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**Mr. Justice O'Connor, The Arar Inquiry  
Box 507 Stat. B Ottawa K1P 5P6**

**June 11, 2004**

**PUBLIC SUBMISSION on the Disclosure Motion of Government of Canada Documents  
Filed On Behalf of Maher Arar**

**The application motion made by Mr. Arar's counsels at the Arar Inquiry has considerable merit.**

**Otherwise, how can Mr. Arar and his lawyers prepare and present a factual case concerning the circumstances surrounding his detention, deportation and imprisonment, treatment, return and subsequent interpretation of those events?**

**If they cannot at a very minimum have the Government of Canada disclose information and documents that are or have been in the public domain, then the Inquiry suffers. It is my understanding up to this point that not a single piece of information or record has been provided by the Government of Canada to Mr. Arar's counsels.**

**Their disclosure motion would help ensure that the Arar Inquiry truly engages at the outset a central issue to the Inquiry. The underlying emphasis must not be on turning matters public into secrets. An Inquiry chalk full of continuous objections and skirmishes on known facts is hardly productive.**

**The major qualification to my support is the need to clarify the meaning of the motion's words, "in part". If this refers to severing of what is public from still secret data that itself can be very narrowly be defined and tested as having national security considerations, that is one matter.**

**It is another matter if this means, or is interpreted to mean, accepting a limit on what is already public. This in essence leads to adopting in part the Government of Canada's sweeping position on national security confidentiality that definitely does permit conversion of public domain information into state secrets.**

**The Inquiry Commission should carefully examine the materials released to me under the Access to Information Act on behalf of Mr. Arar and Ms. Mazigh that his counsels gave to the Inquiry.**

**The Inquiry will find that some of the data confirms the basic premises of the disclosure motion before the Commission. For example, the data indicates that the RCMP were in touch with American authorities concerning Mr. Arar, that he was under**

**surveillance before being detained and deported, and that the PMO and Solicitor General were not, early on, kept fully abreast about the Arar case. Should this released data now be buried and hidden?**

**More government data is yet to come, and more is expected to be released after active complaints are dealt with. Some of the agencies over the many months have shown that they have little interest in getting the facts out promptly and in proactive disclosure.**

**The Inquiry itself is most likely experiencing too a reluctance on the part of some agencies to provide all relevant data. Yet this is not public.**

**Some agencies have even gone so far as to reclassify public source data as secret. For example, the RCMP exempted parts of reporters' queries to them, queries made that can be confirmed by the reporters. The RCMP also is hiding parts of their media analysis reports they did on the Arar case even though the data is taken from open source material.**

**The motion by Mr. Arar's lawyers requesting an order for the production of information and records that are in effect in the public domain is about fairness and accountability. It is backed up by their citation from various legal cases and a review of the Inquiry's own draft Rules of Procedure.**

**The Inquiry then may want to consider favourably orders:**

- . Confirming that public domain data remain public.**
- . Extending that underlying principle to other governments in Canada, including the Government of Ontario.**
- . Expanding proposed rules of procedures to ensure that public domain data remains public and permits many more documents and evidence to be made public during the Inquiry.**

**The disclosure motion made by Mr. Arar's lawyers needs to be argued orally, early on, preferably highlighted before the Inquiry begins and before secret evidence is introduced. Should July 5, 2004 - a date when the hearing has already begun - be confirmed as the day for such oral arguments, I will, regrettably, given previous commitments, be unavailable and out of town and unable to respond.**

**The disclosure motion is most important. It will help put more of the Inquiry proceedings out in the open and benefit the public and the Inquiry. Its rejection will have a definite counter-productive impact on the Inquiry.**

**Respectfully submitted,**

**Ken Rubin**