

Internal Inquiry into the Actions of
Canadian Officials in Relation to
Abdullah Almalki, Ahmad Abou-
Elmaati and Muayyed Nureddin



Enquête interne sur les actions des
responsables canadiens relativement à
Abdullah Almalki, Ahmad Abou-Elmaati
et Muayyed Nureddin

General Rules of Procedure and Practice

Definitions

1. In these Rules, unless otherwise provided or the context otherwise requires, the following definitions apply:
 - (a) Commissioner: the Honourable Frank Iacobucci, Q.C., appointed by Order-in-Council P.C. 2006-1526;
 - (b) Documents: records made or stored in physical or electronic form, including written, electronic, audiotape, videotape, digital reproduction, photography, maps, graphs, microfiche or any other data and information recorded or shared by means of any device;
 - (c) Inquiry: the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, established by Order-in-Council P.C. 2006-1526;
 - (d) Inquiry Counsel: counsel engaged to assist the Commissioner with the Inquiry;
 - (e) Inquiry Office: mailing address P.O. Box 1208, Station B, Ottawa, Ontario K1P 5R3, e-mail address inquiry.admin@bellnet.ca, fax number 613-992-2366;
 - (f) National Security Confidentiality: the confidentiality of information that, if it were disclosed to persons or bodies other than the Government of Canada, would be injurious to international relations, national defence, national security, or the conduct of any investigation or proceeding;
 - (g) Participant: a person granted an opportunity to participate in the Inquiry in accordance with the Terms of Reference and the Inquiry's Rules of Procedure and Practice Respecting Participation and Funding;
 - (h) Person: an individual, group, government, agency or any other entity;
 - (i) Terms of Reference: the terms of reference of the Inquiry set out in Order-in-Council P.C. 2006-1526.

General

2. The Commissioner may amend or dispense with compliance with these Rules as he considers necessary to ensure that the Inquiry is thorough, expeditious and fair.
3. Participants and witnesses and their counsel are deemed to undertake to adhere to these Rules, and may raise any issue of non-compliance with the Commissioner.
4. The Commissioner may deal with a breach of these Rules or a breach of appropriate decorum as he sees fit, including by revoking or limiting the opportunity of a participant or counsel to participate in the Inquiry.
5. Subject to the *Inquiries Act*, the Terms of Reference and these Rules, including Rule 2, the conduct of and the procedure to be followed in the Inquiry are in the control and discretion of the Commissioner.
6. These Rules shall be interpreted and applied in a manner that ensures the protection of National Security Confidentiality.
7. Participants and witnesses and their counsel are deemed to undertake that any information and documents that they receive in the course of the Inquiry, except information and documents that have been disclosed in a portion of the Inquiry that the Commissioner has determined should be conducted in public or in the Commissioner's separate public report, will be kept confidential and used solely for the purpose of the Inquiry.

Applications

8. Except in exigent circumstances, applications to the Commissioner shall, unless the Commissioner directs otherwise, be made in writing on adequate notice to all participants with an interest in the subject matter of the application, and filed with the Inquiry Office. In the ordinary course at least seven days' notice should be provided. The Commissioner may determine the adequacy of notice.
9. A participant wishing to receive notice of applications shall provide the Inquiry Office with an e-mail address. Participants' e-mail addresses will be posted on the Inquiry website. Notice will be effective if given by e-mail to the posted e-mail address.
10. The Commissioner or Inquiry Counsel may require that an application be supported by affidavit.

Conduct of the Inquiry in Private

11. In accordance with the Terms of Reference, the Inquiry, including the review of documents and the taking of oral evidence, shall be conducted in private, except

where the Commissioner is satisfied that it is essential to ensure the effective conduct of the Inquiry that specific portions of the Inquiry be conducted in public.

12. The Commissioner may make a determination that it is essential to ensure the effective conduct of the Inquiry that specific portions of the Inquiry be conducted in public
 - (a) on his own motion, with adequate notice to all participants with an interest in the matter;
 - (b) on application by Inquiry Counsel; or
 - (c) on application by a participant or other interested person.

Evidence

13. The Commissioner may receive any evidence or information that he considers to be relevant to the mandate of the Inquiry whether or not the evidence or information would be admissible in court.
14. Participants are requested to advise Inquiry Counsel as soon as possible of the name of and contact information for any person who may have information relevant to the mandate of the Inquiry and, if possible, to provide summaries of the information relevant to the mandate of the Inquiry that the person may have.

Documents

15. While the Commissioner may as he considers appropriate require the production of documents, all participants are requested to provide to the Inquiry, as soon as possible and through Inquiry Counsel, all documents in their possession, power or control that are relevant to the mandate of the Inquiry.
16. Where the Commissioner requires the production of documents, copies of documents may be produced unless Inquiry Counsel request original documents, in which case originals shall be produced.
17. Unless a different procedure is set out in the *Canada Evidence Act*, the Terms of Reference or an agreement between the Commissioner and a participant, where the Commissioner requires the production of documents and the person to whom the requirement is directed objects to the production of any document on the ground of privilege,
 - (a) the person shall specify the privilege claimed and the basis for the claim;
 - (b) the document shall be produced in unredacted form to Inquiry Counsel;
 - (c) the production of the document will not constitute a waiver of any applicable privilege;

- (d) Inquiry Counsel shall inspect the document, in the presence of the person or the person's counsel if the person wishes to be present personally or by counsel, and advise the person of their view as to the validity of the claim; and
- (e) if the person does not accept the view of Inquiry Counsel, the person may apply to the Commissioner for a ruling; and
- (f) the Commissioner may if necessary inspect the document and may rule on the claim, or refer the matter to the Federal Court for determination.

Interviews

- 18. Inquiry Counsel may interview any person who may have information or documents relevant to the mandate of the Inquiry.
- 19. If a person to be interviewed by Inquiry Counsel is or was employed by a participant, Inquiry Counsel shall notify counsel for the participant of the proposed interview, unless the person to be interviewed has advised Inquiry Counsel that he or she does not wish counsel for the participant to be notified.
- 20. A person interviewed by Inquiry Counsel is entitled to have counsel present at the interview, and counsel may offer assistance to Inquiry Counsel in eliciting information or documents relevant to the mandate of the Inquiry.
- 21. If Inquiry Counsel determine that a person interviewed will be called as a witness, Inquiry Counsel will prepare a statement of the witness' anticipated evidence, and, subject to protecting National Security Confidentiality, provide a copy of the statement to the witness for review before the witness testifies.

Proposed Findings

- 22. To facilitate the expeditious conduct of the Inquiry, Inquiry Counsel may prepare proposed findings for the Commissioner's consideration based on documents, interviews and 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.
- 23. The proposed findings shall set out with reasonable particularity the basis for the findings that are proposed.
- 24. After considering the proposed findings and any other information that he considers relevant, the Commissioner may, subject to section 13 of the *Inquiries Act*, adopt the proposed findings as his findings.

Calling of Witnesses

25. In the ordinary course Inquiry Counsel will call the witnesses who give oral evidence in the Inquiry. Inquiry Counsel have a discretion to refuse to call or present evidence. A witness may be called more than once.
26. A participant may apply to the Commissioner for a direction that a witness be called.
27. Inquiry Counsel may issue and serve a subpoena or summons requiring that a person give evidence.
28. Before a witness testifies, the Commissioner shall determine which participants are entitled to be present when the witness testifies.

Pre-examination Disclosure of Anticipated Evidence and Documents

29. Before a witness testifies, Inquiry Counsel shall where practicable, subject to protecting National Security Confidentiality, provide to counsel for any participants entitled to be present when the witness testifies a statement of the witness' anticipated evidence and the documents to which Inquiry Counsel intend to refer in examination in chief.
30. Any participants entitled to be present when a witness testifies shall at the earliest opportunity, and in any event no later than two business days before the testimony of the witness begins, provide copies of any documents that they propose to file as exhibits or to which they otherwise intend to refer during the examination of the witness to Inquiry Counsel and, subject to National Security Confidentiality, to other participants entitled to be present.

Examination of Witnesses

31. Witnesses will testify under oath or affirmation unless the Commissioner directs otherwise.
32. Witnesses are entitled to have counsel present while they testify, subject to protecting National Security Confidentiality. Unless the Commissioner directs otherwise, the participation of counsel for a witness will be limited to making any appropriate objections and to examining the witness in accordance with Rule 33 (c).
33. Unless the Commissioner directs otherwise, the examination of a witness will be conducted as follows:
 - (a) Inquiry Counsel will lead the witness' evidence in chief and may ask both leading and non-leading questions;

- (b) participants may then cross-examine the witness to the extent of their interest, in the order agreed by the participants and Inquiry Counsel or, if they are unable to reach agreement, by the Commissioner;
- (c) after cross-examinations, counsel for a witness may examine the witness, and may ask both leading and non-leading questions; and
- (d) Inquiry Counsel may then re-examine.

Access to Transcripts

- 34. The transcript of any portion of the Inquiry conducted in private will be accessible only to persons authorized in writing by or on behalf of the Commissioner. Authorization may be provided generally or to particular transcripts or portions of transcripts.
- 35. The transcript of any portion of the Inquiry conducted in public will be posted on the Inquiry's website. A hard copy will also be accessible at the Inquiry Office.

Submissions

- 36. The Commissioner may give directions or issue further rules relating to submissions by participants and Inquiry Counsel.