

**INTERNAL INQUIRY INTO THE ACTIONS
OF CANADIAN OFFICIALS REGARDING
ABDULLAH ALMALKI, AHMAD EL MAATI AND
MUAYYED NUREDDIN**

**FURTHER REPLY SUBMISSIONS BY MUAYYED NUREDDIN
(IN RESPONSE TO SUPPLEMENTARY SUBMISSION
OF THE ATTORNEY GENERAL)**

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FURTHER REPLY SUBMISSIONS OF MUAYYED NUREDDIN

1. Mr. Nureddin makes these further submissions in response to the “Confidential Supplementary Submission of the Attorney General of Canada” dated September 16, 2008. To the extent the issues canvassed in the Supplementary Submission of the Attorney General of Canada are covered in the final submissions (dated June 20, 2008) and reply submissions (dated June 26, 2008), Mr. Nureddin relies on those submissions and adds the following.

2. The Attorney General of Canada’s (AG) is once again taking the position that the appropriate test to be applied by the Commissioner is whether there is evidence of an “actual causal connection” between the conduct of Canadian officials and the mistreatment of Mr. Nureddin in Syria.¹ For example, the AG suggests the Commission must consider whether the sharing of information by the RCMP “created an interest in Mr. Nureddin” or guided the actions of the Syrians.² This strict approach to the issue of causation was expressly rejected by Commissioner O’Connor in the *Arar Inquiry*:

I have two further remarks to make about the “causation argument.” First, as I have already stated, I do not read into the mandate the requirement that I report only on actions that caused Mr. Arar’s fate. In several places in the Report, I comment on the actions of Canadian officials that created or increased a risk that Mr. Arar would be subjected to unacceptable treatment. While creating or increasing an unacceptable risk may sometimes fall short of establishing causation as that term is used in a strictly legal sense, creating an unacceptable risk is still something that should be avoided. In my view, reporting on the creation of unacceptable

¹ Confidential Supplementary Submissions of the Attorney General of Canada, para. 7

² Confidential Supplementary Submissions of the Attorney General of Canada, paras. 5 -

risks fall within the mandate set out in the Order in Council and is something that the Canadian public would expect me to do.³

The same standard ought to be applied here. The Commissioner must consider whether the RCMP decision to share information with American officials and others created an “unacceptable risk” that he would be investigated, detained, interrogated or tortured abroad.

3. The Commissioner must reject the AG’s attempt to mischaracterize the information shared by the RCMP with American and other foreign agencies about Mr. Nureddin as “limited”. According to the Draft Narrative, the RCMP shared a SITREP with the Americans containing significant information about Mr. Nureddin’s travels in January 2003.⁴ Prior to Mr. Nureddin’s detention in Syria, the RCMP provided the American authorities with another SITREP which contained the results of the search and interview conducted of Mr. Nureddin at the airport on September 16, 2003, including “information about the money he was carrying and about his relationship with various people known to CSIS.”⁵ In the context of a national security investigation which had previously described Mr. Nureddin as “a financial courier for people believed to be supporters of Islamic extremism”,⁶ this cannot be characterized as “limited”. The RCMP shared a significant amount of information about Mr. Nureddin with the American officials and others which was intended to or had the effect of creating a false impression that he was involved in terrorist related activity.

³ Arar Report, *Analysis and Recommendations*, p. 288

⁴ Nureddin Draft Narrative, para. 7

⁵ Nureddin Draft Narrative, para. 19

⁶ Nureddin Draft Narrative, para. 5

4. The Commissioner must also reject the AG submission that there is “no evidence that the information shared with the American agencies played any role in the actions of any Syrian agency.”⁷ While it may be that there is no direct evidence that the information gathered by the RCMP and admittedly shared with the Americans played a role in the actions taken by the Syrian officials, there is compelling circumstantial evidence that the Syrian Military Intelligence had and used information gathered by the RCMP to interrogate and torture of Mr. Nureddin. As set out in further details in paragraph 68 of the *Final Joint Submissions by Abdullah Almalki, Ahmad El Maati and Muayyed Nureddin*, the Syrian authorities questioned Mr. Nureddin about the same two individuals he was questioned about by the RCMP. He was also questioned about how much money he was carrying when he left Canada and for whom he was carrying it, a topic covered in detail by the RCMP with Mr. Nureddin prior to his departure from Canada. On the basis of this evidence, the Commissioner ought to find that the information gathered by the RCMP was indirectly shared with the Syrian Military Intelligence and used as a basis to detain, torture and interrogate Mr. Nureddin.

5. Contrary to the submissions of the AG, the Commissioner is not being encouraged to simply make an “automatic assumption that the sharing of any information in relation to an individual who is subsequently detained resulted in their detention”.⁸ Nor is the Commissioner being encouraged to conflate the sharing of information with the actions of the Syrian Military Intelligence.⁹ Rather, the Commissioner is being asked to make reasonable inferences based on the available, albeit imperfect, evidentiary

⁷ Confidential Supplementary Submissions of the Attorney General of Canada, para. 5

⁸ Confidential Supplementary Submissions of the Attorney General of Canada, para. 6

⁹ Confidential Supplementary Submissions of the Attorney General of Canada, para. 6

record. Based on the striking similarities between the information gathered (and shared) by the RCMP and the questions asked by the Syrian Military Intelligence, it is clearly open to the Commissioner to find, and the Commissioner should find, that the interrogation and torture of Mr. Nureddin in Syria was based on information gathered by the RCMP and shared with foreign intelligence agencies.

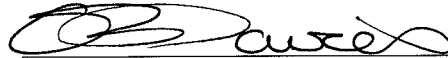
6. The AG makes the bald assertion that imposing an automatic assumption that the sharing of any information in relation to an individual who is subsequently detained resulted in their detention “would put a profound chill on information sharing” and would “have serious implications for the security of our country.”¹⁰ The Commissioner must not be influenced by the Government’s unsubstantiated doomsaying. It is entirely appropriate that limits be placed on information sharing with regimes known to have poor human rights records in order to avoid similar cases arising in the future. Rather than being a “profound chill”, findings of deficiencies in the RCMP handling of Mr. Nureddin’s case will provide much needed guidance on the proper limits of information sharing in the context of national security investigations. This, in turn, will ensure that the proper balance is struck between protecting national security and protecting human rights.

7. As set out in further detail in paragraphs 58 to 60 of the *Joint Reply Submissions* by *Abdullah Almalki, Ahmad El Maati and Muayyed Nureddin*, the use of qualifiers such as “suspected” or “believed to be” when describing individuals involved in national security investigations is insufficient. There is no evidence that qualifying terms such as

¹⁰ Confidential Supplementary Submissions of the Attorney General of Canada, para. 6

“suspected” or “believed to be” are uniformly accepted and understood by foreign agencies. As a result, there is no guarantee that such descriptors will be treated with the appropriate degree of skepticism or that information with such descriptors will not be used to justify the detention and/or mistreatment of Canadian abroad.

All of which is respectfully submitted this 26th day of September, 2008



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