

Hon. Warren Allmand:

Mr. Chairman and members of the committee, I am here today on behalf of the International Civil Liberties Monitoring Group, which is a pan-Canadian coalition of civil society organizations that was established in the aftermath of the September 11, 2001 terrorist attacks.

This coalition brings together 40 international development and human rights NGOs, unions, professional associations, and faith groups. Its purpose is to monitor the impact of anti-terrorism legislation on human rights standards, and to advocate against abuses and violations. The ICLMG was an intervener in the Arar inquiry, the Iacobucci commission, and we appeared before the Supreme Court of Canada in the security certificate case relating to Adil Charkaoui.

Our comments in response to Bill [C-42](#) are based on our experience before the Arar commission, and the findings and recommendations set out by Judge O'Connor in his two reports following his inquiry into the Arar incident.

In his first report, tabled in September 2006, Judge O'Connor found that Maher Arar's detention by U.S. officers in New York in 2002, and his surreptitious transfer by them to Syria a few days later, where he was imprisoned and tortured for approximately one year, was in large part due to the negligence of the RCMP who incorrectly labelled Mr. Arar as an Islamist extremist linked to al-Qaeda, and then irresponsibly shared this inaccurate information with American authorities. Judge O'Connor was especially critical of the RCMP for its failure to gather and verify correct information, for its sharing of inaccurate information, and for its inadequate direction and oversight of the investigation team.

In his first report, Judge O'Connor made 23 recommendations to correct these failures and shortcomings. In his second report, dated December 2006, also to correct the problem cited above, Judge O'Connor proposed a new review agency for the RCMP, and a new review process for five other federal agencies carrying on security and intelligent activities.

As a result of his inquiry, Judge O'Connor discovered that there were 24 federal agencies in Canada involved directly or indirectly in the security and intelligence business, the principal ones being CSIS, the RCMP, Communications Security Establishment Canada, Canada Border Services Agency, Transport Canada, DFAIT, DND, Immigration Canada, the PCO, Justice, and the Coast Guard. He discovered that there were 247 agreements by which intelligence information was shared internationally and within Canada.

In addition, he found that there were an increasing number of joint intelligence operations known as INSETs, integrated national security enforcement teams, made up for example of CSIS, the RCMP, provincial police forces, and municipal police forces. With all this sharing and with all these joint operations, it is easy to understand how errors and mistakes by the RCMP and other agencies might escape review and go undetected. The problem is that the existing review bodies—the CPC, the Commission for Public Complaints, SIRC for CSIS, the CSE commissioner—have different, limited powers and mandates, which in each case are only directed at a single agency. Therefore, how do you get at problems resulting from joint operations and sharing arrangements?

Some of these review bodies have the power of subpoena and some do not. Some have the right to audit and others don't. Some, such as the Canada Border Services Agency, have no review body whatsoever. This leaves us with an impossible situation where issues and violations can easily fall between the cracks.

In chapter 10 of the second report, Judge O'Connor asked the question, "Is the status quo adequate?" He said, "Categorically, no". He said that the RCMP internal controls were not adequate. The existing powers of the Commission for Public Complaints, CPC, were not adequate, and the powers of other accountability bodies were not adequate. He therefore proposed a new body to replace the RCMP's CPC, to be known as the independent complaints and national security review agency. The name doesn't matter. For what you're proposing in this bill, that name would do as well. The purpose of this new body would be to review the RCMP and the Canada Border Services Agency, with increased powers to audit and to investigate complaints.

He also proposed that SIRC be given additional powers to review the security and intelligence operations of Immigration Canada, DFAIT, Transport, and FINTRAC, in addition to CSIS. He leaves the CSE commissioner as is to review the activities of the Communications Security Establishment. However, to coordinate these three bodies, to review all national security practices, and to make sure that nothing falls between the cracks, he proposes an integrated national security review coordinating committee.

Mr. Chairman, and members of the committee, six years after O'Connor's two reports, we have Bill [C-42](#). Since it is a very large and complicated bill, some 120 pages, amending nine major statutes, I have not had the time to examine and analyze all parts of the bill. Therefore, today I will deal specifically with those issues raised by the Arar commission, that is, the work done by the RCMP and others in security and intelligence, and especially in joint operations such as the INSETs. I will deal with both joint operations and sharing within Canada, as well as cross-border.

There are two parts of the bill that might be relevant in this respect. Proposed section 45.75 states:

45.75 (1) If a complaint concerns the conduct of a member or other person appointed or employed under Part I and a law enforcement officer of any other jurisdiction, whether in or outside Canada, the Commission may conduct an investigation, review or hearing of that complaint jointly with the authority in that other jurisdiction that is responsible for investigations, reviews or hearings with respect to complaints against law enforcement officers.

(2) The Governor in Council may make regulations respecting investigations, reviews or hearings conducted jointly under subsection (1).

The problem is, do the words "any other jurisdiction" include the other review authorities under federal jurisdiction, such as SIRC, the review agency for the CSE, and so on? That has to be clarified. I say that because most of the RCMP joint operations include two or three of the other federal security authorities. I remind you that Judge O'Connor found that there were 24 of them. Does the application of

this article regarding joint reviews, the purpose of which is good, extend not only to provincial and non-Canadian authorities, but also to the other authorities under federal jurisdiction?

What about those federal agencies, such as the Canada Border Services Agency, which has no review or oversight whatsoever? How do we investigate joint operations between the RCMP and CBSA, of which there are several? Judge O'Connor said that the new review agency should deal with both the RCMP and CBSA.

As a result, this article may require amendments and clarification. We should also know more about what the government means by "regulations" under proposed subsection 45.75(2).

In the same vein, we should seek clarification of part VII.2, starting with proposed section 45.88 and following. This part is entitled "Review of Integrated Cross-Border Law Enforcement Operations".

First of all, in reading the bill, I can't quite understand the relationship of these proposed sections with proposed section 45.75 to which I just referred. Will these sections, for example, allow the new civilian review and complaints commission, CRCC, to investigate, review, and hold hearings on cases like those of Arar, or El Maati, Almalki, and Nureddin, who were dealt with under the Iacobucci commission?

I read the minister's testimony before this committee, and it is my view that the minister should be invited back to the committee and asked to clarify these articles that I've referred to about joint reviews—joint reviews within Canada and joint reviews cross-border--and, if necessary, propose amendments.

I think the government had the right intention in mind in allowing for joint reviews with other oversight bodies, but those sections are not clear at all. There must be clarification. Maybe amendments will be required.

The cases studied by Judge O'Connor and Judge Iacobucci should not be overlooked and forgotten. Judge O'Connor spent three years.

Judge Iacobucci spent two years. They used millions of taxpayers' dollars to look into these cases. They cannot be ignored.

I would like you to remember that Judge O'Connor was able to get to the bottom of the Arar tragedy because he had full powers to look at all agencies, joint operations, and all information-sharing agreements. If this new CRCC is to do its job correctly, it must have similar powers.

Thank you very much, Mr. Chairman.

[Read the complete Evidence of the SECU meeting of October 24, 2012](#)