

**COMMISSION OF INQUIRY INTO THE ACTIONS OF  
CANADIAN OFFICIALS IN RELATION TO MAHER ARAR**

**RULES OF PROCEDURE AND PRACTICE**

1. The Commission proceedings will be divided into two parts. The first part, the “Factual Inquiry”, will focus on the actions of Canadian officials in relation to Maher Arar, including the following:
  - (a) The detention of Mr. Arar in the United States;
  - (b) The deportation of Mr. Arar to Syria via Jordan;
  - (c) The imprisonment and treatment of Mr. Arar in Syria;
  - (d) The return of Mr. Arar to Canada; and
  - (e) Any other circumstance directly related to Mr. Arar which the Commissioner considers relevant to fulfilling his mandate.

The Commissioner will conduct hearings in relation to the Factual Inquiry as set out in these Rules.

2. The second part of the Inquiry is a policy review directed at making recommendations for an independent arm’s length review mechanism for the activities of the Royal Canadian Mounted Police with respect to national security (the “Policy Review”) based on:
  - (a) An examination of models, both domestic and international, for that review mechanism, and
  - (b) An assessment of how the review mechanism would interact with existing review mechanisms. The Commissioner will conduct consultations in relation to the Policy Review as set out in these Rules.
3. In these Rules, “persons” refers to individuals, groups, governments, agencies or any other entity.
4. In these Rules, the term “documents” is intended to have a broad meaning, and includes the following forms: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

## **I. RULES – FACTUAL INQUIRY**

### **A. GENERAL**

5. The Commissioner may amend these Rules or dispense with compliance with them as he deems necessary to ensure that the Inquiry is thorough, fair and timely.
6. All parties, intervenors, witnesses and their counsel shall be deemed to undertake to adhere to these Rules, and may raise any issue of non-compliance with the Commissioner.
7. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a party, and imposing restrictions on the further participation in or attendance at (including exclusion from) the hearings by any party, intervenor, counsel, individual, or member of the media.
8. Subject to the *Inquiries Act*, the conduct of and the procedure to be followed on the Inquiry is under the control and discretion of the Commissioner.
9. Hearings will be convened in Ottawa to address issues related to the Factual Inquiry.
10. Insofar as he needs to hear evidence, the Commissioner is committed to a process of public hearings to the greatest extent possible. However, the Terms of Reference direct the Commissioner 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. The procedure which will govern hearings where such issues may arise is addressed in the section on “National Security Confidentiality”.
11. Applications may also be made to proceed *in camera* for reasons of personal confidentiality, referred to as “Personal Confidentiality” in these Rules. Such applications should be made in writing at the earliest possible opportunity.

### **B. STANDING**

12. Commission counsel, who will assist the Commissioner to ensure the orderly conduct of the Factual Inquiry, have standing throughout the Factual Inquiry. Commission counsel have the primary responsibility for representing the public interest at the Factual Inquiry, including the responsibility to ensure that all matters that bear upon the public interest are brought to the Commissioner’s attention.
13. The Commissioner will grant party standing to all persons who satisfy the Commissioner that they have a substantial and direct interest in the subject-matter of the Factual Inquiry. Persons with party standing are referred to as parties in these Rules.

14. The Commissioner may grant intervenor standing to persons who satisfy the Commissioner that they have a genuine concern about issues raised by the Factual Inquiry mandate and have a particular perspective or expertise which may assist the Commissioner. Persons with intervenor standing are referred to as intervenors in these Rules.
15. The Commissioner will determine on what terms and in which parts of the Factual Inquiry a party or intervenor may participate, and the nature and extent of such participation.
16. Persons who apply for standing will be required to provide written submissions explaining why they wish standing, and how they propose to contribute to the Factual Inquiry. Persons who apply for standing will also be given an opportunity to appear in person before the Commissioner in order to explain the reasons for their application.
17. The Commissioner may direct that a number of applicants share in a single grant of standing.
18. Counsel representing witnesses called to testify before the Commission may participate during the hearing of such evidence as provided in these Rules.

**C. FUNDING**

19. The Commissioner may recommend funding for a party or intervenor to the extent of their interest, where in the Commissioner's view the party or intervenor would not otherwise be able to participate in the Factual Inquiry.
20. A party or intervenor seeking funding shall apply to the Commissioner in writing, demonstrating that he or she does not have sufficient financial resources to participate in the Factual Inquiry without such funding.
21. Where the Commissioner's funding recommendation is accepted, funding shall be in accordance with approved Treasury Board guidelines respecting rates of remuneration and reimbursement and the assessment of accounts.

**D. EVIDENCE**

22. The Commissioner may receive any evidence which he considers to be helpful in fulfilling his mandate whether or not such evidence would be admissible in a court of law.

**(a) Preparation of Documentary Evidence**

23. As soon as possible after being granted standing, all parties and intervenors shall provide to the Commission all documents having any bearing on the subject matter of the Factual Inquiry.

24. Where a party or intervenor objects to the production of any document on the grounds of privilege, the document shall be produced in its original unedited form to Commission counsel who will review and determine the validity of the privilege claim. The party, intervenor and/or counsel may be present during the review process. In the event the party or intervenor claiming privilege disagrees with Commission counsel's determination, the Commissioner, on application, may either inspect the impugned document(s) and make a ruling, or may direct the issue to be resolved by the Federal Court.
25. Upon the request of Commission counsel, parties and intervenors shall provide originals of relevant documents.
26. Documents received from a party, intervenor, or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude Commission counsel from producing a document to a proposed witness prior to the witness giving his or her testimony, as part of the investigation being conducted, or pursuant to Rule 40, all subject to National Security Confidentiality.

**(b) Witness Interviews**

27. Commission counsel may interview people who have information or documents which have any bearing upon the subject matter of the Factual Inquiry. People who are interviewed are entitled, but not required, to have a legal counsel present.
28. If Commission counsel determines that a person will be called as a witness following an interview, Commission counsel will prepare a statement of the witness' anticipated evidence. Commission counsel will provide a copy of the statement of anticipated evidence to the witness for review before the witness testifies before the Commission.

**(c) Witnesses**

29. All Government entities, agencies and officials and all witnesses shall cooperate fully with the Commission and shall make available all documents and witnesses relevant to the mandate of the Commission.
30. Witnesses who testify will give their evidence at a hearing under oath or upon affirmation.
31. Commission counsel may issue and serve a subpoena or summons upon each witness before he or she testifies. Witness may be called more than once.
32. Witnesses who are not represented by counsel for parties are entitled to have their own counsel present while they testify, subject to National Security Confidentiality. Counsel for a witness will have standing for the purpose of that

witness' testimony to make any objections thought appropriate and for other purposes set out in these Rules.

33. Parties and intervenors are encouraged to advise Commission counsel of the names, addresses and telephone numbers of all witnesses they wish to have called and, if possible, to provide summaries of the information the witnesses may have.
34. If the proceedings are televised, applications may be made for an order that the evidence of a witness not be televised or broadcast.

**(d) Oral Examination**

35. In the ordinary course Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a party may apply to the Commissioner to lead a particular witness' evidence in-chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner.
36. Commission counsel have a discretion to refuse to call or present evidence.
37. The order of examination in the ordinary course will be as follows:
  - (a) Commission counsel will lead the evidence from the witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to ask both leading and non-leading questions;
  - (b) Parties will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination will be determined by the parties and, if they are unable to reach agreement, by the Commissioner;
  - (c) After cross-examinations, counsel for a witness may then examine the witness. Except as otherwise directed by the Commissioner, counsel for the witness is entitled to ask both leading and non-leading questions;
  - (d) Commission counsel will have the right to re-examine last.
38. After a witness has been sworn or affirmed at the commencement of giving evidence, no counsel other than Commission counsel may speak to a witness about the evidence that he or she has given until the evidence of such witness is complete except with the permission of the Commissioner. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by other counsel.
39. When Commission counsel indicate that they have called the witnesses whom they intend to call in relation to a particular issue, a party may then apply to the Commissioner for leave to call a witness whom the party believes has the

evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witness is needed, Commission counsel shall call the witness, subject to Rule 35.

**(e) Use of Documents at Hearings**

40. In advance of a witness' testimony, Commission counsel will endeavour to provide to the parties and the intervenors having an interest in the subject matter of the proposed evidence a statement of that witness' anticipated evidence and associated documents, subject to the Rules regarding National Security Confidentiality, and subject to receipt of an undertaking that all such documents or information will be used solely for the purpose of the Inquiry. In addition, the Commissioner may require that documents provided, and all copies made, be returned to the Commission if not tendered in evidence. Counsel are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect. These undertakings will be of no force regarding any document or information once it has become an exhibit. The Commissioner may, upon application, release any party or intervenor in whole or in part from the provisions of the undertaking in respect of any particular document or other information.
41. Parties shall provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings at the earliest opportunity, and in any event shall provide such documents to Commission counsel no later than two business days before the document will be referred to or filed.
42. Before using a document for purposes of cross-examination, counsel shall provide a copy to the witness and to all parties having an interest in the subject matter of the proposed evidence not later than two business days prior to the commencement of that witness' testimony.

**(f) National Security Confidentiality**

43. This section of the Rules addresses issues relating to the disclosure of information that would, in the opinion of the Commissioner, be injurious to international relations, national defence or national security ("National Security Confidentiality"), including the process regarding the *in camera* hearings in the absence of parties and their counsel pursuant to paragraph (k) of the Terms of Reference.
44. After the standing hearing, parties and intervenors may make written submissions to the Commissioner with respect to the relevant case law and principles which they submit the Commissioner should apply when making determinations of National Security Confidentiality as to which evidence should be heard *in camera* and in the absence of parties and their counsel. The procedure shall be as follows:

- (a) The Government and all parties who may seek to have evidence heard *in camera* and in the absence of parties and their counsel on the grounds of National Security Confidentiality shall make written submissions about the principles the party submits the Commissioner should apply, relevant case law, and whether the principles differ with respect to the separate elements of National Security Confidentiality (injurious to international relations, national defence or national security). The Government and any party making submissions under this sub-paragraph shall file one written copy of the submissions and supporting documentation with the Commission offices no later than May 17, 2004.
  - (b) Other parties and intervenors may make written submissions no later than May 28, 2004, about the principles the party submits the Commissioner should apply, relevant case law, and whether the principles differ with respect to the separate elements of National Security Confidentiality (injurious to international relations, national defence or national security).
  - (c) The Government and parties who filed submissions in accordance with Rule 44(a) may file responding submissions. The party shall file one written copy of the submissions and supporting documentation with the Commission offices no later than June 2, 2004.
45. Commission counsel shall indicate to the Attorney General of Canada which documents or portions thereof, and which aspects of the proposed evidence Commission counsel deems relevant and may introduce into evidence.
46. The Attorney General of Canada shall then indicate, with reasons, which documents or portions thereof, and which aspects of the proposed evidence, he claims are subject to National Security Confidentiality.
47. The Commissioner shall convene an *in camera* hearing in the absence of parties and their counsel to consider a request by the Attorney General of Canada or any other person to have specific information received *in camera* and in the absence of parties and their counsel because of National Security Confidentiality. The Attorney General of Canada or the person seeking an *in camera* hearing in the absence of parties and their counsel shall bear the burden of establishing why it is necessary to have specific information received *in camera* and in the absence of parties and their counsel because of National Security Confidentiality.
48. The Commissioner will appoint an independent legal counsel to act as an *amicus curiae* to appear in any Rule 47 hearing to make submissions with respect to the request to have specific information received *in camera* and in the absence of parties and their counsel because of National Security Confidentiality. The *amicus curiae* shall be independent of Government and shall be a person with a background in security and intelligence. His or her mandate shall be to test requests to have information received *in camera* and in the absence of parties and their counsel on the grounds of National Security Confidentiality.

49. Hearings to determine what information will be received *in camera* and in the absence of parties and their counsel because of National Security Confidentiality shall be held periodically as necessary throughout the Inquiry.
50. The procedure following a Rule 47 hearing shall be as follows:
- (a) The Commissioner shall rule on a request for National Security Confidentiality setting out the following:
    - (i) the test and principles that he applied in determining whether or not the evidence was to be heard *in camera* and in the absence of parties and their counsel;
    - (ii) to the extent possible, reference to the general nature of the evidence that he ruled must be heard *in camera* and in the absence of parties and their counsel;
    - (iii) reference, in general terms, to the anticipated evidence that he rules should be heard in public;
    - (iv) his reasons for denying a claim for confidentiality when such a claim was made; and
    - (v) the information to be conveyed by Commission counsel to the parties and intervenors pursuant to Rule 53.
  - (b) The ruling shall be provided to the Attorney General of Canada and, to the extent that a claim for National Security Confidentiality is rejected or the Attorney General of Canada objects to the disclosure of information contained in the ruling, such rejection or objection shall constitute notice pursuant to s. 38 of the *Canada Evidence Act*. Further,
    - (i) the Commissioner shall not disclose the ruling or cause it to be disclosed until a period of 10 days has elapsed after notice of the ruling has been received by the Attorney General of Canada; and
    - (ii) the Attorney General of Canada shall notify the Commissioner in writing within 10 days, on a confidential basis, whether the Attorney General of Canada intends to apply to the Federal Court for a determination under section 38 of the *Canada Evidence Act*.
51. The Commissioner may also wish to issue confidential reasons referring to specific evidence that he has ruled should be heard *in camera* and in the absence of parties and their counsel, with specific reasons for such rulings. Those reasons would not be made available to the public.
52. Except as contemplated by Rules 47-50, no party, witness or intervenor, or counsel for such party, witness or intervenor, shall receive any information,

including any document or proposed evidence (e.g. statements of anticipated evidence) for which National Security Confidentiality has been claimed without possessing a valid and appropriate security clearance and without the prior agreement of the Attorney General of Canada.

53. The Commissioner shall hear evidence that is subject to National Security Confidentiality *in camera* and in the absence of parties and their counsel. Counsel for the Attorney General of Canada and subject to National Security Confidentiality any other persons permitted by the Commissioner shall be entitled to attend. Witnesses shall provide the evidence taken *in camera* and in the absence of parties and their counsel under oath or upon affirmation. Commission counsel will thoroughly test the evidence heard *in camera* and in the absence of parties and their counsel by examination in chief or by cross-examination where deemed appropriate.
54. Prior to attending a hearing where information will be received *in camera* and in the absence of parties and their counsel because of National Security Confidentiality, Commission counsel shall advise parties and intervenors of the information and evidence described in Rule 50(a)(v) that will be introduced at such hearing. Parties and intervenors shall be invited to raise with Commission counsel specific areas for questioning. Commission counsel shall, following a hearing where information was received *in camera* and in the absence of parties and their counsel, advise counsel for parties and intervenors whether or not those areas were covered.
55. In order to maximize disclosure to the public of relevant information, after hearing evidence *in camera* and in the absence of parties and their counsel, the Commissioner shall prepare a summary of that evidence and shall provide the Attorney General of Canada (“Attorney General”) a period of ten business days within which to comment on the summary prior to its release. The applicable procedure with respect to release of the summary is as follows:
  - (a) if the Attorney General takes issue with the proposed summary, the Attorney General of Canada shall indicate objections to the Commissioner within five business days of receipt of the summary, and shall apply to court for a determination under section 38 of the Canada *Evidence Act*, within ten business days of receipt of the summary, or
  - (b) if the Attorney General does not object to the release of the proposed summary, the summary shall be marked as a public exhibit, published on the Commissioner’s web site, and will form part of the record of the inquiry.
56. If the Commissioner is of the opinion that the release of a part or summary of the information received *in camera* and in the absence of parties and their counsel would provide insufficient disclosure to the public notwithstanding National Security Confidentiality, the Commissioner shall advise the Attorney General and

provide a summary to the Attorney General identifying the information subject to National Security Confidentiality which the Commissioner proposes to disclose to the public, which shall constitute notice under section 38.01 of the *Canada Evidence Act*.

**(g) Personal Confidentiality**

57. Upon application, the Commissioner may make an order for a grant of “Personal Confidentiality”, aimed at protecting the identity of a witness. For the purposes of the Factual Inquiry, Personal Confidentiality shall include the right of the witness to have his or her identity disclosed only by way of non-identifying initials, and, if the Commissioner so rules, the right to testify before the Commission *in camera*, together with any other privacy measures which the Commissioner grants.
58. Upon application, the Commissioner may make an order to conduct hearings *in camera* when he is of the opinion that intimate financial, personal or other matters are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that the hearings should be open to the public.
59. A witness who is granted Personal Confidentiality will not be identified in the public records and transcripts of the hearing except by non-identifying initials, and the public transcripts may be redacted to exclude any identifying details. Any reports of the Commission using the evidence of witnesses who have been granted Personal Confidentiality will use non-identifying initials only, and may exclude reference to identifying details.
60. Media reports relating to the evidence of a witness granted Personal Confidentiality shall avoid references that might reveal the identity of the witness. No photographic or other reproduction of the witness shall be made either during the witness’ testimony or upon his or her entering and leaving the site of the Inquiry.
61. Any witness who is granted Personal Confidentiality may either swear an oath or affirm to tell the truth using the non-identifying initials given for the purpose of the witness’s testimony.
62. Any party, intervenor or witness may apply to the Commissioner to have intimate financial or personal information which is not relevant to the subject matter of the Inquiry redacted from documents proposed to be introduced into evidence.
63. All media representatives shall be deemed to undertake to adhere to the rules respecting Personal Confidentiality. A breach of these rules by a media representative shall be dealt with by the Commissioner as he sees fit.

**(h) Access to Evidence**

64. All evidence shall be categorized and marked P for public sittings and C for sittings *in camera*
65. Copies of the P transcript of evidence will be made available on the Inquiry's website. One copy of the P transcript and the P exhibits of the public hearings will be made available for public review at the Commission offices.
66. Only those persons authorized by the Commission, in writing, shall have access to C transcripts and exhibits.

## **II. RULES – POLICY REVIEW**

### **A. GENERAL**

67. The Policy Review will proceed in three phases:
  - (a) The Commission will publish a consultation paper (the "Consultation Paper"). The Consultation Paper will examine existing models, both domestic and international, which might serve as a basis for an independent arm's length review mechanism for the activities of the Royal Canadian Mounted Police with respect to national security, and will provide a description of existing review mechanisms.
  - (b) Persons with an interest in the subject matter of the Policy Review may make submissions in writing (the "Public Submissions") to the Commission about any matter relevant to the Policy Review, including specific proposals for the recommendations to be made by the Commissioner.
  - (c) The Commissioner will convene public and private consultations (the format of which may vary) to hear submissions on the matters raised in the Policy Review. The participants in the public consultations may, at the Commissioner's discretion, include any person whom the Commissioner concludes will contribute to the process.

### **B. CONSULTATION PAPER**

68. The Commission will publish the Consultation Paper on the Commission's web site.

### **C. PUBLIC SUBMISSIONS**

69. Any interested person may make a Public Submission, in writing, to the Commission dealing with any matter related to the Policy Review including comments on any matter raised in the Consultation Paper.

70. The Commissioner will set a deadline by which all Public Submissions must be received. The Public Submissions will be made available for public review either on the Commission's web site or at the Commission's offices.

**D. PUBLIC CONSULTATIONS**

71. Once all Public Submissions have been reviewed the Commissioner will convene public consultations relating to the major topics addressed in the Policy Review. The format of the public consultations will be tailored to the topics discussed, and may vary. The public consultations may include persons invited by the Commissioner, where the Commissioner concludes such persons would contribute to the discussion based upon the contents of the Public Submissions.
72. The public consultations shall be recorded.
73. At his discretion, the Commissioner may also conduct private consultations.

**III. OTHER**

74. Whenever practicable, applications should be made in writing on notice to the parties and intervenors. The Commissioner may determine in any case whether the length of notice provided, if any, was reasonable. Applicants will be expected to justify notice periods of less than seven clear days. Parties and intervenors wishing to receive notice of applications shall provide the Commission with an e-mail address for delivery. The e-mail addresses will be posted on the Commission's web site. Notice to a party will be sufficient if e-mailed to the e-mail address provided on the Commission's web site.
75. The Commissioner shall write two reports. One shall be a private report which incorporates matters of National Security Confidentiality. The other shall be a public report. In his public report, the Commissioner shall make the greatest possible reference to matters heard *in camera*, and conclusions which he has made with respect thereto.