

**Committee of Organizations with Intervenor Status at the Arar Inquiry**  
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## **Joint Intervenors' Submission to the Arar Commission Policy Review**

**December 17, 2005**

*This submission is being made jointly by the eighteen organizations with Intervenor Status at the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. They are Amnesty International Canada, the British Columbia Civil Liberties Association, Canadian Arab Federation, Canadian Islamic Congress, Canadian Labour Congress, Council of Canadians, Council on American Islamic Relations (Canada), International Coalition Against Torture, International Civil Liberties Monitoring Group, Law Union of Ontario, Minority Advocacy Rights Council, Muslim Canadian Congress, Muslim Community Council of Ottawa-Gatineau, National Council on Canada-Arab Relations, Polaris Institute, and internationally the Redress Trust, Association for the Prevention of Torture and the World Organization against Torture (OMCT).*

## INTRODUCTION

The Intervenors would like to preface this submission by acknowledging the tremendous work of the Commissioner and Commission Counsel on this policy review process. We are encouraged by the level of discussion and analysis and thank the Commission for inviting further submissions.

The Intervenors have very grave concerns with the proposed “Integrated National Security Review Committee” (INSRC) option outlined in the Commission’s November 25, 2005 discussion paper. We believe this model will not provide sufficient disincentive for abuse or a lasting level of accountability and review.

The Intervenors urge the Commission to instead recommend the creation of a unified, permanent and overarching national security review agency that has jurisdiction and adequate authority to review all federal and provincial agencies engaged in national security work. We believe this is the only viable option for ensuring sustained and effective oversight sufficient to rebuild public confidence in our national security agencies.

## CONCERNS WITH THE INTEGRATED NATIONAL SECURITY REVIEW COMMITTEE

1. **Fragmented approach:** We are alarmed that the INSRC would not conduct its own investigations, and would instead delegate parts of, or the whole investigation to one or more of the existing oversight agencies, possibly playing only a coordinating role. We believe this fragmented approach fails to acknowledge that when it comes to integrated national security operations, the whole is more than just the sum of its parts. Effective oversight of the interrelationships between agencies participating in an integrated operation requires a holistic approach.
2. **Shortsightedness:** We do not believe that the INSRC model sufficiently addresses the long term expectation that integrated national security operations, and the technologies that facilitate them, will be the norm, not the exception. This proposal seems to take an incremental approach to reforming oversight. Canada needs a permanent, well-resourced organization that can provide ongoing, comprehensive review of national security operations, not a temporary committee structure.
3. **Vulnerable to non-cooperation:** There is a significant risk that any chairperson, no matter how high-profile, would not have adequate power or leadership to compel or direct existing oversight agencies to cooperate with the INSRC’s work. The December 9, 2005 submission by the CSE Commissioner in response to the INSRC proposal asks “how much review can the security and intelligence community be expected to bear?” We believe this is indicative of the entrenched culture of secrecy and a foreshadowing of what we can expect in terms of non-cooperation from these agencies. Any model that relies on volunteerism or consensus in this highly territorial and secretive environment is at risk of being sidelined.
4. **Preserving inequities:** We believe the INSRC model would preserve existing inequities between existing oversight bodies and entrench a lack of oversight of key agencies that now operate without effective review. The proposal outlines enhanced powers for the Commission for Public Complaints, but does nothing to address the current ineffectiveness of the CSE Commissioner and the non-existence of review bodies for the other “Big Four” that play a critical role in national security: The Canadian Border Services Agency; Citizenship and Immigration Canada, Transport

Canada, and the Department of Foreign Affairs and International Trade. The long list of 26 agencies provided by the government as potentially involved in national security work is, with respect, a red herring. The lack of accountability of the Big Four must be addressed in any recommendation.

5. **Complex complaints process:** The INSRC model offers five ways for launching a complaint, and we believe this is unnecessarily complex. It also describes the complaint intake role of the INSRC as “limited.” We very firmly believe that there must be one organization that the public knows deals with complaints relating to national security operations – an organization not directly tied to the very agency a complainant may be concerned about. This is especially key as it is often unclear to complainants what agencies are involved in their cases.
6. **No proactive audit process:** It is widely accepted that proactive audits are critical to effective review, and yet the INSRC proposal does not appear to address this capacity. We can only assume that if the INSRC were mandated to initiate audits, that it would first have to negotiate this with the Committee. We are certain a model that relies on audit planning by negotiation facilitated by the Chair of such a committee would fail to ensure adequate review.
7. **Political and public accountability:** While we are encouraged that the INSRC model proposes conducting public outreach about the complaints process and reporting on “accountability issues relating to Canada’s national security practices and trends,” little more is said in the discussion paper about the process or frequency of public reporting by INSRC. We believe that annual public and parliamentary reporting is key, especially in the context of ministerial powers granted under anti-terrorism legislation. Political accountability also relies on the power of corresponding parliamentary “accountability bodies” and we address that issue more below in our discussion about the Parliamentary Committee.

## THE VIABLE SOLUTION: ONE NATIONAL SECURITY REVIEW AGENCY

Previous submissions made by Amnesty International, the British Columbia Civil Liberties Association, the Canadian Council on American Islamic Relations/Canadian Arab Federation, the International Civil Liberties Monitoring Group and the international Intervenor Redress Trust, the World Organization Against Torture, and Association for the Prevention of Torture recommended one overarching agency for reviewing national security activities of all agencies of government.

All Intervenor consider this the only viable option that can prevent and address the types of abuses that led to the torture of Maher Arar and the detention and torture of Abdullah Almalki, Ahmad El Maati and Muayyed Nureddin. This agency must have, at the least, the following characteristics:

1. **One oversight agency for all national security operations:** The agency must have jurisdiction and adequate authority to review all federal and provincial agencies engaged in national security work. The agency would absorb SIRC and the CSE Commissioner, and attract key personnel from the CPC, in order to consolidate existing expertise and knowledge. Much like SIRC does now, the agency should have staff with security clearance so that it can have legal authority to access information and the power to subpoena any individual to compel testimony or produce documents.

2. **Accessibility for complainants:** The agency must be responsible for all aspects of complaints related to national security operations including receiving, initiating, investigating and determining the merits of a complaint. Complainants must be able to directly lodge a complaint with this new agency. If an investigation launched by the CPC uncovers a national security component, the CPC must be compelled to automatically transfer the investigation to the overarching agency. Furthermore, a key component of accessibility is public awareness, which we address below.
3. **Proactive audit function:** The agency must have a legislative obligation to undertake proactive audits of the national security operations. A unified agency is much more likely to engage in effective audits.
4. **Political and public accountability:** The agency must report annually to the public as well as annually reporting confidentially to a Parliamentary Committee on National Security. However, the power and credibility of any oversight agency depends on the power and credibility of its parliamentary and political counterparts. The Parliamentary Committee must have access to information in order to follow up on reports with recommendations to amend or introduce legislation. On November 24, 2005, the Minister of Public Safety and Emergency Preparedness tabled Bill C-81, the *Act to Establish the National Security Committee of Parliamentarians*. This legislation would allow ministers to restrict the committee's access to information subject to solicitor-client privilege; information about a particular criminal investigation, national security investigation or operation or a military operation; information obtained in confidence from a foreign state or international organization of states; and information which could lead to the identification of sources of information or provide details about those sources or about operational methods. With these sweeping restrictions in place, it would appear that this parliamentary committee has no more access to information than CPAC viewers did to information at the Arar Commission. It is crucial that the Commission's recommendations address the serious shortcomings of this proposed legislation.
5. **Public education and outreach:** The agency must have a mandate and a sufficient budget for conducting ongoing and robust programs of outreach and education to inform the public about its work, especially with respect to the complaints process. Annual reports to the public offer an excellent vehicle for communicating the agency's mandate, and its role in receiving complaints. The agency should also report on accountability and human rights issues arising in relation to national security operations.

## CONCLUSION

The Intervenors understand that the option we propose is a challenging one. However, the case of Maher Arar, precisely because it revolved around grave human rights abuses including torture, created an unprecedented public credibility crisis for our security agencies that demands an unprecedented solution. In addition, what happened to Maher Arar is just one example of the human cost of affording security agencies sweeping new powers without adequately addressing the need for accompanying oversight. We hope the Arar Commission's Policy Review process will rise to the challenge and use this rare opportunity to recommend a lasting, effective, and modern solution that will both rebuild public trust and enhance national security operations.