

Ruling on Summaries

The Terms of Reference for this Inquiry contemplate that I may, from time to time, prepare summaries of those portions of the *in camera* evidence that, in my opinion, can be disclosed publicly in accordance with the process set out in the Terms of Reference. With that in mind, I developed Rules of Procedure and Practice that provided for the preparation of periodic summaries of the *in camera* evidence. The purpose of periodic summaries was twofold: to keep the public informed, to the extent possible, of the evidence being heard *in camera*; and to provide the parties with as much information as possible about the *in camera* evidence before the public hearings took place.

In accordance with the contemplated process, I prepared a summary of a relatively small portion of the CSIS *in camera* evidence that, I considered, could be disclosed to the public in accordance with the Terms of Reference. Without belabouring the point, the discussions with the government about the contents of that summary and what parts of it could be disclosed publicly were extremely time-consuming. In the end, no agreement was reached and the government filed an application in the Federal Court challenging the disclosure of some parts of the summary.

In light of that experience, it became obvious to me that, from a practical standpoint, the summary process is unworkable. Were that process to be continued, discussions with the government about the contents of summaries and what parts may be disclosed publicly would be both complex and time-consuming. Further, based on the experience with the first summary, the government and I appear to have differing views with respect to disclosure of at least some of the information over which the government claims national security confidentiality. The summary process, if continued, could lead to a series of potentially lengthy court applications, with ensuing delays of the work of the Commission and a substantial increase in the cost of the Inquiry.

As a result, I have decided to implement a new procedure for the Inquiry. The Rules of Practice and Procedure will be amended so that I may prepare summaries of the evidence

heard *in camera*, but I will no longer be committed to do so. At the present time I do not intend to prepare any further summaries.

Before making this decision I sought submissions from the parties and intervenors about discontinuing the summary process. It is fair to say that while Mr. Arar and the intervenors think it unfortunate that the summary process must be abandoned, they also accept that, in the circumstances, the new procedure that I set out below is the best way to proceed. The government accepts that I have the authority to establish the procedures I think best for the Inquiry.

Given that the new procedure will not involve the preparation of summaries, I have agreed not to seek disclosure of the CSIS summary at the present time on the understanding that the issues raised in the government's challenge to the disclosure of that summary can be litigated later, if necessary. The government has accordingly withdrawn its court application.

Before turning to the new procedure, I want to make it clear that the adoption of this new procedure does not constitute a change of view on my part with respect to the information in the CSIS summary. I maintain the view that that information should be disclosed to the public.¹

The new procedure is designed to develop a more efficient, expeditious and workable process for the Inquiry. It provides an approach in which disagreements about what should be disclosed publicly, if they arise, can be addressed at one time and in the context of a report containing findings of fact, rather than on the basis of a series of summaries of the evidence heard *in camera*.

The new procedure will be as follows:

¹ However, I recognize that in response to a new concern raised by the government after my ruling on the CSIS summary was released, I agreed to hear further evidence and submissions from the government with respect to one specific area in the summary. I will hear that evidence and those submissions before forming any view as to whether that information should be disclosed to the public.

1. Rule 55 of the Rules of Procedure and Practice, which currently provides that “the Commissioner shall prepare a summary” of evidence heard *in camera*, shall be amended to provide that “the Commissioner may prepare a summary” of that evidence.
2. The Commission will complete the *in camera* hearings and then commence the public hearings in May. A schedule of the evidence to be called during the public hearings will be published shortly. A schedule for closing submissions will be prepared.
3. After hearing submissions, I will submit a report to the government with those findings of fact and conclusions in respect of the actions of Canadian officials in relation to Mr. Arar that I am able to make on the basis of the *in camera* and public evidence heard to that point.
4. The question remains how I will communicate to the government my opinion as to what portions of my report should be made public in accordance with the Terms of Reference. Currently, I am inclined to prepare a second “public” report containing those findings of fact and conclusions from the report referred to in the preceding paragraph that, in my opinion, can be disclosed to the public. However, as the Inquiry proceeds, it may be that some other way of approaching the issue of public disclosure of my report will appear more desirable.
5. For the time being, I leave open the possibility that further evidence may be called after the disclosure referred to in the previous paragraph has occurred. It is possible, but by no means certain, that upon reviewing the public report, the parties, and in particular Mr. Arar, may seek to have the Commission call further evidence. At this stage, I do not foreclose that possibility.
6. I will convene an *in camera* hearing prior to submitting my report. At that time, the Attorney General will be given an opportunity to lead evidence and make submissions

with respect to the government's claims of national security confidentiality.

7. If the government disagrees for reasons of national security confidentiality with the disclosure to the public of parts of my report that I consider should be disclosed, such disagreements may be addressed pursuant to the Terms of Reference.

There will be a procedural hearing on May 3rd, 2005 to deal with three other issues that have arisen in the course of considering this new procedure. The three issues relate to Mr. Arar's testimony, the process by which the government's national security confidentiality claims will be addressed in the public hearings, and the role of the *amicus curiae*. A notice calling that hearing is attached to this ruling.

Dated at Ottawa this 7th day of April, 2005

"Dennis O'Connor"

Commissioner Dennis O'Connor

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