just going to skip to the second line: “On March 16, 1993, two gunmen...”, and I'll skip to the second line, “on a congested street in Rome...shot the driver in the face at point blank range. The motorist was a former Iranian diplomat....” Going down to the last two lines: “Germany as well is concerned about the murder of four leaders of the Kurdish Democratic Party of Iran in Germany last September.”

In paragraph 7.1, you'll see a reference to June 6, 1993: in Karachi, Pakistan, “...a member of the MEK...was shot in the back and killed. The attack, in which a bystander was also shot and killed was attributed to agents of the Iranian Government by the MEK.”

Again I don't want to belabour the point, but you have in paragraph 8 a reference to concerns by the Turkish government: on January 20, 1993, “the murder of a popular investigative journalist... (his car was blown up)”, and on January 28, 1993, an “attack on a leader of Istanbul's Jewish community”, and then you see a reference in the last two sentences that, “The public prosecutor in Turkey has demanded the death sentence for members of a radical group known as Islamic Action, charging them with a series of murders of anti-Islamic journalists since 1990.”

In paragraph 9, you see a reference to other recent attacks in Turkey. It includes, in the first bullet, “the abduction and murder...of a former Iranian army officer”, and in the second bullet, “the abduction of an Iranian opposition activist last June”.

In paragraph 10, in the first line, the “attacks in Europe...include”, in the first bullet you see there, “the murder of...a respected former prime minister, at his home in Paris”; in the second bullet, “the murder in Geneva...of...the Khomeini regime's first ambassador to the UN agencies in Geneva”, who's “a well-known dissident”; in the third bullet, the “murder by stabbing of...an Iranian singer opposed to the regime...in Bonn”; in the fourth and last bullet on that page, the “murder of...[the] Italian translator of Salman Rushdie's book 'The Satanic Verses'....”

On page 7, in the first bullet, there's the “murder of...a supporter of Bakhtiar”, and in the next one after that the murder of a dissident at his home in Paris.

Then you'll see in paragraph 11 on that same page that Mr. Ahani provided detailed information about the murder of two other opponents of the Iranian government.

● (1555)

In paragraph 12 there's a little bit of information about his background, which indicates that Mr. Ahani lived and worked in Singapore prior to coming to Canada. In the third sentence, third line, “He arrived in Vancouver”, and then move to the last line, “without a valid passport or an immigrant visa. He then requested political refuge”. Then you see the next page where he took up residence in Toronto.

Paragraph 13, there's a reference on the second line of several interviews with Mr. Ahani by the intelligence service over four months, and the fact that he voluntarily submitted to a polygraph examination.

Under paragraph 14 we get into a series where the courts advise Mr. Ahani of some of the concerns in the information he provided. About the fourth or fifth line down, you'll see that it says in the first opening line, “Some of the information in this Report which was provided by Ahani is corroborated”, and on the second line, “but contradictions in his statement”. I'll just move you then to the fourth line, “all show that Ahani has been untruthful and has attempted to deceive the Service and Canadian immigration authorities”.

Then they go on to give examples. “Ahani first told immigration authorities that he had been jailed in Iran for insurrection”. When they get into this, they are getting into the periods. He says he was jailed from 1987 up to approximately July 1991. If you go down about three more lines, it says “In a subsequent interview he said that the period of incarceration was from July, 1987 to February, 1989.” So was he incarcerated for four years, or for a year and a half? They were just pointing out inconsistencies in his testimony.

It goes on then. At the third line from the bottom, “In addition, Ahani told the immigration authorities that he came to Canada from Iran via Bandar Abbas and Dhubai.” And then it says, “The Service knows through investigation and Ahani's subsequent admissions that he came to Canada from his residence in Singapore.” It was indicating that there were inconsistencies in his statements. At the top of page 9, the first line is, “Ahani reluctantly admitted these facts only on a fourth interview.”

In paragraph 15, these are more inconsistencies: “Ahani's initial claim for political refugee status in Canada was based upon having been twice taken to offices of the Islamic Revolutionary Committees (Komiteh) and there beaten, by members of the Iranian Revolutionary Guard Corps for having been intoxicated.” Later he changed his claim, and it says “In a second version, Ahani stated that he was imprisoned from shortly after July, 1987...for having refused to fire his weapon during a raid upon an establishment of the MEK in Quetta, Pakistan.” So he changed his stories. He said he secured his release from prison by feigning to have realized the error of his ways and having agreed to join the "foreign assassins branch" of the intelligence branch of the foreign ministry. So you can see the stories tend to vary.

On page 10, paragraph 16, he “described himself to the Refugee Determination Board as knowing much about Iranian government personnel and covert operations”, and therefore he said he would face certain death if he was forced to leave Canada and return to Iran. He then started to go on about the fact that he couldn't be sent back because he would face either torture or death.

Paragraph 17—

● (1600)

The Vice-Chair (Mr. Kevin Sorenson): If I could just interrupt for a minute, we're at 27 minutes, and I realize there were some interruptions there.

It's going to be tough, Mr. Ménard, but we may have to speed it up a little bit. All right, thank you.

Mr. Kennedy, continue. We'll give you more time.

Mr. Paul Kennedy: If you would bear with me—because you'll have the report and an opportunity to study it and will have it translated—I'd like just to point out for you in summary that in the report there is extensive detail provided to this individual, including, in the later pages, the fact that he met up with another chap, who was actually the head of an assassination team for the MOIS, who contacted him after he came to Canada.

Mr. Ahani, while he's doing all his refugee claim process, buys another false passport, returns to Europe, is involved with this other chap in what looks like covert attempts to set up another assassination bid, works with this guy to take the pictures, goes to Turkey, hands the camera in to the Iranian embassy, and comes back with another false passport that he acquires. This way, he's processing things in Canada. He destroys both passports as he comes back to Canada, and then, in any event, continues to liaise with this guy and has taken training in terms of how to assassinate people.

They talk about some of the training you'll see in the documents here, about how to shoot people, jump out of a car, roll on the ground, put a couple of bullets into people's hearts, and jump back into the car.

My reason in pointing this out to you, and of course the fact that he was polygraphed, that he failed the polygraph, and that the court, suffice it to say, found that he lacked certain credibility.... This is put before you to indicate that even with a document that is only 17 pages long—bearing in mind that in other such cases, certificate cases, we can have hundreds of pages—there is in fact information that would certainly make you aware, if you were a person subject to a certificate, what the allegation is and what we're alleging you are and why in fact there are reasonable grounds to believe you are a threat to the security of Canada.

The documents I have here also indicate the vigour of the judicial process available to the individual, that there in fact is an open hearing.

I think, in the interests of time, I'll stop there. As I say, we're prepared to hand this to you. A lot of the decisions, because they are Federal Court decisions, I believe in fact are translated and available to you. The transcripts of the hearings are not, because they are *viva voce* in the language of the hearing.

● (1605)

The Vice-Chair (Mr. Kevin Sorenson): Were any of the other witnesses going to give testimony? No? You're here to help answer questions. Great. Thank you.

We'll go into the first round, which will be a seven-minute round. We'll begin with Mr. MacKay.

Mr. Peter MacKay (Central Nova, CPC): Thank you, Mr. Chair, and thank you, Mr. Kennedy, and all the witnesses for being here.

As you were taking us through this document and through this Ahani case, I can't help but think, for most Canadians, in hearing this type of evidence, it's very reminiscent of the spy world around James Bond and the type of activity that this individual was involved in. Yet I guess the first question I'd like to get into, in looking at the CSIS practice of compiling this information, the security certificate process itself, and the jigs and reels, for lack of a better expression, that have to be followed in order to collect and manifest this type of evidence, is this: are we really down to a process that has set the bar very high in the admissibility of this evidence in a regular court process?

It occurs to me that if you're able to compile this type of evidence.... Granted, much of this is based on hearsay evidence and the requirement to rely on others who are similarly involved, and let's be frank, in this world of espionage, the trade is treachery. We're talking about people involved in murders, espionage, double agents. It's a completely different world, I would suggest, from the normal criminal element, and yet there is a very high standard that has to be met, as you know, in the normal court process, proof beyond a reasonable doubt, which is very, very difficult in many instances when you have a number of other witnesses who are similarly involved and similarly motivated to deceive and in fact to very much avoid detection.

So is it about the burden of proof in our regular criminal justice process that leads us to the adoption of this security certificate process that you are here to talk about today? Is that what we're talking about, the necessity for this parallel process? Otherwise, the simple question is why can't we just, through adducing evidence, proceed through the normal courts and try to bring about accountability and justice in that fashion?

Mr. Paul Kennedy: You are quite right in many ways. This is an administrative law process. Bear in mind that the individuals we're dealing with are either foreign nationals or permanent residents who have come to the country, and what we're doing is we're relying upon an administrative process that allows the country to regulate who comes to the country or not. Section 6 of the charter indicates that only citizens have a right to return; therefore, we have more availability, more scope, to use other processes to remove non-citizens from the country. Once a person has acquired citizenship, then you have a different standard.

Because it is administrative law, you can clearly come up with an evidentiary standard that is different. And the Supreme Court of Canada has clearly indicated that.

If you were doing something beyond reasonable doubt.... Clearly, we've seen recent examples of the challenges of meeting that particular standard. You would face the same difficulty, which is that you don't have many foreign intelligence services testifying in court. We've had some rare exceptions ourselves where CSIS officials have done so, but worldwide that's a unique phenomenon.

The other aspect is that for a criminal process it's usually fairly mature in terms of where the activities are at if you're going to intervene, and you really run the risk that if you intervene too late, you're going to have a significant terrorist event on your hand. What you'll be doing is going in after the event and picking up the pieces. So if you really want to do prevention and disruption, looking at some of the activities that people engage themselves with in this country, you should do that.

The other thing is that the regime looks at people who were terrorists, are terrorists, or are going to engage in terrorist activity. That was changed, actually, back in the early 1990s, because you had people who had run around for 10, 20 years creating mayhem, and then saying they were coming to Canada—they had given up their terrorist ways and wanted to settle in Canada. And the regime says no, if you've done that, you're not welcome here either.

So your criminal model wouldn't really work for you. If you're looking at a model that is looking at prevention and disruption, you have to get them out before they do it. In some cases you are dealing with organizations that have a long history, so you may want to remove the leader. If the leader fits into this class, you can remove the leader, and it disrupts the organization. They may be doing fundraising. They may be doing procurement. They could be doing recruitment of people, propaganda—there are all sorts of things. So it can be very effective for you to do this. Even at this, it costs approximately a million dollars to do each one of these cases, so they're very strategic in terms of what you use.

The regime we have allows us to use information that includes hearsay, and that could be done by either side, because the other side as well has conference calls and has experts around the world phone in. So it's very general. It's up to the judge to decide what weight is to be attached to that. That is not to say that in some of these cases we ourselves would not have our own information from our own coverage, which could be based upon intercepted communications as well.

● (1610)

Mr. Peter MacKay: Mr. Kennedy, you mentioned the resource aspect of this, and I think everyone can appreciate the utility, the usefulness, of the security certificate process. Also, in your presentation you referred to the number of times it's been used, which is—I would suggest, based on the number of people who are coming and leaving our shores—relatively small. Particularly, I'm surprised to hear, post 9/11, it's been five times, I think, in that timeframe.

But the real question, I suppose, that many Canadians would have, and in a proactive way, is with some of these individuals who do get caught in the net and who end up being considered through this process to be a security threat and meet that very high criterion, what have we learned, and what have you learned, I guess most importantly, on the front lines and working with the individuals tasked to do this, about where the resources are most needed? Is it in the proactive front end to catch them before they come to Canada? Is this really not a case of the resources being used after the fact? And you've mentioned the cost, the sheer cost associated with proceeding in this fashion.

Isn't the emphasis, and don't you believe the emphasis should be, on the front end, and that is intelligence gathering and prevention, before they wind up inside our borders creating havoc, carrying out these nefarious activities?

Mr. Paul Kennedy: Definitely the ideal situation.... There is a strategic advantage to being in Canada. Obviously proximity, depending on your target, gives you an advantage. Canada has, through our CBSA on the immigration side, officers overseas now, so there is earlier detection to prevent people sometimes from getting on. That prevention clearly is a key part to filtering people out if we can.

In these particular cases there are targets that clearly are watched, and the number.... I think I indicated 350 approximate targets that the prior director of the service indicated. Well, clearly some of those are acted upon, and they're acted upon only because their activities reach the point where there is concern, and if the state does not take some action, society is at risk. That's why those cases have to be moved on before their activities mature any further. Clearly, others can be watched, and appropriate actions taken in due time.

For the criminal one, you really have to wait much longer for your evidence to get to the state of admissibility in court, evidence gathering, and you'd be quite far along in terms of danger at that point.

● (1615)

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

We'll move on to Monsieur Ménard, for seven minutes.

[*Translation*]

Mr. Serge Ménard: I greatly appreciate the efforts you made for this presentation. I appreciate the fact that you sought to understand our concerns and respond to them, in terms of both the decisions handed down by the courts and the types of cases where you used these certificates. I recognize that your demonstration can be very conclusive.

Because of my training, my natural reaction is to wait until I hear all the arguments before forming a final opinion. When people are to be deprived of their freedom, I also tend to look at laws based not only on the way they were used, but also on the way they could be used in the future. I recognize that this is a concern for courts of justice. I have not yet read everything I would like to read on these cases, but I will certainly do so before the end of the exercise we agreed to do.

However, I am particularly concerned about the continuous use of the words "organized crime." As we are talking about selective assassinations, which is one of the things that horrify us here, in Canada, you just told us about a very dangerous man, who is a member of a very dangerous organization. I know you have rarely used security certificates. You spoke of about thirty cases, I believe, in previous presentations.

Have you used any against organized crime?

[*English*]

Mr. Paul Kennedy: Chiarelli is the case that went to the Supreme Court of Canada, and that was an organized crime case. All the cases, but for Chiarelli, are national security cases, and that is one of the cases that are in the materials. There are, as I indicated, not 30 but 27 cases in which we've actually used the certificate, but Chiarelli is the organized crime case.

We can use immigration for other cases of organized crime, but it may be that the information is public and therefore we don't have to use the certificate. We'd use a certificate only if the information we relied upon had an element in it that could not be publicly disclosed. It may very well be the identity of a source or technique. In other words, Mr. Chiarelli would know exactly what the allegation was, but we'd go and say to the judge, here it is, would you edit the summary on the basis of deleting the name of this person, or delete the name of this technique, or to otherwise do it. The judge provides a gist of that.

It's a bit like how under the Criminal Code you'll find the same thing being done for wiretap affidavits, where they will submit applications and so on where the judge can do that. It is used and can be used for organized crime. It would only be used if we had to. Likewise, if we had other national security cases where the information was all public and we didn't have to have a judge perform this judicial summary part, we would do it through other means.

The other thing is that depriving the individual of their freedom is not a punishment. In this case it is a deterrent, because the individual is perceived to be a threat to society if they are released pending the determination of the judge. If the individual chooses to leave Canada, they are free to leave Canada of their own volition. They remain in custody only so long as this status process is being contested and the judge agrees that their detention is required in the public safety interest. There are two cases where the court has released individuals on terms of conditions: the first one is Mr. Suresh and the second one is Mr. Charkaoui.

● (1620)

[*Translation*]

Mr. Serge Ménard: If you have this evidence, and since it is now illegal in Canada to be a member of a criminal organization, why not charge the person and bring them before... In this case, I understand, since all the crimes referred to were not committed in Canada. However, in the case of organized crime members, the laws were specifically amended for this to be considered an offence, so they can be convicted and punished as deemed appropriate by the courts.

[*English*]

Mr. Paul Kennedy: Membership in either a criminal organization or a terrorist organization, in and of itself, is not a criminal offence.

I'll give you an example in our particular case. We have a list, under the Criminal Code, of 35 organizations listed as criminal organizations. It is possible for an individual today, when that list goes up, to be a member of that organization, but if they do nothing to further the activities of that organization—and as a matter of fact hopefully distance themselves from that organization—they are not committing any activity.... But if, after it's listed, they went out and did any activity to support it, such as fundraising or recruitment, Bill C-36 would now make that activity a criminal activity—but just membership by itself is not.

In terms of other individuals, looking at what appears in the Criminal Code, if you were thinking for organized crime activity, there is “participating in” and “leadership of”, but there has to be something there that you can hook into.

I would have to look back and see whether or not Mr. Chiarelli would have possibly made himself subject to those provisions. I can't recall offhand, but certainly he was to be excluded as an inadmissible member on the basis of his criminal activities, for immigration purposes.

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

Mr. Comartin, you have seven minutes, please.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, Mr. Kennedy, for being here.

Just to stay with Ahani for a minute, he has committed, as far as our police authorities know, no crimes in Canada, other than perhaps breaching the Immigration Act—entering the country illegally, perhaps?

Mr. Paul Kennedy: I guess it depends what you look at. Based upon some of the stuff he talked about, we could have gone back with the passports. I guess he had uttering forged passports, but from his testimony, he indicated he destroyed them. Those could have been criminal activities. Certainly the acquisition of a false passport and uttering a forged passport were criminal activities, and punishable up to 14 years.

Other than that, what you're saying is in terms of his other activities as an alleged assassin, the concern there was based upon his membership in that organization and the activities of that organization, which were to eliminate the dissident groups around the world. Some of those dissidents clearly were in Canada, and he continued an association with the leader of that organization, the head assassin. After he had come to Canada, he had gone back to Italy for the purpose of assisting in another potential assassination attempt. The concern was that he would possibly be used by them here as a resource for that purpose. Therefore, in an act of prevention, he was moved out of the country.

Mr. Joe Comartin: Have there been any attempts by either Switzerland or Italy to extradite him?

Mr. Paul Kennedy: I don't know. To my knowledge, that wasn't part of this, but....

Mr. Joe Comartin: Has he taken the position that if he goes back to Iran, he's at risk of torture?

Mr. Paul Kennedy: He had taken that position before the immigration board. That position was looked at by the court, and the court said that in the court's opinion, he did not face that risk. That was the position of the minister at the time.

In the materials we have here as well, it was something counsel on his behalf argued before the UN committee and continued to argue at that point. Canada was able to go back and find that he in fact was not at risk, because he had approached a representative of the Iranian government and had come back and asked for some goods that were in Canada, personal effects, to be shipped to him. There had been contact as well with our embassy, both by him and later, I believe, by his mother, indicating his concern was the lack of employment. This was up to 2003.

● (1625)

Mr. Joe Comartin: Was that the last contact we had any information about?

Mr. Paul Kennedy: That's the last information I have. And in addition to those events, which would seem to mitigate against his concern for torture, the Government of Canada had approached the Government of Iran to remind it of its obligations separate from those things.

So our last information was that—

Mr. Joe Comartin: I'm assuming we didn't take that as an absolute guarantee, given the history of that country in terms of how they've treated other people.

Mr. Paul Kennedy: Well, he was one of their folks. He seemed to not have suffered any consequences. This is a couple of years after his return, so....

Mr. Joe Comartin: Is the MOIS on the list to be potentially designated?

Mr. Paul Kennedy: No, it's not on the list. I have a copy of the list.

Mr. Joe Comartin: Do we have any agencies that are directly affiliated with governments that are on our list?

Mr. Paul Kennedy: No, not to my knowledge.

Mr. Joe Comartin: We could do that, though. I mean, the law would allow—

Mr. Paul Kennedy: I'm not sure.

Mr. Joe Comartin: The Canadian law would allow us to do that, Mr. Kennedy.

Mr. Paul Kennedy: I'm not sure. I'd have to sit back and look at it. I'm tempted to answer, hypothetically, yes, but I wouldn't want to answer without looking at it properly.

Mr. Joe Comartin: Just going back to the numbers, you've told us there have been five since 2001, since 9/11.

Mr. Paul Kennedy: Since 9/11.

Mr. Joe Comartin: My understanding is the last ones were both May of 2003, which were done by Mr. Charkaoui.

Mr. Paul Kennedy: Mr. Charkaoui was May of 2003. Mr. Zundel was May of 2003. Mr. Harkat was December of 2002. Mr. Mourad Ikhlef was December of 2001 and Mr. Almrei was October of 2001.

Mr. Joe Comartin: Is there any reason why we haven't used it since 2003? It's been two years now.

Mr. Paul Kennedy: Each of these cases is assessed on its own merits. I indicated to you that it's used as a preventative tool, and it would depend upon the risk assessment that the intelligence service would come up with. It's not just cost. These are used judicially and are based upon a risk assessment that activities have to be taken because individuals are perceived to cause a public safety concern.

Mr. Joe Comartin: Can the Canadian public have some sense of confidence that the threat to Canada has been reduced, since you haven't used it in the last two years?

Mr. Paul Kennedy: We live in a very dangerous world and a very dangerous environment. I wouldn't want to say that. All I can tell you is that we certainly perceive public safety to be our number one priority, both by the intelligence service and by the RCMP, and that in the appropriate case, action would be taken.

In terms of the comment that we don't have, let's say, a certificate, we do have one individual who, after that date, was charged with an alleged terrorist event and is currently facing charges before criminal courts in Canada.

Mr. Joe Comartin: That was the one here in Ottawa?

Mr. Paul Kennedy: That's correct.

Mr. Joe Comartin: Is that the same one—part of the same sequence of events that occurred in England, where a whole bunch of people were just released?

Mr. Paul Kennedy: No.

Mr. Joe Comartin: That's a different series.

Mr. Paul Kennedy: Yes. The ones who were released were individuals detained by immigration. There was a separate criminal case that's ongoing in the U.K., where people have not been not released.

Mr. Joe Comartin: In the five we've had since 9/11, none have been removed up to this point, other than Zundel, of course.

Mr. Paul Kennedy: That is correct. I think there are six that are currently before the court. Four of them have had their certificates found to be reasonable by the court. One, Mr. Charkaoui, is being heard by the court. In other words, the court is continuing to go through the process of reasonableness. There is one that is still outstanding, in terms of the court commencing that process.

The individuals are challenging the removal aspect of the process, and whether or not they would face torture, and whether or not the minister's assessment or delegate has made the appropriate determination. That information has been challenged in the court and has gone back for reconsideration.

So of the six, four have been confirmed by the court—the certificates were reasonable; one is currently being heard, and one is outstanding.

● (1630)

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

Mr. Joe Comartin: I said something that was not accurate: one has been removed from that group.

Mr. Paul Kennedy: Mr. Ikhlef, apparently, was removed.

The Vice-Chair (Mr. Kevin Sorenson): Mr. Wappel, for seven minutes, please.

Mr. Tom Wappel: Thank you, Mr. Chairman.

Thank you for coming today. I have a few questions that are really all over the place; they don't particularly relate to any subject matter. You mentioned providing us with a background brief on security certificates and removals, and a deck. In the deck, whose pages are not numbered, I just want you to turn to the heading, “How Process Responds to Criticism”, and subheading 1, “Secret Evidence”, which has four bullet points.

Have you got that?

Mr. Paul Kennedy: By the way, that was a deck Mr. Therrien prepared, who may be prepared to speak to it.

Mr. Tom Wappel: Excellent, that's no problem with me.

Mr. Therrien, bullet four states: "Canadian process commented positively by European Court of Human Rights". I could be wrong, but when I looked, I did not find any mention of that bullet point in the background brief, which I presume was also prepared by the Department of Justice. If that is true, I wonder if you'd be kind enough to provide the committee with the decision, or whatever it is you're referring to, in that bullet point.

Mr. Paul Kennedy: By the way, the background brief was prepared by the Department of Public Safety and Emergency Preparedness, and then, separately, Mr. Therrien prepared his deck. There is a decision by the European Court of Human Rights, but maybe Mr. Therrien—

Mr. Tom Wappel: Mr. Therrien, can you help us here?

Mr. Joe Comartin: It looks like a PowerPoint presentation, named "Department of Justice Canada", and it is the third from the last page.

The Vice-Chair (Mr. Kevin Sorenson): About the eighth page of the document toward the end, "How Process Responds to Criticism", number 1, "Secret Evidence", and the fourth bullet.

Mr. Tom Wappel: Might I recommend that your pages be numbered, so that we can quickly flip to them—which should apply to all committees, I would think.

Mr. Daniel Therrien (Senior General Counsel, Office of the Assistant Deputy Attorney General, Department of Justice): We'll do that.

Mr. Tom Wappel: Anyway, my question, simply, is would you be kind enough to provide us with the decision, whatever it is, you're referring to in that bullet point? I don't want to hear about it now.

Mr. Daniel Therrien: Absolutely.

Mr. Tom Wappel: Thank you.

The third bullet point states, "Amicus curiae (special advocate) not required by fundamental justice", and there are three cases cited there. Does that mean those three cases considered the issue of amicus curiae and decided it's not required by fundamental justice? Is that what that bullet means?

Mr. Daniel Therrien: That's correct.

Mr. Tom Wappel: So it may not be required by fundamental justice, but is there some reason it cannot be done as a policy matter?

Mr. Daniel Therrien: No, there isn't.

Mr. Tom Wappel: Because that's something we could consider.

● (1635)

Mr. Daniel Therrien: Absolutely.

It was discussed by the Federal Court of Appeal in Charkaoui, for instance, where the court said it was not the role of the court to impose this as a matter of law—as a matter of fundamental justice—but that Parliament might wish to look at the issue.

Mr. Tom Wappel: All right. Good, thank you. I think the committee might wish to look at that issue.

On this list of security certificates, just so I understand, you've got the name of the person, the affiliation, and then you've got the date of arrest. Is the date of arrest the date of issue of the certificate?

Mr. Paul Kennedy: That is correct.

Mr. Tom Wappel: So you arrest the person on the very day that the certificate is issued, in every case?

Mr. Paul Kennedy: The minister signs the certificate, and then, clearly, they have to go out and find the individual. There might be a bit of a gap, but normally we know where the person is, because we tend to watch their activities. So there's a very short period of time, and then the person is arrested, and then the matter is put very rapidly to a judge, because a judge has to look at it and satisfy himself as well that there's a process there.

Mr. Tom Wappel: Perhaps I can ask this. Of the 27 listed here, how many had a difference of more than seven days between the date of the issuance of the certificate and the date of the arrest?

Mr. Paul Kennedy: With your indulgence, I have counsel who actually argued some of those cases.

Counsel has indicated that in most of the cases he's dealt with, from the time the minister signed the certificate, the individual is usually apprehended within a week, and then they certainly have to get to the judge and the court within a week. So it's a very short time.

Mr. Tom Wappel: I was just asking because I didn't quite understand what date of arrest meant, specifically. If you happen to know of a case on this list where it was more than seven days, perhaps you could get back to us and let us know, just for my own interest.

Finally, I guess, within the timeframe I have, tell me about the procedure. A certificate happens, and then there's a hearing. When is the torture aspect of it considered?

Mr. Daniel Therrien: The certificate itself is reviewed by the Federal Court. The allegation of torture is reviewed, at the end of the day, by a delegate of the Minister of Immigration.

Mr. Tom Wappel: What I'm getting at is this. You have a certificate. Let us say that the person immediately says "You can't do this because I'm going to be tortured if I'm returned home." When is the issue of whether or not there's a substantial risk of torture dealt with, before or after or at the same time as the determination under the certificate as to whether or not the person should be deported?

Mr. Daniel Therrien: In the case of Charkaoui, for instance, who's a permanent resident, the certificate was filed by the minister. The person claimed to be at risk of torture. This was assessed before the court looked at the reasonableness of the certificate. And in a consolidated procedure, at the end, the court will look at the reasonableness of the certificate and whether the person is inadmissible on security grounds, and at the legality of the finding that he is not at risk of torture, if that finding is made.

Mr. Tom Wappel: Sorry, Mr. Therrien, but that sounds illogical to me. What is the purpose of examining whether or not a person is going to be subject to torture before deciding whether or not that person is going to be deported? It's totally irrelevant that the person is going to be tortured if the decision is that the certificate should be quashed. Why not deal with the allegations and the certificate first to get them out of the way? Then, if the certificate is quashed, and we see it happen on occasion, goodbye. It's irrelevant.

If, on the other hand, there's a determination that the certificate is relevant and the person has made an allegation that there will be a substantial risk of torture, then you consider it. Wouldn't this make sense?

Mr. Daniel Therrien: The reason it's like that is to have a more efficient process on the premise that a number of these individuals who are the subjects of certificates will argue that they are at risk of torture. If you proceeded sequentially—you look at the certificate first, in court, then if the certificate is upheld, the person makes the allegation of torture—you would have a process before the court that could be relatively lengthy.

● (1640)

Mr. Tom Wappel: As if it isn't now.

Mr. Daniel Therrien: The person is detained, and then after that you would have a further process to look at the risk of torture, followed by another review by the Federal Court of the finding that is made by the Minister of Immigration.

Essentially, the point is to have together, in parallel, the two determinations, rather than to have them in sequence, because it will take less time to do it as a consolidated procedure. Of course it takes time as it is, but it would take more time if you did it sequentially than in the consolidated way it is now.

The Vice-Chair (Mr. Kevin Sorenson): I have to stop you, Mr. Wappel, because your time is up.

Mr. Ménard, five minutes.

[*Translation*]

Mr. Serge Ménard: I would like to ask all my questions at once, because I want you to know where I'm going, and I think you will honestly try to answer them.

If this committee of parliamentarians were created—we have studied this possibility—to review and oversee security services, CSIS, to what extent could the use of this kind of certificate be examined? Under our laws, the power to incarcerate people does constitute an exception. I think you are now willing to provide information on all the cases where security certificates were used. If this committee sat in camera and had access to this information, would you be willing to tell us more than what you are telling us right now? Would such a committee be assured that it would be able to review all the cases, all the available evidence against people for whom security certificates were used?

[*English*]

Mr. Paul Kennedy: I don't want to get ahead of the curve on that particular issue, because I know there is clearly a report by the joint committee of the Senate and the House dealing with that particular issue. I'm not sure how that would actually play out in terms of what would be available.

The only information we're trying to protect with the process we've referenced here is the same kind of information that's identified in the Security of Information Act, which is information that would talk to operational information. In other words, what operations are going on? What human sources are involved? What other targets are out there? What other agencies are you working with that you may not be publicly avowing you are dealing with? And is there a unique technique that you're using? You can protect all of those things, just as you do in a normal criminal trial, and still know the substance of the case against the individual. I guess the difference would be in how this committee was struck, as you've made reference to, and whether or not there could be a little more information in terms of how the state would prepare the gist of the information, as opposed to how the judge is currently preparing the gist of the information.

Believe it or not, we actually do try to be as transparent as we can be with the committee. One of the major amendments in Bill C-36, when it amended the Canada Evidence Act, was to make more information available, and judicial summaries were the vehicles one tried to look at to make more available.

The only part you would not have might be that this individual was the human source that was relied upon, or that the individual is actually an intelligence officer with the service who is undercover right now. Clearly, there is a risk of putting their lives at risk. That concern would exist in a police operation just as it would here. I'm not really sure if the committee would need to know that. Maybe you would need to know, or we could tell you, that the information came from a human source, or that the information actually is based on a wiretap and therefore it's an intercept of the communication, and that's why the court is comfortable with that information.

It would be worth while for you to actually look at the recent decision in Harkat by Madam Justice Dawson in which she outlines the kind of testing and vigour that is engaged in by the court in terms of testing what the information is—I have a copy of it—to possibly give you some comfort as to what is there or not there, and how the information is tested. If you have occasion to read that—it's in the materials we have—it would show you that the court does its best to give you as much as possible and only protects the key information that I think we would all agree ought to in fact be protected.

● (1645)

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

We'll go to Mr. Cullen, please, for five minutes.

Hon. Roy Cullen: Thank you, Mr. Chair.

Thank you, Mr. Kennedy and officials.

This Federal Court document dealing with Mr. Ahani.... I know it's very judgmental, but Mr. Ahani seems like a pretty dangerous kind of individual. Would you say, in terms of the people who are being held now under security certificates, that he is representative? In other words, is he particularly bad or particularly mild? I know that's a judgment call, but is this the typical kind of person that is being held on a certificate?

Mr. Paul Kennedy: The difference is that he was an agent of an intelligence service of a foreign government, or we believed he was, who was involved in assassinations around the world. The individuals, and I would prefer to look at all of the individuals we have on the list.... All of the organizations are organizations that involved themselves in terrorism and that, if you look at their history, have killed tens of thousands of innocent people in very brutal fashion. These are not necessarily surgical strikes against a police officer or a military officer; these are organizations that have very bloody histories.

In terms of the GIA, I think it's 50,000 or 100,000 people who have been executed. People have gone into villages and beheaded people—men, women, and children—just for the terror factor. So it depends. To some extent, Mr. Ahani might be a cold-blooded killer, but he maybe is more surgical than what some of these other people have.

We have associates of bin Laden. The only ones, I guess, who stand out a little are the two Russian folks here, who are shown as the Lamberts. That's an espionage case of two individuals who are believed to be members of a Russian intelligence service who were sleeper agents in this country. They would have been here collecting intelligence.

All the other groups are ones that have extensive history. Tens of thousands of people have been killed due to their activity—so take your pick.

Hon. Roy Cullen: Thank you.

In this Federal Court document, on page 17, the court concludes in paragraph 35 that:

> The consequences of AHANI remaining in Canada are that the Government of Iran will have a person in Canada to support, threaten or undertake acts of violence against people in this country.

So that was their conclusion.

It's interesting, Mr. Kennedy. You make the point that it's a three-walled house in the sense that these people who are detained under security certificates, if they want to leave the country, are free to leave any time they want. That brings us to this whole business of the allegations that they could be tortured or killed. I just want to get into that a little, because sometimes I've seen it at another dimension...people using this argument in immigration cases, and I think it just doesn't bear credibility. On the other hand, there would be people, I suspect, for whom this would be a valid concern.

In terms of looking for assurances from a country that they won't torture or kill someone, how do you accept assurances? How can that be put together in a way that's meaningful and valid from some countries where I'm sure we wouldn't take their word? What accountabilities are there to deliver on any commitments they do make?

● (1650)

Mr. Paul Kennedy: That's a very fair question. I have Mr. Morill here, who can talk a bit, if you want—he's from the foreign affairs department—in terms of the steps they go through to get assurances.

In addition to the diplomatic aspect, I think people are much more driven by self-interest. What you have to look at is the fact that we are dealing with global phenomena. These are transnational groups. These are groups where the world collectively has to work together to address the challenge. That's why the United Nations has put such a high priority on this. That's why the United Nations has the procedures in place. They want countries under the conventions to put terrorism laws in place; they want freezing on financing. There's a whole effort by the United Nations to coordinate activities worldwide. So it is literally impossible for a country standing alone, regardless of what country it is in the world, to deal with the terrorist phenomena. You need the assistance of other people.

In our particular case, in addition to the concerns I'd have—obviously Air India was clearly a case where it happened in Canada—more often than not, there's propaganda, there's recruitment, there's acquisition of materials. We've had people buying the night goggles here, and weaponry, and things of that nature. Activities that occur in Canada are maybe ones where another country in fact is going to be the one where the actions play out. And it's either people who are recruited in Canada.... We found dual citizens who were abroad, or others who have gone abroad to do it. We find moneys that are in Canada that are used to finance these activities elsewhere, and we find equipment that is procured here that is used to carry out activities elsewhere.

So those other countries have a self-interest to maintain the good will of Canada, regardless of their thug regimes. It's in their self-interest to say they will cooperate, because they need the assistance of Canada: Canadian society, Canadian citizens, but also, clearly, our intelligence agencies and our police agencies. It is not in their interest to cause that kind of thing because there will be, at a very practical level, repercussions in terms of our interactions with them as to what information we share, what assistance we provide to them, or anything else. That is at a very selfish level.

In addition, states are also signatories to these conventions, and diplomatically there is pressure as well. And once an issue has profile, the states want to behave and be held accountable. So there is a dynamic that causes, out of self-interest, if nothing else, good behaviour in these areas.

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

We'll go to Mr. MacKay for five minutes.

Mr. Peter MacKay: Thank you.

I first want to comment briefly on my friend Mr. Cullen's question, and then I have one other that I would like to pose to you.

You mentioned this idea that we would, in some instances, be sending an individual back to their country of origin where it was in fact a state-sponsored activity or terrorism that led them to be in Canada. I guess that's outside the purview of what we're talking about, but what other international information and agencies can we rely on? Obviously, we have our allies. Are there so-called independent bodies that we can turn to? I'm thinking of Amnesty International. You mentioned the United Nations. We've got our own internal, and to some degree external, intelligence-gathering mechanisms.

I guess what it comes down to is that when the country to which the detainee might be sent is, in the view of Canada and in the view of those making the assessment, likely to torture the person or put them to their death—and correct me if I'm wrong—the courts have said that in some cases, even in those circumstances, it is justified, even applying the charter test, to send this person outside of Canada because the risk is so high, because of the assessment of the harm they could cause if they remained in Canada. Just as a corollary to that, how long can we hold a person? How long can we actually detain someone? What is the maximum time? I can't seem to find that in the presentation or the information I've looked at.

The second question deals with the judges themselves who are making this assessment. There appears to be discomfort on the part of many of the federal judges because they're being put into a situation and a very complex process where they are making decisions based upon sensitive information, in the absence of the normal rigorous examination that takes place in a courtroom, because it's secret evidence. In some cases, frankly, they don't have the training or they don't fill the role of the traditional amicus curiae where they are the friend of the court, and they are there to try to assist the person. Do we have an alternative whereby we could perhaps have three judges, one who acts on behalf of the state, one for the accused, and one who is assessing the evidence? It seems to me that judges, in some instances, depending on their experience, need special training and special support, and maybe we have to experiment with this process a little bit further in order to protect everybody in the process, including the judges themselves.

● (1655)

Mr. Paul Kennedy: There are a number of questions there.

In terms of Mr. Ahani, who was returned to the actual state he came from, clearly, the fact that he has been identified in terms of what his occupation is somewhat negates his usefulness. The other thing is that there are watch lists produced and shared internationally, so his mobility would be severely curtailed. In addition, he would have been photographed, fingerprinted, and all the rest of that. It would be more difficult for him to carry out future activities. There obviously is a bit of irony in having him return there, just like returning spies to Russia, maybe to be redeployed. The fact is, they're not here, and they're not posing a risk to us. You're not going to have a 100% solution, but you are at least moving the marks ahead a little bit.

The other one, the Supreme Court of Canada versus Suresh, indicated that there was nothing in our charter that prohibited Canada from having a person return to face torture. It clearly indicated, though, that this would be a very exceptional circumstance. We haven't had such a circumstance where we in fact have done so. That would, I think, be akin to the situation for extradition: we don't have the death penalty and normally we don't send anyone back by extradition to face a death penalty. There is an exceptional discretion that could be used. All they were doing is indicating that there could be some case, hypothetically, where it would be possible. What the court indicated in Suresh is that it would be possible for Canada to do so without violating the charter.

In terms of how long, I pointed out that the person is detained because they are here and they're contesting their status. One of the reasons I use the Ahani case is I'm putting my worst foot forward. He may be an assassin, but actually he was an individual who I think was incarcerated for almost eight years. As you can see, he pursued an awful lot of legal remedies, contesting the matter through numerous courts. He did not want to go back, and he was detained for that period of time. The court obviously did not let him out on any kind of a provision because here was a chap who was alleged to be an assassin.

Mr. Peter MacKay: Are there regular scheduled reviews? In this extraordinary case, where the person was in custody for eight years, is there a regularly scheduled review? This was something that came to light during the British examination of a similar process, and I think they built in regularly scheduled reviews.

Mr. Paul Kennedy: We do not have indeterminate detention. If you are a permanent resident, the judge has to make a determination in 48 hours, and this is reviewed every six months. In the case of this chap, after the certificate was found to be reasonable, it would looked at by the court every 120 days thereafter. The court weighs the risk posed to society if this individual is released, and in some cases decides not to release him.

So as long as he wants to stay here and contest it, and the judge is satisfied that he would pose a risk, then he would remain detained. It may reach a point where the judge decides otherwise.

In respect of the discomfort by the judge, I think you were referring to two comments. One was a case heard by Chief Justice Lutfy of the Federal Trial Division. It was actually under the Canada Evidence Act. It wasn't an Immigration case, but he made some comment. Another one was a statement by a judge during the course of a panel discussion. I would invite you to read some of the decisions that we have referenced in the material. The judges realize that it is their obligation. In the last decision on Harkat, which came within the past month, the judge was very detailed in the challenge process she went through to verify the information. Is it trustworthy? Does the person have a motive? Who is it? Is it from a source? Is the source someone at risk of being deported? Check the motive. It is a detailed analysis by the court, and you'll see this by all the judges. It's difficult, but it's the appropriate regime, and we're the ones to do it. We can do it, and we're independent.

● (1700)

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

For the record, we have some information in regard to Mr. Ahani's affiliation with the Iranian intelligence service. He was arrested in June 1993, and his date of removal was June 2002, which would be nine years.

Mr. Macklin, five minutes.

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

I want to clarify a conversation and some of the evidence that occurred recently. There was a discussion about doing the review of the certificate and dealing with the risk of harm, concurrently.

In the deck under item 6, with respect to (b) pre-removal risk assessment, we have the following:

> The pre-removal risk assessment application, that is, the risk of torture suspends review of the certificate until the CIC ministerial delegate decides whether to grant the pre-removal risk assessment protection from risk of harm.

That doesn't sound like it's concurrent; it appears to be consecutive.

Mr. Daniel Therrien: The concurrence occurs at the level of the review by the court itself. It works like this. First, the certificate is filed with the court. Second, the person makes an allegation, a claim that he will be tortured. Third, the certificate process is suspended. Then, a determination is made whether the person is at risk of torture. The value of the process as we have it is that, at the very end of the process, once the minister has decided whether the person is at risk of torture, the same judge reviews both the issue of inadmissibility and the risk of torture. The alternative would be to proceed to the certificate, have the judge determine whether the certificate is reasonable, make an application under the torture convention, and finally, have a judge confirm under a separate procedure whether it is legal.

Hon. Paul Harold Macklin: I think that clarifies that point.

With respect to the United Kingdom, the House of Lords made a decision to release a number of people who were foreign nationals and citizens alike, and who had been held for an extended time. Before their release, however, the legislature was able to pass a control process, so that these individuals would remain under some control after they were let out.

In light of this decision, should we be considering something similar in this country? Is this something you're working on? Could you give us some insight on where this might lead us, or do you think it's applicable?

Mr. Paul Kennedy: Actually, our Federal Court of Appeal, in Charkaoui, I think, had actually looked at that issue and distinguished the House of Lords case by saying that it did not apply here. Under the British regime, they had a procedure where there was indefinite detention of these folks. That's the way it was written.

Ours is not written that way. People are not indefinitely detained because there is a possibility clearly that the reasonable certificates have been quashed or released. If it is maintained for foreign nationals, there's a requirement for the judge to again look at it after 120 days. We have the same thing, a provision where it's every six months.

We have two cases right now, both Suresh and Charkaoui. Both of those individuals are currently out on a form of release that is very akin to the kind of release you're referring to that was used in the House of Lords, which the Brits had put in place.

Our regime was different from theirs. We always had the capacity for the judge in the appropriate case to weigh the respective merits and have the person released on some kind of order, whether it's house alone, reporting conditions, or things of that nature. The issue they're confronted with is not one that is a problem for us, and our Federal Court has pronounced on that.

● (1705)

Hon. Paul Harold Macklin: Once that person has been released under those conditions, do you believe it will give us sufficient control over that individual?

Mr. Paul Kennedy: Those are judgments that are of concern to us on each particular case. Clearly with the last release of Mr. Charkaoui, the representative for the Government of Canada argued in favour of his detention and that in fact the risk posed was of such a nature that the release orders would not be sufficient. However, the court made its decision. The terms are there. We're certainly doing our best to make sure that the terms are adhered to and no risk occurs to public safety.

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

We're back to Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: A moment ago, you gave us many figures to compare the certificates issued and the procedures undertaken relative to the number of people who came to Canada. How do you calculate that number of people? Do you count each entry as a different person? The numbers you provide do not seem to correspond to the number of people who entered Canada, but rather to the number of entries into Canada: if a person travels a lot and leaves the country six times, that adds up to six people.

[*English*]

Mr. Daniel Jean (Assistant Deputy Minister, Policy and Program Development, Department of Citizenship and Immigration): On the number of entries, of course the vast majority of entries are at the Canada-U.S. border. They probably account for close to 100 million, and then the others are from foreign lands.

[*Translation*]

Mr. Serge Ménard: So, a truck driver who...

Mr. Daniel Jean: I should have answered you in French, I'm sorry.

Mr. Serge Ménard: Thank you. So a truck driver who delivers paper and who travels regularly—say 50 times a year—between a paper mill and New York is counted as 50 people. Mind you, it's fine, that's what I wanted to know.

[*English*]

Mr. Paul Kennedy: I would suggest that if you don't accept my 1.5 million, we can at least go to the number of people who are admitted to the country and get permanent resident status. Even if you look at those numbers, there are over 200,000 a year of those.

[*Translation*]

Mr. Serge Ménard: That's why I thought it was no use exaggerating.

[*English*]

Mr. Paul Kennedy: I think it's fair to say that Canada does have a tourism industry. We actually have people who visit us from other countries, and we have a fairly busy tourist industry. It doesn't matter what numbers you use. I think it's fair to say that 26 individuals over 14 years is a fairly small number.

To show you that we use the process as judiciously as we can, and to the extent we don't have to use it and all the information would be public, we use the normal immigration process. Where we have to use it to protect state information, we do, but we're extremely judicious in the use of this power.

[*Translation*]

Mr. Serge Ménard: It's fine. Thank you.

[*English*]

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

Mr. Tom Wappel: Mr. Therrien, I'm afraid I don't follow your explanation.

Let's take an example. Today two ministers sign a certificate. As a result, someone is picked up today. When is the Federal Court seized of that certificate?

Mr. Daniel Therrien: Almost immediately.

Mr. Tom Wappel: All right. Almost immediately the court is seized of that certificate. Tomorrow, if the person picked up today says that you can't do this, and he or she is going to be tortured if sent back, then what happens?

Mr. Daniel Therrien: The process is suspended for the allegation to be assessed.

Mr. Tom Wappel: Wasn't that what I was just asking in my previous line of questioning? Your deck says that the process of reviewing the reasonableness of the certificate is suspended until it's decided whether or not the allegations of torture are correct.

That's what in fact happens.

Mr. Daniel Therrien: Yes.

Mr. Tom Wappel: Who makes the determination of whether or not the allegations of torture are reasonable?

● (1710)

Mr. Daniel Therrien: In the first instance, a delegate of the Minister of Immigration, subject to review by the Federal Court.

Mr. Tom Wappel: Not the Federal Court.

So it isn't the same judge making both determinations, as you told us earlier, or at least as I understood you telling us earlier. It is a judge being seized of a certificate, and then if someone alleges torture, the reasonableness test is suspended until the allegation of torture is dealt with.

I say to you that this is backward, because if the certificate is not reasonable, it's irrelevant whether or not there would be torture, because the person is going to be released. I can't see how it is more efficient to go through a process of examining whether or not a person's allegations of torture are correct before you examine whether or not the certificate was correctly issued, because the person is under detention. Surely you should determine first whether the certificate is correct, because you're depriving someone of their liberty. Then, after it's determined whether or not the certificate was properly issued, let's say it wasn't, the person is gone. If it is determined that the certificate was properly issued, then you examine whether or not there's a substantial likelihood of the person being tortured.

I don't understand why you do it the opposite way.

Mr. Daniel Therrien: Did you say that with respect to the allegation of torture it is not the Federal Court that decides this matter? In the first instance, it isn't. But neither is the court the first decision-maker in the certificate process. The first decision-makers are the two ministers, and their decision is reviewed by the Federal Court, which reviews whether the ministerial determination was correct.

Mr. Tom Wappel: That's mandated by statute?

Mr. Daniel Therrien: That's correct.

Similarly, with respect to the allegation of torture, a decision is first made administratively by a delegate of the Minister of Immigration.

Mr. Tom Wappel: Is that mandated by statute?

Mr. Daniel Therrien: Yes.

Mr. Tom Wappel: What statute? What section?

Mr. Daniel Therrien: It's section 112 of the Immigration and Refugee Protection Act, which provides for the pre-removal risk assessment.

Mr. Tom Wappel: By statute that is to be determined before the reasonableness of the certificate is determined?

Mr. Daniel Therrien: Through the rule, which is not section 112, but around section 79—I can provide you with the exact reference later—there is a specific statutory provision in the certificate scheme that says the application made under section 112 suspends the review of the certificate by the Federal Court.

Mr. Tom Wappel: Given that, let's assume that's all correct, does it make sense?

Mr. Daniel Therrien: The point I would try to emphasize again is that you have two administrative decisions, both of which will almost invariably be reviewed by the Federal Court. Is it better to have the Federal Court look at these two decisions separately, sequentially—I grant you that the suspension is a form of sequential procedure—perhaps by two different judges, than to have—

Mr. Tom Wappel: It could be the same judge.

Mr. Daniel Therrien: It could be the same judge.

Mr. Tom Wappel: So that's a red herring, isn't it?

Mr. Daniel Therrien: Generally it would be a different judge, but in the event—

Mr. Tom Wappel: Well, that's an administrative matter. You could deal with that.

Mr. Daniel Therrien: It would be a decision for the chief justice to assign these cases.

But the point is that you would have two separate judicial reviews in the first place—of the certificate, the determination, and of the allegation of torture. And the system is built on the premise—you may disagree—that it is better to have the two decisions reviewed at the same time by the same judge, rather than to have them reviewed separately, either by the same judge or a separate judge.

Mr. Paul Kennedy: Possibly I could intervene there. I've talked to a counsel who has one of these cases. They go back before the same judge, who's hearing both. The fact that so much uphill battle is going on here maybe articulates that you have something worth chewing on. One of the individuals we actually have, Mr. Jaballah, who has been incarcerated since August 2001, raised the kind of concern Mr. Therrien has spoken to. A whole series of court cases has dealt with the determination of risk of torture. Of the six before the court, he's the only one who has not yet had a finding of reasonableness on that certificate, so there is something that in theory would work a certain way, but in practice...if you're looking four or five years down the road and you still haven't had a determination on the reasonableness of the certificate, I think that's the problem.

Clearly we're looking here at any kind of refinement you might bring to it. I don't think we're trying to pretend there's one perfect model, and there are cases in which imperfections show up in terms of execution.

● (1715)

Mr. Tom Wappel: Thank you, sir.

The Vice-Chair (Mr. Kevin Sorenson): Mr. MacKay.

Mr. Peter MacKay: Just along those lines, have you had the experience thus far that while a person is being held on a security certificate, there may be a warrant for them in another jurisdiction, and we would accelerate the process here to answer that call from another country? First of all, has it happened, and are we prepared for that possible scenario?

I also want to come back to this issue of the time and the delay. Even at the front end a person, as I understand it, can be scooped up and held 48 hours without access to even basic counsel. I grant this is an extraordinary circumstance when it's enacted. I guess I ask a rhetorical question—where is the harm in allowing at least initial counsel within that 48-hour period? And who pays for it? Is there a legal aid component attached to this process?

Again, I'm still troubled somewhat by the aspect of the judges themselves, who seem to have expressed concern about their ability to deal with the complexity of this, in some cases, and be the sole arbiters in this process.

An Ontario Superior Court judge, Roger Salhany, made comments that he felt judges were simply not equipped at the Federal Court level—didn't have the training or the familiarization with this process to make a proper determination—so is it even being contemplated by the department that we could have specially designated judges who would be trained in this particular fashion?

Mr. Paul Kennedy: Well, you—-

Mr. Peter MacKay: I know I'm throwing a lot of questions at you, but this is the process we have to deal with in this forum.

Mr. Paul Kennedy: There are a number of issues here, and I'll respond to them.

A warrant, by itself, isn't the issue. The issue, if there's a warrant, is whether or not it's being followed up by a request under the Extradition Act.

Mr. Peter MacKay: Extradition, that's right.

Mr. Paul Kennedy: Clearly the two processes could go in parallel. Hopefully one would pick the process more likely to be appropriate in that case, instead of having a multiplicity of proceedings.

The only one I know of recently came up in the case of Mr. Charkaoui. It turned out the other country actually had a warrant out for his arrest, but it had never disclosed that to us publicly, and it wasn't, at that stage, a request for extradition. So in some of these countries there may be, in fact, that kind of process.

When we generate the activity under the Immigration Act, we're doing it because of Canada's interest to exclude a person. In the case of the Extradition Act, you respond to another country's request for you to do something, so if we're moving on our own, that is where we are going from.

In terms of counsel—clearly people have counsel. I have counsel here from the service who could probably articulate every one of these cases as counsel acting for them. I assume it's legal aid. I haven't made inquiries, but most of the people, I would suspect, are being retained by legal aid. A number of them have two counsels who act for them, so they're well equipped. I point out to you that this particular case went to Federal Court, Federal Court of Appeals, Supreme Court of Canada, Ontario Superior Court, Ontario Court of Appeals, Supreme Court of Canada, and the UN, so clearly they're well equipped with counsel who vigorously push the issues.

Mr. Peter MacKay: Mr. Kennedy, if I could interrupt you just for a moment, that is very much an issue in this country right now—the backlog and the sheer volume of cases that legal aid is carrying. Should a legal aid lawyer become engaged in a case like this, I would suggest that the lawyer is going to be locked into it and have to drop everything else because of the complexity and the dedicated service that it's going to require to take on such a case. I think legal aid is fairly overburdened right now.

Mr. Paul Kennedy: I can't get into the merits of that. People are entitled to legal aid. Even if there are serious issues, they're entitled to it.

On your other comment, in terms of Justice Roger Salhany, I believe he's a judge of the Ontario—

Mr. Peter MacKay: He's retired now. He's from the—

Mr. Paul Kennedy: I don't think he was ever a Federal Court judge.

Mr. Peter MacKay: —Ontario Superior Court.

Mr. Paul Kennedy: Yes, and these cases don't appear in that court. They all go to the Federal Court of Canada. There is a bench of specially designated judges who hear all of these cases. They are experienced judges who hear these cases and are familiar with national security matters. So you are dealing with people....

The two that you referred to have made public comments, but I've urged you to look at the cases where judges themselves, as of a month ago, have looked at it and said, "We have no problem. We are doing these cases, and this is how we're doing it, and we're doing a good job." They're cognizant of the obligations they have. So rather than a newspaper report, I think it would be worth while to actually look at the comments, and in the background material we've provided we excerpt from a number of those cases the very comments by those judges—extremely thorough in terms of what they've done.

● (1720)

Mr. Peter MacKay: On the timing of access, too, there are no instances when a person is denied counsel during that 48-hour period.

Mr. Paul Kennedy: Just give me a moment and I'll have Mr. Batt come up, if you would consent to that. He's counsel who has done a number of these cases and he can articulate to you the timing, how the process unfolds, and when counsel appears. On a criminal matter you could have the same thing—you're arrested, you have duty counsel, and then you retain counsel—

Mr. Peter MacKay: You can be remanded,correct? You could be remanded for a weekend, in some cases, before you have access.

Mr. Paul Kennedy: Exactly.

The Vice-Chair (Mr. Kevin Sorenson): Just before you answer that question, would you mind just identifying who you are and your position, please, into the mike?

Mr. Robert Batt (Counsel, Canadian Security Intelligence Service): My name is Robert Batt. I'm with legal services at CSIS.

To answer the honourable member's question, in a number of these cases the individual is arrested and has counsel within a matter of 24 hours. Sometimes it's a little bit longer. I frequently, on a number of cases, have had calls from a lawyer within a couple of days.

Just to go back, the matter has to go to a Federal Court judge within seven days of the individual being detained. Sometimes the individual does not have counsel within that period of time, but he will get counsel shortly after that. I haven't seen a case where an individual has never obtained counsel.

In relation to legal aid, I know from speaking to a number of counsel who have handled these cases, they are dealing with legal aid. There may well be problems with legal aid, but in the end the counsel does appear, and a counsel is funded by legal aid.

Mr. Peter MacKay: Very good.

Thank you.

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

Mr. Cullen, please.

Hon. Roy Cullen: Thank you.

The Vice-Chair (Mr. Kevin Sorenson): This will be the last question.

Hon. Roy Cullen: I have a short question, a follow-up really to a question Mr. Comartin asked. He's not here now, but I think what he was alluding to—and I'll finish off this question, even if he didn't have this in mind—is that in this particular case with Mr. Ahani most of the crimes, killings, whatever, happened outside of Canada, but you did say that there were probably some crimes committed in Canada with respect to passports.

My question is this. Presumably it was a matter that there wasn't sufficient evidence to charge him under the Criminal Code of Canada for acts committed in Canada. Is that correct? My broader question is, if we can get a person convicted for an offence under the Criminal Code of Canada for offences in Canada, maybe we don't have to go through this whole process.

Mr. Paul Kennedy: Bear in mind that there are two things. One, we avail ourselves of all the remedies. When you're fighting terrorism, you use whatever you can. As an example, we have the tracking of moneys that are used in money-laundering activities. In Bill C-36 the deregistration of charities aspect is there. We have under the Criminal Code the power to freeze and seize money, and we have that under the regulations under the UNSTR with the suppression of terrorism financing regulations. So you can seize money; that's one technique. The other is removal of people as a technique, and you also have the power under the Criminal Code, for instance, to prosecute people.

Independent of that are the other things we use, such as trying to get communities to abandon those kinds of activities and to live a democratic lifestyle.

You have all these techniques, and what you're trying to do is use the full range. You're using intelligence, you're using disruption, you're using displacement, and by moving people out and so on, you in fact are doing something successful to affect the efficiency of these organizations. It's not just the individual; that individual is usually part of an organization, and it's their role in the organization you're trying to disrupt.

You could in the appropriate case...and we have a case currently before the courts where someone is charged with a terrorist-related offence, and that's what you're going to do. With someone who's here, there's clearly an advantage for that person to acquire Canadian citizenship. We don't want to make a problem worse—they are here, they get permanent resident status, and they become citizens—because then you really compound your difficulties. At least try to reduce that as a particular problem.

In addition to that, suppose we charge the person with a criminal offence. Assuming a conviction has occurred, you would still want to remove the person from the country. It is not a case of prosecuting, convicting, and incarcerating a person and then welcoming that person into your society. You turn around and at some point in the process you are still going to remove them from your country. The issue is, have they done something here that causes you to say it's worth your while to do a criminal trial for the punishment?

Look back at Mr. Charles Ng as an example. Mr. Ng was accused of horrific crimes in, I believe, California: sadistic murders, sexual murders, and stuff. He came to Canada, and while in Canada he committed criminal offences. He was charged in Canada with those offences, served his sentence, and then was returned to the United States. There was an extradition, and he fought it, I think, through nine different levels of appeal, and he was finally removed from the country.

At the end of the day you are still stuck with the fact that you wish to remove that person from this country. It's just a case of timing.

Do you want to add something?

● (1725)

Mr. Daniel Jean: I would just add one thing. If you're dealing with somebody who is a high risk to security and it's somebody who has been granted protection as a refugee, a minor criminal conviction will not be sufficient to remove that person. If you have identified somebody who is really a risk, that is not a mechanism.

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

That basically sums up most of the questions, but in conclusion I would like to ask a couple of questions.

The testimony today has been very welcome, and we appreciate so much your appearance here today. You've talked about some of the ones there have been security certificates issued for. You've brought out that there are some who have been removed because they were part of, perhaps, sleeper cells here in Canada, so we know the risk is very real.

But when we talked about the Federal Court judges who will preside and who will listen to the arguments, you said there were a certain number of Federal Court judges. I have two questions. How many of those Federal Court judges would make decisions with regard to the certificates? Is there any extra training that is available? Does the government or the department have a responsibility to let those judges know the guidelines they would have, or do you believe it would be the judges' responsibility to understand the legislation that's brought down here, those specific judges who are involved?

I'll ask the other question just very quickly. In the early 1990s former justice minister Allan Rock brought forward a process where suspected war criminals could eventually be deported from our country without the benefit of prosecution if it was found they had provided misinformation at their immigration hearing. Can you do a quick comparison? What's the difference between that process and this process?

Mr. Paul Kennedy: Maybe I could answer some of your questions. One thing, there is actually a panel of judges, and I can't recall the number. There may be seven or eight.

A voice: Ten.

Mr. Paul Kennedy: There are ten judges who are designated by the Federal Court to actually hear these cases. Those are judges who also heard some of these cases prior to the legislation being put in place, but the government made additional money available to strengthen the Federal Court bench to take on the perceived additional workload.

In terms of the training, the training is done by the judges themselves. Because of the independence of the judiciary it would be improper for us to provide that kind of training to them, but there is training that is available to judges. George Thompson heads up the section—I forget the name of it now—that actually has a whole series of judicial training. My counsel has indicated it is the National Judicial Institute where there is training. The judges have provisions in place where they are in fact being trained. There are people who over the years are designated for it, are dealing with these cases, and who have the training. The training is objectively given, but not by the government.

As a matter of fact, I know that some of the judges were formerly counsel for SIRC. They have had training in their private sector role in terms of security cases through their involvement and proceedings before the Security Intelligence Review Committee. Clearly, there are people up there who have a knowledge of this particular area.

In terms of the war crimes, I'm not the person to answer that question. I don't know if Mr. Therrien could answer, or whether we would have to get back to you on that.

● (1730)

Mr. Daniel Jean: I can answer that.

Mr. Paul Kennedy: My colleague, Mr. Jean, would like to answer that.

Mr. Daniel Jean: The revocation process is not only in the case of world war crimes, but it's a similar process if a person misrepresented facts and acquired citizenship by false pretenses. The way it works in the context of a world war crime is that by misrepresenting facts you've alluded to the fact that you were inadmissible to Canada in that you've been associated with war crimes or crimes against humanity.

The current process in the Citizenship and Immigration Act is one where the minister, if he's satisfied there's enough grounds in terms of an allegation, will notify the person that he may refer them to the Governor in Council. The reason they refer them is that people are allowed to answer this. The Federal Court has a role to confirm there's been misrepresentation. If the court finds there was misrepresentation, then the minister has to decide whether or not he will refer that case to Governor in Council and then a final revocation would come through the Governor in Council process.

As you probably know from serious attempts that we've had with the Citizenship Act, in the last attempt to reform the Citizenship Act there was a proposal to make that process a full judicial process.

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

Our time being 5:33, and the bells ringing for a vote, we will adjourn. I would ask the members to wait behind for a couple of minutes to give a summary as to what we will be doing next week.

Mr. Kennedy, just in conclusion.

Mr. Paul Kennedy: You've asked for the translation, which we'll take care of, of the annex that was missed, and to which Mr. Wappel referred. The two volumes I've referred to here that we have provided to the Senate, if you wish, we'll also make those available to you with additional copies.

The Vice-Chair (Mr. Kevin Sorenson): I think that would be very much appreciated, if you could give that to the clerk for anyone who wants access to it.

We're adjourned.

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