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Commissioner Frank Iacobucci
Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki,
Ahmad Abou-Elmaati and Muayyed Nureddin
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By Fax: 613.992.2366

August 22, 2007

Dear Commissioner,

We are writing this letter in follow-up to our meeting with you on August 9, 2007 to confirm, clarify and underscore a number of the issues that we discussed. Let us begin, however, by thanking you for having met with us. We found it to be a constructive session and look forward to further opportunities to meet again in the future.

As we stated in person, we sought the meeting with you because our organizations have a number of very serious concerns about several aspects of the inquiry process. We prefaced our concerns in strong terms, indicating that we had come to a point of having lost confidence in the process. We continue to have serious concerns. We have emerged from our meeting, however, with an expectation that several of our concerns have been heard and will be addressed. We look forward now, in short order, to meeting further with Mr. Laskin and Mr. Terry to advance the discussion we have begun. We also look forward to hearing further from you about these points, through written reply to this letter.

At the meeting, we indicated that our concerns arise in four general areas. At this point we would like to raise a fifth area of concern as well, namely the Commission's practice to date of requesting that all meetings and exchanges of information be conducted "off the record."

1. The need to go "on the record"

Commissioner, over the past three months all of our dealings with the Commission have been "off the record", at the Commission's request. That has been the case for our various meetings with Commission counsel and again at our August 9th meeting with you. We have agreed to that approach in the past and we do recognize that it may, at times, facilitate a more open exchange of information and opinions. We are very concerned, however, that as a result of this approach, there is no record of our exchanges with the Commission.

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There is, in fact, no public indication that we are engaged with the process. We have not been able to readily and freely communicate with the legal teams for the three men, with parliamentarians who are interested in the process, with staff and members in our own organizations, with media, and with concerned members of the public.

We will, of course, honour agreements to date about the "off the record" nature of our exchanges. And we hope that there will be some occasions in the future when exchanges continue to be "off the record." However, it is also our position now that future exchanges about key issues need to be "on the record."

2. Secrecy

The inquiry is proceeding at this point entirely *in camera*. We feel that our ability to engage with and contribute to the process in a meaningful manner is thus significantly impaired. We spoke about the possibility of at the very least opening up possibilities for greater access to some written evidence.

We are particularly interested in hearing your response to the suggestions we made during the meeting that the following documents be made available:

- (1) redacted copies of any documents which you and your counsel believe are of key importance; and
- (2) redacted transcripts of interviews and, if convened, hearings in line with the approach adopted by the Security and Intelligence Review Committee.

We also discussed our continuing concern that you will inevitably face a challenge in ensuring that government departments and agencies do provide full and complete disclosure of all relevant documents. We know that you and your legal counsel are diligently seeking full disclosure and that you have made it clear to government counsel that you expect full disclosure. We are also, however, cognizant of the fact that in the Arar Inquiry, with that same degree of diligence and expectation, obtaining full disclosure was difficult and time-consuming. We realize that you have valuable experience and expertise in this area, but you of course cannot be involved in the daily effort of pressing and following-up with regard to disclosure. We urge you to consider appointing an expert to assist the Commission in this area, someone with demonstrated experience regarding access to information issues in a national security context.

3. Thoroughness and Efficiency

We recognize that delivering justice demands a commitment to both thoroughness and efficiency. There is of course, however, an inherent tension between these two imperatives and the risk that thoroughness can at times be sacrificed to efficiency. We would like to highlight two of the issues that we covered in this regard.

a) Interviewees and witnesses

We urged that the list of individuals being interviewed needs to be expanded and, in particular, that individuals who served in positions of political and agency leadership must be examined. We referred, by way of example, to former RCMP Commissioner Zaccardelli. In the meeting we indicated that we would provide more detailed submissions outlining our view as to why it is crucial to interview him and other individuals. That information is now attached as an Annex to this letter. We have drawn attention to questions about actions these individuals took, decisions they reached, or statements they made. We also stress that many of these individuals should be interviewed because of the simple fact that they were in central leadership roles and must be questioned about what effort they did or did not make to assert appropriate authority and oversight regarding these cases.

b) Public hearings

We asked whether you are still intending to have a phase of hearings, *in camera* and/or in public, involving some of the individuals who have been interviewed. You indicated that is still a possibility. We urge that it is vital that there be hearings, as that will significantly strengthen the authoritative nature of the evidence gathering you have done. We consider it essential that counsel for Mr. Almalki, Mr. El Maati and Mr. Nureddin have an opportunity to cross-examine witnesses at that time.

We also believe it is vital that some of those hearings be open to the public. Your terms of reference, paragraph (e), authorize you to hold sessions in public when you believe it is essential for the effective conduct of the inquiry. A similar phase of the Arar Inquiry was, in our view, of considerable value. There is considerable public concern about the issues you are examining in this inquiry. Public trust in Canadian security agencies has recently been shaken by revelations of mistakes and wrongdoing that have been masked by unfounded claims of national security confidentiality. One critical means of restoring that faith is to ensure that concerns receive public and transparent attention. This cannot only be at the end of the process, with the eventual release of your report. It must offer the public some opportunity to follow and engage with the proceedings while underway.

We consider this particular issue to be perhaps the most critical of those we have raised with you. We are concerned, therefore, to learn from you as soon as possible about your intentions. Would you please advise when you will make a decision about hearings, including how much of any hearing phase will be open to the public.

4. Interviews about Torture

You confirmed that there will not be government representatives in the room during the interviews about torture. We welcomed that assurance.

We spoke further about disclosure of particular documents to the government, including Alex Neve's notes from his own interviews with these men, medical reports, and transcripts from the interviews that Professor Toope conducted with these men in 2005. It is our understanding that legal counsel for the three men are still considering their position as to disclosure of these documents to government lawyers.

We stressed that there must be caution about how the question of government involvement in this aspect of the process is structured. Our concern is that the government be constrained from adopting an aggressive or unduly adversarial role in what needs to be a thorough, credible and sensitive process. In our view, the role that you, your counsel and your expert advisor Professor Burns will be playing and the access to documents you will all have sufficiently provides the necessary thorough and probing review of this evidence.

5. The Issue of Reputation

We discussed the importance of examining whether or not there was an appropriate evidentiary basis for any characterization or labeling of these three men as extremists or individuals with suspected links to terrorism. Commissioner O'Connor took that approach in the Arar Inquiry and reached the conclusion that there had not been evidence to support characterizing Mr. Arar in that manner.

We highlighted that our chronology documents several specific instances where Canadian officials and/or agencies characterized these men as terrorists in communications with media and/or foreign agencies and governments. We urged you to determine whether in these instances, and other instances we are not aware of, Canadian agencies and officials performed their duties deficiently when they characterized these men as terrorists.

We outlined that we believe this is an issue central to your mandate. If Canadian agencies and officials performed their duties deficiently when they characterized these men as terrorists, that finding would be relevant to all three of the issues you are reviewing: detention, consular assistance and mistreatment. We also stressed that the dictates of fairness are such that you cannot make any contrary finding as to allegations against any of these three men being well-founded. That is because the men have not been provided with any opportunity to know, let alone respond, to those allegations.

You assured us that you are paying very close attention to this issue and implied that you do intend to determine whether Canadian agencies and officials performed their duties deficiently when they characterized these men as terrorists. We ask that you explicitly inform us whether this is indeed your intention.

6. Next Steps

We look forward to an early written reply from you with respect to the suggestions and questions we raised in the meeting and have repeated here. We do intend to arrange an early meeting with your two lead counsel which could provide an opportune setting to receive and discuss your response.

Sincerely,



Alex Neve
Secretary General
Amnesty International Canada

On behalf of:

Amnesty International
British Columbia Civil Liberties Association
Canadian Arab Federation
Canadian Council for American Islamic Relations
Canadian Muslim Civil Liberties Association
International Civil Liberties Monitoring Group

cc. Barbara Jackman, Hadayt Nazami, John Norris, Paul Copeland, Jasminka Kalajdzic

**ANNEX: INTERVENOR SUBMISSIONS WITH RESPECT TO
INDIVIDUALS WHO SHOULD BE INTERVIEWED AND OR
REQUIRED TO TESTIFY**

As per correspondence with Mr. Terry in early August, the Intervenors understand that the following people have been, or will be interviewed:

- DFAIT: Myra Pasty-Lupul, Leo Martel, Franco Pillarella, Garfield Pardy, Konrad Sigurdson, Michel deSalaberry, Brian Davis, Stuart Bale, Roger Chen, Daniel Livermore, Scott Heatherington, Robert Fry, Senator Pierre deBane, Jonathan Solomon, James Wright, Bill Graham, and Don Saunders (an official in DFAIT's intelligence section).
- RCMP: Richard Flewelling, Kier MacQuarrie, Dennis Fiorido, Richard Reynolds, Steve Covey, Michel Cabana, Gary Clement, Richard Proulx, Wayne Pilgrim.
- OPP: Scott Mills
- CSIS: Ten witnesses, which may include Jack Hooper
- Other: Dan McTeague

We have also been informed that the Commission is still considering interviewing RCMP Staff Sergeants Callaghan and Corcoran, a couple of other RCMP witnesses "who may have had minor roles" and other potential witnesses referred to by the intervenors and counsel for the men.

The Intervenors feel very strongly that at a minimum, the following people should also be interviewed and considered as witnesses in future hearings. Where possible, we have provided reasons why, but urge the Commission to consult our chronology for more information. We will continue to consult available documentation on these cases and will inform you if any others come to mind.

CSIS interviewees/witnesses

From CSIS, we would like confirmation that the following are being or have been interviewed, and will be or have been considered as witnesses for future hearings. While we understand that you cannot give us names we do not already know, we do not understand why you cannot confirm anything about the people whose names we know:

- Ward Elcock, former director of CSIS
- Jim Judd, current director of CSIS
- CSIS agent Theresa Sullivan: This was the first agent to openly contact Abdullah Almalki, having questioned him twice in 1998. She is important to understanding why CSIS was interested in him. The Intervenors believe this is important to understand how different officers in different agencies came to view Mr. Almalki over time — did their suspicions build over time? If so, why?
- CSIS agents Violaine Pepin (badge number W06175) and "Dave" (badge number W05337), who questioned Abdullah in February 2000. Again, they would be well placed to explain their interest at this time.
- "Michel" from CSIS questioned Muayyed Nureddin in late 2000 — this person might explain why there was interest in Mr. Nureddin at this time.

- Adrian White and another CSIS agent visited Ahmad El Maati's home on September 11, 2001. We believe it is important to understand whether they investigated the origins of the map, why they told Mr. El Maati they would block his wife's immigration to Canada, why they did not want a lawyer present, and why did they not return Rocco Galati's calls (see chronology entry for October 15, 2001). They questioned Badr El Maati in early December 2001, and then in late November 2002 and seemed to indicate to Badr El Maati that they could persuade Egypt to release Ahmad as long as he did not return to Canada.
- CSIS agent Rob Cassolato, who, with Adrian White, questioned Badr El Maati in early December, 2001 about his son.
- CSIS agent Alexander Gelvan visited Mr. Almalki's home on September 18, 2001. Again, we believe it is critical to understand how and why officials and agencies' perceptions of Mr. Almalki changed over time, and any consequences for his detention and treatment.
- The CSIS agents who questioned Mr. Nureddin at the airport on September 16, 2003: Did they later share these questions with foreign agencies? Why did they question him at the airport? Did they or anyone they know of contact foreign agencies following Mr. Nureddin's departure?
- CSIS agents Justin Wallace and William Jones: They questioned Badr El Maati on May 29, 2004 and called Ahmad El Maati that afternoon to try to convince him to talk to them without a lawyer. They also questioned Ahmad El Maati again on May 25, 2005. The Intervenors would like to understand the purpose of these attempts, why they would not meet with a lawyer present. It is also important to determine whether there may have been an attempt to intimidate or discourage Mr. El Maati from demanding answers.
- The CSIS agent referred to in the Arar Report, Factual Background, Volume 1, page 20 of the pdf: "To assist with the national security components of the investigation, Project A-O Canada sought personnel support from CSIS. In March 2002, CSIS seconded a transnational organized crime specialist to Project A-O Canada, where he remained until April 2004." This agent is seconded for almost the exact same time period of time that Abdullah is detained (May 3, 2002 to March 10, 2004). The Intervenors believe this agent must be a key witness when it comes to CSIS' role in Project A-O Canada, and on the Almalki case during his detention.

RCMP interviewees/witnesses

We also believe the following RCMP officials should be interviewed and considered as witnesses in future hearings.

- Former RCMP Commissioner Guilano Zacardelli: The Intervenors believe it is crucial to understand what he knew about each of these cases when, why, and what he did or did not do about what he did or did not know, and why.
- RCMP Captain Erika Sheridan and another woman who would not identify herself told Mr. Almalki's cousin on January 22, 2002 that they knew Mr.

Almalki was Al Qaeda, and asked if the cousin knew if Mr. Almalki intended to travel to Syria. These officers should be asked why they made these statements and asked this question.

- Chief Superintendent Antoine Couture, Officer in Charge of "A" Division's CROPS unit, was briefed on the decision to send questions for Mr. Almalki. What did he do about it? He also approved requests to interview El Maati in Egypt. Why?
- Superintendent Wayne Watson, Assistant CROPS Officer, agreed it was appropriate to share information with the Syrians. Why?
- O.P.P. Detective Sergeant Dave Truax attended meetings with Badr El Maati and Ahmad El Maati's aunt, Sana Wasseff, with O.P.P. officer Scott Mills. He is as important to interview as Scott Mills is. Do their stories differ?
- Sergeant Randy Walsh – Played a prominent role in Project A-O Canada throughout, first as lead investigator, then affiant for the team – including for warrants that were justified using information obtained using torture. He also needs to be interviewed about the legality of the warrants executed on the Almalki family's luggage. He also returned the papers seized during the January 22, 2002 searches to Badr El Maati. Was he aware that these items had been used as the basis of interrogations in Egypt?
- RCMP spokesman Corporal Eric Simard, who commented on the map story in the media, saying publicly that their investigation focused on the infiltration of nuclear facilities. Did he or anyone in the RCMP investigate the origins of the map? Given what we now know of the origins of this map, was this public statement, which must have caused a great deal of public fear in the wake of the 9/11 attacks, deficient, or irresponsible?
- RCMP Assistant Commissioner Ghyslaine Clément wrote a letter to the Syrian officials saying that Mr. Almalki was not wanted in Canada. What discussions took place around this?
- Staff Sergeants Callaghan and Corcoran obviously both key witnesses: They were involved in discussions with U.S. officials about Mr. El Maati's case as early as January 2002; were with Inspector Cabana when they tried to convince the U.S. authorities to open an investigation into Mr. Almalki; sent a fax to the L.O. in Rome about Mr. El Maati's allegations of torture in August, 2002; told U.S. officials that Mr. Arar had a possible link to Al Qaeda through Mr. Almalki; faxed the questions for Mr. Almalki to the L.O. in Rome; and Callaghan seemed to be one of the few to remember Jonathon Solomon's comments on torture.
- Dan Killam, Director General of National security
- Garry Loeppky, Deputy Commissioner, Operations
- Ron Lauzon, Officer in Charge, National Security and Intelligence Branch
- Richard Roy, Liason Officer at DFAIT

Other interviewees/witnesses

Others we believe should be interviewed, and considered as witnesses in future hearings:

- Former minister Manley; former minister Anne McLellan, and former solicitors general Wayne Easter and Lawrence MacAulay should be interviewed on what

they knew when, why or why not, and what they did or did not do about it and why or why not.

- Member of Parliament, John Godfrey - what happened when he contacted the PM? What was he told?
- Mira Wassef was in attendance at the August 12, 2002 consular meeting where Mr. El Maati said he had been tortured in Syria. She also attended a second meeting where Mr. El Maati was asked if he would agree to be interviewed by a Canadian officer in Egypt.
- Anna Pappas: Also attended a consular visit with Mr. El Maati in which he was asked if he would agree to be interviewed by a Canadian officer in Egypt.
- Maha Kotrache, senior staff, embassy in Syria
- Drivers, translators and support staff to embassy staff in Syria and Egypt: They will be able to provide appointment lists, talk about conversations they overheard and provide logs of trips.
- Marlene Catterall: What was she told about these men?