Application Brief

Tab	Document
1	Amended Notice of Application
2	Public Inquiry Act [SBC 2007] Chapter 9
3	Practice and Procedure Directive for Evidentiary Hearings
4	*Bentley v. Braidwood* 2009 BCCA 604
5	Braidwood Commission on the Death of Robert Dziekanski, Part 6: The Response of the RCMP, Richmond Fire-Rescue, and BC Ambulance Service
6	Report of the Somalia Commission of Inquiry: Openness and Disclosure of Information to the Inquiry (Executive Summary)
7	Report of the Somalia Commission of Inquiry: Openness and Disclosure of Information to the Inquiry

MISSING WOMEN COMMISSION OF INQUIRY

AMENDED NOTICE OF APPLICATION

Names of Applicants: **Families of Dianne Rock, Georgina Papin, Marnie Frey, Cynthia Dawn Feliks, Cara Ellis, Mona Wilson, Helen May Hallmark, Dawn Crey, Angela Hazel Williams, Jacqueline Murdock, Brenda Wolfe, Andrea Joesbury, Elsie Sebastian, Heather Bottomley, Andrea Borhaven, Tiffany Drew, Angela Jardine, Stephanie Lane, Tanya Holyk, Olivia William, Debra Jones, Janet Henry, Marie Lorna Laliberte, Sereena Abotsway, and Dianne Melnick (the "Applicants")**

To:	The Commission
And to:	Commission counsel
And to:	Participants or their counsel
And to:	Counsel for Doug Fell
And to:	Counsel for Don Adam
And to:	Counsel for Gary Bass
And to:	Counsel for Earl Moulton
And to:	Counsel for Brian McGuiness
And to:	Counsel for Terry Blythe
And to:	Counsel for Brock Giles
And to:	Counsel for Gary Greer
And to:	Counsel for Fred Biddlecombe
And to:	The Organized Crime Agency of British Columbia
And to:	The Combined Forces Special Enforcement Unit of British Columbia
And to:	West Coast Reduction Ltd.

TAKE NOTICE that an application will be made by counsel for the Applicants to the presiding Commissioner at the hearing room at 801-701 West Georgia Street, Vancouver, B.C. at 9:30 a.m. on Monday, February 13, 2012 or as soon thereafter as counsel may be heard for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order that the Vancouver Police Department ("VPD") deliver to the Commission copies of all relevant records in its possession or control, including but not limited to:
    a) members' notebooks, handwritten notes, memoranda, correspondence, emails, logs, continuation reports, database search results, surveillance reports, meeting minutes and agendas, statement and interview transcripts,

audio/video recordings, photographs and all other physical and electronic records in the possession or control of the VPD;

b) notes, agendas, memoranda, minutes, correspondence and all other records relating to the meeting of April 9, 1999, attended by several high-ranking members of the VPD and RCMP, Attorney General Ujjal Dosangh, cabinet ministers and their aides;
c) notes, agendas, memoranda, minutes, correspondence and all other records relating to the "brainstorming session" of May 19, 1999;
d) all "monthly updates" drafted and sent by Det. Cst. Lori Shenher to all sworn VPD members during her tenure as investigator on the Missing Person Unit;
e) all relevant handwritten notes and "log book" entries of Cst. Dave Dickson created during the time period defined by the terms of reference;
f) records of offline CPIC searches of David Francis Pickton.

2. An order that the Royal Canadian Mounted Police ("RCMP") deliver to the Commission copies of all relevant records in its possession or control, including but not limited to:
    a) members' notebooks, handwritten notes, memoranda, correspondence, emails, logs, continuation reports, database search results, surveillance reports, meeting minutes and agendas, statement and interview transcripts, audio/video recordings, and all other physical and electronic records in the possession or control of the RCMP;
    b) correspondence between Sgt. Mike Connor and then Crown Counsel Mr. Peder Gulbransen relating to the investigation of Robert William Pickton as a suspect in the missing women investigations;
    c) correspondence between Sgt. Mike Connor and Sgt. Wade Blizard relating to the investigation of Robert William Pickton as a suspect in the missing women investigations;
    d) notes and records of Det. Cst. Lori Shenher created during her tenure as investigator on the Missing Person Unit and later provided to Project Evenhanded;
    e) notes and records of Cst. Sylvestri related to his attendance at the Pickton residential property on May 1, 1999;
    f) records in the possession of the RCMP relating to the well-publicized allegations of systemic gender discrimination and workplace harassment raised by Cpl. Catherine Galliford;
    g) videotapes of interviews of Robert William Pickton conducted on February 19, 20, and 23, 2002, by members of the RCMP; and
    h) videotapes of the "cell plant" of Robert William Pickton conducted on February 22, 2002 at the Surrey RCMP Detachment.

3. An order that the following current and former VPD and RCMP officers, in their personal capacity, deliver to the Commission copies of all relevant notebooks, handwritten notes, memoranda, correspondence, emails, logs, continuation reports, database search results, surveillance reports, meeting minutes and agendas,

statement and interview transcripts, audio/video recordings, and all other physical and electronic records in their possession or control:

a) Doug Fell (VPD);
b) Mark Wolthers (VPD);
c) Don Adam (RCMP);
d) Gary Bass (RCMP);
e) Earl Moulton (RCMP);
f) Brian McGuiness (VPD);
g) Terry Blythe (VPD);
h) Brock Giles (VPD);
i) Gary Greer (VPD); and
j) Fred Biddlecombe (VPD).

4. An order that the Criminal Justice Branch deliver to the Commission copies of all records in its possession or control related to its decision on January 27, 1998, to enter a stay of proceedings on charges against Robert William Pickton of attempted murder, assault with a weapon, forcible confinement and aggravated assault, including but not limited to:
   a) the Criminal Justice Branch's copy of the Report to Crown Counsel;
   b) correspondence, notes, emails, charge assessment memoranda, and other physical or electronic records related to the charge assessment decision; and
   c) records explaining the inability of the Criminal Justice Branch to produce any part of the file.

5. A order that the Province of British Columbia deliver to the Commission copies of all relevant records in its possession or control, including but not limited to:
   a) handwritten notes, memoranda, correspondence, emails, and all other physical and electronic records; and
   b) notes, agendas, memoranda, minutes, correspondence and all other records relating to the meeting of April 9, 1999, attended by several high-ranking members of the VPD and RCMP, Attorney General Ujjal Dosangh, cabinet ministers and their aides.

6. An order that Commission counsel be directed to obtain and disclose to all participants' counsel copies of the Port Coquitlam Provincial Court file #52808, *R. v. Pickton* (1997).

7. An order that Commission counsel be directed to disclose to all participants' counsel copies of all correspondence with Deputy Chief Jennifer Evans related to her engagement, instructions, and the preparation of the report she produced for the purpose of this Inquiry.

8. An order that Commission counsel be directed to disclose to all participants' counsel copies of all correspondence to and from Don Celle related to his engagement, instructions, and the preparation of the report he has allegedly produced for the purpose of this Inquiry.

9. An order that the Organized Crime Agency of British Columbia ("OCABC") and the Combined Forces Special Enforcement Unit of British Columbia ("CFSEU") deliver to the Commission copies of all relevant records in their possession or control, including but not limited to:
    a) records of all investigations of Robert William Pickton, David Francis Pickton and members of the Hells Angels Motorcycle Club associated with the Picktons; and
    b) records of all investigations of the establishment known as "Piggy's Palace" located at 2252 Burns Road, Port Coquitlam, BC.

10. An order that E-Comm Emergency Communications for Southwest British Columbia Incorporated ("E-Comm") deliver to the Commission copies of all relevant records in its possession or control, including but not limited to:
    a) transcripts of 9-1-1 calls relating to or originating from the residential property of Robert William Pickton, located at 953 Dominion Avenue, Port Coquitlam, BC, during the period January 23, 1997 to February 5, 2002; and
    b) missing person reports made by members of the public to E-Comm during the time period defined by the Terms of Reference.

11. An order that the following record keepers deliver copies of all relevant records in their possession or control to the Commission:
    a) the City of Vancouver;
    b) the Vancouver Police Board;
    c) the Vancouver Police Union;and
    d) West Coast Reduction Ltd.

Part 2: FACTUAL BASIS

1. The Applicants are the surviving relatives of 25 women who went missing in or around Vancouver and who were subsequently determined or believed to have been murdered by convicted serial killer Robert William Pickton.

2. The Applicants were granted "full participant status" in this Commission on or about December 7, 2010, "due to their clear legal interest in the subject matter of the Commission".

3. The Applicants have received periodic disclosure of some records from the Commission since June, 2011, primarily through the "Concordance" database, which currently contains approximately 9,150 files.

4. In accordance with s. 36 of the Commission's *Practice and Procedure Directive for Evidentiary Hearings* the Applicants' counsel have made numerous requests of Commission counsel to use the powers bestowed upon the Commission by the

Public Inquiry Act, S.B.C. 2007, c. 9 to obtain specific, relevant documents from participants and third parties.

5. While some of these requests have been satisfied, many remain outstanding or have been denied by Commission counsel on various grounds. The Applicants submit that numerous probative documents relevant to this Commission's mandate have not yet been obtained from participants and third parties by this Commission.

6. The Commission issued summons for the production of documents to the Vancouver Police Department and Criminal Justice Branch on or about August 18, 2011, almost one year after the establishment of the Commission and less than 2 months before the commencement of the hearings on October 11, 2011.

7. To the Applicants' knowledge, no other participants or third parties have been served summons for production of documents by the Commission. All other participants and third parties who have provided documents to the Commission have done so on a voluntary basis.

8. The Applicants seek orders from the Commissioner that certain participants and third parties, named herein, produce specific documents or classes of documents to this Commission.

9. The Applicants submit that full and proper disclosure in accordance with their requests is necessary in order for this Commission to achieve its mandate, and in order for the Applicants to properly prepare for the witnesses who are expected to testify.

Part 3: LEGAL BASIS

1. *Public Inquiry Act*, S.B.C. 2007, c. 9, ss. 7, 9, 10, 21, 22
2. Missing Women Commission of Inquiry: *Terms of Reference*
3. Missing Women Commission of Inquiry: *Practice and Procedure Directive for Evidentiary Hearings*, ss. 1, 30-32; 36-42; 46

Part 4: MATERIAL TO BE RELIED UPON

1. Affidavit of Robin Whitehead to be sworn
2. The transcripts and exhibits in the proceedings herein
3. Such further material as counsel may advise and the Commissioner may permit

Dated this 10th day of February, 2012

"*A. Cameron Ward*"
Counsel

This Act is Current to November 23, 2011

PUBLIC INQUIRY ACT

[SBC 2007] CHAPTER 9

Assented to March 29, 2007

Contents

Part 1 — Interpretation

Definitions

1 In this Act:

"chief commissioner" means

(a) if only one commissioner is appointed, that commissioner, or

(b) if more than one commissioner is appointed, the commissioner designated as chief commissioner under section 5 (2);

"commission" means a commission of inquiry established under section 2;

"commissioner" means a person appointed as a commissioner under section 5;

"court" means the Supreme Court;

"hearing commission" means a commission designated as a hearing commission under section 2;

"information" includes evidence and records;

"participant" means a person who is provided with notice or is accepted as a participant under section 11;

"study commission" means a commission designated as a study commission under section 2.

Part 2 — Establishing a Commission of Public Inquiry

Division 1 — Establishing a Commission

Establishing a commission

2 (1) The Lieutenant Governor in Council may, by order, establish a commission to inquire into and report on a matter that the Lieutenant Governor in Council considers to be of public interest.

(2) In an order made under subsection (1), the Lieutenant Governor in Council must do the following:

(a) define the purposes of the commission;

(b) set the terms of reference of the inquiry;

(c) designate the commission as a study commission, hearing commission or both;

(d) appoint one or more commissioners in accordance with Division 2 *[Appointment of Commissioners and Staff]*;

(e) subject to any directives of Treasury Board, set the remuneration of the commissioners and compensation for expenses, if any.

Agreements

3 (1) The Lieutenant Governor in Council may enter into an agreement to establish a joint commission with either or both of the following:

(a) the government of another jurisdiction;

(b) an aboriginal organization exercising government functions in British Columbia.

(2) If a joint commission is established with a government of another jurisdiction, the Lieutenant Governor in Council may, in the order establishing the commission, exempt the commission from all or part of a provision of this Act or the regulations made under it if necessary to avoid a conflict of law.

Appropriation

4 The costs and expenses incurred in connection with an inquiry under this Act must be paid out of the consolidated revenue fund, in the absence of an appropriation of the Legislature available for that purpose.

Division 2 — Appointment of Commissioners and Staff

Appointment of commissioners

5 (1) On establishing a commission, the Lieutenant Governor in Council

(a) must appoint a commissioner to conduct the inquiry, and

(b) may appoint other commissioners.

(2) If more than one commissioner is appointed, the Lieutenant Governor in Council must designate the commissioner who is to act as chief commissioner.

(3) Unless the Lieutenant Governor in Council states otherwise in the appointment order, a commissioner may rely on all decisions made and information received by any former or current commissioner of the inquiry to which the commissioner is appointed.

Responsibilities of chief commissioner

6 The chief commissioner is responsible for

(a) the effective management and operation of the commission,

(b) the organization and allocation of work among commissioners, including assigning commissioners to panels consisting of one or more commissioners, and

(c) ensuring that the commission is financially responsible and accountable.

Commission staff

7 (1) The chief commissioner may appoint employees, in accordance with the *Public Service Act*, necessary to exercise the powers and perform the duties of a commission.

(2) The chief commissioner may engage or retain consultants, investigators, lawyers, expert witnesses or other persons the chief commissioner considers necessary to exercise the powers and perform the duties of a commission.

(3) The *Public Service Act* does not apply to a person engaged or retained under subsection (2) of this section.

Part 3 — Duties and Powers of Commissions

Division 1 — General Duties and Powers

Commissioner duties

8 Commissioners must faithfully, honestly and impartially perform their duties and, except in the proper performance of those duties, must not disclose to any person any information obtained as a commissioner.

Power to make directives

9 (1) Subject to this Act and the commission's terms of reference, a commission has the power to control its own processes and may make directives respecting practice and procedure to facilitate the just and timely fulfillment of its duties.

(2) Without limiting subsection (1), a commission may make directives as follows:

(a) respecting timetables for the conduct of the inquiry, including dividing the inquiry into phases;

(b) respecting adjournments;

(c) respecting the extension or abridgement of time limits provided for in the directives;

(d) respecting applications to be a participant;

(e) respecting the transcription or recording of meetings and hearings and the process and fees for reproduction of a transcription or recording if a person requests one;

(f) respecting access to, and restriction of access to, commission records by any person;

(g) establishing the forms it considers advisable.

(3) For any matter under this Act for which a commission may make directives, the commission may, for different persons or classes of persons,

(a) make different directives, and

(b) waive or modify one or more of its directives as necessary.

(4) A commission must make accessible to the public any directives made under this Act.

(5) A commission may make an order in respect of any matter for which a directive has been made, or may be made, under this Act.

Power to inspect

10 Subject to this Act and the commission's terms of reference, a commission may

(a) conduct an inspection of a public place, including copying any records found in that place, and

(b) with the permission of the owner or occupier, conduct an inspection of a private place, including copying any records found in that place.

Who may participate

11 (1) A person may act as a participant if the person

(a) is provided with notice under subsection (2), or

(b) is accepted as a participant under subsection (4).

(2) If a hearing commission intends to make a finding of misconduct against a person, or intends to make a report that alleges misconduct by a person, the hearing commission must first provide the person with

(a) reasonable notice of the allegations against that person, and

(b) notice of how that person may respond to the allegations.

(3) A person other than one described in subsection (2) may apply to be a participant by applying to a commission in the manner and form it requires.

(4) On receiving an application under subsection (3), a commission may accept the applicant as a participant after considering all of the following:

(a) whether, and to what extent, the person's interests may be affected by the findings of the commission;

(b) whether the person's participation would further the conduct of the inquiry;

(c) whether the person's participation would contribute to the fairness of the inquiry.

Powers respecting participants

12 (1) Subject to section 13 *[rights of participants]*, a commission may make orders respecting

(a) the manner and extent of a participant's participation,

(b) the rights and responsibilities of a participant, if any, and

(c) any limits or conditions on a participant's participation.

(2) In making an order under subsection (1), a commission may

(a) make different orders for different participants or classes of participants, and

(b) waive or modify one or more of its orders as necessary.

(3) In making an order under subsection (1), a hearing commission must ensure that a participant who responds to a notice under section 11 (2) has a reasonable opportunity to be heard by the commission before the commission makes a finding of misconduct against the participant, or makes a report that alleges misconduct by that participant.

Rights of participants

13 (1) A participant may

(a) participate on his or her own behalf, or

(b) be represented by counsel or, with the approval of the commission, by an agent.

(2) A participant

(a) has the same immunities as a witness who appears before the court, and

(b) is considered to have objected to answering any question that may

(i) incriminate the participant in a criminal proceeding, or

(ii) establish the participant's liability in a civil proceeding.

(3) Any answer provided by a participant before a commission must not be used or admitted in evidence against the participant in any trial or other proceedings, other than a prosecution for perjury in respect of the answer provided.

Power to accept information

14 (1) A commission may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in any court.

(2) Without limiting section 12 *[powers respecting participants]*, a commission may exclude anything unduly repetitious.

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to which or purposes for which any oral testimony, records

or things may be admitted or used in evidence.

Power to prohibit or limit attendance or access

15 (1) A commission may, by order, prohibit or restrict a person or a class of persons, or the public, from attending all or part of a meeting or hearing, or from accessing all or part of any information provided to or held by the commission,

(a) if the government asserts privilege or immunity over the information under section 29 *[disclosure by Crown]*,

(b) for any reason for which information could or must be withheld by a public body under sections 15 to 19 and 21 to 22.1 *[privacy rights, business interests and public interest]* of the *Freedom of Information and Protection of Privacy Act*, or

(c) if the commission has reason to believe that the order is necessary for the effective and efficient fulfillment of the commission's terms of reference.

(2) In making an order under subsection (1), a hearing commission must not unduly prejudice the rights and interests of a participant against whom a finding of misconduct, or a report alleging misconduct, may be made.

Power to maintain order

16 (1) At a meeting or hearing, a commission may make orders or give directions that it considers necessary for the maintenance of order at the meeting or hearing, and, if any person disobeys or fails to comply with any order or direction, the commission may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

Participant's failure to comply with orders

17 Without limiting any other power of enforcement, if a participant fails to comply with an order or a directive of a commission, including any time limits specified for taking any actions, the commission, after giving notice to the participant, may do any of the following:

(a) schedule a meeting or hearing;

(b) continue with the inquiry and make a finding or recommendation based on the information before it, with or without providing an opportunity for submissions from that participant;

(c) make any order necessary for the purpose of enforcing its orders or directives.

Power to record meetings or hearings

18 (1) A commission may transcribe or record its meetings or hearings.

(2) If a commission transcribes or records a meeting or hearing, the transcription or recording must be considered to be correct and to constitute part of the record of the meeting or hearing.

(3) If, by a mechanical or human failure or other accident, the transcription or recording of a meeting or hearing is destroyed, interrupted or incomplete, the validity of the meeting or hearing is not affected.

Privative clause

19 (1) A commission has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under this Act and to make any order it is permitted to make.

(2) An order of a commission under this Act or its terms of reference on a matter in respect of which the commission has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

Division 2 — Study Commissions

Powers of study commissions

20 (1) Subject to this Act and the commission's terms of reference, a study commission may engage in any activity necessary to effectively and efficiently fulfill the duties of the commission, including doing any of the following:

(a) conducting research, including interviews and surveys;

(b) consulting with participants, privately or in a manner that is open to the public, either in person or through broadcast proceedings;

(c) consulting with the public generally and, for that purpose, issuing directives respecting any of the matters set out in subsection (2).

(2) Without limiting the powers of a commission set out in Division 1, a study commission may make directives respecting any of the following:

(a) the notification of participants and the public regarding a consultation under this section;

(b) the holding of public meetings, including the places and times at which public meetings will be held and the frequency of public meetings;

(c) the conduct of, and the maintenance of order at, public meetings;

(d) the receipt of oral and written submissions.

(3) A study commission must not exercise the powers of a hearing commission as set out in sections 21 (1), 22 and 23, unless the study commission is also designated as a hearing commission.

Division 3 — Hearing Commissions

General powers of hearing commissions

21 (1) Subject to this Act and the commission's terms of reference, a hearing commission may engage in any activity necessary to effectively and efficiently fulfill the duties of the commission, including doing any of the following:

(a) issuing directives respecting any of the matters set out in subsection (2);

(b) holding written, oral and electronic hearings;

(c) receiving submissions and evidence under oath or affirmation;

(d) making a finding of misconduct against a person, or making a report that alleges misconduct by a person.

(2) Without limiting the powers of a commission set out in Division 1, a hearing commission may make directives respecting any of the following:

(a) the holding of pre-hearing conferences, including confidential pre-hearing conferences, and the requiring of one or more participants to attend a pre-hearing conference;

(b) procedures for preliminary or interim matters;

(c) the receipt and disclosure of information, including but not limited to pre-hearing receipt and disclosure and pre-hearing examination of a participant or witness on oath, on affirmation or by affidavit;

(d) the exchange of records by participants;

(e) the filing of admissions and written submissions by participants;

(f) the service and filing of notices, records and orders, including substituted service and the requiring of participants to provide an address for service;

(g) without limiting any other power of the commission, the effect of a participant's non-compliance with the commission's directives.

(3) A hearing commission must not exercise the powers of a study commission as set out in section 20 (1), unless the hearing commission is also designated as a study commission.

Power to compel witnesses and order disclosure

22 (1) At any time before making its final report, a hearing commission may serve a summons requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, a meeting or hearing to give evidence on oath or affirmation, or in any other manner;

(b) produce for the commission or a participant information or a thing in the person's possession or control.

(2) A person cannot be compelled to disclose to a hearing commission anything that, in any court, would be privileged under the law of evidence.

(3) A hearing commission may,

(a) if a person was summoned to appear before the commission at the request of a participant, order the participant to pay appearance fees and expenses reasonably and necessarily incurred by the person summoned, other than fees and expenses incurred by the person in respect of legal representation or advice, and

(b) in any case, pay appearance fees and expenses reasonably and necessarily incurred by a person summoned to appear before the commission, other than fees and expenses incurred by the person in respect of legal representation or advice.

(4) A hearing commission may apportion fees and expenses under subsection (3) between 2 or more participants, and between one or more participants and the commission.

(5) Subject to this Act and the hearing commission's terms of reference, a hearing commission may make directives respecting appearance fees and expenses reasonably and necessarily incurred by a person summoned to appear before the commission.

Power to apply to court

23 A hearing commission may apply to the court for any of the following:

(a) an order directing a person to comply with a summons served by the commission under section 22;

(b) an order directing any directors and officers of a person to cause the person to comply with a summons served by the commission under section 22;

(c) a warrant authorizing the commission to conduct an inspection of a private place, including copying any records found in that place;

(d) an order finding a person to be in contempt, as if in breach of an order or a judgment of the court, for failing or refusing to comply with a summons to

(i) attend a meeting or hearing before the commission,

(ii) take an oath or make an affirmation,

(iii) answer questions, or

(iv) produce information or things in the person's possession or control;

(e) an order finding a person to be in contempt, as if in breach of an order or a judgment of the court, for failing or refusing to comply with an order or a directive of the commission;

(f) an order finding a person to be in contempt, as if in breach of an order or a judgment of the court, for a reason other than as set out in paragraph (d) or (e) of this section.

Service of notice or records

24 (1) A hearing commission may provide a notice or record to a person by personal service of a copy of the notice or record or by sending the copy to the person by any of the following means:

(a) ordinary mail;

(b) electronic transmission, including telephone transmission of a facsimile;

(c) if specified in the hearing commission's directives, another method that allows proof of receipt.

(2) If a hearing commission is of the opinion that, because there are many participants or for any other reason, it is impracticable to give notice of a hearing to a participant directly or by a method referred to in subsection (1), the commission may give notice of a hearing by public advertisement or otherwise as the commission directs.

(3) If a notice or record is not served on a person in accordance with this Act or the regulations made under it, an inquiry is not invalidated if

(a) the contents of the notice or record were known by the person within the time allowed for service,

(b) the person waives the requirements of service, or

(c) the failure to serve does not result in prejudice to the person, or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.

Hearings open to public

25 Subject to section 15 *[power to prohibit or limit attendance or access]*, a hearing commission must

(a) ensure that hearings are open to the public, either in person or through broadcast proceedings, and

(b) give the public access to information submitted in a hearing.

Application of *Freedom of Information and Protection of Privacy Act*

26 (1) The *Freedom of Information and Protection of Privacy Act*, other than section 44 (1) (b), (2), (2.1) and (3) *[powers of commissioner in conducting investigations, audits or inquiries]*, does not apply to any of the following in respect of a hearing commission:

(a) a personal note, communication or draft report of a commissioner or of a person acting on behalf of or under the direction of a commissioner;

(b) any information received by the commission to which section 15 *[power to prohibit or limit attendance or access]* or 29 *[disclosure by Crown]* of this Act applies;

(c) a transcription or recording of a hearing;

(d) information to which public access is provided by the commission.

(2) Subsection (1) does not apply to personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.

Division 4 — Reporting

Interim report

27 (1) If required by the commission's terms of reference, a commission must make an interim report to the minister at the times and on the matters stated in the terms of reference.

(2) A commission may make an interim report to the minister on any matter relevant to the commission's terms of reference at any time before the commission makes its final report.

(3) Section 28 (2) to (8) applies to an interim report as if it were a final report.

Final report

28 (1) A commission must make its final report to the minister in writing, setting out

(a) any findings of fact made by the commission that are relevant to the commission's terms of reference, and the reasons for those findings, and

(b) if required by the commission's terms of reference, any recommendations of the commission.

(2) The minister must submit the report to the Executive Council at its next meeting.

(3) On receiving the report, the Executive Council may direct the minister to withhold portions of the report for any reason for which information could or must be withheld by a public body under sections 15 to 19 and 21 to 22.1 *[privacy rights, business interests and public interest]* of the *Freedom of Information and Protection of Privacy Act*.

(4) Following review of the report, the Executive Council must direct the minister to lay the report, except any portion directed to be withheld under subsection (3), before the Legislative Assembly.

(5) On receiving a direction under subsection (4), the minister must

(a) remove any portions to be withheld,

(b) in the report, identify any withheld portions and, to the extent possible, summarize them, and

(c) either

(i) if the Legislative Assembly is in session, or will be within 10 days of receiving the direction, promptly lay the report before the Legislative Assembly, or

(ii) in any other case, promptly file the report with the Clerk of the Legislative Assembly.

(6) If a report includes a finding of misconduct against a participant, or alleges misconduct by a participant, the minister must make available to the participant a copy of the report.

(7) Despite the *Freedom of Information and Protection of Privacy Act*, if, after a report is laid before the Legislative Assembly, a person makes a request under section 5 of that Act for information in relation to the report, the head of a public body must not refuse to disclose information on any basis on which disclosure must or may be refused under section 12 of that Act.

(8) A person must not release a report of a commission except in accordance with this section.

Part 4 — General

Disclosure by Crown

29 (1) If the government discloses to a commission, either voluntarily or in response to a request or summons, any information over which the government

asserts privilege or immunity, the privilege or immunity is not waived or defeated for any other purpose by the disclosure.

(2) If a commission determines that it is necessary to disclose information over which the government asserts privilege or immunity, the privilege or immunity is not waived or defeated for any other purpose by the disclosure.

Responsibility for records

30 Following the completion or termination of an inquiry, the minister has primary responsibility for the final report and all records of the commission.

Compulsion protection

31 A commissioner, or a person acting on behalf of or under the direction of a commissioner, must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about information obtained in the discharge of duties under this Act.

Immunity protection

32 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against a commission, a commissioner, a person acting on behalf of or under the direction of a commissioner, or the government, because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act, or

(b) in the exercise or intended exercise of any power under this Act.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Power to make regulations

33 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations respecting the following:

(a) service of notice or records by a commission or a participant;

(b) appearance fees and expenses reasonably and necessarily incurred by participants.

(3) The Lieutenant Governor in Council may make different regulations under subsections (1) and (2) for

(a) study commissions and hearing commissions, and

(b) specified commissions.

Part 5 — Repeal and Transition

Repeal

34 The *Inquiry Act*, R.S.B.C. 1996, c. 224, is repealed.

Repealed

35 [Repealed 2007-9-35 (2).]

Part 6 — General Consequential Amendments

General Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 36 to 41.]

Section(s)	Affected Act
36	*Agricultural Land Commission Act*
37	*Local Government Act*
38-39	*Police Act*
40	*School Act*
41	*Vancouver Charter*

Part 7 — Consequential Amendments of Statutes Not Requiring Commissioner Powers, Duties or Protections

Consequential Amendments of Statutes Not Requiring Commissioner Powers, Duties or Protections

[Note: See Table of Legislative Changes for the status of sections 42 to 44.]

Section(s)	Affected Act
42	*Gaming Control Act*
43	*Legislative Procedure Review Act*
44	*Marriage Act*

Part 8 — Consequential Amendments Concerning Administrative Hearings

Consequential Amendments Concerning Administrative Hearings

[Note: See Table of Legislative Changes for the status of sections 45 to 66.]

Section(s)	Affected Act
45-46	*Agrologists Act*
47-48	*College of Applied Biology Act*
49	*Environmental Management Act*
50	*Farm Practices Protection (Right to Farm) Act*
51-52	*Foresters Act*
53	*Health Emergency Act*
54-55	*Legal Profession Act*
56	*Medicare Protection Act*
57	*Motor Dealer Act*
58	*Notaries Act*
59	*Public Sector Pension Plans Act*
60	*Real Estate Development Marketing Act*
61-62	*Real Estate Services Act*
63	*Secure Care Act*
64-66	*Teaching Profession Act*

Part 9 — Consequential Amendments Concerning Statutory and Other Decision Makers

Consequential Amendments Concerning Statutory and Other Decision Makers

[Note: See Table of Legislative Changes for the status of sections 67 to 109.]

Section(s)	Affected Act
67	*Corporation Capital Tax Act*
68-69	*Correction Act*
70	*Debtor Assistance Act*
71-72	*Electoral Boundaries Commission Act*
73	*Employment Standards Act*
74-75	*Financial Administration Act*
76-78	*Freedom of Information and Protection of Privacy Act*
79-80	*Health Act*
81-82	*Indian Advisory Act*
83-86	*Labour Relations Code*
87-88	*Logging Tax Act*
89-90	*Mineral Tenure Act*
91	*Mines Act*
92-94	*Ministry of Energy and Mines Act*
95-98	*Personal Information Protection Act*
99-101	*Private Investigators and Security Agencies Act*
102	*Public Service Act*

103-104	*Railway and Ferries Bargaining Assistance Act*
105	*Representative for Children and Youth Act*
106	*Vancouver Charter*
107	*Water Act*
108-109	*Youth Justice Act*

Part 10 — Consequential Amendments to Provide Direct Contempt Powers

Consequential Amendments to Provide Direct Contempt Powers

[Note: See Table of Legislative Changes for the status of sections 110 to 115.]

Section(s)	Affected Act
110-111	*Members' Conflict of Interest Act*
112-113	*Police Act*
114-115	*Provincial Court Act*

Part 11 — Consequential Amendments of Statutes That Provide for Public Inquiries

Consequential Amendments of Statutes That Provide for Public Inquiries

[Note: See Table of Legislative Changes for the status of sections 116 to 126.]

Section(s)	Affected Act
116	*Crown Counsel Agreement Continuation Act*
117	*Education Services Collective Agreement Act*
118	*Environmental Assessment Act*
119	*Environmental Management Act*
120	*Health Professions Act*
121	*Labour Relations Code*
122	*Local Government Act*
123	*Ministry of Labour Act*
124	*Public Education Support Staff Collective Bargaining Assistance Act*
125	*Railway and Ferries Bargaining Assistance Act*
126	*Real Estate Services Act*

Part 12 — Related Consequential Amendments

Related Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 127 to 133.]

Section(s)	Affected Act
127	*Administrative Tribunals Act*
128	*Adoption Act*
129	*Child, Family and Community Service Act*
130	*Evidence Act*
131	*Family Relations Act*
132	*Securities Act*
133	*Statistics Act*

Commencement

134 This Act comes into force by regulation of the Lieutenant Governor in Council.

Practice and Procedure Directive for Evidentiary Hearings

[Authorized by *Public Inquiry Act*, s. 9(1)]

October 26, 2010

Definitions

1. In this directive,
   a. **"Act"** means the *Public Inquiry Act*, S.B.C. 2007, c. 9,
   b. **"Commission"** means the Missing Women Commission of Inquiry, a hearing commission established pursuant to Order in Council 605/2010 under section 2 of the *Public Inquiry Act*,
   c. **"participant"** means persons with a grant of standing,
   d. **"record"** includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise, and
   e. **"rule"** means a section in this directive.

Purpose of the evidentiary hearings

2. The Commissioner will inquire into those matters set out in section 4 of the Terms of Reference. On the basis of oral and documentary evidence tendered during the evidentiary hearings, the Commissioner will make findings of fact and may make a finding of misconduct against a person or make a report that alleges misconduct by a person. The Commissioner's findings of fact or findings of misconduct cannot be taken as findings of criminal or civil liability.

General

3. Notice or service by email shall be considered adequate notice or service. All participants must identify to commission counsel the email address they wish to use for this purpose.

Public and media access to evidentiary hearings

4. Subject to Rule 5, the Commission must
    a. ensure that evidentiary hearings are open to the public, either in person or through broadcast proceedings (see *Public Inquiry Act* s. 25(a)) , and
    b. give the public access to information submitted in an evidentiary hearing (see *Public Inquiry Act*, s. 25 (b)).

5. The Commissioner may, by order, prohibit or restrict a person or class of persons, or the public, from attending all or part of an evidentiary hearing, or from accessing all or part of any information provided to or held by the Commission,
    a. if the government asserts privilege or immunity over the information under section 29 of the Act (see *Public Inquiry Act*, s. 15(1)(a)),
    b. for any reason for which information could or must be withheld by a public body under sections 15 to 19 and 21 to 22.1 of the *Freedom of Information and Protection of Privacy Act* (see *Public Inquiry Act*, s.15(1)(b)),
    c. if the Commissioner has reason to believe that the order is necessary for the effective and efficient fulfillment of the Commission's terms of reference (see *Public Inquiry Act*, s. 15(1)(c)), or
    d. if the Commissioner is satisfied that such an order would make available to the Commission evidence that would otherwise not be available due to a privilege under the law of evidence.

6. In making an order under Rule 5, the Commissioner must not unduly prejudice the rights and interests of a participant against whom a finding of misconduct, or a report alleging misconduct, may be made (see *Public Inquiry Act*, s. 15(2)).

Video and audio recording of the evidentiary hearing proceedings

7. The Commissioner may impose restrictions on the video and audio recording of the evidentiary hearing proceedings and may, on application, order that there be no video or audio recording of some or all of a witness's testimony.

Reporting the proceedings

8. The public and media may report the evidentiary hearing proceedings that are open to the public, except for testimony and/or submissions in respect of which the Commissioner has ordered that they shall not be published.

Application for standing to participate in the evidentiary hearings

9. A person may apply to be a participant by applying to the Commission in the manner and form it requires. The application must set out the basis upon which participation is sought, and the extent and nature of the participation sought (see *Public Inquiry Act*, s.11(3)).

10. To apply for standing, a person must submit a written application to the Commissioner by 4 p.m. on November 30, 2010 or by such other dates as the Commissioner may determine.

11. The Commissioner may accept an applicant as a participant after considering all of the following:

    a. whether, and to what extent, the person's interests may be affected by the findings of the commission (see *Public Inquiry Act*, s. 11(4)(a)). ,

    b. whether the person's participation would further the conduct of the inquiry (see *Public Inquiry Act*, s. 11(4)(b)).,

    c. whether the person's participation would contribute to the fairness of the inquiry (see *Public Inquiry Act*, s. 11(4)(c)).

12. Where persons are known to have shared interests in the subject matter of the Commission, they should make an application for standing, identifying those persons whose interests are reflected in their application.

13. The Commissioner may direct that a number of applicants share in a single grant of standing.

Application for funding recommendations

14. Where the Commissioner is satisfied on the evidence that a participant would not otherwise be able to participate in the Commission, the Commissioner may recommend to the Attorney General that a participant receive financial assistance to pay for legal counsel to facilitate participation appropriate to the extent of a participant's interest.

15. Applications for funding recommendations may be made concurrently with applications for standing. To apply for a funding recommendation, a person must submit a written application to the Commissioner by 4 p.m. on November 30, 2010 or by such other dates as the Commissioner may determine.

16. An application for a funding recommendation must be supported by an affidavit setting out the following:

    a. facts that demonstrate the person seeking funding does not have sufficient financial resources to participate in the work of the Commission without financial assistance for legal counsel, and

    b. facts in relation to any other sources of funds received, expected or sought by the person in relation to legal services rendered, or to be rendered, with respect to the Commission.

    Affidavits must be in Form 1 to these rules, or in another form as the Commissioner may determine. Guidelines for application format and delivery will be posted on the Commission website: www.missingwomeninquiry.ca

17. The Commissioner will determine the outcome of applications for funding recommendations on the basis of written applications, unless the Commissioner determines that an oral hearing is necessary.

18. Where the Commissioner's funding recommendation is approved, funding shall be in accordance with the terms and conditions approved by the Attorney General respecting rates of remuneration and reimbursement and the assessment of accounts.

Powers respecting participants

19. Subject to Rule 22, the Commissioner may make orders respecting

    a. the manner and extent of a participant's participation (see *Public Inquiry Act*, s. 12(1)(a)),

b. the rights and responsibilities of a participant, if any (see *Public Inquiry Act*, s. 12(1)(b)), and

c. any limits or conditions on a participant's participation (see *Public Inquiry Act*, s. 12(1)(c)).

20. In making an order under Rule 17, the Commissioner may

a. make different orders for different participants or classes of participants (see *Public Inquiry Act*, s. 12(2)(a)), and

b. waive or modify one or more of his orders as necessary (see *Public Inquiry Act*, s. 12(2)(b)).

21. In making an order under Rule 17, the Commissioner must ensure that a participant who responds to a notice under section 11(2) of the Act has a reasonable opportunity to be heard by the Commissioner before the Commissioner makes a finding of misconduct against the participant, or makes a report that alleges misconduct by that participant (see *Public Inquiry Act*, s. 12(3)).

Rights of participants

22. A participant may

a. participate on her or his own behalf (see *Public Inquiry Act*, s. 13(1)(a)), or

b. be represented by counsel or, with the approval of the Commissioner, by an agent (see *Public Inquiry Act*, s. 13(1)(b)).

23. A participant

a. has the same immunities as a witness who appears before the court (see *Public Inquiry Act*, s. 13(2)(a)), and

b. is considered to have objected to answering any question that may

i. incriminate the participant in a criminal proceeding (see *Public Inquiry Act*, s. 13(2)(b)(i)), or

ii. establish the participant's liability in a civil proceeding (see *Public Inquiry Act*, s. 13(2)(b)(ii)).

Production of records

24. All records provided to the Commission shall be indexed in a form acceptable to the Commission.

Confidentiality of records

25. Commission Counsel shall not provide a record to counsel, a participant or a witness until that person has delivered to Commission counsel a signed undertaking, in a form approved by the Commissioner, that all records disclosed by the Commission will be used solely for the purposes of the Commission.

26. Counsel for a participant or a witness shall not provide a record to the participant or witness until the participant or witness has delivered to counsel a signed undertaking, in a form approved by the Commissioner, and counsel has delivered that signed undertaking to Commission counsel.

27. The Commissioner may:

    a. impose restrictions on the use and dissemination of records,

    b. require that a record that has not been entered as an exhibit in the evidentiary proceedings, and all copies of the record, be returned to the Commission, and

    c. on application, release counsel, a participant or a witness, in whole or in part, from the undertaking in relation to any record, or may authorize the disclosure of a record to another person.

Records

28. A participant must, at the earliest opportunity and in any event at least ten days before using a record in an evidentiary hearing or tendering it as an exhibit, deliver a copy of the record to Commission counsel.

Public access to records

29. Unless the Commissioner orders otherwise:

    a. a record within the Commission's control that has not been entered as an exhibit is not available for public inspection or copying, and

b. a record that has been entered as an exhibit may be inspected by the public and the media. The Commission will determine the circumstances in which a charge will be imposed for copying records.

Applications to the Commissioner

30. A participant may apply to the Commissioner for an order by:
    a. preparing the application in writing,
    b. attaching to the application any supporting materials, and
    c. delivering the application and supporting materials to the Commission by email, to **applications@missingwomeninquiry.ca** in Microsoft Word or *.pdf format.

31. An applicant must deliver the application for an order to the Commission at least four days before the application is to be heard.

32. A participant who wishes to receive notice of an application shall provide the Commission with an email address for delivery.

33. The Commission shall promptly deliver the application and supporting materials, by email, to each other participant who has provided the Commission with an email address for delivery.

34. Any other participant may file written materials in relation to an application made under Rule 30.

35. The Commissioner may make an order based on the written material filed or, at his discretion, after hearing oral argument.

Applications for further disclosure of a record

36. A participant may seek disclosure of a record from another person ("record holder") by asking Commission counsel, in writing, to use the powers of the

Commission to obtain the record.

37. The request must state:

    a. the reasons the participant believes the record holder possesses the record, and

    b. the reasons the participant believes the record is relevant to a matter before the Commission.

38. If Commission counsel accepts the request, Commission counsel will attempt to obtain the record.

39. If Commission counsel rejects the request, Commission counsel shall notify the participant, and the participant may apply to the Commissioner, in accordance with Rules 20 to 23, for an order respecting the request.

40. When the participant applies to the Commissioner under Rule 39, the Commission shall deliver the application and any supporting materials to the record holder, and to each other participant who has provided the Commission with an email address for delivery.

41. The record holder and any other participant may file written materials in relation to an application made under Rule 39.

42. Unless the Commissioner orders otherwise, the procedures set out in Rules 36 to 41, in relation to a particular witness, should whenever possible be completed before that witness commences his or her testimony.

Witnesses

43. Each participant shall provide to Commission counsel at the earliest opportunity the name and address of any person who the participant believes should be called as a witness during the evidentiary hearings, with a statement of the subject matter of their proposed testimony, their experience and background, and the estimated length of their testimony.

44. The following rules apply to witnesses:

    a. Commission counsel shall decide who shall be called as a witness at the evidentiary hearings,

    b. Subject to Rule 45, Commission counsel shall call and examine witnesses on behalf of the Commission, and may adduce evidence by way of both leading and non-leading questions,

    c. each witness called shall, before testifying, be sworn or affirm,

    d. each witness who testifies may during his or her testimony be represented by counsel or, with the approval of the Commissioner, by an agent,

    e. the Commissioner may, on application by a participant, permit a participant to cross-examine a witness to the extent of that participant's interest. If the participants are unable to agree on an order of cross-examination, the Commissioner will determine the order,

    f. subject to Rule 45, counsel for a participant is entitled to examine that participant last, regardless of whether or not counsel is also representing another participant,

    g. after Commission counsel has called all witnesses on behalf of the Commission, a participant may apply to the Commissioner for permission to call a witness and, if permission is granted, subrules (c) to (e) apply to each witness called by a participant.

    h. Commission counsel has the right to re-examine any witness who has testified.

45. Counsel for a witness may apply to the Commissioner for permission to lead that witness's examination in chief. If permission is granted, counsel will examine the witness in accordance with the normal rules governing the examination of one's own witness in court proceedings, unless the Commissioner directs otherwise.

Power to accept information

46. The Commissioner may receive and accept:

    a. information that he considers relevant, necessary and appropriate, whether or not the information would be admissible in any court (see *Public Inquiry Act*, s. 14(1)), and

b. a witness's evidence by way of affidavit or written statement, or by audio or video conference.

47. Without limiting Rule 17, the Commissioner may exclude anything unduly repetitious (see *Public Inquiry Act*, s. 14(2)).

48. Nothing in Rule 46 overrides the provisions of any Act expressly limiting the extent to which or purposes for which any oral testimony, records or things may be admitted or used in evidence (see *Public Inquiry Act*, s. 14(3)).

49. A person cannot be compelled to disclose in an evidentiary hearing anything that, in any court, would be privileged under the law of evidence (see *Public Inquiry Act*, s. 22(2)).

Final submissions

50. Commission counsel, and each participant authorized to do so, may make final oral and written submissions to the Commissioner on any issue within the Commission of Inquiry's Terms of Reference.

51. The Commissioner may set time limits on oral submissions, and page limits on written submissions.

The Commission's process

52. Subject to the Act and the Commission's Terms of Reference, the Commission has the power to control its own process (see *Public Inquiry Act*, s. 9(1)).

Participant's failure to comply with this directive

53. Without limiting any other powers of enforcement, if a participant fails to comply with this directive, including any time limits specified for taking any actions, the Commissioner, after giving notice to the participant, may do any of the following:

a. schedule a meeting or hearing (see *Public Inquiry Act*, s. 17(a)),

b. continue with the inquiry and make a finding or recommendation based on the evidence before him, with or without providing an

opportunity for submissions from that participant (see *Public Inquiry Act*, s. 17(b)),

c. make any order necessary for the purpose of enforcing this directive (see *Public Inquiry Act*, s. 17(c)).

Commissioner's discretion

54. The Commissioner retains a residual discretion to amend, add to, vary or depart from any of the Rules in this Directive for the effective conduct of the evidentiary hearings.

FORM 1
(Rule 16)
MISSING WOMEN COMMISSION OF INQUIRY

AFFIDAVIT IN SUPPORT OF APPLICATION FOR FUNDING RECOMMENDATION

I, ...[*name*] of .....[*address*] in the City of .....[*city of residence*], in the Province of....., MAKE OATH AND SAY AS FOLLOWS:

1. [*Set out the following in sequentially numbered paragraphs: facts that demonstrate the person seeking funding does not have sufficient financial resources to participate in the work of the Commission without financial assistance for legal counsel, and facts in relation to any other sources of funds received, expected or sought by the person in relation to legal services rendered, or to be rendered, with respect to the Inquiry.*]

SWORN / SOLEMLY AFFIRMED BEFORE ME at

.....in the Province

of ....., the ..... day of

....., 2010

.....

[*print name of deponent*]

.....

A Commissioner for taking Affidavits in

[*name of jurisdiction*]

FORM 1
(Rule 16)
MISSING WOMEN COMMISSION OF INQUIRY

AFFIDAVIT IN SUPPORT OF APPLICATION FOR FUNDING RECOMMENDATION

I, ...[*name*] of .....[*address*] in the City of .....[*city of residence*], in the Province of....., MAKE OATH AND SAY AS FOLLOWS:

1. [*Set out the following in sequentially numbered paragraphs: facts that demonstrate the person seeking funding does not have sufficient financial resources to participate in the work of the Commission without financial assistance for legal counsel, and facts in relation to any other sources of funds received, expected or sought by the person in relation to legal services rendered, or to be rendered, with respect to the Inquiry.*]

SWORN / SOLEMLY AFFIRMED BEFORE ME at

.....in the Province

of ....., the ..... day of

....., 2010

.....

[*print name of deponent*]

.....

A Commissioner for taking Affidavits in

[*name of jurisdiction*]

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bentley v. Braidwood,*
2009 BCCA 604

Date: 20091229
Docket: CA037241; CA037246;
CA037251

Docket No.: CA037241

Between:

Constable William Bentley,
A Member of the Royal Canadian Mounted Police

Appellant
(Petitioner)

And

Thomas R. Braidwood, Q.C., Commissioner and
Attorney General of British Columbia

Respondents
(Respondents)

Docket No.: CA037246

Between:

Constable Kwesi Millington,
A Member of the Royal Canadian Mounted Police

Appellant
(Petitioner)

And:

Thomas R. Braidwood, Q.C., Commissioner and
Attorney General of British Columbia

Respondents
(Respondents)

Docket No.: CA037251

Between:

Constable Gerry Rundel,
A Member of the Royal Canadian Mounted Police

Appellant
(Petitioner)

And:

Thomas R. Braidwood, Q.C., Commissioner and
Attorney General of British Columbia

Respondents
(Respondents)

Before: The Honourable Madam Justice Saunders
The Honourable Mr. Justice Chiasson
The Honourable Mr. Justice Groberman

On Appeal from: Supreme Court of British Columbia, July 17, 2009
(*Rundel v. British Columbia – Braidwood Commission*, 2009 BCSC 814,
Docket Nos. S09251, S09252, S09253 and S09377)

Counsel for the Appellant, Cst. Bentley:	D. Butcher A. Srivastava
Counsel for the Appellant, Cst. Millington:	R. Hira, Q.C. B. Morley
Counsel for the Appellant, Cst. Rundel:	G. Beaubier
Counsel for the Respondent, T. Braidwood, Q.C.:	P. McGowan A. Vertlieb, Q.C.
Counsel for the Respondent, Attorney General of British Columbia:	C. Jones K. Wolfe
Place and Date of Hearing:	Vancouver, British Columbia December 4, 2009
Place and Date of Judgment:	Vancouver, British Columbia December 29, 2009

Written Reasons by:
The Honourable Madam Justice Saunders

Concurred in by:
The Honourable Mr. Justice Chiasson
The Honourable Mr. Justice Groberman

Reasons for Judgment of the Honourable Madam Justice Saunders:

[1] This appeal concerns the jurisdiction of Thomas R. Braidwood, Q.C., Commissioner, to issue Notices of Misconduct to the appellants advising them he may make certain findings affecting them, in the course of issuing his report on the death of Robert Dziekanski. They appeal from the order of Mr. Justice Silverman dismissing their petitions for judicial review in which they sought to quash the Notices of Misconduct, to prohibit and enjoin the Commissioner from making such findings, and, in the alternative, to receive further particulars of the potential findings that could be made against them.

[2] The roots of this appeal lie in the events of October 14, 2007. In the early hours of that day, Mr. Dziekanski, a new arrival to Canada, died in the International Lounge of the Vancouver International Airport. His death followed the deployment of a conducted energy weapon by a member of the Royal Canadian Mounted Police, one of four officers who responded to a call from the airport for assistance.

[3] The Province of British Columbia appointed Thomas R. Braidwood, Q.C. a Commission under the *Public Inquiry Act*, S.B.C. 2007, c. 9 to inquire into and report on the death of Mr. Dziekanski.

[4] The Commissioner heard evidence from 87 witnesses between January 19 and May 26, 2009, including from the four officers who attended at the Vancouver International Airport on October 14, 2007 in response to the airport's call.

[5] On April 30, 2009 documents entitled "Notice of Misconduct" signed by the Commissioner were delivered to each of the four officers. Although individually crafted to each recipient, the notices bear common hallmarks: they were delivered on a confidential basis; they state "the Commissioner may make" certain findings that "may amount to misconduct within the meaning of s. 21 of the [*Public Inquiry*] *Act*"; they contain some common allegations; and, after listing the allegations in relation to the recipient, they advise it is possible another participant may "make one

or more allegations of misconduct against you," in which case the recipient will have an opportunity to respond.

[6] Each of the four officers demanded particulars of the misconduct alleged and the standard against which it would be measured. The Commissioner issued a ruling on the notices, at that stage confidential, in the main concluding the Notices of Misconduct were sufficiently particularized with the exception of one allegation, which he more clearly defined.

[7] The Notices of Misconduct as amended contain four allegations common to all appellants, with the Notice of Misconduct directed to Constable Millington containing three additional allegations. Mr. Justice Silverman accurately described all the allegations at issue by paraphrasing them at para. 17:

> 1. failing to properly assess and respond to the circumstances faced in relation to Mr. Dziekanski;
> 2. deploying the taser in circumstances that did not justify such deployment;
> 3. after deploying it, failing to adequately reassess the situation before further deploying it;
> 4. making further deployments of the instrument when they were not justified in the circumstances;
> 5. misrepresenting facts in notes and statements which had been made;
> 6. misrepresenting facts in evidence given before the Commission;
> 7. providing misleading information of the witness' notes and statements in the evidence before the Commission.

[8] The four officers each applied to the Commissioner to quash their Notice of Misconduct. When those applications were dismissed, each officer commenced a proceeding under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 to quash the Notice. The petitions sought orders in the nature of *certiorari* and prohibition, injunctions, declarations and orders in the nature of *mandamus* compelling production of particulars.

[9] On June 15, 2009 Mr. Justice Silverman dismissed the petitions.

[10] In this appeal three of the officers, the appellants Constables Millington, Bentley and Rundel, contend the judge erred in failing to quash the Notices of Misconduct. They say the Notices of Misconduct are beyond the jurisdiction of the Commissioner because:

1. the allegations require an analysis of their conduct against criminal law standards, and thereby infringe upon federal jurisdiction over criminal law; and

2. the allegations require an analysis of their conduct measured against RCMP training and policy, and thereby infringe upon federal jurisdiction to manage and administer the RCMP, and to discipline members of the RCMP.

[11] The appellants further contend Mr. Justice Silverman erred in declining to compel further particulars of the allegations set out in the Notices of Misconduct.

New Evidence

[12] In support of the appeal the appellants seek to adduce new evidence. The Commissioner also applies to adduce new evidence. The new evidence is a transcript of some of the proceedings before Mr. Justice Silverman, and evidence of submissions and further proceedings before the Commissioner subsequent to the Supreme Court of British Columbia hearing, including those addressing the Notices of Misconduct.

[13] Strictly speaking, I do not consider the new evidence meets the criteria for admission set out in cases such as *Scott v. Scott*, 2006 BCCA 504, 61 B.C.L.R. (4th) 9. It is not capable of affecting the appeal, which may be fully answered on the record as it now stands. In particular, I would not rely upon the appellants' submissions as evidence that particulars are, or are not, required. To do so is to delve more deeply into the Commission's workings than is appropriate for this Court.

The appeal must be resolved, in my view, on the material that was before Mr. Justice Silverman.

[14] I would dismiss the applications to adduce new evidence.

The Statutory Framework For the Commission

[15] The Commission is proceeding under the authority of the *Public Inquiry Act*. Section 9 of that *Act* provides:

> 9(1) Subject to this *Act* and the commission's terms of reference, a commission has the power to control its own processes and may make directives respecting practice and procedure to facilitate the just and timely fulfillment of its duties.
>
> ...
>
> (5) A commission may make an order in respect of any matter for which a directive has been made, or may be made, under this *Act*.

[16] Section 11 of the *Act* provides for participation in these terms.

> 11(1) A person may act as a participant if the person
>
> (a) is provided with notice under subsection (2), or
>
> (b) is accepted as a participant under subsection (4).
>
> (2) If a hearing commission intends to make a finding of misconduct against a person, or intends to make a report that alleges misconduct by a person, the hearing commission must first provide the person with
>
> (a) reasonable notice of the allegations against that person, and
>
> (b) notice of how that person may respond to the allegations.
>
> (3) A person other than one described in subsection (2) may apply to be a participant by applying to a commission in the manner and form it requires.
>
> (4) On receiving an application under subsection (3), a commission may accept the applicant as a participant after considering all of the following:
>
> (a) whether, and to what extent, the person's interests may be affected by the findings of the commission;
>
> (b) whether the person's participation would further the conduct of the inquiry;

(c) whether the person's participation would contribute to the fairness of the inquiry.

[17] Section 12 sets out powers of the Commission in respect to persons who are participants under s. 11 of the *Act*:

12(1) Subject to section 13 [rights of participants], a commission may make orders respecting

(a) the manner and extent of a participant's participation,

(b) the rights and responsibilities of a participant, if any, and

(c) any limits or conditions on a participant's participation.

(2) In making an order under subsection (1), a commission may

(a) make different orders for different participants or classes of participants, and

(b) waive or modify one or more of its orders as necessary.

(3) In making an order under subsection (1), a hearing commission must ensure that a participant who responds to a notice under section 11 (2) has a reasonable opportunity to be heard by the commission before the commission makes a finding of misconduct against the participant, or makes a report that alleges misconduct by that participant.

[18] Section 13 protects participants and prevents their evidence from being used in subsequent proceedings:

13(1) A participant may

(a) participate on his or her own behalf, or

(b) be represented by counsel or, with the approval of the commission, by an agent.

(2) A participant

(a) has the same immunities as a witness who appears before the court, and

(b) is considered to have objected to answering any question that may

(i) incriminate the participant in a criminal proceeding, or

(ii) establish the participant's liability in a civil proceeding.

(3) Any answer provided by a participant before a commission must not be used or admitted in evidence against the participant in any trial or

other proceedings, other than a prosecution for perjury in respect of the answer provided.

[19] Section 21, referred to in the Notices of Misconduct, provides:

> 21(1) Subject to this *Act* and the commission's terms of reference, a hearing commission may engage in any activity necessary to effectively and efficiently fulfill the duties of the commission, including doing any of the following:
>
> (a) issuing directives respecting any of the matters set out in subsection (2);
>
> (b) holding written, oral and electronic hearings;
>
> (c) receiving submissions and evidence under oath or affirmation;
>
> (d) making a finding of misconduct against a person, or making a report that alleges misconduct by a person.
>
> ...

[20] Each appellant applied to be and was accepted as a participant pursuant to ss. 11(3) and (4) of the *Act*.

[21] The parties have all proceeded on the basis the Notices of Misconduct were issued in compliance with s. 11 of the *Act*.

Discussion

1. Jurisdiction

[22] I turn to the issues. First is the jurisdiction of the Commissioner to make findings in the terms posited in the Notices of Misconduct. The appellants advance two propositions: that the Notices of Misconduct reflect an exercise in criminal law beyond the jurisdiction of a provincially appointed commission, and that they reflect an exercise that interferes with the management or administration of a federally created agency, the Royal Canadian Mounted Police, also beyond the jurisdiction of a provincially appointed commission.

[23] The Commissioner concluded in his ruling that his Notices of Misconduct did not stray beyond his jurisdiction. Mr. Justice Silverman agreed. In reaching this

determination Mr. Justice Silverman concluded the standard of review he must bring to the issue of jurisdiction was correctness. Applying this standard, he found the Commissioner was correct in ruling that the issuance of the notices was within the commission's jurisdiction.

[24] In matters of jurisdiction, the standard is, as confirmed in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, correctness, and Mr. Justice Silverman applied the proper standard. The question for us then is whether he was correct in his conclusion that the Notices of Misconduct are within the constitutional jurisdiction of the Commission.

a) Do the Notices of Misconduct Infringe Federal Jurisdiction Over Criminal Law and Procedure?

[25] The Commissioner addressed the appellants' complaint that his Notices of Misconduct trench upon the federal power over criminal law and procedure, concluding that even if the "misconduct" described in the notices is substantiated, they would not equate to a finding of criminal liability. At his para. 37 he said:

> It is important to bear in mind the purpose underlying these allegations. I have neither the mandate nor desire to make determinations respecting whether the Applicant committed one or more criminal offences. These allegations are made in order to give the Applicant reasonable notice that I may make findings respecting his credibility, and the basis for any such findings. I am satisfied that the allegations have been drafted in a manner that is consistent with the principles enunciated in *Krever*, *supra*, including Cory J.'s statement that "commissioners should not be expected to perform linguistic contortions to avoid language that might conceivably be interpreted as imparting a legal finding" (para. 52).

[26] Consideration of the constitutionality of the Notices of Misconduct must start, I consider, with recognition that both levels of government have some authority over matters related to criminal justice. By s. 92(14) of the *Constitution Act* the province is assigned authority over the "administration of justice" within the province, and by s. 92(16) over matters of a "merely local or private nature". On the other hand, by s. 91(27) the federal government is assigned authority over the criminal law including procedure in criminal matters.

[27] The appellants contend the Notices of Misconduct demonstrate that the Commissioner will be determining whether the appellants have committed a criminal offence, and thus evince more than an incidental effect on the criminal law power. While the appellants do not contest the terms of reference of the Commission, they say that in framing the Notices of Misconduct the Commissioner has stepped off his constitutionally permitted ground and strayed impermissibly onto exclusive federal territory. They say Mr. Justice Silverman erred in law in failing to recognize this essential characteristic of the notices, and they urge this Court to correct that error. In making this submission they rely upon *Re Nelles and Grange* (1984), 46 O.R. (2d) 210, 9 D.L.R. (4th) 79 (C.A.) and *Starr v. Houlden*, [1990] 1 S.C.R. 1366, 68 D.L.R. (4th) 641.

[28] The respondents defend the Notices of Misconduct, submitting they do not engage the Commissioner in the sort of inquiry found to be unconstitutional in *Nelles* and *Starr*. Rather, they submit, the notices are properly within the Commissioner's mandate as set out, in a constitutionally correct fashion, in his terms of reference. They say this appeal is analogous to cases such as *O'Hara v. British Columbia*, [1987] 2 S.C.R. 591, 45 D.L.R. (4th) 527, *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440, 151 D.L.R. (4th) 1 ("*Krever*"), *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Min Tragedy)*, [1995] 2 S.C.R. 97, 124 D.L.R. (4th) 129, and *Consortium Developments (Clearwater) Ltd. v. Sarnia (City)*, [1998] 3 S.C.R. 3, 165 D.L.R. (4th) 25.

[29] The commission of inquiry considered in *Nelles* was established to determine who was responsible for infant deaths at the Hospital for Sick Children in Toronto. The inquiry was formed after a prosecution in relation to some of the deaths had failed at the preliminary inquiry stage and while police investigation into the deaths continued. The terms of reference of the commission authorized the commissioner to inquire into and report on how the infants died without expressing a conclusion of law on criminal or civil liability. The commissioner stated a question for the court, asking whether he could express an opinion that the death of a child was the result of any named person. The Ontario Court of Appeal held the commissioner could not

do so. In reaching this conclusion the court focused upon the consequences that would flow on the naming of a person as having administered a lethal dose of digoxin to the infants.

[30] In *Starr* the commission of inquiry was constituted by the Province of Ontario to inquire into the relationship between a named person and other parties including elected and unelected public officers, in language akin to that in the *Criminal Code*. The Supreme Court of Canada held the commission of inquiry was devoid of any broad policy basis and was rather, in pith and substance, a substitute police investigation and preliminary inquiry into a specific offence defined in the *Criminal Code*. Consequently, the Court held, the commission of inquiry was *ultra vires* the province. In his reasons for judgment for the majority Justice Lamer observed at 1401-02:

> ... the pith and substance of a commission must be firmly anchored to a provincial head of power, and that it cannot be used either purposely or through its effect, as a means to investigate and determine the criminal responsibility of specific individuals for specific offences.

[31] Between *Nelles* and *Starr* the Supreme Court of Canada rendered judgment in *O'Hara,* a case addressing the scope of a provincial commissioner's inquiry into injuries sustained by a person while in police custody. There Chief Justice Dickson for the majority of the Court said at 610:

> ... A province has a valid and legitimate constitutional interest in determining the nature, source and reasons for inappropriate and possibly criminal activities engaged in by members of police forces under its jurisdiction. At stake is the management of the means by which justice is administered in the province. That such activity may later form the basis of a criminal charge and thus engage federal interests in criminal law and criminal procedure, does not, in my view, undermine this basic principle.

[32] In *Krever* the Supreme Court of Canada again addressed the jurisdiction of a commission of inquiry. In reasons for judgment for the court, Justice Cory said at paras. 43-44, with reference to *Nelles*:

> ... The appellants rely upon this statement to support their position that a commissioner cannot make findings which would appear in the eyes of the public to be determinations of legal liability.

> I cannot accept this position. The test set out above is appropriate when dealing with commissions investigating a particular crime. However, it should not be applied to inquiries which are engaged in a wider investigation, such as that of the tragedy presented in this case. I agree with the Federal Court of Appeal that if the comments made in *Nelles* were taken as a legal principle of law applicable to every inquiry, the task of many if not most commissions of inquiry would be rendered impossible.

Justice Cory observed that the court in *Nelles* "clearly viewed the proceedings as tantamount to a preliminary inquiry into a specific crime" and stated *Starr* could be similarly distinguished. At para. 47 he said:

> Clearly, those two inquiries were unique. They dealt with specific incidents and specific individuals, during the course of criminal investigations. Their findings would inevitably reflect adversely on individuals or parties and could well be interpreted as findings of liability by some members of the public. In those circumstances, it was appropriate to adopt a strict test to protect those who might be the subject of criminal investigations. However, those commissions were very different from broad inquiries such as an investigation into the contamination of Canada's blood system, as presented in this case.

Last, he concluded at para. 51:

> Clearly, the findings that may be made in *Phillips* and that were made in *O'Hara* and *Keable* would fail the strict test set out in *Nelles* and referred to in *Starr*. Yet each of these commissioners has made or may make findings of misconduct, as authorized by the Act. This they could not and cannot do without stating findings of fact that are likely to have an adverse effect on the reputation of individuals. Nonetheless, the inquiries were upheld by this Court. It follows that the strict test advanced by the appellants cannot be of general application. A more flexible approach must be taken in cases where inquiries are general in nature, and are established for a valid public purpose and not as a means of furthering a criminal investigation.

[33] In *Phillips* a challenge was brought to a provincially constituted inquiry on the basis that certain compellable witnesses were, at the time of the inquiry, facing criminal charges for failing to oversee proper safety practices. The Court allowed the inquiry to proceed even though the criminal proceedings were not concluded.

[34] The themes from *Krever* were reiterated in *Consortium Developments,* with the Supreme Court of Canada addressing the issue of public inquiries, in a case concerning a municipally authorized judicial inquiry into alleged conflicts of interest and irregularities in certain land transactions. The Court commented upon the

exceptional nature of *Starr*, and affirmed the broad scope generally given to provincial inquiries.

[35] There are, in an inquiry into events such as these, several relationships, several applicable standards, and several consequences to be appreciated by the Commissioner, with the Commissioner understanding he may speak on some relationships, some standards and some consequences, but not on others. There is, for example, and focusing here only on the appellants to the exclusion of other persons who have a direct interest in the outcome of the inquiry such as airport personnel and immigration officials: the relationship between the appellants and the state as reflected in criminal law; the relationship between the appellants and the Royal Canadian Mounted Police as reflected in their employment and professional relationship; the relationship between the appellants and those present during the incident including Mr. Dziekanski and his family; and the relationship between the appellants and the community, including in the term 'community' the appellants themselves.

[36] Applicable to those relationships is the criminal law, employment law, civil law, statutory authority, and the general moral standards of the community. Consequences to the appellants directly arising from such matters may range from legal consequences under the criminal law, civil law, and employment law, to non-legal but important consequences through gathered experience and education, and moral and ethical growth. Consequences to the community may be broad or narrow, depending upon the wisdom that may be gleaned and reported by the Commissioner and appreciated by the community.

[37] Yet language, flexible and nuanced as it is, does not arrogate words of general application to any one relationship or standard. So, for example, "misconduct", without more, may suggest a number of things: a failure to comport with the standard considered, or a performance default that may lead to discipline, or a default that may attract liability.

[38] A description of possible findings in common, non-technical language as was provided here in the Notices of Misconduct, does not transmute a public inquiry into a criminal investigation, or a public inquiry process into an end-run around criminal procedure. It is the substance of the inquiry and the scope of possible findings that are relevant to the determination of the *vires* of the Commissioner's action, viewing the matter from the attitude that where, as here, the challenge is anticipatory, the Commissioner will adhere to his jurisdiction.

[39] The substance of the allegations are summarized above. For the purposes of argument it was suggested that findings by the Commissioner in the terms set out in the allegations will be tantamount to findings of criminal conduct. Having reviewed their language, I do not see such an equivalency and I reject that characterization.

[40] The Commissioner is charged with making a full report on the circumstances of Mr. Dziekanski's death. Inherently in that process he must assess credibility of witnesses where evidence conflicts, and as part of his responsibility to his terms of reference, make comment on material conflicts in the evidence. Further, as his inquiry is made in the interests of administration of justice, it seems to me he is entitled to comment, if comment be warranted, on the response of public officials to the events and to his process, thereby to advance the public interest of confidence in the administration of justice.

[41] There is, as well, an aspect of speculation that hovers over this submission. By the terms of his ruling the Commissioner has demonstrated awareness of his constitutional limitations. He expressed again his view, set out in the Notices of Misconduct themselves, that they give notice only of the potential for adverse findings, providing the recipient the opportunity to make comment before he prepares his report.

[42] At this stage of the inquiry process I consider any review of the ruling of the Commissioner should proceed on the basis he will keep within the boundaries he accurately has described.

[43] I would not accede to the appellants' submissions on jurisdiction as it relates to the criminal law power.

b) Do the Notices of Misconduct Infringe Federal Powers Over the Royal Canadian Mounted Police?

[44] The RCMP in British Columbia has a contract with British Columbia to act as the provincial police force, and to act as the municipal police in most municipalities. The four officers were acting under that contract when they responded to the airport's call on the night of Mr. Dziekanski's death.

[45] Policing, in general, is a matter assigned to provincial jurisdiction by s. 92(14) of the *Constitution Act*. To the extent, however, that the provincial function is performed by the RCMP, a police force created by federal legislation (the *Royal Canadian Mounted Police Act*, R.S. 1985, c. R-10), the province is limited from interfering in or directing its management or administration: *Attorney General of Quebec and Keable v. Attorney General of Canada*, [1979] 1 S.C.R. 218, 90 D.L.R. (3d) 161; *Attorney General of Alberta v. Putnam*, [1981] 2 S.C.R. 267, 123 D.L.R. (3d) 257.

[46] In *Keable* the Supreme Court of Canada addressed the constitutional competence of a province to investigate and report on allegedly illegal or reprehensible incidents or acts involving various police forces, including the RCMP, associated with events in Quebec in October 1972. Relying upon *Di Iorio v. Warden of the Montreal Jail*, [1978] 1 S.C.R. 152, 73 D.L.R. (3d) 491, *Faber v. The Queen,* [1976] 2 S.C.R. 9, 65 D.L.R. (3d) 423 and *R. v. Coote* (1873), L.R. 4 P.C. 599, Justice Pigeon, writing for the majority, affirmed provincial competency to establish a commission to report on matters of general scope but held the authority did not extend to intrusion into RCMP management, saying at p. 242:

> ... Parliament's authority for the establishment of this force and its management as part of the Government of Canada is unquestioned. It is therefore clear that no provincial authority may intrude into its management. While members of the force enjoy no immunity from the criminal law and the jurisdiction of the proper provincial authorities to investigate and prosecute criminal acts committed by any of them as by any other person, these

> authorities cannot, under the guise of carrying on such investigations, pursue the inquiry into the administration and management of the force.

[47] In *Putnam* the Supreme Court of Canada again addressed provincial competence in respect to the RCMP, this time in a situation where the RCMP acted as the police force pursuant to an agreement between the municipality of Wetaskiwin, Alberta and the federal government. An issue arose concerning the applicability of a citizen's complaint procedure under the provincial *Police Act* to the RCMP. The Supreme Court of Canada held the provincial complaint procedure did not apply to the RCMP because it interfered with federal disciplinary control of the force. At p. 278 Chief Justice Laskin, writing for the majority, referred to *Keable*, saying:

> I should like to say, before disposing of this appeal, that I recognize that there is a provincial interest in policing arrangements under this or any other contract between the Province and the R.C.M.P. The Province, by this contract, has simply made an *en bloc* arrangement for the provision of policing services by the engagement of the federal force rather than establishing its own force directly or through a municipal institution. The performance of the parties under the agreement of their respective roles is, of course, a matter of continuing interest to the parties if for no other reason than the constant contemplation of renewal negotiations. The Province of Alberta, for example, must have a valid concern in the efficacy of the arrangement, not only from an economic or efficiency viewpoint, but also from the point of view of the relationship between the Government of Alberta through its policing arrangements and the community which is the beneficiary of those police service arrangements. This, however, is a far cry from the right of one contracting party to invade the organization adopted by the other contracting party in the delivery of the services contracted for under the arrangement. This is so apart altogether from any constitutional impediment so clearly raised here as it was in *Keable*, *supra*. I say this not so as to narrow the impact of the observations on the issue directly raised in this appeal, but to contrast the position of the R.C.M.P. as a federal institution with the provincial interest in the provision of policing services throughout the Province. ...

[48] In this case the Commissioner, in his ruling on the appellants' applications to quash the Notices of Misconduct, recognized the limitations on provincial authority to interfere with RCMP administration. He said:

> 51. In my view, an allegation of misconduct respecting the Applicant's notes, statements to investigators or evidence given at the Commission are not an intrusion into the management and supervision of the RCMP. In

> *Keable*, the Court struck down the phrase "and the frequency of their use" where it appeared in the inquiry's terms of reference, because it would have required an inquiry into the methods used by the RCMP, which are essential aspects of its administration. No such inquiry into the RCMP's management or administration is contemplated in this commission of inquiry. We are embarked on a narrowly-focused inquiry into the events at the Vancouver International Airport on October 13/14, 2007, leading to the death of Mr. Dziekanski. The Applicant and the three other officers are compellable witnesses as to what they said and did that evening. As with any witness, they may be examined as to what are alleged to be prior inconsistent statements, and I must take all that evidence into account in determining what happened.

[49] Mr. Justice Silverman, approved the Commissioner's view on this issue:

> [54] ... In other words, he understands that there are aspects of the RCMP, particularly those of a management or supervisory nature, which are within federal jurisdiction. He goes on to express the view, that in this case the allegations of misconduct are not an intrusion into the management and supervision of the RCMP.

[50] I agree with both the Commissioner and Mr. Justice Silverman that the Notices of Misconduct do not tread impermissibly into management or administration of the RCMP.

[51] The *Public Inquiry Act* under which the Commission is established expressly permits a commissioner to report on misconduct. In my view, the larger view of the administration of justice permits a provincially appointed commission to reflect on matters that bear upon public confidence in the administration of justice of which the response of the police officers in this situation is a significant consideration. As Mr. Justice Silverman observed, the terms of reference of the commission are broad and engage more than an inquiry into the validity of actions taken by the four police officers who attended. Although the actions of the officers are a critical component to understanding the events, the inquiry is neither a discipline investigation nor an inquiry into RCMP policies or training.

[52] Again, in his ruling, the Commissioner has demonstrated an appreciation of the limit upon his constitutional authority arising from the character of the officers as members of the RCMP. I would not anticipate he will stray over that line of

demarcation, and I see no basis upon which to interfere, for reasons associated with the federal nature of the RCMP, with the order of Mr. Justice Silverman.

[53] We are urged by the appellants to view the Supreme Court of Canada jurisprudence as reserving more latitude for a provincially appointed commission to inquire into matters involving an agency within provincial power, than exists to consider matters involving a federal agency.

[54] It seems to me the jurisprudence cannot be stated so simply or the cases distinguished on this basis. Any analysis must be directed to the substance of the Commission's action or anticipated action in order to determine its *vires*. Thus, as demonstrated by the cases I have referred to, a provincial inquiry may not be engaged as an alternate to the criminal procedures provided by the federal government. Nor may a provincial inquiry trench upon areas of management or administration of a federal agency. However, where such a direct focus or effect is not present, I see no basis on which to curtail what is otherwise a proper inquiry directed by the Province, under the terms of valid provincial legislation enacted under the province's constitutional authority over the administration of justice in the province.

[55] Accordingly, I see no basis upon which to interfere with the order declining to interfere with the Notices of Misconduct for jurisdictional reasons.

2. The Issue of Particulars

[56] In the alternative, the appellants contend the Commissioner failed to provide adequate particulars. (As submissions have now been made by the appellants to the Commission absent particulars, they seek an order prohibiting the Commissioner from making any findings of misconduct against them.)

[57] In his reasons for judgment Mr. Justice Silverman suggested the Commissioner's ruling on the applications for more particulars should be reviewed on a reasonableness standard, but held that in any event the Commissioner's

decision on the issue was correct. In the course of reaching that conclusion he observed:

> [34] In my view, the fact that the petitioners were represented by counsel, throughout the proceedings and heard, either themselves or by other agents sitting in for them, all of the evidence or have a transcript available to them of all of the evidence from the witnesses at the inquiry, those factors fall into and must be considered in light of the comments I have just referred to from *Morneault*. That is, the question of whether a reasonable person has been given enough information to know what aspect of his or her conduct the decision-maker is considering. Again, these witnesses know everything about the evidence that the Commissioner knows, since they have heard or have available to them all of the evidence. In some circumstances, that may not be sufficient, and it is never going to be a complete answer to such an application for particulars in every case because the question of particulars and what will be reasonable notice will vary with the circumstances of the case.

[58] The appellants contend Mr. Justice Silverman erred in finding the standard of review was reasonableness, and in finding his decision was both reasonable and correct. They contend the Commissioner was required to provide procedural fairness, and that he was required to be correct in his view of the need for particulars considering the high value that is placed on procedural fairness. They contend further that the allegations did not meet the requirements set out in *Krever* and *Morneault v. Canada (Attorney General)* (1998), 150 F.T.R. 28, 10 Admin L.R. (3d) 251 (F.C.) rev'd in part (2000), [2001] 1 F.C. 30, 189 D.L.R. (4th) 96 (C.A.), because the Notices of Misconduct are not "as detailed as possible".

[59] There is difficulty in applying the language of standard of review, 'correctness' and 'reasonableness', to issues of procedural fairness. Whether the tribunal has the alleged duty, in respect to procedural fairness, is a matter on which the courts have the final say. However, subject to any express statutory requirements, a tribunal typically enjoys broad discretion as to how it will fulfill the requirements of procedural fairness, and there will rarely be a single correct answer.

[60] This distinction is important to an understanding of this Court's treatment of the issue in *Martin v. Vancouver (City)*, 2008 BCCA 197, 293 D.L.R. (4th) 37. In

Martin Madam Justice Levine said, concerning a challenge to rescission of appointments of the City of Vancouver Board of Variance, at para. 46:

> The abolition of the "patent unreasonableness" standard of review by the Supreme Court of Canada in *Dunsmuir* does not change the analysis of the issues arising on this appeal. The issues before the chambers judge were matters of jurisdiction, procedural fairness, and bad faith. On any analysis, the proper standard of review by a reviewing court for such issues is correctness. The chambers judge did not expressly refer to the standard of review, but he properly applied the correctness standard.

[61] That statement, made in the context of a case in which the issue was whether the City was required to give notice and an opportunity to be heard, did not address the degree of the duty, but rather the existence of the alleged duty.

[62] In the case before us, where there is a statutory duty (in s. 11) to provide a notice of misconduct, the real question for a reviewing court is whether the notice reviewed is sufficient to provide the procedural fairness required.

[63] On that question, Mr. Justice Silverman, having recognized the discretion available to the Commissioner in constructing the Notices, found that the Commissioner's decision on their content was correct in that enough had been provided to permit the recipients to respond. To focus on Mr. Justice Silverman's tentative articulation of the standard of review, therefore, is to take something of a side trail, and I turn accordingly to his conclusion that enough was said in the Notices to fulfill their purpose.

[64] The basis for notices of jeopardy is discussed at length in *Krever*. Describing the content of procedural fairness in the setting of a broad ranging inquiry, where there are no parties as in civil and criminal proceedings, where civil and criminal responsibility may not be determined, and yet where damage to reputation or interests may be inflicted, the Supreme Court of Canada emphasized the high importance of procedural fairness. It then applied that principle of fairness to the issue of notices of misconduct. (Such notices were statutorily required in *Krever* by s. 13 of the *Inquiries Act*, R.S.C. 1985, c. 1-11, just as they are mandated here by

s. 11 of the *Public Inquiries Act*). Justice Cory made this comprehensive statement on the content of notices at para. 56:

> That same principle of fairness must be extended to the notices pertaining to misconduct required by s. 13 of the *Inquiries Act*. A commission is required to give parties a notice warning of potential findings of misconduct which may be made against them in the final report. As long as the notices are issued in confidence to the party receiving them, they should not be subject to as strict a degree of scrutiny as the formal findings. This is because the purpose of issuing notices is to allow parties to prepare for or respond to any possible findings of misconduct which may be made against them. The more detail included in the notice, the greater the assistance it will be to the party. In addition, the only harm which could be caused by the issuing of detailed notices would be to a party's reputation. But so long as notices are released only to the party against whom the finding may be made, this cannot be an issue. The only way the public could find out about the alleged misconduct is if the party receiving the notice chose to make it public, and thus any harm to reputation would be of its own doing. Therefore, in fairness to witnesses or parties who may be the subject of findings of misconduct, the notices should be as detailed as possible. Even if the content of the notice appears to amount to a finding that would exceed the jurisdiction of the commissioner, that does not mean that the final, publicized findings will do so. It must be assumed, unless the final report demonstrates otherwise, that commissioners will not exceed their jurisdiction.

[65] The appellants have invoked *Morneault* in support of their submission the notices were inadequate. In *Morneault* the notices contained certain references to transcripts, but the report of the commission found misconduct beyond those references. On an application to quash certain findings, the Federal Court found reasonable notice had not been provided, and declared the findings of misconduct invalid. The Federal Court of Appeal overturned this finding, holding sufficient notice was provided.

[66] The appellants refer to *Morneault* as an example of the particulars required in order to withstand scrutiny for procedural fairness.

[67] In my view, Mr. Justice Silverman demonstrated no error in concluding the Notices of Misconduct provided sufficient particulars to withstand the appellants' challenge.

[68] It is instructive, as observed by the Attorney General in his factum, that Mr. Justice Cory in *Krever* approved a notice of misconduct in terms more terse and more generalized than the Notices of Misconduct issued in this case. I do not propose to compare each allegation of the impugned notices. However it is useful to compare a notice approved in *Krever* to one of the allegations that the appellants contend is insufficient. In *Krever* that notice provided:

> 1. After becoming aware in 1982 and thereafter of the possibility or likelihood that its factor concentrates transmitted the causative agent of AIDS, Baxter failed to take adequate steps to notify consumers and physicians of the risks associated with the use of its products and to advise that they consider alternative therapies.

[69] In the case at bar an allegation common to all appellants is:

> 2. In the notes you made and the statements you gave to IHIT investigators regarding your interaction with Mr. Dziekanski, you misrepresented Mr. Dziekanski's behaviours and the manner in which events unfolded at the Airport on the morning of October 14, 2007, for the purpose of justifying your actions and those of your fellow officers.

[70] The allegation in this case appears to be more precise and more directed than the notice in *Krever*. The notice in this case focuses upon two aspects: the recipient's notes and their statements to investigators as to events that occurred in a limited number of minutes. The record of the inquiry reveals intensive cross examination on both aspects. It appears to me the Notices of Misconduct are sufficient to direct the recipient to the area of their evidence, and the potential reputational effect the report may have on him, for the purpose of making a full submission.

[71] Likewise the other allegations in the Notices of Misconduct of behaviours or actions, up to the time of the appellants' participation in the inquiry hearings, are each directed to a particular aspect of behaviour in respect to a time-limited occurrence, and each describes the potential adverse conclusion that may be drawn. The first set of allegations, directed to all appellants, concern behaviour of the officers upon arrival at the airport – allegations of failing to make the proper assessment of circumstances, of failing to obtain information about Mr. Dziekanski

from people in the vicinity, of failing to develop an appropriate plan of action, of acting inappropriately aggressively in their initial approach to Mr. Dziekanski and of failing to take reasonable steps to restrain him at specific moments in time. The allegations unique to Constable Millington all concern his actions in deploying the conducted energy weapon and appear to be directed to discrete portions of the short time of police interaction with Mr. Dziekanski. The appellants were all directed to these events in their testimony. It appears to me the appellants and their counsel would be fully capable of appreciating these specific allegations so as to make a full response.

[72] There are two further allegations in the Notices of Misconduct, one relating to the testimony of the appellants concerning Mr. Dziekanski's behaviour and one relating to the testimony of the appellants concerning the notes and statements they made before the hearing.

[73] The appellants testified at length concerning the events. I see no prospect they could be unclear as to those portions of their evidence that may attract analysis on the issues described in the Notices of Misconduct.

[74] Counsel for Constable Millington also contends that the Commissioner's reasons on his ruling on his application for particulars are insufficient. With respect, this complaint does not address the relief sought. The Commissioner issued the Notices of Misconduct and decided in his ruling they were, in the main, sufficient. The appellants, as they were entitled, challenged the Notices of Misconduct. In the course of doing so they referred to the ruling of the Commissioner, but it seems to me the niceties of the ruling is not the focus of the petition, rather the focus is the Notices of Misconduct. It is the order of Mr. Justice Silverman dismissing the petition that is appealed. As I have explained above, I see no basis upon which Mr. Justice Silverman should have interfered with the Notices of Misconduct issued by the Commissioner as failing to satisfy the principle of procedural fairness.

Conclusion

[75] I would dismiss the appeals and all applications to adduce new evidence.

"The Honourable Madam Justice Saunders"

I AGREE:

"The Honourable Mr. Justice Chiasson"

I AGREE:

"The Honourable Mr. Justice Groberman"

PART 6

THE RESPONSE OF THE RCMP, RICHMOND FIRE-RESCUE, AND BC AMBULANCE SERVICE

He told me that the four officers continued to work together on the same shift at the Airport sub-detachment for two or three weeks after the incident, before being transferred. He checked with them regularly to determine if they were all right, but had no discussions with them about the incident itself.

6. Chief Superintendent Bent's November 5, 2007, e-mail

On June 16, 2009, three weeks after the last witness at our evidentiary hearings testified, and three days before closing oral submissions were scheduled to begin, Commission Counsel received disclosure from counsel for the Department of Justice of a potentially significant e-mail.[157]

The November 5, 2007, e-mail (Exhibit 177) was written by Dick (Richard) Bent, Chief Superintendent, Deputy Criminal Operations Officer, RCMP, "E" Division. It was addressed to Al MacIntyre, Assistant Commissioner, Criminal Operations Officer, RCMP, "E" Division. The e-mail referred to Superintendent Wayne Rideout, the officer in charge of the RCMP's Integrated Homicide Investigation Team that was conducting the criminal investigation into Mr. Dziekanski's death. It stated:

> From: Dick (Richard) BENT
>
> To: MACINTYRE, Al
>
> Date: 2007-11-05 13:46
>
> Subject: Media Strategy – Release of the YVR video
>
> Al, spoke with Wayne Rideout today about our strategy for the release of the video. He had a couple of concerns. First, he didn't think we should be providing any explanation for what was transpiring but instead just say the Inquest will take evidence under oath etc. I went through the rationale and said we need to have an explanation otherwise our detractors will put their own spin.
>
> Second, as we're going to have someone speak to this, he suggested that it should be someone other than Dale Carr otherwise we may lose the perception

157 The circumstances surrounding the late disclosure of this document can be found in the Transcript, June 19, 2009.

> of independence. He would rather have someone separate from IHIT do this. We both think a Use of Force expert would be ideal. Gregg Gillis has not been involved in this investigation so is independent. I suggest we have Gregg do the narrative of what is happening.
>
> Finally, spoke to Wayne and he indicated that the members did not articulate that they saw the symptoms of excited delirium, but instead had discussed the response en route and decided that if he did not comply that they would go to CEW. He has asked investigators for a synopsis and should have it by noon tomorrow.

The word "members" in the last paragraph of the e-mail refers to the four RCMP officers who dealt with Mr. Dziekanski at the Vancouver International Airport, and "CEW" refers to a conducted energy weapon, commonly referred to as a TASER.

When this e-mail came to light, I stated on the record that the delay in disclosing it was appalling. When the evidentiary hearings reconvened more than three months later on September 22, 2009, I stated:

> On its face, the e-mail appears to tell a significantly different story from the testimony I had already heard from the four RCMP officers. From their testimony, it is open to me to conclude that they had no discussion with each other while en route to the Airport, they did not develop a plan of action before arriving at the Airport, [and] the conducted energy weapon was deployed in accordance with RCMP policy and their training.
>
> However, the e-mail, if accurate, suggests that the officers did have discussions with each other while en route to the Airport, they did formulate a plan of action before arriving at the Airport, [and] they were contemplating deployment of the conducted energy weapon if Mr. Dziekanski did not comply, which might not be in accordance with the RCMP policy and training.
>
> Because of the significance of the new evidence at our June 19, 2009, hearing, I accepted Commission Counsel's recommendation that closing arguments scheduled to commence that very day be adjourned until today and that in the interim a thorough investigation be carried out into the circumstances surrounding the writing of this e-mail.[158]

As requested by Commission Counsel, the entire RCMP investigation file and other records originating from, received by, or in the possession of the RCMP or any civilian

158 Transcript, September 22, 2009, pp. 2-3.

member of the RCMP relating to the Dziekanski matter were disclosed — approximately 18,000 documents. Based on the Commission's review of those documents, Commission Counsel called three witnesses to testify about the Bent e-mail, whose testimony I will now summarize.

a. Chief Superintendent Richard Bent

Chief Superintendent **Richard Bent** told me that Mr. Pritchard had initiated a court proceeding in the preceding days to have his video of the Dziekanski incident returned to him. The RCMP had decided to return the video to him within a few days, and quite a bit of time was spent at "E" Division Headquarters developing a communications strategy. From his viewing of the Pritchard video he realized that when it became public, viewers would feel that the RCMP officer deploying the conducted energy weapon had done so very quickly.

On the morning of November 5, 2007, Chief Superintendent Bent had an impromptu meeting with Deputy Commissioner Bass and Assistant Commissioner Macintyre respecting the media strategy. During that meeting, Chief Superintendent Bent mentioned the recent change in RCMP national policy respecting the use of conducted energy weapons with individuals displaying symptoms of excited delirium. Deputy Commissioner Bass asked what the four officers had said about what had happened. Chief Superintendent Bent realized that he had not seen any synopsis from the officers of why they responded the way they did, and it was important to get that accounting in order to develop the RCMP's media strategy surrounding release of the Pritchard video.

Following that meeting, Chief Superintendent Bent sent an e-mail at 10:01 a.m. to Chief Superintendent Dale McGowan, Operations Officer for the Lower Mainland district (which included the Richmond detachment) that stated (Exhibit 176):

> Dale, as I understand it we expect the video to be released later this week. We were talking about our communication strategy and want to get our powder dry.

> Can we get a synopsis of what the members' accounts were. Especially, why the CEW member went to TASER right away. The explanation is important in this case.
>
> I know IHIT is a bit strapped but it's important that we have an update by mid-day tomorrow if possible.

Chief Superintendent Bent then went into a meeting that lasted the rest of the morning. He then had a phone conversation with Supt. Rideout, who had apparently been briefed by Chief Superintendent McGowan on the request for a synopsis. Soon after that conversation, at 1:46 p.m., Chief Superintendent Bent drafted his e-mail to Assistant Commissioner Macintyre (quoted earlier), reporting on his phone conversation with Supt. Rideout.

Chief Superintendent Bent told me that the main thrust of his conversation with Supt Rideout dealt with what the RCMP response should be once the Pritchard video was released. Those matters are dealt with in the first and second paragraphs of his e-mail. He added:

> And then the third paragraph deals with – goes back to the original question I asked. And the reason we'd asked that was we wanted an explanation from the members, an accounting of why they took the action they did with Mr. Dziekanski. That was important for us in developing our media strategy. So that was in answer to that....
>
> And it – and again, my discussion with Superintendent Rideout was specifically did the members make any comment about noticing symptoms of excited delirium, and again, that was the term that we were using at that time, and whether that was part of their accounting, or their reasoning for using the CEW. And in fact, Superintendent Rideout indicated that he not – they had not indicated that or articulated that. And through our conversation, as best I recall, that was what he did tell me and I recorded that in that third paragraph.[159]

Chief Superintendent Bent was asked about his recollection of his conversation with Supt. Rideout, and about the accuracy of the statements in his e-mail:

> Q Are you comfortable this accurately reflects what you intended to say?

159 Transcript, September 22, 2009, pp. 12-13.

A I think it reflects what I intended to say. Again, the context was primarily the issue of the media strategy and what the members had said as it played into that. I don't have a specific recollection of exactly the detail that Superintendent Rideout gave me either with respect to what his thoughts were with the media strategy that we had contemplated or with respect to the members' accounting. I don't have a really clear recollection of that. As I say, it was a year and half later that the e-mail came to light again and I — it was one in amongst many other things that were going on at the same time.

Q Is there anything you wish to correct about this e-mail you wrote to your superior officer?
A No. I believe that what I would have written here is what I believed was — accurately reflect the conversation I had with Superintendent Rideout....

Q Are you confident you did your best to record accurately what you were told by Superintendent Rideout?
A Yes, certainly. These are serious matters we don't take lightly, so yes, I would have —

Q Thank you.
A — done it to the best of my ability, yes.[160]

Chief Superintendent Bent told me that he never received the synopsis referred to in the e-mails. As things turned out, they did not need the synopsis for the media strategy. Given the verbal information he had received from Supt. Rideout about the members' accounting, they did not feel that they were going to use that information in any public statements when the Pritchard video was released.

He agreed that, in spite of his exhaustive search for documents, he was not aware of any other notes or reports suggesting that the officers had developed a plan while en route to the Airport. He had no subsequent conversations with Supt. Rideout about his (Chief Superintendent Bent's) interpretation of the gist of their phone conversation, or as to the sources of it. The primary purpose of his original question had been to develop a media strategy, and he did not pursue the other issue any further. As far as

160 Transcript, September 22, 2009, p. 14.

he knows, Supt. Rideout never received a copy of the Bent e-mail. He agreed that he certainly could have misunderstood parts of what Supt. Rideout said about the officers developing a plan en route to the Airport.

b. Assistant Commissioner Al Macintyre

Assistant Commissioner **Al Macintyre** told me that he is second-in-command in British Columbia and is the officer in charge of Criminal Operations, overseeing all operational activities. He typically receives 100-200 e-mails a day. After he has dealt with an incoming e-mail, he will often delete it. He does not delete his outgoing e-mails – they are stored in his computer for 90 days, and then they are automatically archived in the RCMP's main server. He conducted an exhaustive search for documents relating to the Dziekanski incident and recovered 3,546 documents.

He said that when he searched his e-mail files, he did not recover the Bent e-mail. Since it was an incoming e-mail sent only to him, with no file number on it, containing hearsay information, he likely read it and then deleted it. He testified that he had no recollection of receiving the Bent e-mail and had no recollection of answering it, forwarding it, or taking any steps in response to its contents. He agreed that he never received any other information that might indicate that the four officers discussed their response en route to the Airport.

He agreed that a review of his e-mail records of the Dziekanski incident shows that he received or sent e-mails for just about every day during the first three months of the investigation, but there was a gap in the outgoing e-mails between November 1 and November 8, 2007 (with the Bent e-mail being dated November 5, 2007). He had no explanation for that gap, and the RCMP's informatics and forensic teams could not assist. However, some of his incoming and outgoing e-mails during this time period were recovered from other officers' e-mail records.

c. Superintendent Wayne Rideout

Superintendent **Wayne Rideout** testified that he recalled having a phone call with Chief Superintendent Bent on November 5, 2007, in which they discussed the strategy

for release of the Pritchard video. He told me that he made a note of the conversation, which he read into the record as follows:

> 1:45 p.m. on the 5th of November. Phone to Chief Superintendent Bent. Media issue YVR. IHIT should not do "play by play" following release of YVR video. Optics inconsistent with independent review. He will advise.[161]

He added that there is a line in his notes that says, "Meeting with MROs scheduled for tomorrow."

He was not aware of the existence of the Bent e-mail until he saw it for the first time in June 2009. The first two paragraphs accurately reflect their discussion. With respect to the sentence in the third paragraph that says, "but instead had discussed the response en route and decided that if he did not comply that they would go to CEW," he testified:

> Chief Superintendent Bent is a highly respected member of the RCMP. He occupies an extremely demanding role within this region. He is someone that I personally respect a great deal. But the way he has portrayed my comments to him in that passage that I read out is wrong.[162]

Supt. Rideout said that IHIT found absolutely no evidence to indicate that the four involved members had any plan to deploy the CEW or made any plan collectively while en route.

C. RICHMOND FIRE-RESCUE

At 1:34 a.m. on October 14, 2007, the No. 4 Hall of Richmond Fire-Rescue received a dispatch to attend at the International Arrivals level at the Airport in relation to a 40-year-old male who had collapsed. Captain **Kirby Graeme** was in charge, and he assigned Firefighter **Brent Kopp** as driver, Firefighter **Glen Cameron** as backup, and Firefighter **Sonia Duranleau** as first responder designate, which meant that she had

161 Transcript, September 22, 2009, p. 76.
162 Transcript, September 22, 2009, p. 77.

OPENNESS AND DISCLOSURE OF INFORMATION TO THE INQUIRY

In conducting our investigation, we encountered two unanticipated but related obstacles that cast a large shadow on the degree of co-operation exhibited by the Canadian Forces and the Department of National Defence, in particular its public affairs directorate, in its dealings with our Inquiry, as well as on the openness and transparency of the Department in its dealings with the public. DND, through its actions, hampered the progress and effectiveness of our Inquiry, and left us with no choice but to resort to extraordinary investigative processes in order to discharge our mandate appropriately.

The first obstacle relates to compliance by DND with our orders for production of documents under the *Inquiries Act,* and the delays and difficulties we faced in dealing with the Somalia Inquiry Liaison Team (SILT).

The second obstacle, related to the first, concerns the manner in which DND's public affairs directorate (referred to as the DGPA) failed to comply with our order for disclosure and attempted to destroy Somalia-related documents that we had requested. This matter also involved probing DGPA's treatment of requests for information about the Somalia incidents made by a CBC journalist, Mr. Michael McAuliffe. This matter became a subject of concern for us since the documentation requested by Mr. McAuliffe embraced information covered by our order to DND for the production of documents.

Our terms of reference required us to investigate certain matters that inevitably became intertwined with actions and decisions taken by the Department of National Defence in responding to our orders for the production of documents, and in processing Access to Information requests regarding documents that were simultaneously the subject of our investigation. As things turned out, these events lent further weight to conclusions that we had reached concerning the poor state of leadership and accountability in the upper echelons of Canada's military - issues that became recurring themes throughout our investigation and this report. These appear as the prevalenc of individual ambition, the blaming of subordinates, and blind loyalty to the military institution over public disclosure and accountability.

The story of DND's compliance with our orders for production of documents and later requests for specific documents might appear to lack the drama of events in Somalia, but these issues evoke broader policy concerns regarding leadership in the military, allegations of cover-up, and ultimately, the openness and transparency of government - concerns that are of great importance to those planning the future of the Canadian Forces and, indeed, to government and Canadians in general.

The *Inquiries Act* provides commissioners appointed under its terms with broad powers of investigation and the right of access to any information considered relevant to the subject under study. Actions leading directly or deliberately to delay in producing documents or the alteration of documents and files ordered for the purposes of fulfilling a mandate under that Act should be viewed by all Canadians as an affront to the integrity of the public inquiry process and to our system of government. In that light, the story of noncompliance with the orders of a

public inquiry and the nature of the role played by SILT in that story, which is recounted in Chapter 39, becomes all the more shocking.

On a surface level, the events described in Chapter 39 suggest either a lack of competence or a lack of respect for the rule of law and the public's right to know. Digging deeper, the difficulties we encountered involved tampering with and destruction of documents. The cumulative effect of these actions on our work cannot be overstated. We depended on the receipt of accurate information from the Department on a timely basis in order to decide which issues to investigate and how the hearings were to be conducted. The fact that the production was not timely and the documents were incomplete to such a great extent meant that the work of the Inquiry was delayed and that our staff were constantly occupied with document-related issues.

Despite these obstacles, we were able to examine a number of issues carefully and thoroughly. Although we made steady progress in our work, the cumulative effect of the document-related setbacks was not limited to inconvenience and delay. Ultimately, in conjunction with other factors, the delay caused by document-related issues resulted in the Government's sudden announcement directing an end to the hearings and an accelerated reporting date. The unfortunate result was that many important witnesses were not heard, and several important questions that prompted the creation of our Inquiry remain unanswered.

It is clear that rather than assisting with the timely flow of information to our Inquiry, SILT adopted a strategic approach to deal with the Inquiry and engaged in a tactical operation to delay or deny the disclosure of relevant information to us and, consequently, to the Canadian public.

Perhaps the most troubling consequence of the fragmented, dilatory and incomplete documentary record furnished to us by DND is that, when this activity is coupled with the incontrovertible evidence of document destruction, tampering, and alteration, there is a natural and inevitable heightening of suspicion of a cover-up that extends into the highest reaches of the Department of National Defence and the Canadian Forces.

The seriousness of these concerns and their impact on the nature of the investigation conducted by our Inquiry required that we recount these events in considerable detail in Chapter 39.

PREVIOUS | NEXT | MAIN INDEX | EXECUTIVE SUMMARY INDEX

Search | Help | Français | Comments | D-NET Home

OPENNESS AND DISCLOSURE OF DOCUMENTS

In the conduct of our investigation we encountered two unanticipated but related obstacles that, in our view, cast a large shadow on the degree of cooperation exhibited by the Department of National Defence (DND) in its dealings with our Inquiry as well as on the openness and transparency of the Department in its dealings with the public. Through its actions, DND hampered the progress and effectiveness of our Inquiry and left us with no choice but to resort to extraordinary investigative processes to discharge our mandate appropriately.

The first obstacle relates to compliance by DND with our orders for production of documents under the *Inquiries Act* and the delays and difficulties we faced in dealing with the Somalia Inquiry Liaison Team (SILT).

The second obstacle, related to the first, concerned the manner in which DND's Directorate General of Public Affairs (DGPA) failed to comply with our order for disclosure and attempted to destroy Somalia-related documents requested by us. Also related was DGPA's treatment of requests for information about the Somalia incidents made by CBC journalist Michael McAuliffe. This matter became a subject of concern for us, since the documentation requested by Mr. McAuliffe embraced information covered by our order to DND for the production of documents.

Our terms of reference required us to investigate certain matters that inevitably became intertwined with actions and decisions taken by DND in responding to our orders for production of documents and in processing Access to Information requests in relation to documents that were simultaneously the subject of our investigation. As things turned out, these events lent further weight to conclusions we had reached concerning the poor state of leadership and accountability in the upper echelons of Canada's military- issues that have become recurring themes throughout our investigation and this report. These appear as the prevalence of individual ambition, the blaming of subordinates, and blind loyalty to the military institu over public disclosure and accountability.

The story of DND's compliance with our orders for production of documents and later requests for sp documents might appear to lack the drama of the events that transpired in the Somali desert. However issues of compliance evoke much broader policy concerns, such as leadership in the military, allegatio coverup and, ultimately, the openness and transparency of government-concerns that are of great importance to those planning the future of the Canadian Forces and, indeed, to government and Canac in general.

The *Inquiries Act* gives commissioners appointed under its terms broad powers of investigation and the right of access to any information considered relevant to the subject under study. Actions directly or deliberately leading to delay in producing documents, or the alteration of documents and files ordered for the purposes of fulfilling a mandate under the *Inquires Act,* should be seen by all Canadians as an affront to the integrity of the public inquiry process, to our system of government, and to themselves as concerned citizens. In that light, the story of noncompliance with the orders of a public inquiry and the role played by SILT in that

story, which is recounted in the following pages, becomes all the more shocking.

On the surface, the events described here suggest either a lack of competence or a lack of respect for the rule of law and the public's right to know. As we dug deeper, the difficulties we encountered involved tampering with or destruction of documents. The seriousness of these actions and their impact on the investigation conducted by our Inquiry demand that we recount these events in detail.

THE SOMALIA INQUIRY LIAISON TEAM

DND recognized, at a very early stage, the need to create an entity to assist us and coordinate various aspects of the Department's actions in related matters. But as it turned out, these two purposes were constantly in conflict. Either military officers and officials at National Defence Headquarters (NDHQ) failed to appreciate this, so accustomed had they become to treating all crises as situations to be tactically managed and controlled, or it was a calculated strategy to obstruct and discredit our Inquiry. Even if it were the former, which would indicate a degree of naïveté at NDHQ, the result was the same. Our work was made far more difficult than it should have been, and our Inquiry was needlessly and expensively protracted. In the end, these tactics significantly impeded our work but at a heavy cost to the reputation of the military and to the trust that Canadians had heretofore shown in the effectiveness of the public inquiry process.

Even before the official announcement of this Inquiry, DND began to assemble a team and attend to personnel and administrative matters.[1] SILT was established officially in April 1995 by a directive from Gen de Chastelain, Chief of the Defence Staff (CDS), and John McLure, the Acting Deputy Minister.[2] The directive established SILT within the ADM (Policy & Communications) Group "to act as a focal point for all matters related to the Inquiry". The mandate of SILT was specified as

- collating and cataloguing all documents, notes, email, etc. created or held by the Department on the CF participation in the UN mission in Somalia;
- assisting the Inquiry in obtaining relevant information from the Department;
- responding to requests for information from the public and Inquiry witnesses;
- acting as the focal point for media inquiries;
- and coordinating the appearances of Department witnesses before the Inquiry.

When it was first created, SILT comprised four members: the director of SILT, a public affairs officer, a secretary, and an administrative clerk. They reported to the Associate ADM (Policy & Communications), who at that time was MGen Boyle.

Additional resources were authorized to establish the SILT office.[3] As the number of document demands grew, SILT expanded in an attempt to keep up with those demands. Ultimately it had to struggle with inadequate resources because of its initial "misestimate" of what would be required to do the job.[4]

The CDS directive also addressed the issue of the Department's cooperation in providing documents to us via SILT. It directed that all of DND/CF was required to comply with SILT's requests, that "[no] documents, in whatever form they exist, shall be withheld from the SILT", and it gave SILT the authority to contact anyone it required to fulfil its mandate.[5]

In June 1995, LGen (ret) Fox was appointed Special DND/CF Adviser to "advance the CF/DND interests in respect of all matters under the mandate of the Somalia Commission of Inquiry". LGen (ret) Fox had five primary responsibilities:[6]

1. to coordinate and plan the Department's position on all issues related to the Inquiry;

2. to ensure the development and preparation of the Department's position;
3. to instruct counsel on the Department's position before the Commission of Inquiry;
4. to represent the Department's interests at the SubCommittee of the Joint Management Group; and
5. to superintend all activities of SILT.

This order expresses the inherent contradiction built into SILT between managing the Department's position or political response to the Somalia affair and assisting us to investigate it and the conduct of the CF in relation to it. The predominance and priority given to managing the Department's responses are also clearly evident. LGen (ret) Fox was given the responsibility of overseeing SILT as part of his duties. He reported to LGen Boyle, who had recently been promoted to ADM (Personnel).

Orders for Production

One of the most important factors enabling us to begin our investigation was the receipt of Somaliarelated documents. We sought such information from many sources but gave three formal orders for production to the Privy Council Office (PCO), the Department of Foreign Affairs and International Trade (DFAIT), and the Department of National Defence.[7] The first two organizations had relatively few Somaliarelated documents; it was DND that held the vast majority of the materials we would require.

The order dated April 21, 1995, addressed to the Minister of National Defence, required the production, within 30 days, of all documents relevant to our terms of reference in the possession or control of the Department and the Canadian Forces.[8] The Department applied for an extension of time and by our order dated May 29, 1995 it was granted an extension until June 30, 1995.[9] See Figure 39.1 for a graphic representation of the adequacy and timeliness of production of documents.

GRAPHIC GOES HERE p1203

It was on June 30th that counsel for the Government of Canada wrote to us outlining the documents that had been identified pursuant to the order, providing lists of those documents and stating that all documents listed had been provided to us or would be provided shortly. Counsel also stated their belief that the requirements of the order of April 21, 1995 had been met but that the Department, through SILT, would continue its efforts to provide additional materials to us and to respond to our requests.[10]

Efforts by SILT to Obtain Documents

In the weeks before this order, SILT had already begun obtaining documents relating to Somalia.[11] Requests, in the form of telephone calls and memoranda, were made to offices within NDHQ asking for documents. SILT's idea was to begin at the top of the chain of command and move downward as the search extended to more documents. In this way, policy documents would be collected first and then the search would extend to working documents relating to the Somalia deployment.

This method was almost guaranteed to protect the military's interests. If a coverup is suspected, a topdown investigation courts the risk of failure. By definition, coverup is invisible at the top and contains no clues at that level as to its lower origins. Only an investigation that starts at the bottom of the process has any hope of uncovering the facts that are eventually hidden.

To cite an analogy from history: if SILT had been charged with gathering documents about Watergate, its strategy would have been to ask President Nixon and the White House for all available documents and then

follow these down through the system. The secret tapes would never have been discovered.

Originally, we accepted SILT's profession of good faith, repeated by the CDS and the Minister of National Defence, and waited to see what emerged. To do otherwise would have shown a degree of skepticism in our institutions unwarranted by Canadian traditions and the history of previous inquiries. And so we embarked on what proved to be a long and disillusioning process.

The director of SILT, Col Leclerc, made verbal requests because he felt that these would allow him to gauge better the level of cooperation he received. He considered the cooperation of senior staff in NDHQ in response to his verbal requests to be excellent. He also felt that the general response to SILT was excellent in that there were no complaints about having to provide the documents.[12] That positive response, however, did not mean that everything required was being provided.

Upon receipt of our order, SILT extended its search for documents to all relevant documents. SILT sent a formal request in the form of a message dated June 2, 1995 to the commanders of Land Force, Maritime, and Air commands, asking that these three headquarters take the appropriate measures to provide the required documents to SILT no later than June 9,1995.[13]

Many of the documents were in the possession of SILT by midJune, but it would turn out that many crucial documents arrived at SILT later. Other documents had been destroyed or lost and were never made available to us, Examples of documents that were not provided at that time include documents from the Directorate General of Public Affairs and National Defence Operations Centre (NDOC) logs from headquarters.[14]

SILT's initial estimate was that there were 7,000 documents.[15] The number of documents it received in the summer of 1995, however, quickly exceeded that estimate by a huge amount. The sheer volume meant that SILT began sending documents to us without first registering and copying them.[16] According to its records, by September 1, 1995, SILT had received and delivered to us approximately 30,000 documents.[17] This would turn out only to be a fraction of the final amount.

Receipt and Management of Documents

We always recognized the importance of the documents issue. When the number of documents started to grow beyond SILT's initial estimate, we retained specialized consultants to implement systems to handle the increased volume. From September 1995 until the end of the hearings, we employed at least 10 and as many as 20 persons fulltime in document management.

We put into place a number of systems to track, manage, and review the documents, including a data base to manage the paper documents received and a specialized software program, Folio Views, to provide electronic access to electronic files received.

To ensure full control of the documents, our staff developed a standard procedure to handle documents received. Documents were processed, catalogued into a data base, and then categorized according to the issues they addressed.

Once a document was received, the first step consisted of numbering every page using a unique identifier generated by and recorded in our data base system. In the case of documents received as computer disks, each file was printed out onto a paper copy and then processed. Once numbered, a document could be unambiguously identified by the number on its first page. In addition, a procedure was used to identify documents that contained other documents, for example, a memorandum attached to a covering letter. It was

important to identify these documents within documents to have full control of the information we received.

Next, each document was catalogued by entering key descriptive information into a relational data base system. This allowed us to retrieve documents by several criteria, including the title of the document, the type of document, its date, and information about the document's author and recipient.

A critical element of our ability to deal with huge volumes of documents was the review of the documents after they were recorded in the data base. To allow a systematic review, a list of issues of importance to us was developed. The purpose of the review was twofold: to identify documents that were not relevant to our work and to catalogue those that were relevant by identifying them with applicable issues on our list.

This categorization of the documents, along with the information used to catalogue the documents, allowed our staff the flexibility to research issues, prepare for hearings and create hearing books.

Because not all documents were complete and questions inevitably arose in working with large volumes of material, SILT was responsible for assisting us in obtaining additional relevant information.[18] Formal requests were numbered sequentially for ease of reference. These numbered requests typically asked SILT to supply missing documents or missing portions of documents or to provide other additional information. As an integral part of document management, a data base was used to record and manage these requests. Apart from describing the particulars of the information requested, we assigned to each request a priority of high, medium or low to reflect its relative urgency.

Initial Inadequacies in the Department's Production of Documents

On the assumption that there would be only 7,000 documents in total, SILT arranged to have all documents scanned into an electronic format to facilitate search and retrieval. Initially this undertaking began inhouse. As the size of the task grew, however, an outside company was retained to complete the job. By early September 1995, about 30,000 documents had been scanned. At that point, SILT decided not to scan any additional documents but simply to provide them to us in paper form.[19]

At first, the documents we received were identified by a number assigned by SILT (the 'SILT number'). In addition, when the documents were scanned, a 'control number' was also used to identify the document in the electronic information base. Later the SILT number was discontinued in favour of the control number. After SILT's decision to discontinue scanning, however, many thousands of documents arrived over a two- to threemonth period without any type of reference number assigned by SILT. In November 1995, documents began to arrive under a new identification system using socalled R numbers. This method had no apparent connection with the earlier systems, nor were we alerted to the fact that this was a new system being used by SILT. The meaning of the new designation was clarified only after Commission counsel wrote to SILT asking for an explanation of the Rnumbered documents.[20] As a consequence, we found it necessary to modify the system several weeks after the changes were implemented, resulting in both inconvenience and time delays.

A problem that arose several months later and that was exacerbated by the absence of a reliable tracking system at SILT was the elimination of duplicates.

SILT's delivery of documents showed that little effort had been made to organize the material. Typically, thousands of documents would arrive in unmarked boxes accompanied by only a transit slip and a brief covering letter containing little useful information.

Worse still, documents had pages missing; documents did not contain attachments or appendices; documents were unintelligible as a result of poor photocopying (we received virtually no originals);

documents referred to in other documents could not be found; and documents that belonged together were not delivered together. Often what we received were pieces of information rendered nearly useless by an absence of context and because of inconsistent quality and unreliable integrity. Huge amounts of time were ultimately spent searching for missing attachments and attempting to reconstitute documents or sets of documents from individual fragments

SILT's Difficulties in Responding to Numbered Requests

To address our concerns about SILT's response to the order for document production we made numbered requests to SILT asking the Department for additional information. Using the protocol we had established with SILT, requests were made by Inquiry staff for better copies of documents, missing pages, additional documents, and other information. In many instances, these requests were handled by SILT in a prompt and helpful manner. However, we had to rely on SILT and the Department for the processing of virtually all of these requests and in many cases, the responses were disquieting.

SILT's Slow Response

The most troublesome aspect of the SILT's response was its lack of timeliness. As part of each numbered SILT request, we assigned a priority to the request and a target date for SILT's response. Responses were often received after the target date. Although interim responses were sometimes received, many requests were resolved only several months after the target date, and others were never resolved satisfactorily. Also, even with a priority system, the response time and the urgency of the request were not correlated.

In January 1996, we were concerned about the tardiness of SILT's responses and assessed all numbered requests we had made since September 1995. The result: of the 196 requests at that time, 62 per cent remained outstanding after the target date, with the average delay being 40 days.

Most of the documents we were interested in from PCO and DFAIT came pursuant to orders for production to the two organizations, but a few requests were made to DFAIT through SILT. Unfortunately, these relatively few requests were not answered speedily. For example, in October 1996, we requested a list of records relating to weekly executive committee meetings of senior departmental staff at DFAIT from July 1992 to August 1993.[21] DFAIT's response (through the Office of Counsel for the Government of Canada) came in March 1997, six months later, only to say that it had no such material.[22] In another example, a request was made for materials documenting interdepartmental meetings relating to Eastern and Southern Africa.[23] We were advised to expect receipt of those documents by early December 1996,[24] but nothing was received by late March 1997, when our evidentiary hearings concluded.

Because of the breadth of our mandate, we consistently stated that SILT was to provide all requested documents relating to our terms of reference, and we would decide on the matter of their relevance. In at least two cases, however, government counsel questioned the relevance of the documents requested and wrote to ask for an explanation. In one example, we requested the briefing materials of a particular cabinet minister. Government counsel failed to understand the relevance of these materials because that minister had been briefed only after the Canadian Forces members participating in Operation Deliverance had been redeployed to Canada. The matter was resolved only after we pointed out that the Inquiry's mandate included matters of response and the aftermath of the intheatre incidents.[25] This type of interim exchange did little to expedite the progress of the requests, especially since any clarifications could have been made by telephone.

Inexplicable Difficulties

Other aspects of the responses were also troubling and difficult to understand. For example, two numbered SILT requests,[26] made in the fall of 1995, asked for minutes and agendas for Daily Executive Meetings (DEMs) and related documents. These highlevel meetings were held on a regular, almost daily, basis. It is difficult to imagine that the minutes and other documents that relate to them are not all kept together in a ecure facility and easily retrievable.

The fact is, however, that the request for DEM minutes was outstanding for over three months before a response was received. The first DEM documents we received from SILT arrived inexplicably without a covering letter, without an index, and without reference to the original request, The records were also incomplete and not arranged in any apparent order. It was only after intervention by our senior counsel that a more acceptable response was provided.[27]

That response did not, however, satisfy all the requests for information in respect of DEMs, and many requested documents remained outstanding. The partial explanation that "the older agendas are not readily available and/or may have been destroyed" was vague and unsatisfactory.[28] In addition, an analysis of SILT's responses revealed inconsistencies in the information provided. For example, agendas were missing for some DEMs, but more alarming was that agendas existed for days on which SILT had stated that no meetings were held.[29] The Department's response was inconsistent with an organized and complete set of records being held in a central location. Yet the absence of such an approach would be puzzling given the high level and potential importance of these records.

The value of the DEMrelated documents was in their identification of the issues discussed at those meetings and their indication of what information was available about those issues. It was therefore unsatisfactory that these hundreds of outstanding documents arrived only in October 1996,[30] leaving us less time than we had nticipated to analyze the information received and make further inquiries for the hearings then going on.

Once all available DEMrelated documents from 1990 to 1995 were received, we carefully reviewed their contents. A pattern emerged from the DEM minutes whereby less and less information became available over time about the sensitive issues relating to Somalia.

Taking the records up to 1992 as a baseline, minutes were produced for the large majority of DEMs, and those minutes gave a good idea of what was discussed at the meetings. In 1993, however, at the time of the intheatre events, references to important incidents in Somalia were suspiciously sparse, given the high profile of issues such as the incidents of March 4th and March 16th. By contrast, the minutes did record matters such as why mail for the forces in Belet Huen was experiencing continual delays.[31] The pattern continues through 199495, where DEM minutes are kept less frequently and contain less content, to the point where they are not kept at all in the latter months of 1995.[32] This pattern is inconsistent with the Department's earlier practice of keeping minutes and with the written departmental procedure, which states "Minutes covering DEMs will be prepared by D NDHQ Sec and distributed to all concemed".[33]

When the outstanding DEM minutes were delivered in October 1996, SILT indicated that briefing materials were available upon request: "A number of briefings were presented at DEM/PostDEM, many of which did not relate to Somalia. It is requested that the Commission identify the specific briefings which are of interest to them".[34]

n November 1996, after reviewing the DEM minutes, we asked for briefing notes, background materials, and other documents relating to 46 matters discussed or referred to in the DEMs and PostDEMs.[35] By the end of January 1997, we had received no response and repeated the request.[36] We also emphasized that the new deadline for a final report greatly increased the urgency of the situation and asked SILT to send

whatever materials it had gathered by early February.

SILT's reply came only in March 1997, as the Inquiry was in the process of winding down.[37] Of the 46 requests, many of the documents could not be located; in other instances, responses were incomplete. From these results and SILT's explanatory notes, it appeared that the search had been ad hoc and that there was no orderly system of storage and record keeping of these materials. SILT added that the minutes often did not contain enough information to allow retrieval of the materials referred to and that copies of the briefings were rarely left with the NDHQ secretariat or handed out to attendees.

The search for information related to DEMs began in late 1995 and ended, as our last witnesses were being heard, with a disappointingly large number of materials of interest to us ultimately being unavailable.

In January 1996, Inquiry staff mace request number 239 to SILT for copies of the Red Book since 1990.[38] The Red Book was an annual document containing guidance from the Chief of the Defence Staff to commanders about where they should focus their efforts. This is a well recognized and important document that should have been readily accessible and easily reproduced.

More than four months later, we received boxes of files, once again unaccompanied by any letter, index, or reference to any of our requests. These boxes contained some Red Book material, but in no way can this response be viewed as satisfactory.

This example illustrates the labours involved in the examination of documents. The copies of Red Books should have arrived in a complete package. Instead, the materials we received were piecemeal, incomplete, and intermingled with other documents. After considerable effort, Inquiry staff were unsuccessful in reconstructing the requested documents from the fragments received. In particular, they lacked sufficient material to reconstruct a copy of the Red Book in effect during the predeployment period.

A reminder had been sent to SILT in June 1996,[39] but we received no response until February 1997, when a copy of this key Red Book was received in response to a different request for a related document.[40] SILT offered no explanation for the delay of more than one year in providing the requested information.

In December 1995, we requested a number of documents relating to highlevel meetings, including the agendas for Defence Council meetings from 1990 to 1995.[41] The Defence Council is a forum for discussion to inform senior management and to facilitate decision making. It is chaired by the Minister of National Defence, and its members include the CDS, the VCDS, the DM and other senior officials. The Defence Council is a main avenue for briefing the Minister of National Defence on developments within the DND/CF and should normally meet once a month.

In March 1996, SILT replied that in the period 1990 to 1995, there appeared to have been only six such meetings,[42] a surprisingly low figure. After additional research, the final response in October 1996 was that one of the six meetings had been cancelled, no minutes were produced for another, and two sets of minutes could not be located.[43] The result was that the minutes of only two meetings were available in the sixyear period.

In February 1997, we requested documents relating to communications with the Minister of National Defence about our request for extensions. We were interested in documents that either advised the Minister about the matter or documents that contained the views of the Minister.[44] After we received no response, a reminder was sent in March.[45]

Later that month, SILT's reply was that none of the documents described in that request could be located.[46]

SILT added that because the Honourable Doug Young had been appointed minister (replacing the Honourable David Collenette) "any papers from his predecessor would have been sent to the Archives". SILT also wrote that we had received documents from the PCO and that "[a]ny additional documentation would likely fall into the categories of Cabinet Confidences or Solicitor/Client Privilege".

These comments are troubling. Any reply by Mr. Collenette to his officials would certainly have remained within the Department. It is not the practice to gather all the documents signed by an outgoing Minister and send them to the archives. Similarly, as regards correspondence sent to the Minister, any copies retained by the authors were not archived. Even more unsatisfactory is SILT's uncertain comment that documents were "likely" to be privileged. It appears that SILT did not bother to search for such documents, on the assumption that these were protected by a privilege. Documents that are not privileged were required to be released to us. Documents for which privilege was claimed should have been identified, and a list of such documents should have been sent to us.[47]

A final example along these same lines is our request in May 1996 for the Combined Joint Task Force (CJTF) Somalia operations plan.[48] This key document sets out the whole concept of the operations, missions, and tasks in Somalia. SILT's reply in August 1996 was that these documents could not be found in the Canadian Forces. We cannot understand how the Department was unable to find such an important and highprofile document over a threemonth period following our request.

E-Mail

SILT's mandate, as specified by Gen de Chastelain in his April 1995 directive, included collating and cataloguing "all documents, notes, email, diskettes, videos, etc." relating to the mission in Somalia.[49] Despite this and our order to produce all documents and other recorded information, very little was received in the way of email, either in paper copy or in an electronic version. As this was a matter of considerable interest to us, on May 21, 1996 the Commission Secretary wrote to the head of SILT asking about the status of the disclosure of email.[50] By June, SILT had still not responded, and we wrote a second time asking for a response.[51]

SILT replied that it had requested detailed information about the email systems in place at NDHQ and the CF since 1992 to allow us to assess its use.[52] This appeared to miss the point completely; we wanted copies of the email transmissions, not information about email systems. A letter making that clear was sent to SILT.[53] After additional discussion, SILT's final response was that it had passed on all email that the Department was aware of and that it considered the matter closed.54 The matter might have been closed, but Inquiry staff did not feel that they had received much cooperation in obtaining email communications that might have been relevant to our mandate.

The significance of email is that it is often used to communicate internally within an organization and may be more candid than formal correspondence. One significant example was brought to our attention by counsel for one of the parties with standing. That was a series of email transmissions concerning an attempt by MGen Vernon to organize several colleagues to present evidence before us and LGen Reay's response to that effort. LGen Reay's reference to "the idea of producing the King James Version of events"[55] and his statements "How we respond is entirely up to us and we control what is written",[56] and "Equally, every time the Commission asks for amplifying info or more briefs or whatever, we will respond and we control how we respond"[57] are especially noteworthy.

In his testimony, LGen Reay conceded that these words could be interpreted to mean that he wanted to control the flow of information to the Inquiry, but he added that this had not been his intention.[58] As it turns

out, what LGen Reay said he did not mean was precisely what was reflected in our rueful experience with the disclosure of documents.

Although we were aware of the email transmissions, reliance was placed on SILT to provide copies of the email for the purposes of the hearings. It is of interest to note that even though the quantity of email made available to us was incredibly sparse, this particular example was available and easily retrieved by SILT.[59] However, this particular message was not actually disclosed to us until we advised senior officials that we were already in possession of a copy obtained from another source.

This example illustrates the candour in a less formal communication medium such as email and the value of such records for our work, MGen Vernon testified that it was an everyday occurrence for members of the CF to use email or the telephone to communicate about "demiofficial" matters.[60] He described demiofficial correspondence as being private correspondence and contrasted it with official correspondence which "belongs to Her Majesty".[61] He explained that demiofficial communications were a normal method of staff work: establishing consensus through this less formal liaison before the results are presented to superiors for official consideration. He also testified that the "demiofficial net" accounts for a great deal of the consultation and discussion behind official decisions.[62]

From this testimony, it is clear that had it been more available to us, email could have proven invaluable as a window on the frank consultations that were held on that "net" every day.

Substituted Documents

Another of the frustrations we encountered was the way SILT responded to a request for a particular document by providing a related but different document.

Following a tour of the NDOC for Inquiry staff, we wanted to know what procedures existed for the handling of information received by that office, In October 1995, we requested a copy of the standing orders of the NDOC in effect during Operation Deliverance.[63] SILT's response was to enclose a copy of the National Defence Operations Centre Instruction, October 1995 (two years after Operation Deliverance), with the explanation that "this is a 'living' document which is updated as required but at least reviewed annually" and that it would continue to look for a copy of the Instruction dating back to 1992/1993.[64]

By June 1996, eight months later, there had been no further response from SILT. We wrote again to ask what progress had been made to locate or reconstruct the 1992/1993 version of the document, and if none, we wanted copies of the Instruction used in the two annual reviews that bracketed Operation Deliverance.[65] SILT replied in October (one year after our original request) that the document had not been found and that it was unable to reconstruct it. SILT added that "the Instruction is a 'living' document and as such there is no utility in retaining a copy which is no longer current. In fact, retention of 'living' documents which are not current often leads to confusion and can be a serious liability" and considered our request to have been fulhlled.[66] The result was that one year after our request, the only document that had come into our possession was current but not relevant to the period we had specified and was therefore of no use to us.

A similar situation arose when we requested a copy of a twopage summary written by VAdm Murray and referred to in another document.[67] SILT's response was to send a different document "concerning the same issue" and to state that "[s]ubject to further direction from [us], this request will be considered closed".[68] It is difficult to understand how providing "a new document concerning this same issue" in any way satisfied the original request.

SILT's Need for Clarification

Beyond the failure to receive the materials requested, a considerable amount of energy was spent in clarifying matters for SILT or attempting to get SILT to respond to the request made.

An example already discussed concerns SILT's research into email systems instead of providing us with copies of the email transmissions themselves.

Another example is our request for DEMrelated documents. In June 1996, more than six months after the initial request for these types of documents, SILT did not appear to understand fully what was being requested. We wrote to SILT regarding this matter: "Your response on this issue is unsatisfactory in a number of respects. The main problem is that it does not appear to respond directly to [the] request but, rather, it appears to build on your response to another request dealing with different material."[69]

A final example is that of request number 096.[70] During a 1995 general court martial case, a witness stated that there was a sheet of paper inside a guardhouse that outlined the duties of the guard. In October 1995, request 096 asked SILT to provide a number of documents, including the sheet outlining gate guard duties. Our request made specific reference to page 168 of the general court martial documents, where the statement about the sheet was made.

Eight months later, in June 1996, SILT replied that this outline of guard duties could not be located and that SILT officials did not believe that it existed.[71] We had little confidence in this response, however, because SILT also had difficulty finding the reference on page 168 of the court martial transcripts and stated, erroneously, that there was no such reference.

Unavailable Documents

We were also often frustrated in our attempts to get documents known to have existed but that were unavailable to us. Examples include the *National Defence Act* Review, the Chief Review Services (CRS) studies, and the Kipling Reports.

In September 1995, Inquiry staff requested a copy of the *National Defence Act* Review.[72] Other documents in our possession describe this work as a review of the military justice system conducted internally by the Department and presented to the Defence Management Committee (DMC) in January 1994. A month later SILT replied, stating that the document was under consideration by the Judge Advocate General (JAG) and that it was "not possible to give an exact date when the request will be answered".[73]

In February 1996, SILT forwarded to us a letter from the JAG stating that the Department had established a process to review the *National Defence Act* and brief the DMC, and ultimately the Minister, on recommended changes *to* that act. Although the consultation phase had ended in the summer of 1994, the report was not yet finalized, and the draft would not be released to us.[74]

Over a year after the original request, in November 1996, we sent a further letter to see what progress had been made. SILT's response, a month and a half later, was "[a]lthough the current rationale for withholding this documentation remains unchanged, the Office of the Counsel for the Government of Canada remains willing to discuss the process. For these reasons, SILT's perspective is that this request will be considered closed".[75]

After nearly a year and a half, we were no further ahead in obtaining the desired information. We wanted to study the review to understand the areas identified for change by the Department and the nature of those

changes. Instead, well over a year after the creation of a draft report, the Department continued to deny us a copy, giving no indication when the report would be available. SILT's final comment on the matter was that it considered the request closed.

In November 1995, we asked for a complete list of the studies prepared by the Chief Review Services in DND since 1991.[76] The CRS is responsible for the internal investigation of issues, often at the request of senior departmental officials. Its studies were of interest because the Department's own views of issues being investigated could prove quite revealing and helpful to our work. In December, we amended that request, asking for a list of all studies and reports by the CRS since the position was established.[77] This list was provided in March 1996. In April, we asked for a number of documents of interest from that list.[78] This request remained outstanding as of August, and we sent a reminder to SILT, increasing the priority of that request.[79] In December, SILT forwarded the majority of the requested documents. In January 1997, additional documents were forwarded. A number of documents were not included, however, because they had been "destroyed" in June 1994.[80] No other information was provided about these documents, which included an evaluation entitled "Departmental Evaluation and Accountability Reporting" and an assessment entitled "Public Information", presumably covering the dissemination of information to the public.

In December 1995, we made a highpriority request asking SILT for information about documents known as the Kipling Reports and asking for copies of such reports produced in the years 1993 and 1994.[81] In February 1996 SILT replied that the Kipling Reports are biweekly reports compiled by the NDHQ Secretariat to inform senior staff of current DND issues and are based on information supplied by NDHQ directorates. SILT reported that, based on telephone conversations with the NDHQ Secretariat, "all KIPLING Reports from 1993 have been destroyed and copies are not being kept any more".[82] However, no mention was made of the Kipling Reports from 1994, which we had also requested.

After receiving nothing more on this matter, we wrote back to SILT in December 1996, asking for a more thorough search.[83] SILT's response was that a broadened search revealed that all recipients of the report had destroyed the 1993 and 1994 copies according to records disposal guidelines and that the documents were not available in the Department or the government.[84] Once again, documents that were of interest to us were ultimately unavailable after many months of waiting. Even more disappointing was the fact that a comprehensive search was conducted by the Department only upon a specific request from us and that SILT did not take this step on its own initiative.

The CRS studies and the Kipling Reports are just two examples of the destruction of highlevel documents with no apparent regard for the loss to corporate memory. It is understandable that copies distributed to individuals have become unavailable, but we have more difficulty accepting that the individuals or offices responsible for producing such documents would not retain any records.

The Need to Hold Hearings on Document-Related Issues

Because SILT had failed to deliver all the relevant documents on time, we had no choice but to begin hearings before we had received all the documents. Evidentiary hearings began in October 1995, and as they proceeded through the fall of 1995 and continued through the winter of 1996, we continued to receive, process, and review new documents, including documents of direct relevance to the hearings already under way.

Because of the serious difficulties that we had encountered in obtaining disclosure from SILT, we were obliged to hold public hearings to determine why we were not receiving documents necessary for us to fulfil our mandate and whether this deficiency was deliberate.

Pursuant to our terms of reference, we began hearings in April 1996 related to the integrity of the documents delivered to us, The main issues explored were noncompliance with our orders for production of documents; the alleged destruction and alteration of Somaliarelated documents; discrepancies in the NDHQ logs; and missing intheatre logs.

Alteration and Attempted Destruction of Somalia Related Documents

Later in this chapter, we detail the complexities surrounding the alteration and subsequent attempted destruction of Somaliarelated documents. This issue resurfaced within the DGPA as a result of our order for the production of all relevant documents. While other areas of the Department submitted Somaliarelated materials pursuant to SILT's instructions, the DGPA had not complied, although it knew of the requirement. On the contrary, arrangements were made by supervisors in DGPA to destroy documents requested by us to cover up their previous deceptions. This plan was unsuccessful, however, because the arrangements were discovered before they were carried out.

During the hearings, many details of the affair were examined, and witnesses for the most part denied responsibility. It was clear, however, that the Department had failed blatantly to comply with our order for production. The actions of the Department were, we concluded, dishonest and deliberate. To cover the original deception, the severity of misdeeds had escalated from artifice to lies to noncompliance with an order for production and finally to the attempted destruction of evidence.

NDOC Logs

The National Defence Operations Centre at NDHQ was responsible for coordinating the flow of communications related to operational matters and was the information centre that received all message traffic.[85] Any information received from OF theatres of operations was required to be recorded in the NDOC log by the NDOC desk and watch officers.[86] Col Leclerc testified that the NDOC log was kept by duty officers and contained a record of all message traffic that went through them, that is, telephone calls, messages, and reports from various alert systems that come into the headquarters.[87]

We attempted during the summer of 1995 to obtain the NDOC logs; SILT provided three different ones.[88] During our review of these, we discovered a number of unexplained anomalies, including entries containing no information, entries missing serial numbers, and entries with duplicate serial numbers. The concern was that there may have been deliberate tampering with these logs.

A military police investigation was launched on October 11, 1995, but it was frustrated by the fact that the computer's hard drive had been reformatted and backup tapes were not available. The investigation was unable to determine whether the inconsistencies in the logs were the result of tampering and suggested that they were the result of poor operating procedures, insufficient training, and a lack of system audits.[89]

As a result of the military police report, Commission counsel interviewed NDOC personnel and discovered that the computer system in operation during 1993 actually consisted of two hard drives, one that mirrored the other.[90] The mirror drive was found at NDHQ and, contrary to what had been suggested in the military police report, it had not been reformatted and disposed of, although much of the data had been deleted.[91] As a result, the military police reopened their investigation into the question of tampering. The second investigation revealed no evidence to support the theory that tampering had occurred,[92] but could not eliminate the possibility.

These investigations did, however, reveal a number of other serious problems with the NDOC logs. Despite

the key role the NDOC log would play in any investigation, management and staffdid not appreciate its importance and accordingly did not give it priority.[93] Most of the problems seem to have resulted from the lack of standing operating procedures with regard to the log and a tendency to bypass this awkward system.

One major problem was the lack of policies and practices with regard to creating and maintaining a complete record of communications from field units to NDHQ. To begin with, the purpose of the log was not clear in the minds of NDOC personnel, and perceptions of the role it played at NDOC varied from one individual to another.[94] In addition, oneofficer interviewed stated that there were no standing operating procedure regarding the inputting of information into the NDOC logs, and a National Investigation Service (NIS) report found that "[s]tandard operating procedures were nonexistent".[95] The decision about what information was entered was left to the desk officer or watch officer.[96] When it was decided that information needed to be entered in the log, the fact that NDOC staff received no formal computer training compounded the problem.[97]

A review of the logs shows that there were large gaps in the records of communications that flowed from the intheatre headquarters of CARBG and CJFS to NDHQ during Operation Deliverance, and in particular after the incident of March 4, 1993. Despite the contention that the NDOC was an "allinformed staffsystem",[98] a clear cause for concern was the fact that the NDOC was not always used for official communications. Operational information was often provided directly to senior NDHQ officers without passing through proper channels, bypassing the information system that was in place. Such a prominent violation of NDOC policy demonstrates an ingrained lack of appreciation for the importance of an accurate record of NDOC activities and a serious problem of discipline within the CF.

The security system in place at NDOC was completely ineffective. One officer stated that typing in a user ID followed by a password gained access to the system, and that he had the passwords for the three desk officers because he was regularly required to access their accounts.[99] Another noted that he did not need a password to use the NDOC operations log because it was open and running 24 hours a day.[101] The NIS investigation also noted that there might be concern if the public received information regarding how inadequate the NDOC system was during this period.[102]

The implications of this investigation and of our own review of different versions of those logs is that NDOC logs are not a reliable record of transactions at the operations centre. Even apart from the question of deliberate tampering, the logs were compromised by problems with the database system and the absence of proper procedures for the operators.

Operational Logs

Another type of log, intheatre operational logs, were of great interest to us. In addition to the logs kept by the NDOC operations centre, operational logs were kept daily with respect to the Somalia deployment. "The [operational] log provides an abridged chronological record of all incoming and outgoing information, actions taken and decisions made. It [also] provides a continuous story of the operation in progress, a check upon action yet to be taken and a basis for the writing of the war diary."[102]

A war diary is a historical record that units are required to create when engaged in certain operations, including peacekeeping, In relation to Operation Deliverance, the only mandated war diaries were for the Joint Force HQ and for CARBG.[103] However, other units also maintained diaries. While war diaries have stringent requirements for the preservation of written information, "[i]t is particularly important that *Operations Logs*...be included".[104]

A properly maintained log would "provide the minutetominute sequential information as it occurred within Operation Deliverance deployment to Somalia".[105] Of special interest to us were the logs from three commando units (1 Commando, 2 Commando, and 3 Commando) as well as the Service Commando logs.

Logs were critical to our understanding of events in Somalia, yet the logs we received in June 1995 were incomplete.[106] SILT did not follow up with inquiries about the missing information or monitor the obvious gaps in the information that was resumed to us.[107] Even more problematic was the lack of documentation from SILT outlining which logs did exist, which were missing, and why they were missing.[108] After beginning work on the logs in the fall of 1995 and struggling with these problems for months, we wrote to SILT on January 17, 1996 and made it clear that an order would follow requiring production of the logs kept in Somalia unless the Department began to make progress in this regard.[109] SILT replied on February 1, 1996 identifying some of the logs, but the response was far from satisfactory. A further letter from SILT, dated February 9th, had attached as an annex a more comprehensive listing of Somaliarelated logs and those that were missing.[110] That letter confirmed that 2 Commando communications logs for a period of several months were missing, and nearly all 1 Commando communications logs were missing. It made no mention at all of the logs from 3 Commando or Service Commando. Inquiries with respect to the missing pages appear to have started only on March 11,1996.[111] As a matter of fact, the search for logs became frantic only after we informed the military authorities that we would call the CDS, Gen Boyle, as a witness to account for the lack of compliance.

By the beginning of April 1996 we had assembled a list of the operational logs for the intheatre phase of the operation. This list indicated which of those logs had been delivered to us; practically nothing we received constituted a complete set of documents.[112]

In the months of March and April, a number of logs began to appear because of the heightened attention to them. The Airborne Field Squadron's logs were provided to us on April 18, 1996, after being found among closed files that had not been checked before the April 9th search ordered by Gen Boyle. We found that a copy of the Service Commando logs was held by the military police. In March, SILT informed us that the 1 Commando logs had been destroyed by water while in Somalia.[113] Maj Pommet was surprised that both copies of the 1 Commando log could have disappeared and noted that they would have been useful to the Inquiry, as they contained a critical evaluation of the shortcomings and unsatisfactory procedures of the operation.[114]

Following the CDSordered search in April, the 2 Commando logs were discovered at CFB Petawawa.[115] Despite the importance of the operational logs to our work, the Department appeared to have made little effort to ensure their delivery and completeness. What was produced voluntarily was scant and unacceptable, with no attempt to account for the very substantial portions that were missing. It was not until we had made several demands and finally resorted to the possibility of an order that a more comprehensive search was made. Even the results of those searches were not entirely satisfactory, and many portions remain outstanding.

Incredibly, despite its own mandate to maintain war diaries and certain logs, the Department failed to understand the importance of these documents and failed to explain the unacceptable state of its records. For example, Gen Boyle testified that one reason for missing log pages was that they could have been considered less important once the war diary had been produced.[116] The reality, however, was that there was no evidence that such logs were used in the creation of war diaries and that the diary entries did not refer to the logs or attach them as annexes.

An even more startling example concerned the Canadian Intelligence Staff Branch (J2) intelligence logs.

These logs recorded significant information received and action taken by Canadian Joint Force Somalia (CJFS) headquarters, They were concerned with information about activities that could affect the CJFS.[117] A properly completed J2 log could have provided us with critical objective information concerning such things as the reality of, or lack of, Somali groups engaging in hostile activity on February 17, 1993 or in abotage activities on March 4, 1993. Therefore, this log could have either confirmed or refuted the sabotage theory surrounding the events leading up to the March 4th incident (see Chapter 38).

There were apparently three copies of these logs,[118] but only one copy can be accounted for. These logs were stored in a filing cabinet escorted back to Canada under armed guard[119] and sent to CFB Kingston. Twelve filing cabinets of Somaliarelated documents, including the J2 logs, were shredded by First Canadian Division Intelligence Company in January or February 1996 because of the desire for storage space.[120] Maj Messier, who authorized the shredding, considered the material to be of no value to us,[121] as it was "non-essential documentation".[122]

This position is untenable, because

- (a) it was our role to decide what information was of importance to us, not the Department's;
- (b)the importance of intelligence information that addresses political and military factions, clan groups, and factional groupings,[123] was obvious because of its relevance to the atmosphere surrounding the major incidents under investigation;
- (c) any doubt about such relevance should have been removed by our request number 130 to SILT, dated November 20, 1995, which requested the disclosure of military intelligence reports; and
- (d) we had issued an order to produce all Somaliarelated documents.

A telling comment came from WO Beldam, who personally inspected every page of the Somaliarelated documents before their destruction in midFebruary 1996.'24 The Sumary Investigation officer asked him whether he had any reservations concerning the destruction of the Somaliarelated files. WO Beldam responded:

> none [of the documents] had and have no bearing on the matter at hand. We carefully thought the requirement through and decided we were not destroying anything of value. I had a job to do and the filing cabinets were an impediment, we had the disc copies of the material we required. Had I to do it again, I'd shred them again.[125]

This response not only shows that, in WO Beldman's mind, this act of destruction - and a clear violation of our order - was not a mistake, but also shows that it was "carefully thought" out and would be repeated today.

General Boyle Orders the Department to Search Again

By April 1996, LGen Boyle had been promoted to Chief of the Defence Staff. Because of numerous questions arising from our investigations into missing documents, including the Somaliarelated logs, Gen Boyle issued a CANFORGEN (a message to all units of the Canadian Forces) on April 3, 1996, ordering the Department and the Canadian Forces to "stand down all but essential operations on Tuesday 9 Apr. to conduct a thorough search of all their files, to identify and forward to NDHQ/SILT any Somalia related document not previously forwarded. ..not later than [11:59 p.m.] of that day".[126]

SILT's records indicated that the search resulted in 39,000 additional documents being forwarded.[127] A major concern was that those 39,000 documents would contain a large amount of duplication of materials

already in our possession. Anticipating that this could be problematic, the Commission Secretary wrote to SILT on April 11, 1996, requesting that "[o]nly documents which had not previously been provided to us be delivered".

By the end of April 1996, SILT had established a data base containing entries for the documents received. This meant that a listing of the documents could be given to us on a computer disk. In addition to information used to identify each document, SILT had classified the documents according to "priority" to indicate the likelihood that a document contained new information. Approximately 28,000 documents fell into the low end of that classification. Although SILT did not know whether these documents were duplicates of earlier documents given to us, the team classified these documents as unlikely to contain new information. We could not rely on this classification, however, because it was clear that the Inquiry and SILT had very different views about what was important in terms of documents.

The point that only nonduplicates were to be provided was emphasized in numerous meetings in April and May. This daunting task was undoubtedly made more difficult by the absence at SILT of a single system of tracking documents and by the apparent incompleteness of what systems did exist. It was acknowledged that our tracking system was more comprehensive and, to facilitate SILT's culling of duplicates, we offered to aid SILT by using computers to identify the most likely candidates for duplication. After additional meetings, the result was a plan of action, the exchange of computer data, and a time frame that was acceptable to both the Inquiry and SILT. In a letter dated May 28, 1996, SILT indicated that a copy of all nonduplicates would be delivered by dune 21, 1996.[129]

Unfortunately, in a subsequent meeting on June 12th, SILT stated that approximately 28,000 of the 39,000 documents would not be reviewed for duplicates, because SILT considered that those documents were unlikely to contain new information and that to do so would take far longer than the time afforded by the June 21st delivery date. Although SILT had committed on more than one occasion to go through the exercise of eliminating duplicates, the size of that undertaking appeared to overwhelm the organization.

At this point the vast majority of the documents from the search remained at SILT, where they had been since April. Nearly two months had elapsed with very little progress in getting the documents to us for review. We had no choice but to deal with the problem of duplicates ourselves.

In a letter dated June 13,1996, we demanded delivery of all of the documents from the April 9th search by the beginning of the following week.[130] Despite the earlier commitment to deliver the documents by June 21st, and numerous telephone conversations and letters prompting SILT for timely delivery, it was not until September 27,1996 - more than five months after the search was conducted and the documents had been received by SILT - that we finally received all the documents.

Starting in June, when we began to receive documents, Inquiry staff catalogued and reviewed them over a period of four months. Following this initial stage, staff spent many hundreds of hours more eliminating duplicates and updating hearing books affected by the additional documents.

Delays in SILT's Review of Hearing Books

We agreed to a protocol whereby documents to be included in hearing books would be sent to SILT for final review. After each hearing book was compiled and Commission counsel had approved its contents, SILT reviewed the documents before the hearing books were sent to the printer. The purpose was to identify any missing information and to allow SILT to request in camera hearings for documents that could affect matters of national security or to request the severance of information of a sensitive nature not necessary for our work.

Initially SILT's review of the hearing books was done on a timely basis and with few difficulties. As hearing books increased in volume, sometimes accompanied by requests to supply missing documents, SILT took longer and longer to review them. Delays of two, three, or four months were not uncommon, and in some instances, it took SILT nearly six or seven months to return a series of hearing books, as in the ase of those relating to Cpl Matchee's alleged suicide attempt.[131]

When these delays became apparent, we took a proactive approach and attempted to manage the situation. We determined which books had the greatest priority and then asked SILT to work on those books first. To have a workable arrangement, in many instances we also asked SILT itself to determine when overdue books would be ready. The results of this approach were also unsatisfactory some of our requests were ignored,[132] other requests for the return of hearing books were met with promises of delivery within an unspecified time frame. When delivery dates were specified, SILT often did not keep those commitments.[133] The result was that the filing of hearing books prepared months in advance became unduly delayed.

Documents Arriving as Late as 1997

On January.10, 1997 the Government announced that we were to end our hearings by the end of March 1997 and to complete the final report by June 30, 1997.

At the time of the announcement, we had made 391 numbered requests to SILT, of which 59 remained outstanding. For these 59 requests-some dating as far back as September and October 1995, when the original request system was implemented-we had either received no documents or had received incomplete deliveries and awaited additional information. They collectively addressed a wide variety of issues, from maps of Belet Huen to communications logs to minutes of highlevel meetings within the Department. Of the 391 requests at that time, 342 of them were no longer "outstanding" in the sense that they were no longer active. However, in a number of cases, including the *National Defence Act* Review and the NDOC standing orders discussed earlier, we had never received the information we sought. To our consternation, it was SILT that considered the requests closed because it was unable to find the requested information after some effort.

As we altered our plans and time lines to accommodate the Govemment's surprising announcement, documents stemming from SILT requests and the original order for production continued to arrive, sometimes in quantity.

One example was the war diaries. Hearing books dealing with the war diaries had been compiled early in 1996 and were sent to SILT for review in April. These hearing books were resumed by SILT in July and filed when hearings recommenced in September 1996.[134] Additional war diary documents on computer disk arrived in January 1997, with the explanation from SILT that although the disks were received in early April 1996, "a cursory examination" at that time led the researcher to believe that the materials were duplicates.[135] Another eight or nine months had passed before SILT reexamined the disks, found additional new documents, and forwarded the disks to us in 1997.

A more important example was documents for which the Government was claiming privilege. Pursuant to paragraph (i) of the Inquiry's order for production, the Department was required to produce "A list of all documents for which privilege is claimed, a description of the privileged information, and the basis on which privilege for claimed".[136]

By the fall of 1995 we had received a list containing a small number of documents for which solicitor/client privilege was claimed. In March 1996, during a visit to the Office of Counsel for the Government of

Canada (OCGC), we were given an updated list specifying 134 documents for which privilege was claimed. We were given access to these documents and, after reviewing them, disputed the Government's overly broad claim of privilege for many of those documents.[137]

On September 27,1996, more than a year after the list was due pursuant to the order for production, we received a new list of 2,617 documents for which privilege was claimed, documents referred to by SILT and the OCGC as the "LD" or legal documents. Starting in October, Commission counsel went to the OCGC offices to review those 2,617 documents. As part of ongoing discussions, the OCGC indicated that the list of 2,617 documents was a working document, and accordingly the OCGC would review the list to eliminate duplicates and nonprivileged documents.[138] In November 1996, as the painstaking effort to go through the 2,617 documents was under way, we were informed that additional documents were being added to the LD list.[139] The number of documents to be reviewed had grown to 8,000 by November[140] and then to 12,000 by December 1996.[141]

Apart from the frustration of huge increases in the number of documents to be reviewed, duplicates of documents already received or reviewed were regularly found among the legal documents, despite the earlier commitment by the OCGC to remove duplicates. In addition, the OCGC appeared to be taking the extraordinary position that privilege was claimed for documents on the LD list based on their being in the possession of counsel:

- To clarify matters it is our position that these particular documents are privileged and this privilege is claimed on each document as follows:
- a. The documents [were] contained in the file created by or for a solicitor or counsel;
- b. The documents were provided in confidence to solicitor or counsel for the purpose of securing legal advice;
- c. The documents were gathered by counsel for his or her assistance in preparing for legal proceedings conducted for or against the Crown;
- d. The documents were assembled or gathered by counsel in preparation of an opinion or preparation of a case for or against the Crown and therefore the privilege exists as that of a solicitor brief or litigation brief.[142]

Commission counsel stated their disagreement with this assertion of privilege and, in the interests of expediency, asked that the alleged privilege be waived in documents of interest to us.[143] Subsequent to those communications, arrangements were made to have urgent documents delivered by midDecember and the rest delivered by December 20, 1996. Neither target date was met. Instead, the bulk of the documents arrived a month later, after the Government's announcement had drastically reduced the time available to review these documents.

The Department's Inadequate Production and its Effect on our Work

An enormous amount of material was received over the life of the Inquiry. More than 150,000 documents containing 650,000 pages were catalogued into a data base and reviewed by our staff.[144] That we had over 150,000 documents also meant that SILT had delivered over 150,000 documents. Many of these, particularly those that had been scanned into electronic format by SILT, proved invaluable to our work, Approximately 400 hearing books were produced, which meant that the same number of books were reviewed by SILT staff members. In many ways, our tremendous efforts to retain control over the flood of documents that continued until the end of our hearings were mirrored by the efforts of the members of SILT.

Our serious concerns about the motivation and structure of SILT make it difficult to recognize the efforts that many individuals made within this system. Despite the difficulties, personal contacts between ourselves and SILT personnel were for the most part businesslike and courteous. Even in a flawed system, one cannot work for several years without establishing friendly relations and coming to have a high regard for the personal capabilities of many of the people one is associating with almost daily at times.

Generally speaking, individuals at SILT returned calls promptly and appeared to do what they could to address specific problems. There are instances where individuals made helpful suggestions and provided more than was asked of them. Col Leclerc certainly worked long and hard at the task that was given to him, and we were also impressed by a new spirit of cooperation and professionalism that became evident at SILT in the later stages under the leadership of MGen Tousignant.

But the purpose and design of SILT placed everyone within it in an impossible position, caught between adherence to our order of production and respect for the public inquiry process, and loyalty to their own institution and leadership-a leadership by its own admission disinclined to recognize the public's right to information and willing to resort to legalistic hairsplitting and subterfuge to avoid divulging that information.

Despite these efforts by individuals at SILT, our work was hampered by many systemic difficulties, principally the late delivery of documents; the delivery of documents in an incomplete and disorganized form; and a failure to manage the production of documents.

Late Delivery

The late delivery of documents is a recurring theme throughout the history of this Inquiry Our original order required production by May 1995. At the Department's request, the time period was extended until June. Documents continued to arrive, however, throughout the rest of 1995. MGen Boyle's search in April 1996 produced many more documents that should have been included in the initial production. The delivery of this second set was not complete until September 1996, nearly a year after evidentiary hearings had started and nearly a year and a half after the original order for production. Even then, documents on the LD list were not delivered until early 1997.

Of necessity, we depended on the promptness of the Department to meet our own time lines. The delay in production of documents inevitably meant delay in our work and the progress of the hearings. The most notable example was the delay of the intheatre portion of hearings until September 1996 because of the Department's failure to produce all the required documents, the consequent need to conduct document-related hearings, and the arrival of new documents following the April 9,1996 search. The research of many individual issues was also delayed by our unanswered requests to SILT and the poor state of the delivered documents.

Disorganized and Piecemeal Delivery

Given the quantity of documents being delivered, their breadth of scope, and the variety of sources from which they originated, it was crucial that SILT deliver them in an organized manner. Instead, these documents arrived in disarray, often without a covering letter identifying the contents of the delivery or an explanation of their significance or context. Indexes were included in later deliveries, but these were unreliable because they contained many errors and often did not correspond with the documents delivered.

As a result of these deficiencies, we spent thousands of hours reviewing the documents, eliminating duplicates, organizing them into meaningful categories in order to conduct research and assemble document hearing books, and attempting to reconstruct documents that arrived piecemeal, for example the DEM-related documents and the Red Book materials.

A similar situation arose in documents relating to the March 4, 1993 shooting of two Somali nationals. The military police report of that incident was a key document and one of the natural starting points for investigation.[145] That report was delivered in pieces, however, and had to be reconstructed over several days. Because we encountered this type of difficulty many times, Inquiry staff and counsel had to take extra time to work on documents before they could work *with* them.

The second wave of documents from the April 9,1996 search only added to these difficulties. Despite Gen Boyle's instructions that only documents not previously provided should be forwarded,[146] many duplicates were sent and had to be eliminated. Because these documents were received so late, entire series of hearing books had to be updated or supplemented.

Also, since document disclosure continued throughout all phases of the hearings, much of the information was received after we had dealt with the relevant issue. By the time the April 9, 1996 documents arrived, we had already completed months of hearings on the predeployment phase of Operation Deliverance. Inquiry staff had also produced many working papers based on testimony from those hearings and on the documents already in our possession.

The arrival of tens of thousands of additional documents meant that many of the working papers had to be revised to incorporate the new information and that documents of potential assistance to Commission counsel came too late.

SILT Was Event Driven, Not Management Driven

The quantity of incomplete documents, the absence of a system for ensuring complete delivery, and SILT's inability to account for long delays in fulfilling some requests illustrate its reactive approach to the issue of document production.

Col Leclerc's testimony described the initiative and organization that existed very early in SILT's work. That early plan quickly became inadequate, however, in the face of the enormous volume of documents arriving at SILT.

Although SILT was charged with the challenging task of collecting documents from the entire Department and the Canadian Forces, it did not establish a method of ensuring their receipt.[147] Even when it became obvious that documents were missing and that SILT's methodology was flawed, there was no attempt to correct the situation. The alteration and attempted destruction of documents at the DGPA demonstrates this point. SILT also did not bother to inform us of these serious difficulties, despite almost daily contact with Inquiry staff. There was no apparent effort to organize the documents that were delivered, and when important documents such as operational logs were obviously deficient, SILT was content to pass them on without ensuring their completeness.

Finally, as discussed earlier, in a number of SILT requests, SILT prematurely declared documents to be unavailable even though it had not exhausted all possible avenues of search. For example, in the case of request 307, SILT recognized that copies of the Combined Joint Force Somalia operations plan could be held by the U.S. Department of Defense, but instead of pursuing that obvious route, SILT considered the matter closed. In another example, SILT's search for the Kipling Reports consisted simply of a series of telephone conversations with a single office before it was satisfied that such documents were no longer available. In these and many other examples, it was only because of additional prodding on our part that SILT took further action.

SILT failed to manage actively the production of documents and played only a passive role as a conduit for the materials it received. The Department seems to have made inadequate provision for the supervision of

matters related to our Inquiry.

In many instances throughout the process of document production, it was only when we highlighted a problem that the Department addressed it. The fact that DND would wait until a problem had assumed crisis proportions before responding is amply illustrated by the second sweep for documents in April 1996. After several months of investigation into incomplete logs and other documentrelated issues, Gen Boyle was so troubled by his Department's problems in responding that he ordered the entire Department and the Canadian Forces to stand down and search for documents for a day. Despite such extraordinary efforts, the Department is still unable to account for many documents.

THE DGPA PHASE

Non Compliance with the Inquiry's Order and Attempted Destruction of Documents

Under paragraph 2 of our terms of reference, we were authorized to adopt such procedures and methods as were considered expedient for the proper conduct of the Inquiry. In light of the allegations of coverup, we believed that the most, if not the only, expedient and reasonable way of securing the material we needed was by issuing a request to the Minister of National Defence for production of Somaliarelated documents.

On April 21, 1995 we issued an order requesting the transfer of all Somaliarelated documents to us within 30 days.[148] On May 29, 1995 we gave the Department additional time to comply, extending the delivery date to June 30, 1995, in response to a request from the Attorney General of Canada.

However, by September 5,1995, the Directorate General of Public Affairs had still not complied with the order, even as extended. The testimony of Ms. Ruth Cardinal, then Director General of DGPA, reveals that some time in April she was informed verbally of the existence of the order, but she never received a copy of it or any written instructions as to what measures she should take to ensure proper compliance within the time frame stipulated. Although she does not recall having seen the CANFORGEN issued on June 16, 1995, she testified that she must have received it.[149]

As described previously, SILT was established in April 1995. The team, led by Col Leclerc, initially reported to LGen Boyle, and its mandate included the collection and cataloguing of all Somaliarelated material and a duty to assist the Inquiry in obtaining relevant information from the Department of National Defence. All DND employees and CF members were required to comply with requests made by SILT, and no DND or OF documents, in whatever form they existed, were to be withheld from SILT.[150] Eventually, in June 1995, LGen (ret) Fox came to occupy a newly created position, Special Adviser.[151]

According to Ms. Cardinal s testimony, she received no instructions from LGen Boyle, Dr. Alder or SILT as to what documents she should be collecting and what form or method she was to adopt to comply with our order.[152] She in turn issued no written instructions, orders or directives to her personnel to ensure compliance with the order.[153] Only in September 1995 - that is to say, some four and a half months after the service of the order and three and a half months after its original expiry date - did the DGPA staff most knowledgeable about the existence and handling of Somaliarelated documents (Mrs. Nancy Fournier, Lt (N) Brayman and Mrs. Claudette Lemay) become aware of the existence of the Commissioners order and the need to collect relevant documentation.[154]

Notwithstanding that Ms. Cardinal was asked by LGen Boyle to make another sweep to ensure that all documents had been transferred to SILT in compliance with the order and that Lt (N) Wong had told her

that there was something going on with the documents and SILT had not received them,[155] she took no followup action.[156]

In addition to these stunning developments, the evidence reveals that, on September 5, 1995, Ms. Nancy Fournier was placing Somaliarelated documents, including Responses to Queries (RTQs), into a bum bag for destruction when she was interrupted by Lt (N) Wong, who ordered her to cease her activities immediately and to secure the material. Ms. Fournier testified that she had been instructed by Col Haswell to get rid of Somaliarelated documents.[157]

There were in existence, at that time, two sets of Somaliarelated RTQs in binders, one set containing the originals of these RTQs, the other the altered copies given to the CBC reporter, Michael McAuliffe. The originals contained the original signoffs and indicated who, in senior management, authorized their release. This information was unavailable anywhere else.[158] Lt (N) Brayman, who became aware of the destruction in progress and went to discuss it with Col Haswell, testified that he was told by Col Haswell that two sets of RTQs could not be permitted to coexist, because if the originals were transferred to the Commissioners and publicly released by them, the CBC reporter would then realize that he had been given altered documents.[159] This concœm was first voiœd by Mrs. Fournier, who passed it on to Col Haswell.[160]

We are satisfied that there was a deliberate and blatant attempt within the DGPA to avoid compliance with our orders and the CANFORGEN and that there was also an attempt to cover up the fact that on two prior occasions-one of which was pursuant to a formal request under the *Access to Information Act* - altered documents had been given to a media reporter.

The events subsequent to September 5, 1995 are telling in this regard and confirm the prevailing mentality at the DGPA. Lt (N) Wong testified that on September 6th, he informed the Director General of Public Affairs, in general terms, of the problems associated with the transfer of documents to the Inquiry. She acknowledged as much in her testimony.[161] Lt(N) Wong testified that on September 15, 1995, he suggested to the Director General that she talk to her captains and that an investigation be conducted.

Lt (N) Brayman indicated that as of September 14th, he felt that the chain of command had still not been properly informed of the problems of alteration and destruction of Somaliarelated documents. He met with LCol Carter, a lawyer of the JAG office working at SILT who appeared before us, to alert her to the problem. On September 21, 1995, he met with the Director General and other officials of the DGPA at a staff meeting and was surprised and concerned by the fact that the Director General did not seem to have a complete knowledge and understanding of the nature and scope of the problem. He and Nancy Fournier went to meet with Ms. Cardinal after the meeting in an attempt to acquaint her more thoroughly with the facts.

Only on September 22nd, that is, 17 days after the problems of alteration, destruction, and noncompliance with the orders were brought to light, was an investigation finally ordered,[162] a remarkable state of affairs in an organization that prides itself on its efficiency. What is even more remarkable, in view of the serious, possibly criminal, nature of these alleged shortcomings (improper alteration of documents under the *Access to Information Act,* failure to comply with orders, allegations of an illegal military order to destroy documents under legal request, interference with a legal process, allegations of coverup), is that only an internal investigation was ordered-an internal administrative review by the Chief Review Services (CRS). In fact, the limited CRS review was to address only the alteration of documents. This device was chosen rather than a military police investigation of all the alleged violations.[163] At a staff meeting of September 26, 1995, the whole matter was presented, in general terms, as one involving an administrative problem with a file.[164]

To summarize: the chain of command at DGPA failed to react diligently to the serious problems identified on September 5, 1995 and to take the appropriate and necessary measures to inform the Inquiry immediately of the problems previously described, the existence of Somaliarelated documents, and its failure to comply with the Inquiry's order and the CANFORGEN order. Only on October 3, 1995, after being confronted with our knowledge of the facts, did SILT admit to the events. This situation notwithstanding, only on Novémber 8,1995 were we given some samples of altered and unaltered RTQs. (Despite our regular contact with SILT representatives, these samples were mailed to us by 4th class mail by LCol Carter on October 27th.) Further evidence of undue delay is manifest in the fact that it was not until after Mr. McAuliffe broke another story, on October 27th, that was critical of LGen Boyle for having provided misleading information that LCol Carter saw fit to deliver a copy of the CRS report to us. That same afternoon, we received three boxes of documents with no accompanying explanatory letter. Eventually, the military police gave us a copy of the report of its investigation but we received no letter or communication from SILT. The Somaliarelated documents in the possession of the DGPA, which we had requested on April 21, 1995, were finally handed over to us on November 8, 1995.

Sadly enough, the DGPA chain of command is not the only one that failed to assume leadership and its obligations under the Inquiry's order.

The evidence reveals that on September 5th and 6th, Col Leclerc and LGen (ret) Fox of SILT were informed by Lt (N) Wong of the allegations with respect to the alteration and destruction of documents and of the failure to comply with our request for documents. The briefing to LGen (ret) Fox was given in the presence of Col Leclerc,[165] who himself had already received a full briefing by Lt (N) Wong.[166] LGen (ret) Fox served 39 years in the Canadian Forces[167] and moved through all levels of command in the army and a number of senior staff appointments.[168] He is a very experienced officer and has been described as very capable and very bright.[169] He claimed in his testimony that he was informed simply of the alleged destruction of documents and that he did not inquire about what had happened and why it was happening. He asserted, to our astonishment, that he did not regard the attempted destruction as a big problem.[170] We cannot give credit to his explanations, especially in view of the fact that he told us that from that time forward he and Col Leclerc had to intensify their supervision of DGPA relations and that one of their subordinates, Lt (N) Wong, was therefore to monitor the situation closely in the DGPA.[171] LGen (ret) Fox also admitted in examination that the destruction of officially sought documents was an unusual and extraordinary occurrence.[172]

We are also unable to credit his testimony to the effect that as of September 14, 1995, he did not know of the alterations of the documents that were the subject of the destruction order.[173] Indeed, LCol Carter testified that she informed him of her meeting with Lt (N) Brayman and that she told him of the alteration of documents, the inaccurate memoranda signed by LGen Boyle, and the attempt to destroy the documents.[174]

LGen (ret) Fox told us that he recalled that, at the end of his meeting with LCol Carter, "something" was to be told to LGen Boyle, but he did not recall in detail what that "something" was. Nevertheless, he recalled that it was the DGPA's responsibility to inform LGen Boyle of that "something".'75 This explanation strained credibility. LGen Boyle was the immediate superior of LGen (ret) Fox and, to the knowledge of everyone, especially LGen (ret) Fox, he exerted strict control over Somaliarelated issues. It is unthinkable that LGen (ret) Fox would not have given a warning to his superior, LGen Boyle, even if only to alert him that "something fishy" was going on, involving both LGen Boyle and the DGPA. As we pointed out to the witness, if we were to believe him, the responsibility to inform LGen Boyle would have rested with the very people at the centre of the controversy in the DGPA.[176]

The testimony of LGen Reay with respect to a sensitive letter sent by MGen Vernon on May 23, 1995,

regarding cooperation with our Inquiry, showed that news usually spread very rapidly within the chain of command[177] and that LGen Boyle, even if he was not in the chain of command, was rapidly informed of any Somaliarelated issue, since he acted as a clearing house on these matters.[178] Indeed, when LGen Reay met with LGen Boyle to discuss MGen Vernon's letter, he found that LGen Boyle was already aware of it.[179] The witness admitted that this kind of news spread like wild fire.[180] We have good reason to believe that the same swift passage of information would have occurred with respect to events that involved alterations to and attempted destruction of Somaliarelated documents, especially since serious concerns about inaccurate or false memoranda signed by LGen Boyle himself were involved.

LGen (ret) Fox testified that he did not get a proper briefing from LCol Carter on September 14, 1995 about the issues raised with her by Lt (N) Brayman.[181] In this regard, LCol Carter, whose own testimony at times was coloured by evasiveness and *ex post facto* rationalizations,[182] asserted that she reported the three significant incidents (destruction and alteration of documents and false memoranda signed by LGen Boyle) but did not provide LGen (ret) Fox with many details since she was unaware of them.[183] In reality, this was a good reason for her to make further inquiries, so as to be in a position to provide her superior with the necessary details. Surprisingly, LCol Carter stated that she thought that other people were better able than she was to acquire and pass on this information.[184]

We find it hard to believe that, on September 14, 1995, LGen (ret) Fox was not aware of the attempted destruction and the alteration of documents. He had been briefed on these matters on September 6th by Lt (N) Wong in the presence of Col Leclerc.[185] Col Leclerc, as the official responsible for SILT's collection of documents for the Inquiry, discussed developments on a daily basis with his superior, LGen (ret) Fox. Between September 6 and September 14, 1995, Col Leclerc, who had been fully briefed, must have provided more information to LGen (ret) Fox. We also find it difficult to credit LGen (ret) Fox's assertion that he sought no explanation about the attempted destruction from either Lt (N) Wong or LCol Carter, who both reported to him, when each, in some manner, informed him of this serious incident.[186]

In any event, we base this credibility finding in large measure on our belief that, as a bright, experienced, and able officer, he had enough information to appreciate well what was transpiring and the seriousness of the situation.

LGen (ret) Fox testified that he did not connect the CRS investigation on DGPA documents with the DGPA documents about which Lt (N) Wong and LCol Carter informed him.[187] At best, this is wilful blindness. In addition, he offered, without justification, the incredible explanation that he thought that the attempt to destroy the documents was simply inadvertent, a mistake, and an illfounded action by a person who had misunderstood the Commissioners' order for the production of documents.[188]

LGen (ret) Fox asserted that he did not connect the attempt to destroy documents with an attempt to circumvent or not to comply with the Commissioners' order or an attempt to erase evidence of alterations made to these documents.[189] We found his testimony in this regard to be selective and evasive. LGen Fox left the distinct impression that he was trying to protect Gen Boyle, the individual to whom he reported on a daily basis.[190] His loyalty to his superior, who eventually became the CDS, in our view clouded his vision as a witness before us.

The SILT chain of command failed to react diligently to the serious problems identified on September 5, 1995. No letters were sent to Col Haswell or his group, or to the Director General of the DGPA, and no steps were taken or procedure put in place immediately to collect or retrieve the documents that were the subject of the destruction attempt.[191] In addition, SILT failed to take the appropriate and necessary

measures to inform us of such problems, the existence of Somaliarelated documents, and the failure to comply with our order. It was SILT's duty to maintain liaison with the Inquiry and to facilitate the obtaining and disclosure of relevant documents to us.

Notwithstanding our almost daily contact with SILT, we were never informed of the problems at the DGPA and the lack of compliance by the DGPA with our order.

In fact, LCol Carter, a lawyer in the JAG's office, an officer of justice, and a member of the SILT team assigned to assist us in our work, was informed as early as September 14, 1995 of the alleged violations, including the violation of our legal order. When informed on September 14th, she gave Lt (N) Brayman a week to sort out and remedy the matter within his own chain of command, at the end of which she would inform her own chains of command. (As a lawyer, she had a chain of command within the JAG's office, and as a military officer and a member of SILT, she had a chain of command within and through SILT.) The fact remains, however, that she was an officer of justice assigned to work with us and appearing before us. We would have appreciated receiving complete and timely advice. Eventually, she was informed that it was necessary that she be called as a witness in these matters and, consequently, she was invited to withdraw from the proceedings on account of her potential conflict of interest. She declined to do so, and she had to be disqualified and removed by order of the Commission from the record of our proceedings on May 14, 1996.[192]

In the course of his testimony, LGen (ret) Fox tried to explain SILT's failure to obtain the DGPA documents by the fact that they had established some priority in obtaining the documents. The explanation would appear to be that they concentrated their efforts on the predeployment phase and, in this context, the DGPA documents were seen as postdeployment documents.[193] However, our order requested that all documents be transferred and did not authorize SILT to assign priorities to the material. In addition, the DGPA had in its possession material that also related to the predeployment phase and yet it was not transferred to the Inquiry in this socalled prioritization process.

Alteration of Documents

To help the reader gain a full appreciation of the complexity of the events relative to the DGPA phase of our proceedings, we are providing, as an annex to this chapter, a chronology of the events as they unfolded (see Annex A).

In September 1993, Mr. McAuliffe, a CBC reporter, made a telephone request for copies of existing RTQs relating to Somalia. It was the first time such documents had been requested by the media. During a tour of the DGPA premises, Mr. McAuliffe became aware of the existence of RTQs. His request created turmoil within the DGPA and eventually resulted in a decision to transmit to him, unofficially and informally, a number of altered RTQs.

The oral and documentary evidence heard and filed at our hearings clearly reveals a concerted and deliberate decision by the Director General of Public Affairs and his subordinates to alter the format of RTQs requested by Mr. McAuliffe.[194] This approach was consistent with the policy of containment reputedly favoured by MGen Boyle and the Deputy Minister.[195] We are satisfied, on the basis of the evidence we heard, that both Dr. Calder and MGen Boyle were aware of the decision to release altered documents informally and gave their concurrence to such process.[196] In testimony before us, Mr. Gonzalez stated, "I left that meeting with the clear understanding that I had their concurrence in principle".[197] Indeed, at the time, no Somaliarelated document could be released to the media without the prior approval of MGen Boyle, who was heading the Somalia Working Group under the direct supervision of the CDS and the Deputy Minister. In this context, Mr. Gonzalez, who had just been recruited for this position

by Dr. Calder,could not and would not have decided independently to release such sensitive documents. There is no reason to believe that he would not have mentioned to his superiors, Dr. Calder and MGen Boyle, the consensus that existed among his senior staff to release informally only portions of the requested RTQs to Mr. McAuliffe.[198]

MGen Boyle was described to us as a meticulous man, a micro manager, a man who was a stickler for details.[199] It is unthinkable that a new Director General would have wished or been able to run altered documents by him without his knowledge, especially since these documents were to be the subject of release to the media.

Furthermore, it was common knowledge in the media liaison office that Mr. McAuliffe was to receive altered documents.[200] The alterations were to involve the deletion of information identifying the originator and those who had approved the RTQs, and the removal of sections of the documents reserved for comments and sensitive background information. Also, the documents were to be reformatted so as to appear full and complete.[201] There was also evidence before us that, at times, the substance of the remaining information on the RTQs to be given out was altered.[202] It is not necessary for our purposes to determine whether the alterations made the altered RTQs more accurate, as some have contended.[203] The fact is that the request was for the existing RTQs, not for RTQs that were surreptitiously modified to suit the Department's desire to minimize any potential negative impact.

On January 20, 1994, Mr. McAuliffe made an official request under the Access to Information Act for "all documents known as Response to Queries prepared by or for the Media Liaison Office or Director General of Public Affairs branch at [NDHQ] between the dates of May 15, 1993 and January 16, 1994".[204] This official Access to Information (ATI) request encompassed RTQs that had already been released to him. Fearing that Me McAuliffe would realize that the documents he had been given unofficially had been altered, the senior authorities at DGPA decided to carry on with the pattern of deception already adopted and therefore proceeded to alter the RTQs requested under ATI.[205] These altered RTQs were sent to Mr. McAuliffe on May 16, 1994, more than three months after they were due under the act.[206]

In June 1994, when Mr. McAuliffe made a second request for RTQs,[207] he was denied access to them. He was informed by the DND Coordinator for Access to Information and Privacy (ATIP), who in tum had been so informed on May 11th and June 17th by MGen Boyle, that RTQs were no longer produced. The explanation was that, as of January 1994, RTQs were no longer produced as a result of a change in official policy and the introduction of a 1800 media information line.[208] However, the evidence before us clearly revealed that the memorandum from MGen Boyle was seriously misleading, if not dishonest, since RTQs were still produced in January, February, and March 1994.[209] According to the change in policy, RTQs were to be replaced in January by Media Response Lines (MRLs). However, some 35 RTQs were produced, and MGen Boyle himself signed, reviewed, or initialled some on January 14, 25, 28, and February 9, 1994.[210]

The evidence of senior officials is replete with unconvincing attempts to convince us that RTQs were an undefined concept rather than a document.[211] We were also told that what was given to Mr. McAuliffe, both officially and unofficially, were RTQs.[212]

The truth is that the RTQs requested by Mr. McAuliffe had a format that was largely defined, and those that were released to him were reformated before release in such a way that the deletions made would not be apparent.[213]

In this process of deletion, the requirements of the Access to Information Act were not followed. The requester was never informed of the deletions, and consequently no reasons were ever provided to justify such deletions. The result was a clear and successful attempt to deceive the requester.

In addition to the machinations within the Department just described, there was also an unsuccessful attempt to deter Mr. McAuliffe from making an ATI request for documents. The activities of DND at this time cannot be viewed as other than an attempt to frustrate the proper functioning of our access to information laws. For example, the estimate of the cost of searching for and analyzing documents subject to the first formal request established an inordinate number of hours and prohibitively high costs (413 hours and $4080).[214]

In point of fact, these documents were readily available.[215] According to a letter signed by Maj Verville and addressed to Lt (N) Brayman, LCdr Considine, and Cdr Caie, the estimate was nonsensical, especially since Lt (N) Brayman had confirmed that he knew how many RTQs had been written and where they were.[216] Mrs. Foumier found the estimate outrageous. She had collected all the RTQs in two days, and the books containing them were sitting on the shelves.[217] MGen Boyle and Col Haswell also agreed with Maj Verville that the time and cost estimates made no sense.[218]

A time log was made and reconstructed after the events.[219] This log reflects the fact that Ms. Fournier was acting as instructed by her superior[220] and, as one would expect, the time log has no entry for the editing of the RTQs.[221] There were other efforts to evade detection of the document alteration scheme: Lt (N) Brayman testified initially that he put four hours in the time log for services that he did not perform, as the staff was required to accumulate hours.[222] Upon resumption of our hearings after a weekend break, he produced a new explanation and asserted that these same four hours might have been for services rendered on a different file in which Mr. McAuliffe had initiated a request for Significant Incident Reports.[223] This new explanation was far from convincing. In any event, even if it were true, it meant that he knowingly proceeded to charge these hours illegally to the ATI file concerning the RTQs,[224] He also tried to convince us, in the context of his earlier explanation, that he was requested to record these hours on behalf of LCdr Considine for work LCdr Considine had done, but LCdr Considine flatly denied having done so.[225]

Finally, the change of name from RTQs to MRLs was, in our view, nothing less than a vulgar scheme to frustrate access to information requests and was so perceived by the personnel within the public affairs branch.[226] MGen Boyle admitted that RTQs and MRLs both served exactly the same function in the workings of the media liaison office.[227] We were told that MRLs were nothing more than transitory documents and, as such, not public, thus permitting their destruction after 72 hours.[228] In our view, however, the destruction of MRLs after 72 hours was an attempt to defeat access to information requests directed to the media liaison office.[229]

A memorandum from Col Haswell to MGen Boyle is indicative of the attempt to frustrate the act.[230] In that memorandum, he wrote that Mr. McAuliffe's request had been anticipated and "fortunately" the authorities were in a position to tell the requester that RTQs were no longer produced for the period requested. DND officials did this obviously without telling Mr. McAuliffe that RTQs had simply been replaced by MRLs.

This willingness to deceive, prevalent in the DGPA, is also apparent in a draft memorandum prepared for the signature of MGen Boyle.[231] In this memorandum addressed to his superior, Dr. Calder, MGen Boyle suggested that, in these times of increased Access to Information requests, it might be prudent to remove any references from all pertinent documents to the name of a journalist who had been critical of the

Department. We were unable to ascertain whether the original was eventually signed by MGen Boyle, but the memorandum reveals a willingness within DGPA to alter existing documents before their public release under the Access to Information Act. MGen Boyle obviously knew of this negative orientation with respect to access to information matters under his control.[232] Indeed, senior officials in the DGPA were obsessed with access to information problems and adhered to a negative and restrictive interpretation of a citizen's right to access. This obsessive and restrictive approach was manifest in a policy of editing draft correspondence by affixing removable yellow notation stickers on documents. These stickers were subsequently removed, thereby precluding an examination of all relevant observations and reactions to the material in question.[233]

It was surprising for us to hear that the new director of DGPA, Ms. Cardinal, considered MRLs to be non-public documents because they required updating after 72 hours and therefore could be destroyed.[234] Yet, in January 1994, three months before her arrival at DGPA, LGen Reay concluded, after having consulted the ATI people, that documents with regard to an officer's reproof could not be altered, destroyed, or substituted once a request under the Access to Information had been made. Presumably the same reasoning should apply even to transitory documents, such as MRLs. Under Ms. Cardinal's approach, it was justifiable to destroy government documents, provided one was quick enough to do so before an access request was made. This approach is certainly not in keeping with the spirit of the Access to Information Act.

Furthermore, as early as August 20, 1993, prior to Mr. McAuliffe's informal request for RTQs, the VCDS, LGen O'Donnell, wrote to a number of senior officials, including the ADM (Policy and Communications) and MGen Boyle, expressing concerns over the fact that some replies provided by various offices and Group Principals in response to Access to Information requests for Somalia records were incomplete and, in some instances, erroneous. He stressed the importance of the matter and the serious consequences that such failings could have for the integrity of the Department. In his communication he spoke of the necessity for DND to act not only in accordance with the letter, but also with the spirit of the legislation.[235] In a memorandum sent three days later by MGen Boyle to Dr. Calder, his superior, MGen Boyle addressed the concerns of the VCDS by asserting that he controlled every information request that went through the office and that he would sign off (i.e., assume responsibility) on Dr. Calder's behalf. He went on to add that the same process would be followed for all ATI requests.[236] Therefore, MGen Boyle was aware of the continuing problems before Mr. McAuliffe's request and pledged himself to exert strict control and ensure compliance with the act.

However, in his testimony before us, Gen Boyle defined his role narrowly as one of ensuring compliance with the letter of the act.[237] Also, he acknowledged his failure to ensure compliance with the spirit of the law.[238]

The result was to discredit a new system purportedly designed to bring greater transparency to the Department's relations with the media and the public.[239] To the contrary, the actual effect was a gradual erosion of transparency and accountability. Second, the failure by this important government department to obey the spirit of laws enacted by Parliament had the potential to undermine public confidence in the state of civilmilitary relations. Third, these events served to undermine discipline within the Canadian Forces. Apparently, to judge by these events, disobedience to the spirit of laws (indeed, even the spirit of any lawful order issued through the chain of command) and the shirking of an officer's responsibilities would be condoned.

The letter of the VCDS certainly amounted to a serious warning and a reprimand to the entire Department of National Defence. Strikingly, according to the evidence before us, the remarks of the VCDS were subsequently ignored by those who received them.[240] The mentality whereby one need only obey the letter

of the law continued to flourish during GenBoyle's tenure. As one witness put it, a requester will get only what is specifically asked for, and this may mean that he or she will receive nothing if the wrong terminology is employed.[241]

The RTQs requested by Mr. McAuliffe dealt with highly sensitive issues related to the Somalia deployment, such as the incident of March 4, 1993 involving the killing and wounding of Somali nationals, the March 16, 1993 beating death of a Somali teenager, and the apparent attempted suicide of MCpl Matchee on March 17th.

While it was perhaps to be expected that the public affairs branch of a department would try to minimize the adverse impact of such incidents on the department, the end cannot justify the means. It cannot justify the establishment of a process that, through deceit, provides the public with misleading, incomplete, or inaccurate information under the *Access to Information Act*. It cannot justify, under the cover of a change in policy, the ruse of allowing a change in the name of official documents, from Response to Query to Media Response Line, to avoid disclosure obligations under the *Access to Information Act*. Finally, it cannot justify impeding the public's legitimate right to know about important aspects of the Somalia operation or covering up embarrassing or controversial information relating to that operation.

FINAL REMARKS

The effect on our work of the shortcomings in the production of documents cannot be overstated. We depended on the receipt of accurate information from the Department on a timely basis to be able to decide which issues to investigate and how the hearings were to be conducted. The fact that the production was not timely and the documents were incomplete to such a large extent meant that the work of the Inquiry was delayed and that our staff were constantly occupied with documentrelated issues.

Despite these obstacles, we were able to examine a number of issues carefully and thoroughly. Although we made steady progress in our work, the cumulative effect of the documentrelated setbacks was not limited to inconvenience and delay. Ultimately, in conjunction with other factors, the delay caused by document-related issues resulted in the Government's sudden announcement calling for an end to the hearings and an accelerated reporting date. The unfortunate result was that many important witnesses were not heard, and several important questions that prompted the creation of our Inquiry remain unanswered.

Perhaps the most troubling consequence of the fragmented, dilatory, and incomplete documentary record furnished to us by DND is that, when this activity is coupled with the incontrovertible evidence of document destruction, tampering, and alteration, there is a natural and inevitable heightening of suspicions of the existence of a coverup that extends into the highest reaches of the Department of National Defence and the Canadian Forces.

It is clear that rather than assisting with the timely flow of information to our Inquiry, DND adopted a strategic approach to deal with the Inquiry and engaged in a tactical operation to delay or deny the disclosure of relevant information to us and consequently to the Canadian public.

FINDINGS

From the preceding analysis of events involving the reaction of the Somalia Inquiry Liaison Team (SILT) and the Directorate General of Public Affairs (DGPA) within the Department of National Defence (DND),

We find that the Department of National Defence, through DGPA and SILT, failed to comply with our order for production of documents by failing to ensure the integrity of the documents, and by failing to provide them in a timely manner. More specifically,

- *The Department and SILT failed to make adequate provision for the complete and timely production of documents in the following ways:*
- *(a) there was no adequate methodology to ensure that relevant documents were sent to SILT from all sources;*
- *(b) the systems at SILT for controlling and managing the documents were inadequate;*
- *(c) the Department did not ensure sufficient resources for the size of SILT's undertaking;*
- *(d) SILT failed to ensure the quality of document deliveries and failed to provide adequate explanatory materials and lists;*
- *(e) SILT adopted an unacceptably passive position of responding to issues before the Inquiry;*
- *(f) SILT and DND failed to take active steps to address issues as they unfolded; and*
- *(g) by failing to review our hearing books in a timely manner, SILT threatened to interrupt the smooth functioning of our hearings.*
- *SILT failed to assist us adequately in fulfilling our requests for additional information by:*

- *(a) not promptly delivering many requested documents;*
- *(b) not providing satisfactory explanations for lengthy delays and other problems;*
- *(c) not satisfactorily resolving many problems;*
    - *(d) showing insufficient initiative and failing actively to pursue important requests; and*
    - *(e) not disclosing the existence of all internal departmental email documents relevant to the Inquiry.*
    - *The Department (through the Office of the Counsel for the Government of Canada or OCGC) did not provide us with a list of documents for which solicitor/ client privilege was claimed on a timely basis. The Department and OCGC took an overly broad view of solicitor/client privilege and failed to explain satisfactorily the presence of many documents of questionable privilege among the legal documents.*
    - *The DGPA failed to comply with our order for the production of documents by:*
    - *(a) failing to take appropriate measures to comply and ensure compliance with our order in the stipulated time frame;*
    - *(b) taking deliberate and blatant steps to avoid compliance with our order by attempting to destroy Somaliarelated documents; and*
    - *(c) failing to inform the Inquiry about attempts to destroy documents.*

- *The DGPA failed to comply and ensure compliance with the letter and spirit of the Access to Information Act by:*
- *(a) improperly and illegally altering Somaliarelated documents requested first informally and then formally under the act by a reporter, in particular by making deletions from documents, not informing the requester of such deletions, and reformatting the documents to make them appear full and complete;*
- *(b) making an unsuccessfulattempt to frustrate theproperfunctioningofAccess to Information legislation by charging prohibitively high fees to someone requesting a search for information that was readily available;*
- *(c) changing the name of documents called Responses to Queries (RTQs) to Media Response Lines (MRLs) in order to deny a request for RTQs that the Directorate had anticipated; and*
- *(d) failing to inform the requester that the name of the documents had been changed and still not providing some 35 documents that had been produced under the old name*
- *The chain of command within the DGPA failed by:*
- *(a) not reacting diligently upon discovery of an attempt to destroy documents. This attempt amounted to a failure to comply with a legal order to produce documents and was associated with allegations of an illegal military order to destroy such documents, and allegations of coverup;*
- *(b) calling for an internal administrative review rather than a military police review immediately upon reaming about attempted destruction of Somaliarelated documents; and*

- *(c) not informing us of the existence and attempted destruction of Somaiiarelated documents.*
- *SILT's chain of command, in relation to activities within the DGPA, failed to assume its leadership obligations and organizational responsibilities to ensure compliance with our order by:*
- *(a) failing to inform us of the existence of Somaliarelated documents within the DGPA and the attempted destruction of such documents; and*
- *(b) failing to take the appropriate steps or to put in place a proper procedure for immediate retrieval and forwarding of the documents in question.*
- *The Department failed to ensure that a complete record of intheatre message traffic to NDHQ was maintained by:*
- *(a) not having in place standing operating procedures to ensure that National Defence Operations Centre (NDOC) logs were accurately recorded;*
- *(b) not providing personnel with a good understanding of the purpose of maintaining NDOC logs;*
- *(c) providing inadequate training to duty officers; and*
- *(d) not using system audits to ensure that the record was being properly maintained.*
- *The Department failed to preserve adequate records relating to intheatre operations by:*

- *(a) inadequately maintaining logs;*
    1. *(b) having disregard for the integrity of logs as evidenced by many incomplete sets;*
    2. *(c) not properly attaching logs to war diaries; and*
    3. *(d) failing to understand the importance of maintaining logs, preserving logs, and ensuring their delivery to the Inquiry.*

Recommendations

We recommend that

- **39.1 The Department of National Defence ensure that the National Defence Operations Centre logs are properly maintained, by implementing the following:**
    1. **an audit procedure to ensure that standing operating procedures provide clear and sufficient guidelines on the type of information to be entered and how the information is to be entered;**
    2. **an adequate data base system, which includes software controls to ensure accurate data entry in each field and appropriate training for operators and users of this system; and**
    3. **increased system security to an acceptable standard compatible with the objective of national security, including restricting access to authorized persons using only their own accounts and passwords, and extending the use of secure (hidden) fields to identify persons entering or deleting data"**
- **39.2 The Department of National Defence and the Canadian Forces take steps to ensure that an adequate record of intheatre operations is created and preserved thereafter by:**
    1. **establishing better systems and procedures to ensure a more complete and permanent record of events, including the recording of each day's activity or inactivity, so that every date is accounted for, to avoid the appearance of nonreporting or deleted records;**
    2. **training soldiers to appreciate the importance of the log and diary and their responsibility to follow proper procedures in creating, maintaining, and protecting the record;**
    3. **providing better procedures for supervising the maintenance of records in theatre to ensure adherence to established procedures;**
    4. **improving the integration of secure data collection and storage systems to ensure the integrity of records created; and**

5. **ensuring that data banks are sufficient and include accurate information concerning individual taskings; the start and finish dates of each log and diary; and the location of records.**

- **39.3 The Department of National Defence take the following steps to promote openness and transparency:**
  1. **require the Deputy Minister of National Defence and the Chief of the Defence Staff to:**
     1. **instil by example and through directives the importance of openness in responding to requests made under the Access to Information Act;**
     2. **ensure that military and civilian personnel in the Department of National Defence are better trained to respond to Access to Information Act requests, particularly with regard to legal obligations and procedures; and**
     3. **ensure that staff fully understand the requirement to report, as a significant incident under existing regulations, any suspected document alteration or improper response to Access to Information Act requests;**
  2. **begin consultations with the Information Commissioner, within three months of the submission of this report to the Governor in Council, to determine the most effective way of improving departmental responses to Access to Information Act requests; and**
  3. **ensure that public affairs policy and practices reflect the , principles of openness, responsiveness, transparency and accountability expressed throughout this report.**

ANNEX A

Chronology of Events

The following chronology is based on evidence before us.

1993

January 3	Significant Incident Reports (SIRs) commenced.
January 4	Ms. Kim Campbell becomes Minister of National Defence,
January 22	Mr. Robert R. Fowler, the Deputy Minister of National Defence, tells the Daily Executive Meeting (DEM) that Ms. Campbell enjoyed excellent media relations and was not about to jeopardize them.
February	MGen Boyle becomes Associate Assistant Deputy Minister for Policy and Communications.
March 1	Mr. Fowler directs DND to keep as low a profile as possible; practise "extreme sensitivity" when making public statements; senior staff to prepare a list of "politically sensitive" subjects and to re turn it to the Vice Chief of the Defence Staff (VCDS), LGen O'Donnell, no later than March 3, 1993; pointed out the need for DND to inform Ms. Campbell fully about any operational or emergency situations that might oblige her to respond quickly,
March 4	The March 4th incident (shooting of two Somali nationals at the Canadian compound at Belet Huen) occurs in Somalia,
March 8	LGen O'Donnell receives list of "sensitive" subjects, Mr. Fowler asks that the list be updated and provided to him before his regular weekly

	Monday meetings with Ms. Campbell, Adm Anderson, Chief of the Defence Staff (CDS), tells officers in Somalia to keep a low profile and not to make waves,
June	The *Ottawa Citizen* contemplates legal action to get information about Somalia. Michael McAuliffe, CBC radio news reporter, makes informal request to DND for Somalia related information. Mr. Roberto Gonzalez becomes Director General of Public Affairs (DGPA). "Tiger led by Col (later BGen) G,K, McDonald, Director of the NDHQ Secretariat, charged with analyzing Phase I of the report of the Board of Inquiry, Canadian Airborne Regiment Battle Group (the de Faye Board of Inquiry).
July 19	The de Faye Board of Inquiry submits Phase I of its report to the CDS.
July 28	MGen Boyle directs the commanders of all CF commands to work through the DGPA when releasing Somaliarelated information,
August	Mr. Gonzalez formulates plans for a system of account managers within the DGPA; provides his plans to Dr. Calder via MGen Boyle.
August 20	LGen O'Donnell writes to Dr. Calder, the Deputy Chief of the Defence Staff, the ADM (Personnel), the Senior ADM (Materiel), the ADM (Finance), the Judge Advocate General (JAG), and the commanders of OF commands acknow ledging that DND had responded incompletely and on certain points erroneously to some recent Access to Inflation Act requests for information about Somalia and the Canadian Airborne Regiment (CAR), He orders DGPA to coordinate all information releas ed with the offices of the CDS and the Deputy Minister and urges them to ensure that requests are treated in accordance with the letter and spirit of the act,
August 24	Mr. McAuliffe submits questions in writing to SLt Keough in the Directorate of Information Services Centre of Operations, raising 10 questions about the Significant Incident Report of March 19, 1993, concerning the ap parent suicide attempt of MCpl Matchee,
August 30	Mr. McAuliffe writes to Lt (N) Brayman posing three questions about compensation paid by DND with respect to the incident.
August/September	Mr. McAuliffe visits DGPA,
September 7	MGen Boyle institutes new procedures for the DGPA, including registering all calls (establishing a record of all conversations with the media) and requesting systems for recording conversations.
September 20	Mr. McAuliffe informally requests Somaliarelated Responses to Queries (RTQs) in a telephone call to Lt(N)Brayman, who communicated it to LCdr Considine, who passed it to Cdr Caie,
September/ November	Some time between September 21 and November 2, 1993, Ms. Nancy Fournier, WPA staff member, alters 22 RTQs using a template given her by LCdr Considine.
September 27	Somalia Working Group under MGen Boyle formed (by the Deputy Minister).
September 29	From May 19 to September 29, 1993, DND received 15 requests under the Access to Information Act from Mr. McAuliffe.
October	MGen Boyle and Dr. Calder discuss Mr. McAuliffe's request for the DGPA's

	Somaliarelated RTQs.
October 26	Mr. Gonzalez's memorandum to MGen Boyle concerning Mr. McAuliffe's request for all RTQs about Somalia and related topics. It alludes to attached RTQs and recommends they be passed to him.
November 1	Letter from Mr. Gonzalez to Mr. McAuliffe, accompanying Somalia related RTQs. In office copy of letter, MGen Boyle adds a handwritten note to Dr. Calder commencing with the words "We spoke".
November 2	Col Haswell, Director of Public Affairs Operations, signs a letter, on behalf of Mr. Gonzalez, to Mr. McAuliffe that accompanies the Somaliarelated RTQs.
November 15	MGen Boyle orders that all requests for historical documentation proceed through the Access to Information Act.
late 1993	Col Haswell, becomes Director of Canadian Forces Public Affairs,

1994

January	DGPA undergoes major reorganization, a 1 800 Media Info Line becomes operative, and the media start to receive written weekly summaries of CF operations based on the morning daily executive meeting notes,
January 11	E mail message from Mr. Milsom to Ms. Petzinger shows Mr. Fowler's staff as participating actively in processing an ATI request from Mr. McAuliffe under the act.
January 20	Mr. McAuliffe files *Access to Information Act* request (A) 93/0411 seeking all RTQs prepared by or for the Media Liaison Office or Director General of Public Affairs branch of NDHQ between
May 15, 1993 and January 16, 1994,	The request reaches Mr. Gonzalez, who relays it to Cdr Caie who assigns it to LCdr Considine.
January 24	Ms. Petzinger forwards Mr. McAuliffe's request to MGen Boyle,
February 1	LCdr Considine writes to Maj Verville, estimating that it will take 413 hours to search and review the RTQs, He states 304 hours necessary to search the DISCO at a cost of $4,080.
February 7	Ms. Foumier consults the DISCO's 1993 RTQ binder, photocopies the originals and returns them to a grey binder.
February 8	Ms. Fournier searches the DGPA's computer library for RTQs missing from the 1993 RTQ binder, prints out RTQs from the library, and inserts them in the grey binder-90 RTQs in all- to December 1993. (Mr. McAuliffe had expressed interest in RTQs until January 16, 1994),
February 10	Ms. Petzinger writes to the DGPA, pointing out that the RTQs should have reached the Access to Information and Privacy office (ATIP) a week earlier.
February 15	LCdr Considine instructs Ms. Foumier to alter the RTQs.
mid February	Mr. McAuliffe complains to ATIP,
February 21	Ms. Petzinger writes Mr. Milsom enclosing for his signature a memorandum to Dr. Calder, She asserts that she had received neither a reply to her reminder to the DGPA nor any explanation for the delay,

February 26	Mr. Milsom writes to Mr. McAuliffe, advises him that the analysis of his request is not complete and that he can complain to the Information Commissioner,
March 4	Ms. Fournier completes and checks RTQs and returns them to LCdr Considine,
March 8	Col Haswell forwards a memorandum to the Deputy ATIP Coordinator, Ms. Petzinger, attaching 68 RTQs prepared by the DGPA between May and December 1993. He includes no RTQs for January 1994, explaining that the regu lar format for RTQs was abandoned after the 1800 Media Info Line became operative in January 1994.
March 11	Maj Verville dispatches a Minute Sheet to Cdr Caie stating Col Haswell's signature did not represent a valid sign off,
March 11	RTQ package allegedly passed to MGen Boyle,
March 15	Ms. Fournier forwards a note to Cdr Caie reporting that she and Lt (N) Brayman had completed the time log on the inner cover of the folder for Mr. McAuliffe's request,
March 18	MGen Boyle forwards a note to the DGPA asserting that the RTQs spanned the responsibilities of all group principals and affirming that he assumed that the various account managers had examined the RTQs falling within t heir sphere and assumed responsibility for their release, He asks Mt Gonzalez to institute the proper sign offsystem.
March 21	Cdr Caie makes a note to file stating that RTQs were going to each group principal for review,
May 2	Maj Verville calls for a situation report-still has received no RTQs.
May 10	LCdr Considine writes to MGen Boyle asserting that each DGPA account manager, acting for the respective ADM, has approved releasing the RTQs,
May 11	MUen Boyle signs the memorandum to Mr. Milsom stating that all 68 enclosed RTQs were ready to be released without severance with three exceptions,
May l6	Mr. Milsom writes to Mr. McAuliffe, conveying the records received from MGen Boyle,
June 7	Mr. McAuliffe files a second Access to Info7Tnation Act request for RTQs. He requested copies of all RTQs "prepared by or for the Media Liaison Office or Director General Public Affairs branch at National Defence He adquarters between the dates of January 1 7th, 1994 and June 7th, 1994."
June 15	Mr. McAuliffe's request (A) 94/0136 reaches the DGPA,
mid-June	The DGPA has about 35 RTQs as described in the request,
June 15	Memorandum from Ms. K.l. Namiesniowski, Mr. Fowler's Special Assistant, to Mr. Milsom about the staffing of sensitive requests under the act. Ms. Namiesniowski observes that Mr. Fowler liked to be apprised before any se nsitive information was released under the act, She added: "This process must continue".
June 17	MGen Boyle's memorandum to Mr. Milsom(ATIP) that RTQs had not been produced from January 1994 on and that the request was therefore "redundant",
June 20	Col Haswell comments, "Fortunately,,,we now do not have official records of RTQs on subjects that have yet to be uncovered by the Media".
June 23	Mr. Milsom writes to Mr. McAuliffe advising him that RTQs went out of use in January 1994,
June 24	MGen Boyle forwards a note to Ms. Cardinal in which he affirms that he thought that RTQs were no longer in currency,
July 29	MGen Boyle provides a definition of the Somalia Working Group's mission.
September 29	RTQs now in a file in Col Haswell's office.

1995

Spring	Commission of Inquiry into the Deployment of Canadian Forces to Somalia orders Somalia-related information from DND under Inquiries Act,
April 21	Chairman's order for production.
September 5	Attempt within DGPA to destroy Somaliarelated documents,
September 15	Lt (N) Wong meets the director of the DGPA and suggests that an investigation be conducted on the attempt to destroy Somaliarelated documents,
September 22	Internal administrative review by the Chief Review Services ordered on the alteration of documents, but not on the attempt to destroy Somaliarelated documents,
October 16	Mr. McAuliffe complains to Mr. Grace, the Information Commissioner, that the records forwarded on May 16, 1994 had been wrongfully altered before release, The National Investigation Service (HIS) is tasked to investigate allegations that documents within were destroyed and altered.

1996

January 24	NIS police report produced,
March 12 to April 12	Commission of Inquiry receives the NIS police report.
March 26	Mr. Grace presents his findings to the Deputy Minister, Mme Louise Fréchette.
April 9	MGen Boyle institutes CF wide search for Somaliarelated documents.
April 15	NIS Police reopens its investigation.
June 11	Second NIS police report (Addendum) produced as a result of the reopening of the investigation.
June 17	Commission of Inquiry receives the second NIS police report.

Notes

1. Testimony of Col Leclerc, Transcripts vol. 56, p. 11121.
2. Document book 100A, tab 14, DND 347392.
3. Document book 100A, tab 14, DND 34.7393, ~
4. Testimony of Col Leclerc, Transcripts vol. 56, p. 11157; and Gen Boyle, Transcripts vol. 86, p. 16915.
5. Document book 100A, tab 14, DND 347393347394.
6. Exhibit P162, Terms of Reference, Special CF/DND Adviser, June 27, 1995.
7. See Exhibit P 8, Order issued to the Clerk of the Privy Council, May 18, 1995; Exhibit P7, Order issued to the Deputy Minister of Foreign Affairs, May 18, 1995; and Document book 100A, tab 1.
8. Document book 100A, tab 1. In a letter dated May 23, 1995, counsel for the Government of Canada, Peter Vita, asked us whether subparagraph (a) of the order required only a list of relevant documents or whether the documents themselves were required as well. Commission counsel replied in a letter dated June 6, 1995, making it clear that both the documents and a list were required, and everyone proceeded upon that understanding. 9.

9. Exhibit P163, letter, LCol Carter to Barbara Mclsaac, Commission counsel, June 30, 1995.
10. Exhibit P163.
11. Testimony of Col Leclerc, Transcripts vol. 56, p. 11121.
12. Testimony of Col Leclerc, Transcripts vol. 56, p. 11174.
13. Document book 100A, tab 17.
14. Testimony of Col Leclerc, Transcripts vol. 56, pp. 1114411146.
15. Testimony of Col Leclerc, Transcripts vol. 56, p. 11137.
16. Testimony of Gen Boyle, Transcripts vol. 86, pp. 169261692627.
17. Testimony of Col Leclerc, Transcripts vol. 56, p. 11142.
18. Document book 100A, tab 14, DND 347392.
19. Testimony of Col Leclerc, Transcripts vol. 56, pp. 1114011141 .
20. Letter, Barbara Mclsaac to Col Leclerc, January 26, 1996.
21. Request 370, letter, Gail Bradshaw, Inquiry staff, to Alain Préfontaine, October 23, 1996.
22. Letter, Alain Préfontaine to Gail Bradshaw, March 18, 1997.
23. Request 367, letter, Gail Bradshaw to Alain Préfontaine, October 17, 1996,
24. Letter, Alain Préfontaine to Gail Bradshaw, November 14, 1996.
25. Letter, Stanley Cohen, Commission Secretary, to Alain Préfontaine, October 21, 1996.
26. Request 84, letter, Paul Harte, Inquiry staff, to Col Leclerc, October 11, 1995; Request 185, letter, Paul Harte to Col Leclerc, December 11, 1995.
27. Letter, Barbara Mclsaac to Col Leclerc, January 25, 1996, requiring prompt delivery of certain DEM-related documents.
28. Letter, Col Leclerc to Paul Harte, March 11, 1996.
29. Because of these discrepancies, a further comprehensive request was made for documents related to daily executive meetings (DEMs) in a letter from Stanley Cohen to LGen (ret) Fox, May 24, 1996.
30. Letter, Col Leclerc to Stanley Cohen, October 10, 1996.
31. Minutes of DEM, February 8, 1993, Document book 50A, tab 18.
32. For example, in December 1995, although 16 DEMs were held, there were no DEM minutes (and no postDEM minutes).
33. Staff and Writing Procedures for NDHQ (AADD30001/JS001), p. 645.
34. Letter, Col Leclerc to Stanley Cohen, October 10, 1996.
35. Request 382, letter, Gail Bradshaw to Col Leclerc, November 27, 1996.
36. Letter, Gail Bradshaw to Col Leclerc, January 28, 1997.
37. Letter, Col Leclerc to Gail Bradshaw, March 9, 1997.
38. Letter, Paul Harte to Col Leclerc, January 31, 1996.
39. Letter, Gail Bradshaw to Col Leclerc, June 11, 1996.
40. Request 414, letter, Gail Bradshaw to Col Leclerc, February 17, 1997.
41. Request 185, letter, Paul Harte to Col Leclerc, December 11, 1995; Request 186, letter, Paul Harte to Col Leclerc, December 12, 1995.
42. Annex D of Letter, Col Leclerc to Paul Harte, March 12, 1996.
43. Annex A of Letter, Col Leclerc to Gail Bradshaw, October 4, 1996.
44. Request 418, letter, Gail Bradshaw to Col Leclerc, February 24, 1997.
45. Letter, Gail Bradshaw to Col Leclerc, March 12, 1997.
46. Letter, Col Leclerc to Gail Bradshaw, March 24, 1997.
47. See discussion of privileged documents below.
48. Request 307, letter, Gail Bradshaw to Col Leclerc, May 23, 1996.
49. Document book 100A, tab 14, DND 347392.
50. Letter, Stanley Cohen to LGen (ret) Fox, May 21, 1996.
51. Letter, Stanley Cohen to MGen Tousignant, June 17, 1996.
52. Letter, MGen Tousignant to Stanley Cohen, June 18, 1996.
53. Letter, Stanley Cohen to MGen Tousignant, June 25, 1996.
54. Letter, MGen Tousignant to Stanley Cohen, August 30, 1996.

55. Exhibit P160.
56. Exhibit P160, DND360530.
57. Exhibit P 16O, DND 3605t9.
58. Testimony of LGen Reay, Transcripts vol. 80, p. 15640.
59. Request 292, letter, Gail Bradshaw to Col Leclerc, May 9, 1996.
60. Testimony of MGen Vernon, Transcripts vol. 80, p. 15555.
61. Testimony of MGen Vernon, Transcripts vol. 79, pp. 1549915500.
62. Testimony of MGen Vernon, Transcripts vol. 80, p. 15555.
63. Request 087, letter, Paul Harte to Col Leclerc, October 12, 1995.
64. Letter, Col Leclerc to Paul Harte, October 22, 1995.
65. Letter, Gail Bradshaw to Col Leclerc, June 6, 1996.
66. Letter, Col Leclerc to Gail Bradshaw, October 25, 1996.
67. Request 266, letter, Gail Bradshaw to Col Leclerc, May 10, 1996.
68. Letter, Col Leclerc to Gail Bradshaw, July 15, 1996.
69. Letter, Stanley Cohen to MGen Tousignant, June 25, 1996.
70. Letter, Paul Harte to Col Leclerc, October 18, 1995.
71. Letter, Col Leclerc to Gail Bradshaw, June 20, 1996.
72. Request 015, letter, Paul Harte to Col Leclerc, September 18, 1995.
73. Letter, Col Leclerc to Paul Harte, October 16, 1995.
74. Letter, Col Leclerc to Paul Harte, February 14, 1996, forwarding a letter from Col All. Fenske to SILT Legal Counsel,October 30, 1995.
75. Letter, Col Leclerc to Gail Bradshaw, January 17, 1997.
76. Request 113, letter, Paul Harte to Col Leclerc, November 2, 1995.
77. Letter, Paul Harte to Col Leclerc, December 20, 1995.
78. Request 275, letter, Paul Harte to Col Leclerc, April 1, 1996; Request 277, letter, Paul Harte to Col Leclerc, April 11, 1996 (added to Request 275).
79. Letter, Gail Bradshaw to Col Leclerc, August 26, 1996.
80. Letter, Col Leclerc to Gail Bradshaw, January 21, 1997, forwarded documents relating to Request 277; letter, Col Leclerc to Gail Bradshaw, January 22, 1997, forwarded documents relating to Request 275.
81. Request 174, letter, Paul Harte to Col Leclerc, December 8, 1995.
82. Letter, Col Leclerc to Paul Harte, February 20, 1996.
83. Letter, Gail Bradshaw to Col Leclerc, December 20, 1996.
84. Letter, Col Leclerc to Gail Bradshaw, February 3, 1997.
85. Testimony of Col O'Brien, Transcripts vol. 10, pp. 1869, 1875.
86. Investigative Details of Military Police Investigation NIS 62101095 (hereafter, NIS Investigative Details), Document book 101A, tab 4, p. 1.
87. Testimony of Col Leclerc, Transcripts vol. 56, p. 11186.
88. Submissions of Commission Counsel Re: Investigation of the NDOC Computer Log, Document book 101C, tab A, p. 23, paragraph 5(a) 1, 2, 3.
89. Document book 101, tab 1, DND 346484.
90. Submissions of Commission Counsel Re: Investigation of the NDOC Computer Log, Document book 101C, tab A, p. 3, paragraph 5(c).
91. Submissions of Commission Counsel Re: Investigation of the NDOC Computer Log, p. 3, paragraph 5(c). See also NIS Investigative Details, Document book 101A, tab4,p.2.
92. NIS Investigative Details.
93. NIS Interview with LCol Arbuckle, May 31, 1996, Ottawa, Document book 101A, tab A, p. 3, paragraph i; and NIS Interview with LCdr Bastien, May 14, 1996, Toronto, Document book 101A, tab B. p. 2, paragraph i,
94. Compare NIS Interview with LCdr Bastien, May 14, 1996, Toronto, Document book 101A, tab B. p. 2, paragraph i; NIS Interview with Cdr Silvester, May 27, 1996, Victoria, B.C., Document book

101A, tab G. p. 1, paragraph c; and NIS Interview with Cdr Keenliside, April 11, 1996, Halifax, N.S., Document book 101A, tab D, p. 3, paragraph k.

95. NIS Report of Investigative Findings, October 17, 1995, Document book 101, tab 1, p. 2, paragraph 5.
96. NIS Interview with Cdr Keenliside, April 11, 1996, Halifax, N.S., Document book 101A, tab D, p. 1, paragraph d.
97. NIS Interview with Cdr Silvester, May 27, 1996, Victoria, B.C., Document book 101A, tab G. p. 2, paragraph f.
98. Testimony of Col O'Brien, Transcripts vol. 151, p, 30904.
99. NIS Interview with LCdr Kuzyshyn, May 24, 1996, Dartmouth, N.S., Document book 101A, tab E, p. 2, paragraph k.
100. NIS Interview with LCdr Towns, May 25, 1996, Sackville, N.S., Document book 101A, tab J. p. 1, paragraph d.
101. Covering letter, NIS Report, July 9, 1996, Document book 101A, tab 1, p. 1, paragraph 3.
102. Operations Log, Document book 99, tab B. Annex 3C, p. 3C1, paragraph 3.
103. Testimony of Gen Boyle, Transcripts vol. 87, p. 16994.
104. War Diary Joumal, Document book 99, tab 3, paragraph 23 (emphasis in the original).
105. Document book 99A, tab 1, Summary of Operations Logs, p. 4, paragraph 2.2.
106. Document book 99A, tab 1, Summary of Operations/Communications Logs and other Records.
107. Testimony of Gen Boyle, Transcripts vol. 87, p. 17049.
108. Opening remarks of counsel, April 15, 1996, Transcripts vol. 56, pp. 1107611077.
109. Letter, Stanley Cohen to LGen (ret) Fox, January 17, 1996, Document book 100A, tab 2.
110. Letter, Col Leclerc to Barbara Mclsaac, February 9, 1996, Document book 100A, tab 6.
111. Testimony of Gen Boyle, Transcripts vol. 87, p. 17059.
112. Annex A to letter, Lynn Lovett to Col Leclerc, April 3, 1996, Document book 100A, tab 10.
113. Opening remarks of Commission Counsel, Transcripts vol. 56, p. 11084; and Log Investigation Summary, Document book 99A, tab 7, DND 385548.
114. Testimony of Maj Pommet, Transcripts vol. 107, pp. 2147821480, and vol. 108, pp. 2151721518.
115. Memo, LCol Pittfield, "Log Search", April 10, 1996, Document book 99A, tab 8. Annex A, p. 2, indicates that they were found on shelves in 2 Commando's signals stores.
116. Testimony of Gen Boyle, Transcripts vol. 87, p. 17015.
117. Letter, Col Leclerc to Gail Bradshaw, May 7, 1996, Document book 99A, tab 4, Annex A, p. 1, paragraph 1 .
118. Letter, Maj Messier to SILT, April 17, 1996, Document book 99A, tab 4, p. 1, paragraph 2.
119. Statement of MCpl Beattie regarding J2 Logs, Document book 99A, tab 4, pp. 12.
120. Letter, Maj Messier to SILT, April 17, 1996, Document book 99A, tab 4, p. 2, paragraph 4.
121. CJFS HQ notes (Caps St. Denis), Document book 99A, tab 2, p. 2.
122. Letter, Maj Messier to SILT, April 17, 1996, Document book 99A, tab 4, p 2, paragraph 4.
123. Letter, Maj Messier to SILT, April 17, 1996, Document book 99A, tab 4, p. 1, paragraph 1.
124. Statement of WO Beldam, Document book 92A.1, tab 1, Annex AA, p. 3, paragraph 5.
125. Supplementary Statement of WO Beldam, Document book 92A.1, tab I, Annex AA, pp. 12, answer to question 3.
126. Exhibit P 143 .6
127. Because the Inquiry valued the ability to retrieve individual documents, it relied on its own system of identifying and tracking documents. The quantity of paper received and the printed versions of files received on computer disk totalled more than 200,000 pages, corresponding to more than 52,000 documents as identified by the Inquiry,
128. Letter, Stanley Cohen to LGen (ret) Fox, April 11, 1996.
129. Letter, Col Leclerc to Simon Noël, Commission counsel, May 28, 1996.
130. Letter, John Koh to LCdr MacArthur, June 13, 1996.
131. Document books 39 and 39A were sent to SILT in February 1996 and returned to the Inquiry on

August 16, 1996.
132. For example, letter, Barbara Mclsaac to Col Leclerc, June 3, 1996.
133. For example, letter, Stanley Cohen to MGen Tousignant, July 23, 1996.
134. Document books, volumes 5151E.
135. Letter, Col Leclerc to Gail Bradshaw, January 21, 1997.
136. Document book 100A, tab 1.
137. Letter, Simon Noël to Brian Evernden, September 11, 1996.
138. Letter, Lynn Lovett to Brian Evernden/LCol Callan, November 12, 1996.
139. Letter, Lynn Lovett to Brian Evernden/LCol Callan, November 12, 1996.
140. Letter, Lynn Lovett to Brian Evernden/LCol Callan, November 12, 1996.
141. Memorandum, Lynn Lovett to Commissioners, January 17, 1997.
142. Letter, LCol Callan to Lynn Lovett, November 13, 1966.
143. Letter, Lynn Lovett to LCol Callan, November 13, 1996.
144. These figures are based on the Inquiry's own records of documents received and processed. SlLT's figures appear to differ to some extent based on a different method of counting documents, but there is also the strong likelihood that SlLT's numbers are inaccurate as a result of incomplete records. See, for example, Gen Boyle's testimony that SlLT's system of document registration was overwhelmed (Transcripts vol. 86, pp. 1692616927).
145. Filed as Document books 48A and 48B,
146. Exhibit P 143.6.
147. Testimony of Gen Boyle, Transcripts vol. 86, pp. 1692316927.
148. Document book 100A, tab 1.
149. Testimony of Ruth Cardinal, Transcripts vol. 74, p. 14467. The CANFORGEN was an order signed by LGen Boyle on behalf of the Chief of the Defence Staff and addressed to all units of the CF and DND, requiring them to cooperate with the Inquiry and to comply with any request made by SILT with respect to Somalia related documents (see Document book 100A, tab 15).
150. Memorandum, Col Hillier, April 6, 1995, Document book 100A, tab 14.
151. See Exhibit P 162.
152. Testimony of Ruth Cardinal, Transcripts vole 74,pp.1447014471.
153. Testimony of Lt (N) Brayman, Transcripts vol. 65,pp.1268912690; and Ruth Cardinal, Transcripts vol. 74,p.14475.
154. Testimony of Claudette Lemay, Transcripts vol. 58,pp.1142511426; Nancy Fournier, Transcripts vol. 62,pp.1213112132, 12139; and Lt (N) Brayman, Transcripts vol.65,pp.1268812690.
155. Testimony of Ruth Cardinal, Transcripts vol. 74,pp.14482, 14488, 14489,
156. Testimony of Ruth Cardinal, Transcripts vol. 74,p.14480.
157. Testimony of Nancy Fournier, Transcripts vol. 62,pp.1213212135.
158. Testimony of Nancy Fournier, Transcripts vol. 63,p.lt323.
159. Testimony of Lt (N) Brayman, Transcripts vol. 65,pp.12640, 1269612698, 12707,12720.
160. Testimony of Nancy Fournier, Transcripts vol. 62,pp.1214512146, and vol. 63, pp.1218687; and of Lt (N) Brayman, Transcripts vol. 65,pp.1269412695.
161. Testimony of Ruth Cardinal, Transcripts vol. 74,pp.1448614487.
162. See Exhibit P158, Document on Investigation into Release of RTQs signed by Gen de Chastelain, September 22,1995.
163. See Exhibit P158.1, Chief Review Services Special Examination,October 7,1995; and testimony of Ruth Cardinal, Transcripts vol. 75,pp.1457214573.
164. Testimony of Lt (N) Brayman, Transcripts vol. 66,p.12758.
165. Testimony of Lt (N) Wong, Transcripts vol. 70,p.13545.
166. Testimony of Lt (N) Wong, Transcripts vol. 70,pp.13536, 1354413545, 13567.
167. Testimony of LGen (ret) Fox, Transcripts vol. 77,p.15126.
168. Testimony of LGen (ret) Fox, Transcripts vol. 77,p.14987.
169. Testimony of MGen Vernon, Transcripts vol. 80,p.15550.

170. Testimony of LGen (ret) Fox, Transcripts vol. 77,pp.1501015013.
171. Testimony of Lt (N) Wong, Transcripts vol. 70,p.13594.
172. Testimony of LGen (ret) Fox, Transcripts vol. 77,pp.1512615128.
173. Testimony of LGen (ret) Fox, Transcripts vol. 77,p.15020.
174. Testimony of LCol Carter, Transcripts vol. 76,p.14919.
175. Testimony of LGen (ret) Fox, Transcripts vol. 77,pp.1502715030.
176. Testimony of LGen (ret) Fox, Transcripts vol. 77,pp.1503615043. One exception would be Ms. Cardinal who, according to the testimony of Lt (N) Brayman, Lt (N) Wong, and Mrs. Fournier, had not even been given the full picture. Testimony of Lt (N) Brayman, Transcripts vol. 66,pp.12759-12760; Lt (N) Wong, Transcripts vol. 70,pp.1361413615; and Mrs. Fournier, Transcripts vol. 63, p.12195.
177. Testimony of LGen Reay, Transcripts vol. 80,pp.1562115622.
178. Testimony of LGen Reay, Transcripts vol. 80,p.15623.
179. Testimony of LGen Reay, Transcripts vol. 80,pp.1562715628.
180. Testimony of LGen Reay, Transcripts vol. 80,p.15628.
181. Testimony of LGen (ret) Fox, Transcripts vol. 77,pp.1504915052.
182. Testimony of LCol Carter, Transcripts vol. 76,pp.1491914939.
183. Testimony of LCol Carter, Transcripts vol. 76,pp.1492214923.
184. Testimony of LCol Carter, Transcripts vol. 76,p.14923.
185. Testimony of Lt (N) Wong, Transcripts vol. 70,pp.1354413545.
186. Testimony of LGen (ret) Fox, Transcripts vol. 77,pp.1512715128.
187. Testimony of LGen (ret) Fox, Transcripts vol. 77,pp.1504615049.
188. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15012, 15053, 1506515067, 15142.
189. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 1505315055, 15098.
190. Testimony of LGen (ret) Fox, Transcripts vol. 78, pp. 1528815289.
191. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 1501415015, 1503915040, 1513615137.
192. See the exchanges on this subject that occurred during the testimony of Lt (N) Brayman, Transcripts vol. 68, pp. 1317713180, 1319313203.
193. Testimony of LGen (ret) Fox, Transcripts vol. 77, p. 15002.
194. Testimony of Roberto Gonzalez, Transcripts vol. 58, pp. 11547, 11551.
195. Testimony of Col Haswell, Transcripts vol. 95, pp. 1839518396, 1839918400.
196. Testimony of Roberto Gonzalez, Transcripts vol. 58, pp. 1155311554, 1156211563, vol. 59, pp. 1160511606, 1164911650, 11659, and vol. 111, pp. 2216022161; and Col Haswell, Transcripts vol. 95, pp. 1843718441, 1844718450, 1846518472; and Document book 103, tabs 1 and 2.
197. Testimony of Roberto Gonzalez, Transcripts vol. 111, pp. 2216122162.
198. Testimony of Col Haswell, Transcripts vol. 95, pp. 1844718448.
199. Testimony of Col Haswell, Transcripts vol. 95, pp. 1855418555.
200. Testimony of Lt (N) Wang, Transcripts vol. 70, pp. 1347013471.
201. Testimony of Roberto Gonzalez, Transcripts vol. 58, pp. 11555, 1155711565, 11570, and vol. 59, pp. 1158011581, 1160511606; Nancy Fournier, Transcripts vol. 62, pp. 11983, 12057; and Col Haswell, Transcripts vol. 95, pp. 1841818419, 18424, 1843018432.
202. Testimony of Roberto Gonzalez, Transcripts vol. 59, pp. 1158611587, 1162711629.
203. Testimony of Roberto Gonzalez, Transcripts vol. 60, pp. 1180811810.
204. Document book 103, tab 4.
205. Testimony of Nancy Fournier, Transcripts vol. 62, pp. 1203312038, 1204212043, 1205512056.
206. Document book 103, tabs 17, 18 and 38.
207. Document book 103, tab 40.
208. Document book 103, tabs 36, 41 and 43.
209. Testimony of Nancy Fournier, Transcripts vol. 62, p. 12115; and Lt (N) Brayman, Transcripts vol. 65, p. 12687.
210. Document book 103, tabs 3,5, 9, 10 and 11; and testimony of Gen Boyle, Transcripts vol. 88, pp.

17218, 1722217225.

211. Testimony of LCdr Considine, Transcripts vol. 73, pp. 1412914131.
212. Testimony of LCol Duchesneau, Transcripts vol. 74, pp. 1439514396; and LCdr Considine, Transcripts vol. 73, pp. 1413014131.
213. Testimony of LCdr Considine, Transcripts vol. 73, pp. 1413114132.
214. Document book 103, tab 12.
215. Document book 103, tab 13.
216. Document book 103, tab 13; and testimony of Lt (N) Brayman, Transcripts vol. 67, pp. i294712948, 1307913080.
217. Testimony of Nancy Fournier, Transcripts vol. 62, pp. 1204812050.
218. Testimony of Gen Boyle, Transcripts vol. 88, pp. 1723317234; and Col Haswell, Transcripts vol. 95, p. 18521.
219. Document book 103, tab 25; Exhibits P143.3 (RTQs) and P143.5 (Access to Information Log).
220. Testimony of Nancy Fournier, Transcripts vol. 62, pp. 12053, 12060. 193. 194. 195. 196.
221. Testimony of Nancy Fournier, Transcripts vol. 62, p. 12066.
222. Testimony of Lt (N) Braytnan, Transcripts vol. 65,pp. 12661-12662, 12670.
223. Testimony of Lt (N) Brayman, Transcripts vol. 67, pp. 12957-12986.
224. Testimony of Lt (N) Brayman, Transcripts vol. 67, p. 13051.
225. Testimony of Lt (N) Brayman, Transcripts vol. 65, pp. 12663-12665; and LCdr Considine, Transcripts vol. 73, pp. 14185-14186.
226. See, for example, Document book 103, tab 39, where the words MRL and RTQ were used interchangeably, as the "MRL" contains a reference to the date this "RTQ" was used. See also testimony of Nancy Fournier, Transcripts vol. 62, pp. 12110-12111, 12115-12116; Lt (N) Brayman, Transcripts vol. 65, pp. 12679, 12682, and vol. 67, p. 13090; Gen Boyle, Transcripts vol. 88, pp. 17208-17210; and Col Haswell, Transcripts vol. 95, pp. 18472-18475, 18479-18480,18486, 18499; and Document book 100, tab 6, Annex Q for the perception of the staff.
227. Testimony of Gen Boyle, Transcripts vol. 88, pp. 17217-17218.
228. Testimony of Ruth Cardinal, Transcripts vol. 74, pp. 14449-14452.
229. Testimony of Col Haswell, Transcripts vol. 95, pp. 18480-18484.
230. Document book 103, tab 42.
231. See Exhibit P-195; and testimony of Col Haswell, Transcripts vol. 95, pp. 18507-18515.
232. Testimony of Col Haswell, Transcripts vol. 95, pp. 18493-18495. See also Document book 103, tab 42, Col Haswell's memorandum to Gen Boyle, which openly acknowledges this fact.
233. Testimony of Col Haswell, Transcripts vol. 95, pp. 18510-18515.
234. Testimony of Ruth Cardinal, Transcripts vol. 74, pp. 14448-14452.
235. See Exhibit P-i 67, NS 039772, paragraph 2.
236. See Exhibit P-167, NS 039771.
237. Testimony of Gen Boyle, Transcripts vol. 88, p. 17280.
238. Testimony of Gen Boyle, Transcripts vol. 88, pp. 17220-17222.
239. Testimony of Gen Boyle, Transcripts vol. 88, pp. 17221-17222.
240. Testimony of Gen Boyle, Transcripts vol. 88, pp. 17225-17228.
241. Testimony of Col Haswell, Transcripts vol. 95, pp. 18503-18505, 18548.

PREVIOUS | NEXT | MAIN INDEX | VOLUME 5 INDEX

Search | Help | Français | Comments | D-NET Home