IN THE MATTER OF

THE INTERNAL INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO ABDULLAH ALMALKI, AHMAD ABOU-EL MAATI AND MUAYEED NUREDDIN

JOINT WRITTEN SUBMISSIONS OF THE INTERVENORS, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION and INTERNATIONAL CIVIL LIBERTIES MONITORING GROUP

Application for the Disclosure of Interviewees, Production of Documents, and Public Testimony

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PART I

Overview

1. This Commission of Inquiry commenced in February 2007 and is scheduled to conclude in less than four months. By the present application, the non-government participants and the intervenors (together referred to herein as the "Applicants") are asking the Commissioner for relief that will allow substantive participation in the Inquiry.

2. The following submissions in support of the application are made jointly on behalf of the British Columbia Civil Liberties Association ("BCCLA") and the International Civil Liberties Monitoring Group ("ICLMG"). Both organizations are intervenors to the Inquiry and among the Applicants.

3. Since the Commissioner's ruling on May 31, 2007, public concern about the conduct of the Canadian officials who are the subject of this Inquiry was significantly heightened by the dramatic revelations disclosed by

the Federal Court in *Canada v. Arar Inquiry*[1] and the government's efforts to keep those findings secret. In addition, it has been the Applicants' experience that the practice followed to date, in which no material information has been shared about the Commission's work, has left them unable to meaningfully participate in the Inquiry or effectively monitor its progress.

4. A Commission of Inquiry is a dynamic process and these developments are good reasons for the Commissioner to revisit issues about the Inquiry's procedures and approach. A primary goal of any inquiry is to restore faith in public institutions by making certain findings and recommendations regarding issues of significant public concern. The effective conduct of the present Inquiry therefore necessarily includes maintaining public confidence in the integrity of the Commission's process and the validity of its findings. For these reasons, the BCCLA and the ICLMG submit that a more transparent process is essential if the Commissioner is going to address these legitimate public concerns.

5. Furthermore, the BCCLA and the ICLMG submit that, in these circumstances, and given the context of the Inquiry, the Terms of Reference must be interpreted in a manner consistent with the freedom of thought, belief, opinion and expression, as guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*. The Applicants have the right to communicate their views about the Inquiry, and the public has a right to receive those views. In order to form opinions and effectively exercise their rights, the Applicants require access to more information about the Commission's work.

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[1] *Canada (Attorney General) v. Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*, [2007] F.C.J. No. 1081 (F.C.) ["*Canada v. Arar Inquiry*"] and Addendum to the Report of the Events Relating to Maher Arar, O'Connor Commission, released August 9, 2007.

PART II
Background to the Present Application

6. The present Commission of Inquiry came about as a result of findings and recommendations that arose from another Commission. Commissioner O'Connor made a number of findings in relation to Mr. Almalki, Mr. Elmaati and Mr. Nureddin, and expressed concern about the conduct of Canadian government officials in relation to their cases, describing their actions at times as "most unfortunate", an "enormous failure", and "a sorry state of affairs".[2] He therefore recommended some form of inquiry or review, stating,

> Whatever process is adopted, it should be one that is able to investigate matters fully and, in the end, inspire confidence in the outcome.[3]

7. Commissioner O'Connor issued a public report and a confidential report. Commissioner O'Connor drafted the public report in a manner that he believed respected Canada's valid concerns about risks to national security and international relations. The federal government nevertheless opposed the release of numerous passages in the public report, and the Commissioner applied to the Federal Court for judicial review.

8. Before the Federal Court matter could be heard, the Canadian government acted on Commissioner O'Connor's recommendation to establish a second commission of inquiry. On December 11, 2006, the Canadian government appointed Commissioner Iacobucci to conduct an inquiry under the *Inquiries Act*. The Terms of Reference provide that the Commissioner

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[2] Report of the Events Relating to Maher Arar: Analysis and Recommendations, O'Connor Commission, September 2006, at pp. 210 and 212. ["Arar Report"]
[3] Arar Report, pp. 276-278, p. 278 for quote.

should conduct the Inquiry in private unless he is satisfied portions should be in public "essential to ensure the effective conduct of the Inquiry."[4]

9. The Commissioner has considered these terms of reference in two separate rulings. On April 2, 2007, the Commissioner rendered a decision on participation and funding. At page 3 of that ruling, he stated,

> Although mandated to be in private, the Terms of Reference do permit portions of the Inquiry to be in public and as I previously stated I do intend to take that provision seriously. I say that because transparency and openness generally are valued principles in the work of the courts, tribunals, and inquiries. Their advantages are obvious and of fundamental importance to ensure accountability of decision makers and to inspire confidence in the conclusions reached.

10. The Commissioner made a further ruling on May 31, 2007, regarding the Terms of Reference and Procedure. He determined that counsel for the Applicants would not be given access to information that was sensitive for national security reasons and the hearings would be conducted presumptively in private. The Commissioner found that counsel would be able to provide input on issues such as witnesses to be examined, lines of questioning to be pursued, and documents to be put to witnesses.[5] The Commissioner did not address the possibility of disclosing documents or other information that had been edited to address national security concerns.

11. While the Commissioner ruled that interviews and hearings would be in private, he did not foreclose the possibility of holding public hearings. At page 27, he stated,

> Because there is great importance attached to public hearings, Inquiry counsel and I will be continually sensitive to having public hearings when they can be held with the proper respect for the

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[4] Terms of Reference, paragraphs (d) and (e).
[5] Ruling of Commissioner Iacobucci on Terms of Reference and Procedure, dated May 31, 2007pp. 21 and 26-28.

> Terms of Reference and the underlying national security concerns. I intend to interpret the words, "essential to the effective conduct of the Inquiry", as not being totally restrictive, since they reflect an intention that holding some aspects of this Inquiry in public can contribute to the effective conduct of the Inquiry. In other words, **it is my opinion that "to ensure the effective conduct of the Inquiry" means holding portions of the Inquiry in public to ensure that goal as circumstances may warrant**. This will be ultimately a discretionary decision, to be made on a case-by-case basis, **influenced by the need for a blending of efficiency and transparency dictated by the circumstances and the context**. [emphasis added]

12. In the months following the Commissioner's ruling on procedure, the Applicants and their counsel met with Commission counsel on a number of occasions. The Applicants found these exchanges to be largely unproductive and opaque. In the view of the Applicants, Commission counsel shared very little information about the work of the Commission. Requests for redacted documents and the names of certain interviewees were denied.[6]

13. By June 2007, some of the Applicants already began to express concern about the process. In particular, they were concerned that essentially no details were being disclosed regarding the information being gathered. As one counsel stated, "We do not know what is happening, what information is being obtained, and what are the areas of concern." The Applicants were also uncomfortable with the fact that Commission counsel was insisting that all communications be treated as "off the record", further cloaking the process in secrecy.[7]

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[6] Affidavit of Hadayt Nazami, sworn October 2, 2007, paras. 10, 13, and 15-17.
[7] Letter from Paul D. Copeland to Commissioner Iacobucci, dated June 14, 2007, and letter from Jasminka Kalajdzic to John Laskin and John Terry, dated June 27, at pp. 3-4 for quotes. [Exhibit "B" to the Affidavit of Hadayt Nazami, sworn October 2, 2007].

14. On July 24, 2007, the Federal Court rendered its judgment in *Canada v. Arar Inquiry*. Justice Noël found that the federal government's claims for secrecy were unwarranted in most instances. While the judgment did not directly reference particular passages because of the risk the government would exercise its rights to appeal, Justice Noël did express certain principles of law on the issue of government secrecy. In particular, he observed,

> **[T]he Court will not prohibit disclosure where the Government's sole or primordial purpose for seeking the prohibition is to shield itself from criticism or embarrassment**. This principle has also been confirmed by the Supreme Court in *Carey v. Ontario*, [1986] 2 S.C.R. 637 at paragraphs 84-85, where Justice LaForest, for the Court, wrote:
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> > [84] There is a further matter that militates in favour of disclosure of the documents in the present case. **The appellant here alleges unconscionable behaviour on the part of the government. As I see it, it is important that this question be aired not only in the interests of the administration of justice but also for the purpose for which it is sought to withhold the documents, namely, the proper functioning of the executive branch of government. For if there has been harsh or improper conduct in the dealings of the executive with the citizen, it ought to be revealed. <u>The purpose of secrecy in government is to promote its proper functioning, not to facilitate improper conduct by the government.</u>** This has been stated in relation to criminal accusations in *Whitlam*, and while the present case is of a civil nature, it is one where the behaviour of the government is alleged to have been tainted.
> >
> > [85] **Divulgence is all the more important in our day when more open government is sought by the public. It serves to reinforce the faith of the citizen in his governmental institutions.** This has important implications for the administration of justice, which is of prime concern to the courts. As Lord Keith of Kinkel noted in the *Burmah Oil* case, *supra*, at p. 725, it has a bearing on the perception of the litigant and the public on whether justice has been done.[8]

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[8] *Canada v. Arar Inquiry, supra*, at para. 58. Underline emphasis added by Justice Noël; bold emphasis added by the authors of this submission.

15. Neither the federal government nor the Commissioner appealed Justice Noël's ruling. As a result, numerous details were revealed for the first time to the public as well as Mr. Arar and the participants in the present Inquiry.

16. One significant piece of information revealed was that CSIS was well aware in October 2002 that the CIA was likely sending Mr. Arar to a Middle Eastern country "where they can have their way with him."[9] This suggests CSIS had knowledge about the CIA's "rendition" program long before the practice became public, a fact that should open further lines of inquiry for the present Commission. In addition, it was also revealed that the RCMP had applied for a warrant using information obtained from Mr. Elmaati while under interrogation by Syrian Intelligence, and that the possibility of torture was not revealed to the justice of the peace.[10]

17. These revelations and others raised new questions about the conduct of government officials and the propriety of their national security claims. Media reports across the country similarly expressed cynicism about the government's actions and motivations for claiming secrecy. Some extracts follow:

> Some measure of secrecy is reasonable when national security matters are in play, but Iacobucci seems to be taking it beyond even what the Tories had implied. The inquiry is so clandestine that even Nureddin, Almalki and El Maati aren't getting to find out much about what led to the apparent abuses they endured. [...] You'd think that what we found out this week about the perils of secrecy would have Canadians (not least opposition politicians) crying foul. Instead, we seem to have determined that one Maher Arar is enough for us – a

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[9] Addendum to the Report of the Events Relating to Maher Arar: Factual Background Volume I, O'Connor Commission, p. 245, released August 9, 2007.
[10] Addendum to the Report of the Events Relating to Maher Arar: Analysis and Recommendations, O'Connor Commission, pp. 127-128, released August 9, 2007.

noble sentiment if it means preventing further cases like his, but not if it's ignoring past ones.[11]

After the previously censored details of Mr. Justice Dennis O'Connor's report were made public last week, Canadian officials' role in the injustices done to Maher Arar became clearer than ever. What remains to be seen is whether their complicity in Mr. Arar's imprisonment and torture in Syria was an isolated incident or part of a broader pattern.
[...]
Hoping to avoid the revelation of sensitive information, and possibly also eager to limit embarassment to the national security establishment, the federal government instructed Mr. Iacobucci to conduct an "internal" investigation almost entirely behind closed doors. And it gave him a deadline of January 2008 – less than a year to examine the fate of three men, even though it took 1½ years for Judge O'Connor to investigate Mr. Arar's case alone.

Neither the need for secrecy nor the need to adhere to arbitrary time constraints should limit Mr. Iacobucci's ability to get to the bottom of these cases. [...] In light of the latest revelations surrounding Mr. Arar's case, Mr. Iacobucci should be given as much time and leeway as he needs. Finding out the truth about how Canada views our civil liberties cannot take a back seat to expediency.[12]

Thanks to a federal court judge who overrode most of Ottawa's bogus national security claims, we now know what most long suspected that Ottawa was well aware of the fate awaiting Arar after he was arrested in New York in September 2002. The newly uncensored portions show that the government knew the Americans were deporting Arar to the Middle East to be tortured for information, or as one security bureaucrat cunningly put it, to "have their way with him".

Yet for the entire time that Arar was in jail in Damascus, the Canadian government publicly denied he was in danger of torture. We now know that Ottawa was lying. However, the most important revelations from last week's release relate not to Arar but to three other Canadians whose cases are before a judicial inquiry.[13]

The federal government fought like blazes to keep the fact that the CIA sent Maher Arar to Syria from you – they fought so hard that it took a court order for you to hear it – because Ottawa doesn't want to lose face with the

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[11] "Lessons not learned", Adam Radwanski, *Globe and Mail*, August 10, 2007. Exhibuit "A" to the Affidavit of Hadayt Nazami, sworn October 2, 2007.
[12] "Leeway for Mr. Iacobucci", Editorial, *Globe and Mail*, August 14, 2007, attached as Exhibit "A" to the Affidavit of Hadayt Nazami, sworn October 2, 2007
[13] "Arar case shes light on 3 others", Editorial, *Toronto Star*, August 16, 2007, attached as Exhibit "A" to the Affidavit of Hadayt Nazami, sworn October 2, 2007.

> Americans, or the Syrians for that matter. To preserve their trust, our government was prepared to sacrafice the trust of its own citizens. What are we to make of such a thing?[14]

> It took a legal fight that pitted the Arar commission against the federal government to release information that showed this country suspected Arar would be sent to the Middle East to be tortured, yet released him to U.S. custody anyway...The government had cited national security reasons for keeping this information under wraps. Perhaps it's more of a case of national embarassment.[15]

> Lawyers employed by Harper's government tried to prevent the release of the uncensored Arar documents, once again in the name of protecting national security. Harper said last week that he wants to "ensure that the events that occurred under the Liberals are not replicated for other Canadian citizens." If that is true, a good place to start is with openness and transparency, not censorship and coverups.[16]

18. Following the judgment in *Canada v. Arar Inquiry*, the Applicants renewed their concerns with the Commission about the extent of their participation in this process and the lack of meaningful information being shared.[17]

19. The present application for the disclosure of information and documents and public hearings was served October 3, 2007.

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[14] "Ottawa sacraficed Arar to save face with U.S., Syria", John Ibbitson, *Globe and Mail*, August 10, 2007, attached as Exhibit "A" to the Affidavit of Hadayt Nazami, sworn October 2, 2007.

[15] "Keeping the public in the dark is just wrong", Editorial, *Niagra Falls Review*, August 14, 2007, attached as Exhibit "A" to the Affidavit of Hadayt Nazami, sworn October 2, 2007.

[16] "No excuse for Arar abuse", Editorial, *Kingston Whig-Standard*, August 13, 2007, attached as Exhibit "A" to the Affidavit of Hadayt Nazami, sworn October 2, 2007.

[17] See letters attached as Exhibit "C" to the Affidavit of Hadayt Nazami, sworn October 2, 2007.

PART III
Arguments

A. Freedom of Expression

20. The BCCLA and the ICLMG submit that the participants' freedom of expression, as guaranteed by s. 2(b) of the Charter, is engaged by the present application. In that regard, the Courts have recognized that, in some circumstances, freedom of expression requires access to relevant information for the right to be effective. The Federal Court, as upheld on appeal, ruled as follows in *International Fund for Animal Welfare Inc. v. Canada*:

> An expansive and purposive scrutiny of paragraph 2(b) leads inevitably, in my judgment, to the conclusion that freedom of expression must include freedom of access to all information pertinent to the ideas or beliefs sought to be expressed, subject to such reasonable limitations as are necessary to national security, public order, public health or morals, or the fundamental rights and freedoms of others.[18]

21. A recent judgment by the Ontario Court of Appeal supports this conclusion. In *Criminal Lawyers' Association*, the lawyers' group was seeking disclosure of a report concerning alleged wrongdoing by the Ontario Provincial Police. The request, made under provincial access to information legislation, was denied. The Court of Appeal observed that "the request is merely the means by which the CLA seeks to gain the information that will enable it to express itself", and found the government's refusal to be unconstitutional in the circumstances.[19]

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[18] *International Fund for Animal Welfare, Inc. v. Canada*, [1986] F.C.J. No. (F.C.T.D.) at para. 36, affirmed on appeal, [1988] F.C.J. No. 317 (F.C.A.), in particular on this issue at paras. 16-18.

[19] *Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security)*, [2007] O.J. No. 2038 (On.C.A.) at paras. 29 and 51, 29 for quote. ["*Criminal Lawyers' Association*"]

22. The Supreme Court of Canada has repeatedly stressed the significance of expression to free and democratic societies, describing the right as being paramount to the very functioning of democracy. In an oft-quoted passage from *Edmonton Journal*, the Court said,

> It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized.[20]

23. Freedom of expression is intrinsic to the proper functioning of public institutions and related social and political decision-making. As the Supreme Court observed in *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, "The full and fair discussion of public institutions, which is vital to any democracy, is the *rasion d'être* of the s. 2(b) guarantees."[21]

24. In this context, the Supreme Court has recognized that freedom of expression includes not only the right to convey information, but also to receive it, particularly when such information concerns public institutions. While discussing the connection between the open-court principle and freedom of expression, the Supreme Court in *Edmonton Journal* did not limit the right to receive information simply to court proceedings: "[M]embers of the public have a right to information pertaining to public institutions and particularly the courts."[22]

25. Based on all the foregoing, the BCCLA and the ICLMG submit that the Commissioner's decision on this application necessarily engages the freedom

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[20] *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R.1326 at 1336. Also see *Re Vancouver Sun*, [2004] S.C.J. No 41., at para. 23.
[21] *Canadian Broadcasting Corp. v. New Brunswick (Attorney General),* [1996] 3 S.C.R. 480, at para. 23. Also see *Re Vancouver Sun*, *supra*, para. 26.
[22] *Edmonton Journal, supra*, para. 10. Also see *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712; *Canadian Broadcasting Corp. v. New Brunswick (Attorney General),* supra, at para. 27; and *Re Vancouver Sun*, *supra*, para. 26.

of expression guarantee because a negative determination would effectively restrict the participants' right to receive information, form opinions or beliefs about that content, and express those views. Specifically, the participants have a right to express their views about the progress of this Inquiry as much as they do about the potential wrongdoing of Canadian officials in relation to Mr. Almalki, Mr. Elmaati and Mr. Nurredin. Moreover, the expression at issue relates to the core values underlying the s. 2(b) freedoms, namely the attainment of truth and participation in social and political decision-making.[23]

26. The BCCLA and the ICLMG submit that the Commissioner must allow the participants access to as much information as possible, whether through disclosure of information or documents, or attendance at public hearings. A commission of inquiry necessarily concerns the operation of public institutions. Its very purpose is to facilitate social and political decision-making through fact-finding, analysis and recommendations.[24] These functions embrace the core values of the freedom of expression.

27. Significantly, the participants are not seeking access to information that may be subject to national security. Accordingly, the only reasons to restrict their right to information in this regard would be due to the workability of the proceeding and, potentially, a delay in its conclusion. With respect, these reasons cannot justify an infringement of s. 2(b) on the basis of minimal impairment.

28. In the present matter, the Commissioner has authority to dedicate the necessary resources to redact documents and provide them to the participants in a timely manner. The participants will be able to provide more input and submissions in light of these documents. While it is

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[23] *Irwin Toy Ltd. v. Quebec (Attorney General),* [1989] 1 S.C.R. 927, at 976. Also see *Criminal Lawyers' Association, supra*, at paras. 52-54.
[24] *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy),* [1995] 2 S.C.R. 97 at paras. 64-65.

acknowledged that this may well cause some delay as the Commissioner and Commission counsel consider these representations, this can only improve the process and cannot be regarded as offending the principle of workability.

29. Similarly, it cannot be the case that all potential testimony must be secret due to national security. In particular, there should be no concerns about testimony that does not disclose confidential informants or agents. Further, it is noted that the Supreme Court has held that information about investigation techniques, unless they relate to an ongoing investigation, should not be censored.[25]

30. Finally, there is no demonstrated urgency in the timing of the Commission's report, notwithstanding Cabinet's direction that it be submitted by January 31, 2008. Surely Cabinet did not intend to restrict the Commissioner's efforts to effectively meet his overall mandate, and no doubt reasonable extensions were contemplated. Indeed, Public Safety Minister Stockwell Day recently stated to the media, "If Chairman Iacobucci feels constrained by the terms of reference, he can approach the prime minister."[26]

B. Effective Conduct of the Inquiry

31. The Terms of Reference authorize the Commissioner to hold portions of the Inquiry in public if it is "essential to ensure the effective conduct of the Inquiry". Further, the Commissioner is authorized to grant parties with an "an opportunity for appropriate participation". Given the compelling public interest in the subject matter of this Inquiry, the BCCLA and the ICLMG submit that these terms should be interpreted in light of the public's confidence in the integrity and validity of the Commission's work.

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[25] *R. v. Mentuck*, [2001] 3 S.C.R. 442, at paras. 35, 43 and 46.
[26] See CBC news story at http://www.cbc.ca/canada/story/2007/10/12/torture-inquiry.html

32. The evidence submitted by the Applicants demonstrates the public's interest in this Inquiry and, in light of recent revelations from the Arar Inquiry, the erosion of confidence in how it is being conducted. In particular, there is a legitimate concern that the government is trying to cloak its actions in secrecy as much as possible for reasons that have little or nothing to do with national security. Right or wrong, that is the public's perception, and it must be given due weight.

33. Transparency and openness are increasingly recognized as fundamental operating principles of democratic government. Transparency not only improves decision-making, it improves public confidence in the integrity of government processes. The BCCLA and the ICLMG submit that, if the public is to trust the results of the Inquiry, it must have confidence in the process. This confidence, which has clearly been shaken by the information released following the judgment in *Canada v. Arar Inquiry* and the relative lack of involvement by the parties in this Inquiry, can only be restored through open hearings and the disclosure of documents and information.

34. The BCCLA and the ICLMG further submit that there is nothing in the Terms of Reference or the Commissioner's rulings which would suggest that non-sensitive information cannot be disclosed. To date, the Commission has been overly secretive, even with respect to information that has no discernible national security interest attached. This practice, which no doubt was adopted out of caution, cannot continue if the Commission is to operate effectively and with the confidence of the parties and the general public.

35. Finally, the BCCLA and the ICLMG submit that access to documents and public hearings will necessarily improve the fact-finding process. While Commission counsel is tasked with defending the public interest, more transparency will assist in improving the quality and validity of the evidence.

Wilson J. commented on the salutary effects of transparency on the evidentiary process:

> As Cory J. notes, **Blackstone stressed that the open examination of witnesses "in the presence of all mankind" was more conducive to ascertaining the truth than secret examinations**: see Blackstone's Commentaries on the Laws of England (1768), vol. III, c. 23, at p. 373. Subsequently, in his Rationale of Judicial Evidence (1827), vol. 1, Jeremy Bentham explained at p. 522 that:
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> > The advantages of publicity are neither inconsiderable nor unobvious. In the character of a security, it operates in the first place upon the deponent; and, in a way not less important ... upon the judge.
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> Wigmore wrote extensively on the requirement that judicial proceedings be open to the public (Wigmore, Evidence, vol. 6 (Chadbourn rev. 1976), s. 1834) and noted (at pp. 435-36) that:
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> > Its operation in tending to improve the quality of testimony is two-fold. Subjectively, it produces in the witness' mind a disinclination to falsify; first, by stimulating the instinctive responsibility to public opinion, symbolized in the audience, and ready to scorn a demonstrated liar; and next, by inducing the fear of exposure of subsequent falsities through disclosure by informed persons who may chance to be present or to hear of the testimony from others present. Objectively, it secures the presence of those who by possibility may be able to furnish testimony in chief or to contradict falsifiers and yet may not have been known beforehand to the parties to possess any information.[27]

36. The subject matter of this Commission is profoundly serious as it raises legitimate concerns about government actions in respect of the most fundamental of human rights, namely the rights to be free from arbitrary detention and torture. It is imperative that the Commission maintains public confidence in its work, and that the search for truth is enhanced as much as possible. For these reasons, the application should be allowed as it is essential to the effective conduct of the Inquiry.

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[27] *Edmonton Journal, supra*, para. 55. Emphasis added.

PART IV

Relief Requested

37. The BCCLA and the ICLMG request that the application be allowed, with the following directions:

(a) The names of all Canadian officials interviewed by Commission counsel to date be disclosed to the participants, with the exception of CSIS officials currently engaged in covert operations;

(b) All documents in the possession of the Commission be produced to the participants, without redaction save where there are valid national security confidentiality claims;

(c) Witnesses be called to testify in public regarding any issues that do not concern ongoing investigations or confidential informants or agents; and

(d) If necessary to meet the above directions, Cabinet shall be asked by Commission counsel for a formal extension to the deadline prescribed in paragraph (m) of the Terms of Reference.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated this 16th day of October, 2007.

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