



The Hon. Frank Iacobucci, Q.C., LL.D.
Commissioner
Internal inquiry into the Actions of
Canadian Officials in Relation to
Abdullah Almalki, Ahmad Abou-Elmaati
and Muayyed Nureddin
66 Slater Street
17th Floor, Suite 1720
Ottawa, Ontario K1P 5H1

9 April 2007

Commissioner,

This is the response of the Canadian Coalition for Democracies (CCD) to the Inquiry's Supplementary Notice of Hearing for 17 April 2007, which Notice was issued 27 March 2007.

This response provides the requested "outline" of matters proposed to be raised by me, for and on behalf of the CCD, at the 17 April 2007 hearing. I note that I shall be addressing the Inquiry at that time in the place of CCD Counsel Representative, David B. Harris, owing to Mr. Harris's unavoidable absence on a fact-finding mission in Asia.

OUTLINE

A. RESPONSE TO QUESTIONS

B.

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

Measured against the Terms of Reference requirement of achieving a result that "inspires public confidence," the word "mistreatment" should be given the broadest, practicable interpretation. The Canadian Coalition for Democracies believes that *The Concise Oxford Dictionary's* definition of "mistreatment" as "treat badly" is an expansive, but helpful, guide to the Commissioner's understanding of the term.

In this vein, “any mistreatment” would include treatment resulting in adverse physical and psychological effects, whether of limited or long-term duration. This would include physical or psychological mistreatment that would be actionable in civil or criminal law, together with “torture”, as understood below.

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. Almalki, Mr. Elmaati and Mr. Nureddin were tortured in Syria and Egypt?

For the purposes of this response, the Canadian Coalition for Democracies adopts as its definition of torture that of the United Nations Convention Against Torture, Art. 1, to wit:

... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The Canadian Coalition for Democracies would respond to the question in the affirmative. The question of “torture” has manifestly been brought into issue by the public statements made by one or more of the three persons, or their representatives, whose alleged experiences have brought about this Inquiry. These experiences are said to have included “torture”. The CCD believes that a clear resolution of this aspect of the allegations is a condition precedent to inspiring “public confidence in the outcome” of the Inquiry. This would appear particularly to be the case in light of the Arar Inquiry’s findings and results.

A related point must be made. The present Inquiry is, in part, the product of concerns arising from the Arar Inquiry. However, the Canadian Coalition for Democracies believes that the Iacobucci Internal Inquiry, as an independent inquiry, must conduct its enquiry into questions of possible mistreatment in a manner independent of the findings of the Arar Inquiry. This, so that the Inquiry can achieve credible results capable of standing on their own in relation to the facts of the specific cases presented.

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?**

The Canadian Coalition for Democracies interprets paragraphs (d) and (e) in combination as establishing a rule or presumption that proceedings will be conducted beyond public view. This inference follows naturally from two features of these provisions. First, the general obligation of “taking all steps necessary to ensure that the Inquiry is conducted in private.” Second, the derivative, exceptionalist quality of the paragraph (e) requirement that only “specific portions” of the Inquiry be made public, and then only if this specific deviation from the rule be “essential” to the effective conduct of the Inquiry.

Attendance at private hearings should be determined on a case-by-case basis, having in mind national security requirements. Needless to say, proceedings of the Iacobucci Internal Inquiry hearings are not in the nature of those contemplated in criminal or civil law matters, and do not therefore attract the same obligation of openness.

Determination of access to security-sensitive hearings should be made with reference to the security reliability of prospective attendees, including participating organizations.

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?**

Under the conditions posited, the Canadian Coalition for Democracies would recommend that transcripts be made available to participants, these transcripts being redacted to the extent required by privacy, including national security concerns.

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?**

See 3, above.

On behalf of the Canadian Coalition for Democracies, I thank you for this opportunity to make known the CCD's concerns.

Yours sincerely,

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