

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

COMMENTARY ON NARRATIVES AND EVIDENCE OF THE THREE MEN

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

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COMMENTARY ON NARRATIVES AND EVIDENCE OF THE THREE MEN

Submitted to the Internal Inquiry Into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati And Muayyed Nureddin

Prepared on Behalf of Canadian Arab Federation, Canadian Council on American Islamic Relations, and the Canadian Muslim Civil Liberties Association

PART I: INTRODUCTION

1. The issue of whether or not Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin suffered mistreatment while in Syria or Egypt should be determined on the basis of direct evidence and on a balance of probabilities.

2. On the basis of the evidence Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin did suffer mistreatment in Syria and in the case of Mr. Abou-Elmaati also in Egypt. It is further evident that this mistreatment was a result of the conduct of CSIS and the RCMP.

3. DFAIT failed to provide the level of assistance reasonably expected by Canadians detained in a foreign state with an abysmal human rights record. DFAIT's performance was further undermined by the actions of CSIS and the RCMP.

4. The evidence provided to the Inquiry by Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin is both substantial and credible. Their evidence establishes that the mistreatment they suffered includes torture.

PART II: BALANCE OF PROBABILITIES

5. The narratives provide abundant information regarding the mindset and conduct of DFAIT, CSIS and the RCMP to confirm that their actions contributed directly to the mistreatment suffered by the three men. However, some issues need to be determined on the basis of a balance of probabilities. This is caused, in part, by the redaction of information provided to the interveners due to National Security Confidentiality considerations.

6. An example of this is where the narrative states that information was shared with the United States government and this information is later found to be in the possession of Syria, it is reasonable to conclude on a balance of probabilities that the United States passed on the Canadian information to Syria.

PART III: NARRATIVES

a) Post 911 Information Sharing

7. The narrative evidence confirms that in the wake of 911 Canadian security officials scrambled to demonstrate solidarity with the United States. One manifestation of this was that CSIS and the RCMP embarked on an open door policy regarding the sharing of security information on Canadians with the United States. The Government of Canada was positioning itself to be a full partner to the United States in the “War on Terror”.

8. The narratives confirmed that once information was released to partners in the “War on Terror” control on where the information would go and how the information was going to be

used was essentially lost. In view of this, the standard of care required of Canadian officials assessing and preparing reports on Canadian suspects is necessarily high. The narrative confirms that his standard was not met.

9. On a balance of probabilities it is likely that even if Canada did not freely release information to Syria and Egypt that Canada's ally the United States did do so. Regardless, Canada would still bear responsibility for any subsequent use of misinformation about Canadians that the RCMP or CSIS recklessly composed and then released to other states.

b) Canadian Complicity in Detentions

10. By flagging the three men as security concerns and then delivering to the United States information about them including some itinerary information detailing international travel plans of the men Canada became complicit in the effort to set the three men up to be detained outside of Canada where they would be denied the protection of the *Charter of Rights and Freedoms*.

c) Defamatory and Reckless Labeling

11. It is also clear that Canadian Security services were fixated on interdicting what they described as "Islamic extremists". This term was never adequately defined. In fact the evidence shows that the term meant whatever was in the mind of the author. Even the concept of an extremist was nebulous and could mean anyone suspected of not sharing the opinions or values of the observer. This imprecision was exacerbated by the use of the term "suspected" or "believed to be" before the words "Islamic extremist". As the term "Islamic extremist" has no

real definition its application to any of the three men was gratuitously defamatory, prejudicial and ultimately profoundly damaging.

12. The narrative also stated that the label “Islamic extremist” was sometimes attached to someone and floated internationally to the intelligence community to test what was never more than an unsubstantiated theory. Such a technique is reckless in view of the potential harm to a person detained and the risk of what the narratives described as “circularity” (where the initiator of the rumor may end up receiving confirmation from another party where that confirmation is nothing more than an echo of the original unfounded allegation).

13. The narratives confirm that in a post 911 environment supercharged with Islamophobic thinking this lack of precision in the description of suspects naturally led to abuse.

d) Inadequate Analysis of Evidence

14. Another concern is that neither CSIS nor the RCMP took reasonable steps to understand the evidence they had in a cultural context. For example, the text of Ahmad Abou-Elmaati’s 1999 will, prepared before his departure for the Hajj, used terminology suggesting he wished to die a “martyr”, which out of an Islamic context would lead Canadian security officials to a false and highly prejudicial conclusion about his true intentions. The expression is commonly used in Islamic wills to express a desire to die while serving the will of God. It is an expression of the author’s devotion to God and not a declaration to an intention to die committing an act of terrorism.

15. The failure of CSIS and the RCMP to contextualize evidence is indicative of unprofessional conduct on their part and is a critical error in a struggle over values. It resulted in the spread of misinformation that endangered the three men.

16. Mr. Abou-Elmaati's travel to Syria raised in the mind of the RCMP the prospect that he might engage in an act of terrorism. Even though he was traveling with his mother he was even described as posing an "imminent threat". It should be noted that there is no documented case in the history of terrorism of a terrorist bringing his mother along on a suicide mission.

17. Mr. Almalki was suspected of selling communication equipment to the Taliban even although the established evidence confirmed that he sold the equipment in question to the Government of Pakistan. Mr. Almalki was labeled an Islamic Extremist because Pakistan, Canada's ally in the "War on Terror", had evidently given (the equipment was never reported lost or stolen) at least some of the communication equipment it bought from Mr. Almalki to the Taliban. In effect Mr. Almalki was being scapegoated for Pakistan's poor judgment.

18. In the case of Mr. Nureddin, CSIS's interest in him extended to wanting to know in which mosque he prayed.

19. A profound failure by the RCMP and CSIS to understand the role of remittances to the global economy in general and in the war torn Middle East in particular cast gratuitous suspicion on Mr. Nureddin. People whose sole experience with international travel is limited to going to an all expense paid resort with some pocket money for the gift shop can not relate to a person

carrying USD \$10,500 and 4000 Euros to give to his relatives or to deliver to the family of one or more friends. However, it is reasonable to expect more from Canada's security services.

20. The reasons for which people could become a person of interest to CSIS or the RCMP could be nothing more than being in possession of a civil liberties guide to one's rights should they be contacted by CSIS. This type of document has been generally circulated by the thousands within the Arab, Muslim and other communities by the Canadian Arab Federation. It is patently unreasonable that any person's interest in knowing or desire to rely on their legal rights should be deemed a cause for suspicion by CSIS or the RCMP.

e) The Three men were never previously of interest to Syria or Egypt

21. During the interrogations of the three men never was there an allegation that any of the men were a security threat to either Syria or Egypt. From the questions asked during the torture sessions it is evident that Syria and Egypt had no interest in detaining the three men for their own purposes. Instead, it is clear from the narratives and the evidence of the three men that Syria and Egypt were attempting to demonstrate their utility to their partners, Canada and the United States, in the "War on Terror". The three men were each interrogated with regard to their actions and associations outside of Syria or Egypt. The three men were also interrogated about evidence that could only have come from Canadian officials.

22. For example, Abdullah Almalki was interrogated about his relationship in Canada with Ahmad Abou-Elmaati. Ahmad Abou-Elmaati was interrogated about his 1999 will drafted while preparing for the Hajj. Muayyed Nureddin was asked about the money he was carrying with him

when he left Canada. Information about this money including the exact amounts that were fully and voluntarily revealed to Canadian officials before his departing for Iraq.

23. There is evidence in the narratives that while being held in Syria and Egypt Canadian Security officials exacerbated the mistreatment suffered by Mr. Almalki and Mr. Abou-Elmaati by submitting questions to the Syrian and Egyptian security officials to be asked of them. The stated desire of Canadian security officials to directly question Mr. Almalki and Mr. Abou-Elmaati while they were being held in Syria or Egypt further complicated their situation, led to further mistreatment and abuse, and delayed their release.

f) Canada, a Partner in the “War on Terror”... a Partner in Torture

24. The three men were labeled and associated with Islamic extremism by Canada. Once labeled in association with Islamic extremism any international travel by any of these three men could only be done with extreme danger. The RCMP and CSIS were freely sharing information with the United States while the United States was engaged in a policy of extraordinary rendition.

25. Anyone subjected to extraordinary rendition should expect to end up in a circumstance and setting in which he or she would have fewer rights than they would enjoy in Canada. Accordingly, the practice is inherently abusive.

26. As a full partner in the “War on Terror”, it is not possible for Canadian officials to distance themselves from the extraordinary rendition program and its abuses of the human rights

of those detained. Canadian officials demonstrated no interest or awareness of Canada's obligations under treaties and international human rights law. By delivering misinformation and ill-considered evidence about the three men to the United States and other partners, the men were put in danger by the Canadian government.

27. The Canadian government took no effective measures to warn the three men of the danger they faced in traveling outside of Canada and once detained in Syria and Egypt CSIS and the RCMP were only interested in the men being questioned and, if possible, charged.

28. Canadian complicity is further confirmed as, after the allegation of torture surfaced Canadian officials were primarily interested in confirming the information obtained rather than protecting the detained. The RCMP's explicit reaction was captured by the statement of Inspector Reynolds who stated that "regardless of how much torture is inflicted, a person is only capable of disclosing facts that they know".

29. It is significant that both Syria and Egypt released the detained men, who were also nationals of these states, without charge. Having tortured the three men to their satisfaction, Syria and Egypt were both fully convinced that they had no basis to suspect that any of the three men were associated with terrorism.

30. Canadian officials knew or should have known about the human rights conditions in Syria and Egypt. They knew or should have known about the consequences of being detained in these countries including the high likelihood to the point of certainty that a person detained on

security reasons would be subjected to torture. Canada's security services considered issues of abuse to be a DFAIT/Consular issue.

31. DFAIT concluded that there was a "credible risk of torture" and that it was "contrary to Canadian domestic law, international law and foreign policy, for a Canadian citizen to be questioned under duress (in Syria) at the behest of the Government of Canada".

32. By sharing information with the United States, Syria and Egypt before and during the detentions Canada remained an active full partner in the United States led international extraordinary rendition program.

33. Canadian officials were effectively facilitating the detention of Canadian citizens for questioning in Syria and Egypt, which routinely includes torture. Canada did not physically deliver the three men to their torturers. However, Canada, behind a façade, which can at best be described as willful blindness, was effectively subcontracting its interrogation by torture of the three men to Syria and Egypt.

34. The narratives confirm that Syrian officials confirmed to Canada that they were ready willing and able to question detainees on the RCMP's behalf and then share the information obtained. We also know from the narratives that Canadian officials acted on this offer. With the foreknowledge and the strong DFAIT warning that torture might be involved, the RCMP forwarded questions to Syrian officials to be asked of the detained anyway. All that mattered to the RCMP and CSIS was securing actionable information.

35. Indeed, even though the RCMP had concerns about the authenticity of Mr. Abou-Elmaati's "confession" (it was "too perfect a statement") it was still used by the RCMP to obtain search warrants. CSIS remained fixated only on issues of veracity and reliability of information regardless of how it was obtained.

PART IV: CONSULAR SERVICE FAILURES

36. When first learning about the Syrian detention of Mr. Almalki, and Mr. Abou-Elmaati DFAIT officials failed to be sufficiently proactive in their duty to contact them and provide consular protection and service. This is especially true when it is considered that a detained person is at greatest risk of torture in the first few days of detention.

37. In fact had DFAIT been more effective it could have prevented the Syrian transfer of Mr. Abou-Elmaati to Egypt. In Syria, where no issue of dual citizenship existed, Mr. Abou-Elmaati could have been protected more easily.

38. To the relative credit of DFAIT, the narratives confirm that it did not attempt to wholly discount the possibility of the detained men being tortured while in Syria or Egypt. Many DFAIT officials (ie Solomon) were fully aware of the human rights conditions in Syria and Egypt and the likelihood they would face torture. DFAIT shared this information with the RCMP and CSIS.

39. The specter of abuse in Syria (and Egypt) is so great that DFAIT staff (Martel) did not inform Mr. Nureddin's examining doctor that Mr. Nureddin had just been released from detention. It was clearly understood that this knowledge alone would have tainted the objectivity of the doctor's medical examination and assessment.

40. Mr. Nureddin's evidence confirmed that he feared requesting contact with the Canadian embassy. His evidence confirms that he understood that there was danger for his family should they approach the Canadian embassy on his behalf.

41. It is important to note that the Consular officials never asked to speak with the detained in private. Even if this request is likely to be roundly denied it should have been asked as a standard procedure. Clearly, the detained person risks severe consequences for making such a request.

42. The evidence of Mr. Almalki and Mr. Abou-Elmaati confirms they also feared the reaction of interrogators should they insist on their Canadian status and rights. Indeed, Mr. Almalki was beaten just for answering his interrogator's question and confirming that he was a Canadian citizen.

43. This underscores the challenges faced by a prisoner asking his torturers for a private meeting with a foreign (Canadian) government official and the need for a proactive approach by Canadian officials in cases of detention.

44. Another critical area of failure was that DFAIT violated the trust relationship and confidentiality of information gathered during the provision of consular services. Instead, this

information was shared with the RCMP and CSIS. The RCMP and CSIS could not be relied on to keep this information out of the hands of United States intelligence agencies.

45. The contradictory messages sent by CSIS and the RCMP to Syria and Egypt further undermined the efficacy of DFAIT's efforts in protecting the men.

PART V: EVIDENCE OF THE THREE MEN

46. Each of the three men provided evidence separately to this Inquiry that is consistent with each other. Their evidence is also consistent with what is known about the treatment of political/security prisoners held in Syria and Egypt as is documented in the publicly available reports of Amnesty International, Human Rights Watch and US State Department reports.

47. Furthermore, the evidence of the three men has been consistent over time and their accounts have withstood careful scrutiny by Dr. Toope the Arar Inquiry, DFAIT, CSIS the RCMP, the international and Canadian media and now by this Inquiry.

48. Examples of consistency in their accounts include being taken to Far Falestin, the description and the dimensions of their holding cells, the methodology of the interrogations, the conditions at Far Falestin. Also, there is consistency in their descriptions of the torture technique used on the three men while in Syria (being made to strip down to their underwear, being made to lie down on their stomach and being made to bend their knees at a 90 degree angle to present the soles of their feet for a beating with an electrical cable). Also consistent is their

account of the techniques used by their torturers to relieve pain (pouring of cool water on the soles of the prisoner's feet) so that the torture can begin anew.

49. Another area of consistency is the administrative procedure used by the Syrian interrogators when preparing to release the prisoners. Specifically, the 3 men were given 3 documents to sign and thumbprint. One of these documents is a narrative of facts dictated to the three men by their interrogators. The second is a description of their family. The third is a document with content that remained secret to the three men.

50. As only Ahmad Abou-Elmaati was sent to Egypt there is no comparator with which to assess his evidence. Mr. About-Elmaati describes a different torture technique used in Egypt (electric shocks to hands, back and genitals). However, his allegations of torture in Egypt are consistent with the publicly available reports of Amnesty International, Human Rights Watch, and the US State Department on human rights conditions in Egypt.

51. Mr. Abou-Elmaati's credibility also stems from his immediate report to Canadian Embassy staff during his first consular visit in Egypt (Mr. Bale August 12, 2002) that he had been tortured while in Syria. The absence of this allegation during this consular visit would not have undermined his credibility. It is fully understandable that he did not mention torture in Egypt while still in Egyptian custody).

52. At best Canadian officials remained willfully blind in relation to the issue of torture in Syria and Egypt. Even when the issue is raised directly (ie statement of Solomon) the officials remain in official denial about its likelihood.

53. When first confronted with the allegation of torture directly from Mr. Abou-Elmaati Canadian officials were primarily interested in the potential media impact the allegation could have as if the problem were primarily one of public relations.

PART VI: CONCLUSIONS

54. On the basis of direct evidence and on a balance of probabilities, CSIS and RCMP conduct with regard to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin resulted in the three men suffering detention and mistreatment in Syria and in the case of Mr. Abou-Elmaati also in Egypt.

55. The statements provided to the Inquiry by Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin are consistent with each other, substantial and credible. The evidence establishes that the mistreatment suffered by the three men included torture.

56. At best Canadian security officials remained dismissive in relation to the issue of torture in Syria and Egypt and regarded it as a consular matter for DFAIT to address.

57. DFAIT for its part failed to provide the necessary proactive confidential consular service that was essential to protect the detained men from gross violations of their human rights.