

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

**OUTLINE OF ORAL SUBMISSIONS
TO BE MADE TO THE INQUIRY ON TUESDAY, APRIL 17, 2007**

CANADIAN ARAB FEDERATION

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Part A - Issues relating to the Inquiry's Terms of Reference

1. What is the meaning of the phrase "any mistreatment" as it appears in Paragraph (a) (iii) of the Terms of Reference?

The term "any mistreatment" should be read to include any violations of the rights of Mr. Al Malki, Mr. Elmaati and Mr. Nureddin under international law, the *Canadian Charter of Rights and Freedoms*, and established Canadian government policies and procedures for the provision of services to Canadians overseas.

2. Is it necessary, in order for the Commissioner to determine the matters that paragraph (a) of the Terms of Reference mandate him to determine, for him to decide whether, and the extent to which, Mr. Al Malki, Mr. Elmaati and Mr. Nureddin were tortured in Syria and Egypt?

It is critical for the Commission to fully review and scrutinize the narratives of Mr. Al Malki, Mr. Elmaati and Mr. Nureddin including their allegations of torture to confirm whether or not there was indeed some form of "mistreatment" as defined above. It is equally necessary to document the type and severity of any mistreatment that may be found to have transpired. Without such an assessment Canadians would never know if the mistreatment resulted in only trivial consequences.

One possible conclusion by this Inquiry is that Canadian officials may have deliberately exploited the likelihood of torture being used by Syria or Egypt on Mr. Al Malki, Mr. Elmaati or Mr. Nureddin. Without a full examination of the allegations of torture the work of the Inquiry will remain incomplete.

3. What does paragraph (d) of the Terms of Reference mean in requiring the Commissioner, subject to paragraph (e), to take all steps necessary to ensure that the Inquiry is conducted in private? In particular who should be entitled to attend any hearing conducted in Private?

Section (d) creates a presumption that the Inquiry will be private while section (e) allows the Commissioner to use discretion to hold public sessions as he deems it essential for the effective conduct of the Inquiry. However, it is submitted that the Terms of Reference also state that the Inquiry is to be conducted by a “credible process” that “inspires public confidence in the outcome”. The Canadian Arab Federation submits that closed door processes do not inspire public confidence. Accordingly, it will be necessary “to ensure the effective conduct of the Inquiry” that as much of the Inquiry that can be held in public be done so.

It is also submitted that “private” hearings do not necessarily mean secret hearings.

Three tiers of hearings are suggested. The first being public sessions with all interveners and the media being allowed to attend. The second being private sessions in which the

media is excluded. The third being private sessions in which only security cleared individuals are allowed to participate.

As the Terms of Reference state that the Director of the Canadian Security and Intelligence Service has committed himself to fully cooperate with the review process it is suggested that CSIS expedite the security screening of Mr. Al Malki, Mr. Elmaati and Mr. Nureddin as well as the legal counsels of the interveners wishing to participate in security sensitive sessions. With security cleared legal representatives present in the private sessions public confidence may still be preserved.

4. If the Commissioner decides that some participants are not entitled to attend a hearing conducted in private, what if any steps should he take to ensure that those participants can participate appropriately in the Inquiry's process?

The credibility of the Commission turns on its ability to pursue a "credible process" that "inspires public confidence in the outcome". If the commissioner does determine that some participants need to be excluded from some private hearings then the excluded participants should be expeditiously provided with a redacted record of the evidence received by the Inquiry complete with summaries of censored evidence.

5. What considerations should the Commissioner take into account in determining, in accordance with paragraph (e) of the Terms of Reference, whether he is satisfied that it is essential to ensure the effective conduct of the Inquiry that specific portions of the Inquiry be conducted in Public?

The Terms of Reference explicitly requires the Inquiry to be conducted by a “credible process” that is capable of “inspiring public confidence”. Public confidence can not be inspired by processes that are secret. Accordingly, the requirement for credible processes that inspire public confidence requires the Inquiry to be conducted in public unless substantial national security issues make this untenable.

6. Does the term “actions” as repeated stated in section (a) (i), (ii) and (iii) also include inaction or failure to act where an action was required?

It is necessary to interpret the term “actions” to also mean inaction or failure to act. Such an interpretation is consistent with the purpose of the Inquiry to determine if the decisions and conduct of Canadian officials met international and Canadian standards. If this interpretation is not confirmed then a ready escape from a determination of mistreatment would be created by the Commission for any Canadian official who failed to act with knowledge of the likely consequences for Mr. Al Malki, Mr. Elmaati or Mr. Nureddin. The use of the terms “directly or indirectly” in Section (a) confirms that the Commission is intended to be comprehensive in its review. Willful blindness should not be allowed as a shield for any Canadian officials.

Part B - Issues relating to the Draft General Rules of Procedure and Practice

1. Does the term “injurious” as found in section 1(f) of the terms of the Inquiry’s Draft General Rules of Procedure and Practice require a qualifier so that it is not overly broad.

It is arguable that any information that reveals misconduct by Canada’s government, defence or security services could do some injury to Canada’s “international relations, national defence or national security. Additionally, the short term impact of revelations of such misconduct may be a loss of trust in the services doing investigations. It is necessary that the Commissioner interpret the term “injurious” as meaning “substantially injurious” or else the Inquiry may be later rendered mute.