

**Committee of Organizations with Intervenor Status at the Arar Inquiry**  
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**Backgrounder:**  
**The review all Canadians need into Canada's role in the**  
**detention, interrogation and torture of Ahmad El Maati,**  
**Abdullah Almalki and Muayyed Nureddin**

**October 12, 2006**

## JUSTICE O'CONNOR'S RECOMMENDATION

In our final joint submissions to the Arar inquiry, the eighteen organizations with Intervenor Status urged Justice O'Connor to go as far as the evidence allowed to determine whether what happened to Mr. Arar could be linked to a Canadian policy of having Canadian citizens detained, and/or interrogated on their behalf in countries known for practicing torture. We also called on Justice O'Connor to recommend that there be a further process of independent, impartial and expert review that would provide the kinds of answers and public accountability that are so necessary around the cases of Ahmad El Maati, Abdullah Almalki and Muayyed Nureddin.

In his report, Justice O'Connor concluded that in these cases, there was indeed a pattern of investigative practices regarding Canadian agencies' interaction with foreign agencies with respect to Canadians being detained abroad in connection with suspected terrorist activities. Justice O'Connor recommended there should be a process of review into the cases:

*I have heard enough evidence about the cases of Messrs. Almalki, El Maati and Nureddin to observe that these cases should be reviewed and that the reviews should be done through an independent and credible process that is able to address the integrated nature of the underlying investigations. The process that will result from my Policy Review recommendations, if implemented, is one approach that, in my view, would be acceptable. However, there may be delays. Another possibility would be the type of process recommended by Bob Rae, Independent Advisor to the Minister of Public Safety and Emergency Preparedness on questions relating to the bombing of Air India Flight 182, for reviewing the investigations in the Air India case. Whatever process is adopted, it should be one that is able to investigate the matters fully and, in the end, inspire public confidence in the outcome.<sup>1</sup>*

## THE KIND OF REVIEW ALL CANADIANS NEED

On September 28, 2006, Public Safety Minister Stockwell Day told the Public Safety Committee that the government is, in keeping with Justice O'Connor's recommendation in his report from the Commission of Inquiry into the case of Maher Arar, "now pursuing the most efficient, the most capable way" of ensuring the cases of Messrs. Almalki, El Maati and Nureddin are "reviewed through an independent and credible process." We are encouraged that there is now at last the prospect that there will be justice and accountability for these men. It is vital, however, that the review be precisely of the nature and description called for by Justice O'Connor: it must be independent, comprehensive, credible and fair, and conducted in a manner that inspires public confidence.

- **By independent we mean** the review must be designed independently, perhaps with input from Mr. Justice O'Connor himself; the reviewer must be independent

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<sup>1</sup> *Report of the Events Relating to Maher Arar: Analysis and Recommendations*, page 278.

and have the authority to design and control the process of review; and the reviewer must have an independent staff and budget;

- **By comprehensive we mean** the review must examine all Canadian agencies' roles in the events. While the mandate will be to review Canada's role in the three cases, the reviewer must have the authority to look at other relevant cases if they will assist in understanding Canada's practices and policies;
- **By credible and fair we mean** the reviewer must have subpoena powers; the three Canadians must have maximum participation rights and access to the evidence; counsel for the three Canadians must have the ability to test the government's evidence; and there must be a mechanism for addressing national security claims, such as, for example, the designation of a Special Advocate;
- This process must be conducted in a manner that **inspires public confidence**, meaning the review must permit public participation by key Intervenor Organizations who represent the public interest and there must be frequent and meaningful public and media access to the process.

## THE PATTERN OF INVESTIGATIVE PRACTICES

Before the Arar report was released, Intervenor organizations emphasized that even the very incomplete public evidence at the Commission, along with what was already also on public record, left us asking, not if Canadian agencies were complicit in what happened to *Messrs. Arar, El Maati, Almalki and Mr. Nureddin*, but how and why.

The Arar Report has confirmed we were right to be concerned. Justice O'Connor says that because of questions of national security confidentiality and relevance to his mandate, he is not able to disclose much of the evidence he had heard with respect to the other cases. Despite these restrictions, the information he is able to disclose is alarming. Justice O'Connor describes a pattern of investigative practices behind the cases of *Messrs. Arar, El Maati and Almalki*, saying:

- Canadian agencies shared information with foreign agencies that they could use to detain or arrest Canadians.
- Canadian agencies shared information with foreign agencies about Canadians they held in detention — information that could be used in interrogations or legal proceedings against the detainees.
- Canadian agencies continued to pursue investigations of Canadians while they were being detained abroad, "sometimes in conflict with or to the prejudice of diplomatic efforts to have those Canadians released to Canada."<sup>2</sup> Justice O'Connor says this included submitting questions to be asked of Canadians, pursuing the possibility of conducting interviews abroad, and sharing information with foreign agencies for use when questioning Canadians.

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<sup>2</sup> *Analysis and Recommendations*, p.275

- Canadian agencies accepted or relied upon “information that might be the product of torture without conducting an adequate reliability assessment to determine whether or not torture had been involved,” and were “dismissive” or careless about allegations of torture.<sup>3</sup>
- Canadian agencies notified American agencies whenever a Canadian suspected of terrorism-related activities travelled outside of Canada for any reason, and informed American agencies about their intended destinations. Justice O’Connor says that given American practice at the time, it is likely that the American agencies in turn notified the country of destination.

## **SOME OF THE FACTS REVEALED IN THE REPORT**

- Justice O’Connor writes that prior to Mr. El Maati’s November 11, 2001 departure from Canada for Syria, the RCMP exchanged information with US authorities. He writes that it is reasonable to assume that Syria was informed, and that the RCMP was aware that the US authorities had informed Syrian authorities of his arrival there. RCMP Inspector Cabana testified that it was likely that the Syrians detained Mr. El Maati as a result of information provided by the US.<sup>4</sup> Justice O’Connor notes the following communication, which, it is reasonable to assume, refers to Mr. El Maati, because Justice O’Connor finds that the RCMP was not aware of Mr. Almalki’s destination when he left Canada:

*In one internal communication, an RCMP official stated that his agency would have notified the Middle Eastern country of destination of the departure from Canada of a Canadian suspected of terrorist activity if he had not been confident that the Americans would notify that country of the departure. The RCMP had given the American authorities the information concerning the departure of the Canadian. The justification given for this information sharing was that Canada has international obligations in relation to the movement of known terrorists. Upon his arrival in the Middle Eastern country, the Canadian was detained and tortured.<sup>5</sup>*

- Justice O’Connor documents repeated attempts to interview Mr. El Maati while he was in Syrian and Egyptian detention, and Mr. Almalki while he was in Syrian detention. These efforts continued even after Mr. El Maati told consular officials that he had been tortured in Syria.
- While Justice O’Connor finds that the RCMP did not send questions for Mr. El Maati to any foreign agency, he does not discuss the possibility of CSIS or another Canadian agency having done so.<sup>6</sup>

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<sup>3</sup> *Analysis and Recommendations*, p. 275

<sup>4</sup> *Factual Background, Volume 1*, p. 64.

<sup>5</sup> *Analysis and Recommendations*, p. 276.

<sup>6</sup> *Factual Background, Volume 1*, 106.

- Project AO Canada consulted US authorities in December 2001 (or earlier) about questioning Mr. El Maati, in Syrian detention, about Mr. Almalki. An RCMP fax dated January 9, 2002 referred to efforts underway to secure an interview, and American assistance to that end, and requested another attempt, emphasizing a criminal investigation underway in Canada at the time. Inspector Clement's January 25, 2002 notes refer to a discussion between Inspector Cabana and US authorities about what Project AO Canada's position would be if Mr. El Maati claimed he had been tortured.<sup>7</sup>
- Once Mr. El Maati was transferred to Egypt on January 25, 2002, the RCMP continued to discuss the possibility of interviewing Mr. El Maati while he was in detention there, and the issue of torture was raised regarding both Syria and Egypt. A July 2002 briefing note to RCMP Commissioner Zaccardelli from Superintendent Pilgrim at RCMP headquarters said there were indications that Mr. El Maati had been exposed to "extreme treatment" in Egyptian detention. The RCMP continued to consider this to be a concern for DFAIT. Consular officials met Mr. El Maati for the first time on August 12, 2002, at which time he confirmed he had been tortured in Syria.<sup>8</sup> Efforts to interview Mr. El Maati continued even after his torture had been reported to Canadian officials.
- RCMP Inspector Cabana apparently commented that it was possible that Mr. El Maati was lying about having been tortured.<sup>9</sup> The RCMP's Liason Officer responsible for Syria assumed that Mr. El Maati's allegation of torture was an allegation by someone "looking for some leverage to gain whatever he was intending to gain."<sup>10</sup>
- Project AO Canada was concerned that if Mr. El Maati were released and returned to Canada, this would be a national security concern because of threats he had allegedly made, despite the possibility that these were the product of torture.<sup>11</sup>
- While Justice O'Connor finds that Project AO Canada was not aware of Mr. Almalki's departure or destination until after he left Canada, CSIS' knowledge is not discussed. Project O'Canada learned that he was in Syria on May 31, 2002, but the DFAIT's intelligence division already knew. It is not clear whether CSIS was aware of his detention sooner. On May 31, 2002, Project AO Canada attempted to persuade the US to launch an investigation into Mr. Almalki, with a major presentation in Washington, D.C. Justice O'Connor finds that the presentation contained many inaccurate facts about Mr. Arar, but it is unknown whether inaccurate facts were relayed about Mr. Almalki or other Canadians.<sup>12</sup>

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<sup>7</sup> *Factual Background, Volume 1, p. 105.*

<sup>8</sup> *Factual Background, Volume 1, p. 106.*

<sup>9</sup> *Factual Background, Volume 1, p. 109.*

<sup>10</sup> *Factual Background, Volume 1, p. 249.*

<sup>11</sup> *Factual Background, Volume 1, p. 107.*

<sup>12</sup> *Analysis and Recommendations, p. 126.*

- The RCMP made several attempts to gain information from the Syrians, and to gain access to Mr. Almalki in order to question him, while he was in Syrian detention.<sup>13</sup> These efforts continued even after Mr. El Maati reported he had been tortured in the same Syrian detention centre. When it became clear the RCMP would not be able to directly interview Mr. Almalki in Syrian custody, **the RCMP decided to send questions to be asked on their behalf by Syrian interrogators.** Concerns about torture were raised by a junior DFAIT official, Jonathon Solomon, but were seemingly disregarded.<sup>14</sup> Justice O'Connor quotes a memo from Mr. Solomon:

*The RCMP are ready to send their Syrian counterparts a request that Al Malki be asked questions provided by the RCMP, questions relating to other members of his organization. Both ISI and DMSCUS/HOM [Ambassador Pillarella] have pointed out to the RCMP that such questioning may involve torture. The RCMP are aware of this but have nonetheless decided to send their request.<sup>15</sup>*

- Justice O'Connor writes:

*It seems that no one within the RCMP was overly concerned about the possibility that torture might be used to obtain answers to the questions. Some never gave the matter any thought, while others believed the risk was warranted by the "imminent" nature of the terrorism threat being addressed in the RCMP investigation. In any event, the RCMP reasoned that, if DFAIT had no objections, there was no problem. They were encouraged by the fact that the Canadian Ambassador had agreed to have the questions delivered to the SMI.<sup>16</sup>*

- With the knowledge of DFAIT, the questions for Mr. Almalki were translated to Arabic and a cover letter was attached. The cover letter is quoted at length by Justice O'Connor:

*.... Depending on his [Mr. Almalki's] willingness to answer truthfully and depending on the answers he provides to you, a second series of questions has been prepared for him.... we cannot disclose this second set of questions to him until we favourably assess the quality and accuracy of his answers.... Once we assess the answers to the first series of questions, we can then inform you if we are prepared to proceed to the second series of questions...The police unit investigating this matter in Canada is an integrated team composed of personnel from both the law enforcement community and from our intelligence community, the Canadian Security Intelligence Service.... Both agencies are working together in this matter.... I would like to propose that during my next visit to Damascus, [...] I meet with personnel from your agency in order to further discuss this matter.... Also be aware that we are in possession of large volumes of highly sensitive documents and information, seized during investigative efforts or obtained from confidential informants associated to*

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<sup>13</sup> *Factual Background, Volume 1, p. 108.*

<sup>14</sup> *Factual Background, Volume 1, p. 109.*

<sup>15</sup> *Analysis and Recommendations, p. 209.*

<sup>16</sup> *Analysis and Recommendations, p. 211.*

*terrorist cells operating in Canada. Our Service is readily willing to share this information with your Service....*<sup>17</sup>

- Ambassador Pillarella delivered the questions to the Syrian Military Intelligence on January 15, 2003, through Consul Leo Martel. Canadian officials could not have known Mr. Almalki's condition at this time, as he had not received a single consular visit, and indeed, never did.<sup>18</sup>

## OVERVIEW OF THE FOUR CASES

- **Maher Arar** is the first person to survive a so-called extraordinary rendition and tell the world his story. Since then, much has been exposed about the CIA's program of "extraordinary rendition," its dependence on the complicity of other countries, and the role of torture in the so-called war on terror. Investigations have been launched at the Council of Europe and the European Parliament exposing how member states have colluded in the program. And in Canada, we have learned the stories of three other Canadian Muslim men who were under investigation in Canada before being tortured in the same Syrian prison as Mr. Arar: Ahmad El Maati, Abdullah Almalki and Muayyed Nureddin. Like Mr. Arar, they all say their interrogators asked questions that could only have come from Canada.
- **Mr. El Maati**, a Kuwaiti born Canadian with dual Canadian/Egyptian citizenship, was on his way to celebrate his wedding in Syria when he was detained at the Damascus airport on November 12, 2001. He was taken to the Palestine Branch of the Syrian Military Intelligence and kept in a dark, underground cell measuring only three by six by seven feet. He was repeatedly tortured and interrogated about information that could only have originated in Canada. He was forced to sign a false confession he was not allowed to read. On January 25, 2002, he was transported by air to Egypt, where he was subjected to further torture and interrogation until his release almost two years later on January 11, 2004. Mr. El Maati was never charged with any crime.
- **Mr. Almalki**, a Syrian born Canadian, was on his way to visit family in Syria when he was detained at the Damascus airport on May 3, 2002. He was taken to the Palestine Branch of the Syrian Military Intelligence, where he was repeatedly tortured, interrogated about information that could only have originated in Canada, and forced to sign a false confession. He was held in a dark, underground cell measuring only three by six by seven feet for more than fifteen months until being transferred to another Syrian prison in August, 2003. Mr. Almalki was finally released on March 10, 2004, after more than twenty-two months in detention. Mr. Almalki was never charged with any crime.
- **Mr. Nureddin**, an Iraqi born Canadian, was detained by Syrian officials on December 11, 2003 as he crossed the Iraqi-Syrian border on his way back to Canada after

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<sup>17</sup> *Factual Background, Volume 1, p.343.*

<sup>18</sup> *Factual Background, Volume 1, pp. 343-345.*

visiting family in northern Iraq. He too was taken to the Palestine Branch of the Syrian Military Intelligence, where he was repeatedly tortured and interrogated. Syrian interrogators asked Mr. Nureddin the same questions he had been asked by officials in Canada, and forced him to sign documents he was not permitted to read. He was kept in an underground cell before being released on January 13, 2004, after thirty-four days in detention. Mr. Nureddin was never charged with any crime.