

## Opening Statement of Commissioner

March 21, 2007

Good morning,

**Mesdames, messieurs, bonjour.**

Pursuant to Order in Council P.C. 2006-1526 of December 11, 2006, I was appointed Commissioner under Part 1 of the *Inquiries Act* to conduct an internal inquiry into actions of Canadian officials in relation to Mr. Abdullah Almalki, Mr. Ahmad Abou-Elmaati and Mr. Muayyed Nureddin to determine the following:

- (i) si la détention de Abdullah Almalki, Ahmad Abou-Elmaati et Muayyed Nureddin en Syrie ou en Égypte résultait, directement ou indirectement, des actions de responsables canadiens, particulièrement en ce qui a trait à l'échange de renseignements avec des pays étrangers et, le cas échéant, si ces actions comportaient des lacunes dans les circonstances,**

- (i) whether the detention of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances,
- (ii) whether there were deficiencies in the actions taken by Canadian officials to provide consular services to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin while they were detained in Syria or Egypt, and
- (iii) whether any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances.

It is fair to say that the origin of this Inquiry comes from the view of Associate Chief Justice Dennis O'Connor in the Arar Inquiry that the cases of Messrs. Almalki, Elmaati and Nureddin "raise troubling questions" (p. 277 of Analysis and

Recommendations) that should be reviewed but Justice O'Connor did not recommend a public inquiry to investigate the cases, stating:

“My experience in this Inquiry indicates that conducting a public inquiry in cases such as these can be a tortuous, time-consuming and expensive exercise. Quite properly, the public inquiry process brings with it many procedural requirements for openness and fairness. In Chapter VIII, I describe some of the difficulties encountered in this Inquiry and how I addressed them. Rather than repeat those descriptions here, I will simply say that there are more appropriate ways than a full-scale public inquiry to investigate and report on cases where national security confidentiality must play such a prominent role. These types of cases are likely to occur from time to time, and it is not practical or realistic to respond by calling a public inquiry each time.

That said, I have heard enough evidence about the cases of Messrs. Almalki, El Maati and Nureddin to observe that these cases should be reviewed and that the reviews should be done through an independent and credible process that is

able to address the integrated nature of the underlying investigations. ... Whatever process is adopted, it should be one that is able to investigate the matters fully and, in the end, inspire public confidence in the outcome.”

The Terms of Reference for this Inquiry reflect in the main those recommendations of Mr. Justice O’Connor. For example, paragraph (d), while authorizing me to adopt any procedures and methods for the proper conduct of the Inquiry, stipulates that all steps must be taken to ensure the Inquiry is conducted in private. Paragraph (e) goes on to provide that, despite paragraph (d), I may conduct specific portions of the Inquiry in public if I am satisfied “that it is essential to ensure the effective conduct of the Inquiry”.

**Sans vouloir vous donner une interprétation finale en ce moment des termes de mon mandat, puisque, comme l’avocat de la Commission vous le dira, je voudrais recevoir les représentations des participants sur ce sujet. On peut dire que la plus grande partie de la présente enquête, à cause des implications de sécurité nationale, devra être entendue en privé et exceptionnellement en public.**

Without wishing to give at this time any binding interpretation of these provisions of the Terms of Reference, since as my counsel will state, I wish to receive submissions on their meaning from participants, it is fair to say that the thrust of this Inquiry will, because of national security concerns, be conducted generally in private and exceptionally in public.

**Ayant dit ceci, je veux souligner certains points. Le Gouvernement du Canada a établi, et ce fut une condition pour que j'accepte le rôle de Commissaire, que cette enquête sera indépendante et agira dans l'intérêt du public dans l'exécution de son mandat. Ayant été juge pendant quelques 17 années, j'ai un grand respect pour les principes d'indépendance et d'intérêt du public et je serai aussi vigilant que possible afin d'assurer que l'enquête soit aussi indépendante, complète et juste qu'il est possible de le faire dans les circonstances.**

Having said that, I want to emphasize several points. The Government of Canada has stated, and it was a condition of my acceptance of the role of Commissioner, that this is to be an independent Inquiry which will act in the public interest in carrying out its mandate. Having been a judge for some 17 years, I have a

profound respect for the principles of independence and acting in the public interest and will be as vigilant as I can to ensure that the Inquiry is as independent, thorough and fair as it can possibly be under the circumstances.

Second, I have appointed two outstanding lawyers as my lead counsel, Mr. John Laskin and Mr. John Terry who, as counsel, will perform their duties thoroughly and fairly to ensure the Inquiry's independence and pursuit of the public interest in carrying out the Inquiry's mandate.

Third, as already mentioned, the Terms of Reference importantly provide for public hearings when it is essential for the effective conduct of the Inquiry and I intend to take that provision most seriously.

I have referred to the Arar Inquiry and should like to acknowledge the immense effort of Associate Chief Justice O'Connor and his counsel and staff in the production of their multi-volume Report. In conducting this Inquiry, all of us concerned with it will be mindful of the work of the Arar Inquiry and look to it for guidance where appropriate.

**En dernier lieu, le mandat prévoit que je soumettrai au Gouverneur en Conseil, le ou avant le 31 janvier 2008, un rapport confidentiel ainsi qu'un rapport que nous pourrions distribuer au public dans les deux langues officielles. Il va sans dire que le temps est un facteur important et nous aurons besoin de la coopération de toutes les personnes concernées afin de rencontrer cet échéancier de manière à assurer une enquête complète, juste et détaillée ainsi qu'une analyse des faits et des points en litige.**

Finally, let me say that the Terms of Reference call for me to submit to the Governor-in-Council, on or before January 31, 2008, both a confidential report and a separate report that is suitable for disclosure to the public in both official languages. This means time is of the essence and we will need the full cooperation of everyone concerned in meeting this deadline in a way that reflects a thorough, fair and comprehensive investigation and analysis of the surrounding facts and issues.

In this respect, although timeliness is important, even more so is the fact that the alleged mistreatment of three individuals is at the center of the Inquiry and the Inquiry will do everything it can, as expeditiously as it can, to ascertain whether any

mistreatment was connected to any deficiencies on the part of Canadian officials.

I should now like to call on lead counsel for the Inquiry, Mr. John Laskin, for his opening remarks.