

Committee of Organizations with Intervenor Status at the Arar Inquiry
75 Albert Street, Suite 410, Ottawa, ON K1P 5E7
Tel: (613) 238-2211, Mobile: (613) 294-2203, Email: intervenors@gmail.com

**Joint Intervenors' Reply Submission to the Commission of
Inquiry into the Actions of Canadian Officials in Relation to
Maher Arar**

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This reply submission is being made jointly by the eighteen organizations with Intervenor Status at the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. They are Amnesty International Canada, the British Columbia Civil Liberties Association, Canadian Arab Federation, Canadian Islamic Congress, Canadian Labour Congress, Council of Canadians, Council on American Islamic Relations (Canada), International Coalition Against Torture, International Civil Liberties Monitoring Group, Law Union of Ontario, Minority Advocacy Rights Council, Muslim Canadian Congress, Muslim Community Council of Ottawa-Gatineau, National Council on Canada-Arab Relations, Polaris Institute, and internationally the Redress Trust, Association for the Prevention of Torture and the World Organization against Torture (OMCT).

PREAMBLE

Individual Intervening Organizations will be making their own reply submissions to different issues raised in final submissions by the Attorney General, the RCMP, CSIS and other parties. This joint submission is being made on behalf of all Intervening organizations, with regard to pattern, the key issue we addressed in our joint final submission to the Commission.

REPLY TO SUBMISSIONS ON PATTERN

In its submissions of September 10, 2005, the Attorney General asserts:

The Commissioner has heard very little evidence concerning Mr. Nureddin's circumstances. There is nothing to suggest that he was either a suspect or a person of interest to Project A-OCanada. However, the Commissioner has heard extensive evidence in camera about the RCMP's knowledge of the arrests of El Maati and Almalki in Syria, and whether information was subsequently exchanged with the Syrian or Egyptian authorities concerning these two individuals.¹

The Attorney General also asserts that "because Messrs. El Maati and Almalki travelled to Syria of their own volition, their cases should not have given reason for the RCMP to anticipate Mr. Arar would be sent to Syria."²

In oral submissions, the Attorney General argued against the need to expand the mandate of the Commission in order to determine findings on the issue of pattern. Counsel asserted:

... you have heard extensive evidence about the extent to which Canadian officials knew anything about the arrest of Mr. Almalki in Syria and the arrest of Mr. El Maati in Syria. And you have also heard extensive information about whether there were exchanges of information with the Syrian authorities during the time that any of those people were detained in Syria. So in my submission, your mandate permits you to look at that. You have received extensive evidence about it and certainly sufficient evidence to make an informed decision about whether or not Mr. Arar's circumstances are part of a broader pattern.³

As we outlined in our written and oral submissions, we believe that what we do know, at the very least, gives *prima facie* reason to believe there may be a pattern. Four Canadian Muslim men who were under investigation in Canada, ended up being detained, interrogated and tortured in the same detention centre in Syria, and all say that the information that formed the basis of their interrogations could only have originated in Canada. Whether Mr. Nureddin was ever a suspect or person of interest to Project A-OCanada, rather than another Canadian agency, is not the issue. Nor is the

¹ *Submissions by the Attorney General, chapter 5, paragraph 53.*

² *Ibid. paragraphs 54 and 55.*

³ *Fothergill: 11900:19 to 11901:6*

question of whether he, Mr. El Maati, or Mr. Almalki were travelling of their own volition before being detained.

We cannot, unfortunately, know whether the evidence heard on these cases *in camera* can be considered as “extensive” or “sufficient” as the Attorney General asserts. We can only say that it would be unfair, and inappropriate, for the Commission to make a conclusive finding that there is no pattern, or no Canadian complicity in these men’s cases, based on information that none of these men, Intervenors, or the public, have had a chance to see, hear, question or otherwise respond to. This is especially true in the face of the abundant evidence in the public domain, as outlined in our final submission, that points to the existence of a pattern.

Mr. El Maati, Mr. Almalki and Mr. Nureddin were not granted full standing at this Inquiry, and as such, Commission Counsel did not have the benefit of extensive, ongoing communication with them to inform the calling and evaluation of documentary evidence, or cross examination of witnesses *in camera* or in public. Indeed, detailed chronological accounts of their stories were only introduced as exhibits to the Inquiry near the end of the public hearings, and this information could not have been used to inform, test and explore any *in camera* evidence.

Throughout the public hearing process, government counsel repeatedly limited the scope of questioning permitted about these cases, and about the pattern issue itself, asserting that this is not an Inquiry about Mr. El Maati, Mr. Almalki or Mr. Nureddin. When these men were finally granted standing, it was limited to protecting their reputational interests. On numerous occasions government counsel refused to let witnesses answer questions from their counsel, arguing that these questions went beyond the mandate of this Inquiry.⁴

In our written submissions of September 10, 2005, we made two recommendations with respect to the cases of Mr. El Maati, Mr. Almalki and Mr. Nureddin. First, we urged the Commission must go as far as the evidence allows with respect to determining whether what happened to Mr. Arar can be linked to a Canadian policy of having Canadian citizens detained, and/or interrogated on their behalf in countries known for practicing torture.

We recognized that the Commission may not have seen enough evidence to be able to make conclusive findings of fact with respect to what happened to Mr. El Maati, Mr. Almalki and Mr. Nureddin, or with respect to issues of accountability and redress in their cases, and argued that the Arar Inquiry would not be complete unless the Commissioner recommends the thorough and independent assessment of their claims of mistreatment. We urged the Commission to recommend that there be a further process of independent, impartial and expert review, through a second phase of this public inquiry, through the appointment of an independent expert, or through any other kind of effective independent process that the Commissioner feels would provide the kinds of answers and public accountability that are so necessary.

⁴ See, for example, *Fothergill*, 9370:4, 9392:6; *McIsaac*, 9190:20 to 9191:4

As we write this, we note with optimism that calls are growing for an investigative process. Just this week the United Nations Committee on Human Rights, in examining Canada's compliance with the International Covenant on Civil and Political Rights, noted its concern about allegations that Canada "may have cooperated with agencies known to resort to torture with the aim of extracting information from individuals detained in foreign countries." The Committee noted the ongoing Inquiry into the Maher Arar case, but said it "regrets however that insufficient information was provided as to whether cases of other Canadians of foreign origin detained, interrogated and allegedly tortured are the subject of that or any other inquiry."⁵

The Committee called on Canada "to ensure that a public and independent inquiry review all cases of Canadians citizens who are suspected terrorists or suspected to be in possession of information in relation to terrorism, and who have been detained in countries where it is feared that they have undergone or may undergo torture and ill-treatment. Such inquiry should determine whether Canadian officials have directly or indirectly facilitated or tolerated their arrest and imprisonment."⁶

Many of the Intervening Organizations have called on the government to launch that additional investigative process immediately, and have highlighted that it would be unfair to ask these men to wait for the Commission's report before that investigative process begins. We've called for a process that can build on the work of the Inquiry, be fair, and be independent.

We conclude our reply submissions by once again highlighting that if that process is not already underway when the Commission files its Interim Report, that a recommendation like this from the Commission, will, we believe, be determinative and decisive. We fear that without that recommendation, there may never be answers and accountability for these other men.

⁵ *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee, Canada, CCPR/CO/85/CAN, page 4, paragraph 16.*

⁶ *Ibid., p.4.*