

**Canadian Council on American-Islamic Relations
(CAIR-CAN)**

and

**The Canadian Arab Federation
(CAF)**

OPENING STATEMENT

COMMISSION OF INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MAHER ARAR

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Introduction

The mandate of the Arar Commission is one of profound national importance. To Maher Arar, the Commission offers the prospect of public vindication. To all Canadians, the Commission's work holds out the promise of explanation, reason and reform. And for some communities – notably those of Arab and Muslim descent – the Commission represents a first opportunity to air and redress those institutional excesses they have suffered in the name of national security.

The **Canadian Council on American-Islamic Relations (CAIR-CAN)** and the **Canadian Arab Federation (CAF)** welcomes this opportunity. As they have said before, there need “be no contradiction between security and the fundamental values we share as Canadians”. CAIR-CAN and CAF look to the Commission, through the process of its inquiry and in its final reports, to find the means to harmonize these societal imperatives. And they offer their assistance in achieving this crucial goal.

Civil Rights - The Foundation of our Democracy

Democratic and legal rights and liberties, pluralism, respect for human dignity and the rule of law are the principles that define us as Canadians. These are the “basic tenets” of our legal system that find their explicit affirmation in the *Charter*. They are what safeguard democracy. If, in the name of fighting terrorism, we sacrifice these values for the sake of security, we lose our character, our identity, the very essence of a free and democratic society. We lose the war on terrorism if we become that kind of state that represses democratic rights and freedoms.

Background

Canada is not immune to repressive impulses and the selective suspension of civil liberties in the face of heightened security concerns. The forced migration and internment of Japanese Canadians in World War II is still within the living memory of many. The excesses witnessed in Quebec under the War Measures Act (and more clandestinely before its invocation) are another dark chapter in the history of Canadian human rights.

The response of law enforcement and security agents to Canadian Arabs and Muslims in the years since September 2001 raises a similar spectre. There is a deep concern in the Arab and Muslim communities – reinforced by their collective experience over the past three years – that they are not secure in Canada, that their rights are less worthy of protection than those of other Canadians, that they are the special targets of police surveillance, interdictions and overzealousness. Canadian Muslims and Arabs are targeted because of their ethnicity and religion.

Canadian Muslims and Arabs note that there is a “climate of fear” that permeates their communities. Like all Canadians, they are concerned about the impact of terrorism but are also fearful of being the target of unwarranted state scrutiny. The circumstances that give rise to this inquiry provide a vivid example of the impact on the individual and the community.

Impact on the Community

Maher Arar may be the most notorious Canadian example of overreach on the part of security authorities, but he is far from an aberration. Muslims and Arabs across the country identify with Mr. Arar because his account parallels the accounts they have heard from families, friends and neighbours of the arbitrary abuses they have suffered. They understand racial profiling because they have been targets of it. They understand what it means to be victims of discrimination. They understand what it means to be treated as suspects in the war on terrorism.

Muslims and Arabs in Canada have been subject to the following:

- Undue pressure from CSIS and RCMP officers, particularly in the absence of a simple interview request.
 - This includes police and CSIS visits to places of employment, interviewing neighbours about “suspect” families, interviews when individuals are more likely to be sleeping, threats of “preventative arrest”, attempts to meet in the absence of counsel – even when counsel is specifically requested,
- A pattern of inappropriate questioning by CSIS and RCMP officers on religious practice and devotion .
 - This includes whether an individual prays, reads the Qur’an or has a prayer rug at his place of employment.
- Repeated questioning by CSIS and RCMP officers upon return from Hajj, or the pilgrimage.

- Suggestions that the CSIS officers have powers and authorities that are not mandated under law
 - This includes powers of arrest, detention, search & seizure and compelling testimony
- An unwillingness or impotency on the part of Canadian officials to deal with their American counterparts to ensure equal treatment for all Canadians, regardless of race or religion

Individually, and in jointly-issued public statements, CAIR-CAN and CAF have repeatedly voiced their concerns about the direction of national security policy, about racial profiling, about the indiscriminate sharing of intelligence and, in particular, the absence of any consultation with or input from the Arab or Muslim communities – those most adversely affected by legislative and operational initiatives. In press releases earlier this year, CAIR-CAN and CAF raised “concerns about the institutional discrimination, the targeting of the community and the need to have our voices heard”. They “reiterated the need that any new policy ensures core Canadian values of democracy, human rights, pluralism and the rule of law are respected” and that “a full and comprehensive review [be conducted] of the anti-terrorism legislation, the process of issuing security certificates and ... Bill C-7 to ensure [these] core values remain protected”. They also sought “assurances from government that oversight mechanisms will be put in place [to] ensure the civil liberties of Canadian Arabs and Muslims are protected”.

Mr. Arar's experience embodies the fears and frustrations of the Canadian Arab and Muslim communities.

Issues for use in the Inquiry

CAIR-CAN and CAF's concerns are well grounded in the specific experience of Mr. Arar, but also in the everyday experience of Canadian Muslims and Arabs. These concerns are fit subject for this Commission. To divorce Maher Arar's case from the larger matrix of policy and experience from which it arose would only perpetuate broader injustices. It would also risk reinforcing the fiction that Mr. Arar's case is somehow unique or isolated. The inevitable result would be a further erosion of the civil rights of the most vulnerable communities in Canada. More Maher Arars would follow – and at no material benefit to Canadian security. As an important corrective, the Commission should examine those cases, both domestic and international, where Canadian Arabs and Muslims have been subject to abusive state conduct in the name of counter-terrorism. Only through the emergence of pattern evidence will the systemic nature of the need for reform be identified.

CAIR-CAN and CAF urge that the following issues be explored during the course of this inquiry. While some of these may appear peripheral to Mr. Arar's experience, they are integral to understanding the context in which his story unfolds. They are also essential to understanding the experience of the Muslim and Arab communities and the prevalent climate of fear.

The issues for the inquiry thus include:

- Use of racial profiling as an investigative tool for the purpose of national security;
- Protocols, policies and operational details on the use of such profiling;
- Information sharing and information transfer between Canada and foreign governments and agencies;
- Protocols, technologies, policies, operational details and oversight mechanisms for information transfer;
- Oversight and accountability mechanisms for the purpose of national security;
- Erosion of liberties and the rule of law;
- Detention and torture of Canadian citizens abroad;
- Effect of anti-terrorism legislation on Canadian Muslims and Arabs;
- CSIS and RCMP visitations with Canadian Muslims and Arabs;
- Impact of Maher Arar's case on the Canadian Muslim and Arab communities;
- Appropriate remedies for Maher Arar and what remedial action, if any, is necessary to deal with any inappropriate conduct of Canadian officials.

Conclusion

This Commission's narrative burden is to explain how a Canadian citizen ended up in a Syrian torture cell for almost a year. Its more onerous task – but one of more enduring consequence – is to restore a measure of public confidence in Canada's national security system. This requires assuring Canadians not only that our national security machinery is competent and effective but, of paramount importance, that it

operates in a manner that respects both democratic values and the rule of law. Crucial to the fulfillment of this mandate is the creation of an effective and accountable oversight regime.

It is almost trite to say that the legitimacy of the Commission will depend on how it is seen to conduct its business – by the public and, in particular, by those communities most affected by its recommendations. To every degree possible, the Commission’s process must be public and transparent. It must encourage the participation of those – such as the membership of CAIR-CAN and CAF – who are most directly impacted by the Inquiry. Their concerns are inextricably part of any solution proposed by this Commission.

All which is respectfully submitted this 14th day of June, 2004:

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