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**Chair**

**Mr. Garry Breitkreuz**

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## Standing Committee on Public Safety and National Security

Wednesday, November 1, 2006

• (1530)

[English]

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

This is the Standing Committee on Public Safety and National Security. This is our 18th meeting. Today we are dealing with Standing Order 81(4) on the main estimates for the years 2006-2007, vote 25 under Privy Council, referred to the committee on Tuesday, April 25, 2006.

We would like to welcome our witnesses from the Security Intelligence Review Committee. The chair, Gary Filmon, will have some introductory remarks, and he can introduce the rest of the people with him.

We're also going to be dealing with the order of reference of Thursday, October 26, the study of the SIRC annual report 2005-2006. Also, we will deal with Standing Order 108(2), a study of the report of the Commission of Inquiry on the events related to Maher Arar.

We will be dealing with all three of those things in the two hours we have before us.

Mr. Filmon, if you wish, you can deal with all three issues in your introductory remarks or deal with them as you wish. Welcome to the committee. You may proceed.

**Hon. Gary Filmon (Chair, Security Intelligence Review Committee):** Thank you, Mr. Chairman and members of the committee, for the invitation and the opportunity to appear before the committee. I believe the last time the Security Intelligence Review Committee was invited to appear before this committee was three years ago. So we're pleased to be here today and to respond to the issues you would like to cover.

It is a pleasure for me to introduce my fellow members. All four are here today. We have Roy Romanow, the former premier of Saskatchewan, someone who's probably familiar to most of you. We have Baljit Chadha, a prominent businessman from Montreal. We have Ray Speaker, a former member of Parliament and probably a familiar face to many of you. And we have Aldéa Landry, a former deputy premier of New Brunswick.

As well, we have a number of staff with us: our executive director, Susan Pollak; deputy director, Tim Farr; our legal counsel, Marian McGrath; and one of our researchers, Sacha Richard.

I'll begin by giving a little bit of background. I was appointed to the committee three weeks after 9/11. I was named chair just over a

year ago. So I have been immersed in the challenges of security intelligence for some time now. Over the past five years, the Canadian intelligence security landscape has changed dramatically, but the framework that defines the powers and authority of both CSIS and SIRC has stood the test of time, in our view.

I'll give you a brief overview of SIRC's mandate and operations. Our role is relatively easy to describe, if rather complex to execute. We have two basic functions: one, to conduct reviews; the other, to investigate complaints. SIRC has, in law, absolute authority to examine all of the service's activities, and has full access to all of its files, no matter how sensitive or classified the information may be. The sole exception is cabinet confidences.

SIRC's reviews are designed to yield assessments across a wide range of CSIS activities. Our reviews cover all of CSIS's key program areas, although we recognize that counter-terrorism is CSIS's number one priority. We also examine CSIS's arrangements with foreign and domestic agencies, as well as the advice and assessments they provide on an ongoing basis to the Canadian government.

All of SIRC's reviews are done by assessing CSIS activities against four instruments, which together form the service's legislative and policy framework. These are: one, the CSIS Act; two, ministerial direction; three, national requirements for security intelligence; and four, CSIS operational policy. Each review includes findings and recommendations, which are sent to the director of CSIS and the inspector general. Occasionally we submit special reports under section 54 of the CSIS Act directly to the Minister of Public Safety. Our most recent such report examined the case of Maher Arar.

SIRC also investigates complaints about CSIS brought to us by individuals or groups. These complaints can be about CSIS activities, security clearances, citizenship, or human rights issues. We issue reports and make recommendations to the director and the minister, and we also report the findings of our investigations to the complainant.

I will not describe these two responsibilities in more detail because I'm sure you are already familiar with these topics, although I'd be happy to answer any questions. I'd also invite you to visit our website at [www.sirc-csars.gc.ca](http://www.sirc-csars.gc.ca) if you want more information.

SIRC uses a number of mechanisms to reassure Canadians that CSIS is playing by the rules. We maintain a comprehensive website, participate in conferences and symposia, and visit universities. But perhaps our most visible vehicle is our annual report, which is also our primary means of reporting to Parliament on what we do. It's a sanitized public summary of the much more detailed, highly classified reviews and complaints investigations that we undertake during the year.

● (1535)

Our 2005-06 annual report was tabled in Parliament on October 26. This year's report provides highlights of seven reviews, as well as four decisions rendered in complaints cases. Among the more noteworthy reviews was an examination of CSIS's relationship with agencies in four countries suspected of human rights violations and an examination of CSIS's electronic surveillance and information-gathering techniques to gain a better understanding of how rapidly changing technologies are being used by CSIS and exploited by terrorists and foreign intelligence agencies. Our annual report outlines the 14 recommendations stemming from these reviews.

In 2005-06, SIRC also dealt with 63 complaints, a significant increase over recent years, and we issued four new decisions. In addition to our annual report, SIRC, like all other federal departments and agencies, prepares an annual report on plans and priorities, which was tabled in Parliament in September. It underlines that although we are a small organization—just 20 employees with a budget of \$2.9 million—we are pursuing an ambitious agenda.

I know this committee has devoted considerable effort over the past month discussing the results of Mr. Justice O'Connor's factual inquiry concerning Maher Arar. As you know, SIRC conducted its own review into the matter, although we only examined CSIS's involvement, consistent with our mandate. A report was prepared pursuant to section 54 of the CSIS Act, which means that it was submitted directly to the Minister of Public Safety.

Shortly after receiving our report on May 19, 2004, the minister provided the full classified version to Mr. Justice O'Connor. We were very pleased he was made privy to our section 54 report, and we trust he benefited from our work in completing his own investigations of this case. I would also note that after examining our own findings in light of his report, the committee found them to be consistent with Mr. Justice O'Connor's factual inquiry.

Needless to say, SIRC does not lack for work, and in these turbulent times, several ongoing initiatives will likely impact us, such as the government's response to Mr. Justice O'Connor's eventual recommendations on an independent, arm's-length review mechanism for the national security activities of the RCMP and the proposal to create a committee of parliamentarians to review the activities of all of Canada's security and intelligence organizations.

In the meantime, however, we will continue to work to ensure that Canada has a security and intelligence service that acts within the law, honours our democratic values, and fully respects Canadians' rights. Our objective is even more important since 9/11, as we struggle to find the traditional Canadian balance between protecting public safety and upholding our civil liberties.

Once again, thank you for inviting us to appear before you today. My colleagues and I look forward to answering any questions you may have.

● (1540)

**The Chair:** Thank you very much, sir, and I'm sure there will be plenty of questions.

The usual practice in this committee is to start with the official opposition, the Liberal Party, then we'll move to the Bloc, the NDP, and then over to the government side.

The first round is seven minutes of questions and answers. Then in subsequent rounds, other members in order have five minutes.

So we'll begin with Mr. Holland, for seven minutes, please.

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

Thank you to the witnesses for coming today.

As you will know, the committee heard yesterday from both the current and former directors of CSIS with respect to the Maher Arar matter.

I have a couple of questions, and the first one stems from a request by Maher Arar that SIRC reopen its investigation of CSIS to determine if there was a cover-up of any intelligence reports.

You may be aware—certainly, you are—that the Syrian government stated that on three separate occasions they were told CSIS was not interested in having Maher Arar returned.

Secondly, there were concerns relating to the fact that the analysis of the data coming from the Syrian government was done by somebody with no experience in torture. Therefore, an assessment was made that it was likely not obtained by torture. Justice O'Connor said that someone with a proper background in torture would not have made that conclusion.

So the first question is, are you intending to reopen the investigation with respect to those particular items?

**Hon. Gary Filmon:** We haven't received anything directly from Mr. Arar, but we have received a letter from Mr. Waldman, his counsel. I assume he was acting on behalf of Mr. Arar in making that request to us. I can say to you that the matter is being examined by our committee. We'll need to take some time to investigate a number of the claims that are made within the letter before we respond to that request.

Do you wish me to refer to the points you made about CSIS's actions? I tried to copy them down, but perhaps you could repeat the three things you said were of concern.

● (1545)

**Mr. Mark Holland:** There were two items in particular, the first being that the Syrian government claimed there were three separate occasions in which CSIS said they were not interested in Maher Arar's return, including in a meeting that occurred in 2002. Now, it was more inferred in that 2002 meeting that that was said, but they did state there were three separate occasions in which that occurred.

The second is with respect to the fact that the individual who did the assessment of the information that came from the Syrian government did not have a background in torture. Justice O'Connor, in his report, stated that if that person did have an adequate background in torture, they would certainly have been alerted to the fact that it was highly likely that the information obtained from Maher Arar was done under duress and under torture.

Moving on, because I know I don't have a lot of time, do you feel at this point, before I go to questions around information flowing to the RCMP, that you've received full disclosure from CSIS with respect to this matter?

**Hon. Gary Filmon:** Yes.

**Mr. Mark Holland:** I want to talk about information flow between CSIS and the RCMP. Apparently, you did not find any record of how that information flowed. But clearly one of the concerns was that information that flowed from CSIS to the RCMP was then used in leaks and also in information that was given to the United States.

I'm wondering if you could talk about what the procedures are for sharing information. Second, I would like to know how you felt they were either followed or not followed in this instance. Can you give us any light, because we weren't able to get any yesterday, on how this information flowed to the RCMP and then to others, through leaks and otherwise?

**Hon. Gary Filmon:** I know it's a matter that may be frustrating to the committee and is difficult for us to deal with, but we're constrained by exactly the same requirements of national security protection as are CSIS in this case.

**Mr. Mark Holland:** Maybe I could.... I understand that. It is frustrating for the committee and I know it's frustrating for you. However, I wonder if you can help me with what the procedures are, because I'm really having a difficult time understanding how the information that CSIS gave to the RCMP got to the United States, got leaked. What is the process? Can you talk about it in general terms, if you can't talk about the specifics of what you think may have happened here?

**Hon. Gary Filmon:** There actually is a specific memorandum of understanding between CSIS and the RCMP about information sharing. It has multifacets to it, including the requirement for the reliability or otherwise of the information to be specified, and also any caveats that may be required with respect to any information sharing, and also notification if information is requested to be shared with third parties. All of that is covered in the memorandum of understanding, which I might say, as a result of both our study and some of the findings of Justice O'Connor, has been updated very recently, in September.

**Mr. Mark Holland:** Moving on to another item quickly, if I could, I will read this to you. We know that SIRC found that the RCMP...the situation reports on the 26th and 27th indicated that the United States Federal Bureau of Investigation, when they were interrogating and detaining Maher Arar and denying him entry into the United States...that the RCMP was aware of that at that time. Yet CSIS is saying they only learned of his detention on October 2. What is your view on the delay in CSIS reviewing the RCMP information in this regard? Why did that delay occur? Do you have any insight into why that might have happened?

**Hon. Gary Filmon:** We did receive a response with respect to that, a response that we probably didn't feel was a satisfactory response in terms of the delay. As a result of that, one of the seven recommendations we made in our report on Maher Arar was specifically to address that.

I'm trying to look at which number it was here, of the seven.

At any rate, we did make a specific recommendation—that in this kind of process, where there is very sensitive information that probably ought to be looked at on a very timely basis, there should be some assurance that somebody is watching over it and that the right person is getting that information.

But we were concerned about it. We share your concern.

• (1550)

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

We'll now go to the Bloc Québécois.

Monsieur Ménard.

[*Translation*]

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

Ever since I got interested in the Arar situation, one thing has been troubling me. I am convinced that the work of the Canadian Security Intelligence Service is absolutely vital to protect us against terrorist threats that have hit to other democratic countries. As a matter of fact, that work is even much more important than that of amending legislation. Therefore, one has to give the Canadian Security Intelligence Service the freedom it needs to do its work, within certain limits. Also, it must be able to communicate closely with other similar organizations in other countries.

If, in a democratic country, we have reasons to believe that a foreign citizen has relations with terrorists and that this person intends to come back to the country of which he or she has become a new citizen, it would seem normal to me that the intelligence service of that democratic country provide warning to the new country.

In other words, if the US had reasons to believe that Mr. Arar was linked to terrorist organizations, it would have been absolutely normal, and even unavoidable, that they give that information to the Canadian Security Intelligence Service.

Am I wrong? Since you have looked at many SLOs of other countries and at the relations they have with each other, have you observed this practice?

[*English*]

**Hon. Gary Filmon:** I believe that virtually every review that's been done with respect to terrorist acts in the world in recent years, starting from 9/11 on through to Justice O'Connor, has suggested that we need to have more sharing of information amongst the security and intelligence agencies of all the countries in the world, that it's absolutely fundamental to our desire to make this a safer place and to offer a secure environment for our citizens.

In that happening, the important thing is that we have protocols and agreements in place amongst these security and intelligence agencies that do put limitations, as I said in an earlier answer, on how the information can be used, with an assessment of the reliability of the information, caveats, and assurances to prevent misuse of it.

In the particular case you speak of...and I assume you're talking about Maher Arar and the fact that CSIS was not informed about certain actions early on in the piece when he was being detained and then ultimately sent over to Syria via Jordan. It is troublesome to understand how that could take place without there being some direct contact and information, but to the best of our investigation, that is what happened.

[Translation]

**Mr. Serge Ménard:** As a matter of fact, as you have seen, when Mr. Arar was in Syria, the Canadian Security Intelligence Service indicated that it did not want him to be returned to Canada, did it not?

[English]

**Hon. Gary Filmon:** I'm sorry, I didn't answer that question as well to Mr. Holland; I didn't have time. But the fact is that we did our investigation and did not find any confirmation of that allegation, and I believe, if I'm not mistaken, so did Mr. Justice O'Connor, that he investigated that and could find no confirmation of that allegation.

• (1555)

[Translation]

**Mr. Serge Ménard:** The only thing that we're sure of is that they did not recommend signing the letter that would have been sent by the Canadian authorities to ask for the return of Mr. Arar, perhaps because of some general policy.

Could you give us a clearer explanation than those we have received so far?

[English]

**Hon. Gary Filmon:** We have the same information as the committee was given, which is that, as Mr. Judd said yesterday to the committee, CSIS wouldn't endorse the letter, among other things because it would mean that the service was denying that a person was a target, and it's their policy that they neither confirm nor deny the identity of targets or persons of interest.

**The Chair:** There is probably time for one brief question yet.

Monsieur Ménard.

[Translation]

**Mr. Serge Ménard:** Further to the recommendations of the MacDonald Commission, the RCMP was separated from its intelligence service. In fact, I believe that this was the second time that recommendation was made since the Mackenzie Commission had recommended the same thing earlier.

Today, we're faced with a situation where the mistake that led to the unjustified detention of an innocent Canadian citizen was made by the RCMP without the knowledge of the Canadian Security Intelligence Service.

Do you still believe that intelligence investigations should remain the prerogative of the Canadian Security Intelligence Service?

[English]

**Hon. Gary Filmon:** All I can say is that back at the time we appeared before the Senate committee that was reviewing the Anti-terrorism Act, we did express concern that the Anti-terrorism Act and a number of its provisions did bring the RCMP back into the field of security and intelligence. We expressed that back in I guess it was November 2001.

This is just one experience along the way. I believe it will be up to parliamentarians to decide whether or not the decision that was made in the Anti-terrorism Act to include that area of policy is the right one.

I do accept that we are in an era in which there needs to be a great deal of integration of the different agencies. There is the Canada Border Services Agency, and there are obviously the police at various levels and CSIS involved a great deal in anti-terrorism today. So I think it might be hard to unscramble the egg at this point and say there isn't a role for them.

The key, which is the second half of what Mr. O'Connor is looking at and the concern we expressed at that time, was that there would be two different levels of scrutiny and review or oversight, that they'd be held to different standards. That is, I think, what is now being addressed and may go a long way to solve the concern you've stated.

**The Chair:** Thank you.

We'll now move over to the NDP.

Ms. Chow, please.

**Ms. Olivia Chow (Trinity—Spadina, NDP):** Speaking about integration, clearly, because there are so many different agencies involved, do you think there should be an implementation of a national security commissioner to coordinate all the different services, agencies, and then recommend to perhaps a national security review committee, made up of members of Parliament, so that things are coordinated in a fashion?

**Hon. Gary Filmon:** Coming from a former elected office myself and being familiar with the responsibilities that parliamentarians have to always examine and re-examine policy and structure in view of changing times, I think it's fair to consider a variety of different options. We have the benefit of meeting, as we just did about three weeks ago, with security and intelligence review agencies from all over the world to take a look at different systems. Indeed, they are very different. If you look at the countries of the world with which we interact, Canada's system is different from virtually every other one. Parliamentarians, or Congress, are involved to a different degree in some of the different oversight and review mechanisms.

I don't know whether there's any perfect system. I do believe the powers we have and the ability we have to do our reviews and respond to complaints work well. In fact, we're told by other countries in the world, almost universally, that they see a lot of merit in what powers we have and the way we're able to do our work.

Does that mean it's the best? I'm not sure at this point. Could we do more with a commissioner who is responsible across all of the different security and intelligence functions? There would be some advantages to that, but there might be some disadvantages. I think parliamentarians will have to examine that very closely.

•(1600)

**Ms. Olivia Chow:** You were speaking about review. Do you intend to review the cases of the three men, where they were also imprisoned and interrogated in Syria?

**Hon. Gary Filmon:** I know the government is currently in the process of looking at that.

**Ms. Olivia Chow:** Would your agency be reviewing it?

**Hon. Gary Filmon:** Again, much like CSIS, we don't talk about the reviews that we're doing or contemplating doing. I will say that we will be guided, obviously, by any decisions or requests that may come from government, and I'll leave it at that.

**Ms. Olivia Chow:** So are you saying that perhaps if this committee requests that you do review those three cases, you may welcome that kind of recommendation?

**Hon. Gary Filmon:** We always stand ready to do the work we're responsible for. If it is seen as something that ought to be done, then I think this committee would be happy to undertake it.

**Ms. Olivia Chow:** We know that Justice O'Connor is doing the review on the RCMP, as the second report...but not CSIS or DFAIT. How do you think we could have adequate oversight for CSIS? Say, for example, there had been a lot of recommendations on disclosure, different practices, transparency, reviewing files, dealing with human rights, etc.—lots of recommendations. Would you be looking at whether CSIS would be implementing these recommendations and reporting back in a certain amount of time? How do you propose to deal with the oversights, especially related to the Maher Arar case?

**Hon. Gary Filmon:** Are you saying with respect to the RCMP or CSIS...?

**Ms. Olivia Chow:** CSIS.

**Hon. Gary Filmon:** Well, we are continually looking at different issues that arise out of all these recommendations and so on. We, for instance, did our own study this past year of a number of agencies with which CSIS has exchange of information protocols and agreements, ones that are known to have human rights issues. So we take everything based on what comes out of things such as this, and certainly we are prepared to examine anything and all things that pertain to CSIS's responsibilities and actions.

**Ms. Olivia Chow:** This means you will actually look at whether the recommendations from the first report, Justice O'Connor's report...because there are quite a few recommendations...you will then comment on them and say that maybe in six months' time or a year's time these recommendations are going to be integrated into the practices of CSIS. You will comment on that?

**Hon. Gary Filmon:** First, we don't have the authority to demand of CSIS that they do it. That goes back to a Supreme Court decision. Our recommendations are not binding, but we do make recommendations and we will certainly examine any of those things that come out of the O'Connor report.

I believe we met on three occasions, I certainly made a presentation before Justice O'Connor's commission, and our staff did have a great deal of exchange of information with them. We are familiar with and certainly interested in all of the things that come out of his report. We will look at that report in the context of whether or not something should be done differently with respect to CSIS.

•(1605)

**The Chair:** You have time for a brief question.

**Ms. Olivia Chow:** Do you actually think there is adequate oversight of CSIS, or would you like to see that perhaps the oversight of CSIS could be expanded somewhat?

**Hon. Gary Filmon:** In a sense, this committee is part of the oversight of CSIS. As well, there is the Inspector General, who is essentially the eyes and ears of the minister, and us. As I've indicated, we believe we have the powers and the authority to ensure that we hold CSIS to account on any and all of the things they are responsible for.

**The Chair:** Thank you very much. We will now go to the government side.

Mr. Brown, I believe you're the first questioner.

**Mr. Gord Brown (Leeds—Grenville, CPC):** Yes, and then I'm going to transfer it over to Mr. MacKenzie.

Thank you, Chair, and my thanks to the committee members for coming.

The reason I've jumped in now is that I want to follow up a little bit on what Ms. Chow was asking. I have been asking many of the groups, including CSIS and former Minister Easter, about a parliamentary national security oversight committee. How might you see that committee working?

You were talking a little bit about this committee being part of parliamentary oversight, but as this committee is incorporated, we don't have the ability to get at as many of the issues as you can as a committee. If there was a national security parliamentary oversight committee incorporated by Parliament, how would you see that working with your group?

**Hon. Gary Filmon:** I'm not sure. I'll be honest with you, we'd have to know what the powers and terms of engagement of the parliamentary committee are.

It's fair to say that when we go to meet with our counterparts throughout the world, any of the ones that have parliamentary or congressional committees of oversight don't have the powers that we do. Because of need-to-know principles and protection of national security information, they don't have the access that we do when it comes to any and all of the information in the databases, all communications, and so on, when we're investigating a matter with respect to CSIS.

So we'd have to know what the proposal is and whether or not a parliamentary committee would be given all of those powers. It's probably likely that they wouldn't. Therefore, we would have to establish a relationship in which our group, because of our access to the information, our top secret rating, and so on, would be able to work in a complementary fashion with the parliamentary committee. I think it's possible, and I think we'd have to work it out.

**The Chair:** You're sharing your time?

Mr. MacKenzie, you have the rest of the time.

**Mr. Dave MacKenzie (Oxford, CPC):** Thank you, Chair and members of SIRC.

Amongst other things, I think my friend Mr. Ménard mentioned the issue of the overlay of responsibilities, but maybe one of the problems in the whole scenario is how someone gets in touch with CSIS. I know that if you dial 9-1-1, you'll get a police agency. How would the average Canadian who felt they had information on security and intelligence find CSIS?

**Hon. Gary Filmon:** They have a website for sure. But let's face it, there is a matter of balance between accessibility and having a storefront operation. Very recently, in the case of the Toronto group of eighteen who are now in a process of going through a criminal proceeding—so we can't really talk very much about it—one of the threats that was undertaken was the possibility that they would do damage to the CSIS office in Toronto. That office was in a very visible location, although it was not easily accessible. So there's that balance that you want to keep between putting them at risk and at the same time making sure somebody can contact them.

We have the same desire. We have gone to greater lengths in recent times to try to make the knowledge of our existence more public and to make easier the ability for people to access us because they have concerns and complaints that they'd like to make as well.

• (1610)

**Mr. Dave MacKenzie:** It might be easier to access you than it is for citizens—

**Hon. Gary Filmon:** Yes, I'm sure it is. I don't know what the right balance is there, because I think an argument can be made that they'd be putting themselves in jeopardy if they were too easily accessible and identifiable.

**Mr. Dave MacKenzie:** The issue I have is that when the citizen says, "I think I have information that deals with international terrorism", I think why the RCMP and other police agencies deal with it is because they're the agencies you can talk to. You can't talk to CSIS, you can't find a phone number for them, you can't get in touch with them to pass them some information, so it becomes very obvious why the police agencies then are the first line that deal with those issues.

**Hon. Gary Filmon:** I'm just informed that they're in the phone book under "CSIS"—

**Some hon. members:** Oh, oh!

**Mr. Dave MacKenzie:** There is a phone number for CSIS?

**Hon. Gary Filmon:** Apparently so.

**Mr. Roy Romanow (Member, Security Intelligence Review Committee):** If I may make a brief intervention in support of what our chair has said, CSIS is embarking on an outreach program to various communities to explain their functions, and that it is an intelligence-gathering organization, not a police investigatory agency. So there is greater accessibility and openness in that regard.

**Mr. Dave MacKenzie:** I was just trying to make the point that I understand why the RCMP and the police agencies are involved.

CSIS is not available on 9-1-1, so if you have an issue, you can go to the police agency.

The other question I would like to ask is this. When I looked at the complaint decisions in the four reports, two of them would seem to me to be human resources, personnel issues. Is this something that does in fact take up a reasonable amount of time of SIRC, that is, dealing with internal personnel issues?

**Hon. Gary Filmon:** It does, both internal issues with respect to employees and issues with respect to denial of security clearance, and those are frequent matters of complaint that we investigate.

**Mr. Dave MacKenzie:** My last issue is this. I think since 1986 you've turned out a tremendous number of reports—it looks like 170-some-odd. Do you go back and review what CSIS has done as a result of your reports?

**Hon. Gary Filmon:** The answer is yes. Because our recommendations are not binding, we're very conscious of trying to persuade them that we had good reasons for them, so we do that by examining former reports and taking, shall we say, a checklist of matters to make sure that they do either give us satisfactory answers or do implement our recommendations.

**Mr. Dave MacKenzie:** Would—

**The Chair:** You'll have to wrap up now. You're over time.

**Mr. Dave MacKenzie:** That's fine. I'll stop.

**The Chair:** I just have a matter of clarification as to the questions that just took place. If someone from the public had a concern, they'd generally go to the police. How would they know whether they should go to the police or to CSIS with some information that they may have come across? How would you explain to the public what the advantages are of going to one agency or the other?

**Hon. Gary Filmon:** I guess that's why, as my colleague said, they're trying to do more outreach, because it is difficult even for us who are knowledgeable to define the difference. Basically, the RCMP and police agencies are gathering information for evidentiary purposes for criminal prosecutions, whereas CSIS is gathering information that somebody is talking to somebody about something that might have terrorist implications, or that might put us in danger, or put our society in an insecure position. So it's quite different, really, but it's also very general. If somebody believes a crime is taking place, then obviously the police service is where they go. If it's not a crime, but it's a matter of... You can imagine putting it in the context of 9/11, and people talking about wondering why these folks are taking flying lessons and they're not interested in landing—this kind of thing. It's information out there, and somebody is curious about it and might be able to connect some dots if they put it together with other information that somebody had. That's the kind of thing that gets passed along to CSIS.

• (1615)

**The Chair:** I think it's good to get this on the record.

Now we'll go to the second round.

Mr. Chan.

**Hon. Raymond Chan (Richmond, Lib.):** Thank you, Mr. Chair.

It's very reassuring to see such distinguished membership on the committee. Thank you very much for putting yourselves forward to participate and come to this committee.

**Hon. Gary Filmon:** Thank you, Mr. Chan.

I should also say that your government appointed all of us.

**Voices:** Oh, oh!

**Hon. Raymond Chan:** Over the last few weeks our committee has been very much on top of how to improve our security service to protect Canadians, particularly the innocent Canadians who were tarnished in this country.

One thing that has really bothered me from the very beginning of the Arar case is the behaviour of the American government and the inability of our government to not only protect or stand up for our citizens, but even get information from the American government on why they're doing it. I don't know whether this falls within your mandate, but I sure want to share that concern with you and members of the committee to see how we can protect Canadians abroad.

There is increasing knowledge about what the American government is doing with secret detention centres all around the world. It's not only innocent people in the United States who are being targeted; they're working on anyone. Anyone anywhere in the world could have been put away by them and subjected to torture and that kind of thing.

On the Arar case, I'm not trying to be partisan, but when Mr. Harper, our Prime Minister, said he wanted the Americans to come clean on this issue and the response we got from the Americans was a letter saying they won't do it again, that's not reassuring at all. When the former CSIS director was here, we asked whether they had asked the American security services what prompted them to deport Mr. Arar to Syria, and they didn't share any of that information. We asked and they didn't care. Right?

At the end of the day, how can we as the Canadian government protect our citizens? How do we go on from this point to find justice for Mr. Arar for maltreatment by the American government? I don't know if you can comment on that.

**Hon. Gary Filmon:** On your first and principal point, with respect to our duties and responsibilities as they apply to CSIS, this committee sees as its principal mandate that we are the balance point between the public's right to live in a safe and secure society and the individual's human rights that need to be protected at all times.

I think what you're really asking for is a political statement. This committee didn't give political responses or react in that way in the past, and we won't be doing it now. Our mandate is CSIS and any and all of its actions and activities, and unfortunately—or fortunately, as the case may be—we have to stick to that.

•(1620)

**Hon. Raymond Chan:** I don't expect the committee to make a political statement, and I am trying not to make a political statement here as well, but at the same time, I think it is important for the country to start paying attention to that. Because your committee deals with the security of Canadians, it might be relevant that you

start looking in that direction, at how to protect innocent Canadians abroad.

**Hon. Gary Filmon:** Our mandate, as we've talked about, with respect to even the Arar case, was to examine the actions and activities of CSIS. We couldn't go beyond that to examine, for instance, the RCMP's actions, let alone go to a foreign country and examine their actions. So we have to stay at that.

**The Chair:** We'll have to move on to Monsieur Ménard.

I think you have to be sensitive as to what you can answer and not answer here, and I appreciate the fact that you are doing that. Thank you.

[*Translation*]

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

We've dealt a lot with the past but I also want to look at the future, especially at the cooperation that we should be able to obtain from the communities that should best be able to identify terrorist threats if, indeed, those threats come from the world of extremists, whatever they may be. Several exist today in the world.

What steps has the Canadian Security Intelligence Service taken about its relations with the Muslim and Arabic communities of Canada? Mr. Romanow had started answering such a question from Mr. McKenzie and I like you to expand on this.

[*English*]

**Hon. Gary Filmon:** As my colleague Mr. Romanow has indicated, CSIS is doing its best to do an outreach. In fact, in places like Toronto, we had the discussion with them just a short while ago about their involvement in the various different communities that may be sources of or affected by terrorist acts and may be a focal point of attention with respect to terrorists or suspected terrorists.

Their outreach includes holding community sessions where they let the community know what they are doing, where they encourage the communities to work with them, because certainly, as they have indicated to us, people in the communities don't all want to be tarred with the brush of being a source of terrorism or insecurity to Canada.

We have recently, on our website, included a translation in Arabic with respect to our complaints and review process so that we are reaching out to a community that at times feels, I think, that they are being put upon by negative attention, and so on.

CSIS is certainly doing the same thing, attempting to become linguistically and culturally sensitive to more communities. We encourage that in terms of our meetings with them and our discussions with them.

•(1625)

[*Translation*]

**Mr. Serge Ménard:** I understand that you can't give us any figures, for security reasons, but do you believe that the Canadian Security Intelligence Service has enough staff speaking the languages of the people who would be most prone to plan terrorist acts, for example in order to wiretap conversations and to look at documents?

[English]

**Hon. Gary Filmon:** I think the short answer is that we'd like to see them do more—more resources, more people who are qualified in various different languages.

[Translation]

**Mr. Serge Ménard:** In the fight against crime — and I suppose it's the same thing in the fight against terrorism — I have seen that when a small organization cooperates with a larger one, it always feels that the larger one thinks that it are better than them and also that this large organization always wants to receive more information than it is ready to give. I believe this is a natural tendency and that it might exist between the American and Canadian organizations.

Can you confirm from your examinations that there is indeed some exchange of information between Canada and the US, both ways, but that there may be, let's say, three roads leading to the US for each road leading to Canada?

[English]

**Hon. Gary Filmon:** I don't think we have any way of knowing that. However, our impression is that Canada pulls its weight and that our security and intelligence service is regarded as being very professional and contributing at least its share, if not more, to the international fight against terrorism. This impression is based on our review of CSIS and our discussions with counterparts in other countries of the world.

**The Chair:** Mr. Hawn.

**Mr. Laurie Hawn (Edmonton Centre, CPC):** I'd like to explore the general oversight of defence and security in Canada. We've talked about various committees and parliamentary oversight committees. From my point of view, there wouldn't be much sense in making another committee of parliamentarians to give oversight if security clearance limitations don't give them any more access to information than this committee has.

I'd like to get your thoughts on creating an agency dedicated to public safety, like the U.S. National Security Agency. It would have representatives and intelligence from federal policing bodies such as the RCMP, DND, DFAIT, Public Security, and so on. Do you see a place for a body like that manned by people with the appropriate security clearance, whether they're members of Parliament or whatever? I'm not familiar with the level of security clearance of privy councillors. I don't know whether it's at the same level, higher, lower, or whatever. It seems to me there is a place for a coordinated agency like this. It could be chaired by the Prime Minister, who would oversee and help to coordinate and de-conflict activities of the various agencies responsible for keeping us all safe here and abroad.

**Hon. Gary Filmon:** It's a little difficult for me to get into that. It is a matter of public policy that the government, with the advice of this committee and concerned members of Parliament, would have to look at. They would have to decide whether there is sufficient oversight and review of these security and intelligence functions. I don't know if there is any place in which people are satisfied that they have everything they want, that they have sufficient tools, or that they can feel secure about how their agencies function in this field. It's a very difficult situation.

Combining all of these under some sort of vehicle, provided that it has the proper security clearance and access, makes a lot of sense. On the other hand, there may be reasons why it could be problematic. There is the question of whether you could give them all of the access they need.

• (1630)

**Mr. Laurie Hawn:** As you said, no system is perfect, but it seems to me that what we've been talking about here is a perceived or real disconnect and a lack of coordination between CSIS, RCMP, Foreign Affairs, and other agencies with an interest in security. There ought to be one body that oversees all these activities and coordinates them. In the U.S., it's the National Security Agency. In other places, it's called something else. Is it fair to say that you see a potential benefit in something like this?

**Mr. Roy Romanow:** Mr. Hawn, there was a submission by the Security Intelligence Review Committee to the O'Connor commission on the issue of an independent, arm's-length review mechanism that would try to coordinate all of this. I don't mean to be dismissive at all in saying that this document describes in very pithy terms the position of SIRC on this issue. The chair has approved it; we've all approved it. It's not an easy situation, but it's available. In the interests of time, if you haven't seen it, we can make it available, as an answer to your question.

**Mr. Laurie Hawn:** I'm not attacking SIRC or how you do business with CSIS.

**Mr. Roy Romanow:** No, I understand. I'm not being defensive.

**Mr. Laurie Hawn:** It just seems to me that as a country and as a Parliament we are bogged down. Maher Arar is an example. The case has highlighted some of the deficiencies in how agencies coordinate with one another. At some level, it might help alleviate some of those things.

**Mr. Roy Romanow:** If I may just speak very briefly and finally on this—I can't speak for the chair, but I know him well, and his comments indicate this—all the members of the committee, I'm sure, share this concern of trying to put some form and order into the various agencies that are charged with this responsibility.

It's complex. When one looks at Parliament, you're looking at the conduct of public business, basically, openly. In other jurisdictions, in matters of this nature, there will inevitably be issues of national security that will be in conflict with doing business openly. Therefore, you have an immediate problem, and perhaps criticisms, as to whether or not this can be carried out.

I think the ideal situation is to try to have, I would say, this submission prepared for Mr. Justice O'Connor. Perhaps I'm biased. Ms. Landry and I are very recent arrivals here, compared to people like Mr. Filmon, our chair. But I think this is probably a meritorious suggestion for an imperfect solution that would compromise these areas and come closer to your view that we have some coordination.

**Mr. Laurie Hawn:** Sure, yes, there's never a perfect.... And I must say, you're a healthy addition, if I can use a pun.

**Mr. Roy Romanow:** Thank you very much. I'm not sure my doctor agrees, but....

**The Chair:** Thank you. We'll have to come back after the next round.

We'll now move to the third round of questioning and the Liberal Party.

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

**Hon. Irwin Cotler (Mount Royal, Lib.):** Thank you, Mr. Chairman.

I just want to deal with a specific matter relating to the O'Connor commission, Maher Arar, the RCMP, and CSIS.

Now, the O'Connor report concluded that the RCMP had conveyed false and misleading information, to the effect that Maher Arar was an Islamic extremist associated with al-Qaeda, which, as the commission concluded, likely contributed to the subsequent rendition of Mr. Arar to Syria. Commissioner Zaccardelli, in his appearance before this committee, said that the RCMP corrected this false and misleading information on or around October 2002, on the occasion of Mr. Arar's detention.

Now, the heads of CSIS who appeared before us, former head Ward Elcock and now James Judd, stated that they were not aware that this false and misleading information was initially conveyed to U.S. officials, and that they did not know that this false and misleading information had been corrected until Commissioner Zaccardelli came before this committee four years later.

So my questions, my series of questions, are these. Is it not surprising, I would say even disturbing, that an important, indeed crucial, intelligence-relating function right within CSIS's mandate: a) would not have been known to CSIS; b) that CSIS would not have had knowledge of it being conveyed to U.S. officials; c) that CSIS would not have had any inter-agency intelligence-relating discussions with U.S. officials about it; d) that CSIS would only learn about it four years later, not because of any discussion with the RCMP and not because the RCMP had even reported it to the government, but only because Commissioner Zaccardelli reported to this committee, and without the commission of inquiry he would never have come before this committee and none of this would have ever been known; and finally, that in the absence of this information, or in the absence of this information conveyed by the RCMP to the U.S. officials that was false and misleading, CSIS continued to be engaged in the Maher Arar case, including not joining in the one-voice letter, maintaining contact with Syrian intelligence agencies during Arar's imprisonment, and not correcting the public record when damaging and prejudicial leaks were made, both during and after Maher Arar's return from imprisonment?

Is this not a serious dereliction of the intelligence-gathering mandate of CSIS? Is there not a serious dereliction of its accountability with respect to its intelligence function? And is this not something that your intelligence review committee should in fact look into?

• (1635)

**Hon. Gary Filmon:** Mr. Cotler, I don't want to say that I'm overwhelmed, but I am. You have put quite a lot of information and many, many questions on the table, and I'm not sure where to begin.

But with respect to a number of the issues, I think the one-voice letter was responded to yesterday by Mr. Judd for the committee with respect to their policy of not confirming or denying whether an individual is a target or a person of interest. I believe that Justice

O'Connor concluded that it was appropriate for them to meet with and keep in touch with Syrian security and intelligence officials. I'm sure that would have been encouraged by DFAIT and others who were attempting to work for his release and that they would have wanted to keep the lines of communication open.

With respect to a number of different matters.... Did you raise the issue of their suspicions or that they should have had suspicions of human rights abuses? Was that one of the issues you raised?

**Hon. Irwin Cotler:** I'm just saying that it's astonishing that a body charged with an intelligence mandate should not have known of a crucial intelligence bit of information, which turned out to be false and misleading, and only learned about it four years later because of the commissioner's and the inquiry's report and because Commissioner Zaccardelli came before this committee.

I find that astonishing. How could they possibly have had any relevant, authentic relations with the Syrian intelligence agencies if they didn't know about this fact that the information about Maher Arar, which was false and misleading, had been conveyed to the U.S. officials who brought about his rendition to Syria?

To me, it is astonishing that a committee involved with intelligence would not have known of this. It says something very disturbing about their relationship with the RCMP during that period. It says something very disturbing in terms of the accountability of CSIS and the RCMP, two civilian authorities, including the government. And in my view, this is something that the CSIS review committee should look into, because this, to me, is a very disturbing experience that has been revealed here.

**The Chair:** Mr. Filmon, do you have a brief comment?

**Hon. Gary Filmon:** If I may, I can assure you that virtually every time we get together with CSIS officials, we ask about relationships with the RCMP, the exchange of information, and all the various integrated security programs that they have under way, and there are many these days. We're doing constant reviews of the various different programs—INSETs and all these programs. Having said that, it's obvious that something fell between the cracks.

• (1640)

**Hon. Irwin Cotler:** For four years.

**Hon. Gary Filmon:** If I recall, though, it was indicated in testimony here that that information was in the hands of the Solicitor General, then eventually the Minister of Public Safety. So if that wasn't being coordinated, somehow, through the government's security establishment, if they were aware of it and it wasn't being discussed with CSIS, that begs the question as well.

**Hon. Irwin Cotler:** [*Inaudible—Editor*]...not aware of it. So that's yet another problem. That's what I meant about the lack of accountability.

**The Chair:** Thank you.

We'll go to Mr. Norlock, please.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** Thank you for coming today, gentlemen and ladies. Your attendance here is greatly appreciated.

I'm going to be jumping from topic to topic a little bit quickly here. Recommendations 19 and 20 of Justice O'Connor's report state that CSIS should have clear written policies providing that investigations must not be based on racial, religious, or ethnic profiling, and so on.

What is CSIS's current approach to racial profiling, and to what extent do you think this profiling contributed to Mr. Arar's ordeal?

**Hon. Gary Filmon:** In our discussions with CSIS over the last five years or so that I've been involved with the committee, they categorically deny that there's any racial profiling that is part of their operations, and Mr. Judd has said that publicly on numerous occasions. So I can't respond any further to that.

**Mr. Rick Norlock:** Okay. One of the contentious issues with each body that's come before this committee, and which is of great concern to everyone, is the possibility that somewhere in the administration of each of the bodies, whether it be the RCMP, whether it be CSIS, or anyone else, and I'll have to say, I guess, from your perspective.... We need some reassurance that all these bodies have looked into alleged leaks—information and certain things that were being said to certain parties—that led to something else happening.

Has your committee looked into the possibility that somewhere in your organization there may have been a leak of information that was inappropriate?

**Hon. Gary Filmon:** We're a very small and very tight organization. I will honestly respond that I certainly didn't ever contemplate that the leaks took place within SIRC, if that's your assertion. I would be happy to further investigate, but I don't believe there is that possibility.

**Mr. Rick Norlock:** I'm not making an allegation.

Hon. Gary Filmon: It's an assertion.

**Mr. Rick Norlock:** I'm saying that each body came before this committee and there was a discussion with regard to leaks. Each of the bodies looked into their organizations and had extensive investigations to ensure that no one from their organizations did allow these leaks.

**Hon. Gary Filmon:** There is a police investigation going on now, as I understand it. Certainly if they want to have any discussions with us, we will be fully cooperative.

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

With regard to your report to Parliament, I'm wondering if you've had any response to the last two recommendations you made, numbers 2005-07 and 2005-08, on page 74 of the report.

For instance, could you explain a little further the recommendation that "CSIS review and revise the warrant policy in question so that it reflects current best practices"?

• (1645)

**Hon. Gary Filmon:** We examine, on an annual basis, a variety of the warrant applications because these are the most intrusive aspects of CSIS operations. Ministerial direction to the service states that the least intrusive investigative methods must be used first, except in emergency situations or where less intrusive investigative techniques would not be proportionate to the gravity and imminence of the

threat. As well, of course, under subsection 21(2) of the act, CSIS is required to justify to a Federal Court judge why other less intrusive techniques would be unlikely to succeed when they make warrant applications.

While we recognize that many factors come into play each time CSIS requests and implements warrant powers, we're not sure, based on our review of this particular operation, whether or not warrant powers were necessary in this instance.

I'm not sure what response we received from CSIS on this. At this point, I don't believe we have had a response. We'll certainly follow up on it.

**Mr. Rick Norlock:** The basis for that question is that we are realizing in the global community that there are increasingly better ways for the "bad guys"—to use terminology that's really simple—to communicate in order to do harm to this country. I thought that related, and it apparently does relate, specifically to the matter in which CSIS obtains the legal ability to access this type of information.

I'm not afraid to say what my motivation is: I'm hoping it isn't designed to be an impairment and a roadblock. While adhering to the law, I'm hoping we're not creating more roadblocks than are absolutely necessary. The people of Canada want to ensure that we don't have things like racial profiling and that we don't break the law. But they also want to be reassured that the balance you referred to, going back to your beginning statement, keeps us safe, and that the safety of Canada is not trumped by the philosophical outlook of certain groups.

**Hon. Gary Filmon:** It's a fair comment, and that is one of the reasons we did the study we did on electronic surveillance and information-gathering techniques, which leads us to the issue of the act that died on the order paper at the end of the last Parliament, which was the modernization of investigative techniques act.

I would say to you that in general terms the committee is satisfied that we do need to have our security and intelligence functions keep up with the bad people, so to speak, who are very technologically literate and very used to using the most modern and newest surveillance information and technologies. Indeed, our security and intelligence functions need to keep up, and they need to have a proper legislative framework in which to authorize that.

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

We'll now go to the fourth round.

Mr. Holland, please.

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

I want to go back to the point Mr. Cotler was making and one that I was making off the top, first, with respect to the request by Mr. Arar to reopen the investigation of CSIS, particularly in light of Justice O'Connor's findings. I referenced two specific areas, and these were areas that were brought up by Mr. Arar himself. Mr. Cotler, I think, touched upon a couple of others, not the least of which was the issue around CSIS's refusal to sign off on one voice, and the second was the information flow in the information that CSIS was obtaining then being used by the RCMP and sent elsewhere.

So I would add to those two items.

I would like some clarification, because you said at the beginning that you as a group would be looking at this, making a determination to reopen it. Can I confirm that this is the case?

• (1650)

**Hon. Gary Filmon:** I said we are in the process of examining the letter from Mr. Waldman, on behalf of Mr. Arar, and we will make our decision based on our examination of a whole variety of issues as soon as we can. We received that letter, as I recall, about ten days ago, and we've only just met and determined to undertake an examination of the issues that were raised.

**Mr. Mark Holland:** That's fair enough, that you haven't made a determination on it at this point. I can understand that.

There were some other items brought up both today and yesterday, and specifically in Justice O'Connor's report, and I'm making a request and seeing if it's possible for you to review those items as well, in your consideration of whether or not to reopen this.

**Hon. Gary Filmon:** The one-voice letter... The response, of course, that we received, just as you have as a committee, was the one that Mr. Judd made yesterday. We'll take all that into consideration and we will examine it.

**Mr. Mark Holland:** In a series of very large failures, I would certainly concede that CSIS did not play the largest role in the failures that took place, by any means. That being said, I was really taken yesterday by the comments by both the director and the former director, and therefore this is leading me to the question I'm going to ask. They said, independently, that they believed they and their department played a zero role, no role whatsoever, in Mr. Arar's deportation and the perception that he was a terrorist.

There are two elements out of that. The first is, do you agree? Do you agree that CSIS played a zero role? Or would you agree with Justice O'Connor that there was a role that was played there?

I know it's a hard question, but it's...

**Hon. Gary Filmon:** I stand to be corrected, but I don't believe that I read in Justice O'Connor's report that he has concluded that they played a role in his detention and rendition.

**Mr. Mark Holland:** I think the issue was that they said either in delaying bringing him back, his deportation, or the understanding that he was a terrorist, they played no role. My concern with that—and this is why I'm asking you what your opinion is—is that given that the assessment of the information from the Syrian government was done by somebody with no torture experience; given the fact that there are reports from the Syrian government that on three separate occasions they said they didn't want Mr. Arar back; given the fact that CSIS was in this weird communication flow with the RCMP, where information was being leaked, and then the information seemed to continue to flow from CSIS to the RCMP and there didn't seem to be any discussion—and in fact yesterday they said there wasn't—about how the fact that the information that was flowing from CSIS to the RCMP was to be dealt with, what I was expecting yesterday, to be quite frank, was that they were sorry for any role they might have played, and that there were some areas where there were errors that might have delayed Maher Arar's return, and that for any role they may have played they were apologizing.

But they came out and said they had no role, though I think Justice O'Connor's report clearly identifies that there was a role. The reason that concerns me, and the reason it's important to me to ask you as a group that oversees them, is that if their belief is that nothing went wrong and that everything was done right and they did everything they could possibly do, how can we as a committee have any confidence that any changes will occur, if there's no responsibility taken for what has happened?

In that context, I'm asking whether you share the position of the director and the former director that they had zero responsibility for what happened.

**Hon. Gary Filmon:** First, you are not suggesting now that they had any role in his apprehension and deportation. You're talking about whether or not—

**Mr. Mark Holland:** I'm talking about the whole package: the fact that he took as long as he did to return, the leaks, everything Maher Arar had to go through.

**Hon. Gary Filmon:** On the leaks, we'll have to wait for the police investigation to find out, but at this point we have no evidence—

• (1655)

**Mr. Mark Holland:** It's just a really simple yes or no question. If you look at everything Maher Arar went through—

**Hon. Gary Filmon:** Look, I'm sorry. I don't want to be difficult, but you've taken about five minutes to ask the question and then you're telling me to give a yes or no answer. Come on.

**Mr. Mark Holland:** The only reason I ask is that they gave a black and white answer yesterday. They said no, they had zero to do with the entire affair; there was no fault on their part. What I'm saying is that really, I walked into the day feeling quite comfortable that things were okay and I walked out not having that same degree of confidence. So I'm asking you, as an oversight body, do you share that same belief, that they made no mistakes in this affair?

**The Chair:** Mr. Holland, your time is up.

Let's give Mr. Filmon a chance to respond.

**Hon. Gary Filmon:** I don't think it's a matter of whether or not people made mistakes. We found no evidence that they were involved in his arrest or apprehension and deportation, that's for sure. We do know that, on the request of the Syrian intelligence officials, they did go to interview the Syrian officials. As I understand it, that was supported by not only DFAIT, but Justice O'Connor, who said they had reason to do that.

If you want to talk about whether their actions caused him to be detained longer, again, I don't think that's a conclusive thing in either Justice O'Connor's report or in any other investigation that we've done. So the question I have to get to is what you're saying specifically. Was there error of operation or did they make a contribution to it? There was nothing that we found in our report that was inconsistent with what Justice O'Connor has concluded. The question is where you are placing the blame.

I can tell you that they have made some changes as a result of a variety of things that we have investigated. Among them, in terms of what they do with information they get from countries that may be suspected of human rights violations and how they conduct themselves with respect to meetings with countries and agencies that are suspected of human rights violations, changes are already taking place to try to ensure that they're on top of these kinds of issues in future.

In terms of the actual issue of their ability to know whether the information obtained from him was by torture, I don't think we knew that until Stephen Toope did his report, nor do I think anybody else did. You had reports coming from DFAIT personnel who were in face-to-face contact. CSIS was never in face-to-face contact with Mr. Arar. Two parliamentarians, Ms. Catterall and Mr. Assadourian, went and saw him face to face, and they didn't come back reporting that they suspected that the information was obtained by torture.

So there was a great deal out there that made this a very difficult environment. Let's be fair about that. And on the other matters, we certainly had no indication from Justice O'Connor's report that it was inconsistent with our report and our investigation.

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

For this round, the last question goes to Mr. MacKenzie, please.

**Mr. Dave MacKenzie:** I just wanted to clarify with the members of SIRC, as they are always right. I did check on the Internet. There is a 1-800 telephone number and they are accessible.

The bigger part of my equation was that it sometimes is difficult to sort out police responsibility and CSIS responsibility on the ground level. People wouldn't tend to perhaps do what I did to find the phone number for CSIS, but when they do have an issue, I think we have to appreciate that Canadians will sometimes not have the resources to sort out what's intelligence and international security versus what is a criminal act. When they call, they'll call 9-1-1, so the police are frequently involved first.

I just didn't want to leave the impression with Canadians that CSIS is inaccessible. You can find them on the Internet, and they do have a 1-800 phone number.

**Hon. Gary Filmon:** Thank you.

**The Chair:** I don't detect a question there. Are you sharing your time with anyone?

Mr. Hawn.

**Mr. Laurie Hawn:** Thank you. I'm certainly glad we cleared that up.

On your ability to disagree with CSIS, you oversee CSIS. In answer to one of the questions way back at the beginning, I detected some chat about when there's a disagreement. When there's a fundamental disagreement between Mr. Judd and this committee, how do you go about disagreeing, and who wins in the end?

• (1700)

**Hon. Gary Filmon:** I think Canadians win.

We have a job to do. It has to be a professional relationship, and he has a job to do and I'm sure he takes it very seriously.

We have a job to do, and that's to hold them accountable for their responsibilities and mandate and adhering to it under the CSIS Act, ministerial direction, and obviously their own policy framework that they have to work with. We hold them accountable to always being consistent with all of those things.

From time to time we find that they haven't been, that they haven't measured up, and we're very direct about that. On a complaints process from time to time we've found in favour of the complainant and against CSIS. That doesn't mean to say that they're not a professional organization and that they aren't taking their responsibilities very seriously. It just means that they seem to have slipped up from time to time, and that's what we're there for, to ensure that Canadians are always as well served as they can possibly be.

I think it's a relationship of creative tension. They have their job; we have our job. From time to time we'll disagree, and that's what our reports will indicate.

**Mr. Laurie Hawn:** This may be an unfair question, but do you think there's a place for an organization similar to SIRC that works with the RCMP?

**Hon. Gary Filmon:** Essentially, that's what our submission to O'Connor said. We laid out about ten areas that we believed were really, really important—transparency, access to the information, the credibility and the trust of the review body, and all those things. We laid them out as what we believed was required.

We said at the same time that there may be a case to be made for not replicating all of the information and capability in terms of having top-secret-rated staff and individuals who have the familiarity with doing the kind of investigation into their files and their actions that we have to do with respect to CSIS. A lot of these skills and knowledge are transferrable, and there may be a case to be made to say that we could do the job. We're not trolling for more work. We're not looking for expansion of our mandate, but if we were called upon, we believe SIRC has the capability to do it. But this will be up to Mr. Justice O'Connor. I know he has consulted many, many people far and wide on this.

**Mr. Laurie Hawn:** You oversee or review CSIS to ensure compliance. Who sets the standard of compliance, or is that part of the creative tension that goes on between you and CSIS?

**Hon. Gary Filmon:** We hold them to their own standards across the act, obviously—the act, ministerial direction, and their own policies and practices—and if they don't meet those tests...

They have all of these different relationships, as we've just been talking about, memoranda of understanding with so many different organizations worldwide and domestically, and they have to abide by all of the requirements, and that's what we hold them to.

**Mr. Dave MacKenzie:** I'll just go back to a previous question. You probably haven't had this situation, but if you did come to a point of intractability between SIRC and CSIS, who would you go to?

**Hon. Gary Filmon:** You're right, it hasn't happened. But I would imagine we would have to go to the minister and just lay the issue of difference on the table and report that we were unable to resolve a matter of importance between us, and there would have to be, obviously, some action taken.

**The Chair:** That takes us now through the entire rotation.

I remind the committee that we had three orders before us. We haven't dealt with some of them, and I'm sure those people who are watching on television are learning a lot more about how our security services function and about how our democracy in Canada oversees these institutions and holds them accountable. I'm sure this is a very educational time for them, and if some of you want to focus on some of these other orders in our next round, I think that would be very helpful as well.

I think we'll have time for one more rotation through the various political parties.

Mr. Cotler, would you like to lead off, please?

• (1705)

**Hon. Irwin Cotler:** Thank you, Mr. Chairman.

On the matter regarding the torture of Maher Arar during his imprisonment, I just want to say that at the time of his rendition to Syria by the United States it was a matter of public record, it was on the U.S. State Department's annual report at the time, that Syria was a country that routinely tortured its detainees—apart from the fact that Syria was listed as a country that was a state sponsor of terrorism.

I'm saying that because that should have set off alarm bells in our own intelligence community with respect to what kind of treatment Maher Arar might have been experiencing during imprisonment in Syria.

Now let me, if I may, follow up on a pattern of questions from before, which is, what did CSIS know and when did they know it, or when did they not know it? I know CSIS to be a serious and professional body, as you mentioned, Mr. Chairman, that takes its security and intelligence-gathering functions seriously. I know that in the context of taking those responsibilities seriously they engaged, by their own acknowledgement, in regular contact with counterpart intelligence agencies, including those in the United States.

I would have to assume, therefore, that they were—and indeed are—in continuous contact with American intelligence agencies, and that therefore the intelligence allegations respecting Maher Arar, or the false and misleading intelligence allegations regarding Maher Arar, would have been the subject of discussion between the American intelligence agencies and CSIS at some point either before his detention, during his detention, after his rendition, or during his imprisonment.

In other words, is it not surprising that CSIS would not have known about the false information, the misleading information that was initially conveyed, particularly when it was on an intelligence-related topic, when they had continuous discussions with American intelligence agencies during that entire period? Isn't it disturbing, therefore, that they have to acknowledge that they found out about this only four years later, when Commissioner Zaccardelli came before this committee?

So my question is, how were they able to carry out their security and intelligence mandate—over which you have oversight—in relation to the Syrian government, in relation to the American government, in relation to the Canadian government, in relation to

RCMP officials, in the absence of this crucial bit of intelligence information regarding Maher Arar?

**The Chair:** Your question has taken up quite a bit of time, so there are a couple of minutes for an answer.

**Hon. Gary Filmon:** I believe it's clearly a question that should be asked to CSIS, but if I may, I'll just go back to you about the heads up, that you say everybody should have known about Syria and its reputation for torture.

Well, clearly, people all over the world knew that, and the U.S. State Department knew that, yet.... CSIS did not have anybody in that entire period of time face to face with Mr. Arar. They were not a lead agency with respect to the matter on which, as I understand it, there was an exchange of information, which was Project A-O Canada, in which the RCMP was the lead agency.

But that said, you know, there were DFAIT officials who had face-to-face meetings and access to him. There were two members of Parliament who had face-to-face meetings with him. Yet this information didn't become a conclusive matter until Dr. Toope did his investigation. We were all very upset, obviously, to learn that, and I'm sure many other people were. But there were many things along the way that were going on. It's a very sad state.

Why? I can only speculate, because you're putting me in a position where I have to speculate, basically, as to why CSIS was never made aware of it, and that is only to say that they weren't the lead agency in the investigation and the file that was being put together on him. That Project A-O Canada was one that the RCMP was the lead agency in; therefore, as I understand it, they were having the direct relationship with the Americans on this.

**Hon. Irwin Cotler:** I understand they weren't the lead. It's just that we're talking about a security and intelligence-related function, that's all.

**The Chair:** Your time is up, Mr. Cotler.

• (1710)

**Hon. Gary Filmon:** Yes, I understand that.

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

Monsieur Ménard, do you have a question?

[*Translation*]

**Mr. Serge Ménard:** Yes, Mr. Chairman.

I would like to have more information on the means at your disposal to implement your mandate which is nearly unlimited. How many staff do you have?

[*English*]

**Hon. Gary Filmon:** Twenty.

[*Translation*]

**Mr. Serge Ménard:** Are they all full-time people?

[*English*]

**Hon. Gary Filmon:** Full-time, yes.

[*Translation*]

**Mr. Serge Ménard:** All right.

[English]

**Hon. Gary Filmon:** Only the members of the committee are part-time. The staff are all full-time.

[Translation]

**Mr. Serge Ménard:** Let me add in passing that I share Mr. Chan's opinion and that I'm very appreciative that people of your quality have accepted such a difficult mandate which may require very, very long days of work for the job to be done properly.

Generally speaking, when you need documents from CSIS, is it difficult for you to have access to them? How much time does it take for you to get a document?

[English]

**Hon. Gary Filmon:** It depends on the nature of the inquiry or the review. There are times when thousands of pages of documents are being poured over and many, many electronic communications and all sorts of other information is being pursued.

If the question is, are we ever denied access, the answer is no. Are we ever delayed access? We would have to be reasonable in terms of how much information we want and how much time it takes to get it. Do we ever act, shall we say, more assertively to try to get information more quickly? The answer is yes. If we believe they ought not to be taking as long as they are to get us information we need, then we certainly put our foot down and go after it.

[Translation]

**Mr. Serge Ménard:** Very well.

This year, what was the longest time you had to wait to get a document?

[English]

**Hon. Gary Filmon:** Ten weeks.

[Translation]

**Mr. Serge Ménard:** What type of document was it?

[English]

**Hon. Gary Filmon:** I can't really say. I'm sorry.

[Translation]

**Mr. Serge Ménard:** I suppose that, if you can't say what type of document required ten weeks to be released to you, there may have been many others that required six, eight or nine weeks. That may be the reason why you forgot what type of document it was that required ten weeks.

[English]

**Hon. Gary Filmon:** I can't be specific about what information we ask them for. The difficulty is that virtually everything we're asking is highly classified information, top secret material in many cases, so I can't give you a description of it.

[Translation]

**Mr. Serge Ménard:** All right.

Do you have access to the places where those documents are kept?

[English]

**Hon. Gary Filmon:** Our staff typically go right into the CSIS operations, have access right into their database, their bibliographic

reference system, which is the operational database of the entire CSIS operation.

[Translation]

**Mr. Serge Ménard:** Always accompanied?

[English]

**Hon. Gary Filmon:** Accompanied by somebody from CSIS?

[Translation]

**Mr. Serge Ménard:** Yes.

[English]

**Hon. Gary Filmon:** Yes.

[Translation]

**Mr. Serge Ménard:** When you're an employee is on-site, has it ever happened that he had instructions from your Committee to ask for some documents by surprise? In other words, do you ever do surprise visits? Are you able to make sure that people do not take advantage of the delay to try and hide some documents that they don't want you to see? Had you ever asked for some documents on the spot, without notice, to see how they would react?

[English]

**The Chair:** That will have to be the final question, Monsieur Ménard.

[Translation]

**Mr. Serge Ménard:** But according to my watch, I've only used four minutes so far.

[English]

**The Chair:** Four minutes and 45 seconds.

[Translation]

**Mr. Serge Ménard:** All right. I thought it was four minutes but you may be right.

• (1715)

[English]

**Hon. Gary Filmon:** The answer is no, we don't operate that way. We don't do surprise visits.

I can tell you that in the course of doing some investigations, there are always cross-references. In other words, it's not just in one place. When information is exchanged or communications are exchanged, there's a sender and a receiver, and typically the information shows up in different places.

So to erase something from the files would be very difficult, because it may be in many different areas. It may have been copied to a number of people. Obviously there are ways in which we can keep on top of this and assure ourselves that nothing is being hidden from us or has been purposely destroyed. Our researchers, analysts, and investigators are very good at what they do, and we have every reason to believe that this kind of thing doesn't happen.

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

**Ms. Olivia Chow:** Apparently you found that there was no record of CSIS approval for the RCMP to disclose CSIS information about Mr. Arar to a third party.

Under section 19 of the CSIS Act, it prohibits CSIS—I think it's in your report on page 33—from releasing information without written documentation. It states: “When such information is released, the Director of CSIS must submit a report to SIRC.”

In the past, it looks like you said that you did not receive anything in writing. It's clear that the act said that it must do so in writing. They didn't do it in writing, so obviously something must have gone wrong—this is the “Disclosures of Information” section on page 33 of your report.

If you refer back to the paragraph before, on page 32, if a CSIS employee has acted in a way that is not necessarily appropriate, the director of CSIS must submit a report to the minister, etc.—this is under section 20 of the act—and then in turn the minister must send the report with his or her comments to the Attorney General of Canada and to SIRC. There was no such report filed.

It seems to me—and I don't know whether you agree—that there was no written record of a disclosure of information.

**Hon. Gary Filmon:** Sorry, may I just ask, in what circumstance was there no written report?

**Ms. Olivia Chow:** Apparently you did not find any record of CSIS approval for the RCMP to disclose CSIS information.

**Hon. Gary Filmon:** Right, that's true.

**Ms. Olivia Chow:** CSIS is supposed to approve.

**Hon. Gary Filmon:** No.

**Ms. Olivia Chow:** Is there no protocol?

**Hon. Gary Filmon:** They weren't asked; that's the point we're making.

**Ms. Olivia Chow:** What would be the proper procedure for sharing information? Was the proper procedure followed?

**Hon. Gary Filmon:** The proper procedure would be that if information, which had been garnered by CSIS, was shared with a number of different agencies, domestic or international, in order for them to share that information with a third party, they would have to seek CSIS approval. We're saying that did not happen.

**Ms. Olivia Chow:** So that was not followed. But what is the proper protocol for the release of CSIS information? They're supposed to.

**Hon. Gary Filmon:** That's for somebody else releasing CSIS's information. That's what the protocol we're talking about is. And we're saying that protocol wasn't followed, not by CSIS, but by—

**Ms. Olivia Chow:** The RCMP.

But the problem is that CSIS didn't.... Wouldn't CSIS have to release that information also?

**Hon. Gary Filmon:** Yes, but they have a memorandum of understanding for the free exchange of information. They followed the memorandum and passed the information on. Then approval wasn't sought for that to be passed on to a third party.

• (1720)

**Mr. Roy Romanow:** With a caveat.

**Hon. Gary Filmon:** Right.

**Mr. Roy Romanow:** My word, you have to have that caveat. There's a caveat attached. If they share that information with CSIS, you cannot use it, they say—CSIS can't—unless it's a....

**Ms. Olivia Chow:** But to a third party.

Shouldn't CSIS also be consulted before they approve?

**Hon. Gary Filmon:** They should, but it didn't happen.

**Ms. Olivia Chow:** I see.

Would you be reviewing all CSIS decisions to receive information from countries that have questionable human rights records from now on?

**Hon. Gary Filmon:** Yes. In fact that was one of the outcomes of our study with respect to agencies from countries with questionable human rights records. I might say as well that the RCMP-CSIS memorandum of understanding was tightened up and expanded to cover some of the concerns in September.

**Ms. Olivia Chow:** In your recommendations—I see the whole list of recommendations in here—which one do you think would really address some of the concerns that have been raised in particular?

**Hon. Gary Filmon:** Which page?

**Ms. Olivia Chow:** On page 73, you have a whole list of recommendations that are in front of us right now. Which one of them would give us some comfort that some of the mistakes, which occurred in the past, won't reoccur if these recommendations are followed?

**Hon. Gary Filmon:** At the top of page 74, “CSIS amend its policy governing the disclosure of information to foreign agencies, to include consideration of the human rights record of the country and possible abuses”.

**Ms. Olivia Chow:** Yes, I saw that one.

**Hon. Gary Filmon:** There is another one in Mr. Justice O'Connor's report where he goes through all seven of our recommendations on our Arar study. One said that “CSIS examined its agreements and policies with the RCMP to determine whether they provide the necessary protection against third-party disclosure”. That's precisely from that issue you raised.

“CSIS amended its operational policy in relation to foreign travel proposals including consideration of human rights concerns”, which is in response to Mr. Cotler's question. As I said earlier, “CSIS amended its operational policy to require consideration of human rights issues when seeking to use information for targeting approval”.

These are all matters. Here's another one, number 5, that SLOs “maintain written records when requests for information are transmitted to foreign intelligence agencies”, and that formal letters be “sent to confirm verbal requests”.

This was in that period of time referred to by Mr. Holland as the time gap, with respect to CSIS trying to get information from the CIA on the detention of Mr. Arar.

**The Chair:** We'll have to conclude this round.

Thank you.

Mr. MacKenzie, briefly, you're sharing your time with Mr. Norlock.

**Mr. Dave MacKenzie:** Yes, I just want to clarify. Mr. Cotler was very challenging on the issue about what you should have done, or what CSIS should have known. Would I be right in my assumption that CSIS doesn't know what someone doesn't tell them? If the RCMP had the information and didn't tell CSIS, it would be very difficult for CSIS to know that, even though there may have been memorandums of understanding. If that in fact is the issue, then we should be asking the RCMP.

**Hon. Gary Filmon:** I think it's even more complicated in that clearly CSIS was aware that they had shared a great deal of information with the RCMP with respect to a project that became part of the foundation of their information on Project A-O Canada.

What they didn't know was what had been added to this was an assertion that Mr. Arar was a suspected terrorist, as I understand it. I'm probably getting into information that I shouldn't be sharing. Probably I read it in material that I shouldn't be sharing.

But the fact of the matter is they may have been assuming that they knew what information was there and later found out that there was additional information, which may have come from another source that they didn't know about.

So information sharing is two-way for the most part, but in this particular case, matters were added and not fed back to the origin of the information. Then they were put in a very difficult position, as I interpret it.

• (1725)

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

Earlier on you mentioned that you attended the International Intelligence Review Agencies Conference and that Canada is one of the most respected nations with regard to how we oversee our intelligence-gathering community. You made that statement. I'm a person who believes we need to, with other sister organizations, always share best practices, because you don't always think outside the box; you usually are very concerned.

I'm wondering what best practices did your committee learn while attending that conference? What, if any, Canadian practices do you think should be discontinued as a result of what you learned there? You may feel uncomfortable with it, but that's how we need to work; that's how parliamentarians work. If you don't share that with us, then we don't know how to help you get that enacted.

**Hon. Gary Filmon:** It's clear that one of the advantages that some of our counterparts have is that they aren't limited to dealing with just one of the elements of the whole family of security and intelligence gathering. In other words, in Norway and the U.K., among two, the oversight bodies would have the equivalent of CSIS, the police, the Communications Security Establishment, and border security all under their jurisdiction. That does give an advantage.

The disadvantage they have is that they can't go into the depth that we can and have the access to all of the top secret information that we do on the one agency that we are responsible for. So for every advantage, there's always a disadvantage.

So we learn and we try to sift and sort all of these things and say, should we be pursuing other things? At the moment, we have the wisdom of Mr. Justice O'Connor looking at whether or not he should do something with the RCMP oversight, and maybe that will give us some clue as to where we're heading.

**Mr. Rick Norlock:** Good.

I wasn't going to go here, but would it be, in your view, since some people sitting at home watching may say, yes, they're trying to protect their job, but I don't think that's occurring here.... Despite the fact that I dislike intensely adding additional layers of administrative bureaucracy, would it perhaps be, then, based on what you've just said, a good reason to have a parliamentary oversight in addition to what you do? That parliamentary overseeing body could then access your group as well as those other agencies, so there would be that umbrella group able to coordinate through a parliamentary process.

In other words, the legislators would then—being sworn to secrecy, of course—have an oversight. Do you see a value in that, based on the best practices you've just referred to?

**Hon. Gary Filmon:** I think it is a matter that should be examined in its totality to see whether or not it is feasible and desirable to give that kind of direct access to all of the secrets of state, so to speak, in the whole security and intelligence field to a parliamentary body. I don't know of any country in the world that has done that, but it's obviously a question that parliamentarians and the government are going to have to consider.

• (1730)

**Mr. Rick Norlock:** Do I have one more?

**The Chair:** Actually, we're out of time. They're playing our tune.

I would really like to thank you for coming before the committee. Do you have any concluding remarks? Do any of the witnesses want to make any final comments?

**Hon. Gary Filmon:** Only just that, as I indicated earlier, it was three years ago the last time our committee was asked to come before the parliamentary committee. We appreciate your courtesy, and we appreciate all of the information and the knowledge you are putting into this process. It's very evident that you've done a great deal of work and have examined many people in this whole area.

We appreciate the time you're spending with us because we're here to serve this committee and Parliament in general; that's to whom we report. I think it emphasizes for us the importance of the work we do when we have an opportunity to report to you like this, so thank you.

**The Chair:** Thank you.

I think I speak for everyone around here when I say that we have appreciated very much the feedback and answers you've given us; you've been very candid and honest with us, and that is much appreciated. I'm sure everybody who's watching on television feels the same way. So again, thank you very, very much.

I will turn the floor, very briefly, over to Mr. Holland. He has an issue to raise.

**Mr. Mark Holland:** If there's not consensus, Mr. Chair, I'd be happy to yield on the issue.

But if I could, the committee had previously agreed to hear from Shirley Heafey, the former chair of the RCMP Public Complaints Commission, who launched a complaint against the RCMP on three different grounds. I stand to be corrected by the clerk if I'm wrong, but I believe we have a free hour on the 23rd. My suggestion is that would be a good time for her. So I'm just looking for the consent of

the committee. If that is okay with the committee, we don't need to debate further.

**The Chair:** No problems?

Okay, it's agreed.

This meeting stands adjourned.

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