

**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 vendredi 30 avril 2004

**Held at:**

Government Conference Centre  
Annex Room  
2 Rideau Street  
Ottawa, Ontario

Friday, April 30, 2004

**APPEARANCES / COMPARUTIONS**

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Mr. Ken Rubin	
Mr. Alex Neve	Amnesty International
Mr. Emmanuel Didier	

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon resuming on Friday, April 30, 2004

3 at 10:00 a.m. / L'audience reprend le vendredi

4 30 avril 2004 à 10 h 00

5 THE REGISTRAR: All rise.

6 Veuillez vous lever. Commissioner Dennis O'Connor

7 is now presiding. Le Commissaire, Dennis O'Connor

8 préside cette audience.

9 THE COMMISSIONER: Good morning.

10 We will just wait until the cameras are finished

11 here.

12 --- Pause

13 THE COMMISSIONER: The first

14 application this morning is Mr. ELMaati. This is

15 a conference call to Mr. Rocco Galati.

16 MR. R. GALATI: Good morning,

17 Mr. Commissioner.

18 THE COMMISSIONER: Good morning,

19 Mr. Galati.

20 MR. R. GALATI: Thank you for

21 hearing us this morning.

22 THE COMMISSIONER: That's fine.

23 Let me just explain how the process is done.

24 You can make your application and

25 everyone in the hearing room can hear you. After

1           you conclude that, I understand, am I correct,  
2           that there will be a brief submission from the  
3           government with respect to your application.  If  
4           you stay on the line, Mr. Galati, you will be able  
5           to hear the government's submission and you will  
6           have an opportunity to respond to it.

7                           MR. R. GALATI:  Very well.

8                           THE COMMISSIONER:  Okay?

9                           MR. R. GALATI:  Yes.

10                          THE COMMISSIONER:  You can go  
11           ahead then.

12           APPLICATION (via conference call)

13                          MR. R. GALATI:  I am going to be  
14           very brief, obviously.

15                          Mr. Commissioner, I don't know if  
16           you have had a chance to read the brief 30-page  
17           motion record or application record filed on  
18           behalf of Mr. ELMaati.

19                          THE COMMISSIONER:  Yes, I have  
20           read it and I thank you for it.

21                          MR. R. GALATI:  Very good then.  I  
22           don't have much more to say then what is there,  
23           except to conclude and submit to you that  
24           Mr. ELMaati has a very direct and substantial  
25           interest.  He was detained in Syria on

1 November 12, 2001 and then transported to Egypt in  
2 February of 2002. He was not released from the  
3 Egyptian prison until January of this year, 2004.

4           During his torture in Syria he  
5 divulged certain facts and names, including  
6 Mr. ELMaati's name and Mr. Arar's name. He has  
7 much to offer in terms of testimony, documents,  
8 names of officials, details of the torture and the  
9 fact of both the true and false confessions  
10 compelled under extreme torture that you see under  
11 paragraph 10 of his affidavit. These relate  
12 directly to the terms of the inquiry.

13           He has a contribution to make with  
14 respect to Canadian officials' conduct before,  
15 during and after September 11th. He will  
16 contribute to the factual inquiry.

17           His submissions on his ability to  
18 financially conduct his inquiry are found at  
19 paragraphs 17 to 22 of his affidavit and my brief  
20 submissions at Tab 3. I won't reiterate those.  
21 They are there for your review and decision.

22           Subject to any questions you may  
23 have, those are my submissions.

24 .           THE COMMISSIONER: Is it your  
25 suggestion, Mr. Galati, that his participation --

1 I take it from what you say you are assuming that  
2 he would be called as a witness and for the  
3 purpose of my question assume that. I'm not sure  
4 that is the case, but assuming he is you would  
5 certainly want to participate with respect to his  
6 evidence and also, do I take it, any other  
7 evidence in this inquiry that related to him?

8 MR. R. GALATI: My application  
9 record, my request on his behalf, is that he be  
10 given standing for the entirety of the inquiry to  
11 the same extent as Mr. Arar.

12 THE COMMISSIONER: Okay. I  
13 understand that.

14 MR. R. GALATI: So yes, you are  
15 quite right, it would include his own testimony,  
16 as well as names and suggestions for other  
17 witnesses that the Commission may or may not  
18 accede to.

19 THE COMMISSIONER: Right. Okay.

20 If that is your submission, I will  
21 ask Ms McIsaac for her response now.

22 You let us know, Mr. Galati, if  
23 you have difficulty hearing it. I think the  
24 technology works.

25 MR. R. GALATI: It fades in and

1 out, but I haven't had too much difficulty yet.

2 THE COMMISSIONER: Good.

3 SUBMISSIONS / SOUMISSIONS

4 MS B. McISAAC: Can you hear me?

5 MR. R. GALATI: Yes.

6 MS B. McISAAC: Thank you.

7 Mr. Commissioner, the submission  
8 of the of the Attorney General with respect to  
9 this application is as follows:

10 As I understand the submission it  
11 is that Mr. ELMaati tells you that he has much to  
12 offer in terms of testimony, documents and  
13 information, including apparently information with  
14 respect to the conduct of Canadian officials.

15 However, the point I want to make  
16 is that the predominant concern of this inquiry is  
17 the actions of Canadian officials with respect to  
18 Mr. Arar. The factual inquiry has been given a  
19 clear and precise mandate, which is to investigate  
20 and report on the actions of Canadian officials in  
21 relation to Mr. Arar.

22 In that regard, I submit that both  
23 the Commission and the Government of Canada have a  
24 duty to ensure that the mandate of the Commission  
25 is not diverted to encompass the actions of



1 Canadian officials in relation to other persons or  
2 to investigate matters that are not directly  
3 related to Mr. Arar.

4 It is in the public interest  
5 that both the government and this Commission  
6 ensure that you maintain control of the  
7 proceedings and are not diverted from a timely  
8 delivery of your report.

9 The draft rules which have been  
10 prepared provide for the participation of  
11 witnesses. Commission counsel is in a position to  
12 interview Mr. ELMaati, to receive from him and his  
13 counsel names of other witnesses who might provide  
14 relevant evidence, documents or any other  
15 information.

16 As I understand the rules,  
17 Mr. ELMaati would be able to testify as a witness  
18 if it was deemed appropriate for him to do so. He  
19 could be represented by counsel for the purpose of  
20 doing that. I presume the rules are flexible  
21 enough that if it were appropriate in your view,  
22 as a witness his counsel could also examine on  
23 appropriate points other witnesses.

24 In my submission this is not  
25 an inquiry about what happened to Mr. ELMaati,

1           it is not an inquiry about the actions of foreign  
2           officials, it is an inquiry about the actions of  
3           Canadian officials with respect to Mr. Arar, and  
4           Mr. ALMaati's interests can be fully accommodated  
5           as a witness.

6                           THE COMMISSIONER:  What do you say  
7           with respect to evidence -- and I don't know if  
8           there will be any, but if there was evidence that  
9           related to Mr. Arar that also dealt with  
10          Mr. ELMaati?

11                           I'm asking Ms McIsaac that.

12                           MS B. McISAAC:  It is my  
13          understanding from the rules that as a witness he  
14          would be entitled to counsel and he would testify.  
15          Unless I am mistaken, the rules are flexible  
16          enough that if there were evidence relating to  
17          Mr. ELMaati that some other witness was giving  
18          that you felt it appropriate, his counsel could  
19          participate for that particular evidence.

20                           Is that not correct?

21                           THE COMMISSIONER:  That is what  
22          your submission is, he should be entitled to  
23          participate with respect to that type of evidence?

24                           MS B. McISAAC:  Yes, if it is  
25          relevant and if Commission counsel is of the view

1           that it is an appropriate line of inquiry, yes.

2                           THE COMMISSIONER: Thank you,  
3           Ms McIsaac.

4                           MS B. McISAAC: Thank you.

5                           THE COMMISSIONER: Mr. Galati, it  
6           is your opportunity to respond to that submission.

7           REPLY / RÉPLIQUE

8                           MR. R. GALATI: Thank you,  
9           Mr. Commissioner. My submissions are made, with  
10          all due respect to my friend and the Commission,  
11          but I will make them directly and bluntly.

12                           I pose the rhetorical question  
13          as to whether if Mr. ELMaati were here when the  
14          terms of reference were issued and not in an  
15          Egyptian jail, whether or not he would not have  
16          been included after Mr. Arar with respect to this  
17          inquiry.

18                           What my friend is suggesting is  
19          unworkable. What my friend is suggesting really  
20          is that we pick out the spinach and the mushrooms  
21          and the bacon out of a scrambled omelette. The  
22          fact of the matter is, in all likelihood the facts  
23          of Mr. ELMaati's detention, his torture, his  
24          divulgence of Mr. ELMaati's and Mr. Arar which  
25          later led to their own arrest and detention by the

1 same Syrians, are inseparably intertwined.

2 It is not my client's intention to  
3 veer off on any tangents. Any and all evidence  
4 that will be presented will be directly related to  
5 Mr. Arar, including the vague allegations that are  
6 floating about that are contained in the  
7 application record with respect to this plot in  
8 Ottawa, on and on.

9 So it is not my client's  
10 intention to veer off on any separate or  
11 irrelevant tangents, but rather stick to the terms  
12 of the inquiry.

13 However, I have put to him that  
14 the possibility or the response may be that he  
15 appear as a mere witness. He strongly opposes  
16 that. His wish and his demand is that he be given  
17 full participation as a party because what  
18 happened to him is inseparable in times and in  
19 fact to what happened to Mr. ELMaati and Mr. Arar.  
20 So what my friend suggests could or would happen  
21 will not happen. Mr. Commissioner, we are in your  
22 capable hands in making sure that it doesn't  
23 happen.

24 But as far as my client is  
25 concerned, he also wants answers with respect

1 to what happened with Mr. Arar because what  
2 happened to Mr. Arar is inseparable to what  
3 happened to him.

4 Those are my submissions in  
5 response to my friend.

6 THE COMMISSIONER: Thank you very  
7 much for that, Mr. Galati.

8 The process that is being followed  
9 here is that I am not making decisions as I go. I  
10 am considering all of the applications I heard  
11 yesterday and will hear today and will make my  
12 decision next week. We will release that with  
13 reasons. So you will be notified by the inquiry  
14 when the decision is made.

15 Let me thank you again for both  
16 your written and your oral presentations.

17 MR. R. GALATI: Thank you.

18 THE COMMISSIONER: That terminates  
19 this conference call.

20 Thank you.

21 The next applicant is the  
22 International Civil Liberties Monitoring Group,  
23 Mr. Warren Allmand and Mr. Denis Barrette.

24 Mr. Allmand.

25 APPLICATION

1                   MR. W. ALLMAND: Mr. Commissioner,  
2 I am here representing the International Civil  
3 Liberties Monitoring Group. I am here with our  
4 co-counsel Denis Barrette and Roch Tassé, the  
5 Co-ordinator of the organization.

6                   The International Civil Liberties  
7 Monitoring Group is a coalition of civil society  
8 organizations which came together in the aftermath  
9 of September 11, 2001. We represent over 30 NGOs,  
10 unions, professional associations and faith  
11 groups, some of them dealing with refugees, some  
12 with human rights, the environment, and so on.

13                  As a result, we benefit from a  
14 very wide range of information, expertise and  
15 citizen participation. We also have links with  
16 similar organizations internationally, in the  
17 United States, Asia, Africa, and so on.

18                  Our mandate is to monitor the  
19 impact of laws and practices on civil liberties,  
20 particularly those new laws and practices  
21 introduced after September 11th, and to  
22 investigate abuses, excessive and illegalities  
23 regarding civil liberties, and of course, in the  
24 process of doing that, to defend human rights as  
25 set out in the Charter, the Canadian Human Rights

1 Act, other federal and provincial laws, including  
2 the Privacy Act, Criminal Code and others.

3 What we have done since our  
4 establishment is, first of all, to intervene in  
5 some individual cases, in the Arar case, by the  
6 way where there have been serious allegations of  
7 violations of human rights and civil liberties.

8 The Arar case we have been  
9 intervening since the beginning, requesting an  
10 inquiry. The Mohamed Harkat, the Adil Charkaoui  
11 case, and the case of the 21 Pakistanis falsely  
12 accused under Project Thread in Toronto.

13 We have also intervened to contest  
14 proposed legislation regulations and directives  
15 which, in our view, contravene the Canadian  
16 Constitution and the Charter and international  
17 human rights standards. For example, we appeared  
18 before parliament commissions on C-36, C-17 and  
19 also with respect to the proposals on lawful  
20 access and changes to the Immigration Act.

21 With respect to the Arar case, as  
22 I say, we have been involved in one way or another  
23 since first becoming aware of this case, digging  
24 for information, searching for answers, and so on.

25 In 2003, we began to collaborate

1 with the New York-based Center for Constitutional  
2 Rights which appeared yesterday. We collaborated  
3 with them in an attempt to find out what  
4 information Canadian authorities might have  
5 possessed which would have led to Mr. Arar's  
6 arrest and deportation. We facilitated the use of  
7 the Access to Information Act for the  
8 constitutional rights group in New York.

9 In 2003, we participated in  
10 strategy discussions and meetings with Amnesty  
11 International and the Arar family to ensure the  
12 release of Mr. Arar from Syria. Also in 2003, we  
13 were present at a meeting at the U.S. Embassy with  
14 American officials to make our case to them.

15 Mr. Commissioner, with respect to  
16 a substantial and direct interest in the factual  
17 inquiry, we submit, since our mandate is to  
18 monitor and defend civil liberties and human  
19 rights, we have been extremely concerned with what  
20 happened, what went wrong in the Arar case. We  
21 have been attempting to get answers, so far only  
22 with limited success, and that is why we have  
23 pushed hard for this commission. We are concerned  
24 not only with the plight of Mr. Arar, but these  
25 practices which concern all Canadians.



1                   Consequently, we believe it is  
2           important to be here to raise questions, to  
3           cross-examine, to make sure that the entire  
4           field -- that questions that relate to civil  
5           liberties and human rights are not overlooked,  
6           that all factual issues relating to national and  
7           international law be dealt with to make sure the  
8           territory is covered.

9                   Mr. Commissioner, while some of  
10          the witnesses are requesting standing are  
11          rightfully doing so on behalf of certain religious  
12          or ethnic groups -- and it is correct that they do  
13          that -- our interest is with society as a whole.  
14          As I say, our organization represents a very  
15          broadly-based group. I will just simply repeat  
16          that because of that broadly-based connection we  
17          have access to a strong network of information,  
18          expertise and citizen interests.

19                   I would like to ask my co-counsel,  
20          Mr. Denis Barrette, to fill in on some very  
21          specific detail.

22                   THE COMMISSIONER: Thank you,  
23          Mr. Allmand.

24                   Monsieur Barrette?

25                   MR. D. BARRETTE: I will do it in

1 French.

2 Je me présente. Je suis Denis  
3 Barrette, membre du CA de la Ligue des droits et  
4 libertés qui est membre de la coalition, la ligue  
5 étant -- je vais attendre.

6 --- Pause

7 M. D. BARRETTE: Voilà, monsieur  
8 le Commissaire.

9 Je me présente. Denis Barrette,  
10 membre du CA de la Ligue des droits et libertés  
11 qui est une des plus vieilles organisations de la  
12 défense des droits et libertés au Canada, et aussi  
13 membre de la coalition internationale de  
14 surveillance des libertés civiles.

15 Il y a quelques préoccupations.  
16 On vous a mis à la page 3 de notre mémoire, de  
17 notre bref, quelques préoccupations principales,  
18 les préoccupations principales qu'on veut soulever  
19 pendant l'enquête Arar. Je vous en souligne  
20 quelques-unes :

21 Les multiples démarches  
22 entreprises en vain par  
23 différents organismes de  
24 libertés civiles, comme les  
25 ONG, comme Amnistie, la

1 coalition, pour que le  
2 dossier de Maher Arar se  
3 conclue;  
4 Quelle était la chaîne de  
5 décision et la chaîne de  
6 suivi dans le dossier ? Qui  
7 a décidé, qui a fait quoi,  
8 qui a décidé quoi ?  
9 Quelle protection des droits  
10 fondamentaux est accordée à  
11 la cueillette et au partage  
12 de renseignements ?  
13 Quelle est la perception des  
14 agents de l'État de leur  
15 obligation de faire en sorte  
16 que les droits fondamentaux  
17 de chacune des personnes dont  
18 elle traite des  
19 renseignements soient  
20 respectés ?

21 Quant aux audiences à huis clos,  
22 comme en fait mention le bref, monsieur le  
23 Commissaire, le paragraphe 46 vous permet de tenir  
24 des audiences à huis clos. Nous souhaitons que  
25 ces audiences soient le plus rare possible, mais

1 nous sommes d'avis que ces audiences-là vont  
2 traiter de questions importantes sinon centrales.  
3 C'est dans ce sens-là qu'il est essentiel que la  
4 coalition qui représente une grande partie  
5 importante de la société civile puisse suggérer au  
6 Commissaire des domaines particuliers sur lesquels  
7 on devra interroger les personnes que vous  
8 entendrez à huis clos.

9 Ce dossier-là, monsieur le  
10 Commissaire, a subi un abus, un manque de  
11 transparence. Les Canadiens ont été profondément  
12 choqués de tout l'aspect secret du dossier et des  
13 conséquences qui ont suivi. Il est important que  
14 les représentants de la société civile qui sont  
15 actifs dans la société canadienne puissent  
16 participer activement à l'enquête, et non  
17 seulement se contenter d'une « mere presence »,  
18 pour faire une allégorie, mais de pouvoir  
19 participer pleinement et être des acteurs de  
20 l'enquête pour pouvoir poser des questions, pour  
21 pouvoir avoir une interaction dynamique avec les  
22 témoins, et que les citoyens et la société  
23 canadienne aient l'impression qu'enfin on puisse  
24 lever le voile sur ce qui s'est passé et que,  
25 enfin, ces choses-là ne se reproduisent plus.

1 Je vous remercie.

2 LE COMMISSAIRE: Merci.

3 I would like to ask you, has your  
4 group considered working together with any of the  
5 other applicant for standing so that one of the  
6 possible approaches here is that if groups are to  
7 be involved as intervenors, that they might  
8 represent the same interests and might cooperate  
9 with one another so there would be a single grant  
10 of intervenor participation rather than having  
11 multi-people saying the same thing.

12 MR. W. ALLMAND: Mr. Commissioner,  
13 as you will note, we are already working with  
14 approximately 30 groups: Unions, faith groups,  
15 et cetera, NGOs. We are ready to do that, to  
16 expand on that. I would suggest, however, that it  
17 may not be appropriate for us to do it with the  
18 groups that are representing Arab or Islamic  
19 interests because they have a particular focus. I  
20 think they deserve their own place.

21 Also, with respect to Amnesty  
22 International, while they are a member of our  
23 coalition, they have played a very central role  
24 historically in this case, but in many cases they  
25 have a lot of experience that they may, I think,

1           be able to contribute to the hearings by  
2           themselves.

3                           In general, in answer to your  
4           question, yes, we are willing to cooperate.

5                           THE COMMISSIONER:   And I  
6           appreciate that, Mr. Allmand, and it's not that I  
7           am trying to force people together.  It's simply  
8           as I approach all of these applications -- I take  
9           your point about the Arab and the Islamic groups,  
10          but it strikes me that some groups like the B.C.  
11          Civil Liberties Union, perhaps Amnesty and some  
12          others when I read what their interests are and  
13          background, they are all audible, but they are, in  
14          general terms at least, similar to yours.

15                          MR. W. ALLMAND:   If you look at  
16          Annex I of our brief, we have listed the 30 groups  
17          and we represent a very broad background of  
18          organizations:  The Canadian Association of  
19          University Teachers; Canadian Auto Workers;  
20          Canadian Council of International Cooperation;  
21          Canada Council for Refugees; Canadian  
22          Ethnocultural Council; Canadian Federation of  
23          Students; CARE Canada; the Centre for Social  
24          Justice, Development and Peace; United  
25          Steelworkers of America; Rights and Democracy, et

1           cetera, et cetera.

2                           So we have a lot of expertise  
3 already and a lot of information and I think we  
4 can be very helpful to the Commission.

5                           THE COMMISSIONER: Thank you very  
6 much.

7                           Thank you, both, for your written  
8 and your oral presentations. I appreciate your  
9 interest and your coming here.

10                           You heard what I said to  
11 Mr. Galati in terms of the process that we will  
12 follow; that the decision will come out some time  
13 next week.

14                           MR. ALLMAND: Yes.

15                           THE COMMISSIONER: Thank you,  
16 Monsieur Barrette and Mr. Allmand.

17                           MR. P. CAVALLUZZO: The next  
18 applicant then is Mr. Nureddin, who is going to  
19 join us by conference call through his counsel,  
20 Ms Barbara Jackman.

21                           MS B. JACKMAN: Good morning,  
22 Justice O'Connor.

23                           THE COMMISSIONER: Good morning,  
24 Ms Jackman.

25                           MS B. JACKMAN: I represent

1 Mr. Nureddin, and I have filed an application with  
2 the Commission.

3 THE COMMISSIONER: Yes, I have  
4 seen that.

5 Let me just explain. You are on a  
6 conference call, and there is a group of people  
7 here in the hearing room. So everyone can hear  
8 you. Your application is taking place in the  
9 public hearing.

10 MS B. JACKMAN: All right.

11 THE COMMISSIONER: Please proceed  
12 with it. I have read your written material, but  
13 please add anything you wish.

14 MR. P. CAVALLUZZO: Excuse me,  
15 Mr. Commissioner, before she proceeds could we  
16 advise Ms Jackman that there will be --

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

19 After you have completed your oral  
20 submissions, Ms Jackman, the government has  
21 indicated through their counsel Ms McIsaac that  
22 they wish to make submissions with respect to your  
23 application. I don't expect that they are going  
24 to be lengthy submissions.

25 You will be able to hear those



1 over this conference call, and then you will be  
2 given an opportunity after the government has made  
3 the submission to respond to that.

4 MS B. JACKMAN: Did they respond  
5 to Mr. Galati too?

6 THE COMMISSIONER: Yes, they did  
7 as well. This is the same process that was  
8 followed with respect to Mr. Galati.

9 MS B. JACKMAN: That's fine.

10 THE COMMISSIONER: Please proceed.  
11 APPLICATION (via conference call)

12 MS B. JACKMAN: I don't think I  
13 have too much to add.

14 As you know from Mr. Nureddin's  
15 application, he is a Canadian citizen. He was  
16 examined by Canadian security officials just prior  
17 to leaving Canada for Iraq to visit his family,  
18 and on his way back to Canada was detained by the  
19 Syrian authorities and examined -- well,  
20 interrogated and tortured there, but examined  
21 about the same questions that he was asked in  
22 Canada by the Canadian security officials.

23 It gives right to an inference  
24 that Canadian officials were involved in sharing  
25 information with the Syrian authorities and

1 perhaps with other countries about Mr. Nureddin  
2 that resulted in his detention.

3 I understand that the terms of  
4 reference are that you investigate and report on  
5 the actions of Canadian officials in respect of  
6 Mr. Arar's detention and imprisonment and his  
7 return to Canada. The terms of reference provide  
8 you with the authority to consider any other  
9 circumstances directly related to Mr. Arar that  
10 you consider relevant to fulfilling the mandate.

11 It is Mr. Nureddin's submission  
12 that there are two particular aspects in respect  
13 of his seeking standing before this Commission.

14 The credibility of the actions of  
15 Canadian officials will be at issue with respect  
16 to Mr. Arar. In the cases that I have done over  
17 the years the credibility of Canadian security  
18 officials has been at issue in all of the cases.  
19 I don't expect Mr. Arar's case to be any  
20 different.

21 As well, the practices and  
22 policies of Canadian officials will be at issue in  
23 respect of what happened to Mr. Arar.

24 In this context it is important,  
25 in our submission, to understand if Mr. Arar's

1 case is unique and isolated or if it is part of a  
2 practice on the part of Canadian security  
3 officials.

4 Mr. Nureddin has information to  
5 offer this Commission. It is his submission that  
6 he has a direct and substantial interest in the  
7 workings of the Commission, and his participation  
8 would enable you to address, first, the  
9 credibility of the state security agents in  
10 respect to their actions; second, an exploration  
11 of any links between the Canadian Security  
12 Intelligence Service and the RCMP security  
13 officers.

14 We don't know who was involved in  
15 Mr. Nureddin's case in respect of what happened to  
16 them. It may be both agencies or one was.

17 Third, to explore as well whether  
18 there are practices and policies in place which  
19 involve stereotyping or racial profiling such that  
20 Mr. Nureddin and Mr. Arar were caught up as a  
21 result of that; four, whether there are practices  
22 and policies in place which provide for requests  
23 to other state security agents to investigate on  
24 behalf of Canadian officials.

25 Mr. Nureddin has a direct interest

1 in the outcome of this Commission. He has been  
2 directly affected, it appears, by the policies and  
3 practices of Canadian security agents already,  
4 having been detained and tortured in Syria.

5 He has family in Iraq. His  
6 fiancée is there, and his marriage is supposed to  
7 take place there. He wants to return. I don't  
8 think it is unreasonable to expect someone to want  
9 to be married with all your family and friends  
10 present, and that would have to be in Iraq. There  
11 is no way for him to bring his fiancée to Canada,  
12 because there is no sponsorship of fiancées any  
13 more, only persons who live common law, which he  
14 is not about to do, and married couples.

15 He wants to feel secure in  
16 travelling to that part of the world without the  
17 fear of being detained in one country or another  
18 through which he has to travel. He travelled  
19 through Syria in the first place because the cost  
20 of travelling into Iraq through Syria was much  
21 cheaper than through the other countries.

22 He doesn't want to end up detained  
23 again. He wants to know, as a result of this  
24 Commission, that there will be procedures or  
25 mechanisms in place that will ensure that he is

1           protected when he travels as a Canadian to  
2           countries like Syria.

3                           The only last point is he is not  
4           in a position, if he is granted standing, to be  
5           able to fund counsel.

6                           I cited cases in the application  
7           which address both the direct and substantial  
8           interests and the funding. It is my understanding  
9           that funding can be recommended in order to  
10          provide a person who is given standing with the  
11          full and ample opportunity to participate fully  
12          before the Commission.

13                           Those are basically my  
14          submissions.

15                           THE COMMISSIONER: Thank you very  
16          much for that.

17                           I hear you saying one thing  
18          clearly. You are suggesting that Mr. Nureddin  
19          should be called as a witness, because the  
20          evidence that he would give would help shed light  
21          on what happened to Mr. Arar.

22                           MS B. JACKMAN: Yes.

23                           THE COMMISSIONER: That will have  
24          to be a decision that we will make as we go  
25          forward looking at the evidence.

1                   If he is called as a witness, the  
2 rules provide of course that he is entitled to be  
3 represented by counsel.

4                   MS B. JACKMAN: Yes.

5                   THE COMMISSIONER: So whether one  
6 calls that standing, as a witness he would have  
7 that entitlement.

8                   Are you suggesting beyond that  
9 that as the inquiry looks at evidence that doesn't  
10 mention Mr. Nureddin or directly affect him he  
11 should be granted standing as well?

12                   MS B. JACKMAN: I think that you  
13 are at a disadvantage overall if you are not able  
14 to contextualize what happened. I think that what  
15 happened to him is relevant, even in terms of  
16 Mr. Arar. The questions that could be put to the  
17 Canadian security officials in the open or even in  
18 the secret part of the hearing from the knowledge  
19 of what happened to Mr. Nureddin would be  
20 relevant, I think, in examining what happened to  
21 Mr. Arar.

22                   THE COMMISSIONER: All right. If  
23 that is your submission, I will now call upon  
24 Ms McIsaac.

25                   You will let us know if you have

1 difficulty hearing what she is saying.

2 MS B. JACKMAN: Thank you.

3 SUBMISSIONS / SOUMISSIONS

4 MS B. McISAAC: Thank you, sir.

5 Can you hear me?

6 MS B. JACKMAN: Yes, I can hear  
7 you.

8 MS B. McISAAC: Thank you.

9 Mr. Commissioner, I will repeat  
10 myself to some extent for Ms Jackman's benefit.

11 The mandate of this Commission is  
12 to look into a very unique situation; that is the  
13 situation of Mr. Arar. And it is limited to the  
14 actions of Canadian officials.

15 Mr. Nureddin was arrested while he  
16 was in Syria. Mr. Arar was arrested in New York  
17 and then deported to Syria. Those are very  
18 different situations.

19 What I heard Ms Jackman say with  
20 respect to her client is that he may have  
21 evidence. He may have information. He may be  
22 able to provide context which would assist your  
23 counsel Mr. Cavalluzzo and his team in asking the  
24 appropriate questions of Canadian officials or  
25 indeed other witnesses as the inquiry progresses.

1                   There is nothing, in my  
2                   submission, in the matters raised by Ms Jackman  
3                   which would require Mr. Nureddin to have standing.  
4                   Rather, if appropriate, he could be a witness.

5                   As you pointed out, he would be  
6                   represented by his counsel when he is giving  
7                   evidence.

8                   As I stated earlier, the rules  
9                   appear to me to be broad enough that in  
10                  appropriate circumstances, should your counsel  
11                  feel it necessary and appropriate, or if you feel  
12                  it necessary and appropriate, his counsel, even as  
13                  a witness, might have some opportunity to  
14                  cross-examine other witnesses if his issues are in  
15                  play.

16                  In my submission, again it is not  
17                  appropriate for an individual like Mr. Nureddin to  
18                  obtain standing in this case.

19                  You and the Government of Canada  
20                  have a duty to ensure that the mandate of this  
21                  Commission is not diverted. What I heard  
22                  certainly suggested a diversion of the mandate of  
23                  this Commission to address other issues relating  
24                  to citizens travelling generally throughout the  
25                  world, which is far beyond the scope in my



1 submission.

2 We have a duty, the government and  
3 you, to ensure that this Commission focuses on the  
4 inquiry, what happened to Mr. Arar, the actions of  
5 Canadian officials, to not find itself in a  
6 position where you are losing control of the  
7 proceedings and you are diverted from a timely  
8 delivery of your report.

9 Thank you, sir.

10 THE COMMISSIONER: Thank you,  
11 Ms McIsaac.

12 Ms Jackman, do you wish to  
13 respond?

14 REPLY / RÉPLIQUE

15 MS B. JACKMAN: Yes, a couple of  
16 points. First of all Ms McIsaac makes a  
17 submission that Mr. Arar's case is a unique one.  
18 I am not sure that it is unique and I think that  
19 it is important to understand in a full  
20 investigation, to assess in a full investigation  
21 whether or not it is unique.

22 Secondly, she said the  
23 circumstances are very different, that Mr. Arar  
24 was detained in New York and ended up in Syria,  
25 whereas Mr. Nureddin was detained in Syria. I

1 think that key link between the two is the passing  
2 of information by Canadian security officials  
3 which resulted in detention, whether it was New  
4 York or Syria and whether or not that is a pattern  
5 or a policy or a practice on the part of Canadian  
6 security officials.

7 I don't think you can understand  
8 fully what happened to Mr. Arar without  
9 investigating the context in which Canadian  
10 security officials act. And certainly cases like  
11 Mr. Nureddin's give rise to a concern about the  
12 fact that it is not a unique situation.

13 Certainly Mr. Nureddin may have  
14 evidence to assist the Commission in that inquiry,  
15 but I think he also has a direct and substantial  
16 interest in the outcome. He was already affected  
17 by the processes of Canadian security officials it  
18 would appear, in terms of what happened. The  
19 outcome of this Commission will affect him the  
20 future in terms of what may happen to him when he  
21 travels again.

22 He has an interest in  
23 understanding not just what happened to him, but  
24 what are the policies and practices of Canadian  
25 officials in respect of people like him. He

1           doesn't want to see it happen again to him or  
2           anybody else.

3                           I think Ms McIsaac is exaggerating  
4           in the sense that, I mean no offence to her, but  
5           in the sense that having Mr. Nureddin  
6           participating, giving him standing would divert  
7           the direction of this inquiry. I don't see it  
8           that way at all. Certainly we understand the  
9           terms of reference and are aware that this  
10          Commission must comply with the terms of  
11          reference. But if in fact the government only  
12          wanted the Commission to look solely at Mr. Arar's  
13          case, it would not have put in Part V, that any  
14          other circumstances directly related to him that  
15          you consider relevant so filling the mandate can  
16          be considered.

17                          Other circumstances can include  
18          practices and policies and how other people have  
19          been affected by them.

20                          THE COMMISSIONER: Okay, well  
21          thank you very much for that.

22                          The process, Ms Jackman, that I am  
23          following here is I am not making decisions as I  
24          go. I will finish hearing the rest of the  
25          applications today and will give my decision with

1           respect to standing and funding next week together  
2           with reasons, those will be released. So the  
3           inquiry will be in touch with you about the  
4           results of your application.

5                       MS B. JACKMAN: Okay, thank you  
6           very much.

7                       THE COMMISSIONER: Let me thank  
8           you again for your interest and for both your  
9           written and oral presentations.

10                      MS B. JACKMAN: Thank you.

11                      THE COMMISSIONER: Thank you.

12                      MS B. JACKMAN: Bye.

13                      THE COMMISSIONER: Okay, the next  
14           applicant is not scheduled until 11:00. Can we  
15           carry-on or should we wait?

16                      MR. M. MCGARVEY: Your Honour, on  
17           behalf of the Law Union--

18                      THE COMMISSIONER: Are you  
19           Mr. McGarvey?

20                      MR. M. MCGARVEY: Yes.

21                      THE COMMISSIONER: Good morning.

22                      MR. P. CAVALLUZZO: I wonder, just  
23           before Mr. McGarvey, if we could perhaps deal with  
24           number 6, which is Mr. Almalki's application?  
25           There will be no oral presentation in respect of

1           that but I assume, Ms McIsaac, that you would have  
2           the same submissions in respect of Mr. Almalki's  
3           application?

4                           MS MCISAAC:   That's correct.

5                           THE COMMISSION:   Could you then,  
6           just to make sure, the person who made the  
7           application on behalf of Mr. Almalki in writing,  
8           could you just notify him, Mr. Cavalluzzo, of the  
9           nature of Ms McIsaac's response because he will  
10          not have heard it, he not being here, it not being  
11          in writing.  And if there is anything that he  
12          wishes to add, after you explain to him what the  
13          government's position is, if you could inform him  
14          that he would be free to do so, so that he will  
15          have that opportunity?

16                          MR. P. CAVALLUZZO:   That is fine.

17                          THE COMMISSIONER:   Okay, thank you  
18          very much.

19                          Okay then, Mr. McGarvey.  Now you  
20          are free to do this from either sitting or  
21          standing, whatever suits you.  You can come  
22          forward if you are going to sit, if you don't  
23          mind, it is easier for me to see you.

24          APPLICATION

25                          MR. M. MCGARVEY:   Good morning.  I

1 am a lawyer in Ottawa and currently a lawyer in  
2 Toronto. I am appearing on behalf of the Law  
3 Union of Ontario.

4 I was a steering committee member  
5 of the Law Union from approximately 1990 or 1991  
6 until maybe last year. I have had extensive  
7 involvement with the Law Union and I have been  
8 asked to make the presentation this morning in  
9 favour of the Law Union being granted standing in  
10 this matter.

11 The Law Union historically has had  
12 a significant and I think substantial interest in  
13 the issue of security and security politics and  
14 security malfeasance in some occasions in the  
15 past.

16 Some of the I guess better known  
17 advocates who have appeared on behalf of the Law  
18 Union or on behalf of clients who are associated  
19 with the Law Union are Paul Copeland, who I think  
20 is well known to Your Honour as being one of the  
21 people at the forefront of security issues. He in  
22 fact has been on occasion, at least one occasion  
23 accepted as an expert in the area by the Federal  
24 Court of Canada and that was in the Clayton Ruby  
25 matter versus the Solicitor General on security

1 issues concerning Mr. Ruby's practice and which  
2 also affected Mr. Copeland's practice back when  
3 they were together.

4                   The Law Union I think has a  
5 historical memory and a collective expertise in  
6 this area that is perhaps exceeded by no other  
7 group. The Law Union was actively involved in the  
8 1970s when the RCMP security service was being  
9 investigated. Mr. Copeland, in particular, made  
10 submissions to the MacDonald Commission. I think  
11 it is fair to say that the Law Union has been on  
12 the leading edge of reforms in that area. And  
13 since the terms of reference of this Commission  
14 include a policy review, I think that is probably  
15 where the Law Union has the most significant  
16 ability to provide a lot of input which would give  
17 both a historical context and which would give I  
18 guess access to a broad based of rather expert  
19 people.

20                   The Law Union is not limited of  
21 course to people interested in security issues, it  
22 includes immigration lawyers, many students,  
23 judges, people who have dealt with security  
24 concerns in various context. The Immigration  
25 context obviously is relevant to this inquiry and

1 we have had people appear in the 1970s on behalf  
2 of the Law Union to make submissions on amendments  
3 to the Immigration Act and its security  
4 provisions.

5 The Law Union has sought standing  
6 on these issues on a routine basis and I think our  
7 submissions, when they are permitted, are widely  
8 accepted. The level of expertise and the quality  
9 of submission I think the Commission could expect  
10 would be quite substantial and quite high. We  
11 have been granted standing, for example, at the  
12 Supreme Court of Canada in the Stillman case.  
13 Michael Code the former Deputy Attorney General of  
14 Ontario argued the Stillman case. And I think  
15 that is reflective of the level of expertise in  
16 terms of advocacy that we can bring to the  
17 process.

18 I think the question is with  
19 respect to the factual inquiry side of things. It  
20 may be somewhat less clear what the Law Union can  
21 bring to that process. I think one thing that can  
22 be brought to that process by the Law Union is  
23 that members of the Law Union in their day to day  
24 advocacy which tends to be in the grassroots  
25 dealing with refugee claimants, political



1 organizations who are often in contact with the  
2 police, who are sometimes infiltrated by security  
3 services and so on. We have a history of  
4 representing those groups and those kinds of  
5 people and engaging in I guess litigation with  
6 respect to the relevant parties.

7 Mr. Copeland provided me with a  
8 couple of examples on the telephone where at one  
9 appearance he made on the Ruby case he provided an  
10 affidavit where a claim of national security  
11 privilege was made, and on cross-examination of  
12 the relevant party who had sworn the affidavit on  
13 behalf of the Minister, it turned out that the  
14 person had absolutely no personal knowledge of any  
15 fact which related to national security and that  
16 they had not even read the blanked out sections  
17 that were being subject to the objection.

18 I guess there is a wealth of  
19 experience in how these matters are actually  
20 handled by the security services, who I expect are  
21 going to be compelled to appear before this  
22 Commission, that may provide for a level of  
23 scrutiny, if you would, that might otherwise be  
24 lacking.

25 These people with their

1           experience, Mr. Copeland, Mr. Kellermann and  
2           others in the Law Union, they know how to ask the  
3           hard questions and they know what questions to  
4           look for and what answers may not be satisfactory  
5           in particular circumstances.

6                           I think the other advantage of the  
7           Law Union, in terms of allowing it to be involved  
8           both in the factual and in the policy side of  
9           things, is that the Law Union has no particular  
10          interest, except the interests of justice and  
11          truth. We do not represent any party to what has  
12          happened. We do not advocate on behalf of any  
13          particular group or organization. We are not the  
14          police. We are not the government. We are not  
15          any of the affected individuals.

16                          We come I guess with a progressive  
17          political viewpoint. There is no question the Law  
18          Union is a political organization in its make-up.  
19          But I think it is fair to say that the political  
20          theme of the Law Union is that state authority and  
21          state power can be, and often is, a very good and  
22          necessary thing. However, people must be very  
23          diligent about protecting individuals against  
24          potential for either unintentional misuse or  
25          unintentional lapses in quality, or perhaps more

1 seriously sometimes when there are abuses of that  
2 at state power.

3 For that reason, the law union I  
4 think is capable of representing, first of all, a  
5 diversity of interests because the Law Union has  
6 traditionally represented marginalized groups,  
7 people who may be targets of political oppression,  
8 people who may be refugees from other countries  
9 whose claims have been questioned by the security  
10 services, at times in what appears to be a state  
11 of some confusion at best.

12 Another example Mr. Copeland gave  
13 me was he was involved in a matter that had to do  
14 with Cold War era border crossings and political  
15 organizations. It turned out that the security  
16 service agent who was assigned to that file was  
17 unaware of the timing of the closure of the border  
18 between Hungary and I believe the Soviet Union.  
19 There were simple factual lapses.

20 I think the Law Union's historical  
21 interest in these things allows us to explore such  
22 things as: Are the people who are now,  
23 particularly at the RCMP who have been given  
24 powers that were taken away from them when CSIS  
25 was formed, do they have the expertise that is

1           necessary to exercise those powers properly? Do  
2           they have training in geopolitics, and do they  
3           understand what political organizations exist,  
4           which ones may have a radical viewpoint but are  
5           not particularly dangerous or of concern, what  
6           ones have a radical viewpoint and are extremely  
7           dangerous and of concern?

8                                People in the Law Union are  
9           engaged in these political analyses on a regular  
10          basis. I think the understanding that members of  
11          the Law Union who could be called or asked to  
12          present to the Commission is substantial in that  
13          regard.

14                              Mr. Kellermann's affidavit  
15          outlines some of the areas that the Law Union has  
16          made representations to issues in the past. I am  
17          not going to go over it again, because obviously  
18          your Honour can read this at your leisure.

19                              In particular, the Law Union has a  
20          particular set of experiences in such areas as the  
21          reliability of informant information. There are  
22          lots of criminal lawyers and lawyers who deal with  
23          security issues at the Law Union who can I think  
24          provide a lot of insight into the level of  
25          reliability, or lack thereof, of informant

1 information.

2                   Regarding the lack of  
3 understanding of certain cultural issues,  
4 Mr. Copeland gave me an example where a security  
5 concern was raised because of a document that was  
6 seized, where the word the security services were  
7 concerned about could be translated in one  
8 construction as being a martyr, in another  
9 construction as being a charitable person, in  
10 another construction as being a person in a state  
11 of grace.

12                   It was not clear in the context --  
13 I think it was actually in a written document that  
14 the person had prepared in their home language.  
15 It was not clear in the context that there was  
16 anything dangerous about this at all. It was an  
17 expression of a desire perhaps to be a charitable  
18 and giving person, and yet it could be construed  
19 on the most nefarious construction as something  
20 sinister.

21                   I think an awareness of the  
22 cultural context of these things occur -- and I  
23 overhead Ms Jackman's comments about the  
24 importance of cultural context.

25                   I would think that the Law Union

1 has a wealth of experience and the ability to  
2 produce relevant information in that regard.

3 In terms of funding, I think it is  
4 fair to say that counsel who practise and who are  
5 members of the Law Union do not tend to come from  
6 the demographic which is capable of long-term pro  
7 bono representations. We are the people taking  
8 legal aid certificates. We are the people who  
9 often represent some of these organizations that  
10 hold demonstrations and they want people on call.  
11 We are the people who do that on our own time for  
12 free.

13 We are not, I think it is fair to  
14 say, as a group particularly well resourced. The  
15 Law Union has always operated as a collective  
16 agency, where we come together and share our  
17 experiences and share our expertise when  
18 necessary.

19 For something of this importance  
20 and something that has a potential to be very time  
21 consuming -- the legal research and appearances  
22 where called for would be very time consuming -- I  
23 think it is fair to say that the Law Union would  
24 be incapable of doing that without at least some  
25 level of funding.

1                   It is I think likely that Paul  
2                   Copeland himself will be the person most likely to  
3                   be delegated to make submissions to the inquiry  
4                   when called upon. Assuming the inquiry is  
5                   generally going to be sitting in Ottawa, it may  
6                   mean that Mr. Copeland has to travel, and so on.

7                   I think it is fair to state that  
8                   the Law Union would not be able to provide the  
9                   expertise in either the factual side of the  
10                  inquiry or in the policy review if there is no  
11                  ability to fund it. In terms of keeping our  
12                  practices alive, we just can't expend those  
13                  resources.

14                  We tend to be sole practitioners  
15                  or small firms. I am in a three-person firm here  
16                  in Ottawa. We just can't set aside a month of our  
17                  time to do this without risking our practices'  
18                  demise.

19                  That being said, the Law Union is  
20                  not known for its long, time consuming and wasting  
21                  of resources. We know how to put together good  
22                  submissions, both in our daily practices on legal  
23                  aid cases and when we appear on these matters, in  
24                  an expeditious and cost effective manner. So we  
25                  are not likely to be running up a significant or

1 in any way over-reaching tab on something like  
2 this.

3 Subject to any comments, that is  
4 really the extent of what I have to say.

5 If your Honour is interested, I do  
6 have a copy of an affidavit taken from the Federal  
7 Court Trial Division from Mr. Copeland, which  
8 outlines a little more of his particular  
9 expertise.

10 THE COMMISSIONER: Absolutely.

11 MR. M. T. McGARVEY: It is dated.  
12 It is from the early 1990s, but it does outline  
13 his expertise in particular.

14 THE COMMISSIONER: Thank you,  
15 Mr. McGarvey.

16 MR. M.T. McGARVEY: I think it is  
17 fair to say that the combined wisdom of Paul  
18 Copeland and Robert Kellermann, you would be hard  
19 pressed to find two people with a greater  
20 knowledge of security matters in the country at  
21 this point.

22 Subject to any comments or  
23 questions, those will be the submissions on behalf  
24 of the Law Union.

25 THE COMMISSIONER: Just one



1 comment. The applications for standing and  
2 funding that I have been hearing yesterday and  
3 today are directed at the factual inquiry.

4 That said, you raised the policy  
5 review, as a lot of applicants have, and clearly  
6 you could tell from the draft rules that we have  
7 put forward that we will be seeking the  
8 involvement of the public in types of  
9 organizations like the Law Union and others to  
10 assist us with that.

11 I will be commenting on that in  
12 the reasons and the decisions that I give,  
13 although that is not the specific purpose of why  
14 we are here.

15 I don't have anything else to ask  
16 you, Mr. McGarvey, other than to say the comments  
17 that I would make is I am aware of the work that  
18 the Law Union has done in the past, and I  
19 appreciate very much the interest and, if I can  
20 put it, the offer of assistance, and your written  
21 presentation and your oral presentation here  
22 today.

23 Thank you very much for coming.

24 MR. M.T. MCGARVEY: Thank you very  
25 much.

1 THE COMMISSIONER: Can we still  
2 keep moving or should we take a break,  
3 Mr. Cavalluzzo?

4 MR. P. CAVALLUZZO: Mr. Rubin is  
5 here. I am wondering if Amnesty International is  
6 here as well.

7 It may make some sense to take the  
8 morning break now and then --

9 THE COMMISSIONER: I am flexible  
10 one way or the other. Are both of the applicants  
11 ready to proceed? I see Mr. Rubin is nodding.  
12 And you will be after Mr. Rubin?

13 Unless anybody is requesting an  
14 adjournment, we will carry on.

15 Mr. Rubin, do you want to come  
16 forward?

17 --- Pause

18 THE COMMISSIONER: I have your  
19 written application and I have had an opportunity  
20 to read that. So thank you.

21 Go ahead.

22 APPLICATION

23 MR. K. RUBIN: Thank you,  
24 Mr. Commissioner. We will be collaborating on it.

25 It was almost a year ago that I

1 was approached by civil liberty groups, namely the  
2 Canadian-based International Civil Liberties  
3 Monitoring Group and the U.S. Center for  
4 Constitutional Rights, to file access and privacy  
5 requests on the Arar case.

6 That is how I initially came to be  
7 in touch with Monia Mazigh. With her consent, and  
8 with an initial small start-up grant, I began my  
9 own inquiry. Upon Maher Arar's release, and with  
10 his consent too, I have continued on my own time,  
11 on an unpaid public service basis, to go after  
12 records in over 10 agencies in more than one  
13 jurisdiction.

14 By now having received some  
15 records, I have many war wounds and nearly 40  
16 complaints initiated. The skirmishes to come are  
17 already in full-fledged battle mode against  
18 excessive secrecy and delays.

19 That includes not getting a single  
20 record to date from the RCMP despite their turning  
21 around and asking many other agencies over the  
22 last several months to apply more exemptions to  
23 records.

24 The Commission has my written  
25 submission for independent standing and for

1 funding. What I want to suggest here is that I  
2 have come forward seeking standing because I  
3 thought my years of digging up records and  
4 accessing them might be helpful to the inquiry  
5 Commission as it begins its own efforts to do so.

6 I believe, therefore, I have  
7 unique perspective and experience to offer as the  
8 Commission tries to get at the facts and the truth  
9 behind Mr. Arar's detention, deportation and  
10 imprisonment, a very taxing situation with no  
11 April 30th deadline in sight.

12 I hope that I can further  
13 illustrate what I can offer if granted independent  
14 standing. This I am doing by raising several  
15 practical matters that need addressing, preferably  
16 in a pre-hearing conference of parties before the  
17 main June hearings begin.

18 One problem to address at the  
19 pre-hearing is that Foreign Affairs is using the  
20 inquiry Commission's production order for relevant  
21 government records as a means of making  
22 inaccessible their records on the Arar case, by  
23 delaying the release to leave for a year, a period  
24 longer than Mr. Arar's incarceration.

25 Access to information requests,

1 disclosures and complaints made to the Information  
2 and Privacy Commissioners should not be stopped,  
3 slowed down or impeded by government agencies as a  
4 result of the inquiry.

5 Another matter that parties  
6 wanting to participate ought to know is: Does the  
7 Commission have the capacity and resources in  
8 place to handle incoming records?

9 May I suggest then it would be  
10 helpful for the inquiry Commissioner's March 30,  
11 2004 production order -- and the date I get from  
12 the Attorney General's standing -- to be made  
13 public, along with the names of the 10 agencies  
14 the order went to and the deadlines imposed.

15 Thereafter, it would be useful to  
16 have weekly updates on the volume, nature and type  
17 of records being received from each agency and the  
18 time period involved and what records remain to be  
19 provided. If any records are discovered to be  
20 missing or altered, that too should be in the  
21 suggested weekly update.

22 The next matter I raise, and that  
23 other parties have alluded to, is of great  
24 consequences to parties, the media and the public.  
25 That is: What data and testimony will be public

1 or secret? Right now, the Draft Rules of Inquiry  
2 No. 37 indicate that the Canadian government  
3 should produce a statement of what they mean by  
4 national security confidentiality by May 14, 2004.

5 However, parties only get a week  
6 to respond to this important issue and in writing,  
7 with no pre-hearing venue mentioned. This needs  
8 revisiting.

9 Restrictive grounds for secrecy,  
10 namely for national security, national defence and  
11 international relations, must be put in place.  
12 From past experience, the government wants a very  
13 broad and expansive approach, even beyond claiming  
14 the Access to Information Act exemption  
15 provisions.

16 This will mean many in-camera  
17 sessions and perhaps treating most records as  
18 secret as is the norm. Even then the Canadian  
19 government can still challenge, on broad national  
20 security grounds, any evidence at any time that  
21 the inquiry may want to make public.

22 The recent April 27, 2004 National  
23 Security Policy does not offer up any type of  
24 definitions or just underlines civil liberties  
25 issues. As well, American security-based evidence

1           need not be volunteered or be made admissible in  
2           public. These are important matters that can be  
3           termed in the course of the hearing and need a  
4           fuller airing.

5                           The inquiry needs to further  
6           address publicly how, through what mechanisms, we  
7           will deal with the underlying policy issues in  
8           Part I, the part that I am seeking a standing in,  
9           which is described as being a factual inquiry into  
10          Mr. Arar's detention and deportation, imprisonment  
11          and return, and other circumstances.

12                           Only Part II, which is on the need  
13          for a better independent oversight for the RCMP,  
14          is called a policy review, and the Commission has  
15          accordingly put in place different procedures, but  
16          the facts and circumstances in Part I of the Arar  
17          case may well be driven by policy directives or  
18          the actions played out based on certain policy  
19          assumptions.

20                           For instance, did section such  
21          happen because there was a known or assumed  
22          extraordinary rendition policy, or because there  
23          were various national security intelligence  
24          sharing agreements in place?

25                           Handling this intertwining of

1 factual and policy considerations needs to be  
2 discussed further before the main hearings begin.

3 In Draft Rules of Procedure No.  
4 16, it is stated that the inquiry Commissioner may  
5 receive evidence, whether or not it would be  
6 admissible in a court of law.

7 How then and against what  
8 standards or documents, as well as witness  
9 evidence that is inaccurate, based on hearsay, on  
10 leaks, on eavesdropping or on confessions, is it  
11 to be assessed and treated both in public and in  
12 camera?

13 This needs to be further  
14 elaborated on.

15 While the draft rules proposing  
16 some personal confidentiality, No. 49 to 53, are  
17 useful and instructive, what type of protection or  
18 assurances will be there for some witnesses coming  
19 forward with sensitive information or who want to  
20 come forward but who would not otherwise?

21 As well, will there be later  
22 opportunities for those not seeking standing to  
23 come forward and intervene publicly or in private,  
24 to present evidence or to make submissions?

25 The identification of Canadian



1 officials with substantial and direct interest in  
2 the factual inquiry I note is incomplete as the  
3 Ottawa Police Service is not registered as a  
4 party.

5 What happens when parties do not  
6 register?

7 The Ontario Provincial Police have  
8 come forward and even explained in summary its  
9 involvement as members of the Integrated National  
10 Security Enforcement Team, called INSET. The  
11 Attorney General of Canada, on the other hand, I  
12 note in coming forward did not indicate what  
13 agencies performed what roles relevant to the  
14 factual inquiry that would make them have a  
15 substantial and direct impact on the factual  
16 inquiry.

17 What happens when parties do not  
18 fully identify their specific interests?

19 Finally, there is no road map and  
20 timetable as yet on what order evidence from the  
21 Arar case will be heard or how the work and  
22 evidence collected by other agencies or other  
23 commissions or government investigations on the  
24 Arar affair can or will be dealt with.

25 That is why I seek standing,

1           because I believe that I can contribute to the  
2           inquiry proceedings.

3                           I have applied to you for funding.  
4           I am very conscious that public monies must be  
5           spent wisely and accounted for. As I said in my  
6           written submission, I am not exactly in a position  
7           otherwise to participate fully and effectively.

8                           I do not want to end without  
9           mentioning that what this inquiry is all about is  
10          getting at the truth.

11                          As Mr. Arar said to me a week ago  
12          in going over yet another set of heavily censored  
13          government records, he believes that he is  
14          entitled to know what happened. I believe I can  
15          contribute in a small way to ensure that by  
16          participating in this inquiry, the battle is  
17          already under way and continuing to get at the  
18          truth.

19                          Thank you.

20                          THE COMMISSIONER: Thank you very  
21          much, Mr. Rubin.

22                          I don't have any questions. Thank  
23          you for your application and for coming here  
24          today. As you probably heard, I have indicated I  
25          will be giving my decision next week, with

1 reasons.

2 MR. K. RUBIN: Thank you,  
3 Commissioner.

4 THE COMMISSIONER: The last  
5 applicant is Amnesty International.

6 Good morning.

7 APPLICATION

8 MR. A. NEVE: Good morning, Your  
9 Honour. My name is Alex Neve and I am the  
10 Secretary-General of Amnesty International,  
11 Canada's English-speaking branch. I am pleased to  
12 be here before you this morning.

13 Security measures that ignore or  
14 violate international human rights principles  
15 result ultimately in both injustice and  
16 insecurity. That is the key proposition that  
17 leads Amnesty International to seek standing in  
18 this inquiry.

19 Amnesty International was actively  
20 involved in the Maher Arar case from the very  
21 earliest stages, October 2002 in fact, when we  
22 were directly notified by his wife Monia Mazigh  
23 that he had gone missing while in detention in the  
24 United States.

25 During the more than one year that

1 followed from that time we have actively monitored  
2 the case, campaigned and lobbied on his behalf  
3 with authorities of all governments involved:  
4 Canada, the United States, Jordan and Syria.

5 We have met regularly with his  
6 wife, with Canadian and U.S. officials, including  
7 at Ministerial level, with concerned  
8 organizations, and we have spoken frequently in  
9 the media about the case.

10 And throughout, in all of those  
11 activities, our framework for doing so was the  
12 international human rights obligations which apply  
13 to all four countries involved.

14 Upon Mr. Arar's return to Canada,  
15 I personally had an opportunity to interview him  
16 extensively, and on that basis Amnesty  
17 International publicly pressed for the very  
18 inquiry which we now seek to be involved in.

19 We continued to highlight a number  
20 of important and troubling questions about  
21 possible Canadian direct or indirect complicity in  
22 violations of international human rights law in  
23 his case.

24 I would submit to you that that  
25 experience gives us a comprehensive understanding

1 of the case which, combined with our extensive and  
2 long-established expertise in international human  
3 rights law, positions us to be able to make  
4 helpful and insightful submissions to you with  
5 respect to the extent to which relevant  
6 international human rights obligations are at  
7 stake in this affair.

8 That is further bolstered, I would  
9 submit, by the fact that we have worked  
10 extensively on the cases of four other Canadian  
11 citizens who have recently allegedly experienced  
12 human rights violations abroad and where the  
13 nature of Canadian conduct and/or involvement has  
14 been put into questions.

15 Those are the cases of William  
16 Sampson, Muayyed Nureddin, Abdullah Almalki and  
17 Ahmad Abou-ELMaati. That wider experience will, I  
18 submit, strengthen the value of the submissions we  
19 seek to be able to make to you.

20 I would like to highlight two  
21 pragmatic points.

22 The first is that we do not seek  
23 funding. In fact, given the fundamental  
24 principles Amnesty International has in its work  
25 with respect to government funding, we would not

1 be able to accept the funding if you offered it.

2 We are also seeking limited  
3 standing. Our intention is to observe and to make  
4 occasional submissions to you. We do not seek to  
5 introduce evidence or examine witnesses.

6 I understand and can certainly  
7 very much appreciate your interest in having  
8 organizations cooperate and collaborate with each  
9 other with respect to this inquiry. We are  
10 prepared to do so and will certainly do the  
11 following.

12 One, ensure actively and  
13 continuously that our contribution is not  
14 competitive and adds value to the inquiry.

15 Two, as I have said, as we do not  
16 seek standing to do other than make submissions,  
17 we will work with and rely on other parties to  
18 examine and cross-examine witnesses and not to do  
19 so ourselves.

20 I hope you will agree that at  
21 least three factors are in favour of granting our  
22 application: the first, our extensive involvement  
23 in this case and other similar cases; second, our  
24 expertise in international human rights law; and  
25 third, the limited nature of the standing we seek.

1                   Coming back to the issue of  
2           funding, I would also highlight that funding  
3           issues may pose complications for the nature and  
4           degree of cooperation and collaboration we could  
5           undertake with other parties, because other  
6           parties may very appropriately be granted funding  
7           by you, and our inability to accept that  
8           government funding would give rise to some  
9           complexities. It would not make it impossible,  
10          but it would give rise to some complexities in how  
11          we would then define a working relationship, if  
12          required, to merge our participation with them.

13                   To conclude, Your Honour, in  
14          Amnesty International's view, this inquiry  
15          provides a fundamentally important opportunity to  
16          ensure that security laws, policies and practices  
17          do not in any way undermine or erode basic human  
18          rights and the rule of law.

19                   In that respect, this inquiry will  
20          be watched closely, not only in Canada but around  
21          the world, as this is a global imperative. We  
22          seek standing because of our specific interest in  
23          assisting you ensure that Canada's international  
24          human rights obligations are very much at the  
25          centre of your important deliberations. Thank

1           you.

2                           THE COMMISSIONER: Thank you very  
3 much, Mr. Neve. I appreciate that.

4                           Let me just say, with respect to  
5 responding to your comment that you will follow  
6 the proceedings and are seeking participation to  
7 make submissions from time to time as you see fit.

8                           The public hearing part of the  
9 proceedings will be transcribed. We have a  
10 Website and the transcripts will be made  
11 available, we hope each night at the conclusion of  
12 day. So there will be ready access for those who  
13 wish to follow the proceedings.

14                           We who are involved in the inquiry  
15 will do everything we can to make it accessible.  
16 Those portions of the inquiry that are held in  
17 public, we will try to facilitate access for  
18 groups like yourself.

19                           Thank you for your submission. I  
20 appreciate it and I appreciate the forthright and  
21 very practical way you presented it. Thank you.

22                           MR. NEVE: Thank you.

23                           THE COMMISSIONER: Does that then  
24 complete the applications? There is one further  
25 one, I take it.



1 MR. P. CAVALLUZZO: Yes. There  
2 are two matters remaining, Mr. Commissioner.

3 First of all, there is an  
4 application which was filed yesterday concerning a  
5 lawyer, Mr. Emmanuel Didier, who wishes to appear  
6 before the Commission as a specialist in the  
7 international law of torture.

8 I have been advised by him that he  
9 has been sick over the last few weeks and as a  
10 result of that couldn't make a timely application.  
11 The application obviously is out of time. The  
12 question is whether you will hear it.

13 The only other matter is,  
14 Ms McIsaac wishes to make brief submissions,  
15 general submissions, in respect of your decision  
16 in granting standing. I understand it will be  
17 five minutes or so.

18 THE COMMISSIONER: Okay. Is  
19 Mr. Didier here?

20 MR. P. CAVALLUZZO: Yes, he is.

21 MR. E. DIDIER: Yes, I am.

22 THE COMMISSIONER: You are  
23 prepared to make your submissions now?

24 MR. E. DIDIER: Yes, I am.

25 THE COMMISSIONER: Why don't we

1 take the morning break, because it may be a bit  
2 longer.

3 The only thing -- and perhaps you  
4 could discuss it Ms McIsaac over the break -- if  
5 Ms McIsaac's submissions are to in any way be in  
6 the nature of opposition to any of the  
7 applications that I have heard over the last day  
8 and a half, then that raises a question of whether  
9 or not others should be here to hear them and an  
10 opportunity to respond. I simply leave that with  
11 you to discuss with Ms McIsaac over the break.

12 We will take a break of  
13 15 minutes.

14 THE REGISTRAR: All rise.  
15 Veuillez vous lever. L'audience est maintenant  
16 suspendue. The proceedings are now suspended.

17 --- Upon recessing at 11:15 a.m. /

18 Suspension à 11 h 15

19 --- Upon resuming at 11:30 a.m. /

20 Reprise à 11 h 30

21 THE COMMISSIONER: Good morning,  
22 Mr. Didier.

23 APPLICATION

24 MR. E. DIDIER: Good morning, sir.  
25 I thank you very much for this opportunity. I

1           also wish to apologize to the other counsel for my  
2           tardiness, but I have been quite sick for the  
3           month of April with a bad case of bronchial  
4           pneumonia. It was only a couple of days ago that  
5           I was reminded of the deadline concerning the  
6           appearances before this Commission.

7                           THE COMMISSIONER: That's fine.

8                           MR. E. DIDIER: With your  
9           permission I will address the Court in English,  
10          even though my first language is French, because I  
11          think that it will make things easier for the  
12          other participants. I ask for the mercy and the  
13          patience of the Court.

14                          THE COMMISSIONER: You will have  
15          that for sure.

16                          MR. E. DIDIER: I thank you  
17          very much.

18                          THE COMMISSIONER: Please feel  
19          free to go ahead.

20                          MR. E. DIDIER: The reason for  
21          which I am here today is to bring my expertise to  
22          the Court, if it wishes to avail itself of it, in  
23          a number of areas.

24                          First of all, please let me  
25          introduce myself.

1                   I am a member of the Bars of  
2                   Quebec, Ontario and New York. I am fully  
3                   bilingual. I have been a First Secretary of the  
4                   International Court of Justice. I also have been  
5                   a Commissioner with the Immigration and Refugee  
6                   Board for five years. Finally, I have also been a  
7                   professor of international law.

8                   This Commission will have to make  
9                   a number of recommendations on a set of facts  
10                  concerning the case of Mr. Maher Arar. The case  
11                  of Mr. Maher Arar raises a number of very  
12                  important legal general and specific issues  
13                  concerning to Mr. Arar.

14                 The Court, in order to make  
15                 reasonable and just recommendations, will have to  
16                 understand the context in which the case is taking  
17                 place. This context can be analyzed in three  
18                 different parts. There is the legal context, the  
19                 general regional context, sociopolitical context,  
20                 and the context specific to Mr. Arar and the  
21                 victims of torture.

22                 With regard to the legal context,  
23                 the Commission will have to understand not only  
24                 the principles of international humanitarian law  
25                 but also some very important and relevant

1 principles of general public international law.

2 I will, for example, refer the  
3 Court to the Nottebohm case, Uruguay v. United  
4 Kingdom, of the International Court of Justice,  
5 and also to the Sledinheimer(ph) Arbitral Award  
6 which deal directly with the consequences in  
7 public international law of dual citizenship.

8 Those principles are very  
9 important for the Court to understand the legal  
10 context in which that case is taking place.

11 There are also some very important  
12 aspects of private international law, that is the  
13 law of citizenship and administrative law that is  
14 the responsibility of the state for the acts of  
15 its agents if the Court decides on the evidence  
16 that there have been aspects of responsibility of  
17 state involved.

18 With regard also to public  
19 international law there is also the very important  
20 Imalone(ph) case which may be involved. In this  
21 case I will remind the Court that an arbitral  
22 award was rendered against Canada because Canada  
23 had allowed terrorism acts to be done on its  
24 territory during a war with the United States in  
25 the last century.

1                   So all that case law is very  
2                   important for the Court.

3                   Second, with regard to the general  
4                   context in which the case has been happening, as a  
5                   Commissioner with the Immigration and Refugee  
6                   Board my specialty was precisely the Middle East.  
7                   I have dealt with a number of case on both side,  
8                   both victims of torture and refugees, but also war  
9                   criminals coming from precisely those countries,  
10                  Syria, Lebanon, Iraq, Iran and Afghanistan.

11                  You are going to say we are  
12                  dealing with Syria. Of course. But in order to  
13                  understand what is happening in Syria we need to  
14                  understand the connections between Syria and a  
15                  number of other countries. For example, the  
16                  Alawite minority which rules Syria today is also  
17                  Shia. They are a minority Shia in a country which  
18                  is predominantly Sunni.

19                  Now, as Shia they are linked to  
20                  the other Shia in Iraq who are the majority of  
21                  Iraq, but also to the Shia in Iran. But there is  
22                  a very profound distinction between the Shia in  
23                  Iran on the one side and the Shia in Iraq and in  
24                  Syria on the other side. Why? Because the Shia  
25                  in Iraq and in Syria are Arabs, whereas the Shia

1 in Iran are Persians. And this raises a number of  
2 very important political issues which the court  
3 should be aware of.

4 Now, I have also dealt with in my  
5 experience at the Commission with Immigration and  
6 Refugee Board a number of cases concerning Iraq  
7 and Syrian Ba'ath. Now, those are very important  
8 problems, because after the Ba'ath party was  
9 created in 1941 by Michel Aflaq, who by the way  
10 was a Lebanese Christian, that party was split in  
11 two concurrent parties, one in Syria and one in  
12 Iraq. The one in Syria was commanded for a number  
13 of years by the former president Hafez El-Assad  
14 who died a few years ago in Syria. But the Iraqi  
15 branch has been commanded for about 30 years by  
16 Saddam Hussein.

17 There are lots of relationships  
18 between Ba'athists in Iraq and Ba'athists in  
19 Syria. It is important to understand the  
20 political implications as well as the legal issues  
21 that are involved in these problems.

22 Now you are going to ask me why  
23 Afghanistan and Lebanon? There we are dealing  
24 with the Islamist connection. One of the most  
25 important Islamist movements in the Middle East

1 has been the Muslim Brothers. The Muslim Brothers  
2 have been extremely active in Syria. In Syria,  
3 for example, in 1982 they were at the origin of an  
4 uprising in the City of Hama. The Government of  
5 Syria crushed down the revolt.

6 Those Muslim Brothers in Syria  
7 have been very closely connected, in fact they are  
8 the same organization in many other Arab countries  
9 like for example Egypt. But they also have roots  
10 in Afghanistan, connections in Afghanistan with  
11 the Taliban. And one of the most important facts  
12 that is at stake right now, that will be raised in  
13 the Commission, will be the relationship between  
14 the Muslim Brothers and al-Qaeda. Because  
15 al-Zawahri, who was the No. 2 of al-Qaeda, was  
16 himself raised in the Islamic model by the Muslim  
17 Brothers in Egypt.

18 THE COMMISSIONER: I don't want to  
19 interrupt you, but it seems to me you are here to  
20 make an application for standing, which you will  
21 appreciate would be granted on the basis that you  
22 personally have a substantial and direct interest  
23 in the Arar inquiry. It strikes me that what you  
24 are describing is, whether it would be relevant or  
25 not I am not sure yet, but in any event you are



1           describing a role for yourself where you would  
2           give evidence about a contextual background that  
3           you say would be necessary, rather than be granted  
4           standing.

5                                So, with your remaining time, it  
6           might be an advantage to you if you address the  
7           criteria for granting standing.

8                                MR. E. DIDIER:   Section 11,  
9           paragraph (a) and (b) of the Inquiries Act, allow  
10          the courts to designate, if it wishes so, experts.  
11          So, I can appear either as a specialized witness,  
12          an expert on a number of fields, or as an expert  
13          designated by the court to help the court.

14                               THE COMMISSIONER:   But that is a  
15          different role than being granted standing.  If  
16          what you are suggesting is that you may be of  
17          assistance to the inquiry in the role of an expert  
18          witness, I wouldn't make an order of that nature  
19          here.  The proper approach would probably be for  
20          you to discuss it with Commission counsel who, you  
21          know, will generally be deciding what evidence  
22          needs to be called and so on.

23                               MR. E. DIDIER:   Absolutely.  Now,  
24          my general standing will be that of a Canadian who  
25          is not defending one specific point of view, but

1           who is trying to bring an objective and  
2           dispassionate point of view on the experience of a  
3           person who has gone through a very very difficult  
4           time and who has had and will have very specific  
5           problems in testifying before this Commission.

6                               Now the court may decide that this  
7           is not sufficient to grant me standing, but I will  
8           just respect the decision of that court. Thank  
9           you very much.

10                              THE COMMISSIONER: Okay, well  
11           thank you very much Mr. Didier for coming forward  
12           and for your interest in the work of the inquiry,  
13           I appreciate that. And, as I indicated earlier,  
14           the decision will be made next week.

15                              MR. E. DIDIER: Thank you very  
16           much.

17                              THE COMMISSIONER: That then, Mr.  
18           Cavalluzzo, completes the applications.

19                              MR. P. CAVALLUZZO: That's  
20           correct, Mr. Commissioner.

21                              THE COMMISSIONER: Just before we  
22           adjourn, let me express my appreciation to all of  
23           the applicants. I know most of them are not here  
24           now who came forward. I find it heartening that  
25           there are so many individuals and organizations in

1           our country who have such a genuine interest in  
2           issues of this sort and so I am appreciative of  
3           the time and the effort that everybody put in to  
4           making the applications and coming here.

5                                So we will stand adjourned and  
6           there will be public notice of when the hearings  
7           will begin.

8           --- Whereupon the hearing concluded at 11:50 a.m./

9                                L'audience se termine à 11 h 50

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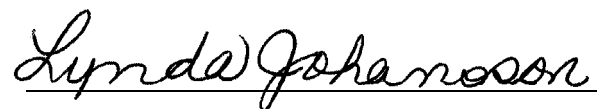
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Lynda Johansson,

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

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