

RULING ON STANDING AND FUNDING

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RULING ON STANDING AND FUNDING

I. INTRODUCTION

I have been appointed by Order in Council P.C. 2004-48 to conduct both a factual inquiry and a policy review. In the first part of my mandate, I am to investigate and report on the actions of Canadian officials in relation to Maher Arar, including the following:

- (i) the detention of Mr. Arar in the United States;
- (ii) the deportation of Mr. Arar to Syria via Jordan;
- (iii) the imprisonment and treatment of Mr. Arar in Syria;
- (iv) the return of Mr. Arar to Canada; and
- (v) any other circumstance directly related to Mr. Arar that I consider relevant to fulfilling my mandate.

The first part of this inquiry is the “Factual Inquiry”.

The second part of my mandate is to conduct a policy review, and to make any recommendations that I consider advisable on an independent, arm’s length review mechanism for the activities of the RCMP with respect to national security based on:

- (i) an examination of models, both domestic and international, for that review mechanism; and
- (ii) an assessment of how the review mechanism would interact with existing review mechanisms.

This latter aspect of my mandate is referred to as the “Policy Review”.

The following paragraphs in the Terms of Reference are relevant to this ruling:

- (e) the Commissioner be authorized to adopt any procedures and methods that he may consider expedient for the proper conduct of the Inquiry, and to sit at any times and in any places in Canada that he may decide;
- (f) the Commissioner be authorized to grant to any person who satisfies him that he or she has a substantial and direct interest in the subject-matter of the factual inquiry an opportunity during that inquiry to give evidence and to examine or cross-examine witnesses personally or by counsel on evidence relevant to the person’s interest;
- (g) the Commissioner be authorized to conduct consultations in relation to the policy review as he sees fit; and
- (h) the Commissioner be authorized to recommend funding, in accordance with approved guidelines respecting rates of remuneration and reimbursement and the assessment of accounts, to a party who has been granted standing at the factual inquiry, to the extent of the party’s interest, where in the Commissioner’s view the party would not otherwise be able to participate in that inquiry.

A. Factual Inquiry

I will conduct the Factual Inquiry by way of evidentiary hearings at which witnesses will give evidence under oath or affirmation, and will be examined and cross-examined. I will receive closing submissions at the end of the Factual Inquiry.

The draft Rules of Practice and Procedure which have been developed for the Factual

Inquiry have been published on the Commission web site at www.ararcommission.ca. These have been modelled on the rules used in other public inquiries. I thought that it would be useful to publish these Rules before the hearings on standing. If any person or group participating in the Inquiry wishes to make submissions on the Rules, they should do so in writing by May 20, 2004. Any changes will be published on the Commission web site. Persons or groups participating in the Inquiry should visit our web site regularly for information on practical details and scheduling.

B. Policy Review

The Policy Review will not proceed by way of formal evidentiary hearings. Instead, in order to make its work accessible and to provide an opportunity for public participation on a broad range of policy issues, the Policy Review will proceed in a number of phases. The Policy Review will proceed concurrently with the Factual Inquiry.

I have appointed a five member Advisory Panel for the Policy Review part of the Inquiry. The members of the panel are Monique Bégin, Alphonse Breau, Kent Roach, Martin Rudner and Reginald Whitaker. The Panel's task is to help me to discharge my mandate in making recommendations on an independent arm's length review mechanism for the activities of the Royal Canadian Mounted Police with respect to national security, including how such a review mechanism would interact with existing review mechanisms. I am confident that the Panel's expertise in the fields of intelligence, national security and government policy will be of great assistance to me in addressing this part of my mandate.

I have arranged for a Research Paper to be prepared which will, among other things, examine domestic and international review models, and identify the key issues which should be considered with respect to any recommendations regarding a review mechanism. The Research Paper will be published on the Commission web site, together with a description of what I see as the more important issues that need to be addressed in formulating my recommendations.

After the Research Paper has been published I will invite persons or groups with an interest in the subject matter of the Policy Review to make submissions in writing to the Commission about matters relevant to the Policy Review. The Commission will set and publish a deadline by which all public submissions must be received. The public submissions will be available for public review.

I also intend to hold a number of public meetings relating to the Policy Review. I will preside over those meetings, and members of the Advisory Panel may also participate.

II. RULING ON STANDING AND FUNDING

The Commission published a Notice of Hearing, which invited persons interested in the Factual Inquiry to apply for standing. I received 24 applications for standing, some of them involving multiple individuals or organizations. The applications were heard in Ottawa on April 29 and 30, 2004. Some were heard by way of teleconference.

Before I address each of the applications, I think it is useful to summarize the general principles that have guided my decisions on standing and funding.

A. Guiding Principles: Standing

I am committed to ensuring that the Inquiry is both fair and thorough, and that in the course of the Inquiry I obtain and consider all relevant information relating to the issues identified in the Terms of Reference.

I agree with the submissions of those applicants who urge that the Inquiry look into not only what happened, but also the causes. I intend to examine the “why it happened” from an individual, organizational and systemic perspective. I also agree with the submissions that the scope of my mandate should be interpreted broadly, and that the actions in question must be viewed in context.

At the same time, I must bear in mind the importance of completing this Inquiry as expeditiously as is reasonably possible. In the past, public inquiries have suffered and lost the confidence of the public because of undue delay. I will do what I can to avoid repetition and I will avoid the examination of matters not relevant or helpful in making findings called for by the mandate.

Another principle which will guide the conduct of this Inquiry is that of transparency and openness. Because of the nature of this Inquiry, this principle presents a special challenge. Some of the evidence will no doubt have to be heard *in camera* in order to avoid injury to international relations, national defence or national security. However, to the greatest extent possible, I will strive to ensure that the work of the Inquiry is accessible to the public and that this Inquiry is as open as possible. I have set out a process in the draft Rules designed to assist me with decisions about what evidence is to be heard *in camera* and to provide for the involvement of those participating in the Inquiry in formulating the principles upon which those decisions will be made.

I will rely upon Commission counsel to assist me throughout the Inquiry. They are to ensure the orderly conduct of the Inquiry and they have standing throughout. Commission counsel have the primary responsibility for representing the public interest, including the responsibility to ensure that all interests that bear upon the public interest are brought to my attention. Commission counsel do not represent any particular interest or point of view, and their role is not adversarial or partisan.

I have decided to create three separate categories through which persons or groups may participate in the Factual Inquiry:

- (i) Party Standing - those with a substantial and direct interest in all or part of the subject matter of the Factual Inquiry;
- (ii) Intervenor Standing - those who do not have a substantial and direct interest but have a demonstrated concern in the issues raised in the mandate and a

perspective and/or expertise that I consider will be of assistance to me in carrying out my mandate; and

- (iii) Witnesses - They may be represented by counsel when testifying.

The primary difference between a grant of party standing and one of intervenor standing is that those with party standing will be involved directly in the development of the evidence - the examination of witnesses. Those with intervenor standing will have significant opportunities to participate but not the right to examine witnesses. I set out in more detail below the criteria upon which I have made my decisions, and the nature of the opportunities to participate that I am granting.

I have not granted some applicants all of the rights to participate that they sought. If, as the evidence is called, circumstances change affecting individuals' or organizations' interests, they may apply for an increased opportunity to participate.

1. Party Standing: Substantial and Direct Interest

The test for the right to examine witnesses under the Terms of Reference is that a person have "a substantial and direct interest in the subject-matter of the factual inquiry". The "substantial and direct interest" test is not unique to this Inquiry. Section 5(1) of the *Ontario Public Inquiries Act*, R.S.O. 1990, c. P.41 uses the same test, and the test under the *Ontario Coroners Act*, R.S.O. 1990, c. C.37 is also similar. In the past both federal and provincial public inquiries have applied the "substantial and direct interest" test in determining whether applicants should be granted standing.

It is neither possible nor desirable to set out a comprehensive list of the types of interests that will come within this test for public inquiries. In each case, a commissioner conducting a public inquiry will have to consider a number of factors including his or her mandate, the nature of that aspect of the public inquiry for which standing is sought, the type of interest asserted by the applicant, and the connection of the particular applicant to the Inquiry's

mandate.

In some instances, applicants asserting a substantial and direct interest have essentially been obliged to prove that their “legal interests” would be “affected” by the outcome of the inquiry or inquest. (Ruling of Commissioner Grange of the Royal Commission of Inquiry into Certain Deaths at the Hospital for Sick Children, cited and affirmed by *Gosselin v. Ontario (Royal Commission of Inquiry into Certain Deaths at the Hospital for Sick Children)*, [1984] O.J. No. 1302 (Div. Ct.) at paras. 7 and 16-17). That, it seems to me, may be an overly restrictive view of the issue.

Clearly individuals or groups whose interests may be adversely affected by the report of an Inquiry as set out in section 13 of the *Inquiries Act*, R.S.C. 1985, c. I-11, have a substantial and direct interest. However, a “substantial and direct interest” embodies more than a section 13 interest (see for example, *Re Royal Commission on Conduct of Waste Management Inc. et al.* (1977), 80 D.L.R. (3d) 76 (Div. Ct.)).

If the subject matter of the inquiry may seriously affect the interest of a party that too would be a basis for finding a substantial and direct interest (*Re Ontario (Royal Commission on the Northern Environment)*, [1983] O.J. No. 994 (Div. Ct.)). For example, if the findings of the Inquiry will affect the legal rights or the property interests of an individual or organization, they would have a substantial and direct interest in those aspects of the Inquiry that implicate those rights and interests. Further where as, here, an individual like Mr. Arar is integrally involved in the events underlying the mandate of the Factual Inquiry, and indeed is specifically named in the Terms of Reference, he will have a substantial and direct interest.

At the same time, merely being a witness does not itself constitute a substantial and direct interest. Nor does having a genuine concern about the issues raised in the subject matter of the Inquiry, or having an expertise in those issues, necessarily amount to a substantial and direct interest in the subject matter of the Inquiry.

In this regard I agree with the reasoning of Campbell J. in *Range Representative on Administrative Segregation Kingston Penitentiary v. Ontario (Regional Coroner)*, [1989] O.J. No. 1003, 38 Admin. L.R. 141 (Div. Ct.) at p. 13 (O.J.):

Mere concern about the issues to be canvassed at the inquest, however deep and genuine, is not enough to constitute direct and substantial interest. Neither is expertise in the subject matter of the inquest or the particular issues of fact that will arise. It is not enough that an individual has a useful perspective that might assist the coroner.

This comment is particularly applicable when the aspect of the Inquiry for which standing is sought is investigative and not preventative. For that reason, one must view some of the jurisprudence dealing with standing in coroner's inquests bearing in mind the difference between standing in an aspect of a hearing that is purely investigative from that in which the investigative, recommendatory and preventative roles are considered jointly.

As I said above, it is not possible to set out a definitive list of the factors that will control the determination of when an interest is sufficiently linked to the mandate to be considered "substantial and direct." There will necessarily be a degree of judgment involved. That judgment should have regard to the subject matter of the Inquiry, the potential importance of the findings or recommendations to the individual or organizations including whether their rights, privileges or legal interests may be affected, and the strength of the factual connection between the individual or group and the subject matter involved.

2. Intervenor Standing

Paragraph (e) of my mandate authorizes me to adopt any procedures and methods which I consider expedient for the proper conduct of the Inquiry. I have decided to exercise my discretion to afford intervenor standing to a number of applicants which I find do not have a substantial and direct interest in the subject matter of the Factual Inquiry, but do have a genuine concern about issues raised by the mandate and who have a particular perspective and/or expertise which I have determined will be of assistance to me in this

Inquiry.

I am satisfied that I should interpret my mandate broadly and should manage this inquiry process in such a way as to obtain the maximum amount of assistance without unduly expanding on the time and expense necessary to achieve my mandate.

I am satisfied that affording certain applicants rights of participation that fall short of party standing but which allow them to participate in the Factual Inquiry in a significant way will enable me to better fulfill my mandate. I call this participation “Intervenor Standing”.

Moreover, I am not, at this stage at least, satisfied that it is necessary to provide the opportunity to examine witnesses to those applicants to whom I have granted intervenor standing. I say so for three reasons:

- (i) As I have stated above, the role of Commission counsel is to represent the public interest, and I am confident that Commission counsel will fully explore all matters related to my mandate.
- (ii) Mr. Arar will be ably represented by two senior counsel, and two junior counsel. None of these applicants is opposed in interest to Mr. Arar. Indeed, it is fair to say that they would approach the development of the factual record with most, if not all of the same objectives. Many of them have supported Mr. Arar in a variety of ways, from meeting with government officials during his detention, writing opinion pieces and letters to the editor in his support, to calling for this public inquiry. Insofar as the development of evidence is concerned I am satisfied that Mr. Arar and his counsel will fully and adequately address the issues raised by the applicants who have not been granted the opportunity to examine witnesses.
- (iii) It will be open to any of these applicants to approach Commission counsel or Mr. Arar’s counsel regarding issues to be canvassed, witnesses to be called,

or areas of evidence to be explored. I expect that Commission counsel or Mr. Arar's counsel will pursue all reasonable suggestions.

Finally, I note that it is in everyone's interest to have this Inquiry conducted thoroughly, but also as expeditiously as possible. This Inquiry raises matters of important public concern. On the basis of what is now known, I am satisfied that the participation of parties with standing who have a direct and substantial interest will enable me to canvass all of the evidence necessary to allow me to make the factual findings called for in my mandate. To add more counsel in the evidence taking process could unduly protract the proceedings, and add unnecessary delay and expense. In making this comment I do not intend in any way to criticize the organizations to which I grant intervenor standing. However, my experience tells me that additional counsel generally result in additional delay and expense.

Those applicants which have been accorded intervenor standing will be entitled to participate in the Inquiry in the following ways. They will have:

- a) The opportunity to make submissions as to the Rules of Practice and Procedure. These submissions should be made to the Commission in writing by May 20, 2004;
- b) The opportunity to make written submissions on the principles which should be applied in making decisions whether information and evidence should be heard *in camera* or in public. Further details on this process will be made available shortly;
- c) The opportunity to make written opening submissions, one week prior to the commencement of the hearings. I would find it most valuable if the parties with standing and the intervenors outline the major principles they submit should guide the Inquiry process, and the specific factual issues raised by my mandate which they submit should be examined;

- d) Copies of exhibits entered into evidence at the public hearings; and
- e) The opportunity to make closing submissions, with a particular focus on the interests, perspectives and expertise as set out in these reasons which have led me to grant intervenor standing.

Importantly, those with intervenor standing will have the opportunity to fully participate in the recommendation and preventative aspect of the mandate - the Policy Review. For many of those granted intervenor standing this will be the main focus of their participation. I will be issuing further directions about the process for the Policy Review in due course.

It has become evident to me that certain applicants have a similar interest or perspective and have no apparent conflict of interest. I am satisfied that the relevant interest or perspective will be fully and fairly represented by a single grant of intervenor standing to the applicants as a group. In order to avoid repetition and unnecessary delay, I have therefore grouped certain applicants into coalitions as discussed below. I did the same in the Walkerton Inquiry, and was satisfied that the participants in the coalitions worked well together. I greatly benefited from their cooperation. As I stated then:

In my view the formation of flexible coalitions achieves a fair balance between the desire to have important interests and perspectives represented and the need to have an inquiry that is manageable. I am asking that the counsel and principals of applicants who have been joined in a coalition make all efforts to work in the coalition. Cooperation and reasonableness are essential . . . In my view, the alternative of separate standing for everyone is simply not acceptable.

(Ruling on Standing and Funding, *Report of The Walkerton Inquiry, Part One* (Ontario: Queen's Printer for Ontario, 2002) at Appendix E(ii), p. 67.)

I also recognize that circumstances may develop that result in a coalition becoming unsuitable and I am satisfied that there should be flexibility, allowing members to request separate intervenor standing should such a situation arise.

3. Witnesses

Witnesses in the Factual Inquiry who are not represented by counsel for parties with standing are entitled to have their own counsel present while they testify. The witness may be represented by counsel for the purposes of his or her testimony, and counsel may make any objections which they believe to be appropriate.

B. Guiding Principles: Funding

The Terms of Reference provide that I may make recommendations for funding for a party who has been granted standing at the Factual Inquiry, to the extent of the party's interest where the party could not otherwise participate. I have made recommendations for funding for those granted party standing who are unable to pay for counsel.

I am of the view that funding for some of those granted intervenor standing is important in order that I receive the type of assistance that will be very helpful to me in fulfilling my mandate with respect to the Factual Inquiry. Accordingly, I am making recommendations for funding for some of those who have been granted intervenor standing.

In making my decisions with respect to funding for the intervenors, I have considered the following:

- § whether the intervenor has an established record of concern and a demonstrated commitment to the interest it seeks to represent;
- § whether the intervenor has special experience or expertise with respect to the issues;
- § whether the intervenor can reasonably be included in a coalition with others with similar interests; and

§ whether the perspective or interest of the intervenor will be otherwise represented.

Finally I note that if witnesses called to give evidence request counsel and are unable to fund counsel, I may make recommendations for funding.

The Government will set out guidelines respecting funding, including the payment of counsel fees and disbursements, for those participating in the Factual Inquiry. My comments in this ruling on the government's guidelines are based on the current draft which has yet to be approved.

III. APPLICATIONS FOR STANDING AND FUNDING: DISPOSITION

I address the applications for standing and funding below.

A. Direct Factual Connection

1. Mr. Maher Arar

This Commission of Inquiry is the "Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar". Mr. Arar seeks standing in all aspects of the Factual Inquiry as they relate directly to his detention, his deportation, his imprisonment and treatment in Syria, as well as any other actions of Canadian officials as they affect him. His counsel have stated that they will put before me all relevant evidence to assist me as I evaluate the conduct of officials towards Mr. Arar, and I welcome that assistance. Mr. Arar's counsel indicated that they will pursue a broad range of issues including: (1) whether the Canadian government "contracts out" torture, or acquiesces in such a practice; (2) the extent to which racial profiling of Muslims occurs; (3) the use of confessions obtained under torture by Canadian intelligence services; and (4) the balance between national security and civil liberties.

On the issue of funding, Mr. Arar seeks funding for two senior counsel and two junior counsel. Mr. Arar has also requested that funds be made available for small offices in both Toronto and Ottawa so that the voluminous documentation can be appropriately managed. One of Mr. Arar's counsel specifically stated that she recognized the trust involved in the use of public funds, and that his counsel would endeavour to minimize overlap. At this time, she stated that the only time she contemplated overlap is when Mr. Arar and his spouse and others who are part of his direct family network are being interviewed or called as witnesses.

Disposition:

I am satisfied that Mr. Arar has a substantial and direct interest in the Factual Inquiry. In accordance with the Terms of Reference I grant Mr. Arar party standing for the purpose of examining and cross-examining witnesses and otherwise participating in the Factual Inquiry.

The Government guidelines for funding for counsel contemplate that I may make recommendations that go beyond the guidelines "in exceptional circumstances". I am satisfied that Mr. Arar's involvement in the Factual Inquiry constitutes an "exceptional circumstance". He is integrally involved in all aspects of the evidence. It is essential that he, with the assistance of his counsel, be able to fully and thoroughly participate in developing the evidence and in making submissions about the appropriate findings.

For those reasons, I recommend that Mr. Arar be granted funding for two senior and two junior counsel. Mr. Arar's senior counsel have undertaken to minimize overlap, and have said that other than days on which Mr. Arar and his direct family network will be called, they will not both be required to attend.

I am recommending that Mr. Arar's senior counsel each be allowed 50 hours for preparation prior to the first day of public hearings and that each junior counsel be allowed

25 hours during the same period. Otherwise, counsel fees, preparation time, disbursements and travel and other expenses are to be paid in accordance with the Government guidelines. I will make a recommendation with respect to the amount of fees allowed for closing submissions later in the process.

Mr. Arar's counsel seek funding for a small office in Toronto and in Ottawa. I note that the Government guidelines for reimbursing counsel do not contemplate this kind of expense. The public hearings for the Inquiry will be held at the Conference Centre in Ottawa. The Inquiry will attempt to arrange for an office or offices for counsel to interview witnesses and to use on the day of hearings. Hopefully this arrangement will be of assistance to Mr. Arar's counsel.

In making the above recommendations I have had regard to the types of funding granted to parties with standing in other public inquiries. I have also taken into consideration the central role that Mr. Arar and his counsel will play in the Factual Inquiry. I am satisfied that the recommendations that I have made for Mr. Arar are at least as favourable and probably more favourable than the recommendations made in other instances.

2. Attorney General of Canada

The Attorney General of Canada has applied for standing in the Factual Inquiry. The Minister of Justice is *ex officio* Attorney General of Canada. Under the federal *Department of Justice Act* he is responsible for, among other things, ensuring that the administration of public affairs is in accordance with law, and for the superintendence of all matters connected with the administration of justice in Canada not within the jurisdiction of the governments of the provinces. He is also responsible for advising the heads of departments of government on all matters of law connected with such departments, and for the regulation and conduct of all litigation for or against the Crown or any department.

Under the proposed Rules of Practice and Procedure of this Inquiry, the Attorney General of Canada has the responsibility of indicating to me which documents or portions thereof, or

which aspects of proposed evidence, are subject to a claim of National Security Confidentiality. The Crown servants with knowledge of relevant facts and events may be entitled to be represented by the Attorney General of Canada. The Attorney General of Canada acts as the Crown's legal advisor with respect to positions to be advanced before this Inquiry, and also with respect to the government's response to my report.

Disposition:

The Attorney General of Canada has a substantial and direct interest in the Factual Inquiry. I grant the Attorney General of Canada party standing in the Factual Inquiry.

3. The Ontario Provincial Police

The Ontario Provincial Police (OPP) assert a substantial and direct interest in the subject matter of the Factual Inquiry with respect to Joint Task Force operations as described below. Members of the OPP belong to joint police task forces operating with the RCMP which were involved in matters related to the mandate of the Factual Inquiry. These task forces, known as Integrated National Security Enforcement Teams (INSET Teams), are charged with the investigation of offences arising out of conduct constituting a threat to the security of Canada. As members of these teams, OPP officers have information about actions and communications that took place among Canadian officials in relation to the mandate of the Inquiry.

The OPP has identified its substantial and direct interest in the Factual Inquiry as a result of:

- (a) its interests as the employer of OPP officers involved in national security investigative teams in which Mr. Arar's name arose;
- (b) its participation in joint investigative task forces mandated to investigate matters of national security; and

- (c) its knowledge of and involvement in the sharing of investigative information among police forces, including joint task forces, at both domestic and international levels.

Counsel indicated that the OPP seek standing limited to those matters directly engaging these interests. They are not seeking funding.

Disposition:

I am satisfied that the Ontario Provincial Police have a substantial and direct interest in the matters set out above. I grant party standing to the OPP in the Factual Inquiry limited to those matters directly engaging those interests.

4. Mr. Ahmad Abou-ELMaati

Mr. Abou-ELMaati is a Canadian citizen born in Kuwait. He knows Mr. Arar. In his affidavit, he states that from April 2001 onwards he had been the subject of surveillance and harassment by CSIS, the OPP and the RCMP. He states that CSIS indicated that they were going to stop the sponsorship of his Syrian wife, and he flew to Syria. He states that he was immediately detained, tortured and mistreated between November 2001 and February 2002 when he was transported to Egypt. In Egypt he states he was directly imprisoned and mistreated until his release in January 2004. He states that during his detention and torture by the Syrians, he was questioned with respect to both Mr. Arar and Mr. Abdullah Almalki. He states that his substantial and direct interest in this Inquiry is in the actions and conduct of Canadian officials whom he believes had a hand in his illegal detention and torture by Syria and Egypt. He submits that his detention and torture is linked to Mr. Arar and Mr. Almalki.

In particular, he states that during his detention and torture in both Syria and Egypt, his torturers made reference to facts and documents from Canada which he believes were provided by Canadian officials. He also seeks funding.

Disposition:

At this point I am not satisfied that Mr. Abou-ELMaati has a substantial and direct interest in the Factual Inquiry that would entitle him to party standing.

It is important to keep in mind that the Factual Inquiry is directed at the actions of Canadian officials in relation to Maher Arar, no one else. Indeed, in his submission for standing Mr. Abou-ELMaati's counsel suggested that if his client had been in Canada when this Inquiry was called, the Terms of Reference would have included Mr. Abou-ELMaati as well as Mr. Arar. Whether that is the case or not, the Terms of Reference do not include Mr. Abou-ELMaati, and I must approach my mandate as it is, not as it might have been.

The mandate for the Factual Inquiry directs me to investigate and report on the actions of Canadian officials in relation to Mr. Arar. Subparagraphs a(i) to (iv) each refer to Mr. Arar. Subparagraph a(v) directs me to consider any other circumstances directly related to Mr. Arar that I consider relevant to fulfilling my mandate. Clearly the mandate is focussed on the events involving Mr. Arar and no one else.

There is a likelihood that Mr. Abou-ELMaati will be called as a witness. If so, he will have an opportunity to relate what happened to him. However, being a witness does not in itself constitute a substantial or direct interest in the Inquiry. If he testifies, Mr. Abou-ELMaati will be entitled to have counsel to represent him with respect to his testimony.

There is also a possibility that some evidence relating to Mr. Arar may involve Mr. Abou-ELMaati including, for example, evidence of alleged associations with Mr. Arar. However, the reference to a person in evidence at a public inquiry does not in itself constitute a substantial or direct interest. More is required.

That said, I am satisfied that if evidence relating to Mr. Arar should refer to Mr. Abou-ELMaati, he should be entitled to have counsel represent him with respect to that evidence if he chooses.

Further, it may be that as the investigation of the Commission proceeds and as the nature of the evidence to be called becomes clearer, Mr. Abou-ELMaati's interest will be greater than is currently envisioned. However, at the present time, I am satisfied that his interest falls short of being substantial and direct. In this connection I would point out that section 13 of the *Inquiries Act*, R.S.C. 1985, c. I-11, precludes any finding of misconduct (which includes a finding adversely affecting an individual's reputation) unless that individual has been given reasonable notice and allowed full opportunity to be heard in person or by counsel. The Attorney General of Canada opposed Mr. Abou-ELMaati's application for standing taking the position that he does not have a substantial and direct interest in the Factual Inquiry. I have no doubt that in opposing the application counsel for the Attorney General was well aware of section 13.

It may be that Mr. Abou-ELMaati's participation in the evidentiary portion of the hearings will warrant the opportunity to be involved in other aspects of the Inquiry including making closing submissions. That is not yet clear and I will defer my ruling with respect to future participation.

Where Mr. Abou-ELMaati is represented by counsel I recommend that the Government pay for one counsel, and fees and disbursements should be paid in accordance with the guidelines.

5. Mr. Youssef Almalki

Mr. Youssef Almalki has applied for standing. He states that his brother, Mr. Abdullah Almalki, was detained and tortured in Syria for almost two years. He seeks standing on the ground that "Mr. Abdullah Almalki's case and Mr. Arar's case may be strongly intertwined"; and because it is unclear when his brother will return to Canada. I understand Mr. Youssef Almalki to effectively be applying for standing on his brother's behalf.

Disposition:

Mr. Abdullah Almalki is in the same position as Mr. Abou-ELMaati except perhaps that he may not be available to give evidence should the Inquiry wish to call him as a witness. My disposition with respect to Mr. Abou-ELMaati applies equally to Mr. Abdullah Almalki, and I need not repeat those reasons here.

Commission counsel are presently in the investigative stage of the Inquiry. Should the situation with respect to Mr. Abdullah Almalki change, he or his counsel will be notified and his application for standing will be considered further at that time.

Mr. Abdullah Almalki is entitled to be represented by counsel if he testifies. If evidence relating to Mr. Arar should refer to Mr. Abdullah Almalki, he should be entitled to have counsel represent him with respect to that evidence if he chooses.

I recommend funding for Mr. Abdullah Almalki for one counsel whose fees and disbursements shall be paid in accordance with the Government guidelines for those matters referred to above.

6. Mr. Muayyed Nureddin

Mr. Nureddin is a Canadian citizen of Iraqi origin. He says he was detained and tortured in Syria. Mr. Nureddin submits that he has a substantial and direct interest in the subject matter of the Factual Inquiry for two principal reasons. He states that he experienced difficulties similar to those experienced by Maher Arar, and he believes Canadian officials played a role in his detention and torture in Syria. He submits this Inquiry is mandated to determine the extent to which racial profiling and systemic racism played a role in what happened to Maher Arar. He submits that a further investigation of what happened to him would assist this Commission in putting into context what happened to Mr. Arar, and would particularly assist me in determining the extent to which racial profiling and systemic racism played a role. He also seeks funding.

Disposition:

I am not prepared to make a grant of standing for Mr. Nureddin at this point in time. It is not clear that Mr. Nureddin will be called as a witness. If he is, he will be entitled to have counsel for that purpose.

Moreover, it is not anticipated at this point that the evidence relating to Mr. Arar will involve Mr. Nureddin.

Commission counsel are presently in the investigative stage of the Inquiry. Should the situation with respect to Mr. Nureddin change, his counsel will be notified and his application for standing will be considered further at that time.

B. Intervenor Standing

1. Introduction

There are sixteen organizations which have applied for standing which I am satisfied do not have a substantial and direct interest in the Factual Inquiry but which should be granted intervenor standing. I will address each of these applicants individually below. However, for the sake of avoiding repetition, I will start out by making some general comments.

All of these applicants are sympathetic to Mr. Arar. Many were involved in the efforts to have Mr. Arar returned to Canada and in the public campaign to have the Government call this Inquiry. Each of these applicants have a genuine concern in some of the issues raised in the Factual Inquiry. These applicants bring a variety of perspectives to these issues.

Some represent different points of view of the Arab community. Others approach the Inquiry from Islamic or Muslim perspectives. Still others have a primary focus directed at human rights and civil liberties, while others, some international, are concerned about international relations and the prevention of torture.

These applicants also have different experiences and expertise as it relates to their

particular perspective.

I am not persuaded at this time that any of these organizations have the type of connection to the matters raised in the Factual Inquiry that meets the “substantial and direct interest” test. It must be remembered that the Factual Inquiry aspect of my mandate for which they seek standing is an investigative, fact-finding process. The recommendation and preventative part of my mandate is found in the Policy Review.

As I said above, the mandate for the Factual Inquiry directs me to investigate and report on the actions of Canadian officials in relation to Mr. Arar. Subparagraphs a(i) to (iv) each refer to Mr. Arar. Subparagraph a(v) directs me to consider any other circumstances directly related to Mr. Arar that I consider relevant to fulfilling my mandate. Clearly the mandate is focussed on the events involving Mr. Arar and no one else.

I have concluded that the interests asserted by the applicants to whom I grant intervenor standing do not meet, at least at this point, the legal test of having a “substantial and direct interest” in the Factual Inquiry. For example, while the Arab and Muslim/Islamic organizations assert an interest based on the premise that what happened to Mr. Arar resulted from racial profiling, systemic discrimination and the way governments have treated their communities in the post 9/11 era, and while evidence about those matters may be helpful in putting what happened to Mr. Arar in context, I do not consider, at least at the present time, that this interest meets the “substantial and direct interest” test. However, as I have noted, I am committed to ensuring that the Factual Inquiry is thorough and that it examines the causes of what happened to Mr. Arar from an individual, organizational and systemic perspective. The applicants to whom I grant intervenor standing have established their particular areas of expertise and experience, and their genuine concern about these issues, and I believe they can make a valuable contribution to this Inquiry.

I have described the attributes of intervenor standing above. Unless otherwise indicated each organization or coalition shall have those opportunities.

For purposes of simplifying the process and for purposes of making the best use of Government funding, I have grouped some applicants into groups or coalitions. I am flexible with respect to coalitions. If any organization seeks to join or separate from a coalition they are free to do so. However, my recommendations with respect to funding are premised, as I set out below, on certain coalitions being formed. Let me then turn to each applicant.

2. Arab and Muslim/Islamic Groups

(a) Canadian Islamic Congress

The Canadian Islamic Congress (CIC) is a non-profit national Muslim organization. The CIC has been in existence for just under a decade. The CIC lobbied the Federal Government for a full inquiry into the Maher Arar matter.

The CIC is concerned with what they submit is racial profiling of members of the Muslim community by national and local law enforcement agencies, including the RCMP and CSIS. They state that while Commission counsel has the primary responsibility for representing the public interest at the Factual Inquiry, they feel that the Inquiry would benefit from a Muslim perspective. The CIC proposes to call expert evidence regarding the present experience of the Muslim community with respect to law enforcement, particularly the RCMP.

Counsel indicated that members of the Muslim community feel threatened, fearful and angry at “Islamophobia”. The CIC would use their expertise to link “Islamophobia” with racial profiling as it is used by the police, the RCMP and CSIS; the impact of racial profiling on the Muslim community; and their expertise in social therapy. They allege that there is a lack of cultural and religious sensitivity on the part of law enforcement officers including the RCMP. Their counsel confirmed that the interest which has led them to seek standing is racial profiling and the stereotyping of Arab and Muslim people.

(b) The National Council on Canada-Arab Relations

The National Council on Canada-Arab Relations (NCCAR) is a national organization that was founded in 1985. The mission of the NCCAR is “to build bridges of understanding and cooperation between Canada and the Arab world”. Their objectives include to promote and assist programs that increase Canadian awareness and knowledge of the Arab world; to expand links between Canadian and Arab institutions; to achieve a fair and balanced coverage of social, political and economic events in the Arab world; and a greater recognition of the contributions of Arab-Canadians to Canada. The NCCAR has been supportive of Mr. Arar, and urged the Arab League to intervene with respect to Mr. Arar’s treatment.

The NCCAR submit that the treatment of Mr. Arar, a Canadian citizen of Arab descent, is of substantial and direct concern as it impacts directly on Arab-Canadians. The conduct also has significant implications regarding the security of Arab-Canadians in Canada and elsewhere, and on Canada’s relations with Arab countries. The NCCAR approaches these issues “from the perspective of an organization whose mandate since its inception has been to study and promote international Canadian-Arab relations”.

The NCCAR identifies its expertise in international relations; governmental and legal constructs, and the sharing of information between governments. They have a wide knowledge of the workings of a variety of Arab governments. Although they are concerned with racial profiling, their counsel acknowledged this is not their area of expertise.

(c) The Muslim Community Council of Ottawa-Gatineau

The Muslim Community Council of Ottawa-Gatineau (MCCO-G) is an umbrella organization of several Muslim organizations within the National Capital Region and across Canada. It is a non-profit organization whose mission is to encourage Canadian Muslim organizations in the Ottawa-Gatineau region to work together harmoniously to establish and support

Islamic institutions, principles and practices that help build happy families in a safe and secure community, and to work with other organizations across Canada to address common issues affecting Muslims. The MCCO-G is comprised of a total of 29 organizations engaged in a range of religious, social, educational and cultural activities.

The MCCO-G seeks standing to the extent of its interest on issues involving race relations, cross-cultural sensitivities, and the interaction of police and other officials with racial and cultural minorities. The MCCO-G has been supportive of Mr. Arar and his family throughout. They identified Mr. Arar and his family as active participants in the Ottawa Muslim community, and cite proximity to and familiarity with Maher Arar and his friends, and the impact of his arrest as having a powerful and negative impact on Muslims in the Ottawa-Gatineau region. They state that other members of the Canadian Muslim communities have experienced various degrees of negative episodes and experiences with intelligence and law enforcement agencies in the wake of the September 11, 2001 tragedy, which they perceive as discrimination on the basis of religion.

(d) Canadian Council on American-Islamic Relations

The Canadian Council on American-Islamic Relations (CAIR-CAN) is an Ottawa-based national organization that represents Canadian Muslims through community education, media engagement, anti-discrimination resolution and public advocacy. They represent three national Canadian Muslim organizations, and 112 local Canadian Muslim organizations. CAIR-CAN has expertise in the legal and policy issues arising from the Arar case, including the context of issues that affect Canadian Muslims in the post-9/11 security environment. I note that they identified the MCCO-G as one of their participating organizations.

CAIR-CAN has been distributing a pocket guide for Canadian Muslims entitled "*Know Your Rights*", advising Muslims what to do if CSIS or the RCMP tries to interrogate them about terrorism. This is reflective of what their counsel referred to as a "community under siege"

since 9/11, and their particular concern and expertise in racial profiling.

CAIR-CAN was very active in the campaign to secure Mr. Arar's release and attended meetings with senior officials from the Canadian and American governments. Their 2003-2004 Annual Review contains a statement from Mr. Arar that CAIR-CAN was the first organization to support his wife, Dr. Monia Mazigh, in her efforts to obtain his freedom.

CAIR-CAN is jointly applying for standing with the Canadian Arab Federation and I rule on this joint standing application below.

(e) The Canadian Arab Federation

The Canadian Arab Federation (CAF) was founded in 1967 as a national, not-for-profit, umbrella organization. The CAF's mandate is to articulate, defend and otherwise pursue the interests of Canadians of Arab origin through maintaining relationships with all three levels of government, liaising with the media, and forging partnerships with other equity-seeking organizations. They indicate that their substantial and direct interest lies in the fact that the CAF is uniquely positioned to represent the interests of Canadian Arabs. This includes the existence of racial and religious profiling of Arabs in Canada by state agents; the effectiveness of oversight and accountability mechanisms for law enforcement and intelligence agencies; the civil and human rights implications of public legislation; human rights and international principles; the nature and details of Canada-U.S. national security relations; and the status, protocol and legal implications of information sharing with foreign security and law enforcement agencies.

Counsel for the CAF submitted that they are deeply concerned with the human rights abuses suffered by Arab Canadians as a result of the new national security agenda. Mr. Arar suffered as he did because he was an Arab Canadian, and Arab Canadians identify deeply with Maher Arar. Counsel identified six main areas of interest to the CAF: (1) racial profiling; (2) security stereotyping; (3) flawed intelligence gathering in minority communities; (4) information sharing practices and protocols; (5) discrimination and marginalization; and

(6) human rights abuses. Counsel stated that an overriding concern is the proper balance between national security and the protection of civil liberties.

(f) The Muslim Canadian Congress

The Muslim Canadian Congress (MCC) is an unincorporated non-profit association created in March, 2002 with the objective of providing a voice to Muslim Canadians who are not represented by existing organizations. They state that the primary objective of the MCC is to identify, articulate, defend and otherwise pursue the interests of the Canadian Muslim community, as well as out-reach and education within the non-Muslim Canadian community. The MCC is seeking to intervene on issues raised with respect to the discrimination on the basis of religion concerning Muslims. They also raise the issue of racial profiling of Muslims in Canada, and the recruitment and use of Muslims as informers by intelligence agencies.

The MCC is seeking the right to file written closing submission at the Factual Inquiry, and to be involved in the Policy Review. They agreed to be part of a coalition to share a single grant of standing.

Disposition:

Three of these organizations - CAIR-CAN, the CAF and the MCC - have agreed to be involved in a coalition. That coalition shall be granted intervenor standing. Each of these organizations is concerned with issues of racial profiling, systemic discrimination and the impact on the Arab and/or Muslim communities of post 9/11 government actions. It is premature to determine to what extent these issues will be relevant to the Factual Inquiry. However, it may be that this coalition can play a role helpful to Commission counsel in developing evidence and identifying issues in these areas. I do not foreclose the possibility that at some point this coalition could be permitted to participate in the examination of witnesses in these areas.

The other three organizations – CIC, the NCCAR, and the MCCO-G – have not sought to be joined in a coalition. These organizations are each granted intervenor standing.

I accept the reasons why they may choose not to join a coalition. Different groups represent different constituencies and different perspectives. For example, the NCCAR is concerned about issues of racial profiling, but it is also concerned about international relations and the sharing of information between states.

Although I grant each a separate grant of intervenor standing, I would urge them to consider if their interests in relation to the Factual Inquiry can be accommodated through a single representation. If so, that would have to have the effect of streamlining the process. If not, I understand.

As to funding, I recommend that the Government provide funding for two counsel for the six Arab and Muslim/Islamic organizations for the Factual Inquiry. As I said, I recognize that some have different constituencies and different perspectives. However, I am satisfied that funding for two counsel is sufficient to provide adequate representation for the different interests.

Although I will not at this point recommend to whom the funding will be directed, I consider the coalition referred to above as a prime candidate to receive funding. I would ask that the six organizations discuss the matter and present a plan. If they are unable to reach agreement by May 17, 2004, I will make a ruling.

As to the amount of funding I recommend that each counsel be permitted a maximum of forty hours in order to make submissions with respect to the Rules, the *in camera* hearings, the opening submissions and other matters prior to closing submissions. I will make a recommendation with respect to the amount of time permitted for closing submissions later in the Inquiry.

3. Civil Liberties and Canadian Democracy/Sovereignty

(a) British Columbia Civil Liberties Association

The British Columbia Civil Liberties Association (BCCLA) is a society incorporated in 1963 pursuant to the *Society Act*, R.S.B.C. 1996, c. 433. The objectives of the BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights. The BCCLA has a long history and involvement with national security and intelligence, anti-terrorism legislation and police accountability. In 1978 and 1979, the BCCLA made submissions to the McDonald Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, and have continued to participate in subsequent reviews of CSIS.

The BCCLA submits that its long standing concern, involvement and influence in national security, intelligence and policing issues in Canada and its acknowledged expertise in these areas “means it has a direct and substantial interest in the rights of not only one citizen such as Maher Arar, but all or any citizen whose rights or freedoms are similarly at risk”. It identifies a unique interest in ensuring that Canadian legislation, institutions, policies and practices are designed to protect those civil liberties, and asserts a substantial and direct interest as information resulting from this Inquiry will be relevant to the work that the BCCLA does in assisting individuals with complaints about the RCMP and other security and intelligence agencies.

Counsel identified the BCCLA’s substantial and direct interest as: (1) the BCCLA represents the civil liberties of all Canadians; (2) an interest in the outcome, to ensure it never happens again; and (3) their role in policy-making and the eliciting of relevant facts. Counsel identified a particular interest and expertise, as demonstrated through the BCCLA’s participation in the APEC Inquiry and court interventions, on principles relevant to *in camera* hearings and the conditions thereto.

(b) The Minority Advocacy and Rights Council

The Minority Advocacy and Rights Council (MARC) is a non-profit corporation formed in 1991 for the purpose of monitoring, assisting, sponsoring and undertaking selected litigation concerning human rights legislation and the *Canadian Charter of Rights and Freedoms* in the promotion and protection of minority rights. MARC's mandate is to address issues related to race, national and ethnic origin, colour and religion in the area of human rights and social justice and to work towards the elimination of racial discrimination and systemic inequality.

MARC submits that this Inquiry raises issues of freedom of conscience, religion and association (*Charter* section 2), the mobility rights of citizens (*Charter* section 6), the right to life, liberty and security of the person (*Charter* section 7), and equality rights (*Charter* section 15). MARC submits that these issues are raised in the context of section 27 of the *Charter*, which recognizes the multicultural heritage of Canadians. They submit that the Inquiry must "consider the more precarious position of minorities in enjoying these legal and constitutional rights particularly where, as here, the fact that Mr. Arar's membership in a minority group was a factor in the events".

Counsel submits that MARC will assist the Inquiry in obtaining facts, and they also have a particular interest in oversight and policing issues.

(c) Canadian Labour Congress

The Canadian Labour Congress (CLC) is affiliated with approximately 60 public and private trade union organizations representing approximately 2.6 million members. The CLC identifies three major issues that they say arise from or may explain the actions of Canadian officials in relation to Mr. Arar, which they identify as their substantial and direct interest. The first issue is human rights and racial profiling. Secondly, they state that they represent workers who are or may be directly affected by the actions of Canadian officials. For example, members of their affiliate trade unions are employed in the transportation sectors and have job duties which require them to regularly travel outside the country.

The CLC's counsel submitted that the Terms of Reference require me to examine not only what happened, but why. This will require an examination of the policy context in which the actions of Canadian officials are placed. On this point, counsel submitted that some of their affiliated members are members of PSAC who are called upon to implement government policies relating, for example, to customs and immigration.

The third aspect identified by the CLC is that of sovereignty. They state that the case of Mr. Arar "illuminates the serious erosion of Canadian sovereignty that has become an increasingly common feature of Canada-U.S. relations", and are particularly critical of any form of two-tiered citizenship in which Canadian citizens of colour or those born in poorer countries are accorded a lesser status, as they say appears to have happened with Mr. Arar.

(d) The Law Union of Ontario

The Law Union of Ontario (Law Union) is an Ontario-based, unincorporated association created in 1974. The Law Union defines its mandate as a commitment to the defeat of oppression on the basis of class, ethnic origin, sex including sexual orientation, age, colour and religion. The Law Union cite a long history of involvement in law reform, and in particular on policing issues including strengthening of public complaints procedure, ensuring effective civilian oversight, combatting the use of excessive force and raising awareness about racial and cultural sensitivity. The Law Union have been involved in a number of national security cases at all levels of court in Ontario, the federal courts and the Security Intelligence Review Committee. The Law Union submits that they would make a special contribution with respect to the use of informers, the apparent lack of understanding of cultural issues by the RCMP and INSET teams, the transmission of intelligence information to agencies of countries that engage in torture and detention without trial, and the credibility or reliability of information obtained or provided by the RCMP and CSIS.

(e) International Civil Liberties Monitoring Group

The International Civil Liberties Monitoring Group (ICLMG) is a pan-Canadian coalition of civil society organizations that was established in the aftermath of the September 11, 2001 terrorist attack in the United States. The ICLMG coalition brings together over 30 groups, including a number of the other applicants such as Amnesty International, the CAF, the CLC, and the Council of Canadians. The mandate of the ICLMG is to defend civil liberties and human rights as set out in the Canadian *Charter of Rights of Freedoms*, federal and provincial laws and international human rights instruments. The ICLMG is also involved in the dissemination of information relating to human rights in the context of counter-terrorism and concern with Canada's anti-terrorism legislation and security policies.

The ICLMG has actively been involved in the campaign for Mr. Arar's release, and supported the calling of this Inquiry.

The ICLMG has indicated they are willing to cooperate in a coalition.

(f) Council of Canadians and the Polaris Institute

The Council of Canadians is a not-for-profit organization founded in 1985. The central interest of the Council of Canadians is the erosion of Canadian sovereignty and the democratic process. The primary objectives of the Council are safeguarding social programs, promoting economic justice, renewing democracy, asserting Canadian sovereignty, preserving the environment and advancing alternatives to present trade policies.

The Polaris Institute is a research-advocacy institute founded in 1997. The key focus for the Institute has been the impact of Canada-U.S. relations on sovereignty and democratic policy-making in variety of areas, including the potential for government priorities in the economic and security sphere to negatively impact Canadian sovereignty and the rights of Canadians.

The Applicants submit that their purpose in seeking standing is to "ensure that the policy

and institutional origins of the apparent collaboration that took place between Canadian and U.S. officials be thoroughly examined". They state that in this regard, it is crucial to examine all relevant aspects of Canada-U.S. relations that may have "come into play in creating the policy and institutional context within which the actions of Canadian officials in relation to Mr. Arar were formulated and carried out". Their counsel submits that this Inquiry should examine the extent to which Mr. Arar's fate is symptomatic of a decline in Canadian sovereignty and increased economic integration with the U.S. The Applicants refer to the integration of economic, national security and other policies, which they submit has a corrosive impact on Canadian sovereignty and democracy. It is in this area that they identify their substantial and direct interests and their particular expertise.

Disposition:

Each of these organizations is granted intervenor standing to pursue the interests identified in their applications. At this point none have indicated a willingness to form a coalition.

As to funding, it is important that the civil liberties perspective be fully and forcefully represented at the Inquiry. Accordingly, I recommend funding for two counsel for this group of applicants.

I ask the applicants in this group to have discussions and if possible to present a plan to the Inquiry by May 17, 2004 for how the funding should be allocated. Failing receipt of such a plan, I will issue a ruling.

Let me make a few comments that might be of assistance. At this point, I am not persuaded that the interests raised by the Council of Canadians, the Polaris Institute and the CLC, other than those relating to civil liberties, are sufficiently germane to the mandate of the Factual Inquiry to warrant funding. I consider the BCCLA as a prime candidate to receive a grant of funding. I was very impressed with their presentation and their history of protecting civil liberties in a national security context.

I recommend that the funding for counsel be to a maximum of forty hours for each counsel, plus disbursements, for services prior to closing submissions. I will address closing submissions later in the process.

4. International Human Rights

(a) The Redress Trust, the Association for the Prevention of Torture and the World Organization Against Torture

Three organizations have applied jointly for standing.

The Redress Trust (REDRESS) is an international non-governmental organization with a mandate to assist torture survivors to seek justice and reparations. It is a United Kingdom based organization, and has accumulated a wide expertise on the rights of victims of torture within the United Kingdom and internationally. It has recently completed a comparative study on a reparation for torture in 31 countries worldwide.

The Association for the Prevention of Torture (APT) is a non-governmental organization based in Switzerland which works worldwide to prevent torture and ill-treatment by actively supporting the national implementation of international norms and standards that prohibit torture, contributing to the promotion of control mechanisms; and developing information and training activities for authorities in contact with detainees. It has participated in the adoption of international and regional standards by various organizations and has organized training in conjunction with various police forces on police codes of conduct and human rights issues. The APT suggests that it will bring to the Commission its experience concerning the elaboration and adoption of international legal obligations at the level of national governments and regional organizations of states, particularly in regard to standards for national police forces.

The World Organization Against Torture (WOAT) was founded in 1985 and is based in Geneva. It is the world's largest coalition of non-governmental organizations fighting

against arbitrary detention, torture, and other forms of violence. Its global network comprises two hundred and sixty-six local, national and regional organizations which share the common goal of eradicating such practices and enabling the respect of human rights for all. WOAT frequently intervenes with various governmental authorities and international mechanisms on behalf of those in danger of being returned to countries where they are at risk of being tortured. Support for victims also takes a more general form, through the submission of reports to various United Nations mechanisms. WOAT brings to the Commission a wealth of experience gained worldwide about the practical implementation of international instruments at the national level.

The Coalition has applied for special standing in the Factual Inquiry. They have identified four areas which they would like to participate. First, they have sought the right to make an opening submission on the rules of international law and practice governing the obligations of government officials, including officials of the government of Canada, to protect citizens, residents and other persons under their government's protection from torture at home or abroad, and the implications of the Arar case within the international community of persons concerned with the prevention of torture. This opening submission would be for the purpose of assisting the Inquiry to frame the issues for the Factual Inquiry and subsequent Policy Review. They also seek the ability to apply for leave to examine specific witnesses on the forcible removal of persons to countries where there is a foreseeable risk of torture. The Coalition seeks leave to make submissions on the scope of the Inquiry's mandate or other procedural matters "that may affect the perception, within the international community, of this Inquiry's ability to achieve the mandate established by its terms of reference". They wish to participate in oral consultations in the Policy Review. Finally, they seek the ability to make closing submissions on matters that arise in the course of the Inquiry.

The Applicant organizations are all members of the Coalition of International Non-Governmental Organizations Against Torture (CINAT), an international body composed of seven international non-governmental organizations committed to ending and preventing

torture, to bring torturers to account, providing rehabilitation and obtaining justice and reparations for survivors of torture. I note that Amnesty International, another applicant applying separately, is a member of CINAT.

The Coalition states that they have direct and substantial interest in the subject matter of this Inquiry, more particularly located in their work on the application of international human rights instruments, the prevention of torture, the promotion of the rights of torture survivors, and the practice and jurisprudence of national and international mechanisms for the protection of human rights. The Coalition submits that the Inquiry raise the potential conflict between national security concerns and international human rights.

Counsel indicated that the Coalition members are pleased to share their expertise if Commission counsel or Mr. Arar should request.

Mr. Kevin Woodall, who acts for this group, has indicated that counsel will serve on a *pro bono* basis, and seek funding only for disbursements. Counsel are acting in the highest tradition of the profession, and I thank them for their commitment to *pro bono* representation.

(b) Amnesty International

Amnesty International Canadian Section (English Branch) (Amnesty International) has applied for standing. Amnesty International was extensively involved in Mr. Arar's case commencing two weeks after his detention in the United States. They worked closely with Mr. Arar and his family and other concerned organizations.

Amnesty International does not seek standing to present evidence or examine or cross-examine witnesses but rather, to observe the proceedings and make submissions on occasion, particularly at the close of the Factual Inquiry. Amnesty International has stated that the essential question the Inquiry must address is whether the knowledge, action or inaction of Canadian officials in any way put Mr. Arar at risk of the serious human rights

violations he has experienced. They have also set out a number of specific questions which they submit this Inquiry should address. Amnesty International does not seek funding.

(c) The International Campaign Against Torture

The web site indicates that the goal of the International Campaign Against Torture (InCAT) is to take all necessary and lawful steps to abolish sovereign immunity for all acts of torture, so that the path leading to justice for all victims of torture will be open. It is a non-governmental organization aimed at providing legal aid for victims of torture, and pursuing justice in the courts by holding perpetrators and violating states responsible for their actions.

InCAT identified as their direct interest that one of their founding members has been tortured, and is still involved in litigation with respect to that torture. Counsel indicated they have no objection to being grouped together in a coalition.

(d) The Center for Constitutional Rights

The Center for Constitutional Rights (CCR) was established in 1966. It is a New York based non-profit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. They are one of the leading organizations in the U.S. providing avenues of redress for torture victims.

Since the September 11th attacks, CCR has spear-headed litigation before U.S. and international tribunals to protect fundamental rights to due process for both U.S. citizens and non-citizens, who are impacted by what they state, are the United States administration's counter-terrorism measures. The CCR represents Maher Arar in legal proceedings against United States officials involving his detention in the United States and his removal to interrogation and treatment in Syria. The CCR filed a complaint on Mr.

Arar's behalf with the Federal Court in January, 2004.

The CCR has identified these main areas of its expertise: (1) a history of U.S. policies regarding torture, refoulement and rendition, including covert and overt policies regarding extraordinary rendition; (2) the legal framework within which Mr. Arar's detention and removal took place, including the function and jurisdiction of various executive, judicial and law enforcement branches and agencies; and (3) the legal framework in the U.S. relating to the implementation of the UN Convention Against Torture, including the role of diplomatic assurances. The CCR has agreed to provide assistance to Commission counsel on these issues, if requested.

Disposition:

Each of these organizations other than the CCR is granted intervenor standing. The CCR acts for Mr. Arar in a civil action in the United States. Given that relationship it seems to me that the CCR's interest in the Factual Inquiry can most appropriately be addressed through Mr. Arar's grant of standing.

As to funding, counsel for the coalition of REDRESS, APT and the WOAT indicated that counsel would provide legal services on a *pro bono* basis. He requested, however, that I recommend payment of disbursements. I am in agreement with that request and so recommend.

Consistent with its established policy, Amnesty International does not request any Government funding.

I do not consider it necessary to make any further recommendations for funding with respect to this group. I note that InCAT has no objection to joining with one of the other organizations in this group.

5. Individuals

(a) Ken Rubin

Mr. Rubin is a public interest researcher who seeks standing as an individual citizen. He states that since May, 2003 he has spent considerable time doing access to information and privacy research work for Mr. Arar and Dr. Monia Mazigh. He also notes that he has been an advocate of open government for over 30 years and has been involved in a significant number of cases and hearings in many jurisdictions, and has written extensively on disclosure and privacy protection. He submits that the areas of his contribution would be to monitor and intervene on the need for as much disclosure of the facts as possible, to provide input on government records connected with the Arar case, and to outline issues regarding access to information and privacy requests. He is requesting funding as a senior researcher.

Disposition:

Mr. Rubin's primary interest relates to the basis on which this Inquiry will determine what evidence should be heard *in camera*. He is granted limited intervenor standing for the purpose of making submissions on this issue. I am not persuaded that he should be granted standing to pursue the other issues raised in his application. I make no recommendation as to funding.

(b) Emmanuel Didier

Dr. Didier appeared before me requesting to appear either as an independent expert, or as an expert appointed by the Commission under Section 11(1) of the *Inquiries Act*, R.S.C. 1985, c. I-11. His experience is in both public and private international law and administrative law. This proceeding deals with standing and not with experts, and so I make no ruling on this application at this time.

IV. CONCLUSION

I express my thanks to all of the individuals, groups and organizations who applied for standing and participated in the hearings.