



PRESS RELEASE

FOR IMMEDIATE RELEASE

Commissioner Dennis R. O'Connor issues ruling on National Security Confidentiality (NSC)

In light of this ruling, *in camera* hearings will start in the week of September 13

Ottawa, July 29, 2004 - In a ruling released today, Mr. Justice Dennis R. O'Connor laid down rules of interpretation with respect to National Security Confidentiality as they will apply to the Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.

The decision covers matters relating to the public disclosure of information that is subject to a claim of NSC by the Attorney General of Canada, that is, a claim that the disclosure of the information would be injurious to the international relations, national defense or national security of Canada.

The Motion for Disclosure

The decision deals with a motion submitted by counsel for Mr. Arar. In that motion, Mr. Arar requested that documents which contain information that is already in the public domain, over which the Attorney General of Canada has claimed NSC, be made public. In his decision Commissioner O'Connor ruled, in essence, that while Mr. Arar's motion was not premature, as argued by the government, he needed to hear more evidence before making a decision as to whether the release of specific documents would be injurious to national defence, international relations or national security. This is especially so in the case of documents received from foreign governments and those relating to alleged "leaks" to the media by Canadian government officials. Nevertheless, the Commissioner stated that: "it is a matter of common sense that previous disclosure will tend to significantly weaken if not defeat the claim that further disclosure would be injurious."

The ruling also deals with a series of questions of interpretation of the *Canada Evidence Act*.

PO Box / CP 507, Station B / Succursale B
Ottawa, Canada K1P 5P6

613 996-4741 Fax / télécopieur 613 992-2366

www.ararcommission.ca / www.commissionarar.ca

Disclosure provisions of the *Canada Evidence Act*

The *Canada Evidence Act*, as amended by the government's anti-terrorism legislation, which put new restrictions on the disclosure of information in court proceedings, apply to this Inquiry. For example, the *Act* expressly prohibits the Commission from disclosing the fact that the Commissioner has made a decision with respect to NSC unless the Attorney General or a Federal Court judge authorizes disclosure. "On their face, the breath of these provisions clearly detracts from the transparency of the Inquiry. Indeed, the provisions do not appear to sit well with the whole idea of a public inquiry," writes Justice O'Connor. The Commissioner did not propose to initiate a constitutional challenge to these provisions at this time as proposed by counsel to Mr. Arar. Instead, the Commissioner has asked Commission counsel to request the Attorney General to agree to a blanket waiver of the relevant provisions of the *Canada Evidence Act* with respect to the Inquiry.

The Process

The Commissioner has decided to hear all of the *in camera* evidence of the RCMP and CSIS in one sequence. A ruling on both NSC and the balancing of public interest will then be issued. "The process will result in one main ruling on what information, for which NSC is claimed, can be heard in public", writes Justice O'Connor.

Court challenges are one of the main causes for delays in public inquiries. Justice O'Connor says, "I expect that the process that I describe in this ruling will reduce the potential for multiple court challenges on these issues. It is in everyone's interest that the Inquiry be completed as quickly as possible and, if there is to be a court challenge to any of the rulings I make with respect to *in camera* hearings, it is preferable that there be only one such challenge."

As a result of that ruling and discussion with the parties, the Commission has decided to proceed with the *in camera* hearings of the Inquiry before continuing with further public hearings. The Attorney General and Mr. Arar agree that this is the most efficient way of proceeding.

The Commission intends to hold a single sequence of *in camera* hearings this fall, commencing in the week of September 13. The Commission will proceed with the *in camera* hearings for the factual evidence of CSIS and the RCMP, as well as those portions of the DFAIT evidence for which an NSC claim has been made.

In his ruling, Justice O'Connor stated that hearing all of the RCMP and CSIS factual evidence *in camera* is the most efficient way to deal with what could become a very complex process of resolving the Attorney General's NSC claims. Also, hearing all of the RCMP and CSIS factual evidence *in camera* will best enable the Commissioner to fulfill the objective of making as much evidence as possible public, and will lead to more sensible and manageable disclosure for the parties and intervenors.

The decision to proceed first with the *in camera* hearings involves rescheduling the DFAIT public evidence until after the *in camera* hearings are complete. The Commission is satisfied that doing so will not unduly interfere with the transparency and efficiency of the Inquiry. Moreover, the rescheduling will not add to the duration of the Inquiry – it will only affect the order of calling the evidence.

The Commissioner will produce a summary (or summaries) of the evidence that is heard *in camera* which, in the interest of transparency, will provide the public with an indication of the evidence that is heard *in camera* subject to the requirements of the *Canada Evidence Act*.

The ruling is available on the Commission's Web site: www.ararcommission.ca

Established under Part I of the *Inquiries Act*, the Arar Inquiry was set up on the recommendation of the Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness to investigate and report on the actions of Canadian officials in relation to Maher Arar. The Commission is also mandated to recommend an arm's length review mechanism for the activities of the Royal Canadian Mounted Police with respect to national security.

Media contact: Francine Bastien, 613-996-4741; Cell. 613-299-6554; Email: fbastien@bellnet.ca