

**Internal Inquiry into the
Actions of Canadian Officials
in Relation to
Abdullah Almalki
Ahmad Abou-Elmaati
and Muayyed Nureddin**



**Enquête interne sur les
actions des responsables
canadiens relativement à
Abdullah Almalki
Ahmad Abou-Elmaati
et Muayyed Nureddin**

**Hearing on Participation
and Funding**

**Audience sur la participation
et l'indemnisation**

Commissioner

L'Honorable juge /
The Honourable Justice
Frank Iacobucci

Commissaire

Held at:

Bytown Lounge
111 Sussex Drive
Ottawa, Ontario

Wednesday, March 21, 2007

Tenue à:

salon Bytown
111, promenade Sussex
Ottawa (Ontario)

le mercredi 21 mars 2007

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Michele Smith	for Ontario Provincial Police
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TABLE OF CONTENTS / TABLE DES MATIÈRES		PAGE
OPENING REMARKS BY		
COMMISSIONER IACOBUCCI		1
INQUIRY COUNSEL		9
SUBMISSIONS BY		
MS KALAJDZIC		17
MS JACKMAN		34
MR. NORRIS		43
MR. PEIRCE		45
MS SMITH		48
MR. BAKER		49
MR. NEVE		66
MR. CENTA		82
MS HEAFEY		90
MR. ALLMAND		100
MR. O'BRIEN		112
MR. KAFIEH		115

1 Ottawa, Ontario

2 --- Upon commencing on Wednesday, March 21, 2007

3 at 10:00 a.m. / L'audience débute le mercredi

4 21 mars 2007 à 10 h 00

5 THE REGISTRAR: Please stand.

6 OPENING REMARKS BY COMMISSIONER IACOBUCCI

7 COMMISSIONER IACOBUCCI: Good

8 morning. Bonjour, mesdames et messieurs.

9 Pursuant to Order in Council P.C.
10 2006-1526 of December 11, 2006, I was appointed
11 Commissioner under Part 1 of the Inquiries Act to
12 conduct an internal Inquiry into actions of
13 Canadian officials in relation to Mr. Abdullah
14 Almalki, Mr. Ahmad Abou-Elmaati and Mr. Muayyed
15 Nureddin to determine the following:

- 16 (i) Premièrement, en français -- si la
17 détention de Abdullah Almalki,
18 Ahmad Abou-Elmaati et Muayyed
19 Nureddin en Syrie ou en Égypte
20 résultait, directement ou
21 indirectement, des actions de
22 responsables canadiens,
23 particulièrement en ce qui a trait
24 à l'échange de renseignements avec
25 des pays étrangers et, le cas

- 1 échéant, si ces actions
2 comportaient des lacunes dans les
3 circonstances;
- 4 (i) In English -- whether the
5 detention of Abdullah Almalki,
6 Ahmad Abou-Elmaati and Muayyed
7 Nureddin in Syria or Egypt
8 resulted, directly or indirectly,
9 from actions of Canadian
10 officials, particularly in
11 relation to the sharing of
12 information with foreign countries
13 and, if so, whether those actions
14 were deficient in the
15 circumstances;
- 16 (ii) Secondly, whether there were
17 deficiencies in the actions taken
18 by Canadian officials to provide
19 consular services to Abdullah
20 Almalki, Ahmad Abou-Elmaati and
21 Muayyed Nureddin while they were
22 detained in Syria or Egypt; and
- 23 (iii) Thirdly, whether any mistreatment
24 of Abdullah Almalki, Ahmad
25 Abou-Elmaati and Muayyed Nureddin

1 in Syria or Egypt resulted,
2 directly or indirectly, from
3 actions of Canadian officials,
4 particularly in relation to the
5 sharing of information with
6 foreign countries and, if so,
7 whether those actions were
8 deficient in the circumstances.
9 It is fair to say that the origin
10 of this Inquiry comes from the view of Associate
11 Chief Justice Dennis O'Connor in the Arar Inquiry
12 that the cases of Messrs. Almalki, Elmaati and
13 Nureddin "raise troubling questions" that should
14 be reviewed but Justice O'Connor did not recommend
15 a public Inquiry to investigate the cases,
16 stating, and I quote:

17 "My experience in this
18 Inquiry [the Arar Inquiry]
19 indicates that conducting a
20 public inquiry in cases such
21 as these can be a tortuous,
22 time-consuming and expensive
23 exercise. Quite properly,
24 the public inquiry process
25 brings with it many

1 procedural requirements for
2 openness and fairness. In
3 Chapter VIII, I describe some
4 of the difficulties
5 encountered in this Inquiry
6 and how I addressed them.
7 Rather than repeat those
8 descriptions here, I will
9 simply say that there are
10 more appropriate ways than a
11 full-scale public inquiry to
12 investigate and report on
13 cases where national security
14 confidentiality must play
15 such a prominent role. These
16 types of cases are likely to
17 occur from time to time and
18 it is not practical or
19 realistic to respond by
20 calling a public inquiry each
21 time.

22 That said, I have heard
23 enough evidence about the
24 cases of Messrs. Almalki,
25 Elmaati and Nureddin to

1 observe that these cases
2 should be reviewed and that
3 the reviews should be done
4 through an independent and
5 credible process that is able
6 to address the integrated
7 nature of the underlying
8 investigations. . . . Whatever
9 process is adopted, it should
10 be one that is able to
11 investigate the matters fully
12 and, in the end, inspire
13 public confidence in the
14 outcome."

15 The Terms of Reference for this
16 Inquiry reflect in the main those recommendations
17 of Mr. Justice O'Connor.

18 For example, paragraph (d) of the
19 Terms of Reference, while authorizing me to adopt
20 any procedures and methods for the proper conduct
21 of the Inquiry, stipulates that all steps must be
22 taken to ensure the Inquiry is conducted in
23 private.

24 Paragraph (e) goes on to provide
25 that, despite that paragraph (d), I may conduct

1 specific portions of the Inquiry in public if I am
2 satisfied "that it is essential to ensure the
3 effective conduct of the Inquiry".

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

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

21 Ayant dit ceci, je veux souligner
22 certains points. Le Gouvernement du Canada a
23 établi, et ce fut une condition pour que j'accepte
24 le rôle de Commissaire, que cette enquête sera
25 indépendante et agira dans l'intérêt du public

1 dans l'exécution de son mandat. Ayant été juge
2 pendant quelques 17 années, j'ai un grand respect
3 pour les principes d'indépendance et d'intérêt du
4 public et je serai aussi vigilant que possible
5 afin d'assurer que l'enquête soit aussi
6 indépendante, complète et juste qu'il est possible
7 de le faire dans les circonstances.

8 Having said that -- now in
9 English -- I want to emphasize several points.
10 The Government of Canada has stated, and it was a
11 condition of my acceptance of the role of
12 Commissioner, that this is to be an independent
13 Inquiry which will act in the public interest in
14 carrying out its mandate. Having been a judge for
15 some 17 years, I have a profound respect for the
16 principles of independence and acting in the
17 public interest and will be as vigilant as I can
18 to ensure that the Inquiry is as independent,
19 thorough and fair as it can possibly be under the
20 circumstances.

21 Second, I have appointed two
22 outstanding lawyers as my lead counsel, Mr. John
23 Laskin and Mr. John Terry who, as counsel, will
24 perform their duties thoroughly and fairly to
25 ensure the Inquiry's independence and pursuit of

1 the public interest in carrying out the Inquiry's
2 mandate.

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

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

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

1 des faits et des points en litige.

2 Finally, let me say that the Terms
3 of Reference call for me to submit to the
4 Governor-in-Council, on or before January 31,
5 2008, both a confidential report and a separate
6 report that is suitable for disclosure to the
7 public in both official languages. This means
8 time is of the essence and we will need the full
9 cooperation of everyone concerned in meeting this
10 deadline in a way that reflects a thorough, fair
11 and comprehensive investigation and analysis of
12 the surrounding facts and issues.

13 In this respect, although
14 timeliness is important, even more so is the fact
15 that the alleged mistreatment of three individuals
16 is at the centre of the Inquiry and the Inquiry
17 will do everything it can, as expeditiously as it
18 can, to ascertain whether any mistreatment was
19 connected to any deficiencies on the part of
20 Canadian officials.

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

24 OPENING REMARKS BY INQUIRY COUNSEL

25 MR. LASKIN: Thank you,

1 Mr. Commissioner.

2 What I propose to do in my brief
3 remarks is first to outline the purpose and order
4 of business for today's session and then to
5 describe the current status of the Inquiry process
6 and the next steps in the process as we currently
7 conceive it.

8 The main purpose of today's
9 session is, of course, to hear applications from
10 interested individuals and organizations for an
11 opportunity to participate appropriately in the
12 work of the Inquiry and in some instances for a
13 recommendation on your part, Mr. Commissioner,
14 that public funding be provided to ensure that
15 they will be able to participate appropriately.

16 The Inquiry's Terms of Reference,
17 and its Rules of Procedure, I must say, set out
18 two bases on which an opportunity to participate
19 may be granted.

20 First, paragraph (f) of the Terms
21 of Reference authorize you, Mr. Commissioner, to
22 grant to any person who satisfies you that they
23 have a substantial and direct interest in the
24 subject matter of the Inquiry an opportunity for
25 appropriate participation in it.

1 Second, under the Inquiry's Rules
2 a person may be granted an opportunity to
3 participate as an intervenor in the Inquiry if you
4 are satisfied that the person has a genuine
5 concern about the subject matter of the Inquiry
6 and has a particular perspective or expertise that
7 may be of assistance to you.

8 With respect to funding, the
9 Inquiry's Terms of Reference also authorize you to
10 recommend to the Clerk of the Privy Council that
11 funding be provided, in accordance with approved
12 guidelines, to ensure the appropriate
13 participation of any party granted standing where
14 in your view the party would not otherwise be able
15 to participate in the Inquiry.

16 A total of 16 individuals and
17 organizations have applied for an opportunity to
18 participate on one or in some instances on both of
19 these grounds. Of these, some 11 are seeking
20 recommendations for funding.

21 First, as we will hear, there are
22 applications for participation from each of the
23 three individuals who are named in the Inquiry's
24 Terms of Reference. They are also seeking
25 recommendations for funding.

1 Second, there are applications
2 from government organizations, from the Attorney
3 General of Canada, the Ontario Provincial Police
4 and the Ottawa Police Service.

5 Third, there are applications from
6 three individuals other than those named in the
7 Terms of Reference, two of whom are seeking
8 recommendations for funding.

9 And fourth, there are applications
10 from seven organizations representing a range of
11 interests who are seeking an opportunity to
12 participate primarily as intervenors on the basis
13 of their genuine concern about the subject matter
14 of the Inquiry and their position that they have a
15 particular perspective or expertise that may
16 assist you. One of these applications is brought
17 jointly by two organizations and all but one of
18 them seeks a recommendation for funding.

19 Now the schedule for today calls
20 for each of the applicants who have indicated that
21 they wish an opportunity to make oral submissions
22 in support of their applications to have 15
23 minutes to make those submissions.

24 There have been some changes in
25 the schedule since it was published and

1 distributed.

2 Two of the individual applicants,
3 Mr. Arar and Mr. Omary, have indicated that they
4 are not in a position to make oral submissions at
5 this time or do not wish to do so and we have
6 heard to the same effect from the Canadian Council
7 on American Islamic Relations and the Canadian
8 Muslim Civil Liberties Association, their counsel
9 will not be appearing today.

10 In addition, there is a further
11 application that was submitted late but in this
12 instance, as I understand it, you have exercised
13 your discretion to permit the Canadian Arab
14 Federation, a further applicant, to make a
15 submission in support of its application for
16 permission to participate.

17 I might say that while 15 minutes
18 have been provided for each applicant, applicants
19 should not feel compelled to use the 15 minutes if
20 they don't feel it necessary. If we are able to
21 move more quickly than the schedule contemplates,
22 we will adjust to the extent we can do so without
23 inconveniencing people who are later in the order.

24 I know, Mr. Commissioner, it is
25 your intention to issue your decisions on the

1 applications that you will hear today and that
2 have been submitted in writing as soon as you
3 possibly can.

4 Before the submissions begin, I
5 propose to say just a few words about the current
6 status of the Inquiry and the next steps in the
7 Inquiry process.

8 Let me first say that the
9 investigation on the part of your staff into the
10 relevant facts has begun. Like all investigations
11 of this kind, this investigation entails a
12 detailed review of a great many documents, and you
13 have issued a request to the Attorney General,
14 Mr. Commissioner, for production of relevant
15 documents. Those documents have begun to come in
16 on a rolling basis in response to that request.

17 The review of the documents, which
18 we expect will in the end total many tens of
19 thousands of documents when the production process
20 is complete, is under way. Even before those
21 documents began to roll in, we had the benefit of
22 other publicly available documents that provided
23 important background to enable us to start into
24 the investigation.

25 Where then do we go from here?

1 The next formal phase of the
2 Inquiry process will be a further public hearing
3 on April 17 in this same location. A notice has
4 been published inviting the individuals and
5 organizations who are granted an opportunity to
6 participate in the Inquiry to make submissions at
7 that hearing concerning the procedures and methods
8 to be followed in the conduct of the Inquiry.

9 We expect very shortly to post on
10 the Inquiry's website and to circulate to those
11 who have been granted an opportunity to
12 participate draft General Rules of Procedure and
13 Practice aimed at fleshing out the framework set
14 out in the Terms of Reference.

15 We will be looking for
16 participants to provide comments on the draft and
17 to provide submissions on certain issues of
18 interpretation that arise from the Terms of
19 Reference.

20 We expect to circulate to
21 participants and to post in advance of the hearing
22 a list of questions as to which you would find
23 submissions particularly helpful, including the
24 question to which you adverted in your remarks and
25 that is how the provisions in the Terms of

1 Reference authorizing you to conduct specific
2 portions of the Inquiry in public if you are
3 satisfied that it is essential to ensure the
4 effective conduct of the Inquiry should be
5 applied.

6 Following the April 17 hearing,
7 the Draft Rules will be modified as appropriate
8 and published in final form.

9 It is premature at this point to
10 indicate when any formal factual hearings that
11 might be held will be convened. However, I can
12 say that it is our hope and intention to make
13 those formal hearings as focused and as
14 expeditious as possible.

15 It is also our intention to
16 communicate as fully as we can concerning the
17 inquiry process and its progress, keeping in mind
18 the nature of the process as set out in the Terms
19 of Reference. We will be using the Inquiries
20 website which is, as you probably know,
21 www.iacobucciinquiry.ca, for that purpose.

22 That concludes, Mr. Commissioner,
23 the remarks that I propose to make.

24 Unless there is anything further
25 you wish me to address or any further comments

1 that you wish me to make, I suggest that the
2 submissions by the applicants now begin.

3 I understand that the first one is
4 to be made on behalf of Mr. Almalki.

5 I suppose one other thing I should
6 say is that the Registrar will be keeping track of
7 the time and giving both applicants and me the
8 sign when time is up.

9 Thank you.

10 MS KALAJDZIC: Duly warned,
11 Mr. Laskin. Thank you.

12 SUBMISSIONS

13 MS KALAJDZIC: Thank you,
14 Mr. Commissioner.

15 To appreciate the direct and
16 substantial interest Mr. Abdullah Almalki has in
17 this inquiry and the reasonableness of his request
18 for funding, it is critical to understand why this
19 inquiry is so important to Mr. Almalki, to his
20 family, and to the Canadian public.

21 Mr. Almalki, as you know, has
22 called Canada home for literally half of his life.
23 He came here at the age of 17. Ironically, his
24 family immigrated here because his parents wished
25 for their four sons the security, the peace and

1 the democracy exemplified by Canada.

2 Mr. Almalki met his wife here, he
3 was educated here, he established a successful and
4 reputable business here. By the fall of 2001, he
5 was the father to four beautiful children, with a
6 fifth on the way.

7 In short, Mr. Almalki was a model
8 Canadian citizen, productive, law-abiding, devoted
9 to his wife and children.

10 This life that he enjoyed, that he
11 had worked so hard to build, began to crumble
12 after 9/11. He was relentlessly pursued by
13 investigators and the subject of intense scrutiny.
14 He was under constant surveillance.

15 We now know that he was the main
16 target of Project A-OCANADA.

17 Then of course in May 2000 his
18 life, and that of his family, was completely
19 shattered when he was detained by Syrian officials
20 upon arrival at Damascus airport.

21 Abdullah Almalki spent 22 months
22 in Syrian prisons, 482 days of which he was in
23 solitary confinement. He was, without question,
24 repeatedly tortured and interrogated. He was
25 severely traumatized, physically and

1 psychologically, by those events, as documented by
2 Stephen Toope.

3 His wife and his children lived in
4 the worst kind of limbo, not knowing his fate or
5 if he would ever be returned to them.

6 The Arar Report confirmed what was
7 apparent to Mr. Almalki in the course of his
8 interrogations: Canadian officials had sent
9 questions to Syria to be asked of him. Canadian
10 officials had shared information with a regime
11 notorious for its torture of detainees.

12 Since his return home to Canada
13 in August 2004, Mr. Almalki has waited for this
14 day, for the start of a process that he hopes will
15 answer vital questions. Questions not:

16 Did Canadian officials have any
17 involvement in his detention and torture, but to
18 what extent were they complicit in his ordeal?

19 Who knew what and when?

20 What information did Canada pass
21 to the Syrians.

22 Why was inaccurate
23 information shared?

24 Was information falsified?

25 Why was he afforded no consular

1 protection?

2 Why, in effect, was his Canadian
3 citizenship rendered meaningless?

4 Why was his humanity ignored?

5 At bottom, this inquiry will, we
6 hope, address these important questions, including
7 a question that all Canadians have an interest in:
8 Is our government, its intelligence service and
9 enforcement agencies committed in name and spirit
10 to fundamental human rights, including most
11 importantly the right to be free from torture.

12 Was there a pattern of conduct
13 that evidences a disregard for these values?

14 Is there, in effect, a government
15 policy that wrongly assumes human rights may be
16 sacrificed in the name of national security?

17 Mr. Almalki personally, and more
18 generally as a Canadian citizen, has a deep
19 interest in the answers to these questions and
20 hopes that the Commission in reporting on these
21 answers will confirm, in the words of Louise
22 Arbour, "that support for human rights rather than
23 being an obstacle to efficient law enforcement
24 actually works to improve human security."

25 The task given to this

1 Commission is enormous. Other countries and
2 many organizations will look with keen interest
3 to the findings of this Commission because of
4 Canada's exemplary and courageous defence of
5 human rights in other security contexts,
6 including most recently by the Supreme Court of
7 Canada in Sharkawy.

8 It is Mr. Almalki's most fervent
9 wish to assist this Commission to the fullest
10 extent possible in unearthing the truth, in
11 getting answers to so many important questions,
12 and in ensuring accountability and redress.

13 In this way, he hopes also to
14 restore his reputation and return completely to
15 his family. While the challenge to recover from
16 torture is a lifelong one, justice can play an
17 important role in his healing process.

18 It is, I submit, beyond question
19 that Mr. Almalki has a direct and substantial
20 interest in this inquiry for the reasons that I
21 have outlined and as set out in his affidavit,
22 which you have.

23 For his own interests, as well as
24 to ensure the Commission has the benefit of a
25 thorough, complete evidentiary record on which to

1 base its findings, Mr. Almalki must be granted
2 standing, in our submission, and be given the
3 fullest of participation rights.

4 Unless there are any concerns or
5 question, Mr. Commissioner, regarding
6 Mr. Almalki's application for standing, I will
7 move on to his request for funding.

8 I will make two essential
9 points about funding. One relates to legal
10 representation and the other more briefly is
11 with respect to his request for office space
12 here in Ottawa.

13 On the issue of legal
14 representation, we asked in our Motion Record
15 for a funding of a total of five lawyers,
16 comprised of two senior, one intermediate and
17 two junior lawyers.

18 In discussions with counsel for
19 Mr. Elmaati and Mr. Nureddin, we have determined
20 that it would be feasible and appropriate to share
21 one lawyer, probably a junior lawyer, whose sole
22 function would be to manage the documents,
23 organize them, review them and summarize them for
24 counsel where needed. So, in effect, Mr.
25 Almalki's request for funding is reduced to four

1 lawyers, that is two senior, one intermediate and
2 one junior lawyer, plus the shared document
3 archivist, if I can call him or her that.

4 Now, there is a caveat. At this
5 stage we don't know how NSC claims are going to be
6 dealt with in the course of the inquiry.

7 In light of Sharkawy it will be
8 our submission on April 17th that Mr. Almalki
9 cannot be wholly excluded from the in camera
10 hearings. We will recommend that one of his legal
11 representatives be security cleared and permitted
12 to participate in the in camera hearings. That
13 lawyer may be one of the four for whom we seek
14 funding, or may, because of security clearance
15 issues or other issues, have to be another lawyer
16 altogether. So we reserve the right to revisit
17 this issue of funding for the in camera lawyer
18 once the procedure is determined.

19 In terms of our request for
20 funding, we submit that it is not much
21 different than that approved for Mr. Arar. Note
22 that the work of counsel here will be more
23 intense and time-consuming than in the inquiry for
24 four reasons.

25 First, this inquiry is looking at

1 events that took place over a much longer period
2 of time. By our estimation, we start in 1998 up
3 until today.

4 Second, this inquiry of course
5 focuses on events surrounding three people and we
6 need to review all of the evidence, even that
7 regarding persons other than my client. We will
8 need to review the evidence related to
9 Mr. Nureddin and Mr. Elmaati in order to exercise
10 our function properly.

11 Third, the condensed nature of
12 this inquiry, which in its mandate is to conduct
13 this extensive review in a much shorter period of
14 time than was afforded in Arar, means that we have
15 to do in nine months what it took the Arar
16 Commission two and a half years to do.

17 Fourth, and finally, Mr. Almalki
18 was the target of Project A-OCANADA's
19 investigation. Presumably there will be even more
20 documents than the tens of thousands filed in Arar
21 relevant to the work of this inquiry.

22 In short, there is a lot of work
23 to be done in a short period of time. I can
24 assure the Commission that there will be no
25 overlap. The lawyers will divide the work and the

1 witnesses to be examined. You will not see four
2 lawyers here at once, generally speaking, and
3 therefore it is our submission that this request
4 for funding of four lawyers, plus the shared fifth
5 documents lawyer, is a reasonable one.

6 In terms of preparation time, we
7 would submit that an exercise of discretion is
8 warranted because of Mr. Almalki's exceptional
9 circumstances, in much the same way that Justice
10 O'Connor in his ruling on funding for Mr. Arar
11 departed from the government guidelines because of
12 Mr. Arar's exceptional circumstances.

13 We ask that you recommend generous
14 funding, including fair preparation time before
15 the hearing commences. I hesitate to ask for a
16 specific number of preparatory hours now before
17 knowing the extent of the prehearing disclosure,
18 the number of witnesses to be called, the extent
19 of our participation rights at bottom.

20 But I will note this: Mr. Arar's
21 two senior counsel each had 150 hours of
22 preparatory time for a modest number of documents
23 released prior to the commencement of hearing as
24 compared to what we anticipate will be the
25 prehearing disclosure in this inquiry.

1 Junior counsel for Mr. Arar each
2 had 125 hours of prep time.

3 I also note that in the Legal Aid
4 context, lawyers are routinely granted 400 hours
5 of preparation time leading up to a preliminary
6 hearing in a criminal trial.

7 I will also point out that in the
8 Groenewegan case -- I may be mispronouncing it.
9 It is a decision that is attached to Mr. Benatta's
10 Motion for Standing -- the Court there observed
11 that:

12 "Having competent legal
13 representation for the
14 parties with standing is
15 beneficial to the efficient
16 and effective workings of the
17 inquiry..."

18 That is at paragraph 38 of
19 that decision:

20 "... and that adequate
21 funding for counsel is
22 necessary to ensure a level
23 playing field."

24 Finally, in terms of the
25 timeframe, we ask that the budget include time

1 spent by counsel since the call of the inquiry up
2 to today. It is time properly spent, in our view,
3 in preparation for this inquiry.

4 Turning to the office space
5 request, it is necessary to have space to work and
6 to store documents and prepare witnesses and
7 confer with the clients.

8 Counsel for Mr. Nureddin,
9 Mr. Elmaati, and ourselves, we have agreed to
10 share space, so long as it is big enough to
11 accommodate us. We note that paragraph h. of the
12 Order in Council authorizes the rental of space
13 required for the purposes of the inquiry.

14 Those are my submissions
15 on funding.

16 Before I answer any questions that
17 you may have, I have one of my own.

18 Could you now, or will you
19 soon, be giving us direction as to the extent to
20 which you are reviewing the documents filed at
21 the Arar Commission? Should we be getting a full
22 set of those exhibits to begin analyzing them,
23 and will we be given a re-redacted version of
24 those exhibits?

25 MR. LASKIN: The request for

1 production to the Attorney General included all of
2 the formal record of the Arar Inquiry. We have
3 received them, or are in the process of receiving
4 them, in accordance with the Commission's Terms of
5 Reference, that is on the basis that the inquiry
6 is presumptively private.

7 We can address issues of
8 production to participants in the course of
9 dealing with the Terms of Reference and related
10 procedures in the next phase of the inquiry's
11 process. Between now and then, I don't believe we
12 would intend to release documents.

13 MS KALAJDZIC: Thank you.

14 MR. LASKIN: I'm not sure if that
15 is the answer you were looking for, but that is
16 the current position.

17 MS KALAJDZIC: All right.

18 Subject to any questions you may
19 have about our submissions...

20 COMMISSIONER IACOBUCCI: Could I
21 ask a few questions?

22 MS KALAJDZIC: Certainly.

23 COMMISSIONER IACOBUCCI: I am a
24 little puzzled by the office space.

25 Is my recollection correct

1 that there was not office space provided in the
2 Arar inquiry?

3 MS KALAJDZIC: There was office
4 space provided to Mr. Arar's Commission. That is
5 my understanding.

6 COMMISSIONER IACOBUCCI: Well, we
7 will find out. I was told that there was not
8 office space.

9 But what do lawyers do when they
10 act for clients? Don't they provide office space
11 for the documents that come in? Isn't that normal
12 for legal representation to --

13 MS KALAJDZIC: Well, the legal
14 representatives for Mr. Almalki are based in
15 Toronto and Windsor. Of necessity, this inquiry
16 is being held in Ottawa. The volume of documents
17 which, as Mr. Laskin pointed out, is in the tens
18 of thousands, makes it highly impractical to be
19 storing and transporting that volume of documents
20 between Toronto, Windsor and Ottawa on any
21 regular basis.

22 COMMISSIONER IACOBUCCI: Yes.

23 MS KALAJDZIC: So, at the very
24 least, we need a space where we can have a
25 central repository for our documents. Otherwise,

1 what we are doing is having to make multiple
2 copies, which is of course inefficient and
3 expensive, and then of course there is the cost of
4 having to transport them.

5 COMMISSIONER IACOBUCCI: Counsel,
6 I am going to ask you some questions but don't
7 feel I am picking on you because I would ask the
8 same questions of counsel for the other
9 individuals.

10 MS KALAJDZIC: I will soon develop
11 a thick skin.

12 COMMISSIONER IACOBUCCI: All
13 right, please do.

14 Because I just want to know why
15 that is necessary or that arrangements couldn't be
16 made for you to handle that.

17 The other aspect that is a
18 little -- we are all starting this process, and
19 counsel mentioned the word "premature", but we do
20 have this mandate that is reflected in the Terms
21 of Reference and so when we are talking about the
22 number of lawyers is pretty hard to determine
23 today, or in the next few days, what the
24 requirements are going to be for lawyers.

25 So I'm not sure if we can

1 really deal with that in any final way without
2 sort of getting a chance to revisit these kinds
3 of issues.

4 So that is one thing. It is not a
5 question, it is an observation.

6 But the question that comes from
7 that in some ways is, if we are under this
8 national security condition, the question then
9 arises as to what is the flow of documentation
10 that will be coming through. We are not in a
11 position to deal with that in any way today
12 obviously and we will have to see.

13 So the question then is raised:
14 Well, yes, there may be a lot of documents, but
15 are they documents that I am at liberty to reveal
16 in this context?

17 You refer to the amicus approach.
18 Well, we will have to look at that at another
19 time. That would be something for a further
20 discussion on April 17th or another time, but
21 certainly soon.

22 So I am still left a little bit
23 with if we are just getting the information and we
24 are not in any position to sort of react to your
25 proposal, what really that amounts to is how are

1 you in a position to be able to predict what the
2 resource demands are for your client at this time?

3 MS KALAJDZIC: I don't disagree
4 with anything you have said, sir.

5 You have identified the difficulty
6 that we have been faced with leading up until
7 today, to try to give the Commission a reasonable
8 estimation of the manpower that will be needed in
9 a vacuum essentially, because the critical
10 question that we have which has yet to be answered
11 is: What is the meaning of "internal" when we
12 talk about an internal inquiry?

13 Are we talking about an inquiry
14 that is private in the sense that the media will
15 not have access to the hearings on the basis that
16 we saw in the Arar Commission, but where the very
17 people about whom the inquiry has been called are
18 included of necessity to ensure that the evidence
19 is vetted properly, or are we in fact talking
20 about an inquiry that is so internal and so
21 private that even these men are excluded?

22 I mean, that is a critical
23 question and, frankly, I don't know the answer to
24 the question. And I don't know if it is a
25 question that we are going to have an answer to

1 today or, more properly, on April 17th.

2 COMMISSIONER IACOBUCCI: It is a
3 question on which, as counsel said, we want some
4 representations on from those who are granted
5 standing. We are not coming in here with any
6 preconceived interpretive answers that we have
7 come to, because we haven't.

8 MS KALAJDZIC: I see.

9 COMMISSIONER IACOBUCCI: So we
10 really do want help from all parties who are
11 granted standing.

12 MS KALAJDZIC: We are optimistic
13 that at the very least we will be given fair and
14 full participatory rights, and it is on that
15 assumption that we based our request for funding
16 in the manner that is set out in our record.

17 COMMISSIONER IACOBUCCI: Yes.
18 Well, we have the gist of what you have said.

19 Thank you very much.

20 MS KALAJDZIC: Thank you.

21 COMMISSIONER IACOBUCCI: I think
22 our exchange of views and discussion will not
23 necessitate us revisiting those points with other
24 counsel. If other counsel wish to comment on
25 those points, they are of course absolutely free

1 to do so.

2 But thank you very much for
3 your submissions.

4 MS KALAJDZIC: Thank you, sir.

5 SUBMISSIONS

6 MS JACKMAN: Good morning,
7 Mr. Commissioner.

8 Barbara Jackman. I am acting
9 for Mr. Elmaati.

10 I think it is self-evident
11 Mr. Elmaati has a direct and substantial interest
12 in this hearing. This inquiry has been convened
13 in order to investigate the events that affected
14 him, Mr. Almalki and Mr. Nureddin.

15 For Mr. Elmaati, I am not going
16 to go through his whole past history, but in a
17 nutshell he was working as a trucker, was married,
18 had gone to see his wife, was detained in November
19 of 2001, not released until January of 2004,
20 detained and tortured in two countries, Egypt
21 and Syria.

22 Mr. Elmaati is not here today
23 because he just underwent his seventh operation
24 because of the effects of torture on him in Syria
25 and Egypt. It was a back operation this time.

1 He has very clearly been directly
2 affected by what he believes was information
3 provided by Canadian officials to officials in
4 both Egypt and Syria. For him, the need to know
5 why it happened is essential.

6 With respect to his
7 participation, I understand your questions about
8 counsel and funding.

9 What he wants to do is participate
10 fully in this inquiry. He is prepared to
11 cooperate with the counsel that are acting for the
12 other two men, Mr. Nureddin and Mr. Almalki.

13 I would note that I have been
14 involved in Mr. Nureddin's case as well and so
15 there is an overlap of counsel in respect of the
16 two cases.

17 But we have had meetings among the
18 counsel involved and I want to assure you that to
19 the extent that there is participation in this
20 hearing we would, as Ms Kalajdzic has indicated,
21 share a coordinating counsel for our
22 participation.

23 We would also share
24 responsibilities so that there is not an overlap
25 in respect of examination of particular witnesses.

1 So to the extent that there is common information
2 that affects all three men, for example with
3 respect to procedure, there would be a lead
4 counsel as opposed to all three counsel preparing
5 to do that.

6 We are very cognizant of the fact
7 that we do not want to run up costs, that there
8 are overlapping interests and issues here, and
9 that we will work together as individuals but, to
10 the extent that we can, as a team in terms of
11 getting answers, because for all three men there
12 is a need to know what happened.

13 We have asked for four counsel. I
14 understand the question that you put to
15 Ms Kalajdzic. I think it is a fair one.

16 At this point in time we don't
17 really know the extent of our participation or
18 whether or not we will see those tens of thousands
19 of documents. I think at a minimum, though, you
20 should provide for at least two counsel to start
21 off with and take further submissions should it
22 become necessary, plus the one counsel that would
23 coordinate for the three.

24 With respect to the question about
25 office space, at the Arar Commission counsel did

1 not have an office outside this building. They
2 were given an office in this building.

3 COMMISSIONER IACOBUCCI: I don't
4 want to interrupt your flow, but could I just --

5 MS JACKMAN: No, that's fine.

6 COMMISSIONER IACOBUCCI: Is it
7 all right?

8 MS JACKMAN: I don't mind at all.

9 COMMISSIONER IACOBUCCI: That is
10 what I was understanding. I understood from
11 counsel's submissions that there was a separate
12 office, facilitation. What was done with Arar, I
13 thought there was a meeting room that was designed
14 for use of Mr. Arar's counsel.

15 MS JACKMAN: It was a double room.
16 I was in it many times. There was sort of a back
17 room with big tables and then a front sort of
18 lobby room.

19 That would be fine. That
20 is a sufficient kind of office. It was in
21 this building.

22 COMMISSIONER IACOBUCCI: I see.

23 MS JACKMAN: We just need a space
24 where we can meet together or with clients and to
25 be able to put documents to the extent that we are

1 at this hearing, that we participate.

2 COMMISSIONER IACOBUCCI: That is
3 an important clarification. Thank you.

4 MS JACKMAN: I have another
5 request, though, with respect to funding which we
6 had not articulated I think in the applications
7 and I raise it now. It is a particular concern
8 with respect to my clients.

9 As you can see from their
10 affidavits, neither of them are working. There
11 are two of them in Toronto. Mr. Almalki is of
12 course in Ottawa.

13 To the extent that they need to
14 participate in this proceeding personally, they
15 can't afford to come to Ottawa all the time. They
16 just don't have the money.

17 I wasn't able to find any
18 reference to the Commission recommending coverage,
19 not of fees or anything, but at least of expenses
20 for travel and stay in Ottawa through the course
21 of the Commission. I know there is a precedent
22 for it because my clients, who have been before
23 the Security Intelligence Review Committee, that
24 committee has covered their hotel expenses and
25 travel expenses when hearings had to occur in

1 Ottawa and they lived in Toronto.

2 So I can't believe that it is not
3 possible, but I would ask that you consider that,
4 because otherwise effectively, for Mr. Nureddin
5 and Mr. Elmaati, neither of them are in a position
6 to be able to participate personally, I mean aside
7 from the question of counsel participation.

8 I don't think they anticipate
9 being here through the whole hearing. It will be
10 online I expect. To the extent that there is
11 public information or disclosure, that will come
12 online and, as with the Arar Commission, we can
13 all of us check online, including them, but there
14 may be times when they need to come and I think
15 that would be appropriate given that you are not
16 going to hold it in Toronto, you are going to hold
17 a hearing here, to the extent that you are going
18 to hold a hearing.

19 I think those are sort of it in
20 terms of the submissions.

21 I wish to say that with
22 respect to the applications to intervene, again
23 we have had discussions as amongst counsel for
24 the three direct participants and we support the
25 intervention applications. I think that even

1 includes the OPP and the police. Much as I may
2 have problems with what they would say, they
3 certainly have a right to be here given that I
4 think they are affected by the outcome of
5 this inquiry.

6 Certainly with respect to the
7 other individuals, Mr. Elmaati, Mr. Nureddin and
8 Mr. Almalki were in the same position that these
9 men are in today coming before you. When we came
10 before Justice O'Connor, Mr. Nureddin was never
11 granted standing, Mr. Elmaati and Mr. Almalki
12 where only granted standing late in the day, like
13 towards the end of the Commission, and I think
14 that was a shame because we have some very serious
15 concerns about the accuracy of some of the
16 assumptions in Justice O'Connor's report with
17 respect to Mr. Elmaati and Mr. Almalki. They
18 should have been there throughout.

19 But to the extent that there are
20 common interests with respect to these men and,
21 from what I understand from reading their
22 applications, the crux of the issue, sharing
23 information by Canadian officials, it is
24 essential, I think, for them as well to
25 participate.

1 So we would support that
2 application.

3 I know it may be that when we come
4 back in April, if we are granted standing and
5 counsel to participate on behalf of Mr. Elmaati,
6 when we deal with the conduct of the inquiry it
7 may be at that point in time, dependent on your
8 decision, that we may have other suggestions for
9 funding.

10 But I guess I just want to
11 highlight today, Justice Iacobucci, I
12 understand -- and Ms Kalajdzic made note of it --
13 that it is an internal inquiry and we have to
14 accept that. It has to be a fair and transparent
15 inquiry notwithstanding that it is internal.

16 I don't see "internal" as the same
17 as national security claim. To that extent we
18 have to address it, but I think it is of the
19 utmost importance that Mr. Elmaati, Mr. Almalki
20 and Mr. Nureddin in the Canadian public know what
21 happened, not that it is all behind closed doors
22 and they get handed a package at the end of the
23 day about what happened.

24 They need to participate, both on
25 illegal level and in terms of psychological

1 closure on their part. They need to know
2 themselves and to be able to participate and have
3 an impact in shaping the outcome of this hearing.

4 Thank you.

5 Oh, subject to any questions...

6 COMMISSIONER IACOBUCCI: No, I
7 have no questions.

8 MR. LASKIN: I just have one,
9 Mr. Commissioner, if I might.

10 Ms Jackman, you mentioned the
11 possibility of the Commissioner deciding that at
12 least on an interim basis two counsel would be
13 funded, or that he would make a recommendation to
14 that effect, and then you referred as well to
15 coordinating counsel on an interim basis. Can you
16 just help us with what role coordinating counsel
17 would serve in the shorter term, pending any
18 documents issues for example, because your
19 colleague referred to a shared counsel playing
20 primarily a documents role.

21 Did you have something else
22 in mind?

23 MS JACKMAN: No. I think that's
24 important. I mean, the coordinating counsel would
25 primarily be dealing with the documents. You may

1 not be giving us any documents, but if we are
2 granted standing the Arar documents are relevant
3 and we need to look at them. We need to go
4 through them.

5 To a certain extent, several of
6 us have some knowledge of the Arar documents that
7 relate to Mr. Elmaati and Mr. Almalki because of
8 their standing in the last five months of that
9 two and a half year inquiry, but I think in order
10 to be prepared we still need someone to be
11 looking through what is out there in the public
12 record and there is already thousands of pages in
13 the public record.

14 So I still think it is necessary,
15 regardless of -- you know, if we are shut out
16 completely we are not going to participate anyway.
17 I'm sure we are not going to be shut out
18 completely, so we will be participating, if
19 standing is granted, to a certain extent and we
20 would like to be as well prepared as we can be.

21 Thank you.

22 MR. LASKIN: Thank you.

23 SUBMISSIONS

24 MR. NORRIS: Thank you,

25 Mr. Commissioner.

1 My name is John Norris, I am
2 counsel for Muayyed Nureddin, the gentleman
3 behind me.

4 I can be brief, I think. I echo
5 all of the remarks of my colleagues on the
6 practical matters that have been raised.

7 With respect to the issue of
8 substantial and direct interest, Mr. Nureddin is a
9 Canadian citizen on a trip in the Middle East with
10 his family in December of 2003, he descended into
11 the hell that is the Palestine Branch in Damascus
12 where he was unlawfully and arbitrarily detained
13 and tortured.

14 It is of course difficult to
15 imagine a more direct and substantial interest in
16 the subject matter of this inquiry than his own
17 personal experiences. In my submission, it is
18 essential to this Commission's mandate that he be
19 afforded the fullest participation possible so
20 that he may assist the Commission in its
21 fact-finding mandate.

22 With respect to the number of
23 counsel that may be required in the event that
24 he is granted standing, I defer to the
25 Commission's view as a preliminary matter. I

1 would request at this stage approval for two
2 counsel, with any further approvals to be sought
3 on the basis of the groundwork that is laid out
4 and the framework that is established following
5 the next meeting of this Commission.

6 I promised I would be brief.
7 Unless there are any questions, those are my
8 submissions.

9 COMMISSIONER IACOBUCCI: Thank you
10 very much.

11 MR. NORRIS: Thank you.

12 COMMISSIONER IACOBUCCI: You have
13 fulfilled your promise.

14 MR. NORRIS: Thank you.

15 SUBMISSIONS

16 MR. PEIRCE: Good morning,
17 Commissioner.

18 I, too, intend to be brief,
19 although I think the bar has been set high for
20 brevity.

21 The government has a substantial
22 and direct interest in the subject matter of the
23 internal inquiry. That is, of course, why the
24 government called the inquiry.

25 By virtue of the Department Of

1 Justice Act, the Attorney General is responsible
2 for the regulation and conduct of all litigation
3 for and against the Crown and its departments and
4 agencies. The Attorney General is also
5 responsible for advising the government on all
6 matters of law. As a result, if granted the right
7 of participation the Attorney General will
8 represent the government and affected departments.

9 The Attorney General will also
10 represent a number of Crown servants who will
11 appear as witnesses and whose actions may be the
12 subject of the internal inquiry. This is an
13 internal inquiry into the actions of Canadian
14 officials and no one else. It is an internal
15 inquiry into the actions of Canadian officials in
16 respect to the detention, provision of consular
17 services and any mistreatment of Mr. Almalki,
18 Mr. Elmaati and Mr. Nureddin and no one else.

19 The majority of the documents that
20 would be relevant to this inquiry are in the
21 control of the government and the government is
22 actively working to provide those documents to the
23 Commission. I can tell you that we are working
24 closely in cooperation with Commission counsel,
25 Mr. Laskin and Mr. Terry, to ensure the timely and

1 efficient production of those documents.

2 Throughout the inquiry, the
3 Attorney General will also advise on any issues of
4 national security.

5 In summary, then, it is my
6 submission -- I said I would be brief -- that the
7 Attorney General has a substantial and direct
8 interest in the subject matter of the internal
9 inquiry and therefore meets the test for full
10 participation. I would like to add that the
11 Director of the Canadian Security Intelligence
12 Service, the Commissioner of the Royal Canadian
13 Mounted Police, and the Deputy Minister of Foreign
14 Affairs have committed to full cooperation with
15 the internal inquiry.

16 Similarly, as counsel for
17 the Attorney General I will work to help ensure
18 that the internal inquiry can fulfil its
19 mandate as effectively, efficiently and
20 expeditiously as possible.

21 I can also indicate that we are
22 not seeking funding.

23 Those are my submissions.

24 COMMISSIONER IACOBUCCI:

25 Concession, Mr. Peirce.

1 Thank you very much.

2 Very helpful.

3 MR. PEIRCE: Thank you.

4 SUBMISSIONS

5 MS SMITH: Commissioner, I am
6 Michele Smith, counsel with the Attorney General
7 for Ontario and I seek standing and full rights of
8 participation on behalf of the Ontario Provincial
9 Police and current and former officers.

10 I, too, will be brief.

11 You have before you our written
12 materials including affidavit evidence setting out
13 the nature of the Ontario Provincial Police
14 involvement. I would like to summarize the role
15 of the Ontario Provincial Police and indicate that
16 it has a substantial and direct interest in the
17 subject matter in that the OPP and its officers
18 participated in the investigation about which this
19 inquiry is focused.

20 The OPP officers performed duties,
21 both in the chain of command and investigative
22 duties within the investigation, about which this
23 inquiry is focused. The inquiries findings and
24 recommendations, like those made by Justice
25 O'Connor, may impact the Ontario Provincial Police

1 and its employees. The inquiry's findings and
2 recommendations may impact the current and/or
3 future role of the Ontario provincial police
4 engaged in national security investigations and,
5 as a provincial police service the OPP maintains a
6 particular perspective and expertise that may
7 assist the Commissioner in discerning the complex
8 factors affecting multi-jurisdiction joint force
9 operations in the realm of national security.

10 Some of the documents may be in
11 the possession of the Ontario Provincial Police
12 and they may assist the Commission as well.

13 Those are my submissions.

14 COMMISSIONER IACOBUCCI: Thank
15 you.

16 MR. LASKIN: We are moving at a
17 good clip.

18 Next in line was counsel for
19 Mr. Benatta.

20 I don't know if you are ready to
21 proceed now. We could just carry on and we will
22 target a break at 11:30.

23 Does that work for you?

24 SUBMISSIONS

25 MR. BAKER: Good morning,

1 Mr. Commissioner.

2 I am here with Nicole Chrolavicius
3 as counsel to Benamar Benatta, a man who was
4 subjected to arbitrary detention and torture by a
5 foreign state as a direct result of action by
6 Canadian officials.

7 Much is known about what happened
8 to Mr. Benatta, as you would know from the
9 material filed, prior to September 11, 2001 and
10 after September 12, 2001.

11 What is not known is how he came,
12 and under what authority he came, to be identified
13 as a terrorist, denied the benefit and protection
14 of Canadian law and renditioned across the
15 Canadian-United States border where he was placed
16 in the custody of American officials who
17 immediately detained him.

18 Mr. Benatta seeks standing as a
19 participant in this inquiry on the basis that he
20 has a substantial and direct interest in its
21 subject matter.

22 Mr. Benatta was born in Algeria.
23 At the age of 18 he joined the Algerian Armed
24 Forces. While in the Armed Forces he attended
25 university where he trained and qualified as an

1 aeronautical engineer.

2 While in the military he was
3 subject to death threats issued by the armed wing
4 of the Islamic Salvation Front, or GIA, for
5 disobeying orders and refusing to participate in
6 violent acts considered by Mr. Benatta to be
7 illegal and unconscionable.

8 He was imprisoned by the Algerian
9 military for a period of five months.

10 He formed the intention, while
11 still in Algeria, to desert from the Algerian
12 Armed Forces. If caught, he would have been
13 subject to torture and/or summary execution. His
14 only option therefore was to leave Algeria.

15 Because of his experience, he
16 was sent to the United States for training by the
17 Algerian military. He was to be trained by a U.S.
18 defence contractor.

19 Recognizing that this was his
20 opportunity to cross the border into Canada and
21 seek refugee status, he did so following the
22 completion of that training.

23 He was ordered detained by
24 Canadian authorities pending confirmation of his
25 identity. While he was being held in detention on

1 September 11th he was unaware of the tragic events
2 that had occurred. In other words, he had no
3 information at that time that those events had in
4 fact taken place.

5 The next day, on September 12th,
6 a hearing was commenced by an Adjudicator of the
7 Immigration and Refugee Board. Without benefit
8 of legal counsel or an interpreter, his detention
9 review hearing was adjourned for a further week.
10 No inquiry into his refugee claim had even been
11 commenced.

12 Later that same day he was
13 questioned by people he believes to be Canadian
14 officials about matters that seemed unrelated to
15 his immigration case. He was asked about his
16 ability to fly an airplane, his relationship to
17 events in Algeria and other matters that bore no
18 relation, as he understood it, to his claim to
19 refugee status in Canada.

20 He was then taken by Canadian
21 officials and placed in the back seat of an
22 automobile. He thought he was being driven to
23 another detention centre in Canada. Instead, he
24 was unceremoniously driven across the border and
25 handed over to American authorities.

1 There was no legal authority
2 whatsoever for what was done to Mr. Benatta. He
3 was renditioned and he was not deported from
4 Canada. There was no legal authority such as
5 deportation for his removal from Canada.

6 What happened thereafter is well
7 documented. Solely on the basis of information
8 provided by Canadian officials, he was held in
9 isolation in the Batavia Detention Centre without
10 charge or access to counsel.

11 He was continuously interrogated
12 about the September 11th terrorist attacks. That
13 was the first time he learned about those attacks.

14 On September 16th he was
15 transferred to the Metropolitan Detention Centre
16 in Brooklyn, New York. No charges were laid or
17 access to counsel provided to him.

18 He was held incommunicado in a
19 solitary confinement for many months. He was
20 deprived of sleep. The lights in his cell were
21 never turned off. Every 30 minutes, prison staff
22 would come and bang on the door and awaken him if
23 he had fallen asleep.

24 The initials "WTC" were written on
25 the wall outside of his cell as a reminder that he

1 was connected to the destruction of the World
2 Trade Centre.

3 He was beaten regularly by the
4 guards, his head was beaten against the wall, his
5 guards stepped on his leg shackles, which caused
6 him physical injury.

7 These abusive conditions are
8 not just allegations by Mr. Benatta. They have
9 been documented in reports of the U.S. Office of
10 the Inspector General and confirmed by the United
11 Nations Working Group on Arbitrary Detention,
12 which concluded that he had been subjected to
13 arbitrary detention and to torture, contrary to
14 the International Covenant On Civil and Political
15 Rights.

16 I should add that Mr. Benatta was
17 out of the country throughout the period of the
18 Arar inquiry.

19 Mr. Benatta's torture went on for
20 many months and has left Mr. Benatta suffering
21 from physical as well as psychological injuries,
22 including post-traumatic stress disorder, and he
23 is still under the care and treatment of a
24 psychiatrist five years after the torture was
25 administered.

1 While in the MDC, Mr. Benatta was
2 incessantly interrogated by FBI special agents.
3 By November 15, 2001, the FBI had cleared or
4 exonerated him of any connection to terrorism.
5 Notwithstanding this fact, he was not told that he
6 had been exonerated and his detention continued.

7 On December 12, 2001 he was
8 charged with possession of false documents. He
9 did not learn that he was charged with these
10 offenses until mid-2002 when he was transferred
11 back to the Batavia Detention Centre. That was
12 the time he first met with legal counsel and had
13 communication with people outside of his prison.

14 When the charges finally came
15 before a Federal Court, the Magistrate found the
16 charges were a sham and a ruse, in the words of
17 the Court, intended to conceal the fact that he
18 had been illegally detained.

19 All charges were subsequently
20 dismissed. Notwithstanding their dismissal,
21 Mr. Benatta continue to be detained for two and
22 a half years thereafter, for a total of almost
23 five years.

24 In June of 2006 he was returned
25 to Canada, where he has resumed his claim for

1 refugee status.

2 If I can turn to the
3 substantial and direct interest that we say exists
4 in this case.

5 There is absolutely no evidence
6 that Mr. Benatta was a person of interest or
7 linked in any way to terrorist activity by any
8 security authority, in this country or any other,
9 prior to September 11, 2001.

10 Mr. Benatta has no knowledge of
11 how Canadian officials could have reached the
12 conclusion that he was a security threat, other
13 than the fact that he is a Muslim man who knows
14 how to fly an airplane.

15 In the language of this inquiry's
16 Terms of Reference, Mr. Benatta was detained and
17 mistreated by a foreign government directly and
18 solely on the basis of information shared by
19 Canadian officials. Moreover, he was renditioned
20 out of Canada, contrary to Canadian law, and
21 handed over to the American authorities, who
22 proceeded to mistreat him.

23 The direct parallels between
24 Mr. Benatta's case and those of Mr. Elmaati,
25 Almalki and Nureddin, are therefore, we submit,

1 very clear and we document them clearly in our
2 submission as well as Mr. Benatta's affidavit.

3 It is submitted that Mr. Benatta's
4 interest in the inquiry is based on more than just
5 these parallels. In our materials we refer to the
6 decision of Justice Linden in the Royal Commission
7 on the Northern Environment Case. I won't take
8 you to it, I will simply refer to certain points
9 made by Justice Linden.

10 In the case he started his
11 examination of whether a person's interest in a
12 inquiry is pressing and substantial by examining
13 the inquiry's subject matter.

14 In the words of section 2 of the
15 Inquiries Act, "the public business", the good
16 governance of which you are charged to inquire
17 into, concerns, in this case, national security
18 matters as well as human rights matters.

19 This is an area into which public
20 scrutiny occurs rarely, and only where
21 specifically constituted, as is this inquiry, in a
22 manner that balances the competing interests in
23 relation to disclosure. In other words, this is
24 not an opportunity that comes along very often.

25 Second, your terms of reference

1 are very fact-specific. You are not asked, for
2 example, to make sweeping recommendations.

3 Mr. Benatta is not seeking a
4 platform for his views, but instead wishes to
5 direct his participation to an examination of how
6 the facts of his case have a direct bearing on the
7 work of this inquiry.

8 The next consideration according
9 to Justice Linden is whether a person has "vital
10 information to give concerning the subject matter
11 of the inquiry".

12 It is said that the world changed
13 on September 11th. If that is true and Canadian
14 policies, practices and procedures concerning
15 information sharing, rendition and contributing to
16 a person's mistreatment by a foreign country
17 changed as of that date, Mr. Benatta's case was
18 the first and therefore may well be the case where
19 the changes can most clearly be identified.

20 Again in the language of the
21 inquiry's Terms of Reference, you are charged to
22 address the integrated nature of the underlying
23 investigations. Mr. Benatta may therefore,
24 through his participation, assist this inquiry in
25 getting to the source of the changes in the

1 national security practices and procedures
2 involving Canadian officials.

3 Fourth, Justice Linden states:

4 "If one person is potentially
5 affected, that might be
6 viewed differently than if
7 100 or 1,000 or more persons
8 may be affected."

9 It is now clear this inquiry has
10 not been overwhelmed with individual applicants.
11 Moreover, Mr. Benatta's case is particularly
12 helpful, because while it is not possible to say
13 on whose authority the decision was made to act
14 extra judicially, it is clear when it was made and
15 to whom any direction was provided, that is the
16 people who implemented the orders that were given.

17 Mr. Benatta's case offers
18 the inquiry the virtue of a well-documented case
19 of mistreatment while in a foreign country and
20 an unequivocal statement by the FBI that the
21 information shared by Canadian officials was
22 not accurate.

23 The trail, therefore, leads to
24 the missing information, and that trail is
25 straight and relatively easy to follow. It is not

1 a long, convoluted path that needs to be explored
2 in this case.

3 Finally, Justice Linden speaks of
4 the potential importance of the inquiry's findings
5 to the individual concerned.

6 This inquiry is charged with
7 determining the actions of the Canadian officials
8 who were -- I'm sorry, to determine whether the
9 actions of the Canadian officials were deficient
10 in the circumstances.

11 As noted, the parallels between
12 the experiences of the three named individuals and
13 Mr. Benatta are clear. Their are circumstances
14 are the same as his circumstances. The officials
15 may be different, but the issues are identical.

16 Because the circumstances are the
17 same, if Canadian officials were to be exonerated,
18 if their conduct was held not to be deficient,
19 this inquiry's findings would have a direct and
20 substantial impact upon the manner in which the
21 conduct of the Canadian officials in Mr. Benatta's
22 case would be viewed.

23 As indicated above, it is not
24 beyond the realm of possibility, given the
25 proximity of time -- I note that Mr. Elmaati's

1 detention in Syria was approximately 2 months
2 after the renditioning of Mr. Benatta -- and,
3 second, the nature of the information being
4 shared, it is not beyond the realm of possibility
5 that it is the conduct of the same officials in
6 all four cases that will be the subject of this
7 inquiry.

8 For the foregoing reasons
9 Mr. Benatta asks to be allowed to participate in
10 the inquiry.

11 Failing this, and for the reasons
12 cited in his written submissions at paragraphs 78
13 to 81, he asks to be granted intervener status
14 and, finally, in either event he requests, as a
15 person who has been unable to find any sustained
16 employment in Canada due to his difficulties in
17 explaining the five-year period when he was
18 detained in the United States, to be provided with
19 support in order to participate in this inquiry.

20 COMMISSIONER IACOBUCCI: You
21 referred to the Terms of Reference on a number of
22 occasions that I guess the question I have is, I
23 am trying to understand how the interests -- I am
24 not commenting in any way on the tragic events
25 that you described. This has nothing to do it

1 that all.

2 But how do his interests come
3 within the Terms of Reference when they are quite
4 exclusively focusing on the actions of Canadian
5 officials in relation to three named individuals?
6 That is what comes to my mind.

7 Notwithstanding your able
8 submissions, I just have to be convinced
9 that Mr. Benatta's case comes within the Terms of
10 Reference.

11 I have heard you on it and I have
12 heard you cite Justice Linden --

13 MR. BAKER: Yes.

14 COMMISSIONER IACOBUCCI: -- but I
15 still have some questions in my mind about how the
16 Terms of Reference are fulfilled by naming another
17 individual. That is the question.

18 MR. BAKER: I think the response
19 on behalf of Mr. Benatta is this: That the
20 inquiry is into the cases of the three
21 individuals. As I have indicated to you, the
22 issue in relation to those three is whether there
23 were deficiencies in the circumstances in the
24 actions of Canadian officials.

25 First of all, the issue of

1 deficiencies and whether or not conduct is
2 deficient does have a direct impact, which is the
3 test. The test is not that Mr. Benatta's fact
4 situation overlaps necessarily with those in the
5 sense of whatever matters may have been under
6 investigation.

7 The issue for this inquiry is the
8 behaviour of Canadian officials and the
9 deficiencies that we point to and the question of
10 what is it deficiency and under what circumstances
11 would it be considered a deficiency as a matter
12 that is directly relevant to Mr. Benatta.

13 But second, and perhaps more
14 importantly in terms of the highly fact-specific
15 nature of the Terms of Reference is this: We are
16 suggesting -- we have no way of knowing, but we
17 are suggesting that there are important decisions
18 that were made to act extra judicially in this
19 case, and that is presumably true the case of the
20 three gentlemen. That decision would have been
21 made at a level different from the level of the
22 individuals who drove Mr. Benatta across the
23 bridge or necessarily communicated information to
24 the Syrian or Egyptian governments.

25 The point I'm making is that it

1 is at least possible that those lines draw back to
2 in a centralized point of responsibility where
3 policies and practices may well have changed on
4 September 11th and, as I indicated to you, this
5 could have been -- Mr. Benatta's case could well
6 have been the case where major decisions were made
7 to change the policies and practices and those
8 changes would have a direct bearing on the work of
9 this inquiry in relation to what happened to these
10 three gentlemen.

11 COMMISSIONER IACOBUCCI: Well, I
12 hear you. I guess I'm still struggling with this
13 question when the Terms of Reference are quite
14 specific relating to three individuals.

15 The Terms of Reference are
16 directing me just to speculate how would one get
17 information on Mr. Benatta from government
18 sources? It seems to me government officials
19 would say, "Well, this is not within your Terms of
20 Reference. We are not supplying information on
21 Mr. Benatta, it is not within your Terms of
22 Reference."

23 How would I meet that?

24 MR. BAKER: It would be our
25 submission that on the basis of your Terms of

1 Reference --

2 COMMISSIONER IACOBUCCI: You don't
3 have to give me an answer.

4 MR. BAKER: I could try to give
5 an answer.

6 COMMISSIONER IACOBUCCI: I just
7 want to raise the question.

8 MR. BAKER: We would submit that
9 it is within your terms of reference to ask for
10 material which is relevant to the issues before
11 you, namely these three gentlemen, and to the
12 extent that the decisions that related to
13 Mr. Benatta could be demonstrated as having been
14 affected by what happened in Mr. Benatta's case it
15 would be relevant.

16 COMMISSIONER IACOBUCCI: Well, I
17 have heard your submissions.

18 Thank you very much.

19 MR. BAKER: Thank you.

20 MR. LASKIN: May I just ask a
21 supplementary question?

22 COMMISSIONER IACOBUCCI: Yes,
23 Mr. Laskin.

24 MR. LASKIN: You refer in your
25 material and you referred in your oral submissions

1 to some other proceedings that have either taken
2 place or, in one instance, are now under way, the
3 refugee status proceeding is under way.

4 MR. BAKER: That is correct.

5 MR. LASKIN: Are there any other
6 proceedings under way now?

7 MR. BAKER: Not that have been
8 formally commenced, no.

9 MR. LASKIN: All right.

10 If Amnesty is ready to go, why
11 don't we deal with that one before taking a break.

12 Thanks very much.

13 SUBMISSIONS

14 MR. NEVE: Thank you very much.

15 Good morning, Mr. Commissioner,
16 Mr. Laskin and Mr. Terry. My name is Alex Neve
17 and I am the Secretary General of Amnesty
18 International here in Canada.

19 While I promise that I will not
20 exceed my allotted time, I don't know that I can
21 aspire to some of the remarkable examples of
22 brevity that you had earlier, but I will try to be
23 as succinct as possible.

24 Both before and since the
25 September 11th terrorist attacks, Amnesty

1 International both here in Canada and around the
2 world has consistently spoken out about and
3 condemned acts of terrorism. Terrorism does,
4 after all, strike at the very heart of many
5 important human rights, including arguably the
6 most precious right of all: the right to life.

7 We have also, though, urged
8 governments to ensure that their approach to
9 countering terrorism is wholly consistent with
10 international human rights legal standards.
11 Sadly, in a multitude of different ways right
12 around the world governments have, however,
13 adopted new laws, pursued policies and put
14 practices in place which violate and undermine a
15 host of fundamental human rights protections,
16 including the protection against torture,
17 guarantees discrimination and crucial safeguards
18 regarding arrest, detention and fair trials, all
19 in the name of security.

20 Through Amnesty International's
21 research, reporting and campaigning, we have
22 documented and taken action in the face of these
23 mounting concerns. We have highlighted that
24 security policies that are not firmly anchored in
25 respect for human rights are not only unjust but

1 ultimately also insecure. Both security and
2 justice equally and indivisibly demand and require
3 an approach that puts human rights at the very
4 centre of counter-terrorism.

5 That is the perspective and
6 related expertise that lies behind Amnesty
7 International's application to participate in this
8 commission of inquiry as an intervenor.

9 Over the past five and a half
10 years we have through our research, our reports,
11 our work with government officials and our public
12 campaigning devoted considerable time and
13 expertise towards the goal of ensuring that
14 Canada's approach to counter-terrorism, both at
15 home and abroad, is consistent with our
16 international human rights obligations.

17 It is our hope, in fact, that
18 Canada's approach could ultimately stand as a
19 model for the world.

20 Central to our work has been the
21 sadly growing number of cases of Canadian citizens
22 detained and tortured abroad, beginning in the
23 fall of 2001 and continuing through to the end of
24 2003, all individuals who were of some degree of
25 interest in the course of Canadian national

1 security investigations, all individuals whose
2 cases raised worrying, alarming questions about
3 what role Canadian officials may have played in
4 the human rights violations that befell them.

5 Maher Arar returned to Canada in
6 October 2003. Amnesty International spent hours
7 interviewing him and detailing what had happened
8 to him. When he went public with his story, we
9 joined his call for a public inquiry.

10 Muayyed Nureddin returned to
11 Canada in January 2004. Amnesty International
12 spent hours interviewing him and detailing what
13 had happened to him. When he went public with his
14 story, we joined his call for a public inquiry.

15 Ahmad Abou-Elmaati returned to
16 Canada in March 2004. Amnesty International spent
17 hours interviewing him and detailing what had
18 happened to him. When he went public with his
19 story, we joined his call for a public inquiry.

20 And Abdullah Almalki returned to
21 Canada in August 2004. Amnesty International
22 spent hours interviewing him and detailing what
23 had happened to him. When he went public with his
24 story, we joined his call for a public inquiry.

25 Each of these cases was disturbing

1 in its own right: torture, arbitrary arrest,
2 detention without charge or trial, extraordinary
3 rendition, denial of consular rights and numerous
4 other concerns.

5 What became clear though, as we
6 gathered the details of each of these cases and
7 began to fit them together, was that there was
8 potentially something even more disturbing at
9 stake: the possibility that these cases were
10 reflective of some sort of policy or practice
11 within Canadian security and law enforcement
12 agencies, a policy to encourage, facilitate,
13 tolerate or at the very least turn a blind eye to
14 having foreign governments deal with Canadian
15 citizens of interest in domestic national security
16 investigations in ways that blatantly and
17 dramatically violated a whole range of their most
18 basic human rights.

19 We began to ask whether these
20 cases represented a Canadian version of the
21 notorious practice of extraordinary rendition.

22 That is why we consistently, along
23 with other concerned organizations and individual
24 Canadians, insisted that the inquiry into these
25 concerns could not end with the inquiry into Maher

1 Arar's case.

2 In submissions to the Arar
3 inquiry, before Parliamentary committees and U.N.
4 human rights bodies, in numerous public reports,
5 press releases and media interviews and in
6 meetings with government officials, including
7 Ministers, we urged that a comprehensive inquiry
8 was needed to consider the possibility of a
9 pattern, policy or practice that went beyond what
10 happened to Mr. Arar.

11 And we of course welcomed the
12 government's decision in December to do just that
13 and are delighted that the inquiry has opened
14 today.

15 Having devoted such a degree of
16 research and action to these cases and to the
17 campaign to establish this inquiry, we of course
18 have a strong interest and desire to be a formal
19 party to the process with intervenor status.

20 I realize, of course, that our
21 interest and desire to intervene may not on its
22 own convince you to grant that status. Allow me,
23 therefore, to briefly summarize our principal
24 arguments in support of our request for intervenor
25 status and then, second, highlight our vision of

1 how we would carry out that role if it is indeed
2 granted.

3 There are nine principal reasons
4 why we believe we should be granted intervenor
5 status.

6 First, we have extensive
7 well-established knowledge of these three cases,
8 as well as Mr. Arar's case.

9 Second, we were an active and
10 engaged intervening party in the Arar inquiry and
11 would bring a degree of continuity, perspective
12 and efficiency, I would submit, to the present
13 commission of inquiry.

14 Third, we have over the past three
15 and a half years devoted considerable research and
16 analysis to examining the connections among these
17 cases and would continue to do so throughout the
18 course of this inquiry.

19 Fourth, our focus to date has very
20 much been on highlighting the human rights
21 implications of these cases and we would be in a
22 strong position to build on that and continue to
23 offer that perspective throughout our involvement
24 in the present inquiry.

25 Fifth, we have an acknowledged

1 depth of knowledge and expertise, both nationally
2 here in Canada but also internationally, with
3 respect to the interplay between human rights
4 protection and counter-terrorism.

5 Sixth, we also have extensive
6 human rights research expertise regarding both
7 Syria and Egypt, countries whose human rights
8 records and practices will obviously come under
9 examination in the course of this inquiry.

10 Seventh, we have well-established
11 and productive working relationships with the
12 three men who are the subject of this inquiry,
13 their legal teams and the other organizations who
14 have applied to intervene in this inquiry.

15 Eighth, the fact that we have a
16 strong national and international focus to our
17 work means that we will have a relevant and
18 well-informed domestic perspective but will also
19 be able to do so within a global framework that
20 considers the wider international implications of
21 Canada's laws and practices.

22 And ninth and lastly, a point of
23 considerable significance. Commissioner, your
24 work is of great concern to Canadians. In the
25 wake of the Arar case, Canadians want and need to

1 be reassured that our nation's approach to
2 counter-terrorism does not and will not erode
3 respect for fundamental human rights.

4 Canadians are also troubled by the
5 shrouds of secrecy that surround these issues and
6 the various inquiries and court cases that have
7 been convened in recent years.

8 Ensuring that a range of
9 organizations are granted intervenor status and
10 thus able, to a degree, to represent this broad
11 public interest in the course of the inquiry is,
12 in our view, of critical importance in bolstering
13 public confidence in the inquiry and, more
14 broadly, in Canada's security laws and practices.

15 In that regard, I would like to
16 come back to Justice O'Connor's recommendation in
17 the Arar report. That is one of the
18 recommendations that of course led to the
19 establishment of this inquiry.

20 He noted how critical it is that
21 this inquiry go ahead in a way that "inspires
22 public confidence". Involving intervenors such as
23 Amnesty International I submit would very much
24 help do just that.

25 Lastly, if granted status, let me

1 highlight some fundamentals as to how we would
2 approach that role.

3 First, we would at all times
4 ensure that our contributions and involvement are
5 effective and efficient, highlighting key issues
6 and avoiding duplication and repetition.

7 Second, we would, to the maximum
8 extent possible, work jointly and collaboratively
9 with other organizations granted intervenor
10 status. In that respect we strongly support the
11 application that you are going to hear about later
12 today made by the British Columbia Civil Liberties
13 Association for funding to help support
14 coordination among intervening organizations. It
15 is a model that was applied by Justice O'Connor at
16 the Arar inquiry and is one that we, other
17 organizations, other parties and I believe Justice
18 O'Connor and his counsel all found to be
19 tremendously beneficial.

20 Third, it is very much our belief
21 that this inquiry should, to the maximum extent
22 possible, be open and accessible to the public
23 and, if we have the opportunity, it will be our
24 intention to make submissions to you about the
25 importance, in fact necessity, of that sort of

1 approach.

2 We will, however, most certainly
3 respect and participate in keeping with the rules
4 and rulings you establish regarding the division
5 between internal and public dimensions of the
6 process.

7 It would be our intention to
8 participate in the inquiry to the maximum extent
9 open to us.

10 Commissioner, Amnesty
11 International was a strong and outspoken proponent
12 of the importance of this inquiry being
13 established. We believe that the work you do will
14 play a vital role, both in understanding the human
15 rights failings but also in strengthening the
16 protection of human rights in Canada's approach to
17 counter-terrorism.

18 We did, in our view, play a
19 constructive and responsible role in the precursor
20 Arar inquiry. It is our hope and respectful
21 request that you grant us status to intervene in
22 the present inquiry so that we can continue in
23 that vein.

24 And lastly a word with respect to
25 funding. We are not seeking it. That does not

1 mean by any means that we might not need or
2 benefit from funding.

3 I just want to underscore,
4 therefore, that we certainly very much understand,
5 appreciate and respect the funding requests that
6 have been put in front of you by other
7 organizations.

8 The simple reality is that Amnesty
9 International does not in any aspects of our work
10 either seek or accept funding from government. So
11 we are barred from making the request.

12 Those are my submissions. If
13 there are any questions...

14 COMMISSIONER IACOBUCCI: Thank you
15 very much.

16 I just want to raise a couple of
17 points.

18 One is that this, as you know, is
19 a factual inquiry dealing with just conduct, if I
20 can paraphrase the Terms of Reference, relating to
21 events concerning three individuals, as we all
22 know. It is not a policy inquiry.

23 The individuals, with whom you
24 have had relationships and with their counsel,
25 presumably, if granted standing, they will be

1 represented.

2 So I guess the question is: It's
3 not policy; it's conduct related. Counsel are
4 representing the individuals.

5 What is the then role for Amnesty
6 to play?

7 MR. NEVE: Well, I guess I would
8 go back to the Arar inquiry example, which of
9 course had both phases. It had a factual phase
10 and a policy phase. We were granted status to
11 participate as intervenors in both phases.

12 I think what we found through that
13 process is that we did have something very
14 valuable to contribute to both.

15 It is true that the factual
16 process is an examination of the particular
17 circumstances of what happened to, in that case,
18 one individual and in this case three individuals,
19 but that happens in a broader context of law and
20 policy and practice. Clearly, those issues of
21 law, policy and practice are concerns, both that
22 Amnesty International has a lot of expertise
23 around but also a real interest in ensuring that
24 those policies and practices are analyzed,
25 understood and ultimately evaluated in a broad

1 human rights framework.

2 That is the perspective that we
3 constantly brought to the inquiry.

4 Not to suggest that other parties
5 aren't going to also raise human rights concerns
6 and arguments and laws and treaties with you, but
7 I think we have a particular expertise and
8 perspective and an ability to stand back from the
9 particularities of any one particular case and
10 sometimes see the broader picture in a way that I
11 think can be helpful to you in understanding how
12 it all fits together.

13 COMMISSIONER IACOBUCCI: I have
14 only one other question, and that is: If you were
15 granted standing, would you be putting in evidence
16 or information to the inquiry; and if so, in what
17 form? Would you be giving documents, interviews,
18 viva voce? What would be the form of that?

19 MR. NEVE: We don't have
20 particular plans to submit evidence at this point.
21 We certainly have an extensive set of files, a
22 record of work with respect to all of these cases.
23 And we know that a lot of that is probably already
24 in the documents that you are, on a rolling basis,
25 as it was described earlier, starting to receive,

1 because much of that is letters and information
2 and submissions that have gone into government
3 over several years with respect to these cases.

4 If, however, there were ways in
5 which the Commission felt it would be valuable,
6 for instance, to hear from some our
7 well-established experts with respect to the human
8 rights situation in Syria or Egypt or other
9 aspects whereby we can provide that kind of expert
10 evidence, we are certainly prepared to do so.

11 Other than that, it would be our
12 intention, to the extent we are allowed and able
13 to, to provide you with written submissions on key
14 issues at relevant portions throughout the
15 proceedings.

16 COMMISSIONER IACOBUCCI: That is
17 very helpful. Thank you very much.

18 I just want to give notice to the
19 other organizations that I'm going to ask the same
20 two questions of those organizations, just as I
21 asked similar questions of counsel for the
22 individuals.

23 Those are the two things that I
24 would like some help on.

25 Thank you very much.

1 MR. NEVE: Thank you.

2 MR. LASKIN: Just before we break,
3 we have five applicants to hear from on my count:
4 Human Rights Watch, British Columbia Civil
5 Liberties Association, the International Civil
6 Liberties Monitoring Group, Ottawa Police Service
7 and Canadian Arab Federation.

8 Would anybody be inconvenienced if
9 we tried to proceed between the time of our
10 resumption after the break and lunch and hear
11 those five sets of applications? Does anybody
12 have a problem with that?

13 Okay.

14 COMMISSIONER IACOBUCCI: We will
15 take a 10-minute break.

16 THE REGISTRAR: Please stand.

17 We will break for ten minutes.

18 --- Upon recessing at 11:37 a.m. /

19 Suspension à 11 h 37

20 --- Upon resuming at 11:51 a.m. /

21 Reprise à 11 h 51

22 THE REGISTRAR: Okay, everyone, we
23 are going to get started again, so if everyone
24 could please stand.

25 Tout le monde, on va commencer

1 encore maintenant. Alors, tout le monde peut
2 juste se lever.

3 Please be seated. S'il vous plaît
4 vous asseoir.

5 MR. LASKIN: I just have two quick
6 requests for counsel before we resume.

7 Could counsel, for the benefit of
8 those in the room and outside the room watching,
9 please introduce themselves. I think some people
10 did and some people didn't.

11 I am also advised that the
12 interpreters would appreciate counsel being a
13 little slower in their submissions, particularly
14 if they are following their notes closely.

15 Thanks very much.

16 SUBMISSIONS

17 MR. CENTA: Good morning,
18 Mr. Commissioner, Commission counsel. My name is
19 Rob Centa. I'm appearing today on behalf of Human
20 Rights Watch, along with my colleague Ms Brydie
21 Bethell.

22 Human Rights Watch appears today
23 to request intervenor standing in this internal
24 inquiry and in support of that submits that Human
25 Rights Watch has a genuine concern about the

1 subject matter of the inquiry and has a particular
2 perspective and expertise that may assist you in
3 the important work of this Commission.

4 We approach our submissions from
5 the basis that this internal but independent
6 inquiry has not been constituted in the fashion of
7 a regular or traditional public inquiry. You will
8 face many challenges. You will be required to
9 balance efficiency with thoroughness, fairness
10 with confidentiality and all the while trying to
11 conduct the inquiry in a fashion that will
12 maintain the public's confidence in the process
13 while respecting the terms of reference that
14 direct you to conduct the inquiry from time to
15 time in private.

16 It will be important for those
17 participating in the Commission to work with you
18 to, as Justice O'Connor recommended, "inspire
19 public confidence in the outcome of the process".

20 In Human Rights Watch's
21 submission, public confidence in this process is
22 so important because of the concerns that are
23 raised by the treatment accorded to the three
24 primary participants of this inquiry. Canadians
25 are rightly concerned and troubled by the stories

1 that are set out in the supporting material filed
2 by those three men.

3 In 1988 Justice William Brennan,
4 speaking extra-judicially, said -- and said about
5 his country, the United States, but the
6 implications for Canada in light of the report of
7 President Toope and in light of Justice O'Connor's
8 strong words coming out of the Arar Commission are
9 equally applicable to Canada.

10 Justice Brennan said:

11 "There is considerably less
12 to be proud about and a good
13 deal to be embarrassed about
14 when one reflects on the
15 shabby treatment civil
16 liberties have received in
17 the United States during
18 times of war and perceived
19 threats to national security.
20 And after each perceived
21 security crisis ended, the
22 United States has
23 remorsefully realized that
24 the abrogation of civil
25 liberties was unnecessary,

1 but it has proven unable to
2 prevent itself from repeating
3 the error when the next
4 crisis comes along."

5 That is why maintaining public
6 confidence in this process is so important.

7 In the submission of Human Rights
8 Watch, inviting groups like Human Rights Watch and
9 the other intervenor groups to participate as
10 intervenors in an internal but independent inquiry
11 will promote public confidence in the process and
12 increase the public's confidence in the report
13 that will emerge about the conduct and the
14 treatment of these three individuals, but also
15 about the actions of Canadian officials and if the
16 actions of those Canadian officials led to the
17 alleged mistreatment.

18 It is in that way that Human
19 Rights Watch can be of particular advantage to
20 you. These are set out in our submissions at
21 paragraph 3.

22 Human Rights Watch will be
23 prepared to make submissions on a number of
24 following topics to you and by making these
25 submissions we hope that we will permit the

1 Commission to better assess the government's
2 submissions on the appropriateness of their
3 actions.

4 How should the state of play be
5 analyzed? How should the actions and deeds and
6 words of Canadian officials be understood? How
7 can they be measured and reconciled with
8 international human rights law norms? How would
9 those actions and deeds have resonated in the
10 jurisdictions where the alleged mistreatment took
11 place?

12 We believe that it will be
13 important for you to hear not from the government
14 but from those independent of all governments
15 about the policies and practices of extraordinary
16 rendition to Egypt and Syria, policies and
17 practices related to the giving and receiving and
18 reliability of diplomatic assurances in those
19 jurisdictions, policies and practices of torture,
20 the context in which those actions of Canadian
21 officials may have had effect and taken place, and
22 the importance of the prohibition on torture and
23 other international human rights law obligations.

24 How we can best assist you with
25 these submissions and with this information

1 remains to be determined.

2 We will be as flexible as you need
3 us to be, and our flexibility will be matched by
4 our energy to provide you with the best
5 information at our disposal, in a manner that is
6 effective and efficient and one that will assist
7 you to understand and reach the conclusions you
8 need to reach about whether or not actions of
9 Canadian government officials contributed in any
10 way to the horrific stories you have heard about
11 this morning.

12 Human Rights Watch is of course
13 prepared to cooperate with the other intervenors
14 and to take your direction in how best to bring
15 the information to your attention and to the
16 attention of Commission counsel.

17 We support the BCCLA proposal for
18 infrastructure funding. We think that will be
19 money well spent and will achieve savings many
20 times over, should you allow intervenor groups to
21 participate.

22 Finally, Human Rights Watch
23 respectfully requests to be granted intervenor
24 participation rights, although we understand that
25 what that means will develop over time, and it

1 will develop in light of the important discussions
2 that will take place on April 17th and in light of
3 the rules as they are developed.

4 It is impossible to predict the
5 best way. What I can undertake on behalf of my
6 client is that we will be flexible. We will be
7 responsible. We will be responsive and energetic
8 in attempting to assist you to do your work to
9 meet the deadlines that you face and to balance
10 the many tensions I described at the beginning of
11 my submissions.

12 Those are my submissions, unless
13 you or your counsel have any questions.

14 COMMISSIONER IACOBUCCI: I did ask
15 of Amnesty those two questions. I think in some
16 ways you have snuggled up to an answer, but I
17 don't know whether you have expressly answered
18 them.

19 It is basically that unlike Arar,
20 this is not a policy inquiry; it is a factual
21 conduct inquiry relating to three individuals.

22 MR. CENTA: To answer it directly,
23 the conduct of the Canadian officials that may
24 have led to this mistreatment, to determine the
25 reasonableness of that conduct, to determine the

1 effect of that conduct, one has to understand the
2 jurisdictions in which the mistreatment took place
3 to understand the regimes that are in place in
4 those jurisdictions, to understand their views on
5 international human rights law norms, to
6 understand their willingness to engage in conduct
7 that would be entirely intolerable in this
8 jurisdiction.

9 Human Rights Watch brings to bear
10 specific geographic and subject matter expertise,
11 primary research, research that has been on the
12 ground in those jurisdictions. And we are
13 prepared to marshall that information and to
14 present it to you and your counsel in a manner
15 that is most efficient.

16 I don't believe the Commission
17 will be able to properly assess the assurances
18 offered by the Canadian government, the
19 explanations offered by the Canadian government
20 for their conduct without understanding the
21 regimes and the locale in which the mistreatment
22 took place and frankly to assess whether or not
23 under domestic law and international human rights
24 law whether those assurances sought and obtained,
25 if any, justify the conduct that took place.

1 COMMISSIONER IACOBUCCI: Thank you
2 for your answer.

3 You did answer on the way you
4 could present documents or analyses or things like
5 that and working with the counsel --

6 MR. CENTA: Absolutely. We are
7 prepared to participate in whatever form counsel
8 recommend, whether that is creating a second table
9 of policy experts or researchers, or whomever they
10 wish to assemble to provide them with the
11 information as you direct, and we will participate
12 and we are prepared to brainstorm to develop
13 innovative and efficient ways of delivering that
14 information to your counsel.

15 COMMISSIONER IACOBUCCI: Any
16 questions?

17 MR. LASKIN: I don't have any.

18 COMMISSIONER IACOBUCCI: Thank you
19 very much, Mr. Centa.

20 MR. CENTA: Thank you.

21 MR. LASKIN: The next applicant is
22 the British Columbia Civil Liberties Association.

23 SUBMISSIONS

24 MS HEAFEY: Good afternoon,
25 Mr. Commissioner.

1 My name is Shirley Heafey. I am a
2 director on the board of directors of the British
3 Columbia Civil Liberties Association, on whose
4 behalf I am here today.

5 I will refer to the Association as
6 the BCCLA for speed.

7 The BCCLA has two motions before
8 you today. The first is to ask for intervenor
9 standing, as well as funding for counsel to assist
10 the BCCLA perform whatever role you assign in a
11 manner that will facilitate our efficient
12 participation in order to be as helpful as
13 possible to this inquiry. And that is our goal.

14 The second motion is one that is
15 entirely separate from our first motion, and you
16 have heard it mentioned already by two other
17 organizations.

18 We are asking for funding on
19 behalf of -- and I'm jumping the gun, of course --
20 those organizations who will be granted funding a
21 position to coordinate all of the intervenor
22 organizations who may be given intervenor
23 standing.

24 That is our second motion. I'm
25 just introducing that.

1 The first test that the BCCLA has
2 to meet for intervenor standing, pursuant to
3 Section 7 of the Rules, is twofold.

4 The first test is a genuine
5 concern about the subject matter. As demonstrated
6 in our materials, the BCCLA has a long history of
7 responsible advocacy and expertise in the areas of
8 national security, police accountability and human
9 and civil rights.

10 We have played a role and
11 contributed to all the major national security
12 anti-terrorism policing and human rights issues in
13 Canada going back to the McDonald Commission and
14 up to the recent Arar inquiry.

15 Part of our mandate is to provide
16 public education, to assist complainants,
17 influence law and policy at all levels of
18 government and engage in litigation when moral
19 suasion doesn't succeed.

20 The second test is a particular
21 perspective or expertise that may assist the
22 Commissioner.

23 Like many of my colleagues and
24 staff at the BCCLA, I have a great deal of
25 personal experience and interest in the areas of

1 national security and police accountability and
2 anti-terrorism issues. I spent over four years at
3 the Security Intelligence Review Committee as
4 principal investigator and head of national
5 security complaints and, until recently, eight
6 years as Chair of the Commission for Public
7 Complaints Against the RCMP.

8 I participated and made extensive
9 submissions at the Arar inquiry, both when I was
10 Chair of this federal tribunal a little over a
11 year ago, and later as a board member of the
12 BCCLA.

13 The expertise that I have acquired
14 in theory and practice of civilian oversight of
15 national security entities, in my view and in the
16 view of the BCCLA, can only be of benefit to the
17 Commission and Commission counsel in this rather
18 complex and murky area of national security
19 intelligence.

20 The name of the BCCLA belies the
21 scope of its involvement. It is a provincial
22 organization in name only. It is the oldest
23 active civil liberties organization in Canada and
24 has played a prominent role in every significant
25 national civil liberties issue for over 40 years.

1 As intervenors in the Arar
2 inquiry, Mr. Justice O'Connor remarked on our
3 contribution in a very positive way. At the time
4 that Justice O'Connor began his inquiry, he
5 relied -- at this point I'm saying he relied on my
6 Commission where I was at the time very, very
7 heavily because it's a very difficult area. It's
8 an area that not many people have a lot of
9 expertise in.

10 We were extremely helpful to
11 Justice O'Connor in pursuing some of the issues
12 that he had to pursue and to try and understand a
13 lot of the things that were put before him,
14 including the documentation.

15 I have had personal experience
16 going through every one of those documents in
17 every file that we had to investigate.

18 I recognize that the mandate of
19 this Commission is different from that of the Arar
20 inquiry. It is regarded as an internal inquiry,
21 so there will be less public participation.

22 So I am saying why should you
23 grant us standing and funding?

24 Because we have a perspective and
25 expertise that will likely assist you.

1 Because we have first-hand
2 experience as we very frequently deal with Muslim
3 men and women who come to us for help in these
4 kinds of difficulties.

5 Because our expertise will assist
6 the Commission in raising questions and issues
7 that only we can raise because of our expertise
8 and participation in both the factual and the
9 policy segments of the Arar inquiry.

10 Because also although this inquiry
11 is not public in the same sense, it needs to be
12 publicly accessible through our presence as a
13 public service organization with expertise in the
14 issues to be dealt with.

15 Because although we acknowledge
16 that Commission counsel's primary responsibility
17 is to represent the public interest, he does not
18 have sole responsibility for this.

19 And because of all of the above,
20 our participation at this inquiry, in our view,
21 can only enhance the credibility of this entire
22 process in the eyes of the public.

23 Finally, without funding for
24 counsel, we would be prevented from participating
25 and providing our expertise because we really have

1 no resources for this in our budget. It is
2 explained in our materials.

3 In contrast, there will
4 necessarily be CSIS, RCMP and Department of
5 Foreign Affairs representatives. And in our view,
6 having the BCCLA present, among others, to provide
7 a balance can only add to the public confidence in
8 this process.

9 I would like to make it very clear
10 that the BCCLA and the International Civil
11 Liberties Monitoring Group, who will appear I
12 think after I do, have agreed to work together
13 because we have worked together in the past.
14 Although we each need counsel to help us prepare
15 our work, our submissions, our intention is to
16 speak with one voice. There will not be two
17 lawyers showing up.

18 We will be working together and
19 there will be no duplication of effort, and we
20 will make every effort to be as cogent as
21 possible.

22 The second motion -- and as I
23 mentioned, this will look like I'm jumping the gun
24 of course. The motion is for a coordinator for
25 the intervenors or potential intervenors. So this

1 is reliant on that.

2 During the Arar inquiry the BCCLA
3 worked cooperatively with all the NGO
4 organizations who are today asking for intervenor
5 standing. If they do get standing, we have the
6 support of all these organizations to undertake
7 this coordinated effort, with the assistance of an
8 intervenor coordinator.

9 As the previous speaker said, and
10 I think Mr. Neve from Amnesty International, we
11 also are very flexible and we will work together
12 and work in a way that will be most helpful to the
13 Commission, in whichever way you deem will be
14 helpful to you.

15 Funding for this temporary staff
16 coordinator position would assist the BCCLA in
17 coordinating the work of all the NGOs who would be
18 granted intervenor standing. This person has
19 provided in the past -- and Mr. Justice O'Connor
20 acknowledged this. Rather than having each of the
21 intervenors communicating with Commission counsel,
22 for instance, we got our questions together and
23 then one person, this coordinator, would go to
24 Commission counsel and present our questions or
25 our queries so that Commission counsel isn't

1 getting calls from here and there.

2 It has proved to save a lot of
3 time in the whole process.

4 This person also would be involved
5 in preparing or assisting with some of the
6 submissions, which would be different from what
7 counsel would provide because counsel would be
8 providing something a lot more complex to be
9 presented to the Commission.

10 Those are my submissions,
11 Mr. Commissioner.

12 COMMISSIONER IACOBUCCI: Thank you
13 very much.

14 I don't want to be picky but when
15 you are talking about we will speak with one
16 voice, I just hope that if you are granted
17 standing you will speak with what you think is the
18 proper voice to express.

19 So I don't think there should be a
20 monolithic. Personally, I would hope that you
21 would not be guided by sort of a sense of
22 solidarity to the extent that you would be
23 compromising what your views are, because that
24 wouldn't be helpful to what I want to do with this
25 Commission, which is to find the truth and get the

1 best evidence possible.

2 MS HEAFEY: I agree with you.

3 COMMISSIONER IACOBUCCI: So
4 coordination is one thing but not solidarity to
5 the extent of let's compromise our views on this.
6 We really need to get at what the truth is in all
7 of these situations, whatever the issue happens to
8 be.

9 MS HEAFEY: I agree.

10 COMMISSIONER IACOBUCCI: I'm just
11 saying that is just an observation.

12 MS HEAFEY: Okay.

13 COMMISSIONER IACOBUCCI: On the
14 point of the coordination, I think I come back to
15 this policy differentiation compared to the
16 conduct. I just wonder whether there is a need
17 for the coordinator when we are really restricted
18 to the non-policy, if I can call it that,
19 conducted related.

20 It is just a question on whether
21 there is that need at this stage. It applies to
22 the other organizations as well.

23 MS HEAFEY: Of course it will
24 depend on how many intervenors there are. In the
25 Arar inquiry there were about 15, I think.

1 COMMISSIONER IACOBUCCI: Yes,
2 there were 16.

3 MS HEAFEY: Sixteen. So in that
4 case it certainly proved to be very helpful and
5 very much of a time-saver. If there isn't that
6 number -- that's why I was suggesting I am jumping
7 the gun a little bit here.

8 COMMISSIONER IACOBUCCI: Yes.

9 MS HEAFEY: If there isn't that
10 number, then it is not really necessary, I expect.

11 COMMISSIONER IACOBUCCI: That is
12 very helpful. Thank you.

13 MR. LASKIN: Our next applicant is
14 from the International Civil Liberties Monitoring
15 Group.

16 SUBMISSIONS

17 MR. ALLMAND: Commissioner, my
18 name is Warren Allmand. I'm here representing the
19 International Civil Liberties Monitoring Group.
20 I'm also on their Steering Committee.

21 The International Civil Liberties
22 Monitoring Group brings together 39 organizations
23 who came together in the aftermath of September 9,
24 2001 to monitor the impact of anti-terrorism laws
25 on human rights and civil liberties.

1 The 39 groups are made up of NGOs,
2 faith groups, trade unions. Some of the NGOs are
3 human rights NGOs, some of them are international
4 relations NGOs, international development NGOs,
5 and so on.

6 We have since the beginning
7 intervened and worked on many issues. We
8 presented a brief and appeared before the
9 Parliamentary Committee on the Anti-Terrorism Act
10 C-36, and we also re-appeared later when they had
11 the review of C-36, the Anti-Terrorism Act.

12 We also did the same thing with
13 respect to the Public Safety Act, Bill C-17.

14 We also made representations on
15 the lawful access policies that were being
16 proposed by the government, on the proposed no-fly
17 lists.

18 We were intervenors at the Supreme
19 Court in the Charkaoui case on security
20 certificates, the judgment having been brought
21 down just a few weeks ago.

22 We were intervenors in the Arar
23 Commission and appeared and worked on both Part 1
24 and Part 2. We appeared at most of the public
25 hearings. We did not, like some intervenors, have

1 the right to cross-examination but we made
2 presentations on almost all issues at the public
3 hearings.

4 On the other hand, while we didn't
5 have the right to cross-examination, we had quite
6 excellent access to Commission counsel, who met
7 with us frequently bringing us up to date on where
8 the Commission was, and we were able to suggest
9 questions to be posed within the Commission and in
10 the in camera hearings, as well as suggesting
11 witnesses and other areas of action by the general
12 counsel which we couldn't do directly. But that
13 access was really well set up.

14 In Part 2 we participated in the
15 roundtables, both the national experts roundtables
16 and the international experts roundtable.

17 We have examined your mandate to
18 determine whether the detention and mistreatment
19 of Messrs. Almalki, Elmaati and Nureddin resulted
20 from actions of Canadian officials, especially
21 with respect to the sharing of information with
22 foreign countries.

23 Commissioner, we submit that the
24 International Civil Liberties Monitoring Group has
25 a genuine concern in the subject matter of the

1 inquiry under Part 7 of your Rules.

2 In our written motion we applied
3 both under paragraph 7 and paragraph 6, but now we
4 will concentrate on the genuine concern and not
5 the substantial and direct.

6 During the Arar inquiry, we with
7 other intervenors conducted considerable research
8 and assembled substantial information to
9 demonstrate that there were similarities in all
10 three of these cases, as well as with the Arar
11 case, which suggested a pattern, a plan which
12 required special attention, inquiry and study; in
13 other words, that Arar was not an isolated
14 incident of negligent behaviour but part of a
15 pre-existing policy or an approach approved at
16 some level of Canadian officialdom.

17 We strongly argued these points
18 before Judge O'Connor and while he replied that he
19 had no mandate to investigate in detail the cases
20 of Messrs. Almalki, Elmaati and Nureddin, he did
21 first of all, as a result of these arguments,
22 appoint Stephen Toope as a fact-finder to look at
23 the cases of these three men to determine whether
24 their experiences would assist him in dealing with
25 the Arar case.

1 Second, as a result of the
2 persistent arguments of the ICLMG and others, he
3 did in his first report, in Chapter 7, at page
4 278, make the recommendation that led to this
5 inquiry.

6 So we felt that the work that we
7 did had some fruit.

8 Commissioner, we submit that the
9 work that we started under the Arar Commission can
10 be updated and pursued with this Commission and be
11 extremely helpful to you in dealing with the three
12 cases before you.

13 We further submit that the actions
14 which led to the imprisonment and mistreatment of
15 these three men have serious implications for all
16 Canadians in terms of human rights, respect for
17 the rule of law, the behaviour of the RCMP, CSIS
18 and other government officials, the legality and
19 appropriateness of their directives, policies and
20 sharing agreements, issues of management control
21 and supervision.

22 All of these issues impact
23 seriously on civil society and their rights, and
24 therefore civil society asks to be represented.

25 We recognize that the government

1 and all government officials who are touched by
2 these cases will probably be accepted as
3 participants, but we would argue that therefore
4 the other side should be well represented as well
5 to represent civil society and the Canadian public
6 in general.

7 As I pointed out, our organization
8 represents 39 civil society organizations.

9 Commissioner, with respect to the
10 question that you asked the others, I had
11 anticipated that. While it is true that this
12 Commission has no policy component, no Part 2 like
13 the Arar Commission, we submit that it is
14 impossible to pursue the mandate of this
15 Commission without examining certain laws and
16 policies.

17 As you know, Judge O'Connor in
18 Part 1 of his report made 23 recommendations, many
19 of them relating to law and policy.

20 Yes, in Part 2 it was strictly
21 policy, but in Part 1, while finding on factual
22 matters, he made recommendations to try and avoid
23 some of the things he hoped would prevent what
24 happened in the future by policy changes.

25 I might point out that I was a

1 witness on many occasions and followed closely the
2 McDonald Commission in the 1980s and the same
3 thing: there were many recommendations, not only
4 on factual situations but on policy as well in
5 order to correct the matters that had happened
6 before the Commission.

7 In conclusion, Commissioner, the
8 International Civil Liberties Monitoring Group and
9 its members certainly have a genuine concern with
10 the subject matters of this inquiry, as has been
11 demonstrated by our work since 2001.

12 By the way, in Appendix 2 of our
13 motion we set out that work in greater detail.
14 And by the way, the 39 members who are in the
15 coalition are also set out in Appendix 1.

16 the ICLMG and its members have a
17 long experience and expertise in human rights, in
18 international relations and development and also
19 with respect to refugees.

20 In addition, as the attorney for
21 the International Civil Liberties Monitoring
22 Group, I have had the good fortune to serve as
23 Solicitor General for four years and was
24 responsible for the RCMP and the security service.

25 As I mentioned, I was a witness

1 and followed closely the McDonald Commission in
2 the 1980s.

3 I also had the good fortune to be
4 President of the International Centre for Human
5 Rights and Democratic Development, now known as
6 Rights and Democracy, for five years, and served
7 on the Parliamentary committees that adopted the
8 Charter and the CSIS Act in the eighties. All
9 this experience might be helpful.

10 That is with respect to standing
11 as an intervenor.

12 With respect to funding, we have
13 asked for funding, Your Honour. Nearly all our
14 members are non-profit NGOs who in their own right
15 have a difficult time raising funds for their own
16 purposes.

17 We have a very small budget. For
18 this fiscal year it is \$100,000. We have a small
19 office at the Canadian Council for International
20 Cooperation, which is given to us as part of their
21 contribution. And we have only one employee to do
22 all the work that I referred to.

23 As I mentioned, at the Arar
24 Commission we had intervenor status and we had
25 funding for one lawyer.

1 As a result of the funding by the
2 Arar Commission, we were able to participate but
3 only with some additional funds from our members.

4 As was pointed out by Ms Heafey,
5 we are agreed to share funding with the British
6 Columbia Civil Liberties Association with whom we
7 worked very closely at the Arar Commission. We
8 prepared joint briefs.

9 By the way, in answer to your
10 question, I can't remember any area where we
11 disagreed. But we contributed jointly and we came
12 to an agreement. We had joint briefs. We made
13 joint presentations and so on.

14 So we would work closely with them
15 on research, on presentations, on documents.

16 We request funding for one lawyer
17 each so that we can make sure we contribute to the
18 documents. But by doing that, by working
19 together, the hours spent would be far less than
20 if we were working separately.

21 To sum it up, I think what happens
22 and what is decided in this inquiry will have
23 major impacts for all Canadians. Therefore, it is
24 important that civil society be represented.

25 As I said, we bring together a

1 wide spectrum of civil society. We have
2 considerable expertise and experience to assist
3 the Commission with its mandate, and consequently
4 we request that you accept the International Civil
5 Liberties Monitoring Group as an intervenor and
6 grant us funding to be shared with the British
7 Columbia Civil Liberties Association.

8 Thank you, Your Honour.

9 COMMISSIONER IACOBUCCI: Thank
10 you.

11 MR. LASKIN: Mr. Allmand, I just
12 had one question for you arising from your
13 reference to your members.

14 I notice that a number of your
15 members are themselves applying for status in this
16 inquiry.

17 You have referred to coordination
18 with the BCCLA. Do you have any comments to
19 assist the Commissioner with respect to the
20 coordination, if any, with the groups that are
21 applying directly for status?

22 MR. ALLMAND: Not at all. That
23 happened the last time. Amnesty International is
24 a member of the International Civil Liberties
25 Monitoring Group but are very active. It is also

1 on our steering committee. But because of their
2 role internationally and their background, they
3 applied the last time and were intervenors in
4 their own right. We were intervenors. But we
5 worked very closely together, very closely
6 together.

7 The work that I referred to
8 whereby we did considerable research and providing
9 information on what we believed to be a pattern,
10 that Arar wasn't an isolated case, we worked very
11 closely with Amnesty and with the other groups. I
12 think there were three or four major intervenor
13 groups that we worked closely with. We would do
14 the same thing again.

15 That's why when the B.C. Civil
16 Liberties Association suggested a coordinator, we
17 did have coordination the last time. We shared
18 information. We worked closely together. We
19 tried to avoid duplication.

20 Sometimes we came at the issues
21 from different perspectives, and Judge O'Connor
22 thought our contribution was very helpful and said
23 so on many occasions.

24 COMMISSIONER IACOBUCCI: You used
25 the phrase in your submissions and orally today

1 about representing civil society. I would like to
2 think everybody in this room has a feeling of
3 representing civil society, maybe through a
4 different perspective. But I hope everybody in
5 this room would ally himself or herself with what
6 we believe is the civil society in our country.

7 I'm not quibbling with your role
8 that you have described eloquently, and of course
9 your distinguished background. I just want us to
10 be conscious of the fact that there is no one that
11 can claim to represent civil society by itself or
12 himself or herself. It seems to me most of us try
13 to do that in our lives and in our careers.

14 MR. ALLMAND: I fully agree with
15 you, Mr. Commissioner. I just point out that we
16 have 39 such groups in our coalition and the
17 others represent civil society as well. And some
18 of them, as was pointed out, are members of our
19 coalition.

20 As I mentioned, we have KAIROS,
21 which represents the social justice aspect of the
22 major churches in Canada; certain trade unions;
23 the Canadian Association of University Teachers;
24 OXFAM; Inter Pares, et cetera.

25 COMMISSIONER IACOBUCCI: Thanks

1 very much, Mr. Allmand.

2 MR. ALLMAND: Thank you.

3 MR. LASKIN: The next scheduled
4 application is on behalf of the Ottawa Police
5 Service.

6 SUBMISSIONS

7 MR. O'BRIEN: Good afternoon,
8 Mr. Commissioner, counsel.

9 I'm Al O'Brien. I, along with
10 Vince Westwick, are here today to make brief oral
11 submissions on behalf of the request for full
12 standing for the Ottawa Police Service and its
13 members.

14 As you may know, members of the
15 Ottawa Police Service and also members of the OPP,
16 were seconded to the RCMP post September 2001 and
17 became part of Project A-O Canada, and in fact a
18 member of the OPP and a member of the Ottawa
19 Police Service were appointed as Project Managers
20 of Project A-O Canada and had a significant and
21 relevant role in the investigation of a number of
22 matters, including Mr. Almalki, and were involved
23 in the execution of the search warrant and
24 follow-up investigation on evidence obtained.

25 I would like to point out at this

1 stage we are not seeking separate standing for
2 individual members but rather simply standing for
3 the Ottawa Police Service. As time unfolds other
4 issues may develop, but at this stage it is just
5 for the Ottawa Police Service.

6 I did send the Commission a letter
7 dealing with a representative of the OPP. That
8 matter will be resolved between the parties.

9 When we listened to the
10 submissions, both the written and oral
11 submissions, that were delivered on behalf of the
12 OPP it applies of equal force to the Ottawa Police
13 Service. So I won't repeat those.

14 Counsel for Mr. Almalki in her
15 oral submissions listed a number of questions,
16 which I believe are fundamental to the factual
17 review that you are about to undertake.

18 She spoke of the role played by
19 Project A-O Canada in the investigation of
20 Mr. Almalki.

21 She spoke of the role played in
22 the formulation of questions that may have been
23 sent as related to Mr. Almalki; the role of the
24 questions that were forwarded to Syria; whether
25 the information was accurate; whether the

1 information was falsified.

2 All of those fundamental questions
3 will require careful analysis of the investigation
4 and the individual members of the Ottawa Police
5 Service who played a role in that.

6 It is our submission that the
7 Ottawa Police Service can provide valuable
8 assistance in this Commission arriving at those
9 answers, as I believe was done in the Arar
10 inquiry.

11 I will just state it, although I
12 think it is obvious. There is no funding issue.

13 With respect to the written
14 submissions by Mr. Westwick, you will see they
15 dealt with broader issues, if I can put it that
16 way, dealing with the interaction between police
17 services, interaction between police services and
18 government agencies, and the Ottawa Police Service
19 can be of assistance in those areas on the factual
20 basis.

21 Those are my submissions.

22 Mr. Westwick is here if you have
23 any questions of him.

24 COMMISSIONER IACOBUCCI: Thanks
25 very much, Mr. O'Brien.

1 MR. O'BRIEN: Thank you.

2 MR. LASKIN: Finally, then, the
3 Canadian Arab Federation, which made its
4 submission a bit after the deadline. But this is
5 the submission, Commissioner, that you have
6 exercised your discretion to hear today
7 nonetheless.

8 SUBMISSIONS

9 MR. KAFIEH: First of all, on
10 behalf of the Canadian Arab Federation I want to
11 express our thanks for allowing us to participate
12 at this point, and hopefully we hope to achieve
13 intervenor status as well.

14 We have this to submit at this
15 point.

16 We would submit on behalf of the
17 Canadian Arab Federation that it has a direct and
18 substantial interest in the subject matter of this
19 inquiry.

20 COMMISSIONER IACOBUCCI: I'm sorry
21 to interrupt you, but could I ask you to give your
22 name.

23 MR. KAFIEH: I apologize. James
24 Kafieh, K-a-f-i-e-h.

25 COMMISSIONER IACOBUCCI: I have to

1 spell my name a lot too.

2 MR. KAFIEH: I am a lawyer
3 assisting the Canadian Arab Federation.

4 COMMISSIONER IACOBUCCI: Thank
5 you.

6 MR. KAFIEH: The Canadian Arab
7 Federation is a non-profit federally incorporated
8 body. It was founded in 1967 and it has the
9 mandate of being the national organization for
10 Arab Canadians since 1967, and the community of
11 Arab Canadians is well over half a million
12 Canadians.

13 It has a history of involvement in
14 human rights advocacy, anti-racism work and
15 advocacy certainly, but also training. It has a
16 great and central interest in national security
17 issues as well.

18 We have made regular
19 representations to various bodies of government,
20 including the Prime Minister's Office and various
21 ministries as a routine part of our work. We
22 appeared before the Justice Committee when the
23 9/11 legislation was being brought in. So we have
24 been there all along.

25 We had standing at the inquiry

1 looking into the circumstances of Maher Arar. So
2 there was standing there for the Canadian Arab
3 Federation previously.

4 It has expertise and experience
5 with regard to the Arab world that it could
6 provide.

7 There has been for decades an
8 impact on the Arab Canadian community, and I would
9 say a disproportionate impact in terms of CSIS'
10 activity and the various security establishments
11 within Canada.

12 This brochure, for example,
13 entitled "When CSIS Calls", was produced in
14 January of 1991 during the first Gulf War when
15 there was a large swelling of interviews between
16 Arab Canadians and CSIS.

17 So there is this long history of
18 interaction between the Canadian Arab Federation
19 acting on behalf of the Arab Canadian community
20 with regard to Canada's security establishment.

21 Since 9/11, however, there has
22 been a substantial chill on the Arab Canadian
23 community. Unlike any other community in Canada,
24 it has been stigmatized by the events we have seen
25 and certainly by the subject matter of this

1 inquiry.

2 We are concerned about a pattern
3 that exists, that appears to exist, beginning with
4 Maher Arar but certainly continuing to what we
5 understand may be the treatment of the three
6 people that are the subject of this inquiry that
7 we are dealing with: Arab Canadian men and how
8 they are treated certainly overseas and the role
9 of the Canadian government in terms of providing
10 them the kind of protection that any Canadian
11 would expect to have from their government.

12 We are certainly interested in
13 Canada's security policies and procedures.

14 We understand the comments you
15 made earlier, but we would point out that the
16 conduct, which is the central issue here, doesn't
17 happen in a vacuum. There is a context for it.

18 The people involved, if there is
19 wrongdoing, may indeed say we were following
20 instructions. We were following the policies and
21 procedures that were in place.

22 We don't know how it will unfold
23 yet because that is the inquiry's work, but we
24 understand that nothing happens in a vacuum. So
25 the policies and procedures and legislation, the

1 pattern that we perceive, is something that would
2 be relevant still to the Commission on some level.

3 And it is certainly relevant to
4 the Canadian Arab Federation acting on behalf of
5 the Arab Canadian community as there is a special
6 relevance to Arab Canadians, in view of the fact
7 that the impact of the security measures are
8 disproportionate. Arab Canadians travel much more
9 often than an average Canadian would to the Middle
10 East, to the Arab world, that there is a greater
11 vulnerability. And with that vulnerability comes
12 relevance.

13 There is a concern as a class,
14 Arab Canadians have a special interest in the work
15 that this Commission is going to be doing.

16 We would submit that it is an
17 issue at some level of the value of Canadian
18 citizenship when held by an Arab Canadian. We
19 would add to that that it ultimately touches on
20 our role or our status in Canadian society.

21 There has to be in this process,
22 for this Commission to be successful, a certain
23 degree of transparency.

24 We would submit, respectfully,
25 that involving the Arab Canadian community through

1 its national spokes organization would be
2 consistent with that principle.

3 We have a direct substantial
4 interest. We have experience and expertise to
5 provide.

6 In terms of standing, that
7 concludes the submission I will give, subject to
8 your questions.

9 I can move on to issues of funding
10 and then again open up to questions on everything,
11 if you wish.

12 Regarding funding, we are seeking
13 legal representation, to cover the costs of legal
14 representation. The funding that the Canadian
15 Arab Federation gets as a non-profit community
16 organization is really limited to contracts with
17 various levels of government, all levels of
18 government, to deliver settlement services. And
19 as they are contracted, all those monies are
20 committed.

21 There is money that is raised
22 through fund raising. All that money, like any
23 non-governmental organization would know, is very
24 hard gathered and the office, the small staff in
25 the national office, is horribly over-committed as

1 is.

2 In other words, without having
3 support from the Commission, the Canadian Arab
4 Federation will not be able to participate.

5 I also want to touch on one of the
6 points that you touched on earlier directly.

7 We are prepared to cooperate fully
8 with the Commission and coordinate with other
9 parties here. This is a principle for us. It's
10 very important.

11 The only thing that I would state
12 is we support the applications for intervention of
13 all the other parties as well, and obviously the
14 one caveat is that the extent to which any of the
15 groups can participate and maintain their
16 individuality to remain engaged is to some extent
17 naturally limited by the extent of funding that
18 the Commission sees fit to provide.

19 So while we hope that there is
20 funding for all the groups, we will respect the
21 decision that you make. We will look forward to
22 contributing to support the important work of the
23 Commission.

24 We want the Commission to succeed
25 and we are here to support the process of the

1 Commission so that it can achieve a positive
2 outcome for all Canadians.

3 Subject to your questions, that is
4 the submission.

5 COMMISSIONER IACOBUCCI: I just
6 wanted to emphasize, not emphasize but just
7 mention that if you wish to supplement your oral
8 submissions by written submissions --

9 MR. KAFIEH: Yes.

10 COMMISSIONER IACOBUCCI: I'm not
11 asking you to do a lot of work unnecessarily, but
12 if you feel you want to supplement by
13 written submissions --

14 MR. KAFIEH: We do.

15 COMMISSIONER IACOBUCCI: Then
16 please do so.

17 MR. KAFIEH: Thank you very much.

18 COMMISSIONER IACOBUCCI: And would
19 you do so as promptly as you can, because we do
20 want to come out with a decision on this standing
21 issue and funding issue as soon as we can.

22 MR. KAFIEH: I understand that. I
23 believe within 24 to 48 hours, before the end of
24 the week, you will have everything submitted.

25 COMMISSIONER IACOBUCCI: That is

1 good of you. I appreciate that.

2 MR. KAFIEH: Thank you very much.

3 MR. LASKIN: Could I just ask one
4 question of clarification.

5 Mr. Kafieh, you have put your
6 written application and I think most of your oral
7 submissions on the basis of substantial and direct
8 interest. Just to make sure that we understand
9 it, are you also in the alternative seeking
10 participation as an intervenor on the basis of
11 concern and expertise?

12 I think that may be implicit in
13 what you said, but it would be helpful to know if
14 that is correct.

15 MR. KAFIEH: Let me be explicit.
16 Certainly we believe that we have coverage on both
17 principles.

18 If you ask me to identify the
19 central one, it would be the direct interest of
20 the Arab Canadian community as the subject matter
21 will impact perhaps more directly on the Arab
22 Canadian community more than any other Canadian
23 community.

24 MR. LASKIN: Thank you.

25 MR. KAFIEH: Thank you.

1 COMMISSIONER IACOBUCCI: Thank you
2 very much.

3 Let me ask whether Mr. Terry or
4 Mr. Laskin have anything else to add.

5 MR. LASKIN: Nothing further for
6 today.

7 COMMISSIONER IACOBUCCI: That then
8 brings us to an end.

9 I really do appreciate the concise
10 and expeditious nature of this. It doesn't mean
11 that we will have as easy a road when next we
12 meet. We have some tough questions that we will
13 have to get your guidance on, for those who will
14 be granted standing.

15 I do greatly appreciate
16 everybody's presence here today and the
17 collaborative manner in which you made your
18 representations and submissions.

19 We will adjourn and reconvene on
20 April 17th.

21 Thank you very much again.

22 --- Whereupon the hearing adjourned at 1236, to
23 resume on Tuesday, April 17, 2007 / L'audience
24 est ajournée à 12 h 36, pour reprendre le
25 mardi 17 avril 2007