

Notice of Hearing Concerning Process and Procedure

There will be a public hearing at 10:00 am on Tuesday, May 3rd, 2005 at the Old City Hall in Ottawa for the purpose of hearing submissions from the parties and intervenors on the issues described below. Written submissions may be filed with the Commission before 5:00 pm on Thursday, April 28, 2005 and should be given to the other parties and intervenors prior to being filed with the Commission.

1. Mr. Arar's Testimony

For reasons of fairness, it is the practice of the Commission to provide witnesses, before they testify, access to documents and evidence of other witnesses relating to the matters about which they will testify. To date, government witnesses have had access, prior to testifying, to documents and transcripts of evidence previously heard, relating to matters over which they are going to testify.

However, because of concerns about national security confidentiality, it is not possible to follow this practice by providing Mr. Arar access to many documents and much of the *in camera* evidence relating to matters about which he could testify. One consequence is that during his testimony, Mr. Arar would be unable to comment on those documents or that evidence.

The Commission invites submissions about how to address this situation and, in particular, how to minimize potential unfairness to Mr. Arar. Some of the questions the parties may wish to address are:

- a. What parts, if any, of Mr. Arar's potential testimony are essential in order for the Commissioner to fulfill his mandate?
- b. If he is to testify, when would it be most appropriate for Mr. Arar to testify: during the public hearings scheduled to commence in May, or after the

release of a report by the Commissioner setting out the findings that he is able to make without hearing Mr. Arar's testimony? Such a report would likely provide the maximum amount of public disclosure of documents and *in camera* evidence that is possible, given the nature of this Inquiry.

- c. Is it desirable and feasible for Mr. Arar to testify about certain matters during the public hearings scheduled to commence in May, but to delay the decision about whether Mr. Arar should testify about other matters until the release of a report (such as is referred to in b) above), which would take into account the testimony Mr. Arar had already given?

2. Conduct of Public Hearings

The Commission has heard a great deal of evidence *in camera*. Because of concerns about national security confidentiality, much of this evidence may not be disclosed publicly.

The Commission intends to commence public hearings in May. There is a potential that counsel for the Commission, the parties or intervenors (when they are participating) may ask questions during the public hearings that, if answered, could lead to the disclosure of information over which the government claims national security confidentiality.

The Commission invites submissions about the process that should be followed to ensure that the government's claims of national security confidentiality are appropriately addressed and to ensure that there is no disclosure of information over which the government claims national security confidentiality other than in accordance with the Terms of Reference.

Further, the Commission requests submissions on the process to be followed when a witness testifying in the public hearing has previously testified *in camera*.

3. The Role of the *Amicus Curiae*

Mr. Ronald Atkey has been appointed as an *amicus curiae*, with a mandate to test the government's national security confidentiality claims. He is assisted by Mr. Gordon Cameron.

As originally contemplated, *amicus curiae*'s role was to test the government's requests that evidence be heard *in camera*.

Certain questions have been raised about the role of the *amicus curiae*.

The Commission invites submissions about the role of the *amicus curiae* in light of the new procedure set out in the Commissioner's Ruling on Summaries. In particular, how does the role of *amicus curiae* differ, if at all, from that of Commission counsel, and how should submissions of the *amicus curiae* be received by the Commissioner?