RULING ON NATIONAL SECURITY CONFIDENTIALITY

I. INTRODUCTION

1. I have been appointed by Order in Council P.C. 2004-48 (the Terms of Reference) to investigate and report on the actions of Canadian officials in relation to Mr. Maher Arar including the following:

   - the detention of Mr. Arar in the United States,
   - the deportation of Mr. Arar to Syria via Jordan,
   - the imprisonment and treatment of Mr. Arar in Syria,
   - the return of Mr. Arar to Canada, and
   - any other circumstances directly related to Mr. Arar that the Commissioner considers relevant to fulfilling this mandate.

2. This ruling relates to the first summary of information that has been received *in camera* that should, in my opinion, be released to the public. This summary, which I will sometimes refer to as the "final" summary, is attached as Appendix A. This is also the first opportunity for me to address issues of National Security Confidentiality (NSC) by reference to particular information over which the government claims NSC and which, in my opinion, should be made public.

Background: law and process

The Terms of Reference

3. In the Order in Council, I have been directed to take all steps necessary to prevent the public disclosure of information that would, in my opinion, be injurious to international relations, national defence or national security (NSC). The Order in Council directs me:

> ....
>
> (k) ... to take all steps necessary to prevent disclosure of information that, if it were disclosed to the public, would, in the opinion of the Commissioner, be injurious to international relations, national defence or national security and, where applicable, to conduct the proceedings in accordance with the following procedures, namely,
>
> > (i) on the request of the Attorney General of Canada, the Commissioner shall receive information *in camera* and in the absence of any party and their counsel if, in the opinion of the Commissioner, the disclosure of that information would be injurious to international relations, national defence or national security,

(ii) in order to maximize disclosure to the public of relevant information, the Commissioner may release a part or a summary of the information received *in camera* and shall provide the Attorney General of Canada with an opportunity to comment prior to its release, and

(iii) if the Commissioner is of the opinion that the release of a part or a summary of the information received *in camera* would provide insufficient disclosure to the public, he may advise the Attorney General of Canada, which advice shall constitute notice under section 38.01 of the *Canada Evidence Act*.

The relevant provisions of the *Canada Evidence Act* were appended to my ruling of July 29, 2004.

The NSC process to date

4. Rules 43 to 56 of the Inquiry Rules of Procedure and Practice set out the process of the Inquiry as it relates to NSC claims. Rules 55 and 56 deal with the release of a part or a summary of the information that has been received at the *in camera* hearings. I elaborate on relevant aspects of that process in the body of this ruling.

5. In the early stages of the Inquiry, I appointed Mr. Ron Atkey as an *amicus curiae* to test the government's NSC claims. Mr. Atkey has expertise in matters of national security. From 1984 until 1989, he served as the first Chairman of the Security Intelligence Review Committee (SIRC), a body established to oversee the activities of the Canadian Security Intelligence Service (CSIS). Mr. Atkey, assisted by Mr. Gordon Cameron, has participated in the NSC proceedings leading up to this ruling and I will refer to their role in the course of the ruling.

6. In May 2004, the parties and intervenors had the opportunity to make written submissions about the case law and principles that should apply to my determinations of NSC. I thank them for those submissions. They were helpful to me in making this ruling.

7. In my ruling of July 29, 2004, I decided to receive all of the information over which the government claims NSC in one sequence, *in camera*, rather than by switching back and forth between public and *in camera* hearings. I also indicated that I would make an omnibus ruling after the *in camera* hearings are complete, setting out all of the information that, in my opinion, can be disclosed to the public under either section (k)(i) or section (k)(iii) of the Terms of Reference. That continues to be my intention.

8. In my ruling of July 29, I did not foreclose the possibility that I might release rulings with respect to some of the government's NSC claims before all of the evidence has been heard *in camera*. In particular, I indicated that I might choose to make such a ruling if I reached the conclusion that I had heard sufficient information to decide, under section (k)(i), that disclosure of particular information would not be injurious to any of the elements of NSC.

9. The first round of the *in camera* hearings, dealing with evidence relating to CSIS, is now complete. I am satisfied that I can, at this point, rule on the government's NSC claims over some of the information received at those hearings. My ruling is based upon both sections (k)(i) and (k)(iii) of the Terms of Reference and my reasons are set out below. I have attached as Appendix A a summary of the information that, in my view, should be disclosed publicly at this stage of the Inquiry. Additional *in camera* hearings, dealing with evidence relating to the Royal Canadian Mounted Police (RCMP), are underway.

The preparation of the summary

10. I will describe the steps leading to the preparation of the summary in some detail in order to shed light on the difficulties that we have encountered in preparing and releasing a summary. Throughout, Commission staff have

attempted to reasonably accommodate the positions of the government so as to avoid litigation and the ensuing delay at this stage of the Inquiry, while at the same time trying to provide disclosure of some information in accordance with the Terms of Reference. The fact that information heard *in camera* is not disclosed in Appendix A does not necessarily mean that it will not be disclosed at a later date.

11. Following the *in camera* hearings of evidence relating to CSIS, Commission staff prepared a draft summary that was provided to government counsel and to Mr. Atkey. Both government counsel and Mr. Atkey had the opportunity to comment, and Commission counsel convened a meeting to identify areas of dispute. Government counsel objected that the summary contained information that was subject to an NSC claim, and that some portions of the summary did not fairly present the evidence. Government counsel also commented that the summary should not be as specific as was proposed by the Commission, and provided an alternative draft summary that was more general. A copy of the government's proposed summary is attached as Appendix B.

12. In response to the comments of government counsel and Mr. Atkey, the Commission prepared a revised draft summary. Further discussions ensued and, although the areas in dispute were narrowed, there remained several

significant areas about which there continued to be disagreement. Commission counsel prepared another revised draft representing its position and the government highlighted on that draft the areas to which it objected. That draft with the highlighted areas of objections is attached as Appendix C.

13. This draft summary formed the basis of a hearing before me on October 29, 2004. At the hearing, the government was given the opportunity to call evidence to support its NSC claims and to make submissions as to the contents of the summary. Unfortunately, for personal reasons, Mr. Atkey was unable to attend the hearing. However, he was involved in the process leading up to the hearing. Prior to the hearing, Mr. Atkey indicated that he agreed that the first summary prepared by the Commission (which formed the basis for the draft summary, in Appendix C, that was considered at the October 29th hearing) could be disclosed to the public in accordance with the Terms of Reference.

14. Following the hearing, Mr. Atkey appointed Mr. Gordon Cameron to assist him in his role as *amicus curiae*. Mr. Cameron has extensive experience with matters of national security. He has been an outside counsel for SIRC for the past ten years. At my request, Mr. Atkey and Mr. Cameron reviewed the material leading to the preparation of the summary. They also reviewed the evidence upon which the government relied for its NSC claims, as well as the

oral and written submissions of the government made at the October 29th hearing. Mr. Atkey has not changed his view that the draft summary in Appendix C may be disclosed to the public.

15. This ruling follows the hearing of October 29. As I outline below, I have removed some of the information contained in the draft summary, Appendix C, on which the hearing was based. The final summary, Appendix A, contains information that, in my view, should be disclosed at this stage of the Inquiry.

16. The final summary, with this ruling, will be provided to the government, ten days before any release to the public or Mr. Arar, so that the government has an opportunity to respond in accordance with the Terms of Reference and s.38 of the *Canada Evidence Act*. Subsequently, the Commission will provide a copy of the summary to counsel for Mr. Arar to allow an opportunity for comment on its fairness and balance from Mr. Arar's perspective. After any objections of Mr. Arar's counsel have been considered and addressed the summary will, if appropriate, be released publicly.

17. Because this is the first summary produced by the Commission, the preparation and release of the summary has been extenuated. In future, I anticipate that the process should be simplified without interfering with the

government's or the *amicus curiae*'s opportunity to participate in accordance with the Inquiry Rules of Procedure and Practice.

18. I want to repeat that the fact that information received at the *in camera* hearings has not been disclosed in the final summary does not foreclose disclosure of such information in a future summary or other public release. Some information was excluded from the final summary for reasons other than NSC, including in some instances the need for fair and balanced disclosure. I anticipate releasing that information at a future date. Moreover, in furtherance of timely disclosure, Commission staff excluded some information from the draft summary in order to minimize NSC disputes. Finally, I have excluded some information from the final summary because I considered it better to defer my ruling on that information until later in the Inquiry. For these reasons, the fact that information received at the *in camera* hearings has been excluded from the final summary should not be construed as a ruling by me that release of the information would be injurious to any of the elements of NSC.

II. THE GOVERNMENT'S NSC CLAIMS

A. The submissions of the government

19. The draft summary in Appendix C formed the basis for the hearing before me on October 29. The government's objections to disclosure of information in that summary are based on two types of NSC claims. The first, which is highlighted in yellow in Appendix C, flows from the concern that disclosure would reveal information about CSIS investigations. In its written submissions of October 27, the government indicated that the disclosure of this information would:

> identify or tend to identify Service interests in individuals, groups or issues, including the existence or absence of past or present files or investigations, the intensity of investigations, or the degree or lack of success of investigations.

20. The government emphasized the mosaic effect of the disclosure of any information about CSIS investigations. By this, the government meant that the release of apparently innocuous small pieces of information could assist and inform the often sophisticated individuals, who are involved in the activities being investigated, of what CSIS is doing and what CSIS knew or

did not know. The government pointed to the fact that the consideration of whether the disclosure of information might be injurious must be a forward-looking exercise and that one cannot know today what might come to light in the future, nor can one know what harm the release of even small pieces of information might have on future investigations. For this reason, CSIS routinely refuses to publicly disclose information about past or ongoing investigations, or information acquired about individuals. Indeed, CSIS does not confirm or deny any such matters. The government submitted that, even when that information is in the public domain, there could be injury if CSIS confirms its accuracy.

21. The information in Appendix C that the government submits falls within this first broad NSC claim – injury to investigative interests – can conveniently be divided into three sub-categories.

a) [redacted] (The draft summary does not disclose the details or the nature of such information).

b) [redacted]

c) [redacted] Paragraphs 41 and 42 of Appendix C are the primary source of this information.

22. The second type of government NSC claim, highlighted in red in Appendix C, falls generally within the heading of information sharing, primarily with foreign agencies. In particular, the government indicated that the disclosure of this information would:

> reveal information received in confidence from foreign agencies or governments and/or compromise the relationship that CSIS or other Canadian government departments and agencies have with foreign governments and their departments and agencies.

23. At the hearing on October 29, government counsel elaborated on the government's submissions in relation to this NSC claim, and referred to the earlier evidence of Messrs. Hooper, [redacted]. Those CSIS witnesses testified to the damage that would be done to CSIS'

relationships with foreign agencies if CSIS' information sharing arrangements with foreign agencies were revealed, or if information received from foreign agencies was publicly disclosed in violation of caveats to protect the information.

24. The government's evidence stressed the importance of protecting relationships with other agencies in order to ensure the exchange of information. In this age of global terror, the sharing of information among police forces and security and intelligence agencies is critical. Information sharing relationships are based on trust and confidence that the information shared, and often the relationship itself, will not be disclosed. Breaches of these understandings undermine relationships and can interfere with Canadian agencies' access to information that is vital to protecting our national security interests.

B. The Arar case: a highly unusual situation

25. The circumstances in which the government's NSC claims must be considered are highly unusual, perhaps unique.

26. The highly unusual nature of this situation results from two factors: first, a significant amount of information over which the government claims NSC is

already in the public domain; second, the decisions about the government's NSC claims are being made in the course of a public inquiry.

1. Information in the public domain

27. Normally, NSC issues are determined in circumstances where there has been little if any public disclosure of the information over which NSC is claimed. Thus, the potential for injury to the elements of NSC arises because the information, if disclosed, will inform the public and particularly those whose activities are suspect of the information at issue. That, however, is not this case. There has been extensive media coverage about Mr. Arar and the events surrounding his detention in the United States, deportation to Syria via Jordan, imprisonment in Syria, and return to Canada. Further, there is information in the public domain with respect to the national security investigation that is connected to Mr. Arar.

28. Shortly after Mr. Arar was detained in New York, on September 26, 2002, the media became aware of his circumstances and there were periodic media reports about what was happening to him, including the fact that he had been sent to Syria, where he was imprisoned. The media coverage increased alongside the efforts, spearheaded by Mr. Arar's wife, Ms. Monia Mazigh, to have him released from imprisonment in Syria. After Mr. Arar's return to

Canada in October 2003, Mr. Arar made public statements describing his detention and his imprisonment in Syria. The Arar story was front-page news across the country. Controversy grew about the role of Canadian officials in the Arar matter. Mr. Arar literally became a household name. The level of public interest and the uncertainty about what happened led the government to establish this public inquiry in February 2004.

29. The information already made public about Mr. Arar and what happened to him, and about investigations connected to him, has originated from a number of different sources.

a) From time to time, government officials have made public statements that were reported in the media or in official sources about Mr. Arar and his circumstances. Some media reports also attributed statements to unidentified government officials.

b) In response to requests under the *Access to Information Act*, the government has released documents, or parts of documents, that contain information about Mr. Arar ("ATIP release").

c) Through this Inquiry, additional information has been released to the public with the concurrence of the government. Most importantly, the

report of the Security Intelligence Review Committee (the "SIRC report", which reviewed CSIS' role in relation to Mr. Arar) and the report of Chief Superintendent Brian S. Garvie (the "Garvie report", which reviewed, in the context of the RCMP public complaints process, the RCMP's actions in relation to Mr. Arar) have been entered as exhibits at this Inquiry, and publicly released in redacted form. The unredacted portions of those reports reveal information over which the government does not assert an NSC claim.

d) There have been many other documents entered as exhibits at the Inquiry, some at the public hearings and others at the *in camera* hearings. Those entered at the public hearings are now in the public domain. The unredacted portions of documents entered at the *in camera* hearings, i.e. the portions over which the government does not assert an NSC claim, have been made available to Mr. Arar and his counsel and will be publicly released at some point. For practical purposes, the information in unredacted portions of these documents should be considered to be in the public domain.

e) On November 4, 2003, Mr. Arar made his first public statement outlining the circumstances of his detention in New York, his transfer to Syria, and the mistreatment to which he says he was subjected in Syria. Shortly

after, an article appeared in the Ottawa Citizen reporting on statements that Mr. Arar allegedly made during his imprisonment in Syria. [ ] I do not rely on any of the information in the Ottawa Citizen article in the reasoning contained in this ruling.

30. To illustrate, the information that is already in the public domain, often damaging to Mr. Arar, includes the following:

- Mr. Arar was connected to an RCMP national security investigation that involved individuals also of interest to U.S. authorities. Members of the RCMP took steps to continue the investigation after Mr. Arar's return to Canada in October 2003.

- Shortly after Mr. Arar was deported from the United States, the RCMP reportedly told U.S. authorities that the RCMP had no information concerning any threat associated with Mr. Arar. RCMP Deputy Commissioner Loeppky later stated that Mr. Arar was "subject of a

national security investigation in Canada" and that he "remains a subject of great interest". Other RCMP officials have stated that Mr. Arar was a "person of interest".

- The Solicitor General reportedly disclosed that Canada shared information about Mr. Arar with U.S. authorities, and the Foreign Affairs Minister reportedly disclosed that both CSIS and the RCMP did so.

- Canadian officials received confirmation from American officials that Mr. Arar was deported to Syria and that he might have been sent to Jordan. DFAIT learned that Mr. Arar was transferred from the U.S. to Jordan by private plane. DFAIT at one point reported that, on arrival in Jordan, Mr. Arar was detained for questioning by Jordanian authorities instead of being transferred to Syria and that Jordan handed Mr. Arar over to Syria only on October 21.

- In November 2002, an unidentified party provided DFAIT with a verbal briefing of the results of the Syrian investigation of Mr. Arar to that point. A copy of a written report of this information, in Arabic, was translated and forwarded to CSIS.

- In January 2003, the Department of Foreign Affairs and International Trade (DFAIT) informed CSIS that the Syrians believed that Mr. Arar was involved with the Muslim Brotherhood, as well as other Syrian allegations. DFAIT also informed CSIS that, when Syrian officials were asked about Mr. Arar's future, they responded that Mr. Arar would likely be detained for a lengthy period and prosecuted.

- After Mr. Arar's return to Canada, Syria's Ambassador to Canada reportedly stated: "we didn't find complete [redacted] concrete evidence of his link."

31. I have appended, in Appendix D, a lengthier summary of some of the information about Mr. Arar that is in the public domain. I have laid out the information in some detail because I anticipate that the nature of prior public disclosure will be relevant, not only to the present summary, but also to future summaries. It is important to emphasize that the fact that information has been reproduced, both below and in Appendix D, should not be taken to mean that I have found that any of the conclusions that are drawn about Mr. Arar are warranted.

2. The context of a public inquiry

32. The second unusual factor about the case of Mr. Arar is that the government's NSC claims are being raised in the context of a public inquiry. No doubt it was partly because of information about Arar that had become public, and the level of controversy that surrounded what happened to Mr. Arar, that the government sought to investigate what had happened. Significantly, the government chose to pursue a public inquiry, rather than a private investigation, into these events.

33. The relevant part of my mandate, contained in section (k) of the Terms of Reference, is set out above. Section (k) directs me to conduct a two-stage process. First, under section (k)(i), I am to decide whether the disclosure of information would be injurious to any of the elements of NSC: international relations, national defence or national security. The second step is set out in section (k)(iii): if I decide that the disclosure of certain information would be injurious to the elements of NSC, then I must consider whether the disclosure of a part or a summary of the information would provide insufficient disclosure to the public. If I conclude that disclosure would be insufficient, then I may so advise the Attorney General and that advice shall constitute notice under s. 38.01 of the *Canada Evidence Act*.

34. For the sake of efficiency, I address both steps – NSC and the public interest in disclosure – in this ruling. The draft summary, Appendix C, was prepared taking into consideration both section (k)(i) and section (k)(iii). Thus, the summary was intended to include information, the disclosure of which would not be injurious to the elements of NSC; as well as information, the disclosure of which would be injurious, but which should be disclosed publicly under section (k)(iii). This ruling therefore addresses both stages of the process under section (k) of the Terms of Reference.

35. Section (k)(i) of the Terms of Reference requires me, at the first stage, to consider whether the disclosure of information would be injurious to any of the elements of NSC. I am satisfied that the fact that this is a pubic inquiry is not relevant to a decision under section (k)(i). Under that section, I am to hear *in camera* all information that, in my opinion, would be injurious to the elements of NSC. The factors that affect that determination are the same whether the decision is made in the context of a public inquiry or in some other proceeding.

36. The second stage of the process takes place under section (k)(iii). Here, I am satisfied that the fact that the decision is made in the context of a public inquiry is relevant.

37. In itself, the calling of a public inquiry is a significant event in a parliamentary democracy. Public inquiries are often called in the wake of a tragedy or a scandal. When the public's confidence in public officials or institutions has been shaken, the public's demand to know all of the details about what has occurred is often the catalyst for the calling of a public inquiry. Because a public inquiry is established to be independent of the government, it has the advantage of bringing to light, in an impartial and independent way, those facts that are necessary to assess the situation that triggered public concern. One of the great advantages of a public inquiry is that it can expose all of the facts, many of which might not be revealed in normal public discourse.

38. As important as the Commissioner's report, at the end of an inquiry, is the process of public exposure of the facts that allows the public to make its own evaluation over time. I agree with Justice Samuel Grange, who conducted two public inquiries, when he said in "How should lawyers and the legal profession adapt?" (1999) 12 *Dalhousie Law Journal* 151 at 154-55:

> 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 inquires... 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.

39. I recognize that this Inquiry is different from others in that it is concerned with many matters that, for reasons of NSC, cannot be publicly disclosed. Even so, I think it important that I bear in mind, under section (k)(iii), the fundamental point that the government established a public inquiry, rather than a private investigation, in the case of Mr. Arar.

40. Moreover, the government specifically directed me to opine on what constitutes sufficient public disclosure. In forming that opinion, it is important to consider the public nature of the Inquiry and the importance of providing as much information as possible to the public. Consistent with this approach, section (k)(ii) of the Terms of Reference, speaks of maximizing disclosure. It reads:

> In order to maximize disclosure to the public of relevant information, the Commissioner may release a part or a summary of the information received *in camera* and shall provide the Attorney General of Canada with an opportunity to comment prior to its release [redacted].

41. Thus, I am satisfied that I should consider as one of the factors in the balancing exercise, under section (k)(iii), the fact that the sufficiency of public disclosure is being determined in the context of a public inquiry.

42. That said, the interest in public disclosure must be balanced against the fact that disclosures of information, pursuant to section (k)(iii), are disclosures that I have determined would be injurious, at least to some extent, to an element of NSC. Otherwise disclosure could take place under section (k)(i).

43. Clearly, some injuries to the elements of NSC are more serious than others. For example, there should very rarely, if ever, be a disclosure of information that would reveal, even indirectly, the identity of a human source. Similarly, I would only rarely, if ever, consider disclosing information that would harm relationships with foreign law enforcement or security and intelligence agencies. Those relationships are essential to effectively protecting our national security. However, other NSC-related interests may be less compelling. Moreover, I must bear in mind that, where the information at issue is already in the public domain, most, if not all, of the injurious effect of disclosure may have already occurred.

44. Further, I must consider, under section (k)(iii), the need for fairness so as to ensure, as best I can, that the disclosure or non-disclosure of information – for reasons of NSC – is not unfair to those individuals who may be affected. In my consideration of the present summary, I speak here of fairness to Mr. Arar in light of detrimental information about him that is already in the public domain, and nothing more.

45. I recognize that, in addition to considering the public interest in disclosure and the need for fairness to individuals about whom there is damaging information already in the public domain, there may be other factors that come into play in the decision-making process under section (k)(iii). However, for purposes of determining what may be disclosed in the present summary, I need to consider only those two.

C. The two-stage process

1. Section (k)(i)

46. I want to address three aspects of the decision-making process under section (k)(i). First, the onus is on the government to establish its NSC claims. By this I mean that the government cannot merely assert a claim for NSC. Rather,

the government must establish an NSC claim by introducing evidence to support the claim.

47. In *Canada (Attorney General)* v. *Ribic* [2003] F.C.J. No. 1964 (F.C.A.), the Court stated at para. 18-21:

> Where the judge is satisfied that the information is relevant, the next step pursuant to section 38.06 [*Canada Evidence Act*] is to determine whether the disclosure of the information would be injurious to international relations, national defence or national security. This second step will also involve, from that perspective, an examination or inspection of the information at issue. The judge must consider the submissions of the parties and their supporting evidence. He must be satisfied that executive opinions as to potential injury have a factual basis which has been established by evidence: *Home Secretary* v. *Rehman*, [2001] H.L.J. No. 47, [2001] 3 WLR 877 at 895 (HL(E))....
>
> ....
>
> An authorization to disclose will issue if the judge is satisfied that no injury would result from public disclosure. The burden of convincing the judge of

the existence of such probable injury is on the party opposing disclosure on that basis.

48. The requirement that the government lead evidence to support an NSC claim has an additional dimension. The evidence must be sufficiently particular to support the claim of injury flowing from disclosure of the piece of information that is in question. In *K.F. Evans Ltd.* v. *Canada (Minister of Foreign Affairs)* [1996] F.C.J. No. 30 (F.C.T.D.), Rothstein J. concluded that this requirement for sufficient particularity was not met. He stated at para. 34 that "[t]he determination the Court must make requires some explanation of the linkage between disclosure of specific information and harm to Canadian interests" and that what he was dealing with was largely an "exaggeration of the harm to Canadian interests from disclosure which [redacted] subsections 37(1) and 38(1) of the *Canada Evidence Act* were enacted to curtail."

49. All of that said, I recognize that some of the government's NSC claims will be obvious and that the need to call evidence may be dispensed with. In other cases, evidence previously called by the government will be sufficient to support its NSC claim. However, the underlying requirement is that the government supports its NSC claims with evidence.

50. Further, for the government to succeed on a claim of NSC, it must show that disclosure "would be injurious" to one of the elements of NSC. That is a different and more stringent test than that found in some statutory provisions, such as section 38.01 of the *Canada Evidence Act* and section 15 of the *Access to Information Act*.

51. The *Canada Evidence Act*, s. 38.01, requires persons to notify the government of Canada about the anticipated disclosure in court proceedings of what they believe to be "potentially injurious information", which is defined as "information of a type that, if it were disclosed to the public, could injure international relations or national defence or national security" [emphasis added].

52. The *Access to Information Act*, s. 15(1), permits the head of a government institution to refuse to disclose information contained in government records requested under the Act if such disclosure "could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities..." [emphasis added].

53. Counsel for Mr. Arar submitted that the use of the phrase "would be injurious" in the Terms of Reference connotes a higher threshold for

establishing that information should be held *in camera* at this Inquiry than in the case of the statutory provisions reproduced above. I agree. On the face of the Terms of Reference, the use of the less speculative term "would" in the Terms of Reference does connote a higher threshold. This interpretation is supported by an examination of the structure of the *Canada Evidence Act*.

54. In the case of the *Canada Evidence Act*, the initial determination that disclosure could injure triggers a duty to notify the Attorney General of Canada. The Attorney General then has the opportunity, pursuant to s. 38.04(1), to apply to the Federal Court for an order to prevent disclosure of the information. At that stage, pursuant to s. 38.06, the judge of the Federal Court may authorize disclosure unless the judge concludes that disclosure "would be injurious to international relations or national defence or national security" [emphasis added]. Thus, the judge has the discretion to permit disclosure unless a higher threshold is satisfied in support of non-disclosure. The language that is used at the s. 38.06 stage is similar to the language in the Terms of Reference.

55. It is consistent with the basic purpose of this public inquiry – to address public concern about the conduct of Canadian officials – that the threshold for concluding that information will be heard *in camera* should be higher than the threshold that is applied in deciding, in the first instance, whether a piece of

information should be disclosed under the *Access to Information Act* or in court proceedings in general. The purpose of this Inquiry, and the connection of that purpose to a discrete set of events, makes it appropriate to be cautious about applying an overly speculative approach to the determination that information should be received *in camera*. The threshold of injury test in a section (k)(i) determination requires a probability that disclosure would be injurious, rather than a mere possibility of injury.

56. Finally, I want to comment on what deference, if any, should be paid to the government's NSC claims. The wording of the mandate is important. For convenience, I repeat the relevant language of section (k):

> (k) ... to take all steps necessary to prevent disclosure of information that, if it were disclosed to the public, would, in the opinion of the Commissioner, be injurious to international relations, national defence or national security and, where applicable, to conduct the proceedings in accordance with the following procedures, namely,
>
> > (i) on the request of the Attorney General of Canada, the Commissioner shall receive information in camera and in the absence of any party and their counsel if, in the opinion of the Commissioner, the disclosure of that information would be injurious

to international relations, national deference or national security, ... [emphasis added]

57. The mandate directs that I form an opinion with respect to the government's NSC claims. Given that the integrity of a public inquiry depends, to a large extent, on its independence from government, it makes sense that that should be the case. As I said above, a decision that the disclosure of information would be injurious to NSC must be based on evidence. Thus, the mere assertion of an NSC claim is not by itself sufficient to find that an NSC claim is established.

58. I will consider the evidence called by the government to support its NSC claims very carefully and I will attach weight to the expertise of those who give that evidence. As is frequently said in the case law regarding NSC claims, it is the executive – in this case CSIS – which is the expert in the field of NSC; the judiciary is not. I accept that the government and its witnesses have access to special information and expertise, and they have a protective role with respect to public security and safety. See for example *Canada (Attorney General) v. Ribic, supra*, at para. 18-21.

59. Further, I accept that the injury required to shield information from disclosure under section (k)(i) need not be great and that I should bear in mind the

mosaic effect that Addy, J. described in his oft-quoted passage in *Henrie v. Canada (Security Intelligence Review Committee)* (1988), 53 D.L.R. (4th) 568, aff'd (1992) 88 D.L.R. (4th) 575 (F.C.T.D.), at page 578-9:

> It is of some importance to realize that an 'informed reader', that is, a person who is both knowledgeable regarding security matters and is a member of or associated with a group which constitutes a threat or a potential threat to the security of Canada, will be quite familiar with the minute details of its organization and of the ramifications of its operations regarding which our security service might well be relatively uninformed. As a result, such an informed reader may at times, by fitting a piece of apparently innocuous information into the general picture which he has before him, be in a position to arrive at some damaging deductions regarding the investigation of a particular threat or of many other threats to national security....

60. All of that said, I need to be vigilant about the possibility that the government could attempt to use the opportunity to claim NSC in order to delay or avoid the release of embarrassing information, the disclosure of which would not be injurious to any of the elements of NSC.

61. In *Goguen* v. *Gibson* [1984] F.C.J. No. 13 (F.C.A.), Marceau J. made comments which were adopted by Rothstein J. in *K.F. Evans Ltd.* v. *Canada (Minister of Foreign Affairs)*, *supra*, and which I think are apt to the situation that I must address [adopted in *K.F. Evans* at para. 33]:

> While a confidence of the Queen's Privy Council, with the precisions given in the Act, is readily identifiable, a possible danger to international relations or national security is not so easily capable of being recognized and, as a result, may be feared and evoked somewhat too quickly, albeit in perfect good faith. That is clearly apparent in the field of international relations, but is also true, although to a somewhat lesser degree, in that of national security, and if the possibility of improper use has always been present in the former system, it will, of course, be even more present in the new one where the objection is available not only to ministers but to any person claiming interest.
>
> The new rule as I view it, is aimed at thwarting those possible exaggerations, over-statements or abuses by giving the Court the authority to examine the information and to declare that the public interest invoked as the basis for objecting to disclosure, although related to international relations or national security, is, in any given instance,

outweighed in importance by the public interest in requiring disclosure for the due administration of justice.

2. Section (k)(iii)

62. I also want to deal with the question of the onus under section (k)(iii). As mentioned, when I embark upon the analysis of particular information under section (k)(iii), I will have accepted that disclosure of the information would, to some extent at least, be injurious to NSC. Because of that, I am satisfied that I should approach the determination under section (k)(iii) on the basis that the factors which weigh in favour of disclosure must outweigh the injurious effect to the elements of NSC.

63. I note that there will in many cases be no party, other than Commission counsel and the *amicus curiae*, to assert the public interest in disclosure. This is because the *in camera* hearings at which these decisions will be made are held in the absence of the parties and intervenors, with the exception of the government and its officials. The mandate of the *amicus curiae* is to test the government's NSC claims and to make submissions that the *amicus curiae* considers appropriate with respect to the disclosure of information over which NSC is claimed. In doing so, the *amicus curiae* will consider section (k)(iii) as well as section (k)(i) of the Terms of Reference. In addition to the *amicus*

curiae, I have also asked Commission counsel to play a role in the evidentiary process relating to NSC claims and to make submissions, where appropriate, with respect to the public interest.

64. The public interests that are relevant to the decision-making process under section (k)(iii) do not always lend themselves to proof by way of evidence. Both the public's need to know and the need for fairness will often lend themselves more readily to submissions based on the substantive evidence at the Inquiry rather than proof by way of specific evidence. For this reason, in many cases I do not see a need for Commission counsel or the *amicus curiae* to call additional evidence to support their submissions regarding the public interest in disclosure. That said, government counsel should be informed of the basis upon which submissions will be made in favour of disclosure under section (k)(iii) so that they may have an opportunity to address those submissions.

III. THE DRAFT SUMMARY

65. I will now address the government's NSC claims, as set out in the draft summary attached as Appendix C. Those claims seek to protect from injury in relation to two interests: (i) CSIS' investigative interests and (ii) CSIS' information sharing interests, particularly with agencies in foreign countries.

A. CSIS' investigative interests

66. As mentioned above, the government's NSC claims in this area can be divided into three sub-categories. [redacted]

67. In my view, the disclosure of information in this sub-category would not be injurious to any of the elements of NSC.

68. Information that falls within this sub-category is found throughout the draft summary in Appendix C. [redacted]

- [redacted]."

- [redacted] (Note that the words [redacted]" were added at the request of the government, in place of the word "about" in the Commission's draft.)

Other examples are found in paragraphs 25 and 29 of the draft summary in Appendix C.

69. I begin by noting that the disclosure in the form that I propose provides very little, and only very general, information. Moreover, this information is already in the public domain. Publicly available information directly discloses that CSIS acquired information about Mr. Arar during the critical time period shortly after Mr. Arar was imprisoned in Syria. The redacted SIRC report, which was vetted by CSIS in order to protect national security concerns, disclosed that, in November 2002, an unidentified party provided Ambassador Pillarella with a verbal briefing of the results of the Syrian investigation of Mr. Arar to that point. A copy of the written report of this information, in Arabic,

was translated and forwarded to CSIS in November 2002. Further, in a report dated January 8, 2003, DFAIT informed CSIS that the Syrians believed that Mr. Arar was involved in the Muslim Brotherhood, along with other allegations. The public record clearly shows that CSIS acquired information about Mr. Arar shortly after his imprisonment in Syria.

70. Moreover, the public record is replete with references to the RCMP's national security investigation relating to Mr. Arar. Publicly available information discloses that the RCMP was looking at Mr. Arar from the start of 2002; that the RCMP communicated with U.S. authorities during Mr. Arar's detention in New York from September 26 to October 8, 2002; that as of June 2003, when Mr. Arar was still in prison in Syria, Mr. Arar was the subject of a national security investigation in Canada and a person "of great interest" to the RCMP; and that in October 2003 Mr. Arar continued to be a person of interest and arrangements were made to conduct surveillance of him after he returned to Canada. In addition, the public record makes clear that, in order to protect Canada's security, CSIS works very closely with the RCMP and other Canadian agencies. CSIS has the primary mandate to protect Canadians' national security interests. It would be surprising indeed if CSIS did not acquire information about Mr. Arar from the RCMP.

71. Further, it is publicly known that SIRC conducted a review of CSIS' involvement with Mr. Arar and that CSIS is participating in this Inquiry. Both of those facts make clear that CSIS was involved with Mr. Arar and, given CSIS' role as a security intelligence agency, it can safely be concluded that the public knows that CSIS acquired information about Mr. Arar.

72. Moreover, the government did not call any evidence to support the submission that, given the information that is currently in the public domain about CSIS' involvement in the Arar matter, [redacted] I am satisfied that, if the disclosure of that type of information would in fact injure CSIS' investigative interests, such injury has long since occurred. Members of the public, particularly Mr. Arar and anyone who knows him, would by now have concluded that CSIS collected or received some information about Mr. Arar. I cannot conceive that there is the slightest doubt in their minds about that.

73. Let me then turn to information in the [redacted] Examples are found in paragraphs 13, 14 and 18 of the draft summary in Appendix C. [redacted]

[redacted] In his testimony at the Inquiry, Mr. [redacted] – a CSIS witness called by the government – accepted that the fact that CSIS has a database in which it stores information is not a secret. Indeed, that fact was disclosed in public testimony at this Inquiry. [redacted]

74. Insofar as the specifics in paragraphs 13, 14 and 18 are concerned, I am satisfied that the public record is such that no one, let alone Mr. Arar and anyone who knows him, would be surprised by the disclosure of the fact that in the fall of 2002, after Mr. Arar was detained and deported to Syria, [redacted]

75. Finally, in this sub-category the government objects to those parts of the summary that [redacted]

[redacted] Examples of the government's objections in this regard are found in paragraphs 15, 21, 22 and 30 of the draft summary in Appendix C.

76. Again, I do not accept that the disclosure of this type of information in the circumstances of the Arar case [redacted]

77. [redacted]

[redacted]

78. I am therefore satisfied that there would be no injurious effect to the elements of NSC, [redacted]

79. Further, pursuant to section (k)(iii), I am satisfied that the public interest in disclosure of this information, in the context of this Inquiry, overwhelms any possible damage to the elements of NSC. The same reasons that lead me to conclude that such disclosure would not be injurious to the elements of NSC also lead me to say that, if there were injury, it would be minimal.

80. On the other side, arguing in favour of public disclosure, is the fact that this is a public inquiry. I am asked to report on the actions of Canadian officials in relation to Mr. Arar. CSIS played a significant role in the events relating to Mr. Arar. In my confidential report to the government, I will be addressing the role of CSIS at length. However, the government has also requested that I

make a public report. If I am unable to comment on the fact that [redacted] even without providing details, [redacted]

81. The second sub-category of information under the [redacted] relates to information in the summary that would [redacted]

82. Out of caution, I will defer my decision on this sub-category of information until later in the Inquiry. This should not be taken as an indication that I consider that information in this sub-category may cause injury to the elements of NSC. Rather, I think I may be assisted in forming an opinion on this issue when I am addressing the potential disclosure of information about the RCMP's investigation of Mr. Arar.

83. The third sub-category relates to [redacted]

[redacted] This information is found in paragraphs 41 and 42 of the draft summary in Appendix C. I will also defer my decision with respect to [redacted]]. I will consider the release of that information later in the Inquiry.

84. [redacted]

85. [redacted]

[redacted]

86. However, Mr. Arar's case is far from the usual one. There are a number of reasons why, in my view, the above information should be disclosed in this case.

87. First, there is currently in the public domain a large amount of information concerning the assessment of Mr. Arar's status as a threat to national security. This information has come from a number of official sources including, importantly, the RCMP which conducted a national security investigation in relation to Mr. Arar. In my view, the amount of information about Mr. Arar's status currently in the public domain [redacted] Given the substantial amount of public information about Mr. Arar's status, and given that the fact that the [redacted], I fail

to see how disclosure of that assessment could in any way compromise future investigations.

88. Moreover, in this Inquiry, the government has taken the position that disclosure of the RCMP's assessments of Mr. Arar's status would not be injurious to the elements of NSC. At this point, the RCMP is the agency with the primary investigative role with respect to Mr. Arar. By way of example, when the government redacted the Garvie Report for possible NSC claims, it did not redact the RCMP's assessment of Mr. Arar that he was a person of interest or a person of great interest, or the information that Mr. Arar was the subject of a national security investigation. Moreover, the government has not claimed NSC with respect to the disclosure of several of the important details that make Mr. Arar a person of interest to the RCMP. [redacted]

89. In addition, I note that the information that I propose to disclose in this regard is largely benign. [redacted]

[redacted]. This disclosure would add nothing to information now publicly available.

90. Finally, I heard evidence about the potential injury that may result from the release of this type of information. In his testimony at the Inquiry, Mr. [redacted], who is the individual whose personal opinion is expressed in the information I propose to disclose, was asked if release of the information [redacted], as of the day of Mr. [redacted] testimony, would be injurious. After replying that the issue was debatable and that he thought Mr. Arar had already been informed of this information, Mr. [redacted] agreed that disclosure of the information would not be injurious. I accept Mr. [redacted] forthright assessment. He was an impressive witness. He was completely familiar with the case of Mr. Arar and, no doubt, fully aware of much of the information that is now in the public domain. Throughout his evidence, I was struck by his even-handedness, his fairness and his knowledge about matters relating to national security.

91. Two other witnesses gave evidence with respect to the release of the information about Mr. Arar's current status. Mr. Jack Hooper, the deputy director of CSIS, testified that, in his view, there would be injury from the release of this information. He relied upon two factors. First, he was

concerned that the disclosure be accurate and comprehensive. I believe that the disclosure I propose is accurate and comprehensive. Second, Mr. Hooper was concerned about setting a precedent and offered a type of floodgates argument. As I have said, the Arar situation is highly unusual. I do not accept that the disclosure of this information would create a precedent that would present a problem for CSIS in other circumstances. Finally, Mr. Hooper, when giving his opinion, did not address the fact that considerable evidence about Mr. Arar's status has already been publicly disclosed.

92. Mr. [redacted] testified that he considered that [redacted] would be injurious. Like Mr. Hooper, Mr. [redacted] also did not address this issue in the context of the information that is now in the public domain.

93. Where the evidence of the three witnesses differed, I prefer the evidence of Mr. [redacted]. In summary, I am of the opinion that [redacted], as set about above, would not be injurious to any of the elements of NSC.

94. There is also a compelling reason why this information should be released, if necessary, under section (k)(iii) of the Terms of Reference. That reason has to do with fairness to Mr. Arar. It is in the public interest that persons whose

interests may be affected by a public inquiry be treated fairly. The confidential nature of much of the evidence that will be heard in this Inquiry presents unique challenges to the principle of fairness. Section (k)(iii) of the Terms of Reference directs me to consider whether the release of some information heard *in camera* would provide insufficient disclosure to the public. I am satisfied that one of the factors relevant to the sufficiency of disclosure is fairness to individuals; in this instance, Mr. Arar.

95. With respect to the present summary, the relevant issue is that of fairness to Mr. Arar in light of information about him that is already in the public domain. Both before and during the Inquiry, there has been a great deal of information released about Mr. Arar's status in relation to national security. Take for example the statements of an unnamed "senior Canadian intelligence source" as reported in the Ottawa Citizen on January 30, 2004: "This guy [redacted] is not a virgin. There is more than meets the eye here.... If the Americans were ever to declassify the stuff, there would be some hair standing on end."

96. Moreover, much of the information about Mr. Arar's status was released with the government's concurrence. For example, the RCMP's assessment of Mr. Arar, and the information that there was an RCMP national security investigation linked to Mr. Arar, was revealed in portions of the Garvie Report

that were left unredacted by the government. Likewise, portions of the SIRC report, left unredacted by the government, revealed that Syrian Military Intelligence Service (SyMI) officials informed Canadians MPs that a Syrian investigation of Mr. Arar was completed and that Mr. Arar would soon stand trial on charges of belonging to Al Qaeda. The information in those unredacted portions of the Garvie report and the SIRC report were publicly released after the reports were filed as exhibits at the Inquiry, and, in the case of the SIRC report, after an additional piece of information was identified in an ATIP release.

97. By and large, the information that has been publicly disclosed about Mr. Arar's status has been damaging to him. While this Inquiry was not established to determine whether Mr. Arar was involved in terrorist activities, his status in relation to national security is nonetheless relevant, and it is certainly a matter of public discussion and speculation. In my view, the disclosure of information about Mr. Arar's status should be presented fairly. [redacted] with the concurrence of the government, in relation to the RCMP's national security investigation and [redacted] Although I have deferred, for now, the possible disclosure of the fact, favourable to Mr. Arar, that [redacted]

[redacted], I think that the public interest, and fairness to Mr. Arar, [redacted]. I see no reason to delay that disclosure.

B. CSIS' information sharing interests

98. The government's NSC claims in this area arise from a concern about damaging relations with foreign law enforcement agencies or foreign security and intelligence agencies. The concerns relate to two types of disclosure: (i) disclosure of the existence of a relationship and (ii) disclosure of information received from a foreign agency. A number of the government's NSC claims in this area can be dealt with, for now, merely by changing or deleting a word or two. In the summary that I propose to release, Appendix A, I have accepted some of the suggestions of this nature in order to defer resolution of the issue underlying these NSC claims at this time. See for example, paragraphs 17, 18, 21, 22 and 25 of the draft summary in Appendix C. For the same reason, I have deleted paragraph 23 of the draft summary in Appendix C.

99. I now turn to the remaining paragraphs over which the government claims NSC in relation to potential injury to international relations.

100. Paragraph 27 of the draft summary in Appendix C says only that a [redacted]

101. In my opinion, public disclosure of paragraph 27 would not damage relations with [redacted]. The day on which injury may have been caused by such disclosure has long passed.

102. The same holds true for paragraph 28 of the draft summary in Appendix C. Disclosure of the information [redacted] will surely come as no surprise [redacted] As I point out above, [redacted].

103. Paragraph 26 of the draft summary in Appendix C [redacted] Again, however, [redacted]

[redacted]

104. Further, I am of the opinion that the information set out in paragraphs 26, 27 and 28 of the draft summary in Appendix C is relevant to issues raised by the Terms of Reference and should also be made public pursuant to section (k)(iii). [redacted]

105. I am also of the view that paragraph 29 of the draft summary in Appendix C should be disclosed publicly. That paragraph contains information similar to information which was previously released to the public, with the government's concurrence, in the SIRC report. Notably, the information that the government chose to release in the SIRC report has much more detail, and is far more damaging to Mr. Arar's reputation.

106. Finally, in my view, paragraph 39 in the draft summary in Appendix C should be disclosed. That paragraph contains information that complements information, previously released to the public in the SIRC report, that [redacted] told Canadian officials that Mr. Arar was a member of a terrorist cell,

information that is damaging to Mr. Arar. In light of the public interest and fairness to Mr. Arar, the information in paragraph 39 should be released.

C. The NSC Process

107. I am very concerned about the complexity, time and cost involved in addressing the NSC issues covered by this ruling. The draft summary, Appendix C, was prepared so as to minimize NSC-related disputes. As a result, Commission staff left out a good deal of information that I might ultimately determine should be disclosed.

108. Even with that approach, this process has been extremely protracted. In this ruling I have set out the basis for my conclusions in some detail. I have done so in part because this is the first ruling of this sort and because I hope that, by doing so, the approach I take in this ruling will facilitate the process in future.

109. I have prepared the final summary, Appendix A, with a view to capturing the reasons set out in this ruling. Without in any way accepting the validity of the government's submissions as to accuracy and fairness, I have incorporated some of the government's proposed changes where I concluded that they did not alter the meaning of the summarized evidence.

110. It is also my intention to release this ruling to the public. I propose to release the ruling, after providing the government with a copy that contains square brackets to indicate the small amount of information in the ruling that I would not publicly release, and after giving the government an opportunity to make submissions about those portions of the ruling that could raise NSC concerns.

DATE RELEASED: December 3, 2004

Appendix "A"

Final summary of information received *in camera*

[Note: In the attached Ruling, the Commissioner authorized public release of this final summary, in its entirety, following an *in camera* National Security Confidentiality (NSC) hearing of October 29, 2004.]

Summary of Information Received at *In Camera* Hearings

NOTE:

This summary relates to information received at hearings from September 13 to 29, 2004. The summary was prepared by Commission staff and it is subject to revision and addition by the Commission.

There are a number of points that should be made clear about the purpose and content of the summary. First, the summary is not a comprehensive ruling by the Commissioner as to the portions of the evidence that can be publicly released. Rather, the summary has been prepared in order to inform the public, in general terms, about the Inquiry's *in camera* hearings. It is anticipated that a more detailed description of the evidence will be publicly released when the Commissioner makes his ruling(s) on National Security Confidentiality (NSC), either during or after the *in camera* hearings. The Commissioner will also rule, in future, on the government's NSC claims over information that is contained in the SIRC Report, the Garvie Report and other documents, as he considers appropriate. Additional information received at the Inquiry's hearings to date may also be released in future summaries.

Next, the summary does not reflect findings or factual conclusions on the part of the Commissioner. Additional information received at future hearings may differ from information that is summarized here. Any information in this summary that reflects negatively on any individual or organization should be treated as inconclusive until the end of the Inquiry.

Finally, the summary in many instances does not fully reflect the probing of witnesses, by Commission counsel, particularly where relevant information in the testimony is being disclosed at the present time. Information has been excluded or synthesized in the summary in order to present a logical account of evidence that is deemed to be both relevant and significant. The summary also excludes information that is subject to a valid NSC claim and where, in the Commissioner's opinion, the public interest in non-disclosure is not outweighed by the public interest in disclosure. Further, some information has been excluded for reasons of fairness, including consideration of the inability of individuals to cross-examine witnesses whose testimony affects those individuals, the need to account for conflicts in the evidence, and the need not to mislead the public. In particular, to avoid unfairness, information has been excluded where it involves speculation or where it may be contradicted by other evidence. The unusual nature of publishing information by summary has led the Commission to exercise caution in avoiding undue emphasis on evidence that may yet be called into question.

1. The Inquiry received information in contextual presentations by a CSIS officer and an RCMP officer. The presentations summarized ongoing CSIS and RCMP investigations relating to national security. The purpose of the presentations was to provide contextual or background information for the events involving Mr. Arar and to indicate why information that concerns ongoing investigations should be kept confidential for reasons of National Security Confidentiality. Information in the presentations was not presented for the purpose of establishing the culpability of individuals subject to those investigations, but rather for the purpose of providing a background against which the actions of Canadian officials involving Mr. Arar could be reviewed.

2. Following these contextual presentations, the Inquiry heard evidence from nine CSIS officers. Their testimony is summarized below. Any significant divergence of testimony, deemed significant, is reflected in the summary.

3. Prior to Mr. Arar's detention and deportation, [redacted]

4. Within one month of September 11, 2001, CSIS transferred to the RCMP primary responsibility for national security investigations on a number of targets that were believed to warrant criminal investigation and possible charges. [redacted] An RCMP-coordinated investigation project was created. The project was called Project O Canada and its operation in Ottawa was called Project A-O Canada.

5. This transfer of investigations allowed CSIS to focus its resources on security threats that were less clear and to search for new threats. It was a very extensive transfer of investigations by CSIS to the RCMP. The transfer of investigations was not made simply because of resource limits. CSIS believed that there was a good possibility that the RCMP would be able to lay criminal

charges against the individuals whose files had been transferred. Even with its resource allocation before the budget cutbacks of the 1990s, CSIS would have made the same decision to transfer the investigations. As yet, there have been no prosecutions of any of the individuals in question. However, criminal investigations continue as does the prospect of criminal charges under the new anti-terrorism legislation that was introduced in Bill C-36.

6. Following the transfer of investigations to the RCMP, CSIS took a less aggressive role in the investigation of the targets in question. However, CSIS continued to monitor and collect information on the targets. Following the transfer of investigations, CSIS continued to pass on to the RCMP information collected by CSIS, [redacted]

7. Information provided by CSIS in disclosure letters to the RCMP was normally subject to caveats that it be used only for the pursuit of investigative leads and that it not be used to obtain search warrants or authorizations for intercepts, or to support prosecutions.

8. CSIS exercises tight control over the dissemination of its information. After September 11, 2001, CSIS staff warned the RCMP that, when dealing with foreign security intelligence agencies, the RCMP should protect the integrity of CSIS' information. They did so to ensure that CSIS' information, contained in RCMP databases, was being appropriately protected.

9. Following the transfer of investigations to the RCMP, the RCMP provided CSIS with reports on its ongoing investigations. These reports summarized the RCMP's ongoing investigations. Some of the information provided by the RCMP, through Project A-O Canada, [redacted]

10. CSIS officers maintained an ongoing relationship with members of Project A-O Canada. Since the creation of Project A-O Canada, CSIS officers had two dozen,

or more, meetings with members of Project A-O Canada. A CSIS officer testified that CSIS was kept up to date about the RCMP's relevant ongoing investigations.

11. [redacted] The information was accompanied by written caveats that the information was loaned in confidence, and that it not be used as evidence or reclassified or disseminated, without the consent of CSIS.

12. Mr. Arar was detained at JFK Airport in New York on September 26, 2002. In a report dated September 26, 2002, the RCMP informed CSIS that Mr. Arar would be denied entry into the U.S. [redacted] a CSIS witness testified that [redacted] the report was in fact received and read by CSIS on October 3. [redacted]

13. In a report dated September 27, 2002, the RCMP informed CSIS that Mr. Arar was being detained and interrogated in New York. [redacted] a CSIS witness testified that [redacted] the report was in fact received and read by CSIS on October 3. [redacted]

14. CSIS first learned of Mr. Arar's detention from DFAIT on October 2, at which time DFAIT asked CSIS what it knew about Mr. Arar. [redacted]

15. After receiving DFAIT's request in relation to Mr. Arar, a CSIS officer advised other CSIS staff that Mr. Arar had been arrested in the U.S., that DFAIT had advised that the arrest did not appear to relate to an immigration matter, and that DFAIT had advised that "it could be much bigger".

16. Also on October 2, CSIS headquarters in Ottawa requested its Washington office to contact U.S. authorities to seek clarification about the circumstances and reason for Mr. Arar's detention in the U.S. The CSIS office in Washington, which had three staff at the time, handled hundreds of information requests per month. This request was treated as a routine request by CSIS since Mr. Arar already had consular assistance and [redacted] Also, the request was not made a priority because CSIS expected that, if Mr. Arar was deported from the U.S., he would be deported to Canada. Finally, CSIS was aware that other Canadian agencies were involved.

17. On October 7, the RCMP provided CSIS with a report that stated that "Project A-O Canada submitted a request through channels [to U.S. authorities] to allow investigators access to Maher Arar to conduct an interview". The report also stated that Mr. Arar "was detained by U.S. [redacted] upon trying to enter the U.S. on the 27th of September". [redacted]

18. [redacted]

19. CSIS learned of Mr. Arar's deportation to Syria on October 9, from two sources, one at DFAIT and the other at Project A-O Canada. DFAIT had obtained this information from the RCMP.

20. [redacted] a CSIS request for information from U.S. authorities about Mr. Arar's [redacted]

21. [redacted] a CSIS request for information from U.S. authorities about Mr. Arar's [redacted]

22. [redacted]

23. On October 14 or 15, CSIS was informed by DFAIT that Mr. Arar may be in Syria. On October 22, CSIS received confirmation from DFAIT that Mr. Arar was in Syria. Subsequently, CSIS was informed by DFAIT that Mr. Arar had advised its officials that he had been in Jordan briefly, was taken to the Syrian border, and was given to Syrian authorities.

24. [redacted]

25. [redacted]

26. [redacted]

27. After Mr. Arar's deportation, CSIS continued to receive information about Mr. Arar. On October 24, CSIS received information from DFAIT about Mr. Arar from

sources in Syria. A DFAIT report was generated which included information about statements allegedly made by Mr. Arar while in detention in Syria. On November 6, CSIS received an Arabic copy of a statement, obtained by DFAIT from a Syrian official. The statement was allegedly made by Mr. Arar while in detention in Syria.

28. For national security reasons, CSIS may have to enter into relationships with a foreign agency of a country that has a poor human rights record. In such cases, CSIS exercises caution by closely scrutinizing the content of information provided to, or obtained from, the foreign agency and by instituting checks and balances to ensure that none of the security intelligence information exchanged with the foreign agency is used in the commission of human rights violations.

29. Generally speaking, CSIS only discloses information to a foreign agency of a country in which there are human rights concerns after considering various issues. These issues include the potential use to which the foreign agency may put the information, especially if it concerns Canadians, and the degree of the threat that an affected individual poses to national security. Further, CSIS considers the ability and willingness of the foreign agency to respect caveats and protect the information from public disclosure.

30. CSIS was concerned that, if Mr. Arar was tortured or mistreated in Syria, this would make it difficult for Canada to deport other individuals to Syria.

31. By mid-January, 2003, Canadian officials became aware that Mr. Arar could be imprisoned in Syria for a very long time and that he could be sentenced to death. A CSIS witness agreed with the statement that the Canadian government should do everything possible to secure Mr. Arar's release from Syria.

32. In May, 2003, the CSIS liaison officer at DFAIT advised CSIS that the DFAIT Security and Intelligence Bureau was considering sending an officer to Syria to interview Mr. Arar. The Bureau asked CSIS whether CSIS had any questions for Mr. Arar. A CSIS witness testified that, to his knowledge, no questions were sent. Government counsel advised, at the hearing, that the contemplated interview with Mr. Arar did not take place.

33. In May and June, 2003, CSIS objected to a DFAIT proposal to send a joint ministerial letter – from both the Solicitor General and the Minister of Foreign Affairs and International Trade – to the Syrian government requesting Mr. Arar's release. In particular, CSIS objected to the proposed statement that "the Government of Canada has no evidence that Mr. Arar was involved in terrorist activity nor is there any impediment to his return to Canada". CSIS supported alternative language as follows: "Mr. Arar is currently the subject of a National Security Investigation in Canada. Although there is not sufficient evidence at this time to warrant Criminal Code charges, he remains a subject of interest. There is no Canadian government impediment to Mr. Arar's return to Canada." A letter, with modified language, was eventually sent by the Prime Minister on July 11, 2003. That letter stated: "I can assure you that there is no Canadian government impediment to [Mr. Arar's] return".

34. [redacted]

35. [redacted]

36. As mentioned above, [redacted] disclosure of which would be injurious to international relations, national defence or national security. [redacted]

37. [redacted]

38. [redacted]

39. [redacted]

40. With respect to the Commissioner's mandate to make recommendations in Part 2 of the Inquiry, several CSIS witnesses testified that the CSIS review mechanism – consisting of the Security and Intelligence Review Committee (SIRC) and the Inspector General – are very effective. The prospect of review occupies a high

position in the mindset of CSIS staff. This is very effective in keeping CSIS within the bounds of appropriate behaviour and its mandate.

41. In response to a question about caveats, a CSIS witness testified that, when applying caveats, he did not tend to think of the prospect of review by SIRC. Nevertheless, he testified that CSIS staff are very conscious of the policies that surround the use of caveated information and that there could be a review if an error occurs.

42. Another CSIS witness testified that, although the CSIS review bodies are seen as time and resource-intensive by frontline staff, from an organizational point of view the review bodies increase internal accountability. The same witness also testified that, following the implementation of the new anti-terrorism legislation post 9/11, there is now more overlap than ever before between CSIS' work and the RCMP's work in relation to national security, which is a requirement to preclude things 'falling between the cracks'.

Appendix "B"

The government's proposed summary of information received *in camera*

[Note: The government proposed this summary, as an alternative to the draft summary produced by the Commission, in advance of the *in camera* NSC hearing of October 29, 2004.]

Summary – CSIS Witness Testimony

The Commission received information in contextual presentations by Mr. Jack Hooper, the A/Deputy Director Operations, CSIS and an RCMP officer. The presentations summarized ongoing CSIS and RCMP investigations relating to national security. The purpose of the presentations was to provide contextual or background information for the events involving Mr. Maher Arar, and to indicate why information relating to concerns pertaining to ongoing investigations should be kept confidential for reasons of national security confidentiality and to ensure that those investigations are not compromised. Information in the two presentations was not presented for the purpose of establishing the culpability of individuals subject to those investigations, but rather for the purpose of providing a background against which the actions of Canadian officials involving Mr. Arar should be reviewed.

Following these contextual presentations, the Commission heard evidence from nine CSIS employees over nine days of *in camera* testimony.

To prepare for this testimony, the Commission reviewed both the corporate and non-corporate (transitory) records of CSIS – in short, all of the records CSIS identified that could relate to the work of the Commission. Additional equipment and software had to be purchased by the Service and substantial human resources were involved in conducting the searches required by the Commission.

Following a review of CSIS documentation and a series of pre-interviews with Service employees, nine CSIS employees testified *in camera* before the Commission. They were questioned extensively and in detail about the Service's counter-terrorism mandate and investigations, the Service's investigations in the area of Sunni Islamic extremism and, more particularly, on any information relating to Mr. Arar and the work of this Commission.

CSIS witnesses included: senior management (including Mr. Jack Hooper who had testified in the open hearings in June, 2004), analysts, supervisors and managers from CSIS Headquarters Counter Terrorism Branch, CSIS Ottawa Region office investigators and supervisors and CSIS Liaison Officers posted abroad during the relevant period.

During the course of the *in camera* hearings the Commission looked into the following questions raised by the SIRC:

- Was Mr. Arar a CSIS target or individual of interest to the Service before his detention in the United States in September 2002?

- What was the nature and extent of the information that CSIS possessed on Mr. Arar before his detention in the United States?

- What information did CSIS provide to domestic agencies (including the RCMP) and/or foreign agencies (including American, Jordanian and Syrian intelligence agencies) *before* Mr. Arar's detention in the United States?

- Was any information regarding Mr. Arar provided to CSIS, before his detention in September 2002, by other Government of Canada departments or agencies? Which ones?
  By foreign governments? Which ones?

- When and how did CSIS become aware that Mr. Arar had been detained in the United States?

- When and how did CSIS become aware that Mr. Arar was being deported to Syria?

- What information did CSIS receive from and/or provide to domestic and/or foreign agencies between the time Mr. Arar was detained in the United States and the time he arrived in Syria?

- What information did CSIS obtain regarding the detention and interrogation of Mr. Arar in Syria, and from whom did CSIS receive this information?

- Did any CSIS employee or human source travel to Syria during the time Mr. Arar was detained, and did any person associated with the Service have contact with Syrian officials and/or Mr. Arar during this time?

- What operational information did CSIS obtain stemming from Mr. Arar's interrogation in Syria, and did CSIS share any of this information with domestic and/or foreign agencies?

- When and how did CSIS become aware that Mr. Arar was to be returned to Canada?

- What information did CSIS receive from and/or provide to domestic and/or foreign agencies regarding the circumstances under which Mr. Arar would be returned to Canada?

- Regarding the distinction between the duties, powers, functions and responsibilities of CSIS and those of the RCMP, how is this distinction defined and applied by CSIS?

- What are the standards and policies that are in place to determine whether an individual should be a target or subject of an investigation by CSIS?

- INSET is an example of a new program that involves close collaboration between CSIS and the RCMP. Would it be accurate to conclude that the division of responsibilities between the RCMP and CSIS are more blurred today, than intended in 1984 and practices until recent years?

During the June 21-23 public hearings, counsel for Mr. Arar – Mr. Lorne Waldman – posed a number of questions the answers to which were opposed by Government Counsel on the grounds of national security. During the *in camera* hearings, the Commission received information in respect of these questions:

- Have there been times when restrictions have been placed on relationships with foreign agencies because of human rights violations?

- Do you know if CSIS agents went to Syria?

- Does CSIS have an arrangement with Syria?

- The US Department of State website lists the states that engage in torture. Do we have arrangements with any of the states listed on the US Department of State website?

- Has CSIS given information regarding an individual to regimes that engage in torture?

- Can you ascertain whether we shared information with Syria?

- Can you ascertain whether we shared it [information] on any individual?

- Did CSIS provide information on Mr. Nureddin to Syria?

- With respect to joint operations, would this also involve observing another agency
  interview a suspect? Did this happen to Mr. Arar?

- What are INSET teams? What training do they receive? What additional information can you provide?

- Do you think the deportation of Mr. Arar was appropriate?

The Commission also heard detailed evidence from several of the CSIS witnesses in support of the Attorney General of Canada's request that information be received *in camera* and *ex parte* and not be disclosed publicly on the basis that disclosure of such information would be injurious to national security.

With respect to the Commissioner's mandate to make recommendations in Part 2 of the Commission, several CSIS witnesses were asked by the Commissioner to comment on their personal views of the CSIS review mechanism, consisting of the Security Intelligence Review Committee and the Inspector General. Witnesses testified that they viewed the review mechanisms as effective. The prospect of review occupies a high position in the mind set of CSIS staff and is effective in keeping CSIS within the bounds of its statutory mandate. The Commission did not receive any evidence relating to the effectiveness of existing RCMP review mechanisms or possible alternative review mechanisms.

Appendix "C"

Draft summary of information received *in camera*

[not for public release]

[Note: The Commission produced this draft summary in order to provide a record for the *in camera* NSC hearing of October 29, 2004. It was not intended for public release. A revised version of this draft summary, authorized for public release by the Commissioner, is attached as Appendix "A".]

Appendix "D"

Summary of information that is in the public domain

The following is a collection of some of the information about Mr. Arar, often damaging to his reputation, that is already in the public domain. I have grouped the information into different categories and identified the sources of the information in each case.

Investigations relating to Mr. Arar

Official release

- The genesis of Project O Canada and Project A-O Canada (RCMP investigations) was fundamentally linked to the events that occurred post-September 11, 2001. Project O Canada began on September 27, 2001. It was made up of a task force called the Toronto Counter Terrorism Task Force, whose mandate was to investigate an alleged Al Qaeda cell (Exhibit P-19, Garvie report p.55).

- Mr. Arar was connected to an ongoing RCMP investigation that involved individuals also of interest to U.S. authorities (Exhibit P-19, Garvie report p.30).

- On October 7, 2003, A-O Canada investigators decided to request Mr. Arar's arrival location and time in Canada so that their investigation of Mr. Arar could be continued, including placing Mr. Arar under surveillance when he returned to Canada (Exhibit P-19, Garvie report, p.23).

Media reports based on statements of named government officials

- Headline: "Maher Arar still under RCMP suspicion, solicitor general hints: Easter won't divulge force's role in case" (Ottawa Citizen, October 8, 2003). Story: ".... Mr. Easter and Deputy RCMP Commissioner Garry Loeppky threw a cloud of suspicion over Mr. Arar yesterday while testifying at a Commons committee.... Mr. Easter would not say if the RCMP provided information to the U.S., saying it could compromise the integrity of a continuing investigation and violate Mr. Arar's privacy.... Mr. Easter's statement indicates the RCMP are continuing an investigation of Mr. Arar, under way since at least January 2002 when Mounties visited the computer engineer's Ottawa home."

- Headline: "Mounties eyed Arar since start of 2002: Syrian-Canadian had contact with 'persons of interest,' document says" (National Post, October 18, 2003). Story: "The federal government has acknowledged for the first time that the RCMP had Maher Arar under investigation since January, 2002, because of concerns about his associates. A government document says the Mounties were investigating Mr. Arar from the 'early days of this case' based on contacts the Syrian-Canadian allegedly had with "persons in Ottawa who were of interest to them.... The documents say U.S. law enforcement gave the Mounties 'clear evidence' of Mr. Arar's "involvement in al-Qaeda"" [citing documents obtained under ATIP].

- Headline: "Chief admits Ottawa police took part in Arar probe" (Ottawa Citizen, March 10, 2004). Story: ".... After his return home, it was revealed that the RCMP had had Mr. Arar under surveillance and had passed on information about him to U.S. officials."

Media reports based on statements of unnamed sources

- Headline: "Arar case began amid fear of attack on Ottawa" (Globe & Mail, January 16, 2004). Story: "Canadian counterterrorism agents were investigating the possibility of an al-Qaeda plot to blow up targets in Ottawa when they began a probe that would lead to the detentions of Maher Arar

and several other Canadian Muslims half a world away.... information obtained by the Globe and Mail points to a series of events that started just before the September 11, 2001, attacks in the United States. In late August, 2001, U.S. border guards discovered a single sheet of paper – a schematic map of Ottawa marking government buildings and nuclear research facilities – in an 18-wheeler driven by a man named Ahmad Abou El-Maati... Friends say he [Mr. Muayyed Nureddin] was put under scrutiny by CSIS before his capture."

- Headline: "Fears of terror cell fade as two are freed" (Globe & Mail, March 20, 2004). Story: "Fears that Ontario might have harboured a terrorist cell, once thought to have included Maher Arar, seem to have disintegrated, now that two acquaintances are to return to Canada as free men.... Abdullah Almalki was quietly released from a Syrian jail... Ahmad Abou El-Maati was freed early this year... Mr. El-Maati... had been under close scrutiny in Canada, suspected of links to terrorism.... All three men were subjects of a counterterrorism investigation in Ontario in the aftermath of the September 11, 2001 attacks. Properties were searched, but no charges were ever laid."

Information sharing with foreign governments

Official release

- On October 2, 2002, a briefing note stated that an identified party had indicated that "they" would interview Mr. Arar and then refuse his entry into the United States, and that an unidentified party had requested a list of questions from A-O Canada for "their" interview (Exhibit P-19, Garvie report p.17).

- U.S. authorities inquired as to the RCMP's level of interest in filing criminal charges against Mr. Arar and the RCMP's ability to refuse him entry into Canada (Exhibit P-19, Garvie report p.30).

- According to Mr. Stephen Harper, Leader of the Opposition: "The foreign affairs minister said for two months that the United States had offered no justification or information for the deportation of Maher Arar. Yet we now know that the RCMP knew of Arar's activities. They questioned him nearly a year ago and they were notified weeks ago by the FBI of its information" (Hansard, Oral question period, November 18, 2002).

- Syrian authorities provided the Department of Foreign Affairs and International Trade (DFAIT) with confirmation that Mr. Arar was being held and interrogated by Syrian authorities and that there was a reference to Mr. Arar having "apparently already admitted that he has connections with terrorist organizations" and that the Syrians intended to continue to interrogate him (Exhibit P-19, Garvie report, p.32).

- In response to a possible question "Did Syria provide transcripts of its interrogation of ARAR to CSIS", the Solicitor General was briefed to answer as follows (ATIP release):
    - I simply will not comment on the operational activities of CSIS.
    - The terrorist threat confronting Canada is international in scope and unrelenting. We are clearly not immune from the threat of terrorism.
    - To protect Canada and Canadians, CSIS is working very closely with the RCMP and other Canadian agencies.
    - CSIS is actively engaged with its international counter-terrorism partners and exchanges intelligence on terrorist threats to Canada and Canadians.
    - The activities of CSIS are closely reviewed by both the Security and Intelligence Review Committee, SIRC, as well as by the Office of the Inspector General of CSIS.

The briefing was prompted by a CTV news report as follows:

- A CTV news report of 24 October 2003, alleges that the Syrian government provided transcripts of its interrogation of Maher ARAR to CSIS.
- CTV reported that senior government officials have advised that the Syrian information indicates that ARAR, during his interrogation, provided information which implicated several other Canadians detained in Syria as well as in Canada under security certificates.
- CTV reported that this information pertained to Abdullah al Malki, Arwad al Bushi, Ahmed Abu al Maati and Mohamed Harket, and that it tends to indicate that there are Al Qaeda sleeper cells in Canada.

- In response to a possible question, the Solicitor General was briefed as follows (ATIP release):

  Question:

  What about the recent media reports, stating that CSIS has received transcripts of Mr. Arar's "debriefing" by Syrian officials?

  Answer:

  In order for CSIS to fulfill its mandate, CSIS actively exchanges information with foreign agencies, under defined arrangements. These types of information exchanges, as well as the arrangements that govern

them, are available to the Committee at all times and are reviewed by SIRC on an ongoing basis. I am not prepared to comment further, except to re-state that SIRC has full access to all CSIS files.

- On October 10, 2002, American officials confirmed that Mr. Arar was deported to Syria, and further information was provided that Mr. Arar might have subsequently been sent to Jordan (ATIP release).

- Syrian and Jordanian authorities confirmed that Mr. Arar was not in their countries (ATIP release).

- DFAIT learned that Mr. Arar was transferred from the U.S. to Jordan by private plane (ATIP release).

- DFAIT reported that, on arrival in Jordan, Mr. Arar was detained for questioning by Jordanian authorities instead of being transferred to Syria and that Jordan handed Mr. Arar over to Syria only on October 21 (ATIP release).

- DFAIT reported that Mr. Arar was detained by Jordanian authorities for over a week and that they may have questioned him over his alleged terrorist connections (ATIP release).

Media reports based on statements of named government officials

- Headline: "Deporting Arar was right thing to do: U.S.: Easter admits Canada gave information to U.S. about Ottawa man's alleged terror links" (Ottawa Citizen, November 20, 2003). Story: ".... In the past, Mr. Easter has ducked questions about the role Canada played in providing information on Mr. Arar, but yesterday, he said the information on Mr. Arar came 'from a number of agencies globally,' including Canada. 'I think I can say that our discussions indicate that this information didn't just come from Canada alone,' Mr. Easter said."

- Headline: "RCMP passed along Arar's name, U.S. says" (Globe & Mail, November 8, 2003). Story: ".... 'Arar first came to our attention from information from the Canadian government,' a U.S. official who has been closely involved in the case said.... it was of sufficient interest to the Federal Bureau of Investigation and U.S. immigration officials for them to place the Canadian man's name on a computerized watch list known as Viper."

- Headline: "CSIS, RCMP alerted U.S. about Arar, Powell says" (Globe & Mail, December 20, 2003). Story: "Both the RCMP and CSIS fingered Maher Arar to U.S. anti-terrorist agencies, Foreign Minister Bill Graham says he was told by

U.S. Secretary of State Colin Powell.... 'Both [CSIS and the RCMP] provided information to the U.S.,' Mr. Graham said."

Conclusions drawn by Canadian authorities about Mr. Arar

Official release

- On October 18, 2002, the RCMP stated that it had no information concerning any threat associated with/by Mr. Arar (Exhibit P-19, Garvie report, p.30).

- In November, 2002, the RCMP declined to provide Mr. Michael Edelson, counsel for Mr. Arar, with a letter stating that Mr. Arar was not wanted in Canada for any offence, that there was not a warrant for his arrest, and that he was not a suspect with respect to any terrorist crime (Exhibit P-19, Garvie report p.33).

- On June 26, 2003, Deputy Commissioner Loeppky informed another government official that Mr. Arar was "currently subject of a national security investigation in Canada" and that he "remains a subject of great interest" (Exhibit P-19, Garvie report p.41).

- In response to a possible question about Mr. Arar's links to terrorism and "clear evidence", provided by the U.S. to the RCMP, of Mr. Arar's involvement in Al Qaeda, the Solicitor General was briefed to say: "For national security reasons, we do not comment on ongoing investigations nor how they are conducted" (ATIP release).

- On October 10, 2003, RCMP Chief Superintendant Killam determined, concerning the RCMP criminal investigation with respect to Mr. Arar, that Mr. Arar was "a person of interest" and that arrangements were made to conduct surveillance on Mr. Arar upon his release and return to Canada (Exhibit P-19, Garvie report p.48). A request for surveillance resources was prepared by Project A-O Canada but not acted upon (p.70).

- Chief Superintendant Garvie concluded that the members of A-O Canada had legitimate reasons to initiate an investigation with respect to Mr. Arar and that Mr. Arar was a "person of interest," and that direct and indirect links had been established with other individuals who were suspected of being members of, or associated with, Al Qaeda (Exhibit P-19, Garvie report p.67).

Media reports based on statements of unnamed government officials

- Headline: "U.S. ready to cooperate in Arar probe: Wants assurances intelligence reports on case will remain secret" (Ottawa Citizen, January 30, 2004). Story: "…. 'This guy is not a virgin. There is more than meets the eye here,' said a senior Canadian intelligence source, speaking on background. 'If the Americans were ever to declassify the stuff, there would be some hair standing on end.'"

Conclusions drawn by U.S. authorities about Mr. Arar

Official release

- U.S. authorities concluded that Mr. Arar was a member of Al Qaeda (ATIP release).

- Chief Superintendant Garvie concluded that Mr. Arar was, at the very least, a person of interest to U.S. authorities (Exhibit P-19, Garvie report p.67).

Media reports based on statements of named government officials

- Headline: "U.S. ready to cooperate in Arar probe: Wants assurances intelligence reports on case will remain secret" (Ottawa Citizen, January 30, 2004). Story: "…. U.S. Justice Department spokesman Charles Miller said yesterday Mr. Ashcroft had 'no position' on Canada's inquiry, but maintained the U.S. considers Mr. Arar a security threat. 'We have information indicating that Mr. Arar is a member of al-Qaeda and, therefore, remains a threat to U.S. national security…. the information sought involves sensitive national security information that is classified and cannot be released publicly.'"

Media reports based on statements of unnamed government officials

- Headline: "Deporting Arar was right thing to do: U.S.: Easter admits Canada gave information to U.S. about Ottawa man's alleged terror links" (Ottawa Citizen, November 20, 2003). Story: "…. U.S. officials have been reportedly leaking details of the circumstances surrounding Mr. Arar's deportation…. The Washington Post yesterday quoted an unnamed U.S. official who claimed that Mr. Arar had the names of 'a large number of known al-Qaeda operatives, affiliates or associates' in his wallets and pockets when he was detained after arriving in New York…."

Conclusions drawn by Syrian authorities about Mr. Arar

Official release

- In November 2002, an unidentified party provided Ambassador Pillarella with a verbal briefing of the results of the Syrian investigation of Mr. Arar to that point. A copy of a written report of this information, in Arabic, was translated and forwarded to CSIS in November 2002. The report indicated that, in 1993, Mr. Arar traveled to Afghanistan (Exhibit P-18, SIRC report, p.18).

- In a report of January 8, 2003, DFAIT informed CSIS that the Syrians believed that Mr. Arar was involved with the Muslim Brotherhood (noting that this organization "has resorted to acts of political violence" and "has given rise to a number of more militant and violent organizations, including Hamas and Islamic Jihad") and that Mr. Arar was part of a terrorist cell. DFAIT also informed CSIS that, when Syrian officials were asked about Mr. Arar's future, they responded that Mr. Arar would likely be detained for a lengthy period and would be prosecuted (Exhibit P-18, SIRC report, p.22).

- Unredacted fragments of a DFAIT document state: "of Mr. Arar and question him as to his alleged affiliation with al-Qaida."; "Mr. Arar could be connected to al-Qaida"; and "Mr. Arar had finished and it was their intention to have him

stand trial on charges of belonging to al-Qaida and for having received military training in an al-Qaida camps in Afghanistan"; and "Mr. Arar was not wanted for any criminal activity in Canada and again emphasized the humanitarian and compassionate situation with respect to Mr. Arar" (ATIP release).

- The Canadian Ambassador and Canadian Members of Parliament Catterall and Assadourian met with SMFA (Syrian Ministry of Foreign Affairs) and SyMI (Syrian Military Intelligence Service) officials. The SyMI officials informed the MPs that their investigation of Mr. Arar was completed and that he would soon stand trial on charges of belonging to Al Qaeda and having received military training in Al Qaeda camps in Afghanistan (Exhibit P-18, SIRC report, p24, supplemented by ATIP release).

- DFAIT reported that Syrian authorities stated that Mr. Arar was a member of Al Qaeda, noting that this assertion was the same as that used by the Americans when Mr. Arar was ordered deported to Syria (ATIP release).

Media reports based on statements of named government officials

- Headline: "Syrians couldn't link Arar to al-Qaeda" (Globe & Mail, October 9, 2003). Story: "Syria says it never had enough evidence to link Maher Arar to

al-Qaeda.... 'we didn't find complete [or] concrete evidence of his link,' Ahmad Arnous, Syria's ambassador in Ottawa, said in an interview yesterday.... Mr. Arnous said U.S. authorities turned over to Syria an extensive dossier on Mr. Arar that, according to the Americans, showed involvement with the al-Qaeda terrorist group. This included information obtained during an interrogation of Mr. Arar that took place while he was detained in Jordan.... Syria also provided Canadian officials with the information in the Arar dossier 'as a goodwill gesture,' Mr. Arnous said."