



Amnesty International
CANADA
1-800-266-3789
www.amnesty.ca

The Honourable Frank Iacobucci, Q.C., LL.D
Commissioner
Internal Inquiry Into the Actions of Canadian Officials in Relation to
Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin
P.O. Box 1208 1208, Station B
Ottawa, ON K1P 5R3

May 20, 2008

Dear Commissioner Iacobucci,

Re: Intervenors Access to Draft Narratives

On behalf of Amnesty International, ICLMG, CAIR-CAN, CAF, and CMCLA, it is respectfully requested that you reconsider your decision to limit access to the draft narratives to those members of the intervenor's teams who are lawyers.

We the undersigned intervenors respectfully submit that in order for the Commission to receive fair and accurate feedback from the intervenors it is imperative that Kerry Pither and Roch Tassé be granted access to the documents.

Both individuals have played instrumental roles in aiding the aforementioned intervenors in their contributions to the Inquiry thus far. The depth of their knowledge of these cases, and experience preparing submissions, attending hearings and providing counsel for the participants in the Arar Inquiry, makes them invaluable members of the intervenor's teams. Our ability to provide meaningful comments and suggestions is severely hampered by their absence from the process at such a critical stage.

As intervenors we have sought out every opportunity to contribute to the work of the Commission yet have found our ability to play a role has been extremely limited. We were heartened to read in the Commissioner's November 6th, 2007, ruling that he was eager to solicit our comments and suggestions for further investigation stemming from the draft narrative. In light of your decision of May 15th, we are concerned that our voice will once again be diminished. We are concerned because the two members of our team who are presently available with the most substantial knowledge of the cases and the process have been barred from reviewing the draft narratives.

National Office
312 Laurier Avenue East
Ottawa, ON K1N 1H9
Telephone: 613.744.7667
Fax: 613.746.2411
Email: info@amnesty.ca

Toronto Office
14 Dundonald Street
Toronto, ON M4Y 1K2
Telephone: 416.363.9933
Fax: 416.363.3103
Email: toronto@amnesty.ca

Pacific Regional Office
430-319 W. Pender St.
Vancouver, BC V6B 1T4
Telephone: 604.294.5160
Fax: 604.294.5130
Email: pro@amnesty.ca

When Mr. Neve spoke with Mr. Terry on May 1, and corresponded with him by email on May 6, he made it clear that he wanted Ms. Pither to review the documents especially as the short notice, and his travel schedule, would not permit him to be able to review them himself — Mr. Neve wishes to stress that even if he were able to review the documents personally, Amnesty International would still require Ms. Pither's contribution in order to provide meaningful feedback to the Commission. Mr. Terry did not refer to the ruling or the "counsel" requirement on either occasion. Instead, the Interveners did not receive formal notice of the viewing process and clarification about this stipulation until an email on May 13, the same day the document became available for viewing. Mr. Tassé, who received that communication, did not receive clarification that he would be excluded from the process until May 16, a full four days into the viewing process.

When Ms. Kikoler subsequently raised our concerns about not being able to rely on the expertise of those who had been excluded, Mr. Terry's response was that we could ask them "probing questions." It is our position that this, rather haphazard approach, poses more of a risk that a straightforward undertaking.

We are similarly concerned that this restriction also means that the men will be unable to review the draft narratives. They have first hand knowledge of events pertinent to the draft narratives and can provide meaningful feedback that will strengthen the Commission's work. Furthermore, given that their reputations are at stake, they should be afforded the same opportunity to review the material as were given to those Government officials who testified and their counsel who have reviewed the documents — or who have expressed concerns about their own reputations thus resulting in stricter limitation on access for the men and the intervenors. Being barred from the process at this stage has caused the men considerable emotional distress and have left them feeling isolated from the process.

We respectfully request that the Commissioner outline for us the grounds for his November 6th, 2007, ruling limiting access to "Counsel for the men and the intervenors." We similarly request that an explanation be provided in writing outlining why an exception to this rule cannot be found to permit Kerry Pither and Roch Tassé permission to review the draft narratives.

We wish to stress that we believe that the commission should trust the intervenors and acknowledge that the signing of an undertaking should serve as a sufficient guarantee that the material in the draft narratives will not be disclosed. The material in the narrative, while extremely sensitive, is not protected by NSC and as such, enforcing limitations beyond the signing of an undertaking by key members of the intervenor's teams, is not warranted.

In response to a comment made by Counsel for the Commissioner referring to lawyer's understandings of undertakings, we would like to inform the Commission that Roch Tassé and Kerry Pither signed an undertaking during the Arar Inquiry. Signing undertakings is a well-recognized practice and carries legal significance for all signatories, not only lawyers. Kerry Pither and Roch Tassé are aware of the significance of the undertaking and would not do anything to jeopardize their personal reputations, that of the organizations they represent, our, or the Commission's reputation.

Finally we wish to address the issue of the meaning of the term "counsel." Nowhere in the Terms of Reference or in your November 6th ruling is the term "counsel" as it pertains to the intervenors, defined. We are NGO's and community organizations led by dedicated advocates who in many cases, such as that of Roch Tassé of ICLMG, are not lawyers. Many NGO's, do not retain staff lawyers and do not have the funding to do so. This does not restrict their ability to have informed representatives serve as "counsel" (in the more broadly understood meaning of the term as providing advice and consultation) to intervenors.

For a point of clarification, Amnesty International does not retain a staff lawyer. Alex Neve does not maintain practicing status with the Law Society of Upper Canada and as such does not carry insurance. As Secretary General of Amnesty International he serves as the "eyes and ears" of Amnesty at the Inquiry. He does not do so as legal counsel to the organization but rather as an employee. Likewise, Naomi Kikoler is an articling student and not a "lawyer" in the eyes of the Law Society yet she has been permitted access to the Inquiry on the grounds that she meets the "counsel" requirement.

The Inquiry is a non-judicial proceeding. In the interest of ensuring that key stakeholders are involved in the process, the Commission solicited applications from interested parties who sought intervenor status. There was no requirement in the original request that intervenors ensure that they have "legal counsel" on staff. In light of this, the fact that the draft narrative in question has been security cleared; that each individual will sign an undertaking; and that in order for the intervenors to provide fair and accurate comments and feedback it is essential that Kerry Pither and Roch Tassé be granted access to the draft narratives; we the undersigned intervenors respectfully request that you reconsider your decision to bar them.

Given the time constraints we urge you to respond in time to ensure that Ms. Pither and Mr. Tassé will have sufficient time to review and analyze the information.

Sincerely

A handwritten signature in cursive script that reads "Alex Neve".

On behalf of the organizations,

ICLMG
CAIR-CAN
CAF
CMCLA