

**Commission d'enquête  
sur les actions des  
responsables canadiens  
relativement à Maher Arar**



**Commission of Inquiry into  
the Actions of Canadian  
Officials in Relation to  
Maher Arar**

**Audience publique**

**Public Hearing**

**Commissaire**

L'Honorable juge /  
The Honourable Justice  
Dennis R. O'Connor

**Commissioner**

**Tenue à:**

Salon Algonquin  
Ancien hôtel de ville  
111, Promenade Sussex  
Ottawa (Ontario)

le mardi 9 août 2005

**Held at:**

Algonquin Room  
Old City Hall  
111 Sussex Drive  
Ottawa, Ontario

Tuesday, August 9, 2005

## APPEARANCES / COMPARUTIONS

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Ms Lori Sterling Mr. Darrell Kloeze Ms Leslie McIntosh	Ministry of the Attorney General/ Ontario Provincial Police
Mr. Faisal Joseph	Canadian Islamic Congress
Ms Marie Henein Mr. Hussein Amery	National Council on Canada-Arab Relations
Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
Mr. Emelio Binavince	Minority Advocacy and Rights Council
Mr. Joe Arvay	The British Columbia Civil Liberties Association

## APPEARANCES / COMPARUTIONS

Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture
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Mr. David Matas	International Campaign Against Torture
Ms Barbara Olshansky	Centre for Constitutional Rights
Mr. Riad Saloojee Mr. Khalid Baksh	Canadian Council on American-Islamic Relations
Mr. Mel Green	Canadian Arab Federation
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Ms Sylvie Roussel	Counsel for Maureen Girvan
Ms Catherine Beagan Flood	Counsel for the Parliamentary Clerk
Mr. Norman Boxall Mr. Don Bayne	Counsel for Michael Cabana
Mr. Richard Bell	
Mr. Vince Westwick Mr. Jim O'Grady	Counsel for Ottawa Police Service
Mr. Paul Copeland	Counsel for Abdullah Almalki
Ms Barbara Jackman	Counsel for Ahmed El Maati

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1 Ottawa, Ontario

2 --- Upon commencing on Tuesday, August 9, 2005 at  
3 2:26 p.m. / L'audience débute le mardi 9 août  
4 2005 à 14 h 26

5 THE REGISTRAR: Please be seated.  
6 Veuillez vous assoir.

7 THE COMMISSIONER: Mr. Cavalluzzo.

8 MR. CAVALLUZZO: Thank you  
9 Commissioner. At the outset, prior to completing  
10 the examination of Mr. Cabana, we were going to  
11 have a discussion in respect of possible delay in  
12 the timelines in respect of the filing of written  
13 submissions as well as oral submissions. I  
14 understand that Mr. Bayne is going to request  
15 that.

16 MR. BAYNE: I didn't intend to  
17 slow down the cross-examination. I intended to  
18 raise that with you Mr. Commissioner, at the end  
19 of the day.

20 THE COMMISSIONER: We can deal  
21 with it -- is it going to take long?

22 MR. BAYNE: Well, I have a couple  
23 of submissions to make, asking for time.

24 THE COMMISSIONER: Do you suggest  
25 we do it now, Mr. Cavalluzzo.

1 MR. CAVALLUZZO: I don't have a  
2 preference either way so long as we do it today in  
3 public.

4 MR. PAUL COPELAND: I would be  
5 happy to do it now, I would like to have the  
6 results of that, being able to make submissions in  
7 matters of some importance to me in both my  
8 capacity for Mr. Almalki and whatever the Law  
9 Union might choose to do.

10 MR. CAVALLUZZO: We can do it at  
11 the completion. Obviously Mr. Copeland and Ms  
12 Jackman are welcome to be here. In fact, I asked  
13 them to stay so that we can fully discuss it.

14 THE COMMISSIONER: Let's do the  
15 cross-examination. We have Superintendent Cabana  
16 here, so let's do that first.

17 MR. CAVALLUZZO: Just prior to the  
18 completion of the cross-examination, there was a  
19 request that was made in terms of attendees at a  
20 particular session or lecture that government  
21 counsel undertook to discover in terms of names,  
22 and just let me read into the record that in  
23 respect of the presentation on November 26, 2001,  
24 which was in issue in discussion, there is no list  
25 of attendees which can be found which would

1 determine as to whether any members of A-OCANADA  
2 attended that presentation which dealt with Muslim  
3 extremism issues. However, at a follow-up session  
4 on December 17, 2001, at CSIS, which dealt with  
5 middle-eastern names, at least four members of  
6 A-OCANADA attended, and as far as -- there was  
7 some discussion about presentations after and the  
8 question related to presentations prior to  
9 Mr. Arar's detention.

10 So that would complete the direct  
11 examination of Mr. Cabana. I don't know whether  
12 Mr. Copeland or Ms Jackman will go first. I  
13 assume they have left it to --

14 THE COMMISSIONER: It is up to  
15 them, whoever would like to go first.

16 MR. PAUL COPELAND: I will go  
17 first.

18 I would like to deal firstly,  
19 Mr. Commissioner, before I start asking Mr. Cabana  
20 some questions some aspects of my attempts to get  
21 the most recently unredacted version of the  
22 information to obtain the search warrant. It was  
23 something I thought I would like to have before I  
24 attempted to the cross-examination. I had some  
25 discussions with Mr. Cavalluzzo last week, I think

1 on the third of August, asking for that and he  
2 indicated to me, at least at that time, that they  
3 had one but it had not been filed yet and  
4 suggested that I approach the lawyers for the  
5 Ottawa Citizen. I indicated to him that I would  
6 do that, then subsequently sent him a email  
7 outlining what I got from that.

8 I might say that Mr. Reardon's  
9 office on a prior occasion, just after the Ontario  
10 Court of Appeal decision was handed down, had been  
11 very cooperative and sent me a bundle of material.  
12 Andrew Kidd of his office had done that.

13 Unfortunately, last week, Mr. Kidd  
14 was on holidays and I did a little bouncing around  
15 in their office, spoke to his secretary who said  
16 she would send me the most recent version and  
17 would I get it from her was a copy of the search  
18 warrant, which is of no value to me whatsoever.

19 I sent a email to Mr. Cavalluzzo  
20 indicating that I would make some further efforts  
21 to get that material but I asked him if he could  
22 send me the most recent unredacted version of the  
23 search warrant, and I might say he gave that to me  
24 today. I really have not had a chance to go  
25 through these. He has given me a copy which is



1 highlighted in yellow to show what is recently  
2 unredacted.

3 But I also said to him at that  
4 time, and I have sent a email to him and I have  
5 provided a copy to the reporter, I would like to  
6 read a portion of it. I said to him:

7 "It appears to me that via  
8 the Ottawa Citizen and it's  
9 reporter, James Gordon, the  
10 RCMP and/or CSIS is seeking  
11 to destroy my client's and  
12 Barb Jackman's client's  
13 reputation by articles  
14 appearing in the Citizen.  
15 The most recent article was  
16 in the Citizen on August 2,  
17 2005.

18 For the purpose of  
19 defending my client's  
20 reputation, I need to see the  
21 unredacted version of the  
22 information to obtain the  
23 search warrant. Time and  
24 problems getting past  
25 national security/criminal

1 intelligence confidentiality  
2 claims make it useless for me  
3 to apply to justice Dorval  
4 for release of that  
5 information to obtain.  
6 Commissioner O'Connor, I  
7 believe, has a much clearer  
8 idea of the national security  
9 interests in play here, and I  
10 am asking that you consider  
11 my request to see the  
12 unredacted version of the  
13 information to obtain. I am  
14 agreeable to terms being  
15 placed on my access to that  
16 document.

17 I believe if I see the  
18 document, I may be able to  
19 demonstrate to the inquiry  
20 that there are legitimate  
21 concerns about the competence  
22 of the work done by CSIS  
23 and/or the RCMP and branding  
24 my client as a high-level  
25 al Qaeda, and providing that

1 branding to Syrian and  
2 malaysian officials. Some of  
3 the material I have seen..."

4 I will skip that part.

5 " Please let me know as  
6 soon as possible whether I  
7 can get access to the  
8 information to obtain the  
9 search warrant."

10 And then I told him that if I was  
11 unable to get access to it I would be making the  
12 request to you this morning. I indicated as well  
13 that I was making the request both on my own  
14 behalf and on behalf of Ms Jackman, or her client.

15 I might say that, in relation to  
16 this inquiry, it is something I think that is  
17 critical for me to see. I appreciate that so far  
18 at least the matter is somewhere in the Federal  
19 Court. Ms Jackman and I may try to make some  
20 efforts to intervene there, but I don't think  
21 we'll get anything in a timely fashion. In  
22 relation to the information I have from my client,  
23 that in questioning both in Malaysia and in Syria,  
24 he was informed that the Canadians described him  
25 is a high level al Qaeda person wanted by the

1 Canadian officials. At least some aspects of what  
2 has come out here are not far off that.

3 It is very difficult obviously for  
4 me to deal with any of that in any way without  
5 knowing exactly what allegations are made. I make  
6 that request to you I am not wildly optimistic  
7 that you are going to hand it over to me. I asked  
8 Mr. Fothergill briefly before whether he would  
9 make that available to me, and he said he would  
10 email it to me, but I think that was a facetious  
11 answer.

12 --- Laughter / Rires

13 MR. BAYNE: I asked that he send  
14 it in a plain brown envelope so they couldn't  
15 trace it.

16 --- Laughter / Rires

17 In any event, it would greatly  
18 assist both Ms Jackman and I to know what the  
19 authorities have alleged in relation to my client.  
20 As well, it would have assisted me perhaps to have  
21 an opportunity to go through the most recent  
22 unredacted version of the information to obtain.  
23 My understanding from Mr. Cavalluzzo is that was  
24 filed as Exhibit 179 on July 27. I might say  
25 looking at appendix D, it says "Public Version,

1 July 15 and 18, 2005"

2 I know the article that appeared  
3 most recently in the Ottawa Citizen post-dates  
4 that. I don't know whether they have more  
5 material or not but, as I say, there is a great  
6 concern on my part of the slow leaking of  
7 information that appears to come from government  
8 sources.

9 I might say as well, in relation  
10 to that, that both the Juliette O'Neil articles,  
11 originally -- and those relate to Mr. Arar not so  
12 much to my client, they also happen to relate to  
13 my client Mr. Harkat, there is some material that  
14 came -- at least the RCMP thinks it came from the  
15 RCMP or from CSIS, but somebody in the know who  
16 went to Ms O'Neil, there is some more material  
17 that came from Joy Malbon at CTV that also seems  
18 to have been sourced from some government bureau.  
19 It all appears to me to be part of this process of  
20 blackening my client's reputation.

21 As well, I would just point out to  
22 you that, in the original Law Union opening  
23 submissions, we made reference to the use of the  
24 media. I don't know whether I brought more than  
25 one copy of that material here. I think I

1           probably --

2                           THE COMMISSIONER: I remember the  
3           submission, in general terms.

4                           MR. PAUL COPELAND: I have a copy  
5           if you want one. I made some general reference to  
6           it and actually named a couple of reporters in  
7           that context. So my request to you is to have  
8           some opportunity of seeing that material if it is  
9           possible.

10                           That, I think, finishes my opening  
11           submissions in regard to the cross-examination of,  
12           or getting to the cross-examination --

13                           THE COMMISSIONER: Let me just  
14           deal with it up to here, because I suspect I know  
15           what is going to happen. The parts that are  
16           redacted in the most recently redacted part, they  
17           are, I take it, all redacted for NSC claims?

18                           MR. FOTHERGILL: That's correct.  
19           The version we currently have as an exhibit in  
20           these proceedings is the one that was sanctioned  
21           for public use by courts and other proceedings.  
22           For the purposes of our proceedings here, we  
23           continue to maintain a claim of National Security  
24           Confidentiality for anything which hasn't been  
25           disclosed in those proceedings. I think the

1           proper way to respond to Mr. Copeland's request is  
2           to see it is as, in some ways, a request for you  
3           to deal with this part of the NSC process when the  
4           time comes and obviously we'll have to reconcile  
5           that with the relatively narrow scope of your  
6           mandate versus the issues that are being dealt  
7           with by the courts and other proceedings.

8                           THE COMMISSIONER:   The bottom line  
9           of that being that if the government as it is  
10          asserts the claim at this point, the process we  
11          have adopted here is I won't address it now. You  
12          know the theory behind that, you will end up in  
13          the Federal Court where you do not want to be at  
14          this stage in any event, but that I will consider  
15          it as part of my report writing exercise, along  
16          with many other matters, as I see fit.

17                          I would include reference to  
18          material didn't thought wasn't subject to NSC and  
19          was relevant to the mandate. That would be the  
20          process.

21                          MR. PAUL COPELAND:   That process  
22          unfortunately doesn't assist me in my attempts  
23          to --

24                          THE COMMISSIONER:   I agree, it  
25          doesn't.

1 MR. PAUL COPELAND: -- if it is  
2 possible to show the quality of the work done by  
3 CSIS and/or the RCMP has not of the highest level.

4 What I propose to do in regard to  
5 the questioning of, or cross-examination of  
6 Mr. Cabana, I have received from Mr. Cavalluzzo  
7 this morning the list of questions that I had  
8 provided in writing, in my rather scratchy  
9 handwriting, to him I suppose a couple of weeks  
10 ago. He has provided me with a list that has some  
11 checked-off questions that I gather are the ones  
12 I'm going to be allowed to ask.

13 What I would like to do is, for  
14 the purpose of putting it on the public record, is  
15 read the questions that I would like to ask, those  
16 that can be answered, have them answered. And I  
17 had indicated to Mr. Cavalluzzo that those weren't  
18 all the questions I wanted to ask because I  
19 hadn't, at that point, read the transcript.

20 I have read the transcript. I  
21 would like to go through it and try to ask some  
22 other questions that come out of the testimony of  
23 Mr. Cabana and see where we go in relation to  
24 which of those I might get answered.

25 THE COMMISSIONER: With the ones



1           that -- the reason that questions won't be  
2           answered, again, is because of NSC claims.

3                         MR. PAUL COPELAND:   I understand  
4           that.

5                         THE COMMISSIONER:   If you want to  
6           file the questions you are welcome to read them if  
7           you wish to.

8                         MR. PAUL COPELAND:   As I  
9           understand it, at some point other -- I gather we  
10          are not on the website today but CPAC is reporting  
11          or broadcasting at least some of this.  I don't  
12          know what parts get broadcast and what don't, but  
13          my preference would be, for the public record if  
14          nothing else, is that I actually put the  
15          questions --

16                        THE COMMISSIONER:   The one thing I  
17          can say, just before I speak to that is, I  
18          spoke -- Mr. Cavalluzzo showed me the list and we  
19          went over it.  We are of the view of those that  
20          cannot be answered here, that the overwhelming  
21          majority of the information sought has been  
22          elicited in camera, so I think that states fairly  
23          what we concluded.

24                        MR. PAUL COPELAND:   Mr. Cavalluzzo  
25          indicated that to me before we started this

1           afternoon.

2                           THE COMMISSIONER:   Sure.  It will  
3           take a bit of time.

4                           MR. BAYNE:   Mr. Commissioner, on  
5           this issue I am sorry to interrupt my friend.  And  
6           consistent with your ruling June 27 about the  
7           proposed cross-examination of Mr. Loepky, I had  
8           occasion to re-read that this morning.  While  
9           there are certain questions that are ticked off,  
10          as my friend says, and while they may or may not,  
11          in the mind of the government, engage sufficient  
12          national security confidential issues that they  
13          aren't objected to on that basis, I fail to see  
14          how, given the mandate of this inquiry, any of  
15          these questions engage the reputational interest,  
16          which was the test you imposed on the  
17          cross-examination of Mr. Loepky and you went  
18          through it question-by-question with my friend  
19          Ms Jackman.  And consistent with the approach you  
20          took there, I don't see how these questions meet  
21          that test, any of them.

22                           THE COMMISSIONER:   Mr. Copeland.

23                           MR. PAUL COPELAND:   Well I  
24          reviewed your comments on standing, which are at  
25          page 7751 of the first day's testimony of

1 Mr. Cabana, which was June 29, 2005. I'll just  
2 read what you said there.

3 "...I now rule ... that you  
4 do have standing for purposes  
5 of dealing with evidence that  
6 relates to your client and  
7 for purposes of addressing  
8 evidence that may adversely  
9 affect your client's  
10 reputation."

11 THE COMMISSIONER: Right.

12 MR. PAUL COPELAND: It seems to me  
13 that those questions are evidence that relates to  
14 my client.

15 THE COMMISSIONER: Actually we  
16 numbered -- there are 26 questions here.

17 MR. PAUL COPELAND: I don't have  
18 the numbed version.

19 THE COMMISSIONER: I just wanted  
20 to put the numbers in so I could further --

21 I mean, I'd just as soon not, if  
22 the questions aren't going to be answered in  
23 public, we can go through question by question,  
24 and I can, I will write a ruling. I am busy with  
25 a lot of things in this inquiry these days, I can

1           assure you, but I have to deal with it in a formal  
2           way.

3                               It struck me, when I looked at the  
4           questions, that there might be the argument you  
5           have raised, Mr. Bayne, about a number of them.  
6           If they weren't going to be answered in public and  
7           given the fact virtually all of them have been  
8           answered in camera, I was hoping to avoid that  
9           argument and having to make a ruling and sorting  
10          out precisely what is relevant and what is not,  
11          insofar as Mr. Copeland standing is concerned. I  
12          was hoping to do a practical short circuit.

13                           MR. BAYNE: I wasn't anticipating,  
14          Mr. Commissioner, putting you in the position of  
15          having to reserve and write a ruling. That isn't  
16          the way you dealt with Ms Jackman's questions  
17          proposed in cross-examination of Mr. Loepky, you  
18          made your decision on a question-by-question basis  
19          from --

20                           THE COMMISSIONER: The difficulty  
21          with some of these questions is that, actually,  
22          the ruling in the relevance of some of these  
23          questions -- I mean, some of them are difficult  
24          and will depend on a bun much of information that  
25          I have heard in camera that Mr. Copeland doesn't

1 know about.

2 It struck me, when I looked at  
3 them -- not all of them, but some -- it gets  
4 complicated, even insofar as whether it engages  
5 his client's interest.

6 MR. BAYNE: So you are hoping I  
7 don't raise this argument, to make your life  
8 easier.

9 THE COMMISSIONER: What I thought  
10 is -- when I saw NSC claims, I thought this was a  
11 way of short-circuiting all of this.

12 MR. CAVALLUZZO: Let me attempt to  
13 assist, here. If my friend, Mr. Bayne, is raising  
14 a fairness issue, the fairness issue related to  
15 having Mr. Cabana answer questions in public which  
16 would be unfair to him in the sense he couldn't  
17 give a total and complete answer because part of  
18 that answer may relate to in camera evidence, what  
19 Mr. Copeland is suggesting here would not require  
20 Mr. Cabana to answer anything. All he wants to do  
21 is read in to the record the questions so there  
22 would be no unfairness on Mr. Cabana.

23 MR. BAYNE: Perhaps I am not  
24 making myself clear. I have no objection if he  
25 wants to read certain questions in and they are

1 not allowed on a NSC basis. I am making a  
2 different point, and that is, Mr. Cavalluzzo, of  
3 the six or seven that you ticked off as not  
4 national security prohibited, on that as I looked  
5 at them and then read your ruling which I gave on  
6 a question-by-question basis they are the same  
7 kinds of questions that were asked of Mr. Loepky  
8 by Ms Jackman, each and everyone of which was  
9 ruled by you, Mr. Commissioner not to bear, given  
10 your mandate, on the reputational interest of some  
11 other person, other than Mr. Arar.

12 I am simply raising that, that I  
13 didn't any make that ruling, and it is not the  
14 other ruling about fairness I am talking about.

15 THE COMMISSIONER: I must say I  
16 can't recall if Ms Jackman asked these specific  
17 questions and I ruled.

18 MR. BAYNE: I don't want don't  
19 unfair, my memory is not photographic, but they  
20 are of the same genus and they are actually in a  
21 transcript, and Mr. Decarie had it this morning  
22 and I happened to read it, not that I wasn't  
23 paying attention to his submissions but while he  
24 was making submissions.

25 MS JACKMAN: I am not sure they

1 are the same questions, Justice O'Connor, but even  
2 if they are I think the point is, that day, we  
3 were all tired, I didn't push it, and it was done  
4 very quickly. So, I think it is a different issue  
5 than right now.

6 THE COMMISSIONER: Let's start  
7 with the questions, and I can't remember which  
8 ones have not been objected to, and we'll deal  
9 with them on a one-by-one basis. I take it there  
10 is no objection when NSC is claimed.

11 MR. BAYNE: (Nodding yes)

12 THE COMMISSIONER: Let's read the  
13 first question.

14 PREVIOUSLY SWORN: MICHEL CABANA

15 EXAMINATION

16 MR. PAUL COPELAND: First question  
17 I would like to ask you, Mr. Cabana, which you are  
18 not going to answer is: Did Canadian authorities,  
19 CSIS, the RCMP or others, provide information on  
20 OCANADA or A-OCANADA suspects to Malaysian  
21 officials in the fall of 2001 and early 2002? Was  
22 a list of questions sent to those Malaysian  
23 officials? If I can just put it in a little bit  
24 of context, the information I have from my client  
25 is he was questioned by Malaysian officials about

1 matters that came from Canadian authorities.

2 And I gather I am not going to be  
3 allowed to get an answer to that question. Is  
4 that correct.

5 THE COMMISSIONER: That's correct.

6 MR. PAUL COPELAND: The next  
7 question was: Did Canadian authorities receive  
8 information from Malaysian officials in December  
9 2001, January 2002, re A-OCANADA suspects? Did  
10 Canadian authorities indirectly send or receive  
11 this material? And, again I ask that question in  
12 regard to A-OCANADA suspect and particularly in  
13 regard to Mr. Almalki. Next question is: On  
14 January 22, 2002, did RCMP or CSIS ask questions  
15 of a person in Ottawa as to whether that person  
16 thought an A-OCANADA suspect would go to Syria?  
17 Was Erica Sheridan an RCMP officer at that time?  
18 To put that in context the information I received  
19 from my client --

20 MR. FOTHERGILL: Commissioner,  
21 before Mr. Copeland continues, I do have some  
22 concern putting on the record what Mr. Copeland is  
23 instructed by his client, when there is no  
24 reasonable expectation that client will come to  
25 testify.



1 THE COMMISSIONER: I agree.

2 MR. PAUL COPELAND: Next question:  
3 In the winter/spring 2002 did RCMP directly or  
4 indirectly notify Syrians of the possible arrival  
5 of an A-OCANADA suspect in Syria, and the question  
6 I am asking is in relation to Mr. Almalki. I  
7 gather you are not going to be able to answer that  
8 question on national security claims. Was a list  
9 of questions provided on Syrians -- that may well  
10 be -- should have said, "provided to Syrians", I  
11 am not sure which. That is another question you  
12 won't have to answer.

13 In May 2002 or later did the RCMP  
14 and/or CSIS receive reports directly or indirectly  
15 from Syrian officials re the interrogation of an  
16 A-OCANADA suspect in Syria? And, again, that  
17 relates to Mr. Almalki.

18 Was Ambassador Pillarella involved  
19 in transit of those reports? Another question you  
20 will not get to answer.

21 Were new questions sent to Syrians  
22 in late May or early June 2002? Was another  
23 report signed from the Syrians about that time?  
24 Was another list of questions sent to Syrian  
25 officials in late June or early July of 2002? And

1           that isn't in the list of questions but that is  
2           the date I was referring to.

3                         Next question, which you will get  
4           to answer: Were you aware of reports of human  
5           rights abuses during interrogation by Syrian  
6           officials, at the time --

7                         THE COMMISSIONER: That will be a  
8           question Mr. Bayne objects to as not being falling  
9           within your standing, is that right?

10                        MR. BAYNE: Yes, based on not  
11           engaging a reputational interest. There was  
12           nothing the officer said that damaged the  
13           reputation of Mr. El Maati in this inquiry during  
14           his evidence in chief.

15                        THE COMMISSIONER: I must say that  
16           that technically is right. I really don't see any  
17           harm in asking the question.

18                        MR. BAYNE: Mr. Commissioner, I  
19           have raised the issue -- I am not strident about  
20           this -- I will trust your judgment.

21                        THE COMMISSIONER: I think that's  
22           fine. Go ahead, please. Can you answer the  
23           question? It's number 11.

24                        MR. CABANA: Actually, I believe,  
25           if memory serves me right, I have already

1           addressed this issue in the public testimony.  
2           Having knowledge, direct knowledge of human rights  
3           abuse by Syrian officials in their interrogation,  
4           I did not have any direct knowledge. I had  
5           basically the same knowledge as the majority of  
6           Canadians with respect to the fact that Syrian  
7           authorities might not follow the same procedures,  
8           and treat their incarcerated individuals the same  
9           way as we do here in Canada. That I was aware of,  
10          yes.

11                           MR. PAUL COPELAND: If I can ask a  
12          subsequent one to that and let everybody object:  
13          You had, at some point, received reports of  
14          Mr. El Maati's claims of mistreatment by the  
15          Syrians.

16          --- Pause

17                           El Maati.

18                           THE COMMISSIONER: No objection,  
19          go ahead.

20                           MR. CABANA: Yes sir, we did.

21                           MR. PAUL COPELAND: And were you  
22          concerned how Canadians would be treated by  
23          Syrians while being asked questions provided  
24          directly or indirectly by Canadians, and I have  
25          the RCMP/CSIS.

1                   MR. FOTHERGILL: Commissioner, if  
2 we can just confirm that's being asked in the  
3 hypothetical -- if such questions were asked --  
4 without confirming whether in fact they were.

5                   MR. PAUL COPELAND: I don't get --  
6 as long as it's being answered also -- because  
7 obviously I don't get to have answers to whether  
8 the list of questions that was sent.

9                   THE COMMISSIONER: -- whether it  
10 was sent, yes.

11                  MR. CABANA: I am allowed to  
12 answer.

13                  THE COMMISSIONER: Yes, you are.

14                  MR. CABANA: Whether, in a  
15 situation like this -- actually, in every  
16 situation, including normal, I would term them as  
17 normal criminal investigations -- there is a  
18 multitude of concerns, as law enforcement  
19 officers, that we have to look at. And these  
20 range or include the impact of having Canadians  
21 abroad being interviewed, impact on the -- first  
22 of all, on our ability to discharge our mandate,  
23 on the admissibility of any evidence that reaches  
24 us or returns here to Canada, and, of course, the  
25 impact on the treatment of these very individuals

1 that are incarcerated abroad.

2 So in order for us to make  
3 decisions to go forward in criminal  
4 investigations, we have to balance all of this,  
5 looking at the mandate, and looking at our role  
6 here in Canada with respect to protecting the  
7 Canadian public.

8 MR. PAUL COPELAND: I will try a  
9 supplementary question to that. I am not  
10 concerned about charter rights and some other  
11 things you talked about, applicability of the  
12 Charter to questioning being done abroad, so on.  
13 I am concerned about mistreatment and torture, and  
14 I wonder whether there was a concern about that in  
15 relation to Canadians being questioned?

16 MR. CABANA: Any time, sir, that  
17 we deal with foreign authorities there is always a  
18 concern and, like I explained, it is a situation  
19 for us to balance these concerns and try to  
20 measure them, but yes, to answer your question, of  
21 course it is a concern.

22 MR. PAUL COPELAND: Specifically  
23 in relation to the Syrians as opposed to the other  
24 189 countries or whatever there are now in the  
25 world.

1 MR. CABANA: Yes, sir.

2 MR. PAUL COPELAND: There was a  
3 concern about how the Canadians would be treated  
4 by the Syrians.

5 MR. CABANA: Of course.

6 MR. PAUL COPELAND: In relation to  
7 torture.

8 MR. CABANA: In relation to the  
9 way they are treated while incarcerated while in  
10 their custody. Yes, sir, that would include  
11 torture.

12 MR. PAUL COPELAND: Did the RCMP  
13 or other Canadian authorities directly or  
14 indirectly ask Syrian authorities not to release  
15 an A-OCANADA suspect and in particular  
16 Mr. Almalki?

17 MR. CABANA: Absolutely not, not  
18 to my knowledge, anyway.

19 MR. PAUL COPELAND: Next question  
20 that you are not going to get to answer, although  
21 I will come back to it when I start going through  
22 the transcript. July 29, 2002, exhibit P-85, in  
23 volume 3, tab 114 -- there are a couple of page  
24 references -- a reference to the RCMP being in  
25 contact with James Gould at DFAIT, ISI, regarding

1 seeking access to somebody through consular  
2 channels in Damascus. Was that person  
3 Mr. Almalki? And I gather that is one of the  
4 questions you are not going to be allowed to  
5 answer on a national security claim?

6 MR. CABANA: That's right.

7 MR. PAUL COPELAND: I might say,  
8 sir, in relation to that, when Mr. Pillarella  
9 testified -- they don't actually specify the  
10 person. I am sorry, I don't have the date on  
11 this, starting at page 7132, Mr. Waldman is  
12 cross-examining Mr. Pillarella, and he makes  
13 reference at that point to Exhibit 138 and there  
14 is a discussion at that point about whether or not  
15 the RCMP would have direct access to -- and  
16 Mr. Pillarella says this has nothing to do with  
17 Mr. Arar. And then there is a reference -- so  
18 there was another person the RCMP had asked to  
19 see, and Khalil, which is General Khalil, seemed  
20 to be disposed in having that person interviewed  
21 by the RCMP.

22 I must say, that having been on  
23 the record, and as I understand it -- actually, at  
24 page 7144, Mr. Waldman says:

25 "...it doesn't really matter.

1                   We know his name, it's on the  
2                   record, Mr. Almalki."

3                   So the issue of the RCMP having  
4                   sought to gain access to Mr. Almalki in custody  
5                   seems to me is on the public record now. It seems  
6                   to me that I should be entitled to have an answer  
7                   to that question, that the national security claim  
8                   seems to be gone in relation to that aspect.

9                   THE COMMISSIONER: That may or may  
10                  not be but the process, as you know, is if the  
11                  government is asserting the claim --

12                 MR. PAUL COPELAND: Even though it  
13                 has been somewhere else revealed that it is  
14                 Mr. Almalki?

15                 THE COMMISSIONER: I am not sure  
16                 that you followed by ruling in the subsequent  
17                 challenge, but I'm not sure that public disclosure  
18                 is viewed by some as being an absolute answer.

19                 MR. PAUL COPELAND: I obviously  
20                 have not followed that aspect of the inquiry  
21                 particularly carefully.

22                 MR. FOTHERGILL: Just on that  
23                 point, I am not prepared to say that is  
24                 necessarily a conclusive disclosure on this  
25                 subject.



1 THE COMMISSIONER: Right.

2 MR. PAUL COPELAND: The next  
3 question, actually, has an incorrect date in it,  
4 it should be January 13, 2003.

5 THE COMMISSIONER: Okay.

6 MR. PAUL COPELAND: The question  
7 reads: On January 13, 2003, Rome liaison officer  
8 Fiorido was in Damascus. Was he there any way  
9 related to Mr. Almalki? Did he directly or  
10 indirectly provide information or questions re  
11 Almalki to the Syrians?

12 And that is, again, a question  
13 that there is national security claim. The next  
14 question which you will perhaps get to answer, at  
15 least there isn't a national security claim: Did  
16 anyone in the RCMP up to that time discuss the  
17 issue how Syrians might conduct interrogations and  
18 whether torture might be used? That is up to  
19 January 13, 2002.

20 MR. CABANA: Again, I believe that  
21 during my public testimony I have clearly  
22 testified to the possible use of torture was  
23 always subject to discussion, and of consideration  
24 in any step of our investigation.

25 MR. PAUL COPELAND: Was it

1 discussed specifically in relation to Syria is  
2 opposed to a broad, general context?

3 MR. CABANA: Yes, sir, it was.

4 MR. PAUL COPELAND: When it was  
5 discussed, did anybody talk about the Syrians  
6 human rights record as reported by Amnesty, as  
7 reported by the US State Department and a number  
8 of other organizations.

9 MR. CABANA: Whether it was  
10 discussed in the context of Amnesty reports or any  
11 other kind of reports, I don't -- I have no  
12 recollection of that. But I can confirm that it  
13 was discussed just as general knowledge of the  
14 fact that that was a possibility.

15 MR. PAUL COPELAND: Discussed as a  
16 possibility. Did anybody discuss trying to do  
17 something that prevented or dissuaded Syrians from  
18 the use of torture?

19 MR. FOTHERGILL: Commissioner,  
20 that seems to implicitly suggest that questions  
21 were actually submitted and, as Mr. Copeland  
22 knows, that is subject to a claim of NSC.

23 THE COMMISSIONER: Right.

24 MR. PAUL COPELAND: I will ask the  
25 next question. Were the RCMP happy that, by the

1           Syrians, there was an opportunity to question an  
2           A-OCANADA suspect?

3                         MR. CABANA: No, absolutely not.  
4           Our preference would have been to be able to  
5           interview these individuals ourselves. Like I  
6           explained a little bit earlier, there is always a  
7           issue of admissibility of the information that  
8           reaches us from these foreign jurisdictions. So  
9           of course our preference would have been to be  
10          able to speak to them ourselves.

11                        MR. PAUL COPELAND: In relation to  
12          Mr. Almalki, correct me if I am wrong, there had  
13          already been an attempt made to interview him.

14                        MR. FOTHERGILL: Specify, is that  
15          in Canada?

16                        MR. PAUL COPELAND: In Canada.

17                        MR. FOTHERGILL: Thank you.

18                        MR. PAUL COPELAND: Mr. Almalki  
19          arrived and is detained in Syria in May of 2002, I  
20          think I am correct?

21                        MR. CABANA: Yes.

22                        MR. PAUL COPELAND: And there had  
23          been an attempts made to interview him before  
24          that?

25                        MR. CABANA: Not to my knowledge,

1 sir.

2 MR. PAUL COPELAND: Prior to the  
3 time that CSIS officials went to Damascus, and I  
4 think that is November 2002 -- somebody can  
5 correct me if I'm wrong -- did they inform DFAIT  
6 officials who were working to secure the release  
7 of the two Canadians then in custody in Syria?

8 Do you know anything about that?

9 MR. CABANA: Yes, sir, actually I  
10 do.

11 MR. PAUL COPELAND: Let me read  
12 the rest of the question, that puts it in some  
13 context. It says:

14 "(Pardy sends email about  
15 this October 28 and 30,  
16 2002)..."

17 The question goes on after the  
18 brackets:

19 "Was issue discussed at the  
20 meeting of ISI, CSIS, RCMP  
21 and Pillarella on  
22 November 11, 2002"

23 MR. CABANA: Actually, the meeting  
24 was not November 11, it was discussed at the  
25 meeting of November 6, 2002, if I remember

1 correctly.

2 MR. PAUL COPELAND: Aside from the  
3 date of the meeting, was there some discussion  
4 about -- so there is a general meeting that  
5 includes CSIS, the RCMP, ISI, and  
6 Ambassador Pillarella on November 6, and there is  
7 some discussion about CSIS officials going to  
8 Damascus.

9 MR. CABANA: Yes. Actually, the  
10 decision for CSIS officials to travel to Damascus  
11 was based on results of the meeting of November 6.

12 MR. PAUL COPELAND: And do you  
13 know whether or not information was sent to DFAIT  
14 about those officials going.

15 MR. CABANA: The meeting was held  
16 at DFAIT with DFAIT representatives.

17 MR. PAUL COPELAND: The next  
18 question was -- let me ask this question, and we  
19 can get it out if need be, that Mr. Pardy -- I'm  
20 sorry, Mr. Pardy's email predates that meeting, so  
21 I won't ask the subsequent question.

22 Here's another question you don't  
23 have to answer, on national security grounds:

24 After Fiorido was in Damascus  
25 January 13 2003, did RCMP shortly after that

1 receive another report from Syrians, directly or  
2 indirectly, re the results of A-OCANADA suspect  
3 that occurred within days of January 13, 2003?  
4 I'll tell you, the A-OCANADA suspect I'm referring  
5 to is Mr. Almalki.

6 And you don't get to answer that  
7 one.

8 When providing information to  
9 Americans, Syrians and Malaysia about A-OCANADA  
10 suspects, did the RCMP emphasize that no charges  
11 had been laid and that there was, at that time, no  
12 basis to lay any charges. And again, I gather  
13 that is another matter in which national security  
14 claims have been made, so you don't get to answer  
15 it.

16 This one you do get to answer --  
17 or perhaps get to answer: On what date did the  
18 RCMP learn of Mr. El Maati's allegations of  
19 torture by the Syrians? Did that impact on how  
20 RCMP and other Canadians dealt with the Syrians?

21 MR. CABANA: I'm not aware of the  
22 exact date that the RCMP as an entity learned of  
23 the allegations that Mr. El Maati had been  
24 tortured. I believe it was in August 2002,  
25 somewhere around there, but the exact date I am

1 not familiar with it.

2 Whether it impacted on how -- well  
3 I can only speak, of course, for the RCMP --  
4 whether it impacted on how we dealt with  
5 Syrians -- first of all, we didn't deal with  
6 Syrians. Throughout my stay on that project, I  
7 have never had any dealings with the Syrians.

8 MR. PAUL COPELAND: Well, the  
9 Liaison Officer went to Damascus.

10 MR. CABANA: I myself did not deal  
11 with the Syrians. Whether it changed our  
12 approach? It required us, as in any case, to have  
13 a look at the information that was reaching us,  
14 that was coming back, and making an effort to try  
15 to corroborate as many points as possible with  
16 respect to the statements that were alleged to  
17 have been obtained from these individuals, and  
18 that's exactly what we did, and we satisfied  
19 ourselves.

20 MR. PAUL COPELAND: Well the  
21 question was: Did that impact on how the RCMP and  
22 other Canadians dealt with the Syrians, Mr. El  
23 Maati's allegations of torture.

24 MR. CABANA: I can't testify as  
25 far as whether it impacted on how Mr. Fiorido, if

1 he dealt with the Syrians, how it impacted the  
2 relationship he will with them, because I'm not  
3 aware of that. I can only speak for the impact it  
4 had on the way I dealt with the information I was  
5 being provided.

6 MR. PAUL COPELAND: I will read  
7 you some other questions that you're not going to  
8 get to answer, and one of them really flows out of  
9 that.

10 Was more information sent to the  
11 Syrians after that time?

12 --- Pause

13 MR. PAUL COPELAND: I have just  
14 received a note and perhaps I might try and ask  
15 this question: You eventually become aware of  
16 Mr. Arar's claims of torture by the Syrians.

17 MR. CABANA: I was no longer  
18 attached to this investigation by the time these  
19 allegations --

20 MR. PAUL COPELAND: So even if I  
21 were allowed to ask the question you couldn't tell  
22 me whether or not that affected how the RCMP dealt  
23 with the Syrians.

24 MR. CABANA: No, sir.

25 MR. PAUL COPELAND: Questions you



1 won't get to answer: Was more information sent to  
2 the Syrians after you learned of, I guess August  
3 of 2002, Mr. El Maati's allegations of torture,  
4 and there are four more questions that you won't  
5 get to answer. The information to obtain says  
6 that compact disks full of documents recovered  
7 from walls, rafters, et cetera, in which city did  
8 they rip open walls? Is it accurate that in  
9 Ottawa no walls were ripped open? Your notes at  
10 page 40 read:

11 "July 16, 2002, Covey advises  
12 that, in his view..."

13 -- blank --

14 "... will never be returning  
15 to Canada."

16 Does "blank" refer to Mr. Almalki?  
17 Did you ask Covey the basis for  
18 that belief?

19 Again, that's a question you won't  
20 have to answer, national security claims.

21 Did the RCMP directly or  
22 indirectly receive reports of interrogations of an  
23 A-OCANADA suspect in Syria that took place in  
24 early October 2002, when Mr. Arar was being  
25 interrogated in New York? And I should say that

1 the A-OCANADA suspect is Mr. Almalki, that I'm  
2 asking about. Did the RCMP sends materials to the  
3 Syrians at that time or are you aware of Americans  
4 sending information to Syria at that time?

5 At page 54 of your notes -- I'm  
6 sorry, I don't have page 54 before me -- the  
7 question I have here is: What information did you  
8 give to Mr. Gould re Mr. Almalki? Did you say  
9 charges laid or contemplated? Again that's not a  
10 question you are going to get to answer.

11 Page 61 of your notes reference to  
12 December 12, 2002, was a list of questions  
13 provided to the Rome liaison officer re  
14 Mr. Almalki. And that completes the list of  
15 questions that I had provided in advance. With  
16 your indulgence, Mr. Commissioner, if I could make  
17 my way through -- I am sorry I have not prepared  
18 this in a thorough fashion -- the transcript of  
19 Mr. Cabana's testimony. I am only going to be  
20 referring to the first volume of that.

21 I take it during your time as the  
22 head of the project A-OCANADA you had not, up to  
23 that point, and even during that, you did not have  
24 any training in national security investigations.

25 MR. CABANA: No, sir, I did not.

1 MR. PAUL COPELAND: And your  
2 expertise, I gather, most recently before that was  
3 sort of financial transactions?

4 MR. CABANA: Criminal  
5 investigations.

6 MR. PAUL COPELAND: As I  
7 understood your testimony you were looking at two,  
8 mainly two things, one to prevent some form of  
9 attack on Canada and, specifically, looking at  
10 financial transactions is they might relate to  
11 terrorism, at least in the A-OCANADA  
12 investigation.

13 MR. CABANA: No, sir, I believe it  
14 went beyond that.

15 MR. PAUL COPELAND: I take it you  
16 may not be allowed to answer this question:  
17 Mr. Cavalluzzo refers to page 7768, in the month  
18 of September 11, CSIS transferred to the RCMP  
19 primary responsibility for investigations they had  
20 been doing which they thought might have some  
21 warrant criminal investigations. I don't know  
22 whether he gets to answer that or not.

23 THE COMMISSIONER: I think he can  
24 answer that. That has come out before, I think.

25 MR. CABANA: Yes, sir, that's

1 correct.

2 MR. PAUL COPELAND: So far as you  
3 know, did you receive the complete CSIS files?

4 MR. FOTHERGILL: I don't think we  
5 can get into this area .

6 THE COMMISSIONER: No.

7 MR. PAUL COPELAND: One of the  
8 targets of your investigation was my client  
9 Mr. Almalki, and that's page 7774, Mr. Cavalluzzo  
10 sets that out.

11 THE COMMISSIONER: I think he can.

12 MR. CABANA: Yes, sir, Mr. Almalki  
13 was the main target of our investigation.

14 MR. PAUL COPELAND: The main  
15 target?

16 MR. CABANA: The main target.

17 MR. PAUL COPELAND: At page 7785  
18 you talked about this investigation being an open  
19 book investigation. You were working closely in  
20 partnership with domestic and foreign agencies.  
21 Mr. Cavalluzzo asked you to name those agencies.  
22 Mr. Fothergill objected to that. I am going to ask  
23 the question and before you answer wait until  
24 Mr. Fothergill gets on his feet.

25 THE COMMISSIONER: Wait to see if

1 Mr. Fothergill gets up and changes his mind?

2 MR. PAUL COPELAND: I don't want  
3 him to name all the foreign agencies, I just  
4 wanted to know whether it was Syria.

5 MR. FOTHERGILL: I think he can  
6 answer that. I think we made it clear the  
7 partnership did not extend beyond Canadian and  
8 American agencies.

9 THE COMMISSIONER: Yes, so you can  
10 answer that question.

11 MR. CABANA: I can?

12 THE COMMISSIONER: The question  
13 specific, did it include Syria?

14 MR. CABANA: No, it did not, sir.

15 MR. PAUL COPELAND: I will ask  
16 this question again whether you get to answer it:  
17 Your testimony was that caveats were down  
18 throughout this period?

19 MR. CABANA: Yes, sir, it was.

20 MR. PAUL COPELAND: There is been  
21 some further evidence -- I don't know whether you  
22 have dealt with this in camera -- there is been  
23 some further evidence from one of your superiors  
24 that caveats weren't down.

25 MR. CABANA: It would appear so,

1           yes, sir.

2                           MR. PAUL COPELAND:  Were you  
3           surprised to hear that?

4                           MR. CABANA:  Very much so.

5                           MR. PAUL COPELAND:  Sorry, I don't  
6           remember his rank, was Mr. Loepky part of the  
7           meetings you went to?

8                           MR. CABANA:  Deputy Commissioner  
9           Loepky attended, I believe, one of our meetings.

10                          MR. PAUL COPELAND:  At page 7824,  
11           you testified:

12                                   "... the main focus of our  
13                                   investigation dealt with a  
14                                   very strong international  
15                                   financial component."

16                                   That's correct?

17                           MR. CABANA:  That's correct, sir.

18                           MR. PAUL COPELAND:  Mr. Almalki  
19           was part of that financial component?

20                           MR. CABANA:  He was at the centre  
21           of it, sir.

22                           MR. PAUL COPELAND:  Wait and see  
23           what kind of objection you get to this:  Did that  
24           relate to Mr. Almalki selling communications  
25           equipment to the government of Pakistan.

1 MR. FOTHERGILL: Yes, I do object.

2 MR. PAUL COPELAND: I take it, on  
3 national security grounds?

4 MR. FOTHERGILL: Yes.

5 MR. PAUL COPELAND: Page 7867, you  
6 talk about conversations with Mr. Couture about  
7 the prospect of sharing information with the  
8 Syrians authorities to further the investigation.

9 MR. CABANA: I don't have the  
10 transcript in front of me, sir. These  
11 conversations did take place, I believe that was  
12 on July 10, if memory serves me right. July 10,  
13 2002.

14 MR. PAUL COPELAND: I appreciate  
15 you don't have the transcript in front of you. On  
16 page 7868, you are reading from a redacted text.  
17 There is a portion there that says:

18 "Mr. Covey advised that in  
19 his view ... will never be  
20 returning to Canada. We  
21 subsequently discussed  
22 protocol of sharing project  
23 info with Syrians to  
24 reciprocate."

25 THE COMMISSIONER: That was in

1           your questions actually. In your earlier  
2           questions, I think.

3                           MR. PAUL COPELAND: My question at  
4           this point is -- well, let me just --  
5           --- Pause

6                           MR. PAUL COPELAND: Okay, thanks.  
7           --- Pause

8                           MR. PAUL COPELAND: This may be  
9           covered in another question as well, but at page  
10          7884, at the top of the page, part of your answer  
11          is:

12   "... some of this  
13   information, including hard  
14   drives, some of them were  
15   hidden in rafters and in  
16   walls."

17   The question I wanted to ask was:  
18          Did that relate to Mr. Almalki's home or  
19          residence.

20   MR. FOTHERGILL: I object to that  
21          question on NSC grounds.

22   MR. PAUL COPELAND: Page 7907, you  
23          talked about the sharing of the -- in  
24          approximately April 2002 -- sharing of databases  
25          with the Americans and providing the Americans



1 with three compact disks.

2 Again, wait for Mr. Fothergill:  
3 Am I correct that information in regard to  
4 Mr. Almalki was part of that information shared  
5 with the Americans.

6 MR. FOTHERGILL: All he can do is  
7 confirm what he has previously which is the search  
8 results were shared.

9 MR. PAUL COPELAND: And answering  
10 whether Mr. Almalki was part of that is a national  
11 security claim? The main target of the  
12 investigation?

13 MR. FOTHERGILL: My instructions  
14 there is an NSC claim with respect to all of the  
15 places where the searches were executed, for the  
16 purposes of this proceeding.

17 MR. PAUL COPELAND: All right, I  
18 will ask it more generally. As part of the  
19 database that was shared with the Americans, was  
20 there information in relation to Mr. Almalki?

21 MR. FOTHERGILL: Same objection  
22 Mr. Commissioner. He can't confirm anything more  
23 than he already has.

24 THE COMMISSIONER: Okay.

25 MR. PAUL COPELAND: The

1 information shared with the Americans, did it  
2 include the information to obtain the search  
3 warrant?

4 MR. FOTHERGILL: My instructions  
5 are to assert an NSC claim with respect to that.

6 MR. PAUL COPELAND: At page 7910,  
7 you said:

8 "I should also point out, and  
9 I think it is important to  
10 note that the sharing was not  
11 in relation to Mr. Arar, it  
12 was in the context of the  
13 investigation of the targets  
14 we were looking at at that  
15 time."

16 Did that include Mr. Almalki?

17 MR. FOTHERGILL: Commissioner,  
18 there is also a mandate question at issue here.  
19 This is, it seems to me, not something that was  
20 fairly raised by witness' examination-in-chief. I  
21 don't think Mr. Copeland's client's reputation  
22 really has been enhanced by this line of  
23 questioning if I can put it that way. And we try  
24 not to assert National Security Confidentiality  
25 excessively but when we get into an area which

1           doesn't obviously further your mandate, I have to  
2           take a strong position on this. I don't think it  
3           is an appropriate ground of questioning, So I  
4           object to it on NSC grounds.

5                           THE COMMISSIONER: Okay.

6                           MR. PAUL COPELAND: I hear two  
7           different objections there.

8                           MR. FOTHERGILL: There are two.

9                           THE COMMISSIONER: I think the  
10          comment I can make is that I am, and counsel by  
11          not objecting, are being generous with respect to  
12          the breadth of the examination that you are grant  
13          of standing should permit. In any event, there is  
14          an NSC claim with respect to that.

15                          MR. PAUL COPELAND: Page 7915,  
16          there is reference toward the bottom of that page  
17          that one of the presentations of sharing of  
18          information was conducted in the United States.  
19          My note indicates, at least, that that US  
20          presentation was done on the 31st of May, 2002.  
21          First of all, were you involved in the  
22          presentation -- I don't even really need to know  
23          that, but what I am curious about, in relation --  
24          assuming I am correct that there was a  
25          presentation done in the United States in May of

1           2002, were you aware that Mr. Almalki was detained  
2           in Syria by that point.

3                         THE COMMISSIONER:   Go ahead.

4                         MR. CABANA:   I am trying to  
5           remember.  Actually, I don't believe I can answer  
6           that because I have no idea.

7                         MR. PAUL COPELAND:   Page 7920  
8           there is a discussion about a list of questions  
9           that were sent to the Americans at the time  
10          Mr. Arar was in custody in New York.  At the  
11          bottom of the page, you said:

12                         "I would assume it would be  
13                         the project managers that  
14                         made the decision to send the  
15                         questions."

16                         -- going over to the next page --

17                         "Questions were not in  
18                         relation to Mr. Arar per se.  
19                         Again, the questions were in  
20                         relation to the target, the  
21                         main target of our  
22                         investigation, and the  
23                         relationship Mr. Arar had  
24                         with that person."

25                         Later on the page you say that was

1 Mr. Almalki. My question is: Do you know whether  
2 the Americans gave that list of questions to the  
3 Syrians?

4 MR. FOTHERGILL: I think one of  
5 the objections I have to make is that if he has to  
6 draw on foreign intelligence in order to answer  
7 the question, he can't.

8 THE COMMISSIONER: First of all, I  
9 think it is proper, within the grant of standing,  
10 to come back to what I said before. Your  
11 objection is if you have to draw upon intelligence  
12 received from a foreign country in order to answer  
13 the question you ought not answer the question.

14 MR. FOTHERGILL: Actually,  
15 Commissioner, as I reflect on it -- forgive me for  
16 stammering a bit, because I have not had prior  
17 knowledge of this. I did ask for some prior  
18 notice of questions to make sure I had clear  
19 instructions.

20 It occurs to me that, in fact, he  
21 can neither confirm nor deny because if he gives  
22 you the answer that he must draw on foreign  
23 intelligence in order to answer the question he  
24 has effectively answered it, so it is one of these  
25 he simply cannot answer.

1 THE COMMISSIONER: You claim NSC  
2 because --

3 MR. FOTHERGILL: Yes.

4 --- Pause

5 MR. PAUL COPELAND: I am getting  
6 close to the end you will be happy to know.

7 THE COMMISSIONER: Okay .

8 MR. PAUL COPELAND: Starting at  
9 page 8006, There is some discussion about -- I  
10 have to find out who is the writer of the  
11 particular document -- some conversation about, as  
12 we go on from there, about a newly redacted  
13 version, talks about:

14 "...the writer advised we  
15 have intelligence/evidence  
16 that we would be prepared to  
17 share with Syrian authorities  
18 if they felt it could be of  
19 assistance to their  
20 investigation. This is in  
21 light of the sharing of their  
22 sharing info with us in  
23 past."

24 So far as you were aware had there  
25 been past sharing of information with the Syrians

1 in regard to my client?

2 MR. FOTHERGILL: I would object to  
3 that question commissioner.

4 THE COMMISSIONER: Yes.

5 MR. PAUL COPELAND: Page 8013,  
6 Mr. Cavalluzzo asked you a question:

7 "To your knowledge did the  
8 RCMP ever, in fact, give  
9 information to the Syrian  
10 authorities through DFAIT  
11 about Mr. Arar?"

12 Your answer was":

13 "I don't believe so. Not at  
14 the time I left the project."

15 Do you know whether the RCMP gave  
16 information to the Syrians about Mr. Almalki?

17 MR. FOTHERGILL: I object to that  
18 question as well, sir.

19 MR. PAUL COPELAND: To your  
20 knowledge -- I am at page 8049, there is some  
21 discussion about a CSIS visit to Syria in about  
22 late November, November 18, 2002 -- did the RCMP  
23 get a report from the CSIS people in relation to  
24 Mr. Almalki?

25 MR. FOTHERGILL: Objection,

1 Commissioner.

2 MR. PAUL COPELAND: Page 8054,  
3 there are questions asked about RCMP sending  
4 anyone to Syria to interview Mr. Arar. Do you  
5 know whether the RCMP sent anyone to Syria to  
6 interview Mr. Almalki?

7 MR. FOTHERGILL: Objection,  
8 Commissioner.

9 MR. PAUL COPELAND: Page 8055,  
10 there is some discussion, an answer you give about  
11 the liaison officer in Rome. I will read the  
12 portion:

13 "Contacted LO Rome who  
14 advised writer..."

15 -- I'm not sure who I know who the  
16 writer is --

17 "...he will be travelling to  
18 Syria very shortly. He  
19 advised that, from is  
20 discussions with ... he feels  
21 our best approach at this  
22 stage would be to share a  
23 list of questions with Syrian  
24 authorities."

25 Did that relate to Mr. Almalki?



1 MR. FOTHERGILL: I object,  
2 commissioner.

3 MR. PAUL COPELAND: Are you  
4 aware, sir, or familiar with the term "conspicuous  
5 surveillance"?

6 MR. CABANA: Yes, sir.

7 MR. PAUL COPELAND: What do you  
8 understand that term to be?

9 MR. CABANA: In what context, sir?

10 MR. PAUL COPELAND: I will give  
11 you a variety of contexts. The context, I  
12 remember it from the McDonald Commission Report  
13 was a meeting in a farm in Quebec where they  
14 surround -- and it has to be RCMP security service  
15 surrounding the farmhouse with officers to make  
16 everybody inside aware they were under  
17 surveillance.

18 MR. CABANA: Yes.

19 MR. PAUL COPELAND: You are  
20 familiar with it in that context, the term?

21 MR. CABANA: Yes.

22 MR. PAUL COPELAND: And in  
23 relation to RCMP surveillance of Mr. Almalki, was  
24 conspicuous surveillance done.

25 MR. FOTHERGILL: First of all, we

1 don't confirm or deny that certain individuals  
2 were under surveillance at particular times, so  
3 there is an NSC objection and, again, we seem to  
4 be broadening the mandate of this inquiry into an  
5 examination of the actions of Canadian officials  
6 in relation to a person other than Mr. Arar.

7 THE COMMISSIONER: That would not  
8 inform, at least as I see it, my findings with  
9 respect to Mr. Arar.

10 MR. PAUL COPELAND: I have, I  
11 think, one final sort of broad question. I will  
12 lay out a preamble of it and ask you the question.  
13 My understanding in relation to this is that there  
14 was a two- or three-year investigation done by  
15 CSIS which probably included surveillance and wire  
16 taps, that in the fall of 2001, A-OCANADA took  
17 over or inherited the results of that  
18 investigation from CSIS.

19 Again in relation to my client,  
20 that I presume that the investigation involved  
21 surveillance, wire taps, information from  
22 informants, information from other agencies, of  
23 other countries, including the United States, that  
24 a search warrant was executed in January of 2002,  
25 seven search warrants executed in 2002, and in the

1 final result, there have been no charges laid  
2 against my client and there are no charges laid  
3 against anyone in relation to that investigation  
4 to your knowledge?

5 MR. FOTHERGILL: If the question  
6 is only the last sentence which was the question,  
7 and if the witness has not been asked to confirm  
8 Mr. Copeland other assertions, then he can answer.

9 MR. PAUL COPELAND: I'm not asking  
10 him to confirm my other assertions, although I  
11 make the assertions very strongly.

12 MR. CABANA: What is the question,  
13 sir?

14 MR. PAUL COPELAND: No charges  
15 have been laid against Mr. Almalki and no charges  
16 laid against any other person in relation to the  
17 investigation done by A-OCANADA?

18 MR. CABANA: Not yet, sir.

19 MR. PAUL COPELAND: Are charges  
20 contemplated?

21 MR. FOTHERGILL: He can't answer  
22 that, Commissioner.

23 MR. PAUL COPELAND: I have no  
24 further questions.

25 THE COMMISSIONER: Ms Jackman.

1 EXAMINATION

2 MS JACKMAN: Mr. Fothergill can  
3 stand up if there is a problem; I expect he will.  
4 You do not need to explain it, Mr. Fothergill,  
5 just say "NSC" and that's fine.

6 MR. FOTHERGILL: I will. I  
7 appreciate it.

8 MS JACKMAN: I just want to  
9 confirm, in terms of my understanding your  
10 testimony and some of the others that I had a  
11 chance to review, as I understand it Mr. Arar was  
12 one of the subjects of interest, he wasn't really  
13 a target. Mr. Almalki was the main target, and I  
14 am not quite clear, what was Mr. El Maati? Was he  
15 a target, a person of interest, a subject of  
16 investigation...?

17 THE COMMISSIONER: Sorry, this is  
18 at the time of the transfer?

19 MS JACKMAN: Back when Mr. Arar  
20 was --

21 THE COMMISSIONER: Back when the  
22 A-OCANADA investigation began.

23 MS JACKMAN: Yes.

24 MR. CABANA: Am I allowed to  
25 answer?

1 MR. FOTHERGILL: He can offer a  
2 characterization. I think it is on it is record  
3 already. I don't think we can get into much  
4 detail here.

5 MR. CABANA: I am sorry.

6 THE COMMISSIONER: You can give a  
7 characterization of what Mr. El Maati was, in  
8 general terms, is what Mr. Fothergill indicated.

9 MR. CABANA: During the fall of  
10 2001, Mr. El Maati become a subject target of our  
11 investigation.

12 MS JACKMAN: Not the main one, but  
13 one of them.

14 MR. CABANA: One of the main  
15 targets.

16 MS JACKMAN: One of the main  
17 targets.

18 MR. CABANA: Yes.

19 MS JACKMAN: So now Mr. Almalki is  
20 not alone?

21 MR. CABANA: Mr. Almalki is not  
22 alone.

23 MS JACKMAN: And was his brother  
24 also considered a main target.

25 MR. FOTHERGILL: That will be NSC.

1 MS JACKMAN: At any point from the  
2 fall 2001, through his entire, I guess, detention,  
3 did he switch or did he remain one of the main  
4 targets?

5 MR. FOTHERGILL: I think the time  
6 frame introduces a new element, so out of an  
7 abundance of caution, I will object on NSC  
8 grounds. I also want to specify that the only  
9 reason I am not ordinarily objecting about the  
10 identification of Mr. El Maati is because his name  
11 has been disclosed in other fora. But I think, as  
12 I said earlier in the proceedings, we think it's  
13 unfortunate -- frankly that these targets have  
14 been identified and I think, although no doubt  
15 their counsel are in the best position to make  
16 this assessment, it doesn't enhance their  
17 reputations to keep reinforcing this fact and I  
18 don't think it is important for your mandate,  
19 frankly.

20 THE COMMISSIONER: In fairness,  
21 you make the point their counsel is in the best  
22 position to judge what is in their best interests.  
23 Their names have been mentioned during the course  
24 of the public evidence here, in context of this  
25 investigation, so they can fairly ask questions

1           that relate to that, that there's not an NSC  
2           claim.

3                           MR. FOTHERGILL:   In that case,  
4           Commissioner there is an NSC claim whether that  
5           characterization change and, if so, at what time.

6                           THE COMMISSIONER:   Yes, I  
7           understand that.

8                           MS JACKMAN:   Exhibit 171 is a fax  
9           message from the Canadian embassy.  I think it's  
10          from the liaison officer in Rome.  In it, it  
11          indicates, January 2, 2002:

12   "...received a call from  
13   Ambassador Pillarella from  
14   Damascus.  He advices that  
15   ... has received  
16   information..."

17   -- and that we should not concern  
18          ourselves with this case because he is a Syrian.

19   I take it that that is  
20          Mr. El Maati because, as far as I understand, he  
21          is the only one detained at that point in Syria.  
22          Did we have this already?  It sort of rings a bell  
23          now.

24   MR. FOTHERGILL:   Yes, and I  
25          declined to confirm whether in fact the individual

1           whose name is redacted here was El Maati or  
2           another person of interest.

3                       MS JACKMAN:  So if I can -- and  
4           Mr. Fothergill can stand again if he feels it is a  
5           concern.

6                       I want to ask you, did it surprise  
7           you that an ambassador would say we don't need to  
8           concern ourselves with this case, even though the  
9           person is a Canadian citizen, because they are  
10          also Syrian?  That's the way I am reading it.  May  
11          be I am misreading it.

12                      MR. CABANA:  I don't believe  
13          that's the way it reads.

14                      Can I can have a few seconds to  
15          read this.

16                      THE COMMISSIONER:  Sure, take your  
17          time to read this.

18                      MR. CABANA:  Unfortunately, I  
19          believe it is the redaction that attributes these  
20          comments to Mr. Pillarella.  I don't think that's  
21          the case.

22                      MS JACKMAN:  Somebody seems to not  
23          be concerned about this Canadian citizen because  
24          this person was a Syrian.  May be it wasn't  
25          Ambassador Pillarella, but somebody was.



1 MR. CABANA: I believe it was the  
2 Syrians.

3 MR. FOTHERGILL: It cannot be  
4 Mr. Pillarella, because --

5 MS JACKMAN: You are saying the  
6 Syrians are saying "don't concern yourself". I  
7 just wanted to clarify.

8 THE COMMISSIONER: Thank you.

9 MS JACKMAN: Why don't I do  
10 this: Mr. Copeland has asked you a number of  
11 questions about sharing information and if you  
12 received information relating to Mr. Almalki. And  
13 rather than my repeating all those questions, just  
14 take it as a given that you are asked in relation  
15 to Mr. El Maati and Mr. Fothergill can say NSC and  
16 that's done with, right?

17 MR. FOTHERGILL: That's correct.

18 MS JACKMAN: I want to clarify,  
19 though, in respect of the sharing of information,  
20 when you say the RCMP did not share, they may have  
21 had discussions, but there is nothing on this  
22 record that shows they shared. You are not  
23 speaking for the Canadian government as a whole,  
24 just for the RCMP, is that right?

25 MR. CABANA: I have no knowledge

1 of what other Canadian agencies have done. I  
2 cannot speak to them.

3 MS JACKMAN: That's true in  
4 respect of CSIS as well, you don't know what they  
5 did or didn't do?

6 MR. CABANA: No, ma'am, even  
7 within the RCMP, I don't pretend to have control  
8 of the RCMP as an entity.

9 MS JACKMAN: So, in fact, CSIS may  
10 have sent all the same information you got  
11 directly to the Syrians and you won't necessarily  
12 know about it?

13 MR. CABANA: It is a possibility.

14 MS JACKMAN: I wanted to clarify  
15 limits on use with respect to information  
16 received.

17 We know that you testified that  
18 you did get evidence from Syria in the past.

19 I don't think I need to give you  
20 the page numbers. I can, if you have any concerns  
21 about it. That wasn't a common practice. That's  
22 what I took from your evidence.

23 And also with respect to Mr. Arar  
24 at least you were concerned the information you  
25 received was too general from the Syrians.

1                   So we know there was some  
2 information received from the Syrians.

3                   I just want to be clear, if you  
4 had received information concerning Mr. El Maati,  
5 you had indicated there was a concern about use in  
6 a court.

7                   Would that concern extend to a  
8 warrant, to an affidavit to support a warrant for  
9 a search?

10                  MR. CABANA: Yes, actually it  
11 would.

12                  MS JACKMAN: You would not use  
13 information obtained under torture from another  
14 country?

15                  MR. CABANA: No. That is not what  
16 I am suggesting. I am suggesting it would be a  
17 concern to us and we would try to validate or  
18 corroborate as much of the information as we could  
19 and that's exactly what we did.

20                  MS JACKMAN: And that is true  
21 with respect to Mr. El Maati. You are not going  
22 to answer that, right.

23                  MR. CABANA: I am not sure whether  
24 I am allowed or not.

25                  MR. FOTHERGILL: There seems to be

1 a buried premise that information was in fact  
2 obtained. I think the witness can and has answered  
3 as a matter of policy and as a general  
4 proposition, whether information obtained from a  
5 country with a questionable human rights record  
6 could be used in support of a search warrant.

7 MS JACKMAN: As I understand --  
8 let me just ask a further question of  
9 clarification because I am a little dense on this:  
10 it would have to be corroborated -- would the  
11 information go in with the collaboration?

12 MR. CABANA: Well, what would  
13 normally -- and here we are speaking -- I gather  
14 hypothetically --

15 THE COMMISSIONER: In general  
16 terms and not specific?

17 MR. CABANA: In general terms what  
18 would happen is that the information that reaches  
19 us would be analyzed -- as many as the points  
20 contained in this information, would be -- there  
21 would be an attempt to try to corroborate that.

22 The information would be included  
23 in the information to obtain and, as well, as the  
24 source of that information, and the issue that's  
25 attached to it -- so if there was an issue of

1           torture, we would make sure that the judicials are  
2           aware of the existence of that possibility. And  
3           you are absolutely right, the corroborating points  
4           would also be included.

5                       MS JACKMAN: You probably cannot  
6           answer this -- I know from what your testimony  
7           that it appeared that you did want whatever  
8           information Mr. Arar was going to give the  
9           Americans or may give the Syrians. I am assuming  
10          that was probably the case with Mr. El Maati as  
11          well.

12                      MR. CABANA: Ma'am, again, in  
13          general terms, we were interested in getting --

14                      MS JACKMAN: Anything?

15                      MR. CABANA: -- any information  
16          that would help us protect the Canadian public.

17                      MS JACKMAN: Let me ask you if  
18          it's reasonable for someone to perceive --  
19          Mr. El Maati himself to perceive this or for  
20          others to perceive this, that in November of 2001,  
21          when he left Canada for his wedding in Syria, you  
22          didn't have reasonable and probable grounds at  
23          that point to lay a criminal charge against him?

24                      MR. FOTHERGILL: Commissioner,  
25          beyond characterising him as has been done, we

1 would object to any further particularization of  
2 the case against Mr. El Maati.

3 MS JACKMAN: Okay. Well, no  
4 charges were laid against Mr. El Maati in November  
5 of 2001?

6 MR. CABANA: Not to my knowledge,  
7 no.

8 MS JACKMAN: Do you think a  
9 reasonable person -- because Mr. El Maati says  
10 that the Syrians and the Egyptians asked him  
11 specific information that was from Canada -- that  
12 he could get the impression or others could get  
13 the impression that what you were trying to do was  
14 use Egypt or Syria as surrogates to get  
15 information that you couldn't get yourself?

16 MR. FOTHERGILL: Commissioner --

17 THE COMMISSIONER: Go ahead.

18 MR. FOTHERGILL: -- I think it is  
19 partly --

20 MS JACKMAN: To strengthen a case.

21 MR. FOTHERGILL: -- an NSC  
22 objection, but it is also the point I made in  
23 relation to something that Mr. Copeland did, which  
24 was to put on the record as a proposition  
25 something which we don't have any reasonable

1 expectation will be confirmed by evidence.

2 THE COMMISSIONER: I agree with  
3 that.

4 MS JACKMAN: Sorry, I did not  
5 understand. NSC I understand.

6 THE COMMISSIONER: There is also  
7 an NSC claim. But also you asserted that  
8 Mr. El Maati says something.

9 MS JACKMAN: Good point.

10 THE COMMISSIONER: So the question  
11 shouldn't be used as a vehicle to do that.

12 MS JACKMAN: I wanted to clarify  
13 something as well in terms of what you said.

14 I am not talking about caveats  
15 now. There is an implied limit on use. Like, you  
16 cannot take information received from Canada that  
17 is given to the US, and they cannot go use it --  
18 they are not supposed to go use it in a court  
19 proceeding or something without coming back to  
20 you.

21 But that doesn't apply, am I  
22 correct in thinking, to intelligence gathering?

23 So, for instance, if you sent  
24 information to the Syrians, they could  
25 legitimately use it to interrogate, even though

1           they couldn't use it in a court proceeding. Is  
2           that a fair understanding?

3                       MR. CABANA: Now, what the  
4           proceedings or the parameters, the laws are in  
5           Syria, I am not familiar with.

6                       The normal sharing mechanisms  
7           between -- we'll speak of our common partners,  
8           like the Americans, indicate if we are dealing  
9           with intelligence here, intelligence is not in an  
10          admissible format.

11                      MS JACKMAN: It is not in an  
12          admissible format for court, but it is certainly  
13          admissible for the purpose of their furthering the  
14          investigation

15                      MR. CABANA: For the purpose for  
16          which it is being shared.

17                      MS JACKMAN: And there is no  
18          reason to disbelieve that Syria would probably --

19                      MR. CABANA: I have no knowledge  
20          of what the law is in Syria, no.

21                      MS JACKMAN: No. No. I am not  
22          talking about the law in Syria; I am talking about  
23          RCMP going to Syria or CSIS information going to  
24          Syria with an implied understanding on limited  
25          use. It would not cover investigation?



1 MR. CABANA: To my knowledge,  
2 there was no implied caveats with Syria.

3 MS JACKMAN: Okay.

4 MR. CABANA: So I don't think that  
5 question would apply here.

6 MS JACKMAN: Okay. In other  
7 words, no caveats to Syria? What do you mean?

8 MR. CABANA: It is just, you  
9 are -- in your question you are referring to an  
10 implied agreement between two countries for the  
11 purpose of sharing of the information.

12 If we go back to my --

13 MS JACKMAN: I see what you are  
14 saying.

15 MR. CABANA: -- to my public  
16 testimony where I describe, I believe, the  
17 original sharing agreement between partner  
18 agencies, Syria was not part of that.

19 MS JACKMAN: You had indicated --  
20 and this was in respect of Ms Edwardh's questions  
21 to you that this was a new situation that had  
22 never really happened before -- and I wanted to  
23 know -- it is page 8141 -- I just wanted to know,  
24 when you say this is a new situation, if you meant  
25 it was new only in respect of Mr. Arar or in

1           respect of the other men that were in detention at  
2           that point? You might want to look at it.

3                           She asked you in terms --

4                           MR. PAUL COPELAND: I will give  
5           him a copy of my transcript.

6                           THE COMMISSIONER: Sure.

7                           MS JACKMAN: -- communications  
8           that are --

9                           THE COMMISSIONER: That would be  
10          great. Thank you.

11                          MS JACKMAN: She was asking you if  
12          this is an unusual event for you to receive  
13          consular materials, if that had ever happened in  
14          your experience -- and before you answer -- you  
15          answered, my career, your answer, yes.

16                          Mr. Cabana: I have never been  
17          involved in anything like this before in my  
18          career, ma'am.

19                          I am just wondering if you are  
20          restricting that to Mr. Arar or to the fact that  
21          there were other men, Canadians detained in those  
22          countries and allegedly --

23                          MR. CABANA: I am sorry, I am not  
24          sure I understand your question.

25                          You are making reference to

1 receiving information through consular --

2 MS JACKMAN: Consular officials,  
3 right.

4 MR. CABANA: Consular officials.  
5 So your question is in relation to information  
6 that would have been received from consular  
7 officials in relation to other individuals?

8 MS JACKMAN: Yeah. You did get it  
9 already. I thought you already confirmed that you  
10 thought it was with respect to Mr. El Maati.

11 THE COMMISSIONER: We are  
12 getting -- okay.

13 MR. FOTHERGILL: Commissioner, he  
14 can't confirm that consular information was  
15 received on any individual, other than Mr. Arar,  
16 and that he has explored that.

17 MS JACKMAN: Sorry. I  
18 misunderstood. I thought he confirmed he did  
19 receive it.

20 MR. FOTHERGILL: If it is useful  
21 to Ms Jackman to inquire what sort of frequency  
22 does one generally receive consular information  
23 through ISI, I think that might be of some  
24 interest.

25 THE COMMISSIONER: It is far a

1 field from Mr. El Maati, but certainly if  
2 that's the question you would like to ask him.

3 MS JACKMAN: I just wanted to know  
4 how come -- it doesn't really matter. I just  
5 wanted to get a sense of when he was talking  
6 about the unusual situation or giving the flavour  
7 that it was an unusual situation for -- in respect  
8 of Mr. Arar, was he only talking about Mr. Arar --  
9 the fact it was series of cases all through the  
10 same time period.

11 I am not saying you got  
12 information or didn't. I just think --

13 MR. CABANA: It was an unusual  
14 situation period --

15 MS JACKMAN: For everybody?

16 MR. CABANA: -- in relation to  
17 everybody.

18 MS JACKMAN: Right. You can  
19 probably -- your friend will probably claim  
20 national security claim.

21 I want to know, was anything ever  
22 received from Egypt about Mr. El Maati? I know  
23 you were going to say --

24 MR. FOTHERGILL: NSC.

25 MS JACKMAN: Right. You had

1 indicated -- and again this was in response -- I  
2 want to clarify this -- but at page 8134 --  
3 actually, if you start at 8133, Ms Edwardh's is  
4 asking you in the middle of the page -- she says,  
5 "...it seems to me really  
6 interesting that we have  
7 Mr. Almalki, we have  
8 Mr. El Maati, we have  
9 Mr. Arar back in Canada. Of  
10 course they are a little  
11 frightened of you guys."

12 And if you go onto the next page,  
13 8134, I read your answer as saying,

14 "No, ma'am..."

15 And this is at line 10 --

16 "At the same time, I would  
17 refer you to testimony of  
18 yesterday. We tried on  
19 numerous occasions to meet  
20 with the very individuals  
21 that you have just  
22 identified."

23 Now, the very individuals includes  
24 Mr. El Maati.

25 I just want to know if you can

1           clarify for us when the RCMP ever tried to meet  
2           Mr. El Maati.

3                           MR. CABANA: My understanding  
4           actually is the RCMP did meet with Mr. El Maati.

5                           MS JACKMAN: They met with  
6           Mr. El Maati in Canada. They actually met with  
7           Mr. El Maati in Canada?

8                           MR. CABANA: That's my  
9           understanding.

10                          MS JACKMAN: My understanding is  
11           the OPP met with Mr. El Maati, CSIS met with  
12           Mr. El Maati, not the RCMP.

13                          MR. CABANA: The information I  
14           have, ma'am, is that the RCMP as well met with  
15           Mr. --

16                          MS JACKMAN: Can I ask when that  
17           was? Is he allowed to answer that, when he met  
18           with them?

19                          MR. FOTHERGILL: The difficulty,  
20           commissioner -- just to state the objection, no,  
21           it is subject to NSC.

22                          This is turning into the kind of  
23           proceeding that I feared when Superintendent  
24           Cabana first came to testify.

25                          You will recall at the conclusion

1 of those two very difficult days I commended the  
2 cooperation and professionalism of all concerned,  
3 specifically your counsel, because it's very  
4 difficult to sit here in a state of heightened  
5 concentration, trying to anticipate whether these  
6 questions are going to elicit NSC answers or not.

7 And what has obviously just  
8 happened is that we had something released,  
9 hopefully it is not serious, but it is something I  
10 had no way of anticipating. The witness answered.  
11 And in retrospect it should not have been  
12 answered.

13 We dealt with this, I think,  
14 surprisingly well in the context of your mandate  
15 because of the extraordinary efforts of your  
16 counsel Mr. Cavalluzzo, to elicit the evidence in  
17 a material and very careful way. It made my job  
18 possible -- not easy but possible.

19 I am very concerned about the way  
20 that this is unfolding, despite the fact that last  
21 week I asked these very counsel to identify for me  
22 the sorts of questions they wanted to ask, so I  
23 could have instructions, so I would not have to  
24 disrupt and so I would not have to try to perform  
25 mental gymnastics to determine whether the answer

1 sought was appropriate or not.

2 So, I don't know how much longer  
3 we are going to have to continue this, given that,  
4 with the greatest of respect, none of these  
5 questions really are furthering your mandate at  
6 all.

7 Perhaps I could ask for some  
8 assistance from commission counsel to ensure that  
9 the evidence that is adduced before you does in  
10 fact further your mandate and is an effective use  
11 of your time.

12 THE COMMISSIONER: Maybe I am not  
13 sure it is not a bit of an offer statement to say  
14 none of it, but be that as it may, the basis that  
15 I granted standing to these two counsel was to  
16 deal with evidence where their clients names were  
17 mentioned and to deal with any sort of  
18 reputational interest that may be affected.

19 As I commented once already, I  
20 think I have been and you have been extremely  
21 generous in interpreting the breadth of that  
22 mandate.

23 I, quite frankly, have been taking  
24 the approach -- rightly or wrongly -- that if  
25 there wasn't any particular harm and there was at



1           least some tenuous connection, we could probably  
2           deal with it more quickly, rather than arguing on  
3           a question by question basis.

4                         It is unfortunate -- and you are  
5           certainly not at fault if an answer has come out  
6           which you didn't make the NSC objection in time.

7                         And if it is your wish to assert  
8           an NSC objection with respect to that line of  
9           questioning, your failure to do so in the first  
10          instance isn't held against you.

11                        MS JACKMAN:  Also, I can  
12          anticipate the answer.  I mean --

13                        THE COMMISSIONER:  In any event, I  
14          think one cannot underestimate -- I can tell you  
15          sitting her -- cannot underestimate the difficulty  
16          that Mr. Fothergill is going through, because as I  
17          sit and listen to the questions, I can tell you,  
18          the first exercise you have to go through is what  
19          did we hear in camera and did we hear in public.  
20          Some of it is obvious.

21                        MS JACKMAN:  Right.

22                        THE COMMISSIONER:  I must say that  
23          his recollection of the evidence is impressive.

24                        In any event, a long way of saying  
25          the objection that you make to that line of

1           questioning, there is an objection, even though it  
2           is made after the fact.

3                       MS JACKMAN: I won't pursue it,  
4           but I just wanted to clarify my understanding, you  
5           did allow me with Ms Pastyr-Lupul that I could ask  
6           questions of clarification and that's what I did.  
7           This came directly out of the evidence. He said  
8           we tried many times to meet those very people. I  
9           was just trying to clarify.

10                      THE COMMISSIONER: The point here  
11           there, was a slip.

12                      MS JACKMAN: Yeah, there was.

13                      THE COMMISSIONER: We will just  
14           push on.

15                      MS JACKMAN: I am trying not to  
16           do all that -- I mean, to cover all those things.  
17           I just want to cover -- I am almost finished.

18                      In terms of clarification, Ms  
19           Pastyr-Lupul, the officer from the Department of  
20           Foreign Affairs made reference to a conversation  
21           that she had had with Badr El Maati,  
22           Mr. El Maati's dad, in which -- and you may not  
23           know the answer to this -- in which Badr had  
24           reported that CSIS didn't want Mr. El Maati  
25           back -- that seemed to be the case from the memo.

1                   My friends can object if they  
2 think I am misstating it, but I had asked her to  
3 clarify that that when I asked her questions.

4                   I just wanted to know if the RCMP  
5 shared that view that you didn't want him back in  
6 Canada.

7                   MR. CABANA: Again, I can't speak  
8 on behalf of the RCMP is an entity. Myself, as an  
9 investigator, I would prefer to be able to meet  
10 with the individuals and obtain whatever evidence  
11 we can secure directly from the person.

12                  MS JACKMAN: Then my next question  
13 is, did you make any effort to meet with  
14 Mr. El Maati when he was detained in Egypt? I  
15 understand there is a track record from the  
16 Department of Foreign Affairs indicating that  
17 consular officials, at least, were asking  
18 Mr. El Maati -- this is in their records, not  
19 his -- asking Mr. El Maati if he would meet with  
20 Canadian intelligence officials. It didn't say  
21 which ones.

22                  MR. FOTHERGILL: From an RCMP  
23 perspective, that would be NSC.

24                  THE COMMISSIONER: Right.

25                  MS JACKMAN: I know you didn't go

1 to Syria with CSIS, or A-OCANADA or OCANADA didn't  
2 go to Syria with CSIS.

3 Did you go Egypt with CSIS when  
4 they went for training by Egyptian intelligence?

5 MR. FOTHERGILL: NSC,  
6 commissioner.

7 MS JACKMAN: It is not NSC. It is  
8 a matter of public -- oh, it is NSC with respect  
9 to whether the RCMP went, because CSIS went and  
10 that is a matter of public record.

11 MR. FOTHERGILL: Yes.

12 MS JACKMAN: And as Mr. Copeland  
13 indicated, to the present time in respect of  
14 Mr. El Maati, he has not been made the subject of  
15 an investigative hearing under the criminal code,  
16 or criminal charges.

17 MR. CABANA: Again, I will give  
18 you the same answer I gave Mr. Copeland.

19 MS JACKMAN: Thanks.

20 MR. CABANA: Not yet, ma'am.

21 MS JACKMAN: Not yet, okay. And  
22 that is since at least September 2001.

23 MR. CABANA: That's correct.

24 MS JACKMAN: Thank you.

25 THE COMMISSIONER: Thank you, Ms

1 Jackman.

2 I just cannot remember the order  
3 of where we were for further examinations.

4 MR. BAYNE: I thought we were done  
5 everything.

6 THE COMMISSIONER: I think we had  
7 done everything, except these two.

8 MR. CAVALLUZZO: Everyone had been  
9 completed, except Mr. Copeland.

10 THE COMMISSIONER: So there are no  
11 further questions at this stage.

12 Let me thank you, Superintendent  
13 Cabana.

14 MR. CABANA: It was my pleasure,  
15 sir.

16 THE COMMISSIONER: I appreciate  
17 it.

18 Let me just reiterate to you what  
19 Mr. Fothergill had said in the spirit of that.  
20 The giving of evidence in these circumstances for  
21 everybody concerned presented special challenges  
22 because of the NSC claims.

23 I think given that, that it has  
24 gone -- I agree with Mr. Fothergill -- I think it  
25 has gone well and it has proved to be beneficial.

1           You certainly benefitted the commission by your  
2           patience and the way you answered the questions  
3           and persevered through that. I appreciate it very  
4           much.

5                           MR. CABANA: Glad to be of help.

6                           THE COMMISSIONER: Thank you. You  
7           may then step down.

8                           I think we have another matter we  
9           are going to deal with right now.

10                          We might as well deal with it  
11           right away.

12                          Is everybody ready to deal with  
13           the matter right away?

14                          Thank you, then, superintendent.

15                          Mr. Bayne.

16                          MR. BAYNE: Would you prefer,  
17           Mr. Commissioner, if I go over to the podium.

18                          THE COMMISSIONER: It depends how  
19           long you are going to be. You can do whatever you  
20           are most comfortable at.

21                          This is a motion for an extension  
22           of time?

23                          MR. BAYNE: It is, sir.

24                          THE COMMISSIONER: If you want to  
25           use the podium, do.

1 MOTION

2 MR. BAYNE: It is a request,  
3 Mr. Commissioner, in respect of written  
4 submissions that Mr. Boxall and I have been trying  
5 for some time to get done.

6 And the condensed version of my  
7 position is as follows: I think we started this  
8 commission in about February of '04. Evidence  
9 started in the summer of '04.

10 It has been over a year now of  
11 pretty consistent evidence, about 14 months or so.  
12 The evidence is still going on and will until  
13 Wednesday, August 31, 2005, on the present  
14 schedule -- and the schedule has had to be  
15 adjusted. Please do not take any of my comments  
16 as criticism.

17 These are difficult matters. I  
18 know your counsel and you have worked extremely  
19 hard in getting witnesses here -- sometimes they  
20 are not available and so the schedule gets  
21 adjusted. I am very sensitive to that.

22 Let me give you the other side of  
23 the story from at least Mr. Boxall's and my  
24 perspective.

25 Evidence that has gone on about 14

1 consecutive months will end Wednesday, August 31  
2 and our final submissions are due one clear day  
3 later.

4 So the Thursday we have and then  
5 Friday, September 2, under the present schedule  
6 is when our final submissions have to be in.

7 In my submission it is not  
8 unreasonable for me to make a request even up to  
9 30 days from the end of the evidence in a case of  
10 this type or an inquiry of this type.

11 The conditions Mr. Boxall and I  
12 are working under -- we don't have any other  
13 people cleared in our office. It is just  
14 Mr. Boxall and I. We have, quite frankly, limited  
15 access to materials.

16 Nothing is at our office, nothing  
17 is at our home. We cannot work at either place.  
18 We have to go into the RCMP to work and we are  
19 limited as to when there are people there to  
20 supervise us.

21 That affects us. It also affects our word  
22 processing of written materials.

23 New issues constantly arise. This  
24 week and last week is a good example.

25 Mr. Cabana has been some four



1 times now to give evidence to the commission --  
2 two times alone this week -- and we have been  
3 occupied with that.

4 Without getting into anymore  
5 specificity, we are dealing with a broad range of  
6 issues.

7 All of that would have posed a  
8 real challenge for us to get these meaningful and  
9 helpful submissions. I say that trying our best  
10 to be helpful to you by September 2.

11 But the straw that broke our  
12 camel's back was when yesterday morning -- today  
13 is Tuesday -- yesterday morning at about 7:00  
14 o'clock in the morning, I got a call Mr. Boxall  
15 about a death in the immediate family by motor  
16 vehicle. A tragedy occurred. A young father of  
17 two young children -- his wife's defacto brother.  
18 Mr. Boxall is packing up his entire family to go  
19 to New York. He has a paternal role in the  
20 extended family. So, he is lost to me now.

21 And I am asking you for  
22 consideration.

23 I don't think it would be  
24 unreasonable to ask for 30 days from the end of  
25 the evidence, but I am asking you at least to

1           September 19th.  Whatever position you take about  
2           other people's submissions, our submissions are  
3           going to be limited and directed.  They are not  
4           directed to some of the broader issues you will  
5           have to deal with.  You know our focus.  But I am  
6           asking to September 19th.

7                           I can tell you, in terms of oral  
8           submissions, it is not my intention to make them,  
9           simply because I don't, consistent with the  
10          position I have taken in respect of Superintendent  
11          Cabana, I cannot really make an effective and  
12          cohesive, coherent public submission.  It would be  
13          fractured and non-contextual, and most of it I  
14          cannot refer to.  I do not want to do that  
15          disservice to the public.

16                          So, I am simply not intending to  
17          make oral public submissions.

18                          So you can schedule those when you  
19          want.

20                          THE COMMISSIONER:  You do not  
21          intend to make any oral submissions?

22                          MR. BAYNE:  If there are things  
23          said by some counsel that on the spur of the  
24          moment I want to respond to and I am able to.  It  
25          would be nothing more than that.  It wouldn't be

1           like a presentation.

2                           THE COMMISSIONER:  You are not  
3           intending to make oral submissions either,  
4           publicly or in camera, but merely to respond to  
5           something that triggered you?

6                           MR. BAYNE:  Well, to the extent  
7           that you want oral submissions in camera, I can  
8           make them.

9                           THE COMMISSIONER:  I am not  
10          requiring anybody to make oral submissions.

11                          MR. BAYNE:  I don't think as much  
12          as we are sometimes taken away by our own  
13          rhetorical flourish, that you want to listen to me  
14          waxing away in camera or in public.  I can put it  
15          down in writing and let you read it and make what  
16          you will of it and then digest it when you come to  
17          write your report.  I am simply asking that I be  
18          given until September 19th.

19                          The reality is, we are simply not  
20          going to be able to get it done, given what has  
21          now happened and where we are.  I will not say  
22          more about it.

23                          It strikes me, as a matter of  
24          fairness to Superintendent Cabana,  I am asking  
25          for that indulgence.

1 THE COMMISSIONER: Are you  
2 intending to make written public submissions?

3 MR. BAYNE: No. I couldn't make  
4 an effective -- given the narrowness -- I don't  
5 want to say -- it is not narrow in one sense --  
6 but given the nature of my standing, our standing,  
7 no, I don't.

8 THE COMMISSIONER: Thank you.  
9 Does anybody else have anything to say on this  
10 issue? Mr. Fothergill? Mr. Bell.

11 MR. BELL: I, too, had earlier  
12 asked for an extension, for 30 days beyond the end  
13 of the evidence, which would have taken us to the  
14 end of September.

15 My client's circumstances are a  
16 little bit different than Mr. Bayne's, but not  
17 terribly dissimilar.

18 My client was served with a  
19 Section 13 notice on April 8th. I was retained  
20 mid April, but not security cleared until the very  
21 end of May.

22 I have been trying to bring myself  
23 up to speed and sit in on witnesses that I  
24 considered necessary.

25 And my own personal schedule,

1 quite frankly, requires me to be in Vancouver for  
2 the Canadian Bar Association business, and it is  
3 sort of a command performance this weekend, and  
4 then I have had a long standing, quite frankly,  
5 vacation planned for two weeks after that.

6 Now, the commission has been kind  
7 enough to extend the time for my client's brief to  
8 be due on the 6th of September. I appreciate  
9 that. But I can tell you it would be much more  
10 focused and better presented if I had until the  
11 19th of September, as Mr. Bayne suggested.

12 THE COMMISSIONER: Are you  
13 intending to make oral submission either in public  
14 or in camera?

15 MR. BELL: Not at this time. My  
16 intention is very similar to Mr. Bayne's. I  
17 intend to provide written submissions. Now, as a  
18 result of another motion that you have heard in  
19 camera, I will be making some of my submissions on  
20 jurisdictional issues in a public forum.

21 THE COMMISSIONER: But they would  
22 be in writing?

23 MR. BELL: But they would be  
24 written.

25 THE COMMISSIONER: What is

1 important to me at this point -- and hear from  
2 both of you in terms of scheduling time. And if I  
3 hear that counsel are not intending to make oral  
4 submissions, that changes the assumption on which  
5 I would normally approach this.

6 If that is your intention, then so  
7 be it.

8 MR. BELL: At the present time,  
9 that is my intention, to make written submissions.

10 THE COMMISSIONER: Okay. Anybody  
11 else, Mr. Wallace.

12 MR. WALLACE: I will stay here  
13 because I will not speak very long.

14 I would make the same request. I  
15 don't want to give you an undertaking right now  
16 because until Mr. Bayne mentioned that I, I hadn't  
17 really given any thought to it.

18 The idea seems quite attractive to  
19 me; however, I just haven't considered it.

20 THE COMMISSIONER: The idea of no  
21 oral submissions?

22 MR. WALLACE: That's correct. I  
23 do not want to mislead you by thinking that I am  
24 saying that I am not going to do that. I haven't  
25 considered it. I would ask for the same

1 extension. Thank you.

2 THE COMMISSIONER: Okay, anybody  
3 else.

4 MR. KLOEZE: Mr. Commissioner, my  
5 submissions will be in writing.

6 THE COMMISSIONER: Only in  
7 writing?

8 MR. KLOEZE: In writing, sir, yes.

9 THE COMMISSIONER: Let me ask the  
10 three of you: are you going to make both public  
11 and in camera submissions?

12 MR. KLOEZE: I would expect that  
13 mine will be in camera submissions,  
14 Mr. Commissioner.

15 THE COMMISSIONER: Right.

16 MR. KLOEZE: As you know, we have  
17 a discrete limited interest and I think that we  
18 will relatively brief.

19 I support Mr. Bayne's position.

20 I indicated to you earlier that we  
21 would be prepared to live with the dates that have  
22 been set forth. I happy to do that.

23 Obviously the more time permitted,  
24 the greater the convenience to us. With that  
25 said, I am on Mr. Bayne's side.

1                   I know he has worked assiduously.  
2                   He looked after our interest until we were brought  
3                   on board. I know his function is much broader  
4                   than ours in terms of his representation of his  
5                   interests, and I am sympathetic to his needs.

6                   THE COMMISSIONER: Mr. Fothergill.  
7                   I am sorry. Yes.

8                   MS PITHER: I am Carrie Pither. I  
9                   am not legal counsel to the intervenors but I am  
10                  here in lieu of legal counsel to the 18  
11                  organizations that have intervenor status at the  
12                  commission.

13                  As I understand, at least two of  
14                  them have contacted the commission about the  
15                  concerns with the timing with Leo Martel, the last  
16                  witness testifying up until the 31st and then  
17                  written submissions being two days following that.

18                  I know for at least two of the  
19                  intervenors that are quite engaged, his testimony  
20                  is very key, and affects the kind of submission  
21                  that they would be making with respect to foreign  
22                  affairs and other things.

23                  So, I know for many of the  
24                  intervening organizations, this is quite a big  
25                  issue. We are also trying to sort out the



1 question of joint versus individual submissions,  
2 which complicates matters even more.

3 And then, of course, some of the  
4 organizations wish to make oral submissions  
5 following their written submissions and others  
6 don't. So for us this is all a huge issue. And  
7 it is very complicated by the very short window  
8 between the last witnesses and the date for  
9 submissions.

10 I wanted to add that voice in on  
11 behalf of the intervenors, that we are finding  
12 that very difficulty as well.

13 THE COMMISSIONER: Are the  
14 intervenors -- do you know how many voices there  
15 will be either in writing or orally?

16 MS PITHER: I think all  
17 intervenors will be making submissions. I don't  
18 believe --

19 THE COMMISSIONER: They will not  
20 coordinate them through a single voice?

21 MS PITHER: We are working on that  
22 right now. I have a feeling that there will be at  
23 least three individual submissions, written  
24 submissions, and then there might be some  
25 groupings of joint submissions. And we have yet

1 to finalize that.

2 THE COMMISSIONER: Okay. That  
3 would help if you could let us know as soon as  
4 possible.

5 MS PITHER: I am trying.

6 THE COMMISSIONER: I am sure you  
7 are. That is your job, isn't it?

8 Okay, if you could let us know  
9 when that would be. And then Mr. Copeland and Ms  
10 Jackman.

11 MR. PAUL COPELAND: I am sort of  
12 wearing two hats at the present moment.

13 As you know, the law union has  
14 standing. I am not sure that we had contemplated  
15 making submissions, because the scale of the  
16 inquiry has been so massive that it has been  
17 difficult for us to do much, other than focus on  
18 occasional issues and to join with others in  
19 making some submissions and some requests to the  
20 commission.

21 I rather expect that we will sign  
22 on somebody else's and maybe add some additions to  
23 it. I can almost virtually assure you we will not  
24 be making oral submissions.

25 In regard to Mr. Almalki, at this

1 point, other than making a very brief written  
2 submission, I do not intend -- am not certainly  
3 intending to make oral submissions. I may make a  
4 written submission to you, but it will be very  
5 limited.

6 THE COMMISSIONER: Thank you.

7 MR. PAUL COPELAND: I have to tell  
8 you particularly in relation to Mr. Almalki, I  
9 don't know how far I will get or even whether I  
10 will be here in relation to Mr. Martel -- he has  
11 dealings with Mr. Almalki that are of some concern  
12 and reflect reputational interests. And having a  
13 two-day turnaround is difficult.

14 THE COMMISSIONER: Ms Jackman.

15 MS JACKMAN: If everybody else is  
16 asking for an extension, I certainly would like  
17 one.

18 THE COMMISSIONER: You don't want  
19 to be the only one who would come in a week before  
20 everybody else, is that the point?

21 Sounds like a good idea.

22 MS JACKMAN: No, I knew there  
23 would be a problem in terms of Mr. Martel. I am  
24 not even sure the extent of the submissions that I  
25 would put in at this point.

1                   I have not actually had the  
2                   opportunity to review the transcript in the past  
3                   that may be relevant -- all of them. So I,  
4                   obviously, would like more time, if it is going.

5                   THE COMMISSIONER: You will buy  
6                   in. Mr. Fothergill.

7                   MR. FOTHERGILL: Commissioner,  
8                   this may be one of the rare times where we have a  
9                   common position, despite the diverse positions we  
10                  normally advance.

11                  From the attorney general's  
12                  perspective, we are, too, facing a huge logistical  
13                  challenge here.

14                  One of the unusual aspects of this  
15                  inquiry is that commission counsel have elected  
16                  not to make submissions. So there is no party  
17                  that I think has taken upon itself the task of  
18                  summarizing to the extent that this can be done in  
19                  an reasonable way the full gamut of evidence that  
20                  has been presented. We are attempting to do that.

21                  And we do have reasonable  
22                  resources applied to this task, in that we have a  
23                  number of lawyers who have been very helpful in  
24                  summarizing individual transcripts.

25                  But the ultimate determination of

1           what is really germane and what is useful to you,  
2           I think really falls to Ms McIsaac, Mr. Baxter  
3           and myself to do personally.

4                         We have also discovered that  
5           despite our optimism looking through this month  
6           and indeed last month, that there might be time to  
7           do this. It really hasn't materialized that way,  
8           because of a number of things that have arisen  
9           unexpectedly.

10                        For example, I know throughout  
11           next week I will be readying potentially new  
12           witnesses through interviews with your counsel who  
13           were identified to me fairly recently, and a  
14           number of just final bits and pieces that  
15           commission counsel refers to his due diligence  
16           where he is still dealing with document requests  
17           and requests, as I said, to interview new  
18           witnesses.

19                        I think the attorney general has a  
20           special role here.

21                        I think it will be of use to you  
22           to have at least one party come before you with  
23           something approaching a comprehensive summary of  
24           all the evidence you have heard both in public and  
25           in private.

1                   We are certainly expecting to make  
2 public submissions, unless you rule that you would  
3 prefer to have only submissions in writing.

4                   THE COMMISSIONER: No, I would  
5 certainly would welcome public oral submissions  
6 and oral submissions in camera from the  
7 government.

8                   MR. FOTHERGILL: And I think,  
9 given the public mandate that you have, there  
10 might be also some value, just from the point of  
11 view of people who have taken an interest in this  
12 inquiry, who have seen some discussion in a public  
13 forum about what the evidence possibly --

14                   THE COMMISSIONER: And Mr. Arar's  
15 counsel intends to make submissions publicly. No.  
16 question about that.

17                   MR. FOTHERGILL: Yes.

18                   THE COMMISSIONER: And they have  
19 indicated they wish a half a day for oral  
20 submissions, which is certainly fine by me, and  
21 they intend to make, as I understand it, both  
22 written and oral submissions publicly. I see a  
23 nod from back there.

24                   MS PARNES: Yes, that's correct.

25                   THE COMMISSIONER: My preliminary

1 thought is that I probably hear from them first.

2 MR. FOTHERGILL: Yes.

3 THE COMMISSIONER: And then it  
4 sounds I will not hear very many other oral  
5 submissions, perhaps from the intervenors, but I  
6 would then be inclined to hear from the  
7 government.

8 MR. FOTHERGILL: And I think in  
9 order to make it a worthwhile exercise, we would  
10 like to put before you and before the Canadian  
11 public a very carefully considered brief that will  
12 properly, from our perspective, summarize all the  
13 evidence that has been led in in public.

14 We will, of course, be doing the  
15 same exercise in camera. I think we also play a  
16 special role with respect to those counsel who are  
17 newly retained, because I think you have heard  
18 from time to time references to the herculean task  
19 they face, trying to make sense of the evidence  
20 that may touch upon their clients' interest.

21 One thing I think that we can do,  
22 as the attorney general, to help that process and  
23 to promote the efficient running of this, is to  
24 make our summary available to them, so that rather  
25 than trying to also summarize all the evidence

1 from their perspective, to the extent that they  
2 agree with our characterization, they can draw on  
3 that. That will make their submissions more  
4 practical for you.

5 I wouldn't limit it to those who  
6 are newly retained for Canadian officials,  
7 because we will try to do this in a very even  
8 handed way.

9 Obviously, the government has a  
10 particular perspective -- and I am not going to  
11 pretend that isn't the case. But it may be of  
12 assistance to all participants. They may find, at  
13 least with our summary of the evidence, there  
14 isn't a great deal of disagreement, although we  
15 can argue about the significance of that.

16 So in order to do a good job of  
17 that, I really don't believe we'll be able to  
18 comply with the September 2 deadline. It just  
19 doesn't seem reasonable given the other roles that  
20 we have as counsel to expect that we will find the  
21 time to sit down and have the sustained period of  
22 concentration and effort that is required to give  
23 you something worthwhile.

24 And the great danger if we speed  
25 this process, is that we will have to cut corners



1 and we will give you something that is something  
2 less than the best that we could offer you. I  
3 think it won't assist the quality of the process.

4 THE COMMISSIONER: I don't quarrel  
5 with a lot of what you are saying. This schedule  
6 has been in the cards for a long period of time.  
7 So I would have hoped that all counsel had been  
8 working towards it.

9 MR. FOTHERGILL: Absolutely. We  
10 have. As I said, we have been trying to summarize  
11 the evidence as we go, and these are the building  
12 blocks for the final submission.

13 Mr. Bell alluded to some motions  
14 and some jurisdictional questions that I think may  
15 affect how some of the evidence -- how germane it  
16 may turn out to be and whether it is necessary to  
17 address it.

18 And I also think the significance  
19 of the evidence will shift as we continue to hear  
20 it. It is really an extraordinary challenge to  
21 keep summarizing and keep reviewing and keep  
22 processing and with having the last witness who  
23 was, of course, the consular officer who had  
24 direct dealings with Mr. Arar.

25 THE COMMISSIONER: In fairness,

1           you know, you have heard that witness before, so  
2           there are no great surprises there.

3                       MR. FOTHERGILL:  There are some  
4           surprises always.  The public testimony --

5                       THE COMMISSIONER:  But the rifle-  
6           shot surprises, the rest of the evidence, with all  
7           due respect -- I mean, I sit here.  We have heard  
8           a lot of his evidence in camera.  Others haven't.  
9           And there may be slight differences, but it is not  
10          like you are starting from scratch.

11                      MR. FOTHERGILL:  In a sense -- and  
12          I have to respectfully disagree with you on this.  
13          In a sense we are, because if we are going to have  
14          a meaningful discussion in a public forum, I can't  
15          draw on what happened in camera.

16                      THE COMMISSIONER:  No.

17                      MR. FOTHERGILL:  Indeed, I think I  
18          have been quite rightly criticized before by  
19          Mr. Cavalluzzo for once alluding to in camera  
20          testimony.  It is something that we can't do.

21                      And if we are going to have as  
22          good a discussion in the public forum as we  
23          possibly can, our summary cannot be based on in  
24          camera evidence.  It has got to be based on the  
25          evidence that is actually presented before you in

1           this forum.

2                           I do envisage at the end of the  
3           day, two completely separate submissions; an in  
4           camera submission that is based entirely on the  
5           camera evidence, which may allude to public  
6           testimony -- I think that is fair game -- but it  
7           can't work the other way.

8                           THE COMMISSIONER: Right.

9                           MR. FOTHERGILL: And our public  
10          submission to you will be based wholly on the  
11          public evidence and nothing else.

12                          THE COMMISSIONER: Right.

13                          MR. FOTHERGILL: And in order for  
14          that to be worthwhile, we need to know what is in  
15          the public domain and, of course, we will not know  
16          that finally until you have ruled on the  
17          procedural matters before you, the jurisdictional  
18          arguments, some of which I think will still be  
19          scheduled to take place in public, assuming the  
20          parties still want to proceed with --

21                          THE COMMISSIONER: What seemed to  
22          be the case is that I will rule on some of the  
23          items, but a number of the items people said they  
24          were simply going to leave to their closing  
25          submission. I think quite probably so, when one

1 reads the jurisprudence.

2 MR. FOTHERGILL: Yes, I am  
3 inclined to agree with you.

4 THE COMMISSIONER: I think you and  
5 I can safely predict what those matters will be --  
6 that will be in their closing submissions. So I  
7 will not have ruled on those before I receive  
8 their written closing submissions.

9 MR. FOTHERGILL: Fair enough, that  
10 may not be a major consideration submission, but I  
11 think in order to do a good job in the public  
12 forum, which I think will benefit everybody, we  
13 will want some time after the last witness has  
14 testified to gather the materials and make a  
15 worthwhile submission.

16 THE COMMISSIONER: How long do you  
17 think your oral submission in public -- how long  
18 would the government want to do its oral  
19 submission in public?

20 MR. FOTHERGILL: I expect we can  
21 tailor it in accordance with your direction. I  
22 think we will need a day.

23 THE COMMISSIONER: That's what I  
24 had in mind.

25 MR. FOTHERGILL: I wouldn't expect

1           that we would need more.

2                           THE COMMISSIONER: That is what I  
3 had in mind. And in camera, assuming in public  
4 goes first?

5                           MR. FOTHERGILL: No more than a  
6 day again, I would suggest. And in terms of the  
7 ultimate deadline, I think Mr. Bayne's suggestion  
8 of September 19th is a good one.

9                           Just for other scheduling reasons,  
10 primarily affecting Ms McIsaac, we really do want  
11 to complete this process by the end of October. So  
12 September 19th I think would allow us to fulfil  
13 that goal.

14                          THE COMMISSIONER: There are  
15 commitment problems with delaying it that long, I  
16 can tell you, without going into it. It may be --  
17 I will look at it and obviously I think -- you  
18 know well enough by now that I will do what I can  
19 to accommodate it. One alternative may be to  
20 delay it a week or a bit more, the oral arguments.  
21 I don't know if that is something you can work  
22 with.

23                          I am not as concerned, I must say,  
24 by those who say they want to make written  
25 submissions only. I mean, I hadn't envisioned

1           that, so I don't disagree with it, and as I listen  
2           to it, I can understand that that is the case.

3                           But those who are going to make  
4           oral submissions, clearly their written  
5           submissions should precede their oral submissions.  
6           So what we are talking about in terms of  
7           substantial oral submissions at this point, we are  
8           talking about a half a day by Mr. Arar, -- they  
9           have asked to go first -- we are talking about a  
10          day by the government in public, and we are  
11          talking about the intervenors. I don't know how  
12          long that would take.

13                           MS PITHER: I cannot foresee that  
14          taking more between all of the intervenors than a  
15          couple of hours.

16                           THE COMMISSIONER: If we set  
17          another half a day, and assuming everybody else --

18                           MS PITHER: I could try to  
19          encourage them to work within that.

20                           THE COMMISSIONER: But then we are  
21          looking on that basis is that we are looking at  
22          two days of public oral submissions.

23                           When we go in camera, we are  
24          looking at the government, one day of oral  
25          submissions. So we are looking at three days of

1 oral submissions.

2 Now, the earlier I get the written  
3 submission before the oral submission, the better.  
4 But if I get it two days before, that is not a  
5 particular problem. I mean, that's what I will  
6 do, I will read it. I think I can manage that in  
7 two days, no matter how long it is.

8 There a number of factors that  
9 play into this. I am sympathetic to the request,  
10 and the personal situation that Mr. Bayne referred  
11 to.

12 As I say, the big one is the  
13 government. Why don't you leave it with me. I  
14 hear what you are all saying. I will do -- yes,  
15 Ms Parnes.

16 MS PARNES: Mr. Commissioner, can  
17 I just say a few words as well.

18 I have not had the opportunity to  
19 talk to you, the other counsel for Mr. Arar, but  
20 we, too, are facing similar challenges in terms of  
21 the time frame for submissions.

22 We are, obviously, trying the best  
23 to accommodate the time frame. But similarly it  
24 is difficult, considering that submissions are due  
25 so close to -- well, basically upon completion of

1 the public hearings, the submissions are due right  
2 away.

3 We have not had the opportunity,  
4 as government counsel has, to hear this evidence  
5 in any form before -- you know, the public  
6 hearings will be the first time that we are able  
7 to hear that evidence.

8 So I just wanted to alert you --  
9 we, too, are having those challenges, and if it  
10 could be delayed, it would be helpful for us as  
11 well.

12 Also, I just wanted to express  
13 some counsel go ahead with the oral submissions  
14 when all the written submissions haven't been  
15 before counsel. It may be difficult to anticipate  
16 what other parties are --

17 THE COMMISSIONER: I think what  
18 would happen, if there were to be written  
19 submissions following oral submissions, if that is  
20 the way it played out, then I think that those who  
21 had gone ahead, which would be the government and  
22 Mr. Arar, in the way we are talking about it now,  
23 would have to have an opportunity in writing to  
24 respond to the written submissions.

25 MS PARNES: Yes, that seems fair.



1 THE COMMISSIONER: That would be  
2 necessary. So if they came later -- yes,  
3 Mr. Westwick.

4 MR. WESTWICK: Just to give you a  
5 clear picture, sir, we had expected to make public  
6 oral submissions and written submissions, but I  
7 would expect they would both be very brief.

8 THE COMMISSIONER: Yes.

9 MR. WESTWICK: I suspect that  
10 would be the case -- I can't speak for them, but I  
11 suspect that would be the case with my colleagues  
12 from the OPP, but in either case they would be  
13 very brief and very focused.

14 THE COMMISSIONER: Okay. Well, I  
15 will go to work on that and see what we can work  
16 out.

17 It may be that commission counsel  
18 will discuss with you, Mr. Fothergill and with  
19 Mr. Arar's counsel-- I guess Ms Edwardh would be  
20 the lead counsel -- the timing of it, because the  
21 one's who are going to be in the current  
22 scenario -- I am repeating -- would be the most  
23 rushed would be the government and Mr. Arar.

24 That completes this public  
25 hearing. We are set to resume tomorrow afternoon

1 in camera at 1:00 o'clock.

2 THE REGISTRAR: Please stand.

3 --- Whereupon the hearing adjourned at 4:30 p.m.,

4 to resume in public on August 22, 2005, at

5 10:00 a.m. / L'audience est ajournée à

6 16 h 30, pour reprendre en public le 22 août

7 2005 à 10 h 00

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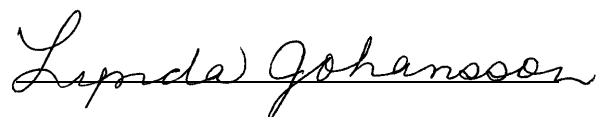
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Lynda Johansson,

C.S.R., R.P.R.

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