

The Right Honourable Paul Martin  
Prime Minister of Canada  
80 Wellington Street  
Ottawa, Ontario  
K1A 0A2

March 8, 2005

Dear Prime Minister,

I am writing this letter to you on behalf of all 18 organizations that have been granted intervenor status before the Commission of Inquiry into the actions of Canadian Officials with respect to Maher Arar.

Prime Minister, all of our organizations have very serious concerns with respect to the approach the government has taken to the inquiry, which has effectively meant that the public dimension to what is meant to be a public inquiry has been almost entirely curtailed. We urge that you intervene personally to ensure that the government's participation in and cooperation with the inquiry is carried out in a manner and spirit that maximizes public access to the important evidence and findings that is beginning to emerge through the *in camera* process.

This inquiry was called because Maher Arar has a right to truth and accountability for what has happened to him. It was also called because there was considerable public interest in and distress about the case; and a clear public interest in understanding what had transpired. Maher Arar wants answers, so too does the public – and we all want to ensure that if there has been wrongdoing or shortcomings, those problems are publicly exposed and discussed so that any necessary reforms in law, policy or practice can be implemented. These goals cannot be met, and the objectives of the inquiry cannot be fulfilled, if there is not reasonable and timely disclosure of information to the public.

Beginning during the latter part of 2004, when *in camera* proceedings of the inquiry were examining witnesses and documentary evidence from CSIS and the RCMP, concern mounted that the government's interpretation of the scope of national security and other grounds for keeping information confidential was unduly broad. That culminated in the government's response to Commissioner O'Connor's attempt in December to publicly release a summary of evidence he had heard regarding CSIS' involvement in the case.

The Commissioner made it clear that he had intentionally prepared what he considered to be a conservative and reasonable summary. He intimated that there was further information that he personally believed to be appropriate for public disclosure that he would not seek to disclose at this time. He did so because he wanted to avoid disagreement with the government and because he believed that it was important to make information available to the public.

However, the government did object to large portions of Commissioner O'Connor's proposed summary. The government's own proposal of what they believed suitable for public disclosure quite simply made a mockery of the very notion of public disclosure and was essentially a list of some of the questions that had been considered by the Commission during the CSIS hearings, with no answers or information related to those questions. It would have provided no meaningful disclosure to Mr. Arar or to the public. The matter ended up in Federal Court, and Justice Lutfy ordered the government and the Commission to negotiate and find a resolution to the impasse. It is our understanding that those negotiations were not successful.

In the aftermath of this experience, the Commission has now indicated that it intends to adopt a new approach to dealing with *in camera* evidence. Under that proposal the Commissioner would no longer seek to prepare and release intermittent summaries of the evidence. The impetus for the proposal is that the anticipated ongoing disputes with the government about those summaries, even when prepared in a conservative manner, would be time consuming and pose an excessive demand on the Commission's limited resources. Under this process, the Commissioner intends to release an interim report in the fall, after the public phase of hearings this spring is complete.

If adopted, this proposal would mean that no information about evidence heard during the *in camera* sessions involving CSIS, RCMP and government witnesses will be available to the public or to Mr. Arar, before the public sessions of the hearing. This significantly impairs the ability of intervening parties to participate in the hearing in any constructive way. It also means that it may well be impossible for Mr. Arar himself, and members of his family, to testify during the public phases. It simply is not tenable to expect anyone in his position to give evidence in a judicial proceeding without having any meaningful disclosure of evidence.

Prime Minister, your government called a public inquiry. But as a result of government obstruction this is fast becoming anything but that. This has become a public inquiry in name only, and in practice has become a private process from which the person most directly implicated is now effectively barred from participating in any meaningful way. It has become a public inquiry which excludes the public.

When the inquiry was established, the government appointed an accomplished and highly-respected jurist as Commissioner. He in turn has appointed well-qualified

lawyers, academics and others to serve as *amicus curiae*, commission counsel and expert advisors. It is their careful and thoughtful work that has resulted, for instance, in the proposed summary of CSIS evidence. There is a thorough and impartial process in place to ensure that government concerns about national security (and other matters that might require some evidence to remain confidential) are addressed. We urge the government to cooperate with and respect that process. We would point out as well that advancing an overly-broad and near-absolutist position regarding national security here serves ultimately to undermine the credibility of legitimate and pressing national security claims the government may make in other venues.

Carriage of this file and, we assume, responsibility for formulating and approving the government's strategies and approaches has rested primarily with Minister of Public Safety and Emergency-Preparedness Anne McLellan. It is not clear to us what role if any has been played by Geoff Regan, the acting Minister of Justice and Attorney General who has been assigned responsibility for matters related to Maher Arar. Please intervene with these two Ministers and make it clear that you expect the government to refrain from taking positions which obstruct the ability of the Commissioner to fulfill what he was specifically mandated to do in his Terms of Reference, namely to: "maximize disclosure to the public of relevant information."

The government took a strong stand for justice and accountability in convening this public inquiry. It is imperative that the government maintain those same objectives in how it now conducts itself during the course of the hearings. But positions taken over these past months have instead undermined and obstructed those goals. Your personal involvement is very much needed to reaffirm the government's commitment to the critical principles that are at stake.

Sincerely,

Alex Neve, Secretary-General, Amnesty International

On behalf of all of the organizations intervening at the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar:

Amnesty International Canada  
British Columbia Civil Liberties Association  
Canadian Arab Federation  
Canadian Islamic Congress  
Canadian Labour Congress  
Council of Canadians  
Council on American Islamic Relations (Canada)  
International Civil Liberties Monitoring Group  
International Coalition Against Torture  
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

Joint intervenors: Redress Trust, Association for the Prevention of Torture and  
Organisation mondiale contre la torture

cc. Commissioner Dennis O'Connor