



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

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**CONFIDENTIAL REPLY SUBMISSIONS  
OF THE ATTORNEY GENERAL  
OF CANADA**

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DATED: June 25, 2008

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1. The other parties and various intervenors, as they have throughout the Internal Inquiry, once again seek to transform the Inquiry into something that it is not. It is not an international tribunal charged with the application of international law. This is an Internal Inquiry governed exclusively by the Commissioner's Terms of Reference.

2. The Commissioner's Terms of Reference are unique and should not be confused with the Terms of Reference of other inquiries. Unlike the Arar Inquiry, the Internal Inquiry's Terms of Reference set out a specific standard for causation ("resulted, directly or indirectly, from") and a standard for assessing the conduct of Canadian officials ("deficient in the circumstances").

3. Pursuant to his Terms of Reference, the Commissioner must first determine whether the detention and any mistreatment of the three individuals resulted, directly or indirectly, from the actions of Canadian officials. At this stage, the standard is not, as the individuals suggest, "whether the actions of Canadian officials created a serious risk" of the detention or any mistreatment of the individuals.<sup>1</sup> No principles of interpretation are capable of transforming the language of the Terms of Reference – "resulted, directly or indirectly, from" – into the language of the individuals' submissions – "created a serious risk." The evidence clearly establishes that the detention and any mistreatment of the three individuals did not result from the actions of Canadian officials.

4. Secondly, if, contrary to the evidence, the Commissioner were to find that the actions of Canadian officials resulted in the detention or any mistreatment of the individuals, he is mandated by his Terms of Reference to determine whether those actions, or actions taken to provide consular services, were deficient in the circumstances. Again, there is no other standard to be applied.<sup>2</sup>

5. The phrase "in the circumstances" does not invite the Commissioner to assess the actions of Canadian officials by 2008 standards or, as the individuals put it, "in today's world." The phrase "in the circumstances" refers to the period during which the detention of the individuals occurred, that is, from 2001 to 2004.<sup>3</sup> That phrase also requires the Commissioner to consider the actions of Canadian officials in the context of Canada's well-founded investigative interests based on credible information that the activities of the three individuals posed a threat to the security of Canada.

6. This credible information informed the descriptions of the individuals in communications with foreign agencies. The three individuals were referred to as

<sup>1</sup> Joint Final Submissions by Abdullah Almalki, Ahmad El Maati & Muayyed Nureddin, at paragraph 21.

<sup>2</sup> See also the Attorney General of Canada's Submissions on Standards of Conduct, December 14, 2007.

<sup>3</sup> As stated in the Attorney General's January, 9, 2008, oral reply submissions on the Standards of Conduct, in referring to the tragic events of September 11<sup>th</sup>, and the period following, the Attorney General is not suggesting that those events created an exception to the existing standards but rather that the application of those standards must be understood in the context of those events and their aftermath.

Islamic or Islamist extremists in communications between domestic and foreign agencies based on credible information that their activities posed a threat to the security of Canada.

7. The term extremist is a well known reference within the security and intelligence community. An extremist is understood to be an individual who supports the use of violence in regard to achieving their ideological, religious or political goals. It does not necessarily mean that the individual will engage in violence but that they actively support the use of violence.

8. The term extremist is a reference that may be applied to any number of ideological, religious or political beliefs. It is not a term used exclusively in relation to Islamist extremism. To be clear, believing in Islam does not make you an Islamist extremist any more than being an environmentalist makes you an environmental extremist. The term of art is the word extremist rather than Islamist or environmentalist or any profoundly held belief.

9. In these cases, there was credible information that the activities of the three individuals posed a threat to the security of Canada because of a particular form of extremism, Islamist extremism. When Canada used that term in relation to the three individuals, the description was believed to be appropriate based on the information available at the time.

10. Nevertheless, it is important to understand that it is not the description itself that is significant in a communication but rather the information contained in the message which sets that description in context. These are not labels nor are they free-standing. Canada does not label individuals.

11. Any use of a communication would be based on the information contained in the message and, of course, the information held by the receiving agency. For example, a reference to the fact that an individual is suspected of being an Islamist extremist is not by itself a basis for action, whether it be sharing further information, questioning the individual at a port of entry or surveillance. Rather, the action is, and must be, based on the particular information or request that is shared and the information already in the possession of the receiving agency. That is how police and intelligence work is carried out domestically and internationally.

12. Canada must be able to carry out activities to protect the security of our country. In so doing, Canada must be able to share information in a coherent and meaningful way. It would undermine the security of our country if Canada were restricted to sharing information without a description of Canada's interest in an individual and only once the information was determined to be conclusive of the point for which it was being shared. That is not intelligence; that is not even evidence; it is proof. If that were the standard for information sharing, there

would be no need for information sharing and the security of our country would be all the more at risk for it.

DATED: June 25, 2008

A handwritten signature in black ink, appearing to read "Michael Peirce", is written over a solid horizontal line.

Michael Peirce  
Alain Préfontaine  
Roger Flaim  
Gregory Tzemenakis  
Yannick Landry