

**Speaking notes for the
House of Commons Standing Committee on Public Safety and National Security
Review of the Findings and Recommendations of the
Iacobucci and O'Connor Reports**

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In early October 2002 I received a phone call from a woman in Tunisia, whose husband had been arrested unexpectedly while transiting through JFK airport on his way home to Canada. He was now missing. US authorities would only say that he was no longer being held where he had been for close to two weeks. It was a classic case of “disappearance” but the victim was a Canadian, Maher Arar, “disappeared” in Brooklyn. The caller, Monia Mazigh, wanted to know where she should turn to ensure that her husband’s rights would be protected.

In October 2003 I spent many hours hearing Maher Arar recount firsthand what he had gone through in the United States and in Syria. He became particularly emotional when he described encountering another Canadian citizen in detention in Syria. He was terribly fearful for the well-being of this man, Abdullah Almalki, whose torture he described as brutal. Maher wanted to know, what we should do to make sure Abdullah’s rights would be protected.

In November 2003, after Maher Arar had described his ordeal in a national press conference, I received an emotional call from a man who told me about his son, Ahmad El-Maati, imprisoned in Syria and Egypt for 2 years. He said that Canadian officials had insisted that he not go public about his son’s case. Now, he had seen that Monia Mazigh had gone public and her husband was home. He feared he been wrong to remain silent and wanted to know what he should do to ensure his son’s rights would be protected.

There were similar moments with respect to these cases, as well as the case of Muayyed Nureddin, at every turn. Everytime the theme has been the same: where to turn to ensure that the individual’s rights could and would be protected.

Canadians pride themselves on this being a country with a deep commitment to human rights protection. That none of these individuals or their loved ones has known where to turn to secure basic human rights protection was and continues to be a scandal. It is very much our hope that through the much-needed attention that comes from these hearings, this Committee will help restore human rights to where they belong in Canada’s national security practices. Human rights are the key to national security, not the obstacle. When any country, including Canada, adopts national security laws, policies or practices that encourage, facilitate or tolerate serious human rights violations such as torture, arbitrary imprisonment and discrimination – the result is greater injustice and deeper insecurity.

This point has been forcefully brought home in two recent international reports. The first, issued last month by Martin Scheinin, the UN Human Rights Council's Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, includes a reference to Maher Arar's case and stresses how important it is to ensure there is strong oversight and true accountability with respect to human rights violations associated with counter-terrorism practices. The second, a lengthy report from an eminent panel convened by the International Commission of Jurists, after close to four years of research, investigations and hearings around the world, including in Canada, concludes that the ways that human rights have been undermined since the September 11th attacks represents "perhaps one of the most serious challenges ever posed to the integrity of" the international human rights system. The eminent panel points out that upholding human rights is not a matter of being "soft" on terrorism and that to the contrary, states have a positive human rights obligation to protect people under their jurisdiction from terrorist acts, an obligation that extends to those who may be at risk of terrorism and those who may be suspected of terrorism.

The cases of Maher Arar, Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin have been the subject of two extensive judicial inquiries. The events leading to their arrest and detention have been meticulously examined. Their lives have been investigated to a degree virtually unprecedented for any other Canadian.

The result? A shocking picture of disregard for fundamental precepts of the rule of law, due process and commitment to human rights. In all cases, the use by Canadian officials of inflammatory, exaggerated labels such as being extremists linked to al-Qaeda, labels not at all borne out by evidence, was shown to have played a crucial role in the chain of events that led to their unlawful imprisonment and torture. Ontario Court of Appeal Justice Dennis O'Connor and former Supreme Court of Canada Justice Frank Iacobucci both catalogued a myriad of shortcomings that caused or contributed to the severe human rights violations experienced by these four men.

Many Canadians likely assume that with the inquiries done and the reports in, these cases and the underlying issues have all been resolved. That is all the more so given that most Canadians are, of course, aware of the official apology and compensation that Maher Arar received in early 2007.

But there is still far to go both in ensuring that there truly is justice and accountability with respect to these four cases and in ensuring that the legal, institutional and policy reforms needed to guard against similar instances of human rights abuse in the future are enacted.

You will hear from my colleagues in greater detail about each of these concerns but let me begin by sketching in broad terms, the important work that still must be done to address the pressing concerns at the root of these human rights tragedies.

First is oversight and review. An absolutely crucial safeguard in protecting against human rights violations by police or security agencies in any country, any context is to ensure that there is effective, independent and impartial review and oversight of their activities. In the Arar Inquiry, Justice O'Connor spent considerable time and resources canvassing this issue exhaustively. He found that the approach to review and oversight of agencies involved in national security investigations in Canada was complex,

incomplete and inadequate. He proposed a thoughtful, comprehensive new model. However, more than two years later there has been no public indication at all of progress towards adopting and implementing Justice O'Connor's model. We have called on the government to do so without further delay and to implement the precise model Justice O'Connor proposed, nothing less. With a strong mechanism in place for reviewing the national security activities of the RCMP, CSIS and other agencies, there would finally be an answer to the question that haunted these men and their families – a place to turn to ensure their rights would be protected.

Second is the critical importance of implementing the reports from these two inquiries. Justice O'Connor formulated a detailed set of recommendations, as that was part of his mandate. Justice Iacobucci did not, as that was excluded from his mandate. However, his findings as to what went wrong and why lead quite naturally to implicit recommendations, some similar to the Arar Inquiry, others additional to what Justice O'Connor proposed. More than 2 ½ years after the first report was released from the Arar Inquiry there has not yet been any meaningful public reporting as to the implementation of the recommendations. Mr. Arar himself remains in the dark. Five months since Justice Iacobucci released his report we have heard little more than an assertion that his findings are reminiscent of what arose in Arar, that the Arar report has been fully implemented and there is therefore nothing left to worry about. This is unacceptable. It is time for full implementation of the Arar recommendations, a public analysis as to what additional recommendations are needed to address the Iacobucci findings, and a commitment to regular public reporting on the progress of implementation.

In a letter to Amnesty International earlier this month Public Safety Minister Peter Van Loan described ten steps the government has taken with regard to the Arar Inquiry recommendations. The points tend to raise more questions than they answer. For instance it is asserted that before sharing information with a country that has a questionable human rights record, the RCMP does now "use" foreign affairs human rights reports but there is no indication as to what approach is taken and what would lead to a decision to share and what would lead to a decision not to share the information. The letter also refers to the government implementing 22 of Commission O'Connor's 23 recommendations. There is no indication as to which recommendation is not being implemented and why it has been rejected.

Third, there must be accountability for the serious human rights violations that have occurred in these four cases. Individuals in Canada, the United States, Syria, Egypt and Jordan made decisions or took action that contributed to the human rights violations these men experienced. To date, to our knowledge, not one person in any of those countries has been held accountable. We urge you to press for details about what has happened to the Canadian officials most centrally implicated in these cases. What steps have been taken to determine whether any criminal charges should be laid? What steps have been taken to impose appropriate disciplinary penalties? When there is no accountability for human rights violations, the only message conveyed is one of impunity. Impunity encourages more of the same.

Beyond the accountability of Canadian officials we also urge you to press for details as to what the Canadian government has done to ensure accountability of officials in other countries. The government has maintained that lawsuits against foreign government officials in Canadian courts are barred because

of Canada's State Immunity Act. As such, Maher Arar's efforts to sue Jordanian and Syrian officials in Ontario Court failed. It is not clear how forcefully Canadian officials have pushed for there to be independent investigations and real accountability in any of the other countries involved. The recent letter from Minister Van Loan indicates that the Syrian and Egyptian ambassadors to Canada have been provided with copies of the Iacobucci report and have been asked to investigate and report back. That falls short of a forceful demand that individuals responsible for the torture of four Canadian citizens be held accountable. At a minimum we need assurance that formal diplomatic protests have been registered with both governments.

Fourth, there must be redress for all four of these men. There has, of course, been redress for Maher Arar. Five months after the release of the Iacobucci report, there has been nothing for the other men. Minister Van Loan's letter declines to comment on this because their cases are currently "before the courts" and notes that Commissioner Iacobucci had not been asked to address issues of compensation. With respect, that is not the issue. Commissioner Iacobucci documented numerous deficiencies that contributed to the imprisonment and torture of these three men. It is time for redress for the role Canadian officials played in these human rights violations. We urge you to press government witnesses who come before you to lay out what steps they are taking towards a prompt, preferably negotiated or mediated settlement of the claims of these three men, leading to a meaningful official apology and appropriate levels of compensation.

Finally, what we have learned from these four cases must inspire a new approach to how Canada responds to similar cases. Sadly, we need look no further than the current case of Abousfian Abdelrazik to see that little has changed: imprisoned on two separate occasions in Sudan almost certainly, information now reveals, at the behest of Canadian officials, subject to torture in detention and now – for close to one year – languishing in temporary refuge in Canada's embassy in Khartoum. Rather than take quick and decisive action to right the wrongs in this case, the Canadian government has put obstacle after obstacle in the way of his return to Canada and restoration of his rights.

We have also repeatedly urged that these cases be catalysts for strengthened Canadian leadership in the global campaign to eradicate torture, including by ratifying the Optional Protocol to the UN Convention against Torture. Sadly, there is as of yet nothing to point to by way of strengthened leadership and, more than six years after the UN adopted the Optional Protocol, Canada has still yet to ratify it.