



Press release

Release of the Public Report of the Iacobucci Internal Inquiry

Ottawa, October 21, 2008 – The Honourable Frank Iacobucci, the Commissioner appointed to conduct the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, announced today the release by the Government of Canada of the Inquiry's public report. Both the public report, and a confidential report containing information subject to national security confidentiality, were submitted to the Governor in Council on October 20, 2008, in accordance with the Inquiry's Terms of Reference.

In a statement that frames the report, the Commissioner observes: "At its core, the Inquiry [involved] the appropriate response of our democracy in Canada to the pernicious phenomenon of terrorism, and ensuring that, in protecting the security of our country, we respect the human rights and freedoms that so many have fought to achieve." The mandate of the Inquiry was to examine the actions of Canadian officials relating to three Canadian citizens, Mr. Almalki, Mr. Elmaati and Mr. Nureddin, who were detained and mistreated in Syria and (in the case of Mr. Elmaati) in Egypt, and to determine (1) whether there were any links between the actions of Canadian officials (particularly in relation to the sharing of information with foreign countries) and the detention and any mistreatment of the three men, (2) whether, if so, these actions were deficient in the circumstances, and (3) whether there were any deficiencies in the provision of consular services to the three men while they were in detention. The Commissioner emphasizes in the report that the Inquiry was not mandated to investigate, and did not investigate, the conduct of Mr. Almalki, Mr. Elmaati and Mr. Nureddin, and that nothing in the report should be taken as an indication that any allegation that might have been made against any of them is founded.

The Commissioner's findings are directed to the actions of three institutions of the Government of Canada – CSIS, the RCMP and the Department of Foreign Affairs and International Trade (DFAIT). After reviewing all of the evidence obtained by the Inquiry concerning the conduct of Canadian officials, the Commissioner concludes: "I found no evidence that any of these officials were seeking to do anything other than carry out conscientiously the duties and responsibilities of the institutions of which they were a part. It is neither necessary nor appropriate that I make findings concerning the actions of any individual Canadian official, and I have not done so."

... / 2

Concerning the actions of Canadian officials with respect to Mr. Elmaati, the Commissioner does not find any direct link between any of these actions and Mr. Elmaati's detention in Syria. However, he does conclude that certain instances of information sharing by Canadian officials likely contributed to the detention, so that the detention in Syria can be said to have resulted indirectly from these actions, and that these actions were deficient in the circumstances. He does not find that Mr. Elmaati's detention in Egypt resulted directly or indirectly from any action of Canadian officials.

After careful review, the Commissioner finds that Mr. Elmaati suffered mistreatment in both Syria and Egypt that amounted to torture, as that term is defined in the *UN Convention Against Torture*. He does not conclude that any mistreatment resulted directly from any action of Canadian officials. He finds, however, that mistreatment resulted indirectly from several actions of CSIS and the RCMP, and that these actions were deficient in the circumstances. He also concludes that there were a number of deficiencies in the actions of DFAIT in providing consular services to Mr. Elmaati.

Concerning the actions of Canadian officials with respect to Mr. Almalki, the Commissioner does not find that Mr. Almalki's detention in Syria resulted directly from any of these actions. On the evidence available to him, he is unable to determine whether or not any action of Canadian officials resulted indirectly in Mr. Almalki's detention. The Commissioner did not have available to him any evidence from Syria, since Syria, like the United States, Egypt and Malaysia, failed to provide any information to the Inquiry, despite requests that it do so.

After careful review, the Commissioner finds that Mr. Almalki suffered mistreatment in Syria that amounted to torture, as that term is defined in the *UN Convention*. He does not conclude that any mistreatment resulted directly from any action of Canadian officials. He finds, however, that mistreatment resulted indirectly from two actions of the RCMP, and that these actions were deficient in the circumstances. He also concludes that the actions of DFAIT to provide consular services to Mr. Almalki were deficient in several respects.

Concerning the actions of Canadian officials with respect to Mr. Nureddin, the Commissioner does not find that Mr. Nureddin's detention in Syria resulted directly from any of these actions. However, he concludes that certain instances of information-sharing by CSIS and the RCMP likely contributed to the detention, so that the detention can be said to have resulted indirectly from these actions. He finds that some, though not all, of this information-sharing was deficient in the circumstances.

After careful review, the Commissioner finds that Mr. Nureddin suffered mistreatment in Syria that amounted to torture, as that term is defined in the *UN Convention*. He does not conclude that any mistreatment resulted directly from any action of Canadian officials. He does find that the same sharing of information that likely contributed to Mr. Nureddin's detention also likely contributed to mistreatment. The Commissioner finds no deficiencies in the actions of DFAIT to provide consular services to Mr. Nureddin.

As required by its Terms of Reference, the Inquiry was an internal inquiry, and presumptively private. This requirement originated in the comments of Justice Dennis O'Connor in the Report of the Arar Inquiry. Justice O'Connor recommended that the cases of Mr. Almalki, Mr. Elmaati and Mr. Nureddin be reviewed, but in a manner more appropriate than through a full scale public inquiry. He noted that when issues of national security confidentiality are involved, a full scale public inquiry can be complicated, protracted and costly. Because, as the Commissioner notes in the report, there was no template for conducting an inquiry of this kind, he adopted within the framework of his Terms of Reference a process aimed at enabling him to carry out a private but thorough investigation while allowing all Inquiry participants, including Mr. Almalki, Mr. Elmaati and Mr. Nureddin, to have input into the fact-finding process. In the report, the Commissioner states: "This process ... resulted, in my view, in an investigation into the actions of Canadian officials with respect to Mr. Almalki, Mr. Elmaati and Mr. Nureddin that was thorough, efficient and fair."

The key elements of the process included:

- granting status and funding to Mr. Almalki, Mr. Elmaati and Mr. Nureddin, and Intervenor status (and in some cases funding) to a number of interested organizations;
- requesting and obtaining extensive production of relevant documents – some 40,000 in total – from the Government of Canada;
- holding a series of meetings with Mr. Almalki, Mr. Elmaati and Mr. Nureddin and their counsel, and with Intervenor organizations and their counsel, to obtain their input on witnesses who should be interviewed and questions that should be pursued;
- conducting detailed interviews of Mr. Almalki, Mr. Elmaati and Mr. Nureddin, under affirmation, about their detention and treatment;
- conducting interviews under oath or affirmation of 44 other witnesses, most of them officials with CSIS, the RCMP and DFAIT;
- holding public hearings on the interpretation of certain important aspects of the Terms of Reference, including the question whether the Commissioner should determine whether the mistreatment of the three men amounted to torture;
- holding public hearings on the standards that should be applied in assessing the conduct of Canadian officials;
- disclosing to counsel for Mr. Almalki, Mr. Elmaati and Mr. Nureddin and counsel for the Intervenors draft factual narratives, based on the documents and interviews and other information obtained by the Inquiry, obtaining their detailed comments and suggestions on the drafts and taking these suggestions and comments into account in finalizing the report; and
- receiving final and reply submissions from counsel for Mr. Almalki, Mr. Elmaati and Mr. Nureddin and counsel for the Intervenors, based on the draft factual narratives that they had reviewed.

According to John Laskin, Lead Inquiry Counsel, “Many of these procedures were unprecedented in any Canadian inquiry. The input that the three men and the Intervenor organizations provided through these and other means made an important contribution to the work of the Inquiry.”

With one exception, the Commissioner is satisfied that the information contained in the confidential version of his report, but omitted from the public report, is properly subject to national security confidentiality. If it is ultimately determined that further information can be publicly disclosed, he intends to take the necessary steps to supplement the public report.

The complete text of the public report, and copies of related documents, will be available on the Inquiry’s website, www.iacobucciinquiry.ca.

Established under Part I of the Inquiries Act by the Minister of Public Safety, the Inquiry's mandate was to determine whether the detention of Mr. Almalki, Mr. Elmaati and Mr. Nureddin in Syria or Egypt resulted from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries, whether those actions or the actions of Canadian consular officials were deficient in these cases and whether any mistreatment of these three individuals in Syria or Egypt resulted from deficiencies in the actions of Canadian officials.

Media contact: Francine Bastien
Tel: 613.947.7606
Cell: 613.299.6554
E-Mail: fbastien@bellnet.ca