

ARAR INQUIRY UPDATE

Maher Arar Support Committee, info@maherarar.ca
Produced by volunteer labour.

Take Action!

- Vote in the new poll on maherarar.ca and encourage others to vote.
- Submit your comments to maherarar.ca on the *Have Your Say* page.
- Write to Geoff Regan, the acting attorney general for the Arar inquiry, and ask for the government to cooperate with the inquiry. You can contact him at: Regan.G@parl.gc.ca
- Write to your local newspaper and comment on the government's actions or on how the inquiry is progressing.

EDITORIALS:

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Arar and Mazigh call on government to cooperate with inquiry

Maher Arar and Monia Mazigh have called on the federal government to cooperate with the public inquiry investigating Arar's case after the government censored information the commissioner ruled the public has a right to know.

"The government said it wanted to get to the bottom of what happened to me, and yet it now seems to be hampering the work of its own commission," said Arar. "The public has a right to

know what has been happening in this inquiry."

"We are appealing to the public to help us convince the government to cooperate with the inquiry," pleaded Mazigh, Arar's wife.

Justice Dennis O'Connor ruled in December that some of the CSIS evidence heard in closed hearings could be safely disclosed to the public without harming national security. Nonetheless, the federal

government chose to black out some of the information being released, as well as portions of O'Connor's ruling on the disclosure.

"We are very surprised and disappointed with the government's position on what the public is entitled to know," said Paul Cavalluzzo, lead counsel for the commission. "This government called a public inquiry and not a private investigation."

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Arar named Canadian Newsmaker of the Year

Maher Arar, the man wrongly accused of being a terrorist and deported to a year-long imprisonment in Syria, has been named Time magazine's Canadian Newsmaker of the Year.

"I am happy because I believe that the more attention my case gets, the more people will understand why it is so important that we learn the whole truth about what happened to me," said Arar on receiving the title.

Steven Frank, Time magazine's Canadian bureau chief, says Arar was chosen as the Newsmaker of the Year

for "taking on the national-security agencies in two countries; for standing up to anonymous allegations with courage, forcefulness and common sense; (and) for stepping into the public realm despite the cost to himself and his family."

Since his return to Canada in September 2003, Arar has had to deal with intense media attention along with the trauma of his ordeal. He won a public inquiry into his case which has revealed some disturbing facts about CSIS and the RCMP, who shared information about Arar

with the U.S. while knowing he posed no security threat, and then impeded efforts to have him released from Syria.

"Arar didn't vanish into oblivion in his Middle East cell," writes Frank in the Time magazine article. "Nor, after his release, did he recoil from public view. Instead Arar, who has a modest home in Ottawa, has stepped into the spotlight, emerging as a vocal proponent of human rights in Canada, a symbol of how fear and injustice have permeated life in the West since 9/11."

IMPORTANT NOTICE:

The Arar inquiry's deadline for public submissions on the policy review of a watchdog for the RCMP is January 31, 2005. Please check www.ararcommission.ca, the commission's web site, for more information.

UPDATE on the review of the Anti-Terrorism Act, Bill C-36

Canada officially launched its parliamentary review of the Anti-Terrorism Act, Bill C-36, last month. The act is now three years old, and while it increased the powers of our police and security agencies, it has also affected the rights and freedoms of all Canadians. The committee reviewing the act will hold hearings during the next few months, and those interested in appearing before the committee must send a written submission to committee clerk Marc-Olivier Girard. He can be contacted at:

(613) 944-5635
girarm@parl.gc.ca

Arar and Mazigh – continued from page 1

Large portions of the summary of evidence and ruling were blacked out on the claim that the information would damage national security or international relations. Even parts of a news article, something already available in the public domain, was redacted. Also concealed was information that O'Connor said is "favourable" to Arar and should be released immediately out of fairness.

What's more, the commission included in the disclosure a government proposal on what information should be released to the public. That proposal consisted of a list of questions being asked of CSIS witnesses, with none of the answers provided.

"There must be a balance between national security and the public's right to know, but what we're seeing here is undermining both," says Arar. "The government must cooperate with its own commission of inquiry."

The matter will now be settled in Federal Court, however, should the court rule in favour of the disclosure, the government can use a new provision of the Anti-Terrorism Act to override the court's decision and stop the release. That action cannot be appealed to any court and remains final.

Prime Minister Paul Martin told the Globe and Mail, a few days prior to the full public disclosure, that the redactions are "a

normal part of the give and take in terms of what kind of documentation should be kept in confidence."

But Ed Broadbent, a New Democrat MP, disagrees. "This undermines the whole notion of a public inquiry, when you censor to death a report of the independent inquirer," said Broadbent, who called on Martin to intervene. "This is supposed to be a public inquiry, not a secret investigation."

The commission is still holding secret hearings on evidence from the RCMP and the Department of Foreign Affairs. Further summaries of the testimony will be released before the public hearings resume in March.

Canada upholds anti-terror power while British court rejects it

Britain's highest court has rejected the anti-terror measure of detaining suspected terrorists without trial just one week after a Canadian court upheld a similar power.

The divergent rulings in both countries were issued last month on separate cases. Canada's Adil Charkaoui, one of at least five men detained on security certificates, lost his challenge against the detention of suspected terrorists without charges. The Federal Court of Appeal ruled that individuals without

Canadian citizenship can be subjected to different legal standards and upheld the use of secret evidence. Charkaoui is appealing the ruling.

A week later, Britain's House of Lords ruled that the detention of foreigners without trial violates European human rights laws.

"Indefinite imprisonment without charge or trial is anathema in any country which observes the rule of law," wrote Lord Nicholls in his ruling. "It deprives the detained person of the

protection a criminal trial is intended to afford."

Nonetheless, the nine detainees who challenged the detentions in Britain will remain in prison. Charles Clarke, Britain's Home Secretary, told parliament that the anti-terror power will "remain in force" until the law is reviewed.

Gareth Peirce, a lawyer representing eight of the detainees in Britain, told the BBC that the detention has driven four of the men to "madness," and that two of them have since been hospitalized.

Faisal Kutty is a freelance writer and lawyer. He is currently representing the Council on American-Islamic Relations Canada (CAIR-CAN) in the Arar inquiry. CAIR-CAN, which has intervenor status in the inquiry, is active in the areas of media relations, anti-discrimination and political advocacy on behalf of Canadian-Muslims.

The disturbing state of Canadian intelligence

By **FAISAL KUTTY**

“We do not target specific communities,” said a Canadian intelligence officer, parroting the official line. “We (including Canadian Muslims) are all on the same team in the war on terror.”

The agent, who was questioning one of my clients, was attempting to assuage the growing insecurity gripping Canadian-Muslims.

Showing up at homes and workplaces unannounced; speaking with employers; offering money and favors for “information”; intimidating and threatening newcomers; questioning about specific institutions and individuals; inquiring about a person’s religiosity; and discouraging people from engaging lawyers are some of the recurring themes I have heard from clients. The problem is so severe that the Council on American-Islamic Relations Canada has distributed almost 30,000 Know Your Rights guides and organized 27 workshops across the country on dealing with CSIS and the RCMP.

Now, allegations are growing of Canadian intelligence cooperating with foreign governments to detain and question citizens abroad.

Most recently, a 62-year-old academic, Dr. Mahboob Khawaja, told

the CBC that “the (Saudi) police officer told me they had no reason to arrest me. There were no charges against me here in (Saudi Arabia) ... They arrested me on a request from Canada.”

Khawaja, a Canadian citizen currently employed at a college in Saudi Arabia, was picked up shortly after the Ottawa arrest of his son, Momin, on terrorism charges. The 24-year-old software programmer’s arrest was the first under Canada’s hastily drafted anti-terror laws. Saudi intelligence released the elder Khawaja after two weeks without filing any charges.

Unlike Maher Arar, the Canadian citizen detained by U.S. officials and deported to Syria where he allegedly was tortured, Khawaja says he was not mistreated by the Saudis. But his claim that he was detained at Canada’s request is consistent with Arar’s allegation of Canadian complicity. Khawaja’s eldest son, Qasim, got it right when he told the press, “This is a very disturbing fact, that the RCMP would go about...asking a foreign government to apprehend a Canadian on foreign soil.”

If evidence exists, why not charge, arrest and prosecute suspects in Canada? As if this was not serious enough, Khawaja

dropped another bombshell when he said his interrogators informed him that they were asked by Canadian authorities to ensure that he did not contact consular staff in Riyadh — in clear contravention of the Vienna Convention on Consular Relations. The RCMP denies the allegations, and CSIS refuses to comment.

The denial would be easier to believe if this were an isolated incident and if the government had a better track record. Even former solicitor general Wayne Easter acknowledged the possibility that “rogue” elements of the RCMP may have played a role in Arar’s deportation to Syria — essentially torture by proxy. Indeed, as far back as 2002, U.S. officials incredibly defended the practice as an acceptable weapon in the war on terror to The Washington Post.

Since his return, Arar has launched separate lawsuits against U.S. and Canadian authorities. The U.S. suit revolves around his deportation to certain torture, while the Canadian claim alleges that Canada was “negligent for passing on erroneous information to the American authorities that led them to believe that Arar was connected to a terrorist group.”

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Denis Barrette is a lawyer who is currently representing the International Civil Liberties Monitoring Group (ICLMG) in the Arar inquiry. The ICLMG, which has intervenor status in the inquiry, is a coalition of more than 30 organizations that work to protect and defend human rights.

Caught in the shackles of secrecy

Excerpted from an article published in the newsletter of the *Ligue des droits et libertes* (October, 2004).

By DENIS BARRETTE

In January 2004, after repeated requests by Maher Arar and civil liberties defense organizations, the Martin government decided to set up a public Commission of Inquiry.

The International Civil Liberties Monitoring Group (ICLMG) stated before the commission that Arar's painful experience raises many troubling questions. To what extent was Canada complicit or negligent in the decision to deport Arar, and if so, on the basis of which laws, policies or operational guidelines? Did an erroneous conception of the "protection of international relations" serve as a basis for the transfer of information on Arar to U.S. and Syrian authorities? If there was collaboration among Canada, the U.S. and Syria in Arar's case, was such collaboration meant as a "way around" legal methods of obtaining information from him (to have others do what is prohibited here)? To what extent did the fact that the RCMP could not guarantee Arar's arrest in Canada influence the U.S. decision to deport Arar to Syria? Was Canada's respect for human rights and civil liberties a problem for U.S.

agencies? Is the culture of secrecy and lack of political accountability inherent to or a condition for U.S. collaboration in matters of national security? Do Canadian security agencies feel more affinity and obligation toward their U.S. counterparts than they do toward their political masters in Canada?

A truly public inquiry?

Although the commissioner has clearly expressed his willingness to give the inquiry a transparent and open character, the public hearings were abruptly suspended last July. Because lawyers for Canada's attorney general have argued that a substantial part of the evidence could injure national security or international relations, the hearings are presently being held *in camera* and *ex parte*, that is without the presence of the intervener organizations or Arar's lawyers. Judge O'Connor will have to decide whether exposing this evidence would really injure national security. The importance that the commissioner confers to the "public interest" of a piece of disclosure will be an important factor in his ruling.

Although the legal mechanism already existed, the Anti-Terrorism Act considerably modified and refined procedure regarding national security. For example, if the commissioner decided to make certain facts public, this decision could be appealed at the Federal Court, and then at the Supreme Court, without the public ever being informed at all.

Judge O'Connor is open to a constitutional challenge of this enactment, put forward by Arar's lawyers. What's more, even if the Supreme Court were to uphold the commissioner's decision to expose certain facts, the legislative provisions of the Anti-Terrorism Act grant the attorney general the discretionary power to withhold certain pieces of evidence simply by filing a certificate. This entire procedure ultimately rests in the hands of political power, and more specifically of the attorney general who can, at all times, withdraw his objections and permit the public hearings to resume. Although Irwin Cotler is the current attorney general, he is refusing responsibility for this file, as he acted on behalf of the Arar family prior to his election.

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If you would like to submit an editorial, please e-mail it to:

info@maherarar.ca.

Please restrict your work to 550 words and note that it may be edited for content and space limitations. All editorials must be submitted at least seven days in advance of the publication date, which is the 4th day of each month.

Disturbing state – continued from page 3

The fact that at least seven Canadians have been detained abroad (some even tortured) is problematic enough. To think that Canadian intelligence may have played a role is, to say the least, unacceptable and disturbing. These cases, along with that of Mohammed Mansour Jabbarah, a Canadian who was repatriated to Canada after his arrest in Oman and then secretly handed over by CSIS or the RCMP to the Americans waiting at the border — subverting the extradition process — raises more than enough concerns about the way Canadian intelligence agencies operate. Granted that Jabbarah pleaded guilty to terrorism charges in a secret trial, the fact remains that guilt or innocence is not the issue — rather it is the treatment and rights of Canadians. If evidence exists, why not charge, arrest and prosecute suspects in Canada to the

full extent of the law?

Barbara Jackman, a lawyer specializing in national security, told a press conference that both the RCMP and CSIS are trying to get around the obstacle of having to obtain security certificates in order to detain citizens. Why do all that hard work, after all, when you can get other countries to do it with fewer constraints? According to Jackman, both agencies are “opportunistically taking advantage” of citizens traveling abroad by providing information to foreign governments. If this is the case, then Canadian intelligence in effect has quietly adopted the practice of torture by proxy — getting foreign governments to do the “dirty work,” in Jackman’s words.

Disturbingly, the sharing of intelligence on Canadian citizens with other countries — including those that have questionable human rights records — has been a

recurring theme over the years. In fact, a former CSIS agent, Michel Juneau-Katsuya, has gone on the record with this very claim.

To demand anything less than a full and complete investigation into these claims would be irresponsible, particularly when even the head of the RCMP’s own watchdog, Shirley Heafey, has publicly acknowledged her inability to investigate misuse of the force’s new anti-terrorism powers.

The Arar inquiry should be just the beginning of a more comprehensive look at how Canadian intelligence agencies are conducting themselves.

“It is sad but true that all Canadians cannot rely on their government to stand up for their human rights,” said NDP leader Jack Layton. “If you’re a member of a religious or ethnic minority, the message from the government seems to be: ‘You’re on your own.’”

Shackles of secrecy – continued from page 4

Geoff Regan, the minister of fisheries and oceans, is now dealing with this file in cabinet in the name of the attorney general. Thus, it is the federal government, and particularly the cabinet, that will bear the political responsibility of withholding or publicly exposing the evidence in the Arar inquiry.

It is ironic to realize that

the same government that ordered a public inquiry is deploying so much energy to hide the facts. It is nonetheless essential that the public receive thorough answers in this affair that has outraged citizens. What’s more, Arar has principally been the victim of this culture of secrecy upheld by Canada’s intelligence

agencies. Pressure from the media and civil liberties defense organizations could play a determining role in preserving the public character of the inquiry. Only by means of thorough public inquiry can we hope that what happened to Arar will never happen again.