

**Ruling on a motion to determine whether to make
certain RCMP documents public**

November 23, 2004

This is a motion to determine whether certain redacted documents relating to the RCMP evidence, now being heard *in camera*, be released to the public.

The government produced to the Inquiry a large number of documents from the RCMP. The documents, considered to be relevant, have been entered as exhibits in the *in camera* hearings. The government claimed NSC with respect to all or portions of many of the documents. The relevant documents, with those portions over which the government claims NSC redacted, were produced to Mr. Arar's counsel. Mr. Arar's counsel requests that the redacted documents be released to the public.

Counsel for certain parties who have testified *in camera* object to the release at this time. They argue that the release of these documents should await either the public disclosure of a summary of the RCMP evidence heard *in camera* or a decision by me about what other portions of these documents may be publicly disclosed, or both. In that way, they submit, the documents will make more sense and the public will be able to put the documents in their proper context. The government does not object to the release of the documents at this time, but submits that it would be a more orderly process if the documents were released later in conjunction with a summary of the viva voce evidence relating to them. These documents, possibly with fewer redactions, will be released eventually. The essential issue is one of timing.

I heard this motion *in camera* in order to give the parties objecting to release an opportunity to raise specific concerns about unfairness to their interests by the release of the documents at this time and in their redacted form. I am not satisfied that there will be any unfair prejudice to the parties by their release at this time. Nor do I accept that the public will be misled because they cannot put the documents in their proper context. The public is fully able to understand that there may be other evidence relating to the matters referred to in the unredacted documents.

Clearly, some of the documents, without accompanying *viva voce* evidence, may provide little, if any, useful information to the public. However, others will. There is already a considerable amount of information in the public domain about Mr. Arar and the events relating to him. That information should assist in understanding where some of the documents fit into the overall picture. In any event, the documents, albeit in unredacted form, have now been entered as exhibits in evidence. This is a public inquiry and to the extent possible evidence should be made public in a timely manner. In my view, absent a demonstration of unfair prejudice to a party or of a likelihood that the public will be misled or confused by disclosure of the documents in their redacted form, they should be released.

One of the parties argued that it is the unredacted documents that are the exhibits, not the documents in redacted form. Thus, it is argued the redacted documents should not be released on the basis that they have not been entered into evidence. Be that as it may, the unredacted portions of the documents which are the subject of this motion are part of the exhibits now in evidence. Given the absence of legitimate concerns about prejudice or confusion, I am exercising my discretion under Rule 26 of the Rules of Procedure and Practice to direct release of the redacted versions of the documents now in evidence. I note that not uncommonly documents are released under the Access to Information and Privacy process in redacted form without accompanying *viva voce* evidence.

In the course of submissions, I was referred to a ruling by Justice Linden in the Ipperwash Inquiry. I agree with his conclusion in which he declined to disclose publicly certain documents, however, that case is distinguishable. Unlike this case, the Commission Counsel had not screened the documents in issue and they did not form part of the evidentiary base of the Inquiry.

I wish to make a number of points about the documents. First, it is Mr. Arar's counsel who seeks their release. Counsel has seen the documents and are obviously not concerned about any potential unfairness to Mr. Arar or his family.

Second, the documents are redacted on the basis of the government's NSC claims. The Commission has received into evidence the documents in their entirety. At this point, I have not

ruled on the government's redactions. It may be that in future, more of the information contained in some of these documents will be disclosed publicly.

Next, I caution readers not to attach undue importance to the information in these documents. The Inquiry has heard and will hear more evidence about the documents and the events referred to in them. In due course I will provide a public description, to the extent I am able, of that evidence.

Finally, as I look ahead in this Inquiry, I am concerned about the amount of time that would be involved in screening for NSC claims all of the documents received into evidence at the *in camera* hearings. I expect that there will be over 2000 documents and many are lengthy. The process for reviewing a document, sometimes word by word, and hearing submissions and ruling upon the NSC claims, can be very protracted. Some documents are far more significant than others. It is essential that I thoroughly examine all of the relevant evidence and that I provide a public report that is as thorough as the NSC constraints permit. It is also important that the Inquiry be completed as expeditiously as possible. With that in mind, I will be asking the parties for submissions about the process that I should follow in addressing the government's NSC claims over documents so as to provide a public report that is as thorough as possible and at the same time is delivered in a timely manner.

Accordingly, I direct that a set of the documents will be made available to the public at the Inquiry's office.

"Dennis O'Connor"

Commissioner Dennis O'Connor