

The following are draft rules of procedure and practice for the Inquiry. Persons who are granted standing will be given an opportunity to make submissions about these rules and the rules may be amended as deemed appropriate.

**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.

I. RULES – FACTUAL INQUIRY

A. GENERAL

4. Hearings will be convened in Ottawa to address issues related to the Factual Inquiry.

5. Insofar as he needs to hear evidence, the Commissioner is committed to a process of public hearings to the greatest extent practicable. 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".
6. 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

7. 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.
8. The Commissioner will grant 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 standing are referred to as parties in these Rules.
9. The Commissioner will determine on what terms and in which parts of the Factual Inquiry a party may participate, and the nature and extent of such participation.
10. 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.
11. The Commissioner may direct that a number of applicants share in a single grant of standing.
12. Counsel representing witnesses called to testify before the Commission may participate during the hearing of such evidence as provided in these Rules.

C. FUNDING

13. The Commissioner may recommend funding for a party, to the extent of the party's interest, where in the Commissioner's view the party would not otherwise be able to participate in the Factual Inquiry.
14. A party 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.
15. Where the Commissioner's funding recommendation is accepted, funding shall be in accordance with Treasury Board guidelines respecting rates of remuneration and reimbursement and the assessment of accounts.

D. EVIDENCE

16. 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

17. As soon as possible after being granted standing, all parties shall provide to the Commission all documents having any bearing on the subject matter of the Inquiry. Upon the request of Commission Counsel, parties shall provide originals of relevant documents.
18. All documents received by the Commission will be treated as confidential, unless and until they are made part of the public record or the Commissioner otherwise directs. However, Commission counsel are permitted to produce such documents to proposed witnesses and parties and their counsel upon receipt of the appropriate undertaking.

(b) Witness Interviews

19. Commission counsel may interview people who have information or documents which have any bearing upon the subject matter of the Inquiry. People who are interviewed are entitled, but not required, to have a legal counsel present.
20. 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.

21. After a proposed witness has reviewed the statement of anticipated evidence, Commission counsel will provide copies to parties having an interest in the subject matter of the proposed evidence. Before being given a copy of statements of anticipated evidence, parties will be required to sign an undertaking that they will use the statements only for the purposes of the Inquiry.

(c) Witnesses

22. 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.
23. Witnesses who testify will give their evidence at a hearing under oath or upon affirmation.
24. 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.
25. Witnesses who are not represented by counsel for parties are entitled to have their own counsel present while they testify. 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.
26. Parties 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.
27. 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

28. 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.
29. Commission counsel have a discretion to refuse to call or present evidence.

30. 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 the cross-examinations by the parties, counsel for a witness may then examine the witness;
 - (d) Commission counsel will have the right to re-examine last.
31. Except with the permission of the Commissioner, 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. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by other counsel.
32. 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 27.

(e) Use of Documents at Hearings

33. In advance of a witness' testimony, Commission counsel will endeavour to provide to the parties and the witness a statement of that witness' anticipated evidence and associated documents, subject to National Security Confidentiality.
34. 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 the day before the document will be referred to or filed.
35. Before using such 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 evidence not later than the day prior to the testimony of the witness, subject to the discretion of the Commissioner.

(f) National Security Confidentiality

36. 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.
37. After the standing hearing, parties with standing 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* 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 party shall file one written copy of the submissions and supporting documentation with the Commission offices no later than May 14, 2004, and shall provide the Commission with an electronic copy of the submissions. These submissions will be posted on the Commission’s web site.
 - (b) Other parties with standing may 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).
 - (c) The Government and parties who filed submissions in accordance with paragraph 38 (a) of these Rules may file responding submissions. The party shall file one written copy of the submissions and supporting documentation with the Commission offices no later than May 21, 2004, and shall provide the Commission with an electronic copy of the submissions. These submissions will be posted on the Commission’s web site.
38. Commission counsel shall indicate to the Attorney General of Canada which documents or portions thereof, and which aspects of the evidence Commission counsel deems relevant and may introduce into evidence.

39. 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.
40. The Commissioner shall convene an *in camera* hearing, in the absence of parties and their counsel, to consider the request by the Attorney General of Canada or by a party that specific evidence is subject to National Security Confidentiality. The Attorney General of Canada or any party seeking an *in camera* hearing shall bear the burden of establishing why it is necessary.
41. The Commissioner will appoint an independent legal counsel to act as an *amicus curiae* to appear in these *in camera* hearings to make submissions with respect to the request for *in camera* hearings. The counsel 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 *in camera* hearing requests on the grounds of National Security Confidentiality.
42. The hearings shall be held periodically as necessary throughout the Inquiry, although it is contemplated that major portions of the evidence can be addressed before the evidentiary hearings begin. They are currently scheduled to begin on June 14, 2004.
43. The Commissioner shall rule on a request for National Security Confidentiality. In his rulings, the Commissioner will set out the test and principles that he applied in determining whether or not the evidence was to be heard *in camera*. He will also refer, in general terms, to the anticipated evidence that he rules should be heard in public and his reasons for denying a claim for confidentiality when such a claim was made. In addition, to the extent possible, the Commissioner will refer to the types of evidence that he ruled must be heard *in camera*, and the principles and reasons that he applied to such decisions. The Commissioner's rulings and reasons as set out in this paragraph will be made public and posted on the Commission's web site.
44. The Commissioner may also wish to issue confidential reasons referring to specific evidence that he has ruled should be heard *in camera*, with specific reasons for such rulings. Those reasons would not be made available to the public.
45. The Commissioner shall hear evidence that is subject to National Security Confidentiality *in camera* and in the absence of parties and their counsel, to the extent necessary to protect National Security Confidentiality. Witnesses shall provide the evidence taken *in camera* under oath or upon affirmation. Commission counsel will thoroughly test the evidence heard

in camera by examination in chief or by cross-examination where deemed appropriate

46. Prior to going *in camera* Commission counsel shall, to the extent possible and in accordance with directions from the Commissioner, advise parties of the general nature of the evidence to be heard. Parties are invited to raise with Commission counsel specific areas for questioning. Commission counsel shall, following an *in camera* session, advise counsel for parties whether or not those areas were covered.
47. After hearing evidence *in camera*, the Commissioner shall prepare a summary of that evidence to the fullest extent possible without breaching National Security Confidentiality, and shall provide the Attorney General of Canada ("Attorney General") with an opportunity 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 may apply to court for a determination under section 38 of the *Canada Evidence Act*, or
 - (b) if the Attorney General agrees with 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.
48. If the Commissioner is of the view that notwithstanding National Security Confidentiality, such evidence should be disclosed publicly, the Commissioner may prepare a separate summary of the evidence. The Commissioner shall advise the Attorney General and provide the summary to the Attorney General, which shall constitute notice under section 38.01 of the *Canada Evidence Act*.

(g) Personal Confidentiality

49. Any witness may apply to the Commissioner for a grant of "Personal Confidentiality". For the purposes of the 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*.
50. 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. Any reports of the Commission using the evidence of witnesses who have been granted Personal Confidentiality will use non-identifying initials only.

51. 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.
52. 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.
53. All parties, their counsel and media representatives shall be deemed to undertake to adhere to the rules respecting Personal Confidentiality. A breach of these rules by a party, counsel to a party or media representative shall be dealt with by the Commissioner as he sees fit.

(h) Access to Evidence

54. All evidence shall be categorized and marked P for public sittings and C for sittings *in camera*
55. 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.
56. Only those persons authorized by the Commission, in writing, shall have access to C transcripts and exhibits.

II. RULES – POLICY REVIEW

A. GENERAL

57. The Policy Review will proceed in three phases:
 - (a) The Commission will publish a research paper (the "Research Paper"). The Research 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; provide a description of existing review mechanisms; and describe the manner in which the proposed models would interact with 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. RESEARCH PAPER

- 58. The Commission will publish the Research Paper on the Commission's web site.

C. PUBLIC SUBMISSIONS

- 59. Any interested person may make a Public Submission, in writing, to the Commission dealing with any matter related to the Policy Review including responses to any matter raised in the Research Paper.
- 60. 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

- 61. 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.
- 62. The public consultations shall be recorded.
- 63. At his discretion, the Commissioner may also conduct private consultations.

III. OTHER

- 64. All parties, witnesses and counsel shall be deemed to undertake to adhere to these Rules, which may be amended or dispensed with by the

Commissioner as he sees fit. Issues of non-compliance with the Rules may be raised with the Commissioner.

65. 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.