

Commissioner Frank Iacobucci
Internal Inquiry into the Actions of
Canadian Officials in Relation to
Abdullah Almalki, Ahmad Abou-Elmaati
And Muayyed Nureddin
P.O. Box 1208, Station B
Ottawa, Ontario
K1P 5R3

By fax: 613 947 7606

November 20, 2007

Dear Commissioner,

We are writing in follow-up to your November 6th ruling on our October 2nd Application for greater public disclosure at the Inquiry. We have had an opportunity to discuss and clarify matters in a helpful meeting with John Terry on November 16th.

Commissioner, we must begin by expressing our deep disappointment with your ruling. We are particularly distressed that you did not find it necessary or appropriate to make a specific ruling with regard to the fundamentally important issues that we raised.

Our application effectively sought a decision from you as to when the “effective conduct” of the Inquiry would require conducting sessions in public and releasing evidence publicly. We argued that international human rights principles, Canadian legal standards, basic dictates of fairness and a context of shaken public confidence in Canada’s security agencies all require a greater degree of public disclosure and that those are considerations that go to the heart of the “effective conduct” of the Inquiry. It troubles us that , effectively (though not expressly), you rejected our request for disclosure and more meaningful participation and have decided to continue the process established for the conduct of this Inquiry months ago.

At this time we would like to raise with you a number of points that arise from your ruling and the Notice of Hearings on Standards of Conduct.

1. It is our understanding that the “draft of proposed factual findings, accompanied by a supporting factual narrative” will not be made available to us until after the hearings on standards of conduct which are now scheduled for December 19 and 20. We understand the pressure of timing that you are facing. However we find the proposed schedule to be untenable, particularly given the detailed nature of the questions laid out in the Notice of Hearings.

We are simply not able or prepared to provide submissions with respect to standards until we have received some greater degree of evidentiary disclosure. If it is impossible to prepare the “proposed factual findings” or some other form of reasonable disclosure before December 19, then we request that the hearings be postponed until a date that will make that possible.

2. We find the characterization of this document as “proposed factual findings” to be problematic given that there has been absolutely no input into its preparation by counsel for Messrs. Almalki, Abou-Elmaati and Nureddin. It is our hope and expectation that after this document has been provided to us there will be opportunity for considerable further exchanges about its content, and that the right of legal counsel for the three men to propose and call further evidence and cross-examine sources of disputed information will be respected. As such it is far from a stage where it is appropriate to be considering it a set of proposed factual findings. We would instead urge that this document be termed and understood to be a “Summary of Evidence Reviewed to Date”.

3. We are concerned that there is an important theme that has not been expressly included in the Notice of Hearing on Standards of Conduct. We remain convinced that the nature and basis of conclusions drawn about the three men must be examined closely as you consider the possible deficiencies of Canadian officials. We know from the Arar Inquiry that Mr. Arar was labeled as a known Islamic extremist and in other inaccurate and inflammatory ways that were simply not supported by the evidence. We expect that you are considering the evidence closely to ascertain whether there were any such similar deficiencies with respect to these three men.

We discussed this with Mr. Terry, who indicated that these are points that could certainly be covered in Question One in the Notice of Hearing. We believe that this is a sufficiently important matter, however, as to warrant being explicitly covered in the Notice. We think this is particularly important because Question One refers specifically to information sharing with foreign governments. The question of conclusions and labeling extends equally, however, within Canadian agencies as well as in leaks of information to the media.

4. We understand that the summary provided to us will be subject to national security confidentiality claims by the government. In that respect we would like to hear from you as to how you intend to counter the clearly-established tendency of the government to make unfounded and over-reaching NSC claims. We would also expect that any material that the government requires be removed from the summary be subject to the standard practice of redaction with black ink. No other form would be useful or acceptable to us.

5. We note and welcome the fact that you have retained former Ambassador Paul Heinbecker to provide advice on consular services and intelligence matters as they relate to the activities of DFAIT. We would appreciate an opportunity for some of us to meet with Mr. Heinbecker at an early date.

We look forward to hearing further about this points.

Sincerely,

Alex Neve
Secretary General
Amnesty International Canada
on behalf of:

Amnesty International
British Columbia Civil Liberties Association
Canadian Arab Federation
Canadian Council on American Islamic Relations
Canadian Muslim Civil Liberties Association
Human Rights Watch
International Civil Liberties Monitoring Group