



**HOUSE OF COMMONS
CANADA**

**REVIEW OF THE FINDINGS AND
RECOMMENDATIONS ARISING FROM THE
IACOBUCCI AND O'CONNOR INQUIRIES**

**Report of the Standing Committee on
Public Safety and National Security**

**Garry Breitkreuz, MP
Chair**

JUNE 2009

40th PARLIAMENT, 2nd SESSION

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has the honour to present its

THIRD REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has conducted a review of the findings and recommendations arising from the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin (Iacobucci Inquiry) and the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (O'Connor Inquiry) and has agreed to report the following:

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REVIEW OF THE FINDINGS AND RECOMMENDATIONS ARISING FROM THE IACOBUCCI AND O'CONNOR INQUIRIES

INTRODUCTION

A. Context of the Committee's study and mandate

In the wake of 9/11, Canada and other countries in the West quickly implemented anti-terrorism policies that, in many cases, resulted in the racial profiling of members of the Muslim and Arab communities as well as violations of civil liberties. The violations of the human rights of Messrs. Arar, Almalki, Abou-Elmaati and Nureddin, Muslim-Canadian men who were deported and tortured in countries with questionable human rights records, illustrate the need for more careful consideration and review of our national security policies.

This report examines the implementation of the findings and recommendations arising from the exhaustive inquiries conducted by Justices O'Connor and Iacobucci, who were given the mandate by the Government of Canada to examine the role of Canadian officials in the Arar (Justice O'Connor), Almalki, Abou-Elmaati and Nureddin (Justice Iacobucci) cases. These costly inquiries found that these Canadians were victims of inaccurate intelligence sharing practices by Canadian security agencies, and exposed the glaring lack of civilian oversight of our national security activities.

Given the serious deficiencies uncovered by these inquiries and the risks of not addressing them by fully implementing all the resulting recommendations, the Committee decided, on February 10, 2009,¹ to evaluate the government's progress in this regard. This evaluation became necessary because the government has still not implemented certain recommendations, most notably those dealing with oversight, although over two years have passed since Justice O'Connor issued his conclusions. Like the majority of witnesses it heard from, the Committee urges the government to immediately implement all the recommendations from these inquiries, as the failure to do so could result in further serious violations of the rights of Canadians.

1 Pursuant to Standing Order 108(2). Committee Minutes, February 10, 2009.

B. Committee's approach and report structure

To summarize the lessons learned from the tragic events that led to these inquiries and to ensure that action is taken on their findings and recommendations, the Committee called upon human rights and national security experts and met with officials from many the departments and agencies to which the recommendations pertained.²

This report summarizes the information gleaned from the Committee's review. The report is divided into three parts. The first outlines the mandates of the inquiries and summarizes their main conclusions. The second part examines the implementation of the recommendations made in Justice O'Connor's two reports. Finally, the third part presents the Committee's findings and recommendations.

² A complete list of the witnesses appearing before the Committee is provided in Appendix A, and a list of their briefs is in Appendix B.

PART 1: MANDATES OF THE O'CONNOR AND IACOBUCCI INQUIRIES

A. The O'Connor Inquiry

On January 28, 2004, the Government of Canada announced the creation of a Commission of Inquiry with a mandate to inquire into the role of Canadian officials in the Maher Arar affair. Chaired by Justice Dennis O'Connor, the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (hereafter the O'Connor Inquiry) had two objectives:

- to investigate and report on the actions of Canadian officials in relation to Maher Arar (factual inquiry);
- to make any recommendations on an independent review mechanism for the activities of the Royal Canadian Mounted Police (RCMP) with respect to national security (policy review).³

The three-volume report on the factual inquiry was made public on September 18, 2006. It outlines how the actions of Canadian officials contributed to the torture of Mr. Arar and to the violation of his human rights. It contains 23 recommendations⁴ intended to address the many weaknesses uncovered in how the RCMP and other Canadian national security agencies conduct their activities.

In releasing his conclusions, Justice O'Connor noted that the RCMP had breached its own information-sharing policies, provided the Americans with inaccurate information about Mr. Arar, neglected to oversee its own investigation, inaccurately described Mr. Arar and his wife as Islamist extremists with suspected ties to Al-Qaeda and refused to support the efforts of the Government of Canada to have Mr. Arar released from prison in Syria. The recommendations in the factual report sought to correct the inadequate information-sharing practices of the departments and agencies that make up the security and intelligence community in Canada and abroad, the insufficient internal controls over such investigations and the weaknesses in the training of investigators, for example, in terms of respect for human rights as well as racial, ethnic and religious profiling.

3 For more information about the Commission's mandate, see the *Report of the Events Relating to Maher Arar: Analysis and Recommendations – Volume 3* and *A New Review Mechanism for the RCMP's National Security Activities*, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, 2006.

4 The full list of recommendations is provided in Appendix C.

In December 2006, Justice O'Connor released his policy review report. It contained 13 recommendations, clearly indicating that an independent review mechanism for RMCP activities with greater powers is needed as well as a structure for the integrated review of national security issues to prevent tragic events such as those involving Mr. Arar from recurring.

B. The Iacobucci Inquiry

In December 2006, in response to a recommendation by Justice O'Connor, the Canadian government directed Justice Iacobucci to chair the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin (hereafter the Iacobucci Inquiry). According to the terms of reference, Justice Iacobucci was to determine:

- i. Whether the detention of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances;
- ii. Whether there were deficiencies in the actions taken by Canadian officials to provide consular services to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin while they were detained in Syria or Egypt; and
- iii. Whether any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances.⁵

Justice Iacobucci released his report in October 2008. Unlike Justice O'Connor's report, it does not contain any recommendations.⁶ Justice Iacobucci does however make several findings with respect to the actions of Canadian officials in these cases and the role that their actions may have played in the detention and mistreatment of these three individuals at the hands of Syrian and Egyptian authorities. Justice Iacobucci concluded that the treatment of Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin constituted

5 For more information on the terms of reference, refer to the report, *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin*, 2008.

6 Mr. Alex Neve, Secretary General, Amnesty International Canada, noted in this regard that "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 those of the Arar inquiry, others perhaps in addition to what Justice O'Connor proposed." *Evidence*, March 24, 2009.

mistreatment amounting to torture, as defined in the *UN Convention Against Torture*, during their detention in Syria, and in Egypt, in the case of Mr. Abou-Elmaati.⁷ While the inquiry concluded that none of the actions taken by Canadian officials directly contributed to the detention or mistreatment of these Canadians, Justice Iacobucci determined that the actions of Canadian officials had indirectly contributed to their detention (except for Mr. Almalki) and mistreatment at the hands of Syrian officials, and Egyptian officials, in the case of Mr. Abou-Elmaati.

⁷ *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin* (2008).

PART 2: COMMITTEE FINDINGS REGARDING THE IMPLEMENTATION OF JUSTICE O'CONNOR'S RECOMMENDATIONS

A. Follow-up on the 23 recommendations arising from the factual inquiry

According to the evidence gathered by the Committee, the Canadian Security Information Service (CSIS) and the Canada Border Services Agency (CBSA) implemented all the recommendations directed to them in the report on the factual inquiry (a total of 10 and six recommendations respectively).⁸

CSIS and RCMP officials also informed the Committee that the Department of Foreign Affairs and International Trade (DFAIT), in accordance with Justice O'Connor's recommendation 13, now provides its annual reports assessing the human rights records of various countries to the RCMP, CSIS and other national security departments or agencies that may have dealings with those countries in the course of investigations.

The Committee also heard, without specific details, that the six recommendations arising from the factual inquiry that pertain directly to the government have been implemented. However, the Committee did not receive any information on the implementation of recommendation 18, which states that:

Consular officials should clearly advise detainees in foreign countries of the circumstances under which information obtained from the detainees may be shared with others outside the Consular Affairs Bureau, before any such information is obtained.

During the Committee's review, only the RCMP submitted a detailed document setting out the changes it had made in response to each of the recommendations directed to it.⁹ This document indicates that the RCMP implemented all the recommendations directed to it, or 15 of the 23 recommendations stemming from the factual inquiry.

8 The complete list of recommendations arising from the O'Connor report is provided in Appendix C.

9 This document is available on the RCMP website at: <http://www.rcmp-grc.gc.ca/nsci-ecsn/oconnor-eng.htm>.

While the Committee welcomes the improvements the RCMP has made to its policies and agreements in light of Justice O'Connor's findings,¹⁰ it is nonetheless concerned that new policies and agreements have not been reviewed by an independent body in accordance with Justice O'Connor's recommendation 10.¹¹

In its document, the RCMP indicated that "its practices and agreements are subject to review by the Commission for Public Complaints Against the RCMP (CPC) and the Auditor General of Canada." Although the Auditor General has the authority to conduct such a review, a certain amount of time may elapse until she undertakes that review. As to the CPC, Justice O'Connor confirmed in his report that the agency does not have the necessary powers to effectively review the way the RCMP carries out its mandate. Justice O'Connor recognized, as did many stakeholders who referred to the insufficient oversight of the RCMP,¹² that the power to receive and investigate complaints, while important, is only one aspect of a full and effective civilian oversight.

Given the limited powers of the CPC, the Committee would have liked to have seen the RCMP take the initiative to submit its new policies and agreements to the CPC for review. Such a review could have confirmed that the changes made by the RCMP meet the objectives of the O'Connor recommendations. It is unfortunate that the Chair of the CPC, Paul Kennedy, had to state in his preliminary remarks that he was unable to report to the Committee on the implementation of the recommendations, since the CPC does not have the general power to review RCMP policies. He stated:

[T]he commission does not possess a general power to review or audit programs, policies, or activities of the RCMP. Any such reviews have to be part of a complaint process [...] Accordingly, I cannot give you any assurance today that the RCMP has implemented the recommendations of Justice O'Connor, or if such recommendations, if implemented, are either being adhered to or are adequate to achieve their stated purpose.¹³

A number of witnesses noted that the oversight of the RCMP is not as rigorous as that of CSIS. The Security Intelligence Review Committee (SIRC), whose role is to oversee CSIS activities, is regarded as an effective review body. The *Canadian Security*

10 In her report of March 2009, the Auditor General of Canada noted the improvements the RCMP had made in the internal oversight of national security investigations. She stated: "the RCMP has improved its management of its national security operations". "Chapter 1, National Security: Intelligence and Information Sharing", March 2009.

11 Recommendation 10 states: "The RCMP's information-sharing practices and arrangements should be subject to review by an independent, arms-length review body."

12 Including David Brown, who was responsible for investigating the allegations into the RCMP pension and insurance plans (2007), the Auditor General of Canada (2003 and 2009) and the former CPC Chair, Shirley Heafy, *Evidence*, March 24, 2009.

13 Paul Kennedy, *Evidence*, March 5, 2009.

Intelligence Service Act gives the SIRC broad review powers and specifically provides for the submission for review by the SIRC of agreements concluded between CSIS and foreign governments or international organizations.

The Committee appreciates that the implementation of the recommendations from the policy review would make Justice O'Connor's recommendation 10 unnecessary, since the review body he recommends would have broad review powers, similar to those of the SIRC. This matter is discussed in the next section of the report.

In short, the information gathered during this review is insufficient for the Committee to determine with certainty whether the changes made by the security and intelligence agencies that appeared before it have achieved the stated objectives of the recommendations of the factual inquiry and whether they are therefore sufficient. The Committee only knows for sure that the government has not implemented any of the recommendations arising from the policy review.

B. Follow-up on the 13 recommendations arising from the policy review

In his second report, Justice O'Connor makes 13 recommendations to address the serious shortcomings uncovered in terms of the oversight of Canadian security and intelligence agencies. He notes for instance that some government departments and agencies, including the CBSA, are not currently subject to independent review of their national security activities. He also concluded that the degree of supervision of the RCMP is insufficient given its intrusive powers.

This Committee¹⁴, as well as many stakeholders, have on numerous occasions expressed the same points of view as Justice O'Connor, urging the government to increase civilian oversight of RCMP activities.¹⁵ Like Justice O'Connor, the Committee is of the opinion that the body responsible for the supervision of the RCMP's activities should at least have comparable powers to those of the SIRC.

The body recommended by Justice O'Connor, the Independent Complaints and National Security Review Agency for the RCMP (ICRA), would have the power to review all RCMP operations and to ensure that the organization is in compliance with the law. ICRA

14 Report of the Standing Committee on Public Safety and National Security, *Study of the Conductive Energy Weapon Taser®*, 39th Parliament, 2nd Session, June 2008.

15 The need for an independent review body with broad powers to oversee the RCMP's activities was mentioned not only by Justices O'Connor and Iacobucci, but also by David Brown, who chaired the working group on governance and cultural change at the RCMP (*A matter of trust: report of the independent investigator into matters relating to RCMP pension and insurance plans*, December 14, 2007), as well as the current and former Chair of the CPC, to name just a few.

would also have broad access to information as well as the power to conduct inquiries on its own initiative and to require bodies or individuals to produce documents or to provide testimony.

The implementation of the recommendations from the policy review inquiry would also guarantee independent reviews and investigations of complaints relating to CBSA, DFAIT, Citizenship and Immigration Canada, Transport Canada and the Financial Transactions Reports Analysis Centre. To ensure that these federal departments and agencies are subject to independent review, since their national security activities are not currently subject to review, Justice O'Connor recommended that the ICRA also review the activities of CBSA and that the SIRC review the activities of the four other bodies mentioned.

The review framework that Justice O'Connor recommended demonstrates an appreciation of the increasing integration of national security investigations. His recommendation that legislative gateways be created between the ICRA, the SIRC and the Office of the Communications Security Establishment (CSE)¹⁶ Commissioner would provide for "the exchange of information, referral of investigations, conduct of joint investigations, and coordination and preparation of reports."¹⁷ An integrated review of national security issues would also be served by the creation of an Integrated National Security Review Coordinating Committee (INSRCC), whose members would be the Chair of the ICRA, the Chair of the SIRC, the CSE Commissioner and an independent person chairing the Committee.

The Committee is aware that the government has promised a number of times since 2006 to establish an independent national security review structure to achieve the basic objectives set out by Justice O'Connor. That being said, the Committee is quite concerned that none of the recommendations from the policy review have been implemented to date. In his recent committee appearance on the review of the Main Estimates, the Minister of Public Safety did not provide any details about the oversight model he intends to implement. Instead he informed the Committee of his decision to wait for the results of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 before making any changes in this regard. He stated the following:

I will be quite candid with you. In enumerating your list of inquiries, one of those you identified was Justice John Major's inquiry into the Air India matter. That committee has finished its work, but we're awaiting its report. In my judgment, as Minister of Public Safety, my preference has been not to proceed with our changes until we have the advantage and benefit of his advice on the problems that existed and how he feels they can be remedied, to the extent that he may provide advice on them. That is why, at this

16 The Office of the Communications Security Establishment Commissioner has the mandate to oversee the activities of the Communications Security Establishment.

17 *A new review mechanism for the RCMP's national security activities*, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Ottawa, 2006.

time, although we've done considerable work and I think are in a good position to proceed very soon with a new comprehensive oversight mechanism, it would be wise and prudent to await the recommendations of Justice Major. That is where we are right now.¹⁸

18 Hon. Peter Van Loan, *Evidence*, April 2, 2009.

PART 3: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

A. Urgency of the situation: The O'Connor Inquiry recommendations must all be implemented immediately

The Committee finds it regrettable that the government has not yet established the independent national security review framework recommended by Justice O'Connor. In the Committee's opinion, and in that of the majority of witnesses, the implementation of the recommendations from the policy review report would give Canadians assurance that the actions of national security departments and agencies are in compliance with the law. Like a number of witnesses, the Committee is of the opinion that the creation of this review framework is also essential to prevent further human rights violations.

The Committee has difficulty understanding why the government wishes to wait for Justice Major's conclusions before implementing this review structure. Like a number of witnesses, the Committee considers it pointless to wait,¹⁹ since the government could make any necessary changes after reviewing the recommendations of this important commission of inquiry. The majority of the Committee sees an urgent need for action. Without an integrated structure for the full review of national security issues, the government cannot effectively and efficiently protect Canadians from violations of their civil rights and freedoms.

Like Justice O'Connor, the Committee wishes to point out to the government that the implementation of the recommendations from the policy review would yield considerable long-term savings. Witnesses noted that governments have been forced to spend millions of dollars on public inquiries and ad hoc reviews of RCMP activities. The O'Connor Commission of Inquiry cost \$15,222,798, while the Iacobucci Inquiry cost \$6,019,457.²⁰ The Chair of the CPC, Paul Kennedy, noted in this regard:

My view is that if you properly constitute a commission with the right resources and powers, you're going to save yourself an awful lot of money. Right now, on national security policing issues, we've got Iacobucci, Major, and O'Connor—who have gone out there and done things—very, very expensive models.²¹

19 Dominique Peschard, President of the *Ligue des droits et libertés*, noted in this regard: "I don't see the need to wait, especially since Justice O'Connor was the one mandated to present the most complete report that we'll get on the security services' actions, on the problems that these actions caused and on the way the services are run. In his second report, he suggests a review of how every service is run." *Evidence*, April 30, 2009.

20 Figures compiled internally by the Library of Parliament's Dissemination Section.

21 *Evidence*, March 5, 2009.

The Committee is disappointed that the government has decided to cut the CPC's budget. This is especially difficult to understand in light of the serious deficiencies uncovered by the O'Connor and Iacobucci inquiries. The Committee is of the opinion that the government should invest more human and financial resources in independent review bodies in order to prevent the violation of Canadians' human rights.

In view of the risk of serious civil rights violations that other Canadians may face because Justice O'Connor's recommendations have not all been implemented and given the need to strengthen the independent review of the RCMP and other national security departments and agencies in order to restore public confidence in the police and the intelligence community:²²

RECOMMENDATION 1:

The Committee reiterates the recommendation made in its report presented to the House of Commons on January 30, 2007²³ and recommends that the Government of Canada recognize the urgency of the situation by immediately implementing all the recommendations from the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.

B. Accountability and Transparency Issues

Throughout the Committee's review, witnesses expressed concerns about government accountability with respect to the implementation of the recommendations of the O'Connor and Iacobucci inquiries. The witnesses repeatedly pointed out that close to two and half years have passed since Justice O'Connor presented his reports and about eight months since Justice Iacobucci presented his. Yet the government has not released any document that would allow for the evaluation of the progress made in addressing the serious deficiencies identified by these inquiries.

While the witnesses sometimes had different views on the progress made since the release of the O'Connor and Iacobucci reports, most agreed that the government had not effectively communicated the details of the implementation of their recommendations. The information gathered by the Committee clearly shows that many witnesses were not really aware of what progress the government had made in this regard, as the following statements show:

22 Chief Superintendent Gilles Michaud (Director General, National Security Criminal Operations Branch, RCMP) noted in this regard: "I would like to say that public trust is essential to the RCMP's ability to respond to issues of national security. To this end, the RCMP fully supports enhanced review of its national security criminal investigations, and recognizes the important role it plays in maintaining this trust." *Evidence*, March 31, 2009.

23 Standing Committee on Public Safety and National Security, *Second Report*, 39th Parliament, 1st Session, January 30, 2007.

More than two and a half 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 (Mr. Alex Neve, Secretary General, Amnesty International Canada).²⁴

The only thing we can say is that while a statement has been made to the effect that 22 of the 23 recommendations have been implemented, there are no tangible outcomes attesting to this. [...] To my knowledge, for now, RCMP officials have merely reassured us that they have taken to account and will implement a certain number of recommendations contained in the O'Connor report. However, there is no mechanism to guarantee that this is indeed the case. There is no proof that changes have been made (Mr. Dominique Peschard, President, *Ligue des droits et libertés*).²⁵

The general comment by Stockwell Day, who was then the minister, on October 21, 2008, that all the recommendations were implemented tells us nothing about the implementation measures and is unacceptable (Hon. Warren Allmand, International Civil Liberties Monitoring Group).²⁶

The government's lack of accountability for the implementation of the recommendations is not satisfactory to the majority of the Committee, especially since accountability is essential to public trust in the security and intelligence community. James Kafieh, legal counsel for the Canadian Arab Federation, stated in this regard:

We are at increased danger from a lack of security and the way the security agencies do their work. The Arab Canadian community lost confidence in Canadian security agencies in large measure from the experience of Maher Arar. And when we saw the treatment of Abdullah Almalki, Ahmad Abou-Elmaati, and Muayyed Nureddin, we understood this was a pattern, that it wasn't just a one-off event but a pattern. And we see the abuse of other Arab Canadians today in other parts of the world—they've already been mentioned—in terms of their perplexing inability to return, with the help of the Canadian government, back to Canada.

We need, as a community, to see evidence of the implementation of all 23 recommendations of the O'Connor report. It's critical that we see it. This shouldn't be something done in secret. It's important for Canada to come clean and to start anew, in terms of building relationships with the communities that are perhaps more critical right now for us to have a good relationship with, so that there is confidence, for example, between the Arab and Muslim communities and Canadian security agencies.²⁷

In light of these considerations:

24 *Evidence*, March 24, 2009.

25 *Evidence*, April 30, 2009.

26 *Evidence*, March 24, 2009.

27 *Evidence*, March 24, 2009.

RECOMMENDATION 2:

The Committee recommends that the Government of Canada immediately issue regular public reports on the progress made in implementing the findings and recommendations arising from the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar and the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin.

C. Need to officially recognize the harm done

It goes without saying that the issue of compensation was discussed seriously by the Committee. A number of witnesses urged the government to officially apologize and pay compensation to Messrs. Almalki, Abou-Elmaati and Nureddin for the harm they had suffered. In their opinion, the government must also make every effort to correct the inaccurate information about them held in Canadian records and in those of other countries.

Maher Arar has already been compensated, but Messrs. Almalki, Abou-Elmaati and Nureddin have received nothing to date. The government maintains that issuing an apology could influence the outcome of the parties' civil actions against the government. Some witnesses dismissed this explanation, pointing out that the government issued an official apology to Maher Arar before his case was heard in court.

Appearing before the Committee, Mr. Geoffrey O'Brian, CSIS, indicated the potential impact of such comments on civil actions against the government. He stated:

Frankly, our instructions, therefore, are not only slight, they are completely and utterly clear: we cannot in fact discuss anything that would indicate that the government is either in agreement with all of the findings or comment specifically on any of the findings. That's why, in my opening remarks, I tried to phrase it generally.²⁸

The majority of the Committee does not agree with the government's position that issuing apologies can influence the course of civil actions. The majority is of the opinion that the government must officially recognize the harm caused to these Canadians:

RECOMMENDATION 3:

In consideration of the harm done to Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin, the Committee recommends:

28 Geoffrey O'Brian, Advisor, Operations and Legislation, Canadian Security Intelligence Service (CSIS), *Evidence*, March 31, 2009.

- That the Government of Canada apologize officially to Mr. Abdullah Almalki, Mr. Ahmad Abbou-Elmaati and Mr. Muayyed Nureddin.
- That the Government of Canada allow for compensation to be paid to Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin as reparation for the suffering they endured and the difficulties they encountered.
- That the Government of Canada do everything necessary to correct misinformation that may exist in records administered by national security agencies in Canada or abroad with respect to Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin and members of their families.

D. Adopting a firm position on torture

The Committee was deeply troubled by the vague statements made by Mr. Geoffrey O'Brian regarding the use of information that may have been obtained through torture by CSIS. When asked whether CSIS uses information obtained by torture, he stated that such information may be used but only when lives are at risk.²⁹ Following his statement, Mr. O'Brian submitted a letter to the Committee which stated: "I wish to clarify for the Committee that CSIS certainly does not condone torture and that it is the policy of CSIS to not knowingly rely upon information that may have been obtained through torture".³⁰

The Committee understands that the practices of countries with respect to torture change over time, which precludes a static characterization of their respect for human rights. We are of the opinion, however, as are a number of witnesses, that the minister must issue regular ministerial directives clearly prohibiting the exchange of information with countries where there is a credible risk that this exchange could lead to the use of torture or contribute to it. The application of a clear directive on torture would allow for the full implementation of Justice O'Connor's recommendation 14, which states: "Information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture."

Following his appearance, the Minister of Public Safety sent the Committee a copy of his ministerial directive to CSIS regarding information sharing with foreign organizations. The Committee notes the government's efforts in this regard but is still not satisfied. Since human rights are the foundation of freedom and justice³¹, a directive on torture must be

29 *Evidence*, March 31, 2009.

30 Letter submitted to the Committee on April 1, 2009.

31 Universal Declaration of Human Rights.

clear and specific.³² The directive must also be directed to all national security departments and agencies, not just CSIS. Canada must never contribute to the incidence of torture. Consequently:

RECOMMENDATION 4:

The Committee recommends that the Government of Canada issue a clear ministerial directive against torture and the use of information obtained from torture for all departments and agencies responsible for national security. The ministerial directive must clearly state that the exchange of information with countries is prohibited when there is a credible risk that it could lead, or contribute, to the use of torture.

E. Creation of a parliamentary committee to review the activities of national security organizations

Discussions surrounding a potentially larger role for Canadian parliamentarians in the review of security and intelligence activities have intensified since the tragic events of September 11 and the introduction in Parliament of the bill to establish the National Security Committee of Parliamentarians (Bill C-81), on November 24, 2005. This bill, which was supported by all parties, died on the Order Paper just a few days later when the 38th Parliament was dissolved. The bill would have established a committee made up of no more than three senators and six MPs,³³ with a mandate to review the legislative, regulatory and administrative framework for national security and the activities of national security departments and agencies and any other matter relating to national security referred to it by the appropriate minister.

In 2004, an interim committee of members of the Senate and the House of Commons was given the mandate to consider this issue and report its conclusions. Bill C-81 stemmed from the conclusions of this interim committee,³⁴ which recommended in a report presented in October 2004 that a committee of parliamentarians be created to review the security and intelligence communities and to ensure that they respect the *Canadian Charter of Rights and Freedoms*.

In 2007, after their respective reviews of the *Anti-Terrorism Act*, this Committee³⁵ and the Special Senate Committee on the *Anti-Terrorism Act* also recommended the

32 The ministerial directive to CSIS is reproduced in Appendix D.

33 The members would have been appointed by the Governor in Council until the dissolution of Parliament. They would have been required to swear an oath and would have been bound to secrecy in perpetuity.

34 Interim Committee of Parliamentarians on National Security, *Report of the Interim Committee of Parliamentarians on National Security*, October 2004, pp.4-5.

35 *Rights, Limits, Security: A Comprehensive Review of the Anti-Terrorist Act and Related Issues*, Final Report of the Standing Committee on National Security and Public Safety, March 2007.

creation of a committee of parliamentarians on national security, with the mandate of reviewing the activities of Canadian security and intelligence agencies and any security or intelligence matter referred to it by the government.

On March 26, 2009, at an informal meeting in Ottawa, a discussion took place between Members of this Committee and members of the United Kingdom's Intelligence and Security Committee. The U.K. Committee has extensive powers and a mandate to review the operations of all national security organizations in that country. It reports its findings and recommendations to the Prime Minister. These discussions confirmed the importance of independent review of the activities of national security departments and agencies in order to uphold rights and freedoms. These discussions also renewed the Committee's interest in the creation of a committee of parliamentarians on national security. In light of these considerations:

RECOMMENDATION 5:

The Committee recommends, once again, that Bill C-81, introduced in the 38th Parliament, An Act to Establish the National Security Committee of Parliamentarians, or a variation of it, be introduced in Parliament at the earliest opportunity.

CONCLUSION

The Committee notes that progress has been made further to the recommendations of the O'Connor Inquiry report. That being said, the fact that the government has delayed the implementation of the recommendations from the policy review is of tremendous concern to the Committee. The Committee maintains that progress will be unsatisfactory until the government establishes the independent review framework for federal departments and agencies responsible for national security, as recommended by Justice O'Connor.

The Committee intends to closely monitor the implementation of the recommendations contained in this report to ensure that the recommendations arising from these exhaustive inquiries do not go unheeded. The Committee is of the opinion that prompt action is required. The government must make the implementation of all the recommendations arising from these inquiries a priority. Acting on these recommendations is extremely important in order to protect Canadians from violations of their human rights and to restore the necessary public trust in the security and intelligence community.

Finally, the Committee recognizes the importance of sharing information with foreign organizations in dealing with national security threats. The measures taken to address those threats and the activities of national security departments and agencies must however ensure the safety of all Canadians while protecting their rights and freedoms. As some witnesses pointed out to the Committee, human rights are a key component of national security and not an obstacle to it.

LIST OF RECOMMENDATIONS

RECOMMENDATION 1:

The Committee reiterates the recommendation made in its report presented to the House of Commons on January 30, 2007¹ and recommends that the Government of Canada recognize the urgency of the situation by immediately implementing all the recommendations from the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.

RECOMMENDATION 2:

The Committee recommends that the Government of Canada immediately issue regular public reports on the progress made in implementing the findings and recommendations arising from the *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* and the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin.

RECOMMENDATION 3:

In consideration of the harm done to Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin, the Committee recommends:

- That the Government of Canada apologize officially to Mr. Abdullah Almalki, Mr. Ahmad Abbou-Elmaati and Mr. Muayyed Nureddin.
- That the Government of Canada allow for compensation to be paid to Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin as reparation for the suffering they endured and the difficulties they encountered.
- That the Government of Canada do everything necessary to correct misinformation that may exist in records administered by national security agencies in Canada or abroad with respect to Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin and members of their families.

¹ Standing Committee on Public Safety and National Security, *Second Report*, 39th Parliament, 1st Session, January 30, 2007.

RECOMMENDATION 4:

The Committee recommends that the Government of Canada issue a clear ministerial directive against torture and the use of information obtained from torture for all departments and agencies responsible for national security. The ministerial directive must clearly state that the exchange of information with countries is prohibited when there is a credible risk that it could lead, or contribute, to the use of torture.

RECOMMENDATION 5:

The Committee recommends, once again, that Bill C-81, introduced in the 38th Parliament, *An Act to Establish the National Security Committee of Parliamentarians*, or a variation of it, be introduced in Parliament at the earliest opportunity.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Commission for Public Complaints Against the Royal Canadian Mounted Police</p> <p>Paul E. Kennedy, Chair Executive Services</p> <p>Michael P. MacDonald, Director Strategic Policy and Research</p> <p>Security Intelligence Review Committee</p> <p>Steve Bittle, Research Director</p> <p>Susan Pollak, Executive Director</p> <p>Sylvie Roussel, Acting Senior Counsel Complaints Section</p>	2009/03/05	8
<p>As an individual</p> <p>Kerry Pither, Human rights advocate and author</p> <p>Amnesty International</p> <p>Alex Neve, Secretary General</p> <p>British Columbia Civil Liberties Association</p> <p>Shirley Heafey, Board Member</p> <p>Canadian Arab Federation</p> <p>James Kafieh, Legal Counsel</p> <p>International Civil Liberties Monitoring Group</p> <p>Warren Allmand, Spokesperson</p>	2009/03/24	11
<p>Canada Border Services Agency</p> <p>Geoff Leckey, Director General Intelligence Directorate</p> <p>Canadian Security Intelligence Service</p> <p>Geoffrey O'Brian, Advisor Operations and Legislation</p> <p>Royal Canadian Mounted Police</p> <p>Gilles Michaud, Director General National Security Criminal Operations Branch</p> <p>Bert Hoskins, Superintendent, National Security Criminal Investigations</p>	2009/03/31	13
<p>Ligue des droits et libertés</p> <p>Dominique Peschard, President</p>	2009/04/30	18
<p>As an individual</p> <p>Paul Cavalluzzo, Counsel</p>	2009/05/07	20

Office of the Privacy Commissioner of Canada

2009/05/07

20

Jennifer Stoddart, Privacy Commissioner of Canada

Chantal Bernier, Assistant Privacy Commissioner

Carman Baggaley, Strategic Policy Advisor
Legal Services and Policy Branch

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

Commission for Public Complaints Against the Royal Canadian Mounted Police

Office of the Privacy Commissioner of Canada

**LIST OF RECOMMENDATIONS ARISING FROM
COMMISSION OF INQUIRY INTO THE ACTIONS OF
CANADIAN OFFICIALS IN RELATION TO MAHER
ARAR**

LIST OF RECOMMENDATIONS ARISING FROM FACTUAL INQUIRY

Recommendation 1:

The RCMP should ensure that its activities in matters relating to national security are properly within its mandate as a law enforcement agency.

(a) The RCMP should take active steps to ensure that it stays within its mandate as a police force to perform the duties of peace officers in preventing and prosecuting crime. It should ensure that it respects the distinct role of CSIS in collecting and analyzing information and intelligence relating to threats to the security of Canada.

(b) The RCMP should continue to develop its capacity for intelligence-led policing while ensuring that it remains within its law enforcement mandate.

(c) The RCMP should establish internal controls for all national security investigations to ensure that, when commencing and carrying out investigations and collecting information, it is properly within its law enforcement mandate to prevent, investigate and prosecute crimes.

Recommendation 2:

The RCMP should continue to engage in integrated and co-operative operations in national security investigations, but agreements or arrangements in this respect should be reduced to writing.

(a) The RCMP's integrated policing initiatives with other Canadian police forces are necessary and beneficial and should continue.

(b) While respecting their different mandates, the RCMP and CSIS should continue to co-operate with one another and expand upon the ways in which they do so.

(c) The RCMP should continue to adhere to and refine its policy of cooperating with other federal agencies or departments involved in national security investigations.

(d) The RCMP should continue to work co-operatively with foreign agencies in pursuing its law enforcement mandate in national security investigations.

(e) The RCMP's agreements or arrangements with other entities in regard to integrated national security operations should be reduced to writing.

Recommendation 3:

The RCMP should ensure that those involved in national security investigations are properly trained in the particular features of such investigations.

(a) Investigators in the national security field require all of the skills and expertise of investigators in other criminal investigations, but they should also be given training relating specifically to national security aspects.

(b) The RCMP should ensure that the specific types of information at the basis of national security investigations are analyzed with accuracy, precision and a sophisticated understanding of the context from which the information originates, with a view to developing intelligence that can lead to successful prevention and prosecution of a crime.

(c) The RCMP's National Security Enforcement Course curriculum should be reviewed in the light of the findings and recommendations of the Inquiry. In future, training curricula should be reviewed periodically by the RCMP and by the proposed independent review body.

(d) Training for national security investigators should include a specific focus on practices for information sharing with the wide range of agencies and countries that may become involved in national security investigations.

(e) The RCMP should continue and expand upon its social context training, which is necessary to be able to conduct efficient investigations while ensuring fairness to individuals and communities.

Recommendation 4:

The RCMP should maintain its current approach to centralized oversight of national security investigations.

Recommendation 5:

The minister responsible for the RCMP should continue to issue ministerial directives to provide policy guidance to the RCMP in

national security investigations, given the potential implications of such investigations.

Recommendation 6:

The RCMP should maintain its policy of sharing information obtained in the course of national security investigations with other agencies and police departments, both domestic and foreign, in accordance with the principles discussed in these recommendations.

Recommendation 7:

The RCMP's Criminal Intelligence Directorate (CID) or another centralized unit with expertise in national security investigations should have responsibility for oversight of information sharing related to national security with other domestic and foreign departments and agencies.

Recommendation 8:

The RCMP should ensure that, whenever it provides information to other departments and agencies, whether foreign and domestic, it does so in accordance with clearly established policies respecting screening for relevance, reliability and accuracy and with relevant laws respecting personal information and human rights.

(a) The RCMP should maintain its policy of screening information for relevance before sharing it.

(b) The RCMP should ensure that information provided to other countries is reliable and accurate and should amend its operational manual accordingly.

(c) Information should also be screened by the RCMP for compliance with the applicable law concerning personal information before it is shared.

Recommendation 9:

The RCMP should never share information in a national security investigation without attaching written caveats in accordance with existing policy. The RCMP should review existing caveats to ensure that each precisely states which institutions are entitled to have access to the information subject to the caveat and what use the institution may make of that information. Caveats should also generally set out an efficient procedure for recipients to seek any changes to the.

(a) The RCMP's current policy of requiring caveats on all documents being provided to other agencies is sound and should be strictly followed.

(b) The RCMP should review the language of its existing caveats to ensure that it clearly communicates the desired restrictions on the use of information being shared. Caveats should clearly state who may use the information, what restrictions apply to that use, and whom to contact should the recipient party wish to modify those terms.

Recommendation 10:

The RCMP's information-sharing practices and arrangements should be subject to review by an independent, arms-length review body.

Recommendation 11:

Canadian agencies other than the RCMP that share information relating to national security should review recommendations 6 to 10 above to ensure that their information-sharing policies conform, to the appropriate extent, with the approaches I am recommending for the RCMP.

Recommendation 12:

Where Canadian agencies become aware that foreign agencies have made improper use of information provided by a Canadian agency, a formal objection should be made to the foreign agency and the foreign minister of the recipient country.

Recommendation 13:

The Department of Foreign Affairs and International Trade (DFAIT) should provide its annual reports assessing the human rights records of various countries to the RCMP, CSIS and other Canadian government departments or agencies that may interact with such countries in connection with investigations.

Recommendation 14:

The RCMP and CSIS should review their policies governing the circumstances in which they supply information to foreign governments with questionable human rights records. Information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture. Policies should include specific directions aimed at

eliminating any possible Canadian complicity in torture, avoiding the risk of other human rights abuses and ensuring accountability.

Recommendation 15:

Canadian agencies should accept information from countries with questionable human rights records only after proper consideration of human rights implications. Information received from countries with questionable human rights records should be identified as such and proper steps should be taken to assess its reliability.

Recommendation 16:

The Government of Canada should develop a protocol to provide for coordination and coherence across government in addressing issues that arise when a Canadian is detained in another country in connection with terrorism-related activity. Essential features of this protocol should include consultation among relevant Canadian agencies, a coherent and unified approach in addressing the issues, and political accountability for the course of action adopted.

Recommendation 17:

The Canadian government should develop specific policies and training to address the situation of Canadians detained in countries where there is a credible risk of torture or harsh treatment.

(a) Consular officials posted to countries that have a reputation for abusing human rights should receive training on conducting interviews in prison settings in order to be able to make the best possible determination of whether torture or harsh treatment has occurred.

(b) If there is credible information that a Canadian detained abroad is being or has been tortured, the Minister of Foreign Affairs should be informed and involved in decisions relating to the Canadian response.

(c) Canadian officials should normally insist on respect of all of a detainee's consular rights.

Recommendation 18:

Consular officials should clearly advise detainees in foreign countries of the circumstances under which information obtained

from the detainees may be shared with others outside the Consular Affairs Bureau, before any such information is obtained.

Recommendation 19:

Canadian agencies conducting national security investigations, including CSIS, the RCMP and the Canada Border Services Agency (CBSA), should have clear written policies stating that such investigations must not be based on racial, religious or ethnic profiling.

Recommendation 20:

Canadian agencies involved in anti-terrorism investigations, particularly the RCMP, CSIS and the CBSA, should continue and expand on the training given to members and staff on issues of racial, religious and ethnic profiling and on interaction with Canada's Muslim and Arab communities.

Recommendation 21:

Canadian agencies should have clear policies about the use of border lookouts.

(a) The RCMP and CSIS should develop guidelines governing the circumstances in which border lookouts may be requested both in Canada and in other countries.

(b) The CBSA should establish clear, written criteria for placing individuals on a lookout list.

(c) The CBSA should establish clear policies or guidelines concerning criteria for examining and photocopying documents and retrieving information from computers and electronic devices when individuals are seeking entry into Canada.

(d) Canada Customs should purge the information about Dr. Mazigh and her children from the Intelligence Management System.

Recommendation 22:

The Government of Canada should register a formal objection with the governments of the United States and Syria concerning their treatment of Mr. Arar and Canadian officials involved with his case.

Recommendation 23:

The Government of Canada should assess Mr. Arar's claim for compensation in the light of the findings in this report and respond accordingly.

LIST OF RECOMMENDATIONS ARISING FROM THE POLICY REVIEW

Recommendation 1:

Existing accountability mechanisms for the RCMP's national security activities should be improved by putting in place an independent, arm's-length review and complaints mechanism with enhanced powers.

Recommendation 2:

The review and complaints body should be located within a restructured Commission for Public Complaints Against the RCMP, and be renamed the Independent Complaints and National Security Review Agency for the RCMP (ICRA for short) to reflect its expanded role.

Recommendation 3:

ICRA's mandate should include authority to:

(a) conduct self-initiated reviews with respect to the RCMP's national security activities, similar to those conducted by the Security Intelligence Review Committee (SIRC) with respect to CSIS, for compliance with law, policies, ministerial directives and international obligations and for standards of propriety expected in Canadian society;

(b) investigate and report on complaints with respect to the RCMP's national security activities made by individual complainants and by third-party groups or individuals;

(c) conduct joint reviews or investigations with SIRC and the CSE Commissioner into integrated national security operations involving the RCMP;

(d) conduct reviews or investigations into the national security activities of the RCMP where the Minister of Public Safety so requests;

(e) conduct reviews or investigations into the activities related to national security of one or more government departments, agencies, employees or contractors, where the Governor in Council so requests; and

(f) in exercising its mandate with respect to the matters in paragraphs (a) to (d) above, make recommendations to the Minister of Public Safety, and with respect to matters in paragraph (e), to make recommendations to the relevant Ministers.

Recommendation 4:

ICRA should have the following powers:

(a) extensive investigative powers, similar to those for public inquiries under the *Inquiries Act*, to allow it to obtain the information and evidence it considers necessary to carry out thorough reviews and investigations; those powers should include the power to subpoena documents and compel testimony from the RCMP and any federal, provincial, municipal or private-sector entity or person;

(b) power to stay an investigation or review because it will interfere with an ongoing criminal investigation or prosecution;

(c) power to conduct public education programs and provide information concerning the review body's role and activities; and

(d) power to engage in or to commission research on matters affecting the review body.

Recommendation 5:

ICRA's complaints process should incorporate the following features:

(a) in the first instance, ability on the part of ICRA to refer a complaint to the RCMP or investigation or to investigate the complaint itself, if deemed appropriate;

(b) ability on the part of the complainant to request that ICRA review the complaint if the complainant is not satisfied with the RCMP's investigation and disposition of it;

(c) ability on the part of ICRA to dismiss a complaint at any stage of an investigation as trivial, frivolous or vexatious, or made in bad faith;

(d) establishment of a program providing opportunities for the use of mediation and informal complaint resolution, except where the complainant does not have the information about the RCMP activities that are relevant to the complaint;

(e) with respect to complaints, opportunity for the Commissioner of the RCMP and affected members of the RCMP to make representations to ICRA and, where a hearing is commenced, to present evidence and be heard personally or through counsel;

(f) opportunity for the complainant to make representations to ICRA and to present evidence and be heard personally or through counsel at a hearing;

(g) open and transparent hearings of a complaint, to the extent possible, but authority for ICRA to conduct all or part of a hearing in private when it deems it necessary to protect national security confidentiality, ongoing police investigations or the identity and safety of sources;

(h) for purposes of hearings of complaints, discretion by ICRA to appoint security-cleared counsel independent of the RCMP and the government to test the need for confidentiality in regard to certain information and to test the information that may not be disclosed to the complainant or the public;

(i) ability for ICRA to seek the opinions or comments of other accountability bodies, such as the Canadian Human Rights Commission, the Privacy Commissioner of Canada and the Information Commissioner of Canada.

Recommendation 6:

ICRA should be structured so that complaints and reviews related to the RCMP's national security activities are addressed only by specified members. Appointments of such members should be aimed at inspiring public confidence and trust in their judgment and experience. Appointees should be highly-regarded individuals with a stature similar to SIRC appointees.

Recommendation 7:

CRA should prepare the following reports to the Minister of Public Safety (the Minister) and the Commissioner of the RCMP:

(a) Reports arising from self-initiated reviews and investigations of complaints, which should include non-binding findings and recommendations.

(b) Annual reports on its operations to the Minister, who should lay an edited version of the report, omitting national security information, before each House of Parliament.

All of the above reports may include confidential information (including information subject to national security confidentiality) and should also include an edited version that ICRA proposes for public release.

Recommendation 8:

ICRA should have an adequate budget to fulfill its mandate in relation to the RCMP's national security activities, including for purposes of self-initiated review.

Recommendation 9:

There should be independent review, including complaint investigation and self-initiated review, for the national security activities of the Canada Border Services Agency, Citizenship and Immigration Canada, Transport Canada, the Financial Transactions and Reports Analysis Centre of Canada and Foreign Affairs and International Trade Canada.

Recommendation 10:

ICRA should review the national security activities of the Canada Border Services Agency, and the Security Intelligence Review Committee should review the national security activities of the other four entities.

Recommendation 11:

The government should establish statutory gateways among the national security review bodies, including ICRA, in order to provide for the exchange of information, referral of investigations, conduct of joint investigations and coordination in the preparation of reports.

Recommendation 12:

The government should establish a committee, to be known as the Integrated National Security Review Coordinating Committee, or

INSRCC, comprising the chairs of ICRA and the Security Intelligence Review Committee, the Communications Security Establishment Commissioner and an outside person to act as Committee chair. INSRCC would have the following mandate:

- **to ensure that the statutory gateways among the independent review bodies operate effectively;**
- **to take steps to avoid duplicative reviews;**
- **to provide a centralized intake mechanism for complaints regarding the national security activities of federal entities;**
- **to report on accountability issues relating to practices and trends in the area of national security in Canada, including the effects of those practices and trends on human rights and freedoms;**
- **to conduct public information programs with respect to its mandate, especially the complaint intake aspect; and**
- **to initiate discussion for co-operative review with independent review bodies for provincial and municipal police forces involved in national security activities.**

Recommendation 13:

In five years' time, the government should appoint an independent person to re-examine the framework for independent review recommended in this Report, in order to determine whether the objectives set out are being achieved and to make recommendations to ensure that the review of national security activities keeps pace with changing circumstances and requirements.

**MINISTERIAL DIRECTION TO THE DIRECTOR
CANADIAN SECURITY INTELLIGENCE SERVICE:
INFORMATION SHARING WITH FOREIGN AGENCIES**

MINISTERIAL DIRECTION TO THE DIRECTOR
CANADIAN SECURITY INTELLIGENCE SERVICE:
INFORMATION SHARING WITH FOREIGN AGENCIES

This Ministerial Direction provides guidance to the Director of the Canadian Security Intelligence Service (CSIS), pursuant to subsection 6(2) of the *CSIS Act*, on information-sharing with foreign agencies.

INFORMATION SHARING WITH FOREIGN AGENCIES

It is widely recognized that the international sharing of information is a vital component to safeguarding Canada's national security as well as an obligation of all states, pursuant to resolutions and conventions of the United Nations and other multilateral institutions, engaged in the struggle against terrorism. As such, pursuant to section 17 of the *CSIS Act* and in accordance with existing Ministerial Directives, CSIS may be authorized to enter into formal information sharing arrangements with foreign agencies, including those that are generally recognized as having poor human rights records.

That said, the government is steadfast in its abhorrence of and opposition to the use of torture by any state or agency for any purpose whatsoever, including the collection of intelligence. As such, and so as to avoid any complicity in the use of torture, CSIS is directed to:

- not knowingly rely upon information which is derived from the use of torture, and to have in place reasonable and appropriate measures to identify information that is likely to have been derived from the use of torture;
- take all other reasonable measures to reduce the risk that any action on the part of the Service might promote or condone, or be seen to promote or condone the use of torture, including, where appropriate, the seeking of assurances when sharing information with foreign agencies.

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 8, 11, 13, 18, 20, 28, 29](#)) is tabled.

Respectfully submitted,

Garry Breitkreuz, MP

Chair

DISSENTING OPINION FROM THE CONSERVATIVE PARTY OF CANADA

Conservative Member's supplemental report on the Public Safety and National Security's Review of the Findings and Recommendations of the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin (Iacobucci Inquiry) and the report from the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (O'Connor Inquiry)

RECOMMENDATION 3

The Committee did not undertake this study to make any claims regarding the facts of the cases of Mr. Almalki, Mr. Abou-Elmaati and Mr. Nurreddin and therefore has no factual basis from which to recommend either an apology or compensation. There is on going litigation in these cases and it is our opinion that it would be inappropriate for the Committee to make this recommendation (Marleau and Montpetit pg 428).

The Committee did undertake to consider the findings of the Iacobucci inquiry and at no point in his report did Justice Iacobucci recommend that the government either apologize or give compensation.

RECOMMENDATION 4

It is the Conservative member's position that this recommendation has already been fulfilled by the government.

On April 2nd, 2009 the Minister stated in answering a question from the opposition:

"The position of the Government of Canada is quite clear: we do not condone the use of torture in intelligence gathering. Our clear directive to our law enforcement agencies and our intelligence service is that they are not to condone the use of torture, practice torture, or knowingly use any information obtained through torture."

Further, the head of CSIS Jim Judd stated the following regarding the Minister's statement:

"The minister's position is reflective of the policy of CSIS. We do not condone torture. We do not rely on information obtained by torture."

Lastly, at the Committee's request the Minister of Public Safety provided a copy of a directive to CSIS on information sharing with foreign agencies where it clearly states that CSIS "will not knowingly rely on" such information and they will "take all reasonable steps" to prevent even the appearance of condoning torture. A copy of the Minister's directive is attached to this report.