

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 ATTORNEY  
GENERAL OF CANADA IN  
RESPONSE TO THE NOTICE OF  
APPLICATION FOR PUBLIC  
HEARINGS**

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DATED: JULY 16, 2008

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## **THE APPLICATION IS MISCONCEIVED AND WITHOUT FOUNDATION**

1. The Applicants continue to fundamentally misapprehend the nature of this Internal Inquiry. This is an Internal Inquiry, which is to be conducted in private. It is not a public inquiry. Further, it is an investigative inquiry which aims to determine whether the actions of Canadian officials, directly or indirectly, resulted in the detention or mistreatment of three individuals in Syria and Egypt and, if so, whether those actions, and any actions in respect of the provision of consular services, were deficient. It is not a policy inquiry. The Terms of Reference do not call on the Commissioner to make policy recommendations.

2. The Terms of Reference state that the Internal Inquiry is to be conducted in private unless the Commissioner is satisfied that it is essential to the effective conduct of the Inquiry to conduct specific portions in public (paragraph e). The Applicants have not met this threshold test for holding a hearing in public. Indeed, the Applicants do not even refer to this threshold test and do not claim that it has been met. For this reason alone, this Application must fail.

3. Mischaracterizing this as a policy inquiry, the Applicants mistakenly assert that "the importance of the issues at stake calls for some public process or dialogue" because the Internal Inquiry will "set significant policy for all Canadian citizens" (Notice of Application, paragraph 14). As this is an investigative rather than a policy inquiry, the facts rather than public sentiment must govern. There is no doubt, however, that public debate and ultimately public policy will be informed by the Commissioner's public Report.

4. By misapprehending the nature of this Internal Inquiry, the Applicants have once again brought forward an Application that is ill founded, contrary to the Terms of Reference and inconsistent with the process established by the Commissioner in previous rulings. The Application cannot succeed.

## **THE APPLICATION IS REDUNDANT**

5. The Application is redundant. The process that is called for by the Applicants has already occurred. The Commissioner has already held public hearings on the very issues identified by the Applicants - most specifically during the Hearings on the Standards of Conduct which required the Participants and Intervenors to address standards for the provision of consular services, international information sharing, the use of terms such as Islamist extremist and the appropriate standard for assessing the actions of Canadian officials. During those hearings, counsel for the Attorney General unequivocally stated the Government's position on torture; the Government of Canada does not in any way countenance torture.

6. The Parties have publicly stated their positions on the issues identified by the Applicants and the Commissioner has had the "unique opportunity... to engage in a dialogue with counsel on the issues relevant to his mandate" (Notice of Application, paragraph 17). Public understanding has been fostered by this process. No purpose can be served by reenacting the Standards Hearings.

7. The Applicants refer to protecting National Security Confidentiality as the basis for not holding public hearings on the issues at large. That is not the case. Beyond the fact that this is an Internal Inquiry, the reason for not holding public hearings at large is the need to maintain the confidentiality of the Commissioner's factual findings prior to release of the Commissioner's public report, which will include his analysis and findings based on those facts. Counsel for all parties have had access to the draft factual narratives, have commented on the facts and have made full final submissions. Those submissions will be made public following the release of the Commissioner's report at the end of the Internal Inquiry.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED: July 16, 2008



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