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Chair

Mr. Rick Casson

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• (1530)

[English]

The Chair (Mr. Rick Casson (Lethbridge, CPC)): We'll call the meeting to order.

Today we have the 15th meeting of the Special Committee on the Canadian Mission in Afghanistan. Pursuant to the order of reference of Tuesday, February 10, 2009, and the two motions adopted by the committee on Wednesday, October 28, 2009, the committee commenced its study of the transfer of Afghan detainees from the Canadian Forces to Afghan authorities as part of its consideration of the Canadian mission in Afghanistan. I'm going to read the two motions.

Today we have two witnesses, two different panels. We'll start with Richard Colvin, the first secretary of the embassy of Canada to the United States of America at the moment. As an individual, we have Lori Bokenfohr, legal counsel. The second panel will consist of Peter A. Tinsley, chair of the Military Police Complaints Commission. Then we have to go in camera to deal with the fifth report of the subcommittee on agenda and procedure.

These are the motions I referenced at the opening. The motion moved by Mr. Bachand states: "That the committee review the laws, regulations and procedures governing the transfer of Afghan detainees from the Canadian Forces to Afghan authorities, including section 37 and 38 of the Canadian Evidence Act, and that the committee report its findings and recommendations to the House of Commons". Mr. Dewar's motion, as passed, states: "That the committee hold hearings regarding the transfer of Afghan detainees from the Canadian Forces to Afghan authorities". Those are the two motions under which the committee will operate today.

Mr. Colvin, welcome, sir.

Mr. Laurie Hawn (Edmonton Centre, CPC): Point of order.

The Chair: Go ahead.

Mr. Laurie Hawn: I do have a short point of order to begin.

In an interview earlier today Mr. Dosanjh referred to documents before the Military Police Complaints Commission and that he had knowledge of them. I don't know what was in these documents. I didn't know they had been publicly released. I am curious as to whether Mr. Dosanjh has those documents, if they can be tabled in English and French, and if he plans to refer to them during his questioning this afternoon.

The Chair: Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): No, I don't have the documents. The documents I would have would be public documents.

Hon. Bob Rae (Toronto Centre, Lib.): You don't have any other documents?

Hon. Ujjal Dosanjh: I don't have any other documents.

Mr. Laurie Hawn: Fair enough. I just wanted to clarify.

The Chair: Thank you for that.

Mr. Colvin, before I start, I would like to just give a brief statement, which I think is an assistance to yourself, sir.

Before we proceed with the hearing today I wish to inform the witness that members of the Subcommittee on Agenda and Procedure of the Special Committee on the Canadian Mission in Afghanistan met on Monday, November 16, 2009, in order to discuss a number of important issues concerning our hearings.

It is the desire of the whole committee to thoroughly examine issues surrounding the transfer of Afghan prisoners. As chair of the special committee on Afghanistan, and on behalf of all of its members, I would like to inform you of the following. Should a witness appearing before this committee believe that their response to a question from a member might in any way compromise national security, endanger our men and women serving abroad, or damage international relations, then he or she should say so immediately. In a case such as this, I will then, as chair, ask the witness to briefly explain their concern, and offer the opportunity to answer that question in camera at the end of the session.

Do you understand, sir?

Thank you very much.

The usual procedure, sir, is you give an opening statement and then we go into rounds of questions from the committee.

Go ahead, sir.

Mr. Richard Colvin (First Secretary, Embassy of Canada to the United States of America): Thank you, Mr. Chair, and thank you to the committee for convening this session.

I would like to thank the committee for its interest in this important issue.

In this public setting, I will do my best to shed light within the limits imposed by my professional obligations, such as protecting the confidentiality of sources.

[*Translation*]

This presentation will take about 15 minutes. But I am ready to answer your questions afterwards, in French or in English.

[*English*]

A little bit of background: I joined the Department of Foreign Affairs and International Trade in 1994. I've had five overseas assignments, in Sri Lanka, Russia, the Palestinian territories, Afghanistan, and now in Washington, D.C. Afghanistan was therefore my second Islamic posting and third insurgency.

I spent 17 months in Afghanistan, first as a senior DFAIT representative of the provincial reconstruction team, or PRT, in Kandahar, and then for over a year at the Canadian embassy in Kabul as the head of the political section and chargé d'affaires—that is, the acting ambassador.

In these capacities, I was responsible for a large number of issues, including getting additional Afghan police and soldiers to Kandahar to relieve Canadian Forces; development issues; counter-narcotics; coordination with our NATO allies, the UN, and the Afghan government; and security and intelligence files. Detainees was only one of about 15 major issues I worked on. My primary focus was on improving the effectiveness of our efforts so that we had a better chance of achieving our goals.

I volunteered to go to Afghanistan. Canada's objectives are noble: to help bring peace, prosperity, and hope to Afghans after 30 years of war and the repressions of the Taliban.

I'd like to start with two general comments. First, Afghanistan was an extraordinarily difficult environment. Canada had not fought a war since the Korean War 50 years earlier and had not fought a counter-insurgency since the Boer War, 100 years ago.

Insurgency is the most complicated, demanding, and subtle of wars. There are vital geopolitical and security interests at play in Afghanistan. Kandahar is the most important province in the whole country, and most important, lives are on the line—Canadian lives and also Afghan lives. Afghanistan is not some bureaucratic exercise. It was therefore critical that we approach this daunting challenge with seriousness and also humility, and with a willingness to listen, to learn, and to adjust.

Second, I was very proud to have served in Afghanistan alongside the courageous and professional men and women of the Canadian Forces, including Canada's military police. The focus of our attention, in my view, should not be on those who obeyed their chain of command, which soldiers are obliged to do. Instead, any responsibility for Canada's practices toward detainees lies, in my view, with the senior military officers, senior civilian officials, and the lawyers who developed the legal framework, designed the policies and practices, and then ordered that they be implemented.

What was the nature of our detainee system in Kandahar? Perhaps a good place to start is to compare our practices to those of our principal NATO allies in southern Afghanistan: the United Kingdom and the Netherlands. What we were doing differed in five crucial respects.

First, we took and transferred far more detainees. As of May 2007, Canada had transferred to the Afghan authorities six times as many detainees as the British, who were conducting military operations just as aggressive as ours and had twice as many troops in theatre, and we had transferred twenty times as many detainees as the Dutch.

Second, we did not monitor our own detainees after their transfer. Again, unlike the British and Dutch, Canada's memorandum of understanding on detainees, signed by General Rick Hillier in December 2005, had no provision for our own officials to follow up on what happened to our detainees after they were handed to the Afghan intelligence service, the NDS, or National Directorate of Security.

Instead, our detainee system relied upon two human rights groups to monitor the well-being of detainees after transfer: the Afghanistan Independent Human Rights Commission, or AIHRC, and the International Committee of the Red Cross. Unfortunately, the AIHRC had very limited capacity, and in Kandahar were not allowed into the NDS prisons. So for the purposes of monitoring our detainees, they were unfortunately quite useless.

The Red Cross is a very professional and effective organization. However, they were also no good for us as monitors. Once a detainee had been transferred to Afghan custody, the Red Cross, under their rules, could only inform the Afghan authorities about abuse. Under those strict rules, they are not permitted to tell Canada.

The third important difference is that, again unlike the Dutch and British, Canada was extremely slow to inform the Red Cross when we had transferred a detainee to the Afghans. The Canadian Forces leadership created a very peculiar six-step process. Canadian military police in Kandahar had to inform the Canadian Forces command element at Kandahar airfield, who in turn informed Canadian Expeditionary Force Command, or CEFCOM, in Ottawa.

CEFCOM would eventually inform the Canadian Embassy in Geneva, who then informed Red Cross headquarters in Geneva, which finally was able to notify the Red Cross mission in Kandahar. This process took days, weeks, or in some cases up to two months.

● (1535)

The Dutch and British military, by contrast, had a one-step process. They simply notified the Red Cross office in Kandahar directly. The Dutch did so immediately upon detaining an Afghan, and the British within 24 hours.

In other words, in the critical days after a detainee was first transferred to the Afghan intelligence service, nobody was able to monitor them. Canada had decided that Canadians would not monitor. The AIHRC could not do so, because they had very weak capacity and were not allowed into NDS jails. The Red Cross in practice could not do so either, because we did not inform them until days, weeks, or months after we had handed over the detainee.

During those crucial first days, what happened to our detainees? According to a number of reliable sources, they were tortured.

The most common forms of torture were beating, whipping with power cables, and the use of electricity. Also common was sleep deprivation, use of temperature extremes, use of knives and open flames, and sexual abuse—that is, rape. Torture might be limited to the first days or it could go on for months.

According to our information, the likelihood is that all the Afghans we handed over were tortured. For interrogators in Kandahar, it was standard operating procedure.

A fourth difference between us and the British and Dutch was our unusually poor record-keeping. This had serious consequences. When the Red Cross was finally informed that we had transferred a detainee, not only had a lot of time passed, but the information that Canadian Forces had taken was so limited that the Red Cross was often unable even to locate our detainees.

Another consequence was that we ourselves did not know about the fate of a given detainee after transfer. Was he still in detention? Had he been released? Had he been transferred to a third party? Had he died under torture or been executed? We had no idea.

Once Canada did sign a new memorandum of understanding on May 3, 2007, we tried to go back to figure out what had happened to the large number of Afghans we had already transferred. However, our records were so poor that the task was physically impossible.

I'll offer a concrete example. In June 2006 an Afghan woman came to the PRT in Kandahar. She had three young children with her, including an infant of six or eight months who was listless and visibly sick. The woman's name was Fatima. It was, in my view, an act of considerable courage for her to pass through checkpoints to our heavily fortified compound to talk to a foreigner. Her husband, Bismillah, was a taxi driver. One day he had gone to work but had never come home. Fatima came to the PRT to ask if Canada had detained him. I tried to answer her question, but Canadian records were so hopeless that I was unable to.

The final difference, which is a very important one, is that Canada, unlike the U.K. and the Netherlands, cloaked our detainee practices in extreme secrecy. The Dutch government immediately informed the Dutch Parliament as soon as a detainee had been taken. The Dutch also provided their Parliament with extremely detailed reporting on every stage of detention and transfer and on the results of monitoring after transfer. The U.K. also announced publicly the number of their detainees.

The Canadian Forces, by contrast, refused to reveal even the number of detainees they had taken, claiming this would violate operational security.

When the Red Cross wanted to engage on detainee issues, for three months the Canadian Forces in Kandahar wouldn't even take their phone calls. The same thing happened to the NATO ISAF command in Kabul, who had responsibilities to report detainee numbers to Brussels. They were told, "We know what you want, but we won't tell you."

Frankly, the operational security argument makes no sense to me. If we go into a village and take away three Afghans, everyone in the village knows exactly who we have taken. In practice, the information was being concealed not from the Taliban but from the NATO ISAF, the Red Cross, and the Canadian public.

To recap, Canada took far more detainees than the British and Dutch. Unlike our NATO allies, we conducted no monitoring. Instead of hours, we took days, weeks, or months to notify the Red Cross, which meant that nobody else could monitor. We kept hopeless records, and, apparently to prevent any scrutiny, the Canadian Forces leadership concealed all this behind walls of secrecy.

As I learned more about our detainee practices, I came to the conclusion that they were contrary to Canada's values, contrary to Canada's interests, contrary to Canada's official policies, and also contrary to international law. That is, they were un-Canadian, counterproductive, and probably illegal.

Starting in May 2006, as we in the field became aware of the scope and severity of these problems, we began informing Ottawa about them. We used the means available to us—that is, written reports and verbal briefings—to alert senior officials in both DFAIT and the Canadian Forces about the grave deficiencies of our detainee practices and their grave consequences.

• (1540)

It was our function, responsibility, and obligation to provide such information and analysis. That was our job. The concerns we expressed reflect, I believe, the mainstream views and values in both DFAIT and the Canadian Forces. A number of my closest military colleagues in Kandahar were extremely troubled by what we were doing with detainees.

We on the ground in Kandahar, civilians and military, informed DFAIT and the senior military leadership about the notification problems with the Red Cross, the delays and the inadequate information. We informed them about our very serious concerns about what was happening to detainees after transfer. We informed them about the lack of information being given to NATO.

In our annual human rights report at the end of 2006, we informed them about systemic problems of torture in Afghan jails.

By March 2007 we were orally warning Ottawa that the NDS tortures people, and if we don't want our detainees tortured, we shouldn't hand them to the NDS.

On April 24 and 25, 2007, as the detainee issue was becoming a political crisis in Ottawa, the embassy sent two reports that offered Ottawa a solution: to protect our detainees from being tortured, we should adopt the British and Dutch approach—that is, take responsibility for our own detainees, monitor them ourselves, and establish a robust, aggressive, and well-resourced monitoring mechanism that would guard our detainees from further risk of abuse.

Senior officials in DFAIT and the Canadian Forces did not welcome our reports or advice. At first we were mostly ignored. However, by April 2007 we were receiving written messages from the senior Canadian government coordinator for Afghanistan to the effect that we should be quiet and do what we were told. There was a phone message from the DFAIT assistant deputy minister suggesting that in future we should not put things on paper but instead use the telephone.

In May 2007 a new ambassador arrived. Immediately thereafter, the paper trail on detainees was reduced. Written reporting from the field was restricted to a very limited circle of officials, which shrank further over time. Reports on detainees began sometimes to be censored, with crucial information removed.

By summer 2007, internal censorship had spread to new areas. For example, we could no longer write that the security situation in Afghanistan was deteriorating, even though everyone knew that it was.

In terms of established DFAIT practice, all of these steps were extremely irregular.

By the end of April 2007, senior officials in Ottawa did accept the embassy's recommendations from April 24 and 25. On May 3 we signed a new MOU with the Afghan government that for the first time gave us the right to monitor. DFAIT accepted responsibility for that monitoring. However, the other part of our advice was not implemented—that is, to monitor effectively, we needed new resources, at a minimum one full-time officer, to conduct the monitoring as well as to manage the relationships with NDS, NATO allies, human rights partners, and other partners.

Instead, for the first five months of our new detainee regime, monitoring was done by a succession of officers, some of whom were in the field on short visits of only a couple of weeks. There was too little capacity and not enough continuity. The result was that despite the new MOU, some of our detainees continued to be tortured after they were transferred.

It was only in October 2007 that DFAIT's senior leadership finally sent a dedicated monitor to Kandahar. Within weeks, he found incontrovertible evidence of continued torture. An Afghan in NDS custody told him that he had been tortured, showed him the marks on his body, and was able to point to the instrument of torture, which had been left under a chair in a corner of the room by his interrogator.

Up to that point, we had done what we could to monitor in Kandahar, and also once in Kabul, the existing pool of detainees, at least those we could locate. Canadian officials interviewed numerous Afghans who gave very credible allegations of torture and who still had, in several cases, marks on their bodies. But they'd all been tortured before May 3, when the new MOU came into force.

The late October 2007 case was, I believe, the first instance after May 3 that we became aware of. However, because our monitoring regime was ineffectual, there may well have been other cases.

October 2007 was 17 months after the PRT first informed senior officials in the Canadian Forces and DFAIT about the very grave dangers facing our detainees after transfer. In other words, for a year and a half after they knew about the very high risk of torture, they continued to order military police in the field to hand our detainees to the NDS. As far as I know, Canada, even today, continues to transfer detainees to the NDS in Kandahar.

In October 2007 I left Afghanistan and started a new job in Washington, D.C. In April 2009 I was subpoenaed by the Military Police Complaints Commission. In response, DFAIT, in collaboration with the Department of Justice, took three significant steps.

● (1545)

First, they've made it very difficult for me to access legal counsel. This ongoing problem has still not been resolved.

Second, DFAIT and the Department of Justice, again working together, blocked my access to my own reports from Afghanistan. I was told, "We will decide which of your reports you require." I was given none of them.

Third, government lawyers have threatened me under section 38 of the Canada Evidence Act. This had the effect of placing me in an impossible position. If I refused to cooperate with the MPCC subpoena, I could be jailed for up to six months; however, if I did cooperate, under section 38 I could be jailed for up to five years. And when this warning was sent, DFAIT and the Department of Justice, again acting together, were still withholding approval for legal counsel, depriving me of legal advice and protections.

I have a final section. I hope I'm not taking too long.

As a final section, asking kind of a rhetorical question, even if Afghan detainees were being tortured, why should Canadians care? I think there are five compelling reasons.

First, our detainees were not what intelligence services would call “high-value targets”, such as IED bomb-makers, al-Qaeda terrorists, or Taliban commanders. High-value targets would be detained under a completely different mechanism that involved special forces and targeted intelligence-driven operations. The Afghans I’m discussing today were picked up by conventional forces during routine military operations, and on the basis typically not of intelligence but suspicion or unproven denunciation.

According to a very authoritative source, many of the Afghans we detained had no connection to the insurgency whatsoever. From an intelligence point of view, they had little or no value. Frankly, the NDS did not want them. Some of these Afghans may have been foot soldiers or day fighters, but many were just local people: farmers, truck drivers, tailors, peasants, random human beings in the wrong place at the wrong time, young men in their fields and villages who were completely innocent but were nevertheless rounded up. In other words, we detained and handed over for severe torture a lot of innocent people.

The second reason that Canadians should care is that seizing people and rendering them for torture is a very serious violation of international and Canadian law. Complicity in torture is a war crime. It is illegal and prosecutable.

Third, Canada has always been a powerful advocate of international law and human rights. That is a keystone of who we are as Canadians and what we have always stood for as a people and nation. If we disregard our core principles and values, we also lose our moral authority abroad. If we are complicit in the torture of Afghans in Kandahar, how can we credibly promote human rights in Tehran or Beijing?

Fourth, our actions were counter to our own stated policies. In April 2007, Prime Minister Stephen Harper said publicly that Canadian military officials don’t send individuals off to be tortured. That was indeed our policy. But behind the military’s wall of secrecy, that unfortunately is exactly what we were doing.

Finally, even if all the Afghans we detained had been Taliban, it would still have been wrong to have them tortured. The Canadian military is a proud and professional organization, thoroughly trained in the rules of war and the correct treatment of prisoners.

I would like to quote, if I may, the authoritative military manual on counter-insurgency. It says:

The abuse of detained persons is immoral, illegal, and unprofessional.... Torture and cruel, inhuman, and degrading treatment is never a morally permissible option, even if lives depend on gaining information. ... The methods used [by the military] must reflect the nation’s commitment to human dignity and international humanitarian law.

When we look at our U.S. allies who work with us in Kandahar, their top commander, General David Petraeus, lists ten big ideas of counter-insurgency. One is to live your values. He said that whenever we place expediency above our values, we end up regretting it. In a counter-insurgency, when you lose moral legitimacy, you lose the war.

Canada’s counter-insurgency doctrine makes the same point. Persons not taking part in hostilities, including fighters who have been detained, must be treated humanely. Once local citizens have

lost confidence in foreign military forces, their sympathies and support will be transferred to the insurgents.

Counter-insurgency is an argument to win the support of the locals. Every action, reaction, or failure to act becomes part of the debate. In Kandahar, Canada needs to convince local people that we are better than the Taliban, that our values are superior and we will look after their interests and protect them.

In my judgment, some of our actions in Kandahar, including complicity in torture, turned some local people against us. Instead of winning hearts and minds, we caused Kandaharis to fear the foreigners. Canada’s detainee practices, in my view, alienated us from the population and strengthened the insurgency.

Thank you for your attention.

● (1550)

The Chair: Thank you, Mr. Colvin.

We will start the opening round, a seven-minute round, with the official opposition.

Hon. Bob Rae: Thank you, Mr. Chair.

Mr. Colvin, let me just say at the outset that as the son of a foreign service officer, I am very proud of your performance.

I want to ask you to try to explain for me why you think it took 17 months for the Canadian government to realize that something had to change.

You sent an action memo in May 2006, and in your affidavit to the military commission you describe a number of memos and information that you provided. I wonder if you can now, in reflection, tell us why you think it took so long for the Canadian government to realize that the procedures had to change because something had substantially gone wrong.

Mr. Richard Colvin: That’s a good question, Mr. Rae. There are perhaps two parts to it. At the beginning, in 2006—our first reports were in May and June 2006—the Canadian effort in Afghanistan was a bit disorganized, a bit under-resourced and a little bit disjointed. The military was very strong in Kandahar, but CIDA and DFAIT were strong in Kabul.

It seemed to me that the military wanted to run things the way they wanted them to be run. They weren’t very interested in civilian input, and there was a resistance to outsiders, DFAIT people and others, telling them things they didn’t want to hear. I think they had a system in mind that they had created, and they wished to continue that system.

At the same time, DFAIT had not yet come to terms with the scope of the challenge in Afghanistan. It was not resourcing the effort sufficiently. There were very few of us in the field, and at the senior policy levels.... My feeling in 2006 was that there was no real champion. There was nobody you could turn to who would fight these kinds of issues. In terms of personalities, my impression, in talking to people, was that General Hillier was quite a dominant figure. There was a reluctance to take him on, I think, at senior levels.

On these issues, I'm giving you impressionistic answers because it wasn't always clear to us in Kandahar and Kabul what was actually happening at those senior levels. But the sense in 2006 was that across a gamut of issues, there was not much response to problems.

• (1555)

Hon. Bob Rae: Who told you not to discuss issues or not to keep sending bad news to Ottawa?

Mr. Richard Colvin: That was a bit later, in 2007. That was the era of David Mulroney, and Colleen Swords phoned to suggest not to put things on paper any more. Before that, the tenor was set quite early. I think David Mulroney first came out in March 2007, after, I believe, a human rights report had been leaked and published in *The Globe and Mail*. I forget the sequence, but a redacted version was released and then the full version was published.

In March 2007 Mr. Mulroney suggested that we be very careful about what we put in our next human rights report. From that time on—I left in October 2007—there was a strong emphasis, which was reinforced to us, that things are best done on paper and that reporting, if it was sent, should be sent to a very limited number of people. Certain more sensitive items were removed before they were even sent.

Hon. Bob Rae: I'm going to share my time with Mr. Dosanjh.

The Chair: You have three minutes left, Mr. Dosanjh.

Hon. Ujjal Dosanjh: Who reinforced that message of secrecy?

Mr. Richard Colvin: It was Mr. Mulroney's choice for ambassador, Arif Lalani.

Hon. Ujjal Dosanjh: Did Mr. Lalani reinforce that message of secrecy?

Mr. Richard Colvin: Yes. He was managing it in the field.

Hon. Ujjal Dosanjh: To your knowledge, sir, would your memos and would these directives be known to Peter MacKay, to your knowledge?

Mr. Richard Colvin: I'm afraid I'm unable to answer that question.

Hon. Ujjal Dosanjh: Other than Mulroney or Arif Lalani, do you know who else in the PCO or the PMO knew about the allegations of torture that you had been reporting about?

Mr. Richard Colvin: Well, on the military side, General Hillier and General Gauthier. On the civilian side, you had Mr. Mulroney, Margaret Bloodworth, and Colleen Swords. Those were the senior people who seemed to be handling this issue.

Hon. Ujjal Dosanjh: And remind me, Margaret Bloodworth was the special national security adviser to the Prime Minister?

Mr. Richard Colvin: That's correct.

Hon. Ujjal Dosanjh: I have just one more question. Did you ever have a chance to visit Asadullah Khalid, and did you know anything about what he was involved in?

Mr. Richard Colvin: Yes, yes, I had lots of information on Mr. Khalid.

• (1600)

Hon. Ujjal Dosanjh: Can you tell us?

Mr. Richard Colvin: I believe so. In this forum I'm protected from libel.

He was known to us very early on, in May and June 2006, as an unusually bad actor on human rights issues. He was known to have had a dungeon in Ghazni, his previous province, where he used to detain people for money, and some of them disappeared. He was known to be running a narcotics operation. He had a criminal gang. He had people killed who got in his way. And then in Kandahar we found out that he had indeed set up a similar dungeon under his guest house. He acknowledged this. When asked, he had sort of justifications for it, but he was known to personally torture people in that dungeon.

So on a range of issues—governance, security, human rights—he was a serious problem, and there were efforts made to have him replaced, but those efforts were not successful.

Hon. Ujjal Dosanjh: Were you ever present in meetings in Ottawa or even in Kabul or Kandahar where there were political people like the ministers or CEFCOM people who were listening to you and stopped taking notes? Do you think that was as a result of the directive that had been issued to not talk about torture?

Mr. Richard Colvin: I'm not sure. At least at first I didn't get the sense there was—well, maybe in the military there was a directive. I think it was seen as just a very sensitive issue and people didn't really want to engage, and there were certain things that they didn't want to hear.

There was one episode that I found quite surprising. In March of 2007 I happened to be in Ottawa, where I went to an inter-agency meeting on detainees. There were maybe 12 or 15 people in the room from a range of agencies. And this was after the complaint from Amnesty and the B.C. Civil Liberties Association, so it was obvious this issue was going to be a serious problem, and I felt that perhaps I hadn't been clear enough in conveying to people how bad it was.

So I said, "Look, you know, the NDS tortures people, that's what they do. And if we don't want our detainees tortured, we shouldn't give them to the NDS." I was a bit taken aback to see the CEFCOM note-taker stop writing. She didn't write that down and then she put her pen down, so the official records of our meeting I think would not reflect those comments.

There are episodes like that that suggested that there was some information that was seen as too hot a potato and no one wanted to be responsible for grasping that hot potato.

The Chair: Thank you, sir. We're out of time.

Moving to Mr. Bachand, seven minutes, sir.

[Translation]

Mr. Claude Bachand (Saint-Jean, BQ): Mr. Colvin, first, I would like to congratulate you on your testimony. In my view, it is extremely courageous of you. It is also explosive in the extreme because you are confirming our worst fears about the culture of secrecy but also about the fact that we, as parliamentarians, seriously doubted that any torture was going on.

First, I wonder if you have been following the debates in the House of Commons and have heard the questions asked of various ministers every day, and their answers that there was no torture.

Have you been following those debates?

Mr. Richard Colvin: Yes, I have been following them.

Mr. Claude Bachand: When you saw that the Special Committee on the Canadian Mission in Afghanistan was going to be conducting its own inquiry, did you heave a sigh of relief?

Mr. Richard Colvin: It was not relief, but I felt that it would be a good subject for an inquiry because it seemed to me that we officials were having difficulty solving the problems.

Mr. Claude Bachand: You sent reports to various departments in Ottawa. Can you tell us how many reports you sent and to which departments?

Mr. Richard Colvin: I have a long list of reports on many subjects, but there were about 17 or 18 on detainees.

Mr. Claude Bachand: There were 17 or 18 reports?

Mr. Richard Colvin: Yes. I sent them to almost everyone at first, to 75—

Mr. Claude Bachand: You sent them to 75 people?

Mr. Richard Colvin: I sent them to 75 individuals or organizations. The military ones went to directions rather than to individuals. After May 2007, the list was much more limited, but in 2006, I could send them to anyone.

Mr. Claude Bachand: Today, the opposition parties asked questions about a directive from the Privy Council, which, as you know, is the Prime Minister's department. That directive is supposed to have asked diplomats not to reveal any information about the torture of Afghan detainees.

Are you aware of those allegations? Do you know whether the Privy Council issued a directive saying that nothing should be sent to anyone?

• (1605)

Mr. Richard Colvin: I am not exactly aware. Mr. David Mulroney was exerting pressure. At that time, he held the second most important position in Foreign Affairs. In addition, since he was the coordinator, he spoke as if he were part of the Privy Council. I feel that it came from him. I do not know if he was acting under orders.

Mr. Claude Bachand: A little earlier, you talked about the culture of secrecy that exists in the Canadian Forces. Is it not also your impression that this culture of secrecy extends to the elected politicians who are responsible for the mission in Afghanistan?

Mr. Richard Colvin: I agree with you that that is part of it. But I am not exactly aware of what the military were telling the politicians.

I know that, with regard to the security situation, they were sending overly optimistic analyses that did not reflect the actual situation in Afghanistan. I remember some situations, such as when one of my colleagues, an ambassador, said something negative and the military were angry at him. There were times like that. But I think that happens a lot in the military. They have a success mentality: they have to win. So they are in the habit of inflating their successes a little.

Mr. Claude Bachand: If I understand correctly, inflating their success meant trying to hide the fact that torture was going on, because revealing it would have a negative effect on public opinion in Canada. You feel that the successes were overstated but that the negative aspects were concealed from the government. Is that correct?

Mr. Richard Colvin: Yes, that would be correct.

Mr. Claude Bachand: When the Minister of Defence tells us that he has not seen Mr. Colvin's documents, and other ministers tell us that absolutely nothing took place, do you feel that they are, in a way, participating in this culture of secrecy? Really, even if it was only a matter of allegations, I feel that any self-respecting minister has to make some attempt to find out the truth and whether anything actually went on. The impression is that government ministers had washed their hands of it. Do you share my opinion at all?

Mr. Richard Colvin: It is very difficult for me to answer that question. It is very possible that General Hillier decided not to tell the minister. That is part of the culture. I worked for a year with colleagues from the Department of National Defence. A lot of them are very open and regular people. But there are others who do not trust civilians. In my opinion, the policy on detainees was kept secret even from the minister. As a policy, that, to me, was indefensible.

Mr. Claude Bachand: It was kept secret even from the minister. Now, you wanted to testify before the Military Police Complaints Commission. It was not the military who prevented you from testifying.

Mr. Richard Colvin: That is true.

Mr. Claude Bachand: So politicians set about keeping under wraps things that the military perhaps wanted to hide. It is a vicious circle, right? They really want to keep everything hidden, so they gag witnesses and put an end to commissions. I have to say that it is partly because of that that we are forced to do the work here that the politicians are trying to stop being done elsewhere. Do you share that opinion?

Mr. Richard Colvin: Yes. I am talking about the situation in 2007 when the military was perhaps not talking to the politicians. But now, it is not the military who are trying to prevent witnesses from—

Mr. Claude Bachand: Thank you again for your courageous testimony.

Mr. Richard Colvin: Not at all.

[English]

The Chair: Thank you, Mr. Bachand.

Mr. Hawn.

Mr. Laurie Hawn: Thank you, Mr. Chair, and thank you, Mr. Colvin, for coming today.

We've heard a lot of pretty bold assumptions being made across the floor, some you agreed with and some you didn't necessarily agree with. Why did you decide to appear today as an individual instead of as a public servant?

•(1610)

Mr. Richard Colvin: I'm not aware that I'm here as an individual and not as a public servant.

Mr. Laurie Hawn: That's what it said.

The Chair: He's listed as an embassy person.

Mr. Laurie Hawn: In your affidavit, point number 64, you referred to first-hand information.

Mr. Richard Colvin: Yes.

Mr. Laurie Hawn: I want to ask you a pointed question. Did you ever see torture with your own eyes, or is all of your information second-hand?

Mr. Richard Colvin: I saw first-hand people who testified that they had been tortured and had marks of torture. I didn't witness any acts of torture.

Mr. Laurie Hawn: Those marks of torture, or marks of physical distress, is it possible they were received through capture, or through self-infliction? These folks are instructed to carry out acts that will divert attention from the truth.

Mr. Richard Colvin: We monitored four individuals in Kabul. One didn't want to talk to us. Draw whatever conclusion you like. Of the other three, none of them, off the bat, mentioned torture. They all said things were fine. It was only when we pressed them—what happened in Kandahar—that they became responsive. And each response was distinct. One got very quiet, and just said he'd been hurt. One said that it was nothing, that he had only been beaten for a few days. He had marks of having been beaten. The other described, in a more pained way, what had happened to him, and he also had marks on his body. So our sense—there were three of us who took part in this monitoring visit—was that these were credible reports, consistent with the larger body of reporting on NDS practices in Kandahar.

Mr. Laurie Hawn: So these reports weren't first-hand. They were basically second-hand from people within the prison system.

Mr. Richard Colvin: They were first-hand to the extent that we sat and talked to the people who had been tortured.

Mr. Laurie Hawn: We can discuss how Taliban somebody is or what he's carried out. But these are people, some of them at least, who have been engaged in killing or trying to kill Canadians as well as their own people.

Mr. Richard Colvin: There's a complication here. We had a hard time finding the people we wanted to monitor. So we monitored four people and we weren't sure who they were, because the records weren't that good. Later, we got better information. Of the four, maybe only one was actually one of the four we were looking for.

We were in the NDS jail, and they brought these people in and left us alone. There was no guard, no one outside the door. We just sat there with these people, and it was very relaxed. When we drove away, they were escorted back to their cells, just walking hand in hand, laughing with their jailers. It was a very low-security environment. If they were hardened Taliban, they were certainly

endangering our lives by leaving us there. But they seemed to be confused people who the jailers weren't treating as dangerous individuals.

Mr. Laurie Hawn: Is it fair to say the conditions in Afghan prisons are different from conditions in Canadian prisons?

Mr. Richard Colvin: Yes.

Mr. Laurie Hawn: And not in a positive way.

Mr. Richard Colvin: Yes, that's very true.

Mr. Laurie Hawn: Have you ever visited a Canadian prison and asked Canadian prisoners how they feel about the way they're being treated?

Mr. Richard Colvin: No, I haven't.

Mr. Laurie Hawn: I have, and generally the answer is that they are not being treated well. This is the answer you'd be likely to get from prisoners anywhere.

Mr. Colvin, one of the recommendations coming out of Justice O'Connor's inquiry into the Maher Arar affair was that consular officials posted to countries that have a reputation for abusing human rights should receive training on conducting interviews in prison settings, in order to be able to make the best possible determination on whether torture or harsh treatment has occurred. I know you're not a consular official, but have you ever received this kind of training?

Mr. Richard Colvin: No, none at all.

Mr. Laurie Hawn: Okay, thank you.

Are you familiar with what the intelligence and section 38 experts call the mosaic effect?

Mr. Richard Colvin: No.

Mr. Laurie Hawn: This is information that by itself may be innocuous, but put together with other pieces forms a mosaic of information that could be of use to people who aren't on our side.

Given that what may seem like a piece of information of no consequence may in fact be of consequence if somebody puts it together in a mosaic, do you think the government has a responsibility to be conscious of the mosaic effect?

Mr. Richard Colvin: Yes, I absolutely accept that the government has a duty to protect its people and its interests.

•(1615)

Mr. Laurie Hawn: In your memos and e-mails and so on, a lot of them had a very, very long list of addressees, 76 on the "cc" line in several of them. You were co-author on some of these memos; you were not the principal author. You were shown as a contributor on many of these.

Mr. Richard Colvin: Mostly I authored them, but sometimes other people were consulted on them. Generally, I signed them and sent them myself.

Mr. Laurie Hawn: Can I suggest to you that if I were trying to get somebody's attention about something serious, I would direct it pretty carefully and precisely at the level that I thought should do something about it, even if that were a minister?

Mr. Richard Colvin: Sure. Usually there'd be on these reports four people on the "To" line, which were the kind of key divisions of DFAIT who I expected would reply, and then the other 72 would be on the "cc" line—you know, "For your information". It could be anyone from our mission to NATO, to different DND departments.

Mr. Laurie Hawn: Do you have any idea how many reports like this are produced daily in Afghanistan, for example, on a mission of that size?

Mr. Richard Colvin: Yes, I have a pretty good sense.

Mr. Laurie Hawn: A lot.

Mr. Richard Colvin: At the time—this may be surprising, and I was surprised—there were very few of us in the field, so the volume of reporting was actually quite modest. If you added the numbers, certainly the list would be longer. Maybe it would be in the order of twice as much on the civilian side. The military produces a lot of reporting. I'm sure there's a great volume that comes out of the military side.

Mr. Laurie Hawn: In many of these reports there's a wide variety of topics covered. It's not only one topic. There's not only a report on alleged torture; there's a whole bunch of topics covered. Is it fair to say that somebody getting one of these—I'll call them omnibus communications—if something's not standing out, might say it's relatively routine?

Mr. Richard Colvin: The way I report and I think most of my colleagues report, usually it does have quite a specific subject and the subject matter refers to that. You would have sometimes omnibus topics, if there was a meeting that dealt with a lot of issues, but the ones on detainees usually dealt only with detainees and were quite narrowly focused.

The Chair: You're just about out of time here.

Mr. Laurie Hawn: That's too bad.

What I really wanted to point out is that none of your evidence you're talking about is actually first-hand. It is coming second-hand from prisoners who are trained to give false information. That's what they do; that's the way they're trained. It's come second-hand or third-hand from other colleagues, people who have received information, which was probably second-hand to them as well. So there really is nothing here that is actually first-hand.

The Chair: Sorry, Laurie, we're out of time. I apologize.

Mr. Dewar, for seven minutes.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you.

Thank you to our witness. Thank you, Mr. Colvin, for appearing before us and finally shedding some light on a topic that many of us have tried to get more light shed upon.

I want to go to the question around Mr. Asadullah Khalid, the Governor of Kandahar. You had grave concerns about him. You laid out why you had grave concerns. To whom did you pass on your concerns about him?

Mr. Richard Colvin: Some of those were passed on orally and some in written reporting.

Mr. Paul Dewar: Up the chain of command, so to speak?

Mr. Richard Colvin: Yes.

Mr. Paul Dewar: So the same recipients of the e-mails that you'd sent out?

Mr. Richard Colvin: Yes—not usually such a big distribution list, usually more tightly focused.

Mr. Paul Dewar: When did you first let it be known that you had concerns about him?

Mr. Richard Colvin: That's a good question. I don't have most of my reporting from the PRT, but I believe I wrote on it from the PRT, so that would have been probably June of 2006, certainly in the summer of 2006 and past.

Mr. Paul Dewar: So he stayed around for a little while after you had raised your concerns about him.

Mr. Richard Colvin: Yes, he was there when I arrived in April 2006 and he was still there when I left in October of 2007.

Mr. Paul Dewar: We know that Mr. Bernier had been present in the region when he was still the governor. We know there were concerns around him at that time, when Mr. Bernier in fact raised concerns.

Can you share with the committee any feedback that you received from your memos? I'm thinking of one that was titled "Kandh0029". Did you receive any feedback on that memo, and specifically from the PCO?

• (1620)

Mr. Richard Colvin: I did get feedback on that one. It came from DFAIT. It doesn't mention PCO having been consulted, but there was CEFCOM and some other divisions in DND, and then three divisions in DFAIT.

Mr. Paul Dewar: Just so people will know, generally speaking, what was in that memo?

Mr. Richard Colvin: That was 0029?

Mr. Paul Dewar: Yes.

Mr. Richard Colvin: That was about the notification issues with the Red Cross, the delays, and the inadequate information. They were having a hard time finding our detainees. They were a little unhappy about that.

Mr. Paul Dewar: So you had told them we had concerns about monitoring detainees, that this long period of time had elapsed, and you had let them know you were concerned about this, and they basically said....

Mr. Richard Colvin: This one they did reply to. They said, "Of course we respect the ICRC; they have an important function. There was just a mix-up: people were out of the country and didn't get the phone messages. We were a little surprised at the tone of the message, and we're going to fix it. Here's the contact information, the contact person for the Red Cross to get these problems solved."

At the time I thought this would take care of the problem.

Mr. Paul Dewar: But it didn't.

Mr. Richard Colvin: I think there were some ameliorations, but then when this issue flared up again almost ten months later, it seemed the delays were still substantial, two weeks and more.

Mr. Paul Dewar: Just to capsulize, you've said to us that you were aware of, and there had been wide reporting of, torture that had been going on. We're talking about sexual abuse, we're talking about the use of various instruments to torture prisoners after they were handed over, that we had exponentially more prisoners being handed over than the Dutch or the British, and that we had no way of tracking them that you were confident in.

Is that correct?

Mr. Richard Colvin: Yes.

Mr. Paul Dewar: And you let people know that?

Mr. Richard Colvin: Yes.

Mr. Paul Dewar: People such as Mr. Mulrone and General Hillier knew that?

Mr. Richard Colvin: Yes.

Mr. Paul Dewar: How did you feel when no one did anything?

Mr. Richard Colvin: I should say, and I think I mentioned it at the beginning, this was one of maybe 15 issues I had. In the summer and fall of 2006, we were really caught up in Operation Medusa, trying to get forces down to replace the Canadians. There was a lot of activity just in security issues and narcotics issues, police reform. I was mostly busy with that. I wasn't really following this quite as closely as I should have.

Then in the late summer or fall we heard about problems. ISAF complained they weren't getting information from the Canadian Forces. That was when I began to think maybe something more systemic was going on.

Then around early 2007 it really began to sink in to me that these problems, which I thought had been rectified—and I should probably have followed up and checked—had not, or they had been temporarily fixed and then seem to have recurred. The underlying problem of transfer and what happened after transfer had not been addressed.

Mr. Paul Dewar: When we hear the government ministers say there was no evidence of torture during that period until they found out later and said they changed everything, your evidence would be that there was notification that this torture was going on and you had reported that?

Mr. Richard Colvin: Yes. There was this key message of June 2, 2006. In this context, in a public context, I can't reveal the source or sources of that information, but it was an extremely credible source or sources that had expressed serious concern about treatment after transfer and gave some adjectives describing the treatment and hinting at a lot of abuse.

That was sent June 2, 2006. It was in the context of a report on the Sarposa prison and the conditions of the prison. We were looking at renovating the infrastructure.

I was careful to flag at the beginning and at the end that the key issue or the key concern wasn't the prison but what was happening to the detainees after they had been transferred.

Mr. Paul Dewar: I received a note from someone who has had experience in the field, and they said they're still concerned about the transfer of detainees and the monitoring of prisoners. Do you share that concern, from what you know?

Mr. Richard Colvin: Yes. I'm a little bit removed from the mechanics and also the policy side, but from what I know of the NDS, my feeling was always that we shouldn't be giving detainees to the Kandahar NDS. I'm not pointing the finger at them; they are who they are. They've got a job they're trying to do it. There's a war going on in Kandahar. The Taliban are trying to kill them, are killing them, killing their families. It's a very harsh, violent environment. But knowing what we know about Kandahar NDS, I would say they're not a suitable partner to be giving our detainees to.

It's very hard to protect people. You need a very rigorous, aggressive monitoring system. I think you could probably create that, but you'd really have to let them know that the second anything happened, you'd be knocking on the door of President Karzai, if need be, and there would be consequences for them. You'd have to be in there, maybe not every day but certainly every week. You'd also need to have relationships with them where you could get access. There are all kinds of caveats you'd have to meet first.

• (1625)

Mr. Paul Dewar: Were you aware of problems around translation in terms of handing over of prisoners, that we didn't have people who actually spoke the language and that there were some concerns about who we handed over?

The Chair: A short response, please, Mr. Colvin.

Mr. Richard Colvin: No, I wasn't aware of those concerns, sir.

The Chair: Thank you.

That ends the opening round. We get into a five-minute round now. We're just about to our hour here, so we'll get started.

The way this goes of course is the government, official opposition, government, Bloc, government, official opposition, government, NDP. Let's see how far we get into the list here.

We start with the government.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Thank you, Mr. Chairman. If I do have any time left, I'd like to share it with Mr. Hawn.

To the witness, insurgents are practised in the dissemination of false information and propaganda exercises. The al-Qaeda handbook devotes an entire chapter on getting information by pretending to be someone you're not.

While the story of Fatima was quite touching, it is quite typical for Taliban to send a seemingly innocuous individual in to gather information on where their fighters are being held. In fact, this entire exercise of attempting to draw a link between the Canadian Forces and prisoner treatment without a shred of evidence is playing right into the hands of the insurgents, which is the departure of security forces so the Taliban can retake Afghanistan to return it to training terrorists and forcing the people to grow opium to fund that illicit activity.

These allegations being discussed here today would not even hold up in a court of law. The fanning of the flames of outrage over allegations, however unproven, are having the desired effect on the Canadian people of wanting our troops to return even quicker.

Let's go to something that the Taliban and insurgents are very good at. General Atkinson himself has stated in defence committee that:

First of all, they are masters at information operations. Just because we are sitting inside the middle of Afghanistan, in the mountains, the desert, in areas where you could argue there is very little communication, there is cellular technology. They have access to the Internet through satellites. When there's a story being printed in the *Ottawa Citizen* today, it's being read. If it's on the BBC News or somewhere else, they have it.

They know how to take and plant false stories and everything else. Their ability to react to things on the ground is something that is very practised. They have used it against us. It's something we combat and work on. It's called information operations. We do it to them; they do it to us.

That's a quote from General Atkinson in defence committee.

Let's go to the allegations that after the Canadian Forces transferred prisoners.... The Canadian Forces did not harm our prisoners. In fact, when the defence committee visited KAF, we saw Taliban prisoners who had been wounded and who were being treated with the same care that our very own soldiers, who they shot, were being treated. We have to make this very clear. Our soldiers have had nothing to do with these allegations of torture.

Are insurgent prisoners given private cells? You were visiting the prisons. Are they put in their own cells individually?

• (1630)

Mr. Richard Colvin: On your previous points, I would just confirm that I have never heard a hint of a Canadian who has been involved in any of these things. My sense of the Canadian Forces is that they're extremely professional, very well trained, and maybe one of the best militaries in the world. I would share your high view of them.

With respect to insurgent prisoners, I have to say that I've never seen a prisoner in a cell. The ones we were monitoring were brought to a separate location, and we were given a tour of the prison facility separately. In terms of going inside a cell when prisoners were in the cell, I didn't see that.

Mrs. Cheryl Gallant: So you don't know if they're held alone, or if they're with the other insurgents, or with the regular criminals from the population?

Mr. Richard Colvin: The information I had is that they were sharing cells. There were overcrowding problems in nearly all these prisons. In Sarposa in Kandahar, the so-called political, which are the security prisoners, are kept quite separate from the general criminal

population. At the NDS jail we went to in Kabul, kind of by definition it has only political, meaning security prisoners. The NDS aren't holding common criminals there.

I think there are typically maybe four or five to a cell. That's what the NDS acknowledged. They said that they had overcrowding problems and that they would like us to build a bigger facility for them, because it was quite old. It was a Soviet-era prison. It was in poor condition.

The Chair: We ran a little bit over there. Thank you for that.

Mrs. Cheryl Gallant: Pardon me?

The Chair: We're out of time.

Mrs. Cheryl Gallant: Five minutes?

The Chair: The five minutes are gone.

Over to the official opposition.

Hon. Ujjal Dosanjh: Thank you.

Mr. Colvin, I'm going to ask you some very brief questions and I would like brief answers. As you know, we're running against time here.

You said that General Hillier knew about these allegations of torture. Can you tell me how and when?

Mr. Richard Colvin: My sense from early on is that Gauthier.... I made sure to put him on the address list for these reports, and he would have told General Hillier. In April 2007 I deliberately added General Hillier to a key report, to put him by name, but I think the Gauthier-to-Hillier channel was a very reliable one.

Hon. Ujjal Dosanjh: You said that Margaret Bloodworth and Arif Lalani were the people who reinforced the issue about secrecy and not writing about these issues in the reports. When was that, and in what circumstances?

Mr. Richard Colvin: I should say it was David Mulrone rather than Margaret Bloodworth. So that came quite early. The first report I sent after Mr. Lalani arrived, he took my 75 names and reduced them to five for the distribution list. There was some very sensitive information, important information, I thought, that was removed from that report as well. That set the pattern. I mean, he was kind of inconsistent that way. He would sometimes sign things off without any changes, but typically reducing the distribution list, and some things were considered too sensitive to send.

Hon. Ujjal Dosanjh: And when was that?

Mr. Richard Colvin: That began at the end of April 2007.

Hon. Ujjal Dosanjh: And when was Arif Lalani's involvement in this?

Mr. Richard Colvin: Well, he arrived at the end of April 2007, so....

Hon. Ujjal Dosanjh: You mentioned Margaret Bloodworth's name earlier. In what context?

Mr. Richard Colvin: We knew that *The Globe and Mail's* reporting was coming in April. We had advance notice, so we had informed Ottawa—other people had to—and they developed a kind of detainee response. It was called a diplomatic contingency plan. That had been signed off by Margaret Bloodworth.

There were a couple of occasions when it seemed like the key decisions on detainees were being taken by Margaret Bloodworth, and I think the discussions on Asadullah Khalid also went to Margaret Bloodworth.

Hon. Ujjal Dosanjh: I have one more question. I understand that there may have been what is called a decision memo prepared for Peter MacKay to apprise him of the situation regarding torture in Afghanistan. Were you ever able to see that memo?

Mr. Richard Colvin: I'm not aware of that memo's existence, even.

Hon. Ujjal Dosanjh: You've indicated that the circulation of the June 2006 and May 2006 reports was far and wide, and eventually, a year later, the circulation became narrower. Have you had any chance to talk to anyone from the upper echelons of the civil service in the government that would tell you that they were aware, other people who were aware, of these allegations of torture—DMs, ADMs—other than David Mulroney, Margaret Bloodworth, or Arif Lalani?

Mr. Richard Colvin: Colleen Swords, certainly. She was key.

Hon. Ujjal Dosanjh: Colleen Swords. Other than that, anybody else?

Mr. Richard Colvin: The Privy Council Office was copied on a lot of them, so the foreign and defence policy adviser, I suppose.

Hon. Ujjal Dosanjh: Did you ever talk to Margaret Bloodworth directly?

• (1635)

Mr. Richard Colvin: I don't remember if I talked to her on these issues. Not that I recall.

Hon. Ujjal Dosanjh: In terms of General Gauthier, you put him on the e-mail list. Did you ever talk to him personally?

Mr. Richard Colvin: Yes, I talked to him quite a few times.

Hon. Ujjal Dosanjh: You talked about the allegations of torture and about your concerns?

Mr. Richard Colvin: No.

Hon. Ujjal Dosanjh: Why not?

Mr. Richard Colvin: He's quite a difficult guy, General Gauthier—somewhat unpleasant to deal with. He was a tough guy to talk to. I preferred to use the official channels rather than try to engage him, where he could simply just be rude for no particular reason. It was just a personal sort of way he had of dealing with people.

Maybe that was my experience, but I think he had that reputation. He didn't really like dealing with the civilians. It was kind of his attitude that, you know, "We're in charge. It's our province and we're not interested in what you have to say." And that was not across the board, but at senior levels, with some officers, it was quite noticeable. I think General Gauthier, in my mind, was the kind of primary advocate of that approach.

Hon. Ujjal Dosanjh: Thank you.

The Chair: You've left your colleague 30 seconds.

Hon. Bob Rae: That's been duly noted, Mr. Chair.

The Chair: And with that warning, you're out of time, Keith. I'm sorry, we'll have to come back to you.

We're over to the government.

Mr. Laurie Hawn: I'll start, Mr. Chair, and then I'll hand it off to my colleague.

I just want to make clear what was just said. There was no action memo, that you're aware of, to Minister MacKay.

Mr. Richard Colvin: I've never heard of that.

Mr. Laurie Hawn: Thank you.

Hon. Bob Rae: He didn't say there wasn't one. He said he wasn't aware of one.

Mr. Laurie Hawn: Thank you very much.

I'm interested in what you did, and you talked a little bit about it. Other than telling somebody in a report, some of which you were the author of, some of which you were co-author of, some of which you were a contributor to, many of which went to 76 addressees and covered many topics, not just one, did you ever go to the Afghans and talk with them about what was perceived or what was alleged?

You did say you didn't pay as much attention as you should have, that there was a war going on, and you didn't follow up on things—all of which is understandable, because there was a war going on. Likewise for General Gauthier, for whatever anybody might say about getting along with each other, there's a war going on.

Did you ever do anything to actually follow up on those things in theatre? I sense a bit of regret in your testimony that perhaps you should have done more. Did you ever follow up on any of that?

Mr. Richard Colvin: I did. It was a little bit later, so it was more early 2007.

Mr. Laurie Hawn: But not at the time. Is it fair to say that improvements were made in mid-2007 with the improved agreement, and that things have been better since? You weren't there, I understand, but....

Mr. Richard Colvin: Yes. I mean, there are still some issues that weren't quite fixed. It was in a sense of acquiring knowledge, so it took me a while to really understand the nature of our detainee system.

Mr. Laurie Hawn: It takes anybody time to acquire knowledge in that situation, I agree.

I'll pass it to my colleague.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Mr. Colvin, you'll forgive me if I'm a little bit querulous. Out of 5,000 Canadians who have travelled through there, at least in that period of time, you are the one single person who is coming forward with this information, so you'll forgive me if I'm skeptical.

For example, you testified today that when you drove away after the interrogation of those four prisoners, you saw them laughing, holding hands, and walking back with their captors to their cells. I find that quite astounding. Would I be going back to a cell with the people who had just finished punishing me? I don't understand that.

Mr. Richard Colvin: I think the answer is that these people had been detained in Kandahar. They had been, according to their information, their allegations, tortured in Kandahar, but then had been transferred to Kabul. They seemed confused, didn't really seem to know what they were doing there, either. Some of these people just get caught up, and if they don't have money to buy their way out, they're just kind of stuck in the jail system. So I think the NDS also felt these were probably people who shouldn't have been detained in the first place. That was my conclusion.

The people we met just seemed confused and didn't know why they were there, and their jailers treated them the same way.

Hon. Jim Abbott: I apologize that I have trouble with the credibility of that.

Are you fluent in Pashtun?

Mr. Richard Colvin: No, I don't speak any Pashtun.

Hon. Jim Abbott: So then the testimony you received from these prisoners was through an interpreter—

Mr. Richard Colvin: That's correct.

Hon. Jim Abbott: —who may or may not have had his or her own motive for what they were interpreting for you.

Mr. Richard Colvin: We used someone from the embassy who had actually been jailed in that same jail under the Taliban. In the testimony there was a lot of body language, and the body language accorded with the interpretation. We've used this guy before. He's a reliable interpreter.

•(1640)

Hon. Jim Abbott: Can you see how I could arrive at a conclusion that you're an honourable gentleman who came to a conclusion that may not be correct?

Thank you.

The Chair: Okay, thank you. There's just one minute left. Maybe I'll use it.

We're at a crossroads here. Mr. Colvin, I know that it was previously indicated that we had two witnesses and you could probably assume an hour each, but we're over time on you already. In order to get to the second round completely, to be fair to everybody, it would take another 25 minutes.

Mr. Tinsley is in the building and waiting, but do we have agreement to do that?

Mr. Laurie Hawn: We have bells at 5:30, don't forget.

Mr. Paul Dewar: Chair, if I may, Mr. Tinsley is actually here in Ottawa, is that correct? He's situated here in Ottawa?

The Chair: He's in the building waiting.

Mr. Paul Dewar: No, but does he work here?

The Chair: Yes.

Mr. Paul Dewar: I would move that we continue with Mr. Colvin, as he is in Washington. I would like to continue with him for at least the next 25—

The Chair: It would take 25 minutes. I don't even know if Mr. Colvin's available. I haven't asked him that yet.

Mr. Richard Colvin: I'm at your disposal.

The Chair: So you're fine.

Mr. Laurie Hawn: Mr. Chair, we have Mr. Tinsley here now. That was the agreement reached by the steering committee, by this committee. I suggest we follow on with the plan we all agreed to.

The Chair: We're over time on this session already.

Mr. Paul Dewar: Mr. Chair, he has referenced the steering committee; we usually don't, but he has. You may recall we said that we would use as much time as we needed for Mr. Colvin.

Mr. Laurie Hawn: Up to an hour and a half is what we said.

Mr. Paul Dewar: Well, the committee gets to decide that. Anyway, I'll stop talking and we can continue on with our witness.

Mr. Laurie Hawn: Up to five o'clock is fine.

The Chair: We will proceed, then, with five minutes for the Bloc.

[Translation]

Mr. Claude Bachand: Mr. Colvin, first of all, a few weeks ago, there were questions about paying your lawyer's bill. I see that she is here, incidentally. She seems to be a nice young lady and she should not have to volunteer her time.

Has the government finally accepted our arguments and agreed to pay her? Has she received the fees for work on your behalf to date?

Mr. Richard Colvin: She has not been paid yet, but there is an agreement to that effect. One problem remains, however, in that they are always trying to limit the number of hours that she works. The amounts they provide are small. They have to be convinced and we have to fight, in a way, for the payments to be approved.

Mr. Claude Bachand: So I can only conclude that, not only were the military uncooperative in not forwarding information to the elected politicians, but also that the politicians are uncooperative in that they want to prevent you from testifying. They are nickel-and-diming with your lawyer's fees at the moment, probably in order to keep you quiet or in order to get you to step out of line so that they can then discredit you.

Does that interpretation make any sense to you?

Mr. Richard Colvin: I would say it does.

Mr. Claude Bachand: Mr. Colvin, can you tell us if you received any directives from the government that were intended to stop you from talking, not only to the Military Police Complaints Commission, but also to others such as the media, members of Parliament, or to us here today? Did you receive any directives preventing you from doing that?

Mr. Richard Colvin: Yes, actually, I was told that I could not go before the commission because of section 38 of the Canada Evidence Act . I was also told that the same section 38 also applied to testimony before this committee.

Mr. Claude Bachand: It is important that we talk about section 38 of the Canada Evidence Act. We had discussions with General Watkin who said that there could be legal recourse or that the legality of it all could be reviewed, but that there is a degree of protection before a committee like this one.

Mr. Chair, I have to say to those listening to us that it is likely easier for the government to put an end to an inquiry and to prevent it from proceeding than to prevent a parliamentary committee from proceeding with a study. That is why we are forced to do this today. We are happy that we are able to get to the bottom of things.

I would like to add that I feel sure—and it is something I would like you to confirm—that no Canadian soldiers tortured Afghan detainees. You are an expert in international law, you are a diplomat. Are soldiers vulnerable when they transfer detainees to people who are strongly suspected of inflicting torture? Is this a violation of the Geneva Convention? Is your interpretation the same as mine?

•(1645)

Mr. Richard Colvin: Yes, it is the same.

Mr. Claude Bachand: So the Canadian government and the Canadian military are leaving themselves open to legal proceedings against them when they transfer detainees to authorities who they know full well are going to torture those detainees. Is that how you read it too?

Mr. Richard Colvin: Yes.

Mr. Claude Bachand: It was said that 5,000 or more people have gone to Afghanistan and you are the only one to have raised this issue. To your knowledge, and knowing the military structure as you do, are soldiers free to speak out when they have been ordered not to?

Mr. Richard Colvin: Not to speak to whom?

Mr. Claude Bachand: To the media, or to anyone else. If people have seen, or think they have seen, people being tortured but they have been ordered not to talk about it, do you think that they can do so anyway?

Mr. Richard Colvin: I feel that it is difficult for them because of the way in which information travels.

Mr. Claude Bachand: It is all about the structure, the hierarchy.

Mr. Richard Colvin: The structure is very rigid. I could write whatever I wanted and send it. They do not have the right to do that. There is a process that limits information when it is sent to military superiors.

Mr. Claude Bachand: Are you the only one to have denounced this ill-treatment or did other diplomats in your circles say that they could not be silent about the situation? Have people other than yourself provided reports?

Mr. Richard Colvin: Among the Canadians?

Mr. Claude Bachand: Yes.

[English]

The Chair: A short response, please.

[Translation]

Mr. Richard Colvin: It was mostly my colleagues and myself who did it.

Mr. Claude Bachand: How many colleagues are we talking about?

Mr. Richard Colvin: There were very few of us, about four.

Mr. Claude Bachand: Did those four colleagues support your reports?

[English]

The Chair: We're out of time.

How this is going to finish up, then, is over to the government, then back to the official opposition, then the government and the NDP.

Mr. Laurie Hawn: I'm going to start and then hand it off to my colleague Peter.

Mr. Colvin, are you a specialist in international law?

Mr. Richard Colvin: No, I'm not, sir.

Mr. Laurie Hawn: Thank you. So that's contrary to what Mr. Bachand said.

When did you first visit the prison? Do you remember the date?

Mr. Richard Colvin: Yes, it was May 13th or 16th.

Mr. Laurie Hawn: Of...?

Mr. Richard Colvin: Of 2006.

Mr. Laurie Hawn: How long had you been sending reports on conditions in prisons prior to that?

Mr. Richard Colvin: No, I'd never done that.

Mr. Laurie Hawn: Fair enough.

I'll hand off to Mr. Goldring.

Mr. Peter Goldring (Edmonton East, CPC): Thank you very much.

Thank you, Mr. Chair.

Mr. Colvin, you had mentioned or had said that you had no problem accessing the prisoners or gaining access to the prison to speak to the prisoners. When I look at the transfer of detainees agreement, the one that was dated May 2007, it states:

Representatives of the Afghanistan Independent Human Rights Commission...and Canadian Government personnel, including representatives of the Canadian Embassy in Kabul and others empowered to represent the Government of Canada will have full and unrestricted access to any persons transferred by the Canadian Forces to Afghan authorities while such persons are in custody. In addition to the International Committee of the Red Cross...relevant human rights institutions with the UN system will be allowed access to visit such persons.

That's very plain, as to having ready access by many groups and organizations to the prisoners. I find it incredulous, too, with all of those facilities having access to the prisoners, that some information hasn't come through in the reporting.

When I look at your comments here, in your reports you've been sending in, it talks of risk of torture or actual torture. But here we've just had the discussion that what it might possibly be.... As you say, it might not have been torture; it might have been other forms of injury. The suggestion was that we don't know whether they were in solitary confinement or in individual cells. If they're in the population as a whole, certainly there are hazards to that, too, from other prisoners.

All the way through in here you talk about first-hand reports of torture. Yet through the discussion here, it's really like second-hand or third-hand reports of torture. You have said yourself that you haven't specifically seen anybody being tortured, but you see the marks or signs that you believe might be torture. But then again they might not.

With all of these differences of opinion on here, I still have to go back to the basis that I find it difficult to understand why you are the only person who can see through all of this and no other organization has come down with like comments.

• (1650)

Mr. Richard Colvin: Most of my information was from other institutions, who were the experts. Without naming names, there were some human rights organizations, but also some intelligence services we would meet with and discuss these questions with them. That's kind of how we do our job as diplomats. So the trick is to find the authoritative, most credible organizations and then find out what information they have and then you can develop a picture of events.

The one monitoring visit I made in Kabul is really just, for me, a small kind of anecdotal reinforcement of this bigger pattern.

Mr. Peter Goldring: Well, in your report here, as I said, it's mentioning treatment of detainees, treatment of detainees, and procedure, procedure, procedure. And when you have the opportunity to face up, to speak to the general directly, you don't mention it. So I'm really.... You know, in spite of having a relationship difficulty being able to communicate, I would think that would be the one common time that you could speak up, right then and there. And if you had these grave concerns for it, I would have thought that you would.

The Chair: A short response, please.

Mr. Richard Colvin: Sure.

The principal way we're supposed to inform Ottawa is via more official channels rather than to a particular individual.

Mr. Peter Goldring: Well, face to face?

Mr. Richard Colvin: Relations with General Gauthier unfortunately were not very good. If it had been another general, it would have been different—for example, General Grant, a very easy relationship. Certainly with him I would have felt no compunction with raising it. So it was just kind of a personality issue.

The other disadvantage with the oral report is that there's no paper trail. Ultimately, it's the whole system, the whole system with many parts. I wrote the reports to try to reach different elements of the whole system.

Mr. Peter Goldring: You can see where our concerns are, then.

Mr. Richard Colvin: Yes.

The Chair: Thank you, Mr. Goldring.

Mr. Martin.

Hon. Keith Martin (Esquimalt—Juan de Fuca, Lib.): Thank you very much, Mr. Chair.

I actually was a guard and also a physician in a jail, and I never saw anybody tortured in a Canadian jail, nor any allegations. But that's another matter.

Mr. Colvin, you are a credit to our foreign service. Thank you very much for being here and for your erudite testimony.

Ministers often come through Afghanistan. Did you have a chance to meet any ministers of the crown and actually express to them what you've expressed here?

Mr. Richard Colvin: No, I didn't. Yes, I've met several ministers, but I did not raise these issues with them.

Hon. Keith Martin: Did you hear anybody else raising these issues to them, in your presence?

Mr. Richard Colvin: No, not in the meetings I was at.

Hon. Keith Martin: When the names were reduced from your list, from 75 to five, do you remember what those five names were?

Mr. Richard Colvin: Sure. I have them here.

Are you interested in hearing them?

Hon. Keith Martin: Yes, please.

Mr. Richard Colvin: There's the director at FTAG, the Afghanistan task force. There's David Mulroney, as deputy.

Do you want the names or just the position?

Hon. Keith Martin: Just the position.

Mr. Richard Colvin: Yes.

There's the Afghanistan officer at PCO, and then two addresses at Kandahar airfield in the PRT.

Hon. Keith Martin: Thank you.

Did you ask why this was done, why they were reduced?

Mr. Richard Colvin: Yes; it was very sensitive, and they didn't want it going to a wide circle of people.

Over time, I myself was removed from the distribution list for these messages.

Hon. Keith Martin: You mentioned also that the government lawyers had threatened you. Can you elaborate on that?

Mr. Richard Colvin: Oh. Well, this is, I guess, my interpretation.

I had been subpoenaed to the MPCC. When I first heard, the government's lawyers told me, "You're free to go for this pre-hearing interview. There's no problem. It's entirely up to you." I had a July 28 letter saying that.

I said to them, "Fine, I'll go on September 1." Three days later, they hit me with this section 38 thing. If I did go, I could be charged under section 38, and possibly jailed up to five years, for meeting the legal obligation to assist the MPCC.

I guess I interpreted that as a threat.

Hon. Keith Martin: It put you in an untenable situation.

Mr. Richard Colvin: Yes, I felt so.

•(1655)

Hon. Keith Martin: To go, you would be penalized. To not go, you would also be penalized.

Mr. Richard Colvin: Yes, that's correct.

Hon. Keith Martin: Was this information expressed to the Minister of Defence at all in any of your memos or missives, that this is what had happened to you with respect to the untenable situation you were put in?

Mr. Richard Colvin: No. I've been writing to my deputy minister, Mr. Len Edwards, with some of my concerns about it, and to the Department of Justice. Mr. Préfontaine is the key person there.

Hon. Keith Martin: Thank you very much.

The Chair: Thank you, Keith.

Over to the government, and then we'll finish up with the NDP.

Mr. Laurie Hawn: Thank you, Chair.

Mr. Colvin, you're an experienced diplomat. Experienced diplomats get to deal with difficult people all the time. So I'm a little concerned about why you wouldn't, regardless of personality clashes, have been more forceful with General Gauthier.

Also, if you had met a number of ministers at various times over there, why didn't you raise the issue with them? You said you didn't. Why not?

Mr. Richard Colvin: That's a good question. I didn't copy ministers typically on my reports, either.

Generally when the minister comes in, your job is to make sure they have a nice trip; it's a tough environment. I would go to meetings and write reports on the meetings, but I wouldn't really insert myself into their lives or their business. It would be a bit inappropriate, I think, to come and ruin a minister's visit by saying, "Hey, do you know people are getting tortured with electricity?"

Mr. Laurie Hawn: Well, you know what? I'd suggest that the minister is there to do a job, and if I were the minister and something were that serious or you were that serious about it, then I would expect you to come and tell me about it. So I have to cast some incredulity on that.

I'll give it to Mr. Abbott.

Hon. Jim Abbott: The four transferees that you interviewed, were they captured by Canadians?

Mr. Richard Colvin: I don't know.

Hon. Jim Abbott: You don't know. Don't you think that's important?

Mr. Richard Colvin: Oh, it's very important, yes.

Hon. Jim Abbott: Okay. Hang on a second. You were telling us that you were interviewing four detainees who had signs of abuse, and you don't even know if they were detainees who had been put into the system by Canadians, much less do you know that they received those signs of abuse through torture, and we're supposed to take you as being credible. That's amazing, sir. That's absolutely amazing.

I wonder if you've arrived at the conclusion you wanted to arrive at. You referred earlier to a pointed tool of torture that was left in the corner under the chair by an interrogator. Now, that could be taken as evidence of torture, or a tool that might have been used for self-abuse, or it could have been put there just for your benefit.

I'm sorry, this is really quite incredible, sir.

Mr. Richard Colvin: On the October one, I should say, I wasn't there for that, so I just heard about this monitoring visit.

The problem we had in Kabul was that the information we were given was so hopeless. We went to the prison and we said: "We're looking for these four people. These are the names and they were all taken in Kandahar. Could you produce these people?" So they produced people who had names that were more or less similar and we tried to figure out if these were the people we were looking for. We settled on four who more or less matched the criteria we'd been given.

Later, we got much better information, a full package, including photographs and the proper names, and when I looked at that, I concluded that of the four we had met, only one was the right person. But this was really a function of the record-keeping. It was very poor—very, very poor.

Hon. Jim Abbott: But with the greatest respect, sir, it's not a function of the record-keeping; it's a function of the credibility of your testimony. Those three people who you've said were abused in prison as a result of being turned over by Canadians, you have just told us, were not turned over by Canadians. What else can I say?

Mr. Richard Colvin: Yes, you're probably right. Maybe one of them was.

On the monitoring visit, I didn't really want to do the monitoring visit. It's not really my job, you know, but we didn't have anyone else.

But the reporting I had sent on detainees, which went back to June 2006, wasn't based on first-hand interviews. It was based on meeting with organizations that in our judgment were credible, did have access, and had reliable information. So the concerns were drawn from those organizations, of which there were several. I can't really name names in this forum, I'm afraid.

The Chair: There's one minute left.

Mr. Laurie Hawn: Thank you, Chair.

I have to just follow on a little bit with Mr. Abbott and go back to everything we've heard today. There have been a lot of assumptions, a lot of allegations, and nothing first-hand. It's all second-hand.

You had opportunities to speak to people in authority if you were concerned enough about something, as you expressed, and we're all concerned about those kinds of activities if they're going on. You didn't take the opportunity to do that. All of your information is, at the very best, second-hand. So I really do have to question, as my colleague has done, whether this is really credible testimony in the direction that people want to take this.

You can comment on that or not, but I'm a little bit skeptical.

• (1700)

The Chair: Would you like to respond?

That's more a statement than a question.

Mr. Laurie Hawn: Yes.

The Chair: Mr. Dewar.

Mr. Paul Dewar: Thank you, Chair.

Thanks again to our guests.

I want to come back to the procedure that was in place. You were saying that we didn't have people on the ground to monitor, so when we hear questions about that from the other side.... Your whole point was that we didn't have people to actually monitor. However, you also gave evidence to say that both the British and the Dutch had a very accountable process—within 24 hours, with the British. Is that correct?

Mr. Richard Colvin: Yes.

Mr. Paul Dewar: What did you hear from the British and the Dutch? Did you have any communication with them about the behaviour, about what was happening in the prisons about torture? Did they reference torture to you?

Mr. Richard Colvin: Yes. If I can generalize it, I met regularly with our NATO allies, a number of countries, and we discussed those kinds of issues, and I got information from them as well.

Mr. Paul Dewar: So they referenced their concerns about handing over detainees and what would happen to them when they were handed over?

Mr. Richard Colvin: Yes, that's correct.

Mr. Paul Dewar: When we look at the process that was put in place, one of the concerns was to monitor prisoners after they were released. Was that a concern you had during the time you were there? In other words, when prisoners were sent out, were there any monitoring processes in terms of where they went?

Mr. Richard Colvin: When they were handed over, or after they were released?

Mr. Paul Dewar: After they were released from the prison.

Mr. Richard Colvin: No. We didn't even know—usually—what had happened to them, whether they were in the prison or had been released. We didn't follow up with them at all once we handed them over, so there was no information at all on that.

Mr. Paul Dewar: You said in your testimony that there were concerns around a number of things, referencing torture in various

manners. In fact, in one of the documents you said that when you interviewed someone you asked how they were treated. You said that when you asked about one person's treatment, he had said that he was hit on the feet with a big wire and forced to stand for days, and he had marks on his back and ankles, etc. You noted that there was a red mark on the back of his ankle. It basically said that's how NDS interrogated him.

Was this a typical way of treating prisoners?

Mr. Richard Colvin: Yes, I believe so.

Mr. Paul Dewar: Would you consider that to be a violation of the Geneva Convention?

Mr. Richard Colvin: Yes, I would.

Mr. Paul Dewar: Would you be able to share with the committee any documents you have with you so that we can reference them to do our work?

Mr. Richard Colvin: I would be pleased to. However, I'm concerned about what the consequences might be if I were to do that.

Mr. Paul Dewar: Can I leave that to your counsel to go over and to decide what to share with the committee?

Ms. Lori Bokenfohr (Legal Counsel, As an Individual): Right now, or could we have a...?

Mr. Paul Dewar: No. We're here for a long time. We can give it to you, and you can decide and send it in to us.

Mr. Richard Colvin: I was told just this week that there are new documents available in a redacted form. I haven't had a chance to look at it yet, but I was given a diskette yesterday.

Mr. Paul Dewar: Any information you have to share with this committee for it to do its work would be helpful.

Mr. Richard Colvin: Certainly.

Mr. Paul Dewar: Thank you.

The Chair: Thank you, Mr. Dewar.

Mr. Colvin and Ms. Bokenfohr, thank you very much for your time.

I apologize for the temperature in the room. There's been some trouble with the plant system here on the Hill. We don't usually bring witnesses in and sweat it out of them as we did today. I apologize for that.

Do you have anything to say in conclusion?

Mr. Richard Colvin: I appreciate your having organized this. Thank you for inviting me and for treating me fairly. It was nice to meet all of you.

Thank you.

The Chair: Good. Thank you very much.

We're going to suspend for one minute while we bring in our next witness.

Thank you, sir.

• (1700)

(Pause)

• (1705)

The Chair: Could we reconvene, please?

Mr. Tinsley, I want to apologize on behalf of the committee for keeping you waiting and carrying over. We have bells at 5:30.

Do you have a prepared statement?

Mr. Peter A. Tinsley (Chair, Military Police Complaints Commission): Yes, I do, Mr. Chair.

The Chair: Do you have any idea how long it will take?

Mr. Peter A. Tinsley: No more than nine or ten minutes.

The Chair: Okay, and then we'll see how it works after that for you.

Sir, just to make it official here, you are the chair of the Military Police Complaints Commission, and you are here at the request of the committee. We appreciate your being here.

We will turn the floor over to you to make your opening comments, and we'll see how much time we have for questions after that, sir. Thanks for being here.

• (1710)

Mr. Peter A. Tinsley: Mr. Chairman and members of Parliament's Special Committee on the Canadian Mission in Afghanistan, good afternoon. I'm pleased to respond to your invitation and to assist, as I may be able, the committee in its work pursuant to its motions of October 28, 2009, concerning the treatment of detainees by the Canadian Forces in Afghanistan.

As you are aware, the Military Police Complaints Commission has been engaged in the investigation of complaints concerning the treatment of detainees by the military police of the Canadian Forces since January 2007, when the first such complaint was received from Dr. Amir Attaran.

Through the clerk, I have provided a chronology, and I hope you've received it, of the history of the commission, and more importantly, of these complaints and the decisions related thereto. I hope they may be helpful to you.

The first complaint filed by Dr. Attaran was resolved through a public interest investigation. The file was very recently closed following the reduction of the redactions to the original report and the re-release of the report. A copy of that re-released version may be found at tab E of the additional materials provided to you this afternoon.

The other complaints, also received in early 2007, from Amnesty International Canada and the British Columbia Civil Liberties Association, have not been resolved and remain either before the commission, pending an adjournment of the commission's inquiry by the public interest hearing process, or before the Federal Court of Appeal, pending a decision on the commission's application for leave to appeal, a decision of the Federal Court. Again, I've supplied the committee clerk with a chronology and the commission's decisions in respect of these matters, which I hope may assist you in understanding my very brief remarks.

I believe that it is because of these unresolved complaints that I've been invited here to speak to you and answer your questions. It's also because of the state of these complaints—still, as said, in the process of the commission's inquiry or before the Federal Court—that I may have to be restrained in what I may say in response to your

questions; that is, restrained out of respect for and to maintain the integrity of these processes. I am currently presiding over a panel that is conducting hearings into the complaints that remain before the commission, and I have a duty to act fairly in respect of the parties, including a requirement to speak about matters specifically before the commission only through the decisions of the commission. I hope you will understand.

Given the constraints upon me, perhaps I can briefly and appropriately elucidate the present situation of the commission and its inquiry process by recapping and paraphrasing some concluding remarks I made previously, following delivery of the commission's decision to adjourn on October 14 this year.

The matter of the treatment of detainees by the Canadian Forces in Afghanistan by Canada's military police has, particularly given the notorious experience of some other nations in similar situations in Iraq and Afghanistan, and our own recent history in Somalia, attracted much public attention across our country and internationally. There is clearly an expectation of answers in respect of the complaints filed with the commission.

As I've said before, the concerns raised by the complaints are serious in the interest of what have been referred to as the victims or potential victims of the treatment in question. They also potentially call into question the honour and professionalism of Canada's military police in discharging their solemn duty to uphold the rule of law within the Canadian Forces, even in the midst of Canada's most substantial military engagement in half a century.

As an agency specifically created by Parliament in the 1990s to provide greater accountability following the tragic experience in Somalia, wherein the outstanding efforts of so many of the Canadian Forces were nationally and internationally stained by a few, and more particularly, by a lack of transparency regarding the events in question, the Military Police Complaints Commission very much regrets the delays occasioned to its inquiry process in these matters that leave the public record, as it is at this time, replete with more questions than answers. When I speak of the public record, I am not, to be sure, speaking of the commission's evidentiary record in respect of its hearings.

As of this moment, very little evidence is actually before the commission in the context of the formal proceedings of the public interest hearing. Nonetheless, over the past two and a half years of the preceding public interest investigation, and other inquiries preliminary to these hearings, certain information has come to the attention of the commission that moved the commission to convene its hearing process and that underscored the importance of the inquiry. Some of that information is indeed already in the public domain and much published.

• (1715)

The danger and difficulty of all of this information is that it is incomplete and/or untested in a procedurally fair and thorough manner, respecting the rights of those involved. Accordingly, it cannot properly be referred to as a proper and complete evidentiary base of fact. As such, the commission and I cannot draw any conclusions or implications from such information, and I have cautioned the public to adopt similar restraint.

The commission also appreciates the reality that by inquiring into the conduct of military police in respect of these allegations, facts may well come to light that reflect on the actions and decisions of those outside the military police. But as has been said repeatedly, that was never the purpose or focus of this inquiry, only a possible and necessary contextual consequence exacerbated by public attention.

However, for over a year the commission sought to address this complaint through an investigation without hearings—and for that matter, without challenge to its jurisdiction. But it was compelled to resort to the more formal and public route of a hearing, which was the only means available to compel production of information, or so the commission thought.

Agencies for the independent oversight of the police, like all parts of our administrative law structure, are intended to serve the people or community on behalf of the government that created them. That is, in the police oversight context in maintaining public confidence in the police, unquestionably what should be a priority for any democratic government today. The norms of independent oversight of the police across Canada, and indeed such international norms as do exist, dictate that such oversight agencies be created in statute form with the purpose of providing independence, both real and perceived, from the government of the day, of which the police are an agent.

This commission was so created in order to ensure its credibility and effectiveness in fostering public confidence in military policing, which effectively means the caring and enforcement of the laws and standards that Canadians expect within their military, including from the chain of command at home and abroad. Unfortunately, the fallibility of this arrangement has been exposed in the matter of the detainee complaints when quite out of step with the normal situation wherein the principal challenge to police oversight is what has been often referred to as “the blue wall”. The government becomes the obstacle in the oversight piece, as opposed to the police themselves.

In such circumstances, notwithstanding establishment empowerment by Parliament, experience to date in this matter has demonstrated that when the government does not cooperate, there is no equality of arms. By this martial analogy, which is also a legal one, I do not mean to suggest that the relationship between the government of the day and administrative tribunals is properly adversarial in nature; quite the contrary, it is not. Indeed, they form part of the executive branch.

However, administrative tribunals such as or including police oversight agencies are generally intended to serve the public interest by bringing to bear their particular expertise in a quasi-judicial fashion, including a certain independence from the government of the day. But while they are often imbued with court-like powers, they do not have the same degree of independent authority as the judiciary and are intended to provide more informal, expeditious, and expert forums for dealing with specialized matters.

However, the intended value of administrative tribunals is rendered for naught when they are confronted by the need to rely on the courts to give effect to their mandates, with all of the associated costs and delays associated therewith, a result likely not intended by Parliament when establishing such agencies.

It would seem that some of the key lessons of the Somalia experience, from which I have already said this commission arose, wherein accusations—whether well founded or not—were fueled by a lack of transparency, have not been learned. Oversight of military policing, like military policing itself, presents a number of unique challenges. The commission's goal throughout this process has been focused on one overarching objective: to ensure public confidence in the integrity and professionalism of military policing and the rule of law.

Again, I very much regret the additional delay occasioned by the present adjournment in rendering this service to the Canadian people, the complainants, and indeed to the military police personnel involved, who continue to live under a dark cloud of unproven suspicion. However, for the duration of my appointment, I can assure you that the commission will continue to be committed to resolving these matters as soon as possible, and in the public interest.

Thank you, Mr. Chair.

• (1720)

The Chair: Thank you, sir.

Now, committee, we have a quandary here. We have ten minutes left before the bells ring. Do you want to start into the questioning? You're not all going to get a question.

Hon. Bob Rae: I would make the suggestion that we not proceed with questions today. I think we would all feel dissatisfied with having one question and not being able to pursue a line of questioning. I know it's been frustrating for Mr. Tinsley, and I appreciate his having come here, but I think the best thing to do would be for us to come back the next time and proceed with questions at that point. I just think we're not going to have a satisfactory exchange for anybody, and I think it's better if we do that.

I haven't discussed this with my colleagues. I don't know what anybody else thinks, but that would be my view.

The Chair: Mr. Tinsley, would that opportunity present itself for you?

Mr. Peter A. Tinsley: If you're talking about next Wednesday, Mr. Chair, I will appear. I will advise you that I'm travelling this weekend to Brazil to speak at an oversight conference and will get off a plane at noon next Wednesday, but I will appear.

The Chair: I think we're almost set up for next Wednesday's meeting. We may have some confirmation of witnesses, so I'm not sure when we can work it in, but we'll have to work it out.

Hon. Bob Rae: We'll work it in. I think it's important that we—

The Chair: Do we have agreement on that?

Mr. Jack Harris (St. John's East, NDP): Agreed. I don't think we'll get to anyone besides one questioner anyway, so let's do it another time.

The Chair: Thank you, sir. I appreciate your being here, and we'll be in touch. We have your opening comments.

The meeting is adjourned.

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