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

SUBMISSIONS ON BEHALF OF MUAYYED NUREDDIN CONCERNING THE CONDUCT OF THE INQUIRY

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A) Introduction

1. The Government of Canada has established this Commission under Part One of the *Inquiries Act*, R.S.C., C. I-13 to determine:

> (a) whether the detention of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances;
>
> (b) whether there were deficiencies in the actions taken by Canadian officials to provide consular services to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin while they were detained in Syria or Egypt; and
>
> (c) whether any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances.
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> *Terms of Reference (Order-in-Council P.C. 2006-1526), paras. a(i), (ii), (iii)*

2. The Terms of Reference title the Commission an "internal inquiry". They provide that the Commissioner is to adopt any procedures and methods that he considers expedient for the proper conduct of the inquiry, "while taking all steps necessary to ensure that the inquiry is conducted in private." Notwithstanding this, the Terms of Reference permit the Commissioner to conduct "specific portions of the inquiry in public if he is satisfied that it is essential to ensure the effective

conduct of the inquiry."

Terms of Reference (Order-in-Council P.C. 2006-1526), paras. d and e

3. The Commissioner has invited submissions from participants concerning the procedures and methods to be followed in the conduct of the Inquiry. In particular, the Commissioner has requested submissions concerning the following questions arising from 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?

2) Is it necessary, in order for the Commissioner to determine 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?

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?

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?

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 Commissioner has also invited submissions concerning any aspects of the Inquiry's Draft General Rules of Procedure and Practice that may be of concern to participants.

Supplementary Notice of Hearing dated March 27, 2007

4. In addition to what follows, Mr. Nureddin adopts the submissions of Messrs. Almalki and El Maati.

B) The Meaning of "Any Mistreatment"

5. Mr. Nureddin submits that the Commissioner should construe the phrase "any mistreatment" broadly and in accordance with the ordinary meaning of the words. It is submitted that the phrase should encompass not only torture *per se* but any conduct resulting in the imposition of physical or psychological harm. It should also encompass the arbitrary deprivation of liberty, incommunicado detention, the lack of access to due process and the denial of rights of consular access. In short, this Inquiry should consider any treatment accorded to Messrs. Almalki, Elmaati and Nureddin that constituted a breach of their human rights as set out in international human rights instruments.

C) The Torture of Mr. Nureddin in Syria

6. It is submitted that the torture and other mistreatment of Mr. Almalki, Mr. Elmaati and Mr. Nureddin in Syria and Egypt is central to the Inquiry's mandate. It is not, however, necessary for the Commissioner to embark upon his own fact-finding inquiry in this regard.

7. Paragraph (b) of the Terms of Reference provides that the Commissioner may accept as conclusive, or give weight to, the findings of other examinations that may have been conducted into the actions of Canadian officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin. In the course of the Commission of Inquiry into the Actions of Canadian Officials Relating to Maher Arar ("the Arar Inquiry"), Justice O'Connor appointed Professor

Stephen Toope to prepare a fact-finding report on Mr. Arar's allegations of mistreatment in Syria. As part of his investigation, Professor Toope also interviewed Messrs. Almalki, El Maati and Nureddin. Professor Toope concluded in his October 27, 2005, report that the accounts given by the men of their mistreatment in Syria, including torture, were credible and consistent with general human rights reports on Syria. Justice O'Connor found Professor Toope's report "comprehensive and highly informative."

> *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (2006), at 297 "Report of Professor Stephen J. Toope", *Report of the Events Relating to Maher Arar: Factual Background, Volume II, Appendix 7*

8. Mr. Nureddin asks that the Commissioner adopt the conclusions of the Toope Report with respect to the treatment he experienced while detained in Syria. He makes this submission subject to the following caveat. If officials of the Government of Canada dispute that Mr. Nureddin was tortured in Syria, then Mr. Nureddin seeks the appointment of the same or another fact-finder with the same mandate as had Dr. Toope vis-à-vis Mr. Arar. This would ensure that a comprehensive report can be prepared, with specific findings as to the occurrence and character of the torture to which Mr. Nureddin was subjected.

D) The Conduct of the Inquiry: Public or Private?

9. The present Inquiry has its origins in the conclusions and recommendations of Justice O'Connor in the Arar Inquiry. Messrs. Almalki, El Maati and Nureddin were granted intervenor status in that inquiry and Justice O'Connor learned something about each of their individual cases in the course of carrying out his mandate in relation to Mr. Arar. He concluded that the cases of each

of the men "raise troubling questions about what role Canadian officials may have played in the events that befell them." Justice O'Connor went on to recommend that "these cases should be reviewed and that the review should be done through an independent and credible process that is able to address the integrated nature of the underlying investigations." After reviewing some possible models, Justice O'Connor stated: "Whatever process is adopted, it should be one that is able to investigate the matters fully and, in the end, inspire public confidence in the outcome."

> *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (2006), at 276-78

10. Justice O'Connor expressed reservations about a "full-scale public inquiry" into the cases of Messrs. Almalki, El Maati and Nureddin and, in the end, did not recommend such an approach. He stated:

> One of the options put forward by the intervenors was that the three cases be considered through a public inquiry – possibly a second state of this Inquiry. I would not recommend adopting that approach. My experience in this Inquiry indicates that conducting a public inquiry in cases such as these can be a tortuous, time-consuming and expensive exercise. Quite properly, the public inquiry process brings with it many procedural requirements for openness and fairness. In Chapter VIII, I describe some of the difficulties encountered in this Inquiry and how I addressed them. Rather than repeat those descriptions here, I will simply say that there are more appropriate ways than a full-scale public inquiry to investigate and report on cases where national security confidentiality must play such a prominent role. These types of cases are likely to occur from time to time, and it is not practical or realistic to respond by calling a public inquiry each time.
>
> *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (2006), at 277-78

11. In his Policy Review report, Justice O'Connor makes recommendations for an independent arm's-length review mechanism for RCMP national security activities. He also makes recommendations for addressing review problems arising from integrated operations. Should the

Government of Canada adopt these recommendations, this will obviate the need for a public inquiry "each time" these types of cases occur.

12. In the absence of such mechanisms at the present time, the Government of Canada has created the present Inquiry into the cases of Messrs. Almalki, El Maati and Nureddin under Part I of the *Inquiries Act*. Part I of the Act is headed "Public Inquiries". Section 2 of the Act provides as follows regarding public inquiries:

> The Governor in Council may, whenever the Governor in Council deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof.

13. It is submitted that commissions of inquiry serve several important public interests. As Sopinka J. explained in *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*:

> One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or scepticism, in order to uncover "the truth". Inquiries are, like the judiciary, independent; unlike the judiciary, they are often endowed with wide-ranging investigative powers. In following their mandates, commissions of inquiry are, ideally, free from partisan loyalties and better able than Parliament or the legislatures to take a long-term view of the problem presented. Cynics decry public inquiries as a means used by the government to postpone acting in circumstances which often call for speedy action. Yet, these inquiries can and do fulfil an important function in Canadian society. In times of public questioning, stress and concern they provide the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem and to be a part of the recommendations that are aimed at resolving the problem. Both the status and high public respect for the commissioner and the open and public nature of the hearing help to restore confidence not only in the institution or situation investigated but also in the process of government as a whole. They are an excellent means of informing and educating concerned members of the public.
>
> This important characteristic was commented upon by Ontario Supreme Court Justice S. Grange following his inquiry into infant deaths at the Toronto Hospital for Sick Children:

> I remember once thinking egotistically that all the evidence, all the antics, had only one aim: to convince the commissioner who, after all, eventually wrote the report. But I soon discovered my error. They are not just inquiries; they are *public* inquiries . . . I realized that there was another purpose to the inquiry just as important as one man's solution to the mystery and that was to inform the public. Merely presenting the evidence in public, evidence which had hitherto been given only in private, served that purpose. The public has a special interest, a right to know and a right to form its opinion as it goes along. [Emphasis in original.]
>
> (S.G.M. Grange, "How Should Lawyers and the Legal Profession Adapt?", in A. Paul Pross, Innis Christie and John A. Yogis, eds., *Commissions of Inquiry* (1990), 12 *Dalhousie L.J.* 151, at pp. 154-55)

The public inquiry has been even more broadly characterized as serving a particular "social function" within our democratic culture:

> . . . a commission . . . has certain things to say to government but it also has an effect on perceptions, attitudes and behaviour. Its general way of looking at things is probably more important in the long run than its specific recommendations. It is the general approach towards a social problem that determines the way in which a society responds to it. There is much more than law and governmental action involved in the social response to a problem. The attitudes and responses of individuals at the various places at which they effect the problem are of profound importance.
>
> What gives an inquiry of this kind its social function is that it becomes, whether it likes it or not, part of this ongoing social process. There is action and interaction . . . Thus this instrument, supposedly merely an extension of Parliament, may have a dimension which passes beyond the political process into the social sphere. The phenomenon is changing even while the inquiry is in progress. The decision to institute in inquiry of this kind is a decision not only to release an investigative technique but a form of social influence as well.
>
> (Gerald E. Le Dain, "The Role of the Public Inquiry in our Constitutional System", in Jacob S. Ziegel, ed., *Law and Social Change* (1973), 79, at p.85)

In *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, Cory J. cited this discussion in *Phillips* and then added the following:

> Undoubtedly, the ability of an inquiry to investigate, educate and inform Canadians benefits our society. A public inquiry before an impartial and independent commissioner which

> investigates the cause of tragedy and makes recommendations for change can help to prevent a recurrence of such tragedies in the future, and to restore public confidence in the industry or process being reviewed.
> *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 at paras. 62-63
> *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440 at para. 30

14. It is submitted that commissions of inquiry have been as effective as they have proven to be because of the participation they afford to affected parties, and because they conduct their proceedings in the public eye.

15. It is submitted that the factual determinations the Commissioner is directed to make in Paragraph (a) of the Terms of Reference are clearly matters of public concern. There is a compelling public interest in how the Government of Canada safeguards national security. There is an equally compelling public interest in knowing the extent to which Canadian officials are implicated in serious human rights abuses abroad.

16. Paragraphs (d) and (e) of the Terms of Reference call upon the Commissioner to balance privacy and openness in conducting this Inquiry. The Commissioner may conduct public hearings "if satisfied that it is essential to ensure the effective conduct of the Inquiry." Drawing on Justice O'Connor's recommendations, it is submitted that the effective conduct of the Inquiry has two fundamental elements: the Inquiry must be able to investigate the matters fully and the Inquiry must, in the end, inspire public confidence in the outcome.

17. The key countervailing consideration weighing against the openness of this proceeding is the need to protect matters affecting national security or other public interest privileges. Indeed, it appears to have been the complications that ensued from the need to deal with claims of national security confidentiality in a public inquiry that made the Arar Inquiry "a tortuous, time-consuming and expensive exercise." At the same time, it is clear that Justice O'Connor found much to recommend in a process that was a public as possible. He wrote:

> In this chapter, I have described a number of steps taken in the Inquiry to address difficulties arising from a process in which some information could not be made public, the most important being the use of independent counsel during the *in camera* hearings. However, I do not suggest that steps such as these are an adequate substitute for public hearings, in which the public can scrutinize the evidence first-hand and affected parties are able to participate. If it is possible to hold a public hearing, this should always be the first option.
>
> Openness and transparency are hallmarks of legal proceedings in our system of justice. Exposure to public scrutiny is unquestionably the most effective tool in achieving accountability for those whose actions are being examined and in building public confidence in the process and resulting decision. As Fish J. aptly put it in the *Toronto Star* case, "In any constitutional climate, the administration of justice thrives on exposure to light – and withers under a cloud of secrecy."
>
> *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (2006), at 304
> *Toronto Star Newspapers Ltd. v. Ontario*, [2005] 2 S.C.R. 188 at para. 1

18. It is submitted that public confidence in the outcome if this Inquiry will be greatest if the Inquiry conducts itself, to the greatest extent possible, in an open and public manner. This essential link between openness and public confidence is reflected in the open court principle. While developed in respect of judicial proceedings, it is submitted that this principle applies equally to public inquiries under the *Inquiries Act*.

19. The Supreme Court of Canada has recognized on many occasions the fundamental

importance of the open court principle. It has also developed a general analytical framework for determining when limitations on the open court principle are justified by other compelling interests.

20. It is submitted that the open court principle is "a hallmark of a democratic society." It has "long been recognized as a cornerstone of the common law" and is "inextricably linked to the freedom of expression guaranteed by s.2(b) of the *Charter*." The freedom of the press to report on judicial proceedings is a core value. It engages not only the rights of the press under s.2(b) but also the constitutional right of the public to receive information. The press "plays a vital role in being the conduit through which the public receives that information regarding the operation of public institutions." The open court principle, "to put it mildly, is not to be lightly interfered with." Limitations on this principle are to be determined in accordance with the *Dagenais*/*Mentuck* test.

> *Re Vancouver Sun*, [2004] 2 S.C.R. 332 at paras. 24-26
> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835
> *R. v. Mentuck*, [2001] 3 S.C.R. 442
> *Toronto Star Newspapers Ltd. v. Ontario*, *supra*, at paras. 24-33

21. There are many reasons for the special status accorded to the open court principle. Foremost among them is that public scrutiny is essential to the proper administration of justice. As Iacobucci J. held in *Sierra Club v. Canada (Minister of Finance)*:

> The importance of public and media access to the courts cannot be understated, as this access is the method by which the judicial process is scrutinized and criticized. Because it is essential to the administration of justice that justice is done and is <u>seen</u> to be done, such public scrutiny has been described as "the very soul of justice", guaranteeing that justice is administered in a non-arbitrary manner: *New Brunswick*, at para. 22.
> *Sierra Club v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 at para. 52

22. Similarly, Iacobucci and Arbour JJ. observed in *Re Vancouver Sun*:

> Public access to the courts guarantees the integrity of judicial processes by

demonstrating "that justice is administered in a non-arbitrary manner, according to the rule of law": *Canadian Broadcasting Corp. v. New Brunswick (Attorney General), supra*, at para. 22. Openness is necessary to maintain the independence and impartiality of courts. It is integral to public confidence in the justice system and the public's understanding of the administration of justice. Moreover, openness is a principal component of the legitimacy of the judicial process and why the parties and the public at large abide by the decisions of courts.

Re Vancouver Sun, supra, at para. 25.
Canadian Broadcasting Corp. v. New Brunswick (Attorney General), [1996] 3 S.C.R. 480 at paras. 20-26.

23. In *Attorney General (Nova Scotia) v. MacIntyre*, Dickson J. (as he then was) held:

I find it difficult to accept the view that a judicial act performed during a trial is open to public scrutiny but a judicial act performed at the pretrial stage remains shrouded in secrecy.

The reported cases have not generally distinguished between judicial proceedings which are part of a trial and those which are not. *Ex parte* applications for injunctions, interlocutory proceedings, or preliminary inquiries are not trial proceedings, and yet the 'open court' rule applies in these cases. The authorities have held that subject to a few well-recognized exceptions, as in the case of infants, mentally disordered persons or secret processes, all judicial proceedings must be held in public. The editor of *Halsbury's* 4th Edition states the rule in these terms:

> In general, all cases, both civil and criminal, must be heard in open court, but in certain exceptional cases, where the administration of justice would be rendered impracticable by the presence of the public, the court may sit in camera [Vol. 10, para. 705, at p.316].

Attorney General (Nova Scotia) v. MacIntyre, [1982] 1 S.C.R. 175 at 186

24. It is submitted that the public interest in the proper administration of justice is the same for every kind of judicial proceeding. In the particular case of search warrants, which are part of the investigative pre-trial process of the criminal law, Dickson J. held:

At every stage the rule should be one of public accessibility and concomitant judicial accountability; all with a view to ensuring there is no abuse in the issue of search warrants, that once issued they are executed according to law, and finally that any evidence seized is dealt with according to law. A decision by the Crown not to prosecute, notwithstanding the

> finding of evidence appearing to establish the commission of a crime may, in some circumstances, raise issues of public importance.
>
> In my view, curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance.
>
> *Attorney General (Nova Scotia) v. MacIntyre*, *supra*, at 186

25. Where the actions of public officials have occurred out of the public eye, the policy argument in favour of public accountability is even stronger. Thus in the case of search warrants, Dickson J. held in *MacIntyre*: "Initial secrecy surrounding the issuance of warrants may lead to abuse, and publicity is a strong deterrent to potential malversation." Judges play a critical role as defenders of individual freedoms and human rights against the actions of the state. They are given an essential role in authorizing investigative steps that may impinge upon constitutionally protected interests so that they can act as a check against state excess, thereby protecting both the integrity of the investigation and the interests of its target. The public has a keen interest in seeing that this role is being discharged properly. Public scrutiny helps to ensure that it is.

> *Attorney General (Nova Scotia) v. MacIntyre*, *supra*, at 183-84
> *Therrien (Re)*, [2001] 2 S.C.R. 3 at para. 108
> *Application under s.83.28 of the Criminal Code (Re)*, [2004] 2 S.C.R. 248 at paras. 86, 91

26. The conduct of public authorities, including those responsible for authorizing or carrying out investigations into criminal offences or threats to national security, is by definition a matter of public interest. It is submitted that the foregoing discussion of the open court principle and the values it represents applies equally to an Inquiry such as this.

E) Participation in the Private Proceedings

27. To the extent that the Commissioner considers that portions of the Inquiry cannot be

conducted in public, Mr. Nureddin requests that he be represented by counsel in the private proceedings.

28. The model he proposes has been adapted from that used in the Air India trial. The Supreme Court of Canada describes that model in *Charkaoui v. Canada (Citizenship and Immigration)* as follows:

> Crown and defence counsel in the recent Air India trial (*R. v. Malik*, [2005] B.C.J. No. 521 (QL), 2005 BCSC 350) were faced with the task of managing security and intelligence information and attempting to protect procedural fairness. The Crown was in possession of the fruits of a 17-year-long investigation into the terrorist bombing of a passenger aircraft and related explosion in Narita, Japan. It withheld material on the basis of relevance, national security privilege and litigation privilege. Crown and defence counsel came to an agreement under which defence counsel obtained consents from their clients to conduct a preliminary review of the withheld material, on written undertakings not to disclose the material to anyone, including the client.
>
> *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at para. 78

29. Michael Code, one of the defence counsel in the Air India trial, has also described the procedure followed in that trial:

> In essence, it involved the Crown and CSIS providing defence counsel with access to the relevant CSIS files on an undertaking of confidentiality. The undertaking allowed counsel to examine the files but ordered them not to disclose the information to anyone, including to their clients. Counsel would then negotiate with the Crown and CSIS as to which documents were of real importance to the defence, such that the s.38 [of the *Canada Evidence Act*] "public interest disclosure" would outweigh any competing "public interest in non-disclosure". This process of examination and negotiation allowed counsel for the parties to resolve every disclosure dispute involving potentially privileged documents. Once resolved, the disclosed documents could then be shared with the accused clients and the non-disclosed documents were returned to CSIS.
>
> "The Role of the Independent Lawyer and Security Certificates", *Criminal Law Quarterly*, Vol. 52, No. 1 (November 2006), at 107

30. The Supreme Court of Canada recognized that the Air India model might not be suitable for

security certificate hearings under the *Immigration and Refugee Protection Act* because disclosure "in a specific trial, to a select group of counsel on undertakings, may not provide a working model for general deportation legislation that must deal with a wide variety of counsel in a host of cases." It is submitted that this concern does not arise given the mandate of this Inquiry, which permits the tribunal to develop rules of procedure for a specific proceeding in which a select group of counsel are participating.

Charkaoui v. Canada (Citizenship and Immigration), supra, at para. 78

31. Further, while the procedure adopted in the Air India trial was directed to the specific issue of disclosure in a criminal trial, it is submitted that there is no reason why it could not be adapted to fit the broader mandate of this Inquiry.

32. The importance of participation by affected parties in processes leading to factual determinations was underscored by the Supreme Court of Canada in *Charkaoui*:

> 63. The fairness of the *IRPA* procedure rests entirely on the shoulders of the designated judge. Those shoulders cannot by themselves bear the heavy burden of assuring, in fact and appearance, that the decision on the reasonableness of the certificate is impartial, is based on a full view of the facts and law, and reflects the named person's knowledge of the case to meet. The judge, working under the constraints imposed by the *IRPA*, simply cannot fill the vacuum left by the removal of the traditional guarantees of a fair hearing. The judge sees only what the ministers put before him or her. The judge, knowing nothing else about the case, is not in a position to identify errors, find omissions or assess the credibility and truthfulness of the information in the way the named person would be. Although the judge may ask questions of the named person when the hearing is reopened, the judge is prevented from asking questions that might disclose the protected information. Likewise, since the named person does not know what has been put against him or her, he or she does not know what the designated judge needs to hear. If the judge cannot provide the named person with a summary of the information that is sufficient to enable the person to know the case to meet, then the judge cannot be satisfied that the information before him or her is sufficient or

> reliable. Despite the judge's best efforts to question the government's witnesses and scrutinize the documentary evidence, he or she is placed in the situation of asking questions and ultimately deciding the issues on the basis of incomplete and potentially unreliable information.
>
> *Charkaoui v. Canada (Citizenship and Immigration), supra*, at para. 78

33. The analogy between security certificate proceedings under the *Immigration and Refugee Protection Act* and this Inquiry is not perfect. The respective proceedings have very different consequences for affected parties. The Commissioner has the benefit of the assistance of Commission Counsel and broader access to information than does a judge presiding over an adversarial proceeding. Nevertheless, it is submitted that the key impediment to accurate fact-finding in the security certificate context – the lack of participation by someone instructed by and representing the interests of the affected person – would be replicated here if there is no one in the private hearings representing Messrs. Almalki, El Maati and Nureddin.

F) Disclosure to Participants Who Are Not Permitted into the Private Proceedings

34. It is submitted that participants who are not permitted into the private proceedings should be kept informed of those proceedings to the greatest extent possible. The extent to which they are able to assist the Commissioner is necessarily dependent on the extent to which they are aware of the information before the Inquiry.

35. Obviously, not everything heard in private can be made public. At the same time, presumably not everything first heard in private must be kept secret. It is submitted that an

appropriate model for balancing affected interests (including the public interest in open proceedings) and determining the extent to which disclosure may be ordered may be found in the procedures adopted by Justice O'Connor in the Arar Inquiry. Assistance may also be found in the procedures adopted under s.38 of the *Canada Evidence Act* in *R. v. Ribic* (2003), 185 C.C.C. (3d) 129 (Fed. C.A.).

G) General Rules of Procedure and Practice

36. Mr. Nureddin relies on the foregoing submissions. He does not offer submissions on any particular aspects the draft General Rules of Procedure and Practice.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: April 11, 2007

"John Norris"

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JOHN NORRIS

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_____

BARBARA JACKMAN

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