



Effective Oversight:

Protecting Human Rights in the Context of Canadian National Security Investigations

Submissions to the Policy Phase of the
Commission of Inquiry into the Actions of
Canadian Officials in relation to Maher Arar

Amnesty International Canada
www.amnesty.ca

June 6, 2005

Preface

These are Amnesty International's preliminary submissions to the policy phase of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, and outline the organization's initial recommendations concerning an independent, arm's-length review mechanism for the RCMP's activities with respect to national security.¹

Introduction

In any country, any society, police play a central role in upholding and defending human rights. The actions of police also have the potential to directly or indirectly cause serious violations of human rights. Amnesty International considers effective oversight of police operations to be a vital means of ensuring that police operations are consistent with human rights protection and that any shortcomings or transgressions are identified and addressed. That applies to conventional police operations and certainly extends to policing in the area of national security.

Amnesty International is of the view that there is a need for an improved mechanism for oversight of the RCMP's activities with respect to national security. We consider that to be necessary for two principal reasons:

- The existing Commission for Public Complaints against the RCMP has found it difficult to carry out effective oversight of the RCMP in the area of national security. The Commission's Chair has repeatedly raised this concern publicly, and reiterated her call for strengthened and clarified powers in her submission to this Inquiry.²
- Amnesty International's experience in raising human rights concerns and seeking clarification and answers as to police and security agency conduct in cases such as Maher Arar, Abdullah Almalki, Ahmed Abou El-Maati and Muayyed Nureddin highlights the ways in which the RCMP cooperates closely with other police and security agencies, including the Canadian Security Intelligence Service, the Ontario Provincial Police and others. The connections and relationships between and among these various agencies appears to be complex and multi-layered. In our view, the present agency-specific approach to oversight is a cumbersome and likely ineffective means of ensuring comprehensive review of the entirety of a specific national-security operation.

¹ Amnesty International may provide further submissions at a later date. Despite a full year of this inquiry, there has been very little public disclosure to this point in time as to the details of RCMP operations in Maher Arar's case. When that information is ultimately more fully disclosed Amnesty International may have additional recommendations as to a review mechanism.

² Submissions of the Commission for Public Complaints Against the RCMP, February 21, 2005.

A New Model for National Security Oversight in Canada

In line with the above-noted concerns, Amnesty International recommends that a new body, charged with responsibility for ensuring oversight of police and security agency operations in the area of national security be created. The mandate, composition and powers of that body should be consistent with the following principles:

- **COMPREHENSIVE NATIONAL SECURITY MANDATE**

It should be one over-arching body with a mandate tied to function – national security investigations – rather than to a specified agency or agencies. As such its powers should extend to the national security activities of all policing, security and intelligence bodies in Canada, including those identified by the Chair of the Commission for Public Complaints against the RCMP in her submissions to this Commission of Inquiry: the RCMP, CSIS, the Communications Security Establishment, provincial and municipal police forces, Public Safety and Emergency Preparedness Canada, the Department of National Defence and the Canadian Forces, Foreign Affairs Canada, the Financial Transactions and Reports Analysis Centre of Canada, the Canada Border Services Agency, Transport Canada, the Canadian Air Transport Security Authority, the Canadian Coast Guard and Natural Resources Canada.

- **COMPLEMENTARITY**

The review body should complement other forms and processes of accountability and oversight. Ministers responsible for particular law enforcement and security agencies, and for relevant government departments, must assume greater responsibility for ensuring that those agencies and departments operate in ways wholly consistent with human rights obligations. Parliamentary oversight of national security operations should also be strengthened.

- **CENTRALITY OF HUMAN RIGHTS**

The mandate of the review body should very clearly and explicitly refer to the necessity to ensure that national security investigations are carried out in a manner that is consistent with international human rights standards.

- **ENFORCING HUMAN RIGHTS PROTOCOLS**

Canadian law should be reformed to require that Canada enter into binding human rights protocols to govern information sharing arrangements and other cooperative relationships with foreign police and security agencies. The new review body should be charged with responsibility for monitoring compliance.

- NO COMPLICITY IN HUMAN RIGHTS VIOLATIONS

Canadian law should prohibit law enforcement or security activities, in Canada or abroad, which directly, indirectly or recklessly put any individual at risk of serious human rights violations in Canada or any other country. The new review body should be charged with responsibility for monitoring compliance.

- INDEPENDENCE

The review body's independence from government and from the law enforcement and security agencies subject to the review body's jurisdiction should be well-defined and protected.

- DIVERSITY

There should be diversity in the membership of the review body to reflect, in particular, any ethnic or religious groups who may be disproportionately impacted by Canadian national security operations.

- EXPERTISE

The review body should be composed of members who bring a variety of areas of expertise, including human rights, risk assessment, and policing.

- INITIATION OF COMPLAINTS

The review body should be able to launch review on its own initiation, upon the receipt of an individual's complaint, or when requested to do so by a third party.

- POWERS

The review body should have strong and clearly-defined powers established in law that are necessary to carry out its work, including unhindered access to information that may be classified as National Security Confidential, the ability to issue subpoenas, compel the disclosure of documents and the power to order arrest in exceptional circumstances.

- DISPOSITION OF COMPLAINTS

The review body should have the power to make recommendations as to discipline, prosecution and compensation.

- PUBLIC AND TRANSPARENT

The review body should report the results of its work publicly, including to Parliament.

- **OUTREACH AND PUBLIC EDUCATION**

The review body should engage in wide ranging public education, including outreach to ethnic and religious communities most directly impacted by national security investigations. Outreach should involve accessible information that builds awareness and develops trust, such that individuals who may have complaints are confident in bringing them forward.