

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

**OUTLINE OF ORAL SUBMISSIONS
TO BE MADE TO THE INQUIRY ON TUESDAY, JANUARY 8-9, 2008
ON STANDARDS OF CONDUCT**

**CANADIAN ARAB FEDERATION
CANADIAN COUNCIL ON AMERICAN ISLAMIC RELATIONS
CANADIAN MUSLIM CIVIL LIBERTIES ASSOCIATION**

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OVERVIEW

It is the opinion of the above organizations that that as a sovereign state and signatory to numerous international conventions including, but not limited to, the *Universal Declaration of Human Rights*, *International Convention on Civil and Political Rights* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* that Canada has a profound and unequivocal obligation to proactively protect the human rights of all of its citizens regardless of where these citizens are located. This duty of conduct would certainly and necessarily manifest itself in the operations of Canada's state security apparatus and Foreign Service institutions.

The *Canadian Charter of Rights and Freedoms*, the *Bill of Rights* and the *Criminal Code* of Canada form a domestically based framework and imperative requiring Canada to protect the rights of its citizens, including but not limited to, the right to security of the person.

An integral part of the submission to be made at the hearing will advocate that all Canadians are fully entitled to the full protection of the Canadian law and international civil, political and human rights conventions regardless of any allegations against them contained in any file held by

any state. In addition, it will be submitted that the type of collaboration with foreign entities that can be deemed acceptable would necessarily be dependent on the nature of potential partners. For example, a partnership with states that are known or suspected to use torture or other human rights abuses to obtain information from detainees has the real potential of rendering Canada as a partner in torture or other human rights abuses.

SPECIFIC RESPONSES TO QUESTIONS RAISED BY THE COMMISSIONER

In specific response to the questions raised by the Commissioner the above interveners will offer the following points that will be elaborated on substantially at the scheduled hearing.

1. Sharing of Information with foreign authorities

(a) Canadian officials responsible for investigating activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and Canadian officials responsible for conducting criminal investigations into the possible commission of terrorism offences should be operating within a similar framework. Implicit in the question raised is the premise that the conduct of investigations be done on the basis of specific and well-founded evidence.

The sharing of information concerning Canadians citizens with the authorities of a foreign state must be governed by a simple standard of what Canada understands will be the potential impact of such information sharing. If the sharing of information with foreign authorities will likely

result in the abuse of the human rights of a Canadian then the Government of Canada and all of its institutions have an obligation not to share such information. The only exception would be where on the basis of well-founded evidence that the refusal to share specific information would result in imminent harm to human life. Even in such cases Canada would remain obligated to protect the rights of persons affected to the greatest extent possible under the law.

(b) In addition to the point stated in (a) above, the Government of Canada has an obligation to vet its files so that any information or characterizations regarding an individual under its scrutiny are founded on specific, credible and substantial evidence rather than speculation and that the presentation of information or characterizations do not lend themselves to misinterpretation. As was demonstrated in the case of Maher Arar, the release of information in Canada's files whether shared internally, released to the media, or released to foreign states can be devastatingly destructive to the security of persons that Canada is obligated to protect.

The simple sharing of travel plans of a Canadian citizen with a foreign state known for its repressive nature can be predicted to result in the detention and abuse of the Canadian citizen by the foreign state. Accordingly, only if there is no other way to prevent the imminent harm to human life should information be shared with such a state. Canadian officials should take into account and anticipate the need to proactively protect the security of people about whom information is released. The potential for a foreign state to further pass on shared information to third states should also be evaluated as indirectly the same harm to Canadians could arise as would result from the direct sharing of information.

2. Questioning Canadian Citizens detained in foreign states

(a) The submission of questions by the Government of Canada to the authorities in a foreign state to be used by it in the interrogation of detained Canadian can only be considered in the context of the nature of the foreign state, the urgency and relevance of the information being sought and the likely result in terms of the human rights of the detained Canadian. For example, if the foreign state is suspected of using torture or other human rights abuses to extract answers from persons it detains, then to submit questions to the foreign state to be posed to a detained Canadian would likely make Canada a full partner in the use of torture on a Canadian citizen. The presence of a Canadian official during some or all of the interrogation sessions is not relevant to addressing the concern of abuse if the security of the person in detention can not be always guaranteed. Indeed, torturers routinely rely on the specter of pain as much or more than they do on its actual application to extract information. The fact that a person is not being tortured during an interrogation does not mean that the threat of torture is not being used during the interrogation.

(b) A legitimate reason for Canadian officials to contact and question a Canadian detained overseas is to provide full and unconditional assistance within lawful limits to facilitate a Canadian's wish to safely return to Canada.

3. Provisions of consular services to Canadian citizens detained in foreign states

(a) Canadian officials are duty bound to provide every significant lawful assistance to Canadians detained in a foreign state. DFAIT holds a responsibility to advocate in the interest of the rule

of law, international agreements and respect for international conventions to protect the civil, political and human rights of all Canadians detained abroad.

(b) The exact nature of the assistance is necessarily dependant on the issues a detained Canadian is suspected of facing. For example, if a Canadian were being detained in a state that is believed to be using torture or other forms of human rights abuses against detainees, then Canadian officials would be duty bound to provide all necessary assistance to ensure that the detained Canadian is never subjected to torture or other forms of human rights abuses, or to the threat of such abuses.

In some cases daily visits by several DFAIT officials would be reasonable to ensure that a detained Canadian is not being abused. Daily visits by DFAIT staff to detained Canadians in Syria or Egypt, for example, in cases where security issues have been raised, would be the necessary standard due to the well known and routine use of torture by these two states.

(c) The first duty of DFAIT officials is to attempt to meet and communicate in an environment and by a method that is free from third party scrutiny. The second task is for DFAIT staff to confirm their credentials in a manner that correctly assures a detained Canadian that the person they are meeting is actually a DFAIT official acting in the best interest of the detained individual. This could be done by communicating to the detained individual difficult to know information provided by the detainee's close family members. Communication with the detainee can be done in writing in a manner that would prevent the capture of content by surveillance cameras.

4. Disclosure of information obtained by consular officials

Canadian security officials should be able to seek the release of specific information held by DFAIT where on the basis of well-founded specific evidence the release of the information sought would prevent imminent harm to human life.

All information collected by DFAIT staff during the provision of consular services to Canadians should remain wholly privileged with one exception. Information in DFAIT's possession should be released to CSIS if DFAIT has credible evidence, that the specific information it possesses, if released to CSIS, would prevent harm to human life immediately risk.

All Canadian officials should be acting on the basis that all detained Canadians are innocent until proven guilty. In addition, evidence obtained or provided by a state suspected of practicing torture or other human rights abuses should be regarded as suspect and unreliable. The reliance on information derived, or suspected of having been derived, through torture must never be accepted or relied on by Canadian officials. To do otherwise would make Canada a partner in the practice of torture.

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

Under no circumstances should questions be sent by Canadian officials to a foreign state to be asked of a Canadian detained on suspicion of involvement with terrorism, attend in a foreign

state to participate in the questioning by the foreign authorities of, or attend in a foreign state to question directly a Canadian citizen detained by foreign authorities known to use torture.

All of which is respectfully submitted to you this 19th of December 2007.

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