

**IN THE MATTER OF THE INTERNAL INQUIRY INTO THE ACTIONS  
OF CANADIAN OFFICIALS IN RELATION TO ABDULLAH ALMALKI,  
AHMAD ABOU-ELMAATI AND MUAYYED NUREDDIN**

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**SUBMISSIONS OF THE  
ONTARIO PROVINCIAL POLICE**

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In a Notice of Hearing on Standards of Conduct, issued by the Commissioner on November 6, 2007 and amended November 26, 2007, the Commissioner has requested submissions from the parties on certain questions relating to the standards of conduct of Canadian authorities on matters relevant to the terms of reference of this Inquiry. The OPP makes the following submissions on these questions:

**1. Sharing information with foreign authorities**

- (a) During the period 2001 to 2004, in what circumstances, if any, would it have been appropriate for
- (i) Canadian officials responsible for investigating activities that may on reasonable grounds be suspected of constituting threats to the security of Canada, or
  - (ii) Canadian officials responsible for conducting criminal investigations into the possible commission of terrorism offences
- to
- (iii) share information concerning Canadian citizens with the authorities of a foreign state, or
  - (iv) in particular, provide the authorities of a foreign state with information concerning the travel plans of Canadian citizens?
- (b) If there were circumstances during the period 2001 to 2004 in which it might have been appropriate for the Canadian officials referred to in question 1(a) to share information concerning Canadian citizens with the authorities of a foreign state or, in particular, provide the authorities of a foreign state with information concerning the travel plans of Canadian citizens, what considerations should the Canadian officials have taken into account before doing so?

**Submission re 1(a):** In the period 2001-2004, the Ontario Provincial Police investigated activities that may on reasonable grounds have been suspected of constituting threats to the security of Canada. However, it would not have been appropriate for OPP members, or those acting under OPP supervision, to share information concerning these investigations, or the Canadian citizens involved, or their travel plans, with the authorities of a foreign state.

Any investigation pertaining to “threats to Canada” would have taken place as one of two types of investigations. Investigations occurred in very specific entities within the OPP, under the lead of the RCMP. These would include OPP members seconded to RCMP-led Joint Force Operations (JFOs), such as Project O Canada and/or Project A-O Canada. Alternatively, from April 2002 to the present these investigations were also directed by the OPP-led Provincial Anti-Terrorism Section (PATS). While OPP members in these capacities engaged in investigations into terrorist activity, any dissemination of this information/intelligence/evidence would have occurred at the behest of the RCMP.

In the case of RCMP-led projects (cited above) dissemination would have fallen under the auspices of the RCMP and federal policy. In the case of the PATS, requests for dissemination were routed via the RCMP and were subject to its policy. This routing process almost exclusively involved requests to correspond with American authorities. The process required a request for dissemination to the Criminal Intelligence Directorate (CID) of the RCMP, which would provide the appropriate approval and accompanying caveats in covering documents. The information would then be forwarded to the U.S. Legal Attaché. Further, any response received arrived via the RCMP CID.

**Submission re 1(b):** In disseminating information to foreign authorities, several considerations were taken into account. The principles upon which decisions were made, were on notions of “need to know” and “right to know”, factors usually revolving around the existence of joint investigations. Once a decision to request foreign dissemination was determined, other factors needed to be assessed. As cited in the Arar Inquiry, these were relevance, reliability and validity, in addition to any other considerations that the RCMP deemed appropriate.

*Relevance* was determined on the basis of considering principles such as “need/right to know”. As stated, this criterion was usually satisfied by the existence of a joint investigation, or an investigation that, while occurring in one country, maintained the potential to heavily impact the other country. Information was not provided wholesale but on a case-specific basis.

All intelligence was graded by two factors: reliability and validity. These assessments occurred to ensure the most accurate assessment possible. *Reliability* was an assessment of the source of the information (i.e. confidential informant, agent, etc.). It was assessed by means of gradings such as reliable, believed reliable, unknown reliability, etc., as articulated in the Arar Report. *Validity* was an assessment of the information itself (divorced from the source). This assessment process is determined by the Criminal Intelligence Service of Canada (CISC) and is the same for the RCMP as the OPP. Before

any product was completed, all steps would be taken to acquire corroboration – thus improving accuracy and precision.

The OPP maintained minimal policy at that time governing the external sharing of information in relation to threats to Canada. This is due to the legislated, “primary responsibility” of the RCMP as per the Security Offences Act (SOA). The decision to disseminate, the underlying policy, and the factors to consider in so doing, rested with the RCMP.

It should be noted that, in the absence of concrete policy for the period 2001-2004, the OPP followed federal policy almost exclusively, and thus acquired the approval to disseminate investigative products to foreign states – although this was a relatively rare occurrence. Anticipating the outcome of the Arar Inquiry, however, individual entities such as PATS adopted strict prohibitions on the independent sharing of information to foreign states, funneling all requests via INSET. The recommendations of Justice O’Connor firmly supported this stance, calling for the centralization of any dissemination via the RCMP. The RCMP incorporated these recommendations in the National Security Criminal Operations Policy that became active in May 2007. The OPP PATS adheres to this policy.

## **2. Questioning Canadian citizens detained in foreign states**

- (a) During the period 2001 to 2004, in what circumstances, if any, would it have been appropriate for the Canadian officials referred to in question 1(a) to
  - (i) send questions to the authorities of a foreign state to be used by the foreign authorities to question,
  - (ii) attend in a foreign state to participate in the questioning by the foreign authorities of, or
  - (iii) attend in a foreign state to question directly,
 a Canadian citizen detained in the foreign state?
- (b) If there were circumstances during the period 2001 to 2004 in which it might have been appropriate for the Canadian officials referred to in question 1(a) to engage in some or all of the activities referred to in question 2(a), what considerations should the Canadian officials have taken into account before doing so?

**Submission re 2(a):** During the period of 2001-2004, the instances in which an OPP officer, or one under OPP direction, would have attended a foreign state to participate in the questioning of an individual by foreign authorities, or alternatively, to send questions to the authorities of a foreign state to be posed to individuals, in relation to terrorist investigations, would have been exceedingly rare. As stated above, this would only have occurred where the OPP member in question was directed to do so as part of an RCMP-

led JFO such as O Canada or A-O Canada. In the case of the PATS, any requests for interviews etc., would have been made via a request to RCMP CID.

**Submission re 2(b):** The considerations taken into account in these instances would include: relevance and/or impact to the investigation.

### **3. Provision of consular services to Canadian citizens detained in foreign states**

(a) During the period 2001 to 2004, what standard of consular services, including but not limited to

- (i) the nature and frequency of consular visits,
- (ii) the nature and frequency of efforts to ascertain the location of the detainee and how the detainee was being treated while in detention,
- (iii) the nature and frequency of efforts to gain access to the detainee,
- (iv) the nature and frequency of efforts to secure the detainee's release,
- (v) the nature and frequency of contact with the detainee's family, and
- (vi) the nature of efforts to assist the detainee upon release to return to Canada,

would it have been reasonable for Canada to provide to a Canadian citizen detained in Syria or Egypt?

(b) During the period 2001 to 2004, what considerations should Department of Foreign Affairs and International Trade (DFAIT) officials have taken into account in determining the nature and frequency of the consular services, including but not limited to the services referred to in question 3(a)(i) to (vi), to be provided to a Canadian citizen detained in Syria or Egypt?

(c) During the period 2001 to 2004, what practices should DFAIT officials have followed when meeting a Canadian citizen who was detained or who had been detained in Syria or Egypt to assess whether the Canadian citizen was being or had been mistreated?

**Submission:** This question does not apply to the OPP nor PATS as they are not involved in the provision of consular services.

### **4. Disclosure of information obtained by consular officials**

(a) During the period 2001 to 2004, in what circumstances, if any, would it have been appropriate for the Canadian officials referred to in question 1(a) to seek from DFAIT

officials disclosure of information that DFAIT officials had obtained from a Canadian citizen to whom they were providing or had provided consular services?

- (b) If there were circumstances during the period 2001 to 2004 in which it might have been appropriate for the Canadian officials referred to in question 1(a) to seek from DFAIT officials disclosure of information that the consular officials had obtained from a Canadian citizen to whom they were providing or had provided consular services, what considerations should the Canadian officials have taken into account before doing so?
- (c) During the period 2001 to 2004, in what circumstances, if any, would it have been appropriate for DFAIT officials to disclose to the Canadian officials referred to in question 1(a) information obtained from a Canadian citizen to whom they were providing or had provided consular services?
- (d) If there were circumstances during the period 2001 to 2004 in which it might have been appropriate for DFAIT officials to disclose to the Canadian officials referred to in question 1(a) information obtained from a Canadian citizen to whom they were providing or had provided consular services, what considerations should DFAIT officials have taken into account before doing so?

**Submission:** In relation to terrorist investigations, the OPP, or those acting under its direction, would only have made this type of inquiry via its involvement in RCMP-led JFOs. The PATS did not engage in this type of request.

## **5. Role of consular officials in national security or law enforcement matters**

- (a) During the period 2001 to 2004, in what circumstances, if any, would it have been appropriate for DFAIT officials to assist the Canadian officials referred to in question 1(a) to engage in some or all of the activities referred to in question 2(a)(i) or (iii)?
- (b) If there were circumstances during the period 2001 to 2004 in which it might have been appropriate for DFAIT officials to assist the Canadian officials referred to in question 1(a) to engage in some or all of the activities referred to in question 2(a)(i) or (iii), what considerations should DFAIT officials have taken into account before doing so?

**Submission:** This question does not apply to the OPP nor PATS as they are not involved in the provision of consular services.

**Further submissions:** In an email dated November 29, 2007, Commission counsel requested further comments on the “description” or “labeling” of persons of interest/suspects in investigations. In this time period (2001-2004), there were no established criteria for the descriptors attributed to individuals apart from that proscribed to Major Case Management principles (i.e. suspects vs. Persons of Interest). Thus the process may have been prone to the subjectivity of the report writer and/or supervisor. The terms

“suspect” and “person of interest” may often have been interchangeable – or, alternatively, the recipient of information may have inferred various levels of suspicion based upon labels, in a manner not intended by the writer. Other problematic labels included the terms “extremist”, “fundamentalist”, “supporter”, etc. In the new National Security Criminal Operations Policy and Governance Framework, this variable is addressed and a great deal of attention is given to use of “labels” to ensure due diligence.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

**DATED** this 14<sup>th</sup> day of December, 2007.

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