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Chair

Mr. Garry Breitkreuz

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• (1530)

[English]

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

This is the Standing Committee on Public Safety and National Security, meeting number 17, and today we are dealing with a briefing on the international role of the Canadian Security Intelligence Service, commonly known as CSIS.

Our witnesses for the first hour are from the Security Intelligence Review Committee. We welcome the Honourable Gary Filmon, the chair, and Susan Pollak, the executive director.

Thank you very, very much for appearing today. The usual practice at this committee is to give you time for an opening statement of approximately 10 minutes. As you know, we then go to questions and comments around the table.

Any time you're ready, sir, you may begin.

Hon. Gary Filmon (Chair, Security Intelligence Review Committee): Thank you very much, Mr. Chair, and I'll begin by thanking you for inviting me to appear today. I'm delighted to be here as chair of the Security Intelligence Review Committee, along with Susan Pollak, our executive director. We have a number of our senior staff with us as observers, and in case we forget something, we have our director of research, Steve Bittle, and our senior legal counsel, Sylvie Roussel, as well as a number of our research analysts.

I would like to take the opportunity to go through a brief introduction about SIRC and its mandate and responsibilities. The last time representatives of SIRC appeared before this committee was in 2009. The membership has changed somewhat, so I think we'll take the opportunity to give an introductory view of SIRC, and then we'll be very happy to answer questions.

Let me say first that having served on SIRC for nearly nine years, during which time I have been in regular contact with many organizations with similar mandates, I'm confident that Canada's model is, and is recognized to be, one of the strongest review functions in the world. This is not to say that changes and improvements are not possible, but simply that we have in SIRC an effective tool for helping to ensure the accountability of Canada's security intelligence agency, CSIS.

As I'm sure you are aware, SIRC came into being at the same time that Canada created CSIS, its civilian security intelligence service. With the passage of the CSIS Act in 1984, Canada became one of the

first democratic governments in the world to establish a detailed legal framework for the operation of its security service. It is equally significant that the CSIS Act created a framework to make CSIS accountable in exercising its powers, a framework that by and large has stood the test of time.

Specifically, the CSIS Act defines the mandate and limits of state power to conduct security intelligence. It also spells out how the service's work is to be monitored through a rigorous system of political and judicial controls, including two review bodies, each with a distinct mandate, to watch over the new agency.

I will not describe in detail the role of the inspector general of CSIS, but will simply say that it's an internal body that provides the Minister of Public Safety with a knowledgeable set of eyes and ears on CSIS operations. SIRC, on the other hand, is an external review mechanism that does not report to any minister, but directly to you, as parliamentarians, and through you, ultimately, to all Canadians. SIRC's role is relatively easy to describe, although somewhat complex to execute. The committee has two basic functions: first, to conduct reviews into CSIS operations; and second, to investigate complaints against CSIS. SIRC has, in law, the absolute authority to examine all of the service's operational activities and has full access to all of its files, no matter how highly classified that information may be, the sole exception, of course, being cabinet confidences.

Our reviews are done by assessing the service's past activities and operations against four instruments that together form the legislative and policy framework for the service. These are, first, the CSIS Act; second, ministerial direction; third, national requirements for security intelligence; and finally, CSIS's own operational policies.

In each of its reviews, the committee examines certain fundamental questions, such as: Did CSIS have reasonable grounds to suspect a threat to the security of Canada? Was the level of investigation proportionate to the seriousness of the threat? Did exchanges of information between CSIS and domestic and foreign partners respect the agreements and caveats that govern information-sharing? And finally, did the service's investigation respect the rights of the individuals who were involved in lawful activities, such as protest or dissent?

Normally, our reviews take several months to complete and involve SIRC staff examining thousands of pages of documents, as well as having numerous discussions with CSIS personnel. Once a review is completed, copies are sent to the director of CSIS and to the inspector general; in some special cases, we send our reviews directly to the Minister of Public Safety. Declassified summaries, with any national security and privacy concerns removed, are also included in SIRC's annual report to Parliament.

• (1535)

Although SIRC's annual report is our main communications vehicle for informing Parliament and the public about our work, SIRC does carry on a modest communications program as well. We respond to media inquiries and participate in domestic and international symposia with relevance to our work. We also address seminars at Canadian universities to explain SIRC's role to students pursuing studies in this or other related areas. SIRC's website is another useful source of information for the public. There, you can find all of SIRC's annual reports, speeches and presentations, backgrounders and other publications, as well as descriptions of who we are and what we do.

Moving now to the subject of complaints, you are no doubt aware that SIRC investigates complaints about CSIS brought by individuals or groups. These complaints fall into one of four categories. They can be about any act or thing done by the service; denials of security clearances to federal government employees and contractors; referrals from the Canadian Human Rights Commission in cases where the complaint relates to the security of Canada; and, very infrequently, ministers' reports in respect of the Citizenship Act.

When SIRC accepts jurisdiction, the complaint is investigated through a quasi-judicial hearing presided over by a committee member, whose role is similar to that of a judge. At the conclusion of the investigation, the member issues a decision containing findings and recommendations to the minister, the director of CSIS, and, in cases concerning security clearance, the deputy head of the government department involved. We also provide a declassified report on our investigation to the complainant, in which we provide to that individual as much information as we can without breaching our obligation to protect national security.

As far as SIRC is concerned, having review and complaints under one body has proven advantageous. Our reviews give us the expertise to evaluate and investigate complaints more fully. At the same time, complaints give us another window on CSIS's operations, particularly their impact on the lives of ordinary Canadians. In some jurisdictions, these functions are kept separate, but Canada's experience suggests that there are real benefits to having them under one roof.

Whether we are speaking about reviews or complaints, SIRC's recommendations are non-binding. The scheme of review that Parliament created was not meant to have SIRC substitute for either the director of CSIS, who is accountable to the minister, or for the minister, who is answerable to Parliament. Nevertheless, CSIS has implemented the majority of SIRC's recommendations and has publicly acknowledged that SIRC has made it a better organization over the years. In late 2003, then CSIS Director Ward Elcock said at a major public conference, and I will quote:

Twenty years of constant review activity have resulted in many recommendations on how we could run things differently, and many of these recommendations have mirrored adjustments that have been made to the Service's management procedures. SIRC's comments have extended into the heart of how the organization is run, including matters of source-handling, investigative methods, targeting decisions and other core functions ... Do we always share SIRC's views? No in some cases, yes in some. But that is not the point. The point is that the review process remains an ongoing debate on ways to ensure that the principles of the legislation are sustained as we evolve and adapt to new threats. That is what the legislators intended.

Having given you a very brief overview of SIRC, I'd now like to take a few more minutes to address some of the issues that are preoccupying committee members, as well as ourselves, in the context of CSIS's foreign operations.

First, I do wish to reiterate the point that I and all members and staff of SIRC are persons permanently bound to secrecy, as stipulated in the Anti-terrorism Act of 2001. For this reason, although I am free to talk about what SIRC does and what our overriding concerns and observations are, I am not at liberty to divulge any operational details or any classified information. Even with this constraint, I believe I can offer you some helpful comments to guide you in your own examination of the issue of CSIS operating abroad.

• (1540)

I begin by noting that both the government and CSIS itself have indicated clearly that the service has in recent years been expanding its foreign operations in pursuit of its security intelligence mandate, in order to protect Canada's national security. This is hardly surprising, given the global character of the terrorist threat and the borderless flow of information and assets in our modern world. There is no question in my mind that the law permits CSIS to work in this way and that it is appropriate to do so in order to fulfill its mandate, as specified in section 12 of the CSIS Act.

That said, the shift in CSIS's role overseas from one of strictly liaison to one that allows for operational activity of a clandestine nature is a significant change from CSIS's longstanding focus on domestic security principally conducted from within Canada. From SIRC's perspective, there are a number of criteria that come into play in order for the service to operate effectively overseas in its security intelligence function.

First, CSIS needs appropriate direction from the government to carry out this expanded function effectively and in a way that reflects government priorities.

Second, CSIS should be adequately resourced to conduct its increased overseas operations. This would include not only funding but also training.

Third, the scope and pace of the shift from predominantly domestic to global operations should be proportionate to, as well as reflective of, the threat. Furthermore, the benefits should be measurable.

Finally, the bifurcation of CSIS's investigative function should be monitored so as to assess whether it is creating a perceived or real two-tier system within the service's intelligence officer cadre, those who operate overseas versus those who work on the domestic front, and whether this in itself could lead to long-term problems.

In concluding, I would say that for over 24 years SIRC has strived to carry out its work in an objective, fair, and balanced way. We recognize that in a free society we have to use every available resource to counter threats to our national security, the most significant today being terrorism. At the same time, we must uphold the principles of accountability, fairness, adherence to the rule of law, and respect for individual rights.

I will admit that this task has become more challenging since 9/11, as allegations of human rights abuses in the name of fighting terrorism have surfaced in many countries. Canada has not been immune to such controversy, and the case of Maher Arar, which SIRC reviewed prior to the government appointing a separate commission of inquiry, serves as a case in point.

The committee and SIRC staff believe that we have helped to make CSIS a more professional organization since 1984, and we remain as committed to this objective as we were then.

Thank you for your attention, and I look forward to your questions.

The Chair: Thank you very much.

We'll go immediately to the Liberal Party for seven minutes. Mr. Holland.

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

Thank you very much, Mr. Filmon, for your testimony today, for your work, and for appearing before the committee.

The assistant director of foreign collections, Mr. Colombe, confirmed that it was possible that information received from Afghanistan's notorious secret police may have been extracted by the torture of Canadian-transferred detainees.

I am wondering whether SIRC, as the oversight body of CSIS, has taken a look at what role CSIS has played in this involvement in that particular question.

• (1545)

Hon. Gary Filmon: As you know, we develop a work plan on an annual basis, and CSIS's involvement with Afghan detainees is one of the topics that is on this year's work plan.

Mr. Mark Holland: So will you be looking at that?

Hon. Gary Filmon: Yes.

Mr. Mark Holland: I am wondering how you feel in a general sense. I notice you didn't mention the cases of Mr. El Maati, Mr. Nureddin, and Mr. Arar.

We also had before this committee Mr. O'Brian, who gave commentary that was less than clear about what CSIS's position is on exchanging information with countries or individuals who might be engaged in human rights practices that include torture. Have you looked at this issue overall? Do you feel the ministerial directive is clear enough? And are you concerned about the comments by Mr. O'Brian, the comments by Mr. Colombe, and by the cases of Mr. El Maati, Mr. Nureddin, and Mr. Arar, that this is something that seems to be ongoing and continuing?

Hon. Gary Filmon: I must admit that I haven't seen all of the comments you're referring to. I have seen press references to them.

Mr. Mark Holland: You read the conclusions of Justice Iacobucci.

Hon. Gary Filmon: I have not read them in detail, no.

Mr. Mark Holland: You have not read the conclusions of Justice Iacobucci?

Hon. Gary Filmon: I have not read them in detail. I've seen summaries.

Mr. Mark Holland: Sir, as the individual who is responsible for oversight, I've got to express a lot of concern about that. If I could implore upon you to read the conclusions of Justice Iacobucci, who undertook a process of looking.... We often talk about Mr. Arar...but I am just frankly a little shocked. If I could implore you to go back and review that, and review it in the light of the question that I've just asked, I would appreciate that.

Hon. Gary Filmon: Would you mind then telling me what your question is?

Mr. Mark Holland: My question is, as the oversight body responsible for overseeing CSIS.... We have a situation in Afghanistan where Mr. Coulombe said that it is possible that information that was received might have been extracted through torture of transferred detainees.

We have a situation where Mr. O'Brian from CSIS, a senior individual with over 30 years with CSIS, says there is continued transferring of information from states that are engaging in torture.

We have the conclusions of Justice Iacobucci, who found that three innocent Canadians were detained and tortured abroad and that it was faulty Canadian intelligence that was complicit in that. We have the case of Mr. Arar.

So I guess what I'm asking.... You are saying this one issue is on the work plan, but why isn't this a higher priority?

Secondly, what concerns do you have in that context with the way in which Canada is exchanging information with nations that engage in torture?

Hon. Gary Filmon: What I think is important to stress is that we have done several reviews along the way on various different activities of the service with respect to many of these different individuals and their processes. I have heard, as no doubt you have heard from many senior officials in the service, that when they receive information they are often not in a position to know how that information was obtained. So in our investigations we have assured ourselves that they follow a process of not simply accepting any piece of information without some other form of verification of that, some other cross-referenced verification of that information.

Because of the nature of what they're doing and the sources they have, they are not in a position to know with any certainty at the time they receive the information whether or not it has been received through torture.

They have said that publicly many, many times. That is not something that is new from Mr. Justice Iacobucci. It was in O'Connor's report. It has been in many reports.

•(1550)

Mr. Mark Holland: Right, but it hasn't changed. That is what I'm trying to drive at here.

Hon. Gary Filmon: No. The point is that they have changed—

Mr. Mark Holland: If I could pose the question, what we're hearing in the conclusions of Justice Iacobucci—which do follow the conclusions of Justice O'Connor—which I think are very clear, is that intelligence officials are saying that we can't know whether or not this information was obtained by torture.

If you do a Google search of Syria, you're going to know they engage in torture. There's probably a pretty good chance that if they're coming out of a Syrian prison, they're going to be tortured. You don't need to really study that one too deeply.

What I'm concerned by is that we continually have officials, who are still coming before committee, and ambiguous statements about how we engage other countries in torture, as recently as the transfer of Afghan detainees.

So as the oversight body, given that, and given that we are supposed to have a ministerial directive that prohibits that exchange, do you not think it's important to review that? Are you not concerned by the fact that this practice seems to be ongoing and continuing, despite a ministerial directive in place?

Hon. Gary Filmon: First, I believe it's important for you to establish whether or not you're satisfied with the ambiguity you're getting. I am not the person giving you the ambiguity.

What I'm telling you is that in our reviews we have satisfied ourselves that the directions are clear and that the service believes in the directions. But you know, we're talking about things—

Mr. Mark Holland: Can I just ask a question? I have limited time. If it is not you who is responsible, as the body for independent oversight, to clear up ambiguity and to ask tough questions, then what is the independent third body—other than opposition members—to get answers?

Hon. Gary Filmon: We are satisfying ourselves that they have clear direction and that their approach to it is clear.

Mr. Mark Holland: Their approach but not their outcome—

The Chair: I'm sorry, we have to wrap it up here.

Hon. Gary Filmon: If you're telling me an individual has told you that it was not possible to determine in some cases whether or not... then you have to accept their word. But that doesn't mean they weren't given clear direction.

The Chair: Ms. Mourani, please, you have seven minutes.

[Translation]

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

Mr. Fimon and Ms. Pollak, thank you both for being here. Ms. Pollak previously appeared before the committee in 2008 or 2009, if my memory serves me. You said at the time you had doubts about the torture allegations and CSIS, but that's not what I want to talk about.

I would like us to talk about the case of a Canadian citizen, a journalist and author. This is someone who denounced the Islamic extremists and filed a complaint against CSIS. I'd like to talk about that complaint. She filed a complaint because CSIS looked at her credit file on August 24, 2004.

The complaint was considered by your services and a number of meetings were held. The citizen in question is Ms. Djemila Benhabib. You must be familiar with the file since you signed a number of reports. Ms. Benhabib filed a complaint against CSIS, which apparently investigated her and submitted a request to Equifax Canada concerning her credit. Judge Speaker came to the conclusion that everything was fine.

I read the report and saw that there was a lot of complacency. I got to the point where I asked myself whether the Security Intelligence Review Committee handled complaints properly. Let me explain. On the one hand, one document contained an interview with the various parties in English, because Ms. Benhabib was unable to obtain service in French. That's unacceptable for a federal institution. So I'd like to know why she was unable to obtain service in French.

On the other hand, according to that document, Ms. Roussel, representing the Security Intelligence Review Committee, told her in French that there would be an interview and that CSIS would testify without her being present. So it was to be an *ex parte* hearing. At that *ex parte* hearing, a summary would be declassified and handed over to her, to the extent that was possible. That would give her an overview, having regard to the security constraints and legal obligations to protect classified information. So she was told she would get a summary.

I saw the judge's report. With regard to the evidence submitted by CSIS, the only thing you could read was bits of sentences like: "The witness submitted", "The witness added", "The witness testified", "She indicated that, based on her experience", and "The witness said". What did she say? We don't know. It's so shaded out that we don't even know what they have against Ms. Benhabib. We absolutely do not know what CSIS has against Ms. Benhabib to warrant an investigation of her.

My question is simple. Did CSIS have grounds to investigate Ms. Benhabib? Did CSIS have reasons to suspect a threat to Canada's security within the meaning of section 12?

What do you think about this, Ms. Pollak?

Mr. Chairman, I hope this silence isn't included in my time.

•(1555)

[English]

The Chair: There are three minutes left.

[Translation]

Mrs. Maria Mourani: Mr. Chairman, I'm not getting an answer.

[English]

The Chair: I'll give three minutes from when they start the reply.

[Translation]

Mrs. Maria Mourani: For the moment, I haven't obtained an answer and time is passing.

Ms. Pollak, do you have an answer?

[English]

Hon. Gary Filmon: If I may, I'll respond on behalf of the committee.

Obviously there was a complaint that you're aware of. It was heard by a member of the committee and a decision was rendered. The information that can be made public has been made public.

We are subject to all of the requirements of national security with respect to what information can be made public from an in camera discussion. You have the information that can be made public.

[Translation]

Mrs. Maria Mourani: Mr. Filmon, nothing has been made public, absolutely no information has been given. There was an *ex parte* hearing and Ms. Benhabib received no information. Judge Speaker's report contains nothing, only the words "the witness filed" or "the witness said." I very frankly wonder whether the review committee is properly playing its role with regard to CSIS. I doubt it, Mr. Filmon; I have serious doubts.

I would like to know one thing. Section 12 clearly provides that CSIS must conduct investigations solely of persons or organizations that it believes constitute a threat to the security of Canada. Is that correct?

[English]

Hon. Gary Filmon: Yes.

[Translation]

Mrs. Maria Mourani: So why was Ms. Benhabib investigated? Does she constitute a threat to the security of Canada?

[English]

Hon. Gary Filmon: We cannot give you that information, but we can assure you that the information was available to Mr. Speaker, who was the member who conducted the inquiry. There was no information withheld from him.

[Translation]

Mrs. Maria Mourani: I therefore understand that CSIS is above the law and rights and that the review committee is not doing its job. That's what I understand, because Ms. Benhabib, if—

[English]

Hon. Gary Filmon: Our job is to give assurance that CSIS is not above the law, and that's the assurance we give after doing the investigation.

[Translation]

Mrs. Maria Mourani: If CSIS isn't above the law, under section 12, Ms. Benhabib constitutes a threat to the security of Canada, doesn't she? You can't answer. Very well, I'd like to know why—

•(1600)

[English]

Hon. Gary Filmon: The answer is that an investigation was made, and we can give the assurance that CSIS acted within the law.

[Translation]

Mrs. Maria Mourani: I understand that CSIS takes the liberty of investigating everyone in any way it wants.

Do I have one second left, Mr. Chairman?

[English]

The Chair: You have 30 seconds left.

[Translation]

Mrs. Maria Mourani: I'd like to know why she wasn't allowed a francophone judge for a case as tough and as important as this one. Why?

An hon. member: There was a consultation.

Mrs. Maria Mourani: To know whether there was a francophone judge? Something's wrong, Mr. Chairman!

[English]

Hon. Gary Filmon: If I may, I will have Ms. Roussel, our senior legal counsel, explain the issue to you.

[Translation]

Mrs. Sylvie Roussel (Acting Senior Counsel, Complaints Section, Security Intelligence Review Committee): I'm going to answer your first question.

The committee has an obligation to keep its investigations secret. Section 48 of the Canadian Security Intelligence Service Act specifically provides that the committee's investigations are conducted in private. The act also states that, when they are before the committee, the parties do not have an absolute right to know the submissions of the other party. The committee has rules that provide that, when the evidence is before them, members must try to determine how they will ensure a balance between the rights of the parties and national security. This exercise is conducted in all complaints cases, but no one has an absolute right to know the information the other party will bring. In all cases, in all files, the committee tries to communicate as much information as possible to the complainant. Shading is done, and we try to provide as much information as possible to the complainant.

Mrs. Maria Mourani: Why wasn't she granted the right to a francophone judge? No one's answering my question.

Mrs. Sylvie Roussel: With regard to the matter of francophone judges, that depends on the availability of members. Furthermore, there is simultaneous interpretation when the members request it or when a party or witness requests it.

Mrs. Maria Mourani: There was no translation in this case. There was no judge from what I understand.

[English]

The Chair: Ms. Mourani, you'll have to respect the rules of the committee.

We'll go to Mr. Harris.

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

I want to thank our guests today for their presentation.

I'd like to ask, first of all, a general question about your role in overseeing the work of CSIS. Of course, we respect the fact that SIRC is a civilian oversight program, which, together with the inspector general, we see as vital. In fact, it is a model that could be used for the RCMP or as a similar type of civilian oversight model for the military.

In terms of your oversight of CSIS, can you just expand slightly on the fact that in its overseas role, CSIS has, as you say here, moved from a strictly liaison role to what you're calling operations of a clandestine nature? That is a significant departure from their long-standing focus. Is that something you actually oversee?

We had Monsieur Coulombe testify before the Afghanistan committee last week, and they actually had an agreement or a partnership with the NDS, an organization of some notoriety because of its human rights activities and violations in Afghanistan. Is that something you would take it upon yourselves to ensure was in keeping with what CSIS is supposed to be doing outside of this country?

Hon. Gary Filmon: Thank you.

First, we are a review body, the distinction being that if we were an oversight body, we would be involved with their active day-to-day operations and the examination of their activities. Rather, we review all their activities on a post hoc basis. We selectively look at issues in their operations that are of concern to us and we examine them. Over a period of time, every element of what they do, in a major sort of principled way, is examined.

With respect to your question about their activities in terms of foreign operations, the point we're making is that over time, they have been collecting information and are involved in activities that I think are fairly well known publicly with respect to Afghanistan. In the interests of the security of our personnel over there, they are gathering information that's of critical importance with respect to kidnappings that have taken place over recent times that involved Canadians. Even, I think, when there was a major Hamas uprising in Lebanon, there were many Canadians there, and it was important to have information on the ground that was of critical importance, from a security standpoint.

Things of that nature have evolved over the years as a requirement of intelligence gathering for the betterment and security of Canadians. So in that respect, we have, in at least three different reviews, examined that to see whether they are adhering to their legislation, their own policy structure, ministerial direction, and national security requirements.

•(1605)

Mr. Jack Harris: Let me tell you that I, for one, as a Canadian, have concerns about a Canadian intelligence force having an agreement or a partnership with an organization like the NDS, given its notoriety. I would hope that SIRC would use its independent review power not just to respond to complaints but to have a look at that and see whether it has concerns about how it's operating.

Hon. Gary Filmon: I should say that we examine all their agreements—their cooperation and interchange-of-information agreements. They now have, I believe, 278 of them, with more than 140 countries.

Mr. Jack Harris: Is there any distinction, then, between what CSIS is doing internationally and what might be done by a Canadian foreign intelligence service? Or are we now saying that CSIS is our foreign intelligence service as well as domestic intelligence?

Hon. Gary Filmon: I think that's a question you'll have to ask the director in terms of their operational activities and the extent to which he can share that with you.

Mr. Jack Harris: In terms of national security and the security of Canadians, we have agreements with 140 different countries and we're operating all over the world. This hardly seems to be the CSIS that was devised in 1984.

Hon. Gary Filmon: I didn't say we were operating all over the world. I said we had 278 agreements with over 140 countries. I said that is for information-sharing and exchange. As I think you're aware, in the aftermath of 9/11, virtually every analysis and report that was done said it was a failure to share information, to connect the dots, that a lot of knowledge and information was available in a variety of different places but wasn't put together, which might have stopped it. So I think information-sharing has been accepted by security and intelligence agencies all over the world as being an absolute must.

Mr. Jack Harris: Okay. Let's talk about information-sharing for one second.

Mr. Justice Iacobucci found that information about a truck driver with a visitor's map of Ottawa was shared with a foreign intelligence service, which contributed to the ill treatment of Ahmad El Maati in Egypt and potentially Syria. Is that something that you would also review and say whether these problems had been fixed?

Hon. Gary Filmon: Yes. In our investigation into Maher Arar, which took place before the judicial inquiry, we certainly said there were concerns, not on the part of CSIS, but clearly information had been communicated to other foreign powers without perhaps, as he ultimately did find out, proper caveats and restrictions on it.

All these agreements call for appropriate caveats, restrictions, and limitations, and third-party....

All these issues are within the agreements. So it's not a matter of whether the agreements are there; the agreements are there, and from our investigation they're appropriate, but it's whether they're respected by other people, other agencies, or other partners.

The Chair: Mr. MacKenzie, please.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair. I will be sharing my time with Mr. Norlock.

I'd like to thank the panel for being here.

First off, all of us understand that this is not 1984. The world has changed, and so must CSIS.

But I'd like to set the record straight about what was said at a previous committee—not this committee, but the Afghan committee—with respect to dealing with issues in Afghanistan. I would ask the press and anyone at home who has an interest to go to the blues from May 5, where the CSIS people appeared here. Prior to 17:15, they will find that one of the members of the panel, Mr. Dosanjh, asked the CSIS representative a hypothetical question. He persisted in asking the question, even though the member from CSIS said he didn't like to answer hypothetical questions.

It went on and on, and finally, I think, people will find that Mr. Dosanjh said:

But if you try to seek similar evidence from sources not tainted by torture and you're unable to get that because you're in a battlefield in a country torn asunder by war, but you have this nagging feeling that something may happen to our forces, you indicate that if you try, but if you can't find it, you do act on that original information if you think the lives of our troops are at risk.

I don't think there's a Canadian out there who would expect CSIS or anyone else to ignore the information if people's lives are at risk.

My friend talks about whether we have arrangements with NDS. We have 143 Canadians killed in that country. Surely he wouldn't expect CSIS not to seek the information they can, not from torture, but to deal with colleagues around the world. I would hope that SIRC, in doing its job, overviews and oversees those kinds of situations.

I wonder if any of you would like to comment on what I've just said here.

•(1610)

Hon. Gary Filmon: As I said just a moment ago, we have examined those agreements. We're satisfied that the agreements are appropriate in the circumstances, that they cover the issues of how the information is exchanged, what kind of information is exchanged, the use of appropriate caveats and limitations, and all those things that mean that, in the exchange of the information, we are doing it for the benefit, safety, and security of Canadians as opposed to any other purpose.

Mr. Dave MacKenzie: Thank you.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much to the witnesses, and thank you very much, Mr. Filmon, for your testimony so far today.

I have a few other questions. They are somewhat general in nature, and I'm asking these on behalf of Canadian citizens who are watching this televised proceeding.

You've mentioned that we have 278 agreements with 140 countries. You used to be in a very partisan.... As premier and as a political leader, you're very much aware of the partisan attitude that can erupt in certain areas, such as we're seeing here in this place. I'm asking you this quite frankly in plain English. Do you feel as a loyal Canadian citizen, a man who has the Order of Canada, a man who is vested with a very important job, a man who I believe is above politics now...do you believe Canadians can hold their head up and be proud of CSIS and of the job that your organization is doing to make sure that we protect the human rights of Canadian citizens, and above all else their safety?

Hon. Gary Filmon: I think that's leading the witness, but—

Mr. Rick Norlock: Excuse me sir. It may be leading the witness, but people out there are not getting the right information.

Hon. Gary Filmon: I appreciate what you're saying. I would just say that I believe, in the nine years that I've been both a member and chair of SIRC, that I've conducted myself in a totally non-partisan vein.

I'm sure that members know that I was appointed to the committee by the Liberal government of Mr. Chrétien, that I was appointed chair by the Liberal government of Mr. Martin, and that we have people of many different political persuasions on the committee. It's always been a multi-party, non-partisan committee.

We take our responsibilities very seriously, and I would say to you that we regard our relationship as being one in which we're protecting the best interests of all Canadians in our examination of service. In so doing, we have to be as independent as we possibly can, both from them and from any other motivation. Along the way, from time to time, regrettably, it's been our responsibility to find fault with them. Having said that, we don't in any way judge poorly their motivation or their professionalism. It's just like any organization. From time to time they have made mistakes, in our judgment, and we've pointed that out in our reviews and in our annual reports.

That having been said, I believe it is fair to say as well that over time they've become more professional and better able to do their work, so that if you believe in continuous improvement, they probably are a good example of people who have striven to get better and better at what they do, and I think they're recognized for that.

That doesn't make our job any easier, because it means we still have to be very alert to the fact that it's a human service and from time to time mistakes are made.

•(1615)

The Chair: You have a half a minute yet.

Mr. Rick Norlock: Thank you very much. Also, current members of Parliament have been on SIRC. Is it not true that the Hon. Bob Rae was a member of SIRC?

Hon. Gary Filmon: That is correct.

Mr. Rick Norlock: Thank you very much.

Mr. Chair, I think my next question is going to be too long, so we'll wait for our next turn.

The Chair: Mr. Wrzesnewskij, please.

Mr. Borys Wrzesnewskij (Etobicoke Centre, Lib.): Thank you, Mr. Chair.

Mr. Filmon, you were laudatory in your opening remarks about the legislative and operational framework of CSIS and the parliamentary oversight that SIRC provides for us here. Do you believe that, if properly resourced, CSIS has adequate, sufficient powers legislatively to do its job?

Hon. Gary Filmon: Yes.

Mr. Borys Wrzesnewskyj: I ask that question because recently there was an article by a former director of CSIS, Mr. Reid Morden, who stated, exactly as you had said, that that was correct, and he felt that preventative arrest and investigative judicial hearings in fact cross the line between the security of the state and the rights of the citizen.

Let me move on to another question. My understanding is that CSIS no longer interrogates prisoners in Afghanistan. Is that correct?

Hon. Gary Filmon: I think that's something you'll have to ask the director.

Mr. Borys Wrzesnewskyj: Okay. If you're not sure of an answer, it can always be provided to the committee afterwards.

Would you have any idea how many prisoners have been interrogated by CSIS during our Afghan operations?

Hon. Gary Filmon: As I said, we're just doing our Afghan detainee review this year as part of our work plan, so I don't have that information right now.

Mr. Borys Wrzesnewskyj: When that information becomes available, could you pass it on to the committee?

Could you also provide the number of the prisoners who were sent to the National Directorate of Security, as it was labelled earlier, the notorious NDS?

Hon. Gary Filmon: Subject to national security constraints, I'd be happy to provide you with that information.

Mr. Borys Wrzesnewskyj: I'm not asking how many CSIS agents we have on the ground, just how many people they've actually interrogated. Considering that other NATO partners, in fact, post the numbers of people they detain and pass on, I wouldn't see what the security implication might be there.

You produced the Khadr report. Is a report on Mr. Abdelrazik in process? There were indications that a report would be produced.

Hon. Gary Filmon: We are just discussing this, because generally speaking we don't speak about specific individuals who are being reviewed or investigated by us.

•(1620)

Mr. Borys Wrzesnewskyj: Is there an ongoing investigation at this time of a Canadian citizen who was detained in Sudan, one of the worst countries in terms of human rights records? In fact, President al-Bashir was indicted by the International Criminal Court.

Is there an investigation of allegations that he was arrested in Sudan as a result of CSIS making that request to the Khartoum government?

Mrs. Sylvie Roussel: I can answer that. The committee does not comment or acknowledge generally whether there are complaints before the committee. Because of section 48, all investigations of complaints are conducted in private. We normally don't acknowledge that we have complainants in front of the committee, and we don't comment on the investigations.

Mr. Borys Wrzesnewskyj: Let me try this. If there were a complaint of that sort made in the spring of last year, and indications were that SIRC would begin a report, normally what would be the

timeframe within which one could expect a report, as was done in the Khadr case?

Mrs. Sylvie Roussel: The Khadr report was not a complaint. With respect to complaints, the delay for getting reports out will vary according to the nature of the complaint and the nature of the allegations that need to be investigated.

Mr. Borys Wrzesnewskyj: So you're supposed to provide oversight for Parliament and you can't even let us know whether or not SIRC is investigating when there are serious allegations that CSIS may have been complicit in the arrest of the Canadian citizen who alleges two years of torture? The complaints have been ongoing for a long period of time. We can't even find out whether or not there may be a report at some point in time. That then leads me to question whether SIRC is working as efficiently and in such a laudatory manner as was presented to us at the start of the session.

Let me move along to another topic—

The Chair: You're over time. I'm sorry.

Hon. Gary Filmon: The response is yes. Perhaps the difference is that we're not on a political timetable.

Mr. Borys Wrzesnewskyj: Can I have three seconds?

The Chair: You're way over time.

Mr. Borys Wrzesnewskyj: I have one quick one. You can send it in—

The Chair: Borys, I'm sorry. We only have time for one more questioner.

Ms. Glover, please.

Mrs. Shelly Glover (Saint Boniface, CPC): I want to thank you as well for appearing today.

I understand very well the need to have a cloak of secrecy, particularly when we're talking about national defence. I commend you on the work you do. It is difficult work, and we very much appreciate that you're patient with our line of questioning today.

I would like to talk a little more generally. I'm going to try to extract from you a comparison today, Mr. Filmon. You have stated in your opening remarks that our system is one of the strongest. I would like you to take a moment to assess and provide us with a comparison with other nations—maybe a little bit of the good, the bad, and the ugly. Can you just do a small comparison with other nations?

Hon. Gary Filmon: I'm not sure that this is anything more than an experienced opinion, but that's the only thing I can give you.

We meet regularly, at least every second year, with bodies that do similar work from all over the world—typically 10 or 12 countries with whom we have good relationships. You've heard of the “five eyes”, and there are many others with whom we have good relationships, from countries that are well-established democracies and have very well-established security and intelligence functions. We get a chance to compare and contrast how our systems work versus those of others.

One of the things they say they really like about Canada's system is that basically we have attempted to remove, and have been very successful at removing, the politics from our review of what is probably the most sensitive and potentially intrusive aspect of security and intelligence anywhere. The possibilities are, of course, that people could very seriously, personally, be damaged and that human rights, individual rights, could be negatively affected. It is a very sensitive area. We've managed with our system to remove politics as much as possible. This has gone through more than 25 years now of a very effective, non-partisan process. They like that about us.

They like the fact that our people are able to get into all of the elements of the operation of the security intelligence service, that aside from a cabinet confidence, there's nothing that can be withheld from us. That goes beyond almost any other similar oversight or review body that we encounter amongst our counterparts. They say that's a very positive thing about it that is lost, for instance, in a congressional committee, where partisanship gets in and they're not able to get at a lot of the information because of the fact that these organizations can keep secrets from them.

In those two regards, and in the ability to develop an experienced staff that over the years gets to really know the inside workings, and so in terms of review can be very incisive in getting at the information and the conclusions—for all those reasons—we are told by our peers that they really feel we have a great system in Canada.

• (1625)

Mrs. Shelly Glover: What are the criticisms? We've talked about the good. Let's talk about the bad. Are there criticisms from other nations of the way our civilian oversight system works?

Hon. Gary Filmon: I'm not sure what criticisms we've heard. There's always a desire, I would say, on the part of people in elected office to be able to get at the information they would like to with respect to the inner workings of the security intelligence establishment in every country.

Some countries have managed to find some hybrid system to do that, but it brings in another element to the process, in which parliamentarians, congressmen, and so on can only be given access to certain things, or if they are given it, then they have to bear the same cloak of secrecy that we do.

Mrs. Shelly Glover: Bearing in mind applicable laws and human rights, what is your impression of CSIS? How do you think they are doing?

Hon. Gary Filmon: That's difficult for me to say, because I think our primary role is to find fault, to be a watchdog, to be very assertive in attempting to find out information, and from time to time to be critical. Having said that, I think it's a very respectful relationship, and we certainly respect their integrity and their

professionalism. At the same time, you only have to review our annual reports to know that we do find fault with them and criticize when we believe criticism is due.

Mrs. Shelly Glover: I'm going to ask you for another comparison, based on what you've just said.

Very briefly, can you compare how security intelligence agencies of other nations are doing compared with how ours is doing?

Hon. Gary Filmon: I can't really. As a general term, I think the service is admired by its peers, though.

Mrs. Shelly Glover: Very good.

Thank you very much.

The Chair: Thank you very much. We appreciate your coming before the committee today. It's been an abbreviated session, and our next session will be shorter yet.

We'll suspend for a moment and have our next witness come forward.

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_____ (Pause) _____

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• (1630)

The Chair: We'll continue with our study today on the Canadian Security Intelligence Service.

We welcome now the director, Mr. Richard Fadden; and Mr. Michel Coulombe, assistant director for foreign collection.

We welcome you, gentlemen, and we look forward to an opening statement, if you have one, of approximately ten minutes. Then we'll have questions and comments.

Go ahead any time you're ready, sir.

Mr. Richard Fadden (Director, Canadian Security Intelligence Service): Thank you, Mr. Chairman.

I'm very pleased to be here today to speak to the role that CSIS plays abroad in support of Canada's national security interests.

As I approach my first anniversary as the director of CSIS, I want to underscore how important it is that we have an informed and flowing dialogue about national security in Canada. There's no better setting than Parliament in which to advance this dialogue, so I'm very pleased to have been invited here today.

As you know, my assistant director of foreign collection, my colleague Monsieur Coulombe, spoke last week to the Commons' Special Committee on the Canadian Mission in Afghanistan. There will no doubt be some overlap in content and interest with today's proceedings, and to the extent that I can, I'll answer any questions you might have on that.

[Translation]

I would like to structure today's remarks in the following manner. First, I would like to briefly summarize to you what CSIS is allowed to do outside of Canada, because I don't believe that those functions have always been well understood, even by commentators in the national security community; second, I will advance to you an argument on why I think CSIS must be active outside of Canada as part of its overall mandate to protect Canada's national security; and last, I will give you a sense of what CSIS is doing abroad so that today's proceedings are strongly grounded in real-life issues and circumstances.

[English]

The central duties and functions of CSIS are defined in section 12 of the act. We are to "collect...analyse and retain information and intelligence respecting activities that" could reasonably be suspected of being security threats to Canada. We call this security intelligence. We are then to "report to and advise the Government" on that intelligence.

Based on those general powers, CSIS collects intelligence on a variety of specific threats to Canadian security, defined broadly in our act and refined by directives from cabinet and the Minister of Public Safety. These include terrorism, espionage, and foreign-influenced activities.

Most relevant to today's proceedings is the fact that the CSIS Act does not place any territorial limitation on where the service can collect security intelligence. In short, if it's a threat to Canada's security, we can collect intelligence on it, in Canada or outside Canada. This is a crucial point, because as I will explain later, threats are rarely conveniently confined in the discrete geographic space called Canada. Threats, much like air pollution or migrating species, rarely stay put for long and tend not to respect borders. They move; therefore, CSIS has to move.

The framers of the CSIS Act recognized this essential fact. The notion that CSIS must be able to operate overseas has always been recognized as necessary. Indeed, the McDonald Commission, which provided an exhaustive report in 1981 on what a Canadian security intelligence agency should look like, found that:

...we do not think that the agency should be required to confine its intelligence collecting or countering activities to Canadian soil. If security intelligence investigations which begin in Canada must cease at the Canadian border, information and sources of information important to Canadian security will be lost.

Similarly, then-Solicitor General Robert Kaplan, speaking in support of the passage of the CSIS Act, said in an appearance before a Commons committee in April 1984:

There is no statutory requirement that the entire activities of the Security Intelligence Service be performed in Canada. I think that would be unduly inhibiting....

The SIRC, whom you have just spoken to, has also recognized our mandate to collect intelligence. In its 2003-04 annual report, SIRC reported on a review of a CSIS investigation abroad and "determined that CSIS has a clear mandate to conduct...investigative activities outside Canada, and concluded that such operations will undoubtedly increase as the threat posed by international terrorism grows".

The situation is similar for many of our international counterparts, who, like CSIS, recognize that the collection of security intelligence must be defined thematically by the threat and must be indifferent to the source or locations of those threats. Quite simply, the service's functions extend beyond Canada's shores because Canada has interests beyond those shores and threats can and do find us anywhere we are.

● (1635)

[Translation]

There are several key reasons why CSIS must focus a growing amount of its resources on foreign collection. First of all, as I alluded to earlier, threats move. The globalized world is interlinked and intertwined. International affairs is no longer the sole domain of states and of foreign affairs departments. An explosion of political, commercial and social ties has knit the globe together and made us more interdependent than ever before. And while that interdependence can be a great source of strength, it is also presents to us new challenges. Numerous global forces are pushing on our borders, softening them. If we are to protect our national security, we have to toughen them up and push them out.

[English]

This is not political science theory. It is a stark reality and can be illustrated by a few key examples.

The Internet has allowed terrorists to use social networking technology as a force multiplier, which permits them to gather in a virtual world to recruit, plan, and execute acts of terror. However, as the Internet spreads its tentacles into every society, computer, and home, the implications are enormous. Never before have so many ill-intentioned people had instant global access to every corner of the globe. It has become much easier for those abroad to plan and organize attacks on Canada or on its allies. But it's also easier for young Canadians, excited by a perverse call to action, to become radicalized and to develop into a security concern either in Canada or abroad. I don't, however, want to leave you with the impression that I'm against the Internet. It's only that we have to deal with the consequences of its use.

Of those security concerns, confronting the threat from al-Qaeda, its affiliates and its adherents, remains our number one priority. Naturally we are most concerned with those within Canada who ascribe to such movements and who advocate violence as a means to achieve their ends. In that regard, I can say that as of this month, CSIS is investigating over 200 individuals in this country whose activities meet the definition of terrorism as set out in the act.

In addition to the work that CSIS does to counter the threat that these individuals represent to Canada, CSIS also plays an important international role in protecting others from threats emanating from Canada. For example, the involvement of Canadian citizens with foreign terrorist organizations, many of them listed as such in the Criminal Code, is a relatively new phenomenon. Some Canadians even play senior roles in such organizations. I think Canada has an international obligation to work with partners to ensure that our citizens do not plan or execute terrorist acts abroad.

It may surprise some to hear that CSIS maintains an investigative interest in a disturbing number of Canadian citizens or permanent residents who have travelled abroad to engage in terrorist activities. The suspected whereabouts of these individuals span the breadth of the globe, involving countries primarily in the Middle East, parts of Africa, and South Asia, but also in Europe and the Americas.

It is also worth mentioning that the service maintains an active interest in the threat-related activities of a number of non-citizens who have ties to Canada, whether through former residence here or family links.

[Translation]

In a much more general sense, of course, the movement of people in and out of Canada is enormous. As the Minister of Citizenship, Immigration and Multiculturalism notes in his 2009 annual report, Canada has a proud history of openness to newcomers from around the world. Canada has the highest relative immigration rate of any major western country. In 2010, we expect to welcome about 250,000 permanent residents. This connection to the world is a Canada hallmark, a central facet of our identity.

Increasingly, however, Canadian citizens have strong links to homelands that are in distress, are failed states, or that harbour terrorist groups. Canada is therefore increasingly implicated in a more complex, turbulent world. If we are to protect our national security, we have to know that world, and we can't do that by simply reading scholarly articles. We have to collect intelligence outside of Canada to have a true grip on what is transpiring. Just as we have solid diplomatic, commercial and social relations, we need solid intelligence links.

• (1640)

[English]

The recent spate of terrorist kidnappings provides perhaps the most tangible example of why our work abroad is necessary. It is an unfortunate reality that many of these incidents have taken place in parts of the world where Canada has little diplomatic presence or even where diplomatic ties of any kind may be minimal.

Our lack of diplomatic engagement in some very turbulent countries should not, however, be allowed to hinder us when one of our citizens is in distress. We must find ways to engage with foreign entities in such situations. This is where CSIS can be and has been effective.

Over the past three years, an alarming number of Canadian citizens have been kidnapped by extremist elements in some of the most dangerous regions of the earth. In many of these cases, key intelligence services are given the lead for efforts to secure the

release of foreign hostages. It is not unusual for them to insist that Canada's exclusive point of contact be CSIS.

Although our arrangements with certain foreign agencies have sometimes been criticized, this trust that our foreign counterparts place in the service has led directly to the safe and secure release of Canadian citizens held hostage abroad. In specific cases such as terrorist kidnappings, the Government of Canada, through CSIS, has little choice but to engage with foreign intelligence agencies, wherever they may be, if it is to protect Canadians. This is why CSIS must continue to cultivate and maintain such a large network of intelligence relationships, which currently involves over 275 agencies in approximately 150 countries around the world.

To shy away from such engagement, in my view, would be a form of unilateral disarmament in a dangerous world. It would render us extremely ineffective. It would be like sitting in a non-smoking section of a tiny restaurant, feeling proud about how we have advanced our health, as the blue haze drifts towards us. In a dangerous world, I argue that this approach is not a realistic option.

[Translation]

CSIS officers overseas collect information and manage and leverage relationships with foreign intelligence agencies to protect Canada, and others, against threats to their security. This is a vital part of an ongoing, international system of intelligence sharing. With major allies, this allows Canada—

[English]

The Chair: Can I interrupt for a minute? Do you think you could summarize the remainder of this in your own words? We have a copy of what you have to say, and people can read that. You're over time and—

Mr. Richard Fadden: Sure, I'll be happy to do that.

[Translation]

Mr. Chairman, our officers abroad are also charged with providing security screening advice to Citizenship and Immigration Canada regarding screening. Last year, we received 329,000 immigration-related security screening requests. The program focuses on visitors, and refugee claimants. It is important for Canada to be able to push out its borders.

[English]

Before concluding, I would like to say a few words about Afghanistan.

The news that CSIS is operating in Afghanistan has often been greeted with relative surprise and even in some quarters a bit of bewilderment. I don't quite understand this, because it seems logical that a government committing itself to a project as complex, dangerous, and ambitious as routing al-Qaeda and helping to stand up democratic institutions would wish to take full advantage of all of its available resources.

There seems to be a general sense among—

The Chair: I think members are already reading the rest of your report, so—

Mr. Richard Fadden: Okay, that's fine.

Thank for that, and I look forward to your questions.

The Chair: Thank you very much. We appreciate that you've gone to all the work in preparing this, but we have a very short session here.

We'll go immediately to questions and comments.

Mr. Holland, please.

Mr. Mark Holland: Thank you to the witnesses for appearing today.

I'll go right to the question of Afghanistan.

Mr. Coulombe, you confirmed that it's possible that information received from Afghanistan secret police might have been extracted by the torture of Canadian transferred detainees.

Further, you say, and I quote:

When we receive information from any agency where there is a doubt with respect to human rights, what we need to understand is that it doesn't mean that all information received from that agency has been obtained by means of torture.

I want to know how you ascertain that line. How do you divide out what's obtained by torture and what isn't, specifically when there's a ministerial directive against sharing information obtained by torture?

•(1645)

[Translation]

Mr. Michel Coulombe (Assistant Director, Foreign Collection, Canadian Security Intelligence Service): Mr. Chairman, I would like to emphasize that, on certain occasions, it is impossible to know whether the information has been obtained by torture. On other occasions, however, it's obvious from the nature of the information. For example, we can know whether information has been obtained through technical intercepts or other investigation techniques, by shadowing, or whether it's information that was already in the files of the service in question. When there are any doubts, we can also try to find out a little more about the manner in which the information was obtained, by going back to the service and asking some questions. However, it may be impossible at times to determine with any certainty whether the information was obtained by torture.

[English]

Mr. Mark Holland: If it's impossible in many circumstances to draw that line—and let me specifically take the cases of Mr. Arar, Mr. Nureddin, Mr. Almalki, and Mr. El Maati.... These are Canadian citizens, where both Justice O'Connor, in one case, and Justice Iacobucci, in the other, said that Canada was complicit in their detention and torture specifically because they found we didn't watch those lines.

If you're telling me it's impossible to know in many cases whether or not we're sharing information with groups or with governments that exchange any information on torture, when it's impossible to know whether or not what you're getting is extracted from torture,

when in the opinion of reports you've been told—or probably a Google search would tell you—there's a good chance torture is going on, to get that information, in your opinion, is it appropriate to be violating that ministerial directive? Or do you feel the ministerial directive, which has a sort of escape clause written by the minister saying “not knowingly relying upon information”...in your opinion does “not knowingly relying on information” include when it's impossible to know? Is it okay to use information obtained by torture in those circumstances?

Mr. Michel Coulombe: No. When there is a doubt, we don't rely on the information, as far as—

Mr. Mark Holland: Okay. You can understand my hesitation in believing that, when we have reports by justices who say that excuse has been used, and you just told me sometimes it's impossible to know and sometimes it is.

Let's take Afghanistan specifically. How can you know when that information is obtained by torture or not? How could you possibly know that? You're dealing with the secret police, an agency that is well known to be engaging regularly in torture, and you're saying there's information being exchanged. How could you possibly draw that line, particularly when we know that Justice O'Connor and Justice Iacobucci have said that line has been so improperly drawn in the past?

[Translation]

Mr. Michel Coulombe: Mr. Chairman, in the case of Afghanistan, there are allegations of torture, but these aren't just allegations. Earlier I explained how we try to confirm the origin of information or the manner in which it has been obtained. What I was explaining applied to Afghanistan. Sometimes it's obvious that it comes from other investigation techniques where we request more information, but it isn't always possible to confirm the origin of the information or the manner in which it was obtained.

[English]

Mr. Mark Holland: Let me ask you a very direct question, then, with respect to the secret police in Afghanistan. Do you think it's appropriate to exchange information? Should CSIS be exchanging information with an agency like that, well known to be engaging in torture?

[Translation]

Mr. Michel Coulombe: Mr. Chairman, my answer is yes, given the parameters in place, ministerial directives, acts and internal service policies.

[English]

Mr. Mark Holland: Okay. We're going to have to come back to that later. Obviously I think that's a clear violation of the ministerial directive when you are saying you know they engage in that. But we'll come back to that in a minute.

Mr. Coulombe, you said it here again today, that you feel CSIS has full legal authority to operate overseas. Can you touch on that in a little more detail and explain the specific nature of CSIS's work in dealing operationally with countries overseas?

[Translation]

Mr. Michel Coulombe: With regard to the legal mandate, section 12 of the act defines the service's mandate. There is no geographic restriction. The service gathers information when it has reasons to suspect that activities are related to a threat, in accordance with the definition contained in section 2 of the Canadian Security Intelligence Service Act. However, that act imposes no geographic limit for the gathering of security intelligence. Our overseas activities consist, among other things, in the gathering of security intelligence, that is information on activities that pose a threat to the security of Canada.

• (1650)

[English]

Mr. Mark Holland: Just a last question then, if I could. Justice Iacobucci's report concluded that Mr. Nureddin, Mr. Almalki, and Mr. El Maati were detained and tortured abroad and that Canada was complicit in their torture. The government has refused to issue an apology and refused to follow up. These men still have to live with the cloud of suspicion over their heads. CSIS and the RCMP have not apologized. I'd like to give you the opportunity today, if you so wish, to acknowledge that those individuals were mistreated and help clear their names.

[Translation]

Mr. Michel Coulombe: Mr. Chairman, I'd like to clarify a point. Commissioner Iacobucci clearly stated

[English]

that no actions of Canadian officials directly resulted in the mistreatment of any individual.

In addition, I think it would be inappropriate for me to comment on those three cases.

Mr. Mark Holland: But he did say we were complicit. He was questioned rather heavily. Is it now your position that there was not an intelligence failure in those cases, and you're disagreeing with the conclusions of Mr. Iacobucci?

Mr. Michel Coulombe: I agree with Mr. Iacobucci, including the statement I've just read.

Mr. Mark Holland: I'm sorry, but if you don't accept those conclusions and you're trying to get out of it by saying there wasn't any direct involvement, then how can we believe you on other issues of torture?

The Chair: Thank you very much.

Ms. Mourani, please.

[Translation]

Mrs. Maria Mourani: Thank you, Mr. Chairman.

Welcome, Mr. Coulombe and Mr. Fadden.

In the additional report, Mr. Iacobucci very clearly states that your services likely contributed indirectly to the abuses against Mr. Abou-Elmaati in Egypt. Point 5 states that CSIS and the RCMP feel it is not the responsibility of intelligence or law enforcement to be concerned with the human rights of a Canadian detainee.

I'd like to hear your comments on that subject. Are you required to respect human rights in your investigations?

Mr. Richard Fadden: I'll make a general statement, like my colleague. Mr. AlMaki, Mr. Abou-Elmaati and Mr. Nureddin sued the Crown. I don't think it would be appropriate for us to comment in greater detail.

Mrs. Maria Mourani: No, I simply want to know whether you respect human rights when you conduct your investigations.

Mr. Richard Fadden: Yes, madam.

Mrs. Maria Mourani: Do you respect the right of children as well?

Mr. Richard Fadden: Yes, madam.

Mrs. Maria Mourani: Very well.

I'll move on to another case, that of Omar Khadr. When your investigators found themselves in Guantanamo opposite this young child, and he took off his shirt—we saw this very clearly in the video—to show that he had been abused, tortured, why did you do absolutely nothing, why did your service do nothing about the matter? Did you use the information reported by Omar Khadr?

Mr. Richard Fadden: Mr. Chairman, it has to be recalled that there were various episodes concerning Mr. Khadr's detention at Guantanamo Bay. First, when we went to interview him, there weren't as many allegations or videos, and the courts hadn't considered what happened, either at Guantanamo Bay generally, or against Mr. Khadr in particular. We went to see him because we thought he had information concerning the security of Canada. In that context, we executed a decision by the government in general. What we did is to talk to him. Our officers saw no indication of torture or inappropriate treatment.

Mrs. Maria Mourani: He showed you his injuries.

Mr. Richard Fadden: No, madam.

Mrs. Maria Mourani: So what we saw in the videos was—

• (1655)

Mr. Richard Fadden: That depends when it was, madam.

Mrs. Maria Mourani: It was in February 2003. This is a report by the review committee. The CSIS investigator is with Omar Khadr. The youth takes off his shirt, shows his injuries. He tells you in particular that he was mistreated, that, to those who had interrogated him he had told lies that were extracted from him under duress. What I want to know is whether you use information obtained by torture. You say no, that you can't really analyze it, that sometimes you don't really know. However, in this case, a youth showed you that he was injured while detained at Guantanamo. At first glance, Guantanamo isn't for children. How was it that this youth didn't even have a lawyer? According to your instructions, you are normally required to conduct your examinations in the presence of lawyers.

Mr. Richard Fadden: No, madam.

Mrs. Maria Mourani: You aren't required to do so?

Mr. Richard Fadden: Absolutely not. It's not a criminal investigation. If we were a law enforcement agency, lawyers would have to be present. A lawyer is in no way required to be present when we conduct interviews of individuals.

Mrs. Maria Mourani: That includes minors?

Mr. Richard Fadden: It's a general policy.

Mrs. Maria Mourani: All right, it applies to minors as well.

In Canada, when you conduct examinations of individuals who you feel may be of interest, are you accompanied by lawyers? Do you have to have a warrant or not?

Mr. Richard Fadden: No, madam.

Mrs. Maria Mourani: Very well.

I now refer you to the report of the International Civil Liberties Monitoring Group. I've received some testimonials from young Canadians, Montrealers and Quebecers of Arab or Islam extraction who said they had received calls from CSIS making appointments to meet in cafés, asking them to work for the service as infiltration agents. These are young CEGEP and university students. And when they don't want to do so, there are reprisals.

I'm going to cite you some examples. A young Palestinian Canadian was visited by two CSIS officers at his home. They took him to a café and questioned him; they didn't have a warrant. They asked him to come without a lawyer and said they had information about his family that could cause problems in his country of origin, that they might use it if he didn't cooperate. Two days later, he was on the no-fly list. Does that tell you something? Is that part of CSIS's practices?

Mr. Richard Fadden: Absolutely not; we don't need a warrant to speak to Canadians. What we need is a suspicion that leads us to believe they might present a danger to public safety. We don't have lawyers because this isn't a criminal investigation. We talk to people; we can't arrest them or put them in prison or file criminal charges against them. What we can do with them is talk to them. In those circumstances, we don't need lawyers.

Mrs. Maria Mourani: I understand, Mr. Fadden. Can you target certain communities? I am told that racial profiling is done, that certain communities are targeted. Moreover, your website was in Arabic at one point. I saw it was removed. Do you do racial profiling in your analyses?

I also read another decision by a judge, Judge Montigny, who simply decided that your report was inconclusive because he found that the reliability of the searches conducted on Wikipedia and other websites was inconclusive. I asked myself the following question. We're paying half a million dollars for your services. Can we therefore expect a certain degree of professionalism on your part? If so, I'd like to know.

[*English*]

The Chair: You will have to pose your question.

[*Translation*]

Mrs. Maria Mourani: Can you conduct an investigation of Ms. Djemila Benhabib? Does she present a threat to the security of Canada, in accordance with section 12?

Mr. Richard Fadden: Mr. Chairman, if I remember correctly, Ms. Benhabib was under investigation for a security clearance. So the answer to your question is no.

Mrs. Maria Mourani: All right, thank you.

[*English*]

The Chair: Mr. Comartin.

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

Thank you, Mr. Fadden and Mr. Coulombe.

Mr. Fadden, in terms of getting a clearer picture of the expansion of our international role, I worked in the 2004-05 period on the committee that was looking at having parliamentary oversight of all of our intelligence services, not only what is done by SIRC. I think from all of our traditional allies, the United States, England, Australia—I wouldn't say this was public, but behind the scenes there were regular complaints from them that at the international level we were not carrying our equal weight as those allies were.

Were you aware of those types of comments from our allies at that period of time?

• (1700)

Mr. Richard Fadden: Yes, Mr. Chairman.

Mr. Joe Comartin: Is that continuing today?

Mr. Richard Fadden: I think, Mr. Chairman, rather less than was the case. There's no doubt that Canada receives far more intelligence than it provides. I think that's probably a reflection of our size and our location, but certainly since I've been at CSIS it has struck me how much more we are producing as compared to, say, a few years ago.

Mr. Joe Comartin: In that regard, let's jump over to finances for a minute. After 9/11, CSIS budgets were expanded substantially. Can you give us that figure, percentage-wise? Where are we by comparison to where we were in the year after 9/11?

Mr. Richard Fadden: Let me think. Since 2001 we have had a 72% increase in our budget.

Mr. Joe Comartin: Can you tell us how much of that would have been used in expanding what we are producing internationally, versus what is being done domestically?

Mr. Richard Fadden: I can't do that directly, not because I don't want to, but it's simply not how we account for what we do.

To give you a bit of a sense of where we spend our money, a large chunk of what we do on the counter-terrorism front is abroad, and something in the order of 45% of our budget goes to counter-terrorism.

Mr. Joe Comartin: Right.

My information, I think right up to the present, is that there were logical areas for us to expand into, because of where our foreign affairs people were, because of our economic interests in certain areas, particularly in South America and Africa. Without disclosing any particulars, have those two continents been particular ones in which we have expanded in the last five to seven years?

Mr. Richard Fadden: I think it's fair to say, Mr. Chairman, that the greatest expansions we've seen would have been in the Middle East and Africa, which is not to suggest we haven't done more elsewhere. But I was trying to answer your question.

Mr. Joe Comartin: Okay. In terms of coming back....

Monsieur Coulombe, je ne sais pas si vous allez répondre à ma question.

Section 12 has been used as the basis on which the expansion...but I know at one period of time, at least, there was a question as to whether that was broad enough and that in fact internally in CSIS there was some desire to get amendments to the act in order to clarify our ability to gather intelligence internationally.

Are you aware that this was a position internally at CSIS at one time, and if so, is it still today? Would you like to have an amendment with regard to section 12?

Mr. Richard Fadden: I'll take that, if I can. I do understand that at the time, between now and when the act was enacted, there was some discussion as to whether or not it was clear enough.

I think there's no discussion whatsoever of that now. As I was trying to say in my opening remarks, the authority to conduct security intelligence operations is not limited to Canada, in contradistinction to our foreign intelligence mandate, which is limited to Canada. So from our perspective and the perspective of our lawyers, and, as I said in my opening remarks, at the time during discussions in Parliament, it is quite clear to us now that we do have that authority.

Mr. Joe Comartin: I'm not sure this would ever be possible, but have there ever been any court cases where the gathering of intelligence internationally has been challenged in Canada?

Mr. Richard Fadden: My understanding is no, not directly, Mr. Chairman.

Mr. Joe Comartin: To explore the role of gathering information....

Actually, let me just pass, Mr. Chairman.

The Chair: Are you going to give your time over to the other side, Mr. Comartin?

Mr. Joe Comartin: I'm sorry, Mr. Chair. Borys is asking for my two minutes. I'd be quite happy to give them to him.

The Chair: It's now a minute and a half. Quickly, please.

• (1705)

Mr. Borys Wrzesnewskyj: Thank you, Chair.

Mr. Fadden, do you believe that CSIS has sufficient legislative powers in place to do its job, of course, with the caveat, should adequate resources be provided to CSIS?

Mr. Richard Fadden: Broadly speaking, I do, Mr. Chairman.

Mr. Borys Wrzesnewskyj: Thank you.

Would that, then, mean that preventive arrest and investigative hearings are not required for you to be able to do your job?

Mr. Richard Fadden: Interesting question. I would say that that question would be more appropriately answered by my colleague, the Commissioner of the RCMP.

From our perspective, what we try to do is to collect information and make it available to the police and others, and it's for them to decide whether they're going to do something to disrupt or counter.

From my general perspective, these would be additional tools that would be useful, but it really is I think more on the police side that they would make use of these additional tools.

Mr. Borys Wrzesnewskyj: Your predecessor, former director Mr. Morden, stated that he doesn't believe these powers are necessary and that in fact they cross a line—"the imposition of these two powers crosses that line...between the security of the state and the rights of its citizens". He made it quite clear in regard to CSIS: CSIS does not need to have those additional legislative powers to do its job. Do you agree, generally, with that statement?

Mr. Richard Fadden: In the context that they are not powers for us to use. They would be used by the attorneys general or by the RCMP, so we would not use them. They would use intelligence that we would produce and decide whether or not it would be useful to use.

In a general sense, I think they're useful because it points out to people that if there's a real problem—and if I understand correctly, these powers were never used in the first five years—and if you can get a judge and an attorney general to agree, we can force someone to testify in a particular circumstance. It's a useful tool to have. But again, I want to repeat, from my limited perspective, that it's not a tool we would use; others would use it.

Mr. Borys Wrzesnewskyj: Thank you.

The Chair: Thank you very much.

We'll go over to the government side now.

Mr. McColeman, please.

Mr. Phil McColeman (Brant, CPC): Thank you, and thank you for coming today.

There has been talk about Afghanistan and the CSIS role there. I'd like to first read into the record part of your presentation that didn't make it because you didn't have enough time. It's in the latter part of your presentation, and I read:

...CSIS plays a critical role in supporting all three pillars of Canada's efforts in Afghanistan—defence, diplomacy, and development.

As my Assistant Director Foreign Collection stated last week, information collected by CSIS has saved lives. Our work has led to the disruption and dismantling of insurgent networks planning imminent IED and car bomb attacks against military and civilian targets.

We are very proud of our role in force protection, and our employees are willing to share the risks faced by CF personnel while in Afghanistan....

CSIS intelligence contributes to the success of Canada's overall mission in Afghanistan.

Now, Director Fadden, in the context that has been described by some here today, you would think that some of your work is simply to be harsh on people in an undue way. We've lost 143 Canadian lives, men and women, in Afghanistan. You're there protecting Canadian lives, as far as I can tell. Tell me about some of the people you interview.

And from another part of your earlier comments, I'll quote again from your presentation: "CSIS is investigating over 200 individuals in this country"—meaning Canada—"whose activities meet the definition of terrorism as set out in section 2(c) of the *CSIS Act*".

Let's talk about what's really important in terms of public safety and saving Canadian lives and what you're doing in Afghanistan. When you are getting intelligence, are you not talking to people who are even terrorists themselves, criminals, murderers, to gather information? Are these the types of things you're doing to protect our people in Afghanistan?

• (1710)

Mr. Richard Fadden: Thank you, Mr. Chair.

Basically, what we do is try to talk to people in Afghanistan who would have some intelligence, some information, about threats to both Canada and to our allies. By definition, those people are either terrorists themselves, Taliban insurgents, or they're people who know something about them. So our job is, in one shape, form, or another, to try to acquire that kind of intelligence.

One of the categories of people that we talk to, Mr. Chair, is suspected Taliban insurgents taken into custody by the Canadian Forces through some sort of operation that they have run. Initially, when we were first in Afghanistan, over the first few years the Canadian Forces were not organized to interview these people. So in the context of a quite structured Canadian Forces interviewing program, we were frequently brought in to ask them questions, usually to try to ascertain their identity, to try to find out what they had been up to. In most cases, these interviews lasted less than 15 or 20 minutes. They were then transferred, at the call of the Canadian Forces or not, to the Afghan authorities.

So, yes, our job involves talking to people in Afghanistan who potentially would do harm to Canadians and to try to use that information, to provide it to both Canadian authorities and the Afghan authorities, to forestall harming Canadian and allied lives.

Mr. Phil McColeman: So you're working alongside our Canadian Forces, rooting out the information you need to protect Canadian soldiers' lives. Is that what you're saying?

Mr. Richard Fadden: That's correct, and there are specific examples, which I, unfortunately, can't talk about, where we've actually done that. We have saved Canadian lives.

Mr. Phil McColeman: Can I say it in a different way, then? This isn't a pretty business. This is a business of getting the intelligence you need so that you can protect our Canadian soldiers as they drive out of Kandahar on a mission or whatever they're doing, and that's part of your role and why you are in Afghanistan. You're not there to be the bad guys. You're there to help protect our lives.

Mr. Richard Fadden: No, absolutely not. We're there to gather information. We don't have any executive authority. We don't arrest, detain, or imprison people. Our job is to collect information that the Canadian Forces, ISAF, and our other allies can use to save Canadian or allied lives. The only way we can do this is by communicating with people who know about potential plots to harm Canadian and allied lives. That's not doing any harm. To my mind, that's doing a great deal of good.

Mr. Phil McColeman: I want to thank you for that.

If I have any remaining time, I'd like to pass it over—two minutes—to Mr. MacKenzie.

Mr. Dave MacKenzie: I think it's fair to say that's the essence of what Canadians expect you to do, and we thank you very much for that.

One of the things that we see with our closest neighbours to the south.... The area you operate in, nobody wants to know you're there, particularly when everything is safe. I see our American neighbours having a couple of recent incidents, looking at their intelligence agency, and making the suggestion that it broke down because it didn't gather the information that may or may not have saved these last two incidents.

I think Mr. McColeman has that essence. That's what Canadians expect. That's what they want to do. I think we would see that your work in that area is like that of police officers. If they're going to catch bank robbers, they have to talk to bank robbers and so on.

In addition to what you're doing in Afghanistan, those 200 people that you've already mentioned...those are potentially issues that would happen in this country. I'm just wondering if there's anything you can expand on without being specific.

Mr. Richard Fadden: Thank you, Mr. Chairman.

Included in this grouping are a number of people who are involved in espionage and a few who are involved in foreign interference, but I guess the group I'd like to talk about a little bit are those who have been radicalized domestically. It's a characteristic that we're finding in Canada, the United States, the United Kingdom, and Australia.

Usually, second- or third-generation Canadians, who in some ways are relatively well integrated into Canada economically and socially, for one reason or another develop connections with their former homeland. They become very disenchanted and are led to contemplate doing violence either in Canada against Canadians or against someone else overseas.

The public example of this is the Toronto 18, most of whom have either pleaded guilty or are on the road, I hope, to conviction. These are people who have become appallingly disenchanted with the way we want to structure our society. They reject the rule of law, they want to impose Shariah law—they want to do a whole variety of things.

There are a number of such groups in Canada that we're investigating, as there are in the United States and the United Kingdom. That's the most worrisome part, I think, of our work today. It's the people who have been in this country for quite a while who are rejecting the very essence of what we are in Canada.

• (1715)

The Chair: Thank you very much.

This is an abbreviated session. We have to vote in 15 minutes. I thank you very much—

Mr. Mark Holland: Mr. Chair, there are 16 minutes. It takes 30 seconds to get to the House—

The Chair: I have to adjourn this meeting at 5:15, as we normally do.

Mr. Mark Holland: Mr. Chair, I don't like to do it, but I disagree with that ruling. There's no reason for that. We're 30 seconds away from the House.

An hon. member: I think if there's a consensus around the table.... It takes us a couple of minutes to get to the House.

The Chair: It takes a couple of minutes, but some of us have some things we have to do.

Mr. Mark Holland: Mr. Chair, I'm sorry. If we have things we have to do.... This meeting is scheduled to 5:30. The bells haven't even started. When the bells start, we have 15 minutes. We're 30 seconds away.

The Chair: The next round will take more than 10 minutes.

Mr. Mark Holland: The next round will take five minutes.

The Chair: That's only one witness.

Mr. Mark Holland: Well, five, and then 10.

As I said, we can be generous to ourselves and allow five minutes to get to the House of Commons, but I don't understand. The bells haven't even started and we're abbreviating the meeting for no

reason. We're scheduled to go to 5:30. The bells haven't even started, and we're not able to pose questions.

The Chair: Mr. MacKenzie.

Mr. Dave MacKenzie: With all due respect to my friend across, who always has a problem with the chair, I would suggest that the standard practice in this place is that when the bells ring, the meeting is adjourned. That's our understanding in all the other committees, and I think it should be the purpose here.

Mr. Mark Holland: We just wasted two minutes before the bells rang.

Mr. Dave MacKenzie: We're being summoned. I believe the meeting should be adjourned, Mr. Chair.

Mr. Mark Holland: I had asked for the concurrence of the committee that we just have the opportunity to pose a couple of rounds of questions.

The Chair: We're going to do as we always do. We're not going to make an exception at this point, because it sets a precedent. You may not like it, but that's what all committees do.

This meeting stands adjourned.

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