

June 9, 2004

VIA FACSIMILE

Mr. Paul Cavalluzzo
Commission of Inquiry into the Actions of
Canadian Officials in Relation to Maher Arar
66 Slater Street
Suite 1720 - 17th Floor
Ottawa, On K1P 5K6

Dear Sir:

As requested, the purpose of this letter is to provide the comments of the Attorney General of Canada with respect to the motion filed by Mr. Arar's counsel for disclosure of certain documents in the possession of the Government of Canada. We had understood from your email communication of June 1, 2004 that we had until June 11, 2004 to provide comments. Without waiting for those comments the Commission has scheduled an oral hearing of the motion on July 5, 2004. Nevertheless, it is important that the Attorney General's views with respect to the motion be placed on the record before the motion is argued.

1. The motion seeks disclosure of information to Mr. Arar and to the public. Such an approach is contrary to the procedures of inquiries generally and to the procedures adopted by this Inquiry and expressed in the draft Rules of Practice and Procedure. Records are not disclosed to a party or to the public. They are disclosed to the Commission. The Commission, through Commission counsel, decides what records are to be entered into evidence and disclosed to the public and to parties to the Inquiry subject to findings by Justice O'Connor that certain information will only be received *in camera* and *ex parte*. The Orders being requested are not proper;
2. The motion is premature. The representations contained therein should be provided to the Commission as considerations which the Applicant submits Justice O'Connor should take into account when adjudicating on claims for National Security Confidentiality as contemplated by the draft Rules of Practice and Procedure. A vast number of documents have been provided to the Commission and documentary

June 9, 2004

- 2 -

production continues. In some cases the Attorney General has asserted claims for National Security Confidentiality. In some cases, he will only do so once Commission counsel identifies the documents which the Commission deems relevant to its Inquiry. Accordingly, it is not all clear at this time that some of the documents and information requested even exists, let alone whether the Attorney General makes any claim for National Security Confidentiality;

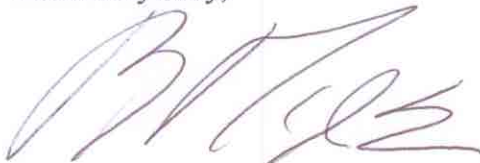
3. The motion will necessarily have to be argued in the abstract. Item (3) of paragraph 1 of the motion provides an illustration. What is "information subsumed or made obvious by the information in the public domain"? Information in the media is not always accurate. Nor is it "evidence" that particular documents or information actually exist or are in fact in the possession of the government.

In summary, an important factor for Commissioner O'Connor to take into account when evaluating a claim for National Security Confidentiality is whether that information is in the public domain. However, that factor is not always dispositive of the issue. The claims for National Security Confidentiality to be made by the Attorney General of Canada must be evaluated on a case by case basis with reference to the overall context, the specific information in issue and the specific circumstances under which it came into the control of the Government of Canada. Such claims ought not to be evaluated in the abstract.

However, if the motion is to proceed on July 5, 2005 as scheduled, we will need production immediately of the following documents referred to in the motion, but not provided:

- Statement of Mr. Edelson (p.7)
- Statement of Ms. Mazigh (p.9)
- Statement of James Lockyer (p.11)

Yours very truly,



Barbara A. McIsaac, Q.C.

BAM/pg

c. All Other Parties

Doc #5626377