

Ruling

On August 10, 2005, I issued a Directive setting out the schedule for closing submissions, providing parties and interveners the opportunity of making oral or written submissions. I also set out the procedure that would be followed for NSC claims by the Government and the manner in which written submissions would be then distributed to parties and interveners for the purpose of written reply submissions.

The closing written submission procedure was further modified as outlined in Commission Counsel's letter to concerned parties dated September 30, 2005.

The Commission has now received the written closing submissions of certain individuals who participated in this Inquiry and the OPP. The submissions have been redacted, in some cases substantially, because of the process that has been adopted in this Inquiry. A good deal of evidence was heard *in camera* and may not be referred to in public submissions.

The parties making submissions, who had access to the *in camera* evidence, have made submissions based on both *in camera* evidence and public evidence. I have the benefit of their full submissions and will consider all of their submissions in preparing my report.

The submissions have been redacted to remove information over which the Government claims National Security Confidentiality, evidence heard *in camera*, and information or submissions which the parties making them consider to be unfair because there can only be partial disclosure to the public.

Mr. Arar's counsel also had an opportunity to review and comment on the independent party submissions and seek further redactions on the basis of concerns for fairness to Mr. Arar. Mr. Arar's counsel quite properly point out that certain submissions, because of the redactions, invite speculation about the content of *in camera* evidence in a manner that is unfair to Mr. Arar because he has not had access to the evidence and, therefore, cannot respond.

This Inquiry has been conducted with public and *in camera* hearings. It is inevitable that those, like Mr. Arar, who only have had access to the public record will be placed at some disadvantage. Mr. Arar does not have access to *in camera* evidence and will not be able to adequately respond to any argument that is based on a party's assessment or interpretation of that evidence. However, I do have access to all of the evidence and I will base my report on the entirety of that evidence.

It is important to keep in mind that the submissions or statements to which Mr. Arar's counsel object are in essence submissions and nothing more. They should not be treated as statements of fact. They are not evidence. A reader must not assume that the submissions made by those parties will necessarily be accepted. The *in camera* evidence may not support the submissions at all. By definition, a submission exposes an advocate's view of the case and nothing more.

There is no perfect solution to the difficulty encountered by Mr. Arar's counsel in not being able to respond to some of the submissions. However, given that these are only submissions, and that the fundamental mandate of this public inquiry is to review and report on the conduct of Canadian Officials, I think that, on balance, the submitting parties should be allowed to assert their positions publicly. The fact that Mr. Arar's counsel cannot fully respond is an unfortunate result of the process in this Inquiry. In the end, I am satisfied that I will be able to address all of the arguments in my report.

Mr. Arar's counsel also argue that in a few instances assertions are made in the submissions that are unsupported on the public record and which give rise to inferences that could harm Mr. Arar's reputational interests. I note, however, that the instances that could be harmful to Mr. Arar's reputation are only indirect, at best. Moreover, there is now a substantial body of evidence on the public record that has gone a great distance to addressing Mr. Arar's reputational concerns. Further, I repeat that the assertions objected to are also contained in submissions, not evidence. I caution readers, again, that they should not assume that the *in camera* evidence referred to in the submissions necessarily supports the submissions being made. In my report I will fairly address the evidence as it relates to Mr. Arar. In these circumstances, I do not think that the passages objected to by Mr. Arar's counsel that may cause Mr. Arar any reputational damage need be further redacted.

In the result, I am directing that the submissions be released without the redactions sought by Mr. Arar's counsel. Reply submissions, if any, shall be filed by 3:00 pm on Wednesday, November 2, 2005.

October 25, 2005

DATE

Commissioner Dennis O'Connor