

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

**IN THE MATTER OF ORDER OF COUNCIL P.C. 2006-1526,  
MADE PURSUANT TO THE INQUIRIES ACT: INTERNAL  
INQUIRY IN THE ACTIONS OF CANADIAN OFFICIALS IN  
RELATION TO ABDULLAH ALMALKI, AHMAD ABOU-  
ELMAATI AND MUAYYED NUREDDIN**

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**JOINT SUBMISSIONS OF THE OTTAWA POLICE  
SERVICE AND ONTARIO PROVINCIAL POLICE**

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The Commissioner of the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin (“Internal Inquiry”) has posed five (5) questions to the participants of the Internal Inquiry. The Commissioner of the Internal Inquiry has also encouraged participants to make joint-submissions as much as is possible.

The Ottawa Police Service and Ontario Provincial Police, both of whom have been granted standing as full participants to said Internal Inquiry, make the following joint submissions in response to the five (5) questions:

1. No position is taken on the meaning of the phrase “any mistreatment” as it appears in paragraph (a)(iii) of the Terms of Reference.
2. With respect to whether the Terms of Reference mandate the Commissioner to first determine whether, and the extent to which Mr. Almalki, Mr. Elmaati and Mr. Nureddin were tortured in Syria and Egypt so as to respond to the matters identified in paragraph (a) of the Terms of Reference, it is submitted that detention under paragraph (a) (i) could be determined without knowing whether there was torture. As for items (a) (ii) and (iii), it is submitted that the Commissioner would need to determine whether there was torture in order to determine those matters.

3. It is submitted that counsel with security clearances for the Ottawa Police and the Ontario Provincial Police, as full participants, should be permitted to attend any hearing conducted in private. No position is taken on whether other participants should be granted the right to attend closed hearings as defined in paragraph (d) of the Terms of Reference.
4. No position is taken on the steps the Commissioner should take to ensure that those participants not entitled to attend a hearing conducted in private can participate appropriately in the Inquiry's process.
5. It is submitted that the Terms of Reference dictate that the Inquiry be in private except where the Commission determines it is necessary to have a public hearing. National security issues in the broad sense of the term should be considered in determining whether or not a hearing should be in public, with the presumption being that the hearing should be in private, in accordance with the Terms of Reference.

The Commissioner has also asked for submissions on the **Draft General Rules of Procedure and Practice**. We make the following joint submissions thereon:

1. We note that pursuant to Rules 15 and 17, solicitor-client privileged documents would be produced. We suggest that the draft rules be amended to reflect the amended Rule adopted by the ongoing Cornwall Public Inquiry, a copy of which is attached.
2. Rules 21-23 appear to allow Commission Counsel to prepare draft findings of fact based on interviews, documents or other findings, which may then be adopted by the Commissioner as his own. If the Commission Counsel makes draft findings based on interviews, is it contemplated that those interviews would be conducted in public, or in the presence of counsel for someone who may be adversely affected by a draft finding arising out of that interview? If not, and private interviews lead to adverse findings without the presence of legal counsel, will counsel be entitled to an opportunity to address the finding?
3. We note there is no requirement in the draft Rules for Commission Counsel to notify counsel for a participant that the Commission wishes to interview its employee or former employee and that the interviewee is entitled to have the benefit of counsel for that participant. We suggest that this be inserted. Attached is the wording from the "Krever" Commission, which we suggest be added to the Rules.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**DATED** this 11<sup>th</sup> day of April, 2007.

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