

**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 relative à la  
demande de statut de partie  
ayant qualité pour agir**

**Hearing for  
Application for Standing**

**Commissaire**

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

**Commissioner**

**Tenue à:**

Centre des conférences du gouvernement  
Salle Annexe  
2, rue Rideau,  
Ottawa

le jeudi 29 avril 2004

**Held at:**

Government Conference Centre  
Annex Room  
2 Rideau Street  
Ottawa, Ontario

Thursday, April 29, 2004

## APPEARANCES / COMPARUTIONS

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Ms Freya Kristjanson	Legal Advisor
Mr. Lorne Waldman Ms Marlys Edwardh	Counsel for Maher Arar
Ms Barbara A. McIsaac, Q.C. Mr. Colin Baxter Mr. Simon Fothergill	Attorney General of Canada
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. Emilio Binavince	Minority Advocacy and Rights Council
Mr. Joe Arvay	The British Columbia Civil Liberties Association
Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture

**APPEARANCES / COMPARUTIONS**

Colonel Me Michel W. Drapeau	The Muslim Community Council of Ottawa-Gatineau
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
Ms Amina Sherazee	Muslim Canadian Congress

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1                                   Ottawa, Ontario / Ottawa (Ontario)  
2       --- Upon commencing on Thursday, April 29, 2004  
3                                   at 9:58 a.m. / L'audience débute le jeudi  
4                                   29 avril 2004 à 9 h 58

5                                   MR. P. CAVALLUZZO: Good morning,  
6       Mr. Commissioner.

7                                   At the outset I would like to  
8       briefly review with you a road map of what we are  
9       going to be doing today and tomorrow and then  
10      perhaps attempt to answer some questions which  
11      have been asked of me from the public and from the  
12      media respecting certain aspects of the inquiry.  
13      My statement in regard to that will be brief.

14                                  As far as today and tomorrow are  
15      concerned, we have 23 applications, including  
16      those of Mr. Arar, the Attorney General of Canada  
17      and the Ontario Provincial Police. These three  
18      applications will be heard initially in the first  
19      hour which has been set for these hearings.

20                                  Sixteen applications have been  
21      brought by various organizations representing a  
22      broad spectrum of interests from across the  
23      country. Apart from Mr. Arar, there are  
24      applications from four individuals who will be  
25      seeking standing and funding.

1                   Most of the applicants will be  
2 here today and tomorrow making oral submissions in  
3 support of their written application. However,  
4 seven applications will be heard by conference  
5 call, stretching from Vancouver to Berlin. We  
6 will be hearing those conference call submissions  
7 this afternoon and tomorrow.

8                   In terms of the procedure that we  
9 have set out for the two days of hearing, three  
10 applications are scheduled for each hour of  
11 hearing. Each applicant has 15 minutes in which  
12 to make oral submissions supplementing their  
13 written submissions. If there are any submissions  
14 in opposition to any application, these will be  
15 made at the end of all of the oral submissions,  
16 which should be completed, hopefully, by one  
17 o'clock tomorrow afternoon.

18                   At this time I do not know whether  
19 anybody will be making submissions in opposition  
20 to any application. However, if that opportunity  
21 is exercised, then the party whose application is  
22 being opposed will have the right of rebuttal  
23 after the person making the submissions in  
24 opposition.

25                   After that, then obviously the

1 decision will flow. Hopefully the decision will  
2 be rendered shortly. You can perhaps indicate to  
3 us at the end of the hearing day tomorrow when you  
4 think a decision might be issued.

5 Finally, I have been asked a  
6 number of questions concerning the status of our  
7 investigation, the process of the inquiry, when  
8 the hearings are going to start, how long the  
9 hearings will take. I think at this time I might  
10 make a few brief comments attempting to answer  
11 some of these inquiries.

12 At this time we are in the midst  
13 of our investigation. We are in the process of  
14 receiving and reviewing hundreds and, indeed,  
15 thousands of documents which we have received from  
16 the Government of Canada pursuant to our document  
17 request.

18 Our document request is broad and  
19 is now focused on 10 government agencies and  
20 ministries. With the cooperation of the  
21 government in producing these documents, the  
22 hearing should proceed in an expeditious manner.

23 No doubt this is a complex and  
24 cumbersome process, however we are meeting with  
25 the government now to ensure that the documents



1 will be produced in the most efficient manner as  
2 possible so as to avoid any delays.

3 We intend to commence these  
4 hearings in June. Everyone agrees that the  
5 inquiry should proceed and be completed  
6 expeditiously. It is our goal to conduct this  
7 inquiry in a fair, expedient but thorough manner.  
8 We will review all of the documents which are  
9 relevant and necessary to fulfil our mandate. We  
10 shall leave no stone unturned in meeting our  
11 responsibilities.

12 Our final objective is to be as  
13 accessible as possible to the public. Although we  
14 are dealing with national security concerns, the  
15 government called a public inquiry into the  
16 conduct of Canadian officials. However, the  
17 Attorney General of Canada may request that  
18 certain documents and information be heard  
19 in camera rather than in public.

20 Under the Order in Council  
21 appointing you as Commissioner, you are given the  
22 authority to determine what will be heard in  
23 public. Under our proposed Rules of Practice, the  
24 burden will be on the Attorney General of Canada  
25 to persuade you that information or documents

1           should be heard in camera because its disclosure  
2           might endanger national security, national defence  
3           or international relations.

4                           In regard to the procedure or the  
5           process of this inquiry, the challenge of the  
6           inquiry will be to find an appropriate balance  
7           between national security concerns, on the one  
8           hand, and public disclosure and accessibility on  
9           the other.

10                           In regard to the substantive  
11           issues before this inquiry, the challenge for the  
12           inquiry will be to find the appropriate balance  
13           between national security concerns and civil  
14           liberties and human rights, clearly one of the  
15           most important legal issues facing Canada and all  
16           other liberal democracies today.

17                           Mr. Commissioner, the first hour  
18           we will be hearing initially from Mr. Arar's  
19           counsel, then the Attorney General of Canada and  
20           then the Ontario Provincial Police.

21                           I have told counsel that if they  
22           feel more comfortable being seated, they can make  
23           their submissions from there or to use the lectern  
24           if preferable.

25                           Thank you.

1 THE COMMISSIONER: Thank you,  
2 Mr. Registrar.

3 Mr. Waldman, good morning.

4 APPLICATION

5 MR. L. WALDMAN: Good morning,  
6 Mr. Commissioner.

7 This is an application by Maher  
8 Arar for standing for Part I of the factual  
9 inquiry into the conduct of Canadian officials  
10 into his detention and deportation to Syria.

11 Before I commence further I would  
12 like to introduce my esteemed co-counsel, Marlys  
13 Edwardh. I am sure she is well-known to the  
14 Commissioner. She has extensive experience in  
15 Commissions of inquiries.

16 I can say on a personal note,  
17 many, many years ago she was my principal when I  
18 articulated and I have maintained this relationship  
19 with her. I have the greatest of respect for her  
20 and I am thrilled that she has agreed to embark  
21 upon this journey with Mr. Arar and myself.

22 First, I would like to say that we  
23 intend to rely on our written submissions with  
24 respect to the question of standing.

25 THE COMMISSIONER: I don't know if

1           it helps you or not, and certainly feel free to  
2           say whatever you wish, but I can tell you you  
3           won't be surprised that Mr. Arar will be granted  
4           full standing.

5                           MR. L. WALDMAN: I don't think  
6           that surprises me, but I would still like to make  
7           a few --

8                           THE COMMISSIONER: No, no, please  
9           go ahead. I don't mean to curtail your remarks.

10                          MR. L. WALDMAN: I hope that  
11           doesn't concern my friends any, prejudgment.

12                          THE COMMISSIONER: I am sure they  
13           won't be surprised.

14                          MR. L. WALDMAN: No.

15                           Until September 26, 2002  
16           Mr. Arar's life was a typical one for my clientele  
17           in the immigration area and a great success story  
18           of our multicultural society.

19                           Immigrating as an adolescent to  
20           Canada, he obtained a Bachelors and Masters degree  
21           and began work in his field as a consultant in  
22           software. He was married and had two children.

23                           All of this was tragically  
24           disrupted when on September 26, 2002, while in  
25           transit through New York on his way back to

1 Montreal, where he was going to look into job  
2 possibilities, he was detained by U.S. officials.

3 Twelve days later, in violation of  
4 international law and over his own objections, and  
5 ignoring his right as a Canadian citizen to choose  
6 deportation to Canada, Mr. Arar was deported to  
7 Syria, another victim of the policy of the U.S.  
8 government called rendition, which is publicly  
9 known and acknowledged, a policy of sending  
10 suspects to third countries where they are  
11 subjected to interrogation under torture to try to  
12 extract information.

13 But this inquiry is about the  
14 conduct of Canadian officials, but it raises grave  
15 questions which go to the heart of our democratic  
16 values.

17 The Supreme Court of Canada in  
18 Suresh has made it clear that torture and  
19 returning persons to torture violates our Charter  
20 and violates international law, yet Mr. Arar's  
21 experiences and the public information that has  
22 been available to date raises the very grave and  
23 serious question of whether the Canadian  
24 government, in particular the Canadian Securities  
25 Services, are involved in contracting out torture

1 in violation of Canadian and international law.

2 Did Canadian officials acquiesce  
3 to Mr. Arar's deportation to Syria? There is  
4 already evidence on the public record to suggest  
5 that they did.

6 Mr. Arar's case also raises the  
7 very difficult issue of racial profiling. All of  
8 the public evidence to date strongly suggests that  
9 Mr. Arar fell under suspicion because he was a  
10 young Muslim man who was seen in casual situations  
11 with other Muslims who were also of interest to  
12 the intelligence services.

13 Most significantly, Mr. Arar's  
14 case raises another very problematic issue: the  
15 issue of the use of confessions obtained under  
16 torture by our intelligence services. The public  
17 record reveals that the confession made by  
18 Mr. Arar under torture by the Syrian authorities  
19 was obtained by the Canadian intelligence services  
20 and was subsequently leaked to the media in an  
21 effort to discredit Mr. Arar.

22 Use of confessions obtained under  
23 torture should never be countenanced in any  
24 Canadian process, yet it appears that the  
25 confessions under torture were relied upon and

1           were intentionally leaked by our intelligence  
2           services to the media.

3                           Mr. Commissioner, we know this  
4           will be a very difficult and complex public  
5           inquiry. We have every reason to believe that the  
6           Government of Canada is not committed to an open  
7           public process and will try to keep as much of the  
8           evidence in private as possible. We wish to  
9           assure you that you can count on our support in  
10          ensuring that this is truly a public inquiry.

11                           This inquiry was called because  
12          there was a groundswell of public outrage over  
13          Mr. Arar's treatment. Rarely has there been such  
14          sustained public attention to an individual's  
15          fate. Rarely has there been so much unanimity in  
16          the media over the need to conduct a public  
17          inquiry into Mr. Arar's case.

18                           Justice Cory of the Supreme Court  
19          of Canada in Westray sets out the importance of  
20          commissions of inquiry at paragraph 60 of the  
21          judgment. I think it is worth noting.

22   "Commissions of inquiry have  
23   a long history in Canada.  
24   This court has already noted  
25   the significant role that

1                   they have played in our  
2                   country and the diverse  
3                   functions that they serve.  
4                   As ad hoc bodies, commissions  
5                   of inquiry are free of many  
6                   of the institutional  
7                   impediments which at times  
8                   constrain the operation of  
9                   the various branches of  
10                  government. They are created  
11                  as needed, although it is an  
12                  unfortunate reality that  
13                  their establishment is often  
14                  prompted by tragedies or  
15                  grave miscarriages of  
16                  justice."

17                         Clearly Mr. Arar was the victim of  
18                  a grave miscarriage of justice. The public has  
19                  demanded answers, and the public is watching very  
20                  closely.

21                         I agree with what Mr. Cavalluzzo  
22                  said: that this inquiry raises fundamental  
23                  questions about values that touch the heart of our  
24                  democratic process. Where are we going to find  
25                  the balance between national security and civil



1           liberties? Since 9/11 there has not been a real  
2           public debate. The intelligence services have  
3           been given increased power and have been allowed  
4           to operate really unabated.

5                           I think Mr. Arar's experience  
6           highlights the need for this public debate, and  
7           the only way there will be a public debate is if  
8           there is an open public debate where most of the  
9           information is made accessible to the public.

10                           If granted standing, Mr. Arar will  
11           work hard with his counsel to assist you in this  
12           most difficult task. We look forward to working  
13           with you over the days and months ahead. We  
14           assure you that we will struggle to assist you in  
15           every way we can, because we acknowledge the  
16           difficult task that confronts us.

17                           Thank you.

18                           THE COMMISSIONER: Thank you very  
19           much, Mr. Waldman.

20                           Are either you or Ms Edwardh going  
21           to speak to the application for funding now?

22                           MS M. EDWARDH: Thank you,  
23           Mr. Commissioner.

24                           As we indicated in our written  
25           materials that were filed with you, Mr. Arar wants

1 very much to participate through the whole of this  
2 process and is, in effect, unable to do so without  
3 a direction for funding from you,  
4 Mr. Commissioner.

5 He obviously is not in a position  
6 to retain one counsel, let alone two, to appear on  
7 a daily basis to assist him in producing documents  
8 to you through Commission counsel and to be  
9 present to cross-examine witnesses. He is  
10 therefore asking in order to be an effective  
11 participant, because he cannot be an effective  
12 participant without his counsel and without your  
13 assistance and an order for funding.

14 If you would like me to address  
15 any of the specifics of that --

16 THE COMMISSIONER: I have read  
17 your material, and it was most helpful. Thank you  
18 for that.

19 What you propose is that both you  
20 and Mr. Waldman, each supported by a junior -- and  
21 correct me if I am not stating it right. You  
22 would, to a large extent, operate independently  
23 but there would be some overlap, particularly at  
24 certain portions of the hearing.

25 My question simply is: What

1 amount of overlap would there be? Are you able to  
2 indicate to me how many days of the hearing?

3 MS M. EDWARDH: I wish we could,  
4 Mr. Commissioner. As I understand it, your  
5 Commission counsel has not yet put out a list of  
6 witnesses. So we are not at this point able to  
7 indicate whether there is a grouping or a list of  
8 witnesses that will allow us to say to you, "Mr.  
9 Waldman will do this portion and I will do this  
10 portion."

11 In the absence of that  
12 organization taking place, it is very difficult  
13 for us to say precisely what overlap.

14 I can say this. It is not our  
15 intention to overlap unnecessarily at all. We  
16 understand the trust involved in using public  
17 funds in this process and have no interest in  
18 being redundant.

19 The only time I think that I can  
20 clearly say to you that we will both want to work  
21 with Commission counsel is when it comes to the  
22 period of time where Mr. Arar and his spouse and  
23 others that are part of his direct family network  
24 are being interviewed and are being put forward as  
25 witnesses before you. That may take both of us

1 for a period of time.

2 Beyond that, it is not our goal to  
3 overlap.

4 THE COMMISSIONER: I think that is  
5 fine for my purposes.

6 MS M. EDWARDH: Thank you.

7 THE COMMISSIONER: Thank you both.

8 As Mr. Cavalluzzo indicated, I  
9 won't make my rulings today with respect to  
10 standing or funding, although I have already  
11 indicated what I am going to do. I will be more  
12 discreet with the rest.

13 What I propose to do is release a  
14 decision, with reasons, some time next week. I  
15 will deal with all of the applications for  
16 standing and funding in a set of reasons, and we  
17 will do that as quickly as possible. It will be  
18 some time next week for sure.

19 The second application is the  
20 Attorney General of Canada.

21 Ms McIsaac.

22 APPLICATION

23 MS B. McISAAC: Thank you, sir.

24 I would also take this opportunity  
25 to introduce my colleagues, Colin Baxter, as well

1 as Mr. Simon Fothergill, who is with the  
2 Department of Justice. We will be the Attorney  
3 General's main counsel team, should you grant the  
4 Attorney General standing.

5 We have filed submissions as well,  
6 and what I want to do today is take a few moments  
7 to simply summarize those submissions.

8 I also want to clarify that this  
9 particular application by me is in respect of  
10 Part I of the hearings only; that is, the fact  
11 finding part of your mandate.

12 There are really four points that  
13 I think are important and that we have indicated  
14 in our submissions.

15 First, the Attorney General is the  
16 chief legal officer for the Government of Canada  
17 and is the usual legal representative for the  
18 Federal Crown, including all of its departments  
19 and agencies, in all manner of legal proceedings.  
20 So the Attorney General would be here in that  
21 representative capacity.

22 As Mr. Cavalluzzo pointed out, the  
23 Attorney General has also taken the lead role on  
24 behalf of the government and the ten departments  
25 and agencies to which the document production

1 order has been issued in respect of the collection  
2 and production of documents.

3 I wish to assure you in that  
4 regard that the Government of Canada is working  
5 very closely with Mr. Cavalluzzo. Clearly, with  
6 the number of documents involved, we are facing a  
7 number of challenges but I am very confident that  
8 we will be able to address those challenges.

9 The Attorney General also holds a  
10 very important role with respect to the issue of  
11 national security. Clearly your terms of  
12 reference do recognize that there may be times  
13 during the course of this hearing where national  
14 security interests arise.

15 On that point, I would like to  
16 respond to the point that has been made by  
17 Mr. Waldman.

18 The Government of Canada is aware  
19 that this is a public inquiry and clearly is  
20 willing and wishes to cooperate with you and with  
21 your counsel in order to ensure that as much as  
22 possible of this hearing can be held in public.  
23 We all have to work together to find that  
24 appropriate balance.

25 However, the Attorney General and

1 the Government of Canada have a concurrent  
2 responsibility, that is to the people of Canada,  
3 with respect to national security issues, and we  
4 will have to be mindful of that responsibility as  
5 well.

6 Finally, there will be Crown  
7 employees called from time to time who may  
8 suitably be represented by myself and my counsel  
9 team and the Attorney General expects to play that  
10 role in some of the situations.

11 So those in summary, sir, are the  
12 reasons why the Attorney General is seeking  
13 standing and I can assure you we are not looking  
14 for funding, sir.

15 THE COMMISSIONER: Thank you,  
16 Ms McIsaac.

17 The third application, then, is on  
18 behalf of the Ontario Provincial Police.

19 Ms Sterling.

20 APPLICATION

21 MS L. STERLING: Thank you. I  
22 would like to begin by thanking the Commission for  
23 the opportunity to make oral submissions in  
24 support of the standing of the Ontario Provincial  
25 Police at this inquiry.

1                   I would also like to introduce my  
2                   colleague Darrell Kloese and we will be joined by  
3                   a third lawyer for Ontario, Leslie McIntosh,  
4                   during the course of the hearings.

5                   I would like to break my brief  
6                   submission into two parts. First, why the OPP  
7                   have a direct and substantial interest and,  
8                   secondly, the manner in which we propose to  
9                   participate.

10                  Turning then to the first  
11                  submission, it is our submission that the OPP has  
12                  a direct and substantial interest for three  
13                  reasons:

14                  First, the OPP intervenes as an  
15                  employer. OPP officers participated in a joint  
16                  task force related to national security with the  
17                  RCMP that is related to this inquiry. Although  
18                  they worked with the RCMP, they nevertheless  
19                  remain accountable under the Ontario Police  
20                  Services Act.

21                  Further, as employer, the OPP is  
22                  seeking standing in the event any of its officers  
23                  who were members of this joint task force are  
24                  called as witnesses.

25                  Apart from the direct and



1 substantial interests the OPP has as an employer,  
2 the OPP also has institutional interests in Part I  
3 of this inquiry. First, the OPP has an interest  
4 in the way these joint police task forces operate.

5 Pursuant to statute, the RCMP may  
6 make arrangements with provincial governments to  
7 work with them on matters related to national  
8 security.

9 The OPP generally supports the  
10 integration of these different branches of  
11 government, federal, provincial and municipal in  
12 bringing together the expertise required to deal  
13 with matters of national security. To the extent  
14 that an integrated task force was involved in  
15 matters related to this inquiry, Ontario has a  
16 direct and substantial interest in how it  
17 operated.

18 And then finally, the OPP has an  
19 institutional interest in information sharing  
20 amongst police forces. For the OPP and other  
21 police forces, information sharing is obviously an  
22 important aspect of policing and, to the extent  
23 that that does become an issue in this inquiry,  
24 the OPP would have an interest in ensuring that  
25 there is an appropriate mechanism for information

1 sharing.

2 So those are the interests of the  
3 OPP. In terms of how we intend to participate, I  
4 can assure the Commission that the OPP's intention  
5 is neither to prolong the hearing nor to duplicate  
6 any evidence that is already before it. We may  
7 seek to have access to certain material which may  
8 be confidential, but it would relate exclusively  
9 to the joint task force operations and, of course,  
10 we would abide by any restrictions placed on the  
11 use of that information and, of course, for the  
12 purposes only authorized by the Commission.

13 Equally, the OPP may wish to  
14 examine witnesses whose evidence again is once  
15 broadly related to these joint task forces. At  
16 this stage, it is premature to be more specific as  
17 to which witnesses, but we understand your process  
18 contemplates a witness statement and of course we  
19 would read those and only participate as  
20 necessary.

21 Finally, we may wish to make  
22 submissions at the appropriate time related to the  
23 confidentiality of documents and/or evidence, but  
24 we will deal with that in due course as the  
25 evidence and the witness lists come forward.

1                   So to conclude, then, the OPP has  
2                   a very focused interest, but it is direct and  
3                   substantial and therefore a matter for which  
4                   standing ought to be granted.

5                   THE COMMISSIONER:  What I hear you  
6                   saying is, then, that OPP's standing, based on its  
7                   substantial and direct interest, then would be --  
8                   would the phrase be "limited" -- to those matters  
9                   which directly engaged the interests you have  
10                  outlined?

11                  MS L. STERLING:  That is right.

12                  THE COMMISSIONER:  In dealing with  
13                  the last one, the issue of the in camera hearings  
14                  and confidentiality of documents or some evidence,  
15                  you will have seen in the draft rules of the  
16                  inquiry that we propose a process.

17                  The first step of which is parties  
18                  with standing can make submissions about the  
19                  principles that should apply.  And then to be  
20                  followed by an in camera hearing to look at the  
21                  specific evidence at which, and I will see the  
22                  specific evidence for which confidentiality is  
23                  being sought and that could be followed by then a  
24                  ruling by me as to whether or not it should be in  
25                  camera or in public.

1                   Would you be suggesting that,  
2           insofar as that type of evidence relates to the  
3           OPP, touches on the interests you have outlined,  
4           that you should be involved in that in camera  
5           "screening" hearing, if you will?

6                   MS L. STERLING:  It is a little  
7           difficult to say without knowing that the exact  
8           parameters of what the evidence is.  But this may  
9           be a matter for which the OPP would definitely  
10          have an interest.

11                  THE COMMISSIONER:  And I am sure  
12          you thought of it, but people who participate in  
13          that type of hearing will need, then, to have the  
14          higher security clearance because it would be  
15          examining evidence that --

16                  MS L. STERLING:  We have already  
17          been fingerprinted.

18                  THE COMMISSIONER:  --  
19          potentially --

20                  Okay.

21                  MS L. STERLING:  And our pictures  
22          are in and my clients and counsel have sought that  
23          clearance already and we are just awaiting the  
24          word.

25                  THE COMMISSIONER:  Okay then,

1           thank you very much, Ms. Sterling.

2                           MS L. STERLING: Thank you.

3                           THE COMMISSIONER: Now

4           Mr. Cavalluzzo, that completes the first block of  
5           three applicants. The way the schedule has been  
6           set up, we have just included a certain number of  
7           each hour. The next two are scheduled to begin at  
8           11:00.

9                           MR. P. CAVALLUZZO: That is  
10          correct.

11                          THE COMMISSIONER: Does it make  
12          sense to -- I don't know if they are here or  
13          not -- carry on or should we break until 11:00 and  
14          then stay by the planned schedule?

15                          MR. P. CAVALLUZZO: I think that  
16          we should stay by the planned schedule because  
17          people will be coming in and out--

18                          THE COMMISSIONER: Right.

19                          MR. P. CAVALLUZZO: -- and they  
20          may not be here at the present time.

21                          THE COMMISSIONER: Okay.

22                          MR. P. CAVALLUZZO: They just  
23          don't realize how expeditious we are going to be.

24                          THE COMMISSIONER: This is a good  
25          thing, a good sign that on our first day we are

1 actually, for a public inquiry, ahead of schedule,  
2 a goal we will all seek to continue throughout.

3 Okay. Well, then, we will rise  
4 until 11:00.

5 --- Upon recessing at 10:30 a.m. /

6 Suspension à 10 h 30

7 --- Upon resuming at 10:59 a.m. /

8 Reprise à 10 h 59

9 THE REGISTRAR: All rise.

10 Veuillez vous lever. Commissioner Dennis O'Connor  
11 is now presiding. Le Commissaire, Dennis O'Connor  
12 préside cette audience.

13 THE COMMISSIONER: This is the  
14 Canadian Islamic Congress. Mr. Joseph, good  
15 morning.

16 MR. F. JOSEPH: I figure from how  
17 I am feeling right now I should have gone on a  
18 diet from the heat in here. I am going to lose a  
19 few pounds obviously.

20 THE COMMISSIONER: It is not too  
21 bad up here.

22 MR. F. JOSEPH: Whenever you are  
23 ready, Mr. Commissioner.

24 THE COMMISSIONER: Go ahead, yes,  
25 please.

1 APPLICATION

2 MR. F. JOSEPH: Thank you very  
3 much.

4 For the record, Mr. Commissioner,  
5 my name is Faisal Joseph and I am presently a  
6 partner with Lerner's law firm in London.

7 Thank you sincerely for the  
8 opportunity to make oral submissions on behalf of  
9 the Canadian Islamic Congress for a standing at  
10 this inquiry.

11 Personally, sir, I am wearing  
12 three hats for this organization, the first as a  
13 former federal and provincial Crown attorney;  
14 secondly, as past-president of the Islamic Centre  
15 of Southwestern Ontario; and, thirdly, of course,  
16 as national legal counsel for CIC in my capacity  
17 here today.

18 The first 35 years of my life I  
19 lived in the small town of Truro, Nova Scotia,  
20 which comprised of six or seven Muslim families  
21 until I moved to London, Ontario, which boasts the  
22 highest percentage of Muslims in the country;  
23 35,000 strong, or 11 per cent of the city's  
24 population. It gives one a unique perspective in  
25 our Canadian mosaic.

1                   London is one of the many active  
2 chapters of the Canadian Islamic Congress,  
3 possessing one of over 25 regional directors  
4 across the country.

5                   CIC, sir, is one of the largest  
6 national, non-profit, independent Islamic  
7 organizations with absolutely no affiliations  
8 ideologically, financially or politically to a  
9 foreign organization or country. I think that is  
10 important.

11                  We are comprised of both major  
12 sects of Islam, as you know, sir, Suni and Shiite,  
13 in both individuals and organizations from those  
14 sects. We have not been Johnny-come-lately to the  
15 Muslim community. We have been very successful  
16 and active, sir, for over 10 years now. Our voice  
17 is strong, respected and valued by all.

18                  By individual and organizational  
19 membership we represent over 60 per cent of  
20 Canada's significant Muslim population. We feel  
21 strongly that as an organization we have a direct  
22 and substantial interest in the subject matter of  
23 this very significant public inquiry.

24                  We also appreciate, sir, that in  
25 addition to the factual findings that you will



1           make, there will be significant policy review to  
2           make recommendations for the RCMP and CSIS  
3           activities regarding the Muslim community and  
4           Canadians.

5                               We are also impressed that the  
6           terms of reference will include and ensure that:

7                                       "All matters that bear on the  
8                                       public interest are brought  
9                                       to the Commission's  
10                                      attention."   (As read)

11                              After 9/11 the CIC was responsible  
12           for bringing Shirley Heafey, the Chair of the  
13           Public Complaints Commission, against the RCMP to  
14           London with a significant Muslim population to  
15           deal with what we perceived as racial profiling in  
16           the Muslim community.

17                              The CIC takes the very strong  
18           position that profiling of criminal behaviour in  
19           Canada is necessary, but not racial profiling  
20           which is what occurred. In our view, it increases  
21           national security risks, not reducing them.

22                              The Muslim community in Canada at  
23           times feels threatened, fearful and angry at what  
24           has been termed as "Islamophobia" and the myths  
25           that may be inadvertently perpetrated by even the

1 media.

2 I couldn't help myself, sir -- and  
3 this wasn't in my prepared text -- but on the  
4 plane coming down last night, I grabbed a copy of  
5 the Time Canadian edition "Islam in Canada", and  
6 the front page and the cover says:

7 "Is the nation too lenient  
8 towards extremist fringe?".

9 It is articles such as this and  
10 the photographs that are in that that cause a lot  
11 of concern for the Muslim community because some  
12 members of the media -- and, of course, everybody  
13 is affected by what we see and hear -- take  
14 certain positions out of ignorance and perhaps  
15 other reasons.

16 The results of the public meetings  
17 in London, with about 800 Muslims present, with  
18 the Chair of the Complaints Committee to the RCMP,  
19 were both significant and helpful to both the  
20 Muslim community and the RCMP, sir. They  
21 benefited.

22 The CIC has always been a leader  
23 in this regard and is the only national Muslim  
24 organization that has conducted an intensive  
25 five-year study with empirical data on

1 anti-Islamic bias in the media, i.e. Islamophobia,  
2 which has been nationally recognized by  
3 journalists and academics.

4 CIC hopes to have the opportunity,  
5 sir, to use that expertise to link Islamophobia  
6 into the realm of the racial profiling that we  
7 feel is occurring by law enforcement in Canada  
8 whether purposely or inadvertently.

9 In London, sir, at that meeting we  
10 found that there were dozens of cases reported  
11 with inappropriate conduct allegations with the  
12 RCMP and CSIS. There appears to be no appropriate  
13 screening process of law enforcement in the Muslim  
14 community and this has caused undue hardships,  
15 fear and at times members of the Muslim community  
16 feel intimidated.

17 The standard list of questions  
18 from the RCMP and CSIS that I have seen,  
19 regretfully, are lacking in the cultural and  
20 religious sensitivities of Muslims and, in some  
21 cases, is offensive and perceived to be  
22 threatening at times by members of our community.

23 Law enforcement lack the education  
24 on these issues and the CIC has been instrumental  
25 in providing that since September 12, 2001 to all

1 law enforcement agencies in this country. We want  
2 to work with them, not against them, and we hope  
3 they want the same.

4 We have an expertise in these  
5 matters in addition to expertise of law  
6 enforcement impact post-9/11 on all Muslims. We  
7 have Muslim experts with over 25 years' experience  
8 in social work and family therapy that have needed  
9 to use those skills, unfortunately, to deal with  
10 the aftermath of the racial profiling within the  
11 Muslim community by law enforcement.

12 The goals of the Canadian Islamic  
13 Congress are many, but can be summed up in four  
14 points to give you a feel for this organization  
15 versus other organizations, sir.

16 One goal is the successful  
17 integration of the Muslim community into the  
18 larger community.

19 Secondly, educating the public,  
20 dispelling myths and building bridges of  
21 understanding in addition to providing interface  
22 forms of social reforms, including everything from  
23 child poverty issues to security issues.

24 Thirdly, political and social  
25 participation by the Muslim community which is

1           somewhere in the range of 600,000 to 700,000 in  
2           Canada.

3                           Fourthly, community development to  
4           assist other Muslim organizations to prosper in  
5           this fantastic Canadian mosaic.

6                           If I could add one other -- and it  
7           is not in importance because it is certainly last  
8           but not least -- to protect civil liberties and  
9           other legal rights from human rights problems with  
10          respect to the workplace and various other things,  
11          but particularly, since the last two and a half  
12          years, with respect to the new legislation, et  
13          cetera.

14                          Mr. Commissioner, we have worked  
15          hard with CSIS, with the RCMP, educators,  
16          universities. We have prepared important policy  
17          and position papers that our government relies on  
18          in everything from Canada's role in working with  
19          other Muslim countries, in addition to the  
20          important analysis of the unprecedented  
21          legislation such as Bill C-36, Bill C-16, Bill C-7  
22          and C-2.

23                          We have an excellent relationship,  
24          sir, with the OIC, which is the Organization of  
25          Islamic Countries which consists of 22 countries

1 with large Muslim communities.

2 We provide and facilitate student  
3 cultural exchanges, trade missions, work to  
4 support, "democracy" building in Muslim countries,  
5 and Canada's role in curing that democratic  
6 deficit.

7 Even the Russian government,  
8 recently within the last few weeks, has requested  
9 valuable input from the CIC for the Middle Eastern  
10 Studies Institute.

11 Every year we provide an  
12 opportunity, through dinners, et cetera, for  
13 interchange of information for all MPs,  
14 ambassadors, senators, to work towards improving  
15 relations within Canada and the Muslim world as  
16 well as the Canadian Muslim community.

17 Sir, the Canadian Islamic Congress  
18 can provide necessary information and insight in  
19 racial profiling, how Arab and/or Muslim  
20 stereotypes contribute to what we term as the myth  
21 perceptions that are out there that have  
22 contributed to a climate of fear for both law  
23 enforcement as well as the Muslim community. The  
24 results by some have contributed to the escalation  
25 of hate crimes in this country, which is

1 unacceptable for any group.

2 Sir, in closing, I wanted to say  
3 that you have authority to share standing -- I  
4 have looked at the terms of reference very  
5 closely -- with other Muslim organizations and  
6 that may be appropriate for some, but the CIC  
7 feels that we offer more than enough expertise to  
8 have our voice heard independently on our own.  
9 Our voice offers a unique perspective from our  
10 work and experience over the last 10 years.

11 We are more than prepared to work  
12 with all other groups and, in fact, have worked  
13 with the groups that are applying for standing  
14 today, but some of us do have different  
15 constituencies and these are good organizations,  
16 but they have a different perspective and several  
17 of the Muslim organizations have a different and  
18 unique perspective from those of the CIC that you  
19 may be able to benefit from.

20 I am thinking in particular, for  
21 example -- and my friends will probably speak to  
22 it later, the National Council on Canadian-Arab  
23 Relations. That is an organization and they have  
24 counsel here, I am sure, that can speak better to  
25 it than us, but that is not just a Muslim

1 organization. That is an Arab organization that  
2 encompasses both Christians and Muslims and they  
3 deal with different issues than we do: The more  
4 international foreign policy issues and various  
5 other things that they can contribute to.

6 With our organization, we are  
7 distinctly Canadian. This is an organization that  
8 has made a valuable contribution that has been  
9 appreciated by all, and I guess at this point I  
10 would like to make a few comments with respect to  
11 the funding side of it.

12 THE COMMISSIONER: Before you do  
13 that, Mr. Joseph, do I correctly hear you to say  
14 then that the interest that brings you to the  
15 inquiry, and the connection, if you will, between  
16 your group and what we are concerned in the  
17 factual inquiry, relates to the issue of racial  
18 profiling and stereotyping of Arab and Muslim  
19 people?

20 MR. F. JOSEPH: Correct.

21 THE COMMISSIONER: Don't let me  
22 put words in your mouth, but insofar then as the  
23 evidence in the factual inquiry would relate to  
24 issues of that sort, you would say that engages  
25 your organization's interests.



1                   MR. F. JOSEPH: And in particular  
2 with that because the situation with,  
3 unfortunately, Maher Arar, the situation, and our  
4 experience has been is we have members of our  
5 community throughout the country from coast to  
6 coast that have gone through that contact with law  
7 enforcement and we have actually sat through the  
8 interrogation process, the questioning process,  
9 and many of the things that have happened to other  
10 members of the Muslim community may not have  
11 happened to Mr. Arar, and we want to make sure  
12 that those things get out.

13                   For example --

14                   THE COMMISSIONER: This is an  
15 inquiry into what happened to Mr. Arar.

16                   MR. F. JOSEPH: Absolutely. And I  
17 am just indicating that I think from that  
18 perspective we have both an interest from the  
19 factual side as well as with respect to the  
20 mechanisms for review.

21                   THE COMMISSIONER: The policy  
22 review side, yes.

23                   MR. F. JOSEPH: Absolutely.

24                   THE COMMISSIONER: My question  
25 here was just relating to the factual side, the

1 one looking at what happened to Mr. Arar.

2 You have touched on the point  
3 about the other groups that have applied for  
4 standing that are either representing Muslims or  
5 Islamic people or that are representing Arabs, and  
6 you have made the point that you think your group  
7 brings a unique perspective.

8 Let me put it to you this way. As  
9 I read the material, I could see that each of the  
10 groups represents, as you say, different  
11 constituencies and brings a different perspective,  
12 perhaps focus, and perhaps a different emphasis,  
13 if you will, in some situations. That is as I  
14 have perceived it.

15 What struck me was that by and  
16 large, insofar as their approach to the inquiry is  
17 concerned, there seemed to be a good deal of  
18 uniformity as to what they were interested in in  
19 the inquiry.

20 As you point out, they are  
21 interested in the issue of racial profiling and  
22 stereotyping of Arab or Muslim people; that they  
23 all are interested in that. Generally speaking, I  
24 think they all either have supported Mr. Arar and  
25 his evidence but are in any event supportive of

1 Mr. Arar's position and expressed concern about  
2 what happened to him.

3 My question to you is: Accepting  
4 the difference in the backgrounds and the reasons  
5 for the organizations, the different  
6 constituencies, I have to view this issue of  
7 standing through the lens of the inquiry and as to  
8 what contribution and assistance the groups would  
9 provide to me. I am sure they are all genuine and  
10 would be helpful.

11 I don't want to unnecessarily  
12 duplicate things because it becomes time consuming  
13 and expensive.

14 Is there anything in terms of the  
15 issues raised by the inquiry that sets your group  
16 apart from the other five to fall in the general  
17 category just mentioned?

18 MR. F. JOSEPH: Fair enough. I  
19 want you to know that I think in good faith many  
20 of the Muslim organizations or the Arab  
21 organizations that are here today have had some  
22 communication dealing with the issue. I think I  
23 can speak on behalf of all of us when I say that  
24 nobody from these organizations has any interest  
25 in duplicating, overlapping, et cetera.

1                   What I do want to tell you, for  
2                   example, is we talked about the Arab and the  
3                   Muslim when we take the National Council on Arab  
4                   Relations versus the Canadian Islamic Congress.  
5                   Muslims are not just Arabs. There are probably 60  
6                   or 70 different cultural backgrounds. The  
7                   National Council on Arab Relations deals with  
8                   Arabs, so there is a whole constituency that is  
9                   left out.

10                   The three things that I would say  
11                   that our organization is in a better position than  
12                   perhaps other organizations is, for example, we  
13                   are the only national organization that has done  
14                   the intensive studies with respect to the racial  
15                   profiling: a five-year study that has gone  
16                   through, that has been recognized nationally and  
17                   deals with those issues. It wasn't just done  
18                   after September 11th. This was something that was  
19                   done before and continued after.

20                   There is nobody that has had those  
21                   resources to be able to pull together.

22                   Second, we have worked very hard  
23                   on the impact that all of this has had on the  
24                   Muslim community of Canada, numbering roughly  
25                   650,000 people. We have dealt with the social

1 aspects of it from the social workers and those  
2 people that we have been dealing with, and we have  
3 evidence to give in respect of the racial  
4 profiling, on the effect of the impact of racial  
5 profiling on Muslims after 9/11. There are other  
6 organizations that don't have that information at  
7 their fingertips.

8 Finally, I think we are in a  
9 position to offer expert evidence because of the  
10 work that we have done. I think that whatever  
11 organizations get standing, whether it is done  
12 individually or sharing, I think it is very  
13 important that we have an opportunity to be heard.

14 THE COMMISSIONER: You are  
15 referring to on racial profiling?

16 MR. F. JOSEPH: Yes, on racial  
17 profiling, number one.

18 Number two, on the impact on the  
19 Muslim community of the racial profiling, not just  
20 the racial profiling which is a fact finding that  
21 has to be in the first part but the impact it has  
22 had on the community from the aspect of health  
23 professionals, et cetera, and the Muslim  
24 community --

25 THE COMMISSIONER: Relative to the

1 policy review.

2 MR. F. JOSEPH: Yes. But of  
3 course one is linked to the other, because you  
4 can't do it in isolation.

5 Let me say this as well. This is  
6 public monies and we are conscious of that with  
7 respect to any funding issues with these  
8 organizations.

9 We have a close enough  
10 relationship that once we have the witness list,  
11 there will not be a need for six organizations to  
12 have their counsel cross-examine on the same  
13 issues.

14 I am telling you that after  
15 speaking to these organizations we are not going  
16 to do that. If we do get separate standing for  
17 some of these organizations, and maybe a few you  
18 are going to put under an umbrella, we are going  
19 to make sure that we don't have duplication of it.  
20 But we have to make sure, because these  
21 organizations have a completely different  
22 perspective.

23 The National Council on Arab  
24 Relations and various other ones do not have the  
25 expertise and do not have the information; the

1 same with respect to their foreign policy work, et  
2 cetera, that they will talk about, CIC doesn't  
3 have.

4 I am asking for a little leap of  
5 faith, knowing how important this is and the  
6 community that is involved, that we be granted the  
7 standing individually. We will do our utmost to  
8 make sure -- and I should say as well if I can,  
9 sir, that the federal government, if they have  
10 four lawyers or whatever, I am here in my capacity  
11 to ask for funding on behalf of CIC for one  
12 counsel. There will be three counsel on the  
13 matter. The other two counsel will be absorbed  
14 through the associations and organizations. We  
15 will not be asking for that. We are asking for  
16 one, and we think that is prudent that we are  
17 willing to show good faith, that we are willing to  
18 bear some of the cost to the Canadian taxpayer.

19 This is important enough that we  
20 need a little bit of help in it, because these  
21 issues are critical to the future of this country.

22 Finally, you are very familiar  
23 with the maxim and I need not remind you that in  
24 this case, particularly with the Muslim community  
25 and the large contingency in Canada, we want to

1           make sure that justice is not only done but seen  
2           to be done; that we have a voice that is  
3           effective.

4                               Thank you, sir.

5                               THE COMMISSIONER: Thank you very  
6           much, Mr. Joseph.

7                               Next is the National Council of  
8           Canada-Arab Relations.

9                               Ms Henein, good morning.

10          APPLICATION

11                               MS M. HENEIN: Good morning.

12                               I appear for the National Council  
13          on Canada-Arab Relations, and with me today is  
14          Mr. Hussein Amery, who is the President of the  
15          Council.

16                               I would like to address my  
17          submissions hopefully squarely to the concerns  
18          that you raised with my friend just moments ago.  
19          I would like to talk briefly about the experience  
20          that the National Council has that would be of  
21          assistance to this inquiry in advancing the issues  
22          that you will be considering; our interest, which  
23          is obvious. As well, I would like to make some  
24          submissions as to why it is important that a mere  
25          coalition of Arab groups that may be perceived to



1        have similar interests is not created. I will  
2        have some very specific submissions to make about  
3        that and why we are distinct but why as well, as a  
4        matter of public interest, this is the type of  
5        inquiry that the diverse group that composes Arab  
6        Canadians is given a very strong and comprehensive  
7        voice so that you can come to the conclusions and  
8        have the information fully from the Arab  
9        community.

10                    Let me begin by the first  
11        component, if I may, and deal briefly with our  
12        experience.

13                    This is an organization that  
14        commenced its being in 1985. It is a national  
15        organization. It has been extensively involved in  
16        a very particular area, and that area is involved  
17        in international relations, particularly between  
18        Canada and other Arab governments.

19                    The organization promotes  
20        knowledge and fairness with respect to Canada-Arab  
21        relations, and unlike every single other Arab  
22        organization this is an organization that has been  
23        dedicating to reaching across borders and actually  
24        being involved on a political level and government  
25        level and legal level in terms of bridging the

1           gaps, if you will, between Canada and other Arab  
2           countries and their governments, an issue which  
3           clearly will come into play in this inquiry.

4                           We are involved in annual  
5           consultations with governments and  
6           parliamentarians and often are asked to speak and  
7           consult. As a result, we have an extensive body  
8           of knowledge to offer this inquiry, both with  
9           respect to the formal and informal political and  
10          legal structures that occur, particularly in Arab  
11          countries.

12                           As an example of the extent to  
13          which this organization is involved, I can tell  
14          you that they were involved in bringing Amre  
15          Moussa, the Secretary-General of the Arab League,  
16          to Canada. Shortly before Mr. Arar was released  
17          he met, through this Council, with the Prime  
18          Minister and the Foreign Minister, again simply  
19          one example of the type of extensive involvement  
20          that this Council has had in an international  
21          front.

22                           I can indicate to you that the  
23          Council urged Mr. Moussa to play a role with  
24          respect to Mr. Arar.

25                           So this has been an organization

1           that is very proactive in dealing with these types  
2           of issues and again has a significant expertise as  
3           to the way that these constructs, the legal and  
4           governmental constructs of Arab countries work.

5                         Our concern, if I can go to the  
6           second point, is, in my respectful submission,  
7           self-evident. All aspects of Mr. Arar's case are  
8           of grave concern to Arab Canadians, in addition to  
9           the issues you heard about, racial profiling.

10                        This is an organization that has  
11           promoted very proactively the perception that  
12           Canada and its fairness that it extends to not  
13           only Canadians but Arab Canadians as well, is a  
14           significant component of our government and we  
15           have advanced that with other Arab governments.

16                        The extent to which Canada is  
17           genuinely committed to the security of all  
18           Canadian citizens, whatever their origin including  
19           Arab Canadians, is a very, very significant  
20           concern for this organization and indeed for, I  
21           imagine, every single Arab Canadian in this  
22           country.

23                        I would like to then just move  
24           briefly to the last issue, which is why it is  
25           that, in my respectful submission, a coalition

1 of --

2 THE COMMISSIONER: Just before you  
3 do that I will just ask you if you could put in a  
4 nutshell for me the test for standing in Part 1 of  
5 substantial and direct interest. I asked  
6 Mr. Joseph this question.

7 I hear you saying you have a  
8 substantial direct interest in racial profiling as  
9 it applies to Arab people that you are  
10 representing.

11 MS M. HENEIN: Right. We would  
12 not be duplicating that. Our focus on this  
13 inquiry and where we would like to assist the  
14 inquiry is on the governmental and legal component  
15 in the international relations.

16 I can indicate to you, obviously  
17 as an organization focused on Arab Canadians we  
18 are interested in that concept, in that issue, and  
19 we may have things that we can contribute to other  
20 counsel advancing that issue. But that is not our  
21 basis for seeking standing. It is not the area  
22 that we bring particular expertise to.

23 Our area of expertise is very  
24 specific. It is the communication of information  
25 between governments, the legal constructs, the

1 governmental constructs, the international  
2 relation component, which plays a very significant  
3 part in how, I guess to generously put it, wires  
4 were crossed -- that may be a generous  
5 interpretation -- in this context and Mr. Arar's  
6 case occurred. So we have an expertise in that  
7 component.

8 So while we have an interest  
9 because we represent Arab Canadians, and it is a  
10 diverse group in racial profiling, that is not an  
11 area we would seek to question witnesses about.  
12 We would have and work with other organizations to  
13 participate as best we could through them, but  
14 that is not something we would want to question  
15 witnesses about.

16 So it is a very specific area that  
17 we are interested in.

18 THE COMMISSIONER: A number of the  
19 other organizations, not that are identified with  
20 the Arabs or Muslims, put forward the same  
21 expertise or interest in their applications that  
22 you have just mentioned. They are concerned about  
23 international relations and, in particular, the  
24 concern that gets closer to the facts here, the  
25 sharing of security intelligence among nations and

1 the cooperation and so on.

2 So that interest, if you will --  
3 and I am not trying to be difficult with you -- is  
4 put forward by other groups, civil liberties types  
5 of groups, international groups as well.

6 MS M. HENEIN: Yes. There is no  
7 question that civil liberties groups would have  
8 that interest, but in conjunction with that, on  
9 the issues standing, one of the factors obviously  
10 is an expertise. What this organization has is a  
11 very particular expertise with the types of  
12 governments and countries that are in issue in  
13 this inquiry. So that it is not a very  
14 generalized expertise but a very focused expertise  
15 in dealing with these governments on a political  
16 and international basis.

17 That is what, in my respectful  
18 submission, distinguishes this organization and  
19 allows us to be of particular assistance by  
20 bringing that body of knowledge and practical  
21 knowledge as to how these things work to the  
22 inquiry.

23 So while they may have the same  
24 interest, in my submission they don't have the  
25 same expertise.

1 THE COMMISSIONER: The level of  
2 participation you would see to bring that body of  
3 information or expertise to the inquiry would be  
4 what?

5 MS M. HENEIN: In my respectful  
6 submission it cannot be simply limited to a  
7 written submission. It is, in my submission,  
8 important that the organization or the counsel  
9 have standing to question the witnesses pertinent  
10 to that area. Because again, it is in eliciting  
11 that information, because this is a fact-finding  
12 mission to a certain extent, or a significant  
13 extent, that this counsel can assist the  
14 Commissioner. So that we should, in my respectful  
15 submission, be allowed to focus our questioning on  
16 that particular area, but to assist in eliciting  
17 that information. Again, the questions --

18 THE COMMISSIONER: That is on a  
19 sharing of information issue?

20 MS M. HENEIN: That is right, on  
21 the sharing of information and how information is  
22 shared, yes.

23 So we would seek standing to  
24 question witnesses on that issue. That is really  
25 the heart of our concern and what we bring that,

1 in my submission, is different having regard to  
2 our expertise and dealing particularly -- I won't  
3 go through the brief which I know you have read --  
4 with the Syrian government.

5 This is an organization that has  
6 been proactive with the Syrian government and has  
7 had communication with that government and  
8 communication with the Canadian government. In  
9 terms of the lines of communication that are  
10 fundamental to this inquiry, this is an  
11 organization that has been a player in that  
12 process.

13 So, in my respectful submission,  
14 we have that very significant component to add.

15 If I can go to the last part of  
16 it -- and in responding to your questions I hope I  
17 have addressed it to a certain extent -- a  
18 coalition of groups, as you heard my friend  
19 indicate earlier, in my respectful submission, is  
20 not workable.

21 The Arabic community is profoundly  
22 diverse culturally, religiously and politically.  
23 Some organization, as you will see, have a very  
24 significant religious component to that  
25 organization and a religious mandate. Others do



1 not. The Arab community is very diverse and, I  
2 daresay, sometimes quite divisive.

3 So, in my submission, in an  
4 inquiry which pertains to the treatment of  
5 Mr. Arar, but more broadly Arab Canadians, the  
6 voice of organizations and community groups that  
7 have that interest should be heard loud and clear  
8 and should be welcomed.

9 In my submission, that level of  
10 cultural sensitivity to the distinctiveness of  
11 these groups and what they may bring to assist you  
12 in your mandate would be borne out by granting  
13 separate standings, albeit on focused issues. I  
14 have hopefully identified the issue that we would  
15 like to focus our attention on and contribute to  
16 this inquiry on.

17 I can indicate to you CAF -- which  
18 is another organization that will be making  
19 submissions later on, when you look at their  
20 submissions -- is an organization that is very  
21 much community-based and that is unlike our  
22 organization. We are an organization that is very  
23 much focused on international relations. That is  
24 our strength. CAF has some 25 member  
25 organizations.

1                   Looking down that list, it is  
2                   clear that there are certain Arab communities that  
3                   are represented, others that are not. Again, I  
4                   stress that our council is not an organization  
5                   that is focused on any particular cultural or  
6                   religious view. It is very much a political  
7                   legislative international relations focus.

8                   So, in my respectful submission,  
9                   it is appropriate in the circumstances to give  
10                  Arab Canadians to give Arab Canadians the comfort  
11                  to know that their government and this inquiry is  
12                  hearing their voices independently and giving them  
13                  a chance to be considered by you.

14                  If I may, with your permission,  
15                  just move to the issue quickly of funding. Thank  
16                  you.

17                  This organization is a charitable  
18                  organization and so, like many of the others  
19                  before you, does not have the funds. The  
20                  Government of Canada I guess can choose to fund  
21                  four of their own lawyers, but the rest of us have  
22                  to seek the funding from the Government of Canada.  
23                  We don't have that luxury of having a huge body of  
24                  money.

25                  What I have requested in my

1           submissions is that funding be allowed for both  
2           junior and senior counsel. The reason I have  
3           requested that is that on much of it many things  
4           and money can be saved by having junior counsel do  
5           it and senior counsel does not have to duplicate  
6           or do that work. So the focus is not to have both  
7           present all the time, it is actually the contrary.  
8           It is to be able to divide up the work in a way  
9           that reduces the amount of fees that would be  
10          spent for senior counsel doing things when a  
11          junior counsel could effectively do it or  
12          summarize it.

13                                So the point in that is to avoid  
14          the duplication rather than increase costs. We  
15          hope to be able to minimize our costs by doing  
16          that and by also speaking to other organizations  
17          and where we have nothing to say we won't say it.  
18          We won't waste your time doing that.

19                                THE COMMISSIONER: Are you  
20          proposing that you wouldn't even need to be here  
21          for parts of the evidence that don't relate to the  
22          issue that you have raised?

23                                MS M. HENEIN: Right, if it  
24          doesn't relate to the issue or for example where  
25          it is -- and it is difficult to know without

1 obviously the witness list, but it is a very  
2 specific issue or specific area. It may be that  
3 we are able to attend for that portion to ask for  
4 questions and to leave so we don't waste money  
5 sitting here for three weeks of testimony that is  
6 simply not going to be relevant.

7                   Where it is relevant, this is a  
8 concrete example, it may be that junior counsel  
9 comes rather than senior counsel for a day and a  
10 half and then senior counsel comes and it is  
11 really an attempt to just focus it.  
12 Unfortunately, I can't be of more assistance to  
13 you at this stage, because I don't know who the  
14 witnesses are.

15                   Subject to questions, those are my  
16 requests.

17                   THE COMMISSIONER: Thank you very  
18 much, Ms Henein.

19                   MS M. HENEIN: Thank you, sir.

20                   THE COMMISSIONER: Now, Mr.  
21 Cavalluzzo, there was some suggestion that we  
22 might move up the applicants from the 12:00 to  
23 1:00 slot?

24                   MR. P. CAVALLUZZO: Yes, Mr.  
25 Commissioner. Mr. Shrybman has kindly agreed to

1           make his presentation now in respect of the two  
2           applications which he has filed.

3                           THE COMMISSIONER:   Okay,  
4           Mr. Shrybman.

5           APPLICATION

6                           MR. S. SHRYBMAN:   Thank you very  
7           much, Mr. Commissioner.

8                           So I am here today to present  
9           applications on behalf of three groups, two of  
10          them have filed for joint application.  And if you  
11          do indeed grant those applications for standing,  
12          other counsel would certainly be involved from  
13          time to time.  But given the circumstances, it  
14          made sense for me to be here today and present  
15          both.

16                          I would like to begin, if it is  
17          all right with you, with the application filed on  
18          behalf and the written arguments filed on behalf  
19          of the Canadian Labour Congress if I might.

20                          So this is an application to  
21          participate in both phases of the inquiry made on  
22          behalf of the Canadian Labour Congress, which I am  
23          sure you know is the principal labour central and  
24          senior trade organization in Canada.  It  
25          represents approximately 60 affiliated unions who

1 represent 2.6 million working people in Canada.

2 As part of its mandate, the  
3 Congress has a long-standing commitment to  
4 reducing inequalities in Canadian society so that  
5 all Canadian workers can participate fully and  
6 share in the benefits of our society. And trade  
7 unions have played a key role in promoting  
8 equality and have fought for equality rights  
9 through collective bargaining, in the courts,  
10 certainly in the legislatures and Parliament and  
11 through political action.

12 The Congress also represents  
13 Canadian workers internationally. It is a member  
14 of the International Confederation of Free Trade  
15 Unions, it is also represented on the governing  
16 council of the International Labour Organization  
17 and several of its affiliates are also involved in  
18 international labour organizations as well. And  
19 the subject of national security and border  
20 security has been a hot topic of conversation in  
21 those groups ever since the events of  
22 September 11, 2001.

23 It is those interests that explain  
24 the Congress's interest in this proceeding and why  
25 it has been involved from the outset. In the

1 particular case of Mr. Arar it attended at  
2 Dr. Mazigh's request, Mr. Arar's wife's request,  
3 at the very first meeting she had with Bill  
4 Graham, the Minister of Foreign Affairs in June of  
5 2003. In our written submissions, paragraph 6.3.9  
6 documents some of the activities that the Congress  
7 and its affiliates have been involved in since  
8 that time in providing assistance to Mr. Arar and  
9 in calling for this inquiry and other related  
10 activities.

11 Our purpose in seeking standing  
12 before the Commission is to insist with the  
13 inquiry of the Commission into the actions of  
14 Canadian officials in relation to Mr. Arar with  
15 respect to three issues. The first is human  
16 rights and the particular practice of racial  
17 profiling as it may have played a role in Mr.  
18 Arar's case. The second has to do with the rights  
19 of workers in the workplace who have been and may  
20 continue to be affected by the integration of  
21 Canadian and US policies, including those relating  
22 to border security. And the third has to do with  
23 Canadian sovereignty, the erosion of which we  
24 believe has played a key role in explaining the  
25 actions of both Canadian and US officials in

1 relation to Mr. Arar.

2                   So, I would like to deal with each  
3 of those briefly if I might. The first, the issue  
4 of human rights and racial profiling, our written  
5 submissions document the commitments of the  
6 Congress and its affiliates to the human rights  
7 agenda, lists several of the submissions that have  
8 been made by the Congress or on its behalf to  
9 various parliamentary committees in dealing with  
10 the development of policy and law that has taken  
11 place since 9/11, which we believe frames the  
12 context within which the actions of Canadian  
13 officials in relation to Mr. Arar must be  
14 understood.

15                   A key concern for the Congress is  
16 that in the rush to respond to the security  
17 challenges confronting Canada and the United  
18 States, particularly in light of the degree of  
19 economic integration between our countries, that  
20 we not retreat from the gains that we have made in  
21 advancing the cause of human rights and ridding  
22 our society of racial and ethnic prejudices.

23                   The circumstances of Mr. Arar's  
24 detention suggest unfortunately in our view that  
25 that indeed is already occurring. This in turn



1 raises fundamental questions about the policies,  
2 programs and institutional arrangements that have  
3 undergone and continue to undergo rather radical  
4 transformation in order to respond to these new  
5 challenges that preoccupy the attention of many in  
6 the United States and the Canadian  
7 administrations.

8                   And so those issues are, for  
9 example, to what degree did Canadian officials in  
10 the case of Mr. Arar observe Canadian  
11 constitutional safeguards including those set out  
12 in the Charter? Did racial profiling contribute  
13 to the decision to gather and share information  
14 about Mr. Arar? Did these officials have proper  
15 regard for the legal protection that Canadians  
16 enjoy, including those concerning privacy? These  
17 are issues, in my submission, with respect to  
18 which the Congress have a substantial and direct  
19 interest.

20                   The second issue--

21                   THE COMMISSIONER: I am very  
22 concerned about obviously and I accept absolutely  
23 that you have a genuine concern about it and have  
24 an experience in dealing with. The phrase you  
25 used at the end there, "have a substantial and

1 direct interest" is one that sort of governs the  
2 grants of standing under my terms of reference.

3 Can you bring that more closely  
4 home, how you would say the Congress has a  
5 substantial and direct interest in the factual  
6 inquiry which, you know, repeated is an inquiry  
7 that is focused on finding out what happened to  
8 Mr. Arar?

9 MR. S. SHRYBMAN: Well, I will do  
10 my best. I mean, what happened to Mr. Arar was  
11 the consequence of certain actions of Canadian and  
12 other officials, your mandate's limited to the  
13 former. In order to understand the actions of  
14 those Canadian officials one needs to understand,  
15 we would argue, the policy and institutional and  
16 programmatic context within which those officials  
17 function. In our view, that is the subject matter  
18 of this inquiry. It isn't simply what the  
19 Canadian officials did, but why they conducted  
20 themselves in the way that they did.

21 We believe that when you embark  
22 upon that inquiry you will find that the reasons  
23 for the actions of Canadian officials are probably  
24 multifaceted. The fact that you are seeking  
25 documents from 10 different government agencies,

1 as counsel indicated earlier today, is an  
2 illustration I think of how broad the play of  
3 public policies and the diversity of public  
4 officials that are involved in matters relating to  
5 Mr. Arar truly are.

6 The Congress, to the degree that  
7 those policies impact workers, and they do in many  
8 ways, for example, I don't know whether it is 10s  
9 or 100s of thousands of members of affiliates of  
10 the Congress actually have to cross the border in  
11 order to work. They are involved as employees in  
12 the transportation sector or in the entertainment  
13 sector or in various sectors.

14 Other affiliated members of the  
15 CLC actually implement those measures and  
16 policies. Members of the Public Service Alliance  
17 of Canada, for example, are employed as Customs  
18 and Immigration officials. So they are not only  
19 affected by those policies and the implementation  
20 of those policies, of which the conduct of  
21 Canadian officials in relation to Mr. Arar is one  
22 manifestation, but they are also called upon, from  
23 time to time to implement those policies.

24 It is the perspective of the  
25 members of the CLC as workers, both being affected

1 by, and at times carrying out, the measures, the  
2 programs, implementing the guidelines. They exist  
3 within the context of policy and law.

4 That explains why the officials  
5 behaved as they did with respect to Mr. Arar. So  
6 that is the substantial and direct interest, I  
7 would argue, that the Congress has in the inquiry.

8 THE COMMISSIONER: It would be  
9 that assistance relating to that contextual  
10 background that you have just mentioned, that you  
11 would say that part of the factual inquiry would  
12 be the link to the Congress that you urge upon me.

13 MR. S. SHRYBMAN: Yes, it would.  
14 I think it would be helpful for the Commission to  
15 also understand, I believe, the actions of  
16 Canadian officials. They certainly need to be  
17 understood in context, but I think it is helpful  
18 for that understanding to appreciate that those  
19 policies are played out in various ways and affect  
20 a great many people who have to cross the border  
21 every day, or who may have to implement the  
22 policies. That helps you to understand, I think,  
23 not just the theory of the policy, but its  
24 practice and its day-to-day implementation.

25 One example that I included in our

1 written submissions has to do with the fact that  
2 in October 2002, for example, a Travel Advisory  
3 was issued by the Canadian government warning  
4 certain Canadians who are nationals of certain  
5 Arab countries not to travel back and forth across  
6 the border.

7 Well, if you happen to be a worker  
8 involved in an industry that requires you to do  
9 that as part of your day-to-day employment, that  
10 is particularly problematic and the experience and  
11 difficulties that workers confront in dealing with  
12 those constraints are unique to their situation as  
13 employees.

14 The third issue, I have already  
15 dealt with, the second, which has to do with the  
16 impact on workers as workers, including in their  
17 workplace, has to do with the question of  
18 sovereignty which, in our view, involves the  
19 protection of citizens as a core function of a  
20 sovereign state.

21 That not only includes questions  
22 of physical security, but personal privacy as  
23 well, yet the Arar case seems to illustrate that  
24 there has been a serious aversion of Canadian  
25 sovereignty and that, we believe, is increasingly

1 a feature of Canada-U.S. relations. The denial of  
2 Mr. Arar's rights is an extreme case, but it is  
3 illustrative, we believe, of a growing trend in  
4 which less and less respect is accorded to  
5 important norms of sovereign authority.

6 The Congress is worried that since  
7 the events of September 11, 2001, that those who  
8 would promote deeper integration with the United  
9 States for further erosion of Canadian sovereignty  
10 have seized upon this as an opportunity to promote  
11 that agenda and we are very concerned about the  
12 impacts that will have on sovereignty,  
13 notwithstanding the fact that many Canadian  
14 workers, of course, depend on international trade  
15 with the United States. We don't believe that  
16 that needs to occur at the cost of Canadian  
17 sovereignty without respect for Canadian  
18 constitutional safeguards.

19 With respect to the scope of our  
20 participation in this proceeding, our intention  
21 would be to limit that role to dealing  
22 specifically with the issues I have identified.  
23 We don't suspect to participate throughout the  
24 course of the proceedings or necessarily be here  
25 even for most of the time, but only to deal with

1 the specific issues which I have identified.

2 I have a comment to make with  
3 respect to funding.

4 THE COMMISSIONER: Go ahead.

5 MR. S. SHRYBMAN: Obviously, the  
6 Congress is a substantial organization with  
7 substantial resources, and it does have a  
8 substantial budget for litigation which is, at the  
9 moment and typically, over subscribed. You can  
10 imagine the diversity of demands that are placed  
11 on the organization in that regard.

12 This, obviously, is an  
13 extraordinary expense. The cost of intervention,  
14 as you know, would be quite substantial. This  
15 is in the spirit of assisting the Commission and  
16 arguably, from a public policy point of view, is  
17 a cost that appropriately should be borne by the  
18 state.

19 Let me on the question of  
20 collaboration make one point, and that is that a  
21 number of CLC affiliates have taken a great  
22 interest in the events surrounding Mr. Arar, and  
23 that is demonstrated to a modest degree by our  
24 written submissions.

25 Rather than each be here today to

1 seek standing before you, they have decided  
2 collectively that the best course would be for  
3 them to organize their participation under the  
4 umbrella of the Congress. So that winnowing of  
5 diverse interests has already taken place in the  
6 case of this particular application, and that is  
7 something I would respectfully request you to take  
8 into account.

9 THE COMMISSIONER: Okay. Thank  
10 you. So that completes your submission for the  
11 Congress?

12 MR. S. SHRYBMAN: Yes.

13 THE COMMISSIONER: And then there  
14 is the Council of Canadians and the Polaris  
15 Institute.

16 MR. S. SHRYBMAN: Polaris  
17 Institute.

18 THE COMMISSIONER: Right.

19 MR. S. SHRYBMAN: I will briefly  
20 describe each of the organizations, very briefly.

21 The Council was founded in 1985.  
22 It has over 100,000 members. They are organized  
23 into 70 chapters across the country. It is a very  
24 prominent civil society or public interest group  
25 in Canada.



1                    Since its inception, much of the  
2                    Council's work has focused on the erosion of  
3                    Canadian sovereignty and, in many ways, that is a  
4                    common theme with many of its projects, whether it  
5                    is the protection of Canadian water resources and  
6                    resource conservation policies, or the protection  
7                    of Canadian social programs, or international  
8                    trade. At the heart of all of that is a concern  
9                    about sovereignty and the democratic process. I  
10                   mean, if there is one thing that the Council  
11                   exemplifies it is that, the essential features of  
12                   a sovereign democracy for Canada.

13                   The Polaris Institute, on the  
14                   other hand, is a research group with more recent  
15                   vintage. It was founded in 1997. Again, the  
16                   focus is on sovereignty and democratic  
17                   policy-making with respect of diversity of issues:  
18                   Social, defence, economic policy, national  
19                   security.

20                   It has a presence in both the  
21                   United States and in Canada, and much of its  
22                   projects are carried on collaboratively by groups  
23                   in Canada and internationally.

24                   It has been tracking the agenda  
25                   for continental integration as a key priority in

1 response to the U.S. national security doctrine  
2 that was pronounced by President Bush about a year  
3 after the events of September 2001. It is  
4 acknowledged for its expertise on these issues.  
5 It was called to appear before the Standing  
6 Committee on National Defence and Veterans Affairs  
7 to comment on continental security and the defence  
8 relationship.

9 So with that description of the  
10 groups, let me describe the nature of their  
11 interests, if I might.

12 The applicants are seeking  
13 standing before you, Mr. Commissioner, for the  
14 purpose of ensuring that the policy institutional  
15 origins of the apparent collaboration between  
16 Canadian and U.S. officials in the case of  
17 Mr. Arar be thoroughly examined. That is the  
18 point.

19 The applicants believe that an  
20 important part of the explanation for the conduct  
21 of several Canadian government officials in  
22 relation to Mr. Arar can be found outside the  
23 realm of Canada's national security goals and  
24 arise from other dimensions of Canada-U.S  
25 relationships.

1                   Whatever their origins, the  
2                   actions of Canadian officials, whether they are  
3                   employed by the RCMP or not -- and we suspect that  
4                   many of them were not who were involved in the  
5                   case of Mr. Arar -- may be seen more accurately as  
6                   a reflection of, rather than diversions from,  
7                   Canadian policies.

8                   So increasing oversight of the  
9                   RCMP may miss a lot of people involved in the  
10                  process, but may also miss the boat in the sense  
11                  that if those officials are simply carrying out  
12                  Canadian policies, or some Canadian policies if  
13                  there is a lack of policy coherence with respect  
14                  to these issues -- and we believe the evidence  
15                  suggests there is that lack of coherence -- then  
16                  providing additional oversights of public  
17                  officials who are simply doing their job won't get  
18                  us very far in terms of adjusting the problems  
19                  that may have given rise to Mr. Arar's  
20                  predicament.

21                  THE COMMISSIONER: That sounds  
22                  like a concern, Mr. Shrybman, that will come up in  
23                  the policy review part when we are looking at the  
24                  oversight mechanism for the RCMP. Do I hear you  
25                  correctly?

1 MR. S. SHRYBMAN: Well, it would  
2 to a degree. But the concern that we have is that  
3 the Phase 2 of the Inquiry is framed very  
4 narrowly. Your mandate is to look at institutions  
5 that might provide additional oversight of the  
6 RCMP.

7 THE COMMISSIONER: That will  
8 interact with other review mechanisms through  
9 other intelligence agencies.

10 MR. S. SHRYBMAN: Right. If you  
11 are looking at the activities of ten government  
12 agencies, there are obviously agencies involved  
13 that don't necessarily have a security mandate,  
14 and there are officials involved obviously who  
15 won't work for the RCMP.

16 Unless you inquire fully into the  
17 institutional and the policy and other  
18 relationships that have grown up, since many of  
19 them are new -- they are untested; they are  
20 unprecedented. They were put in place subsequent  
21 to an agreement in December 2001, which you may  
22 know of but I am sure you will hear more about,  
23 the Smart Border Action Plan, which calls for  
24 precisely the kind of collaboration that seems to  
25 have played out in the case of Mr. Arar.

1                   Unless you understand that policy  
2                   context and its derivations -- because we don't  
3                   believe those policies entirely derive from  
4                   national security concerns. We believe there are  
5                   economic policy concerns at play as well.

6                   Unless you conduct that inquiry,  
7                   the stage won't be set for Phase 2. That is the  
8                   concern.

9                   It is almost as if there has been  
10                  a judgment about the nature of the problem before  
11                  we have had actually had the inquiry during Phase  
12                  1 to truly probe the nature of the problem. That  
13                  is the concern.

14                 So we are very keen to participate  
15                 in Phase 1 or to assist the inquiry to understand  
16                 the full parameters of the policy and  
17                 institutional context within which a diversity of  
18                 Canadian officials -- we don't know how diverse --  
19                 played a role in what happened to Mr. Arar.

20                 That is not just in relation to  
21                 the U.S. but Canada in its relationships with  
22                 other countries internationally, including Syria.  
23                 We noted in our application that there were  
24                 important investment transactions that were taking  
25                 place at the same time. They may have been

1 carried forward by the same government department.

2 There is lots of evidence in the  
3 public record that there was a lack of coherence  
4 in government policy. There is certainly the  
5 indication that other countries were getting mixed  
6 signals from Canada.

7 We know that government policy  
8 isn't monolithic with respect to any issue and  
9 that conflicts often exist between government  
10 policy objectives. At times they exist even  
11 within the same department, and of course the  
12 department then. The Department of Foreign  
13 Affairs and International Trade has now been  
14 separated into two government bodies.

15 It is important, I think, for you  
16 to probe that context. That is why participation  
17 in Phase 1 is important.

18 Just bear with me for one moment,  
19 and I will make sure that I have covered these  
20 points in responding to your question.

21 --- Pause

22 MR. S. SHRYBMAN: In terms of that  
23 conflict of policies, I think it is very important  
24 for you to understand the nature of those  
25 conflicts and how they might be resolved. We do

1 not, respectfully, believe that looking at the  
2 RCMP and oversight of the RCMP will be an adequate  
3 instrument for addressing those issues, and that  
4 they perhaps might -- they better reside, and in  
5 any event the foundation for their assessment and  
6 analysis resides in the factual phase.

7 From our perspective, at the heart  
8 of the Commission's inquiry is the fundamental  
9 question, and that is the extent to which  
10 Mr. Arar's fate and the violation of his human and  
11 civil rights are symptomatic of an erosion of  
12 Canadian sovereignty that has become a feature of  
13 Canada-U.S. relations, we are concerned, over  
14 recent years.

15 We believe the events surrounding  
16 Mr. Arar have to be viewed and assessed in the  
17 context of a new political agenda for deepening  
18 integration between Canada and U.S. policies  
19 concerning energy and the economy and more  
20 recently national defence and homeland security.

21 It is all part of the package, and  
22 it has all been bundled together by both  
23 governments. The Smart Border Action Plan is  
24 simply one articulation of that bundling. To  
25 imagine that you can look at the question of

1 national security in isolation from all of the  
2 other policy objectives that have formed decisions  
3 to create a plan and an integrated network would  
4 leave you uninformed about important dimensions of  
5 the equation.

6                   The last point I would make before  
7 turning to the question of funding is just to note  
8 that the security measures that trapped Mr. Arar  
9 may well ensnare others, including people who are  
10 notorious for their political views, because they  
11 are anti-globalization activists or they are sharp  
12 critics of Canada's international trade policies  
13 or its security policies, or integration of  
14 Canadian-U.S. defence policies.

15                   There is some concern that while  
16 the inclination is to focus on people of a  
17 particular ethnic background, that indeed the  
18 security measures may be blind and ensnare others  
19 in the net whose actions are suspect for reasons  
20 that we would consider to be perfectly valid and  
21 appropriate in any democratic society.

22                   The only other submissions I have  
23 to make concern the question of funding.

24                   Both of these organizations are  
25 non-profit organizations. None of them derive any



1 support from government funding or corporate  
2 funding. They rely totally on the contributions  
3 of individuals and charitable foundations to do  
4 some of their work.

5 Costs of intervening are  
6 extraordinary. Neither organization has a budget  
7 for that purpose. It would need to reduce its  
8 program activities and staff in order to fund its  
9 participation, if it thought that was a reasonable  
10 trade-off.

11 Its participation in this inquiry  
12 depends upon some financial support. Again, it is  
13 not the intention of these organizations to  
14 maintain a day-to-day presence, only to be here to  
15 ensure that those issues I have identified are  
16 explored. If that happens, my client's dispatch  
17 of them will be satisfied.

18 Thank you very much.

19 THE COMMISSIONER: Thank you very  
20 much.

21 I might say to counsel who have  
22 already presented that they should feel free to  
23 leave, if they so wish. They are also welcome to  
24 stay.

25 I see Mr. Binavince is here now.

1 Are you ready to proceed?

2 MR. E. BINA VINCE: I am ready to  
3 proceed.

4 THE COMMISSIONER: Why don't we  
5 not rise. If anybody wishes to leave the room,  
6 please feel free to do so before we begin the next  
7 presentation.

8 Mr. Binavince, you represent the  
9 Minority Advocacy & Rights Council?

10 MR. E. BINA VINCE: That is right.

11 THE COMMISSIONER: If you would  
12 like to come forward, you are free to speak either  
13 from a seated position or from the podium,  
14 whichever suits you the best.

15 APPLICATION

16 MR. E. BINA VINCE: I can do both,  
17 I think.

18 May it please the Commissioner, we  
19 have given a description of what the Minority  
20 Advocacy & Rights Council is. I don't think there  
21 is any need to go in detail into that.

22 We are a non-profit organization.  
23 If there are concerns that relate to minorities,  
24 whether it is cultural or racial or religious, or  
25 whatever they are, we seek to intervene to ensure

1           that their perspective is heard in these cases.

2                           We have appeared in the Supreme  
3           Court of Canada in a number of cases and in  
4           certain proceedings at the Trial Division. This  
5           is actually the first time we are going to appear  
6           before an inquiry, and hopefully we will be able  
7           to help the Commissioner to determine the facts in  
8           this case, as well as in the making of the model  
9           that will be appropriate to oversee the police  
10          power in this country.

11                          With respect to the factual  
12          inquiry, we have certain contacts that might  
13          enable us to contribute a little bit into the  
14          attempt of this Commission to determine the facts  
15          in this case. We are not too confident at this  
16          point how good those contacts are and what kind of  
17          ability we will have to round them up. That will  
18          depend upon our financial ability and the kinds of  
19          contacts we have.

20                          We will try to do that, to the  
21          extent it is possible. Even if we will not be  
22          intervening in relation to the particular part of  
23          the inquiry, we will still try our best to seek  
24          some kind of factual perspective in this inquiry  
25          and show them to somebody else who will be

1 appearing before this Commission.

2 THE COMMISSIONER: I can tell you  
3 that Commission counsel would be most receptive to  
4 that type of assistance.

5 MR. E. BINA VINCE: So we believe  
6 that from the factual inquiry side this is  
7 extremely important and therefore for the  
8 Commission to be able to understand the  
9 perspective of the problem, even if we were not  
10 going to appear before this inquiry, we will  
11 assist counsel of the Commission in this if it is  
12 possible.

13 I think our role here can be  
14 related to the model that I think will follow  
15 after the factual inquiry has been completed or at  
16 least on the basis of which the model for purposes  
17 of oversight is going to be determined.

18 We have always taken the position  
19 that self-policing, even including professionals  
20 like the Law Society or the medical profession, is  
21 not always very efficient or in any event the  
22 perspective of fairness is very often lost. But  
23 we are not wedded to that kind of principle, if it  
24 is different then facts will show that from the  
25 viewpoint of efficiency and security there might

1           be certain kinds of consideration relating to the  
2           police.

3                               Nonetheless, it is important that  
4           those kinds of considerations should be tested and  
5           we are attempting to appear before this Commission  
6           to give an opportunity to test some of those  
7           assumptions so that what will emerge from legal  
8           issue there will be a model that is not only  
9           acceptable for Canadian citizens generally, but  
10          those who are more exposed to kinds of problems  
11          like minorities.

12                              The way we look at this problem to  
13          day, Mr. Commissioner, is that it is not totally  
14          clear what kind of considerations entered into the  
15          decisions of the RCMP or any police power  
16          including the United States in bringing Mr. Arar  
17          over to Syria.

18                              I am a little bit fortunate in  
19          having studied in the United States and am quite  
20          familiar with immigration laws and some of the  
21          rules in the United States. And I might be able,  
22          with the Commission and even if we are not going  
23          to be appearing before you if we are not given the  
24          standing, but it is quite important in our view  
25          that in looking at the model relating to the

1 oversight of our police institutions that we  
2 should not immediately copy some other country's  
3 model because they are not always the same.

4 The big debate today is Canadian  
5 mosaic versus melting pot, raises almost  
6 immediately the concern of a lot of people. And  
7 if this is going to be a case of borrowing from  
8 another country without considering the unique  
9 character of our country, we might be losing sight  
10 of important constitutional considerations.

11 So, Mr. Commissioner, from our  
12 viewpoint I personally have experience in police  
13 matter. In fact, I was the chairman for a number  
14 of years in police inquiry cases for discipline  
15 matters principally. I have also represented the  
16 Police Association in Ottawa in a number of  
17 inquiries against the Police Board in some cases.  
18 I have also taken certain cases where there are  
19 civil actions where there is an attempt or is  
20 misuse of police power.

21 We would hope that we will be able  
22 to use this kind of experience and expertise in  
23 the work of this Commission.

24 Thank you very much.

25 THE COMMISSIONER: Thank you very

1 much, Mr. Binavince. Thank you for coming.

2 Mr. Cavalluzzo.

3 MR. P. CAVALLUZZO: Mr.

4 Commissioner, that would complete the application  
5 for this morning. We are set to reconvene at 2:15  
6 at which time we will have a conference call from  
7 Victoria, British Columbia in respect of an  
8 application of the BC Civil Liberties.

9 THE COMMISSIONER: We have two  
10 conference calls then I think. Are both of them  
11 from British Columbia?

12 MR. P. CAVALLUZZO: Correct.

13 THE COMMISSIONER: The first two,  
14 right?

15 MR. P. CAVALLUZZO: Right.

16 THE COMMISSIONER: Okay, well then  
17 the inquiry will rise until 2:15.

18 --- Upon recessing at 12:05 p.m. /

19 Suspension à 12 h 05

20 --- Upon resuming at 2:15 p.m. /

21 Reprise à 14 h 15

22 MR. P. CAVALLUZZO: The next  
23 applicant is the British Columbia Civil Liberties  
24 Association. This is one that we are going to  
25 receive by way of conference call.

1 THE COMMISSIONER: Mr. Arvay, are  
2 you there?

3 MR. J. ARVAY: I am,  
4 Mr. Commissioner.

5 MR. P. CAVALLUZZO: This is  
6 Mr. Cavalluzzo, Mr. Arvay. You can hear us?

7 MR. J. ARVAY: I can hear you  
8 fine.

9 MR. P. CAVALLUZZO: Okay. Why  
10 then don't you start? The Commissioner is here  
11 and he is listening.

12 APPLICATION (via conference call)

13 MR. J. ARVAY: Thank you.

14 Mr. Commissioner, Commission  
15 counsel, thank you for this opportunity to allow  
16 the British Columbia Civil Liberties Association  
17 to make its application for a stranding and  
18 funding by telephone.

19 With me right now is Mr. Murray  
20 Mollard -- M-O-L-L-A-R-D -- who is the Executive  
21 Director of the BCCLA and expected any moment, but  
22 seems to be caught up in traffic, is Mr. John  
23 Russell, the President of the B.C. Civil Liberties  
24 Association.

25 I know you have our written



1 materials, and I know that the purpose of this  
2 presentation is simply to finalize some points and  
3 to respond to any questions that the Commission  
4 has. That is what I will try to do in the short  
5 time available to us.

6 As you will see from the material,  
7 but not withstanding its name, the British  
8 Columbia Civil Liberties Association, it can  
9 legitimately claim that it is Canada's oldest and  
10 most active civil liberties association and we  
11 respectfully submit that the association has  
12 substantial and direct interests in the subject  
13 matter of these proceedings.

14 For close to 40 years,  
15 Mr. Commissioner, the Civil Liberties Association  
16 has argued that restrictions on our basic rights  
17 and our basic freedoms can only be justified if  
18 they are necessary ultimately for the sake of  
19 those very same rights and freedoms.

20 This has been their guiding  
21 principles, their mantra, so to speak, for the  
22 last 40 years and it is seen throughout materials  
23 starting with the submissions that it made to  
24 commissions such as the MacDonald Commission in  
25 the 1970s right through to the present.

1                   This principle, though,  
2           Mr. Commissioner, is easy to state perhaps but is  
3           not so easy in its application. It has to be  
4           tested not only against particular laws and  
5           policies, but its application introduced different  
6           results in different times. It is a submission to  
7           the House of Commons Committee on Justice and  
8           Legal Affairs which was considering what was then  
9           the proposed anti-terrorism bill. The Civil  
10          Liberties Association made submissions whereby it  
11          expressed concern that the government  
12          anti-terrorism proposals place unnecessary  
13          restrictions on individual freedoms and liberties,  
14          notwithstanding the events of 9/11.

15                   I would like to take you,  
16          Mr. Commissioner, if you have our material in  
17          front of you, to Exhibit N, as in Nora, to the  
18          affidavit of Mr. Russell.

19                   THE COMMISSIONER: Just let me  
20          turn that up.

21          --- Pause

22                   MR. J. ARVAY: And if I can ask  
23          you to go to Exhibit N, as in Nora, and go to the  
24          second page.

25          --- Pause

1 MR. J. ARVAY: As I am not there  
2 to see how you are doing, I will ask you if you  
3 found it.

4 THE COMMISSIONER: It's Exhibit N  
5 to the affidavit?

6 MR. J. ARVAY: Yes.

7 THE COMMISSIONER: The pages  
8 aren't numbered.

9 MR. J. ARVAY: They are numbered  
10 on the bottom. They should be numbered 1 of 3 --

11 THE COMMISSIONER: What is the  
12 document?

13 MR. J. ARVAY: It says "News  
14 Flash" on the top and it's the speaking notes on  
15 the federal anti-terrorism proposal of October 30,  
16 2001.

17 THE COMMISSIONER: I am getting  
18 there.

19 --- Pause

20 THE COMMISSIONER: There we are.  
21 I have it.

22 MR. J. ARVAY: Okay, thank you

23 THE COMMISSIONER: Thank you.

24 MR. J. ARVAY: After recognizing  
25 that no rights are absolute and recognizing the

1           horrific events of September 11th and the fact  
2           that when you have extraordinary threats  
3           extraordinary measures may be required,  
4           nevertheless, the Civil Liberties Association  
5           cautioned that we have to be careful that the  
6           restrictions are no more than necessary than to  
7           protect the very rights and freedoms which the  
8           so-called anti-terrorism provisions were designed  
9           to protect.

10                               One of the concerns that the  
11           Commission had was expressed on the second page.  
12           It would be essentially three paragraphs from the  
13           bottom if I can read that to you.

14                               It starts off "The likely effect".

15                               THE COMMISSIONER: I have it.

16                               MR. J. ARVAY:

17                               "The likely effect of these  
18                               proposals on the Canadian  
19                               Muslim community afford  
20                               another compelling reason for  
21                               a sunset clause..." (As read)

22                               Which is what they were calling

23           for:

24                               "... for the main burden of  
25                               this legislation is going to

1 fall almost exclusively on  
2 Muslim Canadians,  
3 particularly on those of Arab  
4 descent. Only the most naive  
5 and uninformed observer could  
6 think of the exercise of  
7 their preventive detention,  
8 investigative hearings and  
9 prosecution for financing, or  
10 of abetting terrorism that  
11 are contemplated by this  
12 legislation will not at times  
13 be mistaken, sometimes  
14 seriously and with tragic  
15 consequences. As the Muslim  
16 Canadian community becomes  
17 the main focus of  
18 investigation and as genuine  
19 controversies arise and  
20 mistakes are made, it is  
21 practically inevitable that  
22 Muslim Canadians will ask  
23 questions about their  
24 government's commitment to  
25 respect their right to

1                   fundamental freedoms and  
2                   equality alongside their  
3                   Canadian brothers and  
4                   sisters. These are the  
5                   social costs that we must do  
6                   all in our power to avoid."

7                   (As read)

8                   These comments turned out to be  
9                   rather prescient in a chilling sort of way, hence  
10                  the ink had barely dried, Mr. Commissioner, on the  
11                  new anti-terrorism legislation, which I understand  
12                  was enacted in December of 2001, when on December  
13                  20, 2001 we understand that Mr. Arar was stopped  
14                  by Canada Customs on his way home from the United  
15                  States, even though on many previous trips he had  
16                  never been bothered before, but on that particular  
17                  trip he was stopped, his computer impounded and  
18                  seized.

19                  A month later, the RCMP were  
20                  advised, were showing up in the early morning  
21                  hours at his home and, of course, several months  
22                  later he was detained by the FBI on September of  
23                  2002 and subsequently deported on to Syria where  
24                  he was tortured.

25                  The Civil Liberties Association

1 has not only followed the Arar case with great  
2 interest and concern, but in fact has been at the  
3 very fore amongst many Canadians in calling for  
4 this inquiry and, in fact, has, as the material  
5 reveals, recommended terms of reference that are  
6 very close to the actual terms of reference of  
7 this inquiry.

8                   Again, I would like to read you  
9 another document in the material. It's Exhibit X,  
10 as in x-ray, to Mr. Russell's affidavit. This was  
11 an ed piece that was prepared for publication in  
12 newspapers across the country calling on the Prime  
13 Minister to ask for this inquiry.

14                   THE COMMISSIONER: I have it.

15                   MR. J. ARVAY: Because of time  
16 constraints, I only wanted to read this passage  
17 from that document, the middle of the document.

18                   What Mr. Russell is talking about  
19 is the problems that presented itself to Mr. Arar  
20 may run deeper than simply legislation that unduly  
21 restricts rights and freedoms, but may be embedded  
22 in cultures and attitudes amongst the police and  
23 law enforcement officials.

24                   In the middle of that document,  
25 about six paragraphs down, after saying that --

1 well, I will just read it to you. He says:  
2 "In fact, the more  
3 significant changes may be  
4 more subtle and difficult to  
5 pin down. They may have to  
6 do a shift to the culture  
7 and attitudes of government  
8 and law enforcement after  
9 9/11. The new normal, as it  
10 has been chillingly called,  
11 appears to operate  
12 significantly beyond normal  
13 law and regulations. That is  
14 one thing among many that  
15 should be frightening about  
16 what has changed post-9/11.  
17 Maher Arar's case is a case  
18 in point. It appears that  
19 Canadian police and/or  
20 security intelligence  
21 officials may have conspired,  
22 or at least knowingly sat by,  
23 to permit a Canadian being  
24 abducted in effect and sent  
25 to another country to be



1                   tortured in an attempt to  
2                   obtain information about  
3                   terrorism. That is an  
4                   amazing and, unfortunately, a  
5                   disturbingly credible  
6                   allegation. Such measures  
7                   were never contemplated even  
8                   by our own much criticized  
9                   anti-terrorism legislation.  
10                  It happened. How did it  
11                  happen and what else is going  
12                  on outside the law?".

13   (As read)

14   I will leave the rest of that  
15                  document for your review, Mr. Commissioner, but I  
16                  think what the Civil Liberties was saying then and  
17                  what it is saying now is that the real work of  
18                  this Commission is not just to examine legislation  
19                  and policies and is not just to examine what  
20                  happened to Mr. Arar, but the real work of this  
21                  Commission is to determine why it happened, how it  
22                  happened. It is to examine these cultures, the  
23                  new culture, these attitudes and other systemic  
24                  reasons that may have resulted in what happened to  
25                  Mr. Arar. Because we want to know about the why

1 of what happened to Mr. Arar that we would have  
2 some assurance, we would hope, that it won't  
3 happen to any Canadian that is here as a permanent  
4 resident again.

5 It is because this inquiry is  
6 necessarily so fact-driven and so fact-intensive  
7 that we respectfully submit that the Commission  
8 should allow standing to anyone or everyone who  
9 can truly assist the Commission in its task.

10 The Civil Liberties Association  
11 recognizes the important role that many, if not  
12 all, of the applicants before you can bring to the  
13 Commission, but we think we can say without fear  
14 of contradiction that there is no group or  
15 individual before you who can lay claim to be able  
16 to represent the civil liberties interests of all  
17 Canadians because that is what the B.C. Civil  
18 Liberties Association, notwithstanding its B.C.  
19 nomenclature, has been doing for the last 40  
20 years.

21 Mr. Commissioner, the Civil  
22 Liberties Association's experience at the APEC  
23 inquiry we think is instructive. There are some  
24 similarities there in that there was certainly  
25 counsel for the individual students whose focus

1 was on the rights of the students and how those  
2 rights were infringed by the RCMP. The analogy  
3 here indeed would be Mr. Waldman's role on behalf  
4 of Mr. Arar.

5 There was also at the APEC inquiry  
6 counsel for the RCMP, individual members, the  
7 force and the government and, of course, that  
8 counsel's role was to explain and justify the  
9 RCMP's and the government's action in the interest  
10 of national security.

11 There was also, of course,  
12 Commission counsel who was tasked to fully explore  
13 all the facts, but to do so in way that was  
14 neither partisan or adversarial.

15 The B.C. Civil Liberties  
16 Association at the APEC inquiry and the role that  
17 it played there and the role that we would hope it  
18 would play before this Commission if we are  
19 granted standing is not to be partisan, but it is  
20 to be adversarial. The Civil Liberties  
21 Association should be allowed to advocate to argue  
22 to present evidence to cross-examine all of the  
23 witnesses offering the perspective of the guiding  
24 principle of the association.

25 In other words, the Civil

1           Liberties Association should be entitled not just  
2           to follow but help lead the way to the answers of  
3           the questions that are before the Commission and  
4           to do so from its unique perspective which is the  
5           guiding principle that any restrictions on  
6           fundamental rights and freedoms can only be  
7           justified if they are necessary for the sake of  
8           those same rights and freedoms.

9                           THE COMMISSIONER:  When I look at  
10           the issue of standing and the test that is laid  
11           out in the Order-in-Council of the substantial and  
12           direct interest, is there a difference between a  
13           substantial and direct interest and an  
14           organization, an association that has a very  
15           genuine and long-held concern about the issues  
16           that arise that has an expertise and the ability  
17           to assist the Commission?

18                          MR. J. ARVAY:  In my respectful  
19           view, you have to interpret that phrase, directed  
20           financial interest, in its proper context.  If you  
21           interpret it in a perhaps literal way, then you  
22           will not be helped by anybody in this inquiry  
23           except by Mr. Arar and his counsel.

24                          That phrase has to be interpreted  
25           in a way which will allow the Commission to

1 perform its task. In my respectful view, the  
2 Commission, I think if already doesn't know this,  
3 probably will find out sooner than later that it's  
4 going to need and want all the help it can get.  
5 No one party, no one group, no one counsel is  
6 going to be able to get to the truth here and it's  
7 very important.

8 One of the things that the Civil  
9 Liberties Association wants is to be able to be  
10 there through counsel every day of the inquiry  
11 because we knew through the APEC inquiry just how  
12 important that was. It wasn't helpful if we could  
13 be there only on occasion in anticipation of  
14 certain witness or to dabble. It was important  
15 because it's an inquiry, and to some extent there  
16 isn't advanced disclosure of what is coming. In  
17 fact, things unfold on a day-to-day basis and I am  
18 sure this Commissioner knows that all too well  
19 from your previous experience that each day will  
20 reveal new information, a new piece of the puzzle,  
21 a new line of inquiry and it's very important that  
22 the Commission be there to assist the Commission  
23 in its task.

24 It has a substantial and direct  
25 interest in a number of different ways. As the

1           representative of the civil liberties of Canada,  
2           this inquiry is about the civil liberties of  
3           Canadians or of the appropriate restrictions that  
4           should be placed on the civil liberties of  
5           Canadians, and the Civil Liberties Association has  
6           an interest, as I said, not only in what happened  
7           to Mr. Arar but in assuring it never happens  
8           again. It has a clear direct and substantial  
9           interest in that outcome, and in order to ensure  
10          that that doesn't happen, it needs to be part of  
11          the inquiry, asking the questions and making  
12          submissions.

13                           It plays an important role in  
14          policy making in this country whether making  
15          submissions to parliamentary bodies or other  
16          inquires. And in order to be a strong proponent  
17          of sound policies it needs to understand the facts  
18          and it believes it can assist the Commission not  
19          only eliciting facts through examination,  
20          cross-examination, but also through its own  
21          contacts with the Arab and Muslim community.

22                           I don't know if that answers, Mr.  
23          Commissioner, but any other interpretation of  
24          direct and substantial interest in a case such as  
25          this would be too narrow, would be unduly narrow,

1           because it wouldn't serve the Commission's not  
2           only investigative function but also its function  
3           of ensuring public confidence in both the process  
4           and the outcome of the inquiry and achieve its  
5           preventative function.

6                                 THE COMMISSIONER:   Okay, thank  
7           you.

8                                 MR. J. ARVAY:   And finally, Mr.  
9           Commissioner, of the Civil Liberties Association,  
10          I believe it has much to contribute on that very  
11          question of the proper practice and procedure and  
12          substance of whether, when, what conditions if any  
13          the Commission should go in camera during the APEC  
14          inquiry and in the Supreme Court of Canada Babcock  
15          cases, the Commission has gained considerable  
16          experience and insight on the whole question of  
17          when national security or international affairs  
18          should pursue the truth in either an inquiry or in  
19          a court case.

20                                The Commission seeks funding for  
21          two counsel, Mr. Commissioner.  As a practical  
22          matter, what we would propose is that one person  
23          would be there on a daily basis.  It would likely  
24          be a colleague of mine who is somewhat more junior  
25          than me but very well versed in international

1           affairs and intelligence and security and I would  
2           propose to be there on an as needed basis.

3                           I see that my time is up and I  
4           thank the Commission for this opportunity to make  
5           submissions and I am here to answer any questions  
6           you have.

7                           THE COMMISSIONER: Well thank you  
8           very much, Mr. Arvay. And let me just say this, I  
9           had an opportunity of obviously reviewing all the  
10          material you prepared and it was very thoroughly  
11          and professionally done and I appreciate the care  
12          and time that you took in assembling the material.  
13          I appreciate the submissions you made.

14                          As I indicated earlier, you  
15          probably -- you weren't here -- I am not going to  
16          make any rulings today. I am going to hear all of  
17          the applications today and tomorrow and will be  
18          releasing a decision with reasons sometime next  
19          week dealing with both questions of standing and  
20          funding.

21                          MR. J. ARVAY: Thank you, Mr.  
22          Commissioner.

23                          THE COMMISSIONER: Thank you very  
24          much, Mr. Arvay.

25                          MR. J. ARVAY: Bye now.



1 THE COMMISSIONER: Bye, bye.

2 MR. P. CAVALLUZZO: Mr.

3 Commissioner, the next application as well as a  
4 conference call from British Columbia, I believe  
5 the submissions will be made by Mr. Woodall.

6 MR. K. WOODALL: Hello, this is  
7 Kevin Woodall speaking.

8 THE COMMISSIONER: Hello, this is  
9 the Commissioner speaking and I am here and Mr.  
10 Cavalluzzo, Commission counsel is here and there  
11 is a number of other people in the room.

12 APPLICATION (via conference call)

13 MR. K. WOODALL: Perhaps I will  
14 begin by identifying myself for the record as well  
15 as the applicants. My name is Kevin Woodall. Mr.  
16 Commissioner, the written application before you  
17 has four applicants, but I can advise that this  
18 application for standing at this time is being  
19 made only on behalf of three of them and those  
20 three are: the Redress Trust; the Association for  
21 the Prevention of Torture; and, the World  
22 Organization against Torture.

23 We had originally been instructed  
24 to apply on behalf of the International Commission  
25 of Jurists. They have asked us to withdraw their

1 application. I am asked to convey to you that the  
2 withdrawal of their application should not reflect  
3 the view that they consider the work of your  
4 Commission to be anything of the highest  
5 importance. But having considered the matter and  
6 other considerations they have decided to withdraw  
7 their application.

8 THE COMMISSIONER: I understand  
9 and I appreciate what you are saying. And just so  
10 that it is clear on the record, the reason for  
11 that is that when I saw this application I  
12 realized that I was a member of the International  
13 Commission of Jurists. And when I spoke to Mr.  
14 Cavalluzzo, the Commission counsel, about it he  
15 contacted you, Mr. Woodall and indicated that in  
16 the circumstances it is probably best that they  
17 not appear on an application before me, me being a  
18 member.

19 And let me just say this to you,  
20 Mr. Woodall, I appreciate very much that that is  
21 the approach you are taking and I think in the  
22 circumstances it serves the interests of the  
23 inquiry and everybody best that we proceed on that  
24 basis.

25 MR. K. WOODALL: Thank you. I

1           should tell you, I told Mr. Cavalluzzo I did not  
2           know whether I would be able to obtain  
3           instructions from Geneva this morning, but I can  
4           advise you I have obtained those instructions.

5                           THE COMMISSIONER: Right, okay.

6                           MR. K. WOODALL: Now, I would like  
7           to begin by outlining who the applicants are and  
8           what is being sought. I won't go into a great  
9           deal of detail, Mr. Commissioner, because I  
10          understand that you may have had an opportunity to  
11          read our written submissions.

12                          THE COMMISSIONER: Yes, I have  
13          read it and thank you very much for the written  
14          presentation.

15                          MR. K. WOODALL: So I will be  
16          fairly brief and highlight what I view as the main  
17          points and then if you have any questions I would  
18          be happy to answer them.

19                          The applicants, as you will note  
20          from having reviewed the submission, are  
21          non-governmental organizations who among them  
22          possess a wide and deep experience in many matters  
23          concerning the international protection of persons  
24          against torture as well as international  
25          agreements that prevent the forcible sending of

1 persons from one state to another state where  
2 there is substantial reason to believe that  
3 torture may be practiced by the second.

4 Their experience has been  
5 recognized by a number of international  
6 organizations including UN organizations as well  
7 as deliberative bodies including courts and  
8 commissions of inquiry. And while the three  
9 applicants have those factors in common, they also  
10 bring to the Commission separate forms of  
11 expertise.

12 Redress, for example, is based in  
13 the United Kingdom and has been involved in the  
14 courts in the United Kingdom. And of course, the  
15 legal system in the United Kingdom is similar to  
16 the legal system of Canada and the United  
17 Kingdom's concern for the guarantee of human  
18 rights is similar to Canada's. And so, they would  
19 be able to bring to this Commission their  
20 experience in a similar form.

21 The Association for the Prevention  
22 of Torture has among its many areas of expertise  
23 one that is of particular interest and that is in  
24 training national police forces concerning the  
25 international requirements of treaties and

1           conventions on human rights generally and the  
2           mistreatment of persons in particular. So, they  
3           bring to the Commission an area of expertise which  
4           I think will be and hope will be of interest to  
5           the Commission, particularly as the focus or at  
6           least one of the focuses of the mandate appears to  
7           focus on the duties and obligations of the Royal  
8           Canadian Mounted Police.

9                           And the final of the three  
10           organizations that are applying this morning, the  
11           World Organization against Torture, has member  
12           units in many countries of the world. It is one  
13           of the largest organizations concerning the fight  
14           against arbitrary detention, torture and summary  
15           extrajudicial execution throughout the world and  
16           therefore brings to the Commission its experience  
17           in a wide variety of government settings, a wide  
18           variety of practical situations in a wide variety  
19           of judicial systems.

20                           What these three applicants are  
21           applying for at this stage is fairly simple and is  
22           fairly limited. What they are asking for as of  
23           right is really two things. The first thing is  
24           the right to make opening and closing submissions  
25           at the factual inquiry and the right to make an

1 oral submission or participate in oral  
2 consultation at the policy stage.

3 They are also asking to have the  
4 opportunity to apply, should the need arise and  
5 should the Commission consider it appropriate, for  
6 an opportunity to examine individual witnesses as  
7 the evidence unfolds.

8 The applicants do not consider it  
9 appropriate at this time to form any  
10 preconceptions about where the inquiry may go,  
11 what witnesses may be called or whether their  
12 expertise will in fact add to the expertise of the  
13 many other persons who are applying for standing.

14 They believe that such a situation  
15 may arise, and there are two sorts of situations  
16 where they consider that may apply for standing to  
17 examine a witness.

18 One such case would be where their  
19 expertise is such that the parties who would be  
20 otherwise examining the witness may not have the  
21 ability to inquire into areas that may be within  
22 the expertise of the other parties to the  
23 Commission. So they would be able to bring to the  
24 Commission, for the purpose of the factual  
25 inquiry, information that might not otherwise come

1 to the Commission's attention.

2 The second circumstance would be  
3 focused on eventual policy submissions, and it may  
4 be that the Commission sees fit to inquire into  
5 protocols, informal or formal, adopted by Canada  
6 or other states regarding the forcible  
7 transmission of persons to other countries.

8 It may be that if there is  
9 evidence of such protocols, they may wish to ask  
10 clarifying questions which would assist them in  
11 making policy submissions at a later time.

12 THE COMMISSIONER: Not to  
13 foreclose that type of participation, but along  
14 those lines, if Commission counsel or I suppose  
15 indeed other counsel, particularly Mr. Arar's  
16 counsel, wanted to seek assistance from you with  
17 respect to either one of those matters, would that  
18 assistance be forthcoming?

19 MR. K. WOODALL: Absolutely. The  
20 first goal is to disrupt the Commission as little  
21 as possible, given that there are a number of  
22 people who have very particular interests. If  
23 Commission counsel consider it appropriate, it may  
24 be that they would provide expertise or  
25 suggestions to him into areas that he may wish to

1 inquire into.

2 THE COMMISSIONER: I appreciate  
3 that. Thank you. Carry on.

4 MR. K. WOODALL: Those are the two  
5 areas where they would ask leave, and I think it  
6 is abundantly evident from the application itself  
7 that we are not asking for a determination now.  
8 We are simply asking that if you were to make an  
9 order granting some form of standing, the order  
10 would recognize liberty to apply it at an  
11 appropriate further time.

12 THE COMMISSIONER: Okay.

13 MR. K. WOODALL: The final area  
14 concerning the application is a recommendation for  
15 funding.

16 The applicants are not asking for  
17 the recommendation to specify any particular form  
18 of funding or any particular payment be made. The  
19 applicants have been able to obtain counsel to  
20 appear without fee, so there will not be an  
21 application in that direction.

22 However, we are based in Vancouver  
23 and the hearing is in Ottawa. If the circumstance  
24 were to arise that the Commissioner were to  
25 consider it appropriate for my clients, the



1 applicants, to participate by way of examining  
2 witnesses, it may in those circumstances be  
3 appropriate to reimburse the applicants for the  
4 ordinary disbursements associated with travel.

5 I have been involved in similar  
6 circumstances in the past, and I am content with  
7 an arrangement whereby some neutral party similar  
8 to a taxing officer would consider extraordinary  
9 expenses, for example, air fare and hotel, prior  
10 to us incurring them so that that neutral person  
11 could determine whether it is a reasonable expense  
12 or not.

13 I would expect in such a  
14 circumstance the taxing officer may take into  
15 account an order that the Commissioner has made  
16 concerning the right to examine a particular  
17 witness is relevant. Again, we don't ask that  
18 that issue be prejudged at this time.

19 THE COMMISSIONER: Okay.

20 MR. K. WOODALL: That is the  
21 application on behalf of the three applicants we  
22 represent, subject to any questions that you may  
23 have.

24 THE COMMISSIONER: No, I don't  
25 have any. I thought your material was very well

1 prepared, and I appreciate it, Mr. Woodall.

2 As I indicated to the hearing  
3 earlier this morning -- you probably didn't hear  
4 it -- I am not going to make any rulings today. I  
5 am going to hear the applications over today and  
6 tomorrow and will release a decision with respect  
7 to both standing and funding some time next week,  
8 with my reasons. That will be communicated  
9 directly to you and will be on the Commission's  
10 Website.

11 Thank you very much for your  
12 application.

13 Let me just make one personal  
14 comment, if I could.

15 I appreciate that you proposed the  
16 participation here on a pro bono basis. I want to  
17 commend you for doing that. I think it speaks  
18 well for you and the profession that people make  
19 those types of contribution.

20 On my behalf, thank you very much.

21 MR. K. WOODALL: I appreciate  
22 those comments. Thank you for the opportunity to  
23 speak to you this morning.

24 THE COMMISSIONER: Thank you.  
25 Goodbye.

1 We are off the phones.

2 MR. P. CAVALLUZZO: Yes, we are  
3 off the phones, Mr. Commissioner.

4 Now we have Col. Michel Drapeau on  
5 behalf of the Muslim Community Council of  
6 Ottawa-Gatineau.

7 THE COMMISSIONER: Good afternoon,  
8 Col. Drapeau.

9 APPLICATION

10 COL. M. M. DRAPEAU: Good  
11 afternoon, Mr. Commissioner.

12 I have a short submission, and the  
13 submission basically will cover some highlights  
14 and emphasis on some of the points contained in  
15 the written submission.

16 The MCCO, or the Muslim Community  
17 Council of Ottawa, speaks for both the local  
18 Canadian Muslim community and several Muslim  
19 Canadian organizations all over the country.

20 The MCCO also has a strong working  
21 relationship with broad-based Muslim  
22 organizations, such as the Canadian Islamic  
23 Congress.

24 It is grateful to this honourable  
25 Commission to present its application for

1 standing.

2                   You may wish to note,  
3 Mr. Commissioner, that the Chair of the MCCO is in  
4 the room, Mr. Mumtaz Akhtar.

5                   Let me open by briefly citing the  
6 raison d'être of the MCCO.

7                   In a nutshell, the MCCO is a  
8 Canadian umbrella organization of Canadian-based  
9 institutions, Muslim-based institutions. It came  
10 into being in 1999 for the purpose of acting as a  
11 coordinating forum for major Muslim organizations  
12 in the Ottawa-Gatineau region for the collation,  
13 examination and advocacy of issues confronting its  
14 membership.

15                   It is blessed with an abundance of  
16 qualified, experienced and civic-minded  
17 individuals of various origin, who collectively  
18 have a remarkable capacity for research, study and  
19 analysis.

20                   Through its executive, the MCCO  
21 represents and is associated with no less than 29  
22 member organizations operating at the regional,  
23 provincial and national levels, in the cultural,  
24 social, educational and religious domains,  
25 concerning issues that impact on many or all of

1 its member organizations.

2 On a regular basis the MCCO deals  
3 with government and non-government agencies to  
4 protect and to enhance the interests of its  
5 members.

6 In addition to its relationship  
7 with national organizations, many of whom look to  
8 the MCCO for leadership and guidance, my client  
9 speaks for no less than 50,000 Canadian Muslims  
10 who live in the National Capital Region.

11 At the personal level, the MCCO is  
12 proud to count as members of its community  
13 Mr. Maher Arar and his wife Monia Mazigh, as well  
14 as their children.

15 Although we do not claim to speak  
16 for Mr. Arar at this hearing or subsequent  
17 hearings, we do make the claim of representing the  
18 various friends, associates and acquaintances of  
19 Mr. Arar who through this ordeal share his pain as  
20 well as his fears in apprehension for their  
21 security and peace of mind.

22 Mr. Commissioner, at the outset, I  
23 think it is important to state unequivocally that  
24 the Muslim Community Council of Ottawa-Gatineau  
25 has a deep and abiding respect for Canada and its

1 institutions.

2 Members of the MCCO are justly  
3 proud of Canada's well-earned worldwide reputation  
4 as an open, multicultural society, tolerant and  
5 respectful of the religion, cultures, customs and  
6 traditions of its diverse people, including recent  
7 immigrants.

8 They are equally proud of their  
9 racial, cultural and religious heritage, knowing  
10 that such is not incompatible with Canadian  
11 citizenship, yet they know that since September  
12 11th, their daily lives have changed dramatically.

13 Instead of being celebrated as a  
14 valued addition to the Canadian mosaic, there is a  
15 deep-seated belief in the community that their  
16 differences in value, in skin colours and  
17 languages are used to distinguish Muslim for  
18 special treatment.

19 There is also a wide perception in  
20 the community that as Muslim they are now the  
21 target of increased government scrutiny.

22 Be that as it may, it is precisely  
23 that proximity to the principle of this inquiry,  
24 and the proximity to his family, friends,  
25 associates and acquaintances which initially



1                   have the opportunity to  
2                   present evidence to the  
3                   Commission and to be present  
4                   for testimony."

5                   Hence, the upshot of our position,  
6                   so to speak, is that the MCCO is seeking full  
7                   standing for two interrelated reasons.

8                   First, the MCCO was a direct  
9                   substantial interest in the proceedings; and

10                  Second, the MCCO, as a credible,  
11                  informed and authoritative interlocutor for the  
12                  Muslim community, can contribute both expertise  
13                  and knowledge to the Commission of Inquiry in its  
14                  pursuit of the truth.

15                  Let me first address in point form  
16                  the issue of direct and substantial interest, an  
17                  issue which is covered in our written submission.

18                  First, the local Muslim community  
19                  embraces Maher Arar as one of its sons.

20                  Second, the Arar family as a whole  
21                  is both respected and appreciated as valued  
22                  members of the MCCO community.

23                  Third, the local Muslim community  
24                  is upset and is in shock about what happened to  
25                  Maher Arar.



1                   Fourth, the local Muslim community  
2 identifies itself closely with the Arar family,  
3 believing that his treatment is but one example of  
4 how certain government agencies can be overzealous  
5 in their application of the antiterrorist  
6 legislation.

7                   Fifth, growing numbers of Canadian  
8 Muslims hold the honest belief that their rights  
9 as Canadian citizens can be ignored by Canadian  
10 security and intelligence officials because of  
11 their religious values, race or country of origin.

12                   Sixth, the MCCO chronicles and  
13 understands the mood, feelings and experience of  
14 the local Canadian Muslim community. They are  
15 aware, for instance, that several local Canadian  
16 Muslims believe that they have suffered from the  
17 indignities of harassing interrogation by Canadian  
18 police and intelligence agencies only because of  
19 their Islamic lineage.

20                   Seven, by having standing the MCCO  
21 will be able to hear testimony firsthand about  
22 what transpired, what actions were taken by whom  
23 and for what reason and have the opportunity to  
24 cross-examine witnesses, where appropriate, so as  
25 to expose the whole truth as well as the motives

1 for some of the actions taken against Arar.

2 This in turn will have a  
3 beneficial impact upon the local Canadian Muslim  
4 community with possible knock-on effect right  
5 across Canada. Why? Because Muslims will realize  
6 that their concern and anxiety are represented  
7 directly before the Commission by a known and  
8 trusted agent.

9 Second, Muslims will be able to  
10 receive directly from their leaders timely and  
11 objective feedback about the work of the  
12 Commission of Inquiry.

13 Third, Muslims will know that to  
14 their community leaders they will have the  
15 capacity to cross-examine witnesses and, if  
16 required, call evidence to ensure that all sources  
17 of information are exploited in the pursuit of the  
18 truth.

19 Let me turn to the matter of  
20 contribution to the work of the Commission.

21 I am convinced that given that  
22 they represent a substantial number of Muslim  
23 organizations in Canada and that they possess the  
24 demonstrated leadership, expertise and knowledge  
25 on issues involving the Islamic culture and

1 religion, the MCCO can contribute significantly to  
2 the work of the inquiry:

3 First by cross-examining  
4 witness -- of course not all witnesses -- where is  
5 appropriate and where there is no duplication;

6 Ssecond, by placing relevant  
7 evidence before the Commission as to the systemic  
8 problems being experienced by members of the  
9 Muslim community, either during Phase 1 or  
10 Phase 2;

11 By acting as an effective and  
12 responsible conduit within the Canadian Muslim  
13 community in an attempt to lessen the growing  
14 chasm of misunderstanding and suspicion between  
15 Muslim Canadians, government and the general  
16 population;

17 By presenting, in a respectful  
18 manner, proposals and recommendations to prevent  
19 recurrence; and

20 Finally, by giving the Commission,  
21 particularly during the policy review phase of the  
22 inquiry, access and advice, as well as knowledge,  
23 in the pursuit of reasonable and practical  
24 solutions.

25 Respectfully, sir, my client

**StenoTran**

1 submits that by having standing at the hearings  
2 they will provide the Canadian Muslim community  
3 with the confidence that the public inquiry will  
4 be impartial in every respect and that all the  
5 facts will be laid out plainly and in full candour  
6 in the interests of discovering the truth.

7                   If only these Canadians can become  
8 convinced that their interests are being addressed  
9 by the inquiry and, through the eyes of their  
10 representative, they can see that indeed the  
11 inquiry is leaving no stone unturned to get to the  
12 bottom of this matter, then standing would have  
13 served the public inquiry.

14                   This in turn will restore  
15 confidence into Canada's security regime so that  
16 Canadians, regardless of their origins, can once  
17 again enjoy a sense of security when travelling  
18 abroad under the protection of a Canadian  
19 passport.

20                   I will close my submission,  
21 Mr. Commission, by noting that the evidence put  
22 before you, in my respectful submission, which  
23 includes two affidavits sworn by the executive  
24 members of the MCCO, aims at bringing home to this  
25 honourable Commission how important it is that

1 public interest organizations like MCCO be granted  
2 standing in order to ensure that a balanced  
3 scrutiny of the facts be conducted.

4 Obviously all concerned are  
5 sensitive to the fact that not only must such  
6 scrutiny take place, but that the perception of a  
7 balanced scrutiny be recognized as being crucial  
8 to the Canadian democracy.

9 Thank you, sir.

10 THE COMMISSIONER: Thank you,  
11 Colonel. Let me just ask you this -- I'm not sure  
12 if you were here this morning, but I asked one of  
13 the earlier applicants -- there are six applicants  
14 in all who represent Muslim or Islamic interests  
15 or Arab interests. I recognize genuinely that  
16 their constituent memberships, their mission, if  
17 you will, is different, that they have different  
18 perspectives and that is why there is different  
19 organizations. There is obviously very good and  
20 valid reasons why there are these different  
21 groups.

22 But in terms of the work of this  
23 Commission, the question I asked this morning and  
24 I now put to you is: They seem to have, in  
25 general terms, basically the same concerns. They

1 are obviously sympathetic to Mr. Arar's case and  
2 anxious to find out not only what happened but why  
3 it happened. I hear that.

4 They are very concerned about, if  
5 I can put it as what some have called about racial  
6 profiling and the impact of this on the Muslim  
7 community. They are very concerned that the  
8 Muslim community be informed about the work of the  
9 Commission and that it have confidence in the  
10 independence of the work of the Commission, all  
11 very laudable objectives.

12 My question to you then is:  
13 Recognizing that there are different reasons and  
14 different perspectives and focus for the groups,  
15 when you come to the Commission how do I sort it  
16 out? If they are all bringing essentially the  
17 same role in terms of what we are doing here at  
18 the inquiry, how do I approach the six different  
19 applications?

20 COL. M. M. DRAPEAU: I am happy to  
21 see that you are going to be struggling with that  
22 and not myself, but when I listened to the  
23 representation this morning there is obviously a  
24 commonality of purpose between them all. Even the  
25 words were similar. We all want to get to the

1 bottom of the truth first.

2 Second, we all want to assist to  
3 the degree that we can in order to highlight, in  
4 order to try to bring expertise and knowledge that  
5 we may have in some area, a very special area.

6 ... No doubt that in some cases even  
7 if all of them were to receive standing not all of  
8 them would automatically want to exercise or quote  
9 or cross-examination rights if they had to have  
10 any, because there would not only overlapping but  
11 there would be duplication if that were to be the  
12 case.

13 If I were to back out a bit -- I  
14 mean in our case and the case that we make is our  
15 fear or interests or our immediacy of concern is  
16 due primarily because we are here and Arar is a  
17 member of that community and we can only bring the  
18 acuteness of some of the problems experienced by  
19 our members. We have done this in this community  
20 where the further you move away from it the more  
21 difficult it will be to bring this to the table.

22 Not to suggest that we could not  
23 collaborate and we have collaborated so far,  
24 because we make that case that MCC who represents  
25 29 different organizations, some national, some

1 provincial, some regional, not to suggest that  
2 there could not be more. And depending on what  
3 your decision is and certainly the MCC was already  
4 willing, but would be the first one to want to  
5 expand that. Now would we want to be at the  
6 table? Of course, and that is the reason why I am  
7 here today and I think we can and I think we can  
8 only play a useful part in it, but we can also  
9 subsume within our representation the interests of  
10 our sisters and brothers organizations.

11 But there is certainly some  
12 overlap and I have to leave this to your better  
13 judgement as to where limitations will have to be  
14 imposed in order to make sure that it is conducted  
15 in a more effective and expeditious action  
16 possible. But what you can take from what I am  
17 saying is we will collaborate as much as we can  
18 not only with the Commission most certainly, but  
19 also with these organizations who are travelling  
20 the same road as we are in the pursuit of the  
21 truth.

22 THE COMMISSIONER: Thank you very  
23 much, Colonel.

24 COL. M. M. DRAPEAU: Thank you.

25 THE COMMISSIONER: The next



1 presentation is scheduled for 3:15 and it is a  
2 conference call to Berlin?

3 MR. P. CAVALLUZZO: That is  
4 correct, Mr. Commissioner. I don't see why we  
5 can't phone him right now. Mr. Matas will be  
6 waiting in a hotel room in Berlin, so I think  
7 that..

8 THE COMMISSIONER: Okay, well let  
9 us try..

10 MR. P. CAVALLUZZO: Get him 10  
11 minutes early.

12 THE COMMISSIONER: Let us carry-on  
13 then.

14 MR. D. MATAS: Hello, it is David  
15 Matas.

16 THE COMMISSIONER: Yes, it is  
17 Commissioner O'Connor and I am here with Paul  
18 Cavalluzzo and a room of other people. I  
19 understand you are in Berlin.

20 MR. D. MATAS: Exactly, that is  
21 right.

22 THE COMMISSIONER: I have received  
23 your written materials, I have had an opportunity  
24 of looking at that, Mr. Matas. So if you would  
25 like to go ahead and make whatever submissions you

1 wish and I may have a few questions.

2 APPLICATION (via conference call)

3 MR. D. MATAS: All right, well  
4 basically the organization is a recently founded  
5 organization. I am one of the co-chairs and our  
6 mandate is torture, dealing particularly with the  
7 international aspects of torture.

8 One of the principals behind the  
9 organization is Houshang Bouzari who is a  
10 plaintiff in a case suing the Government of Iran  
11 for compensation for torture.

12 We are interested both in the  
13 policy and the practical or the factual elements  
14 of the inquiry. Our focus is sending someone to  
15 torture, the kinds of guarantees that are  
16 necessary to prevent it and the assessment of the  
17 reliability of assurances in particular. Our  
18 understanding is in the context of the Arar case  
19 that there were some assurances that were given by  
20 Syria to the United States.

21 So, we would be interested in  
22 pursuing that whole aspect both factually and from  
23 a policy context about what one does to get  
24 assurances, what one does to assess them and how  
25 one prevents removal to torture. So, I feel that

1           our interest is specific enough and we do have  
2           some background already because of this Bouzari  
3           case that we could contribute something to the  
4           Commission.

5                           THE COMMISSIONER: One of the  
6           questions I have been putting to different  
7           applicants is, in terms of reference as I am sure  
8           are aware, specified standing must be granted to  
9           people who have a substantial and direct interest  
10          and whether there is a distinction between that  
11          and people who have a genuine interest and concern  
12          in the issues and indeed have an experience or  
13          expertise that would be of assistance to the  
14          Commission.

15                           Would you say that your group  
16          falls in the former or the latter category?

17                           MR. D. MATAS: Well, there is  
18          something very direct in our interest, because we  
19          do have as one of our founding members somebody  
20          who has been tortured and we are involved in  
21          litigation on that issue still. And there is that  
22          connection that is perhaps a little bit different  
23          from that of the general public. And we do have  
24          background in the issue because of that litigation  
25          and the particular focus of our organization.

1                    Obviously we are not, I mean, we  
2                    are not family members of Maher Arar, but I assume  
3                    that the people who are applying for standing are  
4                    mostly not of that nature. So, I would say it is  
5                    sort of a little bit different from just somebody  
6                    who is off the street and is kind of concerned  
7                    about torture.

8                    THE COMMISSIONER: No and don't  
9                    get me wrong, I am not suggesting that is not the  
10                   case and there is not a genuine concern and also a  
11                   genuine capacity to help the inquiry. What I am  
12                   sorting out is, you can appreciate with the number  
13                   of applications here, is the types of ways that  
14                   people if they are to participate in the inquiry  
15                   may be of assistance.

16                   I can tell you for starters that I  
17                   want all of the assistance that I can get to make  
18                   sure we do a thorough job. But on the other hand  
19                   one still has to structure it so that there is not  
20                   sort of an unnecessary overlap in duplication.

21                   MR. D. MATAS: Well, there is two  
22                   things that I would say. One is first of all that  
23                   we are not interested in every aspect of the  
24                   inquiry, we just have this one specific aspect  
25                   that we are interested in. And the other is I am

1 not really aware of everybody who has applied to  
2 come before you. But if it would make sense to  
3 you to have some of the interveners grouped  
4 together, we would have no objection to that.

5 THE COMMISSIONER: Yes, that was  
6 actually the next question I was going to raise.  
7 There are a couple of the other interveners.. I  
8 wouldn't force people obviously, but if people are  
9 willing and have the same interest, there may be  
10 an advantage to whatever type of participation and  
11 to have it that they do it, those with the same  
12 interest, they do it as a coalition rather than  
13 independently.

14 MR. D. MATAS: Well, simply from a  
15 practical point of view I assume that you will be  
16 sitting a number of days and if there was a group  
17 put together it might be easier to kind of work  
18 that out than if we were each expected to be there  
19 all the time.

20 THE COMMISSIONER: Okay, now is  
21 there anything else you wish to say about your  
22 application?

23 MR. D. MATAS: Well, my  
24 understanding is there is a possibility of funding  
25 and if that is the case we would of course like to

1 apply for it.

2 THE COMMISSIONER: Right, well the  
3 terms of reference provide that if someone is  
4 granted standing, because they have a substantial  
5 and direct interest, then I am able to make  
6 recommendations only, but recommendations to the  
7 government for funding in accordance with  
8 guidelines.

9 I do take it from your material  
10 that you made that application if you were granted  
11 standing, you have also applied for funding.

12 MR. D. MATAS: Yes, that is right.

13 THE COMMISSIONER: Right.

14 MR. D. MATAS: So, other than  
15 that, no there is nothing else I would have to  
16 say.

17 THE COMMISSIONER: Okay, well  
18 thank you very much. The process that is going to  
19 happen here is that I will be hearing applications  
20 for the rest of today and tomorrow. I will be  
21 making my decision with respect to standing and  
22 funding sometime next week and we will be  
23 releasing that decision together with my reasons.  
24 So we will be in touch with you about it.

25 MR. D. MATAS: Fine, and I thank

1           you for calling me all the way over here.

2                           THE COMMISSIONER: Well, that is  
3           not a trouble at all and thank you very much for  
4           your presentation.

5                           MR. D. MATAS: Good luck with your  
6           deliberations.

7                           THE COMMISSIONER: Thank you.

8                           MR. D. MATAS: Right, bye.

9                           MR. P. CAVALLUZZO:  
10          Mr. Commissioner, I think we can move Berlin to  
11          New York, the Center for Constitutional Rights.

12                           THE COMMISSIONER: This is another  
13          conference call.

14          --- Pause

15                           THE COMMISSIONER: Hello?

16                           MS B. OLSHANSKY: Justice  
17          O'Connor, my name is Barbara Olshansky. I am the  
18          Deputy Legal Director for the Centre for  
19          Constitutional Rights.

20                           THE COMMISSIONER: Your last name  
21          is Olshansky?

22                           MS B. OLSHANSKY: Olshansky, that  
23          is correct.

24          APPLICATION (via conference call)

25                           MS B. OLSHANSKY: The Centre is

1 submitting today its oral application for  
2 standing, in addition to the written application  
3 that was submitted several days ago to the  
4 Commission.

5 The Centre, as our written  
6 application states, is a United States based  
7 non-profit legal, educational and advocacy  
8 organization.

9 We felt it incumbent upon us at  
10 the outset to note that we are American trial  
11 counsel for Maher Arar, and we make our  
12 application today because we believe that we can  
13 make a significant contribution to the  
14 Commission's inquiry, not in our role as counsel  
15 but rather in our role as one of the leading  
16 organizations in the United States that has been  
17 concerned with providing avenues for redress for  
18 torture victims and their relatives.

19 The Centre was started in 1996 and  
20 has a long-standing history of assisting people  
21 who have been denied rights and benefits under  
22 domestic and international law.

23 Although this Centre originally  
24 focused primarily on issues surrounding the  
25 enforcement of civil and constitutional rights in



1           this country, beginning in 1979 the Centre  
2           established a program designed to use law as a  
3           means by which to contribute to the struggle for  
4           human rights around the world.

5                           This effort commenced with Centre  
6           lawyers developing a concept of using a  
7           200-year-old federal statute in the United States,  
8           the Alien Tort Statute, to seek redress for  
9           torture victims.

10                           Centre lawyers brought the first  
11           case to use that statute, *Filartiga versus*  
12           *Pena-Irala*, in 1976, on behalf of the family of a  
13           17-year-old who was tortured to death in Paraguay  
14           by a high-ranking police officer.

15                           When Mr. Pena-Irala fled Paraguay  
16           to the United States, Centre lawyers used this  
17           statute as a basis for jurisdiction and a cause of  
18           action in the federal court. That decision in  
19           *Filartiga* established the principles that American  
20           courts must interpret international law as it has  
21           evolved and exists among the nations of the world,  
22           that official torture is prohibited by the law of  
23           nations and that torture survivors have a right to  
24           enforceable remedies in the U.S. court.

25                           In this regard, we wish to make

1 note for your Honour that the Centre has led the  
2 call in this country for legal remedies for the  
3 victims of torture.

4 Later decisions addressing claims  
5 under the Alien Tort Statute have been upheld for  
6 suits concerning genocide, war crimes, summary  
7 executions, disappearances, prolonged arbitrary  
8 detention and cruel, inhuman and degrading  
9 treatment. The Centre has been involved in the  
10 vast majority of the post-Filartiga litigation and  
11 has brought litigation seeking to hold accountable  
12 both para military groups and corporations that  
13 have worked in concert with government actors to  
14 cause the violations alleged.

15 So for more than 25 years now, the  
16 Centre has remained committed to bringing  
17 litigation in order to bring torturers to account  
18 and to obtain justice and reparations for  
19 survivors of torture.

20 In addition, the Centre has played  
21 a leading role in presenting the testimony of  
22 victims to war crimes tribunals convened around  
23 the world and has assisted individuals fleeing  
24 torture and seeking political asylum in this  
25 country, as well as persons seeking safe haven in

1           third countries while in the midst of American  
2           deportation or removal proceedings.

3                         If granted standing, the Centre  
4           would bring to the proceedings its considerable  
5           expertise in three areas that we respectfully  
6           believe are critical to the Commission's work.

7                         The first area is the history of  
8           the policies and practices of the United States  
9           with regard to torture and refoulement or  
10          rendition.

11                        More specifically, the Centre is  
12          most familiar with the extant and emerging  
13          information that should have alerted the Canadian  
14          government about United States' practices, both  
15          prior and subsequent to September 11, 2001.

16                        The Centre also has significant  
17          expertise in the legal framework governing  
18          immigration issues in the United States, including  
19          very complex issues surrounding the interplay  
20          between the executive and judicial branches and  
21          the administrative and adjudicatory functions of  
22          those branches, as well as the interplay resulting  
23          from the overlapping jurisdictions of the various  
24          levels of law enforcement in the United States.

25                        Finally, and not insignificantly,

1 the Centre has significant expertise in the legal  
2 framework governing the United States  
3 implementation of the U.N. Convention Against  
4 Torture.

5                   When the United States ratified  
6 the Convention in October of 1994, it did so  
7 pursuant to a number of significant declarations,  
8 reservations and understandings, including a  
9 declaration that convention Articles 1 through 16  
10 are not self-executing and therefore require the  
11 enactment of domestic implementing legislation.

12                   Because of these reservations,  
13 there is a network of laws that implement the  
14 provisions of the convention against torture.

15                   Pursuant to this network, each  
16 federal agency is required to promulgate and  
17 enforce regulations to implement the convention so  
18 that there is both an amendment of existing laws,  
19 enactment of new laws and enactment of regulations  
20 by each enforcing agency: the Department of  
21 Justice, the Department of Homeland Security and  
22 the bureaus under the Department of Homeland  
23 Security, which are the Federal Bureau of  
24 Investigation and the Immigration and Enforcement  
25 Division.

1                   In addition, there is a body of  
2 U.S. regulations implementing the convention that  
3 speak to the issue of diplomatic assurances.  
4 Pursuant to this provision, the Secretary of State  
5 of the United States is permitted to forward to  
6 the Attorney General assurances that the Secretary  
7 has obtained from the government of a country that  
8 an alien would not be tortured there if he were  
9 removed to that country.

10                   In the United States, if such  
11 assurances are forwarded for consideration to the  
12 AG or to the Department of Homeland Security  
13 Secretary and are deemed sufficiently reliable to  
14 permit removal without violating CAT obligations,  
15 an alien's claim for protection under Article 3 of  
16 the convention is dismissed and he may be removed.

17                   Because Article 3 itself provides  
18 little guidance as to the application of  
19 diplomatic assurances and because the regulations  
20 themselves do not delineate fully the  
21 considerations nor the weight provided to those  
22 considerations in making that determination, we  
23 think the Centre input on these issues would be  
24 very helpful to the Commission in weighing what  
25 types of assurances United States officials got,

1           what types of assurances perhaps Canadian  
2           officials got, and what they should have sought in  
3           terms of United States law.

4                       Beyond these areas of legal and  
5           factual expertise, the Centre would bring to the  
6           Commission the benefit of its relationships with a  
7           large number of U.S.-based human rights  
8           organizations, which could also be called upon to  
9           provide expert testimony or present factual  
10          evidence to the Commission.

11                      Because the Centre believes that  
12          the procedures and methods the inquiry adopts will  
13          likely become an important precedent  
14          internationally and may serve as a model for  
15          future investigations around the world, the Centre  
16          is greatly interested and invested in the outcome  
17          of this proceeding.

18                      We also anticipate that the  
19          findings of the Commission will contribute to the  
20          development of the law and practices governing  
21          procedures to be used for reviewing the conduct of  
22          government officials, and has a direct and  
23          substantial interest in contributing to the proper  
24          development of this substantive law.

25                      For these reasons, the Centre



1                   My question, I guess, is -- and  
2                   this may be premature, I am not sure -- you would  
3                   be available, I guess, or available to help with  
4                   putting together evidence that would be of a  
5                   descriptive nature, but describing that landscape,  
6                   as I call it, that you have discussed with us  
7                   today.

8                   Is that one of the functions that  
9                   you are suggesting you would fulfil?

10                  MS B. OLSHANSKY: Right. Both the  
11                  legal landscape and really the historical and  
12                  factual landscape of the history in the United  
13                  States of both covert and overt policies with  
14                  regard to rendition. There is quite a long  
15                  history in the United States of these policies,  
16                  some of which has now become a matter of public  
17                  record. Some of it has not to date been part of  
18                  that, but which we have been privy to because of  
19                  our participation in various lawsuits on behalf of  
20                  people that have suffered torture.

21                  So we have a very clear factual  
22                  understanding of the United States' role in  
23                  various human rights violations around the world,  
24                  and it's either sort of sanctioning or a  
25                  willingness to look aside at other countries



1           undertaking such action.

2                           THE COMMISSIONER: Thank you very  
3 much for your application and your written and  
4 oral presentation.

5                           The process here is I am hearing  
6 applications for standing and funding over today  
7 and tomorrow. I will be making a decision  
8 sometime next week and we will be releasing the  
9 decisions with reasons.

10                           We will be in touch with you and  
11 communicate the results of your application at  
12 that time.

13                           MS B. OLSHANSKY: Great. Thank  
14 you very much, Your Honour.

15                           THE COMMISSIONER: Thank you very  
16 much. Bye-bye.

17                           MS B. OLSHANSKY: Bye-bye.

18                           THE COMMISSIONER: We have how  
19 many more?

20                           MR. P. CAVALLUZZO: We have three  
21 more applications to do. I don't know if you want  
22 to take the afternoon break now or do you want to  
23 plough through?

24                           THE COMMISSIONER: It's pretty  
25 warm in here. We might just take a 10-minute

1 break and then we will resume.

2 We will rise then.

3 THE REGISTRAR: All rise.

4 Veuillez vous lever. La séance est maintenant  
5 suspendue.

6 These proceedings are now  
7 suspended.

8 --- Upon recessing at 3:24 p.m. /

9 Suspension à 15 h 24

10 --- Upon resuming at 3:38 p.m. /

11 Reprise à 15 h 38

12 MR. P. CAVALLUZZO: Next we have  
13 the Canadian Council on American Islamic  
14 Relations.

15 APPLICATION

16 MR. R. SALOOJEE: Thank you very  
17 much, Mr. Commissioner for listening to us today.

18 My name is Riad Saloojee. I am  
19 the Executive Director of the Canadian Council on  
20 American-Islamic Relations. To my left is  
21 Mr. Khalid Baksh, who will be our counsel and is  
22 from the law firm of Baksh Kutty.

23 In terms of what we would like to  
24 do, Mr. Commissioner, is three things: Very  
25 quickly explain to you who we are at CAIR-CAN.

1 Two, to also speak about our possible amended  
2 application for standing and, three, to turn it  
3 over to Mr. Baksh to demonstrate that we do have a  
4 substantial and direct interest.

5 In the beginning I would like to  
6 mention that we will be pursuing joint standing  
7 with the Canadian Arab Federation. We have  
8 reached this decision after submitting our  
9 individual applications last week and we have  
10 reached this decision for a number of reasons.

11 One is that we are both national  
12 organizations representing large constituencies at  
13 the inquiry. The Canadian Arab Federation is a  
14 national organization representing Arabs across  
15 the country. They are bringing into this inquiry  
16 upwards of 34 different endorsing groups. Many of  
17 those are umbrella groups themselves. We are  
18 bringing into the inquiry about 112 endorsing  
19 groups as well.

20 In our application Appendix A sets  
21 out the list of endorsing organizations. I would  
22 just like to bring to your attention the fact that  
23 the Muslim Community Council of Ottawa-Gatineau  
24 also appeared before you today. Though they are  
25 endorsing our application, that should not

1           prejudice their application for standing as well  
2           before you.

3                           THE COMMISSIONER:  They are one of  
4           the endorsing groups for your organization.  Is  
5           that right?

6                           MR. R. SALOOJEE:  Yes, that is  
7           correct.

8                           THE COMMISSIONER:  Thank you.

9                           MR. R. SALOOJEE:  The reasons why  
10          CAF and CAIR decided to try to pursue a joint  
11          application are essentially five:

12                                  that we are national organizations  
13          representing a fairly diverse constituency across  
14          the country;

15                                  we believe we have complementary  
16          and overlapping interests;

17                                  we believe that there can be value  
18          to the Commission by streamlining its resources  
19          and avoiding redundancy; and

20                                  lastly, we have worked together  
21          very well in the past and we think that we can  
22          work together very effectively at the inquiry as  
23          well.

24                                  Turning to who we are, very  
25          briefly, we are a national grassroots

1 organization. We represent a large number of  
2 Muslims across the country. As you can see from  
3 our application, we are coming to the table with  
4 about 112 such endorsements. We are multi-ethnic,  
5 multicultural and also multi-practice, if you  
6 like, representing both the conservative and also  
7 the liberal end of the spectrum.

8 We have a national office in  
9 Ottawa. We have four paid staff members. We have  
10 a board that comprises prominent Canadian Muslim  
11 activists, lawyers. Our Chair is a columnist for  
12 the Globe and Mail and one of our board members is  
13 the lead counsel for the Canadian Muslim Civil  
14 Liberties Association.

15 I would also mention that within  
16 our endorsing organizations are four national  
17 organizations, the Islamic Social Services  
18 Association, the Muslim Lawyers Association, the  
19 Muslim Association of Canada and the Canadian  
20 Muslim Civil Liberties Association as well.

21 I won't go into much detail,  
22 because of time constraints, in terms of our work.  
23 I would just draw your attention to our annual  
24 review.

25 The review sets out, I think quite

1           succinctly, our work over the last year. It is an  
2           annual review of 2003-2004. It draws attention to  
3           the fact that we publish a number of publications,  
4           we give national workshops, we have done extensive  
5           media engagement, national surveys and hate crime  
6           documentation. We have been before parliamentary  
7           and senate committees and we have a number of  
8           academic writing pieces as well as 41 opinion  
9           pieces across the country.

10                        The specific things I would draw  
11           your attention to, and then I will turn you over  
12           to my colleague, are three things: one is -- if  
13           you will excuse me I will just pass this up as  
14           well.

15                        That is a supplementary brief. It  
16           just documents some of the media coverage  
17           regarding one of our publications. It is called a  
18           "Know Your Rights" publication. It received  
19           extensive coverage over the last week.

20                        The brief details the extent of  
21           the media coverage and also gives examples of the  
22           various elements in our publication.

23                        The piece that created most of the  
24           media interest had to do with legal advice given  
25           to Canadian Muslims regarding visitations by the

1 RCMP and CSIS.

2 In addition, I draw your attention  
3 to page 13 which talks about our opinion pieces.  
4 We also have an index of some of our opinion  
5 pieces on page 16. As you can probably see, many  
6 of those opinion pieces deal directly with issues  
7 of civil rights, civil liberties, the rule of law,  
8 et cetera. Three of them deal directly with the  
9 case of Mr. Arar.

10 Lastly, on page 14 is a fairly  
11 in-depth explanation of our work in Mr. Arar's  
12 case, our activism in that regard, and also a  
13 statement from Mr. Arar directly about our  
14 activism.

15 With that, I will now turn it over  
16 to my colleague, Mr. Khalid Baksh.

17 THE COMMISSIONER: Thank you,  
18 Mr. Saloojee.

19 MR. K. BAKSH: Good afternoon,  
20 Commissioner O'Connor. It is a pleasure to be in  
21 front of you. I don't think I have actually had a  
22 chance to talk to you like this since articling  
23 days back at Borden & Elliott.

24 In any event, you have heard a lot  
25 today. You are going to hear a lot tomorrow

1           again. You are hearing a lot about unique  
2           perspective. I want to talk to you about that,  
3           because again we are bringing a unique  
4           perspective, but let me explain why.

5                           The difference that we have is  
6           dealing with the material witness, being CAIR and  
7           the people at CAIR, and the expertise that CAIR  
8           and its counsel brings to the table.

9                           Now, you have heard -- and I'm not  
10          going to go through this again -- about the  
11          substantial interest of the Muslim community with  
12          regards to this inquiry. Simply put, we have a  
13          community under siege in Canada since 9/11. The  
14          Arar situation, this unfortunate situation,  
15          personifies and clarifies these issues for so, so  
16          many Canadian Muslims.

17                           In dealing with this the mandate  
18          of CAIR is as advocacy, as you can see from the  
19          materials. The work that it has done, the  
20          expertise that they bring to the table is  
21          something that the Commission could seriously  
22          consider adding as a tool in terms of this  
23          inquiry.

24                           Finally, there is the support of  
25          the community. You have heard a lot of



1           indications about support from community members.

2                           The public confidence in the  
3           Commission is essential. It is absolutely  
4           necessary for Muslims in a Muslim group to be seen  
5           and to participate in a meaningful way at the  
6           table.

7                           Enough said about that. What  
8           about CAIR?

9                           The contribution to the factual  
10          inquiry is going to be one with regards to being a  
11          material witness. From the start CAIR was the  
12          first organization that Mr. Arar's wife went to.  
13          CAIR has been involved in the Arar support  
14          committee right from the start dealing with  
15          strategy and the facts: How are we going to deal  
16          with this? What information is coming out? Let's  
17          deal with this. Where are we going?

18                          They advocated for his release,  
19          not only to the Government of Canada but to  
20          government officials for the United States,  
21          including Ambassador Cellucci, including External  
22          Affairs.

23                          CAIR was there upon his return,  
24          Mr. Arar's belated return to Canada.

25                          CAIR was also one of the first

1 organization to press for the inquiry. CAIR has  
2 managed to do this through various levels of  
3 government and through various different  
4 strategies.

5 What CAIR is going to bring, in  
6 addition to the material witness part, to the  
7 table is context. The context is going to be  
8 provided through cross-examination and legal  
9 submissions. Other groups can also bring this to  
10 the table.

11 What makes us separate? What  
12 gives us that unique perspective? Again coming  
13 back to the expertise.

14 CAIR Canada and its counsel have  
15 created expertise on issues surrounding the impact  
16 post 9/11 on the Muslim community. As you can  
17 see, there are many op eds that CAIR has written.  
18 They have advocated at various levels of  
19 government.

20 Counsel and CAIR Canada have been  
21 active participants in the criticism of policy and  
22 legislation at all levels, particularly dealing  
23 with security legislation.

24 Counsel and CAIR Canada have dealt  
25 with CSIS, the RCMP, immigration officials,

1 customs officials and police forces. These unique  
2 perspectives and the experience of counsel and of  
3 CAIR bring to the table will give you, Commission,  
4 a unique perspective on what is happening out  
5 there.

6 There is a survey that is  
7 discussed in our submission. The survey will deal  
8 with issues surrounding RCMP and CSIS in  
9 particular. There is knowledge of procedures of  
10 RCMP and CSIS, both official and unofficial  
11 procedures, because unfortunately it appears that  
12 there are unofficial procedures out there. Again,  
13 perspective can be brought not only through the  
14 cross-examination but also through the legal  
15 submissions with regards to this.

16 Counsel and CAIR-CAN have been  
17 involved in C-36. They have been involved in C-7  
18 in terms of dealing with submissions and  
19 criticisms of it. They have been present at RCMP  
20 and CSIS meetings and advocacy.

21 They have dealt with the  
22 "voluntary questioning" by CSIS and RCMP officers.  
23 We have dealt with issues arising out of project  
24 Thread where the unfortunate 21 gentlemen of South  
25 Asian descent have been involved.

1                   There have been interventions for  
2 individuals detained at home and abroad, including  
3 in the United States. There have been  
4 representations to all level of governments and to  
5 various levels of security forces, including the  
6 local police forces.

7                   In effect, what we are going to  
8 bring to the table for the Commission, not only is  
9 saying we are a voice of the Muslim community,  
10 that we are representative of what the community  
11 can give. We are bringing that expertise to deal  
12 with those specific issues, and you will notice in  
13 our brief -- and I am not going to go through the  
14 brief -- we deal with the issues as we see them,  
15 including issues such as racial profiling,  
16 including issues such as policy reviews. Again,  
17 the is something that we are bringing something  
18 specific to.

19                   With regards to Part II of the  
20 inquiry, we are going to bring impact and evidence  
21 as to effective oversight mechanisms through the  
22 examinations and through submissions. We are not  
23 there just for Part I of the inquiry. Part II of  
24 the inquiry is very important, particularly  
25 considering the experience that we have with RCMP

1 and CSIS, as I indicated before, the official and  
2 unofficial protocols and policies that we find in  
3 place.

4 One of the very important issues  
5 that the Commissioner will be deciding with the  
6 next four weeks is national security  
7 confidentiality. It is essential that the  
8 Commission hears all sides with regards to this  
9 matter. Obviously, there are going to be issues  
10 of national security with regards to this matter,  
11 but at what level does that confidentiality mean  
12 that we have in-camera hearings?

13 Parties such as CARE Canada will  
14 be able to bring perspective, ideas and law to the  
15 Commissioner's attention to allow the Commissioner  
16 to make an informed ruling with regards to all the  
17 options and all the issues in front of him. In  
18 addition to that, the national security questions  
19 under section 46 of the rules.

20 It is my understanding that a  
21 party may suggest questions to counsel and you  
22 have terrific counsel, but perspective is also  
23 very important and by bringing perspective to  
24 those questions, perhaps those questions will be  
25 asked that may not have been asked otherwise.

1           Again, perspective comes from the expertise that  
2           is coming to the table with this group.

3                               Finally, post inquiry. There are  
4           a research paper submissions and consultations.  
5           There are public submissions and public  
6           consultations. Certainly, this should be  
7           something that CARE is going to be part of and I  
8           would imagine, whether CARE is actually a party to  
9           the inquiry or not, that is something where it's  
10          going to be.

11                              The advantage to having CARE --  
12          and this is going back to the beginning -- what  
13          makes this different? Not only the material  
14          witness but the expertise and the specific items  
15          that we will be able to bring into play, not only  
16          with regards to the cross-examination, but also  
17          with regards to legal submissions.

18                              Thank you.

19                              THE COMMISSIONER: Thank you very  
20          much, Mr. Baksh.

21                              Thank you for your presentation  
22          and your material. As I have indicated earlier,  
23          the decision will come next week as I try to sort  
24          out all these applications.

25                              I appreciate very much the

1 interest of your organization and we will be in  
2 touch with you.

3 MR. K. BAKSH: Thank you.

4 THE COMMISSIONER: Thank you.

5 I might just say to counsel, you  
6 are welcome to stay, but you need not to stay once  
7 you have finished your presentation. Feel free to  
8 go if you wish.

9 Mr. Green, you are next, the  
10 Canadian Arab Federation.

11 APPLICATION

12 MR. M. GREEN: Good afternoon,  
13 Mr. Commissioner.

14 Mr. Commissioner, I am here on  
15 behalf of the Canadian Arab Federation or C-A-F  
16 or CAF as it is often known.

17 Simply let me begin by echoing the  
18 proposal made by my colleague, Mr. Riad Saloojee  
19 just a few moments ago and to make clear that the  
20 application on behalf of CAF is amended as a joint  
21 application for a single-party seat and it will be  
22 a twin-headed one. Our proposal to you is  
23 endorsed by --

24 THE COMMISSIONER: So we should  
25 treat this as a single application.

1                   MR. M. GREEN: Treat it, please,  
2 as a single application for one party. We will  
3 share the responsibilities.

4                   I think it's probably patent to  
5 you, Mr. Commissioner, that CAF is an Arab  
6 Canadian organization. CARE Canada is a Muslim  
7 organization. They both have national prominence.  
8 They both, in fact, are venerable organizations  
9 representing their own constituencies. We have  
10 had a history of working together in the past. It  
11 is a good fit, and we approach the matter  
12 appreciating our complementariness of the  
13 interests and with the desire to work together in  
14 the interests of our constituencies and the  
15 purpose of this inquiry and the achievement of  
16 that purpose.

17                   The background to the application  
18 on behalf of CAF must begin with Maher Arar.  
19 Mr. Arar is a victim of the war on terrorism. The  
20 fact that he is a man of Arab descent who lives  
21 and remains part of an Arab community explains  
22 much of why he was subject to the national  
23 security excesses in this particular case. There  
24 is an aura of suspicion that remains to this day.

25                   It's almost trite to point out



1           that no Canadian ethnic community has suffered as  
2           much undeserved collateral damage in the post-9/11  
3           world as has the Arab Canadian community:  
4           Bigotry, stigmatization, outright discrimination,  
5           some of which has been chronicled in the daily  
6           newspapers, magazine articles, and as I will get  
7           to by CAF, since 9/11.

8                                 Arab Canadians identify strongly  
9           with Maher Arar no matter how well integrated they  
10          are in Canada. No matter how many generations  
11          they have been here, no matter how well educated,  
12          no matter how professional, many Arab Canadians  
13          fear their personal safety, their personal  
14          security is no greater than was Maher Arar's.

15                                Arab Canadians identify with Maher  
16          Arar because at some visceral level they are  
17          deeply concerned that what happened to him  
18          happened in substantial part because he was an  
19          Arab Canadian, because he was a Muslim Canadian.  
20          Those concerns are, I say respectfully,  
21          Mr. Commissioner, the same concerns that underlie  
22          your terms of reference.

23                                These are concerns about racial  
24          profiling. They are concerns about the use of  
25          security stereotype. They are concerns about the

1       flawed methods and limited value of intelligence  
2       gathering in ethnic communities. They are  
3       concerns about information sharing, information  
4       sharing that exposes Arab Canadians including, but  
5       certainly not limited to Mr. Arar, to the  
6       excessive zeal of Canada's intelligence partners  
7       and as well concerns about discrimination, raw,  
8       uninformed, culturally insensitive discrimination,  
9       discrimination that not only fails to identify  
10      true security threats, but alienates entire  
11      communities, marginalizes entire communities in  
12      the process.

13                   Those issues, discrimination,  
14      racial profiling and human rights abuses, those  
15      that accompany them, are what CAF is all about,  
16      Mr. Commissioner, since its founding some 37 years  
17      ago in 1967, and particularly so since the events  
18      commencing in 9/11.

19                   CAF has a substantial and direct  
20      interest in the process by which Canadians of Arab  
21      descent come to be labelled and treated as  
22      terrorists. It has a substantial and direct  
23      interest into finding the proper balance between  
24      legitimate national security interest, on the one  
25      side, and the protection of civil liberties and

1 rights on the other. This has always been the  
2 core interest of CAF.

3 Mr. Commissioner, you have before  
4 you a letter of the Executive Director of the  
5 Canadian Arab Federation.

6 I will not walk you through it  
7 other than to point out that CAF is a national  
8 not-for-profit umbrella organization for Arab  
9 Canadians. It has two permanent offices. It has  
10 ten staff members.

11 Its mandate is to defend the  
12 interests of Canadians of Arab origin. It is  
13 composed of dozens of members from coast to coast,  
14 and a number of those member groups are themselves  
15 umbrella organizations that represent and speak  
16 for organizations of local or other shared  
17 interests.

18 It has programs in the field of  
19 education media, advocacy and research. But at  
20 core its work is concerned to protect and advance  
21 the civil liberties of Arab Canadians.

22 CAF representatives have testified  
23 before parliamentary committees considering bills  
24 that have been proposed by the government,  
25 including Bill C-36, the anti-terrorism

1           legislation. It has made written submissions to a  
2           number of parliamentary committees. It has worked  
3           with all three tiers of government across the  
4           country to preserve and enhance respect for the  
5           dignity of Arab Canadians.

6                         Since its inception CAF has  
7           faithfully documented the discrimination and  
8           bigotry suffered by Arab Canadians -- a much  
9           larger job since 9/11.

10                        Indeed, CAF is probably the single  
11           best repository of human rights abuses suffered by  
12           Arab Canadians as a result of the new national  
13           security agenda.

14                        To be clear, Mr. Commissioner, CAF  
15           does not deny the need for effective national  
16           security. What CAF takes issue with is the  
17           premise, no matter how latent, that being Arab  
18           somehow means being suspect. It is a toxic  
19           thesis. It wreaks terrible damage. Maher Arar is  
20           perhaps the most notorious case, but he is no  
21           aberration.

22                        CAF does not seek standing to carp  
23           or whine about past injustices. Let me be clear.  
24           It sincerely wishes to play a constructive role in  
25           identifying the causes of Maher Arar's ordeal and

1 in crafting policies and institutions that are as  
2 effective in preventing terrorism as they are  
3 sensitive to the rights of all Canadians:  
4 fairness, balance and respect.

5 Those are the themes,  
6 Mr. Commissioner.

7 Mr. Commissioner, I don't know if  
8 you need to hear me on funding. The materials are  
9 set out in the letter that I prepared for you.  
10 Clearly, to grant standing to CAF in its current  
11 circumstances would be a hollow gesture. Our  
12 concern is to be a meaningful participant. That  
13 will require funding.

14 Thank you very much.

15 THE COMMISSIONER: Thank you very  
16 much, Mr. Green. Your submission has answered any  
17 questions I might have had, so I appreciate it  
18 very much. And I appreciate the spirit that  
19 underlay your joining together with the previous  
20 applicant.

21 That brings us, Mr. Cavalluzzo to  
22 the last one?

23 MR. P. CAVALLUZZO: Yes. The last  
24 application will also be by conference call. It  
25 is the application of the Muslim Canadian

1 Congress.

2 THE COMMISSIONER: Is it premature  
3 to place that call?

4 Hello?

5 MS A. SHERAZEE: Hello. My name  
6 is Amina Sherazee. I am counsel for the Muslim  
7 Canadian Congress.

8 THE COMMISSIONER: Yes, Ms  
9 Sherazee. It is Commissioner O'Connor speaking.

10 MS A. SHERAZEE: Good afternoon.

11 THE COMMISSIONER: You are on a  
12 speaker phone that is speaking to the hearing  
13 room.

14 I have read your written  
15 submission. If you would like to go ahead and  
16 make any oral submissions, now is the time.

17 APPLICATION (via conference call)

18 MS A. SHERAZEE: Mr. Commissioner,  
19 we don't have any specific submissions that we  
20 want to make. I was hoping this was more of an  
21 opportunity to answer any questions that the  
22 Commission may have with respect to how we can  
23 benefit the inquiry itself.

24 If there are any specific  
25 questions...

1 THE COMMISSIONER: One question I  
2 had was exactly the nature of the participation  
3 that you were seeking. I know you were requesting  
4 standing, but it wasn't clear to me whether the  
5 participation you were seeking was an opportunity  
6 to make submissions perhaps at the beginning and  
7 then for sure at the conclusion of the inquiry.

8 MS A. SHERAZEE: Primarily,  
9 Mr. Commissioner, it was for an opportunity to  
10 make submissions at the conclusion of the inquiry,  
11 to participate in the actual investigation of the  
12 facts, as well as the policy review.

13 In particular with respect to the  
14 policy review, one of the purposes of course of a  
15 factual inquiry is to consider all the  
16 circumstances that are related to the practice of  
17 what our organization believes is the religious  
18 and racial profiling practices that were alleged  
19 here and the fact that Muslims are specifically  
20 affected and exceptionally prejudiced by these  
21 policies and practices.

22 We wanted to have an opportunity  
23 to make submissions for the policy review  
24 component of the Commission.

25 THE COMMISSIONER: Let me make

1           sure that I understand you. You are seeking an  
2           opportunity to make closing submissions at the end  
3           of the factual inquiry and an opportunity to make  
4           submissions or be involved in the policy review  
5           mandate of the inquiry.

6                           MS A. SHERAZEE: That is correct.

7                           THE COMMISSIONER: Right. One  
8           other question I have -- and you probably have not  
9           heard what has been going on here.

10                          I have raised with a number of  
11           people representing the Muslim-Islamic groups or  
12           the Arab groups, I have pointed out to them that I  
13           understand that their groups come from different  
14           perspectives and represent different  
15           constituencies and have a different focus from  
16           each other. But in terms of their relationship to  
17           this inquiry, their positions in general terms at  
18           least seem to be similar.

19                          With that in mind, then, I asked  
20           the question: Is it possible that some of these  
21           groups could form together into a single  
22           coalition, if you will, to avoid overlap, delay  
23           and so on?

24                          Have you thought about that with  
25           respect to any of the other applicants?



1 MS A. SHERAZEE: I believe  
2 Mr. Commissioner is referring to Rule 11 of the  
3 draft rules?

4 THE COMMISSIONER: You have caught  
5 me off guard there.

6 MS A. SHERAZEE: Yes, we did turn  
7 our mind to the possibility that, as an applicant,  
8 we would be sharing perhaps in a single granting  
9 of standing. We do consent to that, and we are in  
10 agreement with that proposition.

11 THE COMMISSIONER: That's good.

12 I don't have any other questions,  
13 if you have no further submissions.

14 The process from here is that I am  
15 going to hear some further applications tomorrow.  
16 I will be making decisions with respect to  
17 standing and funding some time next week and we  
18 will be releasing those decisions, together with  
19 my reasons. So we will be in touch with you about  
20 that.

21 MS A. SHERAZEE: Thank you very  
22 much for the opportunity.

23 THE COMMISSIONER: Thank you very  
24 much for making your application. Goodbye.

25 That completes the applications

1 for today, Mr. Cavalluzzo?

2 MR. P. CAVALLUZZO: Yes,  
3 Mr. Commissioner.

4 Tomorrow, just to highlight, it  
5 would appear that we have six presentations and  
6 two will be by conference call.

7 I assume that we will commence at  
8 the normal time of 10 o'clock.

9 THE COMMISSIONER: All right.  
10 We will rise now until 10 o'clock  
11 tomorrow morning.

12 LE GREFFIER: L'audience est  
13 maintenant ajournée pour la journée. The sittings  
14 are now suspended and over for the day.

15 --- Whereupon the hearing adjourned at 4:10 p.m.,  
16 to resume on Friday, April 30, 2004  
17 at 10:00 a.m. / L'audience est ajournée  
18 à 16 h 10 pour reprendre le vendredi  
19 30 avril 2004 à 10 h 00

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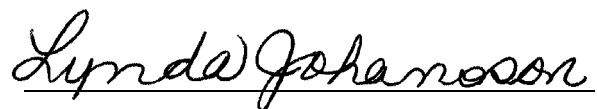
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Lynda Johansson,

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

StenoTran