

Supplementary Ruling re: Funding

I have received a number of submissions with respect to my ruling which was released on May 11, 2004. All of the submissions are directed to the issue of funding. I address each of those submissions below.

Maher Arar

In my ruling I recommended that Mr. Arar be granted funding for two senior and two junior counsel. Those counsel have undertaken to minimize overlap. I recommended that senior counsel be allowed 50 hours of preparation prior to the public hearings (now scheduled to begin on June 21) and that junior counsel be allowed 25 hours during the same period.

Mr. Arar's counsel have written requesting that those numbers be increased to 200 and 150 hours respectively. In their letter counsel point out that the Commission counsel's decision to call Mr. Arar, his family members and other Arar witnesses towards the beginning of the public hearings will result in an enormous amount of work for them before the hearings begin. If those witnesses were to be called later in the Inquiry, the funding guidelines which permit 10 hours of preparation for each day of hearings would help significantly in covering the expense of preparing those witnesses for the hearings. At the time of Mr. Arar's original request for funding, the need for additional funding for preparation time before the start of the hearings was not as apparent as it is now.

There is merit to this request for extra funding. To date Mr. Arar's counsel have been very cooperative in assisting with the preparation for this Inquiry. They indicate that they will continue to provide assistance so that the Inquiry can

proceed expeditiously. I am pleased that we are able to start the public hearings as early as June 21st and it appears that we will be able to continue those hearings through the month of July. There is a significant advantage to everyone concerned in proceeding with this Inquiry as expeditiously as possible. The cooperation of those involved in the Inquiry is important in achieving this goal.

I am prepared to increase the funding I previously recommended for Mr. Arar's counsel for preparation before the first day of hearings by 100 hours for each of the four counsel. An increase of 100 hours for each lawyer is less than requested, however, given that there are four lawyers and that those lawyers will attempt to minimize overlap, it seems to me that an increase of 100 hours is reasonable. Accordingly, I recommend that senior counsel be permitted 150 hours each and junior counsel 125 hours each. In all other respects my recommendation with respect to funding for Mr. Arar's counsel remains unchanged.

Civil Liberties and Canadian Democracy/Sovereignty Group

In my ruling I granted intervenor standing to the six organizations which I grouped under the above-noted heading. I recommended funding for two counsel for the group. I recommended that each counsel receive funding for 40 hours for services prior to closing submissions and stated that I would address the amount of funding for closing submissions at a later point in time. I asked that the group present a plan setting out how that funding should be allocated.

This group has written to me making a number of requests. First, the group requests that I expand my funding recommendation to include payment of fees and disbursements for one full-time legal counsel for the duration of the Factual Inquiry. This counsel would be funded to attend the hearings at which evidence is called, but would not participate directly in the examination of witnesses. It is

suggested that having a counsel in full-time attendance at the hearings would better enable these intervenors to assist Commission Counsel and other counsel when questioning witnesses and would also enable these intervenors to be better informed when making final submissions.

I am not prepared to make the recommendation requested. The transcripts of the hearings will be available on the Commission's website in a timely manner - we expect on the evening of the day during which evidence is heard. Counsel for these parties will have an opportunity of reviewing those transcripts and Commission Counsel will be available to discuss suggestions about areas in the evidence that need to be pursued. I will ensure that no problem arises because counsel for this intervenor group are not present at the hearings when a particular area of evidence is first introduced. I am confident that the intervenors' suggestions to Commission Counsel will be fairly addressed.

Moreover, in approaching the issue of funding I have tried to ensure that Mr. Arar's counsel are sufficiently funded so that they can fully and effectively participate in the hearings. Mr. Arar will be represented by two very experienced senior counsel and I will have the benefit of their participation. Similarly, the government will be represented by a very experienced senior counsel who is supported by a substantial team of lawyers. There will be no shortage of top-flight legal talent participating in the calling of the evidence.

I am satisfied that Commission Counsel and the other counsel who are entitled to examine witnesses will be able to fully and fairly develop all of the evidence necessary for me to make the findings called for in the Factual Inquiry part of my mandate. I do not think that the benefit gained from the presence of an additional counsel throughout the hearings warrants the expense to the public purse that would be involved.

I note that the intervenors in this group would like to reserve the right to make individual or group submissions on various aspects of the Factual Inquiry. I agree with that request.

Finally, this intervenor group has requested that the 80 hours of preparation time be allocated equally among three groups: (1) the BC Civil Liberties Association, (2) the International Civil Liberties Monitoring Group, the Minority Advocacy and Rights Council and the Law Union of Ontario, and (3) the Council of Canadians/Polaris Institute.

I am in agreement with that request and so recommend.

Arab and Muslim/Islamic Group

In my ruling I recommended that the government provide funding for two counsel for the six Arab and Muslim/Islamic organizations which were granted standing. I asked that the six organizations discuss the issue of the allocation of the funding and, if possible, present a plan.

The Canadian Council on American-Islamic Relations (CAIR-CAN) and the Canadian Arab Federation (CAF) have agreed to share one grant of funding. I appreciate their cooperation. On the basis of their written and oral submissions I am satisfied that this is a reasonable approach and I so recommend.

There remain four other organizations in this group which have been granted intervenor standing. They are: the Muslim Community Council of Ottawa-Gatineau, the Canadian Islamic Congress, the National Council on Canada-Arab Relations and the Muslim Canadian Congress. These organizations have been unable to agree upon a plan for shared representation and funding. Each wishes to be represented separately. While I fully accept the point that each of these

organizations represent different constituencies and perspectives, none of them has pointed out any conflicting positions on the issues for which they would be granted funding; the Rules of Procedure; the principles governing In-Camera Hearings; and the issues that need to be canvassed in the Factual Inquiry. I would have thought that while some of these organizations may have a different emphasis or perspective on some issues, a cooperative approach to this Inquiry would nonetheless be possible and desirable.

That said, I have granted each organization intervenor standing and am anxious to have their participation. In order to move the matter ahead, I am prepared to recommend one extra grant of funding of 40 hours for this group of four organizations. It continues to be my view that this funding will be better used if a sharing agreement is reached and I urge these organizations to reach an agreement. Failing agreement, I will recommend that the two grants be divided equally – 20 hours each. I look forward to a response by June 7th. The recommendation for an additional grant of funding at this stage should not be taken as necessarily leading to an additional grant for closing submissions. I will consider funding for closing submissions in due course.

May 26, 2004