

DEPUTY PRIME MINISTER ISSUES TERMS OF REFERENCE FOR THE PUBLIC INQUIRY INTO THE MAHER ARAR MATTER

OTTAWA, February 5, 2004 — The Honourable Anne McLellan, Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness, today announced that the Government of Canada has issued Terms of Reference for the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.

On January 28, 2004, the Deputy Prime Minister announced that Mr. Justice Dennis R. O'Connor would undertake a public inquiry into the actions of Canadian officials dealing with the deportation and detention of Mr. Maher Arar and then, as a second task, make recommendations concerning an independent, arm's-length review mechanism for the RCMP's activities with respect to national security.

Mr. Justice O'Connor is to investigate and report on the actions of Canadian officials in relation to Maher Arar, including the following:

- the detention of Mr. Arar in the United States;
- the deportation of Mr. Arar to Syria via Jordan;
- the imprisonment and treatment of Mr. Arar in Syria;
- the return of Mr. Arar to Canada; and
- any other circumstance directly related to Mr. Arar that Justice O'Connor considers relevant to fulfilling this mandate.

Under the policy review of possible review mechanisms for RCMP national security activities, Mr. Justice O'Connor will examine domestic and international review models. He will make such recommendations as he considers advisable on the creation of a new mechanism and in doing this, he will consider how the recommended mechanism would interact with other Canadian review bodies.

BACKGROUND
TERMS OF REFERENCE FOR THE COMMISSION
OF INQUIRY INTO THE ACTIONS OF CANADIAN
OFFICIALS IN RELATION TO MAHER ARAR

(a) to investigate and report on the actions of Canadian officials in relation to Maher Arar, including with regard to

- (i) the detention of Mr. Arar in the United States,
- (ii) the deportation of Mr. Arar to Syria via Jordan,
- (iii) the imprisonment and treatment of Mr. Arar in Syria,
- (iv) the return of Mr. Arar to Canada, and
- (v) any other circumstance directly related to Mr. Arar that the Commissioner considers relevant to fulfilling this mandate,

in this Order referred to as the "factual inquiry", and

(b) to make any recommendations that he considers advisable on an independent, arm's length review mechanism for the activities of the Royal Canadian Mounted Police with respect to national security based on

- (i) an examination of models, both domestic and international, for that review mechanism, and
- (ii) an assessment of how the review mechanism would interact with existing review mechanisms,

in this Order referred to as the "policy review", and the Committee do further advise that

(c) pursuant to section 56 of the Judges Act, the Honourable Dennis R. O'Connor be authorized to act as a Commissioner on the inquiry referred to in paragraphs (a) and (b) (in this Order referred to as "the inquiry");

(d) the Commissioner be directed to conduct the inquiry under the name of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar;

(e) the Commissioner be authorized to adopt any procedures and methods that he may consider expedient for the proper conduct of the inquiry, and to sit at any times and in any places in Canada that he may decide;

(f) the Commissioner be authorized to grant to any person who satisfies him that he or she has a substantial and direct interest in the subject-matter of the factual inquiry an opportunity during that inquiry to give evidence and to examine or cross-examine witnesses personally or by counsel on evidence relevant to the person's interest;

(g) the Commissioner be authorized to conduct consultations in relation to the policy review as he sees fit;

(h) the Commissioner be authorized to recommend funding, in accordance with approved guidelines respecting rates of remuneration and reimbursement and the assessment of accounts, to a party who has been granted standing at the factual inquiry, to the extent of the party's interest, where in the Commissioner's view the party would not otherwise be able to participate in that inquiry;

(i) the Commissioner be authorized to rent any space and facilities that may be required for the purposes of the inquiry, in accordance with Treasury Board policies;

(j) the Commissioner be authorized to engage the services of any experts and other persons referred to in section 11 of the Inquiries Act, at rates of remuneration and reimbursement that may be approved by the Treasury Board;

(k) the Commissioner be directed, in conducting the inquiry, to take all steps necessary to prevent disclosure of information that, if it were disclosed to the public, would, in the opinion of the Commissioner, be injurious to international relations, national defence or national security and, where applicable, to conduct the proceedings in accordance with the following procedures, namely,

(i) on the request of the Attorney General of Canada, the Commissioner shall receive information in camera and in the absence of any party and their counsel if, in the opinion of the Commissioner, the disclosure of that information would be injurious to international relations, national defence or national security,

(ii) in order to maximize disclosure to the public of relevant information, the Commissioner may release a part or a summary of the information received in camera and shall provide the Attorney General of Canada with an opportunity to comment prior to its release, and

(iii) if the Commissioner is of the opinion that the release of a part or a summary of the information received in camera would provide insufficient disclosure to the public, he may advise the Attorney General of Canada, which advice shall constitute notice under section 38.01 of the Canada Evidence Act;

(l) the Commissioner be directed, with respect to the preparation of any report intended for release to the public, to take all steps necessary to prevent the disclosure of information that, if it were disclosed to the public, would, in the opinion of the Commissioner, be injurious to international relations, national defence or national security;

(m) nothing in this Order shall be construed as limiting the application of the provisions of the Canada Evidence Act;

(n) the Commissioner be directed to follow established security procedures, including the requirements of the Government Security Policy with respect to persons engaged pursuant to section 11 of the Inquiries Act and the handling of information at all stages of the inquiry;

(o) the Commissioner be directed to perform his duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization and to ensure that the conduct of the inquiry does not jeopardize any ongoing criminal investigation or criminal proceedings;

(p) the Commissioner be directed to submit a report or reports in both official languages to the Governor in Council; and

(q) the Commissioner be directed to file the papers and records of the inquiry with the Clerk of the Privy Council as soon as reasonably possible after the conclusion of the inquiry.