



REPORT OF THE EVENTS
RELATING TO MAHER ARAR

FACTUAL BACKGROUND

VOLUME I

Commission
of Inquiry into
the Actions
of Canadian
Officials
in Relation
to Maher Arar

The Report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar as originally submitted to the Governor in Council included some material which in this published version has been omitted in the interests of national security, national defence or international relations (indicated by [***] in the text). The decision to omit this material is made by the Government of Canada, and does not represent the views of the Commission of Inquiry.

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Cat. No: CP32-88/1-2006E
ISBN 0-660-19648-4

Available through your local bookseller or through
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario
K1A 0S5

Telephone: (613) 941-5995
Orders only: 1 800 635-7943
Fax: (613) 954-5779 or 1 800 565-7757
Internet: <http://publications.gc.ca>

Printed by: Gilmore Print Group

Ce document est également publié en français sous le titre
Rapport sur les événements concernant Maher Arar

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Commission of Inquiry into the
Actions of Canadian Officials
in Relation to Maher Arar



Commission d'enquête sur les
actions des responsables canadiens
relativement à Maher Arar

The Honourable Dennis O'Connor
Commissioner

L'honorable Dennis O'Connor
Commissaire

September, 2006

To Her Excellency
The Governor General in Council

May it please Your Excellency:

Pursuant to an Order in Council dated February 5, 2004, I have inquired into the actions of Canadian officials in relation to Maher Arar. With this letter I respectfully submit my report.

Dennis R. O'Connor
Commissioner

A handwritten signature in black ink, appearing to read "D. O'Connor".

PO Box / CP 507, Station B / Succursale B
Ottawa, Canada K1P 5P6

613 996-4741 Fax / télécopieur 613 992-2366

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REPORT OF THE EVENTS RELATING TO MAHER ARAR

FACTUAL BACKGROUND

VOLUME I*

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INTRODUCTION

This *Factual Background* summarizes the evidence presented to the Factual Inquiry into the actions of Canadian officials in relation to Maher Arar. The information it contains was taken from the testimony of over 70 government officials, and some 6,500 government documents that were entered as exhibits.

The *Factual Background* is organized chronologically around the events before, during and after Mr. Arar's detention in New York and his subsequent removal and imprisonment in Syria. It also explains the organizational and policy contexts of the investigations in which he was considered a person of interest, and the contexts of Canadian officials' actions in response to his detention and mistreatment.

There are two versions of this Report. One, which may not be disclosed publicly, is a summary of all of the evidence, including that which is subject to national security confidentiality. The public version that you are reading does not include those parts of the evidence that, in the Commissioner's opinion, may not be disclosed publicly for reasons of national security confidentiality.

A good deal of evidence in the Inquiry was heard in closed, or *in camera*, hearings, but a significant amount of this *in camera* evidence can be discussed publicly without compromising national security confidentiality.¹ For that reason, this Report contains a more extensive summary of the evidence than might have been the case in a public inquiry in which all of the hearings were open

¹ In the footnotes, testimony that was heard *in camera* is indicated with an [IC] prefix, while public testimony is indicated with a [P]. In some cases, the name of the person who testified *in camera* has been deleted for reasons of national security confidentiality. *In camera* exhibits are indicated with a C prefix before the identifying number (e.g. C-134), and public exhibits with a P (P-134).

to the public and all transcripts of evidence are readily available. While some evidence has been left out to protect national security and international relations interests, the Commissioner is satisfied that this edited account does not omit any essential details and provides a sound basis for understanding what happened to Mr. Arar, as far as can be known from official Canadian sources.²

Finally, it should be noted that there are portions of this public version that have been redacted on the basis of an assertion of national security confidentiality by the Government that the Commissioner does not accept. This dispute will be finally resolved after the release of this public version. Some or all of this redacted information may be publicly disclosed in the future after the final resolution of the dispute between the Government and the Commission.

² The governments of the United States, Jordan and Syria declined to give evidence or otherwise participate in the hearings. Mr. Arar also did not testify, for reasons that are explained in Chapter I of the Analysis volume.

I

EVENTS PRIOR TO MR. ARAR'S DETENTION IN NEW YORK

1. CANADA'S RESPONSE TO 9/11

1.1 PROJECT SHOCK

The RCMP's interest in Maher Arar originated in investigative projects that began in the aftermath of the terrorist attacks in New York, Washington and Pennsylvania on September 11, 2001. The immediate RCMP response to these events was an effort by Headquarters to coordinate all of the tips received concerning the terrorist attacks. Called Project Shock, this effort was coordinated by the National Security Intelligence Branch (NSIB) at RCMP Headquarters. All tips related to the Ottawa area were investigated by the National Security Investigations Section (NSIS) of the RCMP's "A" Division in Ottawa.¹

Before 9/11, Ottawa's "A" Division had a large number of national security protective responsibilities, including protecting foreign embassies and certain designated persons. These responsibilities increased significantly after 9/11, putting a strain on "A" Division's resources as it responded to the many tips from Project Shock.²

Project Shock had three goals,³ which were first introduced at a video conference held on September 25 or 26, 2001.⁴ The purpose of the meeting was to advise all officers working in the Integrated Proceeds of Crime (IPOC) units across Canada that RCMP Headquarters was establishing a new entity, the Financial Intelligence Task Force (later known as the Financial Intelligence Branch), to coordinate research on the financial transactions of suspected terrorist organizations. In order of priority, the goals of the Task Force were to be prevention, intelligence and prosecution. This marked the first time that IPOC

officers had been directed to conduct their investigations with prevention, rather than prosecution, as the primary goal.⁵

At the same meeting, participants agreed that these three goals would also apply to Project Shock. The Assistant Criminal Operations (CROPS) Officer for “A” Division, Inspector Garry Clement, testified it was clear to him that these instructions had the approval of RCMP Headquarters, up to and including Commissioner Giuliano Zaccardelli.⁶

1.2

COMMUNICATIONS FROM THE UNITED STATES

On September 22, 2001, members of the RCMP, CSIS, the FBI and other law enforcement agencies attended an all-agency meeting at CSIS Headquarters.⁷ The purpose of the meeting was to promote a sense of cooperation among the agencies with primary responsibility for anti-terrorism activities in Canada and the United States.⁸ Shortly thereafter, the Canadian agencies were asked to investigate certain Canadian individuals who allegedly had ties to persons whom the Americans suspected to be terrorists. The agencies were to provide further information about these individuals, and if possible, detain them for interviews.

The RCMP did not act on the FBI’s request, as it was not yet prepared to detain and interview the individuals named.⁹

1.3

CSIS TRANSFER OF INVESTIGATIONS TO THE RCMP

For some months prior to September 11, 2001, the CSIS office in Toronto had been investigating the activities of a group of targets¹⁰ active in the area who CSIS believed were connected to al-Qaeda. Following 9/11, Western intelligence services were preoccupied with the prospect of a second wave of attacks occurring in the United States, and CSIS spent a great deal of time developing intelligence about this potential next wave. Among the Toronto targets were individuals CSIS believed could have the capability and intent of facilitating an act of terrorism, if not actually executing it.¹¹

It was in this climate that CSIS put the targets under intensive scrutiny. By September 22, 2001, CSIS officials in Toronto were exhausted and reaching the breaking point. They had been working 12-hour days. Jack Hooper, who was then Director General of the Toronto office, decided to seek assistance from law enforcement agencies.¹²

On September 22, 2001 — the same day as the all-agency meeting — Mr. Hooper chaired a meeting at the CSIS Toronto office involving officials from CSIS, the RCMP, the Ontario Provincial Police (OPP), the Toronto Police Service

(TPS) and the Peel Regional Police, where he briefed them on the investigation of certain individuals identified as potential threats to Canadian security. Mr. Hooper's aim was to elicit their assistance in providing speciality investigators and surveillance teams. As the meeting progressed, however, a consensus emerged among the police representatives that CSIS might have enough information to support criminal conspiracy charges. They began to consider whether the case would be better managed as a criminal investigation.¹³

Before proceeding further, the police requested that Mr. Hooper provide information demonstrating that the activities of these individuals constituted a crime. Mr. Hooper agreed to provide an advisory letter with data on the targets, and a profile that would enable the police to compare the targets against what was known about al-Qaeda activists at that time.¹⁴

CSIS subsequently transferred to the RCMP primary responsibility for national security investigations on a number of targets that CSIS believed warranted criminal investigation and possible charges. The transfer was made in two CSIS advisory letters sent within one month of 9/11.

In one letter, CSIS formally advised the head of the RCMP's Criminal Intelligence Directorate (CID), Assistant Commissioner Richard Proulx, of an "imminent threat to public safety and the security of Canada." The letter identified individuals from the Toronto area who were targets of the CSIS investigation, and provided detailed information about them from CSIS files. It indicated that the RCMP could use this information in the event of any prosecutions. The letter also [***] provided general information about al-Qaeda.¹⁵

According to Mr. Hooper, the September 26 letter constituted an extraordinary disclosure of information to law enforcement agencies.¹⁶

This letter led to the formation of an RCMP-coordinated investigation project, based at RCMP "O" Division in Toronto and involving other agencies, including the OPP and TPS. Named Project O Canada, it was similar to Project Shock in that its primary goal was prevention, with intelligence and prosecution as its secondary and tertiary goals, respectively.

At the RCMP's request, CSIS sent a second advisory letter to Assistant Commissioner Proulx, transferring primary responsibility for investigating another individual to the RCMP.

At the time, Maher Arar's name was not mentioned in either of the CSIS advisory letters to the RCMP.

It would appear that Mr. Hooper's decision to shift primary responsibility for investigations of certain CSIS targets was intended to address a threat to American security. In his testimony, Mr. Hooper clarified that CSIS is permitted

to investigate the activities of persons who, on a reasonable suspicion, may be threatening to the security of Canada. CSIS has historically viewed activities in support of terrorist incidents as threats to Canadian security, regardless of whether those activities are being planned for Canada or elsewhere.¹⁷

One CSIS witness said that this was the most extensive transfer of investigations ever made at one time by CSIS to the RCMP.¹⁸ The transfer allowed CSIS to focus on security threats that were less apparent, and to investigate new threats.¹⁹

Following the transfer, CSIS took a less aggressive role in the investigations, but continued to collect information on the targeted individuals.²⁰ CSIS also continued to pass information to the RCMP, including some information about Mr. Arar that was incidental to ongoing investigations of authorized CSIS targets.

It should be noted that at no time since this transfer of primary responsibility to the RCMP have any charges been laid against any of the targeted individuals described above.²¹ When Mr. Hooper was asked whether the decision to transfer responsibility could be considered premature in light of the lack of charges, he stated that it must be examined in the context of the environment immediately after 9/11. CSIS was aware of the principal actors and their links with each other, and believed that continued surveillance in the context of a security intelligence investigation was unlikely to lead to information that would advance the case. In short, CSIS had taken the investigations about as far as it could. In consultation with law enforcement agencies, it was agreed that the circumstances were better suited to a law enforcement investigation.²²

2. FORMATION OF PROJECT A-O CANADA

2.1 MANDATE

In early October 2001, RCMP “O” Division asked “A” Division for assistance in investigating the activities of Abdullah Almalki, an Ottawa resident who was believed to be connected to al-Qaeda.²³ In response, “A” Division created Project A-O Canada.²⁴

In a relatively short time, Project A-O Canada’s role evolved from providing assistance to Project O Canada, to conducting its own investigations. Initially, these investigations focused on Abdullah Almalki, and then on others — including Mr. Arar — who surfaced in the course of its investigations.²⁵

From the outset, it was made clear to the members of Project A-O Canada that the Project had the same three priorities as Project Shock and Project O Canada: prevention, intelligence and prosecution.

Prevention was the first priority for any investigation after 9/11, whether carried out by an intelligence agency or, as in the case of Project A-O Canada, by a law enforcement agency. At the time, Canadian authorities believed that the 9/11 attacks were only the first wave and that further attacks might be directed against other countries, including Canada. According to Inspector Michel Cabana, who became the Officer in Charge of Project A-O Canada, the RCMP's role was "to make sure that nothing nefarious occurred anywhere."²⁶

Intelligence was the RCMP's second priority, as CSIS had indicated there were terrorist cells in Canada about which there was minimal information.²⁷ As such, it was considered vitally important to collect as much information as possible about threatened terrorist activities.²⁸

Normally the primary focus of RCMP investigations, prosecution now became the third priority.²⁹

Despite the emphasis on prevention, members of Project A-O Canada and their superiors viewed the Project as primarily a criminal investigation, as well as an intelligence operation. While the Project's overarching mandate was to prevent terrorist attacks anywhere in Canada, it was also responsible for investigating the activities of Abdullah Almalki, and, as the investigation developed, others who might have been involved in criminal activities. Project A-O Canada officials conducted these investigations with a view to collecting evidence that could be used in a prosecution, should there be one.

2.2

COMPOSITION

In early October, once it was determined that "A" Division would be involved in investigations related to the 9/11 terrorist attacks, the Division's senior officers reflected on the best way to staff the new investigations. At first, they considered using the National Security Investigation Section (NSIS), the section of "A" Division that normally conducted this type of investigation. However, NSIS did not have the capacity for an in-depth investigation, as it was fully employed in responding to tips from Project Shock. As well, the Ottawa office of NSIS lacked experience with criminal investigations, particularly those involving the complex financial transactions that are a key element of terrorist investigations.³⁰ One witness suggested that NSIS officers were more like intelligence officers,³¹ the implication being that they did not have the same level of criminal investigation experience as those assigned to Project A-O Canada.

As mentioned, Project A-O Canada was initially assigned the investigation of Abdullah Almalki. Because Mr. Almalki was suspected of being involved with al-Qaeda, officials expected that the investigation would involve analyzing large amounts of documentary evidence, and would be similar in many ways to a criminal investigation.³² As a result, senior officers of “A” Division reasoned that they should draw extensively on the experience of “A” Division’s Integrated Proceeds of Crime (IPOC) unit.

Another important consideration in selecting officers for Project A-O Canada was the continuing concern about an imminent terrorist attack. To minimize risks to the safety and security of Canadians, officials felt that the new Project should have the best investigators available. With these factors in mind, “A” Division’s senior officers assembled a new team, separate from NSIS.

Inspector Cabana was appointed Officer in Charge of Project A-O Canada at its inception in early October 2001, and held that position until February 4, 2003.³³ Before his appointment, Inspector Cabana was the Interim Officer in Charge of the IPOC unit at “A” Division.³⁴ His background in policing focused on drug enforcement, biker enforcement, and the proceeds of crime. During his career with the RCMP, Inspector Cabana received training in the proceeds of crime, criminal intelligence analysis, investigative techniques, and statement analysis. He had not previously been involved in a national security investigation.³⁵

Inspector Garry Clement, with input from the Officer in Charge of “A” Division’s CROPS unit, Chief Superintendent Antoine Couture, chose Inspector Cabana to lead Project A-O Canada because of his excellent background in managing major case files. Having worked with him on another large investigation, Inspector Clement felt that Inspector Cabana was very capable of providing leadership and managing the project’s enormous paper burden.³⁶ As well, Inspector Cabana had earned the respect of RCMP personnel.³⁷

Inspector Clement and Inspector Cabana worked together to determine an appropriate balance for the Project A-O Canada team,³⁸ while Inspector Cabana was charged with assigning team roles and responsibilities. In recruiting team members, Inspectors Clement and Cabana gave preference to officers with criminal investigation expertise for example, writing affidavits, doing covert entries, developing operational plans, and following a paper trail. They also focused on creating an integrated team with officers from a number of different police services, as no single agency had sufficient resources to address the complexities involved in Project A-O Canada’s investigation.³⁹

As part of the integrated policing approach, officers from the Ontario Provincial Police (OPP), Ottawa Police Service (OPS), Sûreté du Québec, Gatineau Police Service and Hull Police Service were added to the team.⁴⁰

Two officers from outside the RCMP were assigned to serve as assistant managers. A member of the OPS, Staff Sergeant Patrick Callaghan had worked with the RCMP in criminal investigations for nine years. He had an aptitude for major crime investigations, as well as a good grasp of many of the RCMP policy issues that applied to major investigations. Recruited from the OPP, Staff Sergeant Kevin Corcoran was also experienced in major criminal investigations. Inspector Cabana had met Staff Sergeant Corcoran while working on another RCMP project, and was impressed by his understanding of major crime and his solid reputation in policing. Although Staff Sergeant Corcoran was not familiar with RCMP policies, procedures and protocols, including those related to national security investigations, Inspectors Cabana and Clement felt that there would be sufficient oversight in this area.⁴¹

Inspector Cabana's approach to integrated policing called for outside agencies to become full partners and assume management positions. He felt that Staff Sergeants Callaghan and Corcoran had the necessary experience for their assignment at Project A-O Canada, noting also that they would be reporting directly to him.⁴²

Most of the key investigators initially recruited for Project A-O Canada came from the RCMP. Sergeant Randal Walsh was responsible for preparing affidavits for search warrants.⁴³ Corporal Robert Lemay was the exhibit custodian for materials related to Mr. Arar, and assisted in gathering background information on Mr. Arar and others.⁴⁴ Constable Michel Lang came from "A" Division's Customs and Excise unit and had experience with the Canadian and U.S. Customs look-out systems.⁴⁵ The RCMP liaison officer for CSIS (CSIS LO) regularly delivered Project A-O Canada situation reports to CSIS. An officer on secondment to "A" Division's IPOC unit from the Canada Customs and Revenue Agency (as it was then called) was recruited to join the Project. He was responsible for all Canada Customs inquiries.⁴⁶

When Project A-O Canada reached full strength in mid-October 2001, it included approximately 20 officers.⁴⁷

With few exceptions, none of the regular members of Project A-O Canada had previous experience in national security investigations or in RCMP policies relating to national security. However, Corporal Randy Buffam, a senior member of NSIS, who was assigned to the team at the start of the investigation, had experience with Sunni Islamic extremism.⁴⁸ His role included liaising with RCMP Headquarters, NSIS, CSIS and U.S. agencies.⁴⁹ He also assisted managers and

investigators with questions about Islamic extremism and the RCMP's national security investigations program. At first, Corporal Buffam maintained his duties with NSIS, but as time went on, his role with Project A-O Canada became increasingly significant.⁵⁰

Inspector Clement, who had worked with Inspector Cabana to assemble the Project A-O Canada team, was asked whether the team had sufficient national security training to carry out the investigation as it was understood in October 2001. He acknowledged that members of the team, including its managers, had no experience in investigating terrorism, with the exception of Corporal Buffam. However, Inspector Clement believed that Project A-O Canada would ultimately be conducting criminal investigations, and that experienced criminal investigators, like those assigned to Project A-O Canada, had the necessary skills. While it would have been preferable to use people with prior knowledge of terrorism investigations, there were few such people available. The same was true for Project O Canada.⁵¹ Inspector Clement knew each investigator selected and was satisfied that it was the best team available at that time.⁵²

Chief Superintendent Couture added that there was an urgency to assembling the team, as the RCMP was scrambling to identify the threat it was facing and to prevent another terrorist attack. He emphasized that these factors should be considered when looking at the team's initial lack of terrorism training.⁵³ National security training was not a requirement; the primary requirement was the ability to conduct major investigations into very serious crime.⁵⁴

Neither did Inspector Cabana consider the team's lack of experience in national security investigations to be a major liability. Although Project A-O Canada was dealing with issues of national security, Inspector Cabana believed that "[A] criminal investigation is a criminal investigation. It doesn't really matter what the offence is, you are looking at basically developing the file in the same way."⁵⁵ Furthermore, Inspector Cabana felt that the case management of a criminal investigation required certain skills, regardless of the subject matter. In the case of large investigations like Project A-O Canada, it was important that officers have experience in complex case management techniques, such as assigning many tasks and ensuring those tasks were completed.⁵⁶

To assist with the national security components of the investigation, Project A-O Canada sought personnel support from CSIS. In March 2002, CSIS seconded a transnational organized crime specialist to Project A-O Canada, where he remained until April 2004.⁵⁷

In addition to having minimal experience with national security investigations, Project A-O Canada investigators, including Corporal Buffam, lacked

experience working directly with agencies outside of law enforcement, particularly intelligence agencies. Explaining the structure of NSIS around the time of 9/11, Corporal Buffam testified that NSIS members usually contacted CSIS, the FBI or foreign intelligence agencies through liaison officers; direct contact was rare.⁵⁸ As discussed below, however, Project A-O Canada's contact with U.S. agencies increased significantly as the investigation progressed.

2.3

TRAINING

As mentioned, few of the team members assembled for Project A-O Canada had formal training in national security investigations, nor were they trained in RCMP policies on national security investigations and sharing information with external agencies.

At the time, the RCMP offered two courses related to national security. The first was a two-week training course on national security investigations, run by the RCMP in Regina, Saskatchewan. The second was a three-day workshop on Bill C-36, Canada's anti-terrorism legislation.

Prior to 9/11, the RCMP offered a training course in national security investigations entitled "Criminal Extremism and Terrorism."⁵⁹ Mandatory for all members of NSIS,⁶⁰ the course was not available from the fall of 2001 until the winter of 2002, due to other priorities in dealing with the aftermath of 9/11.⁶¹ The name was eventually changed to the "National Security Enforcement Course," and in July 2003, the course was upgraded. Unlike the pre-9/11 training course, participants in the new course were introduced to such topics as the national counter-terrorism plan, terrorist funding, the roots of terrorism, perspectives on Islam and Middle Eastern communities, the psychology of terrorism, and threat assessments.⁶²

Other than Corporal Buffam and other NSIS officers who joined the team, no one in Project A-O Canada ever completed the RCMP's training course in national security investigations.

Several Project A-O Canada investigators took the three-day workshop on Bill C-36, which was offered starting in December 2002.⁶³ Inspector Cabana testified that he did not take this training course because his managerial responsibilities did not allow him the time.⁶⁴ However, he did review Bill C-36 and had numerous discussions with the Department of Justice concerning the impact of Bill C-36.⁶⁵

Inspector Cabana did not receive training on human rights issues that might flow from a national security investigation, nor did he receive training on the

human rights records of foreign countries that he might have to deal with in the course of the investigation.

Once Project A-O Canada was underway, the team relied heavily on on-the-job training. One of the Project's assistant managers described it as a "learn-as-you-go" experience, which he suggested was not unusual in policing. He acknowledged that there is often a learning curve, whether about the law or about community issues. While there may be mistakes, officers try to minimize them.⁶⁶

As the team's primary national security expert, Corporal Buffam also served as a teaching resource. In his testimony, Corporal Buffam expressed doubt about the value of a two-week training course for members of the team, in light of the experience he brought to the Project and on-the-job training opportunities. He did not believe it was necessary for members to have general knowledge about terrorist groups, as the team was focused on a specific criminal investigation. According to Corporal Buffam, the basic course on national security investigations was too broad to be particularly useful. Furthermore, he believed that he could teach the relevant elements of his formal training to other team members. He testified that he provided background information on some of the terrorist organizations, such as who they liked and disliked, and who they associated with, as well as background on some common terminology, such as *jihad* and *mujabedeem*. He also educated team members on the role of CID, CSIS, the CSIS LO and the foreign liaison system for overseas inquiries. Corporal Buffam felt that the team's corporate knowledge grew over time.⁶⁷

Some Project A-O Canada members testified that there was simply no time to take courses once the Project was up and running, due to the substantial workload and the tense environment following 9/11. At the best of times, Inspector Cabana testified, RCMP officers seldom have the flexibility to send staff on training courses; this was especially true after 9/11.⁶⁸ Sergeant Walsh testified that he had not taken any extended training courses since joining the Project because, as a critical member of the Project team, he could not be released from his duties.⁶⁹

Significantly, the Project A-O Canada team had little or no training on, or knowledge about, the RCMP's policies related to national security investigations, particularly with respect to the use of caveats and information sharing with domestic and foreign agencies.⁷⁰

In Inspector Cabana's view, the RCMP officers who were selected to participate in Project A-O Canada were experienced investigators and would have received the necessary training on RCMP policies in other courses taken over their careers.⁷¹ As for non-RCMP police officers who were part of the team, he

explained that Project A-O Canada was a task force, not a permanent unit. As such, there was no obligation for career development. Project A-O Canada's sole purpose was to conduct an investigation. In this context, Inspector Cabana did not feel it was appropriate to send members for extended training.⁷²

Chief Superintendent Couture explained the lack of training, suggesting that the use of caveats was common in police work, especially when exchanging sensitive information. He did not see the need to provide additional training, assuming that his officers would know if they were confronted with a situation in which they lacked knowledge.⁷³ One of the skills required was the ability to manage a large investigation and, in this regard, Inspector Cabana was a seasoned investigator who chose experienced people to work alongside him. According to Chief Superintendent Couture, if members of Project A-O Canada had lacked knowledge in a certain area, including RCMP policy, they would have found a way to bridge the gap.⁷⁴

2.4

REPORTING STRUCTURE AND INFORMATION MANAGEMENT

2.4.1

Relationship with CROPS

Project A-O Canada approached its investigation of Mr. Almalki as it would a criminal investigation, adopting a different reporting structure than for a national security investigation.

Project A-O Canada reported to Criminal Operations (CROPS)⁷⁵ at "A" Division. As part of the chain of command to CROPS, Project A-O Canada assistant managers reported to Inspector Cabana, who in turn reported to the Assistant CROPS Officer, Inspector Clement. On any given day, Inspector Cabana and Inspector Clement were in frequent contact with each other.⁷⁶

Inspector Clement informed the CROPS Officer, Chief Superintendent Couture, about the investigation's progress.⁷⁷ In addition to briefings by Inspector Clement, Chief Superintendent Couture was also provided with Project A-O Canada's situation reports, which were prepared daily and detailed the progress and challenges encountered during the investigation. From time to time, he was also given Project A-O Canada briefing notes.⁷⁸

2.4.2

Relationship with RCMP Headquarters

As indicated above, Project A-O Canada's reporting structure did not require that it report to RCMP Headquarters, which contrasted with the reporting

structure for investigations conducted by “A” Division’s National Security Investigations Section (NSIS).

NSIS units were required to report to CROPS at the divisional level,⁷⁹ and to upload their investigative reports to the Secure Criminal Intelligence System (SCIS), a databank for national security-related documents. Managed at RCMP Headquarters, the SCIS databank permitted some central coordination of national security information. Prior to 9/11, uploading documents to SCIS was virtually the extent of the NSIS reporting relationship with Headquarters.^{80, 81}

After 9/11, however, NSIS reporting requirements increased. Superintendent Wayne Pilgrim, the Officer in Charge of the National Security Investigations Branch⁸² (NSIB) at RCMP Headquarters, testified that his office directed NSIS units in the divisions to notify his office immediately when they initiated a criminal intelligence investigation, and to report on its progress. Members of NSIB were also told to be in constant contact with field units to ensure that the office was kept abreast of ongoing investigations.⁸³

In Inspector Cabana’s view, it was appropriate that Project A-O Canada report through CROPS, rather than through RCMP Headquarters. He did not believe that a single agency was able to respond adequately in the aftermath of 9/11, or that the Criminal Intelligence Directorate (CID) was equipped to handle all incoming information. For example, information often took weeks to reach Project A-O Canada after it arrived at RCMP Headquarters. Inspector Cabana testified that these delays were normal in the context of a security intelligence investigation, but were unacceptable in a criminal investigation, particularly considering the threat level at the time.⁸⁴

To circumvent these problems, Project A-O Canada made the decision not to report through RCMP Headquarters. Instead, officials kept Headquarters informed by copying CID on the daily situation reports submitted to CROPS.⁸⁵ RCMP Headquarters also received periodic briefing notes about the investigation.⁸⁶

According to Inspector Cabana, this reporting relationship caused tensions because of CID’s perception that it did not receive full briefings, or have access to all Project A-O Canada information. He could not explain CID’s perception, however, as he believed that Project A-O Canada kept CID up to date by submitting daily situation reports.⁸⁷

Witnesses from RCMP Headquarters took a different view, however. Superintendent Pilgrim testified that the situation reports kept Headquarters informed to some degree, but he pointed to deficiencies in the process, particularly in regard to reporting timelines.⁸⁸

The Officer in Charge of CID, Assistant Commissioner Proulx, testified that it was important for RCMP Headquarters to be kept up to date for monitoring and decision-making reasons. Furthermore, CID needed to be made aware of developments at the divisional level in order to brief the RCMP Commissioner, ensure the Solicitor General (now the Minister of Public Safety and Emergency Preparedness) had accurate and timely information, and provide CID with information for its various strategic meetings with other government departments (e.g., CSIS, and the departments of Foreign Affairs, National Defence, and Citizenship and Immigration).⁸⁹

According to Assistant Commissioner Proulx, NSIS had a culture supporting exchange with CID, but that culture did not exist in Project A-O Canada. Investigators assigned to Project A-O Canada were accustomed to reporting to one person only — the CROPS Officer.⁹⁰

Culture was not the only source of Project A-O Canada's resistance to a stronger reporting relationship with CID, in Assistant Commissioner Proulx's view. He noted that the Project A-O Canada team had come together very quickly and investigators were still contending with other ongoing investigations. As well, investigators worked long hours under pressure due to staff shortages and the nature of the threats they were investigating. In this context, providing daily updates to RCMP Headquarters was not a pressing issue.⁹¹

The Commanding Officer of "A" Division, Assistant Commissioner Dawson Hovey, did not discount the importance of CID being kept informed of all developments in Project A-O Canada's investigation. His testimony also reinforced Assistant Commissioner Proulx's assessment of a cultural barrier. However, in his view, it was appropriate for Project A-O Canada to have one master, given that it was conducting a criminal investigation.⁹²

2.4.3

Relationship with Project O Canada

RCMP witnesses testified to an ongoing jurisdictional disagreement between Project A-O Canada in Ottawa and Project O Canada in Toronto.

From the beginning, the two Projects struggled to agree on who was responsible for investigating Mr. Almalki in Ottawa. On several occasions when disagreements came up, Inspector Cabana sought a resolution from his superior officer in CROPS at "A" Division. Although often resolved temporarily, these disagreements would resurface from time to time.⁹³

At a meeting on October 26, 2001, senior RCMP officers decided that "O" Division and "A" Division would each be responsible for investigating targeted individuals within their respective areas. At the same time, they agreed to

work together and hold weekly meetings to ensure timely coordination of all leads. They also committed to assist each other with resource requirements.⁹⁴

In spite of this arrangement, the jurisdictional disagreement was never completely put to rest, according to Inspector Cabana. There were periodic meetings, but not many. Instead, investigators in each project were identified to liaise informally on a daily basis.⁹⁵

2.4.4

Information Management and Storage

Information sharing proved to be another area of contention. Many of these problems resulted from shortcomings with respect to information management. Project A-O Canada recorded and stored information in three databanks: Supertext, E&R III (Evidence and Reports), and SCIS (Secure Criminal Intelligence System). Each of these systems will be briefly discussed. However, it should be noted that Supertext is the only database relevant to the issues raised in this Inquiry.

2.4.4.1

Supertext

Project A-O Canada managed its investigation using a computer system called Supertext. A significant flaw with Supertext, as far as major investigations were concerned, was that it lacked case management capabilities, providing only a document management function. Project A-O Canada used Supertext to store and manage all documents associated with the Project, including exhibits, statements, memos, reports and, at least to some extent, officers' notes.⁹⁶ In theory, every piece of paper generated or received by Project A-O Canada was to be scanned into Supertext,⁹⁷ including situation reports, surveillance reports, and reports from outside agencies.⁹⁸ Documents were scanned and digitized using character recognition software and, from that point on, they resided in the database.⁹⁹ The contents of the Supertext database are discussed in detail later in this Report.¹⁰⁰

At the time, neither Project O Canada nor Project A-O Canada were equipped with the infrastructure needed to perform major case management functions involving secret documents.¹⁰¹

2.4.4.2

E&R III

Developed by the RCMP, the E&R III database had only been used in two or three projects before Project A-O Canada. While "A" Division had access to

E&R III because officers had used it in another criminal investigation, some other divisions, such as "O" Division, did not have access to the system.

Project A-O Canada used the E&R III database as a case management tool to record the tasks assigned to officers and the flow of work from these tasks. Officers recorded their progress on a day-to-day basis. This information was then entered into the E&R III database, creating a daily record of all related activities.

In the absence of a direct electronic link allowing for real-time information sharing, or a proper case management system, it was decided to limit communication between the two projects to sharing daily situation reports and uploading documents to the SCIS database.¹⁰² According to Inspector Cabana, however, the practice of sharing Project A-O Canada's situation reports with Project O Canada was terminated by the end of November 2001, because Project O Canada was becoming less active. By this time, Project O Canada had moved on to other priorities.¹⁰³

2.4.4.3

SCIS

As noted above, SCIS is the database for national security intelligence.¹⁰⁴ It contains information classified as "top secret" that CSIS provides to the RCMP, as well as sensitive information generated by RCMP national security investigations across the country. In order to facilitate information exchange, all RCMP officers with national security information are directed to enter it into this databank.¹⁰⁵ An unfriendly system, SCIS does not have case management functions.

RCMP Headquarters manages SCIS, while the divisions are responsible for providing all relevant information.¹⁰⁶

As of September 2001, SCIS was the primary database for NSIS¹⁰⁷ units across the country.¹⁰⁸ A stand-alone, secure system, SCIS is accessible on a limited, need-to-know basis, and access is controlled by password.¹⁰⁹ Corporal Buffam was the only Project A-O Canada member with access to SCIS.¹¹⁰ American agencies did not have access to SCIS, nor are American databases linked to it.¹¹¹

Starting about October 2001, Project A-O Canada's entire E&R III database was periodically uploaded to SCIS. However, this was apparently not the case for the contents of Supertext.¹¹²

2.4.5

Relationship with CSIS

Once CSIS transferred the investigations of certain targets to the RCMP, it played less of a direct role in the investigations. Although CSIS officials would continue to meet occasionally with the RCMP to discuss the investigations, and information was shared between the two groups, CSIS was reluctant to work with Project A-O Canada.

Again, the RCMP used its situation reports as the principal method of keeping CSIS informed. The reports were delivered to CSIS by the RCMP liaison officer for CSIS (CSIS LO).¹¹³ When Project A-O Canada began, the CSIS LO's office was located in the NSIS office at "A" Division. The officer would travel from there to the CSIS offices either on a daily basis, or sometimes several times a week. In April 2002, when the liaison officer program was changed to a secondment program, the CSIS LO's office moved to the CSIS Ottawa Regional Office (CSIS OR). Despite this formal change in the program, however, the officer continued in his capacity as the CSIS LO, and assisted with the exchange of information between CSIS and the RCMP.¹¹⁴

The process for delivering situation reports remained the same as well. Reports intended for CSIS were placed in a designated basket in the NSIS office.¹¹⁵ The CSIS LO would retrieve them and deliver them to CSIS OR.¹¹⁶

In the CSIS LO's opinion, delivering the situation reports was an informal process.¹¹⁷ To his knowledge, CSIS was satisfied with this arrangement, and did not suggest a more formal method of staying informed of developments in the Project A-O Canada investigation.¹¹⁸ In fact, he stated that he had never seen such a high degree of information sharing with CSIS by an RCMP investigative team.¹¹⁹

2.4.6

Relevant RCMP Policies

The reporting structure for national security investigations conducted within NSIS is detailed in the *Criminal Intelligence Program Guide (CID Guide)* and in the *RCMP Operational Manual* (Section IV.10, National Security Investigations).¹²⁰ However, Inspector Cabana was clear that since Project A-O Canada operated outside of "A" Division NSIS, and considered itself to be conducting a criminal investigation, the formal policy rules for national security investigations did not apply. Nevertheless, Inspector Cabana believed that the reporting requirements in the *RCMP Operational Manual* were followed by the team as a matter of course.¹²¹

According to the *CID Guide*, NSIB is responsible for “the assessment and monitoring of all criminal investigations relative to National Security.”¹²² Although Inspector Cabana did not consider Project A-O Canada to be a national security investigation, he agreed that the criminal investigation of Mr. Almalki and other persons of interest — such as Mr. Arar — was related to national security. In Inspector Cabana’s view, CID was able to fulfill its assessment and monitoring function by reviewing Project A-O Canada’s situation reports. As well, CID participated in inter-agency meetings and in some investigators’ meetings, and Project A-O Canada’s assistant managers and some of its investigators often communicated with personnel in CID.¹²³

With respect to reporting on national security investigations, the *RCMP Operational Manual* states: “For an effective National Security Investigations Program, all information concerning real and potential national security threats must be entered promptly into the SCIS database.”¹²⁴ According to Inspector Cabana, the contents of Project A-O Canada’s E&R III database were uploaded to the SCIS database on a daily basis by a member of NSIS. (Even though Project A-O Canada included an officer who was seconded from NSIS, responsibility for the daily uploads remained with NSIS.) Thus, anyone at RCMP Headquarters with access to the SCIS database would have access to some of Project A-O Canada’s information.¹²⁵

The *RCMP Operational Manual* further states that the CROPS Officer is required to immediately notify the Officer in Charge of the National Security Offences Branch (NSOB) of 1) potential threats to national security; 2) known or suspected criminal extremists located in, or traveling to, Canada; and 3) incidents involving national security.¹²⁶ The CROPS Officer is also required to notify the Officer in Charge of NSOB of any proposed operational plans for long-term investigations concerning national security; make an initial report within 14 days; and update ongoing investigations at least monthly by entering summaries on SCIS.¹²⁷ Inspector Cabana testified that Project A-O Canada was not subject to these reporting requirements, even though he believed the team actually met them all.¹²⁸

Inspector Cabana acknowledged that concerns about reporting relationships did arise at RCMP Headquarters later on in the project, but suggested that these concerns were more relevant to Project A-O Canada’s relationship with a foreign agency than to problems with reporting. While there may have been perceptions that RCMP Headquarters was not receiving all of Project A-O Canada’s information, in fact, it was, according to Inspector Cabana.¹²⁹

Superintendent Pilgrim of NSIB did not share Inspector Cabana’s view. He testified that Project A-O Canada’s reporting structure, and more specifically,

how RCMP Headquarters fit into it, was an ongoing issue. Superintendent Pilgrim would have preferred a reporting system that reflected a national security investigation. However, Project A-O Canada personnel considered themselves responsible only to senior management at “A” Division, and believed that RCMP Headquarters was kept sufficiently informed through Project A-O Canada’s situation reports.¹³⁰

3. PROJECT A-O CANADA INVESTIGATION — OCTOBER 5, 2001 TO JANUARY 22, 2002

3.1 INFORMATION SHARING — THE ORIGINAL ARRANGEMENT

3.1.1 RCMP Policies

Before Mr. Arar’s detention in New York on September 26, 2002, Project A-O Canada shared a great deal of information with the American agencies, some of it relating to Mr. Arar. During this time as well, the RCMP had in place certain policies governing how information should be shared with domestic and foreign agencies.

The RCMP has developed a body of policies for criminal investigations. The Project A-O Canada investigation was a national security investigation, which is a particular type of criminal investigation. Unless there was direction to the contrary, then, Project A-O Canada’s investigation was subject to RCMP criminal investigation policies and, more specifically, to policies relating to national security investigations.

What follows is a brief summary of RCMP criminal investigation and national security investigation policies concerning information sharing. These policies are discussed in more detail in the Analysis volume of this Report, with evaluations of whether the actions of the RCMP did or did not comply with them.

3.1.1.1 Caveats

All sensitive information collected or received by the RCMP must be either “designated” or “classified.” Information is “designated” when its value is such that it warrants safeguarding. Information must be “classified” if it is deemed to be

sensitive to the national interest. Depending on its level of sensitivity, classified information may be “confidential,” “secret” or “top secret.”

The *RCMP Administrative Manual*¹³¹ requires that, where information is designated or classified, caveats must be attached to all outgoing correspondence, messages and documents being passed to other domestic and foreign law enforcement agencies and departments. For classified information, the caveats are as follows:

1. “This document is the property of the RCMP. It is loaned to your agency/department in confidence and it is not to be reclassified or further disseminated without the consent of the originator.”
2. “This document is the property of the Government of Canada. It is provided on condition that it is for use solely by the intelligence community of the receiving government and that it not be declassified without the express permission of the Government of Canada.”

If necessary, the following statement can be attached as well:

“This intelligence should not be reclassified or disseminated outside the RCMP without prior consent of the originator.”

The caveat required for designated information is similar, and for the purposes of this Report, the difference in language is not significant. In any event, the large majority, if not all, of the information provided by the RCMP to U.S. agencies was deemed classified.

Caveats are meant to protect the information in the documents in which they are found, not merely the documents themselves. Caveats are also intended to give the RCMP control over how, and for what purposes, the information will be used. For example, if the receiving agency wished to use the information as evidence, the RCMP would have to first give its permission.

A number of RCMP witnesses testified about the use of implied caveats, a circumstance that is not addressed in RCMP policy manuals. This refers to an understanding among law enforcement agencies that when information is exchanged verbally, it will not be disseminated or used without first obtaining the originator's consent. In effect, the implied understanding is the same as that expressed in the written caveats.¹³²

3.1.1.2

Third-Party Caveats

From time to time, the RCMP receives documents from third-party agencies with caveats attached. The RCMP policy manual provides that these caveats must be respected. In virtually all cases, this means that the RCMP must seek the consent of the originating agency before disseminating or using the information in the documents.¹³³ Although it is not against the law to breach a caveat, there is an implied trust between the lending and receiving agencies. Failure to respect these caveats can create tension and make agencies reluctant to share information in the future.¹³⁴

3.1.1.3.

Reliability Ratings

The *RCMP Criminal Intelligence Program Guide*¹³⁵ requires that all sources and information be assessed and rated for reliability in one of the following categories: “reliable,” “believed reliable,” “unknown reliability” or “doubtful reliability.”

The standard practice is to attach a reliability rating when exchanging information with another agency, except when it is first-hand information, i.e., information that an officer has observed personally.¹³⁶

3.1.1.4

Personal Information

The *RCMP Operational Manual*¹³⁷ provides that if the RCMP is releasing personal information to another agency, disclosure must be made in accordance with the *Privacy Act*. The Act forbids disclosure of personal information without the consent of the person to whom the information relates.

However, there are exceptions. The most relevant here is the “consistent use disclosure” exception. As law enforcement is considered to be a broad consistent use, the RCMP may disclose personal information to other agencies for law enforcement purposes.

3.1.1.5.

The “Need-to-Know” Principle

RCMP policy also provides that classified information should only be released on a “need-to-know” basis.¹³⁸ In this regard, RCMP officers agreed in testimony that before sharing information with a third party, such as the FBI, the RCMP must be satisfied that there is an operational reason to share the information,

i.e., it is expected to further an ongoing investigation. The decision to share should be made on a case-by-case basis, and judgment should be applied to determine whether sharing would be appropriate.¹³⁹

3.1.1.6

Sharing Information with Foreign Agencies

The normal procedure for a foreign agency seeking information from the RCMP is to submit a request to RCMP Headquarters, where it is analyzed and processed, and then sent to the appropriate field unit, if necessary. From there, the requested information is sent back to Headquarters and forwarded to the liaison officer (LO)¹⁴⁰ responsible for the requesting country. For example, if the FBI asked the RCMP for information, the response would come up from the division, if necessary, to RCMP Headquarters, and on to the RCMP LO in Washington, D.C., who would then deliver the information to the FBI.¹⁴¹ This centralized process allows RCMP Headquarters to exercise its oversight function, ensuring both that consistent information is given to the foreign agency, and that Headquarters is aware of what information is being shared.¹⁴²

However, prior to 9/11, there were occasions when agencies, like the FBI, for example, met directly with some of the field units to request information.¹⁴³ Moreover, if the investigators' relationship was ongoing, it was acceptable to have a direct contact and information sharing between the two agencies at that level, as long as Headquarters was involved in establishing the initial contact.¹⁴⁴ In a situation like this, controls would still be in place, in the sense that supervisors would continue to monitor the file and approve the ongoing exchange.

RCMP policy further requires that decisions to share information be made on a case-by-case basis, and that judgment be applied to determine whether sharing would violate anyone's rights, or otherwise be inappropriate.¹⁴⁵ This is outlined in the *RCMP Operational Manual* in a section dealing with "Enquiries from Foreign Governments that Violate Human Rights." However, the policy does permit disclosure of information to a foreign agency that does not share Canada's respect for democratic or human rights, if disclosure is justified because of Canadian security or law enforcement interests, if it can be controlled by specific terms and conditions and if it will not result in human rights violations.¹⁴⁶

3.1.1.7

Reporting on the Sharing of Information

The *RCMP Operational Manual* imposes only limited requirements for divisions carrying out national security investigations to report to Headquarters. For

example, immediate notification is required in the case of 1) potential threats to national security, or to an internationally protected person; 2) known or suspected criminal extremists located in, or travelling to, Canada; and 3) incidents affecting national security. As soon as practicable and within 14 days, RCMP Headquarters is to be notified of any “proposed operational plans for long term investigations.” Following this initial notification, monthly updates are to be provided to Headquarters, but only by way of uploading summaries onto SCIS,¹⁴⁷ the RCMP’s database.

There is no specific requirement for reporting on what information is shared with other agencies. However, as described above, the requirements for the way information is to be shared would of themselves alert the Criminal Intelligence Directorate (CID) at RCMP Headquarters that information was being shared.

It is worth noting that Project A-O Canada began to send daily situation reports to CID in the fall of 2001. Typically, these reports would relate the steps taken in an investigation during that day. If done properly and accurately, this type of detailed reporting discloses all information being shared with other agencies.

The nature of Project A-O Canada’s reporting on its information-sharing activities is discussed in the Analysis volume of this Report.

3.1.2

The CSIS-RCMP Memorandum of Understanding

The principles underlying the relationship between CSIS and the RCMP are laid out in the CSIS-RCMP Memorandum of Understanding (MOU).¹⁴⁸ These principles call on the RCMP and CSIS to share with each other intelligence related to their respective mandates, recognizing that the RCMP relies on CSIS for information relevant to national security offences. The MOU calls on CSIS to provide the RCMP with intelligence relevant to its security enforcement and protective security responsibilities on a timely basis, or following a specific request. However, the MOU recognizes that where CSIS information is being provided for evidentiary purposes, full account must be taken to balance the public interest in sharing that information with the potential effects of disclosure on CSIS sources of information, methods of operation, and third-party relations.¹⁴⁹ CSIS and the RCMP undertake to fully protect any caveats imposed by either party, and to restrict access to national security files according to the “need-to-know” principle.

The CSIS-RCMP MOU also describes the “Liaison Officer Program,” which contemplates the exchange of liaison officers (LOs) between the respective national headquarters and, where appropriate, at the divisional/regional level as

well. For the purposes of this Report, a regional liaison can be said to have existed between RCMP “A” Division and CSIS Ottawa Region.¹⁵⁰ The RCMP LO to CSIS plays a role in ensuring that the RCMP is kept abreast of information relevant to the RCMP’s security-related responsibilities. However, the LO must seek authorization before disclosing such information.

Finally, the MOU states that the two organizations will provide mutual assistance and support abroad, particularly when liaising with foreign agencies on security-related matters. However, there is still an understanding that CSIS has primary responsibility when it comes to dealing with the CIA. Deputy Commissioner Loeppky testified that the RCMP had a verbal arrangement with the CIA for information sharing, but that CSIS had primary responsibility for liaising with the American agency. In fact, correspondence in 1989 between the CIA and the RCMP explicitly recognizes that exchanges of intelligence information should acknowledge the primary role of CSIS as the CIA liaison.¹⁵¹

3.1.3

The Environment After 9/11

3.1.3.1

The Imminent Threat

Although Project A-O Canada’s investigation concerned Abdullah Almalki’s alleged involvement with al-Qaeda, according to the Project’s assistant managers the real focus was on preventing another terrorist act.¹⁵²

Beginning with the CSIS advisory letters shortly after 9/11, Project A-O Canada was provided with information linking targeted individuals to what was described as an imminent threat to the security of Canada. Inspector Cabana testified that intelligence sources indicated that 9/11 was just the first of a number of attacks. Project A-O Canada did not know precisely when the next attacks would come, what the targets were, or whether they would be in Canada.¹⁵³

Concerns about an imminent threat gave a sense of urgency to the investigation. Describing the environment at the outset of the Project, Inspector Cabana commented: “It was a race against the clock to ensure that nothing else happened.”¹⁵⁴

This sense of urgency had a significant impact on members of the Project team. Despite increased requests from the Americans, in the view of the Project team, American agencies did not exert pressure on them. While RCMP management put some pressure on its investigators, the most intense pressure came from investigators themselves. According to Inspector Cabana, “the border” between Canadian and American agencies came down. National priority files that

were considered urgent prior to 9/11 were put on the shelf, and everyone was re-directed to address the terrorist crisis. Agencies – both domestic and foreign – worked together to prevent further attacks from occurring anywhere around the world.¹⁵⁵ At the same time, everyone recognized the need to be extremely thorough, and Project A-O Canada made it a priority to carefully examine anyone who was brought to their attention in relation to Mr. Almalki.¹⁵⁶

Superintendent Wayne Pilgrim, the Officer in Charge of the National Security Investigations Branch (NSIB) at RCMP Headquarters, had a somewhat different view of the possible second wave of attacks. He concurred that there was continuing concern about other attacks after 9/11, and that it was therefore necessary to maintain a high degree of vigilance for an extended period of time. In his view, however, the next wave was an imminent threat to the United States, not to Canada.¹⁵⁷

3.1.3.2

The Need to Cooperate with Other Agencies

The Project A-O Canada team was instructed to use every tool possible, within the bounds of the law, to ensure that 9/11 was not repeated.¹⁵⁸ This included sharing information with other domestic and foreign agencies.¹⁵⁹ To Project A-O Canada, outside cooperation was important for two reasons.

First, members of the Project A-O Canada team lacked in-depth knowledge of, and experience in, anti-terrorism investigations. Sharing information with other agencies helped them understand the type of threat they were facing. As well, without the cooperation of other agencies, it would have been difficult to assess whether Canadian intelligence information would be useful to American investigations, or to those being conducted in Europe, Africa or Asia. According to the Commanding Officer of “A” Division, the only way the RCMP was going to be successful in the fight against terrorism was to share information.¹⁶⁰

Team members recognized that a good deal of the information on their target subjects had been provided by U.S. authorities. Project A-O Canada did not have the resources to gather all of the information it needed on its own, nor did it have direct access to information on the targets’ backgrounds, except through other agencies.¹⁶¹

The second strong incentive for cooperation, according to RCMP witnesses, was the potential for loss of life if information was withheld. As Inspector Clement explained, law enforcement officers were dealing with “real-time” events occurring against the backdrop of an imminent terrorist attack. “One tid-bit of information” could be the missing piece of the puzzle in another agency’s database. “That [information] may have prevented an explosion. We can all

speculate.”¹⁶² Assistant Commissioner Hovey agreed that no one wanted to withhold information that might prevent a catastrophe.¹⁶³

According to Inspector Cabana, the Project A-O Canada investigation was more analogous to dealing with an international crisis, than a national one. He noted that agencies were coming to the table and information was being shared to an extent unprecedented in his previous 20 years as a police officer; after 9/11, there was no more territorial squabbling, he added.¹⁶⁴

3.1.4

Views on the Information-Sharing Arrangement

3.1.4.1

Overview

According to RCMP witnesses, members of the RCMP and its domestic and foreign partner agencies met at RCMP Headquarters on either September 12 or 13, 2001 — immediately following the terrorist attacks — to discuss the threat of another attack, and the need for increased cooperation and coordination among the agencies, including the need to share relevant information in a timely manner. These discussions were the starting point for the information-sharing arrangements that ultimately resulted in Project A-O Canada providing American agencies with information about a number of individuals, including Mr. Arar. As discussed elsewhere in this Report, some of this information likely played a role in the American decision to transfer Mr. Arar to Syria. Because it is so significant, the evidence leading to these transfers will be reviewed in detail. This section provides an overview of the varying understandings of information sharing described by the different witnesses.

According to RCMP Assistant Commissioner Richard Proulx, it was understood that the agencies would share all information about the terrorist threats in a prompt manner, so that appropriate preventative or disruptive actions could be taken. However, this arrangement was not intended to deviate from existing RCMP policies related to both criminal and national security investigations. In particular, it was not intended that caveats and the third-party rule would no longer apply to information shared with the other agencies. Furthermore, parties would continue to share only their own documents, unless the originating agency gave its consent.

CSIS witnesses who were questioned about the existence of the information-sharing arrangement did not mention the September 2001 meeting, nor were they under the impression that an arrangement was even agreed to among the agencies with primary responsibility for anti-terrorism activities in Canada

and the United States. That said, their understanding of how the information sharing was to take place with other agencies generally supported Assistant Commissioner Proulx's description.

The information-sharing arrangement was never put into writing. Following the September meeting, Assistant Commissioner Proulx discussed the arrangement with senior RCMP officers in the regions, including those at "A" Division in Ottawa. In turn, the senior officers at "A" Division related the message to Project A-O Canada's managers. Although there are a few notes about these communications, no formal direction setting out the details of the arrangement was given by RCMP Headquarters to the senior officers at "A" Division, nor by these officers to Project A-O Canada personnel. Those involved differ in their recollections about the substance of the messages passed down to officers implementing the arrangement. In the end, however, Project A-O Canada's understanding of how information was to be shared differed in several important respects from that of Assistant Commissioner Proulx.

Members of Project A-O Canada referred to the arrangement as an "open-book investigation" or a "free-flow-of-information agreement," often referring to participants in the original discussion as "partners to an agreement." More specifically, Project A-O Canada project managers understood the agreement to include the following key points:

- a) Caveats no longer applied. ("Caveats are down" was the phrase sometimes used.) Project A-O Canada managers understood it was no longer necessary to attach caveats or the third-party rule to documentary information being shared with other partner agencies. However, there was an implicit understanding that the information would be used for intelligence purposes only.
- b) RCMP policies relating to national security investigations did not apply to their investigation. This was true for a number of reasons, including the fact that Project A-O Canada was conducting a "criminal," not an "intelligence" investigation.
- c) The partners could share documents or information received from another partner without the consent of the originator, even if caveats had been attached by the originator.
- d) All information obtained by Project A-O Canada could be transferred to the "partners to the agreement." It was not necessary to scrutinize information transferred to other agencies for relevance, reliability, "need-to-know" criteria, or for personal information.

Because of this understanding, members of Project A-O Canada provided information and documents to American agencies in a manner that was very

different from what Assistant Commissioner Proulx had envisioned at the September meeting. Project A-O Canada did not attach written caveats or the third-party rule to most of the documentary information they gave to U.S. agencies. Further, members transferred certain third-party documents, including CSIS material containing caveats, to U.S. agencies without first obtaining CSIS' consent. Project A-O Canada also transferred some information to U.S. agencies without first examining it to assess its relevance or reliability, and whether the American agencies "needed to know" the personal information it contained.

The evidence relating to the information-sharing arrangement, as described by those at each level of the RCMP and CSIS hierarchy, is reviewed in detail below.

3.1.4.2

RCMP — Criminal Intelligence Directorate (CID)

In his testimony about the meeting held on either September 12 or 13, 2001, Assistant Commissioner Proulx said that he had urged the agencies to share as much information as possible — and quickly — in order to save lives. The only limitation was that if information was not to be shared with the entire group, the agency sharing it should make that clear to the agency receiving it.¹⁶⁵

According to Assistant Commissioner Proulx, the message he was delivering was not new. In fact, he had told the agencies the same thing during another terrorism case two years earlier. In any event, he expected that information would be shared among the agencies as a matter of course. His main goal in calling the meeting was to emphasize the seriousness of the post-9/11 threat. He urged the agencies to exchange information "in real time,"¹⁶⁶ meaning that it should be shared immediately and directly with the participating [or partner] agencies at the same time,¹⁶⁷ in order to facilitate discussion among them.¹⁶⁸

According to Assistant Commissioner Proulx, at no time during the September 2001 meeting did participants discuss removing written caveats from documents.¹⁶⁹ Nor did they set an end date for the arrangement.¹⁷⁰

Assistant Commissioner Proulx believed that his plan was well received by the other agencies, and felt that everyone agreed on the need to share as much information as possible, as quickly as possible.¹⁷¹ In fact, there were no further meetings on the subject among the participating agencies at a senior level. In Assistant Commissioner Proulx's opinion, all of the issues and details pertaining to the information-sharing arrangement were clear and settled when the meeting ended.¹⁷²

There are several important points about this arrangement. First, there is no written record of it.¹⁷³ Further, the discussions did not result in explicit

parameters about the type of information to be shared in real time. In fact, Assistant Commissioner Proulx's understanding was that, on a practical level, the new arrangement would not fundamentally change the way the RCMP operated. In particular, he was adamant that the arrangement was not intended to change RCMP policies, specifically those regarding the use of caveats and the third-party rule.¹⁷⁴ He explained that the arrangement focused on sharing information directly among the participating agencies to ensure that everyone was simultaneously aware of developments in the investigation. The use of caveats would continue as before. The new arrangement simply meant that the participating agencies would be able to have an open discussion, in a timely way, about information that had been shared.¹⁷⁵

Assistant Commissioner Proulx also understood that each agency was still responsible for sharing its own information with other agencies. That said, it was expected that any information given to one of the agencies should be given to the others, so it could be discussed freely at meetings.¹⁷⁶ He was firm that the information-sharing arrangement did not allow one agency to share written correspondence with another without the permission of the originating agency. Each agency was responsible for sharing its own documents, either by passing them to the other agencies, or by giving permission for them to be passed.¹⁷⁷ It is worth noting that Assistant Commissioner Proulx believed it permissible to verbally discuss the information received from another agency. Apparently, the prohibition against sharing without the originating agency's consent only applied to documents to which caveats had been attached.

This information-sharing arrangement did not extend outside of the participating agencies. Assistant Commissioner Proulx testified that the agencies were not permitted to pass information to an outside organization without first seeking permission from the originating agency.¹⁷⁸

Finally, the arrangement did not extend to using the information in court proceedings. According to Assistant Commissioner Proulx, if one agency wanted to use information from another agency in court, the caveat still applied and the permission of the originating agency was required.¹⁷⁹

While Assistant Commissioner Proulx was clear in his own mind about the parameters of "share as much information as possible in real time," he did not prepare an internal document explaining the arrangement.¹⁸⁰ Neither were structures in place to ensure his message was clearly communicated to the RCMP officers who were ultimately responsible for implementing the arrangement.

According to Assistant Commissioner Proulx, his message about the information-sharing arrangements was communicated verbally, in meetings and video conferences,¹⁸¹ to the commanding officers and the Officers in Charge of

Criminal Operations (CROPS) in the various RCMP divisional offices.¹⁸² It was not delivered in a written communiqué, or by meeting with these senior officers.

Assistant Commissioner Proulx's message about information sharing was given to "A" Division during a video conference on September 27, 2001.¹⁸³ The purpose of the meeting, which was attended by representatives from various RCMP divisions and Headquarters, was to discuss Project Shock, as well as other matters related to post-9/11 crisis management. Assistant Commissioner Proulx testified that he told participants about his meeting with the other agencies, and that "[they] agreed to share as much information as possible."¹⁸⁴

Assistant Commissioner Proulx left it to the senior officers of "A" Division to communicate the information-sharing message to Project A-O Canada's front-line officers. He accepted, however, that it was his responsibility to ensure the message was properly understood.¹⁸⁵

Following the September 27 video conference, there were other meetings and video conferences at the operational level during which information sharing may have been discussed. According to Assistant Commissioner Proulx, he at no time indicated that existing RCMP policies or caveats involving information sharing were suspended. Specifically, he did not recall saying on December 6, 2001 that caveats were down, as Chief Superintendent Couture testified.¹⁸⁶

Deputy Commissioner Garry Loepky, the RCMP's Chief Operational Officer, agreed with Assistant Commissioner Proulx's interpretation of the information-sharing arrangement. That is, it focused on the need to share information fully, in a timely fashion, and within the context of existing RCMP policies.¹⁸⁷

Although Deputy Commissioner Loepky was not involved in defining the parameters of what eventually became known as the free-flow-of-information agreement,¹⁸⁸ he was aware of the meeting held shortly after 9/11 between Assistant Commissioner Proulx and representatives from domestic and U.S. law enforcement and security intelligence agencies. It was his understanding that the purpose of the meeting was to provide assurance that the RCMP would go out of its way to respond to requests in a timely manner, without the usual delays. He did not believe there was any discussion of caveats.¹⁸⁹

Deputy Commissioner Loepky testified that it was management's responsibility to communicate this general direction to the CROPS officers, who were then to carry it out. What the CROPS officers were to take from management's message was that the RCMP would respond to requests in a timely way so there would not be the type of delays that took place before 9/11. However, there was no oral discussion or written document confirming that the instructions "to respond in a timely way" also meant that all RCMP policies still had to be

followed.¹⁹⁰ Deputy Commissioner Loeppky agreed that the instructions to senior officers were very broad.¹⁹¹

He also acknowledged that in the post-9/11 environment, someone might interpret the information-sharing message more broadly than it was actually intended, thus concluding that information could be shared without caveats. Immediately after 9/11, there were domestic and international entreaties by political leaders, law enforcement, business and the community for a new level of cooperation. Although Deputy Commissioner Loeppky expected there would be full and open sharing of information to the extent that RCMP policies permitted, given the bombardment of messages following 9/11, he could see why some people might have understood that the arrangement went further.¹⁹²

A number of officers in NSIB at RCMP Headquarters also testified about their understanding of the information-sharing arrangement.¹⁹³ For the most part, they supported Assistant Commissioner Proulx's interpretation.

Superintendent Pilgrim, Inspector Rick Reynolds and Corporal Rick Flewelling, all of whom were at CID for at least part of the time Project A-O Canada was sharing information with the Americans, believed that Project A-O Canada was doing so without attaching the appropriate written caveats. However, they believed the agencies involved understood that any information was to be treated as if it had caveats (regardless of whether or not it did). This meant the agency receiving the information would have to obtain permission from the originating agency, if the information was to be used for anything other than intelligence purposes.¹⁹⁴ In this respect, the arrangement deviated from the RCMP's policy for national security investigations, which required that written caveats and the third-party rule be attached to all documents shared with another agency.¹⁹⁵

3.1.4.3

CSIS

CSIS witnesses testified that they were not party to, nor were they notified of, an arrangement whereby the RCMP and its partner agencies were to share information without adhering to established rules for the imposition of and respect for caveats and the third-party rule (either express or implied).¹⁹⁶ While acknowledging that there was a general desire to share information in a timely and efficient manner, CSIS witnesses said there was no arrangement in place to suspend the application of CSIS policies.¹⁹⁷

3.1.4.4

RCMP "A" Division — Commanding Officer/CROPS

Three senior officers from "A" Division testified about their understanding of how Project A-O Canada was to share information with the other participating agencies. In order of rank, Assistant Commissioner Dawson Hovey was the Commanding Officer of "A" Division, Chief Superintendent Antoine Couture was the Officer in Charge of CROPS, and Inspector Garry Clement was the Assistant CROPS Officer.

Although Assistant Commissioner Hovey was not closely involved in decisions about sharing information among these agencies, he recognized that the issue assumed a higher priority following 9/11. Like Assistant Commissioner Proulx, however, he understood that information sharing would continue in accordance with RCMP policies. He did not agree that the RCMP had discretion to tailor its policies to a particular situation.¹⁹⁸

Over time, Assistant Commissioner Hovey became aware that Project A-O Canada was sharing information with its American colleagues. Although he supported the approach in general, he was not aware of the details of the arrangement. He testified that, as Commanding Officer, he was ultimately accountable for the investigations conducted by "A" Division. However, it was the CROPS Officer who was responsible for providing day-to-day direction on files.¹⁹⁹

Assistant Commissioner Hovey believed that information was being shared with American agencies in accordance with RCMP policies, including those concerning caveats. Moreover, he was not aware of any issues about the use of caveats or information sharing more generally during his tenure as Commanding Officer.²⁰⁰

As the Officer in Charge of CROPS at "A" Division until January 2003, Chief Superintendent Couture was given general direction from RCMP Headquarters on how information was to be shared.²⁰¹ He understood that Project A-O Canada investigators were to share information in a timely manner because of the imminent threat of another terrorist attack — information was to flow as freely as possible among the participating agencies.²⁰² Chief Superintendent Couture was not able to provide details of communications from RCMP Headquarters, other than to say that the information-sharing message was delivered once or twice by video conference or telephone conference.²⁰³

Three points about Chief Superintendent Couture's testimony are important to note. First, he would neither confirm nor deny that existing RCMP policies for exchanging information with domestic or foreign agencies were no

longer applicable on the direction of RCMP Headquarters. He would say only that members of “A” Division were encouraged to communicate information as freely as possible to ensure an efficient response to the imminent threat of another attack.²⁰⁴

Second, Chief Superintendent Couture stated it was his general understanding that Project A-O Canada could share information without using caveats, as the use of caveats and the third-party rule would not be enforced in the fight against terrorism.²⁰⁵ He made specific reference to a video conference on December 6, 2001, in which Assistant Commissioner Proulx indicated that caveats were down. Although Chief Superintendent Couture made a note of this meeting,²⁰⁶ Assistant Commissioner Proulx did not recall making the comment.

Finally, Chief Superintendent Couture did not believe RCMP Headquarters had directed that information obtained from another party could be shared without the authority of the originating party. He understood that each party would pass its own information directly to the other parties.²⁰⁷

Chief Superintendent Couture testified that post-9/11 information sharing by Project A-O Canada was unique. Never before had he seen information shared fully with the other agencies, but neither had he been in a situation where the stakes were as high.²⁰⁸

According to Chief Superintendent Couture, an unstructured approach was taken in communicating the parameters for information sharing to Project A-O Canada. This approach was similar to that used by RCMP Headquarters to communicate instructions to him. The arrangement was never written down in a clear set of rules for investigators, but was communicated verbally to team members. It was also communicated implicitly every time “A” Division’s senior management sanctioned Project A-O Canada’s actions. For instance, Chief Superintendent Couture implicitly sanctioned the team’s actions by receiving and reading Project A-O Canada’s situation reports.²⁰⁹

Chief Superintendent Couture’s general directions on information sharing were to ensure the team got the job done and shared the information necessary to prevent another terrorist attack. These directions were communicated in conversations with the Assistant CROPS Officer. Chief Superintendent Couture did not speak directly to investigators about information sharing. In general, he left officers within “A” Division to control the day-to-day management of files.²¹⁰

Following a meeting, Chief Superintendent Couture would generally meet to debrief the officers in charge of the various units at “A” Division. Based on this, he believed he passed on Assistant Commissioner Proulx’s statement that caveats were down, which was made at the December 6, 2001 meeting. Chief Superintendent Couture understood this direction to mean that Project

A-O Canada was not to restrict the flow of information, and should ensure that information reached its destination quickly in order to prevent another terrorist attack.²¹¹

Chief Superintendent Couture was also questioned about testimony by Project A-O Canada witnesses that they were directed to share information freely for intelligence purposes, but that permission was required, and very likely an MLAT (Mutual Legal Assistance Treaty) application, if information was to be used in a court proceeding. He confirmed that a foreign agency would require an MLAT to use RCMP information in a legal proceeding.²¹²

Chief Superintendent Couture believed that RCMP Headquarters was aware of the working relationship between the U.S. agencies and Project A-O Canada, including how information was being shared. Further, he believed Headquarters knew of this relationship from the outset of the project.²¹³

Inspector Clement, the Assistant CROPS Officer at "A" Division, communicated the information-sharing arrangement to Project A-O Canada. According to him, he gave very clear direction as soon as the investigation began that there would be an open-book arrangement with Project A-O Canada's partners. Apparently, Inspector Clement was the first one to use the term "open-book investigation." Given the potential threat, Inspector Clement believed that the investigation could not progress unless all of the partners were well briefed on a day-to-day basis.²¹⁴

Inspector Clement also stressed the open-book approach with each of the partner agencies, emphasizing the need for an open and frank sharing of information.²¹⁵ He believed his directive was supported up the chain of command in "A" Division, from the CROPS Officer, Chief Superintendent Couture, to the Commanding Officer, Assistant Commissioner Hovey, as well as at RCMP Headquarters.²¹⁶

Inspector Clement's view of an open-book investigation included two elements of note. First, he believed the arrangement extended to sharing information without taking into account RCMP policies about the use of caveats and the third-party rule. However, he explained this was not the original intent when the open-book directive was conceived.²¹⁷ At the time, the arrangement focused on information shared verbally among the partner agencies at regular meetings, rather than on physically sharing documents. All of the agencies openly discussed information contained in the documents. Eventually, when Project A-O Canada investigators became aware that information had been shared verbally, they began to pass it in documentary form. In doing so, Inspector Clement testified, they were not passing along new information, but information that was already known.²¹⁸

Second, Inspector Clement testified that, in time, it became acceptable for Project A-O Canada to share information received from another partner agency, given that all relevant information was being shared verbally among the partners.²¹⁹

Inspector Clement further believed that all partner agencies understood that information could be shared without the formal application of caveats and the third-party rule. According to him, other partner agencies tacitly approved this approach because they were present at meetings where it was a topic of discussion.²²⁰

Inspector Clement was adamant that, regardless of other deviations from established RCMP policies, there was an implicit understanding among the partner agencies that the third-party rule applied if information was to be used in a legal proceeding. This was in line with legal requirements applicable to all criminal investigations.²²¹

Inspector Clement's rationale for promoting the open-book investigation was based on two main factors. First, his experience managing major case files told him that information could not be withheld from a partner agency if an investigation was to be successful. An open-book investigation promoted cooperation and trust.²²² Second, the imminent threat of another terrorist attack demanded that partner agencies foster an environment of openness so that information could be shared quickly and efficiently. As Inspector Clement stated: "Circumstances sometimes require you to go a step further than you normally would in a routine-type investigation."²²³

The parameters of the open-book concept were not explicitly laid out for Project A-O Canada investigators. However, Inspector Clement testified that most members of the team had worked directly with him before and would have been familiar with how he managed a case. In this instance, he felt the team was very clear on what he intended. The overriding message was that the partners were to share everything openly, and that nothing was to be held back if it was potentially relevant to any one of them.²²⁴

Inspector Clement's interpretation of the information-sharing arrangement was never put into writing. Neither could he direct the Commission to notes of a meeting setting out the implicit understanding that partner agencies needed permission to use another agency's information.²²⁵ According to Inspector Clement, there was never any discussion of drafting a Memorandum of Understanding (MOU) or other document to record the specifics of the information-sharing arrangement.²²⁶

Inspector Clement was aware that even though senior officers understood the implied arrangement about the third-party rule, this was not necessarily the

case at the grassroots level of an investigation. However, he took into account that the FBI was a reputable agency with policies similar to the RCMP, and that, at any given time, the RCMP had numerous investigations involving its U.S. counterparts. As a result, the two agencies had developed a common understanding of what rules must be followed.²²⁷

3.1.4.5

Project A-O Canada

Although the testimony of Project A-O Canada officers varied to some extent, they all agreed that, right from the outset, their instructions were to conduct an open-book investigation with the other participating agencies.

Inspector Cabana, the Officer in Charge of Project A-O Canada, testified that discussions about the RCMP's relationships with other agencies, including its information-sharing relationships, began immediately after the events of September 11, 2001, in the context of Project Shock.²²⁸

Prior to the start of Project A-O Canada, Inspector Cabana attended the September 25 or 26, 2001 video conference at RCMP Headquarters, where the RCMP's response to the 9/11 attacks was discussed.²²⁹ At that time he was a member of "A" Division's Integrated Proceeds of Crime (IPOC) unit. Inspector Cabana recalled that there was a sense of urgency about ensuring the RCMP work in partnership with others. He left the meeting with the understanding that there would be no more protectionism over information, and that everyone would be sharing information more freely in an effort to prevent further attacks.²³⁰

When Project A-O Canada began, Inspector Clement informed Inspector Cabana that it was to be conducted as an open-book investigation. According to Inspector Cabana, Inspector Clement gave him these instructions on October 5, 2001, as part of their discussion about Project A-O Canada taking over the investigation of Mr. Almalki. Inspector Clement told him that Project A-O Canada would be working with the American agencies, and because of the extraordinary circumstances of 9/11, they had all agreed to share information freely.²³¹

From Inspector Cabana's understanding, an open-book investigation meant that caveats normally attached to documents sent to external agencies were down. Project A-O Canada's primary mandate was to prevent any further attacks. To do so effectively meant ensuring information flowed freely among all the agencies.²³² As Inspector Cabana observed: "[T]he way it was described to us, is you are working hand- in-hand with these [agencies] now, and when you are working in partnership with agencies, caveats don't apply."²³³

Inspector Cabana understood that they were no longer required to follow the steps laid out in the RCMP's existing policy "with respect to the use of caveats [and] with respect to the requirement to determine the purpose of the information to be shared." Instead, information was to be shared immediately, without delays. Inspector Cabana believed that there was an agreement in place among the agencies for that purpose.²³⁴

Inspector Cabana did not interpret the open-book arrangement to mean that RCMP policies relating to caveats had necessarily been suspended. He testified that RCMP policies were devised as a guideline on which officers built their investigations, but were not developed with events like 9/11 in mind. He was aware that RCMP policy included certain circumstances where information could be exchanged without a caveat — for example, if there was an MOU, or something similar, in place. Since obtaining an MOU would take too much time under the circumstances, the information-sharing arrangement was put in place. (The applicable RCMP policy referred to a "written" MOU; Inspector Cabana never saw a written agreement.)²³⁵

Neither did Inspector Cabana interpret the arrangement to mean that there were absolutely no controls over RCMP information once it had been shared with partner agencies. Everyone understood that information was being shared for intelligence purposes. If the information was to be used in a legal proceeding, the consent of the originating agency was required, and possibly an MLAT application. This was an established rule within the law enforcement community, and it did not change on account of 9/11.²³⁶ Inspector Cabana also believed that if a partner agency wanted to share the information with a non-partner agency, permission from the originating agency was required.²³⁷

According to Inspector Cabana, both the CROPS Officer and Assistant CROPS Officer for "A" Division attended a briefing on October 15, 2001. When instructions were given for sharing information, they did not object; nor did they suggest that Inspector Cabana had misunderstood the original instructions.²³⁸

Staff Sergeants Callaghan and Corcoran testified that they did not recall receiving instructions on the information-sharing arrangement at the October meeting.²³⁹ Neither could they recall the exact date when the information-sharing arrangement was communicated to them.

According to Staff Sergeants Callaghan and Corcoran, the arrangement evolved as the project progressed, and as the American agencies and CSIS became more involved in the investigation.²⁴⁰ As discussed later in this Report, the officers eventually came to understand that information could be shared without attaching explicit caveats. Caveats were implied; if the requesting party wanted to use the information other than for intelligence purposes, approval

from the RCMP was required. The officers also understood that because of the open-book arrangement between the participating agencies, the RCMP could pass along information received from another partner agency.

Staff Sergeant Callaghan's interpretation of what could be shared came from the Assistant CROPS Officer, Inspector Clement. He recalled Inspector Clement using the phrase "open-book investigation" on a number of occasions, and explaining that Project A-O Canada could share information with all of its partners. According to Staff Sergeant Callaghan, "...[t]here was no ifs, ands or buts about it, or grey area, as to what we were going to share."²⁴¹

Staff Sergeant Corcoran went even further, testifying that "A" Division's Commanding Officer, Assistant Commissioner Dawson Hovey, the CROPS Officers, Chief Superintendent Couture and Inspector Clement, and Project A-O Canada's Officer in Charge, Inspector Cabana, communicated the message to share information openly, right from the beginning. According to Staff Sergeant Corcoran, the instructions for sharing information with various agencies did not appear to be optional — "We were told to share."²⁴²

He also testified that there was no discussion of caveats at the start of the investigation, and it only became an issue later on, in the summer of 2002. By November or December 2001, the hard-and-fast rule was that any information the RCMP gave to an outside agency was for intelligence purposes. If an external agency wanted to use RCMP information for another purpose, it would have to obtain the RCMP's permission.²⁴³

Staff Sergeant Corcoran testified that he was never criticized or disciplined for sharing information in accordance with his understanding of the information-sharing arrangement — specifically, sharing information without caveats. On the contrary, Project A-O Canada was applauded by other agencies for its efforts. "It was clear to everyone that times had changed. The situation was grave. We could not risk not sharing information."²⁴⁴

Project A-O Canada managers testified there was no single document that captured the information-sharing arrangement among the partner agencies, including such phrases as "open-book investigation," "free-flow-of-information" and "all caveats are down." Instead, it was more generally included in various officers' meeting notes and in Project A-O Canada correspondence.²⁴⁵

The instructions to Project A-O Canada about sharing information did not have a fixed end date. As Inspector Cabana testified, the original instructions he received from Inspector Clement were not time-limited, nor were they countermanded before he left the project in February 2003. It was his understanding that this arrangement would be in place for the duration of the Project.²⁴⁶

3.1.5

The Role of Department of Justice Lawyers

At least one lawyer — and as many as three — were assigned to Project A-O Canada from its inception. In early October 2001, the Assistant CROPS Officer, Inspector Clement, requested that the Department of Justice (DOJ) assign counsel to the Project. Because the department was not in a position to provide the Project with its own counsel at the time, it assigned the lawyers at “A” Division’s IPOC unit to work at Project A-O Canada as well.²⁴⁷

With offices on the same floor, DOJ lawyers and the Project A-O Canada team maintained open lines of communication. Many team members, including the Officer in Charge, had a background in IPOC and a history of dealing with these same lawyers. Inspector Cabana testified that he had daily interaction with legal counsel on a number of different issues, including Project A-O Canada.²⁴⁸

Legal counsel played an integral role in developing files for IPOC, and a similar arrangement was adopted for Project A-O Canada files.²⁴⁹ As a general rule, Project A-O Canada personnel sought legal advice for all investigative steps. In addition, counsel for Project A-O Canada regularly attended the investigators’ meetings and joint management team meetings where information sharing was discussed.²⁵⁰

Inspector Cabana stated he was not aware that his investigators specifically discussed the issue of caveats with Project A-O Canada’s lawyers, as the lawyers already knew of the arrangement.²⁵¹ He testified that Project A-O Canada’s lawyers would have been aware of RCMP policies because of their experience with IPOC, which had been conducting international investigations for as long as the lawyers had been there. He concluded that the lawyers were well versed in RCMP policy, and did not recall them suggesting that the team was contravening policy. According to Inspector Cabana, the legal advice he received about the Project was consistent with his original instructions, particularly with regard to RCMP policy.²⁵²

Inspector Cabana did not believe that any of his investigators consulted Project A-O Canada lawyers about whether the team could go against RCMP policy, nor did he feel there was any need to do so, as the team’s directions came from management.²⁵³

3.2

ABDULLAH ALMALKI — THE TARGET

3.2.1

Introduction

This section and others that follow discuss the investigations of Abdullah Almalki and Ahmad El Maati.²⁵⁴ These investigations are relevant for two reasons. First, the substance of the investigation of Mr. Arar emerged from the investigations of Messrs. Almalki and El Maati. Second, the investigations of all three were carried out contemporaneously, often by the same officials and, at least in broad terms, as part of the same investigation. That being the case, understanding the steps taken in the investigations of Messrs. Almalki and El Maati will assist in understanding the actions were taken with respect to Mr. Arar.

The Commission has heard a good deal more evidence relating to the investigations of Messrs. Almalki and El Maati than is set out in this Report. Only those portions of the evidence that are relevant to the investigation of Mr. Arar have been included. However, it should be noted that the Commission did not have access to all of the files of these two individuals.

3.2.2

Background, Scope and Nature of the Almalki Investigation

The investigation of Mr. Almalki, who lived in Ottawa, began as an adjunct to the main investigation related to al-Qaeda that was being conducted by “O” Division in Toronto. However, Mr. Almalki would very quickly become a primary target of the Ottawa RCMP and the focal point of Project A-O Canada’s autonomous, extensive and lengthy investigation.²⁵⁵ Mr. Arar did not come to the attention of Project A-O Canada until an October 12, 2002 meeting between Mr. Almalki and Mr. Arar at Mango’s Café in Ottawa.²⁵⁶

Mr. Almalki was a very religious man, educated in the Koran, who was viewed as an elder in the community. As noted above, however, he was believed to be involved in the facilitation of terrorist activities.

As discussed, Project A-O Canada officers regarded their investigation into Mr. Almalki’s activities as a criminal investigation, rather than a national security investigation. This interpretation of their work was confirmed by the passage of Bill C-36, which specifically established the facilitation of terrorist activities as a criminal offence.²⁵⁷

Because the facilitation aspect was an important element of Project A-O Canada’s investigation, the approach Inspector Cabana adopted was similar

to what he had previously used as head of the IPOC unit. His investigators were instructed to try and uncover Mr. Almalki's business relationships around the world.²⁵⁸

One aspect of the investigation that merits attention here is the emerging relationship between Project A-O Canada and American authorities. Team members met and communicated with the FBI on several occasions in the first months of the investigation, and continued to do so regularly after that.²⁵⁹ The purpose of these communications varied, from transferring information about Mr. Almalki, to seeking help with analysing information, and obtaining operational support.

Project A-O Canada dealt with the FBI directly, in many instances sharing information at meetings without going through RCMP Headquarters, CSIS Headquarters, or RCMP liaison officers in the United States. However, certain Project A-O Canada requests for information were directed through the Washington LO, particularly if regular contacts in the FBI were not able to provide it.²⁶⁰

By late October 2001, senior RCMP officers had decided that Project A-O Canada and Project O Canada would each be responsible for the investigation of targeted individuals in their own area, with the result that Project A-O Canada had exclusive jurisdiction over the Almalki investigation. The two divisions were still to work together, holding weekly meetings to coordinate all leads, and assisting each other with resource requirements, when necessary.

Inspector Cabana testified that, despite this new arrangement, jurisdictional disputes between the two projects were never completely laid to rest. There were periodic meetings, but not many. Instead, investigators were identified whose task it was to liaise on a daily basis. Situation reports generated by Project A-O Canada were generally provided to Project O Canada in Toronto, although this practice was terminated by the end of November 2001 because Project O Canada was winding down, and officials had moved on to other priorities.

3.3

MEETING AT MANGO'S CAFÉ

At a meeting on October 11, 2001, the Project A-O Canada team identified a number of individuals connected with Mr. Almalki as targets of its investigation. Although Mr. Arar was not among them,²⁶¹ by the next day, he had been brought to the team's attention.

Based on certain information that was disclosed *in camera*, two RCMP surveillance teams (and one Ottawa Police Service surveillance team) covered a meeting between Messrs. Almalki and Arar on October 12, 2001.²⁶² According to

the RCMP's record, the two men met at four o'clock in the afternoon at an Ottawa restaurant called Mango's Café. They then had a 20-minute conversation outside as they walked in the rain. Messrs. Almalki and Arar then went to a local house of prayer, where they stayed for approximately 15 minutes. They traveled together in Mr. Arar's car to a local shopping mall, where they examined computer equipment, continuing to talk after they exited the store. They appeared to be taking great pains not to be overheard. The men then returned to the house of prayer, going their separate ways soon afterwards. Altogether, the meeting lasted about three hours.²⁶³

Following the Mango's Café meeting, the RCMP began to take a closer look at Mr. Arar.

At an October 15, 2001 briefing, Project A-O Canada investigators discussed the Ottawa subjects of their investigation, including Mr. Arar.²⁶⁴ The two chairs of the meeting testified that Mr. Arar was a "person of interest" at that time, not a "target." A person of interest is someone whose role is not clear to the investigation team and about whom more information is required. A target, on the other hand, is someone about whom the investigation team is trying to uncover evidence to support criminal charges.²⁶⁵ Project A-O Canada's manager agreed that it would be incorrect to refer to Mr. Arar as a target.²⁶⁶

A few days after this meeting, Corporal Robert Lemay and Sergeant Rock Fillion were assigned to investigate Mr. Arar.²⁶⁷

3.4

COLLECTING INFORMATION ABOUT MR. ARAR

3.4.1

Biographical Data

Soon after the meeting at Mango's Café, Project A-O Canada began building a biographical profile of Mr. Arar. Investigators conducted open-source checks and searched government databases (for example, those at Ontario Works, Canadian Police Information Centre, "A" Division's Immigration and Passport Office, and the Ottawa Police Service).²⁶⁸ Information about Mr. Arar was stored in binders maintained by Corporal Lemay.²⁶⁹

By the end of October 2001, Project A-O Canada had uncovered the following information about Maher Arar.

- He was born in Syria and arrived in Canada as a landed immigrant on September 1, 1987 in Montreal, Quebec. He obtained his Canadian

citizenship on September 28, 1995. He also used the name Abdul Hamid Maher Arar.

- He lived in Montreal at various addresses until he moved to Ottawa in 1998.
- He had both a Canadian and an American social insurance number.
- He maintained a residence in Ottawa, Ontario, as well as one in Framingham, Massachusetts.
- He held two university degrees, one of which was a graduate degree in telecommunications. Mr. Arar was employed as a communications engineer with The MathWorks, Inc. in Natick, Massachusetts.
- He was married with one child. The investigators had uncovered the name of Mr. Arar's father, and further enquiries were being conducted on other family members.²⁷⁰
- He had no criminal record and was not wanted on any charges.
- He applied for a firearm acquisition certificate in Montreal in 1992. The certificate expired in 1997. There were no firearms registered to Mr. Arar.

3.4.2

Surveillance of Mr. Arar and Observation of His House

Although Mr. Arar was categorized only as a person of interest, Project A-O Canada officials considered it necessary to put him under surveillance. They did so only occasionally. It was not unusual to conduct surveillance on a person of interest rather than a target, given that Project A-O Canada was investigating an imminent threat and there were a number of individuals whose role was uncertain at this time.²⁷¹

Periodically in November 2001, a surveillance team followed Mr. Arar for approximately seven hours on each occasion. The resulting surveillance reports confirmed that officials observed nothing unusual.²⁷²

In addition, Mr. Arar's home was put under observation. Late one evening in November 2001, Corporal Lemay and Sergeant Fillion went to Mr. Arar's residence. After watching the house for 15 minutes, they returned to the office and prepared their report.²⁷³ Corporal Lemay testified that this visit was not surveillance because it did not involve a specialized team or a post-surveillance debriefing. The purpose of the trip was simply to determine what, if anything, was happening at Mr. Arar's residence.²⁷⁴

It does not appear that there was any further surveillance of Mr. Arar to July 2002,²⁷⁵ after which time Project A-O Canada learned that Mr. Arar had left the country.

3.4.3

Review of CSIS Files

Project A-O Canada did not have access to the CSIS database. Although the CSIS liaison officer (LO) had privileged access to counter-terrorism information, this access was limited to hard copies of documents stored on the database, with any source information blacked out. If the CSIS LO felt that information was germane to an RCMP interest or investigation, the officer could make a request to a supervisor for formal disclosure to the RCMP.²⁷⁶

On October 6, 2001, members of Project A-O Canada met with CSIS for a briefing [***]. Neither the RCMP nor CSIS raised Mr. Arar's name during this visit.

One month later, on November 5, 2001, Project A-O Canada officials requested that CSIS check Mr. Arar's name against information in the CSIS database.²⁷⁷

3.4.4

The Minto Lease

On October 30, 2001, a Project A-O Canada investigator obtained a copy of Mr. Arar's rental application and lease agreement, in the hopes of learning more about his housing arrangements.²⁷⁸ The documents were obtained voluntarily from the property management company responsible for Mr. Arar's residence.²⁷⁹ The rental application listed Abdullah Almalki as Mr. Arar's emergency contact.²⁸⁰

Project A-O Canada witnesses acknowledged they had no grounds to obtain a search warrant for the tenancy documents, as Mr. Arar was not being investigated for any criminal offence.²⁸¹ When Inspector Cabana was asked about the lack of a search warrant, he stated that there was no requirement for one, and that the property management company was clearly within its rights to provide the documents. According to him, development of a criminal investigation often started with this type of inquiry — building profiles on the target individual's closest associates.²⁸² Neither did Inspector Cabana believe that there was an expectation of privacy, because the purpose of a rental application is to conduct background checks on the applicant.²⁸³

Project A-O Canada officials were uncertain if any of Mr. Arar's family were living in Ottawa when the rental application was signed in December 1997. They could only confirm that he had family living in Montreal at the time.²⁸⁴

In early November 2001, the information that Mr. Arar had named Mr. Almalki as his emergency contact was given to the FBI.²⁸⁵ There is no record indicating that Project A-O Canada provided copies of the rental application and

tenancy agreement to American authorities, and no Project A-O Canada members testified to doing so.²⁸⁶

3.4.5

Financial Investigation

In addition to building Mr. Arar's biographical profile, Project A-O Canada officials were also conducting an extensive investigation into his financial background. Corporal Lemay consulted with an officer in the newly created Financial Intelligence Task Force about possible avenues to be explored, including corporate records, land registry records, and records of investments and banking institutions.²⁸⁷ Corporal Lemay also arranged for income tax and credit bureau checks.²⁸⁸

Significantly, Project A-O Canada was able to confirm that Mr. Arar was then employed by The MathWorks, Inc. in the United States. The investigation also uncovered that Mr. Arar had been previously employed with CIM21000 Inc., Nex Link Communications²⁸⁹ and Alcatel Communication.

Mr. Arar was also found to be the sole proprietor of Simcomms Inc., which he operated from his Ottawa home.²⁹⁰

3.4.6

Information about Dr. Mazigh

At times, the intelligence-gathering exercise directed at Mr. Arar was extended to include Mr. Arar's wife, Dr. Mazigh. Project A-O Canada officials did not consider it unusual to conduct background checks of a spouse; in fact, it was fairly routine to gather information about wives, girlfriends and associates of the main focus of an investigation.²⁹¹

Income tax and credit bureau checks were also applied to Dr. Mazigh,²⁹² and investigators inquired at local schools about Mr. Arar's family.²⁹³ An RCMP officer posted at the Ottawa airport questioned various car rental companies about both Mr. Arar and Dr. Mazigh.²⁹⁴

3.4.7

Other Information

The investigation of Mr. Arar was not limited to Canadian information sources; Project A-O Canada also contacted U.S. Customs, U.S. Immigration and Naturalization Service (INS) and the FBI.

To find out more about Mr. Arar's travel patterns, Corporal Lemay contacted Canada Customs on October 24, 2001, and requested an Integrated Customs Enforcement Service (ICES) check on Mr. Arar.²⁹⁵ The same day, investigators

received an ICES report on Mr. Arar, detailing his travel into Canada between January 1, 2000 and October 24, 2001.²⁹⁶

As well, Project A-O Canada sent a memo to U.S. Customs on October 31, 2001 requesting that a Treasury Enforcement Communications System (TECS) check be conducted on a number of individuals, including Mr. Arar and Dr. Mazigh, as well as on their vehicles. A TECS check also provides travel history information.²⁹⁷

The request to U.S. Customs also asked that these same individuals be placed on a border lookout list. The results of the TECS checks and the implications of including Mr. Arar and Dr. Mazigh on a U.S. border lookout list are discussed in more detail below.²⁹⁸

Notably, at the same time Project A-O Canada was sending its request to U.S. Customs, its situation report for October 30, 2001 noted that U.S. Customs intended to check its records for Mr. Arar and that “it [appeared] he was already known to them.”²⁹⁹

Around this time, Project A-O Canada officials were also speaking to the FBI about Mr. Arar’s residence and employment in the United States.³⁰⁰ In a memo dated November 2, 2001, Corporal Buffam requested that the FBI legal attaché conduct a check on Mr. Arar in the FBI database in an effort to further the investigation on Mr. Almalki. The memo indicated that Mr. Arar was a “close associate” of Mr. Almalki, and that he had previously listed Mr. Almalki as his emergency contact.

3.5 THE BORDER LOOKOUTS

As mentioned above, one of the investigative tools available to Project A-O Canada was the border lookout, an aid used by both Canadian and American investigators to monitor the movement of persons entering Canada or the United States and, potentially, to subject these individuals to closer examination.

3.5.1 Canada Customs³⁰¹ Lookouts

RCMP and CSIS officers do not have the authority to initiate border lookouts and must request the assistance of an authorized Canada Customs officer (usually the Regional Intelligence Officer [RIO] or a Customs superintendent). An authorized Canada Customs officer initiates a lookout by entering the relevant information³⁰² on the traveller, vehicle or cargo, as the case may be, into a computer system called ICES (Integrated Customs Enforcement System).³⁰³

The aim of a lookout is to ensure that the target undergoes both a primary and a secondary examination when crossing the border into Canada.³⁰⁴ When a lookout has been issued, ICES alerts the front-line Customs officer when the subject attempts to enter the country. Swiping a passport or entering other identifying information generates a “hit,” which informs the front-line officer that this individual must undergo a second, more thorough examination.

At the discretion of the Customs officer, this examination may be only minimally intrusive. For example, the officer may conduct a brief interview and possibly ask to examine more closely a document or article that has been purchased abroad. At other times, the secondary examination will involve a full search of the traveller’s baggage.³⁰⁵

Canada Customs has written policies about issuing lookouts. Before accepting a lookout request from another agency, officials weigh the merits of the particular case. The justification from the requesting agency must satisfy Canada Customs requirements that there are reasonable grounds for issuing the lookout.³⁰⁶ This means that the agency must supply enough details to a Canada Customs representative (usually the RIO or a Customs superintendent) to support the action. Otherwise, the lookout will be declined.³⁰⁷ George Webb, Director of Intelligence for Canada Customs at the time the Arar lookouts were issued,³⁰⁸ testified that a lookout may be approved simply because the RIO is associated with the investigation and knows generally what the investigators are doing.

A lookout is classified in different ways, depending on why it is placed. The various types of lookout include those related to commercial fraud, drugs, hate propaganda, pornography, warrants, weapons, and terrorism. A terrorism lookout is used when someone is suspected of being a member, associate or sympathizer of a known terrorist organization, but no outstanding warrant has been issued for apprehending the individual.³⁰⁹

A lookout cannot remain in place for more than 90 days unless it is renewed. This requires the issuing officer to verify at least every 90 days that he or she continues to have justification for monitoring the subject and wishes the lookout to remain in place.³¹⁰

Once a lookout is in place, the issuing officer has the flexibility to make changes by reclassifying the lookout, cancelling or de-activating the lookout,³¹¹ or removing or deleting the lookout from ICES.³¹²

3.5.1.1

The Canadian Lookouts for Mr. Arar and Dr. Mazigh

In late October 2001, Constable Michel Lang³¹³ requested that Officer Jean-Pierre Thériault, an RIO with Canada Customs, place a lookout in ICES.³¹⁴ Officer Thériault had been assigned to the Project A-O Canada investigation to enhance coordination with Canada Customs and Project A-O Canada.³¹⁵ An experienced RIO, Officer Thériault was knowledgeable about Canada Customs laws, policies and procedures. The subjects of the lookout requested by Constable Lang were Maher Arar, his wife Monia Mazigh, and other individuals, as well as their respective vehicles.³¹⁶

In a letter requesting the lookout, Constable Lang wrote: “We are presently investigating in Ottawa, a group of Islamic Extremist individuals suspected of being linked to the Al Qaeda terrorist movement. The following individuals and or vehicles have been identified.” The letter went on to list the individuals, their vehicles and related biographical data.³¹⁷

Project A-O Canada officers testified they were acting out of caution when they included Dr. Mazigh’s name in the lookout. To RCMP officers, the spouse of a suspect or person of interest is significant because that person might carry information valuable to a criminal investigation, and his or her movements could indicate that an attack or other activity is being planned. In October 2001, the RCMP did not have any specific information about Dr. Mazigh, other than that she was Mr. Arar’s spouse.

In early November 2001, Officer Thériault issued a lookout naming all of the people identified in Constable Lang’s request.³¹⁸ Officer Thériault understood that he could refuse the lookout request; he had been an RIO since 1994 and had refused to place lookouts in the past.³¹⁹ He also knew that the lookout system was not to be used for “fishing expeditions,” and that a request must be legitimate and stem from a lawful investigation. In this case, Officer Thériault was satisfied that the request was a valid one. He knew the context of the investigation and had Constable Lang’s request indicating that the individuals and vehicles named were important to Project A-O Canada’s investigation. Officer Thériault testified that he had no qualms about using the lookout system to help the investigation. In fact, he had informed the officers at Project A-O Canada that this was one of the tools available to them.³²⁰

Project A-O Canada officials had decided that Mr. Arar’s documentation should be examined more closely, and a lookout meant that the subjects of the lookout, including Mr. Arar and Dr. Mazigh, would be subject to a secondary examination. To at least one of the investigators, this was a way for members of

Project A-O Canada to view documents for which they would otherwise require a warrant.³²¹ One Project A-O Canada officer testified that they did not have much information on Mr. Arar at that time,³²² and a lookout was the best way of obtaining it. Project A-O Canada officers wanted to know more about Mr. Arar's relationship with Mr. Almalki, and whether Mr. Arar was assisting with his facilitation of terrorism.

The lookout issued on November 2, 2001 contained specific instructions for the front-line officers who would carry out the secondary examination. Classified as a terrorism lookout related to an RCMP investigation, the lookout requested that officers conduct a "very thorough" secondary examination and take photocopies of any documents.³²³ However, the lookout did not state that the targets were a group of Islamic extremist individuals suspected to have links to the al-Qaeda terrorist movement, as the requesting letter had done.

On November 6, 2001, Constable Lang instructed Officer Thériault to ensure that the lookouts on the subjects and vehicles remain in place for an indeterminate period of time, or if this was not possible, that the lookouts be renewed until the investigation concluded.³²⁴ As mentioned previously, a lookout can be issued for a maximum of 90 days.³²⁵ While it appears that Officer Thériault renewed the lookout in the months to follow,³²⁶ it is unclear whether it was in place on a continuous basis for all of the individuals and vehicles listed.

As discussed in greater detail below, Mr. Arar underwent two secondary examinations as a result of the lookout, one on November 29, 2001, and the other on December 20, 2001. However, when Mr. Arar returned to Canada from Tunisia on January 24 or 25, 2002, he was not subjected to a secondary examination, even though Project A-O Canada officers were aware that he would be returning on that day, and Constable Lang had contacted Officer Thériault to place a second lookout on him.³²⁷ That Mr. Arar was not subjected to a secondary examination in this instance was apparently the result of human error. Dr. Mazigh was subjected to a secondary examination in November 2002 when she returned to Canada from Tunisia.

The reason for placing the second lookout on Mr. Arar is not clear, but according to Officer Thériault, Mr. Arar's name may have been removed from the first lookout. The narrative in the second lookout was similar to the first, except that the second one notes that Mr. Arar was arriving from Tunisia and was "... suspected of belonging or being connected to a terrorist organization."³²⁸

These two lookouts appear to have remained in place, in one form or another, until Mr. Arar returned to Canada in October 2003, following his detention in Syria. On October 5, 2003, Officer Thériault cancelled the first lookout on Mr. Arar and Dr. Mazigh, and the lookout on Mr. Arar alone.³²⁹ In doing so,

Officer Thériault removed Mr. Arar and Dr. Mazigh from ICES. This meant that front-line officers would not have access to the lookouts, and Officer Thériault could not monitor Mr. Arar and Dr. Mazigh's entry into Canada. While it is clear that the lookouts on Mr. Arar and Dr. Mazigh were de-activated,³³⁰ it is not certain whether they were completely deleted from the ICES system.³³¹

3.5.2

The American TECS Lookouts³³²

In late October 2001, while Project A-O Canada officials were requesting the Canada Customs lookout, they were also requesting that the U.S. issue a lookout on the same individuals, including Mr. Arar and Dr. Mazigh.

U.S. Customs uses a computer system called TECS (Treasury Enforcement Communications System), an information and communications system that is also used by other U.S. agencies, including the Bureau of Alcohol, Tobacco and Firearms, the Internal Revenue Service, the National Central Bureau of Interpol, the Drug Enforcement Agency, the State Department, and the Coast Guard.³³³ This makes TECS accessible to more agencies in the U.S than ICES is in Canada.³³⁴

Professor Stephen Yale-Loehr testified before the Inquiry as an expert in U.S. immigration laws and procedures (including U.S. immigration watch lists and inspection procedures). He referred to TECS as the “mother of all databases.”³³⁵ A variety of databases feed into TECS, including terrorist watch lists (apparently, there are more than one), and provide just about any kind of information that is relevant for immigration purposes.³³⁶ The front-line U.S. Customs inspector likely sees some sort of interface with TECS when running a search on someone coming into the U.S.³³⁷

Nineteen U.S. federal agencies provide information for TECS. The RCMP also provides information, although the exact nature of this information is not clear.³³⁸ All told, more than 30,000 people have been authorized to input information into TECS. There is no automatic removal process for that information, unless a specific time limit is attached at the outset.³³⁹

As with Canada's system (ICES), one of the functions of TECS is to provide lookout information on suspect individuals, businesses, vehicles, aircraft and vessels.³⁴⁰ In this respect, a distinction should be made between a TECS “check” and a TECS “lookout.” A TECS check provides U.S. Customs officers with a person's travel history, i.e., a document detailing past cross-border activity. A TECS lookout is similar to the Canadian lookouts described above.³⁴¹ Organizations around the world, including Canadian agencies, can submit names requesting that they be placed on a TECS lookout. The names of individuals who surface

in Canadian criminal investigations are routinely included in TECS lookouts.³⁴² Although Canadian agencies — including Canada Customs — may request a TECS lookout, they do not have access to the TECS system.

3.5.2.1

The TECS Lookouts for Mr. Arar and Dr. Mazigh

In late October 2001, Constable Lang sent a written request from Project A-O Canada to U.S. Customs asking that Mr. Arar, Dr. Mazigh and other individuals, as well as their vehicles, be entered as lookouts in the TECS system.³⁴³ Again, the request described them as a “group of Islamic Extremist individuals suspected of being linked to the Al Qaeda terrorist movement.”³⁴⁴ In their testimony, Staff Sergeant Callaghan and Corporal Lemay agreed that “Islamic Extremist” was an improper characterization of Mr. Arar and Dr. Mazigh, given the limited information Project A-O Canada had about them at the time. Moreover, Constable Lang testified that when he made the request for a lookout, he had no information to justify this description of Mr. Arar and Dr. Mazigh. In Inspector Cabana’s view as well, the description was a poor choice of words.

In the lookout request, Constable Lang mentioned entering the “noted information” into the data bank “so as to provide information to U.S. customs line officers.”³⁴⁵

Project A-O Canada officers testified that Dr. Mazigh was included in the request for a U.S. lookout for the same reasons that she was included in the Canadian lookout.

The letter to the U.S. Customs Service also requested that TECS checks be conducted on the subjects and their respective vehicles.³⁴⁶ As mentioned previously, a TECS check provides historical information on the cross-border travels of the targeted individuals and vehicles, i.e., travel into the United States.³⁴⁷

Shortly after, Constable Lang spoke to a U.S. Customs intelligence officer at Ogdensburg, New York.³⁴⁸ The officer explained that a Customs agent would be responsible for placing the lookouts in the TECS system.

It is noteworthy that U.S. authorities had placed Mr. Arar’s vehicle, and possibly Mr. Arar and Dr. Mazigh themselves, in the TECS system before the Project A-O Canada request was made. However, the exact nature of the TECS activity prior to October 31, 2001 is not clear. For example, it is not known whether Mr. Arar’s vehicle, or Mr. Arar and Dr. Mazigh, were the actual subjects of a TECS lookout or if their names were in the system for other reasons. Constable Lang testified that individuals travelling to the United States might have data on themselves or their vehicle entered into the TECS system without

being the specific subject of a lookout. This type of data could potentially be produced on anyone who travels across the U.S. border.³⁴⁹

On November 6, 2001, the Customs agent relayed information to Constable Lang that the individuals named in the Canadian lookout request and their respective vehicles had been entered into the TECS system. The confirmation message made no mention that Mr. Arar and Dr. Mazigh were already the subject of a U.S. lookout. The Customs agent also indicated that further checks were being conducted on Mr. Arar, as requested by Constable Lang.³⁵⁰ Following these initial contacts between Project A-O Canada, U.S. Customs and the FBI, Project A-O Canada received very little information from the FBI about Mr. Arar and his activities in the United States.

Constable Lang does not recall any amendments, upgrades or changes to the U.S. lookouts prior to Mr. Arar's detention in New York on September 26, 2002. Although he expected that the lookout would eventually expire, he was uncertain how long it would last. He did not ask for a renewal of the U.S. lookout, and testified that he was not sure if it was still in effect in September 2002.

Although the letter requesting the U.S. TECS lookout identified Constable Lang as the contact person,³⁵¹ U.S. authorities never contacted him, even though Mr. Arar travelled to the United States after the lookout was entered into the TECS system. For example, Mr. Arar was returning from the United States on November 29, 2001 and December 20, 2001 when he was subjected to secondary examinations by Canadian officials. Although Mr. Arar must have previously crossed into the United States in order to return to Canada on those dates, U.S. authorities did not advise Constable Lang of his entry, nor was he contacted when Mr. Arar attempted to enter the United States on September 26, 2002.³⁵²

3.6

AHMAD EL MAATI

3.6.1

Background

Ahmad El Maati is a Canadian who was employed as a truck driver in Toronto in 2001. He was born in Kuwait in 1964. His mother and father are Canadian citizens, the former originally from Syria and the latter from Egypt. Both parents live in Toronto.

Mr. El Maati immigrated to Canada in 1981 when he was seventeen. He became a Canadian citizen in 1986. He was also a citizen of Egypt through his father.

He has publicly stated that he was in Afghanistan in the 1990s, where he received basic infantry training and fought with the “US backed mujahideen” in their fight against the Russian-supported government. He returned to Canada in 1998.

In 2001, Mr. El Maati became employed as a long-distance truck driver, and made several deliveries to the United States without incident. However, he has publicly stated that on August 16, 2001 he was stopped at the border crossing at Buffalo, N.Y. His truck was searched, and he states he was asked about a map of Ottawa which named several government buildings. He has publicly denied that the map was his.

3.6.2

Departure from Canada and Detention in Syria

In November 2001, Project A-O Canada learned that Ahmad El Maati planned to fly to Syria, apparently to get married. Prior to his departure from Canada there was an exchange of information between the RCMP and American authorities.

Mr. El Maati was detained by Syrian authorities upon his arrival in Syria. In light of American practice at the time, it is reasonable to assume that Syria was informed of his arrival by American authorities. It is also reasonable to conclude that Project A-O Canada would have been aware that the Americans had informed the Syrians of Mr. El Maati’s arrival in Syria. In his testimony, Inspector Cabana agreed that in all likelihood Mr. El Maati was detained as a result of information the Americans gave to the Syrians.

A briefing note was prepared for RCMP Commissioner Zaccardelli regarding the RCMP’s exchange of information with the Americans prior to Mr. El Maati’s departure from Canada. In this note, dated November 21, 2002 (after Mr. Arar’s detention and removal to Syria), Assistant Commissioner Proulx states that the RCMP can be considered complicit in Mr. El Maati’s detention in Syria. However, Mr. Proulx testified that it was the media and public who would consider the RCMP’s actions to be complicit. He did not personally believe that the RCMP was complicit, nor was he referring to complicity in the criminal sense.

A few months before, in August 2002, Mr. El Maati publicly disclosed that he had been tortured in Syria, and that as a result, he had given a false statement to the Syrian authorities. He publicly stated that in this statement he falsely alleged that he was involved in a plot to detonate an explosive device on Parliament Hill. In public statements filed with the Commission, Mr. El Maati alleges that he falsely confessed that his brother Amr sent him instructions to launch a suicide attack using a truck full of explosives, and that the target he chose was the Parliament Buildings in Ottawa. It should be noted that it is a

matter of public record that American authorities consider Amr El Maati to be a serious terrorist threat.

In his statement before the Inquiry's fact-finder, Professor Stephen Toope, Mr. El Maati said that in his interrogation by the Syrians he was asked about the map of Ottawa which was seized from his truck by U.S. Customs officials in August 2001. He was asked to "tell us the story of the map." He also described to the fact-finder his torture by the Syrians in order to obtain the false confession which he eventually gave.

In response to his family's request for assistance, the Consular Affairs Division of DFAIT inquired about Mr. El Maati's whereabouts for many months after his detention in Syria in November 2001. Syria refused to confirm his detention until December 29 or 30, 2001 when high-level officials in the Syrian Ministry of Foreign Affairs contacted Canadian Ambassador Franco Pillarella and finally acknowledged that Mr. El Maati was in Syrian custody. However, they refused to grant consular access because, in their view, Mr. El Maati was a Syrian citizen. He remained in Syrian custody until January 25, 2002, when he was transferred to Egyptian custody without notice to DFAIT. Mr. El Maati remained in Egyptian custody until January 11, 2004, when he was released. He returned to Canada on March 30, 2004.

3.7

ABDULLAH ALMALKI'S DEPARTURE

Abdullah Almalki left Canada for Malaysia on November 27, 2001 with a return ticket, and a scheduled return date of December 25, 2001.³⁵³ His family — his pregnant wife, four children and his parents — all flew to Malaysia the following day.³⁵⁴

The departure of Mr. Almalki and his family came as a surprise to officials at Project A-O Canada.

On November 30, 2001, Corporal Buffam notified the FBI of Mr. Almalki's departure. The RCMP was aware that the FBI would likely relay this information to the CIA. From Corporal Buffam's perspective, notifying the FBI was simply part of the understanding that there was to be an open sharing of information. At the time, Corporal Buffam was not aware of the American practice of rendition,³⁵⁵ nor did he recall any discussion about the Americans wishing to arrest Mr. Almalki.³⁵⁶

Although Mr. Almalki's plane ticket included a return trip to Canada at Christmas, he did not come back. Meanwhile, Project A-O Canada was trying to find him, apparently with no success.³⁵⁷

3.8

THE CANADA CUSTOMS SEARCHES OF MR. ARAR

3.8.1

November 29, 2001

On November 29, 2001, Mr. Arar was subjected to a secondary examination by Canada Customs officials at Ottawa's Macdonald-Cartier Airport as he was returning from Massachusetts. The search was the result of the lookout placed on Mr. Arar by Project A-O Canada at the beginning of the month, which identified Mr. Arar as the subject of an RCMP investigation and instructed the official conducting the search to immediately contact the Regional Intelligence Officer (RIO) — in this case, Customs Officer J.P. Thériault. (An RCMP investigator was listed as a secondary contact.) The lookout further directed the examining officer to "Gather all info possible on: travel, business, ID docs, vehicle, financial transactions, travelling companions, etc." According to the lookout, a very thorough secondary examination should be conducted, with photocopies of documents sent to the RIO and a narrative of the interview put into Notepad (a part of the lookout screen where the examining officer can enter information). Finally, the lookout instructed the officer not to divulge that RCMP and Canada Customs officials were interested in Mr. Arar.³⁵⁸

During this secondary examination of Mr. Arar, Canada Customs seized and copied Mr. Arar's travel documents. The Customs officer recorded Mr. Arar's time of arrival in the Notepad, as well as the fact that he had been in Massachusetts doing a training course, and some other information about his trip to the United States.³⁵⁹

In addition, Canada Customs copied several documents, including travel agent itineraries and Mr. Arar's passport, airline tickets, identity cards, AT&T Customer Caller Card details³⁶⁰ and membership cards.³⁶¹

The next morning, Customs Officer Thériault advised Project A-O Canada that Mr. Arar had returned from the United States, and that afternoon he turned over copies of the documents obtained from the secondary examination.

Canada Customs attached a third-party caveat to the information provided to Project A-O Canada.³⁶² The caveat stipulated that if Project A-O Canada ever wanted to share the information with another agency, it would first have to seek permission from Canada Customs.

Officer Thériault did not obtain authorization from anyone in Canada Customs to disclose the documents to Project A-O Canada. He testified that he was part of the Project A-O Canada investigation and, as Customs liaison, it was

his job to pass on this type of information. Following 9/11, he had been instructed to participate in the Project A-O Canada investigation and to provide whatever help he could.³⁶³ Although his superiors had not given him specific instructions about sharing information, he testified that he acted under this general instruction to offer assistance. In any event, Officer Thériault asserted that information sharing was part of his normal duties as a Canada Customs intelligence officer.³⁶⁴

On November 30, 2001, Officer Thériault sent a message to the front-line officer who carried out the search,³⁶⁵ requesting more details about the interview, including information about Mr. Arar's general demeanour. According to the officer, Mr. Arar fit the profile of a general business traveller and, without the lookout, it was unlikely he would have been detained. In order not to arouse suspicion, Customs officials did not check Mr. Arar's laptop.

Project A-O Canada uploaded the information from this search into its Supertext database.³⁶⁶ As a result, the data was included in the information provided to the Americans in April 2002.³⁶⁷ Some information from the search was also faxed to the FBI on October 4, 2002, when Mr. Arar was in custody in New York.³⁶⁸ Specifically, paragraphs one and two of the October 4, 2002 communication refer to calls made by Mr. Arar using a calling card, the details of which were seized on November 29, 2001.³⁶⁹

3.8.2

December 20, 2001

On December 20, 2001 at approximately 6:20 p.m.,³⁷⁰ Canada Customs subjected Mr. Arar to another secondary inspection at the Ottawa airport. There is much more information available about this search than there is about the November 29 search.

With a lookout in place, Mr. Arar's referral to secondary examination was mandatory. Rose Mutombo, a line officer on duty that evening, processed Mr. Arar and conducted the secondary examination.³⁷¹

As in the previous lookout, officials were to "gather all info possible on: travel, business, ID docs, vehicle, financial transactions, travelling companions, etc." Again, the lookout called for a "very thorough secondary," "photocopies of documents" and a narrative in Notepad. The officer was not to divulge to Mr. Arar that he was a person of interest to Canada Customs and the RCMP.³⁷²

Before beginning her examination, Ms. Mutombo informed the superintendent on duty, Gordon Gantner. Mr. Gantner was with the Contraband Detection unit of Canada Customs, a roving unit able to respond more flexibly than others to various enforcement needs. However, on the night Mr. Arar

passed through Customs, Mr. Gantner was replacing the regular superintendent, who was off duty that day. In most cases, it is a superintendent who authorizes seizures and it was, in fact, Superintendent Gantner who eventually authorized the seizure of some of Mr. Arar's goods.

Superintendent Gantner contacted the RIO, Officer Thériault, shortly after Officer Mutombo started the secondary investigation. Officer Thériault directed Superintendent Gantner to contact the RCMP, which he did.³⁷³

Aiming to gather as much information as possible, Officer Mutombo made photocopies of Mr. Arar's teaching materials, a map and directions, a boarding card, a motel receipt, a receipt from Air Canada and a travel itinerary, as well as Mr. Arar's driver's licence, social insurance card, health card and passport.³⁷⁴ Superintendent Gantner later testified that, aside from the teaching materials, the information obtained was relevant to a lookout.³⁷⁵ Officials did not advise Mr. Arar that his documents were being photocopied, nor was his consent sought.

In her narrative report,³⁷⁶ Officer Mutombo identifies an IBM laptop computer and a Visor organizer (personal digital assistant — PDA). She also states that, when questioned, Mr. Arar said he had purchased the computer and PDA in the United States (apparently on an earlier trip), and that he had not paid duty or taxes on either item. Superintendent Gantner decided that the items should be held for appraisal.³⁷⁷

According to Superintendent Gantner, officials requested access to Mr. Arar's computer, but permission was denied. Mr. Arar's attitude was tense and unhelpful, but not overtly rude. The computer was turned on at some point during the secondary examination, but as Customs officials did not have the password, they could not examine the contents.³⁷⁸

Superintendent Gantner's notes show that the laptop and PDA were seized for "non-report" (failure to declare the items when they were first brought into Canada), and that the items were held for appraisal and possible viewing by NSIS (National Security Investigations Section, RCMP).³⁷⁹ A Macdonald-Cartier International Airport (MCIA) Daily Operations Report suggested that either the RCMP or CSIS would examine the documents,³⁸⁰ although Superintendent Gantner testified that this would have to be done through the RIO.³⁸¹

The Daily Operations Report for December 20, 2001 stated that there was "... a note from Gord (Gantner) on the item in the bond room Please read the note, it is very important. *****"³⁸² The item referred to is Mr. Arar's computer.³⁸³ However, none of the Customs officials who testified recalled having seen the note,³⁸⁴ although Officer Thériault tentatively suggested that there might

have been a note on the computer referring to the RCMP's desire to obtain a search warrant.

The secondary examination began at 6:22 p.m. and officials completed the seizure of Mr. Arar's goods at approximately eight p.m.³⁸⁵ It is unclear whether Mr. Arar left at this time, or earlier. Before he did, however, officials gave him a Customs Seizure Receipt for his laptop and PDA.

Between 7:15 a.m. and 7:30 a.m. the next day, December 21, Officer Thériault went to the Ottawa airport, where he obtained copies of the items photocopied the night before (for example, Mr. Arar's passport, identification cards and course material).³⁸⁶ He subsequently submitted these materials to Project A-O Canada. With the help of Acting Superintendent Philip Crabbe, who was on duty that morning, Officer Thériault obtained the laptop and PDA from the bond room where they had been stored for the night.³⁸⁷ The log book for the bond room indicates that Superintendent Crabbe and Officer Thériault removed the laptop and the PDA at 7:35 a.m. This entry in the log book was consistent with protocol.

Officer Thériault testified that he spent about an hour with the laptop and PDA,³⁸⁸ copying down as much information as he could from Mr. Arar's PDA, including phone numbers and names.³⁸⁹

Officer Thériault also noted as much information as he could from Mr. Arar's computer without having the password,³⁹⁰ including domain names, user name, serial and registration numbers, warranty expiration date and type of computer. According to Officer Thériault, all of this information came from stickers on the computer and from the screen when the computer was turned on.

Apparently, technical staff at Canada Customs have the ability to access the contents of a laptop without the password. However, Canada Customs witnesses testified that this was not done in Mr. Arar's case. That being said, when Mr. Arar arrived to pick up his laptop the next day (December 21, at about two p.m.), he examined the laptop and said that Customs officials had been on the system for 25 ½ minutes.³⁹¹ It is unclear what Mr. Arar meant by this. When Superintendent Crabbe asked if he wanted to make a formal complaint, Mr. Arar did not respond and never filed a complaint.³⁹²

Canada Customs attributed a value of \$500 to the laptop and \$200 to the PDA.³⁹³ Mr. Arar paid a penalty of 25 percent, or \$175, plus provincial sales tax of \$56, and left with his items.³⁹⁴

While these events were taking place, officers at Project A-O Canada were considering whether it would be possible to obtain a warrant to copy the information on the laptop and PDA. At a Project A-O Canada team meeting on December 21, 2001,³⁹⁵ officials decided they did not have enough grounds for

a warrant. Inspector Cabana suggested that CSIS might be in a position to assist;³⁹⁶ however, none of the witnesses could confirm whether or not Project A-O Canada actually approached CSIS.

Officer Thériault submitted to Project A-O Canada all of the information obtained during the December 20, 2001 secondary examination, and from Mr. Arar's computer and PDA. Once again, Canada Customs attached a third-party caveat to this information. However, the information was uploaded into the Supertext database and subsequently became part of the information passed to the Americans on three CDs.³⁹⁷

Officer Thériault testified that after he reviewed the laptop and PDA, he returned them to the bond room. However, there is no entry in the log book, as is required by bond room protocol, showing that Mr. Thériault returned the items. The next entry in the log book about the seized items is at 1.51 p.m., when Mr. Arar arrived to pick up his belongings.³⁹⁸

3.8.3

Relevant Law and Policies

Three key policy issues arise with respect to the November 29, 2001 and December 20, 2001 searches (and also with respect to the later search of Dr. Mazigh's on November 14, 2002).³⁹⁹ The first issue concerns the circumstances under which Canada Customs can issue a lookout — in this case, a terrorism lookout. The second deals with the policy related to examining and photocopying personal documents by Canada Customs agents. The third issue relates to the policy for disclosing Canada Customs information to other agencies, in this case to the RCMP's Project A-O Canada investigation.

Issuing Lookouts

The policies for issuing lookouts were discussed earlier in this section. They require that Canada Customs be satisfied there are reasonable grounds to issue a lookout, although what constitutes reasonable grounds is not defined. A separate policy document indicates that a lookout may be classified as a terrorism lookout when a person is suspected of being a member, associate or sympathizer of a known terrorist organization.⁴⁰⁰

Examining and Photocopying Personal Documents

At the time of the November 29, 2001 and December 20, 2001 searches, Canada Customs policy was that private papers and personal journals should not be examined or photocopied, unless there was reason to believe they contained receipts for goods or referred to the acquisition of goods, or they included

evidence of an offence against an Act administered or enforced by Canada Customs. The existence of unreported or prohibited goods would justify an examination of a person's purse or wallet for receipts. However, reading personal diaries and letters found in a purse or wallet would not be permissible, unless the officer had specific reason to believe they contained evidence of an offence against an Act administered or enforced by Customs Canada. According to the policy, documents that did not relate to such an offence were not to be examined or copied.⁴⁰¹ This policy applied at the time of the November and December 2001 searches.⁴⁰²

The policy was amended on May 31, 2002⁴⁰³ and the new policy would have been in place when Dr. Mazigh was subjected to a secondary examination on November 14, 2002.⁴⁰⁴

Disclosure of Customs Information to Third Parties

On November 29, 2001 (the date of the first secondary examination of Mr. Arar), the law on disclosing customs information was amended. Sections 107 and 108 of the *Customs Act* governing the disclosure of customs information were replaced by a new s.107.⁴⁰⁵ However, a new policy to guide Customs officers in interpreting and applying the amended law was not promulgated until November 26 and December 5, 2003, two years after the law was changed.⁴⁰⁶

Under the old legislation and guidelines, the Minister had the authority to release information to other agencies, once satisfied that the information was required to enforce a federal or provincial law, or to carry out a lawful investigation. Ministerial authority could be delegated to various officials in Canada Customs, such as the Director of the Intelligence Division at head office, or the regional managers of Interdiction and Intelligence Divisions. The old legislation and guidelines did not give this authority to an RIO such as Officer Thériault, who would have had to seek the authority of specified members of senior management to disclose information.⁴⁰⁷

The new s. 107, which came into force on November 29, 2001, provides more scope to Customs officials such as Officer Thériault to release customs information. Section 107(4)(h) permits an official to allow access to customs information, if the information is reasonably regarded by the official to relate to the national security or defence of Canada.⁴⁰⁸ Section 107(5)(a) goes on to say that an official may, under certain circumstances, provide a peace officer with access to Customs information, providing the peace officer has jurisdiction to investigate an alleged offence under any federal or provincial law that is subject to prosecution by indictment. In this case, the Customs official must have reasonable grounds to believe that the information relates to the alleged offence,

and will be used solely for the purpose of investigating or prosecuting the offence.⁴⁰⁹ An official is defined very broadly in s. 107 of the *Customs Act* to include all present and former employees of the Canadian government.⁴¹⁰

To summarize, the new s. 107 of the *Customs Act* provides for the release of customs information if the official 1) reasonably regards the information as relating to the national security or defence of Canada, or 2) believes on reasonable grounds that the information relates to an alleged offence and will be used solely for the investigation or prosecution of that offence.

3.9

THE JANUARY 22, 2002 SEARCHES

3.9.1

Applications for Search Warrants

By January 2002, domestic leads of Project O Canada had been exhausted. The Project's main target, Abdullah Almalki, had departed under what Inspector Cabana referred to as suspicious circumstances.

At this point, the RCMP decided to conduct searches to determine whether the original threats were founded, and whether anyone was left who might be considered a threat.⁴¹¹ On January 22, 2002, Canadian agencies conducted simultaneous searches in Ottawa, Toronto and other Canadian cities, interviewing a number of people as well.

In preparing for the searches, officials considered whether to seek a warrant for Mr. Arar's residence, but determined they did not have sufficient evidence.⁴¹² However, they decided to try and interview Mr. Arar, and hopefully use him later as a witness against Messrs. Almalki and El Maati.⁴¹³ Although officials were uncertain about Mr. Almalki's whereabouts while they prepared for the January 22, 2002 searches, they believed, correctly as it turned out,⁴¹⁴ that he was still in Malaysia with his wife.⁴¹⁵

On January 21, 2002, seven search warrants and a sealing order were issued. It is not necessary for the purposes of this report to list all of the locations searched. Suffice it to say, they included the residences of Abdullah Almalki and his brother, Nazih Almalki, and Ahmad El Maati. As indicated earlier, Mr. Arar's residence was not searched.

During the lead-up to the January 22, 2002 searches, Project A-O Canada officers did not receive any official training on how best to approach members of the Muslim community. However, Staff Sergeant Callaghan testified there were discussions about the need to cover your shoes in Muslim houses, to have female officers available when women were at home, to allow people to pray

before the search, to bring stuffed animals for the children, and to have the Koran available if statements were to be taken. Staff Sergeant Callaghan did not recall any particular discussion about what to do if an officer approached a house and a Muslim woman opened the door.⁴¹⁶ Unfortunately, the Muslim community subsequently expressed serious concerns about the conduct of the RCMP in executing these search warrants.

3.9.2

The Searches

On January 22, 2002, the RCMP, with the help of other Canadian agencies, executed the seven search warrants, conducting simultaneous searches in all of the locations identified.⁴¹⁷ For example, in the Ottawa area six teams from the RCMP, the Ottawa Police Service and other agencies ensured dedicated simultaneous coverage for as many targets as possible.⁴¹⁸ A Muslim constable, who had previously been assigned to Project A-O Canada, was re-assigned to assist with the searches. He was the only Muslim investigator present, at least in the Ottawa region.⁴¹⁹

Search packages containing instructions were prepared for each location. The instructions for Mr. Almalki's residence directed officers to look for materials referring to Mr. Arar, along with other individuals.⁴²⁰

Inspector Cabana testified that he did not expect to find a great deal of useful information in the seized material. As it turned out, however, the yield was much greater than anticipated, and included the following items:

- 26 computer hard drives;
- approximately 40 VHS videotapes (many in Arabic, including family videos);
- about 100 different CDs and diskettes;
- approximately 20,000 pages of documents including photographs, financial records, and correspondence and books in English and various Arabic dialects; and
- two boxes of shredded documents for reassembling — these appeared to be in both English and Arabic

Some of the computers, CDs and diskettes were hidden, either in walls or rafters.⁴²¹

Although Canadian officials also conducted a number of interviews in conjunction with the searches, the only interview relevant to this report was the one with Youssef Almalki, Abdullah Almalki's brother. In the interview notes, Youssef Almalki states that he was "not sure" if his brother had a business relationship with Mr. Arar.⁴²² However, a "statement synopsis" of the interview

indicates that Youssef Almalki said Mr. Arar had a business relationship with his brother, but that Youssef did not know the details.⁴²³ In any event, the seized documents showed that Mr. Almalki and Mr. Arar communicated from time to time, and relied on each other, to some extent, for business information and advice.⁴²⁴

3.10

THE ATTEMPT TO INTERVIEW MR. ARAR

The following section describes in some detail the RCMP's attempt to interview Mr. Arar and, in the end, why the interview did not occur. This account is included because Project A-O Canada officers stated repeatedly in the month that followed — including in documents provided to American authorities — that Mr. Arar refused to be interviewed by the RCMP. In fact, this was not the case.

Mr. Arar was one of seven people who were to be interviewed on January 22, 2002. As mentioned, the goal of the interview was to determine his role in the larger investigation, particularly in relation to Mr. Almalki. From the RCMP's perspective, Mr. Arar was to be interviewed as a witness, not as a suspect.⁴²⁵

Prior to the searches, Corporal Lemay prepared questions for Mr. Arar's interview.⁴²⁶ It appears these were "core questions" that would be asked of all interviewees, with no questions specific to Mr. Arar. For instance, there were no plans to ask Mr. Arar about his meeting with Mr. Almalki at Mango's Café.⁴²⁷ Corporal Buffam was assigned to interview Mr. Arar, with the assistance of Corporal McKinnon of the RCMP's "A" Division National Security Investigations Section (NSIS).⁴²⁸

On January 22, 2002, at 7:30 a.m., Corporals Buffam and McKinnon approached the Arar residence. When Mr. Arar's wife, Monia Mazigh, answered the door, they identified themselves and asked to speak to Mr. Arar. Dr. Mazigh advised them that he was not at home. When asked where he was, she initially replied that he was "abroad." When pressed again, she stated that he was "overseas," and finally, in response to a further question, that he was in Tunisia. She told the officials that he had been gone for two to three weeks and would be back in "maybe three days." Corporal Buffam gave her his business card⁴²⁹ and told her it was important for Mr. Arar to contact him as soon as possible.⁴³⁰ Corporal Buffam recalls the whole exchange taking about three to four minutes.

Apparently, Dr. Mazigh did not express any concern about having to deal with a police officer at 7:30 in the morning. At the time, Corporal Buffam was not aware of the Muslim community's concerns about the police, in particular, about police officers approaching a Muslim home. Nor was he aware of the

protocols and customs that should be followed when a man approaches a Muslim woman.

After speaking to Dr. Mazigh, Corporal Buffam left to help execute the remaining search warrants. At approximately 3:40 p.m. that day, he was informed that Mr. Arar had contacted the office asking why Corporal Buffam had been to his home. Mr. Arar was quite perturbed and had left a phone number where he could be reached in Tunisia. However, when Corporal Buffam called Mr. Arar later that day, at about eight or nine in the evening, there was no answer, which he attributed to the time difference. Mr. Arar did not call Corporal Buffam again.⁴³¹

On January 24, 2002, Constable Lang contacted Canada Customs and confirmed that Mr. Arar's name was still in its databanks.⁴³² Project A-O Canada officials wanted to ensure that they would be informed of Mr. Arar's return, and that Customs officials would subject him to another secondary examination. Although Corporal Lang testified that this was not a new lookout request, a new lookout on Mr. Arar was created at this time.^{433, 434}

When Mr. Arar entered Canada at the Montreal airport on either January 24 or 25, 2002, he was not subjected to a secondary examination, nor did Customs officials notify Project A-O Canada of his return. Apparently, this was the result of human error.

On Friday, January 25, 2002, at 10:00 a.m., Corporal Buffam called Mr. Arar's residence to find out whether he had contacted his wife, and to ask when he was scheduled to return from Tunisia.⁴³⁵ Mr. Arar answered the phone, stating that he had attempted to contact the RCMP from Tunisia. He was somewhat annoyed the RCMP had gone to his home without prior notice while he was away, and disturbed his pregnant wife. Corporal Buffam explained that the RCMP did not know he was away at the time, and described his brief conversation with Dr. Mazigh.

Corporal Buffam requested that Mr. Arar go to RCMP offices in Vanier that day to be interviewed. When Mr. Arar asked why, and inquired how the RCMP had obtained his name, Corporal Buffam explained that they did not discuss ongoing investigations over the telephone. He asked to speak to Mr. Arar in person to clarify some issues that had surfaced as a result of their inquiries, to which Mr. Arar replied that he was tired from travelling, and had not seen his family in several weeks. Although Corporal Buffam urged him to visit RCMP offices that day, Mr. Arar insisted he was too tired, but said he would perhaps go on the coming Monday. Corporal Buffam advised Mr. Arar to rest, visit with his family, and contact him the following day, Saturday, January 26, for a proposed

interview at 3:00 p.m.⁴³⁶ Apparently, Mr. Arar consented to be interviewed at the time suggested.⁴³⁷

Sometime after the conversation with Corporal Buffam, on January 25, Mr. Arar attempted to contact Ottawa criminal defence lawyer, Michael Edelson.⁴³⁸ Although Mr. Edelson tried to return Mr. Arar's call the next day, Saturday, January 26, at 10:30 a.m., he was unsuccessful. However, his office made an appointment for Mr. Arar to meet with Mr. Edelson on January 30.⁴³⁹ As a result, Mr. Arar's interview with the RCMP did not take place on January 26, as scheduled with Corporal Buffam.

Mr. Arar first met with Mr. Edelson on January 30, 2002 for about 45 minutes, at which time he gave Mr. Edelson his personal information, and described how he had been stopped at Canadian Customs in December 2001, and his laptop seized. He also told Mr. Edelson about his trip to Tunisia, and the RCMP's attempt to contact him for an interview.⁴⁴⁰

In addition, Mr. Arar raised an issue that Mr. Edelson assumed had been posed by national security personnel: namely, whether Mr. Arar knew Safa Almalki and Abdullah Almalki. Mr. Arar indicated that he knew Safa, but was "not a direct friend" of Abdullah Almalki. He said he knew Abdullah Almalki's brother, Nazih, as well, and that he saw Safa and Nazih at Friday evening prayers.⁴⁴¹

According to Mr. Arar, on the previous Friday at the mosque, Safa Almalki had told him the RCMP had asked about Mr. Arar and whether he had extreme views about the United States. Mr. Edelson testified that he vividly recalled Mr. Arar putting his hands in the air, sort of shaking his head, and saying, "I admire the Americans." He did not understand why he was being questioned about his views concerning the United States.⁴⁴²

Mr. Edelson's overall impression was that Mr. Arar was "totally forthcoming" during the interview.⁴⁴³

On January 30, 2002, Mr. Edelson contacted Ann Alder, counsel to Project A-O Canada, to discuss a possible interview with Mr. Arar.⁴⁴⁴ Mr. Edelson indicated that Mr. Arar would meet with the police, and that this had always been Mr. Arar's intent.⁴⁴⁵ It may have been at this time that Ms. Alder told Mr. Edelson the RCMP wanted a videotaped statement made under oath. However, Ms. Alder could not and would not indicate whether Mr. Arar would be interviewed as a witness or a suspect, nor would she reveal whether the interview related to a traditional criminal investigation, an intelligence investigation, an anti-terrorist investigation, or something else entirely.⁴⁴⁶

As a criminal lawyer, Mr. Edelson would normally have advised his client not to give a statement, but Mr. Arar had indicated he had no objection to

speaking to the RCMP. As Mr. Edelson did not know what allegations, if any, had been made against Mr. Arar, or what the RCMP's objectives were, he suggested that certain conditions be attached to the interview. He believed that Mr. Arar's life might be in jeopardy, even if the RCMP only wanted a statement that could be used in court against someone else. In fact, the RCMP might actually regard Mr. Arar as a suspect, meaning that the information could be used against him (a situation Mr. Edelson said would typically lead defence counsel to advise Mr. Arar not to speak at all). Mr. Edelson therefore imposed conditions that would address both of these concerns.⁴⁴⁷

The conditions were as follows:

- 1) Mr. Edelson would not consent to a videotaped, sworn statement because he wanted to avoid a situation where the interview would later be admissible as evidence in court — referred to colloquially in criminal practice as a “KGB.” statement, after a Canadian case involving the admissibility of out-of-court statements.⁴⁴⁸
- 2) The statement could be audiotaped.
- 3) A transcript could be prepared, if Mr. Arar was given an opportunity to review the transcript to correct anything erroneous or mistaken.
- 4) The statement would not be “under caution,” i.e., the typical police caution indicating that if the interviewee waived the right to remain silent, then anything said could be taken down and used in evidence.
- 5) Mr. Edelson would be present throughout the interview.
- 6) If Mr. Edelson objected, certain questions would not be answered.⁴⁴⁹
- 7) Mr. Arar and his counsel would be free to leave at any time.^{450, 451}

Mr. Edelson testified that, in his experience, these conditions were appropriate, given the little information provided by the officers and their counsel about the nature of the investigation and whether Mr. Arar was regarded as a witness or a suspect. He said he had dictated similar conditions in dozens of other criminal investigations where the client was willing to speak to the police. In Mr. Edelson's opinion, the conditions did not render the interview useless, as the RCMP would still be able to use the information for intelligence purposes.⁴⁵²

Inspector Cabana did not agree with Mr. Edelson's view. In fact, he felt the conditions were exceptionally stringent, more so than he had seen in his over 20 years' experience as an investigator. It was not particularly surprising that the information from the interview could not be used in a future prosecution against Mr. Arar, but stipulating that it “could not be used in relation to any prosecution against anybody, anywhere, basically rendered the interview, for

all intents and purposes, useless.”⁴⁵³ As a result, Inspector Cabana and Staff Sergeants Corcoran and Callaghan, in conjunction with Ann Alder from the Department of Justice, decided not to proceed with Mr. Arar’s interview.⁴⁵⁴

The very fact that Mr. Arar had retained Mr. Edelson raised suspicions among Project A-O Canada investigators, as Mr. Edelson also represented other targeted individuals and persons of interest. In Inspector Cabana’s view, it showed that they were part of a group, as it was common for one lawyer to represent an entire criminal organization.⁴⁵⁵ At the time, Project A-O Canada officers were not aware that local imams had recommended that Muslims who were approached by the police retain one of three lawyers, one of whom was Mr. Edelson.⁴⁵⁶

4. PROJECT A-O CANADA INVESTIGATION — JANUARY 23, 2002 TO SEPTEMBER 26, 2002

4.1 THE FRUITS OF THE SEARCHES

4.1.1 The All-Agency Meeting on January 31, 2002

Following the searches of January 22, 2002, Project A-O Canada had an enormous amount of material to process. The fruits of the searches included 26 computer hard drives, almost 100 CDs and diskettes, approximately 20,000 pages of documents, about 40 videotapes and two boxes of shredded documents.⁴⁵⁷ Staff Sergeant Corcoran testified that Project A-O Canada officials were surprised at the amount of information obtained from the searches.⁴⁵⁸

Synthesis and analysis of the seized materials began almost immediately. On January 28, 2002, the RCMP began reading the hard drives and CDs.⁴⁵⁹ Shortly after, on January 30, the preliminary analysis of the electronic information and documents uncovered information that Project A-O Canada officials felt linked Mr. Almalki with terrorist groups.

These initial efforts notwithstanding, Project A-O Canada was still faced with the monumental task of reviewing all of the information from the searches, and following up on any investigative leads as quickly as possible. Because of the resources required, it was decided to share all of the seized information with CSIS, the FBI and the other partner agencies, and to enlist their help with the analysis.⁴⁶⁰ Inspector Cabana also felt it would be useful to share the information

more broadly, as similar investigations were underway in other parts of the world.⁴⁶¹

Accordingly, Project A-O Canada scheduled an all-agency meeting for January 31, 2002.⁴⁶² Two days before, Inspector Cabana had sent an internal message to Chief Superintendent Couture at RCMP Criminal Operations (CROPS), recommending that all available information be shared with CSIS and its American counterparts. A list of the seized materials was attached.⁴⁶³

The January 31, 2002 all-agency meeting was attended by representatives of Project A-O Canada, CSIS, the FBI, RCMP Headquarters (National Security), Criminal Operations (CROPS), Ontario Provincial Police (OPP), Ottawa Police Service (OPS), Gatineau Police Force, Sûreté du Québec, Montreal Police Force, RCMP "C" Division, and other partner agencies.⁴⁶⁴ Project "O" Canada was not represented at the meeting as that project was already finished.⁴⁶⁵

The purpose of the meeting was to update all outside agencies on the investigation's progress, and to request their assistance in providing additional personnel and resources.⁴⁶⁶ Speaking notes from the meeting indicate that Chief Superintendent Couture delivered the initial welcome, followed by comments from Superintendent Clement. Assistant Commissioner Hovey left after making some preliminary remarks.⁴⁶⁷ Inspector Cabana oversaw the meeting once it was underway.⁴⁶⁸

Members of Project A-O Canada made a presentation, similar to those given on other occasions, summarizing their investigation to date.⁴⁶⁹ According to speaking notes from the meeting, the presentation was divided among three people: Inspector Cabana, who reviewed Project A-O Canada's history, Staff Sergeant Callaghan, who addressed the current status of the investigation — including the material seized during the recent searches — and Staff Sergeant Corcoran, who outlined the plan for analysing the search materials and the need for additional resources.⁴⁷⁰

During the search, the RCMP had seized Arabic documents (about five percent of the total), 40 to 50 Arabic videos, and vast amounts of electronic data that might contain Arabic material. By Project A-O Canada's estimation, at least two translators would be required. As well, there was evidence of hundreds of financial transactions involving Abdullah Almalki and his companies, some of these involving large amounts of money. One investigator had already arrived from Canada Customs and Revenue Agency (CCRA), but two more would be required. The team also needed expert assistance in reassembling the shredded documents.

All told, Project A-O Canada officials estimated they would need a minimum of seven additional police investigators, two translators, two accountants and

five analysts, as well as continued support from the High Tech Crime Section of RCMP “A” Division, and various background inquiries from other sections of the RCMP.⁴⁷¹

Project A-O Canada offered to share copies of the seized data with CSIS and some of the other partner agencies in return for their assistance.^{472, 473}

Almost everyone agreed to help. For example, the FBI offered to provide a translator and a Computer Analyst Response Team (CART). The Sûreté du Québec agreed to provide an analyst, investigators and an accountant,⁴⁷⁴ as well as two Arabic-speaking constables to help with translation.⁴⁷⁵ RCMP Headquarters contributed the use of its Financial Intelligence Unit.⁴⁷⁶ The OPP offered investigators,⁴⁷⁷ although it is unclear whether these were ever forthcoming. For its part, the OPS committed to keeping its members involved in the investigation.⁴⁷⁸

CSIS did not offer any assistance,⁴⁷⁹ explaining that its post-9/11 resources were already stretched. As discussed below, however, CSIS would soon provide a full-time analyst to assist in the Project A-O Canada investigation.⁴⁸⁰

According to Inspector Clement, the January 31 meeting was a good one, allowing investigators to put the information into context, based on the collaborative efforts of everybody at the table.⁴⁸¹

4.1.2

The Sharing Arrangements — January 31, 2002

It is clear that information sharing was discussed at the January 31, 2002 meeting. Less clear is the precise scope of the sharing arrangements that were agreed on, or even if there was agreement in this respect. Following is a summary of the testimony by those present at the meeting.

4.1.2.1

Project A-O Canada

Inspector Cabana testified that CSIS and the other partner agencies were offered access not only to the seized data, but also to the “sum of the investigation” beyond the fruits of the searches. At the same time, he acknowledged that the focus was on the new information acquired,⁴⁸² and conceded that the scope of the sharing arrangements was unprecedented. However, according to Inspector Cabana, the broad scope of these arrangements was consistent with Project A-O Canada’s mandate to work in partnership with outside agencies to prevent further terrorist attacks.⁴⁸³

Inspector Cabana was certain that this degree of information sharing was sanctioned at the highest level, that is, by CROPS and RCMP Headquarters,⁴⁸⁴ as

neither had objected to the extensive disclosure arrangements discussed at the meeting.

CSIS did not object to the level of sharing either, or to the possibility that CSIS information would be shared. Inspector Cabana testified that Project A-O Canada had already disclosed CSIS information to the American agencies in meetings at which CSIS was present.⁴⁸⁵ In fact, all of Project A-O Canada's pre-search information had been disclosed to the partner agencies at previous meetings.⁴⁸⁶

Inspector Cabana was questioned specifically about whether CSIS, CROPS and RCMP Headquarters knew as a result of the January 31, 2002 meeting that the entire Supertext database would be shared with the Americans. He reiterated that although the focus of the meeting was on sharing the fruits of the searches, it was made clear that all available information would be shared.⁴⁸⁷ In later testimony, Inspector Cabana went even further, stating that Project A-O Canada had offered a copy of the Supertext database to anyone who was interested. Given that CROPS and RCMP Headquarters were both present at the meeting, he concluded they would have been aware of this.⁴⁸⁸

Inspector Cabana pointed to a January 29, 2002 internal memo from Project A-O Canada to CROPS as further evidence of the sharing arrangements, and that CROPS was aware all information would be shared with the partner agencies. Although the memo recommended that "all available information" be shared with these agencies, it went on to state that "[s]imilar investigations are being conducted in other areas of the world and it would be beneficial to compared [sic] all *seized information* to establish links." [Emphasis added.] Despite the memo's qualifier, Inspector Cabana testified that it was meant to include not only seized information, but all information that was available. In his opinion, the seized information could not be analyzed in isolation.⁴⁸⁹ Even though the memo suggested that Inspector Cabana wanted to share only the fruits of the searches with Project A-O Canada's partners, other discussions were taking place at the time the memo was forwarded to CROPS. According to Inspector Cabana, those discussions, together with the memo, meant that CROPS (specifically, Chief Superintendent Couture and Inspector Clement) would have been aware that Project A-O Canada intended to share everything with the Americans, beyond the fruits of the searches, and including the entire Supertext database.⁴⁹⁰

Staff Sergeant Corcoran confirmed Inspector Cabana's assessment, testifying it was also his understanding the January 29, 2002 memo intended that all Project A-O Canada intelligence would be shared, including everything in Supertext.⁴⁹¹ He could not remember if any ground rules for sharing information were discussed at the meeting, although he maintained it was made clear there would

be full and open sharing.⁴⁹² Staff Sergeant Callaghan could not recall a specific discussion about sharing everything on the Supertext database, as the focus of the meeting was on sharing the hard drives and the seized documents.⁴⁹³

As an aside, the Project A-O Canada team sought legal advice on whether they could disclose the materials from the January 22, 2002 searches to CSIS and other partner agencies.⁴⁹⁴ However, because the Government claimed solicitor-client privilege, the nature of this advice was not disclosed to the Commission.

4.1.2.2

CSIS

A CSIS employee did not recall being informed, at any time, that the RCMP planned to share more than the product of the January 22, 2002 searches with the American partner agencies. She was present at the January 31, 2002 meeting, and understood that the meeting dealt with how to analyze and process the vast amount of information seized. She also understood that the RCMP would need to share information in order to receive help from others.⁴⁹⁵

Although he did not attend the meeting, another CSIS headquarters employee agreed that it would have to be a routine matter to share the material with the American agencies if they were going to help analyze the search product. It appears that he, too, was referring to the material seized during the searches.⁴⁹⁶

4.1.2.3

CROPS

Chief Superintendent Couture's general understanding of sharing arrangements following the January 31 meeting was that Project A-O Canada would share the search results with its partner agencies, but would not share the entire contents of the Supertext file.⁴⁹⁷ As discussed in Section 4.3, when Chief Superintendent Couture learned that the three CDs containing the entire Project A-O Canada Supertext database had been given to the American agencies in April 2002, he generally disapproved that the sharing had exceeded the fruits of the searches. He did not recall authorizing such extensive disclosure,⁴⁹⁸ nor did he believe that the original free-flow-of-information agreement was modified on January 31, 2002, or any time after that.⁴⁹⁹

According to Chief Superintendent Couture, the January 29 internal memo recommending that all available information be shared with CSIS and the American agencies⁵⁰⁰ simply confirmed that the pre-search information-sharing arrangement would remain in place if Project A-O Canada received significant new information.⁵⁰¹

Superintendent Clement testified that he gave general direction at the January 31 meeting for members of Project A-O Canada to continue working with other agencies, and to share everything in pursuit of their common goal.⁵⁰² Like Chief Superintendent Couture, he did not think that the agreement extended to Project A-O Canada's entire Supertext database. However, he suggested that his original direction for it to be an open-book investigation might have given the impression it was acceptable to share absolutely everything. He took full responsibility for the fact that Project A-O Canada members might have understood that more than the fruits of the searches could be shared.⁵⁰³

4.1.2.4

CID

Superintendent Pilgrim, who represented RCMP Headquarters at the all-agency meeting, recalled only that it was agreed the U.S. agencies would help retrieve and analyze information from the searches.⁵⁰⁴ Other than that, sharing the seized information was not a significant part of the discussion, although it was generally agreed that the U.S. agencies would have access to it.⁵⁰⁵ He did not recall any specific discussions about sharing other information beyond the fruits of the searches.⁵⁰⁶

Although Assistant Commissioner Proulx was not present at the meeting, he was later made aware of the decision to seek assistance from the American agencies to analyze the seized hard drives. To his mind, this was acceptable, given that this information might help to prevent another attack.⁵⁰⁷ However, he was not asked for his consent to release the information, nor would it normally have been required, as this was an operational decision generally left to the investigator or officer in charge.⁵⁰⁸

4.1.3

The Plan for Analysis

Even before the January 31 meeting, Project A-O Canada had begun planning how to analyze the search materials. Staff Sergeants Callaghan and Corcoran consulted with a number of people, including members of "A" Division's High Tech Crime Unit and CSIS.

The 26 hard drives contained approximately 150 gigabytes of potential data storage space, including e-mails, correspondence, and Internet search sites, all of which needed to be analyzed carefully using tech-strings to identify key words and phrases. Many of the 40 videotapes seized were in Arabic, and their content had not been established. Family videos had been seized because they showed unidentified individuals whose role in the investigation had yet to be

determined. The 20,000 paper documents seized included photographs, financial records, correspondence and books, in English and various Arabic dialects. By all appearances, the two boxes of shredded documents could be reassembled. As well, based on an initial assessment, the officers concluded that further interviews and some follow-up investigation would be required.⁵⁰⁹

On February 6, 2002, a delegation from the American Embassy arrived to discuss a strategy for analyzing the search materials. Inspector Cabana was present, along with representatives from the American agencies. That same day, members from the Sûreté du Québec, including two civilian analysts, two police officers and two Arabic translators/police officers, arrived and were briefed on the investigation. Three members of the Montreal RCMP came as well, and were assigned the task of analyzing documentary evidence from the various search sites.⁵¹⁰

Analysis of the hard drives began in early February. Sergeant Walsh examined them and appears to have largely completed this task by February 5 or 6, 2002.⁵¹¹ At the same time, Project A-O Canada officials were working on a more effective way of scanning the large number of documents.⁵¹² Around this time as well, Project A-O Canada decided to scan all the seized documents to disk and provide them to the partner agencies.⁵¹³

Despite its initial reluctance to commit resources at the January 31, 2002 meeting, CSIS agreed at a meeting on February 18, 2002 to provide analysts to the Project on a part-time basis. This help never materialized; instead they sent a CSIS employee who is an expert in transnational organized crime to participate in the investigation full time.⁵¹⁴ He was seconded to Project A-O Canada in March 2002.⁵¹⁵

According to Staff Sergeant Corcoran, Project A-O Canada paid little attention to Mr. Arar in the months after the January 22 searches, as investigators focused on analyzing the seized materials.⁵¹⁶

4.2

THE EMERGING RELATIONSHIP WITH THE FBI

4.2.1

Access to the Premises and Meetings

Project A-O Canada now had a substantial amount of information to work with, and the investigation was starting to come alive.⁵¹⁷ During the post-search period, there was also a marked increase in information sharing and meetings between Project A-O Canada and the American agencies.⁵¹⁸

Prior to the January 2002 searches, Staff Sergeants Callaghan and Corcoran met occasionally with the U.S. agencies, but senior command staff was usually present.⁵¹⁹ Project A-O Canada's direct relationship with the FBI began in late October 2001, when Project A-O Canada officials began meeting with an FBI agent, primarily about the Almalki investigation. A working relationship developed from there in which the agent would occasionally drop off information to Project A-O Canada. The relationship intensified somewhat when Mr. Arar's computer was seized by Canada Customs in December 2001. [***]. After 9/11, the CIA assumed a more operational role in the U.S.-led "war on terror."⁵²⁰

Following the searches, Staff Sergeants Callaghan and Corcoran began dealing directly with the American agencies on a regular basis, and Corporals Lemay and Buffam did so occasionally as well. Not only did contact with these agencies become more frequent, it also became less formal. Inspector Clement testified that he considered the new informality to be acceptable.⁵²¹

While one or two FBI officers had building passes to RCMP Headquarters, none were allowed unescorted access to the "A" Division building that housed Project A-O Canada. To enter the building, American officials had to be signed in and escorted by a Project A-O Canada investigator.⁵²² As they did not have access to investigators' work stations, they would have gone directly to the office shared by Staff Sergeants Callaghan and Corcoran.⁵²³ In essence, then, the access afforded the American agencies was no different than that permitted to any approved outsider.⁵²⁴ Either Inspector Cabana or Inspector Clement, or both, were aware when American agents were on Project A-O Canada premises.⁵²⁵ Inspector Cabana testified that the American agents did not have open access to Project A-O Canada databases, but if they had requested information, the request would have been granted.⁵²⁶

In February 2002, Project A-O Canada officials met four times with the FBI,⁵²⁷ and periodically with other American agencies.⁵²⁸ Following is a brief description of these meetings and the topics addressed.⁵²⁹

On February 5, Inspector Cabana and Staff Sergeants Callaghan and Corcoran met with the American agents. The American authorities wanted to examine the seized hard drives and prepare copies for themselves. The protocol for sharing information was discussed, as was the process for obtaining copies of the search information. Staff Sergeant Corcoran specifically recalled the message being conveyed that information sharing was for intelligence purposes only; if the Americans wished to use it in court, they would have to make an MLAT (Mutual Legal Assistance Treaty) request.⁵³⁰ The discussion also touched

on other topics related to the investigation, including Mr. El Maati.⁵³¹ However, no specific information was shared at this meeting.

On February 6, Staff Sergeant Corcoran met with members of the American agencies to discuss progress on the overall investigation, including manpower requirements and how the information would be analyzed.

While FBI officials were present on site as of early February, the agency's presence increased in late February, when a team of FBI special agents arrived at Project A-O Canada offices. The team included two agents who had expressed an interest in Mr. Arar and other Project A-O Canada targets, a Washington financial analyst with an interest in the financial records seized from the searches, and an investigative analyst exploring potential links to al-Qaeda. The situation report for February 19 indicated that Project A-O Canada was to exchange information with the FBI over the next several days, with the understanding that a request for documentation would be formalized by a memorandum.⁵³²

On February 7, Inspector Cabana held a meeting with Staff Sergeants Corcoran and Callaghan to discuss a process for controlling information related to the Project. Inspector Cabana requested that all partners be advised that his approval was required before any information was disclosed. This was not an attempt to modify the agencies' information-sharing arrangement, but simply an attempt to avoid the circular flow of information.⁵³³

4.2.2

The Search Information That Was Shared

Following is a timeline and description of the information shared with the American agencies in the period following the January 22, 2002 searches. The seized hard drives were fairly easy to share. Scanning paper documents was more time consuming; however they too were provided to the Americans in time.⁵³⁴

A situation report for February 6, 2002 indicates that informal information sharing began at this time with a "general exchange of information" and a discussion of manpower requirements.⁵³⁵ It is clear that the fruits of the searches were already being shared with the Americans.

The first evidence of a direct *transfer* of search information to the Americans appears on February 8, when Staff Sergeant Corcoran provided American analysts with analytical charts. However, it is unclear what this information related to, and to which agency it was given.⁵³⁶

No caveats were attached to the information that U.S. agencies were given during this period. In Inspector Cabana's opinion, this was acceptable for a number of reasons. First, the order had been given that caveats no longer applied

and, as the Inspector pointed out, they were unnecessary in any event. Caveats are used to protect sources, prevent further dissemination, and ensure that information is used for the purpose intended. According to Inspector Cabana, everyone knew that the information was being shared to prevent further terrorist attacks. Moreover, much of the information in question had already been discussed in open meetings involving the RCMP and its partner agencies.⁵³⁷

Project A-O Canada's view of the sharing arrangements as established at the January 31, 2002 meeting was that, at the very least, everything from the searches would be shared with the Americans. Staff Sergeant Corcoran confirmed this understanding with Inspector Cabana on February 13, 2002, and confirmed with the Americans that none of the information would be released more widely without Project A-O Canada authorization.⁵³⁸

With this understanding, Project A-O Canada provided the Americans with CDs containing approximately 50 megabytes of data, on or about February 14, 2002. Inspector Cabana testified that the CDs contained digital copies of paper documents seized from the search, which Project A-O Canada had been scanning continuously since the searches. He did not believe that all such documents had been scanned by February 14, and could not say when digital copies of all the seized paper documents were provided. It is apparent from officers' notes that the plan was to provide the scanned paper documents to the Americans on a piecemeal basis, as the scanning process continued.⁵³⁹

It is not clear when Project A-O Canada transferred to the Americans copies of the hard drives obtained in the January 22 searches. Staff Sergeant Corcoran could not recall the exact date, but he thought it was done by February 8, 2002.⁵⁴⁰ In any event, Inspector Cabana's notes reflect that, by February 21, 2002, the Americans had the hard-drive information in their possession.⁵⁴¹

It appears that the Americans had not yet received the search videotapes as of February 15, 2002. An entry in Staff Sergeant Corcoran's notes for that day indicates that the Americans would "love" to have access to them.⁵⁴² Similarly, it is unclear whether the shredded documents were ever turned over to the Americans for analysis. Instead, it appears that this information was analyzed by the RCMP in Edmonton.⁵⁴³

One more piece of information shared with the Americans is worth mentioning. On February 8, 2002, the Information to Obtain (ITO) for the January 22 searches was given to the Americans for review.⁵⁴⁴ Sergeant Walsh stated that this was done to provide American agents with a roadmap for their investigation, and to help them analyze the information gathered during the searches.⁵⁴⁵ In his view, the Americans needed the ITO for law enforcement purposes, and he trusted that the U.S. agencies would maintain its confidentiality.⁵⁴⁶ Inspector

Clement also testified that an ITO was commonly used to update investigators in this fashion.⁵⁴⁷

The ITO was subject to a sealing order, which was issued on January 21, 2002.⁵⁴⁸ Sergeant Walsh testified that he did not believe a variation of the sealing order was required before making the ITO available to American authorities; in fact, no one obtained a variation before allowing the Americans to read it. As far as Sergeant Walsh understood, the purpose of the sealing order was to prevent public disclosure of the information used to obtain the search warrant. In this case, U.S. authorities were part of the investigation, not members of the general public. Although the U.S. authorities were not given access to the sealed package, Sergeant Walsh testified that using the ITO was essential to advancing the Project A-O Canada investigation,⁵⁴⁹ as sharing intelligence with the Americans was an integral part of the investigation.

To summarize, by February 21, 2002 the Americans had received a portion of the paper documents from the searches, as well as imaged copies of the seized hard drives and a summary of the ITO for the searches.

It should be noted that, after 9/11, the relationship between the CIA and the FBI changed as a result of a Presidential Direction which required the two agencies to work more closely together and share information. Any information shared by Project A-O Canada with U.S. agencies could have been provided to the CIA. This was understood by Project A-O Canada's managers and senior members of CID.

4.2.3

The FBI Visit — Late February 2002

In late February 2002,⁵⁵⁰ members of the Project A-O Canada team met with five FBI personnel. FBI agents had expressed an interest in Mr. Arar, as well as other Project A-O Canada targets. The situation report for that day (which was sent to RCMP Headquarters and CSIS⁵⁵¹) indicates that an "exchange of information with the FBI will take place over the next several days with the understanding that a request for documentation will be formalized by memorandum."⁵⁵² During the visit, the FBI sought and received access to Project A-O Canada files.⁵⁵³

The presence of the FBI agents was a surprise to Project A-O Canada officials.⁵⁵⁴ Inspector Cabana did not recall inviting them to take part in the February 19, 2002 meeting, and Inspector Clement concurred that the agents were there without a formal request. Out of courtesy, they were allowed to view materials, strictly on an intelligence basis, until a formalized request arrived.⁵⁵⁵

The agents expressed an interest in Mr. Arar, but did not provide any details. They merely asked to review the information on Mr. Arar and others

(including Mr. Almalki). When Corporal Lemay mentioned that the RCMP had requested information on Mr. Arar from the FBI almost three months ago, and still had not heard anything, the agents promised to follow up on the issue.⁵⁵⁶

Inspector Cabana testified that he was aware of an FBI investigation underway, but did not recall asking for specifics.⁵⁵⁷

According to Staff Sergeant Corcoran, the Americans' interest in Mr. Arar piqued his own. Although he asked the FBI to share what they knew about Mr. Arar, he was never given a satisfactory response. To this day, Project A-O Canada has not been able to obtain a full understanding of the FBI interest in Mr. Arar.

In any event, members of the FBI were at the Project A-O Canada offices reviewing documents and analyzing information in three days in February 2002.⁵⁵⁸ The visit began with a 1:30 p.m. meeting on February 19 concerning how to retrieve and analyze the seized documents. Project A-O Canada agreed to provide the FBI with the information for intelligence purposes only, making it clear that an MLAT would be required if the FBI used the information in a prosecution.⁵⁵⁹

That same day, Staff Sergeants Corcoran and Callaghan met with Inspector Cabana to discuss the FBI presence, and the protocol for sharing information.⁵⁶⁰ Staff Sergeant Corcoran testified that he wanted to discuss the sharing arrangements to ensure everyone at Project A-O Canada was "on the same page." Inspector Cabana told the officers to ask the FBI for a formal letter of request for the documents being shared.⁵⁶¹

During the FBI visit, Project A-O Canada personnel gave FBI agents significant access to the fruits of the searches, as well as to materials from the Project A-O Canada investigation in general. However, it is not clear if a direct transfer of documents or material occurred at this time. At a minimum, the FBI spent three days engaged in a rigorous review of Project A-O Canada information, including material from the January 22 searches and other material contained in the files.

Also during this time, the FBI agents met with Corporal Lemay and reviewed two binders of information on Mr. Arar.⁵⁶² These binders contained the rental application and lease that may have been shown to Mr. Arar when he was detained in the United States.⁵⁶³ The binders also included the following material: a profile of Mr. Arar; a photo of Mr. Arar and his home; immigration photos of Mr. Arar and his wife; police reports; past employment information; NSIS inquiries on Mr. Arar; a surveillance report from October 12, 2001; the results of the November 29, 2001 secondary examination of Mr. Arar; and other investigative materials on, or related to, Mr. Arar.⁵⁶⁴

Staff Sergeant Corcoran instructed Corporal Lemay to allow the FBI agents to copy anything they wanted, as long as he was made aware of it and a comprehensive inventory was kept.⁵⁶⁵

Again, it is unclear whether the FBI agents actually received copies of the binders. Staff Sergeant Corcoran testified that he was initially under the impression that the FBI made copies of some of the documents, and were given a copy of the rental application and lease. Certainly, if they had wanted copies they would have received them.⁵⁶⁶ However, Staff Sergeant Corcoran's contention that the FBI received copies of documents in the Arar binders was later contradicted. (In the fall of 2003, the FBI was asked about receiving a copy of the rental application and lease during their February visit.⁵⁶⁷) Staff Sergeant Corcoran said that he would later learn the FBI made notes, and did not take actual documents.⁵⁶⁸

In his testimony, Corporal Lemay denied passing the rental application and lease to the agents, although he agreed that these documents were in the binders the agents reviewed.⁵⁶⁹ The agents took notes while viewing the binders, but Corporal Lemay did not give them photocopies, nor was he aware that they had requested any.⁵⁷⁰

According to Staff Sergeant Callaghan's notes, on February 20 the FBI spent some time reviewing documents and videos from the January 22 searches. He was with them while they conducted this review, and testified that they only looked at a couple of the videos.⁵⁷¹

According to the Project A-O Canada situation report for February 21, the FBI also reviewed CSIS advisory letters that contained caveats requiring CSIS' consent to share the information with agencies other than the RCMP. Although Inspector Cabana was not aware if this consent was sought before the letters were shown to the visiting FBI agents, he testified that the letters had been the subject of extensive discussions in numerous meetings involving all agencies, including the American agencies, CSIS and RCMP Headquarters. In these circumstances, testified Inspector Cabana, the chances were "remote" that anyone had gone to CSIS to obtain consent. Moreover, the February 21 situation report was given to CSIS, and no one from there had contacted "A" Division to object to this information being shared with the FBI. Inspector Cabana testified that this was consistent with the post-9/11 agreement between the partner agencies, which called for them to share information freely.⁵⁷²

The February 21 situation report also indicates that when the Americans reviewed the E&R III database,⁵⁷³ they realized that information they had forwarded to CSIS might not have been provided to the RCMP as well.

Consequently, the FBI reviewed the information provided to CSIS during the previous two years, and compiled a report for Project A-O Canada.⁵⁷⁴

Both Inspector Cabana and Staff Sergeant Corcoran testified that the situation report wrongly indicated that the FBI had access to the E&R III database; apparently, not even CSIS had access to it. Furthermore, the Americans did not have the training necessary to use the database. A more likely event was that FBI agents were shown a report from the E&R III database.⁵⁷⁵

4.3

THE SUPERTEXT DATABASE

In late March or early April 2002, Project A-O Canada prepared CDs containing the entire Supertext database and provided them to the American agencies. The database contained all documents pertaining to the Project A-O Canada investigation, including the documents seized during the January 22, 2002 searches, and a considerable amount of information about Mr. Arar.

4.3.1

The FBI Request

By the time the FBI visited Project A-O Canada offices in late February 2002, Project A-O Canada had already shared information with the Americans, and had indicated its intention to share even more.⁵⁷⁶ To Inspector Cabana's mind, this practice of sharing documents with the U.S. agencies was an important feature of the Project A-O Canada investigation.⁵⁷⁷

Clearly, the Americans had an interest in acquiring as much information as possible. However, such a request was not formally made until the February 2002 visit, when it was agreed that the FBI would do so.⁵⁷⁸ Project A-O Canada would not receive a formal written request from another U.S. partner until April 2002.⁵⁷⁹

On February 22, 2002, immediately after visiting the Project A-O Canada offices, the FBI sent a letter addressed to Commissioner Zaccardelli,⁵⁸⁰ to the attention of Superintendent Pilgrim at National Security Investigations Branch (NSIB).

The letter was a formal request for materials obtained in the January 22 searches. The letter acknowledged that an MLAT request would be required if the materials were to be used in any U.S. criminal proceeding. Referring to items seized in the searches, the letter requested copies of documents, both paper and electronic, hard drives, media storage devices including CD-ROMs and floppy disks, audio and video recorded materials, together with investigative and analytical reports and translations produced by Project A-O Canada in

relation to the seized materials. The letter also requested other material relevant to the Project A-O Canada investigation. Finally, the letter also mentioned the partner agencies' shared interest in a number of individuals, including Mr. Arar.

RCMP Headquarters forwarded the letter to Project A-O Canada, without any directions as to how Project A-O Canada should respond.

On the face of it, the FBI request refers only to the material obtained from the searches. However, RCMP officers interpreted it as encompassing more than just the product of the searches.

In Inspector Cabana's opinion, the FBI letter reflected discussions among the participating agencies at the January 31, 2002, all-agency meeting. On this basis, it was not surprising that Headquarters did not prohibit release of the information, or require that caveats be attached. Nor was it surprising that Headquarters did not ask to see the information before it was released to the FBI.⁵⁸¹

Inspector Cabana further testified that it was agreed at the January 31, 2002 meeting that *all* available information would be shared, not only the seized documents.⁵⁸² This is an important distinction, as will become clear, because Project A-O Canada investigators eventually shared with the Americans much more than just the documents seized during the searches.

According to Staff Sergeant Corcoran, the FBI letter appeared to request not only the fruits of the searches, but everything in the Supertext database.⁵⁸³ In making this determination, he relied on the letter's request for other material relevant to the investigation.⁵⁸⁴ Assistant Commissioner Proulx concurred that the request went well beyond what was obtained in the searches.⁵⁸⁵ In contrast, Inspector Reynolds — the only RCMP officer to offer a different interpretation — understood the request to be for other relevant material and, as such, it did not include everything related to the investigation.⁵⁸⁶ Notably, none of the officers attached significance to the fact that the materials requested by the FBI were referred to as items seized in the searches.⁵⁸⁷

It is not entirely clear from the testimony whether Headquarters approved the FBI request. Although it appears that no one actually considered the request and formally approved it, there were grounds for Project A-O Canada officials to conclude that approval had been given. First, the copy of the letter sent to Project A-O Canada had been initialled by two Headquarters officers, both of whom reviewed operations investigations for Assistant Commissioner Proulx. However, according to Assistant Commissioner Proulx, the initials did not necessarily indicate approval of the content, merely approval that the correspondence be sent to the divisions. That said, he agreed that Project A-O Canada

officials might interpret the initials to mean that Headquarters had approved of the letter's request.⁵⁸⁸

Project A-O Canada's copy of the letter also contained a hand-written request to "please process."⁵⁸⁹ Again, according to Assistant Commissioner Proulx, this did not necessarily indicate approval from Headquarters. It was possible that someone had written the note, then sent the document to the two officers.⁵⁹⁰ Alternatively, he suggested that the note might have meant "process," in the sense of uploading the document onto a database.⁵⁹¹

Despite the difficulty in determining whether Headquarters approved the FBI request, Assistant Commissioner Proulx agreed that, in the circumstances, Project A-O Canada officers might have believed they were authorized to proceed with the letter's request for information. Moreover, Assistant Commissioner Proulx's understanding was that the FBI request referred to the entire Supertext database.⁵⁹²

Inspector Clement, who was Inspector Cabana's senior at "A" Division, saw the February 22 request from the FBI, reviewed it, and authorized disclosure of the information,⁵⁹³ knowing that the request went well beyond the fruits of the January 22 searches. In his view, Headquarters had approved the request and the subsequent release of information.⁵⁹⁴

Several other issues about Project A-O Canada's transfer of the CDs are relevant here. Project A-O Canada did not attach caveats or the third-party rule to the three CDs, or to any correspondence accompanying them. Moreover, before delivering the CDs, Project A-O Canada did not review them for relevance, based on the "need-to-know" principle, or for personal information. Nor did officials seek the consent of third parties whose documents were included, even where caveats and third-party rules were attached.⁵⁹⁵ Finally, Project A-O Canada transferred the three CDs to the American agencies directly.

The contents of the CDs are described below. This is followed by the testimony of the officers involved in the transfer, including their understanding of what occurred and whether it was acceptable practice.

4.3.2

The Contents

Clearly, there was confusion within Project A-O Canada and the RCMP generally about what precisely was contained on the three CDs. By way of example, the Project A-O Canada situation report for April 9, 2002 (signed by Inspector Cabana and Staff Sergeant Corcoran) indicated that the Americans were given scanned documents from the January 22 searches, but made no mention of the balance of the Supertext database.⁵⁹⁶ Apparently, Staff Sergeant Corcoran drafted

this report believing that Project A-O Canada was providing only the results of the searches, even though it was his understanding that all of the documents on Supertext would ultimately be shared with the Americans.⁵⁹⁷

Inspector Cabana testified that 99 percent of what was contained on the Supertext database — and therefore on the three CDs — would have been the scanned paper documents seized from the January 22, 2002 searches.⁵⁹⁸ While this might have been true in terms of volume, in fact the CDs contained much more information than this. Furthermore, given that situation reports⁵⁹⁹ (such as the inaccurate report drafted on April 9, 2002) were the means Headquarters used to monitor Project A-O Canada's activities, the fact that additional material was exchanged likely went unnoticed by Headquarters.⁶⁰⁰

Project A-O Canada used the Supertext database to store and manage all documents originating from the Project, including exhibits, statements, memos and reports, as well as situation reports, surveillance reports, and reports from outside agencies.⁶⁰¹ Theoretically, every piece of paper Project A-O Canada generated or received was scanned and stored in the Supertext database.⁶⁰²

During testimony heard *in camera*, RCMP officials provided detailed descriptions of the information contained in Supertext when the three CDs were given to the Americans.⁶⁰³ The following sections describe the information that can be disclosed in this public Report.

4.3.2.1

CSIS Materials

Many of the CSIS documents given to the Americans as part of the Supertext database were either disclosure letters or advisory letters containing a CSIS third-party caveat. Also included in the database was a CSIS study, as well as reports, threat assessments, an interview summary, photographs, an RCMP memo, various RCMP letters, faxes and briefing notes, and RCMP situation reports. Most of these documents contained a CSIS third-party caveat as well.⁶⁰⁴

Project A-O Canada did not obtain CSIS' consent to transfer any of this material to the American agencies. According to Project A-O Canada managers, it was not necessary to do so because of the free-flow-of-information agreement. However, as discussed elsewhere in this Report, CSIS officials did not concur that an agreement was in place permitting the RCMP to transfer CSIS material subject to a third-party caveat, without CSIS consent.

4.3.2.2

Information Related to Mr. Arar

The RCMP's summary stated that a total of 120 files on the CDs contained a reference to Mr. Arar.⁶⁰⁵ These files can be broken down into two main categories: documents seized during the searches; and documents gathered from third parties, or other documents related to the RCMP's investigation. In broad terms, the non-search material on Mr. Arar included the following:⁶⁰⁶

- Detailed biographical material.
- Various Canada Customs materials, including material obtained from the November 29, 2001 and December 20, 2001 secondary examinations at the Canadian border. These materials were subject to explicit caveats, and they were shared with the American agencies without Canada Customs' consent.⁶⁰⁷
- The Project A-O Canada letter to U.S. Customs, requesting TECS checks and lookouts on Mr. Arar, Dr. Mazigh and others. (The request described Mr. Arar, Dr. Mazigh and the others as "a group of Islamic Extremist individuals suspected of being linked to the Al Qaeda terrorist movement.")⁶⁰⁸
- Various Project A-O Canada and Project O Canada materials, including chronologies, an information request to the FBI, situation reports, faxes, investigative plans mentioning Mr. Arar, analytical material, operational plans, interview notes, surveillance reports, Canadian Police Information Centre (CPIC) person queries, photos and investigators' notes.

The search-related material on Mr. Arar included faxes, business materials, address books, phone lists, an agenda and hard-drive data.

Because of the on-going information sharing, the Americans would already have had much of the extensive biographical and other information on Mr. Arar in their possession. However, the CDs did contain some new information, as well as several references to Mr. Arar as a "suspect," "principal subject," or important figure. These references may well have served to increase American interest in Mr. Arar.⁶⁰⁹

For instance, the CDs contained the following information about Mr. Arar, some of which was misleading:

- Mr. Arar's immigrant visa and record of landing, a client history, and a request for the record of landing.

Information that Abdullah Almalki was listed as Mr. Arar's emergency contact on a "lease" dated December 27, 1998.⁶¹⁰ (The actual Minto rental application and lease were not included on the CDs.)⁶¹¹

- Information that Mr. Arar applied for a gun permit in 1992 (which Corporal Lemay referred to as a “strange thing.”)⁶¹²
- Speculation that Mr. Arar might be President of The MathWorks, Inc. (to be confirmed).⁶¹³ (This turned out to be incorrect.)
- The erroneous notes taken by RCMP officers during Youssef Almalki’s interview on January 22, 2002. (As discussed, the RCMP officer incorrectly noted that Youssef Almalki said Mr. Arar had a business relationship with his brother Abdullah Almalki, but that he did not know the details. What Youssef Almalki actually said was that he was “not sure” if his brother had a business relationship with Mr. Arar.)⁶¹⁴
- A situation report from “O” Division mentioning the Mango’s Café meeting, which erroneously states that Mr. Arar travelled from Quebec to meet Mr. Almalki. (Mr. Arar was living in Ottawa at the time.)⁶¹⁵
- Information on Project A-O Canada’s failed attempt to interview Mr. Arar on January 22, 2002 (not including the details of negotiations with Mr. Arar’s lawyer concerning an interview).⁶¹⁶
- An analysis of the names found on Mr. Arar’s PDA, seized by Canada Customs on December 20, 2001. The analyst speculated that few of the people named might have had links to extremist activity.⁶¹⁷

All told, the CDs gave the Americans access to virtually all of the material that Project A-O Canada had accumulated on Mr. Arar up to that point.

4.3.2.3

Legal Opinions

Two of the documents copied onto the CDs were legal opinions provided by the Ontario Ministry of the Attorney General to managers of Project O Canada. These opinions were sent to the Americans, despite the fact that they were subject to solicitor-client privilege.

4.3.2.4

Project A-O Canada Investigators’ Views on What Was Shared

In his testimony, Inspector Cabana stated that no one had ever questioned his authority to give the American agencies the entire contents of the Supertext database. In fact, he was asked to ensure that all relevant information was shared, a practice he viewed as consistent with the free-flow-of-information agreement. Moreover, Inspector Cabana testified that his superior officers in “A” Division and at RCMP Headquarters were well aware that the entire Supertext database was being shared. While he agreed that, under normal circumstances,

a foreign agency would not be given complete access to the files of an RCMP investigation, the circumstances at the time were quite different, given the post-9/11 information-sharing agreement.⁶¹⁸

Staff Sergeant Corcoran testified that he never received instruction from his superiors *not* to share the entire contents of the Supertext database.⁶¹⁹ Further, while the day-to-day free-flow arrangement was limited to information originating with the partner agencies, he had directions to share everything on the Supertext database and the three CDs.⁶²⁰ That said, Staff Sergeant Corcoran was not able to point to specific authorization for sharing information from agencies that were not party to the free-flow-of-information arrangement. In his view, there was an overarching direction from senior management (more senior than Inspector Cabana) to share everything, including the entire Supertext database. Because of the free-flow-of-information agreement, neither Inspector Cabana nor Staff Sergeant Corcoran considered it necessary to attach caveats to the shared information. Similarly, they did not consider it necessary to obtain CSIS' consent to share its information, because CSIS was party to the agreement.⁶²¹

4.3.2.5

RCMP Superiors' Understanding of What Was Shared

Officers at RCMP Headquarters and Inspector Cabana's superiors at "A" Division were not aware that Project A-O Canada was sharing its entire database with the Americans. However, Inspector Clement — who was the Assistant CROPS Officer and Inspector Cabana's immediate superior — took responsibility for the extent of the disclosure.

Although Inspector Clement was aware that CDs containing Supertext information were going to the Americans, he was not consulted about their content.⁶²² However, he did approve the FBI's February 22, 2002 request, and appears, after the fact, to accept that the request's wording went beyond the fruits of the January 22 searches.⁶²³ Inspector Clement took full responsibility for what was divulged and for his officers doing so, stating that his original direction for everything to be "open book" resulted in the investigators revealing as much as they did.

In retrospect, Inspector Clement testified that certain documents, such as legal opinions, should not have been released.⁶²⁴ He also accepted that some of the documents were apparently released in violation of the third-party rule, but suggested that they might actually have been investigative leads. However, he did not specify which documents fell into the category of "investigative leads."⁶²⁵

With respect to CSIS information, Inspector Clement confirmed that this would have been discussed at earlier meetings at which CSIS and the American

agencies were present. In his view, the CDs did not provide the Americans with any new information from CSIS.⁶²⁶ Moreover, CSIS would have been aware that this information was already being shared at the frequent round table meetings involving these agencies. According to Inspector Clement, the CSIS information had already been provided to the Americans, just not in CD form.⁶²⁷

Chief Superintendent Couture of “A” Division had the impression that only the results of the searches were being shared, and was not aware that the contents of the Supertext file were to be given to the Americans.⁶²⁸ He agreed that this information went beyond the terms of the free-flow-of-information agreement;⁶²⁹ in particular, it should have been left to CSIS to share its own information with the Americans, should they so choose. That said, turning over documents from other police forces, if they were given to the RCMP for the purposes of the investigation, might be viewed as a consistent use of that information.⁶³⁰ Likewise, the transfer of RCMP briefing notes, faxes, letters, reports and situation reports to the Americans would not have breached the free-flow-of-information agreement if they concerned the investigation. However, it would have constituted a breach if the information concerned unrelated matters under discussion with other government agencies.⁶³¹

Chief Superintendent Couture did not know who at “A” Division had authorized sharing the contents of the CDs.⁶³² However, he received an internal message from Inspector Cabana on January 29, 2002 stating it was Project A-O Canada’s recommendation that “all available information be shared with CSIS and our American counterparts for their analysis.”⁶³³ He recalls sanctioning this letter and the sharing of information,⁶³⁴ but understood this approval to apply only to the fruits of the searches, not to the entire Supertext database.

It was only after the fact that Assistant Commissioner Hovey became aware the CDs had been given to the Americans,⁶³⁵ and that more than the results of the searches had been shared.⁶³⁶ He accepted that it was appropriate for members of Project A-O Canada to share this information if caveats were down. However, if information was being passed to agencies that were not partners to the agreement, the documents should have been examined more closely.⁶³⁷ In Assistant Commissioner Hovey’s opinion as well, sharing legal documents was inappropriate.⁶³⁸

The contents of the shared CDs exceeded Assistant Commissioner Proulx’s understanding of the information-sharing agreement among the partner agencies.⁶³⁹ In particular, he pointed to third-party information from agencies such as the Canadian International Development Agency (CIDA), the federal departments of Citizenship and Immigration and Foreign Affairs, and RCMP Legal Services, as outside the agreement’s scope.⁶⁴⁰

According to Assistant Commissioner Proulx, RCMP Headquarters was aware from the outset that the fruits of the January 22 searches would be shared with the Americans. However, he was not asked to give his consent, nor would his consent have been required.⁶⁴¹

Superintendent Pilgrim, the Officer in Charge of what is now the National Security Investigations Branch (NSIB),⁶⁴² did not become aware that the entire Supertext file had been transferred to the American agencies until preparing for this Inquiry.⁶⁴³ According to him, some of the information could rightly have been shared, depending on three factors: whether the information would be useful to the Americans in their investigation; whether the Americans needed to know the information; and whether the RCMP knew how the Americans were going to use the information. In his opinion, some sort of a caveat or restriction should have been attached.⁶⁴⁴ If the information came from an external agency, such as CSIS or Canada Customs, and it contained caveats, RCMP policy required that the external agency give its consent before the information was shared.

Superintendent Pilgrim could understand that some information was being given to the Americans. For instance, the Americans might well have needed pre-search information to provide context for their analysis.⁶⁴⁵ Even so, Superintendent Pilgrim thought it necessary to hand over only relevant information, and to do so in an appropriate manner.⁶⁴⁶

From Corporal Flewelling's perspective working at NSOS (National Security Offences Section) in NSIB, the CD exchange did not comply with RCMP policy.⁶⁴⁷ In his view, the information should have been scrutinized by CID before being released to the Americans.⁶⁴⁸ As well, the third-party agencies whose information was being shared should have been consulted.⁶⁴⁹ Inserting caveats was "just good practice" as a reminder that the documents were for intelligence purposes only, and that recipients required authorization before using it for another purpose.⁶⁵⁰ Corporal Flewelling did acknowledge that even without explicit caveats, the implied caveats on the documents should have had the same effect.⁶⁵¹

According to Corporal Flewelling, it would still have been prudent for the shared information to go through CID despite the post-9/11 environment;⁶⁵² the Directorate had a broader view of implications to national security and to the Government of Canada.⁶⁵³ If information like this had come to him, he would have added the normal caveats, and scrutinized the documents to ensure other agencies were informed that their information was being shared.⁶⁵⁴

Inspector Reynolds, the Officer in Charge of the Financial Intelligence Branch at RCMP Headquarters, reported to Assistant Commissioner Proulx.⁶⁵⁵

Eventually, Inspector Reynolds would become Officer in Charge at NSIB. In 2003, when he became aware that the entire Supertext database had been shared, he was surprised at what he regarded as an unusual practice.⁶⁵⁶ According to him, it was normal to look at the documents before they were sent to other agencies, regardless of what the sharing agreements were. Moreover, one did not necessarily share all of the information in any circumstance.⁶⁵⁷ If he had known what Project A-O Canada intended to share, he would have cautioned against it before first determining where the documents came from, and what they contained.⁶⁵⁸

Although Inspector Reynolds agreed that sharing the CDs fell within the information-sharing agreement, he did not think it was necessary to share information that was not valuable to a partner and that did not move the investigation forward.⁶⁵⁹ Further, he found it abnormal to share an entire database.⁶⁶⁰ However, he agreed that sharing essentially irrelevant documents might not do any harm, unless they were protected by solicitor-client privilege, or contained criticisms of partners and resulted in harm being done.⁶⁶¹

4.3.3

Delivery to the Americans

In April 2002, Staff Sergeant Callaghan left a message with the Americans, informing them that the CDs were ready.⁶⁶² An American agency retrieved the CDs on April 9, 2002.⁶⁶³ Staff Sergeant Callaghan assumed another American agency picked up the CDs on April 18 or 19, 2002.

4.4

PROJECT A-O CANADA PRESENTATIONS

4.4.1

April 2002 — Canadian Agencies and the Americans

Starting in April 2002, Project A-O Canada gave several presentations about its investigation to a number of government agencies, including the Americans, the RCMP's CID and the Canadian Department of Justice. As Inspector Cabana observed, Project A-O Canada was "very popular at the time."⁶⁶⁴

Although the content of the presentation varied occasionally, it generally followed a similar format. Entitled either "The Pursuit of Terrorism: A Canadian Response" or "The Pursuit of Terrorism: A Global Response," it addressed Project A-O Canada's mandate, the genesis of the investigation and the team structure, as well as more recent developments, such as the search results or Mr. Almalki's departure from Canada. Under the heading, "Present Situation," the

presentations invariably devoted significant attention to certain individuals, including Abdullah Almalki and Ahmad El Maati.⁶⁶⁵ Generally, Mr. Arar was included among the individuals mentioned; however, he received varying degrees of prominence, depending on the presentation.

Constable Rail of CID was present at one Project A-O Canada presentation in mid-April, 2002, and his notes indicate that Mr. Arar was portrayed as a target of the investigation, along with Mr. Almalki and Mr. El Maati.⁶⁶⁶

4.4.2

May 24, 2002 — CROPS

On May 24, 2002, Project A-O Canada made a presentation to CROPS.⁶⁶⁷ Under the heading “Present Situation,” it included the names of Abdullah Almalki and Ahmad El Maati. Although Mr. Arar was not listed here, he was mentioned later on as a “business associate” of Abdullah Almalki (with reference to the Mango’s Café meeting). The presentation also mentioned Mr. Arar’s rental application listing Mr. Almalki as a reference, his link to Mr. El Maati, and his status as a contract employee of The MathWorks, Inc. in Boston. According to the presentation as well, Mr. Arar had refused an interview request by Project A-O Canada. As already described, however, Mr. Arar had agreed to the interview, subject to very stringent conditions.⁶⁶⁸

4.4.3

May 31, 2002 — American Agencies

On May 31, 2002, Inspector Cabana and Staff Sergeants Callaghan and Corcoran travelled to Washington, D.C. to give a presentation at FBI Headquarters. A representative of the U.S. Department of Justice was present,⁶⁶⁹ as were representatives of the FBI and other agencies.⁶⁷⁰

The impetus for the presentation appears to have come, at least in part, from the Americans themselves. As it was, the FBI’s powers in Canada were limited to collecting intelligence on certain individuals. The FBI was apparently interested in many of the same individuals.

On May 21, 2002, Inspector Cabana and Staff Sergeants Callaghan and Corcoran met with representatives of the American agencies. The FBI, in particular, urged Project A-O Canada officials to present the status of their investigation to FBI prosecutors in Washington. The hope was that FBI prosecutors would begin a criminal investigation of Mr. Almalki and his associates in the United States.⁶⁷¹

Chief Superintendent Couture explained that the RCMP felt it was important to lobby for a criminal investigation in the United States, as this would have

allowed Project A-O Canada to obtain information from there more quickly. For its part, Project A-O Canada was conducting a criminal investigation; the team had obtained search warrants and conducted searches. Officials needed to show the court they were proceeding expeditiously after the searches, so that they could eventually request further detention of the seized articles. From Project A-O Canada's perspective, the pressure was on. Project A-O Canada officials felt that a criminal investigation would provide the FBI with the incentive needed to move quickly. Chief Superintendent Couture's view was that if the FBI initiated a criminal investigation things might go faster.⁶⁷²

Project A-O Canada's presentation to the Americans was similar to many of its recent presentations. Entitled "The Pursuit of Terrorism: A Canadian Response," it described the investigation's background, team structure and various stakeholders. Like the other presentations, it listed several names under "Present Situation," including Abdullah Almalki and Ahmad El Maati, among several others. Unlike in other presentations, however, Mr. Arar's name was included in this section. Inspector Cabana testified that Mr. Arar was only named as a person of interest, but could not explain why his name was mentioned here when it had not been included only a week earlier in the May 24, 2002 presentation to CROPS.

Clearly, Mr. Arar was not the main focus of the presentation, as his name appeared on only three of the more than 30 slides. The one page dedicated solely to Mr. Arar included the following information about him: he was a "business associate of Abdullah Al Malki;" the lease agreement for Mr. Arar's Ottawa residence listed Abdullah Almalki as a reference; he was linked to Mr. El Maati; he was a contract employee of The MathWorks, Inc. in Boston; and he had refused an interview request.

The presentation dealt with a number of other individuals, including Mr. Almalki, and it made reference to Amr El Maati.

In a concluding slide entitled "Project A-O Canada: What's Next," the presentation indicated that Mr. Arar, along with three other individuals, might be part of an investigative hearing under Bill C-36. As this type of hearing is limited to people who may be witnesses, it appears that as of May 31, 2002 Project A-O Canada did not intend to bring charges against Mr. Arar. Inspector Cabana confirmed this to be true and testified that it was still the case when he left Project A-O Canada on February 4, 2003.⁶⁷³

Although CID's Corporal Flewelling was scheduled to attend the Washington presentation on behalf of RCMP Headquarters, he did not receive his authorization in time. As a result, no one from Headquarters attended. Corporal Flewelling testified that it was not entirely abnormal for a division of

the RCMP to meet with the Americans in this manner, as long as Headquarters was aware of the subject of the discussion.⁶⁷⁴

On June 5, 2002, Staff Sergeant Corcoran spoke to an FBI agent about the American response to the May 31 presentation. The agent requested a copy of the presentation and other materials. He indicated that the presentation had been well received.

On June 26, 2002, Chief Superintendent Couture sent a letter to the U.S. Embassy on behalf of Project A-O Canada. While the letter mainly concerned outstanding requests for information and documentation from the FBI, it also mentioned the May 31 presentation at FBI Headquarters. The letter indicated that the FBI had requested a copy of the Project A-O Canada presentation of May 31, and that the information would be given to the FBI.

Staff Sergeant Corcoran met with the FBI about sharing information on July 8, 2002, and the FBI again requested copies of the presentation and other documents to show to its managers. The same day, Staff Sergeant Corcoran and Inspector Cabana updated the presentation.⁶⁷⁵

A current copy of the presentation, excluding speaking notes, was sent to the Americans on July 22, 2002.⁶⁷⁶ [***].⁶⁷⁷

4.5

MR. ARAR'S DEPARTURE FOR TUNISIA — JULY 2002

In mid-July 2002, Project A-O Canada officials learned that Mr. Arar and his family had left for Tunisia several weeks earlier. They also concluded that he did not plan on returning to live in Canada. Corporal Lemay met with Officer Thériault from Canada Customs to “red flag” Mr. Arar.

CSIS was informed of Mr. Arar's apparently permanent departure for Tunisia in the Project A-O Canada situation report for July 12, 2002.⁶⁷⁸ In a meeting on July 15, Project A-O Canada officials informed the Americans of Mr. Arar's departure. They discussed possible reasons for his departure, including whether it was as a result of the investigation, or if it had already been planned.⁶⁷⁹

Although Project A-O Canada officials expected that Mr. Arar would be returning to Canada, it does not appear they intended to interview him. That said, Corporal Lemay did spend some time in the summer revising questions that had been prepared for Mr. Arar's interview in January 2002 — the interview that never took place.⁶⁸⁰

4.6

THE TUNISIAN INQUIRIES

Project A-O Canada and CSIS officials met on August 28, 2002 to discuss various topics, including Mr. Arar's departure to Tunisia with his family.⁶⁸¹ CSIS offered to conduct trace checks on Mr. Arar with its foreign intelligence contacts. CSIS witnesses testified that no such requests were ever made.

Staff Sergeant Callaghan testified he did not have any knowledge that anyone in the RCMP induced, suggested, requested, or in any way caused the Tunisian military intelligence to visit Mourad Mazigh (Mr. Arar's brother-in-law) or Dr. Mazigh's father in Tunisia, in or around August 2002.⁶⁸² However, Dr. Mazigh's father was apparently asked certain questions about whether his son-in-law had moved to Tunisia, or was merely there on vacation.

4.7

THE PROPOSED INTERVIEWS OF MESSRS. EL MAATI AND ALMALKI (JANUARY 2002 TO SEPTEMBER 2002)

4.7.1

Efforts to Interview Mr. El Maati in Syria and Egypt

As noted above, Ahmad El Maati left Canada on November 11, 2001, and was arrested in Syria the next day.⁶⁸³ Following is a limited chronological description of Project A-O Canada's attempts to interview Mr. El Maati during his detention in Syria and during his subsequent detention in Egypt, where he was transferred in January or February 2002.

4.7.1.1

Proposed Interview in Syria

In December 2001 (perhaps even earlier), Project A-O Canada officials were deciding whether to interview Mr. El Maati about a number of issues, including Mr. Almalki's suspected involvement with al-Qaeda. The interview was considered an important step in their investigation, and Inspector Clement discussed the possibility with the Americans in December 2001.⁶⁸⁴

On January 9, 2002, Inspector Clement sent a fax to the RCMP liaison officer in Rome (the office responsible for Syria), describing Project A-O Canada's interest in Mr. El Maati and giving some details of the investigation.⁶⁸⁵ The fax referred to efforts already made on Project A-O Canada's behalf to determine if Syrian authorities would allow Mr. El Maati to be interviewed, and requested that another attempt be made, emphasizing the criminal investigation currently

underway in Canada. The fax indicated that Project A-O Canada officials had made representations to, and sought the assistance of, their American colleagues.⁶⁸⁶

In his testimony, Inspector Clement indicated that Project A-O Canada's aim for the interview was to try and establish certain facts about the investigation. With respect to human rights issues, Inspector Clement testified that although these rights were likely not held in as high regard in Syria as they are in Canada, Project A-O Canada officials had no evidence of torture at the time, nor was it an issue. They were more concerned about possible non-compliance with Canadian law regarding any statement they might obtain, as they wanted it to be admissible in Canadian courts.⁶⁸⁷

As discussed below, Project A-O Canada officials would have required approval from RCMP Headquarters to travel to Syria, following consultation with the Department of Foreign Affairs and International Trade (DFAIT).⁶⁸⁸ However, the fact that a liaison officer was involved at this stage meant that DFAIT was also involved, as liaison officers are responsible on an administrative level to DFAIT and operationally to the RCMP.⁶⁸⁹

Inspector Clement's notes for January 25, 2002 refer to an interesting conversation between Inspector Cabana and the Americans, in which they discussed Mr. El Maati's potential interview. Asked what Project A-O Canada's position would be if Mr. El Maati claimed to have been tortured, Inspector Clement responded that any allegations would be reported to the Canadian ambassador to Syria. The Ambassador would then meet with Mr. El Maati to determine his general demeanour and whether he had any injuries, and to try and obtain a statement. According to Inspector Clement, DFAIT was responsible for addressing any issue of torture.⁶⁹⁰

Inspector Clement said there was no evidence that Mr. El Maati had been tortured. Nor did he think it appropriate to cast aspersions on a country without having any facts indicating torture, even if the country was known to have a poor human rights record.⁶⁹¹

4.7.1.2

Proposed Interview in Egypt

On February 11, 2002, Inspector Clement learned that Mr. El Maati had been moved from Syria to Egypt. In the months that followed, the RCMP had numerous discussions about the possibility of interviewing him while he was in custody in Egypt. In the end, Project A-O Canada's efforts to interview Mr. El Maati were not successful.

In order to advance their efforts to interview Mr. El Maati, Project A-O Canada officials from time to time had discussions with senior officers of “A” Division, CID at RCMP Headquarters, the RCMP LO in Rome, CSIS, DFAIT, and the Americans. In all of these dealings, Project A-O Canada’s primary focus was to interview Mr. El Maati as part of its ongoing criminal investigation. Officials considered it vitally important to obtain information from him concerning their investigation. This became increasingly important after the January 22, 2002 searches.

Over the course of these discussions, officials raised the issue of torture, either in Syria or in Egypt. While Project A-O Canada officers thought it possible, they had no indication that torture had, in fact, occurred, at least until July 2002, when a briefing note to RCMP Commissioner Zaccardelli, signed by Superintendent Pilgrim from CID, stated that there were indications that Mr. El Maati had been exposed to “extreme treatment” while in Egyptian custody.⁶⁹² Moreover, they considered torture of a Canadian detained abroad to be more of a concern for DFAIT.

On July 4, 2002, Canada’s ambassador to Syria, Franco Pillarella, facilitated a meeting in Damascus between General Khalil, head of the Syrian Military Intelligence, and the RCMP liaison officer in Rome who is responsible for Syria.

In July 2002, the RCMP was considering the possibility of interviewing Mr. El Maati abroad. The RCMP did not conduct any interviews of Mr. El Maati, nor did the RCMP provide a list of questions for Mr. El Maati to any foreign government agency.

On August 13, 2002, Project A-O Canada received a fax indicating DFAIT consular personnel had visited Mr. El Maati in Egypt the preceding day.⁶⁹³ Mr. El Maati said he wanted to return to Canada, and that he had been beaten, subjected to electric shock, and forced to give false information while incarcerated in Syria. However, he did not give details of these admissions.⁶⁹⁴ Mr. El Maati also said he had been held in four different prisons in Egypt. He wanted his family advised; he wanted a lawyer; and he wanted to talk to CSIS officials in Toronto.⁶⁹⁵ The fax indicated that consular officers were looking into the possibility of arranging for legal counsel through Mr. El Maati’s mother or other relatives in Cairo.⁶⁹⁶ That same day, James Gould of DFAIT pointed out to Project A-O Canada that Mr. Almalki was in a Syrian prison, something that Mr. Gould felt posed a potential problem.⁶⁹⁷

The fax was the first clear indication to Project A-O Canada that Mr. El Maati might have been tortured. Moreover, it appeared that the media would soon be aware of these allegations. In the following days, Project A-O Canada officials met with partner agencies, including DFAIT and CSIS, to prepare a media

response. DFAIT officers in Cairo were exploring options for helping Mr. El Maati's relatives visit, the clear implication being that the family would soon learn of the torture allegations.⁶⁹⁸ There was concern that these allegations, combined with the RCMP's search of Mr. El Maati's residence on January 22, 2002, would lead to intense media scrutiny.⁶⁹⁹

At this point, it was Project A-O Canada's understanding that DFAIT was responsible for dealing with issues of torture, as well as for the return of Mr. El Maati to Canada.⁷⁰⁰ DFAIT inquired whether the RCMP wished to lay charges against Mr. El Maati, if and when he returned, but Project A-O Canada officials did not have sufficient evidence to lay charges at the time.⁷⁰¹ Apparently, Project A-O Canada was also concerned that, if released, Mr. El Maati would become a national security concern in Canada because of alleged threats he had made, despite the possibility that the threats had been obtained through torture.⁷⁰²

Officials at Project A-O Canada were still interested in interviewing Mr. El Maati in Egypt,⁷⁰³ believing that if he was released, he would not return to Canada and they might lose track of him.⁷⁰⁴ Moreover, Mr. El Maati's allegations of torture were against Syrian, not Egyptian, authorities (although the briefing note described above referred to possible "extreme treatment" by Egyptian authorities as well).⁷⁰⁵

On August 15, 2002, Project A-O Canada requested that the RCMP Rome LO contact Egyptian authorities to request access to Mr. El Maati for an interview. This request had been approved by the OIC of "A" Division CROPS at a meeting on August 13, 2002. On August 28, 2002, Project A-O Canada personnel met to prepare an interview plan and questions for Mr. El Maati, in the event the Egyptians agreed to an interview.

On September 10, 2002, Project A-O Canada tasked the RCMP LO with a request to get further information from the Syrian authorities in preparation for their proposed interview of Mr. El Maati in Egypt. As noted however, this interview with Mr. El Maati in Egypt never took place.

4.7.2

Mr. Almalki — Questions and/or Interviews in Syria

As noted above, Mr. Almalki left Canada for Malaysia in late November 2001. At one point, Project A-O Canada officials expected Mr. Almalki to return to Canada around Christmas, but he did not, and officials lost track of him.

Project A-O Canada did not learn of Mr. Almalki's whereabouts again until May 31, 2002. The news came to Corporal Flewelling at CID that Mr. Almalki was likely in Syria (the information was not yet confirmed), and that he might have

been arrested/detained by Syrian authorities within the last couple of days. Corporal Flewelling passed the information to Project A-O Canada. The Foreign Intelligence Division (ISI) in DFAIT had already been informed.⁷⁰⁶

At a June 3, 2002 meeting the RCMP urged that the United States be advised of Mr. Almalki's possible detention. The American officials were informed the same day. The Project A-O Canada team indicated its wish to interview Mr. Almalki.⁷⁰⁷

According to RCMP officials, CSIS suggested that the RCMP lay charges against Mr. Almalki, so that CSIS could then approach the Syrians and ask for his return. RCMP officials were under the impression that CSIS had a relationship with the Syrian Military Intelligence, and could secure Mr. Almalki's return to Canada. When this scenario was put to a CSIS witness during testimony, he rejected it. As with Mr. El Maati, however, Project A-O Canada did not have sufficient evidence to lay charges.

During the summer months that followed, Project A-O Canada had discussions with the Americans, DFAIT, RCMP-CID, the RCMP LO in Rome, and senior officers of "A" Division, all in an attempt to gain access to Mr. Almalki in Syria and interview Mr. El Maati in Egypt.

On July 10, 2002, Project A-O Canada officials discussed among themselves the possibility of sharing information with the Syrians in order to gain access to Mr. Almalki.⁷⁰⁸ A protocol for sharing Project A-O Canada information with Syrian authorities was discussed again at a meeting on July 16, 2002, at which the former RCMP LO for Syria was present. It was concluded that any relationship between Project A-O Canada and Syrian intelligence would have to be coordinated through the RCMP LO in Rome.⁷⁰⁹

As already mentioned, when DFAIT informed Project A-O Canada officials on August 13, 2002 of Mr. El Maati's allegations of torture, the department also advised that Mr. Almalki's incarceration in a Syrian prison posed a potential problem.⁷¹⁰ However, Project A-O Canada officials regarded Mr. Almalki's release and the possibility of torture as concerns for DFAIT.⁷¹¹ They continued their attempts to obtain information from the Syrians, or to gain access to Mr. Almalki.

On August 20, Project A-O Canada officials considered the possibility of inviting the Syrians to Canada to review their investigative material, and to provide them with questions for Mr. Almalki on the RCMP's behalf.⁷¹² However, they never did so.

On September 10, 2002, Chief Superintendent Couture and senior officers from Project A-O Canada met with a number of DFAIT officials, including Ambassador Pillarella. The meeting dealt primarily with the type of assistance

DFAIT could provide the RCMP, either for sending Mr. Almalki questions, or for arranging an interview.^{713, 714} Inspector Cabana summarized Project A-O Canada's investigation thus far. For his part, Ambassador Pillarella explained the intricacies of the Syrian intelligence community, and indicated that a Syrian general (General Khalil) had finally admitted having Mr. Almalki in custody.⁷¹⁵ It is also likely that Ambassador Pillarella agreed to facilitate future requests to Syrian authorities, and may have made a comment to the effect that the Syrians would probably expect something in return for sharing their information with Canada.⁷¹⁶

At this same meeting, a junior DFAIT officer, Jonathan Solomon, raised the risk of torture. On the topic of sending questions for Mr. Almalki to Syria, he said something to the following effect: "If you are going to send questions, would you ask them not to torture him."⁷¹⁷ Mr. Solomon had recently completed a posting with the Human Rights and Humanitarian Law division of DFAIT. He had seen reports on Syria, and was surprised that the issue of asking questions was even on the table, given his understanding that Syrian detention practices could involve aggressive questioning, especially if no one else was present.⁷¹⁸

Mr. Solomon described the situation afterwards as awkward, with the RCMP remaining nonplussed. Mr. Solomon remained quiet as a result of the ensuing discomfort.⁷¹⁹ However, he believed that someone turned to Ambassador Pillarella to determine whether the statement about torture was accurate, and the Ambassador made some sort of affirmative gesture or comment.⁷²⁰

Ambassador Pillarella did not recall Mr. Solomon's comment.⁷²¹ He was on vacation at the time, had only dropped by to see friends, and was invited to the meeting. He did not take notes, and his recollection of the meeting was understandably poor.⁷²²

Despite the fact that Mr. Solomon's comment was made seriously, there was little, if any, discussion about the possibility of torture. A brief discussion may have ensued, in which another, more senior DFAIT officer (Scott Heatherington), also said something about the possibility of torture, referring to Mr. El Maati's allegation that he had been tortured in Syria. Inspector Cabana commented, possibly in response, that it was possible Mr. El Maati had only claimed torture, but that the torture had not actually occurred.⁷²³

Mr. Heatherington had no recollection of the meeting, but he did not dispute that something to this effect was said. According to him, DFAIT was comfortable with the RCMP interviewing Canadian citizens anywhere, but was also trying to make the RCMP aware of conditions in countries like Egypt and Syria. At the time, DFAIT knew of Mr. El Maati's claims in Egypt that he had been tortured by the Syrians.⁷²⁴

Inspector Cabana agreed that discussions of torture possibly took place at this meeting, although he could not recall specific comments. When shown the comment he reportedly made, that individuals may claim torture when it has not actually occurred, he stood by it. His view was that this is always a possibility.⁷²⁵

The same day as the meeting, Inspector Cabana sent a fax to Staff Sergeant Fiorido in Rome, who was the RCMP LO responsible for Syria.⁷²⁶ Inspector Cabana referred to the meeting with Ambassador Pillarella. He then wrote as follows:

It is our understanding that the Syrians are prepared to question ALMALKI on our behalf. While their offer is appreciated, it obviously would be in our best interests to interview ourselves.

We would request that you approach your Syrian contact to see if they will grant us access to conduct our own interview of this individual. The Syrians have been most cooperative with our earlier requests and we are hoping that our requests will meet with favourable review. In the alternative, we are contemplating providing the Syrian officials with questions for ALMALKI.

The Syrian authorities have expressed an interest in information we have on ALMALKI and we are lead to believe that they would like access to our information to assist them in their inquiries. I would propose that the Syrians be approached and advised that we would like to extend an invitation for their investigators to come to Canada and meet with our team to share information of common interest.

On January 15, 2003, Project A-O Canada delivered questions for Mr. Almalki to the Syrian Military Intelligence through the LO in Rome and the Canadian ambassador to Syria. The circumstances are discussed in detail in a later section of this Report.⁷²⁷

Mr. Almalki was released from Syrian custody and returned to Canada in August 2004.

4.8

PROJECT A-O CANADA'S RELATIONSHIP WITH OTHER AGENCIES: JANUARY TO SEPTEMBER 2002

During its investigation prior to Mr. Arar's detention in New York, Project A-O Canada interacted with other agencies, primarily CSIS and the FBI. Earlier sections of this report describe many of the specific communications with each of these agencies that are relevant to the mandate of this Inquiry. However, the Inquiry also heard a good deal of evidence about the nature of the relationships between these agencies and Project A-O Canada. While this evidence arguably does not bear directly on the Inquiry's mandate, it nonetheless provides

background and context to the investigation as it relates to Mr. Arar. Some of the key features of these relationships are described below.

4.8.1

CSIS

Viewed from Project A-O Canada's perspective, the relationship with CSIS was frustrating at times.

Project A-O Canada was concerned that CSIS was not providing full and timely disclosure of all relevant information. CSIS, on the other hand, maintained that it provided full and proper disclosure to Project A-O Canada throughout the investigation.

Project A-O Canada officials also felt that CSIS had not provided adequate assistance in analysing the results of the January 22, 2002 searches, and that other agencies had been more helpful. According to CSIS, however, its resources were strained at the time, and it did the best it could in the circumstances.

For its part, CSIS was concerned about the RCMP's close relationship with the Americans. CSIS periodically complained about these relationships,⁷²⁸ suggesting that the RCMP was meeting with the American agencies too frequently and giving them too much access to information about its investigation.

In contrast, Project A-O Canada was of the view that full and open sharing in a timely manner was essential in the post-9/11 climate. Officials had been directed by superior officers at "A" Division and RCMP Headquarters to take this approach in communicating with the American agencies. Indeed, Project A-O Canada officials pointed out that senior officers were fully aware of how they were conducting the investigation, and explicitly or tacitly approved of their approach.

Although the relationship between Project A-O Canada and CSIS was at times strained, it appears that this did not have a direct bearing on the events affecting Mr. Arar.

4.8.2

The FBI

Project A-O Canada also experienced some frustration in its dealings with the FBI. As mentioned, it appears that Project A-O Canada and the FBI were interested in some of the same individuals.⁷²⁹ Even so, the FBI agents revealed very little to Project A-O Canada about the extent and nature of their interest. In contrast, Project A-O Canada was far more responsive to FBI requests.⁷³⁰ The

Project's attempts to achieve greater cooperation with the FBI — its May 31, 2002 presentation, for example — were generally unsuccessful.

Despite the apparent understanding that caveats were down for information sharing, most FBI documents continued to include caveats directed at Project A-O Canada. For instance, on January 24, 2002, Project A-O Canada received a letter from the FBI, together with a caveat prohibiting distribution of the information to third parties or its use in any proceedings.⁷³¹

4.8.3

American Agencies in General

In his testimony, Inspector Clement spoke about the need to exercise caution with American agencies, especially regarding their potential for using strong-arm tactics in the fight against terror. He understood that American agencies had been accorded sweeping powers by presidential decree, and that they most likely used them.⁷³²

The relationship between Project A-O Canada and the American agencies created problems in its relationship with RCMP Headquarters. As a result, several meetings were held at which ad hoc resolutions were reached. The relationship with the Americans also concerned CSIS. According to Mr. Hooper, Superintendent Pilgrim assured him that restraints and restrictions had been imposed on Project A-O Canada's relationship with the Americans, and that the problems cited in his report had been dealt with. Nevertheless, CSIS observed that American agents continued to frequent "A" Division offices. Although CSIS knew now they were not part of a joint investigation, their access was a continuing concern. Even after a meeting on September 26, 2002, Assistant Commissioner Proulx was advised that the Americans were still at "A" Division. By mid- October 2002, American access was curtailed, likely as a result of the controversy surrounding Mr. Arar's removal to Syria.⁷³³

No suggestion was made at the September 26 meeting that caveats should go back on information shared with the Americans.⁷³⁴ Nor, during the period leading up to that time, does it appear that American correspondence with Project A-O Canada included explicit caveats.⁷³⁵

4.9

MR. ARAR'S STATUS AS OF SEPTEMBER 26, 2002

Immediately preceding Mr. Arar's detention in New York on September 26, 2002, Project A-O Canada still considered him to be peripheral to its investigation, despite the significant amount of information they had acquired about him.⁷³⁶ He had been linked to the main targets of the Project A-O Canada investigation, but

officials wanted to know more, particularly about his links to Mr. Almalki, and whether Mr. Arar was involved with “JIHAD training, terrorist groups and or acts.”⁷³⁷

To summarize, prior to September 26, 2002, Project A-O Canada considered Mr. Arar to be, at best, a person of interest that the RCMP wished to interview as a witness. The RCMP did not have evidence to support a search warrant or a wiretap, let alone the evidence needed to lay criminal charges.

4.10

INFORMATION ON MR. ARAR PROVIDED TO AMERICAN AUTHORITIES PRIOR TO SEPTEMBER 26, 2002

It is clear from the discussion above that Project A-O Canada provided American authorities with a substantial amount of information about Mr. Arar on different occasions in the months prior to September 26, 2002. Despite the Project’s assessment that Mr. Arar was no more than a person of interest, the information passed to the Americans included a number of misleading or false statements that were potentially damaging, such as:

- The description of Mr. Arar and Dr. Mazigh as being members of a “group of Islamic Extremist individuals suspected of being linked to [the] Al Qaeda terrorist movement.”
- Several references to Mr. Arar as a “suspect,” “principal subject,” target or important figure.
- The assertion that Mr. Arar had refused an interview with the RCMP.

For convenience, the information provided to the Americans before September 26, 2002 is summarized in Annex 1.

In addition to the specific exchanges of information listed in Annex 1, it is possible, indeed likely, that information on him was provided to the Americans during regular meetings that took place with Project A-O Canada, starting in October and November 2001 and continuing until Mr. Arar’s removal to Syria. Informal exchanges would also have occurred as a result of the frequent telephone contacts that Project A-O Canada officers had with the Americans.⁷³⁸

For example, Staff Sergeant Corcoran’s notes of a meeting on April 30, 2002 with the Americans indicate that there was “no new information on Arar.” Obviously, Mr. Arar was a subject of discussion with the Americans, but the contents of these discussions were not available to the Commission.⁷³⁹

The Americans may also have had access to Project A-O Canada situation reports during their regular visits, and the contents of these reports were likely discussed during meetings.⁷⁴⁰

As noted previously in this Report, no explicit caveats were attached to the information sent to the Americans. One of the reasons given for this was that all the information in question (i.e., that might have been subjected to a caveat) was already being discussed in open meetings between the RCMP and its partner agencies.⁷⁴¹

4.11

EVIDENCE OF AN AMERICAN INVESTIGATION OF MR. ARAR

This section reviews evidence related to whether the FBI had an investigation involving Mr. Arar, and if so, to what extent these investigations obtained information other than that provided by Project A-O Canada.

As the Americans declined to testify at this Inquiry, this discussion is based solely on the evidence of Canadian officials. That being the case, it is not possible, in some instances, to reach a definitive conclusion.

In summary form, a review of the evidence discloses the following:

- It is quite possible that the Americans were investigating Mr. Arar prior to 9/11.
- Starting in early November 2001, Project A-O Canada began providing information about Mr. Arar to American agencies, and continued to do so up until his detention in New York.
- By February 2002, the FBI was possibly conducting an investigation that included Mr. Arar.
- Despite an extensive information-sharing relationship between Project A-O Canada and the American agencies, it is not clear whether the Americans had independently produced information adverse to Mr. Arar.

The following chronological account, through to September 2002, sets out developments in the Project A-O Canada investigation and evidence of American interest in Mr. Arar, and how the two became intertwined.

November 2001

By early November 2001, Project A-O Canada had begun to provide the Americans with a significant amount of information on Mr. Arar, mainly by way of the November 2, 2001 memo to the FBI requesting further information, and the request for TECS checks and TECS lookouts on Mr. Arar and his wife and others. The request for TECS checks and lookouts described Mr. Arar and the others as part of a group of “Islamic extremist individuals.”⁷⁴² The November 2 memo said that Mr. Arar was a “close associate” of Mr. Almalki, and that he had

listed Mr. Almalki as his emergency contact on his lease application. These exchanges may have increased American interest in Mr. Arar.

The request for TECS checks resulted in information from the Americans about the cross-border travels of Mr. Arar and his wife. This might indicate that Mr. Arar and Dr. Mazigh had previously been placed on a lookout, implying that they were possibly the subjects of a prior investigation. On the other hand, the fact that Mr. Arar and Dr. Mazigh's vehicle turned up in the TECS system is not conclusive of an American investigation of Mr. Arar, as information about a person's travels may be in TECS for a number of other reasons.⁷⁴³ TECS contains more than just law enforcement and terrorist suspect information; it also contains information entered for immigration and monitoring purposes. For example, one database that feeds into TECS monitors the history of individuals crossing into the United States, in part to verify that they obey immigration laws and stay in the country for the permitted time. Another database feeding into TECS stores traveller arrival and departure information, including car travel between the United States and Canada.⁷⁴⁴ One Canadian Customs agent also described readers that photograph vehicle license plates at land border crossings and run checks for vehicle offences.⁷⁴⁵ This information may also end up in the TECS system.

Whatever the explanation for Mr. Arar's name and vehicle appearing in TECS, on November 6, 2001, Constable Lang was advised that further checks were being conducted on him. Apparently, the FBI was now investigating Mr. Arar because there were positive hits on him in TECS.⁷⁴⁶

Constable Lang testified that he was never told there was a U.S. investigation of Mr. Arar, but all the information he was receiving at that point led him to believe there was.⁷⁴⁷ According to Staff Sergeant Callaghan, the number of times Mr. Arar's car was identified demonstrated that the Americans had an independent lookout on him before Project A-O Canada began its investigation.⁷⁴⁸

December 2001

American authorities were now fully implicated in the Project A-O Canada investigation.

February 2002

When the FBI visited Project A-O Canada in February 2002, two agents expressed an interest in Mr. Arar and others. During their visit, they were permitted to see the material Project A-O Canada had assembled on Mr. Arar.

Despite the interest in Mr. Arar, the FBI never made it clear what its investigation had revealed, or whether its interest preceded Project A-O Canada's.⁷⁴⁹

Corporal Lemay, who was in close contact with the FBI agents during this February visit, could not say whether Mr. Arar was the subject of a separate FBI investigation, or if the FBI was simply responding to the RCMP's interest in him.⁷⁵⁰

However, it is clear that by this point the FBI was reaching conclusions about Mr. Arar that Project A-O Canada officials were not willing to, based on the evidence they had. Either the Americans had more information, or they were simply quicker to judge Mr. Arar's links to terrorism. Again, it is impossible to tell.

March and April 2002

Information sharing with the Americans increased during this period. By April 2002, the full contents of the Project A-O Canada Supertext database had been provided to the U.S. agencies.

May and June 2002

The exchange of information between Project A-O Canada, and the Americans continued during these two months.

During Project A-O Canada's May 31, 2002 presentation in Washington, D.C., no mention was made of a prior investigation of Mr. Arar.⁷⁵¹ The presentation included information on Mr. Arar.

Further attempts were made to obtain information on Mr. Arar from American authorities during this period, but with little success.

July and August 2002

The Americans and Project A-O Canada continued to exchange information during July and August 2002, including information related to Mr. Arar. On July 15, 2002, Project A-O Canada officials informed the Americans of Mr. Arar's departure to Tunisia, and discussed with the Americans whether he had left as a result of the investigation, or if the departure was already planned.⁷⁵²

Conclusions Regarding the American Investigation into Maher Arar

Many Project A-O Canada officers testified about their belief that the Americans were undertaking a separate, independent investigation of Mr. Arar.⁷⁵³ It is conceivable, however, that the FBI had little additional information on Mr. Arar, but was simply recycling and refining information received from Canadian authorities. Unfortunately, it is impossible to determine with certainty which view is correct, given the lack of evidence from the United States.

NOTES

- ¹ [IC] Cabana testimony (October 25, 2004), pp. 2315–2316.
- ² [IC] Clement testimony (January 18, 2005), pp. 8866–8867.
- ³ [IC] Cabana testimony (October 25, 2004), p. 2339.
- ⁴ Officers' notes from September 25 and September 26, 2001 refer to a meeting where the three goals of Project Shock and the introduction of the Financial Intelligence Branch were discussed. Clement notes, vol. 1, book 2, p. 46; [IC] Clement testimony (January 18, 2005), pp. 8876–8879; Couture notes, p. 1; [IC] Couture testimony (December 7, 2004), pp. 7072–7074.
- ⁵ [IC] Cabana testimony (October 25, 2004), pp. 2339–2341 and [IC] (November 2, 2004), pp. 3550–3551; [IC] Clement testimony (January 18, 2005), pp. 8876–8877. Prior to this meeting, IPOC units focused primarily on collecting evidence for the purpose of prosecuting offences.
- ⁶ [IC] Clement testimony (January 18, 2005), pp. 8877–8878.
- ⁷ Exhibit C-30, Tab 13.
- ⁸ [IC] Pilgrim testimony (January 26, 2005), pp. 10381–10382. This meeting was referred to in an FBI letter to the RCMP and CSIS dated September 23, 2001. The letter concerned certain individuals that the FBI believed were part of a terrorist cell in Canada. Superintendent Wayne Pilgrim, the Officer in Charge of NSIB, could not recall if there was a discussion at the meeting about specific activities that would have led to the September 23, 2001 letter.
- ⁹ [IC] Cabana testimony (November 2, 2004), p. 3651.
- ¹⁰ Section 12 of the *CSIS Act* sets out the criteria permitting CSIS to investigate an individual for matters related to Canadian security. CSIS uses a targeting system that classifies persons being investigated as level 1, 2 or 3 targets. It is not necessary to describe this targeting process in detail here. However, from time to time, the Report will refer to a CSIS target, meaning a person who is the subject of an ongoing CSIS investigation pursuant to the targeting process.
- ¹¹ [IC] Hooper testimony (September 22, 2004), pp. 1466–1467.
- ¹² *Ibid.*, pp. 1467–1468; [P] Hooper testimony (June 22, 2004), p. 407. Mr. Hooper became the Assistant Director of Operations at CSIS Headquarters in June 2002.
- ¹³ [IC] Hooper testimony (September 22, 2004), p. 1468 and [IC] (August 26, 2005), pp. 17841–17843.
- ¹⁴ [IC] Hooper testimony (August 26, 2005), pp. 17843–17844. In a letter dated September 24, 2001, Mr. Hooper wrote to RCMP "O" Division in Toronto with the information promised at the September 22 meeting. The copy of the letter that was reviewed by the Commission did not include the al-Qaeda profile attachment. Exhibit C-330: letter dated September 24, 2001 to Chief Superintendent John MacLaughlan from William J. Hooper re: Multiple Terrorist Attacks in the United States. [IC] Hooper testimony (August 26, 2005), pp. 17847–17849.
- ¹⁵ Exhibit C-30, Tab 14. September 26, 2001 CSIS advisory letter, p. 2. According to Mr. Hooper, the police consulted with the Ontario Crown Attorney to determine whether the information CSIS had provided them could be used as evidence in a criminal prosecution. All of the material information the police now had derived from a CSIS investigation, which is conducted at a lower threshold than a criminal investigation. Mr. Hooper stated that the Ontario Crown Attorney's position was that the information was tainted and could not be used as evidence in criminal litigation. This resulted in the focus of the investigation moving from prosecution to more of a disruption exercise, whereby the police would assist CSIS in dismantling a group of alleged terrorists. [IC] Hooper testimony (September 22, 2004), pp. 1469 and 1474–1475.
- ¹⁶ [IC] Hooper testimony (September 22, 2004), p. 1469.
- ¹⁷ *Ibid.*, pp. 1471–1473. Under s. 2 of the *CSIS Act*, the definition of "threats to the security of Canada" refers to activities "relating to Canada" or "detrimental to the interests of Canada."

- ¹⁸ [IC] Testimony (September 14, 2004), pp. 278–279.
- ¹⁹ [IC] Testimony (September 13, 2004), p. 175.
- ²⁰ [IC] Hooper testimony (September 22, 2004), p. 1474 and [IC] (August 26, 2005), pp. 17837–17838.
- ²¹ [P] Cabana testimony (August 9, 2005), p. 9371.
- ²² [P] Hooper testimony (August 25, 2005), pp. 10745–10746.
- ²³ The investigation of Abdullah Almalki is described below in Section 3.2
- ²⁴ Cabana notes, book 2, p. 15; [IC] Cabana testimony (October 25, 2004), p. 2329.
- ²⁵ On October 5, 2001, Inspector Garry Clement (CROPS) informed the soon-to-be Officer in Charge of Project A-O Canada that the project would be taking over management of the Almalki investigation. Cabana notes, book 2, p. 19. In effect, this marked the beginning of Project A-O Canada as separate from Project O Canada in Toronto. As discussed later in this report, the two Projects continued to meet and share information from time to time.
- ²⁶ [IC] Cabana testimony (October 25, 2004), p. 2340.
- ²⁷ *Ibid.* and [IC] (November 2, 2004), p. 3545.
- ²⁸ [P] Cabana testimony (June 29, 2005), pp. 7782–7783.
- ²⁹ [IC] Cabana testimony (October 25, 2004), pp. 2340–2341.
- ³⁰ *Ibid.*, pp. 2342–2343 and 2381; [IC] Clement testimony (January 18, 2005), pp. 8880–8881.
- ³¹ [IC] Clement testimony (January 18, 2005), p. 8881. When Project A-O Canada was created, NSIS units were located in all major Canadian cities. In February 2002, NSIS units in Toronto, Montreal, Vancouver and Ottawa became integrated policing units called Integrated National Security Enforcement Teams (INSETs).
- ³² [IC] Couture testimony (December 7, 2004), pp. 7324–7325.
- ³³ After leaving Project A-O Canada, Inspector Cabana was promoted to Superintendent, the position he currently holds. For clarity, this Report refers to him throughout by the rank of Inspector, the rank which he held at the time.
- ³⁴ In January 2002, Inspector Cabana became the Officer in Charge of “A” Division’s IPOC unit. He remained in this position during his time with Project A-O Canada and returned to his duties in IPOC when he left Project A-O Canada on February 4, 2003. [IC] Cabana testimony (October 25, 2004), p. 2313.
- ³⁵ *Ibid.*, pp. 2311–2314.
- ³⁶ [IC] Couture testimony (December 7, 2004), pp. 7323–7324; [IC] Clement testimony (January 18, 2005), pp. 8884–8885. The Commanding Officer of “A” Division, Assistant Commissioner Dawson Hovey, approved the appointment of Inspector Cabana, as movement of an officer within “A” Division required his approval. Apart from Inspector Cabana, Assistant Commissioner Hovey was not involved in assigning or hiring personnel for the team. [IC] Hovey testimony (January 17, 2005), pp. 8643 and 8645.
- ³⁷ [IC] Clement testimony (January 18, 2005), p. 8884.
- ³⁸ Inspector Clement personally selected some members of the team. Any members selected by Inspector Cabana were subject to approval by Inspector Clement. *Ibid.*, p. 8882 and [IC] (January 19, 2005), p. 9249; [IC] Cabana testimony (October 25, 2004), p. 2372.
- ³⁹ [IC] Cabana testimony (October 25, 2004), pp. 2369–2372; [IC] Couture testimony (December 6, 2004), p. 7027; [IC] Clement testimony (January 18, 2005), pp. 8882–8884. Many RCMP witnesses spoke about the advantages of integrated operations involving many agencies.
- ⁴⁰ [IC] Couture testimony (December 6, 2004), p. 7030; [IC] Clement testimony (January 18, 2005), p. 8886.
- ⁴¹ [IC] Cabana testimony (October 25, 2004), pp. 2374–2375; [IC] Clement testimony (January 18, 2005), pp. 8882–8883 and [IC] (January 19, 2005), pp. 9200–9201.

- ⁴² [IC] Cabana testimony (October 25, 2004), pp. 2372–2375 and [IC] (November 2, 2004), pp. 3529–3530.
- ⁴³ [IC] Cabana testimony (October 25, 2004), pp. 2376–2377. At the beginning of the Project, Sergeant Walsh also served as lead investigator and project scribe for meetings. Once he became the Project's affiant (the person swearing affidavits), Staff Sergeants Callaghan and Corcoran took over the lead investigator role. Sergeant Walsh also drafted the Project's situation reports from time to time. [IC] Callaghan testimony (November 3, 2004), pp. 3865–3866; [IC] Walsh testimony (November 29, 2004), pp. 5928–5930.
- ⁴⁴ [IC] Lemay testimony (November 16, 2004), p. 5273.
- ⁴⁵ [IC] Lang testimony (November 18, 2004), pp. 5751 and 5753.
- ⁴⁶ [IC] Clement testimony (January 18, 2005), p. 8895.
- ⁴⁷ [IC] Corcoran testimony (November 9, 2004), p. 4614.
- ⁴⁸ Corporal Buffam was the first member of NSIS to join the team. Over time, three other members of NSIS came on board on a full-time basis and another individual joined on a part-time basis. [P] Cabana testimony (June 29, 2005), p. 7833.
- ⁴⁹ Corporal Buffam did not mention CSIS, but members of NSIS usually have contact with CSIS.
- ⁵⁰ [IC] Cabana testimony (October 25, 2004), pp. 2378 and 2381; [IC] Buffam testimony (December 1, 2004), pp. 6378–6380.
- ⁵¹ [IC] Clement testimony (January 19, 2005), pp. 9220–9221.
- ⁵² *Ibid.*, p. 9250. For awhile, some members of Project A-O Canada did not have the appropriate top secret security clearance. However, this is not relevant to Mr. Arar's situation.
- ⁵³ [IC] Couture testimony (December 6, 2004), p. 7029.
- ⁵⁴ *Ibid.*, pp. 7027–7029.
- ⁵⁵ [IC] Cabana testimony (October 25, 2004), p. 2377.
- ⁵⁶ [IC] Cabana testimony (November 2, 2004), pp. 3526–3527.
- ⁵⁷ [IC] Cabana testimony (October 25, 2004), p. 2378; Exhibits C-172, C-173, C-174 and C-175.
- ⁵⁸ [IC] Buffam testimony (December 1, 2004), pp. 6352–6355 and 6357–6358.
- ⁵⁹ [IC] Pilgrim testimony (January 26, 2005), p. 10328.
- ⁶⁰ [IC] Buffam testimony (December 1, 2004), p. 6349.
- ⁶¹ [IC] Couture testimony (December 7, 2001), pp. 7061–7062; [IC] Pilgrim testimony (January 28, 2005), p. 10726.
- ⁶² Exhibit P-12, Tab 45, p. 15 (syllabus). Superintendent Pilgrim testified that at the time of 9/11, the RCMP's national security training course offered minimal training in Sunni Islamic extremism. This topic was usually addressed during CSIS presentations, which were part of the threat assessment portion of the training course. Superintendent Pilgrim stated that efforts were made to enhance the focus on Sunni Islamic extremism in the revamped course. [IC] Pilgrim testimony (January 26, 2005), pp. 10328–10330 and [IC] (January 28, 2005), pp. 10725–10726.
- ⁶³ [IC] Corcoran testimony (November 9, 2004), p. 4646; [IC] Lemay testimony (November 16, 2004), p. 5276; [IC] Walsh testimony (November 29, 2004), pp. 5949–5950; [IC] Buffam testimony (December 1, 2004), pp. 6347–6348. According to Inspector Cabana, space was limited because Bill C-36 was a new training initiative. Due to the limited seating, he could not release everyone to go on this training course. He would send as many people as there were reserved seats. He noted, however, that when Bill C-36 was enacted, RCMP Headquarters, with the assistance of the Department of Justice, prepared a training and information package, which included a CD and a manual. This package was distributed to members of the RCMP. [P] Cabana testimony (June 29, 2005), pp. 7837–7838 and pp. 7840–7841.
- ⁶⁴ [IC] Cabana testimony (November 1, 2004), p. 3499.
- ⁶⁵ [P] Cabana testimony (June 29, 2005), p. 7838.

- ⁶⁶ [IC] Corcoran testimony (November 9, 2004), pp. 4637–4638.
- ⁶⁷ [IC] Buffam testimony (December 2, 2004), pp. 6643–6646 and 6650–6651.
- ⁶⁸ [IC] Cabana testimony (November 1, 2004), pp. 3499–3500. Superintendent Pilgrim testified that immediately after 9/11, there were few officers in the RCMP with national security experience. Despite the need to formally train officers who were now joining the national security program at RCMP Headquarters and in the divisions, the new officers could only be released for training in small numbers, if at all. Often officers being trained in national security were held back due to operational necessity. The only other option available was on-the-job training where officers new to national security were trained by other officers with some degree of experience in this area. [IC] Pilgrim testimony (January 28, 2005), pp. 10733–10734.
- ⁶⁹ [IC] Walsh testimony (November 29, 2004), p. 5950 and [IC] (November 30, 2004), p. 6247.
- ⁷⁰ These policies are described below in Section 3.1.1.
- ⁷¹ [P] Cabana testimony (June 29, 2005), p. 8065.
- ⁷² *Ibid.*, pp. 8065–8067. Inspector Cabana did note that one of the two assistant managers of the Project had been seconded for a number of years to the RCMP prior to his assignment to Project A-O Canada. Inspector Cabana believed he was fully aware of RCMP policies and had received RCMP training during that time. *Ibid.*, pp. 8065–8066.
- ⁷³ [IC] Couture testimony (December 6, 2004), pp. 7029–7030.
- ⁷⁴ [IC] Couture testimony (December 7, 2004), pp. 7326–7327.
- ⁷⁵ [IC] Cabana testimony (October 25, 2004), pp. 2368–2369; [IC] Couture testimony (December 6, 2004), pp. 7019–7022 and [IC] (December 7, 2004), pp. 7317–7318 and 7321–7322; [IC] Clement testimony (January 18, 2005), pp. 8864–8865. RCMP divisional offices are divided into units, (e.g., commercial crime, drugs, customs and excise, national security, criminal intelligence), some of which conduct investigations. The units operate under CROPS, which is the operational nerve center of the division.
- CROPS is headed up by the CROPS officer, who is responsible for directing and coordinating the activities of the various units in accordance with the mandate of the division. The CROPS officer is also responsible for allocating the division’s budget to the various units.
- The CROPS officer works with an assistant CROPS officer, who takes a more hands-on approach in overseeing the units. The assistant CROPS officer briefs the CROPS officer on all major projects conducted within the division.
- Units within a division operate under the command of an officer in charge. Neither the CROPS officer nor the assistant CROPS officer controls the day-to-day management of a unit. This responsibility falls to the officer in charge. All of the units that conduct investigations report to CROPS through the assistant CROPS officer.
- ⁷⁶ [IC] Cabana testimony (October 25, 2004), pp. 2369–2370; [IC] Couture testimony (December 6, 2004), p. 7036; [IC] Hovey testimony (January 17, 2005), p. 8807; [IC] Clement testimony (January 18, 2005), pp. 8885–8886. If Inspector Clement was not available, Inspector Cabana would contact the CROPS officer, Chief Superintendent Couture, directly. On the rare occasion when neither Inspector Clement nor Chief Superintendent Couture was available, Inspector Cabana reported directly to the Commanding Officer of “A” Division, Assistant Commissioner Dawson Hovey.
- ⁷⁷ [IC] Couture testimony (December 6, 2004), p. 7036; [IC] Hovey testimony (January 17, 2005), p. 8647.
- ⁷⁸ [IC] Couture testimony (December 6, 2004), pp. 7036–7038. Chief Superintendent Couture could not recall if he initiated the requirement that situation reports be filed by Project A-O Canada on a daily basis. Regardless, he made an effort to read them each day, and believed that daily filing was necessary to best manage information related to the investigation and to stay informed of the project’s progress.

When Chief Superintendent Couture was asked if using situation reports to keep management up to date on an investigation was a strategy he had encountered previously, he stated he had seen it used on one, or maybe two, previous occasions.

⁷⁹ [IC] Proulx testimony [ET] (December 9, 2004), pp. 7627–7628; [IC] Pilgrim testimony (January 26, 2005), p. 10332.

⁸⁰ [IC] Proulx testimony [ET] (December 9, 2004), pp. 7630–7631; [IC] Pilgrim testimony (January 26, 2005), pp. 10332–10333.

⁸¹ SCIS is discussed in more detail below in Section 2.4.4.3.

⁸² Exhibit P-12, Tabs 10 and 11. NSIB was the part of the Criminal Intelligence Directorate (CID) that dealt with national security issues. In 2003, the national security program at CID was re-organized into three sub-units (National Security Intelligence Branch, National Security Operations Branch, and Policy, Planning and Development) under the direction of the Director General, National Security, who reported to the head of CID.

⁸³ [IC] Pilgrim testimony (January 26, 2005), pp. 10326–10327, 10330–10331 and 10333. Superintendent Pilgrim became the Officer in Charge of NSIB one year prior to 9/11. NSIB was responsible for 1) coordination of any criminal investigations within the RCMP related to national security; 2) coordination of the collection, analysis and dissemination of any criminal intelligence related to national security within the RCMP, including liaising with CSIS; and 3) development of threat assessments in support of the RCMP's protective policing operations. One of Superintendent Pilgrim's first tasks was to create a vision for building expertise within the investigative capacity of the national security program across the country, and a vision for centralized coordination and direction of national security matters. Superintendent Pilgrim testified that NSIB's counterpart agencies, such as CSIS and foreign agencies, operated under a centralized structure. The RCMP, on the other hand, was more decentralized because the field units reported to individual CROPS officers, where varying degrees of priority or importance were assigned to national security matters.

⁸⁴ [IC] Cabana testimony (October 25, 2004), pp. 2385–2387.

⁸⁵ *Ibid.*, pp. 2386–2387.

⁸⁶ [IC] Couture testimony (December 6, 2004), pp. 7038–7039; [IC] Hovey testimony (January 17, 2005), pp. 8647–8648. Unlike situation reports that cover the detailed progression of an investigation, and could apply to a wide audience, briefing notes were used to advise the RCMP Commissioner or Deputy Commissioner of specific issues, or the progression of an investigation over a given period of time. In most major operations, regardless of whether they are of national interest, briefing notes are submitted if there is a particular issue an RCMP division wants to bring to the attention of the RCMP's senior management at Headquarters.

⁸⁷ [IC] Cabana testimony (October 25, 2004), pp. 2383–2384; [IC] Hovey testimony (January 17, 2005), p. 8822; [IC] Pilgrim testimony (January 28, 2005), p. 10612. Inspector Cabana claimed that providing situation reports to CID represented an unusual reporting relationship in that Project A-O Canada made CID aware of everything it was doing on a daily basis. His position was supported by the Commanding Officer of "A" Division, Assistant Commissioner Hovey, who testified that it was common for "A" Division to send briefing notes to Headquarters, but providing situation reports indicated an extra effort on the part of Project A-O Canada to keep Headquarters informed. In contrast, the Officer in Charge of NSIB, Superintendent Pilgrim, testified that it was a common practice to provide situation reports during major investigations, and major incidents or events.

⁸⁸ [IC] Pilgrim testimony (January 28, 2005), pp. 10611–10612.

⁸⁹ [IC] Proulx testimony [ET] (December 9, 2004), pp. 7634–7637.

⁹⁰ *Ibid.*, pp. 7629 and 7637.

⁹¹ *Ibid.*, pp. 7629 and 7337–7639.

- ⁹² [IC] Hovey testimony (January 17, 2005), pp. 8820–8821.
- ⁹³ [IC] Cabana testimony (October 25, 2004), pp. 2352–2354. For example, the Officer in Charge of Project O Canada outlined continued problems between Project O Canada and Project A-O Canada, including whether there was one case manager overseeing both investigations. Project O Canada appeared to believe the O Canada case manager was in charge of both investigations. Project O Canada also complained that Project A-O Canada was sharing information with external agencies without the full knowledge and consent of the Project O Canada case manager. Project O Canada Debriefing Comments p. 10, Exhibit C-30, Tab 15.
- ⁹⁴ Exhibit C-30, Tab 63.
- ⁹⁵ [IC] Cabana testimony (October 25, 2004), p. 2361.
- ⁹⁶ [IC] Corcoran testimony (November 9, 2004), p. 4626; [IC] Walsh testimony (November 29, 2004), p. 6061.
- ⁹⁷ [IC] Cabana testimony (October 25, 2004), p. 2394; [IC] Corcoran testimony (November 9, 2004), p. 4626.
- ⁹⁸ [IC] Corcoran testimony (November 9, 2004), p. 4626.
- ⁹⁹ [IC] Cabana testimony (October 25, 2004), p. 2393.
- ¹⁰⁰ See Section 4.3 below.
- ¹⁰¹ [IC] Clement testimony (January 18, 2005), p. 8893.
- ¹⁰² [IC] Cabana testimony (October 25, 2004), p. 2362; [IC] Couture testimony (December 6, 2004), p. 7040; [IC] Clement testimony (January 18, 2004), p. 8894.
- ¹⁰³ [IC] Cabana testimony (October 25, 2004), pp. 2362–2363.
- ¹⁰⁴ *Ibid.*, p. 2397.
- ¹⁰⁵ If an individual's name is entered into SCIS, there are apparently audit guidelines for how long that name and any corresponding information will remain in the system. However, the Commission did not hear evidence about these guidelines. [P] Loepky testimony (June 30, 2004), p. 820. If information on an individual was entered into SCIS during one investigation, it could theoretically surface again in another investigation. Deputy Commissioner Loepky testified that this was an acceptable outcome, as he felt there were many cases in which apparently innocuous pieces of information later became important. Therefore, police should not arbitrarily decide to purge a file. [P] Loepky testimony (July 6, 2004), p. 1279.
- ¹⁰⁶ [P] Loepky testimony (July 6, 2004), p. 1279. [IC] Proulx testimony [ET] (December 9, 2004), pp. 7629–7637.
- ¹⁰⁷ NSIS units were described by Deputy Commissioner Loepky as small sections located within the divisions that are charged with pursuing the criminal aspects of national security matters. [P] Loepky testimony (June 30, 2004), p. 751.
- ¹⁰⁸ [IC] Buffam testimony (December 1, 2004), pp. 6364–6365. Corporal Buffam testified that NSIS units did not have Supertext or E&R III prior to 9/11. SCIS was their primary database, but they also had access to CPIC (Canadian Police Information Centre), NCBDB (National Crime Data Bank) and PIRS (Police Information Retrieval System).
- ¹⁰⁹ [P] Loepky testimony (June 30, 2004), pp. 754–755.
- ¹¹⁰ [IC] Buffam testimony (December 1, 2004), p. 6382.
- ¹¹¹ [P] Loepky testimony (June 30, 2004), p. 806.
- ¹¹² [IC] Cabana testimony (November 1, 2004), pp. 3430–3431.
- ¹¹³ [IC] Cabana testimony (October 25, 2004), pp. 2387–2388.
- ¹¹⁴ [IC] Kibsey testimony (December 15, 2004), pp. 8437–8439.
- ¹¹⁵ *Ibid.*, pp. 8482–8483 and 8486. Sergeant Kibsey testified that at the start of the Project, the situation reports were mostly produced on a daily basis. Near the end of his term as the CSIS LO in April 2003, the frequency had slowed to once a week or less.

- 116 Ibid., pp. 8485–8486. On a maximum of three occasions, Sergeant Kibsey left the situation reports with his CSIS counterpart who was posted to the RCMP — to be delivered to CSIS OR.
- 117 Ibid., p. 8485.
- 118 Ibid., pp. 8530–8531.
- 119 Ibid., p. 8590.
- 120 The chapter on national security investigations in the *RCMP Operational Manual* has been updated since September 11, 2001. The reporting requirements discussed in this section relate to the requirements that were in place at Project A-O Canada's inception.
- 121 [IC] Cabana testimony (November 1, 2004), pp. 3428–3429 and 3435.
- 122 Section 5.1, *Criminal Intelligence Program Guide* (May 2001), Exhibit P-12, Tab 44.
- 123 [IC] Cabana testimony (November 1, 2004), pp. 3386–3387.
- 124 Section D.1, *RCMP Operational Manual* – IV.10 National Security Investigations, Exhibit P-12, Tab 34.
- 125 [IC] Cabana testimony (November 1, 2004), pp. 3430–3431. As has been mentioned, and as will be discussed in greater detail in the following sections, E&R III reports would only permit RCMP Headquarters to view investigators' progress through the Project. It would not allow RCMP Headquarters to view all documents held by the Project. All documents received and generated by the project were held in the Supertext database. The contents of the Supertext database were not uploaded to SCIS.
- 126 Section E.2.a.1, *RCMP Operational Manual* – IV.10 National Security Investigations, Exhibit P-12, Tab 34.
- 127 Ibid.
- 128 [IC] Cabana testimony (November 1, 2004), p. 3433.
- 129 Ibid., p. 3436.
- 130 [IC] Pilgrim testimony (January 26, 2005), pp. 10344–10346.
- 131 Exhibit P-12, Tab 26.
- 132 [P] Loeppky testimony (July 6, 2004), p. 1119.
- 133 Exhibit P-12, Tab 26.
- 134 [P] Loeppky testimony (July 6, 2004), pp. 1393–1399.
- 135 Exhibit P-12, Tab 44.
- 136 [P] Loeppky testimony (June 30, 2004), pp. 802–803.
- 137 Exhibit P-12, Tab 27.
- 138 Ibid., Tab 26.
- 139 [IC] Cabana testimony (November 1, 2004), p. 3441.
- 140 There are about 35 RCMP foreign liaison officers in 25 locations around the world, some with responsibility for many countries. Their mandate is to assist Canadian law enforcement with inquiries, and to facilitate inquiries from foreign law enforcement agencies. [P] Loeppky testimony (June 30, 2004), pp. 831–832 and [P] (July 6, 2004) pp. 1161–1162.
The RCMP has three foreign liaison officers in the United States — two in Washington and one in Miami. The foreign liaison officer for Syria is actually based in Rome, Italy.
- 141 [IC] Flewelling testimony (January 20, 2005), p. 9355; [IC] Pilgrim testimony (January 28, 2005), p. 10717.
- 142 [IC] Hovey testimony (January 17, 2005), p. 8668.
- 143 [IC] Pilgrim testimony (January 28, 2005), pp. 10717 and [IC] (January 26, 2005), pp. 10355–10356. Superintendent Pilgrim, who at the time was the Officer in Charge of the National Security Intelligence Branch and Superintendent of the RCMP National Security Program, said that this type of direct exchange of information was a practice he was trying to change in the months preceding 9/11. He attempted to impose a rule whereby requests from

- the Americans would first go through RCMP Headquarters. However, when pressed, he admitted that, pre-9/11, it was fairly common for the divisions to deal directly with the FBI.
- 144 [IC] Pilgrim testimony (January 26, 2005), p. 10356; [P] Leoppky testimony (July 6, 2004), p. 1151.
- 145 [IC] Cabana testimony (November 1, 2004), p. 3441; [P] Loepky testimony (June 30, 2004), p. 900.
- 146 Exhibit P-12, Tab 31.
- 147 Ibid., Tab 34.
- 148 Ibid., Tab 49.
- 149 Ibid., Tab 49, para. 7.
- 150 [IC] Kibsey testimony (December 15, 2004), p. 8431. Sergeant Kibsey was the “A” Division RCMP liaison officer to the CSIS Ottawa Region from June 2001 to April 2003.
- 151 Exhibit C-179; [P] Loepky testimony (July 6, 2004), pp. 1189–1190.
- 152 [IC] Callaghan (November 9, 2004), p. 4551; [IC] Corcoran testimony (November 9, 2004), pp. 4631–4632.
- 153 [IC] Cabana testimony (November 2, 2004), pp. 3540 and 3543.
- 154 [IC] Cabana testimony (October 25, 2004), p. 2419.
- 155 [P] Cabana testimony (June 29, 2005), pp. 7762–7763.
- 156 [IC] Corcoran testimony (November 9, 2004), pp. 4633–4634; [IC] Clement testimony (January 19, 2005), pp. 9280–9281.
- 157 [IC] Pilgrim testimony (January 26, 2005), pp. 10432–10433.
- 158 [IC] Cabana testimony (November 2, 2004), p. 3549; [IC] Hovey testimony (January 17, 2005), pp. 8811–8812.
- 159 This topic is discussed in detail below in Section 3.1.4.
- 160 [IC] Corcoran testimony (November 9, 2004), p. 4639; [IC] Hovey testimony (January 17, 2005), pp. 8808–8809.
- 161 [IC] Hovey testimony (January 17, 2005), pp. 8799–8800.
- 162 [IC] Clement testimony (January 19, 2005), pp. 9262–9263.
- 163 [IC] Hovey testimony (January 17, 2005), p. 8815.
- 164 [IC] Cabana testimony (November 2, 2004), p. 3547.
- 165 [IC] Proulx testimony [ET] (December 9, 2004), pp. 7664 and 7666–7668, and [IC] (December 13, 2004), pp. 8124–8125.
- 166 [IC] Proulx testimony [ET] (December 9, 2004), p. 7669. A February 10, 2004 briefing note to the RCMP Commissioner explaining how the RCMP came to share CSIS information with the Americans without the permission of CSIS stated: “Following the events of 9/11, a *new* era of openness and an environment of sharing was necessitated by the need to prevent further terrorist attacks from happening” [italics added]. The briefing note was approved and signed by Assistant Commissioner Proulx, who testified that despite what was written in the briefing note, this was a routine meeting and the message he delivered was not ground-breaking. Exhibit C-30, Tab 586; [IC] Proulx testimony [ET] (December 13, 2004), pp. 8127–8128 and 8139–8140.
- 167 [IC] Proulx testimony [ET] (December 13, 2004), pp. 8108–8109 and 8118. Assistant Commissioner Proulx explained that, under normal circumstances, some American agencies would pass information to CSIS. If CSIS felt it was information the RCMP should have, it would then have to go back to the originating agency for permission to share the information with the RCMP. With real-time sharing, the RCMP would receive information directly from American agencies without the intervention of CSIS. Ibid., pp. 8136–8137.
- 168 Ibid., p. 8119. Sharing information in real time also meant that RCMP Headquarters would be kept up to date on what was being shared. Assistant Commissioner Proulx added that, in

terms of national security matters, keeping RCMP Headquarters informed in real time of what was happening outside Headquarters was not a new operating procedure on account of 9/11. *Ibid.*, p. 8109.

- 169 [IC] Proulx testimony [ET] (December 9, 2004), p. 7673.
- 170 [IC] Proulx testimony [ET] (December 13, 2004), pp. 8135–8136.
- 171 [IC] Proulx testimony [ET] (December 9, 2004), p. 7668 and [IC] (December 13, 2004), p. 8131.
- 172 [IC] Proulx testimony [ET] (December 13, 2004), p. 8133.
- 173 *Ibid.*, p. 8120.
- 174 [IC] Proulx testimony [ET] (December 9, 2004), pp. 7673–7674, 7739 and 7741, [IC] (December 13, 2004), pp. 8109–8110, 8172–8173 and 8192, and [IC] (December 14, 2004), pp. 8207–8208.
- 175 [IC] Proulx testimony [ET] (December 13, 2004), pp. 8137–8138.
- 176 *Ibid.*, pp. 8134–8135. Assistant Commissioner Proulx did not agree with the suggestion that once information had been given to one of the participating agencies, it could be passed to the other agencies without the consent of the originating agency.
- 177 [IC] Proulx testimony [ET] (December 9, 2004), p. 7671 and [IC] (December 13, 2004), pp. 8186–8187. The February 10, 2004, briefing note to the RCMP Commissioner stated: “...Further, it was agreed at Senior levels that it would be the *exception* rather than the rule to seek permission prior to utilizing or sharing the information between the [...partner agencies]” [*italics added*]. Assistant Commissioner Proulx did not believe this statement contradicted his testimony that it was always necessary to obtain permission of the originating agency before sharing written documents from one of the participating agencies. Exhibit C-30, Tab 586; [IC] Proulx testimony [ET] (December 9, 2004), p. 7681.
- Assistant Commissioner Proulx also stated that sharing another agency’s documents was not raised as an issue because it was presumed that the participating agencies had received the same reports, or virtually the same reports, from one another in order to facilitate an open discussion. [IC] Proulx testimony [ET] (December 13, 2004), pp. 8188–8189.
- 178 [IC] Proulx testimony [ET] (December 9, 2004), pp. 7669–7670 and [IC] (December 13, 2004), pp. 8138 and 8184.
- 179 [IC] Proulx testimony [ET] (December 9, 2004), p. 7670 and [IC] (December 13, 2004), pp. 8183–8184; Exhibit C-30, Tab 586.
- 180 [IC] Proulx testimony [ET] (December 13, 2004), p. 8143.
- 181 *Ibid.*, pp. 8141–8142 and 8144–8145 and [IC] (December 14, 2004), p. 8282–8283. Assistant Commissioner Proulx did not have a written record of his communication with the commanding officers or the officers in charge of CROPS concerning the information-sharing arrangement. During his testimony, he suggested that a written record of group meetings whether with the commanding officers or the officers in charge of CROPS should exist. [IC] Proulx testimony, December 9, 2004, pp. 7721–7722 and [IC] (December 13, 2004), p. 8142. The Commission was only provided with RCMP officers’ handwritten notes for video conferences on September 27, 2001 and October 12, 2001, when information sharing with external agencies was discussed. The Commission has not seen a written record of meetings during Project A-O Canada’s inception in which the specific details of the information-sharing arrangement were discussed.
- 182 [IC] Proulx testimony [ET] (December 13, 2004), pp. 8141–8142 and 8144–8145, and [IC] (December 14), p. 8282.
- 183 Assistant Commissioner Proulx testified that he took part in several video conferences and did not specifically recall the video conference of September 27, 2001. He took it for granted that he attended this video conference, however, because Chief Superintendent Couture made reference in his notes to Assistant Commissioner Proulx being present. [IC] Proulx testimony [ET] (December 9, 2004), pp. 7700–7703 and [IC] (December 13, 2004), pp. 8148–8149.

¹⁸⁴ [IC] Proulx testimony [ET] (December 9, 2001), pp. 7713–7716. Assistant Commissioner Proulx testified that he spoke about the general need to cooperate and share information for about the next year. *Ibid.*, p. 7714.

¹⁸⁵ [IC] Proulx testimony [ET] (December 13, 2004), pp. 8143–8144, 8174 and 8193–8194, and [IC] (December 14, 2004), pp. 8279–8280.

¹⁸⁶ Chief Superintendent Couture’s notes and testimony regarding a December 6, 2001 video conference attributed the statement that “caveats and third-party rule have been lifted” to Assistant Commissioner Proulx. However, Assistant Commissioner Proulx testified he did not make this statement. In fact, the first time Assistant Commissioner Proulx heard that caveats were down was while preparing for his testimony before the Inquiry. [IC] Proulx testimony [ET] (December 9, 2004), p. 7739 and [IC] (December 13, 2004), p. 8192.

This is the only meeting referred to by RCMP witnesses during the early stages of the investigation where the issue of caveats being down was specifically mentioned.

¹⁸⁷ [IC] Loepky testimony (April 19, 2005), pp. 14862–14865 and [P] (July 27, 2005), pp. 8404–8405. At no time did Deputy Commissioner Loepky sanction the suspension of RCMP policies relating to the application of caveats. During his time as the Deputy Commissioner of Operations, he never heard reference to the understanding that “caveats are down.” The amendment or suspension of any RCMP policy was a formal process that normally involved broad consultation across the RCMP, as well as final approval by RCMP Headquarters. Any amendment to a policy in response to a particular investigation would apply across the country. Deputy Commissioner Loepky expected that such a change or suspension of RCMP policy would be in writing and communicated to the divisions. [P] Loepky testimony (July 27, 2005), pp. 8406–8407 and [P] (July 28, 2005), pp. 8899–8901.

¹⁸⁸ [P] Loepky testimony (July 27, 2005), pp. 8403–8404.

¹⁸⁹ *Ibid.*, pp. 8411–8412. Deputy Commissioner Loepky testified that the biggest gaps in information sharing prior to 9/11 were in timeliness and quality. Requests received and requests made for information were not always responded to quickly. In fact, there was a danger requests would languish on someone’s desk until the next shift or the next week. As well, details were sometimes glossed over when information was exchanged, and the police force culture of protectionism could affect the quality of information. Although he did not attend the meeting with Assistant Commissioner Proulx on September 12 or 13, 2001, Deputy Commissioner Loepky was briefed on the meeting by the Assistant Commissioner. He was told in general terms that Assistant Commissioner Proulx discussed the need for agencies to collaborate and work together in an efficient and effective manner. While it was indeed true that law enforcement was operating in extraordinary times, it was not his understanding that an unprecedented agreement had been reached at the meeting. Rather, Assistant Commissioner Proulx delivered the message he had heard from Deputy Commissioner Loepky in particular, as well as from the broader community, that there was to be a timely and thorough sharing of information. [P] Loepky testimony (July 28, 2005), pp. 8893–8895 and 8908–8912.

¹⁹⁰ [P] Loepky testimony (July 28, 2005), pp. 8877–8880.

¹⁹¹ *Ibid.*, p. 8887.

¹⁹² [IC] Loepky testimony (April 19, 2005), p. 14862, [IC] (April 20, 2005), pp. 15318–15320 and [P] (July 27, 2005), pp. 8404–8405.

¹⁹³ These officers were Superintendent Wayne Pilgrim, Inspector Rick Reynolds and Corporal Rick Flewelling.

¹⁹⁴ [IC] Pilgrim testimony (January 26, 2005), pp. 10369–10371; [IC] Flewelling testimony (January 20, 2005), pp. 9352–9353 and 9413–9414; [IC] Reynolds testimony (February 1, 2005), pp. 10830–10833.

- 195 *RCMP Administration Manual* – (XI.1. Organizational and Administrative Security), Exhibit
P 12, Tab 26.
- 196 [IC] Testimony (January 24, 2005), pp. 10000–10001 and 10003; [IC] Testimony (August 5,
2005), pp. 17213–17215; [P] Hooper testimony (August 25, 2005), pp. 10594–10595.
- 197 [IC] Testimony (January 24, 2005), pp. 10001–10003; [IC] Testimony (August 5, 2005),
pp. 17209–17210; [P] Hooper testimony (August 25, 2005), p. 10595.
- 198 [IC] Hovey testimony (January 17, 2005), pp. 8802 and 8805. Assistant Commissioner Hovey
was convinced that Project A-O Canada investigators felt their information-sharing practices
were consistent with RCMP policy. Assistant Commissioner Hovey held this view as well, al-
though he admitted he was not aware of the specific documents that were shared by mem-
bers of Project A-O Canada. [IC] Hovey testimony (January 17, 2005), pp. 8802–8803.
- 199 [IC] Hovey testimony (January 17, 2005), pp. 8658–8660
- 200 *Ibid.*, pp. 8679–8681 and 8694. Assistant Commissioner Hovey was aware there was an un-
derstanding among “A” Division personnel that caveats were down. But he only learned this
after his retirement in November 2002. [IC] Hovey testimony (January 17, 2005), pp. 8673–8674
and 8678.
- 201 [IC] Couture testimony (December 6, 2004), pp. 7048–7049. Chief Superintendent Couture tes-
tified there were several communications with RCMP Headquarters where the sharing of in-
formation was stressed within the context of Canadian law enforcement and, at different times,
it was implied that information would be shared with the Americans.
- 202 *Ibid.*, pp. 7047–7048.
- 203 *Ibid.*, pp. 7056–7057.
- 204 [IC] Couture testimony (December 7, 2004), p. 7063.
- 205 [IC] Couture testimony (December 6, 2004), pp. 7048 and 7053.
- 206 Couture notes, p. 61; [IC] Couture testimony (December 7, 2004), pp. 7112 and 7119. Chief
Superintendent Couture discussed a video conference he attended on December 6, 2001 with
personnel from various RCMP divisions and RCMP Headquarters. One of the discussion top-
ics was sharing information with the Americans.
- 207 [IC] Couture testimony (December 6, 2004), pp. 7050–7051. Chief Superintendent Couture
would not go so far as to say that information could be shared and discussed by any of the
partners at that point because there was an underlying assumption that what was being dis-
tributed to one agency was also being distributed to the other agencies. He would only con-
firm that the arrangement at the beginning of the investigation was that each agency would
put its information on the table.
- 208 *Ibid.*, p. 7057.
- 209 [IC] Couture testimony (December 7, 2004), pp. 7293–7294.
- 210 *Ibid.*, pp. 7330–7331.
- 211 *Ibid.*, pp. 7331–7332. Chief Superintendent Couture did not provide a date for this conversa-
tion with Assistant Commissioner Proulx, but his prior testimony suggests he was referring to
the December 6, 2001 video conference, where it is alleged that Assistant Commissioner Proulx
stated that “caveats and third-party rule have been lifted.”
- 212 *Ibid.*, pp. 7332–7333. Canada and the United States are parties to a Mutual Legal Assistance
Treaty (MLAT), which provides for the international exchange of evidence to be used in crim-
inal proceedings. Under the MLAT process, as detailed in the *Treaty between the Government
of Canada and the Government of the United States of America on Mutual Legal Assistance in
Criminal Matters*, the United States can seek information and other forms of assistance from
Canada relating to the investigation, prosecution or suppression of offences for use in law en-
forcement. The Treaty would require the United States to request assistance pursuant to its pro-
visions. The request must be made in writing; in urgent circumstances, it can be made orally

and confirmed in writing after the fact. The request is made by the Central Authority of the Requesting State, which is the Attorney General in the case of the United States, to the Central Authority of the Requested State, which is the Minister of Justice in the case of Canada. The request shall contain such information as the Requested State requires to execute the request, including: (a) the name of the competent authority conducting the investigation or proceeding to which the request relates; (b) the subject matter and nature of the investigation or proceeding to which the request relates; (c) a description of the evidence, information or other assistance sought; (d) the purpose for which the evidence, information or other assistance is sought, and any time limitations relevant thereto; and (e) requirements for confidentiality.

²¹³ [IC] Couture testimony (December 6, 2004), p. 7058.

²¹⁴ [IC] Clement testimony (January 18, 2005), pp. 8913–8914.

²¹⁵ *Ibid.* Inspector Clement's undertaking of the open-book investigation was limited to the partner agencies. The FBI was an integral part of the investigation and the efforts for full disclosure. Inspector Clement felt that the CIA and the FBI became one and the same agency due to the post-9/11 presidential decree for these agencies to work together. Clement testimony (January 18, 2005), pp. 8914 and 8929–8930.

²¹⁶ *Ibid.*, pp. 8915–8918. Inspector Clement noted that Assistant Commissioner Proulx was briefed at the beginning of the project, when RCMP Headquarters was given Project A-O Canada situation reports. The reports were very clear in documenting how Project A-O Canada was handling the investigation. *Ibid.*, pp. 8915–8916. Furthermore, at an October 12, 2001 video conference chaired by Deputy Commissioner Leoppky, officers were told that situation reports were to be shared with the RCMP's partners — in this case, provincial and municipal police forces — and the risk would be accepted. Inspector Clement felt that his open-book approach was in line with direction at this meeting, which was attended by some of the RCMP's highest-ranking officers. *Ibid.*, pp. 8900, 8902, 8907–8908 and 8918.

Deputy Commissioner Garry Leoppky testified that his message at the meeting focused on working together and sharing information, where appropriate, among domestic law enforcement agencies. His comment about accepting the risk concerned the fact that some provincial and municipal law enforcement officers might not have security clearance to the secret level. [IC] Leoppky testimony (April 19, 2005), pp. 14860–14862.

²¹⁷ [IC] Clement testimony (January 18, 2005), pp. 8921 and 8928. The decision to deviate from RCMP policies was not done on Inspector Clement's initiative, but he supported this approach to the investigation. *Ibid.*, p. 8922.

²¹⁸ *Ibid.*, pp. 8929–8930. As will be described in Section 4.3, over time, they did pass information in documentary form.

²¹⁹ *Ibid.*, p. 8930 and [IC] (January 19, 2005), pp. 9203–9204.

²²⁰ [IC] Clement testimony (January 18, 2005), pp. 8917 and 8930–8931. Inspector Clement went so far as to suggest there was no violation of the third-party rule under the open-book arrangement because the partner agencies, who were the custodians of their records, agreed to share information outside the bounds of the formal policy. *Ibid.*, p. 8931.

²²¹ *Ibid.*, pp. 8924–8927, 8955–8956 and 9010–9011 and [IC] (January 19, 2005), p. 9205. Inspector Clement did not attend the December 6, 2001 video conference, at which it is alleged that Assistant Commissioner Proulx made the comment that caveats would not apply. However, he was informed by his superior, Chief Superintendent Couture, that this comment had been made. Although Inspector Clement could not remember the exact date of their conversation, he did not believe the instruction changed anything, due to the implicit understanding among partner agencies about the third-party rule. [IC] Clement testimony (January 18, 2005), pp. 8923–8924 and 9010.

²²² [IC] Clement testimony (January 18, 2005), pp. 8916–8917 and 8920.

- 223 Ibid., pp. 8920–8921.
- 224 Ibid., pp. 8918–8919.
- 225 Ibid., pp. 8957–8958.
- 226 Ibid., pp. 8960–8961.
- 227 Ibid., pp. 8958–8960. Inspector Clement did not believe that attaching caveats and the third-party rule to documents, as per RCMP policy, served no purpose. He agreed that, despite more senior officers working with the implicit understanding about their use, caveats and the third-party rule served to inform front-line investigators that the document was the property of another agency. Ibid., p. 8960.
- 228 [IC] Cabana testimony (October 25, 2004), p. 2422.
- 229 See above, Section 1.1.
- 230 [IC] Cabana testimony (November 2, 2004), pp. 3550–3551 and 3788.
- 231 Ibid., pp. 3553–3554.
- 232 [IC] Cabana testimony (October 25, 2004), pp. 2423–2424.
- 233 [P] Cabana testimony (June 29, 2005), p. 7787.
- 234 [IC] Cabana testimony (November 2, 2004), pp. 3555–3556. Inspector Cabana did not participate in the initial discussions establishing the information-sharing arrangement. However, he emphasized that the arrangement was discussed at numerous meetings and video conferences, and that he took instructions from his immediate superiors in the CROPS office. [P] Cabana testimony (June 29, 2005), pp. 7788–7789 and 7791.
- While Inspector Cabana was certain of the general tone and message that was communicated by Inspector Clement, he could not say if Inspector Clement used the phrase “all caveats are down,” or if he specifically told Inspector Cabana not to worry about caveats. He also could not remember if Inspector Clement specifically mentioned that certain RCMP policies would not apply. He was certain, however, that the directions he received clearly indicated that caveats were no longer required. [IC] Cabana testimony (November 2, 2004), pp. 3784–3785.
- 235 Exhibit P-12, Tab 26, XI.1; [P] Cabana testimony (June 29, 2005), pp. 7804–7807.
- 236 [P] Cabana testimony (June 29, 2005), pp. 7787–7788 and [P] (June 30, 2005), pp. 8242–8244 and 8246–8247.
- 237 [P] Cabana testimony (June 30, 2005), pp. 8254–8255 and 8318.
- 238 [IC] Cabana testimony (November 2, 2004), p. 3557.
- 239 [IC] Callaghan testimony (November 3, 2004), p. 3868; [IC] Corcoran testimony (November 9, 2004), p. 4618.
- 240 Ibid.; *ibid.*, pp. 4641–4642.
- 241 [IC] Callaghan testimony (November 3, 2004), p. 3869.
- 242 [IC] Corcoran testimony (November 9, 2004), pp. 4638–4642.
- 243 Ibid., pp. 4640–4641 and 4643.
- 244 Ibid., pp. 4645–4646.
- 245 [IC] Cabana testimony (October 27, 2004), p. 2792; [IC] Callaghan testimony (November 9, 2004), pp. 4382–4383 and 4391–4392; [IC] Corcoran testimony (November 9, 2004), p. 4644.
- 246 [IC] Cabana testimony (November 2, 2004), pp. 3554–3555.
- 247 [IC] Cabana testimony (October 25, 2004), p. 2375 and [IC] (November 2, 2004), p. 3584.
- 248 [IC] Cabana testimony (November 2, 2004), pp. 3581 and 3584–3585.
- 249 [IC] Cabana testimony (October 25, 2004), p. 2376.
- 250 [IC] Cabana testimony (November 2, 2004), pp. 3586–3587.
- 251 Ibid., p. 3797.
- 252 Ibid., pp. 3589–3591.

- 253 Ibid., p. 3798. As a member of the RCMP, Inspector Cabana was aware of the organization's policies. However, the assistant project managers were not members of the RCMP, and did not receive training in RCMP policies. Testimony by Staff Sergeants Callaghan and Corcoran suggests that RCMP policies were not at the forefront of their minds. Instead, they were careful to adhere to the guidelines and instructions given to them by RCMP senior management.
- 254 The investigation of Ahmad El Maati is discussed below in Section 3.6.
- 255 [IC] Walsh testimony (November 29, 2004), p. 5926.
- 256 See below, Section 3.3.
- 257 [IC] Buffam testimony (December 1, 2004), pp. 6368–6371.
- 258 [IC] Corcoran testimony (November 9, 2004), pp. 4631–4632.
- 259 [IC] Callaghan testimony (November 3, 2004), pp. 3887–3890; [IC] Buffam testimony (December 1, 2004), p. 6385.
- 260 [IC] Buffam testimony (December 1, 2004), pp. 6390–6391.
- 261 Cabana notes, vol. 1, book 2, p. 59; [IC] Cabana testimony (October 25, 2004), pp. 2344 and 2346.
- 262 Exhibit C-30, Tab 26; C-81; [IC] Corcoran testimony (November 10, 2004), pp. 4656–4657.
- 263 Exhibit C-30, Tab 26 (Master Surveillance Report – Team B); Exhibit C-81 (Master Surveillance Report – Team A); Tab 29 (RCMP Situation Report for October 12, 2001); [IC] Lang testimony (November 18, 2004), pp. 5776–5778; [IC] Walsh testimony (November 29, 2004), p. 5986. There are a number of reports of this meeting, which differ in some relatively insignificant details. The above represents what is considered to be the most accurate portrait of what occurred.
- 264 [IC] Callaghan testimony (November 3, 2004), p. 3874.
- 265 [IC] Cabana testimony (October 25, 2004), pp. 2452–2453; [IC] Walsh testimony (November 29, 2004), pp. 5988–5990.
- 266 [IC] Cabana testimony (October 25, 2004), pp. 2453–2454. Inspector Cabana explained that officers were assigned to develop a biographical profile on certain individuals. Investigators referred to such individuals as “targets” in their notes strictly for the purpose of building the biographical profile. This was supported by Staff Sergeant Callaghan and Corporal Lemay, who testified that “target” and “person of interest” were used interchangeably early in the investigation. [IC] Callaghan testimony (November 3, 2004), p. 3875; [IC] Lemay testimony (November 16, 2004), pp. 5282–5283.
- 267 Exhibit C-30, Tab 32; [IC] Cabana testimony (October 25, 2004), p. 2444; [IC] Walsh testimony (November 29, 2004), p. 5989.
- 268 Exhibit C-89; [IC] Lemay testimony (November 16, 2004), pp. 5283–5285; [IC] Buffam testimony (December 1, 2004), pp. 6399–6401.
- 269 Exhibit C-89. Corporal Lemay testified that database checks were standard practice in Integrated Proceeds of Crime (IPOC) investigations as a way to build an individual's profile. Corporal Lemay eventually assembled two binders of information. [IC] Lemay testimony (November 16, 2004), pp. 5283 and 5285.
- 270 Project A-O Canada later learned that Mr. Arar had a mother living in Montreal and six siblings, most of whom lived in Montreal.
- 271 [IC] Cabana testimony (October 26, 2004), pp. 2561–2562.
- 272 Exhibit C-30, Tabs 53 and Tab 54.
- 273 Ibid., Tab 57.
- 274 [IC] Lemay testimony (November 16, 2004), pp. 5346–5347.
- 275 [IC] Lemay testimony (November 17, 2004), pp. 5591–5593.
- 276 [IC] Hooper testimony (September 23, 2004), pp. 1747–1748.
- 277 Buffam notes, p. 21.

- 278 Exhibit C-30, Tab 38; [IC] Lemay testimony (November 16, 2004), pp. 5311–5312.
- 279 Exhibit C-30, Tabs 3, 4 and 39.
- 280 Ibid., Tab 4. The lease application actually listed “Abdullah Malki” as the emergency contact. The phone number listed for Abdullah Malki was traced to Dawn Services, a company owned by the Ottawa target Abdullah Almalki. [IC] Corcoran testimony (November 16, 2004), p. 5249; [IC] Lemay testimony (November 16, 2004), p. 5320.
- 281 [IC] Cabana testimony (October 25, 2004), p. 2459.
- 282 Ibid., pp. 2458–2459 and 2461.
- 283 [IC] Cabana testimony (November 2, 2004), pp. 3765–3766.
- 284 [IC] Walsh testimony (December 1, 2004), pp. 6274–6278 and 6321–6322; [IC] Buffam testimony (December 2, 2004), pp. 6706–6707.
- 285 Exhibit C-30, Tab 48; [IC] Corcoran testimony (November 16, 2004), p. 5217.
- 286 As discussed below in Section 4.2.3, members of the FBI went to Project A-O Canada’s offices in late February 2002 and reviewed the file on Mr. Arar. It is almost certain they would have seen these documents and could have made notes.
- 287 Lemay notes, p. 22.
- 288 Exhibit C-30, Tab 35; Lemay notes, p. 27; [IC] Lemay testimony (November 16, 2004), pp. 5303–5306.
- 289 Exhibit C-30, Tab 31. A Project O Canada financial investigation report, dated October 16, 2001, indicated that Nex Link Communications was “associated to AL MALKI associate ARAR.” Thus, it appears that Project O Canada may have also been taking a closer look at Mr. Arar, but this information was not shared with Project A-O Canada. [IC] Cabana testimony (October 25, 2004), pp. 2440–2441
- 290 Exhibit C-30, Tab 76.
- 291 [IC] Lemay testimony (November 16, 2004), p. 5290. Any information collected on Dr. Mazigh was incorporated into the binders for Mr. Arar. Ibid., pp. 5289–5290 and 5297.
- 292 Exhibit C-30, Tab 35; Lemay notes p. 27; [IC] Lemay testimony (November 16, 2004), pp. 5303–5306.
- 293 Exhibit C-30, Tab 38. Corporal Lemay testified that checks at local schools were standard IPOC practice. [IC] Lemay testimony (November 16, 2004), pp. 5312–5314.
- 294 Exhibit C-30, Tab 49. The purpose of the search was to uncover credit card numbers used by the couple, possible destinations visited, and the address reported on their application. [IC] Cabana testimony (October 25, 2004), pp. 2524–2525.
- 295 Exhibit C-30, Tab 35; [IC] Lemay testimony (November 16, 2004), pp. 5302–5303.
- 296 Lemay notes, p. 25.
- 297 Exhibit C-30, Tabs 40 and 44; [IC] Lang testimony (November 18, 2004), pp. 5792–5793. It was believed that the Americans might have done a check on Mr. Arar previously and that he was already a part of their files. Exhibit C-30, Tab 43; [IC] Clement testimony (January 18, 2005), p. 8945.
- 298 See Section 3.5.2.
- 299 Exhibit C-30, Tab 43.
- 300 Ibid., Tab 45.
- 301 [IC] Webb testimony (February 2, 2005), p. 11137. The term “Canada Customs” is used frequently throughout this Report. Prior to December 12, 2003, Canada Customs was part of the Canada Customs and Revenue Agency (CCRA); however, it is now a part of the Canada Border Services Agency (CBSA). This change in organizational structure is not significant for the purposes of this Report and, for convenience, the term “Canada Customs” will often be used.
- 302 Exhibit C-188, Tab 11, p. 3.

303 Exhibit C-188, Tab 14, para. 47. The entry in ICES must be for a specified period of time not exceeding 90 days. Users with the appropriate access profile may extend a lookout or cancel it, depending on operational requirements.

304 Under s. 11 of the *Customs Act*, everyone is required to report to Canada Customs. However, the front-line officer usually exercises discretion as to whether a traveller should undergo a secondary examination. There are various types of referral to secondary examination — selective referrals, mandatory referrals and referrals that are randomly generated by a computer. In a lookout, a mandatory referral would direct the subject to a secondary inspection by the front-line officer.

305 [IC] Gantner testimony (February 3, 2005), pp. 11679–11680.

306 Exhibit C-188, Tab 11, p. 3. The policy does not specifically set out what constitutes reasonable grounds. However, the following paragraph from the intelligence chapter in the *Customs Enforcement Manual* gives some context:

“Intelligence lookouts may also originate from local sources or other agencies. In accepting lookouts from another agency, Customs will weigh each case and make decisions on the extent to which any action will be undertaken. This means that the other agency must supply sufficient details to a Canada Customs representative (usually the RIO or a Customs superintendent) to establish support for action on our part. If the decision is made to issue the lookout, this back-up information should remain on file with the reviewing officer. If the justification put forward by the other agency does not satisfy our requirement to have reasonable grounds, the request for a lookout will be declined.”

307 Ibid.

308 [IC] Webb testimony (February 2, 2005), p. 11138.

309 Exhibit C-188, Tab 19. CCRA *Enforcement Bulletin 01-02* serves as a guideline for classifying lookouts. It defines a terrorism lookout as “a person lookout used when the individual is suspected of being a member, associate or sympathizer of a known terrorist organization, but there is no outstanding warrant for the apprehension of the individual. Where the person is wanted for questioning, or there is a warrant for arrest, it will be listed as a “wants and warrants” lookout.”

310 [IC] Thériault testimony (February 8, 2005), p. 11842.

311 Even when a lookout is cancelled/de-activated, it stays in the ICES inventory and Customs Canada officials with a sufficiently high level of access are still able to view it. Webb testimony (February 2, 2005), p. 11360.

312 A deleted or removed lookout is still traceable, for example, by searching the system for all the activities of the issuing RIO. [IC] Webb testimony (February 2, 2005), pp. 11361–11362. Only the Director of Intelligence at Customs Canada can remove or delete a lookout. Ibid., pp. 11351–11352.

313 A member of Project A-O Canada, Constable Lang acquired knowledge about lookouts through his work with RCMP drug enforcement in the 1990s.

314 Exhibit C-93.

315 Officer Thériault had initially been seconded to “A” Division IPOC (Integrated Proceeds of Crime) in February 2001. He was transferred to Project A-O Canada after 9/11 and was associated with the investigation in a part-time capacity until February 2003.

316 As discussed in greater detail in Section 3.5.2, a similar request would be made to the U.S. Customs authority.

317 Exhibit C-93.

318 Exhibit C-190, Tab 4.

319 [IC] Thériault testimony (February 8, 2005), p. 12027.

320 Ibid., pp. 11807–11808.

- 321 [IC] Walsh testimony (November 29, 2004), p. 6049.
- 322 [IC] Callaghan testimony (November 3, 2004), p. 3920; [IC] Cabana testimony (October 25, 2004), pp. 2463 and 2470; [IC] Cabana testimony (October 27, 2004), p. 2851. At this point, the information Project A-O Canada had about Mr. Arar primarily concerned Mr. Arar's meeting with Mr. Almalki at Mango's Café on October 12, 2001, and Mr. Arar's rental application showing Mr. Amalki as an emergency contact.
- 323 Exhibit C-190, Tab 4.
- 324 Exhibit C-102, p. 2.
- 325 [IC] Thériault testimony (February 8, 2005), p. 11842.
- 326 For example, in November 2001, the lookout was extended to February 2002. Exhibit C-30, Tab 86. Officer Thériault's notes for June 11, 2002 indicate that Constable Lang asked him to extend the lookout on Mr. Arar. Exhibit C-30, Tab 183. In September 2002, Mr. Arar's lookout was continued once again. Exhibit C-30, Tab 494. Staff Sergeant Callaghan also testified that Officer Thériault came to Project A-O Canada's offices about every 60 days to ask if they wanted the lookouts extended.
- 327 Lang notes, p. 147.
- 328 Exhibit C-190, Tab 9.
- 329 [IC] Thériault testimony (February 8, 2005), pp. 11980–11981.
- 330 However, Officer Thériault forgot to remove Mr. Arar's licence plate from the lookout; this was not corrected until November 26, 2003.
- 331 Mr. Webb claimed that the lookout was totally deleted or removed from the system, but was unable to provide documented proof of this. [IC] Webb testimony (February 2, 2005), pp. 11361 and 11364.
- 332 The following information about the U.S. TECS lookouts was obtained from Canadian witnesses, one American expert and publicly available sources only. No American officials with knowledge of the system gave evidence, and for this reason, it may not be entirely complete or accurate.
- 333 Constable Lang testified that the CIA also has access, but that there is no documented proof of this. [IC] Lang testimony (November 18, 2004), p. 5760. According to Officers Lang and Cabana, the FBI does not have direct access to TECS, unless its members are part of a joint task force or similar group. *Ibid.*, pp. 5760–5761.
- 334 Exhibit C-34, K.1.d.
- 335 [P] Yale-Loehr testimony (June 7, 2005), pp. 5656–5658; Exhibit P-121.
- 336 [P] Yale-Loehr testimony (June 7, 2005), pp. 5659–5661.
- 337 *Ibid.*, pp. 5665–5666.
- 338 *Ibid.*, pp. 5672–5674.
- 339 *Ibid.*, pp. 5677–5679.
- 340 Exhibit C-34, K.1.d.
- 341 [IC] Lang testimony (November 18, 2004), p. 5794; Exhibit C-30, Tab 44.
- 342 This type of lookout is different from an FBI terrorist watch list. According to Inspector Cabana, the U.S. terrorist watch list is completely different from a TECS lookout. To Inspector Cabana's knowledge, Mr. Arar was not on the FBI terrorist watch list, even though the Project A-O Canada lookout request described Mr. Arar and Dr. Mazigh as Islamic extremists with suspected ties to al-Qaeda. According to Inspector Cabana, it would be completely inappropriate for a Canadian agency to request that the Americans include someone on their terrorist watch list, but this does not apply to a TECS lookout.
- [IC] Cabana testimony (October 25, 2004), p. 2477.
- 343 Exhibit C-71, E&R Report; Exhibit C-30, Tab 43.
- 344 Exhibit C-30, Tab 44.

- 345 Ibid.
- 346 Ibid.
- 347 ICES documents travel into Canada.
- 348 Lang notes, p. 73.
- 349 [IC] Lang testimony (November 18, 2004), pp. 5908–5909.
- 350 Ibid., p. 5814.
- 351 Exhibit C-30, Tab 44.
- 352 However, as described in detail in the following chapter, before Mr. Arar arrived in New York on September 26, 2002 U.S. authorities notified Project A-O Canada that he would be arriving that day and would be refused entry to the United States.
- 353 [IC] Cabana testimony (October 26, 2004), pp. 2637–2638. Mr. Almalki's wife is Malaysian.
- 354 Ibid., p. 2638.
- 355 See Chapter V, Section 1 for a discussion of rendition.
- 356 [IC] Buffam testimony, (December 1, 2004), pp. 6437–6439.
- 357 Ibid., p. 6449; [IC] Clement testimony (January 18, 2005), pp. 9044–9048.
- 358 Exhibit C-190, Tab 4.
- 359 Exhibit C-30, Tab 64.
- 360 Exhibit C-30, Tab 236.
- 361 Ibid., Tab 64.
- 362 Ibid. The documents were stamped with the following caveat: “This document is the property of CANADA CUSTOMS. It is provided on the understanding it will be used solely for official purposes by your agency and that it will not be further disseminated without the written permission of CANADA CUSTOMS, from the office of origin or from Headquarters.”
- 363 [IC] Thériault testimony (February 8, 2005), p. 11856.
- 364 Ibid., p. 12012.
- 365 Exhibit C-30, Tab 70.
- 366 [IC] Corcoran testimony (November 16, 2004), p. 5236.
- 367 This is discussed in greater detail in Section 4.3 below.
- 368 Exhibit C-30, Tabs 248 and 236. The fax went to Headquarters NOC (National Operations Centre) and to the RCMP LO in Washington.
- 369 This issue is discussed more fully in Chapter II, Section 3.3.
- 370 Exhibit C-30, Tab 84.
- 371 Although Officer Mutombo may have relevant information to provide to the Inquiry, she is no longer with Canada Customs. She lives in Massachusetts and has indicated to Government counsel that she does not wish to cooperate with the Commission, even by conference call.
- 372 Exhibit C-190, Tab 5.
- 373 [IC] Gantner testimony (February 3, 2005), p. 11702.
- 374 Exhibit C-30, Tab 84.
- 375 [IC] Gantner testimony (February 3, 2005), p. 11687 *et seq.*
- 376 Exhibit C-30, Tab 84.
- 377 [IC] Gantner testimony (February 3, 2005), p. 11694.
- 378 Ibid., p. 11718 *et seq.*
- 379 Exhibit C-190, Tab 38. In this context, NSIS undoubtedly refers to Project A-O Canada.
- 380 Exhibit C-199, “MCIA Daily Operations Report,” December 20, 2001 and Gantner testimony (February 3, 2005), p. 11739.
- 381 [IC] Gantner testimony (February 3, 2005), p. 11742.
- 382 Exhibit C-199, “MCIA Daily Operations Report,” December 20, 2001.
- 383 Ibid.

- 384 Superintendent Gantner did not draft the Daily Operations Report and, although he admitted to the possibility that he wrote the note referred to in the Report, he does not recall its contents. [IC] Gantner testimony (February 3, 2005), p. 11744. Superintendent Leclerc might have drafted the Daily Operations Report, but he does not recall drafting the portion that refers to the note, nor does he recall anything at all about what the note said. [IC] Leclerc testimony (February 9, 2005), p. 12062. Superintendent Crabbe was on duty the next morning and he does not recall seeing a note on the items. He stated that this might have been because Officer Thériault arrived and viewed the items before him. [IC] Crabbe testimony (February 9, 2005), pp. 12084–12085.
- 385 Exhibit C-190, Tab 39; [IC] Gantner testimony (February 3, 2005), pp. 11697–11699.
- 386 [IC] Crabbe testimony (February 9, 2005), p. 12075.
- 387 The bond room is where seized or held goods are secured pending an outcome, such as the payment of duties and taxes in the case of Mr. Arar. Shift superintendents have access to the bond room, as do the chief of operations and one bond room officer. Line officers do not have access. The protocol for entry is that a shift superintendent and another officer/employee of Canada Customs access the bond room together to retrieve goods. Personnel are not supposed to enter the bond room alone.
- 388 [IC] Crabbe testimony (February 9, 2005), p. 12080.
- 389 Exhibit C-30, Tab 84.
- 390 Ibid.; [IC] Thériault testimony (February 8, 2005), p. 11884.
- 391 Exhibit C-190, Tab 41.
- 392 [IC] Crabbe testimony (February 9, 2005), p. 12097.
- 393 The evidence is confusing as to how these items were finally appraised and what appraisal options were available to Customs. Superintendent Crabbe testified that it would have been possible to negotiate a value for the laptop and PDA on the spot, meaning that an arrangement could possibly have been reached at the time of seizure. [IC] Crabbe testimony (February 9, 2005), pp. 12091–12092. Superintendent Gantner was of a different opinion, stating that Customs was not a “flea market.”
- 394 Exhibit C-190, Tabs 44 and 45.
- 395 Exhibit C-30, Tab 90.
- 396 Ibid., Tab 78. Officer Thériault testified he was not surprised that CSIS would be asked to help with the laptop and PDA as the organization has been known to get involved in national security investigations. Sometimes, CSIS is contacted as the primary investigative body and chooses to interview individuals during the Customs process. At that point, however, the subject would be made aware that the Customs process was over.
- 397 Exhibit C-86, Tabs 23 and 24. This is discussed in greater detail below in Section 4.3.
- 398 Exhibit C-205.
- 399 This is discussed in Chapter III, Section 3.7.
- 400 Exhibit C-188, Tab 19.
- 401 Ibid., Tab 16.
- 402 [IC] Webb testimony (February 2, 2005), p. 11216.
- 403 Exhibit C-188, Tab 17 “Enforcement Bulletin 02-02.”
- 404 The amended policy is discussed in Chapter III, Section 3.7 in relation to the secondary examination of Dr. Mazigh.
- 405 Exhibit C-188, Tab 6. It appears that line officers, RIOs and others continued to apply the old policy concerning the exchange of information until the new guidelines were released in November 2003. [IC] Thériault testimony (February 8, 2005), p. 11863.

⁴⁰⁶ Exhibit C-188, Tab 10. Two other statutes come into play as well: the *Access to Information Act* covers disclosure of non-personal, general information; and the *Privacy Act* deals with disclosure of personal information.

⁴⁰⁷ Exhibit C-189, Tab 6, Memorandum D1-16-1. A complete list of senior managers who have this authority is provided in Appendix A to this Memorandum. A July 1991 Interim Memorandum D1-16-2 expanded the permissible disclosure of information to include not only other federal and provincial institutions charged with the duties of law enforcement, but also those charged with the administration or enforcement of a federal or provincial law. This memorandum also expanded the grounds upon which authority could be granted. Previously, the authorizing person had to be convinced that the disclosure of information was for the purposes of enforcing any law of Canada or of carrying out a lawful investigation. As of July 1991 the authorizing person could also consider whether the disclosure was for the purposes of preparing to implement, administering and enforcing any law of Canada or a province, or for carrying out a lawful investigation. That being said, the fundamental notion remained that permission was required from an authorized person.

⁴⁰⁸ Exhibit C-188, Tab 6. Sections of 107(4) read, in part, as follows: “An official may provide, allow to be provided or provide access to customs information if the information: (a) will be used solely in or to prepare for criminal proceedings commenced under an Act of Parliament; ... (h) is reasonably regarded by the official to be information relating to the national security or defence of Canada.” Subsection 107(4)(a) is inapplicable given that no criminal proceedings had been commenced at any of the relevant times.

⁴⁰⁹ Exhibit C-189, Tab 6. Subsection 107(5)(a) reads as follows: “An official may provide, allow to be provided or provide access to customs information to the following persons: (a) a peace officer having jurisdiction to investigate an alleged offence under any Act of Parliament or of the legislature of a province subject to prosecution by indictment, the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged offence may be taken, if that official believes on reasonable grounds that the information relates to the alleged offence and will be used in the investigation or prosecution of the alleged offence, solely for those purposes;” Subsection 107(5)(m) provides for the provision of customs information to “any person, if the information is required to comply with a subpoena or warrant issued or an order made by a court of record in Canada.” However, no warrant was issued in this case.

⁴¹⁰ Subsection 107(1) defines an “official” as “a person who (a) is or was employed in the service of Her Majesty in right of Canada or of a province; (b) occupies or occupied a position of responsibility in the service of Her Majesty in right of Canada or of a province; or (c) is or was engaged by or on behalf of Her Majesty in right of Canada or of a province.”

⁴¹¹ [IC] Cabana testimony (October 26, 2004), pp. 2698–2700.

⁴¹² Exhibit C-30, Tabs 93, 96, 99; [IC] Callaghan testimony (November 3, 2004), p. 3944; [IC] Corcoran testimony (November 10, 2004), p. 4723; [IC] Walsh testimony (November 29, 2004), pp. 6055–6057.

At this point, the information that Project A-O Canada had gathered about Mr. Arar included the following:

- 1) his meeting at Mango’s Café;
- 2) the materials obtained from secondary examinations;
- 3) Mr. Arar’s connection to Mr. Almalki; and
- 4) his use of Mr. Almalki as emergency contact on the Minto rental application.

Source: [IC] Corcoran testimony (November 10, 2004), pp. 4724–4730; [IC] Walsh testimony (November 29, 2004), pp. 6055–6057.

413 [IC] Corcoran testimony (November 10, 2004), pp. 4724–4730; [IC] Callaghan testimony
(November 3, 2004), pp. 3950–3952.

414 Clement notes, p. 154; [IC] Clement testimony (January 19, 2005), p. 9184.

415 Exhibit C-30, Tab 93; [IC] Walsh testimony (November 29, 2004), p. 6055.

416 [IC] Callaghan testimony (November 3, 2004), p. 3959.

417 Exhibit C-75.

418 Exhibit C-30, Tab 100.

419 [IC] Corcoran testimony (November 16, 2004), pp. 5254–5255.

420 Exhibit C-30, Tab 105.

421 [IC] Cabana testimony (October 26, 2004), pp. 2700–2709; Exhibits C-45 and C-75.

422 Exhibit C-30, Tab 106.

423 Exhibit C-44.

424 [IC] Callaghan testimony (November 3, 2004), pp. 3964–3967.

425 [IC] Lemay testimony (November 17, 2004), p. 5618.

426 His notes indicate that he worked on these questions off and on between January 7 and 16,
2002.

427 [IC] Lemay testimony (November 17, 2004), pp. 5400–5412; Exhibit C-94; [IC] Lemay testimony
(November 17, 2004), pp. 5618–5623.

428 [IC] Buffam testimony (December 2, 2004), p. 6451.

429 Corporal Buffam confirmed that the business card he left contained his name, unit, telephone
number e-mail address and office address.

430 Buffam notes, pp. 68–69.

431 [IC] Buffam testimony (December 1, 2004), pp. 6454–6455; Exhibit C-30, Tab 528.

432 Exhibit C-30, Tab 528.

433 See Section 3.5.1.1 above.

434 [IC] Lang testimony (November 18, 2004), pp. 5868–5869 and p. 5873.

435 [IC] Buffam testimony (December 1, 2004), pp. 6455–6456.

436 Ibid., pp. 6456–6457.

437 [IC] Corcoran testimony (November 10, 2004), p. 4731.

438 Exhibit P-141; [P] Edelson testimony (June 16, 2005), p. 7228.

439 [P] Edelson testimony (June 16, 2005), pp. 7230–7232.

440 Exhibit P-143.

441 Ibid.; [P] Edelson testimony (June 16, 2005), pp. 7251–7256.

442 Ibid.; *ibid.* Mr. Arar also discussed his suspicion that his phone had been tapped. When
Mr. Arar returned to Canada, he phoned his mother and immediately thereafter the RCMP
placed a telephone call to his residence. From this, he assumed that the RCMP was engaged
in live listening. [P] Edelson testimony (June 16, 2005), pp. 7251–7252 and p. 7404.

443 Exhibit P-143; [P] Edelson testimony (June 16, 2005), pp. 7251–7256.

444 [P] Edelson testimony (June 16, 2005), pp. 7241–7242.

445 Ibid., pp. 7260 and 7306.

446 Ibid., pp. 7411–7413.

447 Ibid., pp. 7406–7409 and pp. 7412–7413.

448 Ibid., pp. 7414–7415 and 7497–7498. Mr. Edelson also pointed out in testimony that a KGB
statement is usually preceded by several warnings, including a *Criminal Code* warning about
how the statement can be used, and the illegality of giving false evidence. If a statement is
sworn and it can subsequently be established that the individual said something false, there
is the potential for charges. Mr. Edelson wanted to avoid a situation where his client was
placed in this type of jeopardy.

449 Ibid., pp. 7414–7415.

450 There was also discussion about the interview being held in Mr. Edelson's office.
 451 [P] Edelson testimony (June 16, 2005), p. 7415.
 452 Ibid., p. 7493.
 453 [IC] Cabana testimony (November 1, 2004), pp. 3336–3337.
 454 [IC] Corcoran testimony (November 10, 2004), p. 4734.
 455 [IC] Cabana testimony (October 26, 2004), p. 2707.
 456 [IC] Buffam testimony (December 1, 2004), pp. 6459–6460; [IC] Corcoran testimony (November
 10, 2004), p. 4732.
 457 [IC] Cabana testimony (October 26, 2004), pp. 2708–2709; Exhibit C-45.
 458 [IC] Corcoran testimony (November 10, 2004), p. 4735.
 459 Exhibits C-47, C-45; [IC] Cabana testimony (October 27, 2004), pp. 2717–2718.
 460 Exhibit C-45 and [IC] Corcoran testimony (November 10, 2004), pp. 4735–4738.
 461 Exhibit C-45.
 462 Ibid.
 463 Ibid. There is differing testimony about the meaning of this message. These differences are dis-
 cussed below in Section 4.1.2.
 464 Exhibit C-47.
 465 [IC] Cabana testimony (October 25, 2004), p. 2362.
 466 Exhibit C-47.
 467 [IC] Hovey testimony (January 17, 2005), p. 8736.
 468 [IC] Clement testimony (January 18, 2005), pp. 9091–9092.
 469 [IC] Cabana testimony (October 27, 2004), p. 2722. Inspector Cabana was asked to produce
 a copy of this presentation for the Commission, but he was only able to locate his speaking
 notes. [IC] Cabana testimony (November 2, 2004), p. 3601. Inspector Cabana also testified that
 he believed someone from CROPS took minutes from the meeting. Again, these minutes were
 never produced. Ibid.
 470 Exhibit C-75.
 471 Exhibit C-76.
 472 [IC] Cabana testimony (October 27, 2004), p. 2723.
 473 [IC] Clement testimony (January 18, 2005), p. 9094.
 474 Exhibit C-47.
 475 [IC] Callaghan testimony (November 3, 2004), p. 3974.
 476 Exhibit C-47. As mentioned, Superintendent Pilgrim attended on behalf of RCMP Headquarters.
 He does not recall if he was there for the whole meeting, but testified that someone from
 Headquarters would have been present the entire time. Pilgrim testimony (January 28, 2005),
 p. 10691.
 477 Exhibit C-47.
 478 [IC] Callaghan testimony (November 3, 2004), p. 3975.
 479 Ibid.
 480 Ibid., pp. 3985–3986.
 481 [IC] Clement testimony (January 18, 2005), p. 9093–9094.
 482 [IC] Cabana testimony (October 27, 2004), p. 2732.
 483 Ibid., p. 2727.
 484 Ibid., p. 2731.
 485 Ibid.
 486 Ibid., p. 2729.
 487 Ibid., p. 2825.
 488 [IC] Cabana testimony (November 2, 2004), p. 3613.
 489 Ibid., p. 3597.

- 490 Ibid., pp. 3804–3805. Inspector Clement testified that he gave the general impression the parties at the table should continue to work together and share everything in pursuit of their common goal. [IC] Clement testimony (January 19, 2005), pp. 9260–9261. Superintendent Pilgrim could not say whether sharing the seized information was a significant part of the discussion. However, it was generally agreed that U.S. authorities would have access to the material. He does not recall any specific discussions about sharing anything more than the fruits of the January 22, 2002 searches, although he may not have been present for the whole meeting. [IC] Pilgrim testimony (January 26, 2005), pp. 10442–10443 and
- [IC] (January 28, 2005), p. 10691.
- 491 [IC] Corcoran testimony (November 10, 2004), pp. 4739–4740.
- 492 Ibid., pp. 4743–4744.
- 493 [IC] Callaghan testimony (November 3, 2004), pp. 3981–3982.
- 494 [IC] Cabana testimony (November 2, 2004), p. 3591.
- 495 [IC] Testimony (January 24, 2005), pp. 10015–10022.
- 496 [IC] Testimony (September 29, 2004), pp. 2185–2192.
- 497 [IC] Couture testimony (December 7, 2004), p. 7183.
- 498 Ibid., p. 7187.
- 499 As a reminder, Chief Superintendent Couture's view of the original free-flow-of-information agreement was as follows: 1) Project A-O Canada was encouraged to share efficiently in order to deal with the imminent threat; 2) Project A-O Canada could share information without caveats; 3) information belonging to an agency other than the "sisters" could not be shared without permission of the originating agency; 4) each of the sisters should share their own information with the others; and 5) an MLAT (see Section 3.1.4.4, note 212) would be required if the agency receiving information wished to use it in a formal legal proceeding. [IC] Couture testimony (December 7, 2004), p. 7188.
- 500 Exhibit C-45.
- 501 [IC] Couture testimony (December 7, 2004), p. 7148.
- 502 [IC] Clement testimony (January 19, 2005), pp. 9260–9261.
- 503 Ibid., pp. 9187–9188.
- 504 [IC] Pilgrim testimony (January 26, 2005), p. 10443.
- 505 Ibid.
- 506 Ibid., p. 10444. He may not have been present for the entire meeting.
- 507 [IC] Proulx testimony [ET] (December 9, 2004), p. 7771.
- 508 Ibid., pp. 7773–7775.
- 509 Exhibit C-45.
- 510 Exhibit C-30, Tab 118.
- 511 [IC] Walsh testimony (November 29, 2004), pp. 6066–6071. His search produced numerous e-mails as well as addresses and names, including e-mails involving Mr. Arar that went back to 1999.
- 512 Exhibit C-30, Tab 119.
- 513 [IC] Corcoran testimony (November 10, 2004), p. 4761.
- 514 [IC] Callaghan testimony (November 3, 2004), pp. 3985–3986.
- 515 [IC] Couture testimony (December 6, 2004), pp. 7042–7043. According to Project A-O Canada, the fact that CSIS was slow to come on board after the January 22, 2002 searches was a source of frustration. Material from the searches required immediate attention and the lack of a CSIS representative at the outset was seen as a handicap.
- 516 [IC] Corcoran testimony (November 10, 2004), pp. 4786 and 4799; Exhibit C-30, Tab 139. Constable Lemay did continue to carry out relatively minor tasks with respect to Mr. Arar, even in April.

- 517 [IC] Cabana testimony (October 27, 2004), p. 2749.
 518 Exhibit C-74.
- 519 [IC] Corcoran testimony (November 10, 2004), p. 4650.
 520 Ibid., pp. 4651–4652.
- 521 [IC] Clement testimony (January 19, 2005), pp. 9208–9209.
 522 [IC] Callaghan testimony (November 3, 2004), p. 3897.
 523 [IC] Callaghan testimony (November 9, 2004), p. 4431.
 524 Ibid., p. 4433.
- 525 [IC] Clement testimony (January 19, 2005), p. 9219.
 526 [IC] Cabana testimony (October 27, 2004), p. 2783.
 527 This includes one particularly long visit that is summarized below in Section 4.2.3.
 528 Exhibit C-74.
- 529 The actual information that was shared among the agencies is dealt with in detail below in
 Sections 4.2.2 and 4.3.
- 530 See Section 3.1.4.4, note 212 for a description of the MLAT.
- 531 [IC] Corcoran testimony (November 10, 2004), pp. 4753–4754.
 532 This meeting is discussed in greater detail below in Section 4.2.3.
- 533 [IC] Cabana testimony (November 2, 2004), pp. 3604–3605.
 534 Ibid., pp. 3801–3802.
 535 Exhibit C-30, Tab 118.
- 536 [IC] Corcoran notes, p. 69; Corcoran testimony (November 10, 2004), p. 4760.
 537 [IC] Cabana testimony (October 27, 2004), p. 2728.
- 538 Corcoran notes, p. 71; [IC] Corcoran testimony (November 10, 2004), p. 4765.
 539 Corcoran notes, p. 71; [IC] Cabana testimony (October 27, 2004), p. 2763.
- 540 [IC] Corcoran testimony (November 10, 2004), p. 4755.
- 541 [IC] Cabana testimony (October 27, 2004), pp. 2786–2787. Inspector Clement testified that he
 was not certain if CSIS ever picked up a copy of the imaged hard drives, but nothing prevented
 CSIS officials from doing so. [IC] Clement testimony (January 18, 2005), p. 9095. Chief
 Superintendent Couture recalls raising this matter with CSIS on a couple of occasions. He
 found it surprising that they did not come to pick up the information; however, he believes
 they eventually did, although he cannot remember exactly when. [IC] Couture testimony
 (December 7, 2004), pp. 7151–7152.
- 542 Corcoran notes, p. 72.
 543 Ibid.
- 544 Walsh notes, p. 555. On February 6, 2002, Staff Sergeant Corcoran asked Sergeant Walsh to
 make three more copies of the ITO for another American agency. Walsh notes, vol. 1, p. 548.
 545 At some point, FBI personnel also had the opportunity to view the ITO. [IC] Clement testimony
 (January 19, 2005), pp. 9224–9225.
- 546 [IC] Walsh testimony (December 1, 2004), pp. 6236–6237.
 547 [IC] Clement testimony (January 19, 2004), p. 9224.
 548 Exhibit C-110. The sealing order was varied on December 1, 2004. Exhibit C-118.
- 549 [IC] Walsh testimony (November 30, 2005), p. 6237.
 550 Corcoran notes, p. 73.
- 551 [IC] Cabana testimony (October 27, 2004), pp. 2775–2776.
 552 Exhibit C-30, Tab 124.
 553 Corcoran notes, p. 73.
- 554 [IC] Clement testimony (January 18, 2005), p. 9118.
 555 Ibid., p. 9117.
- 556 [IC] Lemay testimony (November 17, 2004), pp. 5427 *et seq.*

- 557 [IC] Cabana testimony (November 2, 2004), pp. 3681 and 3825.
- 558 It is unclear how long the FBI was actually at Project A-O Canada offices. Staff Sergeant Corcoran testified that agents were there analyzing information for two days. [IC] Corcoran testimony (November 10, 2004), p. 4775. Corporal Lemay testified that the FBI spent a few days at the offices. In particular, he indicated that the FBI agents were there on February 21, 2002 for the entire day, reviewing the binders on Mr. Arar, meaning that the FBI were there for more than two days. [IC] Lemay testimony (November 17, 2004), pp. 5424 and 5435; Lemay notes, p. 159.
- 559 Callaghan notes, p. 122.
- 560 Corcoran notes, p. 73; Callaghan notes, p. 122.
- 561 Callaghan notes, p. 122.
- 562 [IC] Corcoran testimony (November 10, 2004), p. 4776.
- 563 It is perhaps a moot point whether FBI officials made or received a copy of the rental agreement and lease application during their February visit. Corporal Buffam had already provided the relevant information from the Minto documents to the FBI in November 2001. [IC] Corcoran testimony (November 16, 2004), p. 5217. It is far from clear that Mr. Arar was in fact shown a rental application or lease while in New York. Although Mr. Arar has publicly said that he was shown these items, the FBI memorandum of its interview with Mr. Arar makes no mention of this matter.
- 564 Exhibit C-76; [IC] Corcoran testimony (November 16, 2004), p. 5215.
- 565 [IC] Corcoran testimony (November 16, 2004), p. 5216. Inspector Clement testified that this was consistent with his instructions to share information. He was aware that the FBI was given access to the binders and agreed that if the FBI had requested copies, it would have been appropriate to provide them. [IC] Clement testimony (January 19, 2005), pp. 9210–9211.
- 566 [IC] Corcoran testimony (November 10, 2004), pp. 4776–4777.
- 567 [IC] Coons testimony (December 8, 2004), p. 7458.
- 568 [IC] Corcoran testimony (November 16, 2004), pp. 5216–5217.
- 569 [IC] Lemay testimony (November 17, 2004), p. 5436. A November 7, 2003 letter from the RCMP Washington liaison officer to the FBI seems to indicate that some information was passed on to the investigators, but Project A-O Canada investigators cannot recall specifically whether the rental application and lease were given to them. Exhibit C-30, Tab 534. An agent later stated that he did not recall receiving or removing these documents during his visit. [IC] Coons testimony (December 8, 2004), p. 7458.
- 570 [IC] Lemay testimony (November 17, 2004), p. 5426.
- 571 [IC] Callaghan testimony (November 3, 2004), pp. 3996–3997.
- 572 Exhibit C-30, Tab 126; [IC] Cabana testimony (October 27, 2004), pp. 2784 to 2786.
- 573 As discussed earlier, the E&R III database was a management tool used by Project A-O Canada. The assignment of tasks and their follow up was recorded in this database.
- 574 Exhibit C-30, Tab 126.
- 575 [IC] Cabana testimony (October 27, 2004), p. 2782; [IC] Callaghan testimony (November 3, 2004), pp. 3999–4000. As mentioned, the visiting FBI agents were not only interested in Mr. Arar, but in others as well, such as Mr. Almalki. It appears that the FBI officials were given access to this information during their visit. [IC] Corcoran testimony (November 10, 2004), p. 4775. The evidence on information sharing during the February 2002 FBI visit does not indicate that a significant exchange of information occurred. However, the point may be moot, as will become clear in the following section, which deals directly with the extent to which the Project A-O Canada team shared the contents of their databases with the Americans.
- 576 Exhibit C-30, Tab 119.
- 577 Corcoran notes, p. 71; [IC] Corcoran testimony (November 10, 2004), p. 4763–4764.

578 Exhibit C-30, Tab 124.

579 Ibid., Tab 147. Inspector Clement received an informal request from another partner agency during a telephone conversation on February 4, 2002, in which the partner agency requested copies of hard drives and videos from the search. [IC] Clement testimony (January 18, 2005), p. 9095; Clement notes, p. 127.

580 Exhibit C-30, Tab 127; Exhibit C-145.

581 [IC] Cabana testimony (October 27, 2004), p. 2803.

582 Ibid., p. 2825.

583 [IC] Corcoran testimony (November 16, 2004), p. 5242.

584 Exhibit C-30, Tab 127.

585 [IC] Proulx testimony [ET] (December 14, 2004), p. 8228.

586 [IC] Reynolds testimony (February 1, 2005), p. 11093.

587 Exhibit C-30, Tab 127.

588 [IC] Proulx testimony [ET] (December 14, 2004), p. 8231.

589 Exhibit C-145; [IC] Proulx testimony [ET] (December 14, 2004), p. 8228–8229.

590 [IC] Proulx testimony [ET] (December 14, 2004), p. 8232.

591 That said, Corporal Flewelling could not indicate what “please process” meant. [IC] Flewelling testimony (January 21, 2005), p. 9694.

592 [IC] Proulx testimony [ET] (December 14, 2004), pp. 8234–8235. A document such as this would normally be forwarded to the divisions with a cover letter.

593 [IC] Clement testimony (January 19, 2005), p. 9206–9207.

594 Ibid., p. 9207.

595 [IC] Corcoran testimony (November 16, 2004), p. 5238.

596 Exhibit C-30, Tab 149. The situation report states as follows: “...was provided with 3 CD’s which comprised the scanned documents seized from the various search locations on 02-01-22. The CD’s in question were provided upon the receipt of a formal request from...”

597 [IC] Corcoran testimony (November 15, 2004), p. 5082. Staff Sergeant Callaghan testified that the situation report contained either an error in thinking or an error in reporting when it stated that the CDs were made up of scanned documents seized from the various search locations on January 22, 2002. He did not notice this error when the report was created. [IC] Callaghan testimony (November 3, 2004), p. 4014.

598 [IC] Cabana testimony (October 27, 2004), p. 2823.

599 Sergeant Walsh explained that situation reports (SITREPS) were internal RCMP documents disseminated to certain sections within the RCMP. The National Operations Centre (NOC) would receive SITREPS at Headquarters, and from there they were sent to CID. The purpose of the SITREPS was to keep everyone informed of the Project A-O Canada investigation; in fact, SITREPS were the primary means of keeping Headquarters informed. In a normal investigation, SITREPS would only be submitted every second week or more, but Project A-O Canada investigators were told at the beginning of the investigation that they were to be submitted on a daily basis. The Americans were not sent copies of SITREPS. [IC] Walsh testimony (November 29, 2004), pp. 5930–5935.

600 [IC] Callaghan testimony (November 3, 2004), p. 4014; [IC] Corcoran testimony (November 10, 2004), pp. 4805–4806.

601 [IC] Corcoran testimony (November 9, 2004), p. 4626. See also, for situation reports, [IC] Walsh testimony (November 29, 2004), p. 5935.

602 [IC] Cabana testimony (October 25, 2004), p. 2394; [IC] Corcoran testimony (November 9, 2004), p. 4626. In contrast, the E&R database set out tasks performed by officers and the actions taken in the performance of those tasks. [IC] Cabana testimony (October 25, 2004), p. 2396. It should also be noted that Supertext did not include officers’ notes, with the ex-

ception of one set by Constable Lang that was scanned into the system on March 5, 2002. Exhibit C-86, vol. IV, Tab 10

603 [IC] Corcoran testimony (November 15, 2004), p. 5046–5048. As an aside, it seems clear that, before testimony was heard, the RCMP had turned its attention to disclosing and sharing information, and burning CDs of Supertext material. In a letter, Pierre Perron, Officer in Charge at National Security Operations Branch, suggested to then-Assistant Deputy Inspector Corcoran that he should “question all investigators (including those that have left the project) in order to ascertain if there are any records indicating sharing of CDs and other investigative information. It is my understanding that there are records kept of all burning of Supertext CDs. ... I agree that disclosure and sharing of information may become an issue at the Arar inquiry. In light of the inquiry, every effort must be made to find records of this sharing of information, and the steps taken in trying to find these records must be properly documented before proceeding with this request.” Exhibit C-30, Tab 602.

604 Consistent with his interpretation of the free-flow-of-information agreement between the agencies, Inspector Cabana did not seek CSIS’ consent to disclose these documents. However, he testified that CSIS would already have been present when much of their information was shared with the American agencies during presentations to the joint management team. He also said that CSIS would have understood the free-flow-of-information arrangement. CSIS might or might not have been aware of the timing for sharing the CDs, but was nonetheless aware that Project A-O Canada was sharing everything with American agencies. [IC] Cabana testimony (October 27, 2004), pp. 2831–2832.

As an aside, the government summary identified the date that the CDs were shared as April 2, 2002, but this is not correct; the actual date was April 9, 2002. Exhibit C-85.

605 Ibid.

606 Exhibit C-86. This list is a summary of what is included in the non-search material. There were a total of 94 non-search documents related to Mr. Arar.

607 [IC] Corcoran testimony (November 16, 2004), pp. 5236–5239. Staff Sergeant Corcoran testified that, in his view, he did not need Canada Customs’ consent to send this information to the Americans. It was his understanding that the direction was to share this type of document, but if the information was to be used for non-intelligence purposes, an MLAT would be necessary.

608 Exhibit C-86, vol. II, Tab 5.

609 The following are examples of such language:

(1) Exhibit C-86, vol. III, Tab 4: This document provides an explanation for the missed Customs lookout on Mr. Arar upon his return from Tunisia after the January 22, 2002 searches. It refers to Mr. Arar as a “suspect.”

(2) Ibid., vol. I, Tab 41: It refers to Mr. Arar as a “Principal Subject” of the investigation.

(3) Ibid., vol. I, Tab 43: This is a Project A-O Canada situation report for October 23, 2001, referring to Mr. Almalki’s connection to Mr. Arar as “important.”

(4) Ibid., vol. II, Tab 4: This is an analytical diagram entitled “Bin Laden’s associates: Al-Qaeda Organization in Ottawa.” Mr. Almalki is at the centre, and Mr. Arar is directly linked to Mr. Almalki.

610 Ibid., vol. I, Tab 50 or Exhibit C-30, Tab 45.

611 Cabana Testimony (November 2, 2004), pp. 3610–3612. The contents of the two binders on Mr. Arar prepared by Corporal Lemay were not yet in Supertext when the CDs were sent to the Americans. However, it is worth repeating that the FBI reviewed the binders when they visited Project A-O Canada offices between February 19 and 21, 2002.

612 Exhibit C-86, vol. I, Tab 50 or Exhibit C-30, Tab 45.

613 Ibid. or *ibid.*

- 614 Exhibit C-30, Tab 106.
- 615 Exhibit C-86, vol. I, Tab 24.
- 616 Ibid., vol. II, Tab 35, Vol. II, Tab 38, Vol. II, Tab 45.
- 617 Ibid., vol. IV, Tab 6.
- 618 [IC] Cabana testimony (October 27, 2004), pp. 2833–2838.
- 619 [IC] Corcoran testimony (November 15, 2004), pp. 5083–5084
- 620 Ibid., p. 5125.
- 621 [IC] Cabana testimony (November 2, 2004), pp. 3609 and [IC] (October 27, 2004), pp. 2831–2832.
- 622 [IC] Clement testimony (January 19, 2005), pp. 9188–9189.
- 623 Ibid., p. 9207.
- 624 Ibid., pp. 9187–9188.
- 625 Ibid., p. 9188.
- 626 Ibid., p. 9296.
- 627 Ibid., p. 9297.
- 628 [IC] Couture testimony (December 7, 2004), p. 7183.
- 629 Ibid., p. 7184.
- 630 Ibid., pp. 7184–7185.
- 631 Ibid., p. 7186.
- 632 Ibid., p. 7187. The Chief Superintendent did point out that the Supertext database was managed by people in charge of major case management. In order for a part of the database to be copied, someone in Project A-O Canada had to request it from the computing staff, but he could not say who would have made the request.
- 633 Exhibit C-45
- 634 [IC] Couture testimony (December 7, 2004), p. 7148.
- 635 [IC] Hovey testimony (January 17, 2005), p. 8746.
- 636 Ibid., p. 8748.
- 637 Ibid., pp. 8754–8755.
- 638 Ibid., p. 8753.
- 639 [IC] Proulx testimony [ET] (December 9, 2004), p. 7686.
- 640 Ibid., p. 7688. Interestingly, Assistant Commissioner Proulx testified that he did not worry before about what was sent to the Americans, but now it was necessary to pay more attention, as it was possible an individual could get placed on a watch list. He testified that RCMP policies had changed as a result of the Arar case. According to Assistant Commissioner Proulx, the RCMP has to be very careful about what they give to the Americans. Ibid., p. 7792.
- 641 Ibid., pp. 7773–7774. Assistant Commissioner Proulx was not entirely sure whether documents were to be shared, or only the hard drives. Ibid., pp. 7774–7775. Nor was he sure why this would have been necessary. Ibid., p. 7786.
- 642 [IC] Pilgrim testimony (January 26, 2005), p. 10326.
- 643 Ibid., pp. 10447–10448.
- 644 Ibid., pp. 10450–10451.
- 645 [IC] Pilgrim testimony (January 28, 2005), p. 10691.
- 646 Ibid., p. 10784.
- 647 [IC] Flewelling testimony (January 20, 2005), p. 9394.
- 648 Ibid., p. 9395.
- 649 Ibid., p. 9396.
- 650 Ibid., p. 9415.
- 651 Ibid., p. 9413.
- 652 Ibid., p. 9397.

- 653 Ibid., p. 9400.
- 654 Ibid., pp. 9416–9417.
- 655 [IC] Reynolds testimony (February 1, 2005), p. 10813.
- 656 Ibid., p. 10852.
- 657 Ibid., pp. 10852–10853.
- 658 Ibid., p. 10853.
- 659 When he stated that the sharing essentially fell within the agreement, he was not questioned on, nor did he mention, the sharing of non-partner agency materials.
- 660 [IC] Reynolds testimony (February 1, 2005), pp. 11058–11059.
- 661 Ibid., p. 11060.
- 662 Callaghan notes, p. 146.
- 663 Exhibit C-30, Tab 149; Callaghan notes, p. 149; Corcoran notes, p. 92; [IC] Corcoran testimony (November 10, 2004), pp. 4802–4803; Exhibit C-30, Tab 528.
- 664 [IC] Cabana testimony (October 27, 2004), p. 2866.
- 665 Exhibit C-56.
- 666 Exhibit C-30, Tab 153.
- 667 [IC] Cabana testimony (November 1, 2004), pp. 3317–3318; Exhibit C-56, Tab 1.
- 668 See Section 3.10 above.
- 669 [IC] Cabana testimony (October 27, 2004), p. 2879.
- 670 Ibid., p. 2869.
- 671 [IC] Callaghan testimony (November 3, 2004), p. 4064.
- 672 [IC] Couture testimony (December 7, 2004), p. 7204.
- 673 [IC] Cabana testimony (November 1, 2004), pp. 3337–3338.
- 674 [IC] Flewelling testimony (January 20, 2005), pp. 9422–9423.
- 675 Corcoran notes, p. 123.
- 676 [IC] Cabana testimony (November 1, 2004), pp. 3317–3318; [IC] Callaghan testimony (November 3, 2004), p. 4078.
- 677 [IC] Cabana testimony (October 27, 2004), p. 2880.
- 678 Exhibit C-30, Tab 195.
- 679 [IC] Corcoran testimony (November 15, 2004), p. 4844.
- 680 [IC] Lemay testimony (November 17, 2004), pp. 5475–5476.
- 681 Exhibit C-30, Tab 213.
- 682 [IC] Callaghan testimony (November 9, 2004), pp. 4428–4429.
- 683 [IC] Clement testimony (January 18, 2005), pp. 9057–9063. See Section 3.6.2.
- 684 Exhibits C-130 and C-131.
- 685 Exhibit C-30, Tab 95.
- 686 [IC] Clement testimony (January 18, 2005) p. 9069; Exhibit C-30, Tab 95.
- 687 [IC] Clement testimony (January 18, 2005), pp. 9062–9067.
- 688 Ibid., pp. 9067–9068.
- 689 Ibid., p. 9070.
- 690 Clement notes, p. 121; [IC] Clement testimony (January 18, 2005), pp. 9079–9085.
- 691 [IC] Clement testimony (January 18, 2005), pp. 9086–9087.
- 692 Exhibit C-49. The briefing note was dated July 18, 2002.
- 693 Callaghan notes, p. 228; Exhibit C-30, Tab 207.
- 694 Walsh notes, p. 395; Exhibit C-30, Tab 207.
- 695 Walsh notes, p. 395.
- 696 Callaghan notes, p. 228.
- 697 Ibid., p. 229.
- 698 Walsh notes, pp. 409–411; [IC] Walsh testimony (November 30, 2004), pp. 6131–6133.

- 699 Exhibit C-30, Tab 207.
- 700 Callaghan notes, pp. 4085–4089.
- 701 [IC] Walsh testimony (November 30, 2004), pp. 6135–6136.
- 702 *Ibid.*, pp. 6136–6137.
- 703 Exhibit C-30, Tab 208.
- 704 [IC] Cabana testimony (October 28, 2004), p. 2949.
- 705 [IC] Walsh testimony (November 30, 2004), p. 6135.
- 706 [IC] Flewelling testimony (January 20, 2005), pp. 9424–9426; Walsh notes, p. 272; [IC] Walsh testimony (November 30, 2004), p. 6087. Callaghan notes, p. 193; Exhibit C-161.
- 707 Corcoran notes, p. 109.
- 708 [IC] Cabana testimony (October 27, 2004), p. 2921. Chief Superintendent Couture testified that Inspector Cabana would have taken this as authorization for him to proceed with this course of action.[IC] Couture testimony (December 7, 2004), pp. 7306–7308.
- 709 Exhibit C-30, Tab 199; [IC] Cabana testimony (October 27, 2004), p. 2919.
- 710 [IC] Callaghan testimony (November 3, 2004), pp. 4085–4086; Callaghan notes, p. 229.
- 711 [IC] Callaghan testimony (November 3, 2004), pp. 4085–4089.
- 712 [IC] Flewelling testimony (January 20, 2005), pp. 9480–9482.
- 713 [IC] Corcoran testimony (November 15, 2004), pp. 4860–4861; Roy notes, p. 11. Chief Superintendent Couture, Inspector Cabana and Staff Sergeants Callaghan and Corcoran were present from Project A-O Canada, as were Ambassador Pillarella, Don Saunders, Scott Heatherington, James Gould and Jonathan Solomon from DFAIT. The RCMP LO to DFAIT, Inspector Richard Roy, was also present, and perhaps others.
- 714 Callaghan notes, p. 279. A series of questions had been prepared for the Syrians to put to Mr. Almalki if Project A-O Canada officials were not permitted direct access.
- 715 *Ibid.*
- 716 [IC] Pillarella testimony (March 30, 2005), pp. 13416–13420 and [IC] (March 31, 2005), pp. 13768–13771.
- 717 Mr. Solomon ‘s comment was not recorded in the contemporaneous notes of the Project A-O Canada officers present. It is mentioned in Staff Sergeant Callaghan’s notes for November 23, 2003, more than a year later, after Mr. Arar’s return to Canada and his press conference. In November 2003, Inspector Cabana had asked about any discussions Project A-O Canada might have had about sending questions for Mr. Arar to Syria. Staff Sergeant Callaghan could not recall any such discussions, but reminded Inspector Cabana of the September 10, 2002 meeting and the comment by Mr. Solomon.
- 718 [IC] Solomon testimony (April 4, 2005), pp. 13912–13916.
- 719 *Ibid.*, pp. 14078–14082.
- 720 *Ibid.*, pp. 13912–13915.
- 721 [IC] Pillarella testimony (March 30, 2005), pp. 13413–13414 and 13427.
- 722 [IC] Pillarella testimony (March 31, 2005), pp. 13749–13750.
- 723 [IC] Roy testimony (December 6, 2004), pp. 6815–6822.
- 724 [IC] Heatherington testimony (April 27, 2005), pp. 16164–16171.
- 725 [IC] Cabana testimony (August 8, 2005), pp. 17291–17296.
- 726 Exhibit C-219, Tab 1.
- 727 See Chapter III, Section 6.3.
- 728 This is discussed at greater length in Section 4.8.3 below.
- 729 The issue of whether FBI interest in Mr. Arar pre-dated or arose independently of Project A-O Canada is discussed below in Section 4.11.
- 730 [IC] Cabana testimony (October 27, 2004), pp. 2890–2892; [IC] Couture testimony (December 7, 2004), pp. 7305–7306. Project A-O Canada directed its requests for information from the FBI

to different places. At times, officials wrote to an FBI regional office; at other times, they wrote to the Ottawa legal attaché at the U.S. Embassy. As a third point of contact, the RCMP occasionally directed its requests to FBI Headquarters in Washington, either directly, or through the RCMP liaison officer in Washington. Project A-O Canada tended to try different communication routes with the FBI, not so much because of protocol, but because they hoped to elicit a quicker response. Chief Superintendent Couture was aware and approved of this direct correspondence between Project A-O Canada and the FBI.

- 731 Exhibit C-30, Tab 109.
- 732 [IC] Clement testimony (January 19, 2005), pp. 9175–9178.
- 733 [IC] Hooper testimony (August 26, 2005), pp. 17857–17858.
- 734 [IC] Cabana testimony (November 2, 2004), p. 3623.
- 735 Exhibit C-30, Tab 145; *Ibid.*, Tab 204; *Ibid.*, Tab 200.
- 736 [IC] Cabana testimony (October 28, 2004), pp. 2962–2963.
- 737 Exhibit C-30, Tab 216.
- 738 Exhibit C-74; [IC] Clement testimony (January 18, 2005), pp. 8970–8973.
- 739 [IC] Cabana testimony (October 27, 2004), pp. 2893–2896.
- 740 [IC] Clement testimony (January 18, 2005), pp. 8933–8935; [IC] Cabana testimony (October 27, 2004), pp. 2728–2729.
- 741 [IC] Cabana testimony (October 27, 2004), pp. 2728–2729.
- 742 Exhibit C-30, Tab 44.
- 743 [IC] Lang testimony (November 18, 2004), pp. 5907–5909.
- 744 [P] Yale-Loehr testimony (June 7, 2005), pp. 5657–5666.
- 745 [IC] Webb testimony (February 2, 2005), p. 11383.
- 746 [IC] Lang testimony (November 18, 2004), p. 5814.
- 747 *Ibid.*, pp. 5905–5906.
- 748 [IC] Callaghan testimony (November 9, 2004), pp. 4491–4492.
- 749 [IC] Cabana testimony (November 2, 2004), p. 3681.
- 750 [IC] Lemay testimony (November 17, 2004), pp. 5427–5434.
- 751 [IC] Cabana testimony (November 2, 2004), pp. 3690–3692.
- 751 [IC] Corcoran testimony (November 15, 2004), pp. 4844–4845.
- 752 [IC] Cabana testimony (October 27, 2004), pp. 2893–2896.

II

DETENTION IN THE UNITED STATES

1. INTRODUCTION

On Thursday, September 26, 2002, Mr. Arar arrived at John F. Kennedy International Airport (JFK Airport) in New York on a flight from Zurich, Switzerland. He had started his trip in Tunisia and made a connection to New York in Zurich, with the intention of flying from there to Montreal. However, when he arrived in New York, he was detained and imprisoned.

The following is a description of what happened during Mr. Arar's detention in New York from two p.m. on September 26 to about four a.m. on October 8, 2002. Mr. Arar has not testified about these events. This account is based primarily on the evidence of officials from the RCMP, CSIS and the Department of Foreign Affairs (DFAIT), in accordance with the Inquiry's mandate to report on the actions of Canadian officials with respect to Mr. Arar. The Inquiry did not hear testimony from any American officials, and thus does not have their first-hand evidence about the reasons the Americans detained Mr. Arar. However, the Inquiry did receive and review American documents concerning his detention and removal, and it also heard testimony from Canadian officials about their conversations with American officials.

The Inquiry's mandate uses the term "deportation" to describe the process by which Mr. Arar was taken from the United States to Syria via Jordan. According to American law, however, the correct term for the process is "removal," and therefore this term is used throughout this Report. However, some documents and witnesses referred to "deportation," and where necessary, that term is used to accurately reflect the evidence.

2. THE RCMP'S RESPONSE TO MR. ARAR'S ARRIVAL IN NEW YORK, SEPTEMBER 26, 2002

At 12:55 p.m. on September 26, 2002, Staff Sergeant Patrick Callaghan of Project A-O Canada received a call from the FBI legal attaché's office in Ottawa. The American official indicated that Maher Arar was flying into New York and was

due to land about two o'clock that afternoon. According to this official, the Americans intended to question Mr. Arar, and then deny him entry into the United States. He said that Mr. Arar would be sent back to Zurich, where his flight to New York had originated. When the official asked if the RCMP had any questions for Mr. Arar, Staff Sergeant Callaghan replied that he would check and get back to him.¹

The three managers of Project A-O Canada had slightly different views on why the FBI offered to ask Mr. Arar questions on behalf of the Project. According to Staff Sergeant Callaghan, the FBI was aware that the RCMP had wanted to interview Mr. Arar earlier in the year. To his mind, the offer was intended to assist the RCMP, not aid the Americans with their investigation.² However, in Inspector Michel Cabana's view, the FBI's offer was aimed at assisting both the Canadian and American agencies, because this might be the last chance for them to have their questions answered.³ Staff Sergeant Kevin Corcoran agreed with Inspector Cabana, testifying that "The information we gleaned from this [interview] would be of assistance to our investigation and it may be of assistance to their investigations."⁴

Project A-O Canada's officials were not aware that Mr. Arar was coming to the United States until they were advised by the FBI on September 26. According to Staff Sergeant Callaghan, his telephone conversation was the first contact between the American authorities and the RCMP concerning Mr. Arar's detention in the United States.⁵

After speaking with the American official, Staff Sergeant Callaghan informed Staff Sergeant Corcoran and Sergeant Randal Walsh of the news.⁶

At one point in his testimony, Inspector Cabana said that he believed he was notified by one of the Project's assistant managers that Mr. Arar was en route to New York and would be denied entry into the United States. He believed this to be so because he was aware that questions were to be sent to the FBI.⁷ Elsewhere in his testimony, however, Inspector Cabana said he only learned about Mr. Arar's predicament on September 27.⁸

When he spoke to the FBI, Staff Sergeant Callaghan specifically asked if Mr. Arar's detention was based on an American or the Canadian investigation. The American official told him that Mr. Arar was being detained as a result of an FBI investigation.⁹ In Inspector Cabana's opinion, the purpose of the FBI's call was not to get Project A-O Canada's input into the decision to refuse Mr. Arar entry into the United States, but simply to inform the Canadians that the decision had been made.¹⁰

2.1

THE FAXED QUESTIONS

Shortly after speaking with the FBI, Staff Sergeants Callaghan and Corcoran instructed Sergeant Walsh to organize the questions for Mr. Arar.¹¹

Sergeant Walsh approached Corporal Robert Lemay for assistance, as the Corporal had prepared a list of questions for an interview with Mr. Arar in January 2002. When that interview did not take place as scheduled, he updated the questions in the summer of 2002 and provided the new version of the questions to Sergeant Walsh. Considering the urgency involved, officials decided not to draft a new set of questions. Sergeant Walsh quickly edited the existing questions and prepared a fax cover sheet.¹²

Sergeant Walsh felt a sense of urgency in this assignment because he received his instructions within an hour of Mr. Arar's arrival in New York. He understood that Mr. Arar was going to be interviewed and refused entry, which meant that he would be sent back to Switzerland in short order.

Sergeant Walsh testified that once the questions were complete, he took them to Staff Sergeants Callaghan and Corcoran for their review.¹³ Although Staff Sergeant Callaghan did not recall reviewing the questions,¹⁴ Staff Sergeant Corcoran acknowledged checking them and then instructing Sergeant Walsh to get Inspector Cabana's sign-off before they were sent to the FBI.¹⁵ Sergeant Walsh could not find Inspector Cabana. Since he had reached his deadline, he decided to send the questions without the Inspector's signature. To his mind, he had prior approval for this action because the questions had to be sent out immediately.¹⁶

Sergeant Walsh sent the questions to the National Operations Centre (NOC) at RCMP Headquarters, with instructions to forward the questions to the FBI legal attaché's office.¹⁷ Corporal Rick Flewelling, the officer at the RCMP's Criminal Intelligence Directorate (CID) assigned to monitor Project A-O Canada, was copied on the fax. However, Corporal Flewelling testified that he did not see the fax or the list of questions prior to this Inquiry. He could not explain why this was so.¹⁸

The fax confirmation sheet indicated that questions were sent out at 12:56 p.m. on September 26,¹⁹ but apparently this record was incorrect. According to Sergeant Walsh, he was directed to put the questions together at 1:10 p.m. He believed that the fax confirmation sheet was out by one hour, and that the correct time was 1:56 p.m. As the last page of the fax went through, Sergeant Walsh noted that the time on his watch was 2:00 p.m.²⁰

The following message on the fax cover sheet preceded the list of questions sent by Project A-O Canada to the FBI:

1. The attached pages are suggested questions for Maher ARAR as per your request. The list was one prepared earlier this year prior to Arar's sudden departure from Canada and, as such, some questions are a bit dated. 2. We appreciate your assistance in interviewing ARAR.²¹

Appended to the cover sheet were the suggested questions, which were preceded by the following statement:

Interview Questions: The following questions were prepared for [an] interview that was slated to be conducted with ARAR in January 2002. Due to the urgent need to transmit this to New York, this outline for questions to be asked was not edited.²²

Sergeant Walsh made few substantive changes to Corporal Lemay's questions. The only change of consequence was the addition of a concluding section.

The opening paragraph was followed by several questions about Mr. Arar's biographical information, occupation and contacts with police. The fax then referred to questions about Abdullah Almalki. Mr. Arar was to be asked why Mr. Almalki was listed as the emergency contact on his "tenancy agreement" and about possible business connections between Mr. Arar and Mr. Almalki.²³ He was also to be asked why he had met with Mr. Almalki at Mango's Café, and why the two men had walked in the rain after their meal.

Other questions concerned Mr. Arar's attendance at a conference in Japan on January 18, 2000 and whether Mr. Arar had visited any other countries.²⁴ The questions also referred to Mr. Arar's relationship with Ahmad El Maati.

Although phrased in the form of questions, the fax contained significant information about Mr. Arar. For example, it disclosed that Mr. Almalki was Mr. Arar's emergency contact on his lease application, and that Mr. Arar had travelled to Japan.

The fax concluded with the following statement:

ARAR kept a low profile while in Canada but he seemed to be connected to many of the targets of our investigation. ARAR had been asked by our members for an interview as a potential witness but ARAR sought legal counsel and declined. ARAR soon after departed the country rather suddenly for Tunisia.²⁵

Neither the fax cover sheet nor the list of questions contained a caveat or made reference to the third-party rule.

In Sergeant Walsh's opinion, the questions did not give any new information to the Americans; Project A-O Canada had previously shared some of the information, and the Americans had learned some of it on their own (e.g., Mr. Arar's employment at The MathWorks, Inc.).²⁶ Inspector Cabana testified that the personal information about Mr. Arar in the conclusion of the fax was well known to American authorities, and was discussed in joint meetings of Project A-O Canada, CSIS, DFAIT, and the American agencies.²⁷

Regardless of whether the information was known to American authorities, Project A-O Canada's concluding statement about Mr. Arar declining an interview was not accurate, as has been described in the preceding chapter. The conclusion also said that "soon after" declining the interview, Mr. Arar departed Canada "rather suddenly." This is simply wrong. He left approximately five months later.²⁸

Sergeant Walsh was certain the issue of Mr. Arar's departure for Tunisia had come up in discussions with the Americans prior to September 26. However, he could not point to a document informing the Americans that Mr. Arar had left Canada or that he had left "rather suddenly" after declining an interview. Sergeant Walsh explained that "suddenly" was used to express Project A-O Canada's surprise at Mr. Arar's departure from Canada.²⁹

On October 7, 2002, Project A-O Canada was informed that its questions had been used during an FBI interview of Mr. Arar which was not referred to in the INS decision to remove Mr. Arar.³⁰ Staff Sergeant Callaghan testified that he never received a complete description of Mr. Arar's answers to these questions.³¹

2.1.1

Lack of Caveats

In Inspector Cabana's opinion, it was not necessary to attach caveats to the questions because the purpose of forwarding them was to ask them of Mr. Arar.³²

Further, Inspector Cabana did not expect the questions to be used for an Immigration and Naturalization Service (INS) hearing because he understood that Mr. Arar was to be refused entry to the United States and returned to Zurich immediately. The purpose of the questions was to assist the Americans with an ongoing criminal investigation.³³

Staff Sergeant Callaghan agreed that caveats were unnecessary in the circumstances. Despite the concluding section of the fax, he did not regard the questions as "intelligence." The fax was simply a list of questions for the Americans to ask Mr. Arar.³⁴

The CROPS Officer for “A” Division, Chief Superintendent Antoine Couture, did not recall being briefed about sending the questions to the FBI. In fact, his authority was not required.³⁵ However, if Sergeant Walsh had asked him for permission, he would have agreed. According to Chief Superintendent Couture, the American authorities would have eventually asked the same questions, once they had time to review all of the information provided by Project A-O Canada.³⁶ Implicitly, he accepted that the questions could be sent without caveats.

2.1.2

RCMP Headquarters

RCMP Headquarters was not aware that the questions were being sent until well after they had gone. A briefing note for the period from September 26 to October 2, 2002 was sent to CID and Deputy Commissioner Garry Loepky.³⁷ It stated:

The FBI requested a list of questions from A-O Canada for their interview. The FBI indicated that they had detained ARAR based on their investigation and not based on any request or investigation from A-O Canada. The questions were faxed out as requested.³⁸

As mentioned, Corporal Flewelling, the officer at RCMP Headquarters assigned to monitor the Project, did not see the questions until he began preparing for this Inquiry. According to him, it would have been prudent for Project A-O Canada to engage CID prior to sending the questions. Nevertheless, with approval from the CROPS Officers, Project A-O Canada would have been authorized to send the questions directly to the American authorities. Corporal Flewelling was not sure if the CROPS Officers approved submitting the questions.³⁹ As also mentioned, the CROPS Officer did not recall seeing the questions. However, the situation report for September 26, 2002, which noted that questions were requested by and sent to the FBI, was approved by Superintendent Wayne Watson, the Assistant CROPS Officer.⁴⁰

Corporal Flewelling did not believe it was appropriate to attach caveats to the questions, since it would prevent them from being asked. However, he stated that caveats should have been attached to any background, contextual or third-party information that was included.⁴¹

The Officer in Charge of the National Security Investigations Branch (NSIB), Superintendent Wayne Pilgrim, did not recall seeing the questions before they were sent out, but he remembered participating in a discussion about them at some point after September 26. According to Superintendent Pilgrim, direct

contact between the FBI and Project A-O Canada, without the involvement of CID, was appropriate due to the urgency of the situation. Furthermore, he did not believe that CID was required to help prepare the questions. This was a matter best left to the investigators.⁴²

As with other Project A-O Canada witnesses, Superintendent Pilgrim did not view the lack of caveats as a problem. From his perspective, caveats were not necessary because the questions were being asked in order to benefit the Canadian investigation. The fact that the conclusion contained personal information did not change his view. On the contrary, Sergeant Pilgrim believed that a caveat would have prevented the FBI from asking the questions at all.⁴³

2.1.3

Right to Counsel

The questions were sent to the FBI without Project A-O Canada knowing if Mr. Arar had retained legal counsel. During Project A-O Canada's attempt to interview Mr. Arar in January 2002, he had informed them that he would only participate under certain conditions — one being that his counsel be present.

Inspector Cabana did not see anything inappropriate about asking the questions while Mr. Arar was in American custody, because Mr. Arar was free not to answer them. In his view, Mr. Arar was being held in a country with many of the same values as Canada. Thus, he would be free to answer or refuse to answer as he chose. Mr. Arar still had a right to counsel, but the Project A-O Canada team hoped that his inclination to answer the questions had changed.⁴⁴

According to Inspector Cabana, Project A-O Canada was under the impression that Mr. Arar would only be detained for a short time. This explained the urgency to get the questions to the FBI before Mr. Arar arrived in New York. Under normal circumstances, officials would conduct a very quick interview, the individual would be informed why he was being refused entry, and then he would be sent out on the next flight.⁴⁵

Inspector Cabana disagreed with the suggestion that Project A-O Canada was trying to circumvent Mr. Arar's right to counsel under the Charter.⁴⁶ Mr. Arar's refusal to speak to officials without his counsel present in January 2002 did not prevent Project A-O Canada from trying to approach him directly to discuss a potential interview.⁴⁷

Staff Sergeant Callaghan agreed with Inspector Cabana that there was nothing inappropriate in sending the questions to New York. He stressed as well that Canadian authorities only viewed Mr. Arar as a witness. If the Americans were treating him as a suspect, Mr. Arar would have access to legal counsel who

could advise him whether or not he should answer the questions. Staff Sergeant Callaghan knew there were laws in the United States governing persons who were arrested and held in detention. However, he conceded that he was not sure if Mr. Arar had actually been placed under arrest, or if American laws regarding the right to counsel applied to aliens.⁴⁸

It appears that no one in Project A-O Canada sought legal advice before sending the questions to the FBI.⁴⁹

3. PROJECT A-O CANADA'S INVOLVEMENT — SEPTEMBER 27 TO OCTOBER 8

3.1 SEPTEMBER 27 TO OCTOBER 2, 2002

Shortly after 1:15 pm on Friday, September 27, another representative of the FBI legal attaché's office spoke to Staff Sergeant Corcoran and Corporal Buffam and explained that Mr. Arar was still in custody in New York and was being questioned by American authorities. The American official stated that FBI investigators had interviewed Mr. Arar.⁵⁰

Inspector Cabana testified that the American authorities had informed Project A-O Canada on September 26 that Mr. Arar would be questioned by the FBI that same day and then sent back to Zurich. Inspector Cabana believed that after this phone call on September 27 he was told by a member of the Project that Mr. Arar would be sent back to Zurich.⁵¹

One of the Project A-O Canada officers' notebooks recorded an entry for September 27 indicating that Michael Edelson — a lawyer who had previously represented Mr. Arar — contacted Project A-O Canada about Mr. Arar.⁵² Although none of the Project A-O Canada witnesses could recall it,⁵³ Mr. Edelson testified that he had in fact spoken to someone from Project A-O Canada on that date about Mr. Arar's apparent disappearance.⁵⁴

On September 30, Sergeant Walsh prepared a situation report for September 27 and Inspector Cabana signed it. Noting the phone call from the FBI official, the Sergeant wrote: "Arar was to be held for additional questioning and then refused entry to the U.S. He was also denied permission to enter Canada via the U.S..... *Arar was then removed from the country.*"⁵⁵ [Italics added.]

Sergeant Walsh was not able to say on what basis he included the statement that Mr. Arar "was then removed from the country," since clearly that was not the case. Sergeant Walsh could only say that, over the weekend, Project A-O Canada concluded that Mr. Arar had been sent back to Switzerland.⁵⁶

However, he did not have any notes relating to this matter. In any event, it appears that, as of September 30, it was a commonly-held belief within Project A-O Canada that Mr. Arar had been removed from the United States to Zurich.⁵⁷

It is unclear precisely when, after September 30, the members of Project A-O Canada were first informed that Mr. Arar was still in the United States. However, the exact timing is not critical to this Inquiry. At the latest, on October 2, Project A-O Canada was informed by DFAIT that Mr. Arar remained in custody in New York.⁵⁸

There is no evidence of any contact between the RCMP and American authorities between the American official's phone call at 1:15 p.m. on September 27 and the late afternoon of October 3, other than one conversation between Staff Sergeant Corcoran and an FBI agent. On October 1, Staff Sergeant Corcoran was told by the agent that it was his understanding that Mr. Arar was going to be refused entry into the U.S. and sent back to his original port of call.⁵⁹

3.2

THE AMERICAN QUESTIONS — OCTOBER 3

Late in the afternoon of October 3, [***] sent a fax to RCMP CID, asking a number of questions about Mr. Arar.⁶⁰ The next morning, Corporal Flewelling sent a fax to Project A-O Canada,⁶¹ attaching [***] questions. On the cover page, Corporal Flewelling wrote:

[***] contacted this office after hours looking for Project A-O Canada's assistance with information pertaining [to Mr. Arar]. On behalf of American law enforcement [***] is seeking any evidence that can assist in the support of criminal charges.

Find attached request forwarded by [***] with a list of questions. They would be most appreciative of any additional information you can supply on this subject. They further request that any response be channeled through the FBI for evidentiary purposes.

Due to time restrictions facing investigator in the U.S.; [***] would be grateful for your attention to this matter.⁶²

[***].

When Staff Sergeant Callaghan read the fax, he thought it most likely that the FBI — as the American law enforcement agency — would use the responses to pursue criminal charges against Mr. Arar. He did not consider whether he had any discretion in answering the questions. For him, it was a matter of responding to a request by RCMP Headquarters.⁶³

Inspector Cabana was not involved in preparing a reply to the request. However, when questioned on the issue of Project A-O Canada's authority to send a reply, he testified that the request was channeled through CID to the Project in order for officials there to comply with it.⁶⁴

[***].

The request included seven questions regarding Mr. Arar's contacts or possible connections with other individuals, sleeper cell members, or known terrorists. The memorandum also asked that the information be provided to Project A-O Canada because the questions were related to an American investigation.

According to RCMP witnesses, the request did not cause any alarm or concern on their part, despite the strong language it used.

Based on the request, it was clear to the RCMP that the Americans considered Mr. Arar to be a member of al-Qaeda. In Staff Sergeant Callaghan's view, the American authorities were not being aggressive in their assessment of Mr. Arar. In fact he wondered if they had more information than Canadian authorities on Mr. Arar in relation to the period of time when Mr. Arar worked for The MathWorks, Inc. in Boston.⁶⁵ He also wondered if Canada had additional information that would confirm that Mr. Arar was a member of al-Qaeda. The al-Qaeda assessment did not give him cause for concern about sharing information with the United States.⁶⁶

Superintendent Pilgrim was one of the officers at RCMP Headquarters to whom the fax was directed. He did not recall seeing or reading a copy of it when it came in.⁶⁷ Asked if Canadians should have been careful about the type of information that was given to the Americans, especially in respect of young Muslim men just a year after 9/11, Superintendent Pilgrim replied that Mr. Arar was a person of interest in an ongoing criminal investigation. It was appropriate for the RCMP to share relevant information with agencies [***], due to the events of 9/11 and the ongoing investigations that they were or might have been involved in. He assumed that the assessment of Mr. Arar as a member of al-Qaeda, was an assertion that the Americans could support on some level.⁶⁸

It is noteworthy that the request appears to indicate that there were two potential purposes underlying the request — removal and law enforcement. The Immigration and Naturalization Service (INS) was currently processing Mr. Arar for removal, and the request was in support of this process. In effect, the Americans intended to use the information from Canadian authorities for that process. The request also inquired about the RCMP's ability to pass the information to the FBI for potential use in law enforcement proceedings.

3.3

THE CANADIAN RESPONSE — OCTOBER 4

Detective Constable David Beardsley and Sergeant Mona La Salle of Project A-O Canada drafted a response to [***] request,⁶⁹ which was reviewed by Staff Sergeants Callaghan and Corcoran. Inspector Cabana was not personally involved. The response was sent to the National Operations Centre (NOC) at RCMP Headquarters, to be forwarded to the FBI legal attaché's office and the RCMP's Washington liaison officer (LO). A copy of the response was also sent to Corporal Flewelling, RCMP CID.⁷⁰

Deputy Commissioner Leoppky testified that it was not CID's practice to look at individual exchanges in each investigation. Literally hundreds of investigations were underway at any given time and it would be beyond CID's capacity to examine each step in an investigation. CID would ensure that a reply was within the acceptable parameters, but would not become involved in second-guessing every exchange.⁷¹

Although the cover sheet indicated the response was sent on October 2, this date was incorrect. In fact, the fax was sent out on Friday, October 4 at 5:05 p.m.⁷²

Although Corporal Flewelling received this fax, he did not see it before it was sent out. However, he had not specifically requested or indicated to Project A-O Canada that the reply should be sent to him before going to the American authorities.⁷³

The fax cover sheet accompanying the October 4 reply stated:

Project A-O Canada received a facsimile this date (through RCMP HQ) from [***] requesting information on Maher ARAR. A-O Canada have responded to each of the requests contained in the facsimile. This information is being provided to the FBI, who are coordinating the request for information. The supporting documents will be forwarded on a later date....It is important to note that the information contained in the attached report only addresses the issues raised. Project A-O Canada has significant documentation on this individual that could be of assistance in your investigation.⁷⁴

The supporting documents mentioned in the fax cover sheet were not sent out. Staff Sergeant Callaghan could not explain why. The Americans did not follow up to request them between October 4 and October 8 (the day Mr. Arar was removed from the United States).⁷⁵

Project A-O Canada's response included information obtained during Mr. Arar's secondary examination at the Canadian border on November 29,

2001.⁷⁶ It also included information indicating a relationship between Mr. Arar and Mr. Almalki, such as a reference to the meeting between Messrs. Almalki and Arar at Mango's Café in October 2001.

The reply made it clear that Project A-O Canada had yet to establish definitive ties between Mr. Arar and al-Qaeda. Specifically, Project A-O Canada stated that “a link analysis has yet to be completed on ARAR and while he has had contact with many individuals of interest to this project we are unable to indicate links to al-Qaida.” The reply also mentioned that a detailed investigation into Mr. Arar had not been completed to date.

The memorandum was accompanied by two caveats. One identified the information as the property of the RCMP and noted that it could not be reclassified, distributed or used without first obtaining the authorization of the RCMP. The other highlighted the third-party rule and the fact that it “may affect the disclosure of... information” the RCMP had received from CSIS.⁷⁷

3.3.1

Use of the Information

Three facts bear repeating. First, [***] requested the information for use in supporting the INS removal process. Second, [***] inquired about the RCMP's ability to pass the information to the FBI for law enforcement purposes. Finally, the RCMP reply contained the following caveat:

This document is the property of the Royal Canadian Mounted Police. It is loaned to you in confidence and it is not to be reclassified, distributed or acted upon without the prior authorization of the originator.⁷⁸

Three members of the RCMP — Staff Sergeant Callaghan, Staff Sergeant Corcoran and Corporal Flewelling — testified in some detail about how they anticipated the Americans would use the answers to their questions. Although the details of their evidence and the language they used differs somewhat, the general thrust of the testimony is the same. All three understood that the information might be used either for criminal charges or INS removal proceedings. However, because of the caveat attached to the answers, they believed that American authorities would have to get RCMP approval before using the information for either purpose. Put another way, without consent the information could be used for intelligence purposes only, and not for any legal proceedings. In arriving at these conclusions, at least two of the witnesses considered that INS proceedings would be covered by this caveat.⁷⁹

The INS was not a partner in the information-sharing arrangement involving the RCMP, CSIS and the American agencies. In this instance, Project A-O Canada expanded this arrangement to allow the INS access to RCMP information. According to Staff Sergeant Callaghan, this was appropriate because Project A-O Canada included a caveat that would make it necessary for the INS to get approval before using the information.⁸⁰

Despite the fact that Project A-O Canada foresaw that the information it supplied in the October 4 reply might be used in an INS proceeding, and so inserted a caveat, team members did not use this opportunity to address the information that had been passed to the American authorities regarding Mr. Arar prior to October 4. This includes the information passed to the Americans in the three CDs in, or shortly after, April 2002. Staff Sergeant Callaghan testified that it was not specifically communicated to the American authorities on October 4 that any of the information provided prior to October 2002 could not be used in INS proceedings without seeking permission from the RCMP. The entire time that Project A-O Canada dealt with the American partner agencies, the understanding was that shared information could be used for intelligence purposes only, and that otherwise an MLAT was needed. According to Staff Sergeant Callaghan, the American authorities were not advised of this requirement on each and every occasion that Project A-O Canada supplied them with information. However, the requirement for an MLAT was implied.⁸¹

The Americans never sought the approval of the RCMP to use the information in the October 4 reply in the INS proceedings that led to Mr. Arar's removal. Nor did they need approval to use any other information previously supplied to them by the RCMP.

On Monday, October 7, Staff Sergeant Callaghan returned to work to learn in an e-mail from Corporal Flewelling that there were problems reading the fax sent to the FBI on October 4. Staff Sergeant Callaghan contacted the FBI, which told him that it was the fax sent to the FBI in Washington, D.C. that was the problem, and that another fax had already been re-sent there by the RCMP NOC.⁸²

When Staff Sergeant Callaghan spoke with the FBI on October 7, the American official indicated that the FBI had not given up on charges against Mr. Arar and would be sending more questions that same day.⁸³ However, the FBI did not send any additional questions.⁸⁴

3.3.2

CSIS Information

The RCMP's reply of October 4 contained some information originating from CSIS. The information was subject to caveats requiring CSIS consent before disclosure.

The CSIS information was sent to the Americans without CSIS' consent. However, a caveat was attached stating: "The third party rule may affect disclosure of this information." Staff Sergeant Callaghan explained that it was important to attach specific third-party caveats to CSIS information to signify that it did not derive from the RCMP's own investigation.⁸⁵

Witnesses from RCMP Headquarters were frank in their assessment of including CSIS information in the October 4 reply without first obtaining the agency's consent. According to both Assistant Commissioner Proulx and Superintendent Pilgrim, Project A-O Canada would have been in breach of the CSIS caveat if it had passed CSIS information to the Americans without first receiving permission.⁸⁶ Assistant Commissioner Proulx added that CSIS approval would have been required if CSIS information was shared with the American authorities for potential use in law enforcement proceedings.⁸⁷

Chief Superintendent Couture was less clear about the propriety of sending CSIS information without seeking the agency's approval. He agreed that it was up to CSIS to choose what to disclose, despite the information-sharing arrangement between the partner agencies.⁸⁸ Nevertheless, the arrangement could be interpreted to mean that information could be shared among partner agencies without the originating agency's authority.⁸⁹ Ideally, however, a partner agency should be advised that information was being shared.⁹⁰

3.4

CONTACTS WITH DFAIT

Project A-O Canada's first contact with DFAIT during Mr. Arar's detention was on October 2, six days after Project A-O Canada had been informed that Mr. Arar would be denied entry into the United States. DFAIT contacted Project A-O Canada officials to tell them Mr. Arar had been detained.

Project A-O Canada officials did not think they were required to inform DFAIT of Mr. Arar's detention when the FBI notified them on September 26. (In fact, during Mr. Arar's detention, Project A-O Canada never initiated contact with DFAIT.) As already discussed, the information officials originally received was that Mr. Arar would not be detained for long; he would simply be interviewed and returned to Zurich. Further, as Inspector Cabana explained, from

September 27 to September 30, Project A-O Canada believed that Mr. Arar was no longer in the United States.⁹¹

Deputy Commissioner Loeppky concurred that it was unnecessary to contact DFAIT in every case. The RCMP's mandate was to further the criminal investigation. The United States was not known as a country that disrespects individual rights, and there was no indication that Mr. Arar would be denied consular access. In general, the RCMP left DFAIT to carry out its consular mandate, unless an individual was unable to access consular services. In Deputy Commissioner Loeppky's opinion, notifying DFAIT could be counterproductive from an investigative perspective, if consular officials approached the detained individuals when they were not aware they were being investigated.⁹²

At the time, Inspector Richard Roy, the RCMP's liaison officer (LO) at DFAIT had only been in the position for about three weeks.⁹³ The RCMP LO, physically located in DFAIT's Foreign Intelligence Division (ISI),⁹⁴ facilitates communication between DFAIT and the RCMP.⁹⁵ If DFAIT ISI was to provide information to the RCMP, Inspector Roy would take the documents to CID with the expectation that CID officials would disseminate the information to the appropriate investigation team, in this case Project A-O Canada.⁹⁶

Inspector Roy first learned about Mr. Arar's detention when Jonathan Solomon, a DFAIT ISI policy advisor, approached him in the afternoon of October 2. Mr. Solomon advised him that Mr. Arar was being detained in the United States, that the case was "not immigration oriented," and that the consulate there was not able to see him.⁹⁷

Inspector Roy's understanding was that Mr. Solomon was passing along this information because he wanted to know if the RCMP was aware of Mr. Arar's detention.⁹⁸

Following the conversation with Mr. Solomon, Inspector Roy went to the Project A-O Canada offices. Staff Sergeant Callaghan's notes indicated that Inspector Roy arrived there at 2:45 p.m. on October 2.⁹⁹ Staff Sergeants Callaghan and Corcoran told him they were not sure of Mr. Arar's whereabouts.¹⁰⁰ They also informed him that: Mr. Arar was a close associate of Mr. Almalki; Mr. Arar had been arrested in New York on September 27; Project A-O Canada had supplied questions to the FBI on September 26; and Mr. Arar was refused entry into the United States.¹⁰¹ According to Project A-O Canada, a report of these events had been faxed to CID.¹⁰²

Inspector Roy returned to DFAIT and informed Mr. Solomon of everything that he had learned.¹⁰³

Inspector Roy instructed Mr. Solomon not to tell anyone that the RCMP had known for a few days about Mr. Arar's detention, as he did not think there

was any need for Mr. Solomon's colleagues at DFAIT to know. According to Mr. Roy, Mr. Solomon understood his instructions and agreed he would simply say that Project A-O Canada was aware of Mr. Arar's detention.¹⁰⁴

Inspector Roy acted on his own initiative in giving this instruction; he was not acting on instructions from Project A-O Canada. Because he had only been in the LO posting for a short time, he was still trying to establish what could and could not be said. He believed that this information had been given to him as a member of the RCMP, not as a member of DFAIT, and he was not sure what information he should pass on to DFAIT. According to Inspector Roy, his goal was to keep information sharing on a "need-to-know" basis.¹⁰⁵

At 3:30 p.m. on October 2, Inspector Roy reported back to Staff Sergeant Callaghan that Mr. Arar was still in detention.¹⁰⁶ Although Inspector Roy did not recall being told by members of Project A-O Canada earlier in the day that they believed Mr. Arar had been sent back to Switzerland, he believed that he probably was given this information. This was why he had telephoned Project A-O Canada to tell officials that Mr. Arar was still in detention.¹⁰⁷

After hanging up, Inspector Roy realized that he had forgotten to tell Staff Sergeant Callaghan an additional piece of information. At 3:45 p.m., he called Staff Sergeant Callaghan again and told him that Mr. Arar had originally intended to fly from New York to Montreal.¹⁰⁸

Inspector Roy also shared the news that Mr. Arar was still in detention with Corporal Flewelling at CID, because it was his understanding that Corporal Flewelling oversaw the Project A-O Canada file at RCMP Headquarters.¹⁰⁹ Inspector Roy did not verify whether Corporal Flewelling already knew that Mr. Arar was still being detained. He could not remember if Corporal Flewelling had any reaction to his news.¹¹⁰

Corporal Flewelling did not notify Sergeant Ron Lauzon, his superior at CID, that Mr. Arar had been detained in the United States. Sergeant Lauzon learned of Mr. Arar's detention during an unrelated meeting at "A" Division on October 3. Regardless, the Sergeant did not believe that Corporal Flewelling had erred in not communicating this information to him immediately.¹¹¹

DFAIT first learned on October 1 that Mr. Arar and his brother were concerned about the possibility Mr. Arar would be sent to Syria.¹¹² Despite DFAIT's awareness of a removal threat, Project A-O Canada did not hear about these concerns until October 8.

According to Inspector Roy, Mr. Solomon provided him with copies of DFAIT consular reports regarding Mr. Arar that described the removal concerns of Mr. Arar and his brother on the afternoon of October 7 or the morning of

October 8. Inspector Roy claims he provided copies of these documents to both Project A-O Canada and CID.¹¹³

However, Mr. Solomon's testimony on this point differs markedly from that of Inspector Roy. He did not remember giving consular reports to Inspector Roy or asking him to convey them to the RCMP on October 7 or 8. An arrangement was in place for members of DFAIT ISI to pass consular documents to an external agency provided the Director General of Consular Affairs gave approval. Mr. Solomon said it would not have been unusual for the Director General to approve passing the RCMP a document expressing Mr. Arar's fear of removal to Syria. Personnel at ISI were trying to help their consular services colleagues on the Arar file, and would have wanted the RCMP's assistance. While Mr. Solomon thought it possible that Inspector Roy saw the reports, he was adamant that the Director General of Consular Affairs would have had to approve their dissemination.¹¹⁴ He suggested that Inspector Roy might have overheard or participated in discussions with DFAIT ISI on the issue of Mr. Arar's possible removal to Syria.

According to Mr. Solomon's recollection of events, ISI was alerted around October 3 or 4 that Mr. Arar had been threatened with possible removal to Syria. The involvement of ISI in the Arar case began on October 1 or 2 when ISI officials offered to help consular officials determine if there was a security link. On October 3 or 4, ISI officials discussed the threat of Syria. In the normal course of events, once ISI had been consulted, Consular Affairs would update ISI on any new or significant developments. Mr. Solomon assumed that if a consular report reflected a concern that Mr. Arar might be sent to Syria, ISI would have heard about it a day or two later. Logically then, ISI would have been informed about the October 1 consular report by October 3. Again, Mr. Solomon had no specific memory of ISI learning about the Syrian threat by October 3, but he believed that it was likely.¹¹⁵

After learning about the removal threat, ISI officials began to hold in-house "scrums" on the issue. They were aware the Americans believed that Mr. Arar was a member of al-Qaeda; that he was being held in a high-security detention facility; and that the FBI was involved in the case. However, the predominant belief among ISI staff was that the threat of removal to Syria was being used as a tool to intimidate Mr. Arar into answering questions. Although Mr. Solomon could not remember if he discussed the issue with Inspector Roy, given that LOs share the same office space as ISI staff, it was possible that Inspector Roy was present for one of these scrums.¹¹⁶ Mr. Solomon believed that Inspector Roy could have become aware of the Syrian threat anywhere from October 4 to 9.¹¹⁷

For his part, Inspector Roy said he would be surprised to learn that ISI was discussing on October 3 or 4 the allegations that Mr. Arar might be connected to al-Qaeda and that he might be removed to Syria. He had no recollection of hearing or discussing the possibility of Mr. Arar being sent to Syria. Moreover, even if such a discussion did take place, it was not apparent that this information should be passed on to the RCMP. Finally, he could not have taken part in such a discussion on October 4 because he was not at work that day.¹¹⁸

Inspector Roy did remember being in Mr. Solomon's office and reading information on his computer pertaining to Mr. Arar's state of mind and his fear of being sent to Syria, as well as seeing a reference to al-Qaeda. However, he was not sure if this information was from a consular report. Inspector Roy believed he saw this information sometime after October 3, because he did not think that Mr. Solomon or ISI was aware of the consular visit until a few days later. According to Inspector Roy, he saw this information on the same day he was given the consular reports.¹¹⁹

Leaving aside Inspector Roy's involvement, it does not appear that ISI took further action to alert others to the threat of Mr. Arar's removal to Syria. Two reasons were offered to explain this. First, Mr. Arar was seen as a consular case that was being managed. Until he was removed from the United States, ISI believed that its role was only to lend assistance to consular officials.¹²⁰ Second, the threat of removal to Syria was regarded as simply an interrogation technique, not as a plausible course of action. In DFAIT's experience, nothing like this had ever happened before, and it was completely outside acceptable and normal practice. A Canadian citizen (even if a dual citizen) travelling on Canadian documents would either be sent back where he or she came from, or to the location on his or her passport. Any other action would have harmed the Canada-U.S. bilateral relationship, and thus it did not enter the minds of DFAIT officials as a realistic possibility.¹²¹

3.5

CORPORAL FLEWELLING'S TELEPHONE CONVERSATIONS

On Friday, October 4 and Saturday, October 5, Corporal Flewelling of CID at RCMP Headquarters had telephone conversations with a representative of the FBI legal attaché's office about where the Americans were considering sending Mr. Arar. Corporal Flewelling is the only witness who testified about what was said during these discussions.

As already indicated, Corporal Flewelling had first learned of Mr. Arar's detention on October 2 from Inspector Roy.¹²² There is no evidence that

Inspector Roy was aware at that time of concerns by Mr. Arar and his brother that Mr. Arar might be sent to Syria.

Corporal Flewelling testified that he spoke to Inspector Roy again on October 4 on a matter other than Mr. Arar. He could not recall the specifics of their conversation, but believed that it was very possible they also discussed Mr. Arar¹²³ — perhaps regarding the issue of consular access.¹²⁴

However, Inspector Roy had no recollection of such a conversation. As indicated previously, Inspector Roy was not in the office on October 4, and although he could have been reached on his cell phone, he had no notes or any memory of a phone conversation with Corporal Flewelling.¹²⁵

Corporal Flewelling testified that about noon, a short time after speaking to Inspector Roy, he went to the RCMP's Immigration and Passport Office to find out about the law related to removal.¹²⁶ Corporal Flewelling provided two explanations for doing this. Early in his testimony, he stated that he was due to have a conversation with the FBI later that day. He wanted to be "armed with enough information to be able to talk about [the removal process] or know what the process was." Later on, he stated that the term "removal" had been used in conversations with his colleagues at Project A-O Canada. When it was suggested that something Inspector Roy said to him had instigated his inquiries, Corporal Flewelling agreed that "It could have been. I just don't recall the content of that conversation."¹²⁷

When Corporal Flewelling arrived at the Immigration and Passport Office, he intended to speak with the CID official who worked on immigration matters there. This individual was not available, but he approached two other officers who were sitting at a table having lunch. Although at the time he did not know their names, Corporal Flewelling later learned that one of the men was Gregg Williams. Corporal Flewelling told the officers that an RCMP subject of interest had flown in from Zurich and was being detained by American authorities. He asked what the normal process would be with respect to removal. Corporal Flewelling could not recall if he mentioned that the person was a dual national.¹²⁸

He was advised that in a removal process, the individual is placed on an aircraft of the airline that brought him into the country, and taken back to his last port of call.¹²⁹ Corporal Flewelling could not remember which of the two officers gave him this information.¹³⁰ Mr. Williams did not recall the conversation, but agreed it was possible he spoke to Corporal Flewelling.¹³¹

Corporal Flewelling did not take any action with respect to this information.¹³²

By this time, DFAIT had heard that Mr. Arar and his brother were worried Mr. Arar was going to be sent to Syria. However, Corporal Flewelling was certain that Inspector Roy did not share this information with him during their conversation earlier in the day.¹³³

Although it is not clear who initiated the call, sometime after 6 p.m. on October 4, Corporal Flewelling spoke to an FBI official. After discussing a few unrelated issues, the discussion turned to what was going to happen to Mr. Arar. The FBI official advised him that Mr. Arar was due to appear at an immigration hearing on Wednesday, October 9. According to him, because Mr. Arar had never officially entered the United States, he would be removed from the country and sent back to Switzerland. Once Mr. Arar was in Switzerland, he could choose his destination, whether it be Canada or Syria. Corporal Flewelling said this was one of the first times that Mr. Arar's dual nationality was discussed.¹³⁴

Corporal Flewelling questioned the FBI official about why it was necessary to send Mr. Arar all the way back to Switzerland, when he could just be dropped off at the Canada-United States border. They also discussed setting up RCMP surveillance of Mr. Arar if the Project A-O Canada team agreed to it. According to Corporal Flewelling, the FBI official responded to his suggestion to send Mr. Arar to Canada by stating that this was more than likely what they would do.¹³⁵ In fact, Corporal Flewelling's impression was that the FBI official took his suggestion seriously, but he could not recall exactly how the conversation was left. He understood that the FBI and the RCMP would be waiting to see the outcome of the October 9 hearing to determine whether Mr. Arar was sent to Zurich or Canada.¹³⁶

Corporal Flewelling did not record the conversation with the FBI official in his notes. He explained that he was on his way out of the office when he was called. Corporal Flewelling recorded other phone calls with this official in his notebook.¹³⁷

At 6:10 p.m. on Saturday, October 5, Corporal Flewelling received a call at home from the same FBI official, who told him that the FBI was unable to read Project A-O Canada's October 4 fax containing answers to the questions sent on October 3. He requested that the report be re-faxed.¹³⁸

During this conversation, the FBI official said that the Americans feared they did not have sufficient information to support charges against Mr. Arar, and they would therefore be looking into deporting him. He informed Corporal Flewelling that Mr. Arar was a dual citizen and had asked to be deported to Canada. He also said that Washington wanted to know about the RCMP's interest in Mr. Arar (i.e., was the RCMP able to charge him) and if it could refuse him entry into Canada. Corporal Flewelling told the FBI official that if an individual

has Canadian citizenship, and there is not enough evidence to support charges in the United States, let alone Canada, it is likely that the person could not be refused entry into the country.¹³⁹

Although Corporal Flewelling was not experienced in immigration matters, he did not seek guidance, information or advice before providing the FBI official with this information. According to Corporal Flewelling, his honest belief was that a Canadian citizen, even if he is a dual national, cannot be refused entry into the country.¹⁴⁰ The October 5 conversation was recorded in Corporal Flewelling's notebook.

Corporal Flewelling testified that this conversation did not raise warning signs that Mr. Arar might be sent to Syria, even though the FBI official had raised the following points: 1) the Americans did not have enough information to charge Mr. Arar criminally; 2) Mr. Arar was a dual national who wanted to be sent to Canada; and 3) they wanted to know if Canada could refuse him entry. Corporal Flewelling testified that, in the context of this conversation on Friday, October 4, he still believed that Mr. Arar would be sent to Switzerland. When it was pointed out to Corporal Flewelling that Switzerland was not mentioned in the Saturday evening conversation, he replied: "All I can tell you is at the time I did not take that as an indicator that they were going to do what they did."¹⁴¹ Moreover, he believed that telling the American official Canada did not have reason to charge Mr. Arar and could not refuse entry, would result in his release and early return to Canada. As well, he knew that a hearing was slated for Wednesday, October 9, and Mr. Arar would have an opportunity for an appeal and to make the necessary arguments.¹⁴² (At this time, Corporal Flewelling had no knowledge of the term "rendition."¹⁴³)

Based on the FBI official's questions, Corporal Flewelling did not form an impression of whether he was hopeful about the RCMP's ability to refuse Mr. Arar entry into Canada. In his testimony, Corporal Flewelling stated "I just thought it was a matter-of-fact question."¹⁴⁴

The same evening as the call, Corporal Flewelling informed Sergeant Lauzon, his superior at CID, of his conversation with the FBI official. The next day, he sent an e-mail to Staff Sergeant Callaghan.¹⁴⁵ On the morning of Monday, October 7, he informed Superintendent Pilgrim of the weekend's events. He also spoke to Sergeant Lauzon about the issue again.¹⁴⁶

In the weekend e-mail to Staff Sergeant Callaghan, Corporal Flewelling advised him of the problem with the October 4 fax to the FBI. He also mentioned that Mr. Arar's trial was scheduled for the coming Wednesday (October 9), and that it appeared the United States did not have enough evidence to support charges. He indicated that Mr. Arar was requesting deportation to Canada

following the trial and that the INS and the FBI wanted to know if there were any objections or laws that would prevent Canada from accepting Mr. Arar. In his e-mail, Corporal Flewelling said that he had advised the FBI that as a Canadian citizen, Mr. Arar could not be refused entry into the country. Corporal Flewelling wanted the question of whether Mr. Arar could be refused entry to be followed up on that Monday.¹⁴⁷

Corporal Flewelling also recommended that Staff Sergeant Callaghan inform CSIS Headquarters about what was going on. He further indicated that CSIS should be told that, in responding to the Americans' October 3 request for information, Project A-O Canada might have alluded to CSIS information.¹⁴⁸

Staff Sergeant Callaghan testified that he was not at work during the weekend of October 5 and 6, and did not receive Corporal Flewelling's e-mail until the morning of Monday, October 7.¹⁴⁹ He called Corporal Flewelling immediately to discuss it. According to Staff Sergeant Callaghan, this was the first time he had heard that there was a chance of Mr. Arar coming to Canada. Prior to this, members of Project A-O Canada believed that Mr. Arar would be sent to Zurich.¹⁵⁰

Staff Sergeant Callaghan's testimony and his notes of the conversation indicate that Corporal Flewelling told Staff Sergeant Callaghan that Mr. Arar would most likely be sent to Canada.¹⁵¹ However, Corporal Flewelling's testimony and his notes of the Saturday evening conversation with the FBI, as well as his e-mail to Staff Sergeant Callaghan, say only that Mr. Arar requested that he be sent to Canada.¹⁵² Corporal Flewelling did not make notes of this conversation.

At 10:40 that morning, Staff Sergeant Callaghan replied to Corporal Flewelling's e-mail, but he did not address the question of whether a Canadian citizen could be refused entry into Canada.¹⁵³ Although it is possible that Staff Sergeant Callaghan sent another e-mail on this matter, no one recalls that he did so.

To Corporal Flewelling's knowledge, there was no follow-up on the questions in his e-mail to Staff Sergeant Callaghan, or on the questions that the FBI official asked him on Saturday, October 5. In particular, Corporal Flewelling did not follow up on whether Mr. Arar could be refused entry into Canada. He remained under the impression that Mr. Arar was going to an immigration hearing on October 9.¹⁵⁴

Despite the phone calls from the FBI on October 4 and 5, Corporal Flewelling did not recall contacting Inspector Roy on October 7 to obtain more information on Mr. Arar's situation.¹⁵⁵

3.6

THE POTENTIAL INTERVIEW WITH MR. ARAR

On October 4, Project A-O Canada took steps to interview Mr. Arar while he was in custody in New York.

On the morning of October 4, Staff Sergeant Callaghan received a call from the FBI, asking if Project A-O Canada knew of any aliases for Mr. Arar. Staff Sergeant Callaghan then contacted Corporal Flewelling and advised him of Project A-O Canada's interest in interviewing Mr. Arar. A short while later, Staff Sergeant Callaghan called the FBI back and provided him with the aliases for Mr. Arar. He also took the opportunity to inform the FBI that Project A-O Canada would be sending the FBI a request for an interview.¹⁵⁶ This request was included in the fax cover sheet accompanying the October 4 reply to the Americans' October 3 request for information.¹⁵⁷

To Inspector Cabana's mind, this would be the last opportunity to interview Mr. Arar before he was returned or sent to Zurich. Initially, officials at Project A-O Canada thought that his removal would occur quickly and consequently there would be no opportunity for an interview. However, when it became clear that Mr. Arar was still in New York, Project A-O Canada asked for access.¹⁵⁸

Before sending out the October 4 reply and request for an interview, the three Project A-O Canada managers and Ann Alder, counsel to the Project, met with Michael Edelson, Mr. Arar's counsel. The purpose of the meeting was to discuss Mr. Edelson's concerns about Mr. Almalki's detention in Syria and Mr. Arar's detention in New York — concerns that Mr. Edelson had first raised on September 27. Mr. Edelson advised them that Mr. Arar was currently being detained in a Brooklyn jail.¹⁵⁹

From October 4 to 7, Project A-O Canada did nothing to pursue the interview with Mr. Arar. However, on the morning of Monday, October 7, Staff Sergeant Callaghan spoke to an FBI official, who wanted to know if Project A-O Canada "could link Mr. Arar to Al-Qaida or any other terrorist group." Staff Sergeant Callaghan replied that the only possible link was through Mr. Almalki. The FBI official also indicated that Mr. Arar had a hearing that day and would have a final hearing on Wednesday, October 9. According to him, if no further information was received, Mr. Arar would likely be deported to Canada that same day.¹⁶⁰ This was the first time the American authorities had directly mentioned Canada as a possible destination for Mr. Arar.

The FBI official agreed to pursue Project A-O Canada's request to interview Mr. Arar, if the RCMP so wished. Staff Sergeant Callaghan told him that he would discuss the matter with his colleagues and call him back.¹⁶¹

That afternoon, Project A-O Canada's assistant managers advised Inspector Cabana that Mr. Arar would likely be released and refused entry to the United States, and the American authorities were planning to send him to Canada. Inspector Cabana asked them to explore the possibility of interviewing Mr. Arar in the United States while he was in custody. First, however, they were to find out the results of the FBI interview, including Mr. Arar's responses to the questions provided by Project A-O Canada on September 26. Inspector Cabana also requested information on the cost of flights to New York, as officials would have to travel either that day or the day after, since Mr. Arar was possibly going to be released that Wednesday.¹⁶²

By the afternoon of October 7, Project A-O Canada officials were making tentative travel plans, even though they understood that Mr. Arar would possibly be sent to Canada two days later. According to Inspector Cabana, they were simply pursuing the original request to interview Mr. Arar, made on October 4.¹⁶³

Inspector Cabana also testified that the final decision to go to New York would be determined in part by Mr. Arar's willingness to talk. The team was most interested in whether Mr. Arar was being cooperative with American authorities, and if he would agree to an interview with Project A-O Canada. Inspector Cabana understood that RCMP policy requires a Canadian detainee to give his or her consent before the RCMP can conduct an interview in a foreign country.¹⁶⁴

Another determining factor was whether Mr. Arar was going to be removed to Zurich. If he was, then the RCMP would likely go to New York to question him.¹⁶⁵

Between noon and about 4:15 p.m. on October 7, Staff Sergeant Callaghan called the FBI to inquire about the results of Mr. Arar's interview on September 27. [***]. Subsequently, Staff Sergeant Callaghan left the FBI a voice mail message about the importance of speaking directly with the official who had interviewed Mr. Arar.¹⁶⁶

In a conference call at 4:15 p.m. on October 7,¹⁶⁷ this FBI official was not able to remember many of the details of his interview with Mr. Arar, as he did not have his notes with him. [***].

Project A-O Canada was also told that the U.S. Department of Justice was still trying to iron out some issues regarding the Project's interview with Mr. Arar.¹⁶⁸

Shortly after this conversation, Project A-O Canada officials made the decision not to interview Mr. Arar. Three factors contributed to this decision: 1) the time involved in going to New York; 2) the cost of flying; and 3) the fact that the American authorities had not yet given their approval. It was decided that it would be more prudent to await Mr. Arar's return and then to make arrangements to put him under surveillance for a few days. After this, Project officials would try to interview him.¹⁶⁹

At 4:30 p.m. on October 7, Staff Sergeant Callaghan informed the FBI that Project A-O Canada would not be going to New York to interview Mr. Arar. He advised Corporal Flewelling of CID of this decision as well.¹⁷⁰

That afternoon, Corporal Lemay was instructed to start preparing a surveillance package and interview questions for Mr. Arar.¹⁷¹ The surveillance package included photos of Mr. Arar, a surveillance request, a profile of Mr. Arar, and mosque locations.¹⁷²

3.7

CONTACTS WITH MR. ARAR'S FAMILY

Acting on a request from Project A-O Canada, officers from RCMP "C" Division in Montreal met with members of Mr. Arar's family living there.¹⁷³

In a fax to Project A-O Canada dated October 8, "C" Division reported that at 4:25 p.m. that afternoon, two officers went to the residence of Mr. Arar's mother, where they spoke to her, as well as to Taufik Arar, one of Mr. Arar's brothers. Explaining that he was the contact person while Maher Arar was in New York, Taufik Arar said he did not know when his brother would be released from prison.¹⁷⁴

At five p.m., the same two officers went to Bassam Arar's residence in Laval, Quebec. Mr. Arar knew his brother was in custody in New York, but he did not know why.¹⁷⁵ Although the evidence is not clear, it appears that officers for "C" Division may have also interviewed other members of Mr. Arar's immediate family.

None of the family members provided information on whether Mr. Arar was coming back to Canada.¹⁷⁶

3.8

THE EVENTS OF OCTOBER 8

3.8.1

Project A-O Canada

At around four a.m. on October 8, Mr. Arar was served with a removal order directing his removal to Syria. The evidence shows that Mr. Arar was taken first to Jordan and, from there, to Syria. Although it is not clear precisely when Mr. Arar was put on the plane to Jordan, it was likely very soon after he was served with the removal order.

Prior to October 8, none of the Project A-O Canada officials who testified before this Inquiry had any information, either from the Americans or from DFAIT, that removal to Syria was a possibility. On the contrary, they believed that Mr. Arar would either be returned to Zurich, where he had boarded the plane to the United States, or sent to Canada.

At about quarter to ten on the morning of October 8,¹⁷⁷ Inspector Roy met with members of Project A-O Canada. According to Staff Sergeant Callaghan's notes, Inspector Roy showed them consular reports, and informed them of Mr. Arar's concerns that he might be sent to Syria. Staff Sergeant Callaghan testified that Inspector Roy said "there was a very good possibility that he [Mr. Arar] was going to Syria."¹⁷⁸ However, Inspector Roy disputes this account of events. According to him, no one at ISI had ever told him that Mr. Arar might go to Syria, so he was unlikely to have indicated this to Project A-O Canada. He did remember mentioning that Mr. Arar was afraid of being sent to Syria.¹⁷⁹

Inspector Roy's testimony was not entirely clear concerning the consular reports that were shown to Project A-O Canada. As mentioned earlier, Mr. Solomon of ISI contended that he did not give consular reports to Inspector Roy, either for his own information or to be shown to Project A-O Canada. Inspector Roy testified that he went to Project A-O Canada with a file folder containing two consular notes, but he could not testify with certainty as to which consular notes he brought with him.¹⁸⁰

Members of Project A-O Canada had varied reactions to the news that Mr. Arar might be removed to Syria. In general, however, they were not certain what to make of it. After receiving the news from Inspector Roy, they continued preparing for Mr. Arar's possible arrival in Canada.

At 10:30 a.m., an FBI official came to Project A-O Canada's offices with information found in Mr. Arar's possession during his New York detention.

According to this official, Mr. Arar was still in New York (although he was not) and the FBI did not know when he was getting out — it was an INS matter, he said. He added that the FBI did not have anything that would allow them to hold Mr. Arar,¹⁸¹ and indicated that the U.S. Department of Justice was still considering Project A-O Canada's request to interview Mr. Arar.¹⁸² He also said that Mr. Arar "could well be sent to Canada or Syria."¹⁸³

About noon, the three Project A-O Canada managers met to consider the situation.¹⁸⁴ Among other things, they again discussed the possibility of interviewing Mr. Arar while he was in New York. They still were not sure if Mr. Arar was returning to Canada and were concerned about missing an opportunity if he was sent to Zurich. As well, they were concerned about a perception that the United States was holding Mr. Arar so that Project A-O Canada could interview him. There might also be a suggestion that Mr. Arar would be sent to Syria if he did not cooperate with the Canadian investigation, and this could be damaging to the RCMP. The Project A-O Canada managers agreed to raise this concern with the FBI, and wait for a reply from the U.S. Department of Justice about their request to interview Mr. Arar.¹⁸⁵

As a result of the meeting, Project A-O Canada decided that they should not interview Mr. Arar until they knew three things: 1) why Mr. Arar was in American custody; 2) what Mr. Arar had said while in custody; and 3) where he was going to be sent.¹⁸⁶ According to one manager, if the Americans decided to send Mr. Arar to Syria, Project A-O Canada did not want to be seen as "encouraging it, participating in it, asking for it, [or] anything of that nature."¹⁸⁷

Inspector Cabana explained that Project A-O Canada's continued interest in interviewing Mr. Arar depended on where he was going to be sent: "If he was coming back to Canada, we wouldn't seek to interview him in the U.S. If we found out that he was going to be deported back to either Zurich or elsewhere, then yes, we would continue with our efforts to gain access to him."¹⁸⁸

At 2:15 p.m., members of Project A-O Canada and Sergeant Lauzon from CID met with an American official to find out about Mr. Arar's situation — specifically regarding the three questions agreed on earlier.¹⁸⁹ Because of Mr. Arar's dual nationality, Canada and Syria were presented as two possible destinations for his removal. Although Sergeant Lauzon understood Switzerland to be another possibility, it was not discussed at this meeting.¹⁹⁰ However, the American official could not provide an answer, as he indicated this was an INS matter.¹⁹¹

At six o'clock that evening, Staff Sergeant Callaghan called the FBI and asked the same three questions. He indicated that Project A-O Canada was concerned about the perception that they had anything to do with Mr. Arar's

possible removal to Syria. The FBI official promised to look into the matter and get back to him the next day.¹⁹²

At 9:04 a.m. on October 9, this official left a message with Staff Sergeant Callaghan that Mr. Arar would not be available for an interview as he was no longer in New York. Furthermore, Mr. Arar would not be returning to Canada.¹⁹³ No further information was provided. By two o'clock that afternoon, Project A-O Canada confirmed, via the Americans, that Mr. Arar had been sent to Syria.¹⁹⁴ Project A-O Canada officials then notified their supervisors at RCMP CROPS.¹⁹⁵

After Project officials were informed on the morning of October 8 that Mr. Arar might be removed to Syria, they did not take any steps to dissuade the Americans from doing so, nor did they register any objections. Two explanations were put forward. First, the Project members did not really believe that Mr. Arar would be sent to Syria;¹⁹⁶ at various times they had been told he would be sent to either Zurich or Canada. Second, DFAIT was aware of Mr. Arar's circumstances and it was that department's role to take whatever steps were warranted to protect him.¹⁹⁷ Furthermore, it should be noted that by the time Project officials were first advised of the possibility of removal to Syria, Mr. Arar had already been removed from New York.

Project members were also asked if they were not concerned that Mr. Arar might be tortured in Syria. They were aware that Ahmad El Maati had alleged that his statement to Syrian authorities had been obtained by torture.¹⁹⁸ Although they each expressed their views somewhat differently, those who were asked were not concerned about the prospect of torture. They had been told it was likely that Mr. El Maati had not been tortured, that he had consular access, and that there was some corroboration for his confession.¹⁹⁹ Moreover, the primary concern for at least one of the Project managers was that Mr. Arar's removal to Syria could have an adverse effect on their investigation. Two of the Project's main targets, Messrs. Almalki and El Maati, were already in custody in Syria and Egypt, respectively. That a third Canadian of interest could potentially end up in Syrian custody might pose a problem for the team in its attempts to neutralize threats to Canadian security, or to obtain information for prosecution.²⁰⁰

3.8.2

RCMP Headquarters

Following September 26, Project A-O Canada provided situation reports to CID/NSIB for the following dates: September 26, September 27, October 2, October 4, October 7 and October 8. These reports outlined the Project's information on Mr. Arar's detention in New York, and on the communications

between the Project and American authorities during the time Mr. Arar was in New York.

There is no evidence RCMP Headquarters knew of the possibility that Mr. Arar could be sent to Syria before October 8. As described, Corporal Flewelling had conversations with the FBI on October 4 and 5, during which Mr. Arar's situation was discussed. However, Corporal Flewelling testified that there was no mention of Syria in either of these conversations, and that neither conversation led him to consider Syria as a possible destination for Mr. Arar.

DFAIT did not inform RCMP Headquarters that on October 1 and 3, Mr. Arar's brother and Mr. Arar, respectively, had told DFAIT officials that American immigration officials had informed Mr. Arar he would be sent to Syria.

Inspector Roy was uncertain if he informed RCMP Headquarters of the possibility of removal to Syria on October 8, the same day he informed Project A-O Canada of this possibility. It was Inspector Roy's routine to deliver to CID all documents that were passed to him from DFAIT. In this instance, however, he could not remember if he met with anyone at CID to inform them of the possibility of Mr. Arar being sent to Syria, or if he dropped off the documents in his file folder at CID.²⁰¹

CID eventually learned of Mr. Arar's removal around October 8 or 9.²⁰² A briefing note to Commissioner Giuliano Zaccardelli, dated October 9, 2002, and signed by Superintendent Pilgrim, stated: "CID/NSOS learned that ARAR was deported and subsequently escorted to Syria, by U.S. authorities at an undetermined time on October 8, 2002."²⁰³

4.

CSIS' RESPONSE TO MR. ARAR'S DETENTION

CSIS first learned of Mr. Arar's detention from DFAIT on October 2, 2002, when DFAIT's communications branch advised the CSIS communications branch that a Syrian-born Canadian, Mr. Arar, had been arrested and detained by U.S. authorities in New York. DFAIT advised that the arrest did not appear to relate to an immigration matter, and that it could be "much bigger."²⁰⁴

Later that day, the CSIS liaison officer (LO) at DFAIT ISI sent an e-mail to CSIS Headquarters concerning Mr. Arar's detention. (The CSIS LO was not aware that CSIS Headquarters had already heard about it.) Informed of the detention by her supervisor, she was asked to find out what CSIS knew about Mr. Arar. In her e-mail, the LO reported that Mr. Arar had been an immigration case in the United States, but now appeared to be a security case. She asked that CSIS staff check Mr. Arar out as a matter of priority.²⁰⁵

The LO did not flag the e-mail as urgent.²⁰⁶ ISI often made informal requests for CSIS to conduct checks. She did not consider this request to be either unusual or urgent.²⁰⁷

Eventually, her e-mail was forwarded to another CSIS official who worked in the Sunni Islamic Terrorism section at CSIS Headquarters. He carried out a quick review of the CSIS holdings for information about Mr. Arar up to October 2, then sent a summary to the CSIS office in Washington and to the LO at ISI. His summary did not contain all of the information that he had found because he was pressed for time and was attempting to put together a quick response for his colleagues. He did not want to mislead them by adding information that might not have been supportable in the long run.²⁰⁸

During his review, the CSIS official saw an RCMP profile of Mr. Arar that had been entered into the CSIS holdings on September 26, 2002.²⁰⁹ As a result, he told the CSIS LO that CSIS was aware the RCMP had an interest in Mr. Arar because of his connections with Mr. Almalki and that therefore the RCMP might be able to provide additional information.²¹⁰

He also contacted the CSIS office in Washington. His message included a summary of his review and a request that they seek clarification from their American counterparts regarding the circumstances and rationale for Mr. Arar's arrest.²¹¹

The Washington office treated the message as a routine request. The CSIS official did not flag it as urgent because he did not see the situation as an emergency. (However, he did follow up the message with a phone call.²¹²) Another CSIS official testified that any threat he posed had been neutralized because he was in custody. Moreover, Mr. Arar was seen to be a consular case by this point.²¹³ It should be noted that the Washington office had a small staff who handled 500 to 700 information requests each month.²¹⁴

The CSIS official also provided other CSIS colleagues with a summary of information about Mr. Arar, and informed them that the RCMP was conducting an active investigation into Mr. Almalki and his contacts, including Mr. Arar. He wrote that it was likely the RCMP had had direct exchanges with the FBI about Mr. Arar. The e-mail also mentioned that CSIS had yet to receive any formal communication from the FBI or any other American agency regarding Mr. Arar's arrest, and would seek clarification regarding the reasons for his detention.²¹⁵

Another CSIS employee sent an e-mail saying she was aware the RCMP knew Mr. Arar was returning to the U.S. (from abroad) and the FBI were planning to hold him.²¹⁶ She believes that she formed this opinion after telephoning Project A-O Canada to inquire about Mr. Arar.²¹⁷ She could not recall if she shared this information with staff at CSIS Headquarters.²¹⁸

The RCMP's situation reports about Mr. Arar were not delivered to CSIS until several days after they were prepared. The CSIS holdings state that on Friday, September 27, CSIS received the RCMP's situation report for Thursday, September 26, which stated that Mr. Arar was about to arrive in New York and that he would be denied entry into the United States.²¹⁹ However, this record in the holdings was incorrect, as a CSIS employee testified that CSIS received and read the report on October 3.²²⁰

The RCMP's situation report for Friday, September 27 stated that the RCMP informed CSIS Mr. Arar was being detained and interrogated in New York. Moreover, the report indicated that Mr. Arar would be denied entry to the United States, and would be denied permission to enter Canada via the United States.²²¹ Again, a record in the CSIS holdings erroneously indicated that CSIS received this report on Monday, September 30. According to the CSIS employee's testimony, in fact, CSIS received and read the report on October 3.²²²

It was customary for Sergeant Glenn Kibsey, the RCMP liaison officer for CSIS, to deliver Project A-O Canada's situation reports to CSIS. In this case, he did not deliver the situation reports for September 26 and September 27 to CSIS until October 3. The situation report for Thursday, September 26 was completed on Friday, September 27, after Sergeant Kibsey had already returned to his office at CSIS following a trip to Project A-O Canada. The situation report for Friday, September 27 was completed on Monday, September 30. However, Sergeant Kibsey was attending an off-site course from September 30 to October 2 and did not return to the office until October 3.²²³

After receiving the two reports on October 3, a CSIS employee e-mailed other CSIS staff about the situation.²²⁴ A briefing note was prepared the same day for Jack Hooper, Assistant Director, Operations, entitled "Maher Arar, Contact of Almalki, Arrested in NY," outlining the action CSIS had taken to date.

As mentioned, on October 2 CSIS sought to contact its American counterparts for clarification about the circumstances and rationale for Mr. Arar's detention.²²⁵ This was followed by a similar request on October 4. [***] to find out about Mr. Arar's recent activities, why he was arrested, his current status, and any information that had been gleaned from him. [***].²²⁶ The request from CSIS Headquarters contained a written text that was to be passed to the Americans. It had two caveats attached.²²⁷

[***].²²⁸

It is unclear what became of the October 2 request. The October 4 request was delivered via a letter to the Americans on October 10, following Mr. Arar's removal from the United States.

On October 9, CSIS learned from two sources that Mr. Arar had been removed from the United States the previous day. An employee of another government agency who was seconded to CSIS was told by a colleague seconded to RCMP Headquarters that Mr. Arar had been sent to Syria. This information was passed on to CSIS; shortly after, the CSIS LO in ISI telephoned with the same news.²²⁹

On hearing about Mr. Arar's removal, CSIS sought information from the Americans about Mr. Arar's whereabouts and the circumstances surrounding his removal to Syria. The request had two caveats attached.²³⁰

[***]. The letter was marked "Urgent" and contained caveats.²³¹ The message [***] was sent to Washington on October 9. The text of the message was transferred to a letter and delivered [***] on October 10, along with a second letter based on CSIS Headquarters' October 4 request for information concerning Mr. Arar's detention in New York. Both letters had caveats.²³²

[***] replied to the October 9 request in a message dated November 5, 2002.²³³ An identical reply was also sent to RCMP Headquarters.

[***] replied verbally to the CSIS Washington office on October 11, but did not send a formal reply until June 9, 2003.²³⁴ This delay was considered to be normal.²³⁵

Despite the limited role CSIS had played during Mr. Arar's detention in the United States, there was speculation within CSIS that the RCMP might have been involved in Mr. Arar's removal.

For example, in an October 10, 2002 e-mail exchange, a CSIS official stated her opinion that the RCMP had significantly contributed to Mr. Arar's removal.²³⁶ However, this official downplayed the e-mail during her testimony, saying that her comment only referred to CSIS information suggesting that information had been flowing back and forth between Project A-O Canada and American officials.²³⁷

According to an October 10 briefing note, it was not known if the RCMP had any role in Mr. Arar being sent to Syria. However, a notation in brackets attributed to the CSIS Director indicated that it was likely the RCMP was involved.²³⁸ CSIS witnesses who were asked about this notation did not comment further on it.²³⁹

5. DFAIT'S ACTIONS

5.1 THE INITIAL CONTACTS

DFAIT first found out about Mr. Arar on Sunday, September 29, 2002, when they received a call from Mr. Arar's brother, Taufik Arar.

Mr. Arar's brother called DFAIT Headquarters, concerned that Mr. Arar appeared to be missing at JFK Airport in New York. He explained that Mr. Arar had left Tunisia on September 25 and was to have arrived in Montreal on September 27 on a connecting flight from New York. At 11:42 a.m., a CAMANT note²⁴⁰ was sent to the Canadian Consulate General in New York informing officials of the situation and asking them to determine if Mr. Arar had been arrested or detained. DFAIT Headquarters also noted that there was no information on file concerning a problem with Mr. Arar's passport.²⁴¹

Maureen Girvan was the manager of consular services at the Consulate General in New York. She had nine years of consular experience in various positions at DFAIT, and had been at the Consulate General since September 2001.²⁴² Ms. Girvan read the note on the morning of Monday, September 30, but had no reason to believe that Mr. Arar was being detained.²⁴³

By noon, the Consulate General had also received a CAMANT note from DFAIT's mission in Tunis concerning Mr. Arar's whereabouts. The message was sent to Myra Pasty-Lupul, the case management officer for the Middle East region at DFAIT Headquarters, and was copied to others, including consular officials in New York. Ms. Pasty-Lupul was informed that Mr. Arar's wife, Monia Mazigh, had contacted the mission when Mr. Arar had failed to call her upon his arrival in Montreal.²⁴⁴

With information from two members of Mr. Arar's family, Lisiane Le Floc'h, a consular officer in New York, contacted the INS office at JFK Airport to find out if Mr. Arar had been arrested and, if so, where he was being detained.²⁴⁵ Unable to reach anyone, Ms. Le Floc'h left a message. Ms. Girvan believed that Ms. Le Floc'h called JFK Airport a second time that day regarding Mr. Arar.²⁴⁶ The Consulate General did not receive a reply until the next day. Ms. Girvan was not surprised, as she knew that the INS office at JFK Airport was very busy. As will be discussed, the reply was obtained from the INS Public Affairs Office.²⁴⁷

In the early morning of October 1, CAMANT notes were exchanged between the mission in Tunis, DFAIT Headquarters and the Consulate General concerning a passport for Mr. Arar's infant son, who was in Tunis with Mr. Arar's

wife and six-year-old daughter. Mr. Arar was travelling with his son's expired passport and had intended to renew it upon his return to Canada.²⁴⁸ In the midst of the messages on how to sort out issues surrounding the son's passport, the mission in Tunis also sent a message to Ms. Le Floc'h and Ms. Pasty-Lupul confirming Mr. Arar's flight numbers.²⁴⁹

On the morning of October 1, Dr. Mazigh notified DFAIT that Mr. Arar had been detained in New York. Neither the American authorities nor the RCMP had contacted the Consulate General in New York with this information, even though the RCMP had been notified of Mr. Arar's detention on September 26. That said, however, consular officials did not expect that they would have been contacted by the RCMP in these circumstances.²⁵⁰

In a CAMANT note sent to Ms. Le Floc'h at 9:31 a.m. on October 1, the Tunis mission stated that Dr. Mazigh had just informed them that Mr. Arar had called his mother-in-law in Canada and told her that he was being detained in New York at the "Federal Bureau of Brooklyn." Mr. Arar told his mother-in-law that he had been given no reason for his detention, and that he had not been treated well. The mission in Tunis asked the Consulate General to "contact that Federal Bureau and advise."²⁵¹

Within 20 minutes of receiving the message from Tunis, consular officials in New York confirmed that Mr. Arar was actually being held at the Metropolitan Detention Centre (MDC) in Brooklyn. However, they did not know what charges Mr. Arar was facing or why he was being held.²⁵² (It appears consular officials assumed that Mr. Arar had been arrested and charged because he was being held at a detention facility. However, at no time during Mr. Arar's detention in the United States did the Consulate General receive confirmation that Mr. Arar had been arrested.)

According to Ms. Girvan, everything seemed normal up to this point. The fact that the MDC did not immediately confirm the charges against Mr. Arar was not unusual. Although the detention facility was not required to provide information concerning any charges, it usually replied to such inquiries through its records division.²⁵³

At the same time as consular officials in New York were investigating the charges against Mr. Arar, DFAIT Headquarters received another call from Mr. Arar's brother telling them of his concern that Mr. Arar would be sent to Syria. This was the first of two instances when consular officials heard concerns about Mr. Arar being sent to Syria. The second instance occurred during Ms. Girvan's consular visit with Mr. Arar on October 3.²⁵⁴ These were the only times during Mr. Arar's detention in the United States that Syria was mentioned to consular officials.

In a CAMANT note sent October 1 at 12:17 p.m., Nancy Collins, the case management officer for the U.S. region at DFAIT Headquarters, wrote: “Brother called this morning in a state of panic. He said that subject was able to call him this morning from the MDC and informed him that he would be deported back to Syria where he was born. Both, subject and brother are extremely afraid that he would be deported to Syria and not in [sic] Canada.”²⁵⁵ Ms. Collins told Mr. Arar’s brother that they had just received confirmation of Mr. Arar’s whereabouts and that they were trying to confirm the charges. Ms. Collins also informed him that DFAIT was not able to provide any additional information without prior authorization from Mr. Arar. Ms. Collins told consular officials in New York to forward the usual letter of introduction to Mr. Arar.²⁵⁶

At the time, Ms. Collins was not aware of possible human rights violations committed by the Syrian government. Neither did she consult with anyone in DFAIT ISI to determine whether there were serious concerns about human rights if Mr. Arar was removed there.²⁵⁷

Although she could not say exactly when, Ms. Girvan read Ms. Collins’ message, took note of it, and continued with efforts to find out the charges against Mr. Arar.²⁵⁸ At this point, her main concern was the charges. Once she had obtained that information, she would try to visit Mr. Arar at the MDC. For these reasons, she put aside the suggestion of sending a letter of introduction.²⁵⁹

In Ms. Girvan’s view, there were four main reasons why consular officials in New York did not consider the threat of removal to Syria to be a real possibility at the time. First, it was common for dual citizens to be concerned about being sent to their other country of citizenship. Second, most family members were very upset when a loved one was in prison; thus the brother’s state of panic was understandable.²⁶⁰

The next two reasons were particularly important because they coloured Ms. Girvan’s mindset throughout Mr. Arar’s detention in the United States.

The third reason given by Ms. Girvan was that she was not aware of the United States ever having removed a Canadian citizen to a country other than Canada when that person had been travelling on Canadian documents.²⁶¹

Finally, Ms. Girvan testified that sending Mr. Arar to a destination other than Canada would have been more of a possibility if he had been held at the airport. She was aware of the international custom whereby a person who is refused admittance at the port of entry is sent back to where his or her flight originated (also referred to as the port of origin). In fact, she had intervened in such cases before, and negotiated the Canadian citizen’s return to Canada, provided the family agreed to pay the difference in airfare between Canada and the port of origin.²⁶²

For these reasons, Ms. Girvan did not regard the situation as serious at the time. However, her suspicions began to increase later in the afternoon on October 1.

5.2

THE SERIOUSNESS OF THE SITUATION

At around three o'clock in the afternoon of October 1,²⁶³ consular officials²⁶⁴ contacted the records division at the MDC requesting information about the charges against Mr. Arar. However, the division refused to provide information without a faxed request. Consular officials were then referred to the Warden's Executive Assistant (EA), who gave the same answer and said that, notwithstanding a faxed request, the office would not be able to provide a reply that day.²⁶⁵

Ms. Girvan regarded this response by the MDC as "highly unusual."²⁶⁶ Normally, consular officials were able to obtain at least some information about the charges over the phone.²⁶⁷

Consular officials also called the Deportation section of the INS in New Jersey to determine if there was a deportation file on Mr. Arar.²⁶⁸ An INS officer informed them that there was no such file and suggested that it was unlikely that Mr. Arar was a deportation case, as the MDC does not hold deportation cases.²⁶⁹ Consular officials were referred back to the MDC.²⁷⁰

Since Canadian officials were not getting any information, they decided to call the Public Affairs Office at INS. When Ms. Le Floc'h was told that no one was available to discuss the case, she asked to speak to the official's superior. This was not the normal procedure.²⁷¹

Although not personally aware of Mr. Arar's case, the superior officer undertook to contact the INS office at JFK Airport and to call back immediately.²⁷² At this point, Ms. Le Floc'h had still not received a response to the two messages she had left the day before with the INS office at JFK Airport.²⁷³

The superior officer called back and informally advised that this case was "of a seriousness that should be taken to the highest level." He suggested that the Canadian Ambassador in Washington contact the U.S. Department of Justice.²⁷⁴

The information consular officials received from the INS offices did not raise any flags that Mr. Arar's case might be a deportation matter. The New Jersey INS office had told consular officials that there was no INS file on Mr. Arar, and that deportation cases were not handled at the MDC. From Ms. Girvan's general knowledge, removals occurred at the airport. As far as she knew, the MDC was not a deportation facility, or a place that INS used for removal cases.²⁷⁵

The information from the superior officer at the INS Public Affairs Office did not clear things up. Although the official there had referred to the seriousness of the case, consular officials did not conclude from this that the information they had received from the INS office in New Jersey was wrong. Based on what the superior officer had told her, Ms. Girvan assumed that Mr. Arar had been arrested and that the matter was serious. She did not speculate further as to what his statement meant.²⁷⁶

Nor did Ms. Girvan assume that the suggestion the Canadian Ambassador intervene in Mr. Arar's case indicated that this was a deportation matter. She had never had anyone suggest that she should take such action.²⁷⁷ Ms. Girvan believed that the INS official made the suggestion because he did not understand the Consulate General's reporting structure — namely, that consular officials reported to their superiors in the New York office, as well as to DFAIT Headquarters.²⁷⁸

However, Ms. Girvan was certain the INS official's comments indicated that the case was “bigger than [her]” and that she had to get instructions from DFAIT Headquarters.²⁷⁹

Immediately after calling the INS Public Affairs Office, Ms. Girvan called Ms. Collins at DFAIT Headquarters. When she could not reach Ms. Collins, she telephoned Gar Parady, Director General of the Consular Affairs Bureau at DFAIT Headquarters (Consular Affairs). Although not the norm, this was permitted in a serious case. Ms. Girvan was referred to Helen Harris, Director of Emergency Services at Consular Affairs, who was acting for Mr. Parady while he was away.²⁸⁰

(Mr. Parady was ultimately notified of the Arar case by Ms. Harris on the morning of October 3, when she called him at home. Mr. Parady was returning from an overseas trip. He began his review of the file at home.²⁸¹)

Ms. Harris agreed to verify the passport and citizenship data on Mr. Arar.²⁸² However, she cautioned that Canadian consular officials in Washington would probably have to be consulted about the advisability of sending a diplomatic note to the U.S. State Department, if consular officials could not get the information they needed from the MDC.²⁸³

The option of contacting the Canadian Ambassador and the U.S. Department of Justice was not discussed as a course of action. According to Ms. Girvan, she had notified Ms. Harris, who was familiar with serious and problematic cases, and would have been aware of the proper means of bringing a matter to the U.S. State Department. (Ms. Girvan testified that if DFAIT was interested in “going to the top,” it was the U.S. State Department that would be approached, not the Department of Justice.) Ms. Girvan noted that it is a fundamental rule of diplomacy that lower-level contacts be approached before an

issue is raised to a higher level — this explained Ms. Harris' suggestion that Canadian consular officials in Washington be contacted first.²⁸⁴

Ultimately, it was decided to send a fax to the MDC that evening asking for details of the charges against Mr. Arar,²⁸⁵ with a follow-up call the next morning. In addition, consular officials in New York would speak to DFAIT Headquarters and the Canadian Embassy in Washington the next morning about sending a diplomatic note to obtain information about the case. The note would also advise U.S. authorities that the Consulate General had not been officially notified about Mr. Arar's case.²⁸⁶

A CAMANT note detailing the afternoon's events involving the MDC and the INS, as well as the suggested course of action, was copied to Mr. Parody, Ms. Collins, the mission in Tunis, DFAIT's communications office, and Hélène Bouchard and Robert Archambault at the Canadian Embassy in Washington.²⁸⁷ Ms. Bouchard was a consular officer, and Mr. Archambault was the head of consular services.²⁸⁸

(In the midst of the calls to the MDC, the INS and DFAIT Headquarters, Ms. Girvan received a call from a close friend of the Arar family. He offered his assistance and asked if there was any more information about Mr. Arar's arrest. He also offered the information that Mr. Arar had worked in the United States at one time, and that he had a valid visa and had travelled there several times during the year. Ms. Girvan replied that they were vigorously researching the arrest and would likely have more information by the next day. She asked that the family friend speak to the Arar family and decide which member would serve as the main contact with DFAIT.²⁸⁹)

On the morning of October 2, the Warden's EA at the MDC called, telling Ms. Girvan that she could only give them limited information, and apologizing for not being able to provide any information earlier. She acknowledged that the MDC was holding Mr. Arar and that the consul or lawyer would be allowed to visit him, provided they received prior approval from the EA.²⁹⁰

The EA's specification that Mr. Arar would only be recognized to the consul and to Mr. Arar's lawyer raised Ms. Girvan's suspicions that the case was related to terrorism. She asked if Mr. Arar was being held in the MDC's special security unit on the facility's ninth floor.²⁹¹

Ms. Girvan's suspicion was related to her knowledge of two post-9/11 cases involving two detained Canadians, Mr. Baloch and Mr. Jaffri. Mr. Baloch was a dual Canadian-Pakistani citizen, and Mr. Jaffri was a landed immigrant in Canada. Both men were held in the MDC's special security unit and both were charged with immigration violations (they were considered to be "persons out of status" in the United States). In fact, both men were being investigated by the

FBI on suspicion of terrorism and were eventually deported to Canada in April 2002.²⁹²

When the EA responded that Mr. Arar was indeed being held in the special security unit,²⁹³ Ms. Girvan's suspicions were confirmed. She now believed that Mr. Arar's case was probably not immigration-related, but rather was a criminal investigation related to terrorism.²⁹⁴

According to the EA, Mr. Arar was being held for an immigration violation. Although the EA acknowledged that she was not being very specific, she added that "wherever the Consulate General might go, [they] would get 'the same run around'."²⁹⁵ Ms. Girvan assumed that the "immigration violation" was being used as a cover for a terrorism investigation.²⁹⁶

Anticipating that DFAIT might have to field questions from the public or members of Parliament, Ms. Girvan suggested that Ms. Collins develop press lines for the case. In her message, she also told Ms. Collins that she was trying to arrange a visit with Mr. Arar the following day.²⁹⁷ The one-day delay was due to the fact that it usually took 24 hours to obtain the necessary permission from the American authorities.²⁹⁸

On the morning of October 3, Ms. Girvan went to the MDC for her consular visit with Mr. Arar. This visit is described below in Section 5.4.

5.3

DIPLOMATIC OPTIONS

By late afternoon of October 1, DFAIT planned to hold discussions the next day between DFAIT Headquarters, consular officials in New York and the Canadian Embassy in Washington regarding the advisability of sending a diplomatic note to the U.S. State Department. The purpose of the note would be to obtain more information about Mr. Arar's circumstances, if the MDC proved not to be forthcoming, and to advise American authorities that the Consulate General had not officially been notified about Mr. Arar's detention.

In the morning of October 2, DFAIT officials exchanged a series of e-mails about Mr. Arar.

At 8:49 a.m., Ms. Girvan e-mailed Mr. Archambault, the head of consular services in Washington, that she hoped to speak to him that morning about whether the best way to proceed with the Arar case was through embassy contacts or via a diplomatic note. Ms. Girvan indicated that she had spoken to Ms. Harris the night before, and that they were leaning towards a diplomatic note, as local American authorities had referred the Consulate General to the U.S. Department of Justice for any information on Mr. Arar's situation.²⁹⁹

Ms. Collins, who was copied on Mr. Archambault's message, e-mailed Ms. Girvan and Mr. Archambault to remind them that DFAIT had the same problem when it tried to confirm Mr. Baloch's detention and request consular access with him. DFAIT sent a diplomatic note in that case.³⁰⁰

In a second e-mail to Ms. Girvan and Mr. Archambault, Ms. Collins suggested waiting until the MDC replied to the Consulate General's faxed request to visit Mr. Arar. If the MDC failed to respond, a diplomatic note should be sent.³⁰¹

At 10:09 a.m., Ms. Girvan sent an e-mail to Ms. Collins and Mr. Archambault agreeing with Ms. Collins' suggestion. Ms. Girvan informed her colleagues that consular officials in New York intended to follow up on the evening's fax with a phone call that morning. However, Ms. Girvan speculated that the advice from the INS Public Affairs Office suggested that they were unlikely to be successful with the MDC. It was her understanding that the Canadian Embassy in Washington was likely to check informally with its contact at the U.S. Department of Justice as a first step. Ms. Girvan concluded that the diplomatic note could follow that attempt, if necessary.³⁰²

Besides being used to request information, diplomatic notes are used to inform a government that it has failed in some action. In Mr. Arar's case, the note was designed to obtain information and to tell the American government about the failure to notify the Consulate General of Mr. Arar's detention. At the time, consular officials did not know if Mr. Arar had asked to see a Canadian consul. Nevertheless, DFAIT was anticipating that he might have asked and been refused.³⁰³ (Their instincts in this case proved to be correct.)

Ms. Girvan explained that a diplomatic note is a formal communication between two countries. Considered exceptional in consular services, it is a last resort after lower-level attempts to assist a detained Canadian citizen have failed. This includes trying to contact local authorities and contacting senior management at the consulate as well as at DFAIT Headquarters. DFAIT Headquarters decides if a higher-level contact is warranted. If so, the Director General of Consular Affairs (or the acting Director General) is authorized to approve a diplomatic note, which is then sent to the foreign affairs department of the host country, via the Canadian Embassy.³⁰⁴

Ms. Girvan pointed out that the disadvantage of sending a diplomatic note is that the expected response time from foreign affairs departments is slow — anywhere from a few days to a few months. One reason for the slow response is the chilling effect that diplomatic notes have on lower-level officials. Once a diplomatic note is issued all communication is carried out through the foreign affairs department. The effect is that Canadian consular officials are denied

informal access to information because everyone is concerned about responding formally. Diplomatic notes are a heavy weapon that should only be used when necessary.³⁰⁵

However, the option of sending a diplomatic note was put on hold because the MDC responded to the Consulate General's faxed request for information concerning Mr. Arar.³⁰⁶

5.4

THE CONSULAR VISIT — OCTOBER 3

Ms. Girvan went to the MDC on October 3 for her first and only consular visit with Mr. Arar. Consular responsibilities include looking after a detainee's well-being and medical care, ensuring the detainee is in touch with his or her family, and assisting in obtaining legal representation.³⁰⁷

Ms. Girvan had prior experience visiting detainees at the MDC in general, and the special security unit in particular.³⁰⁸ While she found prison facilities in the United States to be very secure from the moment a visitor arrived, visits to the special security unit at the MDC involved enhanced security precautions. Visitors were subjected to additional identification checks when they arrived. Instead of meeting in a large room (with other detainees present), visitors were accompanied to a room with cell-like bars. The detainee was either brought to meet the consular official in the same room, or placed in an adjacent room where communication was through a non-contact barrier. A prison official remained on the outside of the barred room and observed the entire visit. Despite this arrangement, however, Ms. Girvan felt that she was able to have a private conversation with detainees.³⁰⁹

Ms. Girvan observed that detainees in the special security unit wore a fluorescent orange jumpsuit. Moreover, they were shackled at the ankles and handcuffed. Sometimes, the shackles and handcuffs were joined by a chain.³¹⁰

When Ms. Girvan arrived for her visit with Mr. Arar on the morning of October 3, she presented herself on the ninth floor of the MDC. As in previous visits, she was subjected to an additional security check, and then accompanied to a cell-like room with a table and chairs. Because this was a contact visit, Ms. Girvan sat in the same room as Mr. Arar.³¹¹

When Mr. Arar was brought in, he was wearing a fluorescent orange jumpsuit, and was handcuffed and wearing leg shackles. Ms. Girvan could not remember if there was a chain linking the handcuffs to the shackles. She believed that he remained in restraints during their meeting. One or two prison officials remained in the corridor.³¹²

Initially, Ms. Girvan did not believe Mr. Arar knew who she was or that he had been given notice a consular official would be visiting him. Indeed, she felt it was unlikely since detainees did not usually receive such notice.³¹³

During the first few minutes, Mr. Arar appeared upset, although he was relatively glad to see her and was very anxious to tell her what had happened to him. She urged him to remain calm, telling him who she was and the purpose of her visit. Ms. Girvan also informed Mr. Arar that his family had found a lawyer, and that the lawyer would be coming to see him. She told him that she had spoken to his wife, and that everyone was concerned about him. Mr. Arar seemed pleased about the lawyer's visit and that Ms. Girvan had been in touch with his wife.³¹⁴

Ms. Girvan assumed that she was the first person to visit Mr. Arar. She did not believe they discussed the issue of Mr. Arar's ability to contact members of his family during the meeting. Ms. Girvan knew that it had been a long time before Mr. Baloch and Mr. Jaffri were able to make any calls, whereas Mr. Arar had made at least two calls — one to his mother-in-law and one to his brother. Ms. Girvan's focus at the meeting was on his well-being and listening to him.³¹⁵

Mr. Arar appeared to be oriented in terms of time and location. He told Ms. Girvan that he was innocent, expressed his love for the United States and spoke of his experience with Americans. Overall, he appeared open and cooperative. Ms. Girvan said that he was voluble, and she did not get the sense that he was withholding information from her.³¹⁶

Mr. Arar showed Ms. Girvan what appeared to be an official document he said had been given to him on October 2, 2002.³¹⁷ As recorded by the consul, the wording on the document was as follows:

Factual Allegation of Inadmissibility under Section 235C of the Immigration and Nationality Act.

- 1) You are not a citizen of the United States
- 2) You are a native of Syria and a citizen of Syria and Canada
- 3) You arrived in the United States on September 26, 2002, and applied for admission as a non-immigrant in transit through the United States, destined to Canada
- 4) You are a member of an organizing [sic] that has been designated by the Secretary of State as a Foreign Terrorist organization, to wit Al Qaeda aka Al Qa'ida.³¹⁸

Ms. Girvan had never seen such a document, nor had she seen a formal instrument charging people with a crime.³¹⁹ Although the document referred to

Mr. Arar as inadmissible under U.S. immigration legislation, she was struck more by the document's reference to al-Qaeda.³²⁰

Even after reading this document, Ms. Girvan did not have immigration issues in the forefront of her mind. She believed that Mr. Arar was to be investigated by the FBI for terrorism. In her experience, such investigations took time and any charges would not be made for months. Even if Mr. Arar was not presently facing charges, she believed that he might be charged down the road.³²¹ Ms. Girvan did not think about the possibility of Mr. Arar's immediate removal.

As a result, Ms. Girvan did not pursue a discussion with Mr. Arar about immigration hearings that would possibly flow from the inadmissibility allegation. In her mind, Mr. Arar was going to be in detention for some time while the FBI investigated him. She was also aware that Mr. Baloch and Mr. Jaffri had been detained for months. However, she kept these thoughts to herself because she did not want to upset Mr. Arar.³²²

Ms. Girvan did not have legal training and relied on her experience as a consul in concluding that the U.S. authorities were going to hold Mr. Arar. None of Ms. Girvan's responsibilities included conducting research into the legality of actions. Her responsibility was to relay information from the consular visit to DFAIT Headquarters and to assist the detainee in finding legal representation.³²³

Mr. Pardy shared Ms. Girvan's belief that the al-Qaeda allegation possibly meant a longer period of detention in the United States. He thought there was a possibility Mr. Arar would be held in custody until American authorities could make further decisions in their investigation. He considered it possible that Mr. Arar might be transferred to Guantánamo Bay, although it was exceptional for persons apprehended in the United States to be sent there.³²⁴

Ms. Girvan could not recall if Mr. Arar had any other documents in his possession, or if the document she remembered seeing had more than one page.³²⁵

As will be discussed,³²⁶ the INS removal order stated that, on October 1, 2002, Mr. Arar was served with all unclassified documents that the INS was relying on in initiating proceedings for his removal. These documents included: 1) an executed I-147 notice saying that Mr. Arar had five days to provide a written response to the allegations and charge of inadmissibility; 2) an attachment to the I-147 alleging Mr. Arar to be a member of an organization that had been designated by the Secretary of State as a Foreign Terrorist Organization (al-Qaeda) and charging Mr. Arar with inadmissibility under the *Immigration and Naturalization Act*; 3) a publication issued by the U.S. State Department listing al-Qaeda as a Foreign Terrorist Organization; and 4) a publication relating to free legal service provided in the New York area.³²⁷

Ms. Girvan did not see anything confirming that there was a notice period. She would have noted this and raised the issue with Mr. Arar's lawyer when she spoke to her later that day.³²⁸ Admittedly, Ms. Girvan was shocked by the al-Qaeda allegations, but she disagreed with the suggestion that this shock caused her to overlook reference to a notice period. That said, Ms. Girvan could not categorically exclude the possibility that a notice period was mentioned without seeing the document that Mr. Arar had showed her.³²⁹

The document that Ms. Girvan reviewed during the consular visit is not available to this Inquiry. As such, there is no way to determine if the document Mr. Arar presented to Ms. Girvan on October 3 had more than one page, or if it was one of the documents he was served with on October 1, including the document indicating the notice period of five days.

During the visit, Mr. Arar described what happened at the airport when he arrived in New York on September 26 at two o'clock in the afternoon. He was immediately stopped by immigration officials, who took him to an interview room where he was interrogated by "police" and the FBI for many hours.³³⁰ (This was the first time Ms. Girvan learned that the FBI was involved in Mr. Arar's case.³³¹)

According to Mr. Arar, he was polite and tried to give officials all of the information they asked for, even when the questions were extremely personal. They insulted him, but he kept his peace. He provided them with his e-mail accounts and the names of his family. He explained that his laptop computer belonged to the company for which he did contract work, The MathWorks, Inc.³³²

At first, the officers told Mr. Arar that he was not a suspect and that he would be put back on the plane once he had answered their questions. After four hours of interrogation, they again said that they were going to put him on the plane. At seven o'clock that evening, they informed him that they did not have a final decision.³³³

At 1:30 a.m., Mr. Arar was taken to a cell.³³⁴

According to Mr. Arar, the next morning he was again interviewed by the FBI. Although they showed him their name cards when he asked for identification, he could not remember their names.³³⁵

At one point, two immigration officers told him that they were going to send him to Syria. Mr. Arar asked why, since he had not been to Syria for years and all his family was in Canada.³³⁶

Eventually, Mr. Arar was put back in his cell. Three armed men then came and transported him in handcuffs to the MDC.³³⁷

Although this was the second time Ms. Girvan heard that Mr. Arar might be sent to Syria, she still did not believe it to be a realistic possibility. She thought

that the Syria threats were possibly used as leverage to force Mr. Arar to offer additional information, or as a preamble to the decision to send him to the MDC's special security unit. She did not believe that the threat would be carried out.³³⁸

Throughout her testimony, Ms. Girvan distinguished between an expedited removal and a deportation. In the case of an expedited removal, a person is refused entry into the country upon his or her arrival. The person remains at or near the airport for a brief period (about a day or two), and is then sent back to his or her port of origin. She was not very experienced with expedited removals because they occurred quickly and there was no requirement to notify consular officials.³³⁹

Ms. Girvan had more experience with deportation. In this instance, the person is removed from the airport and brought to a detention facility in the city. Once the INS has made a removal decision, the consul is notified of the decision. From Ms. Girvan's experience, the average post-decision removal cycle is six to eight weeks, and involves the consul.³⁴⁰

In Ms. Girvan mind, the current situation was not an expedited removal scenario. When Mr. Arar mentioned the possibility of Syria, Ms. Girvan reassured him that he was now "in the system." This was her way of acknowledging that Mr. Arar was in a prison, had a prison number, and was not at the airport where the authorities might precipitately send him off.³⁴¹

She also explained that it was very unlikely he would be sent to Syria because the American authorities recognized him as a Canadian, and the consul had been to see him. She told him he would be seeing a lawyer.³⁴²

According to Ms. Girvan, Mr. Arar's concern was not uncommon for someone with dual nationality. It was suggested that Mr. Arar's case was different because he was actually told by the INS that he would be sent to his other country of citizenship. However, Ms. Girvan stressed that Mr. Arar had also been assured that he would continue on his journey if he answered the FBI's questions. Subsequently, Mr. Arar was told that no decision had yet been made.³⁴³

Most importantly, Ms. Girvan had no precedent for believing that a Canadian citizen would be sent to his other country of citizenship. Although she believed that Mr. Arar would be sent to Canada, not to Syria, she nevertheless cautioned him that this was only her considered opinion. It would be up to Mr. Arar's lawyer to provide legal advice and inform him of what was most likely to happen.³⁴⁴

Ms. Girvan was asked what she might have done differently if she had believed on October 3 that there was a real possibility Mr. Arar would be sent to Syria. She stated that the only difference in her course of action would have

been to adopt the negotiation approach that she sometimes used in an expedited removal scenario. That is, Ms. Girvan would have contacted an INS official and requested that the person be removed to Canada. If these overtures were rebuffed, and she felt the person was at imminent risk, she would not approach the Canadian Ambassador to the United States, because he was not in her line of authority. Rather, she would ensure that both senior management in New York (i.e., the senior consul in charge of consular services and the Consul General) and senior management in Ottawa (i.e., the Director General of Consular Affairs) were aware of the situation. She would also ensure Mr. Arar's lawyer knew what was happening in case the lawyer wanted to offer suggestions to the Canadian government as to how they could assist his or her client.³⁴⁵

According to Mr. Pardy, there were two possible courses of action if Syria was a realistic possibility. The Canadian Ambassador in Washington could potentially speak to a senior person in the U.S. State Department. Alternatively, the Minister of Foreign Affairs could contact the American Ambassador in Ottawa. These meetings would be called on the assumption that DFAIT officials had very specific information to justify their concerns. However, in Mr. Arar's case, DFAIT had received conflicting information.³⁴⁶

Consular officials were also aware of the U.S. National Security Entry-Exit Registration System (NSEERS) that had been instituted on September 12, 2002. Under this program, persons born in, or citizens of, Iran, Iraq, Libya, Sudan and Syria are photographed and fingerprinted on entering and exiting the United States. The Government of Canada issued two travel bulletins in September 2002 warning Canadians that such persons would be subjected to greater scrutiny by immigration officials.³⁴⁷

Mr. Pardy denied that NSEERS was relevant to Mr. Arar's case. First, the decision to remove Mr. Arar was made after he entered the United States, whereas NSEERS deals with foreigners arriving in that country. Second, there was no evidence that the Americans would send a Canadian citizen to a country other than Canada as a result of NSEERS.³⁴⁸

After her consular visit, Ms. Girvan did not follow up with an official from the INS or any other government official about the Syria threat. Between the consular visit on October 3 and Mr. Arar's removal on October 8, no Canadian official spoke directly with any U.S. government agency to determine whether there was a realistic possibility that Mr. Arar would be sent to Syria.³⁴⁹

Although Ms. Girvan had experience dealing with the Middle East, she did not have specific knowledge about human rights issues in Syria. To obtain more information, she could have consulted officials at DFAIT Headquarters, who would have then consulted their legal department.³⁵⁰

During the consular visit, Mr. Arar tried to determine why he had been arrested.

He said that he was repeatedly asked about a man of Syrian origin named Abdullah who lived in Ottawa and ran an import/export business. Mr. Arar told the authorities the two families knew each other, and his “elder brother” had attended the same school in Syria when they were young.³⁵¹ He explained that the brother had a start-up business in Ottawa and that he had worked there for a period of time. However, the police did not seem interested in Abdullah’s brother.³⁵²

Mr. Arar also wondered if the police had gone through his effects in Canada. He noted that American officials kept referring to him by his father’s name. He said that he did not use his father’s name and was known only as “Maher Arar,” which is not unusual in Arab countries.³⁵³

Finally, Mr. Arar questioned whether his work in, and frequent travels to, the United States in the past year had led the police to be suspicious of him. (Ms. Girvan was given background information on his employment in the United States.)³⁵⁴

Mr. Arar told Ms. Girvan that he had agreed to see someone from the Canadian consulate while he was in custody at the airport. In fact, he believed that he had signed a paper to that effect. However, the Consulate General was never officially contacted about Mr. Arar’s request. Furthermore, Mr. Arar was held at the MDC for four days without any access to a lawyer or a family member — essentially, no one knew where he was.³⁵⁵

As far as Ms. Girvan was concerned, it was not unusual that Mr. Arar was asked to sign a document requesting consular services. Mr. Baloch had also been asked to sign such a request. She interpreted this procedure as an encouragement for front-line officials to comply with the obligations under the Vienna Convention on Consular Relations (VCCR) by notifying the appropriate consulate.³⁵⁶

On returning to her office following the visit, Ms. Girvan called Mr. Arar’s wife in Tunis, left two messages for Mr. Arar’s lawyer, and sent a fax to the Warden’s Office at the MDC seeking approval for a visit by Mr. Arar’s lawyer. She also sent a CAMANT note to DFAIT Headquarters to update officials on the case. Over the course of the afternoon, she prepared three additional CAMANT notes summarizing what Mr. Arar had told her.³⁵⁷

According to Ms. Girvan’s testimony, the CAMANT notes she prepared on October 3 were fairly exhaustive, and included everything in her meeting notes. Later on, likely in November 2003, she wrote another e-mail. Prepared from

memory, and with the assistance of the original CAMANT notes, this e-mail contained additional details concerning the consular visit.³⁵⁸

For the most part, the e-mail tracked the information in the original CAMANT notes. However, there were two notable additions. First, Ms. Girvan wrote that Mr. Arar had said that his wife had told him not to travel through the United States. She also wrote that Mr. Arar said he had moved to Tunisia with his wife and children a few months prior to his trip back to Canada.³⁵⁹

Back on October 3, Ms. Girvan did not consider Dr. Mazigh's comments to Mr. Arar to be significant. Many people were trying to avoid travelling to the United States at that time due to the increased security measures. However, she was confident that Mr. Arar had told her this during the consular visit.³⁶⁰

Similarly, she did not consider Mr. Arar's comments about Tunisia to be significant. She understood that the family had moved to Tunisia to care for Dr. Mazigh's ailing father, but that Mr. Arar was having difficulty finding work and was looking for opportunities in Europe and North America. She emphasized that she initially had not recorded this information as she did not think it important at the time.³⁶¹

On the day of Mr. Arar's consular visit, Ms. Girvan sent a message to Ms. Collins at DFAIT Headquarters asking if Mr. Pardey, Ms. Collins, Mr. Archambault and herself could discuss what steps the Canadian government could take to find out the basis for the charges against Mr. Arar.³⁶² In her mind, it was important for Canadian officials to obtain more information on why the American authorities believed Mr. Arar to be a terrorist.³⁶³

The meeting took place the next day, on October 4. Ms. Girvan informed the others of her findings to date, including the fact that a lawyer would visit Mr. Arar the next day. Mr. Archambault mentioned that he had received a call from the State Department acknowledging Mr. Arar's detention. The issue of a diplomatic note was not mentioned.³⁶⁴ In fact, a diplomatic note was never sent on behalf of Mr. Arar.³⁶⁵

5.5

INVOLVEMENT OF MR. ARAR'S NEW YORK LAWYER

There was some uncertainty regarding Mr. Arar's legal representation during his detention in the United States.

When Ms. Girvan began making arrangements for a consular visit on October 2, she also received a call from a friend of the Arar family who told her that the family had found a lawyer in New York named Amal Oummih. Ms. Girvan said that she was going to be visiting Mr. Arar and would relay this information to him.³⁶⁶

After returning to her office following the October 3 consular visit, Ms. Girvan faxed a thank-you message to the Warden's office at the MDC. The fax also stated that Mr. Arar intended to retain the services of Amal Oummih, who had an office in Astoria, New York. Ms. Girvan requested that the lawyer be permitted to visit Mr. Arar, and stated that she would ask Ms. Oummih to contact the MDC directly.³⁶⁷ The fax was marked "Urgent."³⁶⁸

That same morning, Ms. Girvan left two messages with Ms. Oummih.³⁶⁹

On the afternoon of October 3, Mr. Arar's brother, Taufik Arar, spoke to Ms. Collins by telephone. Ms. Collins told him that the consul had visited Mr. Arar that morning and that consular assistance was being provided. Mr. Arar's brother asked if Mr. Arar had a lawyer and, if he could not afford one, how he would be represented. Ms. Collins gave him some general information on public defenders.³⁶⁸

On October 3 as well, Ms. Girvan contacted Dr. Mazigh and told her that the family had found a lawyer for her husband. Dr. Mazigh seemed pleased to receive this news.³⁶⁹

While Ms. Girvan was unsure about the family's financial situation, she knew that Ms. Collins had given information about public defenders to Mr. Arar's family. She decided that she would ask Mr. Arar's brother about who would be handling the lawyer's fees. Ms. Girvan also considered alternatives, such as referring the family, without recommendation, to the Center for Constitutional Rights (CCR). A non-profit legal organization in New York, the CCR had helped Mr. Baloch and Mr. Jaffri locate lawyers during their detention in the United States.³⁷²

Later that afternoon, Ms. Girvan spoke to the family friend concerning Mr. Arar's legal representation. From her conversation, she learned that the family was interested in speaking to someone from the CCR.³⁷³ Ms. Girvan offered to call a lawyer from the organization who had been in contact with her, and relay the family's potential interest in her services.³⁷⁴ According to Ms. Girvan, this was intended to keep the family's options open in the event that a member wanted to contact the CCR in the future.³⁷⁵

In addition, Ms. Girvan told the family friend about her interview with Mr. Arar and reiterated that the family should decide on a primary contact with DFAIT. The friend promised to ensure that money for Mr. Arar was sent immediately to the MDC.³⁷⁶

At the end of the day, Ms. Oummih replied to Ms. Girvan's messages. From Ms. Girvan's recollection of the conversation, she told the lawyer about her consular visit with Mr. Arar, although she could not remember mentioning the al-Qaeda allegations. Regardless, she told the lawyer everything that she knew,

including the assertion from the INS Public Affairs Office that this was a serious matter. Ms. Girvan believed that the lawyer understood the gravity of the situation. Ms. Oummih confirmed that she would contact the MDC to arrange a visit with Mr. Arar. Ms. Girvan felt a certain degree of relief that a lawyer would be meeting with Mr. Arar.³⁷⁷

On October 4, Janice Badalutz from the CCR responded to Ms. Girvan's message from the day before. Ms. Badalutz was trying to contact another lawyer, Martin Stoller, who would charge a reasonable amount in the event he could not represent Mr. Arar on a *pro bono* basis. Ms. Girvan explained that the family had contacted another lawyer, but that she would pass along Ms. Badalutz's contact information so that the family could get in touch with her if need be. Ms. Badalutz promised to get back to Ms. Girvan after she had spoken to Mr. Stoller.³⁷⁸

Later that morning, Ms. Girvan followed up on the requests made by Mr. Arar during this consular visit (i.e., toothbrush, toothpaste, instruments to trim his beard, and a copy of the MDC rule book). The Warden's Office agreed to provide Mr. Arar with an orientation booklet and agreed to check on the other items. Ms. Girvan was also informed that Ms. Oummih had contacted them regarding a visit with Mr. Arar. Apparently, the lawyer had told the Warden's office that she had not yet been retained, but had to meet with Mr. Arar in order to discuss her retainer. The visit was arranged for Saturday, October 5.³⁷⁹

When Ms. Badalutz called back that afternoon, she asked Ms. Girvan to give her number to the Arar family friend or to Mr. Arar's brother. Ms. Girvan asked Ms. Collins at DFAIT Headquarters to do this.³⁸⁰ Ms. Badalutz's number was given to Dr. Mazigh.³⁸¹

By the end of the day on Friday, October 4, Ms. Girvan felt that things were in good order, and knew that Mr. Arar would be seeing his lawyer the next day.³⁸² By Monday, October 7, the situation had changed.

On the morning of October 7, Ms. Girvan received a call from Dr. Mazigh, who expressed concern about Mr. Arar's mental state and requested that the Consulate General intervene to assist Mr. Arar in calling her, and to help him obtain personal items, such as reading materials and hygiene items.³⁸³ Ms. Girvan believed that Dr. Mazigh's concerns about Mr. Arar's mental state were of a general nature, and that she wanted him to have reading materials to occupy his time.³⁸⁴

Dr. Mazigh was told that if she did not hear from her husband by the next day, Ms. Girvan would follow up with the MDC. Ms. Girvan was aware that funds for Mr. Arar had arrived, and that the MDC had agreed to allow Mr. Arar

to call his wife once that happened. In Ms. Girvan's mind, these administrative tasks might have been held up over the weekend. She would therefore wait until Tuesday to make inquiries.³⁸⁵

On Monday morning as well, Ms. Oummih informed Ms. Girvan that she had visited Mr. Arar on Saturday, October 5, and that the money for Mr. Arar had arrived. However, Ms. Oummih found him in "very bad emotional condition." She was not yet representing Mr. Arar, as she still needed agreement from the family. Ms. Oummih also reported that the District Director of the INS had called her that morning to inform her of an INS interview that was to take place with Mr. Arar at 7 o'clock that evening. If she was retained as Mr. Arar's lawyer, she would attend the meeting.³⁸⁶

Ms. Girvan did not consider the INS interview to be at all unusual. Mr. Arar had been interrogated by the FBI, and was being treated as the two other Canadians had been. As already noted Ms. Girvan believed that Mr. Arar was suspected of terrorism and expected that he would be held for some time. The INS interview did not raise her suspicions about removal. Rather, she anticipated the department's continuing interest in Mr. Arar because he was being held on an immigration violation. She was also aware that the INS commonly interviewed persons for information-gathering purposes. From Ms. Girvan's perspective, it was a good sign that the INS had invited the lawyer to participate.³⁸⁷

Ms. Girvan also received a call from the family friend on the morning of October 7. Apparently, he was aware of the upcoming INS meeting and asked if a consular representative would be present. According to Ms. Girvan, this would not normally be the case. In fact, consular officials were not generally informed of these meetings. In any event, she would not be attending, but Mr. Arar's lawyer would be.³⁸⁸

Ms. Girvan did not believe there was a problem with the lawyer's retainer at this point. Even though Ms. Oummih had told her that she was not yet representing Mr. Arar, the family friend later informed her that Ms. Oummih would be retained.³⁸⁹ (On October 8, 2002, after Ms. Girvan learned Mr. Arar had been removed from the MDC, she contacted the family and the family friend. They confirmed that Ms. Oummih had been retained.³⁹⁰)

While there appears to have been some discussion on Monday, October 7 about the possibility of the CCR representing Mr. Arar,³⁹¹ by the time Ms. Girvan went home on Monday, October 7, she was confident the Arar family had retained Ms. Oummih, who would attend the INS meeting that evening.

That same morning, during a call with the Warden's Office at the MDC, Ms. Girvan took the opportunity to follow up on Dr. Mazigh's request to speak to Mr. Arar. The Warden's Office told her that social calls were restricted on the

ninth floor, and that the MDC needed funds before allowing Mr. Arar to call his wife. Ms. Girvan replied that Mr. Arar used one of his earlier calls to his family to let the Canadian Consulate know that he wanted to see a consular officer. She also noted that Mr. Arar was travelling on a Canadian passport and, at the airport, had expressed his desire to see the Canadian consul. The Warden's Office thought that perhaps the funds had not been processed over the weekend and promised to look into it.³⁹²

As events actually occurred, the INS meeting with Mr. Arar took place on Sunday, October 6, not on Monday, October 7. This is important because it appears Mr. Arar attended the meeting without representation. Apparently, there was a miscommunication between the INS and Ms. Oummih about the day of the meeting. This confusion was only sorted out after Mr. Arar had been sent to Syria.

In a CAMANT note dated October 29, 2002, Ms. Girvan indicated that she had spoken to Steven Watt, a lawyer with the CCR. She learned that Ms. Oummih had told Mr. Watt that she picked up the INS message about the "hearing" on Monday, October 7. However, Ms. Oummih said that the message had probably been left the previous day, on Sunday, October 6. When Ms. Oummih went to the MDC that Monday, she was told that the hearing had been held on the Sunday, and that Mr. Arar was no longer there.³⁹³

5.6

DISCOVERY OF MR. ARAR'S REMOVAL AND EFFORTS TO LOCATE HIM

On October 8, Ms. Girvan phoned the MDC to follow up on Dr. Mazigh's request to speak to her husband by phone. She was told that Mr. Arar had been removed from the premises by the INS between three and four o'clock that morning. The MDC was unable to tell Ms. Girvan where Mr. Arar had been taken. They suggested she check with the INS in Manhattan.³⁹⁴

The news of Mr. Arar's removal did not raise Ms. Girvan's suspicions, as moving detainees in the middle of the night or early morning was a common practice. For example, a detainee with a nine o'clock court hearing might be moved from a cell as early as three or four o'clock in the morning.³⁹⁵ Ms. Girvan testified that the Canadian Consulate was not notified when people were moved. The Consulate most often found out when a family member was told about the move in a call from the detainee.³⁹⁶

Ms. Girvan immediately called the INS central processing office in Manhattan to find out what was going on.³⁹⁷ She also called a member of the Arar family and the family friend to inform them that Mr. Arar had been re-

moved from the MDC and that the Consulate General was trying to determine his whereabouts. They told her that they were waiting to hear from Ms. Oummih, and agreed to let Ms. Girvan know if they learned anything about Mr. Arar from Ms. Oummih. Ms. Girvan then called Dr. Mazigh in Tunis, but there was no answer.³⁹⁸

On the same day, Lisiane Le Floch spoke to an official at the INS Public Affairs Office. The official was unable to find a record of Mr. Arar at any of the INS facilities in the area,³⁹⁹ and suggested that Ms. Girvan call INS Headquarters in Washington and speak to the Counsel to the INS Commissioner.⁴⁰⁰ This was the first time Ms. Girvan had ever been referred to INS Headquarters on a consular case.⁴⁰¹ She called and had to leave a message.⁴⁰²

Ms. Girvan had not heard back from INS Headquarters by the late afternoon of October 8. In the meantime, she had again spoken to the Arar family friend, who had expressed concern that the Americans might return Mr. Arar to Syria “where he could disappear into some jail as a ‘suspected criminal.’” Ms. Girvan assured him that the authorities were well aware that Mr. Arar was a Canadian citizen travelling on a Canadian passport. In her view, it was unlikely that such action would be taken at that time.⁴⁰³

Later, she spoke to an attorney in the INS Commissioner’s office in Washington, who said she would try to get information on Mr. Arar’s whereabouts.⁴⁰⁴

On the morning of October 9, Ms. Girvan spoke to Dr. Mazigh, and possibly to the family friend, saying she was waiting for a call from INS Headquarters. Dr. Mazigh indicated she was concerned that her husband might be removed to Syria and that, if he was not removed, the longer he stayed in American detention, the longer the American authorities would have to build a case against him.⁴⁰⁵

Ms. Girvan assured Dr. Mazigh that there was little likelihood that Mr. Arar would be removed to Syria, since the American authorities knew he was a Canadian citizen travelling on a Canadian passport. She told Dr. Mazigh that the Consulate had visited him and clarified his residence. She also suggested that the American authorities had the legal framework to hold Mr. Arar for quite a long time and the fact they no longer wanted to hold him on the ninth floor of the MDC would seem to be good news. She reminded Dr. Mazigh that moves of this sort were normal in the American system.⁴⁰⁶

Ms. Girvan called Ms. Oummih, who told her that she had not seen Mr. Arar on Sunday night, an apparent indication that Ms. Oummih now knew that the INS meeting had been scheduled for Sunday, and not Monday, as she had informed Ms. Girvan on Monday morning. Ms. Oummih told Ms. Girvan

that she was making calls to try to determine Mr. Arar's whereabouts.⁴⁰⁷ At this point, Ms. Girvan was still not aware that there had been confusion about the call Ms. Oummih had received from the INS District Director concerning Mr. Arar's INS meeting.

During their conversation, Ms. Oummih did not mention that she had been unable to locate Mr. Arar since Monday, October 7. Ms. Girvan only became aware of this in November 2003. Despite this omission, Ms. Girvan stated that Ms. Oummih was not obligated to notify the Consulate that Mr. Arar was missing. As the lawyer for Mr. Arar, her obligation was to the family.⁴⁰⁸

That same morning, Ms. Le Floc'h called the INS in Manhattan. She was told that the INS office had no record of Mr. Arar being moved and no record of him at any immigration facility.⁴⁰⁹

Given what had happened in Mr. Baloch's case (as discussed above in Section 5.2), Ms. Girvan called the MDC to see if Mr. Arar had been returned. She left an urgent message asking that the individual handling Mr. Arar's file that week return her call.⁴¹⁰

At mid-day, Nancy Collins tried unsuccessfully to speak to the counsel at INS Headquarters.⁴¹¹ A short time later, Ms. Girvan succeeded in reaching him on her cell phone. The counsel promised to get back to DFAIT shortly with information about Mr. Arar. (Consular officials still had no idea that Mr. Arar had been removed from the United States.) In the meantime, Ms. Collins, Mr. Pardy, Ms. Girvan and Robert Archambault, a consular official from the Canadian Embassy in Washington, held a conference call and agreed they would wait 24 hours before taking any action. In Ms. Collins' opinion, Mr. Arar's case was shaping up to be just like Mr. Baloch's.⁴¹²

Early in the morning of October 10, Mr. Arar's brother called DFAIT Headquarters for an update. He was told that attempts were still being made to track down Mr. Arar.⁴¹³ In the early afternoon of that same day, the INS counsel called Ms. Girvan and told her that Mr. Arar had been removed from the country, adding that he could not provide any further information.⁴¹⁴

Ms. Girvan was surprised by this news because, as far as she knew, nothing like this had ever happened before. She assumed that Mr. Arar had not been sent to Canada because her INS contact would have told her had that been the case. When her contact declined to give more information, Ms. Girvan's working assumption was that Mr. Arar had been sent to Syria, and that DFAIT should investigate this.⁴¹⁵

After discussing with Mr. Pardy how to proceed, Ms. Girvan called Helen Harris at DFAIT Headquarters and asked her to contact Damascus regarding Mr. Arar.⁴¹⁶ Ms. Harris contacted Léo Martel, the consul in Damascus, provided

him with Mr. Arar's biographical information and citizenship and passport details, and asked the Embassy to make a formal request to the Syrian Ministry of Foreign Affairs the next day about Mr. Arar's whereabouts and well-being. Ms. Harris also asked that an attempt be made to ascertain whether Mr. Arar had entered Syria in the previous 24 hours.⁴¹⁷

Ms. Harris also consulted Jonathan Solomon at DFAIT ISI, who was to send a C4⁴¹⁸ message asking the Canadian ambassador in Damascus to investigate Mr. Arar's whereabouts. The message was also to say that DFAIT Headquarters was attempting to obtain this information "through lower levels and formal channels."⁴¹⁹

While Ms. Girvan was trying to contact the INS counsel, Ms. Collins and H el ene Bouchard asked another INS contact to phone on their behalf to see if she could confirm Mr. Arar's whereabouts. During the telephone call, the American official's "face became white" and she hung up the phone.⁴²⁰

When Ms. Collins and Ms. Bouchard asked where Mr. Arar was, the official replied that she could not say anything; but when asked if Mr. Arar had been sent to Jordan, she nodded. (Ms. Collins inquired about Jordan because she was aware that it was used by the Americans as a transit point for persons destined for Guant anamo Bay and elsewhere.) When Ms. Collins asked if Mr. Arar was on his way to Syria, the official replied, "I would not look further."⁴²¹ She added that "there was nothing more the Canadian government could have done. Their minds were made up."⁴²²

Ms. Collins passed on what she had learned to Mr. Pardy, who by then had also heard from Ms. Girvan that Mr. Arar had been removed. Mr. Pardy contacted Scott Heatherington, the Director of Foreign Intelligence Division (ISI), to find out if the information from the American official could be used in a direct, official manner and if he had heard anything. Mr. Heatherington replied that the U.S. Embassy in Ottawa had informed him that Mr. Arar had been removed to Syria.⁴²³

Later that day, Mr. Pardy spoke to the INS counsel in an attempt to obtain information that could be used in an official manner. The counsel did not provide anything beyond what had already been shared with Ms. Girvan.⁴²⁴

6. THE AMERICAN REMOVAL ORDER

6.1 CONTENT

As indicated at the beginning of this chapter, American authorities declined the Commission's invitation to testify at this Inquiry. As a result, the Commission does not have a first-hand explanation from the Americans about why Mr. Arar was removed to Syria, nor does it have an official copy of the INS order to remove him. However, the Commission does have a copy of that decision, which was obtained by DFAIT from CBS News. There is no reason to believe that this is not an accurate copy of the official order, and the following description is based on it.

On October 7, the INS ordered that Mr. Arar be removed from the United States because he had been found to be a member of a foreign terrorist organization, al-Qaeda.⁴²⁵ The Commissioner of the INS had determined that Mr. Arar's removal to Syria would be consistent with Article 3 of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The decision was signed by J. Scott Blackman, Regional Director, Eastern Region, INS (the Regional Director). Mr. Arar was served with the decision at four in the morning on October 8.⁴²⁶

As described in the decision, the INS' version of events between September 26 and October 1 was as follows:

- Mr. Arar, a native of Syria and a citizen of Canada, arrived at JFK airport in New York on September 26, 2002 from Zurich, Switzerland.⁴²⁷
- Mr. Arar was subject to a secondary inspection, and it was determined that he was the subject of a TECS/NAILES lookout as a member of a known terrorist organization.⁴²⁸ (This seems to be inconsistent with the testimony that Project A-O Canada was told before Mr. Arar landed that he would be detained and refused entry into the United States.)
- On October 1, 2002, the INS charged Mr. Arar with being a member of a terrorist organization, and initiated removal proceedings against him under section 235(c) of the *Immigration and Nationality Act*.⁴²⁹
- Mr. Arar had five days to respond to the charge. He was provided with the following documents: 1) a notice of the requirement to respond within 5 days; 2) an attachment alleging that he was a member of an organization designated as a foreign terrorist organization, al-Qaeda; 3) a State Department publication listing al-Qaeda as a foreign terrorist

organization; and 4) a publication describing free legal services available in the New York area.⁴³⁰

- As of October 7, Mr. Arar had not provided a written statement or any additional information in response to the charge.⁴³¹

The Regional Director noted that he had reviewed both classified and unclassified materials in reaching his decision.⁴³²

The unclassified material included the following information obtained from Mr. Arar during two interviews — one conducted on September 26 with an INS officer, and the other on September 27 with the FBI:

- basic background information on Mr. Arar, including that he had dual Syrian/Canadian citizenship, and had been living in Tunisia for three months prior to his application for admission;
- Mr. Arar had denied being linked to a terrorist organization;
- Mr. Arar had admitted to an association with Abdullah Almalki and Nazih Almalki, including three business dealings with Abdullah Almalki;
- Mr. Arar had admitted to knowing Ahmad El Maati.⁴³³

The classified material was contained in a separate Classified Addendum.⁴³⁴ The Commission does not have a copy of the Classified Addendum, and none of the Canadian officials who testified at the Inquiry have seen it.⁴³⁵

The order also stated that an alien entering the United States must establish clearly and beyond doubt that he or she is admissible to the country. Mr. Arar denied that he was inadmissible, but offered no evidence in support of his denial. Based on all of the information made available to the Regional Director, both classified and unclassified, Mr. Arar was found to be “clearly and unequivocally inadmissible... in that he is a member of a foreign terrorist organization.”⁴³⁶

The Regional Director stated that al-Qaeda was considered a “clear and imminent threat to the United States,” and that Mr. Arar’s membership in this organization, as described in the order and more fully in the Classified Addendum, barred him from admission to the country.⁴³⁷

6.2 THE LEGAL FRAMEWORK

The Inquiry was assisted by the testimony and written submissions of Stephen Yale-Loehr, an expert in United States immigration law, concerning the legal framework for removal.⁴³⁸

There are two types of removal proceedings that apply to non-citizens under the *Immigration and Nationality Act (INA)*: normal removal proceedings and expedited removal proceedings. According to Mr. Arar's removal order, it appears that he was removed under the expedited removal proceedings authorized by section 235(c) of the *INA*.

Upon entry into the United States, all non-citizens are subjected to an inspection by an immigration inspector at the port of entry. During the primary inspection, the applicant must present the inspector with required documentation and the inspector has the right to ask questions such as the purpose and length of the trip. If the inspector is satisfied that the applicant is entitled to enter, he or she is admitted to the United States under the appropriate category (e.g., tourist, student, temporary worker, etc.⁴³⁹)

If the non-citizen's admissibility is in doubt, the inspector can refer the applicant to a secondary inspection, which may include searching the applicant's bags, asking additional questions, and making inquiries with other government departments.⁴⁴⁰

If everything is found to be in order, the applicant is released from secondary inspection and admitted to the United States. However, if it appears the applicant is not admissible to the United States, he or she will be held (or possibly released on bail) pending a final determination by an immigration judge.⁴⁴¹

Under the normal removal proceeding, the non-citizen does not have a right to counsel and thus a lawyer will not be appointed to represent him or her before the immigration judge. However, the applicant is free to hire a lawyer at his or her own expense. After hearing arguments from the government's lawyers and the applicant, the immigration judge will issue a ruling as to whether the individual should be removed.⁴⁴² If the immigration judge decides that the applicant should be removed, the decision can be appealed.⁴⁴³

Non-citizens can be subjected to the expedited removal procedures under section 235 of the *INA* if they arrive in the United States without proper documentation or there are security-related grounds to have them removed.

Under section 235(b), a non-citizen who arrives with a lack of immigration documentation, or who has committed a fraud or a misrepresentation to try to enter the United States, can be ordered removed. The decision is made by the immigration inspector and becomes final after review and approval by a supervisory immigration officer. An immigration judge cannot review the order, and make the final decision for removal, unless the applicant expresses a credible fear of persecution or torture.⁴⁴⁴

Under section 235(c), an immigration inspector may order that a non-citizen be removed on security-related grounds. Because of the national security

issues involved, the U.S. Attorney General must review the order. If the Attorney General finds that the applicant is inadmissible for security reasons, he or she may order that the applicant be removed. The Attorney General's decision is not reviewable by an immigration judge.⁴⁴⁵

A removal order under section 235(c) cannot be executed under circumstances that would violate America's obligations under Article 3 of the United Nations Convention Against Torture (CAT). However, the regulations that set out this requirement do not specifically state the factors the Attorney General should take into account to ensure the removal order complies with CAT.⁴⁴⁶

Mr. Yale-Loehr testified that expedited removal proceedings under section 235 of the *INA* are rare.⁴⁴⁷ At the time of his testimony, he had no knowledge of another case of expedited removal under section 235(c).⁴⁴⁸

NOTES

¹ [IC] Callaghan testimony (November 8, 2004), pp. 4119–4120.

² *Ibid.*, p. 4121.

³ [IC] Cabana testimony (October 28, 2004), p. 2993.

⁴ [IC] Corcoran testimony (November 15, 2004), p. 4883.

⁵ [IC] Callaghan testimony (November 8, 2004), p. 4122.

⁶ *Ibid.*

⁷ [IC] Cabana testimony (October 28, 2004), p. 2979.

⁸ [IC] Cabana testimony (November 2, 2004), p. 3762. It seems reasonable to conclude that Inspector Cabana was informed about Mr. Arar's detention in New York on September 26. Both Staff Sergeant Corcoran and Staff Sergeant Callaghan's evidence suggest that they would have advised Inspector Cabana of what was happening on September 26.

⁹ [IC] Callaghan testimony (November 8, 2004), p. 4120.

¹⁰ [IC] Cabana testimony (November 2, 2004), p. 3701.

¹¹ [IC] Callaghan testimony (November 8, 2004), p. 4122; Walsh notes, vol. 2, p. 526.

¹² Walsh notes, vol. 2, p. 526; [IC] Corcoran testimony (November 15, 2004), p. 4882.

¹³ [IC] Walsh testimony (November 30, 2004), pp. 6171 and 6261.

¹⁴ [IC] Callaghan testimony (November 8, 2004), p. 4123.

¹⁵ [IC] Corcoran testimony (November 15, 2004), p. 4889.

¹⁶ Exhibit C-30, Tab 221; [IC] Walsh testimony (November 30, 2004), p. 6171.

¹⁷ [IC] Walsh testimony (November 30, 2004), pp. 6172–6173. Sergeant Walsh did not send the fax directly to the FBI legal attaché's office, even though he had the secure phone number for the fax machine at the U.S. Embassy. According to Sergeant Walsh, the NOC would have to be involved to send a secure fax to a foreign country because they have access to a secure fax with the "right key." *Ibid.*

¹⁸ [IC] Flewelling testimony (January 20, 2005), pp. 9493–9494.

Corporal Flewelling was not seconded to Project A-O Canada on a full-time basis. In addition to monitoring the Project A-O Canada investigation, his duties included monitoring several major investigations. Given his workload, it would have been impossible for him to have had

the complete in-depth knowledge of Project A-O Canada that he could have had if it was the only file on his desk. [P] Flewelling testimony (August 23, 2005), pp. 10020–10021.

In particular, during the period of Mr. Arar's detention, Corporal Flewelling was involved in an unrelated, very sensitive investigation. Because he devoted a significant amount of time to this other investigation, he conceded it was conceivable that some documents could have come to his attention, but he simply could not recall if he saw them. [IC] Flewelling testimony (January 21, 2005), pp. 9746–9749.

19 Exhibit C-30, Tab 221.

20 [IC] Walsh testimony (November 30, 2004), pp. 6159–6160.

21 Exhibit C-30, Tab 221.

22 Ibid.

23 Mr. Almalki was listed as the emergency contact on Mr. Arar's lease application, not on the tenancy agreement.

24 In December 2002, Project A-O Canada discovered that some information regarding Mr. Arar's travels was incorrect (see Exhibit C-30, Tab 406).

25 Exhibit C-30, Tab 221.

26 [IC] Walsh testimony (December 1, 2004), pp. 6280–6303.

27 [IC] Cabana testimony (October 28, 2004), p. 2991.

28 [IC] Walsh testimony (November 30, 2004), pp. 6169–6170.

29 [IC] Walsh testimony (December 1, 2004), pp. 6280–6283.

30 The INS decision only references an FBI interview on September 27, 2002.

31 [IC] Callaghan testimony (November 8, 2004), p. 4207 and [IC] (November 9, 2004), pp. 4533–4534.

32 [IC] Cabana testimony (October 28, 2004), pp. 2986–2987.

33 [IC] Cabana testimony (November 2, 2004), pp. 3743–3744.

34 [IC] Callaghan testimony (November 9, 2004), p. 4561.

35 [IC] Couture testimony (December 7, 2004), p. 7245.

36 Ibid., pp. 7310–7311.

37 Exhibit C-30, Tab 230; Although the briefing note did not state who it was being sent to, Inspector Cabana testified that he believed it would have been sent to CID and, ultimately, to Deputy Commissioner Loeppky. [IC] Cabana testimony (October 28, 2004), p. 3011.

38 Exhibit C-30, Tab 230.

39 [P] Flewelling testimony (August 23, 2005), pp. 9774–9775.

40 Exhibit P-222.

41 [P] Flewelling testimony (August 23, 2005), pp. 9939–9941. In a previous statement to Superintendent Garvie in January 2004, Corporal Flewelling stated that caveats should have been attached to the questions. However, after reviewing the issue, Corporal Flewelling felt that it would not make sense to attach a caveat to questions that were to be put to someone. Exhibit P-221; [P] Flewelling testimony (August 23, 2005), pp. 9937–9941.

42 [IC] Pilgrim testimony (January 26, 2004), pp. 10470–10474.

43 Ibid., pp. 10474–10476 and [IC] (January 28, 2004), pp. 10747–10748 and 10800–10802.

44 [IC] Cabana testimony (October 28, 2004), p. 2995 and [IC] (June 29, 2005), pp. 7929–7931.

45 [IC] Cabana testimony (October 28, 2004), pp. 2994–2996.

46 *Canadian Charter of Rights and Freedoms*.

47 [IC] Cabana testimony (October 28, 2004), pp. 2997–2998.

48 [IC] Callaghan testimony (November 9, 2004), pp. 4561–4563.

49 [IC] Callaghan testimony (November 8, 2004), p. 4129.

50 Walsh notes, vol. 2, p. 533; [IC] Walsh testimony (November 30, 2004), p. 6175.

51 [IC] Cabana testimony (October 28, 2004), pp. 3004–3005.

- 52 Exhibit C-30, Tab 225.
- 53 [IC] Cabana testimony (October 28, 2004), pp. 3012–3013; [IC] Corcoran testimony (November 15, 2004), pp. 4885–4889.
- 54 [P] Edelson testimony (June 16, 2005), pp. 7266 and 7269–7270. On September 27, 2002, Mr. Edelson’s office received a call from Monia Mazigh in Tunisia indicating that her husband had gone missing during his trip to Canada. She asked Mr. Edelson for his help in finding out what had happened to her husband. Mr. Edelson followed his instincts in contacting Project A-O Canada since Project officials had previously demonstrated an interest in speaking to Mr. Arar. [P] Edelson testimony (June 16, 2005), pp. 7261–7265 and 7270.
- 55 Exhibit C-30, Tab 228; [IC] Walsh testimony (December 1, 2004), p. 6307.
- 56 [IC] Walsh testimony (November 30, 2004), pp. 6179–6181.
- 57 [IC] Cabana testimony (October 28, 2004), pp. 3004–3005; [IC] Callaghan testimony (November 8, 2004), pp. 4138–4141; [IC] Corcoran testimony (November 15, 2004), p. 4890.
- 58 Exhibit C-30, Tab 238; [IC] Cabana testimony (October 28, 2004), p. 3015; [IC] Callaghan testimony (November 8, 2004), p. 4141.
- 59 [IC] Corcoran testimony (November 14, 2004), pp. 4891–4892.
- 60 Flewelling notes, p. 53; [IC] Flewelling testimony (January 21, 2005), pp. 9705–9708.
- 61 Flewelling notes, p. 55; [IC] Flewelling testimony (January 20, 2005), p. 9524.
- 62 Exhibit C-30, Tab 240.
- 63 [IC] Callaghan testimony (November 9, 2004), pp. 4535–4536.
- 64 [P] Cabana testimony (June 30, 2005), pp. 8320–8321.
- 65 See Exhibit P-117, Tab 7.
- 66 [IC] Callaghan testimony (November 8, 2004), pp. 4146–4147. Importantly, in its response to one of the questions, Project A-O Canada pointed out that its investigation had yet to establish that Mr. Arar was linked to al-Qaeda.
- 67 [IC] Pilgrim testimony (January 26, 2004), p. 10477.
- 68 *Ibid.*, pp. 10480–10483.
- 69 Exhibit C-30, Tab 248.
- 70 [IC] Cabana testimony (November 2, 2004), p. 3743; [IC] Callaghan testimony (November 8, 2004), pp. 4154–4155.
- 71 [P] Loeppky testimony (July 27, 2005), pp. 8481–8482.
- 72 Exhibit C-30, Tab 236; [IC] Callaghan testimony (November 8, 2004), pp. 4154–4157.
- 73 [IC] Flewelling testimony (January 20, 2005), p. 9523 and [IC] (January 21, 2005), pp. 9707–9708.
- 74 Exhibit C-30, Tab 236.
- 75 [IC] Callaghan testimony (November 9, 2004), pp. 4539–4540.
- 76 Before the reply was sent out, and in an unrelated request, Staff Sergeant Callaghan received permission from CCRA to pass this information to the FBI. [IC] Callaghan testimony (November 8, 2004), pp. 4149–4150.
- 77 This was the first time during the Project A-O Canada investigation that a caveat had been included in correspondence sent to the Americans. [IC] Cabana testimony (October 28, 2004), p. 3033.
- 78 Exhibit C-30, Tab 236. In testimony, the terms “caveat” and “third-party rule” were used interchangeably to describe this condition. Nothing turns on the different terminology.
- 79 [IC] Callaghan testimony (November 8, 2004), pp. 4148–4149 and [IC] (November 9, 2004), p. 4602; [IC] Corcoran testimony (November 15, 2004), pp. 4896–4898; [IC] Flewelling testimony (January 20, 2005), pp. 9516–9518 and 9520.
- 80 [IC] Callaghan testimony (November 9, 2004), pp. 4389–4391, 4464–4465 and 4545. Staff Sergeant Callaghan also agreed that any information Project A-O Canada had given to the American agencies before October 2002 could not be turned over to the INS because this was

not part of the agreement coming out of the request on October 3, 2002. If the American agencies wanted to pass along pre-October 2002 information to the INS, they would have to come back to Project A-O Canada for an MLAT. [IC] Callaghan testimony (November 9, 2004), pp. 4391–4392.

81 Ibid., pp. 4379–4384.

82 [IC] Callaghan testimony (November 8, 2004), pp. 4198–4199.

83 Exhibit C-54.

84 [IC] Callaghan testimony (November 8, 2004), p. 4210.

85 Ibid., p. 4152 and [IC] November 9, 2004), p. 4543.

86 [IC] Proulx testimony [ET] (December 9, 2004), pp. 7693–7695; [IC] Pilgrim testimony (January 26, 2004), p. 10480.

87 [IC] Proulx testimony [ET] (December 13, 2004), p. 8200.

88 [IC] Couture testimony (December 7, 2004), p. 7312.

89 Ibid., p. 7314.

90 Ibid., pp. 7340–7341.

91 [IC] Cabana testimony (November 2, 2004), pp. 3762–3763.

92 [P] Loeppky testimony (July 27, 2005), pp. 8460–8463 and 8469–8470.

93 [IC] Roy testimony (December 6, 2004), p. 6796.

94 Ibid., p. 6805.

95 Ibid., pp. 6797–6798.

96 Ibid., pp. 6973–6974 and 7001.

97 Exhibit P-208, Timeline; Exhibit P-209, Crown Plaza note.

98 [IC] Roy testimony (December 6, 2004), p. 6834. Mr. Solomon chose to approach his RCMP contact for information on Mr. Arar due to a prior conversation Mr. Solomon had with Nancy Collins of DFAIT's Consular Affairs Bureau. On October 2, 2002, Ms. Collins spoke to Mr. Solomon about Mr. Arar's consular case in New York. This was the first time Mr. Solomon heard the name Maher Arar. [IC] Solomon testimony (April 4, 2005), pp. 13935–13937; Exhibit P-82, p. 6 Collins' notes; [P] Collins testimony (May 19, 2005), pp. 3052–3056.

Ms. Collins gave Mr. Solomon the general details of the case and asked if he had any more information. Mr. Solomon undertook to find out if there was a security link to the case. He contacted the RCMP LO, and also left a note for the CSIS LO. [IC] Solomon testimony (April 4, 2005), pp. 13937–13938 and 13946–13947; [P] Collins testimony (May 19, 2005), pp. 3056–3057.

99 Callaghan notes, vol. 1, p. 302.

100 Ibid.

101 Inspector Roy's notes, Exhibit C-123.

102 [IC] Roy testimony (December 6, 2004), p. 6832. Project A-O Canada situation reports for September 26 and September 27, which detailed what the Project A-O Canada assistant managers had repeated to Inspector Roy, were copied to Corporal Flewelling. Corporal Flewelling was aware of the contents of the situation reports by 5:30 p.m. on October 2. Exhibit P-224, Continuation Report; [P] Flewelling testimony (August 23, 2005), pp. 9790–9794.

103 [P] Roy testimony [ET] (August 22, 2005), pp. 9483–9485; Solomon notes, p. 14; [IC] Solomon testimony (April 4, 2005), pp. 13938–13941. Inspector Roy could only remember telling Mr. Solomon that Project A-O Canada was aware of Mr. Arar's detention, that questions had been sent to the FBI and that Mr. Arar had been interrogated.

Mr. Solomon's notes detailing the information he received from Inspector Roy were virtually identical to Inspector Roy's notes of his October 2 visit to Project A-O Canada. Thus, it would appear that Inspector Roy indeed told Mr. Solomon everything that he learned. Apart from the details written in his notes, Mr. Solomon vaguely remembered the conversation. His main

memory was the RCMP's surprise that Mr. Arar was still in custody, and that this was not what the RCMP had expected. [P] Roy testimony [ET] (August 22, 2005), pp. 9483–9485; Solomon notes, p. 14; [IC] Solomon testimony (April 4, 2005), pp. 13938–13941.

104 [IC] Roy testimony (December 6, 2004), pp. 6841–6842.

105 Ibid., pp. 6842–6844.

106 [IC] Callaghan testimony (November 8, 2004), p. 4141.

107 [P] Roy testimony [ET] (August 22, 2005), pp. 9491–9493.

108 [IC] Callaghan testimony (November 8, 2004), p. 4141; [P] Roy testimony [ET] (August 22, 2005), pp. 9498–9499.

109 [IC] Roy testimony (December 6, 2004), pp. 6851–6852 and 6858. Neither Inspector Roy nor Corporal Flewelling has any recollection of Inspector Roy telling Corporal Flewelling of the information Mr. Solomon shared with Inspector Roy earlier in the day. [P] Roy testimony [ET] (August 22, 2005), pp. 9499–9507; [P] Flewelling testimony (August 23, 2005), pp. 9781–9787 and 9794–9796.

110 [IC] Roy testimony (December 6, 2004), pp. 6852–6854. Corporal Flewelling testified that this exchange with Inspector Roy took place when Inspector Roy stopped by his desk. Inspector Roy, on the other hand, said he communicated with Corporal Flewelling over the phone. [IC] Roy testimony (December 6, 2004), pp. 6851–6852 and 6858; [IC] Flewelling testimony (January 20, 2005), pp. 9506–9507.

There also appears to be an issue as to when this conversation took place. Inspector Roy's testimony relied on the times (3:30 p.m. and 3:45 p.m.) provided in Staff Sergeant Callaghan's notes. He testified the conversation with Corporal Flewelling took place after Inspector Roy spoke to Staff Sergeant Callaghan.

Corporal Flewelling's notes do not mention the conversation with Inspector Roy. However, Corporal Flewelling believes Inspector Roy came to see him prior to three p.m., because he attended a meeting at CSIS then, as recorded in his notes. Flewelling notes, p. 52; [IC] Flewelling testimony (January 20, 2005), pp. 9507–9509.

111 Exhibit P-231, p. 10; [P] Lauzon testimony (August 23, 2005), pp. 10126–10130 and 10166–10168.

112 For information about DFAIT's involvement with Mr. Arar during his detention in New York, and how DFAIT officials responded to the concerns about Mr. Arar being sent to Syria, see Section 5 below.

113 [IC] Roy testimony (December 6, 2004), pp. 6863 and 6866–6869.

114 [IC] Solomon testimony (April 4, 2005), pp. 13955–13960 and 13965–13971. Both Mr. Solomon and Inspector Roy testified that Inspector Roy had contact from time to time with officials in the Consular Affairs Bureau, whose office was on the same floor as ISI. Ibid., pp. 13970–13972; [P] Roy testimony [ET] (August 22, 2005), pp. 9444–9445. As mentioned in an earlier note, Ms. Collins of DFAIT's Consular Affairs Bureau spoke to Mr. Solomon about Ms. Arar's case. She noted during her testimony that, on occasion, she had direct dealings with officers in ISI, but any dealings had to be authorized by Mr. Pardy. Ms. Collins did not speak to Inspector Roy directly about Mr. Arar's case nor did she consult with anyone in ISI about Mr. Arar's concerns about being removed to Syria. [P] Collins testimony (May 19, 2005), pp. 3007, 3162 and 3167.

In terms of the actual sharing of consular reports, Maureen Girvan, the Canadian consul working on the Arar case in New York, drafted one of two consular reports where the possibility of Mr. Arar being sent to Syria was raised. Ms. Girvan told detainees that she was providing consular services in confidence, and that the only other persons who would receive information disclosed to her (other than those persons authorized by the detainee) would be officials in Consular Affairs. Ms. Girvan was surprised to learn during her testimony that the RCMP

might have read her report of her consular visit with Mr. Arar. [P] Girvan testimony (May 16, 2005), pp. 2373–2375.

To her knowledge, no one outside the consular services chain of command had the right to access the contents of her consular visits. Ms. Girvan speculated there may be an exception to this rule, but she was not aware of it. Further, no one told her that they were going to be disseminating her information to ISI or to a policing agency. She considered herself to be working separate and apart from ISI and thus believed that the sharing of any information from her consular files would have been made at a higher level. [P] Girvan testimony (May 16, 2005), pp. 2375–2379.

Gar Pardy, the Director General of Consular Affairs, confirmed that his approval was required for any ISI requests for access to consular records or requests for consular records to be exchanged with external agencies. [P] Pardy testimony (May 24, 2005), pp. 3332–3334.

115 [IC] Solomon testimony (April 4, 2005), pp. 13945–13946, 13962–13963 and 13975–13973.

116 Ibid., pp. 13947–13950.

117 Ibid., pp. 13963–13964. Mr. Solomon was not sure if the CSIS LO was also aware of this information. Ibid., pp. 13963–13965 and 13978–13979.

118 [P] Roy testimony [ET] (August 22, 2005), pp. 9521–9523.

119 Ibid., pp. 9514–9520 and [not ET] 9679–9682.

120 [IC] Solomon testimony (April 4, 2005), pp. 13962–13963.

121 Ibid., pp. 13974–13975 and 14129–14131. Mr. Solomon testified that there were discussions with Gar Pardy, the Director General of Consular Affairs, and Scott Heatherington, the Director of ISI, concerning the threat of removal to Syria after ISI learned of the threat. Mr. Heatherington was a particularly useful resource since he had a background as an immigration officer. Messrs. Pardy and Heatherington informed Mr. Solomon that the normal practice for someone in Mr. Arar's predicament was to be sent back where he or she came from or to the location on his or her passport. The idea that a Canadian citizen travelling on a Canadian passport would somehow be sent to Syria, even though he was also a Syrian citizen, was definitely outside of what had been described as normal practice. Ibid., pp. 14129–14131.

122 [IC] Flewelling testimony (January 20, 2005), p. 9492. Project A-O Canada forwarded situation reports for September 26 and September 27 to CID on September 27 and September 30 describing Mr. Arar's detention in the United States. Corporal Flewelling was aware of the contents of the situation reports by 5:30 p. m. on October 2. Exhibit P-224, Continuation Report; [P] Flewelling testimony (August 23, 2005), pp. 9789–9794.

123 Exhibit P-211, Flewelling notes, p. 38; [P] Flewelling testimony (August 23, 2005), pp. 9806–9807 and 9810–9811.

124 [IC] Flewelling testimony (January 20, 2005), pp. 9524–9525 and [P] (August 23, 2005), pp. 9813–9814.

125 [P] Roy testimony [ET] (August 22, 2005), pp. 9523–9528.

126 [P] Flewelling testimony (August 23, 2005), pp. 9811–9813.

127 [IC] Flewelling testimony (January 20, 2005), pp. 9529 and 9553 and [P] (August 23, 2005), pp. 9814–9815.

128 [P] Flewelling testimony (August 23, 2005), pp. 9821–9825.

129 Ibid., p. 9824.

130 Ibid., pp. 9825–9826.

131 [P] Williams testimony (August 23, 2005), pp. 10108–10109, 10113 and 10116.

132 [P] Flewelling testimony (August 23, 2005), p. 9827–9828.

133 [P] Flewelling testimony (August 23, 2005), pp. 9815–9816.

- ¹³⁴ [IC] Flewelling testimony (January 20, 2005), pp. 9529–9532 and [P] (August 23, 2005), pp. 9833–9836. Interestingly enough, Corporal Flewelling was the officer who forwarded the October 3 information request to Project A-O Canada. He was aware the Americans were looking for information to support criminal charges, and that the charges were likely related to terrorism. Despite this, Corporal Flewelling did not stop to consider why the Americans would permit Mr. Arar to enter Canada indirectly from Switzerland, when they would not permit his direct entry into Canada from the United States, especially when he could be viewed as a threat to the United States. [P] Flewelling testimony (August 23, 2005), pp. 9838–9844.
- ¹³⁵ [IC] Flewelling testimony (January 21, 2005), pp. 9750–9751.
- ¹³⁶ *Ibid.*, pp. 9751–9752.
- ¹³⁷ [IC] Flewelling testimony (January 20, 2005), p. 9531.
- ¹³⁸ Exhibit C-30, Tab 249; [IC] Flewelling testimony (January 20, 2005), pp. 9531–9532 and [IC] (January 21, 2005), p. 9753.
- ¹³⁹ Exhibit C-30, Tab 249; [IC] Flewelling testimony (January 21, 2005), pp. 9753–9754.
- ¹⁴⁰ [IC] Flewelling testimony (January 21, 2005), pp. 9759–9761.
- ¹⁴¹ [IC] Flewelling testimony (January 20, 2005), pp. 9534–9536.
- ¹⁴² [P] Flewelling testimony (August 23, 2005), pp. 9849–9851, 9956–9957 and 10065.
- ¹⁴³ *Ibid.*, pp. 9965–9966. See Chapter V, Section 1 for a detailed discussion of rendition.
- ¹⁴⁴ [IC] Flewelling testimony (January 21, 2005), pp. 9754–9755.
- ¹⁴⁵ [IC] Flewelling testimony (January 20, 2005), pp. 9533, 9536–9537 and [IC] (January 21, 2005), p. 9717 and [P] (August 23, 2005), p. 9853.
- ¹⁴⁶ [P] Flewelling testimony (August 23, 2005), p. 9853. Sergeant Lauzon has no recollection or notes of having a conversation with Corporal Flewelling concerning Mr. Arar on October 5 or October 7, but said it was possible these conversations did occur. [P] Lauzon testimony (August 23, 2005), pp. 10135–10138 and 10168–10172.
- ¹⁴⁷ Exhibit C-30, Tab 250.
- ¹⁴⁸ *Ibid.* Corporal Flewelling did not believe he followed up to see if anyone had contacted a CSIS official concerning the CSIS information that was exchanged with the Americans on October 4, 2002 without CSIS' knowledge. Neither Staff Sergeant Callaghan nor the CSIS official has any recollection of speaking to the other about the contents of this e-mail. [IC] Callaghan testimony (November 8, 2004), pp. 4195 and 4202–4203; [IC] Flewelling testimony (January 20, 2005), p. 9541; [IC] Testimony (August 5, 2005), pp. 17043–17045.
- ¹⁴⁹ [IC] Callaghan testimony (November 8, 2004), pp. 4189 and 4193.
- ¹⁵⁰ *Ibid.*, p. 4198.
- ¹⁵¹ Callaghan notes, vol. 1, p. 306; [IC] Callaghan testimony (November 8, 2004), pp. 4197–4199.
- ¹⁵² See Exhibit C-30, Tabs 249 and 250.
- ¹⁵³ Exhibit C-54. In the reply e-mail that was provided to the Commission, Staff Sergeant Callaghan informed Corporal Flewelling that he spoke to the FBI, and that the fax problem was straightened out. He also told Corporal Flewelling that Project A-O Canada was still seeking to interview Mr. Arar and that the FBI had indicated that it was dealing with the request. Furthermore, Corporal Flewelling was told that the FBI had not given up on charges against Mr. Arar and would be sending questions (most likely through Corporal Flewelling) that day.
- ¹⁵⁴ [IC] Flewelling testimony (January 21, 2005), p. 9762
- ¹⁵⁵ [IC] Flewelling testimony (January 20, 2005), p. 9546.
- ¹⁵⁶ Exhibit P-226; Callaghan notes, vol. 1, p. 304; [IC] Callaghan testimony (November 8, 2004), pp. 4178–4180; [P] Flewelling testimony (August 23, 2005), pp. 9804–9805. A Project A-O Canada situation report for October 4, 2002 states: "A-O Canada received a ... request from the [Americans] asking for information, including all aliases, for Maher ARAR. A package was prepared and forwarded via HQ." Inspector Cabana testified that this was a sep-

- arate request and package from those relating to the questions of October 3, 2002. The second package forwarded on October 4 contained biographical information on Mr. Arar as well as general intelligence that had been accumulated. Exhibit C-30, Tab 247; [IC] Cabana testimony (October 28, 2004), pp. 3026–3027.
- 157 Exhibit C-30, Tab 236.
- 158 [IC] Cabana testimony (October 28, 2004), pp. 3031–3032.
- 159 Ibid., pp. 3023–3024.
- 160 Callaghan notes, vol. 1, pp. 306–307; [IC] Callaghan testimony (November 8, 2004), pp. 4203–4204.
- 161 Ibid.; Ibid.
- 162 Cabana notes, book 6, p. 263.
- 163 [IC] Cabana testimony (October 28, 2004), p. 3037.
- 164 Ibid., pp. 3039–3040.
- 165 [IC] Callaghan testimony (November 8, 2004), p. 4205.
- 166 Callaghan notes, vol. 1, p. 308
- 167 [IC] Callaghan testimony (November 8, 2004), pp. 4206–4207.
- 168 Callaghan notes, vol. 1, p. 308. Inspector Cabana was not aware if a member of a Canadian police force was present at any of Mr. Arar’s interviews while in American custody. He also had no information as to whether the RCMP’s Washington liaison officer was present during the interviews. [P] Cabana testimony (June 30, 2005), pp. 8274–8275.
- 169 Cabana notes, book 6, p. 265; Callaghan notes, vol. 1, p. 308; [IC] Corcoran testimony (November 15, 2004), p. 4901. The *RCMP Operational Manual* (II.1 Investigation Guidelines) provides guidance for conducting interviews in a foreign country. The CROPS Officer for “A” Division was aware that Project A-O Canada was considering interviewing Mr. Arar in New York and was satisfied that an interview would have been approved if the requirements of the guidelines were met. One of the requirements was that Mr. Arar consent to the interview in writing (Section 1.2.g. *RCMP Operational Manual* [II.1 Investigation Guidelines]). Exhibit P-12, Tab 29; [IC] Couture testimony (December 7, 2004), pp. 7252–7253 and 7315–7316.
- 170 [IC] Callaghan testimony (November 8, 2004), p. 4209.
- 171 [IC] Lemay testimony (November 17, 2004), pp. 5499–5502.
- 172 Exhibit C-30, Tab 266.
- 173 [IC] Cabana testimony (October 28, 2004), p. 3045; Exhibit C-30, Tab 275.
- 174 Exhibit C-30, Tab 267.
- 175 Ibid.
- 176 Ibid.
- 177 Callaghan notes, vol. 1, p. 309; [IC] Callaghan testimony (November 8, 2004), p. 4211; Walsh notes, vol. 2, p. 560; [IC] Walsh testimony (November 30, 2004), pp. 6186–6187; Roy notes, p. 29; [IC] Roy testimony (December 6, 2004), pp. 6875–6876.
- 178 Callaghan notes, vol. 1, p. 309; [IC] Callaghan testimony (November 8, 2004), p. 4211.
- 179 [P] Roy testimony [ET] (August 22, 2005), pp. 9536–9537.
- 180 Ibid., pp. 9539–9540 and 9545–9548.
- 181 Callaghan notes, vol. 1, p. 309; [IC] Callaghan testimony (November 8, 2004), pp. 4211–4212; Walsh notes, vol. 2, p. 560.
- 182 Callaghan notes, vol. 1, p. 309.
- 183 [IC] Corcoran testimony (November 15, 2004), p. 4902. It is not known whether at this time the FBI official knew that Mr. Arar had in fact been removed to Syria.
- 184 [IC] Callaghan testimony (November 8, 2004), p. 4214.
- 185 Callaghan notes, vol. 1, p. 310; [IC] Callaghan testimony (November 8, 2004), pp. 4214–4215; [P] Cabana testimony (June 29, 2005), pp. 7980–7982.

- 186 [IC] Corcoran testimony (November 15, 2004), p. 4908.
 187 Ibid., p. 4909.
 188 [IC] Cabana testimony (October 28, 2004), p. 3050.
 189 Callaghan notes, vol. 1, p. 310. Sergeant Lauzon’s notes for the meeting were dated October 7. The date is incorrect. His notes should have been dated October 8. [P] Lauzon testimony (August 23, 2005), pp. 10144–10147.
 190 Exhibit P-232; [P] Lauzon testimony (August 23, 2005), pp. 10148–10150. Sergeant Lauzon was the only member of CID who was present at this meeting. He attended in the absence of Corporal Flewelling, who was on holiday. The presence of a CID member at this meeting was in accordance with the agreement reached between “A” Division and RCMP Headquarters on September 26 that any Project A-O Canada meetings involving the presence of an American partner would also involve a CID representative. [P] Lauzon testimony (August 23, 2005), pp. 10150 and 10173–10174.
 191 [IC] Callaghan testimony (November 8, 2004), pp. 4216–4217 and 4221; Exhibit P-232; Walsh notes, vol. 2, p. 562.
 192 Callaghan notes, vol. 1, p. 311; [IC] Callaghan testimony (November 8, 2004), pp. 4216–4217.
 193 [IC] Callaghan testimony (November 8, 2004), p. 4218.
 194 [IC] Cabana testimony (October 28, 2004), pp. 3062–3066; [IC] Callaghan testimony (November 8, 2004), pp. 4222–4223; [IC] Corcoran testimony (November 15, 2004), p. 4912. A fax sent by Project A-O Canada to the RCMP LO in Rome on October 17, 2002 stated that Project A-O Canada managers were advised by American authorities on October 8, 2002 that Mr. Arar had been removed to Syria. The date was incorrect. Exhibit P-173; [P] Cabana testimony (June 29, 2005), pp. 8000–8003.
 195 [P] Cabana testimony (June 29, 2005), p. 7989.
 196 [IC] Cabana testimony (November 2, 2004), pp. 3749–3751.
 197 [IC] Callaghan testimony (November 9, 2004), pp. 4563–4564.
 198 See Chapter I, Sections 3.6.2 and 4.7.1 for discussions of Mr. El Maati’s statement and allegations of torture while he was detained in Syria.
 199 [IC] Corcoran testimony (November 15, 2004), pp. 4904–4908.
 200 Ibid., pp. 4904–4906.
 201 [IC] Roy testimony (December 6, 2004), pp. 6885–6886.
 202 [IC] Pilgrim testimony (January 26, 2005), p. 10489.
 203 Exhibit C-30, Tab 280.
 204 Exhibit C-1, Tab 38. The CSIS LO at ISI could not explain why information was being given to CSIS other than through her. At the same time, she did not consider this to be odd. She assumed that information that came to the CSIS communications branch must have come from DFAIT’s communications branch. [IC] Testimony (September 16, 2004), pp. 784–785.
 205 Exhibit C-1, Tab 38; [IC] Testimony (September 16, 2004), pp. 786–788.
 206 [IC] Testimony (September 16, 2004), p. 789.
 207 Ibid., pp. 791–792.
 208 [IC] Testimony (September 14, 2004), pp. 328–329.
 209 Project A-O Canada provided CSIS Ottawa Region with a background report dated April 11, 2002 that summarized their investigation to date in relation to Mr. Arar. It was uploaded by CSIS on September 26, 2002. The report was received prior to the upload date, but no CSIS witnesses could confirm the exact date when it was received. Exhibit C-1 Tab 34; [IC] testimony (September 14, 2004), pp. 267–268 and 291–294; [IC] testimony (September 16, 2004), pp. 1057–1058 and [IC] (September 20, 2004), p. 1100; [IC] testimony (September 20, 2004), p. 1216.
 210 Exhibit C-1, Tab 38; [IC] Testimony (September 14, 2004), pp. 304–305.

- 211 Exhibit C-1, Tab 38.
- 212 [IC] Testimony (September 14, 2004), p. 305.
- 213 [IC] Testimony (September 16, 2004), pp. 857–858.
- 214 *Ibid.*, p. 837.
- 215 Exhibit C-1, Tab 40.
- 216 *Ibid.*, Tab 41.
- 217 [IC] Testimony (September 16, 2004), pp. 1051–1052 and [IC] (September 20, 2004), pp. 1073–1074.
- 218 [IC] Testimony (September 16, 2004), p. 1053.
- 219 Exhibit C-1, Tab 36.
- 220 *Ibid.*, Tab 43; [IC] Testimony (September 16, 2004), p. 1041.
- 221 Exhibit C-1, Tab 37.
- 222 *Ibid.*, Tab 43; [IC] Testimony (September 16, 2004), pp. 1044–1045.
- 223 Exhibit C-169; Walsh notes, vol. 2, pp. 562–564; [IC] Testimony (January 24, 2005), pp. 9992–9999.
- 224 Exhibit C-1, Tab 43.
- 225 *Ibid.*, Tab 38.
- 226 *Ibid.*, Tab 42.
- 227 [IC] Testimony (September 14, 2004), p. 340.
- 228 *Ibid.*, pp. 342–343.
- 229 Exhibit C-1, Tab 50; [IC] Testimony (September 14, 2004), pp. 356–357.
- 230 Exhibit C-1, Tab 47.
- 231 *Ibid.*, Tab 48; [IC] Testimony (September 14, 2004), pp. 338–339 and 358.
- 232 Exhibit C-1, Tabs 47 and 55.
- 233 *Ibid.*, Tab 85.
- 234 Exhibit C-1, Tab 55.
- 235 [IC] Testimony (September 16, 2004), p. 867.
- 236 Exhibit C-1, Tab 54.
- 237 [IC] Testimony (September 20, 2004), pp. 1077–1079 and 1102–1103.
- 238 Exhibit C-1, Tab 53.
- 239 [IC] Testimony (September 20, 2004), pp. 1240–1241; [IC] Hooper testimony (September 22, 2004), pp. 1482–1483.
- 240 CAMANT is a program that forms part of SIGNET “D”, DFAIT’s unclassified communication system. SIGNET “D” allows DFAIT employees at Headquarters and various missions around the world to exchange messages. Although CAMANT is part of SIGNET “D”, it is not accessible by all DFAIT employees. It is a data recording system whose access is generally limited to DFAIT’s consular officials. CAMANT notes allow consular officials to read and refer, in real time, to consular files regarding Canadian citizens. [P] Livermore testimony (May 17, 2005), pp. 2428–2429; [P] Girvan testimony (May 11, 2005), pp. 1728–1729 and 1731.
- 241 Exhibit P-42, Tab 1; [P] Girvan testimony (May 11, 2005), pp. 1754–1756.
- 242 Exhibit P-49; [P] Girvan testimony (May 11, 2005), pp. 1708–1710. At the relevant time, the Canadian Consulate General in New York was headed by the Consul General, Pamela Wallin. It was organized into different areas of responsibility, one of which was Management and Consular Services. André Laporte was the Consul for Management and Consular Services. Ms. Girvan reported to Mr. Laporte. Three additional consular staff worked with Ms. Girvan in providing consular services; the principal was Lisiane Le Floe’h. Ms. Le Floe’h helped Ms. Girvan with files concerning detained persons. Exhibit P-50; [P] Girvan testimony (May 11, 2005), pp. 1713–1717.
- 243 [P] Girvan testimony (May 11, 2005), pp. 1759–1760.

- 244 Exhibit P-42, Tab 2.
- 245 Ibid., Tab 3.
- 246 [P] Girvan testimony (May 11, 2005), p. 1762. The Inquiry was not provided with a written record of the second call placed by Ms. Le Floc'h with the INS office at JFK Airport. Ms. Girvan testified that, at a later point, she was told by Ms. Le Floc'h that a second attempt was made to contact someone at JFK Airport, but to no avail. [P] Girvan testimony (May 12, 2005), pp. 2160–2161.
- 247 See Section 5.2 below.
- 248 Exhibit P-42, Tabs 4, 6 and 7.
- 249 Ibid., Tab 5.
- 250 [P] Girvan testimony (May 12, 2005), pp. 2089–2090; [P] Pardy testimony (May 24, 2005), pp. 3303–3304.
- 251 Exhibit P-42, Tab 8.
- 252 Ibid., Tab 9; [P] Girvan testimony (May 12, 2005), p. 2163.
- 253 [P] Girvan testimony (May 11, 2005), pp. 1768–1769.
- 254 This visit is discussed below in Section 5.4.
- 255 Exhibit P-42, Tab 10. A memorandum dated November 21, 2003 that was sent to the Minister of Foreign Affairs mistakenly refers to Ms. Girvan taking this call from Mr. Arar's brother. Ibid., Tab 705; [P] Girvan testimony (May 16, 2005), pp. 2390–2392.
- 256 Exhibit P-42, Tab 10. The letter of introduction is a standard form letter that is sent to detained Canadians to inform them of the consular services that are available. The letter accompanies an information and authorization form indicating proof of Canadian citizenship, as well as authorization for persons with whom consular officials can discuss the detainee's case (e.g., family members, lawyer). Exhibits P-54 and P-55.
- 257 [P] Collins testimony (May 19, 2005), pp. 3166–3167.
- 258 The CAMANT system does not have a function similar to e-mail which notifies a person when a message has arrived.
- 259 [P] Girvan testimony (May 11, 2005), pp. 1771–1772 and [P] (May 12, 2005), pp. 2166–2167.
- 260 [P] Girvan testimony (May 11, 2005), pp. 1772–1773.
- 261 Ibid., p. 1774. The fact that she had been notified on September 29 that there were no issues with Mr. Arar's passport led Ms. Girvan to assume that Mr. Arar was a Canadian citizen. DFAIT Headquarters provided confirmation of Mr. Arar's Canadian citizenship later that same day. Exhibit P-42, Tab 12; [P] Girvan testimony (May 11, 2005), p. 1773.
- 262 [P] Girvan testimony (May 11, 2005), p. 1774–1776.
- 263 Ibid., pp. 1803–1804.
- 264 References to “consular officials” refer to Ms. Girvan, Ms. Le Floc'h or both.
- 265 Exhibit P-42, Tab 11.
- 266 Ibid.
- 267 [P] Girvan testimony (May 11, 2005), pp. 1779–1780.
- 268 Ibid., pp. 1781–1782.
- 269 Exhibit P-42, Tab 11.
- 270 Ibid.
- 271 Ibid.; [P] Girvan testimony (May 11, 2005), pp. 1785–1788. Ms. Girvan testified that she did not interpret this response from the INS official to mean that the INS Public Affairs Office did not want to discuss Mr. Arar's case with the Consulate General. She believed that this frontline official simply did not know anything about the case, which is why they decided to speak to the superior officer. [P] Girvan testimony (May 12, 2005), pp. 2175–2176.
- 272 Exhibit P-42, Tab 11.
- 273 [P] Girvan testimony (May 11, 2005), pp. 1786–1787.

- 274 Exhibit P-42, Tab 11.
- 275 [P] Girvan testimony (May 12, 2005), pp. 2168–2173.
- 276 Ibid., pp. 2177–2179.
- 277 Ibid., p. 2180.
- 278 Ibid., p. 2181. Consular services at the Consulate General in New York did not report to the Canadian Embassy in Washington. As the manager of consular services, Ms. Girvan reported to André Laporte, the Consul for Management and Consular Services, and through him to Pamela Wallin, the Consul General. If Ms. Girvan needed to be in touch with DFAIT Headquarters, she would report to Nancy Collins, the case management officer for the U.S. region. Ms. Collins would be in touch with Gar Pardy, the Director General of the Consular Affairs Bureau. [P] Girvan testimony (May 11, 2005), p. 1718.
- 279 [P] Girvan testimony (May 11, 2005), pp. 1789–1791.
- 280 Exhibit P-42, Tab 11; [P] Girvan testimony (May 11, 2005), pp. 1789 and 1791–1792. The CAMANT note documenting the calls to various people at DFAIT Headquarters did not mention the first call that was made by Ms. Girvan to Ms. Collins. Ms. Girvan testified that she would have called Ms. Collins before anyone else. [P] Girvan testimony (May 11, 2005), pp. 1791–1792.
- 281 [P] Pardy testimony (May 24, 2005), pp. 3311–3312 and 3315.
- 282 Exhibit P-42, Tab 11. At 5:30 p.m. Ms. Harris was able to confirm that Mr. Arar had been a landed immigrant since 1987 and a Canadian citizen since 1991. A CAMANT note containing this information was sent to consular officials in New York and copied to others, including officials at the Canadian Embassy in Washington. Ibid., Tab 12.
- 283 Ibid., Tab 11; [P] Girvan testimony (May 11, 2005), pp. 1791–1792, 1796 and 1799–1801.
- 284 [P] Girvan testimony (May 12, 2005), pp. 2181–2185.
- 285 On October 1, 2002, a fax was sent at 5:05 p.m. to the MDC asking for information on the charges against Mr. Arar. Exhibits P-56 and P-57. It should be noted that the Inquiry was provided with a CAMANT note replicating the fax that was sent to the MDC. The date on the fax was October 2, 2002. This was an error. Exhibit P-42, Tab 13; [P] Girvan testimony (May 11, 2005), pp. 1808–1809.
- 286 Exhibit P-42, Tab 11.
- 287 Ibid.
- 288 [P] Girvan testimony (May 11, 2005), pp. 1795–1796 and 1806–1807.
- 289 Exhibit P-42, Tab 11.
- 290 Ibid., Tab 16.
- 291 [P] Girvan testimony (May 11, 2005), p. 1817.
- 292 Exhibits P-52 and P-53; [P] Girvan testimony (May 11, 2005), pp. 1817–1818; [P] Pardy testimony (May 24, 2005), pp. 3294–3296. Mr. Jaffri has alleged that the United States government threatened him with deportation to Pakistan during his detention there. Canadian consular officials were not made aware of this threat in September 2002. [P] Pardy testimony (May 24, 2005), pp. 3296–3297.
- 293 Exhibit P-42, Tab 16.
- 294 [P] Girvan testimony (May 11, 2005), pp. 1817–1818.
- 295 Exhibit P-42, Tab 16.
- 296 [P] Girvan testimony (May 12, 2005), pp. 2186–2189.
- 297 Exhibit P-42, Tab 17.
- 298 [P] Girvan testimony (May 11, 2005), pp. 1819–1820.
- 299 Exhibit P-42, Tab 23.
- 300 Ibid. In October 2001, Mr. Baloch's wife notified DFAIT that he was missing. When consular officials in New York contacted the MDC, they were told that he was not there. In November

- 2001, DFAIT received a call from Mr. Baloch's attorney informing them that Mr. Baloch was at the MDC. It turns out that Mr. Baloch's name was on a special list. Due to the difficulty in getting information about him, after gaining consular access to Mr. Baloch, DFAIT sent a diplomatic note concerning the lack of consular notification and the fact that the MDC had provided inaccurate information. [P] Collins testimony (May 19, 2005), pp. 3036–3041 and 3046–3047. The American reply to the diplomatic note confirmed that Mr. Baloch had indicated he did not want consular access. [P] Pardy testimony (May 24, 2005), p. 3328.
- 301 Exhibit P-42, Tab 23.
- 302 Ibid.; [P] Girvan testimony (May 11, 2005), pp. 1813–1815. Neither Ms. Girvan nor Ms. Collins were aware whether informal inquiries were actually made with the United States Department of Justice. [P] Girvan testimony (May 16, 2005), p. 2274; [P] Collins testimony (May 19, 2005), pp. 3213–3215.
- 303 [P] Girvan testimony (May 11, 2005), pp. 1796–1798. Canada and the United States are parties to the Vienna Convention on Consular Relations (VCCR). The VCCR provides the general rubric under which an individual has the right to access consular services. Government officials of a host country are not obliged to notify consular officials if a foreign national has been arrested. They do, however, have an obligation to inform the foreign national of their right to contact consular officials, and should facilitate such contact “without delay.” See Article 36(1) of the VCCR; [P] Girvan testimony (May 11, 2005), pp. 1726–1727.
- Mr. Pardy explained that the notification provisions under the VCCR are a weak element of the treaty. “Without delay” has not been adequately defined in practice. In the post-9/11 national security environment, notification had become a problem area when dealing with American officials. [P] Pardy testimony (May 24, 2005), pp. 3292–3293, and 3313–3314.
- 304 [P] Girvan testimony (May 11, 2005), pp. 1798–1802; [P] Collins testimony (May 19, 2005), pp. 3050–3051.
- 305 [P] Girvan testimony (May 11, 2005), pp. 1802–1803 and [P] (May 12, 2005), pp. 2095–2097.
- 306 In November 2003, Ms. Girvan was asked by DFAIT Headquarters for further information on the discussions surrounding the diplomatic note option. In her reply, Ms. Girvan mentioned that the Canadian Embassy in Washington had prepared a draft diplomatic note, but Ms. Collins suggested that they wait to see if the MDC responded to the faxed request to visit Mr. Arar. When the MDC responded, the diplomatic note was shelved for the moment. Exhibit P-42, Tab 697.
- 307 [P] Girvan testimony (May 11, 2005), pp. 1829–1830 and [P] (May 16, 2005), p. 2394.
- 308 The Office of the Inspector General of the U.S. Department of Justice produced a report in April 2003 entitled: “The September 11 Detainee: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks.” The report contained a chapter on the conditions of confinement at the MDC. According to the report, prior to 9/11, the MDC had a Special Housing Unit (SHU), which was designed to segregate inmates who required separation from the rest of the facility's population for disciplinary or administrative reasons. After the September 11 terrorist attacks, an Administrative Maximum Special Housing Unit (ADMAX SHU) was created from one part of the existing SHU. The ADMAX SHU was used to house 9/11 detainees. It is considered the most restrictive type of SHU. Exhibit P-64.
- This Inquiry believes that Mr. Arar was held in the ADMAX SHU during his detention at the MDC.
- 309 [P] Girvan testimony (May 11, 2005), pp. 1741–1743 and 1745.
- 310 Ibid., pp. 1744–1745.
- 311 Ibid., pp. 1746 and 1840–1841.
- 312 Ibid., p. 1841 and [P] (May 12, 2005), pp. 2143–2145.

- ³¹³ [P] Girvan testimony (May 11, 2005), pp. 1842–1843.
- ³¹⁴ *Ibid.*, p. 1843. One of the CAMANT notes prepared after the consular visit referred to Mr. Arar as being in an “extremely emotional state.” Ms. Girvan acknowledged that “extreme” was perhaps a little exaggerated. Her purpose in writing this description was to communicate that he was very upset and shaken. Exhibit P-42, Tab 27; [P] Girvan testimony (May 11, 2005), pp. 1827–1829.
- ³¹⁵ [P] Girvan testimony (May 11, 2005), pp. 1844–1845.
- ³¹⁶ *Ibid.*, pp. 1845–1846.
- ³¹⁷ Exhibit P-42, Tab 31; [P] Girvan testimony (May 11, 2005), p. 1837.
- ³¹⁸ Exhibit P-42, Tab 31.
- ³¹⁹ [P] Girvan testimony (May 11, 2005), p. 1840 and [P] (May 12, 2005), pp. 2190–2191.
- ³²⁰ [P] Girvan testimony (May 11, 2005), p. 1853.
- ³²¹ [P] Girvan testimony (May 12, 2005), pp. 2189–2193. It is noteworthy that in an e-mail prepared by Ms. Girvan in November 2003, responding to the actions taken by consular officials in New York, she mentioned that they had no reason to believe the United States would remove Mr. Arar to Syria because he had been “charged with crimes.” Ms. Girvan testified that she considered being a member of al-Qaeda as a charge; thus, in writing “charged with crimes,” she was being informal rather than technical. Although the al-Qaeda allegation was raised in a document that described an immigration matter rather than a criminal charge, Ms. Girvan stated that the most important thing in her mind was that Mr. Arar was a terrorist suspect. She believed that if the American authorities saw fit to move Mr. Arar from the airport to the special security unit of the MDC, it was because they considered him to be a terrorist suspect and they were considering charges against him as a terrorist. Exhibit P-42, Tab 687; [P] Girvan testimony (May 12, 2005), pp. 2204–2208.
- ³²² [P] Girvan testimony (May 11, 2005), pp. 1853–1854.
- ³²³ [P] Girvan testimony (May 12, 2005), pp. 2194–2195. When Ms. Girvan was asked what she would do if she found herself at a loss to understand the legal situation of someone to whom she was providing consular services, Ms. Girvan stated that she would contact the lawyer representing the individual. If they were not yet represented, she would contact DFAIT Headquarters, which would be able to get her the information she needed. *Ibid.*, pp. 2114–2115.
- In Mr. Arar’s case, it was only after Mr. Arar was sent to Syria that DFAIT Headquarters and consular officials in New York began to make inquiries about the legal aspects of what happened to Mr. Arar. [P] Girvan testimony (May 12, 2005), pp. 2115–2117 and 2196–2197; [P] Parly testimony (May 24, 2005), pp. 3489–3490.
- ³²⁴ [P] Parly testimony (May 24, 2005), pp. 3322–3325 and [P] (May 26, 2005), pp. 3969–3972.
- ³²⁵ [P] Girvan testimony (May 11, 2005), pp. 1836–1838 and [P] (May 12, 2005), pp. 2250 and 2253–2254.
- ³²⁶ See Section 6.1 below.
- ³²⁷ Exhibit P-42, Tab 43.
- ³²⁸ [P] Girvan testimony (May 11, 2005), p. 1854 and [P] (May 12, 2005), pp. 2254–2256 and 2258–2259.
- ³²⁹ [P] Girvan testimony (May 16, 2005), pp. 2297–2300. Ms. Girvan has no recollection of Mr. Arar showing her the publication listing al-Qaeda as a foreign terrorist organization nor does she recall seeing the publication regarding free legal services. *Ibid.*, pp. 2293–2297.
- ³³⁰ Exhibit P-42, Tab 31. Ms. Girvan was not clear who Mr. Arar was referring to when he said “police.” She thought he might have been referring to the immigration police. [P] Girvan testimony (May 12, 2005), pp. 2214–2215.
- ³³¹ [P] Girvan testimony (May 11, 2005), p. 1847.

332 Exhibit P-42, Tab 31.

333 Ibid. Ms. Girvan was not clear whether the officers who told Mr. Arar that he would be put back on the plane if he answered their questions were from the police or the FBI. Ms. Girvan felt that, at various times, Mr. Arar seemed unclear as to who was talking to him. [P] Girvan testimony (May 12, 2005), pp. 2214–2215.

334 Exhibit P-42, Tab 31.

335 Ibid.

336 Ibid.

337 Ibid.

338 [P] Girvan testimony (May 11, 2005), pp. 1849–1852.

339 Ibid., pp. 1885–1886 and [P] (May 12, 2005), pp. 2099–2101. Expedited removals are discussed in greater detail in Section 6.2 below.

340 [P] Girvan testimony (May 11, 2005), pp. 1782–1784 and 1886 and [P] (May 12, 2005), pp. 2101–2102.

341 [P] Girvan testimony (May 11, 2005), pp. 1862–1863. During her testimony, Ms. Girvan stated that if she was alerted to the fact that a Canadian dual national was being held at the airport, and the American authorities were considering sending him or her to a country other than Canada (i.e. Tunis or Syria in this case), she would assume that something was going to take place. As such, she would try to speak to the immigration authorities at the airport and arrange for the person to be sent to Canada, under the standard stipulation that the detainee or his or her family cover the difference in the airfare. Ms. Girvan was frank that she did not have the right to insist that her request be carried out, but she would try to negotiate with the authorities. Once the person was transported from the airport, however, she would assume that the American authorities had decided not to send the person back. [P] Girvan testimony (May 12, 2005), pp. 2217–2219.

342 [P] Girvan testimony (May 11, 2005), p. 1862.

343 [P] Girvan testimony (May 12, 2005), pp. 2210–2212.

344 Ibid., pp. 2221–2222. In November 2003, after Mr. Arar's return to Canada, questions were raised within DFAIT concerning how the threat of Mr. Arar's removal to Syria was handled by consular officials in New York. The various explanations in defence of the actions of consular officials in not treating the threat as a real possibility included: 1) they were told it was not a removal case; 2) the ninth floor of the MDC was not known to hold deportation cases; 3) he was questioned by the FBI at the airport and held at a federal maximum security prison, with the clear implication that he was being investigated for supposed terrorist connections (the accusation of being a member of al-Qaeda was on his charge sheet); 4) he was being held in the same prison where other suspected terrorists had been held for months; 5) permission for the lawyer to visit strengthened this interpretation, because in normal cases of inadmissibility detainees were not permitted to see a lawyer and were removed from the country within a few days (depending on flight availability), under the procedure known as "expedited removal;" 6) the threat regarding Syria was made to Mr. Arar at the airport and it was not repeated once he was at the MDC; 7) the Consulate General had never seen a case where a Canadian citizen was sent on an "expedited removal" to his or her country of origin — they were usually sent to the last point of departure or there was a negotiation by the Consulate General to send them to Canada; and 8) American authorities never raised the possibility of removing Mr. Arar to Syria with the Consulate General in New York or the Canadian Embassy in Washington. See Exhibit P-42, Tabs 687, 703 and 705.

345 [P] Girvan testimony (May 16, 2005), pp. 2274–2279.

346 [P] Pardy testimony (May 26, 2005), pp. 3965–3968.

³⁴⁷ Exhibit P-87, Government of Canada Travel Bulletins [September 10, 2002 and September 17, 2002].

³⁴⁸ [P] Pardy testimony (May 24, 2005), pp. 3361–3362.

³⁴⁹ [P] Girvan testimony (May 12, 2005), p. 2228; [P] Collins testimony (May 19, 2005), p. 3223; [P] Pardy testimony (May 26, 2005), p. 3968.

³⁵⁰ Ms. Girvan had three years of experience working as a case management officer for the Middle East region at DFAIT Headquarters. She had also lived in Damascus, Syria for approximately three years prior to her employment with DFAIT. Nevertheless, Ms. Girvan's knowledge in regards to the Middle East was general in nature. She testified that it was not part of her mandate as the case management officer to be familiar with the human rights records of the different countries in that region. However, she would know how to reach experts if she required detailed information. [P] Girvan testimony (May 12, 2005), pp. 2108–2214 and [P] (May 16, 2005), pp. 2263–2264).

³⁵¹ Ms. Girvan was not certain whether Mr. Arar had been referring to his older brother or Abdullah's older brother. [P] Girvan testimony (May 16, 2005), pp. 2326–2327.

³⁵² Exhibit P-42, Tab 32.

³⁵³ Ibid. Later that day, Ms. Girvan spoke to a member of Mr. Arar's family about his concerns regarding his father's name being used and someone possibly having gone through his effects in Canada. When she asked if anyone had gone through Mr. Arar's effects, they assured her that was not the case. Ms. Girvan did not consider this to be a big issue at the time and did not dwell on it. [P] Girvan testimony (May 11, 2005), p. 1857 and [P] (May 16, 2005), pp. 2322–2323.

When it was pointed out to Ms. Girvan that, in addition to his concerns about his father's name being used, Mr. Arar had told her that the questions he was asked during his interrogation were extremely personal, Ms. Girvan replied that she thought "personal" meant the questions were rude. [P] Girvan testimony (May 16, 2005), pp. 2323–2324.

³⁵⁴ Exhibit P-42, Tab 32.

³⁵⁵ Ibid., Tab 34. Ms. Girvan testified that in her experience there have been issues around timely notification concerning Canadian detainees being held on the ninth floor of the MDC. Indeed, Ms. Girvan agreed that she has never been notified by the MDC or by any other United States government agency about persons being held on the ninth floor. In the cases of Mr. Baloch and Mr. Jaffri, Canadian officials were notified through third parties a few months after their detention. Exhibits P-52 and P-53; [P] Girvan testimony (May 12, 2005), pp. 2123–2125.

Mr. Pardy, on the other hand, suggested that considering the weakness around the consular notification provisions under Article 36(1) of the VCCR, he did not consider the lack of notice within four days to be a violation of the VCCR. [P] Pardy testimony (May 24, 2005), pp. 3329–3330.

³⁵⁶ [P] Girvan testimony (May 11, 2005), p. 1866; See also note 303 above for a summary of the applicable obligations under the VCCR.

³⁵⁷ Exhibit P-42, Tab 27; [P] Girvan testimony (May 11, 2005), pp. 1827–1828. These were based on her handwritten notes of the meeting. It appears that Ms. Girvan followed the usual protocol of destroying her handwritten notes after they were entered into the CAMANT system. [P] Girvan testimony (May 11, 2005), pp. 1753–1754 and [P] (May 16, 2005), pp. 2306–2308 and 2311–2320.

Mr. Pardy was instrumental in implementing the CAMANT note system. He never gave consular officials directions about keeping personal notes; this was left to the discretion of the individual. That said, the destruction of personal notes was normal and most people followed the practice applied by Ms. Girvan. [P] Pardy testimony (May 26, 2005), pp. 3831–3832.

358 [P] Girvan testimony (May 11, 2005), pp. 1858–1859, [P] (May 12, 2005), pp. 2046–2047,
2048–2050, 2022–2029, 2038–2043 and 2055, and [P] (May 16, 2005), pp. 2342–2343.

359 Exhibit P-42, Tab 808.

360 [P] Girvan testimony (May 12, 2005), pp. 2047–2048 and 2051. As an example, Ms. Girvan
pointed out that it was normal for detainees to ask about spouses and children but that this
was something she did not write in her original report concerning Mr. Arar. She was now in-
cluding such information to add more colour to the description. [P] Girvan testimony (May 12,
2005), p. 2049.

361 Ibid., pp. 2053–2054. When it was suggested that information about Mr. Arar’s residence was
more than contextual information, Ms. Girvan replied that her concern was whether the indi-
vidual was a Canadian national. It did not matter where the Canadian national lived. During
a consular visit, the primary question that would be raised by consular officials was whether
the person was a Canadian citizen. If the person was a dual national, consular officials would
be interested in knowing if he or she was travelling on a Canadian passport. Regardless, he
or she would still receive the same treatment because “a Canadian is a Canadian.” Thus,
Mr. Arar’s residence was not something she was focusing on at the time. [P] Girvan testimony
(May 16, 2005), pp. 2343–2345.

Ms. Girvan’s comments were supported by Mr. Pardy. He recalled that during the period of
Mr. Arar’s detention, Ms. Girvan had shared portions of the information she had learned from
Mr. Arar concerning his current circumstances. However, it was not seen to be significant at
the time. Mr. Pardy emphasized that the residence of a Canadian citizen was of no conse-
quence in terms of Canadian officials’ provision of consular services. [P] Pardy testimony
(May 26, 2005), pp. 3835–3838.

362 Exhibit P-42, Tab 34.

363 [P] Girvan testimony (May 11, 2005), pp. 1864–1866.

364 [P] Collins testimony (May 19, 2005), pp. 3069–3070.

365 [P] Pardy testimony (May 24, 2005), p. 3321. Although a diplomatic note was never sent,
Mr. Pardy noted that high-level discussions took place and complaints were registered with
the American authorities as to what happened to Mr. Arar. [P] Pardy testimony (May 24, 2005),
p. 3321.

366 Exhibit P-42, Tab 22. The friend also provided Ms. Girvan with background information on
Mr. Arar’s education, employment and children.

367 Ibid., Tab 26.

368 Exhibit P-59.

369 Exhibit P-42, Tab 27.

370 Ibid., Tab 29; [P] Girvan testimony (May 11, 2005), p. 1832. Mr. Arar’s brother was also con-
cerned about keeping the family abreast of the latest news. He asked Ms. Collins if Mr. Arar
had provided authorization for information to be released to him. This message was relayed
to Ms. Girvan. When Ms. Girvan placed a follow-up call with the brother, she was unable to
reach him but decided to leave a message. In her message, she told him that Mr. Arar had
given verbal approval for his case to be discussed with anyone who could help him, includ-
ing his brother, mother-in-law, wife and The MathWorks, Inc. Exhibit P-42, Tabs 29 and 30.
Mr. Arar’s brother finally returned Ms. Girvan’s call at the end of the day. She provided him
with a summary of the day’s events and suggested that he speak to the family friend or
Dr. Mazigh for more details. Exhibit P-42, Tab 36; [P] Girvan testimony (May 11, 2005),
pp. 1872–1873.

371 Exhibit P-42, Tab 30.

372 Ibid.; [P] Girvan testimony (May 11, 2005), pp. 1833–1835. Apart from the cases of Mr. Baloch
and Mr. Jaffri, Ms. Girvan had no other dealings with the CCR with regard to detained

Canadians. Ms. Girvan agreed that the CCR was responding to the post-9/11 arrests and detention of suspected terrorists. [P] Girvan testimony (May 11, 2005), pp. 1835–1836.

373 It is not clear how the family friend heard about the CCR.

374 Exhibit P-42, Tab 33. A lawyer for the CCR called the Consulate General and left a message for Ms. Girvan. She was not sure how the CCR heard about Mr. Arar's case. [P] Girvan testimony (May 11, 2005), p. 1875)

375 [P] Girvan testimony (May 11, 2005), pp. 1859–1860.

376 Exhibit P-42, Tab 33.

377 Ibid., Tab 35; [P] Girvan testimony (May 11, 2005), pp. 1866–1867 and 1870–1871. In November 2003, Ms. Girvan sent an e-mail to DFAIT Headquarters providing further commentary regarding Ms. Oummih's efforts to arrange a visit. These additional comments were reconstructed from memory. Ms. Girvan wrote that when Ms. Oummih contacted the MDC, she was told to send a faxed request to visit Mr. Arar. A visit was eventually approved for Saturday, October 5, 2002. Ms. Girvan recalled thinking that lawyers were not usually allowed in deportation cases. She also recalled thinking that the involvement of the FBI suggested that the Americans were proceeding with an investigation based on a suspicion of terrorism. Exhibit P-42, Tab 671; [P] Girvan testimony (May 11, 2005), pp. 1869–1870.

378 Exhibit P-42, Tabs 37 and 162.

379 Ibid., Tab 38; [P] Girvan testimony (May 11, 2005), pp. 1875–1877.

380 Exhibit P-42, Tab 39; [P] Girvan testimony (May 11, 2005), pp. 1878–1879.

381 Exhibit P-42, Tab 40.

382 [P] Girvan testimony (May 11, 2005), p. 1879.

383 Exhibit P-42, Tab 44.

384 [P] Girvan testimony (May 11, 2005), p. 1880.

385 Exhibit P-42, Tab 41; [P] Girvan testimony (May 11, 2005), pp. 1893–1896.

386 Ibid., Tab 44; Ibid., pp. 1881–1882.

387 [P] Girvan testimony (May 11, 2005), pp. 1882–1885. The CAMANT note in which this INS meeting was discussed had the following handwritten note: “such interviews are usually – *pre-sentence reports* prepared before court hearing.” [Italics added.] The CAMANT note was dated October 7, 2002, but the handwritten note was made by Ms. Girvan some time after the fact, most likely in November 2003 when DFAIT Headquarters was preparing an Arar chronology. Exhibit P-42, Tab 44; [P] Girvan testimony (May 11, 2005), pp. 1888–1889 and [P] (May 12, 2005), pp. 2197–2198.

Ms. Girvan acknowledged that “pre-sentence report” was a misnomer. By making this notation, she was trying to communicate that she was aware the INS frequently interviews persons in detention. She thought the INS meeting was tied into this process. [P] Girvan testimony (May 11, 2005), pp. 1889–1890.

Despite Ms. Girvan's choice of words connoting an adjudicative process, at no time was she thinking that an adjudicative process was about to take place. Ms. Oummih had told her that there would be an interview, but she hadn't said it was an adjudicative process, nor had she attached specific meaning to the interview. Ms. Girvan took the lawyer's advice since it was the lawyer who had been contacted by the INS District Director. [P] Girvan testimony (May 12, 2005), pp. 2199–2200.

388 Exhibit P-42, Tab 44; [P] Girvan testimony (May 11, 2005), pp. 1886–1887.

389 [P] Girvan testimony (May 11, 2005), pp. 1888 and [P] (May 12, 2005), pp. 2241–2242. The duties of consular officials extend to assisting detainees and their families with the names of lawyers who could assist them. Consular officials are not responsible for ensuring a lawyer is retained, paying for a lawyer or supervising the lawyer's work. [P] Girvan testimony (May 16, 2005), pp. 2394.

390 Exhibit P-42, Tab 46.

391 Ibid., Tabs 42 and 44; [P] Girvan testimony (May 11, 2005), pp. 1896–1898, [P] (May 12, 2005),
pp. 2242–2247 and [P] (May 16, 2005), pp. 2395–2396.

392 Exhibit P-42, Tab 42; [P] Girvan testimony (May 11, 2005), pp. 1896–1900.

393 Exhibit P-42, Tab 149; [P] Girvan testimony (May 11, 2005), pp. 1927–1930. While Ms. Girvan’s
record of Mr. Watt’s recollection of his conversation with Ms. Oummih refers to a “hearing”,
this Inquiry believes that it was an interview rather than a hearing that was held on October 7.

394 Exhibit P-42, Tab 45.

395 [P] Girvan testimony (May 11, 2005), pp. 1901–1904.

396 Ibid., pp. 1921–1922.

397 Ibid., p. 1904.

398 Exhibit P-42, Tab 46.

399 Ibid.; [P] Girvan testimony (May 11, 2005), pp. 1909–1911.

400 Exhibit P-42, Tab 47.

401 [P] Girvan testimony (May 11, 2005), p. 1912.

402 Exhibit P-42, Tab 47.

403 Ibid., Tab 48; [P] Girvan testimony (May 11, 2005), pp. 1913–1916.

404 Exhibit P-42, Tab 49; [P] Girvan testimony (May 11, 2005), p. 1918.

405 Exhibit P-42, Tab 52; [P] Girvan testimony (May 11, 2005), pp. 1919–1920.

406 Exhibit P-42, Tab 52.

407 Ibid. A CAMANT note dated October 29, 2002, documented a conversation Ms. Girvan had
with Steven Watt of the CCR, who had spoken to Ms. Oummih. According to the note,
Ms. Girvan received an early morning call from Dr. Mazigh on Tuesday, October 8, 2002, to
say that Mr. Arar had not called her. When Ms. Girvan contacted the MDC, she was told that
Mr. Arar had been removed. She contacted Ms. Oummih, who told her that she was no longer
representing Mr. Arar because the family had not kept its promise to get a cheque to her on
the Monday. Ms. Oummih was told on the Tuesday that there had been a mistake and the
cheque should have been sent on the Monday. Lawyers with the CCR were trying to reach
Ms. Oummih again to confirm these details. Exhibit P-42, Tab 149.

Ms. Girvan testified that she was not entirely clear on her conversation with Mr. Watt, but she
did recall speaking to Ms. Oummih on Wednesday, October 9 in her efforts to locate Mr. Arar.
It was possible that during this conversation, Ms. Oummih told her she was no longer repre-
senting Mr. Arar, but she was not entirely certain. During the search for Mr. Arar, issues re-
lated to Ms. Oummih’s retainer were less important to her than locating him. [P] Girvan
testimony (May 11, 2005), pp. 1967–1969 and [P] (May 16, 2005), pp. 2282–2291.

408 Exhibit P-42, Tab 703; [P] Girvan testimony (May 12, 2005), pp. 2104–2106.

Ms. Girvan testified that once a lawyer is involved in a consular case, consular officials take a
step back and essentially provide assistance to the lawyer, where appropriate. For instance,
the lawyer may approach DFAIT to get the Canadian government’s help in writing a letter or
attending a court hearing to assist the client. [P] Girvan testimony (May 12, 2005),
pp. 2106–2107.

409 Exhibit P-42, Tab 53; [P] Girvan testimony (May 11, 2005), pp. 1931–1932.

410 Ibid.; Ibid., pp. 1931–1932.

411 Exhibit P-42, Tab 55.

412 Ibid., Tab 675; [P] Girvan testimony (May 11, 2005), pp. 1937–1942; [P] Collins testimony
(May 19, 2005), pp. 3091–3093.

413 Exhibit P-42, Tab 56; [P] Girvan testimony (May 11, 2005), pp. 1942–1943.

414 Exhibit P-52, Tab 57; [P] Girvan testimony (May 11, 2005), pp. 1943–1944.

- 415 [P] Girvan testimony (May 11, 2005), pp. 1948–1949. Ms. Girvan testified that she recalled using the words “working assumption” when speaking with the counsel, but could not recall his reply. *Ibid.*, pp. 1949–1952.
- 416 *Ibid.*, pp. 1944–1945.
- 417 Exhibit P-42, Tab 57.
- 418 C4 is DFAIT’s classified communications system. It allows DFAIT employees to exchange secure messages worldwide. [P] Livermore testimony (May 17, 2005), p. 2429.
- 419 DFAIT, Tab 57; Exhibit P-42, Tab 57. This likely was not the first time Mr. Solomon had heard of Mr. Arar’s removal. He testified that on or around October 9, 2002, there had been suggestions that Mr. Arar was no longer at the MDC and was not coming to Canada. Based on Inspector Roy’s notes and his own recollection of events, Mr. Solomon believed that he had probably learned about Mr. Arar’s removal on October 9, in a conversation with Inspector Richard Roy, the RCMP liaison officer stationed at DFAIT Headquarters. Mr. Solomon had then contacted Ms. Harris to see if consular officials could shed some light on the situation. Mr. Solomon was not sure if the information he had shared with Ms. Harris had been passed on to other officials in Consular Affairs. This would be a significant point because as of October 9, Canadian consular officials in the United States were still not aware that Mr. Arar had been removed from the country. [IC] Solomon testimony (April 4, 2005), pp. 13975–13978, 13980–13981, 14128–14129 and 14132–14140.
- 420 [IC] Collins testimony (August 3, 2005), pp. 16657–16658 and 16662–16670. As noted above, H  l  ne Bouchard was a consular official from the Canadian Embassy in Washington
- 421 *Ibid.*, pp. 16668–16672.
- 422 *Ibid.*, p. 16674. DFAIT officials have protected the identity of the American official who provided assistance to Ms. Collins and Ms. Bouchard. There are no documents that record the details of the conversation between these three individuals other than a DFAIT chronology prepared in November 2003 that refers to Consular Affairs being informed by the INS that Mr. Arar had been removed from the United States to Syria due to an immigration infraction and that Mr. Arar might be in Jordan. (See Exhibit P-42, Tab 709, p. 5.)
- 423 Exhibit P-42, Tab 59; [P] Parady testimony (May 24, 2005), pp. 3339–3340 and 3342–3344.
- 424 [P] Parady testimony (May 24, 2005), pp. 3344 and 3354.
- 425 Exhibit P-20, Removal Order p. 2 [typed].
- 426 *Ibid.*, p. 1 [typed].
- 427 *Ibid.*, p. 3 [typed].
- 428 *Ibid.* For an explanation of TECS, see Chapter I, Section 3.5.2. The INS’ NAILS system is used by inspectors at ports of entry to check incoming travellers. It is also used by INS officers to make entries into TECS.
- 429 *Ibid.*
- 430 *Ibid.*, pp. 3–4 [typed].
- 431 *Ibid.*, p. 4 [typed].
- 432 *Ibid.*
- 433 *Ibid.*, pp. 4-5
- 434 *Ibid.*, p. 6 [typed].
- 435 [IC] Cabana testimony (November 2, 2004), p. 3729; [IC] Callaghan testimony (November 9, 2004), p. 4502.
- 436 Exhibit P-20, p.6 [typed].
- 437 *Ibid.*
- 438 Stephen Yale-Loehr is an adjunct professor of immigration and refugee law at Cornell Law School and is an attorney of counsel at True, Walsh & Miller in Ithaca, New York. He is co-

author of the 20-volume *Immigration Law and Procedure*, the leading immigration law treatise in the United States.

⁴³⁹ See generally Exhibit P-120, Tab 4 [Yale-Loehr submission]; [P] Yale-Loehr testimony (June 7, 2005), pp. 5617–5618.

⁴⁴⁰ Exhibit P-120, Tab 4; [P] Yale-Loehr testimony (June 7, 2005), pp. 5618–5619.

⁴⁴¹ *Ibid.*; *Ibid.*, p. 5619.

⁴⁴² *Ibid.*; *Ibid.*, pp. 5619–5620.

⁴⁴³ Exhibit P-120, Tab 4, p. 6.

⁴⁴⁴ Exhibit P-120, Tab 4; [P] Yale-Loehr testimony (June 7, 2005), pp. 5620–5621.

⁴⁴⁵ *Ibid.*; *Ibid.*, p. 5622.

⁴⁴⁶ *Ibid.*; *Ibid.* Mr. Yale-Loehr testified that there is no hearing per se where the Attorney General gathers all of the information that will be used in coming to his decision concerning America's obligations under CAT. He believes it would be reasonable for the Attorney General to take into account the human rights record of the particular country and credible threats or fears expressed by the applicant as to why he or she would be concerned about being tortured if returned. [P] Yale-Loehr testimony (June 7, 2005), p. 5624.

⁴⁴⁷ [P] Yale-Loehr testimony (June 7, 2005), pp. 5620–5621 and 5622.

⁴⁴⁸ *Ibid.*, p. 5817.

III

IMPRISONMENT AND MISTREATMENT IN SYRIA

1. LOCATING MR. ARAR

Immediately after Mr. Arar's removal from New York on October 8, DFAIT consular officials considered the possibility that he had been sent to Syria. However, it was not until October 21, after considerable efforts by DFAIT officials and Minister Graham, that Ambassador Pillarella received confirmation that Mr. Arar was indeed in Syrian custody.

1.1 EFFORTS BY EMBASSIES AND AMBASSADORS

As discussed in the previous chapter, on October 10, Helen Harris of DFAIT's Consular Affairs Bureau asked Léo Martel, the consul at the Canadian Embassy in Damascus, to inquire about Mr. Arar's whereabouts and well-being.¹ She also asked the Embassy's immigration control officer to use his contacts and gather any information he could.² On October 14, the first business day after being contacted by Ms. Harris, Mr. Martel sent a diplomatic note to the Syrian Foreign Ministry requesting its assistance in locating Mr. Arar.³ The Damascus embassy never received a response to this request. In fact, according to Ambassador Pillarella, the Embassy never received any official acknowledgment from the Syrian Foreign Ministry that Mr. Arar was in the country, even after the Canadians had consular access to him.⁴

Ms. Harris also arranged for Dan Livermore, the Director General of DFAIT's Security and Intelligence Bureau (ISD), to request that Ambassador Pillarella use his resources to determine Mr. Arar's location, status and condition.⁵ Importantly, this message to the Ambassador noted that "[t]here are concerns that Arar may be aggressively questioned by Syrian security services."⁶ The message

was marked “For HOM [head of mission] Only” to ensure that Ambassador Pillarella dealt with the matter in an expeditious manner, tapping into sources that only he could access.⁷ On October 11, the Ambassador raised the matter with Syrian Deputy Foreign Minister Haddad, and was advised that he would get back to him on whether Mr. Arar was in Syria.⁸

Ms. Harris also asked the Canadian ambassador to Jordan, Rod Bell, to make inquiries about Mr. Arar,⁹ as Mr. Pardy had received information that Mr. Arar had been “dumped” in Jordan.¹⁰ On or about October 12, Ambassador Bell caused inquiries to be made of the Jordanian government and was advised that there was no indication of Mr. Arar entering Jordan.¹¹

DFAIT officials had asked Ambassador Pillarella to locate Mr. Arar because he had a personal relationship with the head of the Syrian Military Intelligence (SMI), General Khalil.¹²

On October 17, Ambassador Pillarella again made inquiries about Mr. Arar to Deputy Foreign Minister Haddad,¹³ and scheduled a meeting with Mr. Haddad for October 20.¹⁴ Also on October 17, DFAIT Assistant Deputy Minister John McNee raised the matter with Syria’s Ambassador Arnous in Ottawa.¹⁵

On October 19, Mr. Pardy spoke to Ambassador Pillarella about his upcoming meeting with Mr. Haddad.¹⁶ Mr. Pardy asked him to raise both the Arar and Almalki cases, and to advise Mr. Haddad that Mr. Arar was not the subject of a police investigation in Canada and could return at any time.¹⁷ Mr. Pardy explained that DFAIT had also been making inquiries about Mr. Almalki, who was then in Syrian custody, but the department had not yet received any response.¹⁸

Ambassador Pillarella met with Deputy Foreign Minister Haddad on October 20 to request confirmation of Mr. Arar’s whereabouts.¹⁹ A former general and a past member of the Syrian security services, Deputy Foreign Minister Haddad was an essential conduit to the country’s security community.²⁰ Ambassador Pillarella briefed him on the Arar case, emphasizing that Mr. Arar was not the subject of a police inquiry in Canada, and discussed dual citizenship and bilateral relations in the context of Mr. Arar.²¹ Deputy Foreign Minister Haddad stated he was “99% certain” that Mr. Arar was not in Syria, and agreed to confirm this by the next day, October 21.²² Ambassador Pillarella also raised Mr. Almalki’s case, explaining that there had been no official confirmation of his presence in Syria; the Deputy Foreign Minister agreed to look into his case by October 21, as well.²³

Ambassador Bell contacted Mr. Pardy on October 21 with news of Mr. Arar. According to Jordanian Foreign Minister Shaher Bak, Mr. Arar had been in

Jordan, but only “in transit” to Syria.²⁴ Minister Bak had agreed to find out the date of Mr. Arar’s transit, and whether or not he had been accompanied.²⁵

As promised, Deputy Foreign Minister Haddad contacted Ambassador Pillarella on October 21 and advised him that Mr. Arar was, in fact, in Syria, having just arrived from Jordan earlier that day.²⁶ The Ambassador requested consular access to Mr. Arar, but Deputy Foreign Minister Haddad was unable to grant it as Mr. Arar was not in his custody.²⁷ He arranged for the Ambassador to meet with General Khalil the following day.²⁸

Ambassador Pillarella informed Mr. Pardy that Mr. Arar was in Syria shortly before four o’clock in the afternoon Ottawa time. The Ambassador also said he had requested consular access and was awaiting a response.²⁹ This news was passed to officials in DFAIT, the RCMP and CSIS.

In a message to the Ambassador sent on October 21, Mr. Pardy outlined the representations he should make to the Syrians.³⁰ Included was a statement that the “government of Canada would appreciate if the government of Syria could permit the return of Mr. Arar to Canada, a country that he can return to at any time.”³¹ Mr. Pardy also included background materials, and a briefing memorandum prepared for Minister Graham.³²

That same day, Inspector Cabana spoke to James Gould of DFAIT ISI and offered to share information about Mr. Arar and Mr. Almalki with the Syrians. This offer was not pursued, however, and it appears that it went no further within DFAIT.³³ It is not referred to in Mr. Pardy’s written instructions to the Ambassador, nor in the background materials he provided.

On the morning of October 22, Ambassador Pillarella received a call from Deputy Foreign Minister Haddad indicating that General Khalil would see him shortly. Moreover, the General would be in a position to determine what would happen next regarding Mr. Arar.³⁴ The details of the Ambassador’s meeting with General Khalil are discussed below in Section 3.2.

1.2

THE MINISTER’S EFFORTS

Minister Graham began receiving questions regarding Mr. Arar about October 11 or 12.³⁵ While DFAIT was still trying to locate Mr. Arar, Minister Graham met U.S. Ambassador Paul Cellucci for lunch on October 15 to discuss consular issues, including Mr. Arar’s case. A briefing note prepared for the Minister’s meeting included a protest against the procedures used to remove Mr. Arar from the United States, the absence of prior consultation on the matter, and the lack of complete and timely information on Mr. Arar’s whereabouts. The briefing note also

advised the Minister to request detailed information on Mr. Arar on an urgent basis.³⁶

Responding to the Minister's protests, Ambassador Celluci stated that the Americans were entitled to do what they did. He further advised Minister Graham that there was evidence Mr. Arar had contacts with people that made him a danger to the United States.³⁷ According to the Ambassador, Mr. Arar's dual citizenship gave the Americans the right to deport him elsewhere.³⁸ Minister Graham requested the Ambassador's help in determining what had happened to Mr. Arar.³⁹ Ambassador Cellucci told the Minister that some of the information that put Mr. Arar on an American watch list came from Canadian sources, although it was not clear what information or from where.⁴⁰

In an interview by a Canadian journalist on October 16, Ambassador Cellucci was quoted as saying "I think that the U.S. INS authorities acted properly in deporting Mr. Arar to Syria. You should talk to your local people who may know the reasons."⁴¹ According to Minister Graham, Ambassador Cellucci's public position was inconsistent with what he had said in private to Minister Graham. Subsequent to this, Ambassador Cellucci took that position publicly several times.⁴²

On October 18, while in Halifax for a conference, Minister Graham raised the matter of Mr. Arar with Ambassador Arnous, requesting the co-operation of Syrian authorities in locating him.⁴³ In a letter to Dr. Mazigh on October 19, Mr. Parady reported on Minister Graham's meeting as follows: "The Ambassador responded that it was his information that Mr. Arar was not in Syria but did promise to check further with his authorities in Damascus."⁴⁴ The letter further noted that the Ambassador had mentioned Mr. Arar "had been in touch with the Syrian embassy earlier this year with respect to travelling to Syria and expressing concern about any military service obligations." He was advised that "there were no obligations" and he "was free to return to Syria at any time."⁴⁵

1.3

DFAIT'S REQUEST FOR INFORMATION FROM THE RCMP

As a result of Minister Graham's October 15 discussion with Ambassador Cellucci, Mr. Parady called an interdepartmental meeting with the RCMP and CSIS the next day to discuss Mr. Arar's case.⁴⁶ His purpose was to "talk to other officials in the Canadian government about what was going on"⁴⁷ so that DFAIT could prepare a detailed memorandum on the issue for Minister Graham.⁴⁸

At the October 16 meeting, representatives of the RCMP and CSIS advised DFAIT officials of the extent of their knowledge about Mr. Arar.

[***].⁴⁹ For its part, the RCMP reported “they have an interest in Mr. Arar but he is not the primary focus in any of their investigations,” “[r]ather, it was Mr. Arar’s association with Mr. al-Maati [*sic*] and Mr. Abdullah al-Malki [*sic*] that brought him to their attention.”⁵⁰ The RCMP representative was not prepared to speculate about what information had been provided to the Americans on Mr. Arar.⁵¹

Mr. Pardy gave the RCMP official a list of very specific questions about Mr. Arar.⁵² In response, the RCMP’s October 18 memorandum included the following statements:⁵³ “U.S. authorities were advised that the RCMP was interested in Arar from a criminal perspective,” “where Arar is a Canadian citizen, the RCMP could not refuse his entry into Canada” and the “RCMP maintains an interest in Arar as part of an [on]going criminal investigation.”⁵⁴ Importantly, in response to the question “What was the level of threat relating to Arar’s presence in the U.S.?” the memorandum stated that “[t]he RCMP has no information concerning any threat associated with/by Arar.”⁵⁵

To Mr. Pardy’s mind, the RCMP’s message that Mr. Arar was not considered to be a threat was clear and unequivocal.⁵⁶ This would prove to be significant, as it influenced the actions Mr. Pardy took during Mr. Arar’s detention in Syria. Relying on information he received from the RCMP and CSIS, and on DFAIT’s assessment of that information, Mr. Pardy drafted a public backgrounder on October 20 that stated:

We have learned that the American authorities informed Mr. Arar that he was considered to be a member of Al Qaeda [*sic*] and therefore, was ineligible for entry into the United States. The Canadian authorities do not have any information which would support the conclusion of the American authorities.⁵⁷

On October 21, Mr. Pardy drafted questions and answers for the press. One of the questions was: “There have been allegations, including those used by the United States in ordering his departure, that Mr. Arar is a member of Al Qaeda [*sic*]. Are these allegations accurate?” In response, Mr. Pardy wrote that DFAIT was “not aware of information to support the allegation that Mr. Arar is a member of Al Qaeda [*sic*]” and “[w]e have also been assured that other parts of the government of Canada does not have information to support such allegations either.”⁵⁸

Mr. Pardy provided Minister Graham with a briefing memorandum on October 21. In it he outlined the RCMP’s October 18 memorandum about its involvement in the matter.⁵⁹ The briefing memorandum also explained that “[i]n

our earlier discussions with the RCMP they were much less categorical with respect to their interest in Mr. Arar” and at the October 16 meeting, “the RCMP reported ‘they have an interest in Mr. Arar but he is not the primary focus in any of their investigations.’” This was qualified by the fact that the RCMP representative at the meeting was not directly involved in these investigations, and he was to get back to DFAIT with any additional information.⁶⁰

In anticipation of Ambassador Pillarella’s scheduled October 22 meeting with Syrian officials, Mr. Parady provided the Ambassador with a copy of the briefing memorandum and the most recent press lines (both of which had been prepared before DFAIT officially learned that Mr. Arar was in Syrian custody). However, Mr. Parady advised Ambassador Pillarella not to use any of this information in his representations to Syrian authorities.⁶¹

1.4

BRIEFING OF THE PRIME MINISTER’S OFFICE BY THE PRIVY COUNCIL OFFICE

On October 18 — the same day the RCMP responded to DFAIT’s questions — a written briefing was given to the Prime Minister by Ronald Bilodeau, Associate Secretary to the Cabinet, Deputy Minister to the Deputy Prime Minister, and Security Intelligence Coordinator. Prepared by Lawrence Dickenson, Assistant Secretary to the Cabinet for Security and Intelligence in the Privy Council Office’s (PCO) Security and Intelligence Secretariat, the briefing stated [***] “[i]t was unknown at that time if Mr. Arar was under criminal investigation by the RCMP, although it is believed that a Canadian associate of Mr. Arar is being investigated by the RCMP for suspected terrorist activities.”⁶²

A few days later, on October 21, Mr. Bilodeau sent Mr. Dickenson a package of documents containing his October 18 memorandum and a document dated October 8⁶³ prepared by PCO’s Foreign and Defence Policy Secretariat. The following note accompanied the package: “Are we coordinated with Claude. We gave the PM advice which is a bit different.”⁶⁴ “Claude” referred to Claude Laverdure, Foreign Policy Advisor to the Prime Minister and Assistant Secretary to the Cabinet (Foreign and Defence Policy) in PCO. The October 8⁶⁵ document stated that “DFAIT has also been assured that other parts of the Canadian government do not have information to support such allegations either [that Mr. Arar is a member of al Qaeda].”⁶⁶ According to Mr. Dickenson, Mr. Bilodeau was not concerned; rather, he wanted assurances that they were providing the Prime Minister with accurate information. As well, the documents were very different from each other, the October 18 document being a classified document at secret level, and the other a note for Question Period in the House of Commons.⁶⁷

On October 22, Mr. Dickenson forwarded a memorandum to Mr. Bilodeau. Written by a policy advisor in PCO's Security and Intelligence Secretariat, the memorandum explained the differences in the two memoranda that had gone to the Prime Minister.⁶⁸ According to the October 22 memorandum, the main reason for the content differences was that the document drafted by PCO's Foreign and Defence Policy Secretariat did not include classified information and was based exclusively on publicly available information. A policy advisor noted that the Foreign and Defence Policy Secretariat amended its note as of October 22.⁶⁹ The revised note deleted the statement that DFAIT had assurances from other government departments that there was no information supporting American allegations that Mr. Arar was a member of al Qaeda, and that consultation would occur on all future notes on this matter between PCO's Security and Intelligence Secretariat and the Foreign and Defence Policy Secretariat.⁷⁰

2.

SYRIA'S HUMAN RIGHTS REPUTATION

Before continuing with the narrative of events while Mr. Arar was imprisoned in Syria, it is important to establish what Canadian officials knew about Syria's human rights reputation at the time they were involved with his case. Their knowledge defined the context in which they made decisions about Mr. Arar while he was detained in Syria.

2.1

SOURCES OF INFORMATION

2.1.1

U.S. State Department and Amnesty International Reports

The primary public sources for Canadian officials needing information about Syria's human rights record during Maher Arar's detention were the U.S. State Department Country Reports on Human Rights Practices and Amnesty International (AI) annual reports. While Canadian officials may also have reviewed other public sources, these two were considered authoritative and reliable. They provided unequivocal evidence of serious human rights abuses by Syria, notably:

- torture of detainees, especially while authorities were attempting to extract a confession or information;
- arbitrary arrest and detention;
- prolonged detention without trial;

- unfair trials in the security courts; and
- poor prison conditions.

In its 2002 report, AI made specific mention of torture and ill-treatment during incommunicado detention at the Palestine Branch and Military Interrogation Branch detention centres. Mr. Arar has publicly stated that he was detained in the Palestine Branch, which makes references in AI's report to this detention centre relevant.

A more detailed description of the State Department and Amnesty International reports is included as Annex 2.

2.1.2

DFAIT's Assessment

Human rights issues are a central element in Canadian diplomacy. Daniel Livermore, a former director of DFAIT's Human Rights Division and former ambassador, testified that in all bilateral relationships, a country's human rights record is one of the factors that Canada considers in determining the nature of the overall relationship.⁷¹ To assist in this endeavour, many Canadian missions produce annual reports evaluating the state of human rights for most countries, including Syria. These reports, in addition to the testimony heard before the Inquiry, provide insights into Canadian officials' knowledge of Syria's human rights record before and during Mr. Arar's detention in Syria.

Background

DFAIT's annual human rights reports are prepared by the mission under the authority of the head of mission.⁷² They are drafted by political officers in consultation with the geographic and human rights divisions in Ottawa, and are based upon research and interviews conducted during the year. The reports use official and public sources of information as well as sensitive sources of information. They focus on the rights of citizens and how they exercise their rights. Where relevant, the reports are shared with other Canadian departments and agencies in order to inform government policy development and for other purposes.⁷³ Canadian-based consular officers with the proper security clearance, and who need to know a country's human rights situation to carry out their functions, may access these reports from a database, for example.⁷⁴ However, there was no evidence before this Inquiry that officials in either the RCMP or CSIS received DFAIT's annual reports on Syria. The RCMP has no record of ever receiving DFAIT's human rights reports.⁷⁵

In contrast to the U.S. State Department, DFAIT classifies its human rights reports as “confidential.” In other words, DFAIT’s reports are not intended for the public, although some of the contents may later be downgraded to the unclassified level for public discussion with the Canadian NGO community.⁷⁶ Mr. Livermore testified that because Canada and its missions abroad rely on local goodwill to pursue Canadian interests abroad, publishing a public report accusing a government of atrocities may adversely affect Canadian officials’ ability to obtain co-operation from the same country. For example, there is some concern about the impact public reports may have on Canadian commercial interests with these countries — as one of a range of issues that might be affected.⁷⁷ Mr. Livermore explained that the U.S. State Department is able to publicly publish such criticisms without serious repercussions because of its position on the world stage as “the big boys on the block.”⁷⁸ Striking the proper balance of public criticism versus “quiet diplomacy” is a theme that recurs throughout Mr. Arar’s detention in Syria.

Human Rights Reports on Syria: 2001 and 2002

DFAIT’s *Syria: Annual Human Rights Report* for 2001 (released February 8, 2002)⁷⁹ and for 2002 (released January 9, 2003)⁸⁰ are summarized here because they were available to DFAIT officials before and during Mr. Arar’s detention in Syria. The Inquiry also received the reports for 2003 (released December 23, 2003)⁸¹ and 2004 (released January 10, 2005);⁸² however, these were prepared after Mr. Arar’s release.

Before summarizing the report contents, two observations are in order. First, Ambassador Franco Pillarella approved both the 2001 and 2002 reports.⁸³ Second, the e-mail distribution lists of the DFAIT human rights reports for 2001 and 2002 did not include anyone in the Consular Affairs Bureau. The reports were distributed to other Canadian missions, CIC, CIDA, PCO and members in DFAIT’s Middle East Bureau. The 2002 report was also delivered to DFAIT ISI and Jonathan Solomon.

DFAIT’s annual human rights reports on Syria include a review of the following: 1) the political situation in Syria; 2) the state of internationally recognized human rights and freedoms, including civil and political rights (i.e., physical integrity and security of the person, arbitrary arrest, torture/ill-treatment, rule of law/due process, political/democratic rights and freedoms); economic, social and cultural rights; and freedom from discrimination; and 3) Canadian representations or interventions with Syria in the area of human rights.

This template mirrors the U.S. State Department human rights reports. In addition, DFAIT’s reports for 2001 and 2002 incorporate the State Department’s

review of arbitrary arrests and extended periods of detentions without charge; torture by security services; coerced confessions; incommunicado detentions; the lack of due process; unfair trials before the Supreme State Security Court; and the power of security and military services in Syria. While the 2001 DFAIT report quotes the U.S. State Department report verbatim with respect to “credible evidence of torture” and the use of torture to extract confessions,⁸⁴ the 2002 report qualifies the use of torture as “allegations” and omits mention of the use of torture to extract confessions.⁸⁵ However, the 2002 report does refer to some of the torture techniques alleged to be used, including sleep deprivation, beatings and electric shocks.⁸⁶ Torture techniques were not listed or described in the 2001 report.

The DFAIT reports incorporate Amnesty International’s annual country reports and specifically mention AI’s findings of routine torture and ill-treatment of prisoners, especially during the initial stage of detention and interrogation in Tadmur Political Prison. Reference is also made to AI’s reports of secret arrests in cases involving political or national security offences and prolonged detentions without due process.

Finally, DFAIT’s reports include information not found in either the U.S. State Department or Amnesty International reports, such as other third-party information (i.e., Human Rights Watch reports and UNHRC reports); first-hand knowledge or experiences of embassy officials that may corroborate or contradict findings in the other reports; and a Canadian perspective or analysis of the information.

As noted earlier, the 2002 report was released on January 9, 2003 — approximately three months after Mr. Arar arrived in Syria. Yet there is no mention of Mr. Arar, the circumstances of his removal and detention, or the consular visits he received. Nor is there mention of the details surrounding Abdullah Almalki’s detention or of Ahmad El Maati’s allegations of torture while he was detained in Syria.

2.1.3

CSIS’ Assessment

CSIS’ assessment of Syria’s human rights record in 2002 and 2003 quotes from the U.S. State Department report relating to the use of torture, particularly when held at detention centres run by the various security services and while authorities were trying to extract a confession or information about an alleged crime or alleged accomplices.⁸⁷

2.2

CANADIAN OFFICIALS' KNOWLEDGE

2.2.1

DFAIT Officials

Treatment of the Public Record and Prior Consular Cases in Syria

DFAIT officials from the Consular Affairs Bureau and the Security and Intelligence Bureau (ISD) had access to the annual reports prepared by the U.S. State Department, Amnesty International and other human rights organizations, as well as DFAIT's confidential annual human rights reports on Syria.⁸⁸ When asked what they knew about Syria's human rights reputation, DFAIT officials generally testified to having some understanding that it was poor.⁸⁹ They based their conclusions on media reports, first hand experience with Syrian officials, DFAIT human rights reports, U.S. State Department reports, reports from various human rights organizations and other open sources.⁹⁰

DFAIT officials' specific knowledge of Syria's human rights reputation varied. Many testified to having some knowledge that Syrian security authorities may use torture.⁹¹ Minister Graham had no knowledge of specific acts of torture in Syria or details about prison conditions and interrogation methods, but was generally aware that Syria's reputation included repression of internal dissent, especially with respect to the Muslim Brotherhood.⁹² DFAIT officials were aware from the public record that Syria may hold prisoners incommunicado for a period of time to extract information before disclosing the individual's whereabouts.⁹³ Ambassador Pillarella first testified that in 2002 he was not aware of the Palestine Branch or the reputation of human rights abuses at this detention centre as reported in the Amnesty International report.⁹⁴ The next day, he testified that he might have been aware of the Palestine Branch and might have read about it, but did not recall at that particular point.⁹⁵

The Ambassador stated that in 2002 and 2003 he had known of the allegations of torture in the U.S. State Department reports, but that "it [was] extremely difficult to verify."⁹⁶ Later, he said that as the ambassador to Syria during those years, "I did not have any indication that there were serious human rights abuses committed that I could verify."⁹⁷

DFAIT also had knowledge of Syria's human rights reputation prior to Mr. Arar's detention through Abdullah Almalki's and Ahmad El Maati's consular files — Consular Affairs' first direct dealings with Syrian authorities on such matters.⁹⁸ On or about August 12, 2002, Mr. El Maati told consular officials in Egypt

that he had been tortured and forced to give false information in Syria.⁹⁹ Both ISI and Consular Affairs officials in Ottawa became aware of Mr. El Maati's claim shortly after consular officials in Egypt learned of this information.¹⁰⁰ By the time Mr. Arar arrived in Syria, Ambassador Pillarella and Mr. Martel still did not know of Mr. El Maati's claim of torture.¹⁰¹ The Ambassador learned of it much later.¹⁰² While he agreed that this was an important piece of information that should have been brought to his attention, he did not know who should have advised him of it.¹⁰³ Similarly, Minister Graham was not immediately informed of Mr. El Maati's allegation, although he became aware of it at some point. His knowledge of other consular cases, including the difficulties in getting consular access for Mr. El Maati and Mr. Almalki, deepened as his office became more involved in Mr. Arar's case.¹⁰⁴

In his testimony, Ambassador Pillarella said he did not see how knowing about Mr. El Maati's allegation of torture would have helped the Embassy manage Mr. Arar's case because each case must be treated separately:

[B]ecause Mr. El-Maati [*sic*] might have been tortured, it doesn't necessarily follow that Mr. Arar will have been tortured. If we had had any evidence of it, an inkling of evidence, maybe, but we did not have it.¹⁰⁵

In October 2002, ISI stated in two memoranda that there was a credible risk of torture in Syria if Canada asked Syria to put questions to a detained Canadian. As Mr. Livermore testified, "We had had an experience. We had to characterize the risk as credible at that time."¹⁰⁶ He also advised CSIS on December 5, 2002, that "DFAIT reporting and public documents provide credible reports that Syrian security services engage in torture."¹⁰⁷

The "Working Assumption"

Because of national security confidentiality, some DFAIT witnesses would neither confirm nor deny publicly whether their belief about Syria's human rights reputation was consistent with the U.S. State Department and Amnesty International reports.¹⁰⁸ However, in his evidence Mr. Livermore stated he was sceptical of an approach that allows for an assumption to be made about a specific situation based on a general report of human rights conditions in a country. Each consular case is treated independently of prior experiences. Two Canadians detained in the same country might experience different fates. One Canadian might travel to a country with one of the worst human rights records in the world and receive fairly good treatment, while another might travel to a country with one of the best human rights record in the world and receive poor

treatment.¹⁰⁹ For this reason, Mr. Livermore said he would want to see the evidence in each particular case before reaching a conclusion. For example, while he had heard of Mr. El Maati's case, he did not have first-hand evidence that torture had occurred.¹¹⁰

Ambassador Pillarella concurred with Mr. Livermore with respect to treatment of the public record in specific consular cases. He testified that to reasonably believe that a Canadian detained in Syria was being tortured, he would need evidence that this was happening. This was one reason he believed that obtaining consular access was important — to verify that the detainee is safe.¹¹¹ However, despite his position on needing evidence before concluding that torture had occurred, the Ambassador admitted that Mr. Arar's prison conditions were probably appalling, even though he had no direct or concrete evidence of conditions, having never inspected prison conditions in Syria.¹¹²

It was suggested to Ambassador Pillarella that it was important to consider patterns of conduct as well as the facts of a particular case. The Ambassador responded that one cannot go from the general to the particular.¹¹³ The Ambassador believed that while "in theory" there was a credible risk of torture for a Canadian detained in one of the detention centres described in the U.S. State Department or Amnesty International reports, the propensity for torture may depend on the type of allegations against an individual. For example, "[i]f the detainee...was a Canadian that simply happened to be in Syria and had committed some kind of — I don't know. I doubt very much that he would have been subjected to torture." If, on the other hand, the Canadian was suspected of being a member of the Muslim Brotherhood, torture could happen.¹¹⁴

Ambassador Pillarella testified that the facts in the public record setting out the predilection of Syrian security forces to torture were always "at the forefront of [his] preoccupations" in Mr. Arar's case. He stressed that as a former Director of Human Rights at DFAIT, he was "absolutely cognizant of what human rights mean."¹¹⁵ Before obtaining access to Mr. Arar, he had been concerned about Mr. Arar being abused or detained in poor conditions.¹¹⁶ However, throughout Mr. Arar's detention in Syria, no evidence of mistreatment or torture was observed in consular visits.¹¹⁷ He stated that had he believed Mr. Arar was being tortured, the Embassy would not have remained silent because their interest was Mr. Arar's well-being.¹¹⁸ These latter statements are explored in greater detail below in the sections of the Report describing the consular visits.

In contrast, while Mr. Parly did not believe that a political prisoner in Syrian detention would be subjected to torture in every case, his "working assumption" was that torture was taking place, and he would need to be convinced it had not.¹¹⁹ He assumed throughout the relevant period that Mr. Arar

was held incommunicado and was the victim of ill-treatment or torture in the early stages of his detention in Syria.¹²⁰ His understanding was that abusive treatment or torture usually took place early on in the incarceration. Mr. Pardy had assessed the subsequent months of Mr. Arar's detention as being very difficult, but not quite as bad as the early days.¹²¹

Mr. Pardy based his assumption on the public record and his experience with other consular files in the region.¹²² He was aware of the possibility of torture in Syria before Mr. El Maati's allegations. While he found Mr. El Maati's information useful, he said he did not need that example to tell him that the Syrian government tortured people within its ambit.¹²³

Asked which he found more relevant in assessing the likelihood of torture in Mr. Arar's case — the public record or information about Mr. Almalki and Mr. El Maati — Mr. Pardy responded:

I think it was the public record that was more specific, and the public record I think displayed a pattern of activity by the government of Syria going over a long number of years, and I think that allows you to form a certain impression of a government. Certainly we saw nothing down to today that gives any suggestion that Syrian practice in this area is changing. The others [Mr. Almalki and Mr. El Maati] were details that went into your understanding of the practice of that government. These were, if you like, sign posts along the way but the pattern is clearly evident with respect to the government of Syria and how it treats prisoners and particularly prisoners who have 'a political label' on them.¹²⁴

Mr. Pardy stated that the issue of torture in Syria had no bearing on his efforts to seek Mr. Arar's release. He assumed that prison conditions were very difficult and this assumption brought urgency to the work. His goal was to obtain Mr. Arar's release as quickly as possible, whether or not he was being tortured. He was more concerned about public allegations being made about these conditions because he believed publicity would delay Consular Affairs' actions.¹²⁵

There is no written document that clearly states Mr. Pardy's working assumption. However, he testified that he believed that anyone in Ottawa who deals with such cases would read into the circumstances the possibility of torture or serious abuse.¹²⁶ Mr. Pardy believed that DFAIT officials were aware of and shared his working assumption both "horizontally and vertically."¹²⁷

Horizontally, DFAIT's Middle East Division, including Assistant Deputy Minister John McNee, would have been as familiar as Mr. Pardy with the conditions that might have prevailed in Syria.¹²⁸ Mr. Pardy reported to Mr. McNee, who at one time was the Canadian ambassador to Syria.¹²⁹ He believed that

Mr. Jonathan Solomon and Mr. Dan Livermore of ISD/ISI would also have been aware of the working assumption.¹³⁰

Vertically, Mr. Pardy had daily contact with staff in Minister Graham's office,¹³¹ whom he advised verbally of his views on the Arar situation. Minister Graham discussed matters concerning Mr. Arar with the Deputy Minister and with his staff.¹³² Mr. Pardy explained that to avoid the cumbersome coordination process often required in written communications with the Minister's office, he spoke directly to the people involved on many of these issues.¹³³ He noted that, over time, he did not preface each conversation with a reminder that he believed that Mr. Arar had faced especially difficult circumstances in October 2002. As he explained:

You sort of move beyond it because there was a certain comfort factor in those meetings that we had with Mr. Arar up until — well, I would say February 18¹³³ ...I think maybe we might have reflected that comfort factor in comments that we might have made upwards and more broadly in the department.¹³⁴

Minister Graham did not recall whether he had been informed of Mr. Pardy's working assumption.¹³⁵ While he had been aware of concerns about Mr. Arar's well-being, he did not recall that concern extending to the idea that Mr. Arar had been or would be tortured.¹³⁶ Minister Graham strongly believed that being advised of this information in October 2002 might have "energized" DFAIT's efforts and increased their sense of urgency. However, he did not believe it would have changed the results and was uncertain about whether he could have moved the Syrians any more quickly.¹³⁷

Training of DFAIT Officials to Recognize Signs of Torture

DFAIT officials, specifically consular officials, received no training on Syria's human rights record or on identifying signs of torture or abuse in a detainee.¹³⁸ In particular, Mr. Martel was briefed on neither Syria's human rights situation nor the conditions in the country's prisons and detention centres when he arrived in the country in September 2002.¹³⁹ Nor did he read the annual DFAIT Country Report for Syria created in February 2002.¹⁴⁰ Mr. Martel stated, however, that he was well aware of Syria's human rights reputation — especially related to political detainees — from his own experience in the region and from keeping abreast of world events.¹⁴¹

Both Ambassador Pillarella and Mr. Martel testified that they were not experts in torture.¹⁴² Mr. Martel agreed that modern techniques of physical abuse do not leave visible signs and that psychological torture can really be identified

only through a private conversation with a detainee.¹⁴³ Ambassador Pillarella testified that he understood that mental torture may be more difficult to discern than physical torture in the context of a consular meeting, but believed that mental torture would exhibit outward effects.¹⁴⁴

Ambassador Pillarella said that while Mr. Martel might have lacked formal training on identifying torture, the consul was very experienced and had received valuable training on the job.¹⁴⁵ According to Mr. Martel, based on his “on the job training” — and in the controlled conditions under which he had to visit a detained dual national — he would try to glean as much information as possible about the detainee’s treatment through observation: looking at the detainee’s eyes to see if he was drugged, and observing whether he could walk normally and whether his leg was twitching or his hands bruised.¹⁴⁶

In its November 2004 *Review of Consular Affairs*, the Office of the Inspector General recommended that Foreign Affairs Canada develop training and procedures to help consular officials identify cases where torture is suspected.¹⁴⁷ In 2005, DFAIT began to implement a Consular Services training program on torture.¹⁴⁸

2.2.2 CSIS Officials

Treatment of the Public Record on Syria

CSIS officials confirmed that they had, or likely had, knowledge of Syria’s poor human rights reputation before and during Mr. Arar’s detention in Syria. This knowledge included reports that Syrian security agencies used torture to interrogate detainees.¹⁴⁹ CSIS officials were familiar with the Amnesty International and U.S. State Department reports and assessed these documents as credible.¹⁵⁰ As mentioned above, these reports were reviewed in assessing a country in addition to CSIS reporting from independent sources.¹⁵¹

CSIS Director Ward Elcock assessed the Amnesty International and U.S. State Department reports as “credible” insofar as they allow CSIS to assess a country where it is unable to inspect country or human rights conditions first-hand.¹⁵² The reports on Syria indicated to CSIS that intelligence services might use torture in that country. However, Mr. Elcock testified that without knowing the evidence on which these reports relied, CSIS could not conclude absolutely that Syria engages in torture.¹⁵³ While CSIS might suspect the use of torture, it will rarely know for sure.¹⁵⁴

Jack Hooper, Assistant Director, Operations, acknowledged that the U.S. State Department human rights report was “more complete and inclusive” than

a CSIS Country Profile on Syria's human rights record. Specifically, the CSIS report did not mention the use of torture in Syria. Mr. Hooper questioned whether, in light of the audience for which the Country Profile was intended, CSIS needed to provide greater detail in the report. In contrast to the U.S. State Department reports, CSIS Country Profiles are designed for police and security officials only, not to inform policy decisions.¹⁵⁵

In October 2002, CSIS officials knew that the United States might have sent Mr. Arar to a country where he could be questioned in a "firm manner." In a report to his superiors dated October 11, 2002, the CSIS security liaison officer (SLO) in Washington [***].

[***].¹⁵⁶ Mr. Arar's whereabouts were unknown at the time.

It should also be noted that a few months earlier, CSIS officials had been advised of credible evidence of torture in Syria. In July 2002, a memo to Mr. Hooper reported information that was identical to that contained in the State Department and Amnesty International reports. In particular, the memo reported that torture was most likely to occur at a detention centre run by one of the security services, especially when information in a confession was being extracted by the authorities.

During the relevant period, CSIS also became familiar with Syria's human rights record through its efforts to deport Hassan Almrei, who was detained pursuant to a security certificate. Mr. Almrei's deportation was contingent on the Canadian government demonstrating that he would not be at substantial risk of torture were he returned to Syria. CSIS had previously obtained assurances from foreign governments and intelligence services that no harm would befall individuals subject to a security certificate if they were returned to their country of origin. However, assurances had never been tested with Syria,¹⁵⁷ and it was unlikely that Canada would obtain the quality of assurances that would satisfy the Canadian government and the Federal Court.

CSIS was concerned that the allegations of torture in Mr. Arar's case might hinder its ability to deport Mr. Almrei. CSIS believed that any indication at all that Mr. Arar was being mistreated would make its chances of deporting anyone to Syria very remote.¹⁵⁸

Sharing Information with Syria

The decision to disclose information about an individual to Syria or to act upon information received from Syria requires balancing the protection of individual rights and Canada's national security. For example, if the individual might be part of a serious and imminent threat to Canada or foreign interests, and the consequences of CSIS doing — or not doing — something could result in the loss of

lives, these factors may outweigh human rights considerations.¹⁵⁹ Mr. Hooper described this as the “art of our business.”¹⁶⁰

While CSIS may be unable to reach an “absolute conclusion” about the use of torture with respect to a piece of information, it will treat the information differently at the mere suspicion of torture. CSIS would accept information from a foreign country or foreign intelligence service suspected of using torture — such as Syria or the SMI — but would view it differently than information from a foreign service known never to use torture.¹⁶¹ The information itself does not cause harm; it is how the information is used that has the potential to harm.¹⁶² Therefore, CSIS acts or relies on information suspected to be a product of torture only if it can be corroborated by independent information.¹⁶³

Generally speaking, CSIS discloses information to a foreign agency with a poor human rights reputation only after considering various issues. These issues include how the foreign agency may use the information — especially if it concerns Canadians — and the threat an affected individual poses to national security. CSIS also considers the foreign agency’s ability and willingness to respect caveats and protect information from public disclosure.¹⁶⁴

2.2.3

RCMP Officials

RCMP Policy and Operations

In contrast to DFAIT and CSIS, the RCMP does not produce human rights assessments of countries. Nor does the RCMP National Security Program receive annual reports of country conditions prepared by either DFAIT or CSIS.¹⁶⁵ However, RCMP policy does contemplate that knowledge of a country’s human rights record is necessary in carrying out its mandate. Deputy Commissioner Loepky testified that dealing with countries with poor human rights records is an extremely important issue. The RCMP condemns any form of human rights abuses, which are “contrary to RCMP values.”¹⁶⁶ If at any point in a case an investigator has reason to believe that information will be used to infringe on an individual’s human rights, the investigator should raise these concerns at the highest levels.¹⁶⁷

RCMP policy states that the Force will not become involved or appear to be involved in any activity that might be considered a violation of an individual’s rights, unless there is a need to comply with certain international conventions relating to terrorist acts. The policy goes on to say that the disclosure of information to a foreign government agency that does not share Canada’s respect for democratic or human rights may be considered if it is justified by Canadian

security or law enforcement interests; can be controlled by specific terms and conditions; and does not have a negative human rights connotation.¹⁶⁸

Knowledge of a country's human rights record is also relevant to the RCMP's mandate when acting on a detainee's statement from a country with a poor human rights reputation. Deputy Commissioner Loeppky testified that in such a case the RCMP would view the statement as presumptively unreliable to act on or put in the database.¹⁶⁹ In later testimony he qualified this response, saying that the statement would be seen to be of questionable value but would nonetheless be reviewed, and that this review was absolutely required before acting on the statement.¹⁷⁰ An allegation of torture is given serious consideration when assessing the reliability of the statement, but as one factor among others. The RCMP would also rely upon the ambassador, DFAIT, the public record (including U.S. State Department reports on human rights) and any corroborating facts investigators had before they received the statement.¹⁷¹

Evidence exists that the RCMP was aware of Syria's poor human rights reputation before Mr. Arar's removal to that country. Information came to Project A-O Canada and RCMP Headquarters during their investigations of Mr. Almalki and Mr. El Maati. For example, the RCMP was aware of Mr. El Maati's August 2002 allegations that he had been tortured in Syria. It also knew that sending the Syrian authorities questions to ask Mr. Almalki carried the risk of his being tortured; Jonathan Solomon raised these concerns at a meeting on September 10, 2002. The details of the latter incident are discussed below in Section 6.3.

Consultation with DFAIT Officials

If the RCMP wants to share information with a country with a poor human rights reputation, a consultation process is triggered to ensure compliance with policy. Deputy Commissioner Loeppky testified that an imminent threat would be grounds to consider proceeding operationally in the face of any advice that human rights abuses may occur or a Canadian citizen may be tortured. This approach would depend on the particular facts of the case, the RCMP's judgment and further discussions with DFAIT.¹⁷²

RCMP witnesses testified that they rely on DFAIT for information about a country's human rights record if it is deemed relevant to an investigation or an operational step — for example, sharing information with foreign entities, interviewing detained Canadians abroad or sending questions to be posed to a Canadian detainee abroad.¹⁷³ Consultation with DFAIT, and on occasion CSIS, was deemed necessary when sharing information with a foreign entity in a country with a poor human rights reputation such as Syria.¹⁷⁴ The Memorandum of Understanding between DFAIT and the RCMP,¹⁷⁵ as well as Ministerial Directives,

require the RCMP to consult with DFAIT before embarking on certain acts that may have an international dimension.¹⁷⁶ On national security cases, the RCMP would consult with DFAIT ISD.¹⁷⁷

RCMP Headquarters — CID

According to RCMP witnesses, the RCMP's Criminal Intelligence Directorate (CID) at Headquarters should be engaged prior to operational decisions involving a country like Syria. CID should deal with DFAIT on human rights issues because CID has greater experience and expertise on national security files than front-line RCMP investigators. In addition, CID needs to ensure central coordination of these files.¹⁷⁸ CID may also consult with agencies such as the Department of Justice and the Solicitor General's office before making a decision.¹⁷⁹

When asked about Syria's poor human rights reputation, CID officials testified that they were generally aware that Syria did not have the same system or standards as Canada, but were not aware that torture might be used during interrogation of detainees.¹⁸⁰ Superintendent Wayne Pilgrim testified that he was never advised of, nor were there discussions about, Syria's poor human rights reputation. However, he was aware of Mr. El Maati's August 2002 allegation of torture.¹⁸¹

Superintendent Pilgrim testified that he understood that there would be no contact between field units and foreign agencies without first going through Headquarters and/or dealing with the liaison officer in the respective country. However, he gave investigators two options: deal directly with the liaison officer with immediate notification to CID, or come through CID to facilitate that contact with the liaison officer. Either way, the liaison officer was the last point of contact and would facilitate the contact with the foreign agency.¹⁸²

Project A-O Canada

Discussions with DFAIT may also involve the investigative unit¹⁸³ — in this case Project A-O Canada. Project A-O Canada investigators either had no knowledge of Syria's human rights record or only generally knew that Syria operated under different standards than Canada. Inspector Cabana testified that he did not have personal knowledge of how Syria treated its detainees but was fully aware that it did not have the same human rights record as Canada, and that the *Charter of Rights and Freedoms* would not apply in Syria. He had not accessed the U.S. State Department human rights report on Syria and was unaware of the use of torture or incommunicado detentions to extract confessions as reported in these reports.¹⁸⁴ However, the possible use of torture and mistreatment during

interrogations was discussed and considered at any step of Project A-O Canada's investigation that involved Syria.¹⁸⁵

Project A-O Canada investigators received no training on dealing with countries or foreign agencies with poor human rights records or on the law relating to torture; training courses of this nature were not available to RCMP investigators.¹⁸⁶ Therefore, Inspector Cabana consulted with RCMP Headquarters and other government agencies who were the "experts" before dealing with Syrian authorities. These included the Department of Justice, CSIS, DFAIT and Ambassador Pillarella.¹⁸⁷

RCMP Liaison Officer Responsible for Syria

RCMP witnesses pointed out that the RCMP liaison officer in the region should also be consulted before establishing contact with a foreign agency, as he or she would have a much better understanding of the environment.¹⁸⁸ As noted earlier, the liaison officer is the last point of contact and facilitates the contact with the foreign country.¹⁸⁹ In this case, the RCMP liaison officer for Syria, Staff Sergeant Dennis Fiorido, was stationed in Rome and was responsible for supervising contact with foreign agencies in ten countries.¹⁹⁰ The liaison officer reports to the ambassador in the particular country and takes advice from the ambassador concerning human rights conditions if the RCMP plans to approach a law enforcement agency in that country.

Staff Sergeant Fiorido testified that, in this case, he did not review the U.S. State Department human rights reports, Amnesty International reports or DFAIT human rights reports about conditions in Syria. However, he had basic knowledge from media sources that Syria was a country in which human rights abuses may be a concern.¹⁹¹ As of August 2002, he was also aware of Mr. El Maati's allegation of being tortured while in Syrian custody, but said he assumed this was an allegation by someone "looking for some leverage to gain whatever he was intending to gain."¹⁹² As discussed in Section 6.3 below, Staff Sergeant Fiorido did not raise human rights concerns with RCMP investigators. Nor did he see it as his role to raise these concerns when he was asked to assist in operational matters involving Syria. As he said, "I am relying on someone else to raise those flags for me to consider."¹⁹³

3. EARLY CONSULAR ACTIVITIES, OCTOBER–NOVEMBER 2002

3.1

AMBASSADOR PILLARELLA'S RELATIONSHIP WITH GENERAL KHALIL

In his testimony, Ambassador Pillarella highlighted the importance of his relationship with General Hassan Khalil, the head of the Syrian Military Intelligence, in gaining consular access to Mr. Arar.

By October 2002, Ambassador Pillarella had served in Syria for approximately a year and had developed a number of contacts with senior Syrian officials. In the initial period of his posting, his contacts were confined to the Ministry of Foreign Affairs — in particular, to two deputy ministers there, Deputy Foreign Minister Suleiman Haddad and Deputy Foreign Minister Walid Mouallem.¹⁹⁴ Ambassador Pillarella had no relationship with the SMI in 2001, and he explained that diplomats — especially ambassadors — do not normally have access to security services, particularly to military intelligence.¹⁹⁵

However, over the course of 2002, Ambassador Pillarella was able to cultivate a more direct relationship with the SMI and General Khalil.¹⁹⁶ According to the Ambassador, in the 14 months after December 2001, the situation regarding consular access to detainees changed tremendously as a result of that relationship. The Ambassador thought that this improvement was accompanied by a significant change of attitude among the Syrians and extraordinary co-operation. As far as the Ambassador knew, he was the only ambassador to have contact with the SMI.¹⁹⁷ Mr. Martel maintained his own contact there through Colonel Majed Saleh, another senior official in the SMI.¹⁹⁸

As Ambassador Pillarella testified, the SMI was extremely powerful within the Syrian political framework.¹⁹⁹ In a government assessment of the SMI, it was noted that General Khalil reported directly to President Assad, and sat on the National Security Council with important political figures and the chiefs of intelligence agencies.²⁰⁰ The Ambassador agreed with this assessment.

Ambassador Pillarella also noted that the degree to which General Khalil was feared in Syria was likely an indication of the power he wielded over Syrian citizens. Among locals, General Khalil's name was not mentioned openly.²⁰¹

Clearly, General Khalil was a central and powerful figure in Syrian security and politics. It is apparent that — perhaps excluding President Assad himself — General Khalil was the Syrian official with the greatest influence over Mr. Arar's fate.

Ambassador Pillarella testified that, except for one meeting, he was always received by General Khalil in “a most friendly manner.” The Ambassador believed that the General’s relationship with him was genuine.²⁰² He noted later that General Khalil could always be relied on to keep his word and would respond quickly to requests for consular access and information.²⁰³

Henry Hogger, the U.K. ambassador to Syria at the time, testified that he was unaware of any other ambassador who had a relationship with General Khalil.²⁰⁴ According to Mr. Martel, by February 2003, the Ambassador had a “special relationship” with the General, as evidenced by Ambassador Pillarella’s ability to intervene with him and gain access to Mr. Arar.²⁰⁵

3.2

FIRST MEETING WITH GENERAL KHALIL REGARDING MR. ARAR

Ambassador Pillarella first met with General Khalil to discuss Mr. Arar in the morning of October 22, 2002.²⁰⁶ As noted above in Section 1.1, his instructions from Mr. Pardy were to do everything possible to obtain consular access to Mr. Arar, and to seek to have Mr. Arar released and returned to Canada as soon as possible.²⁰⁷

The meeting took place at the General’s offices, as did subsequent meetings between the two. However, travelling to the General’s offices proved to be an elaborate and complicated affair. The Ambassador’s driver was first instructed to drive to a rendezvous point, where a Syrian official got into the car and directed the driver to the General’s building.

In his testimony, the Ambassador denied knowing the location of the General’s office, except that it was in a large security compound in the middle of Damascus. Specifically, he testified that he did not know — and had never inquired — whether the General’s office was located in the Palestine Branch. Further, he was not aware of the Palestine Branch in 2002, or of its reputation as a place where torture is routinely employed. Asked whether he felt it was his responsibility to determine where the meeting was and whether it was in a detention centre, the Ambassador responded that it was immaterial, adding that “to deal with anybody else in Syria was totally and completely useless. We got Mr. Arar out and it was through dealing with Mr. Khalil.”²⁰⁸

Ambassador Pillarella testified that his main concern at the meeting was to obtain consular access, emphasizing that access to a detained Canadian had never been granted before in Syria. The Ambassador was successful, however, making arrangements with General Khalil for a consular visit the next day. Responding to a suggestion that this meeting was a demonstration of Canada’s leverage with the Syrians, the Ambassador explained that he was using the very

few things he had in hand to obtain access to Mr. Arar — such as the level of Canadian media interest.²⁰⁹

In the Ambassador's report describing this meeting,²¹⁰ he noted that, according to General Khalil, Mr. Arar had just arrived in Syria and had already admitted to connections with Pakistani terrorist organizations. Asked whether Mr. Arar's quick admission raised any questions in his mind, Ambassador Pillarella suggested that Mr. Arar must have been very afraid and had decided to say whatever the Syrians wanted to hear in order to avoid further pressure. Asked about the risk that Mr. Arar's admission was coerced through torture, the Ambassador said that he would not jump to that conclusion: "All I can say is that we wanted to have access to him as quickly as possible in order to verify that he was safe."²¹¹

Ambassador Pillarella's report went on to say that "it would be more prudent if we could announce that a consular officer had in fact met with Arar and that he is well." The Ambassador wrote this report before Mr. Martel's first visit, and before he knew of Mr. Arar's physical and mental condition.²¹²

According to Ambassador Pillarella, as of October 22, he had no evidence of torture and did not know what had happened to Mr. Arar.²¹³ However, he was generally aware of the Syrian practice of holding detainees incommunicado while they attempted to extract confessions.²¹⁴ Asked if there was a reason why the Syrians might have been lying about Mr. Arar's presence there for two weeks, and whether he believed General Khalil's version of events over Mr. Arar's, the Ambassador replied: "I don't have the facts to make the choice."²¹⁵

The Ambassador noted in his report that General Khalil had promised to pass on any information the Syrians gathered on Mr. Arar's implication in terrorist activities. The Ambassador testified that he did not solicit this information. Rather, the General offered to provide information to prove that Mr. Arar was a terrorist, in response to the Ambassador's position that Mr. Arar should be returned to Canada.²¹⁶ According to the Ambassador, it was important to gather this information so that it could be sent back to Ottawa, and corroborated or disproved. In his view, obtaining information from the Syrians' investigation would ultimately operate in Mr. Arar's favour, as it would allow the government to defend his interests. The Ambassador did not consider that a continued interrogation might involve torture, nor did it occur to him that agreeing to receive information from a Syrian interrogation might send a signal that was inconsistent with Canada's position that Mr. Arar should be released.²¹⁷

Ambassador Pillarella met with General Khalil on several subsequent occasions, each time repeating what he called "the mantra": "Mr. Arar is not sought for any offence in Canada. Mr. Arar is free to come back to Canada. Either you

have something on him and you charge him in a court of law or you release him.”²¹⁸

Distribution of the report within DFAIT

Ambassador Pillarella sent his report of the October 22 meeting to Mr. Pardy and Mr. Livermore via C4, a classified e-mail system, with copies to other DFAIT bureaus. According to the Ambassador, whatever the Embassy sent to the Consular Bureau was also copied to ISI because of the security aspects of the case. The Ambassador believed that it was his responsibility to inform ISI division and ISD bureau of information he obtained in the course of his consular duties, as ISI and ISD were responsible for the security aspects of Mr. Arar’s case.²¹⁹ Mr. Pardy also testified that ISI had its own responsibilities in this area, which included providing the Minister and senior DFAIT officials with information about the activities of Canadians overseas that could affect Canada’s security.²²⁰

DFAIT reactions to Ambassador Pillarella’s report

A number of witnesses commented on Ambassador Pillarella’s report. Mr. Livermore testified that while he had not been convinced of all the details, it was plausible that Mr. Arar had just arrived in Syria.²²¹ Asked for his reaction to news that Mr. Arar was being subjected to interrogation and had already admitted connections with terrorist organizations, Mr. Livermore testified that this was “precisely what one would expect of him if he were in detention in Syria. He would be subject to interrogation of some sort.” However, Mr. Livermore explained that DFAIT’s principal concern at this time was that Mr. Arar not be subjected to torture, and if there had been torture, that Ambassador Pillarella’s meeting with General Khalil would put a stop to it.²²² Mr. Livermore did not consider it problematic for an ambassador to a country with a poor human rights record to receive information obtained through the interrogation of a Canadian. He testified that in the context of security concerns in 2002, it was quite legitimate for Ambassador Pillarella to gather information on Mr. Arar to share with CSIS and the RCMP: “It would be natural for a head of mission to wish to pass on to all Canadian authorities any information they had on terrorist activities.”²²³

Scott Heatherington, the Director of DFAIT ISI, testified that his initial reaction to the report and information that the SMI was interrogating Mr. Arar was simply relief that Mr. Arar had been located. In his view, DFAIT’s reaction was “Well, now the work begins” in terms of consular access. Asked again whether the reference to the SMI’s continued interrogation and Mr. Arar’s immediate confession raised concerns of possible mistreatment, Mr. Heatherington replied that it did not. Rather, it suggested in his mind that Mr. Arar was “co-operating” and

providing information to the Syrians.²²⁴ As interpreted by another ISI official, James Gould, the Ambassador was making himself a recipient of Syrian interrogation information. Mr. Gould agreed that, despite the comments about interrogation, the Ambassador's report did not express any apparent concern about the possible mistreatment or torture of Mr. Arar.²²⁵

Unlike the others, Mr. Pardy's comments focused on his concerns about the information from the Syrians. He observed that Mr. Arar's alleged admission came very quickly, even for the Syrians. While he had accepted the information at face value when he received it on October 22, he came to view it sceptically the next day, in light of the Jordanian confirmation that Mr. Arar had only been in transit through Jordan, and Mr. Arar's statement to Mr. Martel that he had been in Syria for two weeks.²²⁶

Disclosure of the report to CSIS and the RCMP

Asked whether he would share information that was acquired in the course of his consular duties, Ambassador Pillarella testified that such information stayed "in house" and that it "is not shared with the RCMP or CSIS or anyone else." However, as ISI and ISD are not police agencies, "there is no risk that by passing it on to ISD or ISI, the person would be put in jeopardy."²²⁷

Notwithstanding Ambassador Pillarella's comments, his report of the October 22 meeting with General Khalil was distributed to both CSIS and the RCMP.²²⁸ The evidence is not wholly clear as to who, if anyone, authorized its distribution, in part because DFAIT did not maintain any written record of the information that it disclosed about Mr. Arar. Mr. Pardy testified that he authorized disclosure of consular reports on three occasions, including October 22, 2002.²²⁹ However, one of the three reports authorized for distribution was dated October 23, 2002.²³⁰ From the evidence overall, it seems most probable that Mr. Pardy authorized distribution of the October 23 report of the first visit with Mr. Arar, and not the October 22 report.²³¹

It appears that an official with DFAIT ISI or ISD made the decision to share the report with both CSIS and the RCMP. Mr. Livermore testified that in Mr. Arar's case, it would be "fairly natural" for DFAIT to pass it to both agencies.²³² He explained that ISD had resolved to share more information after 9/11, although the increased sharing was limited to the areas of criminal intelligence and national security information.²³³ Mr. Solomon's understanding was that, depending on the nature of the information, either Mr. Pardy or ISI would make the decision about whether to share documents.²³⁴ If the liaison officers (LOs) wanted ISI to disclose something, ISI would assess it to determine if it was personal information. Mr. Solomon explained that some information in the C4

messages was consular, while other information was political or intelligence-related. ISI did not consider comments about Mr. Arar from Syrian intelligence to be consular, but more related to intelligence. If the information was not “pure consular,” ISI was able to make its own determination of whether to release it.²³⁵

Inspector Roy, the RCMP LO at DFAIT, sent the Ambassador’s report to CID/NSOS (Criminal Intelligence Directorate/National Security Offences Section) at RCMP Headquarters on October 22, and Headquarters forwarded it to Project A-O Canada on October 24.²³⁶ It is not clear from the evidence exactly how the report was transmitted to CSIS; however, CSIS documents indicate that it received its copy of the report through Inspector Roy on October 24.²³⁷ According to a CSIS official, it was not unusual for CSIS to receive this report.

Purpose of disclosing the Ambassador’s report

Inspector Roy could not recall which ISI official had provided him with the report. However, DFAIT did not attach any conditions on how it could be distributed within the RCMP, nor any caveats or other restrictions on its redistribution.²³⁸ In a fax forwarding the report to Headquarters, Inspector Roy wrote “for your information,” but did not indicate any restrictions on how the report could be used or distributed.²³⁹

On November 7, Project A-O Canada asked Inspector Roy whether the report included caveats, and if the RCMP could refer to it in a legal proceeding. Inspector Roy asked his ISI colleagues, Mr. Solomon and Mr. Saunders, who saw no problem and agreed that the RCMP could use the report as evidence.²⁴⁰ There is no indication that these officials considered the risk that Mr. Arar’s admission of terrorist connections, referenced in the report, was coerced through torture.

Mr. Pardy assumed that ISI would share the report with the RCMP or CSIS. While not critical of its distribution generally, he believed that DFAIT had a duty to ensure that the RCMP properly understood the information. In particular, DFAIT should have ensured the RCMP understood that reference to Mr. Arar’s alleged “confession,” which was obtained by the Syrians during incommunicado detention, was unreliable. It was not comparable to a confession obtained in a proper Canadian investigation. In fact, in Mr. Pardy’s view, without independent verification, the confession was worthless.²⁴¹

Mr. McNee advocates for Mr. Arar’s return

On the same day Ambassador Pillarella met with General Khalil in Damascus, Assistant Deputy Minister McNee discussed the Arar case with Syrian

Ambassador Arnous in Ottawa. When Mr. McNee advocated that Mr. Arar be allowed to return to Canada, Mr. Arnous responded that it would depend on the results of the Syrian investigation. Mr. McNee went on to comment that Mr. Arar's case was a strange one as the Canadian government had no information suggesting he was a member of al Qaeda.²⁴² Mr. McNee's approach reflected the strategy and objectives established by Mr. Pardy, who, by this time, was briefing Mr. McNee on the Arar case.²⁴³

3.3

FIRST CONSULAR VISIT

At his meeting with Ambassador Pillarella on October 22, General Khalil agreed that the Canadian consul could visit Mr. Arar the next day. Léo Martel, the senior Canadian consular official in Damascus, had extensive consular experience. He first provided consular services to detainees during a posting to Haiti in 1984, and had 11 years' experience as a foreign affairs officer in North Africa and the Middle East, including four as consul at the Canadian Embassy in Cairo. He had just transferred to the Damascus embassy as management/consular officer (MCO) and consul in September 2002.²⁴⁴

Apart from a few basic phrases, Mr. Martel does not speak or understand Arabic, and he was always accompanied on the consular visits by an SMI officer who acted as an interpreter.²⁴⁵ To varying degrees, the Syrians insisted at every consular visit that Mr. Arar speak Arabic.

Senior DFAIT officials in Ottawa may not have appreciated that Mr. Martel was linguistically disadvantaged during the consular visits. Mr. Livermore testified that Mr. Martel spoke "pretty good" Arabic. He noted that the idea of sending a fluent Arabic speaker to meet Mr. Arar had been discussed, but was dropped because DFAIT was satisfied that Mr. Martel's reporting was satisfactory.²⁴⁶

Mr. Pardy's instructions

On October 22, Mr. Pardy sent his instructions for the first consular visit.²⁴⁷ He prefaced these by acknowledging that the circumstances of the visit might preclude Mr. Martel from doing anything more than observing Mr. Arar's situation or asking very transparent questions. However, he asked the consul, if possible, to state the following during the visit:

- the Canadian government was in daily contact with Mr. Arar's family;
- his situation was a matter of great public concern in Canada, and Minister Graham had protested to the Americans;

- Canada lacked accurate details about how he was removed from the United States and when he arrived in Syria;
- the Syrian government had assured Canada of a visit every three or four days;
- Canada was trying to make arrangements for his return, but this might take some time, and in the meantime would try to ensure he received appropriate amenities; and
- his wife was awaiting a message from him.

Mr. Martel testified that he was not shown Mr. Livermore's October 10 e-mail to Ambassador Pillarella, which expressed concern that Mr. Arar might be "aggressively questioned" in Syria. Nor did the Ambassador share its contents with him.²⁴⁸ He speculated, however, that seeing this e-mail would not have changed his actions during the first consular visit.²⁴⁹ During his testimony, Mr. Martel was also referred to an October 15 CAMANT note citing three newspaper articles; one of these, from the *New York Times*, dated October 12, 2002, expressed concern that Mr. Arar might be subjected to severe punishment by the Syrians.²⁵⁰ He recalled that he had read the articles and had asked that they be entered into CAMANT. A *Globe and Mail* editorial of October 19, 2002, entitled "The Alarming Case of Maher Arar" and noting credible reports of torture in Syrian jails, was also entered into the CAMANT system on October 19, 2002.²⁵¹

Mr. Martel's travel arrangements were similar to Ambassador Pillarella's the previous day. After he had switched to a car with Syrian officials, Mr. Martel asked his SMI contact, Colonel Majed Saleh, why Syria was detaining Mr. Arar. Colonel Saleh responded that Mr. Arar had confessed to knowing members of a terrorist group. Mr. Martel testified that he "really took that with a grain of salt."²⁵² Colonel Saleh also made it clear to Mr. Martel that he was not to discuss Mr. Arar's case during the visit; he could ask only about family matters and his well-being: "I was not to raise unpleasant questions."²⁵³

The Colonel's driver took them to a facility that he later learned was the Palestine Branch.²⁵⁴ There he learned that he was meeting with SMI officials, at least three of whom, according to his recollection, were colonels. Colonel Saleh acted as his interpreter, as Mr. Martel had not been allowed to bring his own. Mr. Martel testified that for about 30 minutes, the parties exchanged social pleasantries over coffee, as is typical in Syrian culture.²⁵⁵ He believed the security officials were frustrated and nervous about the meeting.²⁵⁶

When Mr. Arar was brought into the room, Mr. Martel observed that he was walking normally, but he found him very submissive and disoriented. His head was down and he looked surprised when he first saw Mr. Martel.²⁵⁷ Mr. Martel

shook Mr. Arar's hand and told him he was there to help. He noted that Mr. Arar's handshake was "normal" and that he did not withdraw his hand. Mr. Martel did not look at Mr. Arar's hands, but at his eyes, to get a sense of his well-being. Mr. Arar was then seated at a distance away from the consul.²⁵⁸

Mr. Martel said Mr. Arar's eyes "were popping." He testified that Mr. Arar sent him eye signals that communicated that he could not speak freely. To Mr. Martel, Mr. Arar "looked like a frightened person" and was obviously scared.²⁵⁹ The meeting lasted about 30 minutes.

In his report, Mr. Martel noted that Mr. Arar appeared to be healthy but "of course it is difficult to assess." When asked why this was difficult to assess, he explained that he is not a doctor, could not conduct a medical examination of Mr. Arar, undress him or view him closely, and could ask certain questions only. He noted that the Syrians would never let him see an individual who looked ill-treated.²⁶⁰ He testified that he did not see any bruising on Mr. Arar; however all he could see were Mr. Arar's face and eyes, and how he walked and sat.²⁶¹

Mr. Martel's report stated that he began to question Mr. Arar in accordance with Mr. Pardy's instructions, but it was obvious that he was not free to answer all the questions. They spoke in English and French, and Colonel Saleh translated into Arabic, with the Syrians writing down the entire conversation. Mr. Martel tried to learn more about the period during which Mr. Arar was missing by asking how long he had been in Jordan. He testified that Mr. Arar tried to answer and said he had been in Jordan for only a few hours. However, the Syrians cut off this question by directing Mr. Arar not to answer, at which point Mr. Arar "grew pale."²⁶² Mr. Martel speculated that the Syrians did not want him to know they had had Mr. Arar in custody for a number of days. He testified that when drafting the report, he and Ambassador Pillarella believed the Syrians were lying and that there was enough evidence to show that. In his words, "Someone was not telling the truth, and it wasn't Maher."²⁶³

Mr. Martel testified that he told Mr. Arar that Canada's intervention was limited because the Syrian government took the view that he was a Syrian citizen. While the Syrians had promised regular consular visits, he could not guarantee this. In Mr. Martel's opinion, Mr. Arar needed to understand these limitations.²⁶⁴

As noted in Mr. Martel's report, they also discussed the well-being of Mr. Arar's wife and family, and his wife's financial situation. Mr. Martel concluded the visit by asking if Mr. Arar wished the Embassy to provide him with anything. He testified that it was obvious that the Syrians dictated Mr. Arar's answer — which was that his needs were all taken care of by his Syrian hosts.²⁶⁵ The Syrians also forced Mr. Arar to repeat in English:

I am Syrian and I obey the law of Syria. I am proud of my country of origin and I am also proud of Canada, my country of adoption. I have been respected by my Syrian brothers and I am happy to have come back to Syria. The authorities have not exercised any pressure on me. You can see I feel well. Anything I ask for I receive.

Mr. Martel saw no apparent signs of sore or red wrists or palms, and no blue skin around Mr. Arar's face or neck. He could not say whether Mr. Arar was wearing a long-sleeved shirt or a t-shirt, although he did remember that he was wearing blue trousers and light summer shoes. Mr. Martel testified that each time he saw him, the Syrians had prepared Mr. Arar to "look nice," and that it appeared Mr. Arar was able to shave. However, he could not remember whether Mr. Arar had a beard. He admitted that he did not know what it would mean to an observant Muslim man to have his beard removed, although he believed it indicated an attempt at humiliation. He did not know or inquire whether Mr. Arar was a practising Muslim.²⁶⁶

When it was suggested to Mr. Martel that he did not consider that Mr. Arar had been tortured because he observed no evidence, Mr. Martel responded:

But he didn't have any visible signs. In other words, he spoke to me coherently. His eyes were normal. He could walk. Even though he looked cowed, as I said before, I didn't know why. I couldn't draw the conclusion, and say, for instance to the Department, "I noticed one thing or another, and I believe that he has been tortured."²⁶⁷

The Ambassador's reaction to Mr. Martel's report

Ambassador Pillarella testified that he approved this report, as he did with most of Mr. Martel's reports, sometimes inserting his own comments.²⁶⁸ He believed that the Syrians were extremely nervous about the meeting, and it was therefore understandable that one officer had declined to give his name.²⁶⁹ He agreed he would characterize what the Syrians had dictated for Mr. Arar to say as "a pile of baloney."²⁷⁰ Still, the Ambassador testified that it would have been impossible to request a private meeting. In that situation the Canadians were "beggars, not choosers. We were on their territory, not on ours." Canada was fortunate to have a visit with Mr. Arar, and that he was alive.²⁷¹

Ambassador Pillarella was equivocal about the discrepancy between the Syrians' claim that Mr. Arar had just arrived in Syria and Mr. Arar's statement that he had been there for two weeks. He testified that he did not know whom to believe — Mr. Arar or the Syrians.²⁷² When asked whether Mr. Arar's statement

raised concerns about incommunicado detention, he responded “maybe.”²⁷³ He emphasized that he could not be sure where Mr. Arar had been during those two weeks. He felt it would have been difficult and tactless to raise this question with Deputy Minister Haddad.²⁷⁴

Ambassador Pillarella testified that he believes in facts. He said he had no evidence that Mr. Arar had been physically tortured. He questioned the account Mr. Arar gave after his release of being beaten with cables. He asserted that Mr. Arar had shaken hands firmly with Mr. Martel without withdrawing his hand in pain, and that Mr. Martel had not reported bruising on his hand.²⁷⁵ When asked if Mr. Arar could have been subjected to mental torture, the Ambassador testified that, while he was no expert, he could only imagine that a victim of mental torture would show some outward signs.²⁷⁶

DFAIT reactions to Mr. Martel's report

The Embassy sent Mr. Martel's report to a number of DFAIT divisions and bureaus, including Consular Affairs, ISD, ISI, Assistant Deputy Minister John McNee and the Middle East Bureau. Mr. Livermore testified that this made no difference to the fact that it addressed consular issues.²⁷⁷ Mr. Pardy testified that the consular reports were sent to ISI because ISI had responsibilities to provide the Minister and senior DFAIT officials with information about Canadians overseas that could affect national security or international relations.²⁷⁸ The Embassy did not send the report to CSIS or the RCMP.²⁷⁹

Mr. Pardy testified that notwithstanding the negative aspects indicated in the report and the fact that it was not the best situation, he could only characterize the news of the consular visit as good — particularly in light of the approach the Syrians had taken with Mr. El Maati and Mr. Almalki. The report also provided DFAIT with a benchmark of Mr. Arar's condition, to which consular officials later referred.²⁸⁰ However, Mr. Pardy was not surprised to learn that Mr. Arar had been resigned and submissive, and had not been free to speak. He concluded the Syrians had held Mr. Arar incommunicado and had likely subjected him to an abusive interrogation.²⁸¹ Myra Pasty-Lupul, the case management officer for the Middle East region, had much the same reaction.²⁸²

Mr. Livermore also received the report. He said he reached no conclusion as to whose version of events was correct — Mr. Arar's or the Syrians' — because he had no evidence to account for the period when Mr. Arar was missing.²⁸³ When asked whether the Syrians telling Mr. Arar in Arabic not to answer questions meant they were controlling the discourse, Mr. Livermore responded that he could not say. He noted that it is the norm that detainees are required to speak in the local language. Overall, when first referred to the report,

Mr. Livermore's evidence was that he simply drew no conclusions beyond what Mr. Martel had reported. His only opinion, which he qualified as personal, was that he had no doubt on reading the report that Mr. Arar was having a "difficult time."²⁸⁴ However, Mr. Livermore later testified:

Right from the very first report that we received from Ambassador Pillarella, and the subsequent consular reports that we received from Léo Martel, there is not, as I recall, one hint of torture entering the equation.²⁸⁵

Mr. Pardy, however, was far more certain about what had occurred. He gave credence to Mr. Arar's words.²⁸⁶ He pointed out that the Syrians' claim that Mr. Arar had arrived "without warning" from the United States contradicted Attorney General Ashcroft's statement that before sending Mr. Arar to Syria, the Americans had received assurances he would not be tortured. Mr. Pardy testified that all this information crystallized in his mind on October 23, and he concluded that Mr. Arar had been in Syria from about October 9. He believed that while senior Syrian officials were promoting a different view, the word did not get down to the people holding Mr. Arar, or they would have intervened to correct Mr. Arar's statement.²⁸⁷

DFAIT briefs the Minister's office

When referred to Mr. Martel's report, Robert Fry, senior policy analyst for Minister Graham, testified that "I don't think anyone really believed that they only had him for 24 hours. I mean, I think our suspicion all along was that he had been in Syria longer than 24 hours." He also testified that he always took Mr. Arar's so-called confession with a grain of salt, because he might have provided it to "get people off his back."

Mr. Fry nonetheless disagreed that there were reasonable grounds to suspect torture, testifying that his initial reading of the report would not support that conclusion.²⁸⁸ When asked if he was generally aware of the possibility that Mr. Arar would be subject to mistreatment, he responded that "in the Minister's office we have to deal with the facts that are given to us, the specifics. Just because someone says in a general sense that a particular country, a particular regime, has a bad track record, you know, we couldn't just go out and start making accusations."²⁸⁹

Mr. Fry explained that, throughout this period, he relied extensively on Mr. Pardy for information with which to brief Minister Graham.²⁹⁰ He testified that Mr. Pardy briefed him about the consular visit on October 23 or 24. The evidence of that briefing is unclear. According to Mr. Fry, Mr. Pardy told him that

Mr. Arar basically looked fine, although he appeared disoriented.²⁹¹ However, according to Mr. Pardy, he was operating on the working assumption that Mr. Arar had possibly been tortured, and was reporting this view, horizontally and vertically, to other officials.²⁹²

Whatever happened when Mr. Pardy briefed Mr. Fry, it seems clear that Minister Graham was not informed of Mr. Pardy's working assumption. The Minister testified that Mr. Pardy's concern that Mr. Arar had been tortured was not conveyed to him: "I was not told that that was a conclusion that had been drawn by anybody."²⁹³ Asked if he was aware in October 2002 of Mr. El Maati's allegation that he had been tortured by Syrian security officials, the Minister recalled that he did not learn this until after this time.²⁹⁴

On October 23, after receiving Mr. Martel's report, Mr. Pardy and Ms. Pastyr-Lupul updated a ministerial backgrounder and question and answer media lines.²⁹⁵ The backgrounder did not provide a complete or accurate picture of Mr. Arar's circumstances, and excluded some important information. It did not note that Mr. Arar contradicted the statement that he had just arrived from Jordan. It did note that Mr. Arar said his needs were being taken care of by the Syrians — but failed to state that the Syrians had dictated this answer to him. It noted that Mr. Arar appeared to be healthy, but excluded Mr. Martel's comments that Mr. Arar had looked resigned and submissive.²⁹⁶ It made no reference to concerns about abuse, mistreatment or torture.

Ms. Pastyr-Lupul testified that she was confident Assistant Deputy Minister McNee would have conveyed the full picture to Minister Graham or his staff, as it was his responsibility to brief the Minister.²⁹⁷ She explained the lack of qualification of Mr. Arar's appearance in the backgrounder by saying that DFAIT wanted to express publicly that Mr. Arar appeared to be in good health, but could not state all its concerns in the public media lines. However, the backgrounder is entitled "For Minister's Eyes Only." Ms. Pastyr-Lupul testified that documents entitled "For Minister's Eyes Only" went to many more people than the Minister, but agreed that this backgrounder was not readily available to the public, and therefore could have been more candid than a document intended for public release.²⁹⁸

The backgrounder, which contains personal information about Mr. Arar, was also given to RCMP Inspector Roy.²⁹⁹ There is no evidence that DFAIT conveyed the fuller picture to Inspector Roy when sharing this document.

The backgrounder also failed to put forward Mr. Pardy and Ms. Pastyr-Lupul's conclusion that Mr. Arar had been held incommunicado, a factor that increases the risk of torture. Ms. Pastyr-Lupul testified that it was not clear when Mr. Arar had arrived in Syria — October 9 or another day — because it

depended on factors like the flight duration and time difference.³⁰⁰ However, she testified that she had no reason to doubt that Mr. Arar was telling Mr. Martel the truth about being held in Syria for two weeks.³⁰¹

When questioned about these briefing materials, Minister Graham testified that the question and answer comment about Mr. Arar's good health, in the absence of other information, was "certainly putting a pretty positive gloss on it." The Minister agreed that the question and answer was inconsistent with Mr. Martel's report; had he seen this report, he would instead have chosen to say that "we are not in a position at this time to comment on his condition."³⁰²

Mr. Martel's report is shared with the RCMP

Mr. Martel's report of his consular visit with Mr. Arar was shared with the RCMP on three separate occasions, but apparently not with CSIS.³⁰³ Inspector Roy was given the consular report on October 24, to pass on to RCMP CID. Inspector Roy testified that ISI asked him to distribute this report, and that he did not remember any conditions being placed upon it. He said that, while he did not personally know who had authorized disclosure of DFAIT documents, Mr. Heatherington had solid control over information coming into and going out of ISI.³⁰⁴ He confirmed that he also received a request for a copy of the report from Project A-O Canada, which he delivered to Sergeant Callaghan on October 25.³⁰⁵ Finally, Mr. Heatherington also faxed the consular visit report directly to Inspector Cabana on November 4.³⁰⁶ Within a day, it was further distributed within the RCMP, from "A" Division to "C" Division.³⁰⁷

Policies and protocols governing the sharing of consular information

As discussed in Annex 3, consular officials are guided in the exercise of their duties by the Department's *Manual of Consular Instructions*.³⁰⁸ Mr. Heatherington testified that this manual provides general policy guidance, but legislation provides the final answer.³⁰⁹ Policy 2.4.10 of the manual addresses how to resolve a real or perceived conflict of interest between a mission's consular program and its security programs:

Potential conflicts of interest, including perceived precedence of responsibility in police liaison and consular matters, should be adjudicated by the Head of Mission, who must weigh the merits of any case in the context of relations with the country concerned and of the rights and interests of the Canadian citizen involved, in consultation as appropriate with Headquarters (Consular Policy Division – JPP, Consular Operations Division – JPO, Legal Advisory Division – JLA, Security Division – ISS)

...

There are, in addition, security intelligence officers (CSIS) at a number of missions. Information regarding individual Canadians which is gathered by consular personnel in the performance of their duties is not to be divulged to Liaison and Security Intelligence officers without the prior agreement of the person concerned.³¹⁰

DFAIT also publishes *A Guide for Canadians Imprisoned Abroad*.³¹¹ The *Guide* creates a strong expectation of privacy for detainees, particularly with respect to RCMP investigations. Under the heading “Protection, Advice and Assistance,” it states:

If you are detained or arrested in a foreign country and you choose to talk to Canadian officials, any information you give them will remain completely confidential and is protected under Canada’s Privacy Act. It will not be passed on to anyone, other than consular officials concerned with your case, without your permission. You have the right, for example, to determine who will be notified of your situation, and who may act as your representative. Your family and friends will not have access to any information without your consent. The Royal Canadian Mounted Police (RCMP) and other police agencies have their own international contacts, however, and may know of your circumstances through those sources.³¹²

In his testimony, Mr. Pardy noted that the *Guide* predates consular cases like Mr. Arar’s, needs to be updated and made more specific, and is being rewritten.³¹³

Several witnesses testified that the *Privacy Act* governs the sharing of information gathered in a consular visit.³¹⁴ Mr. Livermore testified that he believed that section 8 of the Act governed the disclosure of consular information. Ambassador Pillarella also testified that, contrary to the plain meaning of the *Guide*, the Consular Bureau in Ottawa may share the information given to them by a detainee in confidence, as long as this decision complies with the *Privacy Act*. The Ambassador believed that, of all the information in Mr. Martel’s report, only Mr. Arar’s letter to his wife should be classified as personal information.³¹⁵

Mr. Pardy authorized distribution of consular visit reports to the RCMP

Mr. Pardy and Mr. Solomon both testified that when ISI wished to disclose a consular document to another agency, Mr. Solomon would contact Mr. Pardy and seek approval. Mr. Pardy testified that it was his responsibility to decide whether information that could be “broadly categorized as consular” could be disclosed. In his opinion, the reports of the eight consular visits and the report of the members of Parliament visit were “exclusive consular information.”³¹⁶

Over time, three reports of consular visits with Mr. Arar were shared with the RCMP. The first was the report of the consular visit of October 23. It is unclear on what date Mr. Pardy authorized sharing this report with the RCMP. Mr. Pardy testified that he gave permission to share consular reports directly to Mr. Solomon. Although there is no documentary record, Mr. Pardy testified that he is certain that Mr. Solomon would have come to him on each occasion to seek permission. Likewise, Mr. Solomon testified that he always consulted Mr. Pardy.

Mr. Pardy only granted Mr. Solomon and the ISI permission to release consular information to the RCMP. He testified that Mr. Solomon never consulted him about disclosing documents to CSIS.³¹⁷ The report of the October 23 consular visit was not disclosed to CSIS.

There is no evidence that DFAIT had a system to record disclosures of DFAIT information — including personal information — to other agencies.³¹⁸

Mr. Pardy's justifications for sharing consular information with the RCMP

Mr. Pardy testified that he decided to authorize the release of consular reports to the RCMP for two reasons. First, Mr. Arar had consented to the disclosure of his personal information. Second, he hoped that disclosing consular information to the RCMP would assist Mr. Arar, particularly by giving pause to the RCMP's desire to travel to Syria, a matter that had been discussed prior to this.³¹⁹

Mr. Pardy confirmed that consent was the most important basis for his decision to disclose Mr. Arar's personal information.³²⁰ In his view, Mr. Arar gave consent to DFAIT to disclose the details of his case to anyone who could help him during Maureen Girvan's consular visit in New York on October 3. Specifically, he relied on Ms. Girvan's October CAMANT note 28 of October 3, 2002, which states:

Mr. Arar gave his verbal approval to discuss case with his brother, mother-in-law, and wife — anyone who could help him, including his company MathWorks.³²¹

Mr. Pardy testified that he interpreted "anyone who could help him" to include the RCMP and CSIS. He read this as indicating that Ms. Girvan had expressly explained that their meeting was confidential, and that Mr. Arar had given his consent to waive confidentiality.³²² Indeed, Mr. Pardy testified that he read this as a plea or cry for help to Canadian authorities. He claimed that Mr. Arar did not need to know the identities of the recipient agencies, so long as Mr. Pardy judged that those agencies were able to help him.³²³

Mr. Arar has not testified. There is no evidence that he and Ms. Girvan discussed sharing his information with the RCMP or CSIS, or with anybody beyond a circle of family and co-workers noted by Ms. Girvan.

Mr. Martel testified that a Canadian detainee has an expectation of privacy for consular visits. He expressed surprise that his consular reports were shared with the RCMP and CSIS at the time of his consular visits to Mr. Arar.³²⁴ Ms. Pastyr-Lupul³²⁵ and Ms. Girvan³²⁶ also testified that it was not normal practice to share consular reports outside DFAIT.

The Consular Bureau did not give Mr. Martel's consular reports to Mr. Arar's family or their supporters. Mr. Pardy was loathe to see Mr. Martel's written reports turn up in the media, and feared that Dr. Mazigh was not always sensitive to concerns about negative publicity. However, Mr. Pardy wrote to Dr. Mazigh on the eve of the first consular visit and advised that she could give information about the first visit to the media after it had occurred.³²⁷ Mr. Pardy never offered Dr. Mazigh the consular reports on the condition that she must not release them. Instead, DFAIT gave Dr. Mazigh verbal reports only, though Mr. Pardy testified that she received 80 to 90 percent of the information.³²⁸

In explaining his second reason for authorizing disclosure of Mr. Martel's consular reports to the RCMP, Mr. Pardy noted that the *Privacy Act* allows information to be used for the purpose for which it was collected. He testified that DFAIT was compiling information from the consular visit to assist Mr. Arar. Therefore, in Mr. Pardy's view, it was appropriate to pass this consular information to anybody who might be willing to help Mr. Arar. He testified that he relied on the "consistent use" exception in the *Privacy Act*.³²⁹ When asked if he thought the RCMP was actually trying to help Mr. Arar, Mr. Pardy said he assessed the information on a case-by-case basis, weighing its potential to injure Mr. Arar against any potential benefits.³³⁰

Mr. Pardy explained that he authorized the disclosure of select consular information to the RCMP to discourage the RCMP from travelling to Syria. In Mr. Pardy's mind, disclosure of this consular information to the RCMP would not cause Mr. Arar any additional difficulties, and might even "have softened a heart or two" amongst the RCMP. He said he wanted to do anything he could to prevent the RCMP from turning up in Syria, and believed that the price of disclosing Mr. Arar's personal information was reasonable.³³¹

Mr. Pardy testified at length on this issue over the course of the Inquiry. He often used language that indicated his process of "weighing" or "balancing" the potential disadvantages of sharing Mr. Arar's personal information against the potential advantages.³³² He explained at one point that based on his past experiences as a liaison officer, the "basic rule" is that information exchange should

not create a problem for an individual.³³³ Mr. Pardy disclosed Mr. Arar's personal information where he judged the information was "not prejudicial" to Mr. Arar's interests, to determine whether DFAIT could help Mr. Arar.³³⁴

DFAIT ISD's and ISI's explanation for disclosing consular information

Witnesses from DFAIT ISD and ISI, which handed over Mr. Arar's consular information to CSIS and the RCMP, explained why, in their view, the reports were shared. Mr. Heatherington testified that consular reports were shared to brief ministers and deputies on how detainees were being treated, what was known about the detainees, and the allegations against them. He acknowledged that they included personal information that DFAIT would normally protect. According to Mr. Heatherington, DFAIT shared information about Mr. Arar, and CSIS and the RCMP accessed that information, for reasons of national security.³³⁵

When referred to Mr. Martel's report of October 23, Mr. Livermore testified that DFAIT ISD "would have been free to share this kind of report with respect to Mr. Arar." He reasoned that DFAIT was sharing information with the RCMP to determine Mr. Arar's location, and that sharing was therefore for the express purpose of assisting Mr. Arar. However, he confirmed that DFAIT did not change its position once Mr. Arar had been located.³³⁶

Contrary to Mr. Pardy, Mr. Livermore testified that DFAIT continued to disclose Mr. Arar's personal information to the RCMP after he had been located because the case involved criminal and national security issues. As mentioned in Section 3.2, after 9/11 ISD resolved to share more information in these two categories. However, Mr. Livermore confirmed that ISD did not pass any protocol or policy after 9/11 to govern increased sharing of this information — instead, it tried to establish systems to enable other agencies to acquire DFAIT information in a timely way. He was unsure whether ISD had notified Consular Affairs of the two categories. He noted that most of the material ISD shared was not consular information, the release of which is controlled by Consular Affairs. It appears from Mr. Livermore's evidence that increased sharing was in one direction only; he testified that, as a matter of course, the RCMP did not share information with DFAIT, nor was there any reason they should. In his estimation, only 20 to 40 of 700,000 consular cases involved these issues.³³⁷

RCMP reaction to the consular report

Inspector Cabana testified that his interest in using the information in Mr. Martel's consular report was to further Project A-O Canada's investigation of terrorist threats, rather than to assist Mr. Arar. Inspector Cabana understood that DFAIT had shared Mr. Martel's report with the RCMP to further his investigation. When

he was told that Mr. Pardy decided to disclose the consular report to encourage the RCMP to “stand down” and not travel to Syria, Inspector Cabana responded that this was actually contrary to his discussions with DFAIT ISI and Ambassador Pillarella on November 6, 2002.³³⁸

There was no evidence that the RCMP ever used, intended to use, or indicated that it would use the information disclosed by DFAIT to assist Mr. Arar.

Inspector Cabana was unaware that DFAIT informs Canadians that the information they give to consular officials will be held in strict confidence.³³⁹ In the Inspector’s experience, it was a “precedent” to receive a consular report from DFAIT. He testified that his concern was not whether Mr. Arar had given consent to disclose his personal information to the RCMP, but rather whether information reaching Project A-O Canada could be admissible in legal proceedings. He agreed that even if the consular report was not admissible evidence, he would still want it as intelligence.³⁴⁰

3.4

SECOND CONSULAR VISIT

Continuing consular efforts

By October 25, a range of consular efforts was underway. Officials in Ottawa, New York, Damascus and Tunis worked to assist Mr. Arar and Dr. Mazigh without regard to the American allegations against Mr. Arar. As Ms. Pasty-Lupul testified, such allegations were irrelevant to the performance of Canadian consular duties.³⁴¹ Mr. Pardy in particular spent a great deal of his time on Mr. Arar’s case, working on it almost every day over the next ten months, with the consistent objective of returning Mr. Arar to Canada as quickly as possible.³⁴²

On October 25, Mr. Pardy and Ms. Pasty-Lupul updated DFAIT’s media lines and a backgrounder for the Minister.³⁴³ Based on Mr. Pardy’s conclusion that Mr. Arar had been in Syria since October 8 or 9, they amended the media material to state that the Jordanian government had advised that Mr. Arar had been in Jordan, but only “in transit” to Syria.³⁴⁴ They added that Mr. Arar appeared well, but was not allowed to answer all questions asked by the Canadian consul.³⁴⁵ Consistent with Mr. Pardy’s strategy, the media lines stated that the government’s goal was to return Mr. Arar to Canada at the earliest possible time. They also stated that Canadian authorities did not have any information to support the claim that Mr. Arar was a member of al Qaeda.

Canadian officials continued efforts to have the Americans explain their actions regarding Mr. Arar.³⁴⁶ In an attempt to understand American laws independently of U.S. government representations, Consular Affairs at DFAIT

consulted with the Center for Constitutional Rights.³⁴⁷ DFAIT officials also maintained a continuing dialogue with the Arar family.³⁴⁸ For example, Ms. Pastyr-Lupul and Mr. Pardy met with Maher Arar's brother, Bassam, on October 25;³⁴⁹ Mr. Pardy e-mailed Dr. Mazigh with an update of their efforts on October 27;³⁵⁰ and Dr. Mazigh gave him a letter for her husband on October 28.³⁵¹ Mr. Pardy also tried to put Mr. Arar and his wife in telephone contact, but was unsuccessful.³⁵²

Mr. Pardy's instructions

By October 28, preparations had begun for a second consular visit, which was scheduled for the next day. Mr. Pardy e-mailed Ambassador Pillarella and Mr. Martel, noting that he did not have much to add to his previous instructions.³⁵³ He told Mr. Martel what he should look for in the visit, and to determine whether there was any change in Mr. Arar's appearance or demeanour since the first visit.

Mr. Pardy also instructed Ambassador Pillarella to try and find out how the Syrian investigation was proceeding, and if the Syrians had reached any conclusions. Mr. Pardy did not consider that this request might be open to criticism, explaining that DFAIT needed to understand the Syrians' intentions if it was to assist Mr. Arar. He noted that this is a standard instruction to ambassadors and consular officers because additional information informs future actions.³⁵⁴

Mr. Pardy concluded by requesting that Ambassador Pillarella inform him about any possible visits by RCMP and CSIS officials to meet with Mr. Arar, Mr. Almalki or Syrian officials. It is possible that Mr. Pardy may have learned of potential visits from Mr. Solomon, who had contacted him on October 28, the same day he began drafting a memorandum concerning RCMP proposals to visit Syria or send questions for Mr. Almalki.³⁵⁵ Mr. Solomon was aware at this time that the RCMP and CSIS might visit Syria.³⁵⁶ However he learned of the intended visits, Mr. Pardy testified that his message was an effort to sensitize the Ambassador to the risk that CSIS and RCMP LOs posted overseas might attempt to involve themselves in Mr. Arar's case. His concern was that CSIS or RCMP personnel might travel to Syria without the knowledge of Consular Affairs or DFAIT Headquarters.³⁵⁷

Limits on Mr. Martel's inquiries

Mr. Martel understood that the Syrians had set limits on this visit, just as they did on all consular visits. Immediately prior to the visit, his SMI interpreter warned him that he was forbidden to discuss the specifics of the case with Mr. Arar. The Syrians made it clear that Mr. Martel should confine his conversations to

family matters and to Mr. Arar's well-being. Questions were to be very general, such as "How are you? Are you well? Do you need medical care?"

Mr. Martel claimed that, because his visits were always closely monitored, he could not inform Mr. Arar of the allegations against him, or ask about the location or size of Mr. Arar's cell, or whether he was being held in solitary confinement.³⁵⁸

In his testimony, Mr. Martel agreed that consular officials have a duty to inquire about detention conditions, including whether the detainee is held in solitary confinement or with the general population, the size of the cell, access to family members, the ability to move around or exercise, access to a doctor or nurse, basic hygiene conditions, heating and access to clean water. Moreover, Canada would launch vigorous protests if these essential needs were not provided.³⁵⁹

For his part, Ambassador Pillarella was concerned that Mr. Arar be treated as a Syrian, under Syrian law. That said, the Ambassador agreed that his responsibility was to ensure that a Canadian detainee is treated not merely in accordance with Syrian standards, but with minimum standards under international law, as articulated in the *Manual of Consular Instructions*.³⁶⁰

In his testimony, the Ambassador stated that he could not invoke principles of international law because they would not resonate with the Syrians, who regarded Mr. Arar as a Syrian. In fact, for the Syrians to grant Mr. Arar consular access was extraordinary and unprecedented. In the Ambassador's words, "What more could I do?"³⁶¹

The visit

Mr. Martel visited Mr. Arar at the Palestine Branch on the morning of October 29.³⁶² When Mr. Arar was brought to the office, Mr. Martel gave him the letter from Dr. Mazigh.³⁶³ Mr. Arar became very emotional for two or three minutes, and then dictated a reply. During the remainder of the visit, which lasted about 30 minutes, they discussed Mr. Arar's family and events in Canada. Mr. Arar asked if there could be a consular visit every week.³⁶⁴

As on each visit, Mr. Martel asked Mr. Arar about his well-being. To this the Syrians would respond, "You can see he is well," perhaps in an attempt to influence Mr. Arar's answers.³⁶⁵ Mr. Martel did not ask Mr. Arar any specific questions about prison conditions, or where he was being detained,³⁶⁶ reasoning that it would have been impossible to get a conclusive answer as Mr. Arar could not speak freely. According to Mr. Martel, it is well known that political detainees at the Palestine Branch are held in solitary confinement. Notwithstanding, Mr. Martel acknowledged that he "didn't know under what conditions he was being

held,³⁶⁷ testifying that neither Ambassador Pillarella nor Mr. Pardy had told him to ask specific questions on this subject.³⁶⁸

Mr. Martel testified that Mr. Arar's demeanour had changed since the first visit, in that he no longer seemed disoriented and was noticeably more relaxed and less frightened.³⁶⁹ He speculated that Mr. Arar had been surprised by and unprepared for the first visit.³⁷⁰ Mr. Martel's report also noted that Mr. Arar seemed able to speak freely, although in testimony he commented that Mr. Arar's ability to speak freely was "very difficult to analyse...in an environment as controlled as that." Moreover, Mr. Martel "couldn't believe everything that [Mr. Arar] said because [he] knew that he couldn't say freely what he wanted." As in other visits, the Syrians took notes of both questions and answers.³⁷¹

Mr. Martel never asked to meet with Mr. Arar alone. He agreed that a consul is normally required to ask for private access to a detainee, and that a diplomatic protest should be lodged if the request is not granted. However, this was not a normal case, according to Mr. Martel. The Syrians claimed that the Vienna Convention did not apply to Mr. Arar, and refused requests that he be allowed to make a phone call.³⁷² Mr. Martel said that the Canadian Embassy could not take the initiative to request a private interview, as this would require instructions from Mr. Pardy and DFAIT Headquarters.³⁷³ He acknowledged the recommendation of the United Nations Committee Against Torture that Canada should insist on unrestricted consular access to its nationals. However, he did not seek an unmonitored meeting because he expected that the Syrians would not agree to it.³⁷⁴

Mr. Martel's report

Mr. Martel's report recorded the details of the visit, including Mr. Arar's appearance and his message to his wife. It also stated that the Syrians would not provide details on the investigation, as only General Khalil had that authority. The General had assured the Ambassador that he would do so once the investigation was completed. Colonel Saleh had given this information to Mr. Martel during their car ride.³⁷⁵

Ambassador Pillarella also testified that General Khalil had promised to provide details on the investigation's progress.³⁷⁶ The Ambassador did not consider that seeking the fruits of the Syrian interrogation made Canada complicit in obtaining information that might have been the product of torture. He reasoned that he did not ask the Syrians to continue interrogating Mr. Arar so that Canada could obtain information. Furthermore, the Ambassador did not have any evidence that Mr. Arar was being tortured or held incommunicado.³⁷⁷

Ambassador Pillarella did not attend either the first or second consular visit, and had no opportunity to assess Mr. Arar's condition apart from Mr. Martel's reporting. However, based on Mr. Martel's reports, he concluded that there was no indication or evidence that Mr. Arar had been mistreated or subjected to physical torture.³⁷⁸ When referred to the report on Mr. Martel's second consular visit and asked for his opinion on whether Mr. Arar no longer appeared disoriented because the Syrians had already obtained the information they wanted through torture, the Ambassador stated:

I can say only one thing, and I am no expert in the matter believe me. But if somebody is being tortured in a way that is very heavy in all sorts of ways do you think that two weeks would be sufficient to erase every mark and to erase every indication that the person might have been tortured?...I would say that if you are beaten with electrical wires on the soles of your feet or your hands, I think it would take a little bit more than two weeks to be able to walk.³⁷⁹

The Ambassador also speculated that there was a "general nervousness in the air" because the Syrians had never permitted a consular meeting before. This explained why Mr. Arar might have been disoriented and nervous in his first visit, and why he "did not know how to act."³⁸⁰

In Ms. Pasty-Lupul's opinion, the second consular visit constituted good news, because it meant the channels to Mr. Arar were still open. There was still the opportunity to meet with him, to assess his condition and to provide moral support. According to Ms. Pasty-Lupul, Mr. Arar's letter to his wife was an important step, and transmitting it was part of her role in ensuring ongoing communication between family members.³⁸¹

As for Mr. Pardy, the report on the second consular visit gave him no cause for alarm. He testified that the only "unusual" part of the report was the section addressing whether the Syrians would provide details on their investigation.³⁸²

Communications about the second consular visit

After receiving news of the second consular visit, Mr. Pardy briefed the Minister's office.³⁸³ On this basis, Mr. Fry concluded that Mr. Arar's condition was improving and that he was looking better and in good health. Mr. Fry testified neither he nor the Minister believed that Mr. Arar was being tortured.³⁸⁴

The Embassy also sent this consular report to ISI and ISD. In commenting on it, Mr. Gould agreed that it was clear the General intended to pass on details to the Ambassador once the investigation or continuing interrogation was completed.³⁸⁵

Unlike the report on the first consular visit, this report was not distributed to CSIS or the RCMP. However, ISI officials did share some of the contents with the two agencies, including personal information about Mr. Arar's emotional state, at a meeting on November 6.³⁸⁶

Next consular steps

Mr. Pardy gave Mr. Arar's message to Dr. Mazigh in the afternoon of October 29.³⁸⁷ Mr. Pardy and Dr. Mazigh were in frequent e-mail contact. Moreover, according to Mr. Pardy, consular officials had detailed conversations with Dr. Mazigh throughout this period to convey the full flavour of the information available to Consular Affairs.³⁸⁸

At the same time, DFAIT officials in Ottawa and Tunis were working to facilitate Dr. Mazigh's quick return to Canada, and to obtain an emergency passport for her infant son, Houd.³⁸⁹ Ms. Pasty-Lupul was particularly active in this regard, arranging for the senior consular official at the Paris embassy to meet Dr. Mazigh at the airport.³⁹⁰ Mr. Pardy also began arrangements for Mr. Fry to meet with Dr. Mazigh. According to Mr. Fry, he relied heavily on Mr. Pardy in order to keep the Minister briefed on the case, which was evolving on a daily basis. By the end of October 2002, the case had gained a very high profile, and was receiving a great deal of media and public attention.³⁹¹

3.5

THE NOVEMBER 3 MEETING WITH GENERAL KHALIL AND THE *BOUT DE PAPIER*

Background to the Meeting

As discussed above, in his instructions for the second consular visit, Mr. Pardy asked Ambassador Pillarella to find out how the Syrian investigation was proceeding, and also requested that the Ambassador inform him of any possible visits by RCMP and CSIS officials to meet with Mr. Arar or Mr. Almalki or with Syrian officials.³⁹² In his report on the visit, Mr. Martel advised that "the question of where things are with the Syrians is being investigated by the HOM [Head of Mission]. Visits by RCMP or CSIS officials could not be discussed at this level."³⁹³ Mr. Martel explained in his testimony that RCMP and CSIS visits were not within his mandate and that Ambassador Pillarella might have added this to the report.³⁹⁴ The Ambassador could not recall what the line dealing with the visits related to.³⁹⁵ He recalled receiving Mr. Pardy's October 28 instructions, but did not know what his concern was with respect to potential visits.³⁹⁶ However,

he did testify that he would have reported back to Mr. Pardy if either CSIS or the RCMP showed up in Damascus.³⁹⁷

Mr. Pardy sent Damascus another e-mail on October 30 which referred to this line in the report.³⁹⁸ Mr. Pardy asked if the Ambassador could report any contact with RCMP and CSIS liaison officers indicating interest in visiting Syria, or any contact with Syrian officials with respect to Mr. Arar's case. He stipulated that "there have been indications of this from RCMP and letter is under consideration by ISI suggesting that this not happen in the current circumstances."³⁹⁹ In Ambassador Pillarella's recollection, the RCMP and CSIS liaison officers were not interested in visiting and he did not recall being approached about a visit. Mr. Pardy believed that when he sent his October 30 message to Damascus, he had a phone call from Mr. Solomon of ISI, who said that discussions were continuing and if a letter was needed, one would be prepared.⁴⁰⁰

A memorandum dated October 30 was drafted by Mr. Solomon, proposing that a letter be sent to the RCMP on the issue of sending questions that Syria could put to Mr. Almalki. His memorandum stated that "both ISI and DMCUS/HOM [Damascus Head of Mission] have pointed out to the RCMP that if such questioning is carried out by the Syrian security services, there is a credible risk that it would involve torture."⁴⁰¹ Ambassador Pillarella testified that he had no recollection of having said this to the RCMP and was not aware of the existence of any draft letter.⁴⁰²

On October 30, Ambassador Pillarella and the DFAIT Special Coordinator for the Middle East Peace Process met with Syrian Deputy Foreign Minister Mouallem in Damascus.⁴⁰³ At this meeting, the Deputy Foreign Minister raised Mr. Arar's case. Ambassador Pillarella asked to see General Khalil before November 4 to receive the latest information on the case, since he was traveling to Canada on that day and fully expected to be queried about it.⁴⁰⁴ Ambassador Pillarella testified that his request for a meeting with General Khalil was not because the General had promised to give him the fruits of the interrogation,⁴⁰⁵ but rather because he would be asked in Canada about how things were evolving and General Khalil was the only person who could tell him this.⁴⁰⁶ While they were meeting with Deputy Foreign Minister Mouallem, General Khalil's office phoned the Embassy to set up a meeting.⁴⁰⁷

The Meeting with General Khalil

Ambassador Pillarella met with General Khalil for an hour on November 3 to review the Arar case. General Khalil was absolutely positive about Arar's links with al-Qaeda and said that he had been recruited with the specific purpose of recruiting others in Canada.⁴⁰⁸ The Ambassador was advised by General Khalil

that Mr. Arar had identified members of sleeper cells in Canada, had clearly identified El-Maati and Al Malki [*sic*] and had also undergone training in Afghanistan where he was also introduced to arms handling.⁴⁰⁹ During this meeting, Ambassador Pillarella asked General Khalil whether he could get a “résumé of information obtained so far from Arar that I could take to Canada with me.” The General promised the Ambassador that he would receive it before his departure for Canada.⁴¹⁰

Ambassador Pillarella explained that their goal was to get Mr. Arar back to Canada because he was not charged with anything; however, since General Khalil claimed that he was connected to terrorist groups, the Ambassador asked him for proof of what he was saying, since Canada had nothing against him.⁴¹¹ Ambassador Pillarella testified that he asked for the information because it was in “our interests to know exactly what it was that the Syrians had against Mr. Arar.”⁴¹² The Ambassador did not believe that the General would keep his promise and provide him with something.⁴¹³ However, as discussed below, he did.

At this same meeting, General Khalil said that “he would agree to have a Canadian intelligence official (CSIS as opposed to the RCMP) to come to Damascus to review the info provided by Arar.”⁴¹⁴ When Ambassador Pillarella asked him whether it would be possible for the official to question Mr. Arar directly, General Khalil was “noncommittal,” but said that the “official would be welcome to attend the interrogation sessions and satisfy himself that everything was above-board.”⁴¹⁵ Ambassador Pillarella testified that he did not ask for a Canadian official to visit Damascus; rather, General Khalil made this offer, and that this was “a very important nuance.”⁴¹⁶ Ambassador Pillarella explained that he thought it would be to Mr. Arar’s benefit if a Canadian could ask him questions independently of the Syrians and that this was not a request for Canadian officials to interrogate him.⁴¹⁷ General Khalil “promised that, whether or not the Canadian official could ask direct questions, he would leave Damascus absolutely satisfied regarding the exact circumstances of Arar.”⁴¹⁸

At the request of Mr. Pardy,⁴¹⁹ Ambassador Pillarella also raised the case of Mr. Almalki, and observed that General Khalil “seemed now disposed to accept that he could meet with a Canadian official.”⁴²⁰ Ambassador Pillarella noted in his report of this meeting that General Khalil preferred to deal with intelligence officials rather than with police officers, and that the best way to proceed should be discussed in Ottawa.⁴²¹ He also noted that it was the “RCMP that has asked to have direct access to Almalki.”⁴²² Ambassador Pillarella testified that the two cases of Messrs. Almalki and Arar could not be collapsed into one with respect to facilitating access to question detainees.⁴²³

In response to whether it was appropriate for the Ambassador to facilitate a visit to Syria by the RCMP or CSIS, Ambassador Pillarella stated that an ambassador represents the entire Government of Canada and the role “is very wide in scope.”⁴²⁴ He was not aware of any DFAIT policies or procedures which would guide him in a situation where a security intelligence agency or the police force wanted access to a Canadian detained abroad.⁴²⁵ The Ambassador reiterated that they would have not got anywhere without dealing with General Khalil and there was “no other avenue for me to pursue to see that Mr. Arar could be set free.”⁴²⁶

The Bout de Papier

Following his meeting with General Khalil, Ambassador Pillarella spoke with Mr. Pardy, who was in Beirut at the time, and reported to him on his discussion with the General.⁴²⁷ The two men discussed the allegations made, and the Ambassador advised Mr. Pardy that he had asked for documentation of those allegations which he would take back with him to Ottawa.⁴²⁸ Mr. Pardy recalled that during this phone call, Ambassador Pillarella might have told him of the invitation for a Canadian to visit Damascus, but no specifics were discussed.⁴²⁹ General Khalil did follow through with his promise. Hours before Ambassador Pillarella was to depart for Canada, someone showed up at his residence with an envelope from General Khalil containing the information he had promised the Ambassador.⁴³⁰ Mr. Pardy commented that DFAIT was “totally surprised that the Syrians provided us with that information,” given DFAIT’s past experience with Syria.⁴³¹

Ambassador Pillarella brought the document to Canada with him and gave it to DFAIT ISI on November 6.⁴³² DFAIT ISI sent it to CSIS for translation and the undated three paragraph *bout de papier*⁴³³ was translated on November 7.⁴³⁴ The translated *bout de papier*⁴³⁵ was returned to DFAIT ISI and the information was then shared with Consular Affairs, the RCMP and CSIS.⁴³⁶ The document provided personal background information on Mr. Arar and then suggested that Mr. Arar “[had travelled] to Afghanistan in order to join the *Mujahidin* camps,” where he underwent military training.⁴³⁷

Appropriateness of Ambassador Pillarella Bringing Back the Information

Ambassador Pillarella testified that he did not solicit the information in the *bout de papier*; rather, the General offered to provide information that Mr. Arar was a terrorist, in response to the Ambassador’s position that Mr. Arar should be returned to Canada.⁴³⁸ The Ambassador testified that he would be “remiss in not doing my job” if he did not carry back this type of information to Canada, and

explained that he represented the whole Government of Canada to Syria, not just DFAIT.⁴³⁹

Ambassador Pillarella explained that it was “very important for me to know exactly what it was that the Syrians had or suspected that Mr. Arar might be involved in.” Any information which he could send back to Ottawa could be checked to see whether or not it was true, and this could “be in favour of Mr. Arar.”⁴⁴⁰ The information that General Khalil promised to provide would be “something welcome because we would know everything that we needed to know if we wanted to defend Mr. Arar’s interests.”⁴⁴¹ Ambassador Pillarella stated that he could not jump to the conclusion during his first meeting with General Khalil (when the information was promised) that the information gathered during the interrogation was extracted using methods of torture.⁴⁴² The Ambassador testified that it did not occur to him that it might have left General Khalil with a mixed signal in the sense that he was requesting Mr. Arar’s release at the same time as he was accepting information obtained on him from the interrogation.⁴⁴³

Ambassador Pillarella testified that his purpose in obtaining the information and providing it to the officials in Canada was to assist Mr. Arar.⁴⁴⁴ He was also aware that Mr. Arar was subject to a national security investigation.⁴⁴⁵ He understood that the purpose of DFAIT sharing the information with the RCMP and CSIS was to see whether they could verify it and help Mr. Arar.⁴⁴⁶ However, he acknowledged that he was not aware of any way in which DFAIT’s sharing of the information with the RCMP and CSIS assisted Mr. Arar.⁴⁴⁷ Inspector Cabana testified that the information provided to the RCMP by DFAIT and Ambassador Pillarella was to be analyzed and verified to see if it was accurate, but that it was going to be used in the context of the RCMP investigation against Mr. Arar.⁴⁴⁸ Inspector Cabana stated that he did not think that DFAIT or Ambassador Pillarella was under any illusion that they were giving the RCMP the information in order to assist Mr. Arar.⁴⁴⁹

The Ambassador explained that it was not his decision whether or not it should also be shared with Mr. Arar’s family or his lawyer to assist in his defence.⁴⁵⁰ Once the information was passed to DFAIT Headquarters, it was for them to decide what to do with the document.⁴⁵¹ As an ambassador he could not “get into the role of being the advocate of the lawyer” and Ottawa would have decided what documentation to give Mr. Arar’s lawyer.⁴⁵²

Ambassador Pillarella testified that he did not know whether the information in the document was obtained under torture, but he noted that no signs of torture were evident at the consular visits.⁴⁵³ The Ambassador disagreed that if the information he obtained from the Syrians and took back to Canada was the product of torture, Canada might be complicit in the torture, because he never

asked the Syrians to interrogate him for information and there was no evidence that Mr. Arar was being tortured.⁴⁵⁴

Both Ambassador Pillarella and Inspector Cabana testified that there was no discussion during a November 6 meeting⁴⁵⁵ between the RCMP, CSIS and DFAIT ISI about the risk or possibility of torture with respect to the statement that Mr. Arar had given to the Syrians.⁴⁵⁶ Ambassador Pillarella testified that during this meeting “everyone took the contents of that particular message with a certain scepticism because we had no way of knowing whether this was true or not” or knowing “if Mr. Arar, finding himself in the situation where he was, thought it might be better to co operate and let the Syrians hear what they wanted to hear so that ... he would be safe.”⁴⁵⁷ However, according to Inspector Cabana, there was no discussion about the reliability of Mr. Arar’s statement and no suggestion that it was in question as a result of the method of interrogation that the Syrians might have used.⁴⁵⁸

Mr. Pardy explained that Ambassador Pillarella had two responsibilities in all his interactions with the SMI, one being his consular responsibility and the other being the responsibility to report back to the government information that related to the security of Canada.⁴⁵⁹ This information would go to DFAIT ISI, which would then decide whether it should go directly to CSIS or the RCMP.⁴⁶⁰ Mr. Pardy considered the Ambassador’s efforts to obtain information from the Syrian investigation to be “appropriate to the circumstances” and that the information might have had “dual use.”⁴⁶¹ One of the uses was that the information could be helpful to Mr. Arar.⁴⁶² The information might have also been of some use to the security and police organizations back in Canada, since it gave them specific information which they could verify independently.⁴⁶³ Mr. Livermore acknowledged that it was legitimate for Ambassador Pillarella to obtain information on Mr. Arar and to pass this information on to the RCMP and CSIS.⁴⁶⁴

Minister Graham stated that “the ambassador also had a responsibility to get as much information as possible so that the ambassador could act with knowledge and information.”⁴⁶⁵ He explained that “as Foreign Minister, I would be anxious to know everything so that if, for example, I am meeting with the Syrian Foreign Minister, I would want to know the bad stuff as well as the good stuff. Someone has to get the information for me. I cannot be an effective advocate for Mr. Arar or anybody if I go into a meeting with another Foreign Minister and I haven’t been given the full goods by my ambassador about the situation in the country.”⁴⁶⁶ He would want the whole picture so that he could decide what to believe and what not to believe.⁴⁶⁷

Minister Graham continued that “if the ambassador knew that they had information about Mr. Arar and he was seeking to protect Mr. Arar and he didn’t

try and find out what information they had, he would be derelict in his duty in trying to help Mr. Arar because he would be boxing in a dark room where he wouldn't know what case he had to meet."⁴⁶⁸ He acknowledged that it is a fine line which would be easy to cross if one undermined the principal message that Mr. Arar should be returned home or tried.⁴⁶⁹ Minister Graham believed Ambassador Pillarella's motivation to be "a sincere desire to try and get Mr. Arar out of jail" and if "he went too far in doing that, that is a judgment."⁴⁷⁰

Distribution of the Ambassador's report and the Bout de Papier

Both the RCMP and CSIS received copies of Ambassador Pillarella's report of the November 3 meeting with General Khalil and the translated *bout de papier*. Ambassador Pillarella sent the report of his November 3 meeting with General Khalil to DFAIT Headquarters⁴⁷¹ and on November 4 it was forwarded by Mr. Heatherington to Mr. Pilgrim in RCMP Headquarters and to Mr. Cabana at Project A-O Canada.⁴⁷² Ambassador Pillarella testified that he had nothing to do with his report being shared with the RCMP and that this was done by DFAIT Headquarters.⁴⁷³ CSIS also received the report from DFAIT on November 4.⁴⁷⁴ DFAIT ISI had sent the *bout de papier* to CSIS for translation and after it was translated, it was returned to DFAIT ISI and the information was then shared with Consular Affairs, the RCMP and CSIS.⁴⁷⁵

3.5.1

Background Information on the Afghanistan Camps

As noted above, the Syrians reported in the *bout de papier* that Mr. Arar had told them he had attended a training camp in Afghanistan in 1993. To evaluate the significance of this information, should it be true, it is necessary to understand the history of training camps in Afghanistan. What follows is a synopsis of *in camera* evidence of the historical and political background of terrorist and *mujabedeen* camps in Afghanistan in the 1990s. This background informed the analysis of the significance of the information on Mr. Arar received from the Syrians.

In 1979, the Soviets invaded Afghanistan. The ensuing war continued for nearly a decade, during which the infrastructure of the *mujabedeen* training camps in Afghanistan and Pakistan slowly developed.⁴⁷⁶ *Mujabedeen* means "holy warrior," and an individual who attended a camp solely for *mujabedeen* training might not necessarily be interested in terrorism, but only in some form of "armed defence."⁴⁷⁷

The camps evolved over time. The Soviet invasion generated great concern throughout both the Islamic and Western worlds about Soviet expansion into

Central Asia. Countries like Saudi Arabia and Pakistan, as well as countries in the West, supported a drive to recruit many people (mostly young Muslim men) to go to fight the Soviets in Afghanistan.⁴⁷⁸

A young Muslim man or woman from Canada who wanted to join this fight would in most cases be referred to someone in a certain network. The individual would learn where to go and who to contact once in Pakistan. She or he might have letters of recommendation to present along the way. Within these networks could be found true extremists from actual terrorist organizations such as the Egyptian al Jihad.⁴⁷⁹

Pakistan was the launching point for the recruits. New recruits would stay at a guest house in Pakistan, of which there were many, with certain organizations having their own. The most famous, used by many recruits and most probably synonymous with the al Qaeda movement, was the Abdullah Azzam guest house (also known as “Bayt Al Arab” or “Makdabul Kitimat”) in Peshawar. This is where Mr. Arar reportedly told the Syrians he had stayed.⁴⁸⁰

Osama Bin Laden fought against the Soviets until 1989. His al Qaeda network would have evolved in the late 1980s as Mr. Bin Laden himself acquired a more significant role in the fight against the Soviets. The name of his group, al Qaeda, means “the base.”⁴⁸¹

The Soviets left Afghanistan in 1989, with their puppet regime hanging on to power for a scant 18 months or so thereafter. Many *mujabedeens* remained to fight this pro-Soviet regime until it collapsed in 1991.⁴⁸²

In 1993, when Mr. Arar is alleged to have been in Afghanistan, both the training camps and the guest houses still existed. The difference was that after the Soviet regime fell, it was unclear who the *mujabedeens* were fighting. Until the Taliban rose to power, different warlords fought one another and the remaining Arab *mujabedeens* had to choose sides. Most *mujabedeens* would have joined forces with Gulbuddin Hekmatyar’s Hizb-I Islami party (HII), as Mr. Hekmatyar seemed most predisposed to them and treated them best during the Soviet war. Many of the Afghan warlords did not want Arab volunteers around and saw them as fanatics. However, Gulbuddin Hekmatyar seemed more inclined to extremism, so the Arabs there gravitated to his group.⁴⁸³

Osama Bin Laden was not in Afghanistan when Mr. Arar allegedly trained there. Mr. Bin Laden left Afghanistan in 1991 for Saudi Arabia, but was soon forced to leave for Sudan because of his opposition to Western forces on the ground in Saudi Arabia during the first Gulf War. He remained in Sudan until 1996, when he returned to Afghanistan.⁴⁸⁴ Mr. Bin Laden’s infrastructure remained in place during his absence.⁴⁸⁵

The training camps were diverse in nature. Some could be described as terrorist training camps; others only as *mujabedeen* training camps. Often, the camps changed with time. Therefore, the allegation that Mr. Arar had received his training in 1993 left uncertainty as to Mr. Arar's terrorist tendencies. A person being trained in Afghanistan in 1993 would not necessarily have been selected for terrorist operations. It would have depended on the training he or she actually took.⁴⁸⁶

It was explained that "some very nasty people ... came out of that camp at that particular point in time, including some of the individuals responsible for the first World Trade Center bombing," but that other individuals who attended Khalden were not of that particular stripe. Thus, the motivation for attending would be unclear. One would also need to know if the individual had received specific instructions to carry out terrorist activity upon leaving.⁴⁸⁷

Based on the Syrians' information, it could not be determined whether Mr. Arar was a member of al Qaeda or had received specific terrorist training. He could have gone to Afghanistan as a religious Muslim with a desire to fight the infidels or he could have had more nefarious intentions.⁴⁸⁸

3.6

THIRD CONSULAR VISIT

Consular duties to facilitate legal assistance

In his testimony, Mr. Martel agreed that a consul's mandate is to try to ensure that a detainee has access to legal counsel if he or she is going to be brought into a country's court system. Normally in such cases, an embassy would make an official request for legal counsel, and Canada would register a protest if it were not granted. The embassy would help the lawyer obtain access to the files, and with authorization from Ottawa, would give the lawyer any relevant documents. According to Mr. Martel, "In other words, the counsel for the defence must be armed and equipped with all the necessary documents to ensure a sound defence."⁴⁸⁹

Ambassador Pillarella agreed that a consul will help obtain legal representation for a detainee, although he believed this assistance is limited to providing a list of lawyers. From his perspective, an embassy's role was not to get involved in matters of legal substance, but merely to facilitate access to a lawyer.⁴⁹⁰

Consular Affairs seeks access for a lawyer in Damascus

On November 2, one of Mr. Arar's brothers called Consular Affairs and provided the phone number of Anwar Arar, a lawyer in Damascus and a relative of the Arar family in Canada. He explained that Anwar had tried to locate Maher in detention, but could not find him or obtain any information from the Syrians. Anwar hoped to meet with Maher by accompanying Mr. Martel on a consular visit. Consular Affairs sent this information the same day to Mr. Martel for his action.⁴⁹¹ Ms. Pastyr-Lupul explained that Consular Affairs does not always try to facilitate physical access of a lawyer to a detainee, because in places like the United States, it assumes the lawyer will obtain access directly. As this was Syria, however, Consular Affairs played a more active role in helping the lawyer gain access to Mr. Arar.⁴⁹²

On November 3, Ms. Kotrache, a junior embassy official in Damascus, advised by CAMANT that "[t]he Consul will ask the Syrian authorities, in his next visit to subject, if they are willing to authorize the lawyer to come with him."⁴⁹³

Mr. Martel knew it was critically important to ensure that every detainee had access to a lawyer, and that doing so was directly within his mandate and duties as consul.⁴⁹⁴ However, there is no documentary evidence that Mr. Martel or any embassy official ever requested access for Anwar Arar. Asked whether he had done so, Mr. Martel replied that he had not made a formal request, although he might have informally asked Colonel Saleh, his SMI contact. Mr. Martel believed that he was the only person the Syrians would allow to visit Mr. Arar. Further, he believed that it was out of the question for the Syrians to allow Mr. Arar a lawyer so long as their investigation was incomplete.⁴⁹⁵

Mr. Martel confirmed that Canada did not make any formal protest to the Syrian government about Mr. Arar's deprivation of counsel, either through himself or the Ambassador. He explained that Canada's first objective was to maintain consular access, and that the Syrians considered themselves to be granting a substantial favour in doing so.⁴⁹⁶ When asked whether Consular Affairs actually considered the risks and benefits of making a protest, Mr. Martel said he believed that Consular Affairs already knew that Anwar Arar's request was impossible to grant, which is why nobody from Ottawa followed up on it. Given the broader circumstances of Mr. Arar's detention, Ottawa did not treat this as an important request.⁴⁹⁷

Preparation for the consular visit

On November 1, Mr. Pardy received an e-mail from Dr. Mazigh, attaching a letter to her husband for the next consular visit. Acting in Mr. Pardy's absence,

Ms. Pasty-Lupul sent the letter to Mr. Martel on November 6. Mr. Martel replied to her with a reminder that Dr. Mazigh should choose her words carefully as her letters were read by Syrian authorities. He explained that all information he brought to Mr. Arar, including letters from his wife, would be read and copied by Syrian officials. If Dr. Mazigh wrote anything negative about the Syrians, they might not allow her letters through, especially as the Syrians already disliked her.⁴⁹⁸

On November 6, Mr. Martel e-mailed Ms. Pasty-Lupul about his difficulties in scheduling a consular visit, concluding his e-mail with the comment: "I have not copied Monia as I would not wish her to be directly in touch with me." Mr. Martel explained that Dr. Mazigh was not his client: "I don't deal with family, friends, relatives who are outside or even in the country."⁴⁹⁹

Two days later, Mr. Pardy and Ms. Pasty-Lupul telephoned Mr. Arar's brother Bassam, who was acting as principal contact for the family in Canada. They advised him of their hope for a consular visit in the next few days, and told him that there was nothing new to report on the Syrian investigation. They did not advise Bassam Arar of the allegations made in the interrogation report given to Ambassador Pillarella on November 3.⁵⁰⁰

According to Mr. Martel, he was never shown this interrogation report, and the Ambassador did not advise him of its contents because it had nothing to do with his consular mandate. Rather, the interrogation report concerned the criminal aspects of the case.⁵⁰¹ As a result, Mr. Martel was preparing for the third consular visit in the absence of information concerning the Syrian allegations against Mr. Arar. Neither could he provide this information to any lawyer, like Anwar Arar, who wished to assist Mr. Arar.

On November 10, Mr. Martel advised Consular Affairs that a visit with Mr. Arar had been scheduled for November 12. Ms. Pasty-Lupul requested a summary of the meeting, so that she could update the press lines and provide information to the Arar family.⁵⁰²

The November 12 consular visit

Mr. Martel's third visit with Mr. Arar lasted about 15 minutes. Although Mr. Martel brought Canadian reading material for Mr. Arar, the Syrian officials did not pass it on to him.⁵⁰³ Mr. Pardy agreed that it would be no surprise if Mr. Arar never saw a single newspaper or magazine Mr. Martel provided, and that even if he did, it would be too dark in his cell to read.⁵⁰⁴

Mr. Arar was permitted to read his wife's letter, which caused him to become emotional. The Syrians copied the letter. Mr. Arar also dictated a message for his wife, which he was forced to provide in Arabic. Mr. Martel testified that

Mr. Arar's demeanour was the same as on the previous visit, confirming as well that the Syrians seemed very at ease and willing to continue the practice of consular visits.⁵⁰⁵

When Mr. Arar asked whether the Prime Minister was going to intervene for his release, Mr. Martel responded that the purpose of the visit was to provide consular assistance and moral support, and that Canada was doing what it could. In his report on the visit, he also said that he "kept to the lines that are public knowledge as they have appeared in the press. Arar realized he was also a Syrian national and now in his country of origin." Asked what he meant, Mr. Martel testified that he did not want to give Mr. Arar any false hope. Although he assured Mr. Arar that his request for intervention would be passed to Ottawa, apart from the passing reference in Mr. Martel's consular report, it is unclear whether this was actually done.⁵⁰⁶

Mr. Martel did not tell Mr. Arar about Anwar Arar's recent attempt to visit him. In fact, there is no evidence that Mr. Martel ever told him that Anwar Arar was in contact with Consular Affairs and was seeking a visit.⁵⁰⁷

In the car ride following the visit, Mr. Martel tried to obtain information on the investigation from Colonel Saleh, thinking that he had a chance of learning more about the case due to his growing relationship with the Colonel. He asked why Syria was holding Mr. Arar and what they were going to do with him. However, the reply was only that the Ambassador had already been provided with a full report.⁵⁰⁸

DFAIT reactions to Mr. Martel's report

According to Ambassador Pillarella, he was most likely still in Canada when the third consular visit took place, which is why he did not approve Mr. Martel's report as usual. However, he testified that he would certainly have seen the report on his return to Damascus.⁵⁰⁹

Ambassador Pillarella confirmed that the Syrians' "full report" was the one-page *bout de papier* provided to him by General Khalil on November 3.⁵¹⁰ At a November 6 interagency meeting in Ottawa, a CSIS official mentioned that even if the interrogation report were true, it did not amount to much evidence against Mr. Arar. Asked whether he went to the SMI with that assessment, the Ambassador testified that this was merely a comment by a CSIS official present.⁵¹¹ At the same time, the Ambassador disagreed that it was inappropriate for Mr. Martel to inquire about the investigation, as it was within his consular functions, and any information could only assist Mr. Arar in getting out of jail. Asked if his opinion would change if Mr. Martel were to share the results of such inquiries with CSIS and the RCMP, the Ambassador testified that the embassy gave

information like this to Ottawa to determine whether Canada could counter the allegations. In fact, all decisions to share information beyond DFAIT were made in Ottawa.⁵¹²

Mr. Livermore agreed that it would be totally appropriate for Mr. Martel to try and gather information on the investigation's progress, as DFAIT needed to know as much as possible to help get Mr. Arar out of Syria.⁵¹³

According to Ms. Pasty-Lupul, a third consular visit within three weeks was a good sign in terms of access. She testified that the message from Mr. Arar to his wife was particularly important, as Dr. Mazigh was anxiously awaiting news from her husband. She observed that these messages were likely crucial for both Mr. Arar and Dr. Mazigh.⁵¹⁴

For his part, Mr. Pardy testified that there was nothing unusual about the third consular visit. To him, the key information in the report was Mr. Martel's statement that he tried to obtain information on the progress of the investigation. Mr. Pardy testified that, at the time of the third consular visit, Canadian officials with whom he was in contact were certainly aware of Ambassador Pillarella's discussion with General Khalil the week before.⁵¹⁵

Mr. Pardy was also referred to Mr. Arar's message to his wife, which read:

I hope to be released soon. Thank you for sending me your message. I am asking you to continue sending me letters as this is the only way for me to know of your whereabouts. I believe the decision you have taken is a wise one as the family is returning to Canada. As we had discussed before the chances of working in Tunis did not turn out to be positive. With God's will we will be re-united.

Asked whether he was aware, during Mr. Arar's detention in New York, of a suggestion that Mr. Arar and his family might have recently moved to Tunisia, Mr. Pardy testified that he was, although he did not see this as significant information. From his early conversations with Dr. Mazigh, he knew that the family was in Tunis because of an illness in Dr. Mazigh's family and Mr. Arar's diminishing employment options in Canada as a result of the slump in the high technology industry. He emphasized that it "does not matter one jot" where a Canadian citizen is located in the world, in terms of Canada's responsibility to provide consular services.⁵¹⁶

DFAIT assists Dr. Mazigh's return to Canada

During this time, Consular Affairs assisted Dr. Mazigh's return to Canada. On November 4, Dr. Mazigh advised that she would maintain her departure date of November 14, provided Tunisian authorities allowed her infant son Houd to

leave the country. Ms. Pasty-Lupul remained in close contact with Dr. Mazigh about her travel plans, and made arrangements for an emergency passport for Houd.⁵¹⁷

On November 13, Mr. Pardy instructed embassy officials to assist Dr. Mazigh's departure from the airports in Tunis and Paris. Consular officials in Paris were to ensure that Dr. Mazigh cleared security for her connecting flight to Montreal. Similarly, a Tunis consular official attended at the Tunis airport and was prepared to intercede with Tunisian authorities, if necessary. Mr. Pardy explained that these efforts were taken because Consular Affairs anticipated that Dr. Mazigh and her two young children might face difficulties clearing customs in both countries. He testified that even in normal times, it can be difficult for a young woman travelling internationally with two young children, so DFAIT tried to assist her to the maximum. He further explained that, just prior to Dr. Mazigh's departure, she was intercepted with her son at a Tunisian passport office by Tunisian security agents, who interviewed her for a number of hours about her husband. Mr. Pardy did not know the reason for the interview and was not aware of any contact between Canadian or American security officials and the Tunisians. Nor was he aware if Dr. Mazigh had trouble on arrival at the Montreal airport, although he later heard that Canada Customs had searched her luggage.⁵¹⁸

Ms. Pasty-Lupul contacted immigration officials at the airport in Montreal on November 14 to alert them to a typo on Houd's emergency passport and to instruct them that the family should face no problems in re-entering Canada.⁵¹⁹

The next day, November 15, Ms. Pasty-Lupul spoke to Mr. Arar's brother, Bassam. He advised that Dr. Mazigh had arrived with her two children, although it had taken the family one and a half hours to clear Customs as officers searched her luggage. Ms. Pasty-Lupul arranged a meeting for Bassam Arar, Dr. Mazigh and Mr. Pardy for November 19.⁵²⁰

In Ms. Pasty-Lupul's phone conversation with Dr. Mazigh that day, Dr. Mazigh made reference to Mr. Almalki using telephone numbers. However, Ms. Pasty-Lupul was not sure from her notes if this referred to numbers from Mr. Arar's phone book or from his own. Dr. Mazigh apparently mentioned that her husband knew Mr. Almalki from the mosque. She apparently called Mr. Almalki a "big mouth," saying that he had given people's names, including Maher's, to prison officials during interrogations. Ms. Pasty-Lupul's notes also refer to Dr. Mazigh mentioning that Mr. Arar knew Mr. El Maati's mother because she had helped them with a plumbing problem in Montreal. However, Dr. Mazigh had noted that Mr. Arar had never met the rest of the family, and they were not social acquaintances.⁵²¹

3.7

THE ONGOING LOOKOUT ON DR. MAZIGH

When Dr. Mazigh arrived at the Montreal airport on November 14, she was sent for a secondary examination by Canada Customs officials because the Canadian lookout on her was still active at the time.⁵²²

Customs officials photocopied some of Dr. Mazigh's belongings, including her personal identification, ticket stubs, E-311 Traveller's Declaration Card and passport, as well as passport information about her children, Baraa and Houd Arar.⁵²³

The same day, a Customs superintendent contacted Officer J.-P. Thériault, the Canada Customs Regional Intelligence Officer (RIO) seconded to Project A-O Canada, to inform him of the secondary examination.⁵²⁴ Officer Thériault directed the superintendent to contact the RCMP. The next day, Officer Thériault checked the Integrated Customs Enforcement Service (ICES) system, and took a copy of the Notepad report and travel history to Sergeant Glen Dorion of the RCMP. The entry indicated that Dr. Mazigh had some American, Canadian and European funds in her possession.⁵²⁵

Prior to November 14, a Customs official in Montreal had placed an intelligence report on Dr. Mazigh in the Intelligence Management System (IMS), which is administered by Canada Customs. The official added to that report on November 21, following Dr. Mazigh's secondary examination on November 14. He included information on the secondary examination, as well as "tombstone data," including Dr. Mazigh's driver's licence, passport and Certificate of Citizenship. The official also included a reference to Dr. Mazigh's daughter (five years old at the time) and son (nine months old at the time), and their passport information.⁵²⁶

The only IMS policy in force at the time and/or made available to this Inquiry was the IMS User Policy.⁵²⁷ It describes the IMS as "an automated facility for the reporting and compilation of intelligence information on targets (individuals, businesses, conveyances, commodities, etc.) that are known or suspected to be a potential border risk." Otherwise, the policy provides little guidance in terms of limits on what can be uploaded. The same policy indicates that information is retained in the system for 10 years, and automatically purged thereafter.

The IMS User Policy appears to contemplate release of IMS information pursuant to ss. 107 and 108 of the Customs Act, the Privacy Act, the Access to Information Act, and related policy. It also appears that other government

departments and law enforcement agencies may have access to it in certain circumstances.

Also relevant are policies related to examining and photocopying personal documents. The policy concerning personal documents was amended on May 31, 2002.⁵²⁸ It requires that private papers and personal journals only be examined when there has been a substantiated contravention of the *Customs Act*. The existence of unreported or falsely reported goods, particularly prohibited goods, would justify examination of a purse or wallet, daily journal, envelope or any other reasonable container for evidence in the form of receipts or references to these goods.

The new policy specifically states that photocopying documents constitutes a seizure under s. 8 of the *Canadian Charter of Rights and Freedoms*. The *Customs Act* does not give Customs officers the authority to copy materials unless they are copied in an enforcement context as permitted under s. 115 of the Act. The same policy document states that photocopying information not related to enforcing the *Customs Act* may be interpreted as an unlawful seizure under s. 8 of the Charter. Further, only the passages or items related to the contravention are to be copied from any record, book or document. Under no circumstances can Customs officials photocopy documents not related to administering or enforcing the *Customs Act*, unless they are seized for some other lawful purpose, or if the owner or person in possession gives permission. The new policy specifically states that officials may not photocopy the personal identification of persons entering Canada and pass it to the police for intelligence purposes. In all cases, people must be advised when their documents are photocopied.

George Webb, who was Director of Intelligence for Canada Customs at the time, testified that there was significant tension in the organization about the new policy. For example, from Mr. Webb's perspective, the policy was written by people who had never worked in the field. As a result, it seriously impeded the performance of intelligence officers.⁵²⁹

When Dr. Mazigh was subjected to a secondary examination on November 14, Officer Thériault was aware of the policy, but considered his actions to be part of a lawful investigation. Officer Thériault's immediate supervisor had directed him to continue collaborating with and supporting Project A-O Canada investigators. It is not clear, however, whether Officer Thériault was directed to photocopy documents in breach of a prevailing policy or enforcement bulletin.

As indicated earlier, the only reason that a lookout was issued on Dr. Mazigh was that she was married to Mr. Arar, a person of interest to Project

A-O Canada. Otherwise, there was no information implicating Dr. Mazigh in suspected terrorist activity. Despite the difficult circumstances facing Dr. Mazigh at the time (she was a young Muslim woman in a post-9/11 environment who was travelling with two small children, and whose husband was being detained in Syria⁵³⁰), Inspector Cabana testified that he did not think that the lookout should have been lifted. In his opinion, people were subjected to secondary examinations in Canada on a daily basis. Moreover, the RCMP believed that individuals involved with al Qaeda were using their spouses to transport information or material across borders. For these reasons, Project A-O Canada considered the lookout on Dr. Mazigh to be appropriate.⁵³¹

3.8

ACTIVITIES IN CANADA

3.8.1

Mr. Edelson Requests a Letter from the RCMP

On October 24, Michael Edelson, a lawyer in Ottawa who had previously acted for Mr. Arar,⁵³² telephoned John McNee, DFAIT's Assistant Deputy Minister for Africa and the Middle East, and raised the concern that Mr. Arar was being tortured in Syria. Mr. McNee referred him to Mr. Pardy.⁵³³ When Mr. Edelson met with Mr. Pardy on October 29 to discuss what he might do to try to obtain Mr. Arar's release, they agreed that Mr. Edelson would ask the RCMP to write a letter to the Syrians indicating that the RCMP had no interest in Mr. Arar.⁵³⁴

The next morning, Mr. Edelson telephoned Ann Alder, a senior lawyer with the Department of Justice who was seconded to Project A-O Canada. Mr. Edelson explained his request for a letter. Mr. Edelson believed that the key point was to have the RCMP indicate in writing that Mr. Arar was not a suspect in a terrorist investigation. He also wanted the RCMP to acknowledge that Mr. Arar was not wanted in Canada — in other words, that there were no outstanding warrants for his arrest. Finally, Mr. Edelson wanted the RCMP to run a Canadian Police Information Centre (CPIC) check to confirm that he had no criminal record. Ms. Alder told Mr. Edelson that he should put his request in writing.⁵³⁵

Mr. Edelson testified that he preferred that the letter come from Canada's law enforcement agency. In his view, a letter from the RCMP, sent through diplomatic channels to Syria and stating that Mr. Arar was not wanted in Canada for any criminal activity, would be more influential with the Syrians than a letter from any other source.⁵³⁶

That same morning, Ms. Alder called Project A-O Canada to discuss Mr. Edelson's call. One of the Project's assistant managers advised her that it would be inappropriate for them to write any letter or attempt to have Mr. Arar released when it was the Americans who had detained him.⁵³⁷

On October 31, Mr. Edelson wrote to Ms. Alder to make a "formal request for the RCMP to assist with respect to our ongoing efforts to obtain the release of Maher Arar from Syria."⁵³⁸ His request stated that Mr. Pardy had advised that "in his view, a letter from the RCMP or yourself for that matter, would be of significant assistance in facilitating the return of Maher Arar to Canada." Mr. Edelson then listed four points that he wished the RCMP letter to confirm:

1. That the RCMP made no request to have Mr. Arar "deported" to Jordan or Syria.
2. That Mr. Arar did not have a criminal record.
3. That Mr. Arar was not wanted in Canada for any offence and was not the subject of any arrest warrant.
4. That Mr. Arar was not a suspect in connection with any terrorist-related crime.

Mr. Pardy testified that Mr. Edelson's letter was a fair representation of their discussion and that its purpose was to have Mr. Arar returned as quickly as possible.

The RCMP Response

Mr. Edelson's letter came to Inspector Cabana's attention, and on November 1, Inspector Cabana sent a memorandum to Chief Superintendent Couture, the "A" Division CROPS Officer, with the letter attached.⁵³⁹ Inspector Cabana advised Chief Superintendent Couture that:

While at this juncture our project is aloof to Mr. Arar's status, the suggestions and comments of Mr. Purdy [sic] are highly problematic in that they seek to shift the responsibility for Mr. Arar's future status squarely on the RCMP. I believe DFAIT has to be sensitized [sic] on the possible impact these types of discussions can have on an ongoing investigation.

Inspector Cabana explained that by "aloof to Mr. Arar's status," he had meant "unaware of his situation."⁵⁴⁰ He testified that he did not feel any responsibility for Mr. Arar's plight in Syria because it was an American decision to send him there. He felt no responsibility to assist Mr. Arar, even though Project A-O Canada had shared its information with American authorities and might

have provided the FBI with interview questions which led to information included in Mr. Arar's removal order. Inspector Cabana reasoned that the evidence on Mr. Arar was insufficient to take legal action against him in Canada. He thus felt no responsibility for Mr. Arar's status in Syria.⁵⁴¹

Assistant Commissioner Proulx did not agree with Inspector Cabana that Mr. Edelson's letter sought to shift responsibility to the RCMP. He agreed that the letter made it clear that it was DFAIT's responsibility to bring Mr. Arar home and that Mr. Edelson was requesting a letter from the RCMP simply to assist in that process.⁵⁴² During his testimony, Deputy Commissioner Loepky was also referred to Mr. Edelson's letter, which he had not seen before. When asked if the RCMP had any responsibility to help with Mr. Arar's return to Canada, the Deputy Commissioner answered that DFAIT would ultimately be responsible, though DFAIT could properly solicit RCMP input.⁵⁴³

Inspector Cabana continued in his memorandum that:

While we had no role to play in Mr. Arar's initial detention and subsequent deportation from the United States, we are not in a position at this time to categorically determine Mr. Arar's role. To be asked to do so at this stage is unreasonable.

Inspector Cabana testified that, as a matter of policy, the RCMP would not and could not confirm most of Mr. Edelson's points.⁵⁴⁴ He was prepared to acknowledge as objective facts that the RCMP had made no request to have Mr. Arar deported and that Mr. Arar did not have a criminal record. However, he testified that the third point, that Mr. Arar was not wanted in Canada for any offence nor was there a warrant for his arrest, might be problematic and would require consultation, because as a matter of policy, the RCMP was not in the habit of confirming such information. Inspector Cabana testified that he found the fourth point the most problematic, because the role of Mr. Arar was still unclear at that point.⁵⁴⁵

Inspector Cabana and other RCMP witnesses, including Assistant Commissioner Proulx of CID, testified that it was improper for Mr. Pardy to suggest that defence counsel make this request, and that DFAIT should have made this request directly.⁵⁴⁶ However, Assistant Commissioner Proulx testified that the RCMP's written response would have confirmed only the first two points.⁵⁴⁷

On November 6, Chief Superintendent Couture sent a memorandum to Assistant Commissioner Proulx, enclosing Mr. Edelson's letter and Inspector Cabana's memorandum.⁵⁴⁸ Chief Superintendent Couture's memorandum stated that "Project A-O Canada investigators are not in a position to provide any comment with respect to the status or role of Mr. Arar in connection to the investi-

gation.” He recommended that the RCMP clarify with DFAIT how to coordinate appropriate procedures for dealing with such matters.

Chief Superintendent Couture also testified that Mr. Pardy should have made the request directly. Apart from protocol, Chief Superintendent Couture testified that confirming the first and second points would not be contentious. He did not identify any particular concerns with the third point, that Mr. Arar was not wanted in Canada for any offence. However, he testified that it would be problematic to confirm that “Mr. Arar is not a suspect with respect to any terrorist-related crime” because, just a few days earlier, DFAIT had provided the *bout de papier* with Mr. Arar’s confession of having attended a training camp in Afghanistan in 1993. Chief Superintendent Couture believed that it was not for the RCMP alone to assert that Mr. Arar was not a suspect, but that DFAIT and CSIS should also comment on whether an individual is a suspect in a terrorism investigation.⁵⁴⁹

On November 11, Superintendent Wayne Pilgrim at RCMP Headquarters also briefed Assistant Commissioner Proulx, enclosing a draft letter to Mr. Pardy for his signature.⁵⁵⁰ Superintendent Pilgrim wrote: “The suggestion that DFAIT/Pardy may have advised defence counsel to seek our assistance in the release and return of this subject is, in my opinion, outrageous and a clear abuse of the respective office.” He also believed that the matter was Mr. Pardy’s responsibility, and he noted that the RCMP had already provided Mr. Pardy with all possible information in a memorandum on October 18. Superintendent Pilgrim assessed that DFAIT could share that memorandum with Mr. Edelson, instead of directing him to the RCMP.⁵⁵¹

Furthermore, Superintendent Pilgrim testified that he would advise any RCMP officer not to discuss with any defence counsel the request for confirmation that Mr. Arar was not a suspect with respect to any terrorist-related crimes.⁵⁵² He did not know what legal services Mr. Edelson was providing to Mr. Arar, but he was concerned that if the RCMP gave responses to Mr. Edelson, he might use them in a legal process. His practice was to be cautious in responding to defence counsel on ongoing investigations.⁵⁵³

On November 16, after consulting with Headquarters and senior officers in “A” Division, Inspector Cabana wrote to Mr. Edelson that he was “not in a position to acquiesce to your request at this time.” He explained that the RCMP “does not involve itself in subjects of foreign policies,” and that “it would be improper for me to comment on Mr. Arar’s present situation relative to our ongoing investigation.” He advised that the RCMP did not “play any role” in Mr. Arar’s situation and that Mr. Arar had no criminal record. However, he did not confirm that Mr. Arar was not wanted for any offence or that there were no warrants for

his arrest in Canada. Inspector Cabana then referred Mr. Edelson back to DFAIT.⁵⁵⁴

When questioned about his letter, Inspector Cabana testified that, at that time, Project A-O Canada could not confirm whether or not Mr. Arar was a suspect. He agreed that Mr. Arar was not wanted in Canada for any offence and that there were no warrants for his arrest, but he claimed that, as a matter of policy, the RCMP does not provide any information, even objective facts, about subjects in an investigation.⁵⁵⁵

However, in his later testimony before the Inquiry, Inspector Cabana stated that Project A-O Canada viewed Mr. Arar merely as a prospective witness. He agreed that it would not have been misleading for the RCMP to have written a letter setting out four simple, accurate facts: 1) that Mr. Arar was a prospective witness in an important Canadian investigation; 2) that there were no warrants for Mr. Arar's arrest; 3) that Mr. Arar faced no criminal charges; and 4) that Mr. Arar had no criminal record.⁵⁵⁶ The Inspector acknowledged that the RCMP often writes letters that confirm an individual is not facing criminal charges and is not the subject of warrants. However, he argued that his letter disclosed more information than the RCMP was in the habit of disclosing, and that Mr. Edelson obtained more than he should have from Project A-O Canada.⁵⁵⁷

Similarly, Inspector Cabana agreed that the RCMP routinely confirms that individuals, such as applicants for teaching positions, are not wanted for any offence. However, he believed that there was a proper process to request this confirmation and the investigator would refer someone making such a request to the proper channels. Asked if he referred Mr. Edelson to the proper channels, Inspector Cabana replied that he referred him to DFAIT since, in his view, confirming whether Mr. Arar was wanted for an offence fell within DFAIT's mandate.⁵⁵⁸

None of the RCMP witnesses pointed to any existing formal process for dealing with a request like Mr. Edelson's.⁵⁵⁹

Unlike Inspector Cabana, Chief Superintendent Pilgrim did not have a problem with the third point in Mr. Edelson's letter, namely, that Mr. Arar was not wanted for an offence and that there were no warrants for his arrest. He agreed that this was an objective fact to which the RCMP could respond. However, he said that the RCMP definitely would not confirm or deny the fourth point — whether Mr. Arar was a suspect — to defence counsel.⁵⁶⁰

It was suggested to Assistant Commissioner Proulx that Inspector Cabana's letter would have the opposite of the desired effect, which was to assist efforts to repatriate Mr. Arar. The Assistant Commissioner agreed that the wording of Inspector Cabana's letter was definitely not good for that purpose, and he noted

that RCMP officers are not diplomats. In Assistant Commissioner Proulx's view, the real objection of the RCMP was that Mr. Pardy had directed a defence lawyer to the RCMP. Asked if he advised Mr. Pardy that he should approach the RCMP directly, Assistant Commissioner Proulx said that he never spoke with Mr. Pardy about this issue.⁵⁶¹

Although Inspector Cabana's letter was dated November 16, Mr. Edelson did not receive a response until November 27, the day after he called to request it.⁵⁶²

Mr. Edelson was frustrated with Inspector Cabana's letter. He expected that the RCMP would indicate whether Mr. Arar was a suspect, noting that in some instances, the police will confirm whether an individual is a suspect or just a witness. Mr. Edelson sent a copy of the letter to Mr. Pardy. Because he did not like the answers, Mr. Edelson immediately phoned Ms. Alder to request another meeting, in the hope that he could obtain more information than was disclosed in the letter.⁵⁶³

Mr. Pardy had a different response to the letter. He was encouraged by the phrase "I am not in a position to acquiesce to your request at this time," explaining that "at this time" suggested to him that the RCMP might still be persuaded to assist.⁵⁶⁴

On November 28, Mr. Edelson met with members of Project A-O Canada and their legal counsel to discuss why the letter had not provided all the information requested. Mr. Edelson also asked whether Project A-O Canada had interviewed Mr. Arar in Syria. He testified that Project A-O Canada members answered that they would like to interview Mr. Arar in Syria, but had not been able to obtain access to him. They also expressed the view that Dr. Mazigh should not pursue press coverage, a view which Mr. Pardy had also expressed to Mr. Edelson at that time.⁵⁶⁵

Mr. Edelson believed it was at this meeting that Project A-O Canada explained why Mr. Arar was a person of interest to them. He testified that Project A-O Canada told him that they had information that Mr. Arar's name had appeared in the PDAs or phone directories of other persons of interest, and that Mr. Arar similarly had those persons' names in his PDA, which they found suspicious. They also told him that Mr. Arar was in the United States on September 11, 2001, and he was rumoured to have been in a training camp in Afghanistan. They suspected that when Mr. Arar and his family travelled to Tunisia, their departure had been suspiciously hasty, and that they were running away. Mr. Edelson responded that he understood the family was simply on vacation in Tunisia. He also recalled that a relative of the family was ill in Tunisia, which may have kept them there longer than they originally intended. Mr. Edelson

testified that the final reason Project A-O Canada officials were concerned about Mr. Arar was that they believed he had a relationship with their target Abdullah Almalki, a belief which they asked Mr. Edelson to keep confidential from Dr. Mazigh. However, Dr. Mazigh already knew that Tunisian security officials believed Mr. Arar knew Mr. Almalki.⁵⁶⁶

On December 10, the RCMP sent a letter to Dan Livermore of DFAIT ISI. The letter was drafted by Superintendent Pilgrim for Assistant Commissioner Proulx's signature, but was signed by Chief Superintendent Dan Killam.⁵⁶⁷ It referred to Mr. Pardy's advice that Mr. Edelson should seek an official response from the RCMP that would facilitate Mr. Arar's return to Canada. The letter stated that the RCMP had already responded to DFAIT's concerns about Mr. Arar, and that it had serious concerns with DFAIT's obvious misunderstanding of the RCMP's role, assuming that Mr. Edelson had correctly depicted Mr. Pardy's advice.

Mr. Livermore testified that when he spoke to Mr. Pardy about the letter, Mr. Pardy told him that he did not want to "get into a big debate" about what he had said and that the RCMP's letter represented a misunderstanding.⁵⁶⁸ Mr. Livermore then phoned the RCMP and said that this was a minor issue and that DFAIT was not going to answer the letter. He suggested that everybody should forget about it and move on. For Mr. Livermore, this is where the matter ended.⁵⁶⁹

However, Mr. Livermore agreed that this matter did not go away and that the RCMP continued to be concerned with later efforts in 2003 to obtain a letter exonerating Mr. Arar.⁵⁷⁰

Mr. Pardy testified that the RCMP's reaction was a disappointment, but he had to continue with his efforts to move the case forward and to involve the RCMP. Asked if the identification of Mr. Arar as a "subject of interest" caused him to reconsider sharing information from consular visits with the RCMP, Mr. Pardy said he already knew that the RCMP considered Mr. Arar to be a subject of interest.

Mr. Edelson Makes a Similar Request on Behalf of Mr. Almalki

Mr. Edelson testified that he made a similar request for a similar letter regarding Abdullah Almalki when he was detained in Syria. Mr. Edelson noted that, compared to the RCMP's response for Mr. Arar, it took a very long time to receive a response for Mr. Almalki. He was told that one of the reasons for the delay was that the RCMP required legal advice, and that it was a "letter by committee" which went through a number of different government meetings. Mr. Edelson believed the delay was also related to the "firestorm" that occurred

in response to Mr. Pardy's earlier letter. However, Mr. Edelson found the letter about Mr. Almalki more helpful than the one on Mr. Arar. Mr. Edelson did not know if the RCMP had a policy for responding to such requests.⁵⁷¹

The RCMP response was written by Assistant Commissioner Gessie Clément, the Commanding Officer of "A" Division, in December 2003.⁵⁷² She confirmed that Mr. Almalki had no criminal record and that he was not the subject of any arrest warrant, and assured Mr. Edelson that the RCMP had not requested Mr. Almalki's detention in Syria. She recommended that Mr. Edelson discuss these comments with the appropriate Canadian government authorities, specifically Citizenship and Immigration Canada and DFAIT, noting that the RCMP would share its correspondence with those agencies in anticipation of Mr. Edelson's request for their assistance.

Assistant Commissioner Proulx testified that he was unaware of this letter and of Assistant Commissioner Clément's involvement. He noted that it contained more or less the same information as Inspector Cabana's letter about Mr. Arar. However, he agreed that Assistant Commissioner Clément's letter was better written than Inspector Cabana's, and that, in contrast to the earlier letter, it offered appropriate RCMP co operation in Mr. Edelson's efforts to repatriate Mr. Almalki.⁵⁷³

Inspector Warren Coons, the new Officer in Charge of Project A-O Canada, appeared to have primary responsibility for this letter. He consulted Inspector Rick Reynolds of RCMP Headquarters on November 7,⁵⁷⁴ and met with Mr. Edelson about his request on or about November 19.⁵⁷⁵ Mr. Livermore was unaware that the RCMP provided Mr. Edelson with a similar letter about Mr. Almalki.⁵⁷⁶

3.8.2

Minister Graham's Meeting with Secretary Powell

As mentioned above, Minister Graham discussed Mr. Arar's case with Ambassador Celluci on October 15. Following that meeting, Minister Graham told his staff that he needed to be better briefed, as Ambassador Celluci seemed to have far more information about the case. The Minister decided to raise these issues with the U.S. Secretary of State, Colin Powell, during his first official visit to Canada on November 14, in order to learn the reason for the American decision and to impress upon Secretary Powell that Canada wanted Mr. Arar returned.⁵⁷⁷

In this period, DFAIT was pursuing a request for a briefing from the Solicitor General's department about Mr. Arar and other individuals who might be investigated by the RCMP and of interest to foreign agencies.⁵⁷⁸ Minister Graham

testified that he never received this briefing. He was told that such a briefing would be inappropriate as he could not be briefed on operational details, even through the Solicitor General. The Minister explained that he could only obtain very general information from the RCMP, which would only say that Canada and the United States had shared information about Mr. Arar and that the RCMP had nothing to do with the decision to deport him.⁵⁷⁹ Minister Graham had the impression that ISD officials were given very limited information by the RCMP:

I wasn't asking to know the specific details myself, but I felt that the security people in our department should be able to get all the information that the police or others had, and I did not believe that was taking place. I was therefore concerned about the level of briefing that I was getting.⁵⁸⁰

The Minister was asked why he could not have received operational information from the RCMP and CSIS in confidence, so that he could meet with Secretary Powell on a level playing field. The Minister responded that if the RCMP provided him with specific information about Mr. Arar which it had shared with the Americans, he would be personally engaged as a minister of the Crown in operational details, which requires a good deal of caution.

A briefing note was prepared for Minister Graham on November 13, the day before the meeting. Mr. Arar's case was one of many issues on the agenda.⁵⁸¹ Two main topics of discussion were Iraq and Canada–U.S. border issues, specifically Canada's concerns with the U.S. National Security Entry-Exit Registration System (NSEERS).⁵⁸² The briefing note advised the Minister to raise Canada's serious concerns about the U.S. handling of Mr. Arar and another consular case. The additional talking points on Mr. Arar were:

We remain troubled by the decision of the American authorities to deport Mr. Arar to Syria. While we recognize that we have to work together on these files, such deportations without full consultation undermine public support for the anti-terrorism campaign.

We would hope if such cases occur in the future that there would be appropriate consultations with Canada before such decisions are taken.

The Meeting with Secretary Powell

On November 14, Minister Graham and Canadian officials had a 45 minute meeting with Secretary Powell and American officials, followed by a working lunch. A summary of the meeting was written in consultation with Assistant Deputy

Ministers Jim Wright and John McNee and distributed widely, through DFAIT, PCO and the Solicitor General's department.⁵⁸³

In setting the context for the meeting, Minister Graham explained that it took place around the time that the United Nations had decided to send inspectors to Iraq, so a key issue for Secretary Powell would have been security issues. When Minister Graham raised Canada's concerns about American authorities deporting Mr. Arar without consulting Canada,⁵⁸⁴ he stressed that "We believe very strongly in security. But security will only come if our own citizens believe that it is being handled in a way where the right balance is being struck, and we don't believe the balance was maintained here."⁵⁸⁵ Mr. Wright said that the Minister was signalling to the Secretary that the two countries needed to ensure this did not happen again.⁵⁸⁶

Secretary Powell appeared well-briefed by his officials on the Arar case and on other consular cases.⁵⁸⁷ The Secretary later told Minister Graham that, prior to this meeting, he was told that Canadian authorities, principally the RCMP, had shared information about Mr. Arar.⁵⁸⁸

In response to the Minister's comments, Secretary Powell insisted that the United States was unfairly taking the blame for Mr. Arar.⁵⁸⁹ He encouraged Minister Graham and DFAIT to consult Canadian security officials, suggesting that they had known about American actions all along and had in some fashion given their blessing to Mr. Arar's removal.⁵⁹⁰

In addition, Minister Graham and Mr. Wright testified that Secretary Powell and the American side emphasized that the American decision to deport Mr. Arar was based on information provided by Canada.⁵⁹¹ Minister Graham said that when it was emphasized that Canada had in no way countenanced sending Mr. Arar to Syria, Secretary Powell disagreed by specifically responding that Canada had shared information on Mr. Arar.

According to Minister Graham, Secretary Powell also stated that the United States had information about phone numbers and a telephone call that justified deporting Mr. Arar, although he appeared to provide no more explicit details.⁵⁹²

The Minister agreed that the Secretary was basically saying, "Listen, we've got a lot of stuff on this guy."⁵⁹³ However, he did not know what information the Secretary had. He observed that security briefings were less than perfect on both sides of the border, and noted that on occasion he and Secretary Powell shared frustration over the level of information they received from their respective security agencies.⁵⁹⁴

For Minister Graham, it was a difficult exchange. He explained that when Secretary Powell looked him in the eye and said, "Bill, you don't know what's going on, and I do because I've talked to the people that know," all he could

do was respond, “Hey, that’s not my advice.” Minister Graham felt a lack of confidence during this exchange, because he had access only to general information about Mr. Arar’s case.⁵⁹⁵

RCMP Reactions to Secretary Powell’s Comments

Deputy Commissioner Loeppky learned of Secretary Powell’s comments at the end of that day. He agreed that Secretary Powell had left the clear impression that somebody in the RCMP knew what was going on and that the RCMP had approved of Mr. Arar’s deportation. Mr. Loeppky acknowledged that it would be difficult to exclude completely the possibility that some individual RCMP officers might have implicitly approved the deportation by turning a blind eye to American action.⁵⁹⁶ However, he disagreed with the Secretary’s reported comment that the RCMP had been advised by the U.S. government of its reasons for deporting Mr. Arar.⁵⁹⁷ The Deputy Commissioner testified that he was disappointed by Secretary Powell’s comments, because he had undertaken a number of internal reviews and had been assured that the RCMP had given no direction to its American counterparts. Following this meeting, RCMP CID initiated another internal review.⁵⁹⁸

Superintendent Killam’s notes of November 15, 2002, state: “Today is the Arar concern that the Force supported the deportation, not true [*sic*].” He assumed that he learned of this from the media. Superintendent Killam was aware that Secretary Powell had given Minister Graham the clear impression that the RCMP was complicit in Mr. Arar’s deportation. However, Superintendent Killam testified that, even without making further inquiries in response to the media reports, he was able to exclude the possibility that the allegation of complicity might be true, because the allegation was inconsistent with the RCMP position.⁵⁹⁹

In late November, Superintendent Pilgrim had lunch with some CSIS officials. He testified that a discussion of the Arar case arose as a result of media reports of the Powell–Graham meeting and the fact that the Americans were aware of the investigation while Minister Graham was not. A CSIS report of the meeting noted that Mr. Pilgrim defended the RCMP’s failure to give DFAIT information about Mr. Arar as keeping tactical criminal information at arm’s length from the political process.⁶⁰⁰

The Ottawa Citizen Article of November 18, 2002

On Monday, November 18, 2002, the *Ottawa Citizen* published an article entitled “FBI told RCMP Ottawa man had terror link: Embarrassed officials admit U.S. sent evidence about Maher Arar.”⁶⁰¹ As planned on the preceding Friday,

and in response to the Citizen article, officials began working on new media lines, which were finalized on November 19.⁶⁰²

Minister Graham clearly recalled the public perception that DFAIT was operating without information held by the RCMP. He also recalled being accused by opposition politicians, including the Leader of the Opposition, of “going to bat for a terrorist.” The Minister explained that he had to make a distinction between the allegations and Mr. Arar’s legal and consular rights, which included working for his release.⁶⁰³

Solicitor General Wayne Easter also recalled the issues raised by the *Ottawa Citizen* article, and testified that he disagreed strongly with Secretary Powell’s comments. The Solicitor General did not recall receiving any specific briefing on the Arar case at that time, apart from notes for Question Period in October 2002. These stated that the RCMP had “no input” into any decision made by U.S. authorities. He agreed that he had very limited information and that his only source of information was the RCMP. When it was pointed out that the Arar case had become a political problem that he should know more about, Minister Easter said the political problem was because people believed Secretary Powell instead of him.⁶⁰⁴

On November 19, a CBC reporter advised Raynald Doiron, a DFAIT media relations officer, that Dr. Mazigh had told him she had received a statement from DFAIT saying “there is no serious information linking her husband with a terrorist organization.” Ms. Pasty-Lupul advised Mr. Doiron that the statement given to Dr. Mazigh was that the Consular Affairs Bureau had no information linking her husband with terrorist organizations. In a phone call with Dr. Mazigh on November 20, Dr. Mazigh observed that this statement made it look like different parts of the government did not have a united front.⁶⁰⁵

Mr. Dickenson recalled having frank conversations on November 15 and 18 with Deputy Commissioner Loepky about Secretary Powell’s comments concerning Mr. Arar, in order to ensure that he had accurate information, should PCO need to brief the Prime Minister. Mr. Dickenson wanted to show that the RCMP did not provide the Americans with information which they used as a basis for deporting Mr. Arar. Mr. Dickenson testified that he did not recall seeking clarification of Mr. Arar’s status from Mr. Loepky and that he could not conclude from their conversations whether Mr. Arar was involved in a joint U.S.–Canada investigation. However, Mr. Dickenson testified that Mr. Loepky assured him that the RCMP did not have information which could have led to Mr. Arar’s arrest. Mr. Loepky was emphatic that nobody in the RCMP had told the Americans that the RCMP did not want Mr. Arar returned to Canada.⁶⁰⁶

Deputy Commissioner Loeppky testified that he advised Mr. Dickenson that the RCMP had done a number of reviews and could not find any indication that the RCMP had given any direction or suggestion regarding the deportation decision, and that Secretary Powell's statements were inaccurate. The Deputy Commissioner was asked to comment on Mr. Dickenson's e-mail to his staff about their conversations, which stated:

Also understand that RCMP is/was displeased with US, that Arar was deported before they had a chance to interview him. Garry was emphatic that RCMP had not met with Arar in New York but had wished to do so. Before arrangements could be made, Arar was deported.

Mr. Loeppky denied that he made these comments to Mr. Dickenson. Rather, he testified that he believed he indicated to Mr. Dickenson that the RCMP had wanted to interview Mr. Arar at one point during his detention in the United States, but that the RCMP had not made the request, believing that Mr. Arar was returning to Canada.⁶⁰⁷

RCMP officials had a different concern about the *Ottawa Citizen* article. They focused on Secretary Powell's statement that the FBI had sent the RCMP information linking Mr. Arar to al Qaeda some weeks earlier. Staff Sergeant Callaghan advised Corporal Flewelling early on November 18 that Project A-O Canada had never received any such document from the FBI. RCMP CID briefed the Deputy Commissioner verbally.⁶⁰⁸

On November 21, RCMP CID provided Commissioner Zaccardelli with a revised version of its November 15 briefing note about media reports of RCMP involvement in the detention of Messrs. Arar, Almalki and El Maati in Syria. Most of the briefing note remained unchanged. The briefing note concluded that the RCMP could be considered complicit in Mr. El Maati's subsequent detention because of the RCMP's exchange of information with the Americans prior to Mr. El Maati's departure from Canada.⁶⁰⁹

There is no evidence that Solicitor General Easter was aware of any of the information from the SITREPS or briefing notes in this period.

3.8.3

"Going Back to the Americans" in Prague

On November 19, Mr. Wright was in Prague for a NATO Summit.⁶¹⁰ Before he departed, he instructed Mr. Livermore to obtain more information on the Arar case, to check with all the agencies and determine whether Canada was involved in Mr. Arar's deportation to Syria.⁶¹¹

Different Views within DFAIT and PCO

On the evening of November 19, Mr. Solomon of ISI sent an e-mail to Ambassador Pillarella, copying it to Mr. Wright at the Canadian Embassy in Prague, among others. The e-mail was approved by Mr. Livermore. It referred to the Powell–Graham meeting and addressed, in large part, CSIS’ impending trip to Syria (discussed in the following section). It noted that on November 18 the Minister had requested an assessment of Mr. Arar’s possible involvement in terrorist activities. Mr. Wright testified that ISI copied him to make sure that he was aware of developments in Ottawa and he explained that officials assumed that Minister Graham and Secretary Powell might have an opportunity to discuss the Arar case again in Prague.⁶¹²

However, senior officials had different opinions about whether Minister Graham should take advantage of this opportunity. On November 20, Mr. Dickenson sent an e-mail to Mr. Livermore, advising that he had just spoken with Paul Thibault, the Associate Deputy Minister of DFAIT. Mr. Dickenson told Mr. Thibault his view (which he had previously expressed to Mr. Wright) that they should not go to the American Embassy on the Arar case without a clear understanding of CSIS’ role. Mr. Thibault responded that it was a waste of time and that they should stop approaching the United States about this. Mr. Dickenson concluded his e-mail by noting that Mr. Wright and Mr. Thibault seemed to have differing views.⁶¹³

Mr. Wright confirmed that Mr. Dickenson had spoken to him, though he did not recall the discussion well. For Mr. Wright, it was completely appropriate for Canada to continue to pursue the United States for more information on what it had done, while seeking greater clarity on the involvement of Canadian agencies.⁶¹⁴

On November 21, Mr. Livermore sent an e-mail to Mr. Wright in Prague, in which he passed along the substance of Mr. Dickenson’s conversation with Mr. Thibault. He wrote that, in Mr. Thibault’s view, “it was water under the bridge.” Mr. Livermore advised Mr. Wright that:

I think the PCO view is that ‘timing is everything’. If it’s late in the game, it may not be useful to go back to the Americans. If the issue is still alive in certain quarters, it might merit a conversation, but definitely not at a political level. This issue will still be on the burner when you return.⁶¹⁵

The e-mail noted that there seemed to be “absolute certainty among the various agencies [...] that neither the RCMP nor anyone spoke to the USA in any way which might have suggested that any Canadian detained in the USA could

be deported to Syria, rather than to Canada.” At the same time, he observed that:

it is impossible to preclude the outside chance that someone in the food chain in NY or elsewhere might have shrugged, winked or through silence acquiesced in a USA question or decision. This is, of course, denied at the most senior levels of the RCMP, but the plain fact remains that someone might either lie to their own senior management or try to cover up what was a misstep.⁶¹⁶

Mr. Livermore testified that his “wink-wink, nod-nod” suggestion was “100 percent speculation” based on “30 years of cynicism.” He added that this was just an “obvious caveat” and a throwaway line: “I had absolutely no ground for believing that that was the case.”⁶¹⁷

Minister Graham did raise the Arar case with Secretary Powell when he attended the NATO Summit in Prague on November 21 and 22. After reminding Mr. Powell that they had recently spoken about Mr. Arar in Ottawa, the Minister advised the Secretary that, according to his information, no one in Canada had participated in the decision to deport Mr. Arar to Syria and this information had not changed. He asked the Secretary to investigate further. According to Minister Graham, Secretary Powell responded: “Bill, my story is exactly the same. You are not getting the straight goods from your guys. I am telling you my information is there were people involved in this decision in Canada.” As in Ottawa, the Secretary asserted that his information was that a Canadian official had given the go-ahead to deport Mr. Arar.⁶¹⁸

In response, Minister Graham again emphasized that Canadian inquiries into the matter did not support this view, and he requested that Secretary Powell provide him with the actual name of the Canadian official who had allegedly authorized or otherwise sanctioned Mr. Arar’s deportation.⁶¹⁹

3.8.4

Proposed Phone Call from Minister Graham to Minister Shara’a

Following his meeting with Secretary Powell on November 14, Minister Graham decided to telephone the Syrian Foreign Minister, Farouk Shara’a, to discuss Iraq and the Arar case. The call was scheduled for November 19, and a preparatory briefing note was sent to the Minister’s office on November 18.⁶²⁰

As background for the Minister, the briefing note stated that Syrian officials had advised that they were investigating Mr. Arar because of alleged links to al Qaeda, and that the RCMP had advised that they did not seek or receive warning of his deportation to Syria. It also gave talking points indicating that Canada

remained very concerned about the circumstances of the deportation and hoped that it would be possible for Mr. Arar to return to Canada.

The November 19 phone call did not take place, however. A number of different explanations were offered for this.

In his testimony, Minister Graham did not recall why the call did not occur, but he speculated that it could have been the result of scheduling difficulties. He recalled that, on one occasion, perhaps at a later time, he had tried to phone Minister Shara'a, but he was out of the country. He also recalled that, at one point, there was a decision to speak to Ambassador Arnous before approaching Minister Shara'a. While he speculated that DFAIT officials might have advised him to approach the Ambassador first, he did not specifically recall receiving this advice.⁶²¹

When asked if the phone call was delayed because of the concurrent visit by CSIS to Syria, Minister Graham testified that this was not his recollection; he was certain that he knew nothing about the CSIS visit until after it happened.⁶²² However, on a later occasion, Minister Graham was referred to Jim Wright's testimony, which was that the Minister wanted a report on CSIS' trip to Syria before he made this phone call. Minister Graham did not recall this, but testified that he would defer to Mr. Wright's recollection of events.⁶²³

A November 19 e-mail drafted by Mr. Solomon of ISI indicated that Minister Graham wanted a report on the CSIS visit before phoning Minister Shara'a. Mr. Wright said that he was not in Ottawa at that time. As noted, however, he testified that the Minister "asked at the time that he simply be fully briefed on the results of the visit immediately thereafter so that this could help inform our engagement with Syrian authorities, either the Syrian ambassador in Ottawa or the Syrian foreign minister."⁶²⁴

Mr. Livermore believed that the phone call was merely "visualized" on November 18, but that nobody had in fact acted on it. He agreed that, due to his experience with Secretary Powell, Minister Graham wanted to be fully informed before he called Minister Shara'a.⁶²⁵ When referred to Mr. Solomon's e-mail of November 19, which he had approved, Mr. Livermore commented that he did not recall the entire chronology of the proposed phone call, but knew that at some point Minister Graham wanted to phone the Syrian Foreign Minister to discuss Mr. Arar's consular rights. Mr. Livermore testified that they were also concerned that this phone call might confuse the Syrians, since it would happen at the same time as the CSIS visit. Therefore, in the words of Mr. Livermore, "We took it to Mr. Graham. Mr. Graham thought that it was completely manageable, that he wasn't worried about it."⁶²⁶

Robert Fry of the Minister's office testified that he believed that the phone call was postponed because Minister Shara'a was unavailable, or because an Assistant Deputy Minister advised that Minister Graham should talk to the Syrian Ambassador before approaching the Foreign Minister. Mr. Fry also noted Minister Graham's travel schedule, and the narrow window of opportunity to call Syria before he departed for Prague.⁶²⁷ In addition, Mr. Fry observed that DFAIT had regular consular access and was receiving reports that Mr. Arar looked good, which implied that it was not urgent to call Syria about him.

However, Mr. Fry later clarified this evidence. Asked why the phone call did not occur, he testified that he spoke with Assistant Deputy Minister McNee, and also possibly with Mr. Pardy. He was told that he was rushing this phone call and that Minister Graham should deal first at the ambassadorial level and take it to the foreign minister later.⁶²⁸

Rescheduling the Call

Subsequently, the phone call was rescheduled for December 16. On December 11, Michael Chesson, a desk officer with the Middle East Division,⁶²⁹ e-mailed Ambassador Pillarella about the call, after consulting with Mr. McNee. He wrote: "As you are aware, MINA [Minister Graham] had considered placing a call to Mr. Shara'a some weeks ago to discuss the Arar case... We would appreciate your assessment of Syria's continuing interest in Arar and whether Mr. Shara'a would be receptive to a call from MINA on the subject."⁶³⁰

The Ambassador responded by e-mail the next day, agreeing that a call should be arranged between the foreign ministers for December 16, if possible. He wrote:

My first point relates to the cancelled phone call between MINA and FM Shara'a. You will recall that when the Syrians were informed that the phone call would not take place, they were somewhat puzzled and despite our explanation that the call was not being cancelled but simply postponed, they remained unconvinced. Therefore, in the interest of our bilateral relations and in order to demonstrate to the Syrians that no ulterior motive existed at the time we postponed the call, MINA should indeed call FM Shara'a.⁶³¹

On December 12, Mr. Chesson contacted James Gould in ISI to ask whether Mr. Livermore had been briefed about the CSIS visit to Syria. Mr. Chesson wanted any information about the trip that might bear on Minister Graham's projected call to Minister Shara'a.⁶³²

The same day, Mr. Heatherington e-mailed CSIS to request any information received in respect of Mr. Arar. His e-mail also stated that:

Our Minister is considering a number of options for further action on this case including placing a call to his Syrian counterpart on Monday, December 16. To assist us in briefing our Minister it would be appreciated if you could provide us with your Damascus trip report by Friday a.m. We want to ensure that CSIS' views are factored into our advice to the Minister.⁶³³

In his testimony, Mr. Heatherington explained that the purpose of obtaining the information was to ensure that Minister Graham had all the relevant facts and was not blindsided in his discussion with the Syrian Foreign Minister. The Minister had been “blown out of the water” in other conversations on the Arar case, in Mr. Heatherington’s view. To be an effective advocate for Mr. Arar, Minister Graham needed the information that CSIS had obtained in Syria. Mr. Heatherington believed that the Minister’s background as a lawyer would help him put CSIS’ information in the proper context.⁶³⁴ Mr. Pardy agreed that DFAIT’s responsibility was to provide the Minister with as complete a picture as possible on the case.⁶³⁵

On December 16, Mr. Solomon e-mailed Ambassador Pillarella, advising him that he was attaching a draft version of Minister Graham’s briefing for his phone call with Minister Shara’a, in order to prepare the Ambassador for a conversation with Mr. Heatherington. Mr. Solomon noted that the draft was still undergoing modifications, and that its final version would not contain language urging the early release of Mr. Arar, but probably a softer line mentioning the level of press coverage the issue was receiving. The attached unofficial draft had been sent to Mr. Solomon by Harold Hickman of the Middle East Division.⁶³⁶

Ambassador Pillarella testified that he did not remember what Mr. Solomon was referring to in this e-mail. He recalled receiving a document for comment, but he testified that he recalled neither the document nor his comments.⁶³⁷ Asked why ISI was now indicating that the ministerial briefing would recommend a softer approach on the Arar case, the Ambassador testified that he was not involved in this discussion and he did not know what prompted that language.⁶³⁸

The evidence regarding Mr. Heatherington’s phone call to Ambassador Pillarella is unclear. Asked why he would speak to Ambassador Pillarella about the Minister’s phone call, Mr. Heatherington testified that “it was going to be about the text,” but it appears that the Ambassador was not involved in discussions about the language of the ministerial briefing. Asked if he was setting up

the Minister's phone call, Mr. Heatherington said no. It is not known whether the Ambassador and Mr. Heatherington discussed the information CSIS had recently obtained in Syria or other developments occurring in mid-December 2002.

As events turned out, the proposed phone call for December 16 was cancelled because of scheduling problems.

On December 18, DFAIT changed its advice on the phone call, in a memorandum to the Minister from the Middle East Division.⁶³⁹ It noted that, following discussions between the Middle East Division, ISD and Consular Affairs, their recommendation was that the Minister meet with Ambassador Arnous instead.⁶⁴⁰ The following day, the Middle East Division instructed Ambassador Pillarella not to take any action at that time on any possible phone call to Minister Shara'a.⁶⁴¹

The matter of the call to the Syrian Foreign Minister lay dormant over the Christmas holidays. In January 2003, the subject resurfaced and the phone call took place on January 16. The circumstances leading to the phone call and its context are discussed below in Section 6.

4. THE CSIS TRIP TO SYRIA

4.1 CSIS INQUIRIES INTO MR. ARAR

CSIS' efforts to obtain further information from American agencies about Mr. Arar immediately after his removal have been described in Section 4 of the preceding chapter. On October 11, 2002, [***] responded verbally to CSIS' request for information about Mr. Arar's recent activities, the reason for his arrest, his current status and any other information gleaned from Mr. Arar. [***] advised CSIS' Washington office that Mr. Arar had been detained on September 26; that [***] had searched him; and that he was subsequently excluded from the US.⁶⁴²

On November 5, [***] sent CSIS and Project A-O Canada a written response to CSIS' October 10 request for information about the circumstances of Mr. Arar's removal. Some CSIS witnesses were offended by the "fairly terse" [***] response.

4.1.1 [***]

[***].

4.2

DISCUSSIONS OF A CSIS TRIP TO SYRIA, NOVEMBER 4 AND 6

On November 4, CSIS, DFAIT ISI and the RCMP met to discuss a CSIS trip to Syria. Staff Sergeant Callaghan testified that on that morning, Corporal Buffam came to Project A-O Canada with a fax from DFAIT containing information from the Syrians and General Khalil. It discussed a potential interview with Mr. Arar by CSIS.⁶⁴³ Inspector Cabana remembered receiving a call from Mr. Saunders of DFAIT ISI, suggesting a meeting between CSIS, the RCMP and DFAIT “to ensure a coordinated approach.”⁶⁴⁴ Staff Sergeant Callaghan of Project A-O Canada testified that the meeting was attended by himself and Inspector Cabana from the RCMP, Messrs. Gould, Heatherington, Solomon and Saunders from DFAIT ISI, and a CSIS official.⁶⁴⁵

According to Staff Sergeant Callaghan, Mr. Heatherington discussed their consular access to Mr. Arar and advised them that Ambassador Pillarella was going to bring back information from the Arar interviews when he came to Canada.⁶⁴⁶ Inspector Cabana noted that at the meeting CSIS agreed that any delegation travelling to Syria for the purpose of interviewing Mr. Arar should be composed of CSIS and RCMP representatives.⁶⁴⁷ It was agreed that they would wait for documentation from the Ambassador before any plan was developed.⁶⁴⁸

Another interdepartmental meeting of representatives from the RCMP, CSIS and DFAIT ISI was held on November 6. By now, Ambassador Pillarella was back in Ottawa from Damascus with the *bout de papier*, which he handed over to DFAIT ISI on November 6. The Ambassador also attended this meeting, but noted that he did not arrange it.⁶⁴⁹ Inspector Cabana testified that he attended the meeting with Chief Superintendent Couture and that Superintendent Pilgrim and CSIS representatives were also in attendance.⁶⁵⁰ As far as Mr. Pardy knew, no one from Consular Affairs was invited to attend, but he believed that this was the kind of meeting where there should have been input from the Consular Affairs Division.⁶⁵¹ Mr. Dickenson of PCO assumed that since no representative from PCO attended the meeting, PCO was not invited — but he would not have expected them to be invited either.⁶⁵²

Inspector Cabana testified that the purpose of the meeting was for Ambassador Pillarella to brief them on the results of his meetings with Syrian authorities and to discuss the information that flowed from those meetings, with a focus on the need to obtain more detailed information.⁶⁵³ He explained that by the end of the meeting there was a shared belief that the information was not specific enough to determine its accuracy and more details were needed.⁶⁵⁴

Inspector Cabana noted down that “it was agreed that more detailed information was required from the Syrians relative to [***] Arar before a decision could be made on whether or not we could attend.”⁶⁵⁵ They also agreed that before going any further, CSIS would travel to Syria to meet with SMI officials in order to “try and gain access to their [Syrian] detailed information.”⁶⁵⁶

The CSIS representative explained that several issues were discussed during this meeting.⁶⁵⁷ CSIS saw this as an opportunity to obtain information about Mr. Arar and, even more important, to discuss other matters with the Syrians and get the wider context.⁶⁵⁸ DFAIT viewed this as a chance to clarify the issues around Mr. Arar.⁶⁵⁹ The CSIS representative said that DFAIT officials were very interested in having CSIS go, but one of their primary concerns was that CSIS not take on any consular duties with respect to Mr. Arar.⁶⁶⁰ The RCMP representatives expressed their view that CSIS should not interview Mr. Arar if provided the opportunity because it might “taint any possible future evidence” about Messrs. Almalki and El Maati and the other active criminal investigations.⁶⁶¹

Since CSIS did not want to become involved in the consular process and risk tainting any criminal investigation, it fully agreed with the concerns expressed by DFAIT and the RCMP.⁶⁶² At the end of this meeting, there was a consensus from the three agencies that it would be a good idea to send a CSIS delegation to Syria.⁶⁶³ It was Mr. Heatherington’s understanding that the delegation was to go to Syria and obtain information about international terrorism, but not interview Mr. Arar or question the Syrians about him.⁶⁶⁴

4.2.1

The Reliability of the *Bout de Papier*

As described above in Section 3.5, both Ambassador Pillarella and Inspector Cabana testified that there was no discussion at the November 6 meeting about the risk or possibility of torture with respect to the statement that Mr. Arar had given to the Syrians. Mr. Solomon did not recall any specific discussions about torture, but believed that at some time during the meeting concern about Mr. Arar’s treatment would have arisen.⁶⁶⁵

Mr. Solomon prepared a draft memorandum for the Minister, dated November 14, which dealt with the upcoming CSIS trip to Syria and stated that the “reliability of the confession Syrian authorities have obtained from Arar [is] also uncertain” and “there are concerns as to whether a visit to Arar by Canadian intelligence officials may make Canada appear complicit in his detention and possible poor treatment by Syrian authorities.”⁶⁶⁶ Mr. Solomon testified that the conclusion about the reliability of the statement would have been that of DFAIT

ISI, and if it had been removed from the final version of the memorandum, as it was, then this would have been done by Mr. Livermore.⁶⁶⁷

In a November 25 draft memorandum intended for Gaetan Lavertu, Deputy Minister of Foreign Affairs, Mr. Solomon wrote that the “reaction of the RCMP to [the *bout de papier*] was to indicate that it confirms what they suspected about Arar, and therefore they believe it to be credible.”⁶⁶⁸ Mr. Solomon testified that he wrote that the RCMP believed it to be credible because “they were confident in the veracity of the material and they felt it was consistent with material that they already had.”⁶⁶⁹

Mr. Solomon went on to write that “CSIS made no comment about the credibility of the document, but said that even if true, it was not necessarily damning evidence against him.”⁶⁷⁰ Mr. Solomon was unsure whether the statement about CSIS’ view related to the November 6 meeting about the *bout de papier* or came from the CSIS delegate after his return from Syria.⁶⁷¹

The November 14 draft memorandum to the Minister prepared by Mr. Solomon evolved into an information memorandum for Minister Graham which was sent to his office on December 16 through Messrs. Wright and Lavertu.⁶⁷² The December 16 memorandum was to provide the Minister with information prior to his call with the Syrian Foreign Minister and it focused on the CSIS trip to Syria.⁶⁷³ As a result of events during that period, the final content of the memorandum, signed a month later, had changed from the draft version, and the comments on the possible unreliability of the confession were not included.⁶⁷⁴

Mr. Livermore testified that the original statement about the reliability of the confession and the possible complicity by Canada if CSIS was to meet with Mr. Arar was “very much on the speculative side” and “it was anticipating something that we later ironed out with CSIS, namely that they would not seek access to Mr. Arar.”⁶⁷⁵ He explained that “having ironed out the difficulty, this memo lost relevance and wasn’t put up.”⁶⁷⁶ Mr. Livermore commented that he could not explain why a sentence was put in or left out and that they almost redid the memorandum from scratch the second time since it was basically a different situation.⁶⁷⁷ He also noted that he was not certain of the status of the original draft and that he could not “vouch for the fact that anyone other than Jonathan Solomon agreed with the text of the draft that he prepared himself.”⁶⁷⁸

Mr. Heatherington was asked about assertions in the final memorandum regarding Mr. Arar’s past activities in Afghanistan and Canada and whether this was reliable information. He testified that it looked like information originating from the Syrians and that he thought everyone was aware of the source of the information.⁶⁷⁹ Mr. Heatherington said that although he did not review the final mem-

orandum, since Mr. Gould signed it for him, he believed that the reliability issue was not highlighted in the final version because of information he had received from CSIS.⁶⁸⁰

In explaining the inclusion in the December 16 memorandum of information from Mr. Arar's statement to the Syrians, Mr. Livermore said that ISI relied on information that had come their way which they took at "face value, not necessarily because he had confessed to it, but it was our understanding that that information was out there from other sources."⁶⁸¹

The *bout de papier* did not give Mr. Hooper any cause to suspect that the statement might have been the product of firm questioning, because his "expectation would have been if he was mistreated, tortured or beaten, there would have been a lot more stuff in there."⁶⁸²

Corporal Flewelling could not recall if anyone at the RCMP's Criminal Intelligence Directorate was tasked to do a reliability assessment of the information which Ambassador Pillarella had brought back from Syria, although this was one of the important functions of that branch of the RCMP.⁶⁸³

4.3

PURPOSE OF THE TRIP

Following the interdepartmental meetings, CSIS submitted a briefing note to Mr. Hooper on November 8 requesting authority to travel to Syria to discuss Mr. Arar and other matters.⁶⁸⁴ The briefing note documented the November 6 meeting by highlighting the points agreed upon at that time by the three agencies: CSIS would be meeting with the Syrians to discuss Mr. Arar and other matters and no other Canadian agencies would be included; CSIS would not seek access to Mr. Arar; the RCMP would seek access to Mr. Arar and the Syrians through its own liaison channels; and DFAIT had requested that no travel be undertaken until Minister Graham had been apprised and had concurred with the initiative.⁶⁸⁵

The briefing note assessed that the trip to Syria would provide a good opportunity for CSIS to meet with the Syrians.⁶⁸⁶ It would also allow CSIS to acquire critical intelligence in support of its Sunni Islamic terrorism investigation and would be an important step in evaluating the information that the Syrians held on Mr. Arar.⁶⁸⁷ Mr. Hooper "strongly supported" the request and it was approved.⁶⁸⁸

On November 18, CSIS met with Inspector Cabana and Staff Sergeants Callaghan and Corcoran. They requested that CSIS not interview Mr. Arar even if given the opportunity, because "this would not be a usable evidentiary statement."⁶⁸⁹

4.3.1

Request from DFAIT to Delay the Trip

On November 18, DFAIT asked CSIS to delay its trip to Syria because it “had doubts about the timeliness of the visit, although not about its substance.”⁶⁹⁰ The timing of the trip concerned DFAIT for two reasons.⁶⁹¹ The Arar case was in the news, and DFAIT was concerned that if the media found out about the trip, it might connect CSIS going to Syria to talk about international terrorism with the consular case of Mr. Arar, which might cause “confusion.”⁶⁹² The second reason for DFAIT’s concern was that Minister Graham planned to phone Syrian Foreign Minister Shara’a and he wanted to confine that conversation to the consular issue of Mr. Arar. In Mr. Livermore’s words, the Minister “didn’t want confusion [in the minds of the Syrians] as to what Foreign Affairs was saying.”⁶⁹³

On November 18, DFAIT, the Solicitor General, CSIS and PCO had a conference call on the Arar case.⁶⁹⁴ Mr. Gould testified that he was instructed by ISD to call either Mr. Hooper or the Director General of Counter-Terrorism at CSIS to pass on a message that the “optics are very bad for this week and they should not plan on an immediate visit, i.e. we recommend you not go in the short term.”⁶⁹⁵ Mr. Gould’s notes attribute comments to Mr. Hooper that the issue would be raised with Mr. Elcock and it would be his decision.⁶⁹⁶ In an e-mail to Ambassador Pillarella late on November 18, Mr. Solomon advised him that “senior DFAIT representatives asked CSIS to delay their visit to Syria,” but that CSIS intended to continue with the planned visit, although the delegation would not attempt to visit Mr. Arar.⁶⁹⁷ Mr. Solomon noted that “PCO chose not to intervene on this debate, so unless the Minister attempts to block this visit,” CSIS would arrive in Damascus shortly.⁶⁹⁸

Mr. Livermore testified that CSIS wished to proceed and DFAIT took it to Minister Graham, who thought that it was “completely manageable” and “he wasn’t worried about it.”⁶⁹⁹ According to Mr. Livermore, Minister Graham chose not to take it up with the Solicitor General.⁷⁰⁰ Mr. Livermore explained that he thought that in the end PCO decided that “unless our minister felt strongly enough about it to intervene, it would proceed.”⁷⁰¹ An e-mail sent by Mr. Solomon to Ambassador Pillarella on November 19 noted that the issue went before the Minister on November 18, but he did not wish to defer the CSIS visit. However, the Minister indicated that “he wished to have a full report on the visit and the discussions with the Syrians before he communicated with the Syrian Foreign Minister” and he “also requested an assessment of Arar’s possible involvement in terrorist activities.”

Minister Graham's testimony that he did not learn about the CSIS trip until after it happened has been discussed earlier in the context of his planned phone call to Minister Shara'a.⁷⁰²

According to e-mail exchanges between the Minister's office and Mr. Parady, the Minister's office was aware by December 3 that CSIS had visited Syria.⁷⁰³ However, Mr. Fry testified that, to his knowledge, the issue of the CSIS trip did not go before the Minister and the first time Mr. Fry heard about it was in early January 2003, after which he brought it to the Minister's attention.⁷⁰⁴ He recalled that he learned about it from Mr. Parady, who framed it as a visit that CSIS had already planned, where the Arar case just happened to be discussed.⁷⁰⁵ Mr. Fry testified that he was briefed that the trip comprised ordinary business between intelligence agencies.⁷⁰⁶ When he learned about the trip, he was unhappy and frustrated.⁷⁰⁷ In his view, the Arar case was very important and high-profile, and this was the kind of thing that should have been brought to their attention sooner rather than two months after the fact.⁷⁰⁸

Minister Easter testified that he did not become aware of the CSIS trip to Syria until later in 2003.⁷⁰⁹ When he was subsequently advised about the visit, Minister Easter was not told that they also went there to discuss the Arar case.⁷¹⁰

Mr. Hooper explained that CSIS was not prepared to delay the visit based on the rationale provided by DFAIT, since the "Arar case was going to have a high media profile for a long time and the terrorists weren't downing tools waiting for us to deal with Arar."⁷¹¹

Mr. Dickenson of PCO testified that he was aware that the CSIS trip was to happen, but PCO would not have intervened to prevent it from happening.⁷¹² That would not be the role of PCO, since it was an operational issue.⁷¹³ According to Mr. Dickenson, PCO was aware that DFAIT and CSIS disagreed on the trip.⁷¹⁴ However, he explained that PCO expects departments and agencies to sort out their differences among themselves.⁷¹⁵ Here, DFAIT did what was expected, in that officials consulted their minister, who made the decision that the visit was not worth blocking.⁷¹⁶

No one informed Consular Affairs that CSIS intended to travel to Damascus and meet with the SMI. Mr. Parady did not learn about the trip to Syria until after it happened, when ISI received a debriefing on November 28.⁷¹⁷ Ms. Pasty-Lupul was also unaware that CSIS was travelling to Syria to meet with the SMI.⁷¹⁸ Mr. Solomon provided Ambassador Pillarella with media lines on November 19 in the "unlikely event there will be press coverage of the visit" These included the following statements: "the visit in question was planned some time ago to discuss terrorism-related issues;" and "the purpose of the visit is not to deal with the Arar case; he will not be visited by these officers."⁷¹⁹

On November 21, Mr. Livermore advised Mr. Wright via e-mail that he had “touched base” with the RCMP, CSIS and Mr. Dickenson in PCO about the CSIS trip. He noted that CSIS officials had a clear idea of what they could discuss with the Syrians and that they would not accept an opportunity to see the detained Canadians even if it was offered.⁷²⁰ He also wrote that CSIS would debrief DFAIT on the information received so that the Department could report to Minister Graham.⁷²¹ Mr. Livermore’s message noted that the RCMP was concerned about direct contacts with the detainees for investigative purposes.⁷²² He explained that the RCMP and CSIS agreed on who had the lead responsibility for questioning, if the issue were to arise, because it would not have been useful if CSIS questioned Mr. Arar before the RCMP.⁷²³

Before CSIS visited Damascus, Mr. Livermore e-mailed Ambassador Pillarella to provide him with some clarification about the trip.⁷²⁴ He explained that, following the trip, Minister Graham expected to receive a full report on the involvement of Canadians in international terrorism.⁷²⁵ He advised that the issue of interviewing the two detained Canadians was an RCMP responsibility and that DFAIT wanted “to be very clear with respect to separating this mission from any consular or interview mission which might take place in the future.”⁷²⁶

4.4

THE EVENTS OF THE TRIP — NOVEMBER 19–24

Between November 19 and 24, a CSIS delegation travelled to Damascus to meet with the SMI. One of the delegates had been to Syria many times before this visit.

4.4.1

CSIS Meets with the Ambassador

The CSIS delegation arrived in Damascus on November 20 and met with Ambassador Pillarella the next morning. Mr. Martel did not know that the CSIS delegation was in Damascus.⁷²⁷ Ambassador Pillarella emphasized to the CSIS delegation that Mr. Arar was a consular case. A CSIS witness testified that the Ambassador was advised that CSIS would try to obtain information about Mr. Arar from the SMI.⁷²⁸ The Ambassador testified that the CSIS delegation had told him that they had come to speak to their counterparts about “terrorist issues.” Contrary to CSIS’ evidence, Ambassador Pillarella testified that CSIS did not tell him that they would be discussing the Arar case with the SMI.⁷²⁹ However, a message sent from a CSIS representative to Ambassador Pillarella on November 18 about the trip stated, “As you are aware, discussions will involve the status of Mr. Arar.”⁷³⁰ The Ambassador wrote to DFAIT Headquarters that he had informed the CSIS delegation that he was trying to arrange a meeting with

General Khalil for November 24. However, Ambassador Pillarella confirmed that he did not facilitate any meetings and that CSIS made contact with the SMI without his intervention.⁷³¹

4.4.2

CSIS Meets with the SMI

The CSIS delegation began its meetings with the SMI on November 23. The first meeting, with General Khalil and four SMI officials, was a general discussion of security politics, the war on terrorism, and the Middle East. Mr. Arar was not discussed.⁷³² Following this meeting, two SMI officials gave them lengthy briefings on other matters.⁷³³

The first briefing was about Mr. Arar. It lasted for approximately one and a half hours and was slowed down by the translation process. The entire briefing was verbal and no paper was exchanged.⁷³⁴ A CSIS representative took notes.

Mr. Hooper did not believe that CSIS would have revealed that Mr. Arar was of interest to a Canadian investigation and he testified that the CSIS delegation did not provide the SMI with any information about Mr. Arar.⁷³⁵ He explained that CSIS met with the SMI to “elicit information,” not to “exchange information.”⁷³⁶ SMI officials were not asked any questions at all about their briefing. The CSIS delegation did not make any comments or provide any assessment about how SMI information compared with CSIS information. No information whatever was shared about Mr. Arar.⁷³⁷

[***],⁷³⁸

The CSIS delegation did not see or interview Mr. Arar during the trip to Syria, nor did the Syrians offer any opportunity to meet with him or suggest they would hand him over.⁷³⁹

Mr. Hooper did not agree that CSIS had posed any danger to Mr. Arar by communicating it had some interest in him.⁷⁴⁰ Ms. Pasty-Lupul was not aware of the CSIS visit before it occurred and was not briefed on it. However, she agreed that, had she known of the visit, she would have been concerned it might encourage the SMI to interrogate Mr. Arar further.⁷⁴¹

4.4.3

CSIS' Position on Mr. Arar

One of the CSIS delegates testified that he did not express to the Syrians any position on whether Mr. Arar should be returned to Canada. In his discussions with SMI officials, he believed that he had made it quite clear that this case was a consular matter and had advised them that they must deal with the Embassy and the Ambassador regarding Mr. Arar. According to him, they appeared to

understand this. He speculated that perhaps he might have overstressed this point, possibly giving the Syrians the impression that CSIS did not care what happened to Mr. Arar. In discussions with DFAIT before the trip, nobody had ever told the CSIS delegates that they should express any position on Mr. Arar's release or return to Canada.⁷⁴²

This delegate denied that any member of the CSIS delegation had communicated to any Syrian authority that CSIS did not want Mr. Arar returned to Canada or that CSIS wanted Syria to keep Mr. Arar.⁷⁴³ At the meeting where Mr. Arar was discussed, there was no reference to Mr. Arar's ability to return to Canada or any insinuation that CSIS did not want him back. Furthermore, the delegate testified that he would not have said that CSIS had no interest in Mr. Arar, because one of the reasons he went to Syria was to acquire the information which the Syrians had on him.⁷⁴⁴

4.4.4

CSIS Did Not Debrief Ambassador Pillarella

The CSIS delegation did not meet with Ambassador Pillarella before they left Damascus. On November 25, Ambassador Pillarella sent an e-mail to DFAIT ISI and GMR officials, expressing frustration and annoyance that the delegation did not return to the Embassy on Sunday, as they had previously agreed to.⁷⁴⁵ The Ambassador noted that the delegation did not return several messages that he left at their hotel on Sunday, and that he learned on Monday morning that they had departed, without sharing any information they might have learned about the Arar case.⁷⁴⁶

The Ambassador testified that he had no idea what the CSIS delegation discussed with SMI officials, because CSIS did not debrief him. This turn of events upset the Ambassador, who testified that he did not even know whether Mr. Arar was discussed, at a time when he was working to assist him.⁷⁴⁷ A member of the delegation testified that it was not his understanding that he was supposed to debrief the Ambassador. He claimed that his instructions were to provide a debriefing on Mr. Arar to DFAIT when he returned to Ottawa.⁷⁴⁸

4.5

CSIS DEBRIEFS DFAIT

CSIS debriefed DFAIT officials about the trip at a meeting on November 28. Shortly before this meeting, Mr. Solomon was given a personal debriefing on the phone, apparently also on November 28. He was told that CSIS had had discussions about Mr. Arar with the Syrians. Mr. Solomon recalled that CSIS noted

that the Syrians would charge Mr. Arar at some point but that the death penalty was unlikely.⁷⁴⁹

Referring to his notes of this phone call, Mr. Solomon testified that the CSIS official stated that the Syrians were holding Mr. Arar for domestic reasons, and that CSIS had asked the Syrians not to tell Mr. Arar of CSIS' visit.⁷⁵⁰ The CSIS official did not recall making this last comment to Mr. Solomon, nor did he recall asking the SMI to keep quiet about the visit. However, he did not think, if he had said it, that it would have made a difference one way or another.⁷⁵¹

Mr. Pardy attended the debriefing meeting on November 28, and it was there that he was first advised that CSIS had visited Syria.⁷⁵² Mr. Pardy sent an e-mail to Ambassador Pillarella with some of CSIS' comments on Mr. Arar.

Some of CSIS' debriefing addressed matters relating to Mr. Arar's consular rights. The CSIS official advised that, in his opinion, the Syrians might charge Mr. Arar.⁷⁵³ According to a DFAIT memorandum to Minister Graham, he also apparently reported that the Syrians had said it was unlikely that Mr. Arar would return to Canada in the short term.⁷⁵⁴ However, the CSIS official testified that following his trip to Syria, he was "expecting him to be released probably before Christmas."⁷⁵⁵

4.5.1

The Muslim Brotherhood Allegation

According to Mr. Pardy's e-mail to Ambassador Pillarella, DFAIT had been advised that the Syrians had suggested Mr. Arar was a member of the Syrian Muslim Brotherhood. CSIS thought it possible that Mr. Arar might be charged for being a member of this organization. Mr. Pardy therefore sought Ambassador Pillarella's assessment of the present significance of the Muslim Brotherhood in Syria.⁷⁵⁶

Mr. Pardy testified that Syria had a very draconian law that allowed it to do whatever it wanted with an individual suspected of any association whatever with the Muslim Brotherhood. In his view, the Syrian government found it convenient to use the Muslim Brotherhood label as a way to keep people in prison.⁷⁵⁷ Mr. Pardy disagreed that the SMI was actually investigating Mr. Arar for connections to this organization; his assessment was that association with the Muslim Brotherhood was a catch-all allegation the Syrians used to justify their actions:

in all of the information that Ambassador Pillarella was able to obtain [...], there was never really any specifics with regard to the Muslim Brotherhood. It was an accusation that stood out there on its own. I think in other areas, and certainly in terms

of the information the Ambassador picked up and other information that came back to the Canadian government, it was the Al Qaida connection that was the key one here. And the Syrians never fleshed out – certainly in my memory, they did not flesh out any supporting evidence of their concern with respect to the Muslim Brotherhood...⁷⁵⁸

Mr. Pardy concluded by describing the Muslim Brotherhood allegation as a “chimera” which neither CSIS nor the RCMP thought warranted any serious attention or concern.⁷⁵⁹

Other DFAIT witnesses had different views. Mr. Livermore testified that he and others developed the opinion that the Syrians were legitimately interested in Mr. Arar for his “past involvement” with the Muslim Brotherhood, and that this motivated Syria’s continued detention of Mr. Arar. Mr. Heatherington testified that Mr. Pardy was sceptical of the Syrians, and did not give sufficient weight to the idea that the Syrian government might simply be trying to indicate that Mr. Arar had links to Islamic extremism in general.⁷⁶⁰

While acknowledging that General Khalil was insistent in October 2002 that Mr. Arar was an al Qaeda recruiter, Ambassador Pillarella testified that the Syrians saw al Qaeda and the Muslim Brotherhood as related and that the Brotherhood remained an obsession of the Syrian government.⁷⁶¹ According to Flynt Leverett, an expert called to testify at the Inquiry on Syrian politics and foreign relations, an allegation of being a member of the Muslim Brotherhood would be far more serious than being a member of al Qaeda because it would be viewed as more directly threatening to Syria’s interests.

By December 12, some DFAIT officials had embraced the notion that the Syrians were detaining Mr. Arar for connections to the Syrian Muslim Brotherhood. Ambassador Pillarella sent an e-mail to Michael Chesson, a desk officer with the Middle East Division (GMR) who was seeking advice on Minister Graham’s upcoming phone call to Minister Shara’a:

One may lament the manner in which Arar found himself in Syria, but the fact is that he is here now. On that basis, one should not forget that for the Syrians Arar is first and foremost a Syrian citizen, in Syria, and as such, submitted to Syrian law. Following his interrogation, Arar is considered to be a case of internal security linked it seems to the Muslim Brotherhood not to Al-Qaida, (see my reftel on the Muslim Brotherhood) and therefore the Syrians will act with extreme prudence having in mind their national interest as the foremost priority. Should they consider that by releasing Arar and returning him to Canada he could still represent a potential menace for Syria, they will likely refuse to release him. This point was indirectly made

to Leo Martel by the contact (a colonel) ... during his last meeting of only a few days ago.⁷⁶²

A DFAIT Middle East Division memorandum to Minister Graham dated December 19, recommending that the Minister call in the Syrian Ambassador, noted that “indications are that Syria has concerns that Mr. Arar’s links are not with al Qaeda but with the Syrian Muslim Brotherhood.”⁷⁶³

4.5.2

CSIS’ Position on Torture

During this debriefing, a member of the CSIS delegation advised DFAIT officials that after reviewing the information received from Syria, he believed that Mr. Arar had likely not been tortured.

Mr. Pardy did not recall discussing torture at the debriefing, but did remember general comments about the potential unreliability of SMI information about Mr. Arar.⁷⁶⁴ The CSIS representative told Mr. Heatherington that Mr. Arar had not been mistreated by the Syrians, because if the Syrians had mistreated Mr. Arar, they would have obtained more information from him.⁷⁶⁵

The CSIS representative agreed that he was not an expert in torture. However, he explained that, if a detainee had been tortured, there “would be a lot more damning information.” He testified that the Syrians would have gone over the same points again and again, and explored in greater detail the information which Mr. Arar provided. In his view, this was not a very complete intelligence report. Based on Ambassador Pillarella’s earlier reports of his meetings with General Khalil, the CSIS representative expected to learn that Mr. Arar was a member of al Qaeda.⁷⁶⁶

Another CSIS representative confirmed that CSIS has no personnel who are trained in assessing whether intelligence is the product of torture. Rather, CSIS’ assessment focuses on whether the Service can corroborate the information.⁷⁶⁷ [***].⁷⁶⁸

Professor Richard Ofshe, an expert who testified at the Inquiry on false confessions, explained that a statement missing details “wouldn’t necessarily tell you anything about coercion itself.” Instead, it would tell him something about the skill of the interrogators and might suggest what they were trying to accomplish.⁷⁶⁹

4.6

DISTRIBUTION OF THE TRIP REPORT

On November 29, CSIS provided a draft copy of the written trip report on Mr. Arar to Corporal Flewelling in RCMP CID, and on December 3, Project A-O Canada received a copy.⁷⁷⁰ This draft was very similar to the final report, which was distributed to the RCMP and DFAIT electronically on December 13; however, the significant difference between the two versions was that the final report included additional analysis and commentary from CSIS.⁷⁷¹

On November 28, Mr. Edelson, counsel for Mr. Arar, met with representatives of Project A-O Canada, who advised him that CSIS had travelled to Syria and obtained some form of statement.⁷⁷² Mr. Edelson recalled that, at that time, Project A-O Canada had not been given access to this interrogation information and they wanted to see it. He testified that he raised concerns about the credibility and reliability of the Syrian information, since Mr. Arar might have been tortured to obtain it.⁷⁷³

The trip report was not shared with Mr. Edelson. James Lockyer, a criminal defence lawyer, testified that if CSIS or the RCMP had obtained an alleged confession from Mr. Arar, they had to provide a copy of it to defence counsel in Canada. In Mr. Lockyer's view, the fact that it was classified was not a legitimate argument for withholding it from defence counsel. The information came directly from Mr. Arar, who could provide it directly to his counsel. Moreover, Mr. Lockyer said that, given the obvious concerns about the reliability of a statement provided under torture, it was all the more important that it be disclosed to defence counsel.⁷⁷⁴

4.6.1

Distribution to DFAIT

Unlike the RCMP, DFAIT was not given a preliminary copy of the trip report. As noted earlier, DFAIT officials requested the report on December 12 in order to prepare Minister Graham for the projected phone call to Minister Shara'a. CSIS e-mailed the trip report to the CSIS liaison officer at DFAIT ISI, late on Friday, December 13, and it was forwarded to DFAIT ISI officials early on Monday, December 16.⁷⁷⁵

In explaining why DFAIT had to follow up with CSIS when the report had been provided to the RCMP two weeks earlier, a CSIS official testified that he was in no great hurry to send his report to DFAIT. He had already given them a personal debriefing and he thought that would hold them off until he had an

opportunity to assess the information fully. In the end, he had to send his trip report to DFAIT without completing this assessment.⁷⁷⁶

4.6.2

Advising Minister Graham

An information memorandum from DFAIT ISI went up to Minister Graham on December 16 to brief him before he called Minister Shara'a.⁷⁷⁷ The memorandum focused on CSIS' visit to Syria and advised the Minister that they had received the trip report that day.⁷⁷⁸

DFAIT ISI also advised the Minister that the "Syrians appear to view these connections as sufficient grounds to detain Arar [***] and "it is clear that the Syrian standard of what constitutes a detainable terrorist is lower than ours."⁷⁷⁹ It mentioned that the Syrians had indicated that Mr. Arar would face charges, possibly followed by sentencing and further prison time, and that the charges "may be linked to his association with the Muslim Brotherhood rather than to current terrorist activities."⁷⁸⁰

Two days later, following consultations between itself, DFAIT ISI and Consular Affairs, the Middle East Division sent a memorandum to the Minister's office on December 18, recommending that as the next step the Minister call in Syrian Ambassador Arnous to discuss the Arar case.⁷⁸¹ It noted that the original option of having Minister Graham call the Syrian Foreign Minister posed several difficulties.⁷⁸² The memorandum advised the Minister that the Syrians had informed both the Embassy in Damascus and the CSIS delegation to Syria that it was unlikely that Mr. Arar would return to Canada in the short term.⁷⁸³ It commented that "there is a concern that if Canada raises the Arar case persistently at senior levels or publicity in Canada becomes intensive, Syria may state publicly their security agencies are working with their Canadian counterparts on the case and that the Canadian agencies are aware of the reasons Mr. Arar is continuing to be held."⁷⁸⁴

Mr. Pardy did not know Minister Graham was being advised not to pursue high-level contacts with the Syrians, and did not have any indication that Minister Graham had any reluctance in this matter.⁷⁸⁵ Mr. Heatherington rejected the notion that the Minister was no longer being advised to call the Syrian Foreign Minister because DFAIT had now received the *bout de papier* and the CSIS trip report and was exercising caution and possibly trying to avoid a scenario similar to the Ahmed Said Khadr experience.⁷⁸⁶ In the latter case, the Prime Minister had faced embarrassment when Mr. Khadr was found to be clearly connected with terrorist activities after the Prime Minister had intervened for his release.

Mr. Wright thought the Syrian Ambassador should be engaged because Minister Graham was preparing to travel and they needed to send their messages quickly.⁷⁸⁷ Minister Graham was not sure if he ever saw this memorandum and therefore could not recall whether he ever spoke with Mr. Easter, Mr. Elcock or Commissioner Zaccardelli about whether the RCMP and CSIS were in fact working with their Syrian counterparts on the Arar case.⁷⁸⁸

4.7

CSIS' USE OF INFORMATION FROM THE TRIP

Although CSIS may have had some questions about the importance of the information it received from the Syrians, it is clear that it subsequently relied on this information. One example of this reliance can be found in a May 9, 2003 briefing note to the Solicitor General, which is discussed below in Section 8.⁷⁸⁹ Other than a passing comment in the trip report, CSIS made no assessment of whether the information obtained from the SMI might have been the product of torture. Furthermore, when it relied on this information, CSIS made no reference to Syria's human rights record or the possibility of torture.

5.

CONSULAR AND OTHER ACTIVITIES — NOVEMBER 26, 2002–FEBRUARY 2003

5.1

CONSULAR VISITS WITH MR. ARAR

Fourth consular visit

The fourth consular visit with Mr. Arar took place on November 26, 2002.⁷⁹⁰ In preparation, Mr. Martel was given several questions that Mr. Pardy and Ms. Pasty-Lupul wanted put to Mr. Arar. He was to assess Mr. Arar's overall well-being, and attempt to determine if his psychological and physical state had improved and whether he was more relaxed than on previous visits. On a more personal note, Ms. Pasty-Lupul suggested that Mr. Martel 1) get a response from Mr. Arar to his wife's letter; 2) let Mr. Arar know that consular officials in Ottawa had met with his wife (who "was very dedicated to him"); 3) find out if Mr. Arar could receive pictures; and 4) keep Mr. Arar abreast of news in Canada.⁷⁹¹

The visit was held in the same location, following the same procedure as previous visits, including an initial discussion with Syrian Military Intelligence officers. Mr. Pardy explained that this was normal practice in countries like Syria,

and not unproductive: it provided the consular officer with an opportunity to engage in conversation, discuss family issues and perhaps humanize the individual in question.⁷⁹²

Overall, the tenor of the visit appeared more relaxed.⁷⁹³ It was agreed that Mr. Arar could receive photographs (he asked in particular for photos of his children). He was also able to receive a letter from his wife and dictate a response.⁷⁹⁴

Mr. Martel's report indicates that Mr. Arar appeared to be "in good physical and mental health." Mr. Arar said that his only medical problem was a knee injury that apparently predated his detention, but he also asked for certain brand-name medications, including "Contact C, Tylenol, Immodium and ... anti-constipation medicine." Mr. Martel questioned him on his diarrhea, but Mr. Arar said it was not the result of his detention and "was linked to history."⁷⁹⁵ Syrian officials made Mr. Arar stand up to show he was well taken care of. According to Mr. Martel, the Syrians made a point of this, having Mr. Arar walk around and turning to the consular official as if to say, "Do you see how well we treat him?"⁷⁹⁶

Mr. Martel then asked Mr. Arar about his health as compared to the first consular visit. Mr. Arar replied that he had been afraid at the beginning as the investigation was more intensive, but that he was being treated very well. When prompted by a Syrian official, he said "My brothers are treating me very well," to which Mr. Martel responded with something like, "Really, what do you really feel?" Mr. Arar replied that he felt as well as anyone would who is being detained in prison and that these visits were his only joy. Finally, he requested financial assistance from his wife.⁷⁹⁷

Mr. Martel explained in testimony that he could not jump to conclusions about Mr. Arar's comment that "the investigation was more intensive" in the beginning. He simply wrote down what he heard and let others interpret. Ms. Pastyr-Lupul took the comment to mean that Mr. Arar must have been through a pretty rough time in the beginning. Mr. Pardy felt that Mr. Arar's comment was consistent with his other experiences with the Middle East, and the possibility that the Syrians had held Mr. Arar incommunicado in the beginning, extracted the information they needed and then disclosed his whereabouts. He agreed that it was also consistent with the comments Mr. Arar made publicly on his return.⁷⁹⁸

As for the Syrians making Mr. Arar stand up and walk around to show he was well treated, Mr. Martel agreed that it was laughable. He did not believe what the Syrians were telling him and felt Mr. Arar would have known that.⁷⁹⁹ Mr. Pardy concurred that it showed Mr. Arar was following the Syrians'

instructions, and that they wanted to restrict the amount of information available to Canada. He added, however, that it was in the context of a certain relaxation on the part of the Syrians during this visit, with perhaps less overall domination and control than previously.⁸⁰⁰

As discussed below, communication with the Arar family was now ongoing. Mr. Martel indirectly provided his impressions of Mr. Arar from this visit to Dr. Mazigh on December 6, when he asked Ms. Pasty-Lupul to convey to Dr. Mazigh that Mr. Arar “looks as fine as anyone should in his situation and I see no evidence of him not being treated well. I will also see what I can do about the specific medicine he has asked for.”⁸⁰¹

Fifth consular visit

By the time of the next consular visit on December 10, Dr. Mazigh had provided the funds Mr. Arar had requested during the previous visit. Based on her discussions with Mr. Martel, Ms. Pasty-Lupul understood at the time that this extra money might have allowed Mr. Arar to buy special food and service, and generally make his life a little easier.⁸⁰² Mr. Arar’s daughter also wanted to send her father something, and Ms. Pasty-Lupul looked into doing so by an e-mail attachment.⁸⁰³

Ambassador Pillarella, with Mr. Pardy’s blessing, sought another meeting with General Khalil prior to the visit to further explore Syrian intentions with respect to Mr. Arar. However, General Khalil was reportedly ill and could not meet with the Ambassador around this time.⁸⁰⁴

The day before the visit, Mr. Martel received instructions from Mr. Pardy. He wanted Mr. Martel to inquire about taking a digital photo of Mr. Arar and ask whether the Syrians would allow Dr. Mazigh to visit her husband. The Syrians would deny both requests.⁸⁰⁵

During the visit, Mr. Arar’s physical condition appeared good — unchanged from the previous visit, according to Mr. Martel. Mr. Martel provided letters, photos, US\$196 and reading material for Mr. Arar. (The reading materials passed indirectly through the guards and it is unclear whether Mr. Arar ever received them or, if he did, whether he was able to read them given the conditions of his detention.) Mr. Martel was allowed to hand over the letter from Dr. Mazigh, and Mr. Arar dictated a response.⁸⁰⁶

According to Mr. Martel’s report, the two talked about “anything and everything.” Mr. Arar asked to be told again about “the Prime Minister’s press attaché story.”⁸⁰⁷ About this, Mr. Martel wrote in his report: “He will eventually get to read about it in the magazines he is being given.” Mr. Arar then asked about

media interest in his case. Mr. Martel replied that there seemed to be fewer articles in the press, but that consular affairs maintained a keen interest.⁸⁰⁸

When asked to comment on this visit, Ms. Pasty-Lupul noted that Mr. Arar appeared to be in good condition. She felt that the thrust of the visit was to uplift his spirits and give him some sort of moral support or connection to Canada.⁸⁰⁹

Mr. Arar's letter to Dr. Mazigh was sent to Mr. Pardy and DFAIT ISD and ISI. When asked why he had sent this personal letter to DFAIT, Mr. Martel explained that he was simply given a list of addresses to send information to, something he viewed as normal procedure.⁸¹⁰

Sixth consular visit

Between the fifth and sixth consular visits, Ambassador Pillarella was asked whether he thought it would be useful to send a special envoy to Syria to plead Mr. Arar's case. The Ambassador's view at the time was that the Syrians saw Mr. Arar's case as a matter of internal security. Thus, he thought it doubtful a special envoy would be effective. In fact, he believed it could do some harm by raising the political level of the case, embarrassing the Syrians and possibly jeopardizing the arrangement Canada had with the SMI that allowed for consular visits.⁸¹¹ The Ambassador pointed out that of the approximately 70 embassies in Damascus, he was not aware of another that had this kind of access to a dual national like Mr. Arar.⁸¹²

Throughout this whole period, Ambassador Pillarella continued to attempt to meet with General Khalil, who remained unavailable, reportedly due to sickness.⁸¹³

By January 2003, the possibility of a war in Iraq loomed large as a distraction for the SMI.⁸¹⁴ Indeed, a theme that emerged in the following weeks was that the Syrians were somewhat annoyed that with the Iraq war on the horizon, all that Canadian officials wanted to talk about was Mr. Arar. On the other hand, the fact that Canada chose not to participate in that war provided a small degree of leverage to Canadians in their negotiations.⁸¹⁵

Another political factor emerged around mid-December 2002 when Canada listed Hezbollah as a terrorist organization under the Criminal Code.⁸¹⁸ The Syrians were not happy about this development.⁸¹⁷

Around the same time, Mr. Arar's brother Bassam expressed his concern to Consular Affairs in Ottawa about the "human rights treatment" of his brother in Syria. He was worried the Syrians might be keeping his brother underground, letting him see daylight only for consular visits.⁸¹⁸ Ms. Pasty-Lupul assured him

that her office shared his concern and would express this if they had reason to believe Mr. Arar was not being treated in a humanitarian way.⁸¹⁹

The sixth visit did not take place until January 7, 2003. Mr. Martel explained that the Syrians had become increasingly coy, not returning his calls as promptly as before, and making excuses for why a consular visit could not take place. For example, on December 16, 2002, he spoke with Colonel Saleh, who explained that his schedule that week was heavy and pointed out that the frequent visits Canada had been getting were unusual. Mr. Pardy's observation was that it was quite clear around this time that the Syrians were backing off from their initial commitment to allow access to Mr. Arar every three or four days.⁸²⁰

When the visit finally occurred, Mr. Martel noted that "Arar looked in good health and no noticeable change was observed since last visit."⁸²¹ Mr. Arar was wearing warmer clothes (Mr. Martel seemed to recall a sweater with long sleeves) and was very pleased to have company.⁸²²

The Syrian authorities were unwilling to allow Mr. Arar to place or receive phone calls, insisting that apart from current consular access, no outsiders were authorized to speak with him.⁸²³ Mr. Martel asked about Mr. Arar's computer, to no avail.⁸²⁴ Again, Mr. Arar dictated letters to Mr. Martel — this time separate letters to his wife and his daughter.⁸²⁵

At the end of the meeting, once Mr. Arar had left the room, Colonel Saleh and Colonel George spent considerable time discussing Mr. Arar's detention conditions. They went out of their way to say that Mr. Arar was receiving special treatment, noting he was being kept in a separate room apart from other detainees, given decent clothing, and provided with necessary food and water.⁸²⁶

According to Mr. Martel, it was not necessarily bad news that Mr. Arar was being kept apart from other detainees. He pointed out that prison conditions in Syria were very bad, and that it can be bad news to hear that a prisoner is being held with other detainees.⁸²⁷ Mr. Pardy more willingly agreed that isolation could be a form of abuse, noting that the longer the time in isolation, the greater the chances the prisoner would suffer a serious deterioration in mental health and well-being.⁸²⁸

Mr. Martel did not directly raise with the Syrians Bassam Arar's concerns that his brother was being kept underground without access to light. He testified that while he kept this possibility in mind during the visit, they could have told him anything they wanted in reply. In his view, such a question needed to be put directly to Mr. Arar, which was impossible in this case. Mr. Martel instead used a more indirect tactic. Once alone with the Syrians, he mentioned there were negative articles in the press about Mr. Arar's situation. This comment led to prolonged assurances from the Syrians that Mr. Arar was being well treated.⁸²⁹

Ms. Pastyr-Lupul agreed that it was a judgment call on Mr. Martel's part whether to directly ask the Syrians about Mr. Arar's treatment or use more discretion. She appeared to accept Mr. Martel's approach. She pointed out that no specific DFAIT policy requires direct questioning. Each situation requires a case-by-case approach. In this case, there was always the risk that too much pressure would close the door to future visits.⁸³⁰

When he was alone with Colonel Saleh, Mr. Martel asked about Mr. Arar's case. The Colonel said that Mr. Arar would likely be detained for a long time and prosecuted. He mentioned that the security services of both countries were working jointly on the matter.⁸³¹ He also let it slip that Mr. Arar's wife did not know everything she should about her husband.⁸³² Mr. Martel suggested to Colonel Saleh that because the case was attracting significant media attention in Canada, it would be in both countries' interests to continue consular visits. Colonel Saleh replied that they would do their best.⁸³³

In testimony, Mr. Martel related that he had developed a good relationship with Colonel Saleh, stating that he "appeared to be a very decent person ...," and Mr. Martel was "pretty close to him." Still, he understood that the Colonel was likely telling him things that were untrue.⁸³⁴

Seventh consular visit

Although Canadian officials applied regular pressure to secure a visit, an even longer period would pass before they saw Mr. Arar again on February 18. Mr. Martel's view was that Mr. Arar's status as a dual national was a problem, and consular access to him was a significant exception to the rule in Syria.⁸³⁵

The notable delay in having consular access this time created angst within Consular Affairs. Mr. Martel felt that applying too much pressure risked jeopardizing Canada's good relations with the Syrians to date. Mr. Pardy indicated in February 2003 that if a response from the Syrians was not forthcoming, it might be necessary to put extra pressure on them, if only to find out why Canada was being denied access.⁸³⁶ News of a visit, when it finally came, was welcome. In the meantime, Ambassador Pillarella finally secured his meeting with General Khalil on January 9. According to Ambassador Pillarella, it was a spirited encounter, but nonetheless ended with a handshake and a joke or two.⁸³⁷

During the meeting, the Ambassador raised the possibility of a visit from Dr. Mazigh with her husband as a way to improve Syria's image. The General seemed amenable to this request.⁸³⁸

Ambassador Pillarella pointed out that the Syrians were bending over backwards not to create additional problems for Canada, even though the General insisted throughout the conversation that Canada was defending a terrorist.⁸³⁹

The Ambassador noted that this was serious talk from the Syrians, and would mean the death penalty for Mr. Arar.

In his report on the February 18 consular visit, Mr. Martel noted that “Arar said he was (and appeared) to be in good health and we have not noticed any changes since last visit.”⁸⁴⁰ Again, he was dressed warmly. Mr. Martel commented that if Mr. Arar had lost weight, it must have been prior to his first visit, because his weight looked constant from then through to August 2003, and this was something he was on the lookout for.⁸⁴¹

Mr. Martel indicated that Mr. Arar was extremely happy to be visited, but that what he found most difficult was adapting to being detained. He still had money, his needs were being taken care of and he was receiving privileged treatment. Again, reading material was left with the authorities⁸⁴² and family photos and a letter exchanged.⁸⁴³

The Syrians gave no indication that charges had been laid. In fact, they said the investigation was ongoing. As related by Colonel Saleh to Mr. Martel in private outside the meeting room, Mr. Arar continued to be interrogated and was still providing valuable information.⁸⁴⁴ The Syrians said that if and when charges were laid, consular access might cease — which was of concern to Consular Affairs in Ottawa.⁸⁴⁵

Mr. Martel’s report, approved by Ambassador Pillarella, speculated about Mr. Arar’s hopes for release:

With regard to MINA’s [Minister Graham’s] statement to Min[ister] Shara’a that the preferred option of the Canadian government would be that Arar be returned to Canada, this concept does not seem to find an echo with the Syrian authorities, at least not for the moment. As long as they consider that their investigation is ongoing, the Syrians will not release Arar. We suspect that the only possibility of a return to Canada could happen only at the end of an investigation that could not justify the laying of charges against Arar. For the moment, this remains an open question.⁸⁴⁶

The Syrians explained that the delay between visits was due to illnesses, absences and holidays. They also made it clear to the consul that no specific commitment could be made for regular visits from then on. Mr. Martel commented in his report that having to mobilize several people for each visit was perhaps straining the Syrians’ resources.⁸⁴⁷

5.2

COMMUNICATIONS WITH THE FAMILY

Contact between Consular Affairs and Mr. Arar's family began almost immediately after Dr. Mazigh arrived in Canada on November 14, 2002.⁸⁴⁸ For example, as discussed above, Bassam Arar's concern about his brother's situation led Mr. Martel to make inquiries with the Syrians. At another point, Dr. Mazigh asked about her husband's laptop, which in turn led to inquiries. There was also the constant exchange of letters, photos, money and personal information between Mr. Arar and his family.⁸⁴⁹

One message consular officials wished to convey to Mr. Arar's family was that they were concerned about Mr. Arar's well-being and wanted to ensure he was being well treated and had access to legal counsel. As consular officials, they were not there to investigate him, or reach conclusions on his guilt or innocence.⁸⁵⁰ This reassurance became relevant a couple of weeks after the January 2003 consular visit. Hassan Arar contacted Mr. Pardey to complain that Consular Affairs was not controlling the RCMP, which had recently requested a meeting with him about his brother. (The continuing Project A-O Canada investigation is discussed in Chapter IV, Section 10.) Mr. Pardey explained that Consular Affairs was not necessarily informed of the RCMP's investigative procedures. Dr. Mazigh's impression was that the RCMP was intimidating the family, and lacked good intentions and an understanding of the situation.⁸⁵¹

Ms. Pasty-Lupul made a point of telling Dr. Mazigh when a consular visit was scheduled, as well as reporting on it after it occurred. The dialogue between the two was continuous; Mr. Pardey also spoke to Dr. Mazigh occasionally.⁸⁵²

However, the family did not receive the actual consular reports, which might have given family members the impression they had not received complete accounts of the visit. According to Ms. Pasty-Lupul, this was a judgment call on DFAIT's part. She added, however, that discussions about Mr. Arar's situation were full and frank during meetings with the family. She suggested that the *Privacy Act* governed what information from Mr. Arar could be relayed to the family and that in this case, Mr. Arar was not able to provide written authorization to allow full release.⁸⁵³ It is not clear, however, that Mr. Martel was ever asked or attempted to obtain such authorization. Mr. Arar may already have given verbal approval to discuss the case with his family when he was in detention in New York.⁸⁵⁴

At one point, Mr. Martel was asked to contact Dr. Mazigh directly to describe his meetings with Mr. Arar. However, he felt this was not within the

consular officer's mandate, and after discussion with Mr. Pardy, the idea was set aside. As mentioned above, in early December Mr. Martel did ask Ms. Pasty-Lupul to pass along a reassuring message about Mr. Arar's condition. Likewise, in mid-January, Mr. Martel wrote to Ms. Pasty-Lupul about Dr. Mazigh's concerns of securing another consular visit:

Monia should, in all fairness, be told the truth. We visit her husband when it is possible to do so but we are working in a foreign country and her husband is a national of this country.

We are doing our best to maintain the excellent relationship we currently have with the authorities which we hope will continue [to] help us access ... Maher on a regular basis.⁸⁵⁵

On this same note, consular officials conveyed to the family their increasing difficulties in securing consular visits in early 2003, quite possibly due to Syria's preoccupation with Iraq.⁸⁵⁶ Dr. Mazigh became increasingly concerned when, in early March 2003, she learned that Canadian diplomatic missions in the Middle East were being scaled down because of the upcoming Iraq war. However, Mr. Pardy made it clear to Dr. Mazigh that the key people with respect to Mr. Arar were staying in Damascus.⁸⁵⁷

Shortly after the February 18 consular visit, Mr. Pardy and Ms. Pasty-Lupul spoke with Dr. Mazigh about whether she would be willing to travel to Syria to visit her husband. As discussed, the Syrians were indicating that this was a possibility at the time.⁸⁵⁸ Discussions to this effect continued through to the visit by members of Parliament in April 2003, and beyond.

In late March 2003, after weeks of delay and no success in recovering money belonging to Mr. Arar that had never reached him when he was at the Metropolitan Detention Center in New York, Mr. Pardy took the unusual step of ordering that a cheque for the equivalent of US\$200 be issued to Dr. Mazigh from a humanitarian assistance fund. Consular officials were aware that, for obvious reasons, Dr. Mazigh was not in good financial shape at the time.⁸⁵⁹

5.3

PUBLICITY AND THE PUBLIC CAMPAIGN

Dr. Mazigh spoke to the media about her husband's situation shortly after her return to Canada on November 14. It appears she told the media that DFAIT officials had said they had no serious information linking her husband to terrorist organizations. In response, Consular Affairs came out with an official line that confirmed her statement.⁸⁶⁰ It was not uncommon for Consular Affairs to field questions from journalists throughout this whole ordeal.⁸⁶¹ Mr. Pardy would

express concern throughout the year that the increased level of media attention to Mr. Arar's case might not be helpful to securing his release, and at one point at least, requested that Dr. Mazigh consider toning down her public campaign.⁸⁶²

Mr. Arar's plight would remain the subject of high-profile media attention throughout his time in Syria.⁸⁶³ In part because of this attention, but also because of the unique facts of the case, it remained a high-profile issue for Minister Graham's office.⁸⁶⁴ Mr. Arar's plight also attracted the attention of groups such as Amnesty International in Canada, which contacted Minister Graham's office in January 2002 to try to secure a meeting with the Syrian Ambassador to Canada. Mr. Fry in the Minister's office had dealt with Amnesty International on other cases. He viewed them as a very credible and respected NGO, and from time to time listened to their advice and suggestions with respect to Mr. Arar's situation.⁸⁶⁵

5.4

HIGH-LEVEL EFFORTS TO OBTAIN RELEASE

Minister Graham's meeting with the Syrian ambassador to Canada

In the first high-level intervention with Syria on Mr. Arar's case, Minister Graham called in Ambassador Arnous, Syria's Ambassador to Canada, on December 19. Ms. Pastyr-Lupul described this as an example of "extraordinary efforts on our behalf which normally do not happen in arrest and detention cases."⁸⁶⁶

Before meeting with Ambassador Arnous, Minister Graham spoke with Mr. Arar's wife in a conference call that included Marlene Catterall, Mr. Arar's Member of Parliament. Mr. Fry, who organized and participated in the call, saw it as an opportunity to reassure Dr. Mazigh and make her aware that DFAIT was doing all it could for her and her husband, at the highest levels of the organization.⁸⁶⁷

Dr. Mazigh wanted to know how long her husband would be detained. The Minister explained that he had no control over the length of the process. Dr. Mazigh expressed concern about her husband being in a state of limbo, with no charges against which he could defend himself. The Minister explained that the Canadian Embassy in Damascus was in frequent contact with Mr. Arar, and that DFAIT was working hard on the case. He also mentioned that he would call the Syrian Foreign Minister to discuss the situation.⁸⁶⁸

During his meeting with Ambassador Arnous that day, Minister Graham related that he had spoken with Dr. Mazigh. He added that there was great interest in the case in Canada and told the Ambassador that in the international war against terrorism, it was still necessary to respect human rights. He then said he

was going to make a representation to the Syrian government to return Mr. Arar at the earliest possible time; if Syria suspected Mr. Arar was guilty, they should charge him and allow him to defend himself against any accusations. He noted that Mr. Arar should not be held in limbo without knowing what he was accused of doing.⁸⁶⁹

Ambassador Arnous replied that the Arar case was complex. Syrian authorities were still investigating, and had numerous concerns, including Mr. Arar's travels to Afghanistan.⁸⁷⁰

Mr. Fry, who was also present, asked how long the process was going to take. The Ambassador replied that he would do his best, but the matter was in the hands of the security services, which do not necessarily share their information.

On January 15, 2003, Mr. Pardy asked Ambassador Arnous if he would meet with Dr. Mazigh. He was not prepared to do so.⁸⁷¹

Minister Graham's call to Syrian Foreign Minister Shara'a

As discussed earlier, a call by Minister Graham to his Syrian counterpart had been contemplated as far back as November 2002. Minister Graham finally spoke with Syrian Foreign Minister Shara'a on January 16, 2003.

Minister Graham raised several other issues first. The Syrians were worried at the time about the potential American invasion of Iraq; for them, Mr. Arar's case was of minor importance. Thus, despite the fact that for Canada, Mr. Arar's plight was front and centre, Minister Graham took his time broaching the subject.⁸⁷² When he finally raised Mr. Arar's case, he noted that it had attracted media and parliamentary attention in Canada and that the manner of Mr. Arar's removal from the United States had upset many Canadians. He took the time to dispel any impression the Syrians might have had that Canada did not want Mr. Arar returned. He made it clear that Mr. Arar's return was Canada's preferred option.⁸⁷³ He then reiterated his earlier message to Ambassador Arnous that the alternative option was to charge Mr. Arar so that he could have the opportunity to defend himself.⁸⁷⁴ On the question of Mr. Arar's dual nationality, Minister Graham said he understood Syria's position that he was Syrian, but that he was a Canadian to Canada, and Canada wanted him back.⁸⁷⁵

Foreign Minister Shara'a assured Minister Graham that if the Syrians' investigation determined Mr. Arar was an associate of al Qaeda, he would have a fair trial.⁸⁷⁶

On January 29, not long after this call, Minister Graham repeated the details of his conversation with the Syrian Foreign Minister in response to a question about Mr. Arar during a press scrum.⁸⁷⁷

6. THE POSSIBILITY OF MIXED SIGNALS

6.1

AMBASSADOR PILLARELLA'S JANUARY 15 MEETING

In January, DFAIT learned that the Syrians thought Canada did not want Mr. Arar back. Ambassador Pillarella and Mr. Martel met with Deputy Foreign Minister Haddad on January 15 to review the Arar case and discuss the possibility of Dr. Mazigh visiting her husband. The Ambassador prepared a report to DFAIT Headquarters in which he stated that the Deputy Foreign Minister had made two points he considered “rather curious.”⁸⁷⁸ The first was that “Arar did not wish to return to Canada;” the second was that “CSIS would have indicated to military intelligence that they have no wish to see Arar return to Canada and they were quite content with the way things were.”⁸⁷⁹ Regarding the first statement, Mr. Martel told the Ambassador that Mr. Arar had indicated the exact opposite in his letters to his wife.⁸⁸⁰ As to not wanting Mr. Arar back in Canada, Ambassador Pillarella said that that was the first he had heard of it.⁸⁸¹

Ambassador Pillarella went on to say that he had heard this same comment once or twice more from the two other key people with whom he had been dealing — Deputy Foreign Minister Mouallem and General Khalil.⁸⁸² No particulars had been provided and no information volunteered to the Ambassador as to who had given the Syrians this message.⁸⁸³ Nor had he seen the need to ask the Syrians who had given them this impression and when.⁸⁸⁴ Ambassador Pillarella explained that since he had mentioned CSIS by name in his report to Headquarters, it was possible the Deputy Foreign Minister had said that “CSIS” did not wish to see Mr. Arar returned to Canada, but that the few times it had been mentioned, it had been phrased as “we understand from your people that you don’t want him back in Canada.”⁸⁸⁵ Mr. Martel could not recall Deputy Foreign Minister Haddad specifically referring to “CSIS” in his statement. To the best of his recollection, the official had said something like “Well, we thought that you didn’t want him back.”⁸⁸⁶

Ambassador Pillarella stressed that any time the three Syrian officials had said this to him, he had responded, “I don’t know what people are telling you that, I am telling you that we want Mr. Arar back in Canada if you have nothing against him.”⁸⁸⁷ Ambassador Pillarella had not contacted CSIS Headquarters directly to inform them of what the Syrian officials had been saying because he had reported it to DFAIT Headquarters and it had been up to them to take care of it in Ottawa.⁸⁸⁸ He had subsequently spoken with CSIS Director Ward Elcock

in Romania in late 2003, about what the Syrians had said almost a year earlier — that CSIS did not want Mr. Arar back in Canada. Mr. Elcock had said this was not true.⁸⁸⁹

After receiving this message from the Syrians, DFAIT contacted people at different levels of CSIS about the statement. It was always denied.⁸⁹⁰ When DFAIT informed him of the Syrian statement, Mr. Hooper met with the CSIS delegation that had visited Syria in November,⁸⁹¹ assuming that this statement had something to do with that trip.⁸⁹²

The CSIS delegation's instructions for this trip from their superiors and DFAIT very clearly stated that CSIS was to make the Syrians understand that the issue of Mr. Arar's release was a consular matter and CSIS was not to get involved in that part of it.⁸⁹³ One of the CSIS delegates testified that at no time had anyone in the delegation told the Syrian authorities that they did not want Mr. Arar back in Canada.⁸⁹⁴ He indicated that he would not have said "we have no interest in Arar"⁸⁹⁵ because one of the reasons for the trip to Syria was to acquire the information that the Syrians had concerning Mr. Arar. Thus, CSIS did in fact have an interest in him.⁸⁹⁶

Mr. Hooper determined that CSIS had said nothing to the Syrians that to his mind could logically have led to a conclusion that CSIS did not want Mr. Arar returned, and he informed DFAIT of his finding.⁸⁹⁷ For various reasons discussed in more detail below, Mr. Hooper did not instruct anyone to contact the SMI to rectify the misimpression, the primary reason being that he was aware that Minister Graham had made a call to his Syrian counterpart on January 16.⁸⁹⁸

Mr. Livermore of DFAIT ISI explained that DFAIT had feared from the outset that they were dealing with a country where there was reason to believe that the Foreign Ministry came below the intelligence service both in the power structure and in terms of influence.⁸⁹⁹ If CSIS had said something to the SMI, the CSIS view might be seen in some Syrian circles as more influential than any view expressed to the Foreign Ministry.⁹⁰⁰ DFAIT was accordingly "concerned about the lines of communication and the ability of the Canadian government to speak with one voice on this [issue]."⁹⁰¹ Mr. Livermore speculated that if the SMI had at any stage understood that Canada did not want Mr. Arar back, that message would have been more powerful than a message from the Foreign Ministry saying that the Canadian government wanted him back.⁹⁰²

6.2

JANUARY 16 CONTACTS WITH SYRIAN FOREIGN MINISTER AND
AMBASSADOR ARNOUS

As described earlier, during his phone call to Foreign Minister Shara'a on January 16, Minister Graham emphasized that the Canadian government's preferred option was that Mr. Arar be returned to Canada. Mr. Fry of the Minister's office testified that this message was intended to "dispel any impressions the Syrians had about mixed messages from Canada."⁹⁰³

An official with DFAIT's Middle East Division informed Ambassador Arnous of Minister Graham's call⁹⁰⁴ and relayed the same message to him.⁹⁰⁵ Ambassador Arnous was "pleased to hear that Minister Graham had informed his Minister that it was the position of the Canadian Government that the preferred option is the return of Arar to Canada."⁹⁰⁶ Ambassador Arnous further "volunteered that he had also been informed that the Syrian security services had been told by their Canadian counterparts that Canada did not wish to see Arar return to Canada."⁹⁰⁷

DFAIT Headquarters instructed Ambassador Pillarella to "convey to Vice Minister [*sic*] Haddad and General Khalil that Minister Graham has stated very clearly that the return of Arar to Canada is the preferred option of the Government of Canada."⁹⁰⁸

Mr. Hooper did not instruct anyone to contact the SMI to rectify the misimpression for a number of reasons. First, he believed Minister Graham's call to his Syrian counterpart had been "pre-emptive in terms of what the Service might do because he has clearly conveyed the message that the Government of Canada wants Mr. Arar back."⁹⁰⁹ Second, Mr. Hooper was aware there had been a call or meeting between DFAIT and the Syrian ambassador on this issue.⁹¹⁰ Third, CSIS had "information from an independent source that satisfied the Service that notwithstanding what may have been said, by the time these calls were made, the discussions were held, there was no misunderstanding on the part of any Syrian entity as to what the position of the Government of Canada was relative to Mr. Arar."⁹¹¹ In summary, by January 16 CSIS understood that there was no misunderstanding on the Syrian side.⁹¹²

Ambassador Arnous stated that Deputy Foreign Minister Haddad had mentioned that "there was some confusion between the other position (Canadian security) and the official position (Canadian government) but the Canadian government position was clear now and it was conveyed to" Minister Shara'a.⁹¹³ He had requested that the message be conveyed to Deputy Foreign Minister Haddad.⁹¹⁴ When CSIS "saw that, that 'the position is clear now' then we felt fairly confident that the matter had been settled" and from "the Service

standpoint, that matter had been cleared up and we just moved on and never heard of it again until some time later when the Commission hearing started.”⁹¹⁵

6.3

QUESTIONS FOR MR. ALMALKI

6.3.1

Events and Discussions in July and August 2002

As noted earlier in Chapter I, in the period leading up to Mr. Arar’s detention in the United States, there were extensive discussions between members of the RCMP and DFAIT ISI officials regarding the sharing of information with the Syrian authorities on Messrs. El Maati and Almalki.

In July 2002, Staff Sergeant Fiorido assumed his duties as the RCMP’s liaison officer (LO) in Rome, accredited to ten countries, including Syria.⁹¹⁶ His job was to facilitate the exchange of information in support of Canadian investigative needs.⁹¹⁷ As noted above in Section 2.2.3, he did not recall ever receiving a copy of DFAIT’s annual report on Syria or on any of the nine other countries over which he had jurisdiction, except possibly Italy.⁹¹⁸ He was not given any training on human rights conditions in Syria, and his personal understanding from open sources was that “Syria was one of those countries in which the abuse of human rights was or may be a concern.”⁹¹⁹ As LO, Staff Sergeant Fiorido dealt exclusively with Ambassador Pillarella and no one at DFAIT.⁹²⁰

Upon taking up his duties, Staff Sergeant Fiorido reviewed a memorandum dated July 10, 2002,⁹²¹ from his predecessor Steve Covey.⁹²²

Inspector Cabana explained that starting in July, Project A-O Canada had had a number of meetings.⁹²³ The issue of sharing information with the Syrian authorities “had been the subject of numerous discussions” and there had been “extensive consultation involving Justice, DFAIT, CSIS, the Canadian Ambassador to Syria, CID and ourselves.”⁹²⁴

On July 29, DFAIT ISI met with Inspector Cabana to discuss the detention of Messrs. El Maati and Almalki in Syria.⁹²⁵ Mr. Gould recalled discussing information sharing between the RCMP and the Syrians, and the matter of the Syrians offering to ask Mr. Almalki questions provided by the RCMP.⁹²⁶ Inspector Cabana explained that “[t]his is where the discussions were initiated with the prospects of sharing with Syria. These individuals didn’t appear to have any major issue with the potential sharing...” and “[e]veryone seemed to be in agreement that it was the thing to do.”⁹²⁷ However, Mr. Gould did not recall this “being the outcome of the meeting, that there was any kind of agreement whatsoever to that.”⁹²⁸

On August 19, Staff Sergeant Callaghan sent Staff Sergeant Fiorido a fax discussing the El Maati case and Mr. El Maati's allegations of torture in Syria.⁹²⁹ The RCMP LO was thus made aware of these concerns early on.

On August 20, Project A-O Canada officials considered the possibility of inviting the Syrians to Canada to review their investigative material, and to provide them with questions for Mr. Almalki on the RCMP's behalf.⁹³⁰ However, they never did so.

6.3.2

September 10 Meeting and Fax to RCMP LO

On September 10, Chief Superintendent Couture and senior officers from Project A-O Canada met with a number of DFAIT officials, including Ambassador Pillarella. The meeting dealt primarily with the type of assistance DFAIT could provide the RCMP, either for sending Mr. Almalki questions, or for arranging an interview.⁹³¹ Inspector Cabana summarized Project A-O Canada's investigation thus far. For his part, Ambassador Pillarella explained the intricacies of the Syrian intelligence community, and indicated that a Syrian general (General Khalil) had finally admitted having Mr. Almalki in custody.⁹³² It is also likely that Ambassador Pillarella agreed to facilitate future requests to Syrian authorities, and may have made a comment to the effect that the Syrians would probably expect something in return for sharing their information with Canada.⁹³³

At this same meeting, Mr. Solomon of DFAIT ISI, raised the risk of torture. On the topic of sending questions for Mr. Almalki to Syria, he said something to the following effect: "If you are going to send questions, would you ask them not to torture him."⁹³⁴ Mr. Solomon had recently completed a posting with the Human Rights and Humanitarian Law division of DFAIT. He had seen reports on Syria, and was surprised that the issue of asking questions was even on the table, given his understanding that Syrian detention practices could involve aggressive questioning, especially if no one else was present.⁹³⁵

Mr. Solomon described the situation afterwards as awkward, with the RCMP remaining nonplussed. Mr. Solomon remained quiet as a result of the ensuing discomfort.⁹³⁶ However, he believed that someone turned to Ambassador Pillarella to determine whether the statement about torture was accurate, and the Ambassador made some sort of affirmative gesture or comment.⁹³⁷

Ambassador Pillarella did not recall Mr. Solomon's comment.⁹³⁸ He was on vacation at the time, had only dropped by to see friends, and was invited to the meeting. He did not take notes, and his recollection of the meeting was poor.⁹³⁹

Despite the fact that Mr. Solomon's comment was made seriously, there was little, if any, discussion about the possibility of torture. A brief discussion

may have ensued, in which Mr. Heatherington of ISI also said something about the possibility of torture, referring to Mr. El Maati's allegation that he had been tortured in Syria. Inspector Cabana commented, possibly in response, that it was possible Mr. El Maati had only claimed torture, but that the torture had not actually occurred.⁹⁴⁰

Mr. Heatherington had no recollection of the meeting, but he did not dispute that something to this effect was said. According to him, DFAIT was comfortable with the RCMP interviewing Canadian citizens anywhere, but was also trying to make the RCMP aware of conditions in countries like Egypt and Syria. At the time, DFAIT knew of Mr. El Maati's claims in Egypt that he had been tortured by the Syrians.⁹⁴¹

Inspector Cabana agreed that discussions of torture possibly took place at this meeting, although he could not recall specific comments. When shown the comment he reportedly made, that individuals may claim torture when it has not actually occurred, he stood by it. His view was that this is always a possibility.⁹⁴²

Mr. Solomon drafted a memorandum dated October 10 for Mr. Livermore's signature to update Mr. Lavertu, the Deputy Minister of Foreign Affairs,⁹⁴³ on the status of Canadians with links to al Qaeda being detained outside Canada.⁹⁴⁴ Referring to Mr. Almalki, Mr. Solomon wrote that "[t]he RCMP are ready to send their Syrian counterparts a request that Al-Malki [*sic*] be asked questions provided by the RCMP, questions relating to other members of his organization. Both ISI and DMSCUS/HOM [Ambassador Pillarella] have pointed out to the RCMP that such questioning may involve torture. The RCMP are aware of this but have nonetheless decided to send their request."⁹⁴⁵ Mr. Solomon believed that this reference to questions for Mr. Almalki was based on the September 10 meeting.⁹⁴⁶

Although Mr. Solomon could not recall whether there had been any contacts with the RCMP between September 10 and October 10, he could "only assume without remembering the specifics of September 10 that there was no agreement that they would not" send their request.⁹⁴⁷ DFAIT officials had stated their concerns, but had not been given any indication that the RCMP would not proceed.⁹⁴⁸ Mr. Solomon could not recall what the statement "the RCMP are aware of this but have nonetheless decided to send their request" was based upon.⁹⁴⁹ Mr. Gould could not recall a discussion with the RCMP on or about October 10. He did remember regular conversations within DFAIT ISI about it being a problem and recalled a meeting or occasions, although not the dates, where it was raised with the RCMP.⁹⁵⁰

On September 10, Inspector Cabana sent Staff Sergeant Fiorido a fax, with an information copy to Corporal Flewelling.⁹⁵¹ He advised the LO that it was

their “understanding that the Syrians are prepared to question Almalki on our behalf” and requesting that he “approach your Syrian contact to see if they will grant us access to conduct our own interview” of Mr. Almalki. He added that “[i]n the alternative, we are contemplating providing the Syrian officials with questions for Almalki.”⁹⁵²

This was the first Staff Sergeant Fiorido had heard about the Syrians being prepared to question Mr. Almalki on behalf of the RCMP.⁹⁵³ He understood from Mr. Covey’s July 10 memorandum that he should be dealing directly with Ambassador Pillarella to facilitate this request since direct access to the SMI was not possible.⁹⁵⁴

6.3.3

October Discussions between the RCMP and DFAIT

There were several discussions between the RCMP and DFAIT in October 2002. On October 21, Mr. Gould called Inspector Cabana to advise him that DFAIT had received official word that Mr. Arar was in Syrian custody and wanted to determine whether the RCMP was interested in Mr. Arar as well as Mr. Almalki.⁹⁵⁵ Mr. Gould asked if there were any messages the RCMP would like conveyed to the Syrians, to which Inspector Cabana replied, “[W]e have intelligence/evidence in relation to both subjects that we would be prepared to share with Syrian authorities if they felt it could be of assistance to their investigation....”⁹⁵⁶

Mr. Gould did not recall telling Inspector Cabana that in his “personal opinion there could be a risk to the individual” at that point in time.⁹⁵⁷ Inspector Cabana testified that “[t]hroughout all the meetings and exchanges we had with DFAIT, nobody ever said you can’t do that [offer information]. They would have put a stop to it.”⁹⁵⁸

Mr. Gould prepared a draft memorandum that same day that stated that “[t]he RCMP is prepared to share with Syrian authorities the information they have generated about Arar in the course of their investigation of al-Malki [*sic*] (see note about similar offer with regard to al-Malki [*sic*]).”⁹⁵⁹ It also stated that “[t]he RCMP has generated a great deal of information about al-Malki [*sic*] and they are prepared to share this information with Syrian authorities is [*sic*] they wish to send someone to Ottawa (this offer may already have been passed to the Syrians by the RCMP LO).”⁹⁶⁰

On October 24, Staff Sergeant Fiorido spoke to Ambassador Pillarella about the Almalki file for the first time.⁹⁶¹ The Ambassador advised him that General Khalil did not like to deal with police agencies and there was not much chance

of the RCMP getting contact, but he offered his continued support of RCMP efforts.⁹⁶²

6.3.4

October 30 Memo on DFAIT's Concerns

DFAIT ISI set out its concerns about sending questions for Mr. Al Malki in a memorandum drafted by Mr. Solomon and dated October 30. According to Mr. Solomon, a meeting between ISI and the RCMP had been held on the morning of Friday, October 25,⁹⁶³ to follow up on the September 10 meeting and the “possibility of sending questions [for Mr. Al Malki] and the issue of torture was raised for a second time.”⁹⁶⁴ He recalled that they had come out of the meeting displeased. A decision had been made “to draft a memo proposing that we send this fairly strict letter from our Deputy Minister to Proulx.”⁹⁶⁵ Mr. Solomon had made himself a note to draft a letter recommending that the RCMP not send questions. He jotted down the following points to include in the draft: “RCMP Al-Malki [*sic*] letter (international law prohibits torture absolutely; there is no justification that may be invoked as a reason for torture).”⁹⁶⁶

Mr. Solomon drafted a memorandum dated October 30 for Mr. Livermore’s signature. He gave some initial thought to what to include in the letter, but never actually drafted it.⁹⁶⁷ The memorandum stated that:

The RCMP are seeking either to directly interview Al-Malki [*sic*] or to send their Syrian counterparts a request that Al-Malki [*sic*] be asked questions provided by the RCMP...Both ISI and DMCUS/HOM have pointed out to the RCMP that if such questioning is carried out by the Syrian security services, there is a credible risk that it would involve torture. Another Canadian citizen who was recently held in a Syrian prison, Ahmad Al-Maati [*sic*], has alleged he was tortured by the Syrians. To make our position clear, we propose that MJW send a letter to Assistant Commissioner Richard Proulx (draft attached) indicating that DFAIT will not support or assist in this matter if there is any risk of a Canadian citizen being question[ed] under duress at the behest of the Government of Canada.⁹⁶⁸

At the time, DFAIT ISI believed that torture was a “credible risk,” based on their experience in another matter.⁹⁶⁹ Inspector Cabana could not recall attending any meetings at which there had been discussion that it was not a good idea to send questions to Syria for Mr. Al Malki because of a credible risk of torture.⁹⁷⁰ Regarding the reference to “...DMCUS/HOM have pointed out...credible risk,” Ambassador Pillarella testified that he had no recollection of having said this to the RCMP and was not aware of the existence of any draft letter.⁹⁷¹

Inspector Cabana testified that the Ambassador had never suggested any such thing.⁹⁷²

The letter was never sent to Assistant Commissioner Proulx, and it was generally understood by DFAIT ISI that the issue had been resolved and the RCMP was not going to send questions to Syria. Mr. Solomon generally recalled that the issue had ended and understood that no questions were going to be sent.⁹⁷³ According to Mr. Livermore, the letter was never sent because the “RCMP eventually agreed with us that they would not submit questions to the Syrians.”⁹⁷⁴ He was not aware of anything in writing stating that the RCMP had agreed not to send the questions.⁹⁷⁵ He believed the matter had probably been resolved at Mr. Heatherington’s level, since it had not come to him.⁹⁷⁶

Mr. Heatherington also believed that the issue had been resolved, with the RCMP accepting their advice. He could not recall who had been involved in resolving the matter.⁹⁷⁷ DFAIT ISI had had no reason to believe that the RCMP would go to Damascus in view of its advice to the RCMP about it not being a very good idea.⁹⁷⁸ Had that not been the case, then “we would have sent some form of the draft letter” since “you go to a final where you think the issue is not resolved.”⁹⁷⁹

Inspector Cabana was not aware of DFAIT’s understanding that the questions were not to be sent. He testified that in fact, his “understanding was to the contrary because Ambassador Pillarella was facilitating the exchange with the Syrian authorities” and the RCMP had discussed this issue a week later, on November 6, with the Ambassador and DFAIT officials.⁹⁸⁰ He had never been involved in any agreement with a DFAIT official to refrain from sending questions and was not aware of any RCMP member in either Headquarters or Project A-O Canada who had entered into such an agreement.⁹⁸¹

6.3.5

Preparation and Delivery of Questions

Decision to Send Questions

Project A-O Canada prepared a package of questions for Mr. Almalki in December and January. According to Inspector Cabana, it had been decided by December 11 to send questions (the second option) instead of attempting to obtain an interview with Mr. Almalki,⁹⁸² at the suggestion of Staff Sergeant Fiorido. He had advised that it would be futile to try to gain access.⁹⁸³ Ambassador Pillarella had informed the LO that there was little chance of obtaining contact with Mr. Almalki.⁹⁸⁴

Staff Sergeant Fiorido asked that the questions for Mr. Almalki be sent to him ahead of time to ensure that the contents were appropriate.⁹⁸⁵ According to Inspector Cabana, DFAIT knew that the questions were being translated into Arabic by the RCMP and that they would then be sent, although he had no notes as to whom at DFAIT he had spoken in this regard.⁹⁸⁶

On December 24, Staff Sergeant Fiorido received a fax from Staff Sergeant Callaghan and Inspector Cabana to which was attached a draft list of questions for Mr. Almalki in English, along with the Arabic translation.⁹⁸⁷ An information copy of the fax was sent to Corporal Flewelling and the International Liaison and Protective Operations (ILPO) branch at Headquarters,⁹⁸⁸ and approved by Chief Superintendent Couture and Superintendent Pilgrim.⁹⁸⁹ Inspector Cabana testified that his CROPS superiors had been directly involved in this process, starting with taskings by Inspector Clement and Chief Superintendent Couture earlier in the year.⁹⁹⁰ Assistant Commissioner Proulx was under the impression that no questions had been sent.⁹⁹¹

Staff Sergeant Callaghan and Inspector Cabana sent the final English version of the questions to Staff Sergeant Fiorido on January 7.⁹⁹² Question 16 asked, “What was your relationship with Maher Arar?”⁹⁹³ There was no caveat on this list of questions and Staff Sergeant Fiorido explained that he did not “think there should have been given the nature of these inquiries” and the secrecy in which agencies in the Middle East operate. It was only when you got “burned” that you wanted to remind people and start including the caveat, he noted.⁹⁹⁴

Cover Letter to General Khalil

A draft cover letter to General Khalil was prepared to send with the package of questions. On January 8 and 9, Staff Sergeant Fiorido e-mailed the draft to Inspector Cabana and CSIS but not to RCMP Headquarters or his own branch, the IOB (International Operations Branch).⁹⁹⁵ He wanted Inspector Cabana to review the wording to ensure it was accurate and consistent with the RCMP investigators’ operational goals. He also wished to show the letter to CSIS because it was mentioned in it.⁹⁹⁶

[***].⁹⁹⁷ Inspector Cabana also approved the cover letter.⁹⁹⁸ Staff Sergeant Fiorido did not know if the Inspector had consulted with DFAIT before approving it. He himself had not done so before submitting the questions.⁹⁹⁹ Inspector Cabana indicated that his notes did not specify that DFAIT had approved sending the questions, but discussions involving DFAIT and the Ambassador clearly indicated that they would facilitate the process.¹⁰⁰⁰

The cover letter dated January 10 and sent to General Khalil with the list of questions contained the following information:

... Depending on his [Mr. Almalki's] willingness to answer truthfully and depending on the answers he provides to you, a second series of questions has been prepared for him.... we cannot disclose this second set of questions to him until we favourably assess the quality and accuracy of his answers.... Once we assess the answers to the first series of questions, we can then inform you if we are prepared to proceed to the second series of questions...The police unit investigating this matter in Canada is an integrated team composed of personnel from both the law enforcement community and from our intelligence community, the Canadian Security Intelligence Service.... Both agencies are working together in this matter.... I would like to propose that during my next visit to Damascus, [...] I meet with personnel from your agency in order to further discuss this matter.... Also be aware that we are in possession of large volumes of highly sensitive documents and information, seized during investigative efforts or obtained from confidential informants associated to terrorist cells operating in Canada. Our Service is readily willing to share this information with your Service....¹⁰⁰¹

Staff Sergeant Fiorido referred to CSIS in this letter because he was aware that General Khalil would rather deal with CSIS than the police and was hoping for an exception in this case.¹⁰⁰² Based on his discussions with Project A-O Canada, the LO indicated that they had a large volume of sensitive documents they were willing to share as a kind of “carrot” or “hook” to get approval of the request.¹⁰⁰³ With respect to the plurality of terrorist cells, Inspector Cabana explained that although he had not drafted the document using the word “cells,” they were satisfied that there were terrorist cells operating in Canada.¹⁰⁰⁴ The RCMP never sent a second set of questions to Syria.¹⁰⁰⁵

The Issue of Torture and Mixed Signals

On January 10, Staff Sergeant Callaghan advised Staff Sergeant Fiorido that in an interview held in Egypt. Mr. El Maati had stated that the Syrians had tortured him.¹⁰⁰⁶ These allegations did not raise a red flag for Staff Sergeant Fiorido with respect to the questions being sent for Mr. Almalki. “[I]t was never a concern because it was never considered.”¹⁰⁰⁷ He testified that he had not thought he needed to be aware of the issue of torture and mixed signals, especially since he had been dealing with another international organization on an operational matter, not expecting “that kind of gross injustice taking place.”¹⁰⁰⁸

In regard to sharing information with the Syrians despite knowing about allegations that they had tortured a Canadian citizen, Inspector Cabana stated that it “would be troubling but ... required” and “would be appropriate” because they were still dealing with an imminent threat.¹⁰⁰⁹ Discussions were held between staff sergeants Callaghan and Corcoran and Inspector Cabana “about any difficulties that Mr. Almalki could face in these questions being asked.”¹⁰¹⁰ As Inspector Cabana explained, “[T]hese were troubling decisions to make,” but they were not made by him alone. After consultation with the “experts” and with other agencies, the consensus was that given the circumstances facing Canada at the time, their only choice was to send the questions.¹⁰¹¹

There was no discussion about the possibility that sending questions for Mr. Almalki in which Mr. Arar’s name came up in the context of terrorist cells and “heavy hitters”¹⁰¹² might give the Syrians mixed signals: on the one hand, Canada was trying to get him released and, on the other, terrorist connections were being suggested.¹⁰¹³ Inspector Cabana stated that the questions had simply asked about his relationship with Mr. Arar. There had been no inference that he was a terrorist.¹⁰¹⁴ He indicated that he would rely on the experts at DFAIT who actually dealt with foreign authorities to determine if mixed messages were being given.¹⁰¹⁵

Delivery of Questions to Ambassador Pillarella

Staff Sergeant Fiorido was in the Middle East from January 12 through 14,¹⁰¹⁶ at which time he met with Ambassador Pillarella to discuss the Almalki matter.¹⁰¹⁷ The LO gave the Ambassador a sealed envelope containing the RCMP’s list of questions for Mr. Almalki and the cover letter.¹⁰¹⁸ Although he did not open the envelope,¹⁰¹⁹ the Ambassador was aware of its contents¹⁰²⁰ and continued to be supportive of the RCMP’s efforts.¹⁰²¹ Staff Sergeant Fiorido stated that it was unusual to have the Ambassador “even show an interest in assisting us at this level.”¹⁰²² It was a “welcomed opportunity,” but “certainly unprecedented” in his experience.¹⁰²³

The two men did not discuss the possibility that the questions might send the Syrians a mixed message about Mr. Arar. Nor did they discuss the possibility of torture.¹⁰²⁴ Staff Sergeant Fiorido did not recall advising the Ambassador that the contents of the sealed envelope had Ottawa’s approval,¹⁰²⁵ but the Ambassador recalled him saying something to the effect that he had “authority from Ottawa.”¹⁰²⁶ When he had received the request to deliver the questions and been advised by the LO that instructions had come from Ottawa to pass on the questions, the Ambassador had had no reason to believe that no consultations between the RCMP and DFAIT had taken place.¹⁰²⁷

Assistant Commissioner Proulx testified that the Ambassador in the country had final authority in a situation such as this to say “[n]o way, it’s too dangerous.”¹⁰²⁸ Ambassador Pillarella stated that as Ambassador, he could make a “very strong recommendation” to Ottawa if he considered something too risky or dangerous, but that DFAIT Headquarters could dismiss his recommendation.¹⁰²⁹ In that case, he would have to be given very specific written instructions as to what was expected of him.¹⁰³⁰

Staff Sergeant Fiorido testified that in the time between the decision to send questions rather than interview and the submission of questions to Ambassador Pillarella, he had spoken with Inspector Cabana, [***] Staff Sergeant Callaghan and Ambassador Pillarella on the issue.¹⁰³¹ No one had informed him that there had been discussion of torture at a September 10 meeting regarding sending questions for Mr. Almalki.¹⁰³² No one with the RCMP or DFAIT had mentioned to him that there was a “credible risk of torture” if the Syrians conducted the questioning.¹⁰³³

Delivery of Questions to the SMI

Ambassador Pillarella saw to the delivery of the questions for Mr. Almalki to the SMI. His decision to submit the questions was based on the “extraordinary unprecedented cooperation” shown by the Syrians with respect to access to Mr. Arar and the unlikelihood that the Syrians would then “turn around and mistreat another Canadian.”¹⁰³⁴ Since there was no indication from the consular visits that Mr. Arar was being mistreated, there was no reason for the Ambassador to presume there would be any mistreatment of Mr. Almalki if the questions were put to him.¹⁰³⁴ He did not believe it would put Mr. Almalki in jeopardy.¹⁰³⁶

When the questions were submitted, no one from the Canadian Embassy in Damascus had visited Mr. Almalki, and his condition was unknown.¹⁰³⁷ Ambassador Pillarella was unaware that a few months earlier, in October, Mr. Livermore had stated that there was a credible risk of torture if the questions were submitted, and so they should not be passed on.¹⁰³⁸

On January 15, the day Ambassador Pillarella and Mr. Martel met with Deputy Foreign Minister Haddad, the Ambassador instructed Mr. Martel to call his contact, Colonel Saleh, as he wanted the letter and questions delivered to General Khalil.¹⁰³⁹ Mr. Martel delivered them to Colonel Saleh that day.¹⁰⁴⁰ Mr. Martel was not aware, and was not advised by the Ambassador, of the letter’s contents. In fact, his impression was that it might contain further pleas from Ambassador Pillarella on behalf of his client.¹⁰⁴¹

No Reply from the SMI

On August 8, Staff Sergeant Fiorido approached Ambassador Pillarella for his insight into what response, if any, could be expected from the SMI, given the lack of any reply thus far.¹⁰⁴² He wanted to determine what future action might be considered.¹⁰⁴³ The Ambassador responded on August 11, advising the Staff Sergeant that the questions had been passed on to the Syrians in late February and sharing his thoughts on the matter.¹⁰⁴⁴

He explained that co-operation with the SMI seemed to have badly deteriorated since February, with access to Mr. Arar cut off (other than the visit with the MPs in April).¹⁰⁴⁵ He suspected that it might be related to the Almalki case.¹⁰⁴⁶ He also suspected that the Syrians were annoyed with them for pressing them about the Arar case when they “keep telling us that we (but who is we?) have told them that they can keep him as we don’t want him back in Canada.”¹⁰⁴⁷ The Ambassador moreover believed that “in the case of Al Malki [*sic*], there is also the stated fact that military intelligence has a certain aversion to working with a police organization.”¹⁰⁴⁸

In closing, Ambassador Pillarella noted that “[a]lthough Arar and Al Malki [*sic*] are different cases, I am convinced that in the Syrian mind they are linked when it comes to dealing with Canada.”¹⁰⁴⁹ He believed the Syrians were “really annoyed with Canada because we were causing problems for them.”¹⁰⁵⁰ In his view, the Syrians wanted to deal with the Arar case in “a very low key manner” and “tried to close up” as a result of all the publicity and the potential damage to their reputation.¹⁰⁵¹

On August 17, the Ambassador followed up on his earlier message to Staff Sergeant Fiorido, advising him that he had met with General Khalil on August 14 and raised the issue of Mr. Almalki.¹⁰⁵² General Khalil had told the Ambassador that he did not wish to interact with a police force.¹⁰⁵³

After receiving this update, Staff Sergeant Fiorido briefed Project A-O Canada and Headquarters on the status of the Almalki matter on August 19.¹⁰⁵⁴ The LO indicated that until DFAIT and the Syrian Foreign Ministry resolved the Arar matter, any further efforts to seek the SMI’s co-operation in the Almalki case would be futile and serve only to irritate the SMI.¹⁰⁵⁵

The Colonel advised him that General Khalil was “very angry” with the RCMP LO from Rome for making inquiries about Mr. Almalki. Staff Sergeant Fiorido knew that General Khalil preferred not to deal with the RCMP, but had never been made aware that he was angry about their attempts to establish a rapport.¹⁰⁵⁶

As discussed earlier, ISI officials believed an understanding had been reached about sending the questions. Neither Mr. Livermore¹⁰⁵⁷ nor Mr. Heatherington¹⁰⁵⁸ was aware that the RCMP had in fact sent questions to Syria for Mr. Almalki.

Mr. Pardy was not surprised, stating “[W]e carry on exchanges of information historically with some of the nastiest regimes....[for] a whole variety of reasons,” but he also noted that when “there is a Canadian in detention and those activities relate to that Canadian, then at an absolute minimum I would expect to be consulted”¹⁰⁵⁹ Mr. Pardy added that “when you are managing consular cases of this complexity you want to control the agenda and environment to the maximum [and] [c]learly other people being involved, with what could be very justifiable reasons, could complicate things.”¹⁰⁶⁰

Dr. Leverett, a former U.S. government official, testified that sending questions for someone other than Mr. Arar would not have affected his consular access because the Arar case had been “*sui generis* [in a class of its own] for the Syrians” and they had “carried out their decision-making on the Arar case on a very case-specific basis.”¹⁰⁶¹

6.4

PROPOSED RCMP INTERVIEW OF MR. ARAR

There was some evidence that members of Project A-O Canada had discussed the possibility of interviewing Mr. Arar in Syria amongst themselves and with members of DFAIT ISI. Leading up to the CSIS visit to Syria, DFAIT acknowledged that CSIS employees would not be meeting Mr. Arar and that interviewing Mr. Arar was seen as an “RCMP responsibility.”¹⁰⁶² DFAIT wanted to ensure that the CSIS mission was separated from “any consular or interview mission which might take place in the future”¹⁰⁶³ and to avoid any “public perception of confusion and mixed messages.”¹⁰⁶⁴

This discussion continued until February 2003. At that point, any potential RCMP visit to Syria to interview Mr. Arar had to be delayed until after the MPs’ visit, which had originally been scheduled for March.¹⁰⁶⁵ On February 28, a meeting was held to obtain clarification from the RCMP on a number of international proposed visits.¹⁰⁶⁶ The visit with Mr. Arar was to be in the context of him as a witness; the others were viewed as suspects.¹⁰⁶⁷ Mr. Pardy advised Ambassador Pillarella that the RCMP had approached them for permission to visit Syria to meet with Syrian authorities and Mr. Arar, but had agreed to delay their visit until after the MPs’ visit.¹⁰⁶⁸ Mr. Pardy stated that he could not recall the RCMP ever revisiting the issue of interviewing Mr. Arar with DFAIT after the MPs visited Syria in April.¹⁰⁶⁹

The RCMP did not send the SMI any questions for Mr. Arar, and no members of the RCMP ever travelled to Syria to interview Mr. Arar.¹⁰⁷⁰

7. THE MPS' TRIP — APRIL 2003

7.1 PREPARATION

In late 2002, two parliamentarians, Sarkis Assadourian and Marlene Catterall, the Member of Parliament for Mr. Arar's riding, discussed the possibility of travelling to Damascus to intervene on Mr. Arar's behalf.¹⁰⁷¹ Ms. Catterall then spoke with Mr. Pardy about this idea in early 2003.¹⁰⁷² Also about this time, Mr. Pardy and Mr. Fry were trying different approaches to the case on behalf of DFAIT.¹⁰⁷³ When Ms. Catterall spoke with Minister Easter in late February 2003 to determine whether CSIS or the RCMP objected to her proposed trip, the Minister sought confirmation from both agencies. Neither objected, and Minister Easter gave Ms. Catterall the "green light."¹⁰⁷⁴

Mr. Pardy wrote to Ambassador Pillarella in early March 2003 to inform him of the MPs' pending visit to Damascus, and asked him to lay the groundwork for it.¹⁰⁷⁵ As it was then just prior to the Iraq war, the Syrians were "flabbergasted" when Ambassador Pillarella approached their foreign ministry about the visit.¹⁰⁷⁶ In fact, Ambassador Pillarella advised that his calls to the Syrian Deputy Foreign Minister were not being returned.¹⁰⁷⁷ Back in Ottawa, a diplomatic note dated March 5 was sent to the Syrian embassy giving government sanction to the MPs' trip and requesting that visas be issued before the parliamentarians left for Damascus on March 11.¹⁰⁷⁸ On March 6, Mr. Fry signed a letter addressed to Ms. Catterall on behalf of the Office of the Minister of Foreign Affairs, providing support for her visit.¹⁰⁷⁹

DFAIT briefed the two MPs on March 11 in anticipation of their intended departure that day for Damascus.¹⁰⁸⁰ Dr. Mazigh, who was receiving periodic updates on the status of the proposed visit, also attended the meeting. However, as the MPs did not receive their confirmation and visas in time to leave on March 11, the trip was postponed until Parliament recessed in April. On March 12, Syrian Deputy Foreign Minister Mouallem confirmed that he would meet with the MPs and arrange for a visit with Mr. Arar.¹⁰⁸¹

On March 24, Colonel Saleh of the Syrian Military Intelligence advised Mr. Martel of a change in procedure.¹⁰⁸² In future, all requests for consular access would be directed through the Syrian Ministry of Foreign Affairs, a department that, up to that point, had routinely failed to respond to the diplomatic

notes sent in regard to Mr. Arar.¹⁰⁸³ Ambassador Pillarella believed that the change in procedure might have been a result of publicity surrounding the MPs' visit and General Khalil's dislike of politicians.¹⁰⁸⁴ Mr. Martel judged this latest Syrian move to be "bad news."¹⁰⁸⁵ On March 25, the Canadian Embassy sent the Syrian Ministry of Foreign Affairs a diplomatic note requesting consular access to Mr. Arar.¹⁰⁸⁶

On April 17, DFAIT was advised that the MPs' visas had been approved, and that consular access to Mr. Arar had been confirmed.¹⁰⁸⁷ The same day, Mr. Pardy sent Mr. Martel a copy of a letter from Dr. Mazigh to her husband to give to Ms. Catterall.¹⁰⁸⁸ The next day, Mr. Pardy briefed Ms. Catterall on recent developments specific to the case and to the region.¹⁰⁸⁹

7.2

THE CSIS MEMORANDUM

Ms. Catterall and Mr. Assadourian met Ambassador Arnous for lunch on March 21, where they discussed Mr. Arar's case and made a humanitarian plea for his release.¹⁰⁹⁰ Ms. Catterall recounted the details of this meeting on March 24 to Ms. Pasty-Lupul, who documented that:

They [Catterall and Assadourian] learned that, initially during this case, that CSIS officials told the Syrians that they "have no interest in Arar". The Syrians took this to mean that the CSIS have no interest in having Arar back. They may have meant that they have no security reasons to investigate Arar in Canada. Due to miscommunication, the Syrians believed that CSIS did not want Arar back in Canada, and therefore decided to detain him/keep him in Syria.¹⁰⁹¹

According to Ms. Catterall, during the conversation with Ambassador Arnous, Mr. Assadourian said: "I think you misunderstood what they said. They might have said, 'This is not a person of interest to us,' meaning 'We are not investigating this person.'" Ambassador Arnous conveyed to them that "due to the miscommunication, the Syrians believed that CSIS did not want Arar back in Canada and decided to detain him."¹⁰⁹² Mr. Pardy, who was later advised of this meeting, understood Ambassador Arnous to be saying "possibly that the Syrians had misunderstood."¹⁰⁹³ Ms. Catterall and Mr. Assadourian both indicated to Ambassador Arnous that this was a serious misinterpretation by the Syrians. Moreover, Canada spoke with one voice about this issue, and the one message was that it wanted Mr. Arar back in Canada.¹⁰⁹⁴

Recognizing the significance of this information, Ms. Pasty-Lupul immediately advised her superior, Mr. Pardy, who suggested that she put it in a "note

to file.”¹⁰⁹⁵ In the note, Ms. Pasty-Lupul described the actions she believed were necessary in the circumstances, including sending “a clear message, in writing, to the Syrians from CSIS that outlines clearly, that we have no information which has led us to believe that Mr. Arar poses a security threat to Canada” and that the Syrians needed to hear “(from the Security people and DFAIT), in writing, that if we do have any information that shows any involvement in terrorist activity, that we will charge him in Canada and deal with his case through the usual law enforcement channels.”¹⁰⁹⁶

Ms. Pasty-Lupul believed that it was CSIS’ responsibility to correct the misunderstanding by sending the Syrians a message clarifying the situation. As a consular officer, she attempted to “get the ball rolling.” However, it was not her job to convey this message to a security agency once she had advised her immediate supervisor.¹⁰⁹⁷

Mr. Pardy was not aware of any communication in writing by CSIS to the Syrians disabusing them of this confusion.¹⁰⁹⁸ Minister Easter could not recall if he was aware of specific discussions between the parliamentarians and Ambassador Arnous at the time, but he was aware of the Syrians’ position.¹⁰⁹⁹ The Minister did not direct CSIS to send a letter to Syrian authorities, and testified that it is not CSIS’ responsibility to speak for the government in the international arena. According to him, the only voices on the international stage should be those of the Prime Minister, the Minister of Foreign Affairs and the head of mission.¹¹⁰⁰ Mr. Hooper explained that CSIS did not become aware of the memorandum until after the Inquiry began and that no one from DFAIT had contacted CSIS and asked them to “fix it.”¹¹⁰¹ As far as CSIS was concerned, after January 16, this was a non-issue.¹¹⁰²

7.3

THE MINISTER’S LETTER

It was DFAIT’s understanding that the MPs, who were not part of the federal government bureaucracy, were travelling to Damascus as a parliamentary initiative on behalf of a constituent of Ms. Catterall, with DFAIT’s support.¹¹⁰³ Therefore, a letter was sent with them from Minister Graham to the Syrian Foreign Minister, supporting their visit and echoing their desire to see Mr. Arar released.¹¹⁰⁴ Because she was delivering a letter from the Minister, Ms. Catterall regarded her role as more than that of an MP going on behalf of her constituent.¹¹⁰⁵

In the time leading up to her departure for Damascus, Ms. Catterall approached either Minister Easter or Ken Morill in the Solicitor General’s office, asking for a letter stating that there was no evidence on which to charge

Mr. Arar.¹¹⁰⁶ She was also in contact with both Mr. Fry and Mr. Pardy. Mr. Fry, who had initially suggested to Ms. Catterall that she speak to her colleague, approached the Solicitor General's office as well, to coordinate efforts on a letter to Syria.¹¹⁰⁷ After discussing the matter with his officials, Minister Easter refused Ms. Catterall's request. His view was that a letter from the Solicitor General would be unwise, as he was responsible for law enforcement and national security, not representing Canada's interests abroad. This was a role better left to the Prime Minister and the Minister of Foreign Affairs.¹¹⁰⁸

While the initial draft of Minister Graham's letter originated with Mr. Pardy's office,¹¹⁰⁹ the Minister's office drafted the final version.¹¹¹⁰ Although not involved in the drafting herself, Ms. Catterall believed that discussions went back and forth about the letter's content.¹¹¹¹ She was aware at the time that the letter originally drafted for Minister Graham was being revised based on input from a security perspective,¹¹¹² and that there were objections from the security community about the wording.¹¹¹³ Mr. Fry was not aware that either the RCMP or CSIS had been involved in the drafting process.¹¹¹⁴ To his knowledge, only the Minister's office and Consular Affairs had an input.¹¹¹⁵

The original letter said, in part, that "Canadian officials have determined that Mr. Arar has not contravened any Canadian laws and since arriving in Canada with his family many years ago has been a good citizen of this country."¹¹¹⁶ In the final version, this was changed to read "Let me again assure you that there is no Canadian Government impediment to Mr. Arar's return to Canada."¹¹¹⁷ Mr. Fry testified that the intention was not to weaken the language in this paragraph, but rather to add precision.¹¹¹⁸ Mr. Fry would not advise Minister Graham to say "he [Mr. Arar] has not broken any laws."¹¹¹⁹

Additional changes made to the final version gave the impression the MPs were not visiting Damascus on behalf of the Canadian government, but as individual members of Parliament.¹¹²⁰ Ms. Catterall hand-delivered the letter¹¹²¹ to Syrian Deputy Foreign Minister Mouallem during her Damascus visit.

7.4

BRIEFING WITH AMBASSADOR PILLARELLA

Soon after their arrival in Damascus on April 22, the two parliamentarians were briefed by Ambassador Pillarella for about one hour.¹¹²² The Ambassador told them about the consular visits with Mr. Arar and the fact that there had not been a visit for several months. He also summarized his conversations with Syrian security officials and their concerns about Mr. Arar's involvement in terrorist activities.¹¹²³ Apparently, the Syrians thought Mr. Arar had been involved with al Qaeda and had perhaps gone for training in Afghanistan.¹¹²⁴ This was new in-

formation to Ms. Catterall, and she was surprised that she had not known about it before leaving Ottawa.¹¹²⁵ She had heard previously that there might be concerns about Mr. Arar skipping his military training in Syria, and about his involvement with the Muslim Brotherhood, but she had not heard of him training in Afghanistan before.¹¹²⁶ Ms. Catterall realized, at this point, that Mr. Arar's situation was even more serious than she had thought.¹¹²⁷

7.5

MEETING SYRIAN OFFICIALS

On April 22, Ms. Catterall and Mr. Assadourian, accompanied by Ambassador Pillarella and political counsellor Ian Shaw, met with Syrian Deputy Foreign Minister Mouallem to discuss Mr. Arar's case.¹¹²⁸ Mr. Martel did not accompany them on this occasion as there was a limit to the number of people who could attend.¹¹²⁹

After discussing regional issues, Ms. Catterall thanked the Deputy Foreign Minister for the opportunity to discuss the Arar case, and presented him with Minister Graham's letter to Foreign Minister Shara'a.¹¹³⁰ She expressed appreciation for the consular access granted, and explained that Mr. Arar was not wanted in Canada for any criminal activity. Had there been any evidence of such activity, charges would have been laid against him.¹¹³¹ She reported as well that Mr. Arar's wife and two children were experiencing a very difficult time since his removal to Syria.¹¹³²

Deputy Foreign Minister Mouallem explained that the U.S. decision to remove Mr. Arar to Syria, via Jordan, had taken his government by surprise. Moreover, the Syrians had not asked for custody of Mr. Arar and had expected him to be removed to Canada.¹¹³³ However, because of Syria's commitment to the international campaign to combat terrorism, the government had no choice but to take custody of Mr. Arar, a dual citizen of Syria and Canada, and question him on his alleged affiliation with al Qaeda.¹¹³⁴ Apparently, the Syrian security services still had concerns that he could be connected to al Qaeda.¹¹³⁵

At the end of the meeting, Deputy Foreign Minister Mouallem telephoned General Khalil and arranged for the MPs to visit Mr. Arar.¹¹³⁶ Ms. Catterall and Mr. Assadourian — together with Ambassador Pillarella and Mr. Shaw — were escorted a short distance in Ambassador Pillarella's car.¹¹³⁷ They were then taken to another building where they met with Colonel George and several other security intelligence officials.¹¹³⁸ The Colonel advised them that the Syrians had concluded their investigation of Mr. Arar, and would shortly be sending him to stand trial on charges of belonging to al Qaeda and receiving military training in al Qaeda camps in Afghanistan.¹¹³⁹

Ms. Catterall explained that the Solicitor General had indicated that Mr. Arar was not wanted in Canada for criminal activity,¹¹⁴⁰ and that his young family was suffering tremendously because of his detention.¹¹⁴¹ Despite this, Colonel George advised that the case was now the responsibility of the Syrian courts, adding that the courts would determine whether the trial was to be open or closed.¹¹⁴² He also advised that Mr. Arar would be moved to another detention centre once he was handed over to the court authorities. Therefore, the Embassy would need to go through the Ministry of Foreign Affairs to ensure continued consular access to Mr. Arar.¹¹⁴³

7.6

MEETING WITH MR. ARAR

Colonel George asked the MPs to confine their questions to matters relating to Mr. Arar's health and family, and not to speak about the substance of the case.¹¹⁴⁴ The visit with Mr. Arar lasted fifteen or twenty minutes and was very controlled.¹¹⁴⁵ He was told to speak only in Arabic, while the MPs were allowed to speak to him in English.¹¹⁴⁶ Mr. Arar appeared to be somewhat disoriented when he was brought in, possibly because he did not have any advance notice of the meeting.¹¹⁴⁷ To Ambassador Pillarella, who had not met Mr. Arar previously, he looked normal, well-dressed and in good health, albeit somewhat surprised.¹¹⁴⁸

Although Ms. Catterall had never met Mr. Arar before either, she found him to be pale and thin compared to pictures she had seen of him taken during a holiday in Tunisia.¹¹⁴⁹ However, he was clean, had on clean clothes, and was not handcuffed or shackled.¹¹⁵⁰ Ms. Catterall did not see any visible signs that he had been mistreated, but qualified her testimony by stating that she was not an expert on the signs of torture.¹¹⁵¹

Ms. Catterall explained to Mr. Arar who she was, and that it was because of his wife's strong efforts that the two MPs had come to see him. She gave him pictures of his family, as well as messages from his wife and drawings from his daughter.¹¹⁵² Overall, Ms. Catterall found the meeting to be very emotional, adding that Mr. Arar was happy to see them and know that she had been in touch with Dr. Mazigh, and that she had met his children and visited his home in Ottawa.¹¹⁵³ On several occasions, Mr. Arar was close to tears as he received news of his family.¹¹⁵⁴

In speaking to Mr. Arar about his wife's efforts on his behalf, the MPs tried to reassure him that the Canadian government was doing everything possible for his return.¹¹⁵⁵ They did not tell him what they had just learned regarding the charges and pending trial as Colonel George had made it clear that this was

not to be discussed.¹¹⁵⁶ Mr. Arar dictated a letter for his wife in English, the only copy of which was given to Ms. Catterall to deliver to Dr. Mazigh.¹¹⁵⁷

After Mr. Arar left the room, the MPs questioned officials further about the court process, whether the family might attend, whether Mr. Arar would have legal representation, and whether the Embassy would have access to the court.¹¹⁵⁸ Ambassador Pillarella also raised the issue of resuming consular access to Mr. Arar.¹¹⁵⁹

7.7

DEBRIEFING

Following the meetings, Ambassador Pillarella held a debriefing with the two parliamentarians, together with Mr. Shaw and Mr. Martel.¹¹⁶⁰ Ms. Catterall expressed concern that she had not known the specifics of the Syrian charges or investigation, or about the conclusions they were reaching.¹¹⁶¹ She was concerned that the information from Ottawa was incomplete, and that Minister Graham had not been fully briefed on the facts of the case.¹¹⁶² That said, she felt that both the Minister's office and Mr. Pardy had been open with her and had not held back any information.¹¹⁶³

In Ambassador Pillarella's report on the MPs' trip, he said that "had [the MPs] been more fully briefed in Ottawa, they would have reconsidered undertaking their mission to Damascus."¹¹⁶⁴ When she was asked about this comment, Ms. Catterall said she did not know where this impression came from.¹¹⁶⁵ Ambassador Pillarella concluded the report by commenting on the Syrians' remarkable level of co-operation, as a foreign country is not obligated to Canada in any way regarding someone they consider to be a Syrian citizen.¹¹⁶⁶ On reading about Ms. Catterall's apparent unhappiness regarding the visit, Mr. Fry asked Mr. Pardy and Mr. Livermore for a complete report on what the Syrian intelligence agency had told her, and how this corresponded to the government's most recent information.¹¹⁶⁷ Mr. Fry acknowledged that he could not discuss everything with Ms. Catterall as she did not have top secret security clearance and was not a government employee.¹¹⁶⁸ According to Mr. Livermore, however, Ms. Catterall had been given a full briefing by DFAIT Headquarters.¹¹⁶⁹

In Mr. Pardy's view, the Ottawa briefing was complete, and DFAIT had omitted nothing in its communications with Minister Graham.¹¹⁷⁰ When he raised the issue with Ms. Catterall, she advised him that the report was not an accurate accounting of her views, or of what she had said.¹¹⁷¹ In the end, Mr. Pardy believed there had been a genuine misunderstanding.¹¹⁷² For his part, Minister Graham acknowledged that he was not in a position to share certain information because of the security aspects of the case.¹¹⁷³ He had done his best to

convey to Ms. Catterall that there were problems, but did not “try to paint [Mr.] Arar in a worse position than they believed appropriate.”¹¹⁷⁴ Minister Graham stated that he probably did not know some of the information himself, as he did not have a direct relationship with Syrian security.¹¹⁷⁵

Ms. Catterall met with Dr. Mazigh on April 25, and repeated what they had been told by Syrian officials, including the news about the impending charges. Ms. Catterall could not recall whether she told Dr. Mazigh of the alleged links to al Qaeda and training in Afghanistan, but could not think why she would not have done so.¹¹⁷⁶

7.8

DISTRIBUTION OF THE REPORT TO CSIS AND THE RCMP

The report of the MPs’ visit was subsequently distributed to both the RCMP and CSIS. DFAIT ISI sent Inspector Richard Roy the report using the normal process for sharing consular reports.¹¹⁷⁷ After receiving authorization,¹¹⁷⁸ Inspector Roy forwarded the report to Inspector Reynolds at RCMP CID.¹¹⁷⁹ Inspector Roy stated that no caveats or conditions were placed on the document, but he added that “people in the community are aware of third-party caveats.”¹¹⁸⁰

According to Inspector Roy, ISI decided which documents were to go to the RCMP; he did not select or request them.¹¹⁸¹ He did not know who had been responsible for authorizing distribution of the documents and could not recall parameters on how they were to be used.¹¹⁸² Inspector Roy did state, however, that Mr. Heatherington had firm control over what was coming in and out of ISI.¹¹⁸³

DFAIT also provided a copy of the report to CSIS.¹¹⁸⁴ According to Mr. Heatherington, a Request for Disclosure to Federal Investigative Bodies (Treasury Board form 350-56) would not have been completed pursuant to the Memorandum of Understanding¹¹⁸⁵ between DFAIT and CSIS as it was a “boot-leg copy” of the report, meaning that it was unauthorized.¹¹⁸⁶

In his earlier testimony, Mr. Pardy acknowledged giving permission for ISI to share the report with the RCMP and CSIS.¹¹⁸⁷ Explaining his rationale, Mr. Pardy said that he had examined the consular reports that Mr. Solomon suggested might be shared, conducted an assessment of the benefit and harm that might result, and then given Mr. Solomon permission to share a limited number with the RCMP and CSIS.¹¹⁸⁸

However, Mr. Pardy later revised his account, saying he had never been asked about the release of a document to CSIS nor consulted on anything that went to CSIS.¹¹⁸⁹ Mr. Pardy did acknowledge, however, that he had been

consulted on documents going to the RCMP, and that he had made a deliberate decision about those documents.¹¹⁹⁰

8. THE PROPOSED “ONE VOICE” LETTER — MAY-JUNE 2003

8.1 OVERVIEW

In February 2003, DFAIT decided to look at ways of improving coordination and consultation among Canadian government agencies. As a result, a presentation “deck” and an action memorandum were prepared, analyzing how the different mandates within the Government of Canada could conflict and providing recommendations for a process to minimize the appearance of such conflicts.

This broader discussion was running parallel to DFAIT’s attempts to obtain a joint letter from the Solicitor General and the Minister of Foreign Affairs, asking the Syrian authorities to release Mr. Arar and send him back to Canada. Mr. Pardy was instrumental in trying to obtain interdepartmental consensus for this letter and, as Minister Graham testified, Mr. Pardy “worked extraordinarily diligently on it.”¹¹⁹¹ Mr. Pardy attempted to have CSIS and the RCMP agree on wording in the letter to state that there was no evidence linking Mr. Arar to terrorist activities. The RCMP and CSIS refused to agree with this and proposed language that would ultimately have resulted in more harm than good to Mr. Arar. Mr. Pardy eventually went around the RCMP and CSIS and sought a letter from the Prime Minister to President Assad, stating that there was no Canadian government impediment to Mr. Arar’s return. This letter from the Prime Minister was the culmination of Mr. Pardy’s efforts to find “one voice” for the Government of Canada that would send a clear message for Mr. Arar’s release and return to Canada.

8.2 COORDINATION AND CONSULTATION IN CONSULAR CASES RELATING TO TERRORIST ACTIVITIES

8.2.1 Balancing Different Mandates in the Government of Canada

By February 4, 2003, DFAIT was well aware of the public perception that the Government of Canada did not have a coherent voice on Mr. Arar’s case. DFAIT developed media lines in response to possible questions about confusion among Canadian agencies when asked about Mr. Arar’s activities. The recommended re-

sponse for the Minister of Foreign Affairs was: “There is close co operation and coordination among all Canadian agencies on such matters”.¹¹⁹²

Mr. Livermore testified that it is natural for different parts of the Government of Canada with different mandates to have different views about how to approach consular cases when terrorist activities are alleged.¹¹⁹³ In such cases, DFAIT is the department mandated to deal with divergent interests and to seek consensus and co operation.¹¹⁹⁴

While there was room for improvement, Mr. Livermore testified, interdepartmental committees and consultation processes were in place at the relevant time to arbitrate differences and to seek consensus.¹¹⁹⁵ Normally, disagreements are resolved at the divisional level, but when normal interdepartmental contacts cannot resolve divergent views, the disagreements go to the director general or the assistant deputy minister. Committees at the assistant deputy minister level can discuss such issues at their regular meetings. Mr. Livermore explained that occasionally disagreements go to the level of the deputy minister, the minister or Cabinet. Cabinet committees and Cabinet itself can set policy for such matters.¹¹⁹⁶

8.2.2

The “Deck”

As the controversy around Mr. Arar was unfolding and other consular cases with national security dimensions were emerging, the Associate Deputy Minister of Foreign Affairs, Paul Thibault, asked Mr. Pardy to create a “deck” — a series of overhead slides and talking points — to highlight the various interests in the Government of Canada when dealing with consular cases that are also associated with alleged terrorist activities. His request was the result of a perceived lack of coordination and consultation among government agencies in dealing with these cases.¹¹⁹⁷ The purpose of the deck was to recommend a process that would ensure that Canada spoke with one voice.¹¹⁹⁸

Mr. Pardy prepared and circulated several versions of a deck entitled “Coordination and Consultation in Dealing with Consular Cases Relating to Terrorism Activities.” One version of the deck was presented to Mr. Thibault and other deputy ministers in Foreign Affairs on February 24, 2003.¹¹⁹⁹ An action memorandum to the Minister of Foreign Affairs, discussed below, states that he and members of his staff attended this presentation.¹²⁰⁰ However, Mr. Fry, Minister Graham’s senior policy analyst, did not recall attending such a briefing. In preparation for his testimony, Mr. Fry asked other staff members in the Minister’s office and no one could recall attending this presentation.¹²⁰¹

Additional changes were made to the deck, which was subsequently presented to RCMP and PCO officials on February 28. This meeting was chaired by Mr. Livermore and also attended by Mr. Pardy and ISI officials. The question of coordination, especially between the Solicitor General and Foreign Affairs, was the primary focus of the meeting.¹²⁰² CSIS has no recollection of any of its personnel attending this meeting.¹²⁰³ However, Mr. Hooper, CSIS' Assistant Director of Operations, testified that he recalled, in general terms, a deck presentation where issues of coordination and consultation were raised.¹²⁰⁴

The deck presented at this meeting highlighted the following key points:¹²⁰⁵

- Detentions relating to the “war on terrorism” will have a higher public profile than other consular cases, and raise policy issues, because of the attributes often associated with such cases: the extraordinary nature of the accusation; due-process concerns; allegations of mistreatment and torture; the death penalty; unusual sentences, including lengthy incarceration or corporal punishment; and questions about the role of Canadian officials.
- Consular responsibilities overlap and sometimes conflict with the roles and responsibilities of other government agencies and departments such as CSIS, the RCMP and Justice. Activities of the RCMP or CSIS may have led to someone's detention in another country. Despite occasional consultations on terrorism-related cases, different mandates and associated laws limit the full exchange of information in some instances.¹²⁰⁶ The RCMP will provide limited information if there is a law enforcement interest in the particular individual. In such cases, there is a problem of interdepartmental coherence.
- Such cases require a higher level of policy coherence and senior levels of political engagement (including ministerial consultations when necessary) to ensure the appropriate balance between consular protection and security requirements. Unless the approach is coordinated, the media exploit these different mandates to point out contradictions in the Government of Canada.

8.2.3

Action Memorandum to the Minister

Following presentation of the deck, Mr. Pardy prepared an action memorandum for the Minister of Foreign Affairs with recommendations for improving coordination across government on security-related consular cases.¹²⁰⁷ The memo was signed by both Mr. Pardy and the Deputy Minister of Foreign Affairs

on April 7, 2003. Minister Graham testified that he would have read this document or been briefed on its contents.¹²⁰⁸

The memo mirrored the issues highlighted in the deck. It stated that since the February 24 presentation, the Director of CSIS, the Deputy Solicitor General, the Commissioner of the RCMP, and senior officials at PCO and Justice had been consulted. There was consensus on the need for closer consultation and co operation to achieve a more coherent, systematic approach to such consular cases. It was agreed that the following approach would be used in consular cases deemed to be security-related:

- Deputy-level consultations will occur between relevant departments to determine the facts of the case and related issues as soon as they arise;
- A coordinated response will be developed that considers the policing, security, intelligence and legal dimensions of the case, possible public concerns, and implications for Canada's international relations, including those with the United States;
- Coordinated media lines will be developed and communication roles and responsibilities will be clarified;
- The offices of the respective ministers and PCO will be informed of the agreed-upon interdepartmental approach to the case and will be updated as required.

The memo recommended that Minister Graham concur with the approach described above. Mr. Pardy understood that Minister Graham did not implement the recommendations, partly because he did not want decisions made elsewhere in the Government of Canada to override DFAIT's consular responsibilities. Mr. Pardy shared this concern. In an earlier draft of the action memorandum, he highlighted that DFAIT's primary responsibility in such cases is the consular one. Therefore, efforts must be made to prevent the perception that the responsibilities of other government agencies take precedence over consular responsibilities.¹²⁰⁹

Minister Graham understood that the Arar case and other consular cases might have brought the security agencies and DFAIT into conflict, but their differing responsibilities had to be accommodated with the right balance.¹²¹⁰ He was aware that Mr. Pardy was frustrated with the problem of coordination at that time.¹²¹¹ He also testified that he would have discussed with his staff two issues that were then being reviewed: 1) What is the appropriate level of coordination?; and 2) How could consular cases be managed so that DFAIT could be more effective for Canadians? He agreed that coordination among government agencies

was necessary to advance the interests of a Canadian abroad suspected of terrorism.¹²¹²

8.3

THE NEED TO SPEAK WITH ONE VOICE

By March 2003, DFAIT, including the Minister and his staff, was aware that Syrian officials still thought that CSIS did not want Mr. Arar back in Canada, and there was confusion about whether CSIS had communicated to the Syrians that Canada did not want Mr. Arar back.¹²¹³ Whether true or not, this perception of mixed messages went to the heart of Mr. Pardy's concern.

Not only were the Syrians possibly confused about Canada's stand on Mr. Arar, but they were becoming more and more preoccupied with events in their own region. In particular, the American invasion of Iraq on March 17, 2003 complicated Canada's efforts to have Mr. Arar released.¹²¹⁴

Dr. Mazigh was continuing to pressure DFAIT to do more for Mr. Arar's release, and Mr. Pardy and other DFAIT officials were increasingly frustrated with the lack of progress in his case.¹²¹⁵ On April 12, Mr. Pardy sent Dr. Mazigh an e-mail acknowledging the Canadian government's lack of consensus on Mr. Arar, which was sending a mixed signal to the Syrian authorities. His e-mail stated that: "A major part of the problem here is that not everyone in the government of Canada agrees with what we are doing in support of Maher. The Syrians are well aware of that and that undoubtedly influences their willingness to be more cooperative."¹²¹⁶

Mr. Pardy testified that he sent this message late at night when he was frustrated, tired and also dealing with the SARS outbreak in Canada.¹²¹⁷ The purpose of his e-mail was to remind Dr. Mazigh that "a major part of the problem was that we needed to have the Canadian government speak with one voice".¹²¹⁸ He wanted her to know that DFAIT was doing its part, that they were still Mr. Arar's champions and that they would not abandon his cause.¹²¹⁹ Dr. Mazigh released this message to the press in late June 2003.¹²²⁰ After its release to the public, no one in the Government of Canada commented to Mr. Pardy that this message was inaccurate.¹²²¹

On April 28, a meeting was held with Ms. Catterall, Mr. Assadourian, and Mr. Pardy, Ms. Pasty-Lupul and Don Sinclair of DFAIT.¹²²² One of the issues discussed was whether the Syrian officials' allegation that Mr. Arar had received training in Afghanistan in 1993 could be refuted. Consular Affairs officials had previously asked Dr. Mazigh to look for any documentation showing Mr. Arar's whereabouts in 1993. Immigration control documents might also have existed to show his movements during that year.¹²²³ Research of this nature would

normally be conducted by CSIS rather than Consular Affairs.¹²²⁴ Ms. Pasty-Lupul testified that somebody at the April 28 meeting stated that this channel had already been pursued, but she had no further information about the results of this check.¹²²⁵

While Mr. Pardy and others in DFAIT were trying to find ways for the Government of Canada to speak with one voice for Mr. Arar's return to Canada, their efforts were further complicated by statements reportedly made by the American Ambassador to Canada, Paul Cellucci, on April 29. In a speech at the Harvard Club in Ottawa that day, he was quoted as saying that Canadian officials told American officials that they did not want Mr. Arar back in Canada, which was why he was deported to Syria.¹²²⁶ Minister Graham did not recall phoning Ambassador Cellucci about these statements immediately after learning about them on April 30; however, he believed he would have raised the issue with the Ambassador when he had an opportunity.¹²²⁷

8.4

DFAIT'S DRAFT ACTION MEMO OF MAY 5

Mr. Pardy prepared a draft action memorandum for the Minister of Foreign Affairs dated May 5, 2003, attempting again to establish a common understanding within the Government of Canada and to obtain a joint statement signed by the Solicitor General and the Minister of DFAIT that could be used with the Syrian authorities to obtain Mr. Arar's release. The memo was circulated for comments to other government agencies, including CSIS, the RCMP, the Solicitor General and PCO. Minister Graham did not see this memo.

This was the third attempt to obtain co operation from the RCMP or CSIS on a joint letter that would assist in obtaining Mr. Arar's release. The first attempt was Mr. Edelson's request on October 31, 2002, at the suggestion of Mr. Pardy, for a letter from the RCMP confirming that Mr. Arar was not a suspect in any terrorist-related crime. The RCMP refused to provide a letter to this effect.¹²²⁸ The second attempt was Ms. Catterall's request of the Solicitor General to provide a letter stating that there was no evidence on which to charge Mr. Arar. Her intention was to deliver this letter to the Syrian authorities during her visit to Syria. Minister Easter refused the request because he believed that the Minister of Foreign Affairs and the Prime Minister were the appropriate officials to communicate with the Syrian authorities.

The memo summarized recent activities related to Mr. Arar, including the MPs' visit to Syria, when Ms. Catterall had emphasized to Syrian officials that Mr. Arar was not wanted for any criminal activity in Canada. Mr. Pardy described the considerations in Mr. Arar's case, highlighting that the central issue was the

discrepancies between what the American authorities had told DFAIT and what the Canadian police and security officials had reported. Mr. Pardy testified that when speaking of representations from American authorities, he meant Ambassador Cellucci's public statements that the U.S. deported Mr. Arar on the basis of information obtained from Canada.¹²²⁹

The memo also referred to Consular Affairs' very limited knowledge of what the RCMP might have known about Mr. Arar's activities.¹²³⁰ It noted that early on, Canadian police officials had stated that their interest in Mr. Arar was based on his contacts with persons in Ottawa who were of interest to them (Messrs. Almalki and El Maati). CSIS initially indicated that it had no interest in Mr. Arar. Mr. Pardy testified that this assessment of Mr. Arar was based on discussions he had with the RCMP and CSIS at the meeting on October 16, 2002, and the memorandum from Superintendent Wayne Pilgrim dated October 18, 2002, which stated that the RCMP maintained "an interest in Arar as part of an ongoing criminal investigation."¹²³¹ The memo notes that after CSIS officials visited Syria, DFAIT officials learned from the Syrian authorities that Canadian security officials had told them that Canada did not want to have Mr. Arar returned. CSIS denied that they had said this to the Syrians.

Finally, Mr. Pardy outlined the shift in Syrian allegations against Mr. Arar. Initially, the Syrians advised Canada that Mr. Arar was a member of the Syrian Muslim Brotherhood, but subsequently told Ms. Catterall that they believed he was a member of al Qaeda, as the Americans had claimed when he was deported.

Mr. Pardy outlined two elements which Consular Affairs thought had to be in place for the Syrians to release Mr. Arar and return him to Canada:

- An unambiguous statement from the Government of Canada, preferably signed by the Solicitor General and the Foreign Minister, to the effect that Canada had *no evidence* that Mr. Arar is or was a member of al Qaeda, and that Canada did not believe such information existed [emphasis added];
- A categorical statement that the information used by the United States in deciding to deport Mr. Arar did not originate with the Canadian authorities, since Canada did not have information that he was a member of al Qaeda.

In the memo, Mr. Pardy expressed his opinion that there was little expectation that the Syrians would respond positively to the request for Mr. Arar's release as long as the American claims remained unchallenged and unless it was denied that Canadian security and police officials did not want to see Mr. Arar returned to Canada. Tensions between the United States and Syria concerning the American role in Iraq and the Middle East peace plan probably meant that

the Syrians would be loath to take positive action on Mr. Arar if they believed that the United States would be opposed. The decision to link Mr. Arar to al Qaeda was probably meant as a signal of Syrian co operation on international terrorism issues.

Deputy Minister Lavertu was to visit Syria on May 19. One of the proposed recommendations in the memo was to use his visit as an opportunity to again impress on the Syrians how seriously Canada viewed the Arar case and to appeal to them not to charge him. Mr. Pardy wanted the Syrians to return Mr. Arar to Canada, not to charge and try him in Syria. Mr. Pardy testified that this preference stemmed from his belief that if Mr. Arar were tried in Syria, he would not be given due process or a fair trial.¹²³² Minister Graham testified that he definitely wanted Mr. Arar returned to Canada. If he was guilty of some terrorism-related offence in Canada, he should be prosecuted under Canadian law. Suggesting that Mr. Arar be tried in Syria was a fallback position if the Syrian authorities were not prepared to release him. This was preferable to Mr. Arar continuing to be detained indefinitely without trial.¹²³³ Minister Graham's position was no different than Amnesty International's: if Mr. Arar was not released, then he should be charged with a recognized criminal offence and offered a fair trial.¹²³⁴

Other recommendations in this memo were:

- Minister Graham should call in the Syrian ambassador at an appropriate time and provide a response to the Syrians' stated intentions to prosecute; and
- if necessary, Minister Graham should meet with the Solicitor General and the Deputy Prime Minister to arrive at a common understanding on this case.

8.5

MEETINGS OF MAY 8 AND 12

The May 5 memo stated that DFAIT intended to convene a meeting of Canadian officials representing DFAIT, CSIS, the RCMP, PCO and the office of the Deputy Prime Minister to develop a clear, common Canadian approach to communicate to the Syrian authorities. Meetings were held on May 8 and 12 to discuss Mr. Pardy's May 5 memo, attended by officials from the above-mentioned agencies and departments (except the office of the Deputy Prime Minister), as well as the office of the Solicitor General.¹²³⁵

8.5.1

Meeting of May 8

At the May 8 meeting, Mr. Parady discussed Deputy Minister Lavertu's coming visit to Damascus with officials from CSIS, the RCMP and DFAIT ISI. Inspector Roy's notes of this meeting state that Mr. Parady gave an overview and said he wanted the Government of Canada to ask in unison that Mr. Arar not be charged, as there was no foundation for such charges. Inspector Roy's notes also state that Chief Superintendent Killam wanted to discuss matters raised in the May 5 memo in-house and to schedule another meeting.¹²³⁶

8.5.2

CSIS Briefing Note to the Solicitor General

CSIS prepared a briefing note for the Solicitor General dated May 9, 2003, which assessed DFAIT's request for a joint letter from the Solicitor General and the Minister of Foreign Affairs to secure Mr. Arar's release from Syria.¹²³⁷ It also advised the Solicitor General that CSIS had been in contact with the Syrian authorities and received information from them on Mr. Arar.

The briefing note stated that DFAIT officials had suggested that CSIS and the RCMP interview Mr. Arar while he was in Syrian custody, but Mr. Parady testified that Consular Affairs certainly did not want this to happen.¹²³⁸

Issues for the Solicitor General's consideration included the following:

[...] an interview of ARAR by the Service while he is in Syrian custody would serve no useful purpose. Moreover, if ARAR were to be returned to Canada after such an interview, it might be interpreted as a "clean bill of health" for ARAR, which the Service would not be in a position to provide. Furthermore, the US Government may also question Canada's motives and resolve, given that they had deported ARAR to Syria because of concerns about alleged terrorist connections.¹²³⁹

CSIS' recommendation to the Solicitor General was that it would be problematic for him or CSIS to sign the joint letter with Minister Graham, and therefore advised "very strongly" that he decline the request.¹²⁴⁰ The Solicitor General, Wayne Easter, accepted CSIS' recommendation in this briefing note.¹²⁴¹

Mr. Hooper testified that he did not review Mr. Parady's May 5 memo,¹²⁴² but he would likely have been consulted on this briefing note to the Solicitor General. It was suggested that "the American resolve effect"—the suggestion that returning Mr. Arar might result in the United States questioning Canada's motives and resolve in the war against terrorism, given that the U.S. had

deported him to Syria — was advice to the Solicitor General that went beyond the letter itself; it argued against Mr. Arar returning to Canada. Mr. Hooper rejected this suggestion.¹²⁴³ He testified that as a senior bureaucrat, he had an obligation to inform his minister of the political considerations and how signing a joint letter might affect the Minister's ability to deal with his American counterparts.¹²⁴⁴ Mr. Hooper said that the purpose of this statement was to tell the Solicitor General that there was some “political jeopardy” in co signing a letter for Mr. Arar's release and that he should leave this to the Minister of Foreign Affairs, whose responsibility it was. CSIS was reconciled very early on to the fact that when the Canadian government took the position that it wanted Mr. Arar back, his release would be a “political hot potato” with the Americans.¹²⁴⁵

The briefing note did not bring to the Solicitor General's attention the following points:

1. Mr. Arar was in custody in a country that tortures people;
2. [***];
3. Mr. Arar is a Canadian citizen who had been in Syria for a very long time, away from his wife and two young children; and
4. the United States had no right to deport Mr. Arar to Syria.

Mr. Hooper testified that he was absolutely certain that these considerations would have been raised with the Minister of Foreign Affairs.¹²⁴⁶ The Government of Canada has a process and structure for providing ministers with advice in particular areas of expertise. CSIS' expertise relates to security intelligence and CSIS was supplying the Solicitor General with information relevant to his duties, which do not include consular matters.¹²⁴⁷

8.5.3

Briefing Note to the RCMP Commissioner: “The Khadr Effect”

RCMP briefing notes leading up to the meeting on May 12 provide some context for the RCMP's position on a joint letter from the Solicitor General and the Minister of Foreign Affairs. In particular, they show that the RCMP's response to the growing political momentum for Mr. Arar's release was to highlight the embarrassment that politicians could face if they secured his release from Syrian custody and his return to Canada.

On April 30, a briefing note to the RCMP Commissioner reviewed media reports of the MPs' trip to Syria¹²⁴⁸ and provided a short description of Mr. Arar's status with the RCMP. It included information such as the following: Mr. Arar “refused” an interview with the RCMP; Mr. Arar left for Tunisia “shortly” after being

approached for an interview; Mr. Arar “volunteered” that he received training at a camp in Afghanistan; Mr. Arar was a “highly connected individual associated with several suspected criminal extremists”; [***].

The briefing note raised concerns about members of Parliament and the public asking the Prime Minister to intervene for Mr. Arar’s release and return to Canada. The concern related to the potential embarrassment for the Prime Minister if Mr. Arar was subsequently found to be clearly connected with terrorist activities. As mentioned above in Section 4.6.2, the Prime Minister faced similar embarrassment when he intervened for the release of Ahmed Said Khadr.

After reading the briefing note, Deputy Commissioner Loepky asked for CID’s views about whether a briefing should be prepared on Mr. Arar so that the Government of Canada would avoid such embarrassment.¹²⁴⁹ Deputy Commissioner Loepky testified that his objective here was to make sure that people knew the facts, because the prevailing notion was that Mr. Arar was not linked to terrorist activities in any way.¹²⁵⁰

The Solicitor General recalled discussions about the potential for embarrassment as in the Khadr case, but could not recall if these concerns were expressed by the RCMP or CSIS.¹²⁵¹ Mr. Hooper testified that it would not be unusual for CSIS to raise the “Khadr effect” with the Solicitor General.¹²⁵²

8.5.4

Meeting of May 12

At the May 12 meeting, no consensus was reached on language describing Mr. Arar’s status that could be used in a joint letter from the Solicitor General and the Minister of Foreign Affairs.¹²⁵³ Specifically, the RCMP and CSIS would not agree to a statement that Canada had no evidence that Mr. Arar is or was a member of al Qaeda.

Mr. Pardy described the May 12 meeting as largely a presentation by him on the status of the Arar case.¹²⁵⁴ He testified that there was no consensus at this meeting “in the largest sense” on the recommendations in the May 5 memo, but the participants were willing to look at what he was trying to achieve with his memo and were to comment on it. He also received some immediate suggestions from attendees for changes to the memo.¹²⁵⁵

The RCMP’s perspective on the meeting was described to Deputy Commissioner Loepky in a subsequent briefing note dated May 14, 2003:

Discussion surrounded the current status of ARAR as well as RCMP and CSIS interest. CSIS and RCMP agreed that at this point the RCMP has the lead in terms of investigating ARAR. Both RCMP and CSIS are of the opinion that while there is

suspicion surrounding the historical activities of Mr. Arar, there is insufficient evidence to claim he is a member of Al-Qaida or any other group. RCMP was asked by DFAIT if we were interested in interviewing ARAR. RCMP advised that while we are interested in interviewing ARAR, it is not a priority at this point. DFAIT advised that they had earlier indications from Syrian authorities that they would not be open to law enforcement contact with ARAR (He is being held by military intelligence) ... All parties agreed that it is important that Mr. Arar receive his Consular Rights.¹²⁵⁶

According to this same briefing note, CSIS, the RCMP and the Solicitor General expressed concern over some of the language in the May 5 memo and Mr. Pardy undertook to redraft the memo and supply all parties with the revised version before he submitted it to his minister. It was agreed that the communication strategy would be for departments to say nothing at this time.¹²⁵⁷

Deputy Commissioner Loepky had asked whether a briefing on Mr. Arar should be arranged to avoid another embarrassing situation and he was advised that all affected Canadian agencies were fully aware of the matter and of the identical position taken by CSIS and the RCMP. Therefore, no further action or briefing was required by the RCMP at that time.¹²⁵⁸

8.6

DFAIT DEPUTY MINISTER'S VISIT TO SYRIA

On May 19, Deputy Minister Lavertu met with the Syrian Foreign Minister in Syria. Since the May 12 meeting had ended without consensus, he could not deliver a joint letter from the Solicitor General and the Minister of Foreign Affairs.¹²⁵⁹ Mr. Lavertu had intended to raise Mr. Arar's case but conditions were such that he could not do so. His meeting with the Deputy Foreign Minister was cancelled at the last moment and his discussions with the Foreign Minister were short and preoccupied with the Syrian position on Iraq and the American and British mandate for Iraq.¹²⁶⁰

On May 30, Mr. Pardy sent an e-mail to Ambassador Pillarella, stating that it was extremely regrettable that the Deputy Minister did not raise Mr. Arar's situation in his discussions with Syrian officials. He further stated: "Quite clearly it probably left the wrong message with the Syrian authorities concerning our deep and abiding interest in the welfare of Mr. Arar." Ambassador Pillarella disagreed with Mr. Pardy's assessment. Ambassador Pillarella stated that he believed that even if the Deputy Minister had raised Mr. Arar's case, it would not have registered with the Syrian Foreign Minister, given his preoccupation with pressing events in the Middle East at the time.¹²⁶¹

8.7

DFAIT'S DRAFT ACTION MEMO OF JUNE 3

After Deputy Minister Lavertu's visit to Syria and the realization that he could not obtain direct support from CSIS or the RCMP for Mr. Arar's release, Mr. Pardy drafted a revised action memorandum to the Minister of Foreign Affairs, dated June 3, 2003. Mr. Pardy abandoned the suggestion of a joint letter from the Solicitor General and the Minister of DFAIT. The sole recommendation was that Minister Graham sign a letter to the Syrian Foreign Minister and that he meet with the Syrian Ambassador to deliver it.¹²⁶²

The June 3 draft memo was substantially similar to the one of May 5, with the following differences or additions. First, the June 3 memo characterized the Syrian position as hardening in the months following the Minister's phone call in January and the delivery of the Minister's letter to Minister Shara'a during Ms. Catterall's visit in April; the letter did not elicit a formal response from Syria. Mr. Pardy concluded that Canada, or at least DFAIT, had little or no leverage with the Syrian authorities in this case. Second, the June 3 memo summarized the positions of CSIS and the RCMP on assisting Mr. Arar as follows:

In recent days we have discussed the case with both CSIS and RCMP. They have maintained their positions that Mr. Arar, while not under investigation in Canada, is a person of interest to them because of evidence of his connections with others who are. In these circumstances, they will not provide any direct support in having Mr. Arar returned to Canada. As such, the best we can do in these circumstances is to again raise the matter directly with the Syrian Foreign Minister and to that end we have attached a letter for your signature. We would also recommend that you call in the Syrian Ambassador and deliver the letter.¹²⁶³

No draft letter was attached to the memo at that time. It was eventually attached to the final memo of June 5, which will be discussed in more detail below.¹²⁶⁴

8.8

FINAL DFAIT ACTION MEMO AND DRAFT LETTER OF JUNE 5

On June 5, Mr. Pardy finalized the memo for Minister Graham, which he and Deputy Minister Lavertu signed. The transmittal slip attached to the memo lists the following government departments and agencies as having been consulted: DFAIT's Middle East Division (GMR), Foreign Intelligence Division (ISI) and Security and Intelligence Bureau (ISD), the RCMP, CSIS and PCO.¹²⁶⁵ The final

memo added a recommendation that Minister Graham meet with Dr. Mazigh,¹²⁶⁶ who had been pressing for a meeting with him since March 2003.¹²⁶⁷

The June 5 memo was substantially similar to the one of June 3, but the final memo stated that the RCMP had confirmed that the Americans had consulted them before deporting Mr. Arar. However, it noted that the Americans had not raised his possible deportation to Syria and the RCMP had not given any indication that such a course of action would be acceptable to them. The wording of the latter statement was provided by the RCMP.¹²⁶⁸ Furthermore, the memo added that should Mr. Arar return to Canada, CSIS and the RCMP had both indicated that they wanted to question him.¹²⁶⁹

Attached to the June 5 memo was a draft letter to Syrian Foreign Minister Shara'a, for Minister Graham's consideration and signature.¹²⁷⁰ The letter included a plea for Mr. Arar's return on humanitarian and compassionate grounds and made the following statement on Mr. Arar's status in Canada: "I assure you that there is no Canadian Government impediment to Mr. Arar's return to Canada."

Because CSIS and the RCMP were not prepared to support DFAIT's effort directly, the draft letter included language that was virtually identical to that in Minister Graham's previous letter to Minister Shara'a, delivered by Ms. Catterall.¹²⁷¹ As Mr. Pardy indicated in his memo, this earlier letter had not elicited any response from the Syrians. Mr. Hooper did not see the memos of June 3 or 5, but was aware that Mr. Pardy had prepared a letter for the Minister of Foreign Affairs' signature, including language to which neither CSIS nor the RCMP objected.¹²⁷² Minister Graham testified that his office had come to a conclusion and clearly Mr. Pardy's advice to his office was that the letter as worded would not persuade the Syrians. However, Mr. Pardy had no success in getting different language adopted.¹²⁷³

8.9

MR. HOOPER'S CALL TO MS. McCALLION

On or about June 5, Mr. Hooper of CSIS phoned Kathryn McCallion, DFAIT's Assistant Deputy Minister (ADM) responsible for consular affairs, to discuss Minister Graham's letter to Minister Shara'a.¹²⁷⁴ Mr. Hooper had no interaction with Ms. McCallion, but knew she was responsible for consular affairs.¹²⁷⁵

Mr. Hooper testified that he wanted to make the following three points to Ms. McCallion. First, he wanted to make sure she understood the earlier issues around the wording of the letter and why CSIS preferred that the Solicitor General not sign it. Second, he wanted to ensure that she knew that Mr. Arar's case was not the last case that CSIS and DFAIT would have to deal with. Other Canadians with a security intelligence link to their case were detained abroad —

some of them dual nationals. Third, he wanted to make the point that there needed to be a better process for coordinated, multi-agency government action. Mr. Arar's case was not specifically discussed other than as a platform for a broader discussion.¹²⁷⁶

Mr. Hooper was concerned that there might have been some inaccuracies in briefings sent to senior officials in DFAIT because the discussions around the language of the proposed letter to the Syrian Foreign Minister were difficult. He was concerned about messaging that was going up to Ms. McCallion from people at the middle levels of the department.¹²⁷⁷

Mr. Hooper testified that he and Ms. McCallion might have discussed the possibility that Canadians detained overseas would present a threat to Canadian security upon their return, and what CSIS would have to do to ensure Canada's security. He stated that at the end of the day, "CSIS will do whatever CSIS has to do... if [it's] confronted with 11 or 15 or 25 new targets on the ground." It was understandable that new targets would bring up resource issues for CSIS.¹²⁷⁸

It was suggested to Mr. Hooper during questioning that one of CSIS' concerns about future targets was that its mandate on security certificate cases would be affected if Mr. Arar returned to Canada and began speaking about his mistreatment in Syria. Mr. Hooper agreed that this consideration had been on his mind at the time of the call. Allegations of mistreatment by Mr. Arar would make it difficult for CSIS to engage the full process to be applied in a security certificate case. Mr. Hooper testified that he had not discussed this consideration with Ms. McCallion.¹²⁷⁹

Mr. Hooper explained that there was no discussion about whether or not CSIS wanted Mr. Arar to stay in Syria because of resource issues. As he recalled, resource issues were not a part of their conversation.¹²⁸⁰ However, he acknowledged that their discussion of other possible security-related cases involving Canadians detained abroad might have given Ms. McCallion the impression that these cases could pose a resource problem for CSIS.¹²⁸¹

What Mr. Hooper did not agree with was any suggestion that Ms. McCallion might have been left with the impression that CSIS did not want Mr. Arar back. From the outset of the conversation, one of the very clear messages he wanted to communicate to Ms. McCallion was that CSIS had never told the Syrians it did not want Mr. Arar back. Furthermore, CSIS accepted the Government of Canada's position that Mr. Arar had to be brought home.¹²⁸²

According to Mr. Hooper, there was never an official CSIS position that CSIS did not want Mr. Arar back in Canada, or that CSIS did not want the Minister of Foreign Affairs to send a letter to his Syrian counterpart.¹²⁸³ It was suggested to Mr. Hooper during testimony, however, that CSIS did not have to say outright

that it did not want Mr. Arar back if it brought forward only negative considerations to the Solicitor General about the need to send a letter to help bring Mr. Arar home. Mr. Hooper responded that he did not believe Ms. McCallion was aware of what the Solicitor General had been advised, apart from the fact that CSIS' position had always been a preference for the Minister of Foreign Affairs to send a letter and that the language in the letter be accurate. Mr. Hooper's understanding was that the negotiations around the language of the letter would have been finished sometime around the middle of May. Therefore, at the time of his call to Ms. McCallion, he believed the letter to be "a done deal."¹²⁸⁴

As mentioned earlier, Mr. Hooper also wanted to discuss with Ms. McCallion the need for better coordination across the Canadian government on future cases involving different government agencies. This issue had already been raised in the April 7 memorandum prepared by Mr. Pardy for the Minister of Foreign Affairs that referred to the "deck" presented in February 2003. Thus, it would seem Mr. Hooper was raising an issue with Ms. McCallion that Mr. Pardy had previously raised with the Minister of Foreign Affairs. Mr. Hooper testified that, in his opinion, there had been no tangible difference in coordination as a result of the February 2003 discussions.¹²⁸⁵

Ms. McCallion's testimony about the call did not differ significantly from Mr. Hooper's recollection of events. She described her conversation with Mr. Hooper as non-confrontational and non-adversarial — a dialogue between two ADMs representing two different mandates who were obliged to work together. They did not discuss the specifics of the Arar case. Rather, they spoke about the global situation, relations with the United States and other states post-9/11, and DFAIT's and CSIS' mandates.¹²⁸⁶

As to the mandates of the two departments, Ms. McCallion interpreted the discussion as CSIS and DFAIT reassuring themselves that the other was aware of the issues surrounding the Arar case within the context of their respective mandates. Both Ms. McCallion and Mr. Hooper acknowledged that in some instances the two departments' mandates were not necessarily 100 percent complementary. There was a need to resolve how to speak with one voice. Ms. McCallion felt that Mr. Hooper wanted to confirm that she was aware that the discussions that had taken place among mid-level officials had not always been easy, but that the wording of the letter had been resolved.¹²⁸⁷ She in turn made it clear that the memo was going forward.¹²⁸⁸

Ms. McCallion testified that Mr. Hooper also conveyed that CSIS' mandate above all is the security of Canadians in general; individual cases are looked at within that context. She did not believe he made these comments to dissuade

DFAIT from its efforts to bring Mr. Arar back to Canada.¹²⁸⁹ Nor did she believe the resource issue was raised when they discussed other possible cases involving Canadian dual nationals detained overseas who might return to Canada.¹²⁹⁰

According to Ms. McCallion, Mr. Hooper did not ask her either to change the wording of the letter to be signed by the Minister of Foreign Affairs or to refrain from sending the memo and letter up the chain of command to the Minister's office. The letter was not specifically discussed.¹²⁹¹

After Ms. McCallion finished speaking with Mr. Hooper, she did not discuss the content of the call with anyone. There was nothing more to be said: the memo was going forward.¹²⁹² She believes, however, that she told someone in Consular Affairs that she had spoken to Mr. Hooper and signed the memorandum, and that it had gone forward. At the time of her testimony, she believed that the person she would have spoken with was David Dyet, Director of Case Management in Consular Affairs, because Mr. Pardy was away.¹²⁹³

Other DFAIT witnesses testified about what they had heard concerning the call between Mr. Hooper and Ms. McCallion. The information they had received was second- or third-hand.

Of these witnesses, only Mr. Dyet testified to having contact with either of the two participants in the call. Mr. Dyet met with Ms. McCallion in the morning of June 5 to brief her on the memo to be sent to the Minister. As he recalled, he was asked to come to her office to discuss the memo before Ms. McCallion returned Mr. Hooper's phone call. After he finished his briefing, she told him that she would be signing off on the memo and it would be going forward.¹²⁹⁴ Ms. McCallion did not recall meeting with Mr. Dyet before her call with Mr. Hooper. Nonetheless, she did not dispute Mr. Dyet's recollection of events. She testified that it would be customary for her to receive such a briefing for background purposes prior to a meeting or, in this case, a phone call.¹²⁹⁵

After the meeting, Mr. Dyet returned to his office where he retrieved a message from Mr. Gould of ISI concerning the status of the June 5 memo.¹²⁹⁶ Mr. Dyet met with Mr. Gould that same day. He could not remember how much time passed between his meeting with Ms. McCallion and his meeting with Mr. Gould, but speculated it was not long.¹²⁹⁷

During the meeting, Mr. Dyet told Mr. Gould he had met with Ms. McCallion, and that she had indicated she was going to sign off on the memo and it was going forward. He also told Mr. Gould that Ms. McCallion had received a call from CSIS.¹²⁹⁸

Mr. Gould's notes of their meeting referred to the Hooper-McCallion call. According to Mr. Gould's notes and testimony, Mr. Hooper called Ms. McCallion and told her that CSIS did not want Mr. Arar back in the country because it

would have to devote too many resources to watching him. Mr. Gould was unsure of the source of Mr. Dyet's information concerning the call.¹²⁹⁹

In his testimony, Mr. Dyet was not clear about the source of the information in Mr. Gould's note. While he was confident he would not have shared this statement concerning resources with Mr. Gould unless someone had mentioned it to him, he could not confirm that he had heard this information from Ms. McCallion. He was sure the information had come to him from someone within DFAIT, possibly Ms. McCallion.¹³⁰⁰ More importantly, he was unsure whether this statement concerning resources indeed derived from the Hooper-McCallion call.¹³⁰¹

When Ms. McCallion was shown the entry in Mr. Gould's notes, she said she did not recall Mr. Hooper mentioning either CSIS' lack of resources for watching Mr. Arar if he came back to Canada or CSIS not wanting to see Mr. Arar return.¹³⁰²

Mr. Livermore, Director General of ISD, was aware that at times representatives of various organizations had expressed the view that it was perhaps preferable that some individuals stay outside of Canada; if they returned they would become a drain on the organization's resources, because they would have to be watched, involving a lot of time and trouble. Therefore, it would be better if they did not come back. However, from the outset that was never DFAIT's preference. This is why he did not pursue rumours that Mr. Hooper did not want Mr. Arar back — it simply was not an option.¹³⁰³

Mr. Gould wrote a draft memorandum on June 24, in which he stated that CSIS' preference was to have Mr. Arar remain in Syria. He stated that this view was not the result of any single event, but rather the result of weeks and months of dealing with CSIS, and a collection of conversations, discussions and innuendo.¹³⁰⁴ Mr. Hooper categorically denied that this was CSIS' position and expressed surprise that Mr. Gould was left with this impression.¹³⁰⁵

8.10

THE MINISTER'S RESPONSE — JUNE 17

On June 12, Minister Graham met with Dr. Mazigh and representatives of non-governmental organizations assisting her in her campaign for Mr. Arar's return.¹³⁰⁶ At this meeting, Dr. Mazigh requested a coherent and clear statement from the Government of Canada that it had no evidence linking Mr. Arar to terrorism and that it wanted Mr. Arar returned to Canada immediately.¹³⁰⁷ She also told the Minister that she knew that not everyone in the government, security agencies in particular, agreed with Consular Affairs' efforts. When she suggested

that a letter from CSIS would have more clout with Syrian security officials than a letter from a politician, Minister Graham did not disagree.¹³⁰⁸

As a result of this meeting, Minister Graham's office pursued Dr. Mazigh's request for stronger language in his letter to Minister Shara'a.¹³⁰⁹ On June 17, Mr. Pardy learned that the Minister's advisers had reviewed the draft letter to Minister Shara'a attached to the June 5 memo and wanted the following changes to the letter, as indicated below in italics.¹³¹⁰

(...) I assure you that there is *no evidence he is involved in terrorist activity nor is there any* Canadian Government impediment to Mr. Arar's return to Canada (...)

Mr. Fry tried to negotiate with the office of the Solicitor General for stronger language in the letter because he believed there was no use in sending another letter from Minister Graham with the "no impediment" language when the Minister had sent a similarly worded letter just two months earlier.¹³¹¹ Minister Graham testified that his office was attempting to find language that would recognize that while Mr. Arar might have been a person of interest, which anyone could be for all sorts of reasons, this must not lead to a conclusion that he was guilty of a terrorist offence in Canada.¹³¹²

Mr. Pardy was asked to seek concurrence from the Solicitor General, the RCMP and CSIS on the text.¹³¹³ Mr. Pardy testified that this proposed language "sparked a reaction" from these agencies.

8.10.1 CSIS' Position

On June 13, Mr. Hooper met with Peter Harder, who had succeeded Gaetan Lavertu as the Deputy Minister of Foreign Affairs, to discuss consular cases with national security implications. Mr. Hooper learned there that a protocol was being developed to deal with such cases. Subsequently, Mr. Hooper stated in an e-mail: "They [DFAIT] already went too far on Arar, as far as we're concerned."¹³¹⁴ Mr. Hooper explained that this statement did not refer to DFAIT going too far in its attempts to have Mr. Arar returned to Canada but rather to DFAIT's approach.¹³¹⁵ He believed that DFAIT acted inappropriately by releasing information to Dr. Mazigh and the media without consulting CSIS.¹³¹⁶ He also believed that Mr. Pardy acted inappropriately by attempting to have the Solicitor General sign a letter.¹³¹⁷

Mr. Hooper believed that DFAIT's Consular Affairs Bureau was too far ahead of the rest of the Canadian government. For lack of strong high-level coordination, different government departments with different interests in the Arar

case were acting on their own and not communicating enough with each other. Mr. Hooper wanted to see clearer direction given to everyone concerned and more frequent consultations on a case involving several government departments.¹³¹⁸ Mr. Hooper believed that the creation of the position of National Security Advisor to the Prime Minister in November or December 2003 was a good move, since this was a senior official who could ensure harmonization among government agencies on these issues.¹³¹⁹

On June 18, the CSIS Liaison Officer to DFAIT wrote to CSIS Headquarters that Mr. Pardy's memo was discussed at length at interdepartmental meetings on May 8 and 12, and it was agreed not to use the language suggesting that there was no evidence to link Mr. Arar to terrorist activities. She asked for strong language to remind DFAIT that their suggestion was not acceptable to CSIS.¹³²⁰ CSIS Headquarters responded to the CSIS LO by e-mail:

We have told them [DFAIT] on a number of occasions that we cannot support this statement ... In the end if they go ahead with this nonsense we will not stand behind it and they will be on their own on this one. We told DFAIT in the past that this could go down the same road as Ahmed Said KHADR; people run to his defense only to find out later he was one of the major players within the AL-QAIDA network.¹³²¹

Mr. Pardy received an e-mail from Scott Heatherington on June 18, advising him that the RCMP and CSIS had concerns about wording proposed by the Minister. Both the RCMP and CSIS agreed that the following would be more accurate:¹³²²

Mr. Arar is currently the subject of a National Security Investigation in Canada. Although there is not sufficient evidence at this time to warrant Criminal Code charges, he remains a subject of interest. There is no Canadian government impediment to Mr. Arar's return to Canada.¹³²³

Mr. Pardy testified that this was "a major step backwards to put in the language 'national security investigation in Canada.'" ¹³²⁴ This language was "clearly unacceptable to the efforts that were under way."¹³²⁵ Minister Graham recalled that he thought the language which the RCMP and CSIS came back with would have made matters worse rather than better.¹³²⁶ Deputy Commissioner Loepky also testified that this language would be counterproductive to efforts to have Mr. Arar returned to Canada.¹³²⁷

Mr. Pardy and Mr. Fry noted that previously Mr. Arar was described as "a person of interest" and suddenly he became "the subject of a national security investigation."¹³²⁸ This was the first time that Mr. Pardy had seen this language

in any communication from the RCMP.¹³²⁹ Mr. Pardy and Mr. Fry testified that CSIS and the RCMP were hardening their position in the aftermath of the previous memos.¹³³⁰ Mr. Pardy believed that the growing momentum of the public campaign to free Mr. Arar was one factor leading the RCMP and CSIS to harden their position.¹³³¹ Mr. Hooper disagreed that CSIS was hardening its position; rather, it was attempting to ensure that the language in the letter was accurate.¹³³²

According to Mr. Livermore, DFAIT had long known that some CSIS officials were uncomfortable with DFAIT's level of ministerial engagement in the Arar case. Mr. Livermore testified that they were aware that CSIS thought these actions imprudent, but from DFAIT's perspective, the political momentum building on the Arar case made DFAIT's actions appropriate.¹³³³

Mr. Hooper testified that CSIS did nothing to try to have any government department or agency prevent Mr. Arar's lawful return to Canada. The Government of Canada had been clear that it wanted Mr. Arar returned. CSIS could not and did not disagree with this position.¹³³⁴ CSIS' position was that the Minister of Foreign Affairs should send the letter and that its content should be accurate.¹³³⁵

8.10.2

The Solicitor General's Position

The Solicitor General's office coordinated the response for the RCMP and CSIS, and in so doing sought comments and advice from these agencies that would eventually be forwarded to DFAIT.¹³³⁶

In May, Mr. Fry was negotiating the wording of a joint statement with the Solicitor General's office, in addition to Mr. Pardy's efforts. He testified that many wordings were discussed, but by the end of May he realized no consensus could be achieved, except to say there was "no impediment."¹³³⁷ While the Solicitor General's office was at first willing to issue a joint statement with Minister Graham, it changed position as a result of the RCMP and CSIS advising that Mr. Arar was the subject of a national security investigation. Once this happened, Mr. Fry described the effect as follows: "It is basically a way of bringing down the veil and then the Minister's office basically has to be hands-off because there is now an investigation and from a political point of view you need to stay away."¹³³⁸

Solicitor General Easter testified that "we wanted to do everything we could to get Mr. Arar back to Canada;" however, the spokespersons for the Government of Canada in this matter were the Prime Minister, the Minister of Foreign Affairs and the Canadian Ambassador in Syria.¹³³⁹ The

Solicitor General saw the goal as doing everything possible to return Mr. Arar to Canada, without in any way compromising the integrity of law enforcement or intelligence agencies.¹³⁴⁰

The office of the Solicitor General's advice to Minister Graham around June 18 was that he should not "walk out on a limb" for Mr. Arar and say that the Government of Canada had no evidence against him: "We may have something [now] or have something in a few months."¹³⁴¹ Commission counsel asked Minister Graham whether he was being warned about his efforts to have Mr. Arar returned, given the Prime Minister's experience in making representations to Pakistan for the release of Mr. Khadr.¹³⁴² Minister Graham testified that he recalled people warning him about the "Khadr effect," and this was a legitimate caution. He did not believe that CSIS or the RCMP were deliberately frustrating his department's efforts to have Mr. Arar returned to Canada; rather, they were trying to make sure that he did not say anything that would inhibit their investigation. He had to be very careful not to stray into their territory. As Minister of Foreign Affairs, he did not have unfettered ability to write whatever he wanted to a foreign government¹³⁴³ and his communications to a foreign state must be informed by the best interests of the Government of Canada as a whole, which would include the security interests of Canada.¹³⁴⁴

8.10.3

The RCMP's Position

On June 24, RCMP Deputy Commissioner Loepky received a memo from the Solicitor General's office, requesting his views on the appropriateness of the draft letter from Minister Graham to the Syrian Foreign Minister with the "no evidence" wording.¹³⁴⁵ The Solicitor General's office wanted to know if the Deputy Commissioner 1) supported sending the letter as currently drafted; 2) wanted changes made to it; or 3) simply recommended not sending it at all. In addition to the draft letter, the memo attached a copy of a letter from Dr. Mazigh to Minister Graham dated June 16, 2003, wherein she expressed her concern that mixed messages were preventing Mr. Arar's release.¹³⁴⁶

On June 26, Deputy Commissioner Loepky sent a letter to the Solicitor General's office in response to the June 24 memo. While the RCMP had no intention of interfering with Mr. Arar's consular rights, the Deputy Commissioner expressed "major concerns with the misleading statement" in the draft letter that there was no evidence of Mr. Arar being involved in any terrorist activities.¹³⁴⁷

He then characterized Mr. Arar's status as follows:

Mr. Arar is currently subject of a national security investigation in Canada. Although there is insufficient evidence to warrant any charges under the Criminal Code at this time, he remains a subject of great interest and our investigation would resume if he returned. Circumstantial evidence links Mr. Arar to several known and high-profile suspected terrorists in Canada and abroad. Given this situation, we do not believe it would be advisable for Mr. Graham to send this letter to his Syrian counterpart.¹³⁴⁸

Deputy Commissioner Loeppky also stated in the letter that the RCMP was very concerned about Mr. Pardy releasing information to Dr. Mazigh with respect to the divergence of opinion on Mr. Arar's release in the Government of Canada.¹³⁴⁹

The Deputy Commissioner testified that this letter was prepared in consultation with CID, where it was decided that some information on file could be evidence if the RCMP pursued criminal charges; he therefore felt that using the words "no evidence" was inappropriate, inaccurate and misleading.¹³⁵⁰

Deputy Commissioner Loeppky testified that generally if the RCMP gave information on a Canadian to a foreign agency and it was learned subsequently that the foreign agency used that information to violate that Canadian's rights, the RCMP and the Government of Canada were obliged to register their concern and protest.¹³⁵¹ When he was later asked whether the RCMP had any responsibility under its mandate to assist in bringing Mr. Arar back to Canada, he responded that this would be a matter for DFAIT. DFAIT might solicit input from the RCMP, but that department would ultimately be responsible for any assistance to Mr. Arar.¹³⁵² He later stated that DFAIT was doing its utmost to have Mr. Arar returned to Canada and the RCMP was providing as much assistance as it could.¹³⁵³

8.11

THE OUTCOME

On June 24, Mr. Gould drafted a memo reviewing DFAIT's difficulties in reaching consensus at an institutional level. This memo remained in draft form only; however, Mr. Gould testified that he might have shared it with Mr. Heatherington and Mr. Livermore to provoke discussion.¹³⁵⁴ Mr. Pardy testified that he agreed with the sentiments expressed in Mr. Gould's draft memo, which stated:

It is very clear there has not yet been, on the institutional level, a meeting of the minds between the Department of Foreign Affairs on the one hand and CSIS and the RCMP on the other with regard to the case of Maher Arar. Recent exchanges have been almost testy and there is a fear that the working relationship between DFAIT and CSIS, in particular, might be poisoned if agreement is not reached on a government-wide approach to this case.

The draft memo provides additional insights into the problem of obtaining consensus among the various government agencies:

CSIS has made it clear to the Department that they would prefer to have him remain in Syria, rather than return to Canada. CSIS officials do not seem to understand that guilty or innocent, Maher Arar has the right to consular assistance from the Department and that in the circumstances in which he presently finds himself, the best outcome might be his return to Canada. Even though there is a risk that Arar might later be found to have been involved in extremist activities of one sort or another, his right to consular assistance must be honoured.

Mr. Gould testified that this description of CSIS' preference to have Mr. Arar remain in Syria was the result not of any single event but rather of weeks and months of dealing with that agency and many conversations, discussions and innuendoes.¹³⁵⁵ Mr. Hooper testified that he was surprised that Mr. Gould was left with an impression that CSIS did not want Mr. Arar back. He said: "I can say categorically that this was never the position of the Canadian Security Intelligence Service. Never. So how Mr. Gould arrived at this conclusion, I don't know."¹³⁵⁶

Eventually, no letter went from Minister Graham. It was made unnecessary by a letter from the Prime Minister to President Assad. By this time, Mr. Pardy had shifted his focus from front-line government personnel and appealed to the Prime Minister to become involved.¹³⁵⁷ Mr. Pardy never saw the Deputy Commissioner's letter dated June 26, 2003, nor was he concerned about it.¹³⁵⁸ Mr. Pardy testified that when he read the CSIS e-mail on or about June 18, he immediately decided that he would step around CSIS and go directly to the Prime Minister and see if he would sign a letter.¹³⁵⁹ Attempts to obtain consensus or assistance from the RCMP or CSIS were abandoned, as efforts were underway to forge a consensus at the top level of the Canadian government. Mr. Fry testified that Mr. Pardy and he decided to pursue a letter from the Prime Minister because they had "run into a bit of an obstruction" on a letter from the Minister of Foreign Affairs.¹³⁶⁰

Mr. Pardy's efforts were spurred by two things. The first was the Prime Minister's letter to Dr. Mazigh on June 13, 2003, in which he stated: "I want to take this opportunity to reiterate the determination of the Canadian government to provide all possible consular assistance to Mr. Arar, as well as to yourself and other members of his family, and to press the Syrian government for his release and return to Canada as soon as possible. We will not relent."¹³⁶¹

The second impetus was an upcoming trip to Saudi Arabia by a prime ministerial envoy, Senator Pierre De Bané. Mr. Pardy talked to PCO officials and they agreed that Senator De Bané would add Damascus to his itinerary and deliver a letter from the Prime Minister to President Assad.¹³⁶² This trip and the letter are described in the following section.

Mr. Pardy testified that he believed the Prime Minister's decision to become directly involved in Mr. Arar's case was due to the inability of front-line officials in the various Canadian government agencies and departments to reach consensus and the only way out was for the Prime Minister to intervene.¹³⁶³ Coherence was achieved only when this was done.¹³⁶⁴

Mr. Pardy testified that the "mixed messages" could have affected Mr. Arar's return, but he had no direct information to confirm it. He was always striving to achieve consensus on this issue in the Canadian government and it was difficult. In the end, the Prime Minister had to intervene.¹³⁶⁵ However, Mr. Pardy was quoted in Juliet O'Neill's article of November 8, 2003 in the *Ottawa Citizen* as saying: "The RCMP and the security people, that's where the division came down. They were saying we have our responsibilities and we don't agree. I think it delayed our efforts to get him out of there to some extent, although I don't think by a heck of a lot, quite frankly." He testified that this quote was certainly consistent with what he had been saying.¹³⁶⁶

9. THE PRIME MINISTER'S LETTER

9.1 THE IDEA

As mentioned above, in June 2003 DFAIT was preparing to send a special envoy to Saudi Arabia on behalf of Prime Minister Jean Chrétien. The subject of the visit was William Sampson, another Canadian citizen in detention overseas. Senator Pierre De Bané was selected to undertake this mission because he was considered to be knowledgeable about the region and a very able diplomat.¹³⁶⁷ During discussions between Mr. Pardy and the Minister's office about the Saudi Arabia mission, the idea arose to extend Senator De Bané's trip to include Syria.

Mr. Fry testified that sending a letter from the Prime Minister to Syria's head of state was seen as an effective way of "ratcheting up" the effort on the Arar case.¹³⁶⁸

By July 7 Senator De Bané had accepted the invitation from the Minister of Foreign Affairs' office to go to Syria on the Prime Minister's behalf.¹³⁶⁹ However, due to prior commitments, he was unable to leave until mid-July.¹³⁷⁰

9.2

JULY 11 BRIEFING

The Senator's understanding from the outset was that he would travel to Saudi Arabia and Syria to meet with the heads of state of both countries, carrying a personal message to each from the Prime Minister.¹³⁷¹ The aim of both trips was to deliver letters from the Prime Minister and, ideally, obtain the release of Messrs. Sampson and Arar.¹³⁷²

On July 11 Senator De Bané was briefed about his upcoming trip. The briefing, held at DFAIT Headquarters, was attended by about a dozen DFAIT officials, including Mr. Pardy, who chaired the meeting. It lasted about an hour and a half and covered both the Sampson and Arar files.¹³⁷³

Senator De Bané was given a copy of the letter, dated July 11, 2003, from Prime Minister Chrétien to His Excellency Bashar Al Assad of Syria.¹³⁷⁴ In the letter, the Prime Minister asked that Mr. Arar be released and returned to Canada. The Prime Minister also stated: "I can assure you there is no Canadian government impediment to his return."¹³⁷⁵ Essentially, the wording favoured by CSIS and the RCMP for the letter from the Minister of Foreign Affairs had been adopted in the Prime Minister's letter.

The Senator was also briefed on the deterioration of consular access to Mr. Arar¹³⁷⁶ and informed about a discussion between the RCMP and the American authorities during Mr. Arar's detention in the United States. Although the evidence varied somewhat, it appears he was told that the RCMP said that they could not detain and charge Mr. Arar.¹³⁷⁷

9.3

SENATOR DE BANÉ'S TRIP

As planned, Senator De Bané first travelled to Riyadh, Saudi Arabia, to meet with the Saudi head of state on the Sampson case. He was scheduled to travel to Beirut, Lebanon, at the end of his trip via a connecting flight from Jeddah, Saudi Arabia.

On July 15 Canada's ambassador to Saudi Arabia drove Senator De Bané to the Jeddah airport to catch his flight. While waiting at the airport,

Senator De Bané called Mr. Pardy to update him on his trip thus far. Mr. Pardy informed the Senator that Ambassador Pillarella was having difficulty arranging a meeting between the Senator and President Assad. As a result, a second letter dealing with Syrian–Canadian bilateral interests would be delivered to the President. It was thought that a message from the Prime Minister indicating that the visit by the special envoy concerned more than one subject would improve the chances of the Senator meeting with the President.¹³⁷⁸ This second letter was delivered to Damascus prior to Senator De Bané's arrival.¹³⁷⁹

Senator De Bané spent a few days in Beirut awaiting word from Ambassador Pillarella on the meeting with the Syrian authorities. On July 21 Ambassador Pillarella confirmed that a meeting had been arranged between Senator De Bané and Syria's Deputy Minister of Foreign Affairs, Mr. Mouallem, for the following day. That same day, a representative from the Canadian Embassy drove Senator De Bané to the Lebanese–Syrian border to meet Ambassador Pillarella. The Ambassador and Senator De Bané continued their journey by car to Damascus. During the one-hour ride, Ambassador Pillarella briefed the Senator on the Arar file.¹³⁸⁰

Senator De Bané was not perturbed to learn that he would be meeting with the Deputy Foreign Minister rather than the President. He knew Mr. Mouallem from the Deputy Foreign Minister's days as Syria's Ambassador to the United States, and was aware of Mr. Mouallem's considerable influence.¹³⁸¹

On July 22 Senator De Bané met with Mr. Mouallem and presented the Prime Minister's letter concerning Mr. Arar. Ambassador Pillarella was also present. One of the first things Mr. Mouallem did was extend the President's apologies for not being able to receive the Senator, explaining that it had not been possible to organize a meeting with the President at such short notice.¹³⁸²

The meeting was cordial. Senator De Bané impressed upon the Deputy Foreign Minister the importance of the Arar case to Canada. He noted that Mr. Arar was a Canadian citizen and that the Canadian government had a duty to intervene on his behalf. He also raised the fact that the Canadian consul had not been permitted to visit Mr. Arar since April 2003 and that Mr. Arar had not been put on trial. He made it clear that the Prime Minister was asking the President to give his urgent attention to this matter and, further, that Mr. Arar should be released and permitted to return to Canada on humanitarian and compassionate grounds.¹³⁸³

In response, Mr. Mouallem stated that the Ministry of Foreign Affairs was following the case very closely, but that new elements had widened the scope of the Syrian investigation. As a result, Mr. Arar had not been put on trial and the Canadian Embassy had not been permitted access.¹³⁸⁴ Mr. Mouallem did not

specify what “new elements” had arisen.¹³⁸⁵ He assured Senator De Bané that the Prime Minister’s letter would be brought directly to the attention of the President and that he would personally support the Prime Minister’s request.¹³⁸⁶

Senator De Bané returned to Canada on July 28 and briefed Mr. Pardy on his meetings in Saudi Arabia and Syria. He believed the Prime Minister’s message had been well received.¹³⁸⁷

10. THE AUGUST 14 CONSULAR VISIT

10.1 THE SHRC REPORT

In the summer of 2003, the Syrian Human Rights Committee (SHRC), a human rights organization based in London, England, issued its 2003 annual report on human rights in Syria. The report covered such topics as freedom of expression, civil rights and unlawful detentions. In particular, the chapter dealing with unlawful detentions briefly mentioned Mr. Arar. According to the report:

Security Forces continue to hold Maher Arrar [*sic*], who is also a Canadian national, and who was forcibly deported by American Immigration Authorities to Syria whilst passing by a Transit lounge on his way back to Canada. SHRC had received confirmed reports that Mr. Arar has been subject to severe torture and intensive interrogation and charged with cooperating with Al-Qaeda.¹³⁸⁸

A member of the Arar family brought the report to the attention of Myra Pasty-Lupul, at DFAIT Headquarters. On or about July 29, Ms. Pasty-Lupul downloaded the report and asked Gar Pardy to take a look at the reference to Mr. Arar.¹³⁸⁹

The contents of the report pertaining to Mr. Arar set off no alarm bells for Mr. Pardy. For one thing, he assumed from the beginning that Mr. Arar had been subjected to harsh treatment in the early days of his detention. Secondly, although he had no prior experience with the SHRC, he understood it to be an émigré organization¹³⁹⁰ run by Syrian expatriates. He was aware that other groups that track human rights issues around the world had expressed confidence in the SHRC; however, he was sceptical of émigré organizations in general due to uncertainty about the reliability of their information and whether they were serving more than one purpose. The report was noted by DFAIT, but it did not lead to further action.¹³⁹¹ This changed once they learned of a July 29, 2003 letter the SHRC sent Dr. Mazigh.

The SHRC's letter to Dr. Mazigh provided more details about Mr. Arar's detention than were found in the 2003 annual report. Among other things, the letter stated: "Mr. Arar has received heavy and severe torture at the initial stage of interrogation. At present, he receives torture and abuse from time to time as a daily routine of the Syrian prisons practices against political detainees."¹³⁹²

Dr. Mazigh forwarded the letter to DFAIT on August 6, one day before a scheduled press conference where she would be discussing the contents of the letter with the media and calling for further action on her husband's case by the Canadian government.¹³⁹³ Unlike the SHRC report, the details in the letter fuelled DFAIT to continue to push for immediate consular access to Mr. Arar.¹³⁹⁴

10.2 PUBLICITY

Dr. Mazigh began speaking to the Ottawa-based media about the SHRC letter's allegations of torture the same day she forwarded the letter to DFAIT. Media outlets then began contacting DFAIT's communications branch for a response. The communications branch asked Ms. Pasty-Lupul to produce updated press lines as soon as possible.¹³⁹⁵

Late in the afternoon of August 6, Ms. Pasty-Lupul e-mailed DFAIT's communications branch and Minister Graham's office with the following press line suggested by Mr. Parady:

We are equally troubled by the statements regarding the use of torture as noted in the report for SHRC, and are very concerned that we have not had consular access to Mr. Arar since April, despite repeated efforts by our Embassy in Damascus to obtain access. We will not relent in our efforts to seek consular access to Mr. Arar.

The e-mail was copied to Ambassador Pillarella and Mr. Martel in Damascus, as well as to DFAIT ISI.¹³⁹⁶ Ms. Pasty-Lupul also drafted a question and answer document for Minister Graham to assist him with inquiries stemming from the SHRC report.¹³⁹⁷

On the morning of August 7, Dr. Mazigh attended the press conference as planned. Alex Neve from Amnesty International accompanied her. She outlined the allegations of torture contained in the letter from the SHRC. She also requested that the Canadian government step up its pressure on the Syrian authorities to release her husband by recalling Canada's ambassador to Syria.¹³⁹⁸

Both DFAIT and the Prime Minister's Office quickly rejected Dr. Mazigh's request to have Ambassador Pillarella recalled. It was believed that recalling the Canadian ambassador to Syria would do little to either increase consular access to Mr. Arar or help secure his release. As the Ambassador had been dealing with

the Syrian authorities on the Arar matter from the beginning, it was seen to be in Mr. Arar's best interests that the Ambassador remain engaged in Damascus. Furthermore, the Ambassador was trying to look into the SHRC allegations.¹³⁹⁹

A few hours after the press conference, Minister Graham's office contacted Ambassador Pillarella with the instructions that, due to intense media pressure and the troubling allegations of torture, he should again try for consular access to Mr. Arar. The Ambassador pointed out that it could be frustrating dealing with the Syrian authorities because they were often slow to respond to requests, but that this was something he had to live with.¹⁴⁰⁰

While Ambassador Pillarella was trying to investigate the SHRC revelations, DFAIT officials in Ottawa were doing their part to communicate their concerns to the Syrian government. On August 7, John McNee, DFAIT's Assistant Deputy Minister for the Africa and Middle East Branch, called in Syria's ambassador to register Canada's concerns. Ms. Pastyr-Lupul also attended the meeting. Mr. McNee informed the ambassador that the Canadian government was extremely concerned about the reports of torture and expected him to convey its concerns — including the need for a response to the allegations — to the Syrian authorities. He also stated that DFAIT wanted consular access to Mr. Arar as soon as possible and that Mr. Arar should be returned to Canada. The Syrian ambassador agreed to communicate Canada's concerns to the Syrian Ministry of Foreign Affairs.¹⁴⁰¹

In Ms. Pastyr-Lupul's opinion, this visit with the Syrian ambassador led to the final consular visit with Mr. Arar on August 14.¹⁴⁰²

At the same time as its concerns were being registered with the Syrian ambassador, DFAIT was trying to arrange a call between Minister Graham and Syrian Foreign Minister Shara'a about the torture allegations. On August 7, DFAIT Headquarters e-mailed Ambassador Pillarella to instruct him to assist in arranging the call.¹⁴⁰³

10.3

AMBASSADOR PILLARELLA'S MEETING WITH GENERAL KHALIL

Over June, July and August, Ambassador Pillarella had repeatedly requested the resumption of consular access to Mr. Arar. No Canadian official had seen Mr. Arar since April 22. The SHRC's allegations only increased the urgency for consular officials to make a breakthrough with the Syrian authorities on this matter.¹⁴⁰⁴

The Syrian government finally agreed to a visit. On August 12, Ambassador Pillarella e-mailed DFAIT Headquarters to inform them that his Syrian "parlia-

mentarian” contact had told him that the consul would be able to meet with Mr. Arar. The arrangements would be sorted out with General Khalil at a meeting scheduled for 10 o’clock in the morning on August 14. Ambassador Pillarella also commented that “a meeting with Arar should help us rebut the recent charges of torture.”¹⁴⁰⁵

The choice of the word “rebut” would seem to suggest an interest in disproving the SHRC’s allegations of torture, although Ambassador Pillarella flatly denied this was the case. While acknowledging that “rebut” was not the best choice of words, the Ambassador testified that he was “not acting for the Syrians.” He said that he was trying to communicate to DFAIT Headquarters that the allegations of torture in the SHRC’s letter to Dr. Mazigh did not conform to what Canadian officials had observed on the previous eight visits with Mr. Arar. There was thus a concern to meet with Mr. Arar to find out if the allegations were true.¹⁴⁰⁶

During his testimony, it was pointed out to Ambassador Pillarella that he seemed to have interpreted the SHRC’s reference to “torture and abuse” to mean only physical beatings or physical mishandling. The Ambassador replied that he could also have referred to mental torture, but that this did not change his observation that Mr. Arar did not seem to exhibit visible symptoms of torture. Nonetheless, he stated that Mr. Arar had probably been subjected to some form of abuse while in Syrian custody.¹⁴⁰⁷

The Ambassador also added that while there may be general allegations that torture occurs in a particular country, there can be instances where torture does not occur. He cited a case where an individual had been detained in Syria for political reasons but not tortured. However, he was unable to confirm whether this person had faced charges related to involvement with al Qaeda or terrorist activity.¹⁴⁰⁸

Mr. Martel testified that he had never received instructions from Ambassador Pillarella or anyone else to rebut the charges of torture. In his view, his role as consul was to visit the detainee, observe the state the detainee was in and report back to his superiors. He agreed that a consul’s role involved investigating any allegation of torture and ensuring that Canadian detainees were not being mistreated. He stated: “If the press and the human rights groups are saying this person is being tortured... it would be certainly of great concern to me and I would certainly be looking for such traces on my next visit, if I am allowed one.”¹⁴⁰⁹

Mr. Martel testified that he met with Ambassador Pillarella prior to August 14 and discussed the Ambassador’s efforts to re-establish the consular visits. The consul was aware at the time of Ottawa’s concerns about the report of Mr. Arar

being tortured. He seemed to suggest that it was not customary for the Ambassador to speak to him about the details of an upcoming visit with a detainee. He did not mention if in this particular instance Ambassador Pillarella had specifically instructed him on the next consular visit, if granted. Mr. Martel made it clear during his testimony that he knew his responsibilities on consular visits: he was to look for signs that the detainee was not being held in good conditions or was being mistreated and, with respect to reports of mistreatment, to investigate what was going on.¹⁴¹⁰

On August 14, Ambassador Pillarella met with General Khalil as planned. The meeting lasted for over two hours. The Ambassador received the good news that the Canadian consul would be permitted to meet with Mr. Arar that very same day; however, he was also informed that Mr. Arar would be put on trial within the week.¹⁴¹¹

General Khalil told the Ambassador that Mr. Arar's situation had not been helped by the publicity generated by Mr. Arar's wife the previous week and the accusations of torture. The plan had been for Mr. Arar to be released within a few weeks and to return to Canada if he so wished. However, because of the negative publicity about Syria, this plan was no longer possible. If Mr. Arar were released now, it would appear that the Syrian authorities were bowing to international pressure, and Mr. Arar would probably no longer wish to co-operate with them. As a result, Mr. Arar was going to be put on trial.¹⁴¹²

When he learned the consular visit was to take place that day, the Ambassador contacted Mr. Martel. He believed the consular visit took place within a half hour of his meeting with the General.¹⁴¹³ Ambassador Pillarella did not have time to speak with Mr. Martel before the visit, although he thought that he and Mr. Martel might have crossed paths as he was returning to the Canadian Embassy and the consul was leaving to see Mr. Arar.¹⁴¹⁴ Neither did Mr. Martel recall meeting with Ambassador Pillarella prior to his visit with Mr. Arar. However, he found it plausible that he and the Ambassador had "crossed paths."¹⁴¹⁵

10.4

THE CONSULAR VISIT

Mr. Martel was shown to General Khalil's office at the Palestine Branch for the visit with Mr. Arar. This was the consul's first meeting with the head of the SMI.¹⁴¹⁶ In addition to General Khalil, two officials, two colonels and an interpreter were present.¹⁴¹⁷

Before Mr. Arar was brought in, Mr. Martel spent about a half hour with the General and his entourage, and was lectured on the Middle East, Israel and issues of concern to the region.¹⁴¹⁸

The actual meeting with Mr. Arar lasted approximately 30 minutes. According to Mr. Martel's consular report, Mr. Arar seemed pleased to see him and thanked all concerned, including the Syrian authorities, for making the visit possible. The report notes that Mr. Arar was "questioned as much as possible on his detention conditions" and asked if he needed anything from the consul.¹⁴¹⁹ Mr. Martel explained that because of the SHRC allegations, he felt it necessary to go beyond the customary "How are you doing?" asked at every visit. He therefore tried to question Mr. Arar as much as he could under the circumstances.¹⁴²⁰

Mr. Arar made no special request but was pleased to learn that an abundant supply of reading materials had been brought for him.¹⁴²¹

Mr. Martel recorded in his report that Mr. Arar was "able to express himself freely at times."¹⁴²² He explained in his testimony that because several officials, including General Khalil, were present throughout the meeting, he had to gauge whether what Mr. Arar was saying to him were his own words. He sometimes found this difficult to determine. On the one hand, Mr. Arar seemed to look around the room before speaking to see if he was permitted to speak. On the other hand, it seemed to Mr. Martel that Mr. Arar expressed himself more freely because of General Khalil's presence — as though to give the consul a good impression.¹⁴²³

Mr. Arar mentioned that prison conditions had been more difficult in the past than now.¹⁴²⁴ When Mr. Martel told him that press reports about him had caused some concern,¹⁴²⁵ Mr. Arar said that he did not wish to have adverse media publicity because this would harm his case. He also told the consul, "The Press will know the truth when I return home."¹⁴²⁶

Mr. Martel seemed uncertain during his testimony whether to take Mr. Arar's statement about media publicity at face value. In early testimony, he appeared to attach more credibility to the statement, saying that Mr. Arar had not been prompted to say this by the Syrian authorities present in the room.¹⁴²⁷ In later testimony, he questioned whether Mr. Arar had spoken freely or had been pushed to say what he did.¹⁴²⁸ He was convinced, however, that the comment about the press knowing the truth came directly from Mr. Arar, as the Syrians had nothing to gain by giving him this line.¹⁴²⁹ More importantly, this comment signalled to the consul that Mr. Arar would likely be unable to respond if asked for more details.¹⁴³⁰

During the discussion on the press reports, the meeting turned to the pivotal issue of Mr. Arar's treatment by his Syrian jailers. As recorded in the consular

report, Mr. Arar confirmed he had not been beaten, tortured or paralyzed. (When Mr. Martel asked him to explain what he meant by “paralyzed,” Mr. Arar said he could not think of a better word.) However, he also said that his long detention had destroyed him mentally. As far as he was aware, his treatment was no worse than that of other prisoners.¹⁴³¹

Mr. Martel believed he had used the word “treatment” when raising the subject of the press reports,¹⁴³² as he generally used this word to elicit information from detainees. He was adamant that he never used the term “torture” or “physical beating.” In his opinion, it was too risky to use such language; he “could have been cut off from seeing [his] client” as a result.¹⁴³³

He testified to being sceptical about Mr. Arar’s statements concerning his physical treatment. Again, he was uncertain whether Mr. Arar’s words had been said of his own accord, at one point speculating that the Syrian authorities might have dictated the statements to Mr. Arar before the visit. He was unsure whether Mr. Arar would have faced repercussions had he openly stated he had been tortured or physically beaten. He was certain, however, that had he himself used those words in questioning Mr. Arar, consular visits might well have ceased.¹⁴³⁴

During the meeting, Mr. Martel took notes for his consular report.¹⁴³⁵ His handwritten notes stated: “present condition – I have not been paralyzed — not beaten — not tortured,”¹⁴³⁶ and below those words, “very beginning very little.”¹⁴³⁷ According to Mr. Martel, “very beginning very little” was unrelated to Mr. Arar’s comments about not being beaten, tortured or paralyzed. He said that, following their conversation about the media reports, he had asked Mr. Arar whether the Syrian authorities were causing problems for him or making life difficult for him. Mr. Arar replied, “At the beginning, but very little.”¹⁴³⁸

As mentioned above, Mr. Arar had stated that he had been destroyed mentally. When asked during his testimony whether mental or psychological harm amounted to torture, in his opinion, Mr. Martel pointed out that he is not an expert in torture. He questioned whether he could have determined Mr. Arar had been tortured simply from his statement that his long detention had mentally destroyed him. He testified that he did not know at that point all the details of the conditions under which Mr. Arar was being held.¹⁴³⁹

Mr. Martel was aware, however, of certain aspects of Mr. Arar’s conditions of detention. Months earlier, DFAIT Headquarters had sent him a CAMANT note concerning allegations that Mr. Arar was being held in an underground cell without access to natural light.¹⁴⁴⁰ Then, during the August 14 visit, Mr. Arar revealed to Mr. Martel that he was being held in a cell that was three feet wide, six feet long and seven feet high — essentially the size of a grave.

The information about his cell emerged during a lengthy exchange in Arabic between Mr. Arar and General Khalil. Mr. Arar seemed to be either making a request or expressing his displeasure about something. After conversing with the General for four or five minutes, he suddenly interrupted himself, turned to the consul and said in English: “My cell is very small. It’s only 3’ x 6’ x 7’, and I’m sleeping on the ground.” He then continued to speak to the General in Arabic.¹⁴⁴¹

Mr. Martel did not deny that Mr. Arar’s outburst could have resulted from his earlier question to Mr. Arar about prison conditions. His notation about the cell dimensions was recorded halfway through his notes, and could be seen as part of the discussion about Mr. Arar’s treatment. He said that, as his notes were taken in difficult circumstances, he could not confirm they were in chronological order.¹⁴⁴²

The consul did not believe that, based on his information from Mr. Arar, he could have concluded at the time that he was being kept in a cell under inhumane conditions. His understanding was that detainees in Syrian prisons were generally held in small cells — sometimes with more than one person — and slept on the ground, perhaps with a mattress and a few covers. He said he did not know Mr. Arar was deprived of natural light or that the cell was underground. When he asked Mr. Arar how other detainees were being treated, Mr. Arar responded that as far as he knew everyone was being treated the same way.¹⁴⁴³

Mr. Martel explained that when he learned about Mr. Arar’s cell conditions, he put the information in the context of other prisoners held in Syrian detention. He noted that while the size of the cell and sleeping on the floor were unacceptable by Canadian standards, this was the situation in Syria. Many others were being detained in similar circumstances.¹⁴⁴⁴ He said his consular guidelines do not direct consular officials to ask for special treatment for Canadian detainees.¹⁴⁴⁵

DFAIT’s *Manual of Consular Instructions* directs officials to do what they can to protect Canadians against the violation of human rights under international law. With regard to intervening with local authorities, the manual states:

The right of a consular officer to intervene with local authorities on behalf of a Canadian who appears to have been the victim of unlawful (under domestic or international law) discrimination or denial of justice is well established in international law. Consistent with Canada’s commitment to fundamental human rights, consular officers do what they can to protect Canadians against violation of these rights. It is a basic principle of international law that whatever a state’s treatment of

its own subjects, aliens must be accorded an international minimum standard of treatment, including...respect for human rights generally.¹⁴⁴⁶

Mr. Martel knew he was obligated to provide full consular services to Mr. Arar, irrespective of Mr. Arar's dual nationality. He noted, however, that his options would have been limited to protesting Mr. Arar's conditions of detention. He had no power to change the situation. He said that had the facts led him to conclude that a Canadian detainee was being treated inhumanely, he would have conveyed his concerns to the Ambassador and Headquarters officials, who would have taken the action necessary.¹⁴⁴⁷

Although he had recorded the information about the cell size in his meeting notes, Mr. Martel did not include it in the consular report sent to DFAIT Headquarters.¹⁴⁴⁸ He testified that in hindsight he could see that the actual cell measurements would have been useful to Headquarters and should have been included in the report.¹⁴⁴⁹ As for not including the information about sleeping on the ground, he said it was standard for inmates to sleep on the floor and the situation could not have been improved even with the intervention of Minister Graham. He agreed that including this information might have helped ensure that the Minister of Foreign Affairs had the maximum information possible on Mr. Arar's conditions of detention.¹⁴⁵⁰

Henry Hogger, the British Ambassador to Syria during the period of Mr. Arar's detention, provided expert testimony on the role and functions of an ambassador, and the means and measures at the disposal of an ambassador and consul in dealing with consular issues. He testified that being held in a three-by-six-by-seven-foot cell would constitute ill-treatment of an unacceptable nature.¹⁴⁵¹ Mr. Hogger said that while he would have difficulty categorically stating that Mr. Martel's omission was serious, he would have been surprised not to have been informed of this information had it been relayed to his consul. He agreed that he would want to inform his foreign ministry if a citizen was being held in a cell of this size, and that was the type of information that should be included in a consular report.¹⁴⁵²

During the meeting, General Khalil informed Mr. Martel that Mr. Arar's case would be going to civilian court within a week and Mr. Arar could choose his own lawyer. Mr. Arar indicated to the General that he wished to know what law, if any, he had broken in Syria. He reaffirmed that he did not belong to any kind of organization.¹⁴⁵³

Following the visit with Mr. Arar, Mr. Martel stayed behind for 15 or 20 minutes to continue speaking with General Khalil. When Mr. Martel asked about

future visits, the General indicated that he would have to seek a higher authority. Mr. Martel did not know to whom General Khalil was referring.¹⁴⁵⁴

On his return to the Embassy, Mr. Martel drafted a consular report. The report was approved by Ambassador Pillarella and sent to DFAIT Headquarters.

Mr. Martel's consular report did not lead Ambassador Pillarella to conclude that Mr. Arar had been tortured physically or mentally. The Ambassador testified that, in his opinion, Mr. Arar had at times talked back boldly to General Khalil — as when he demanded to know what law he had broken and reaffirmed that he did not belong to an organization. The Ambassador did not believe that anyone who spoke back to General Khalil was a person easily intimidated by the General or anyone else. He was looking for evidence of Mr. Arar being tortured and, in his mind, the evidence was not there. While he agreed that being destroyed mentally could amount to torture, he said he needed facts to reach this conclusion about Mr. Arar.¹⁴⁵⁵

The Ambassador testified that he was not aware of the dimensions of Mr. Arar's cell. He did not recall seeing them in the draft of the consular report he had approved nor did he recall Mr. Martel discussing them with him. He saw Mr. Martel's notes for the first time at the Inquiry hearings.¹⁴⁵⁶ Once aware of the cell dimensions, Ambassador Pillarella refused to say whether being held in a three- by six- by seven-foot cell would amount to torture.¹⁴⁵⁷

After completing his consular report, Mr. Martel realized he should have told DFAIT Headquarters that he had also observed Mr Arar's physical appearance. As a shortcut to the complex process of redoing communications, he e-mailed Ms. Pastyr-Lupul with these details.¹⁴⁵⁸

His e-mail stated that Mr. Arar looked much the same as when the consul had last seen him — noting that this should be taken in the context of someone detained for a long period of time. He noted Mr. Arar's comment about his mental condition. He said Mr. Arar looked physically normal, walked normally and was mentally alert. He was wearing a t-shirt and trousers. Mr. Martel had seen no trace of violence on the visible parts of his body.¹⁴⁵⁹

The consular report was copied to DFAIT ISI¹⁴⁶⁰ and eventually found its way to the RCMP.¹⁴⁶¹

10.5

THE MINISTER'S COMMENTS TO THE MEDIA

Coincidentally, on August 14, the day of the consular visit, the Minister of Foreign Affairs participated in a press scrum in Toronto addressing the case of William Sampson, the Canadian citizen who had recently been released from prison in Saudi Arabia. Mr. Sampson had been detained for almost three years,

and had allegedly been tortured by his Saudi jailers. Not surprisingly, Minister Graham was asked about the case of Mr. Arar and the issue of torture. He replied:

I've just been speaking to my officials in Ottawa, who have been on the phone to Damascus this morning. Mr. Ararr [*sic*] has been visited by our consular officials in jail. Our consular officials have assure [*sic*] us that he's in good physical condition. He personally, totally rejects all allegations of torture. He was interviewed independently by our consular officials and he has stated that his condition is better than it was before we started to intervene on his behalf.¹⁴⁶²

Some of Minister Graham's statements were inaccurate. He stated that Mr. Arar had been "interviewed independently," although a number of Syrian officials had also attended the visit. In his testimony, Minister Graham acknowledged that he may have gone too far in saying Mr. Arar had been interviewed independently. However, his impression on receiving the information was that the consul's conversation with Mr. Arar had taken place in much freer circumstances than in previous visits and that Mr. Arar had not been under any inhibitions.¹⁴⁶³

Minister Graham said he told the assembled media that Mr. Arar "rejects all allegations of torture" because he believed this is what he had been told prior to the scrum.¹⁴⁶⁴ The SHRC had suggested that Mr. Arar was being tortured, and during the press scrum someone submitted to Mr. Graham that Mr. Arar was being tortured. Based on the information he had received, Minister Graham believed he was able to disagree and point to the consular visit and say that Mr. Arar was not being tortured. He was clear that the purpose of this statement was to relay what he had been told. He was not necessarily commenting on what had happened to Mr. Arar four months ago or even the day before.¹⁴⁶⁵

Minister Graham's statement regarding torture was confined to the information he had received. He did not disagree that torture can extend beyond physical mistreatment. However, he had been told that consular officials had had a good meeting with Mr. Arar, that Mr. Arar was not being tortured and that he could say this at the scrum. The information was communicated to him very quickly — in a conversation of about 30 seconds¹⁴⁶⁶ — as he was heading to the scrum. Under the circumstances, he did not have time to analyze it.¹⁴⁶⁷

It is not entirely clear how the information concerning the consular visit made its way to Minister Graham. He testified that a member of his office staff would have received the news about the August 14 visit. As he was on his way to the press scrum, someone with him received a call on their cell phone. This

person then turned to the Minister and told him there was up-to-date information on Mr. Arar.¹⁴⁶⁸

Minister Graham testified that he was not told that Mr. Arar had spoken during the consular visit about the size of his cell and being mentally destroyed. The Minister's only information was what he shared with the press. He said he was given an impression of the visit but no details.¹⁴⁶⁹

According to the Minister, had he had more details, he would have been more "cautious" in the language he used that day. What he was trying to convey at that particular moment was that Mr. Arar was in good condition at that time. This did not change the fact that he was relying on the information he had been given. He was told that Mr. Arar had not been tortured.¹⁴⁷⁰

None of the witnesses who were questioned on how the information on the consular visit reached Minister Graham could identify the member of his office staff who would have received the news and contacted Minister Graham in Toronto. Neither Ambassador Pillarella nor Mr. Martel spoke to officials in Ottawa after the consular visit.¹⁴⁷¹ A record of the consular report was e-mailed to the Consular Affairs Bureau, the Minister's office and others.¹⁴⁷² Ms. Pasty-Lupul recalled speaking to a member of Minister Graham's staff and providing either a copy of the consular report or the substance of the report contents, in particular that Mr. Arar said he had not been beaten, tortured or paralyzed.¹⁴⁷³ She could not remember the name of the individual with whom she had spoken, but said she had spoken with at least one person from the Minister's office that day. The conversation about the consular report occurred prior to the Minister's press scrum.¹⁴⁷⁴

The Minister's office had been copied on the consular report. They would have seen the entire message, including Mr. Arar's comment that he was destroyed mentally. Ms. Pasty-Lupul believes she probably read the entire paragraph summarizing what Mr. Arar had to say about his treatment to the person with whom she spoke. She was unsure to what extent the Minister's staff were aware of the definition of torture.¹⁴⁷⁵

11. THE PROPOSED TRIAL IN SYRIA

In his account of his August 14 meeting with General Khalil, Ambassador Pillarella wrote that the "commitment from the General to have Arar presented to the court within one week appeared very strong." Further, General Khalil "seemed to imply that with what they had on him [Mr. Arar], it would be surprising if he were not found guilty and the sentence might not be a lenient one."¹⁴⁷⁶ That said, the Ambassador recalled the General telling him that Mr. Arar

would be tried in a civil court because he risked the death penalty if he was tried before a military court, and General Khalil reportedly did not want that to happen.¹⁴⁷⁷

Mr. Martel received the same news of a trial and civil court for Mr. Arar during his consular visit that day. General Khalil also said that Mr. Arar could have the lawyer or lawyers of his choice. Mr. Arar wanted his wife to take care of his defence, and mentioned a paternal cousin of his father who should represent him.¹⁴⁷⁸

Back in Canada that same day, Ms. Pasty-Lupul told Dr. Mazigh the news of the visit and pending trial. She also informed Dr. Mazigh that Mr. Arar could have a lawyer of his choice, and that he had suggested his father's cousin and asked that there be no adverse media publicity.¹⁴⁷⁹

Underlying these developments was the extremely poor reputation of Syria's judicial system. The 2002 U.S. State Department Country Report on Human Rights in Syria highlighted the inherent unfairness of the Syrian judicial system, especially for security-related detainees. The judicial system includes civil and criminal courts, military courts, security courts and religious courts. While regular courts, such as the civil courts, generally display independence, the security courts are clearly subject to political influence and other serious procedural shortcomings.

Syria's two security courts are the Supreme State Security Court (SSSC), which tries political and national security cases, and the Economic Security Court, which tries cases involving financial crimes. Both operate under the state of emergency and martial law,¹⁴⁸⁰ not ordinary law, and neither observes constitutional provisions safeguarding defendants' rights. Regarding the process meted out by the security courts, the Report states that:

Charges against defendants in the SSSC were vague. Many defendants appeared to be tried for exercising normal political rights, such as free speech.

... defendants are not present during the preliminary and investigative phase of the trial, during which the prosecutor presents evidence. Trials usually were closed to the public. Lawyers were not ensured access to their clients before the trial and were excluded from the court during their client's initial interrogation by the prosecutor. ... The State's case often was based on confessions, and defendants have not been allowed to argue in court that their confessions were coerced. There was no known instance in which the court ordered a medical examination for a defendant who claimed that he was tortured. The SSSC reportedly has acquitted some defendants, but the Government did not provide any statistics regarding the conviction rate. Defendants do not have the right to appeal verdicts, but sentences are

reviewed by the Minister of Interior, who may ratify, nullify, or alter them. The President also may intervene in the review process.¹⁴⁸¹

Ambassador Pillarella knew of the reputation of the security courts in Syria, and had read the State Department report.¹⁴⁸²

Against this background, the following is a chronological account of the actions of Canadian officials from the news of the trial to Mr. Arar's release on October 5, 2003.

August 15, 2003

The news of a trial spurred Canadian officials to take immediate steps. The next day, Mr. Pardy issued instructions to Mr. Martel, Ms. Pasty-Lupul and others. The Syrians' decision to charge Mr. Arar in civil court, as soon as the following week, required the mission in Damascus to take urgent action. Mr. Pardy called for the following steps to be taken:

- 1) urgent efforts to contact the appropriate officials in the Syrian government to identify when the trial of Mr. Arar would take place and what the specific charges were;
- 2) urgent efforts to identify a local lawyer willing to take the case and provide a defence for Mr. Arar; and
- 3) immediate contact with the Ministry of Foreign Affairs seeking authority for the issuance of visas for Dr. Mazigh and a Canadian lawyer who would observe the trial.

Mr. Pardy also indicated that the Syrian ambassador in Ottawa would be called in to register the same requests.¹⁴⁸³

Dr. Mazigh suggested two possible lawyers: Haytham Al Maleh and Anwar Al Bouni.¹⁴⁸⁴ Her preference was Mr. Al Maleh.¹⁴⁸⁵ Mr. Martel was to contact them on behalf of the family.¹⁴⁸⁶

The Canadian lawyer Mr. Pardy had in mind as DFAIT's official observer at Mr. Arar's trial was James Lockyer of the Association in Defence of the Wrongfully Convicted (AIDWC). Mr. Lockyer and Mr. Pardy had worked together on other cases, including the Sampson case. When Mr. Pardy approached him to attend as an observer on behalf of DFAIT, Mr. Lockyer willingly agreed.¹⁴⁸⁷

Over the next weeks, Mr. Lockyer would remain very much in the dark about the details of Mr. Arar's supposed trial. Like everyone else, he did not know if Mr. Arar was charged with anything, where the trial would be held, whether it would be public, or other important details.¹⁴⁸⁸ He was not shown the

human rights report prepared by the Canadian Embassy in Damascus, although he was aware of Syria's human rights record. He said it "was hard not to be," and was specifically aware that the Syrian Military Intelligence was known to use torture to extract information from detainees.¹⁴⁸⁹ He was never told of Mr. Arar's alleged statement to Syrian authorities, which had been passed along to Canadian authorities.¹⁴⁹⁰

That day, Mr. Pardy called in the Syrian Ambassador to Canada to inquire about Mr. Arar's impending legal proceedings. He asked Ambassador Arnous what the charges against Mr. Arar were, when the proceedings would begin, whether Dr. Mazigh could have a visa to attend the proceedings, and whether the Syrians would also issue a visa for an official legal advisor.¹⁴⁹¹

August 16, 2003

On August 16, a diplomatic note was sent to the Syrian Ministry of Foreign Affairs. The note sought further consular access to Mr. Arar, permission to have a Canadian official present as an observer at the trial and the Foreign Ministry's assistance with Syrian visas in this respect.¹⁴⁹² No one ever answered this diplomatic note, and no visa was ever issued for Mr. Lockyer despite further efforts by Canadian officials.¹⁴⁹³

August 17, 2003

On August 17, Mr. Pardy instructed Mr. Martel to establish whether the lawyers Dr. Mazigh had suggested were willing to take on the work. Mr. Martel was also to provide the names of other lawyers he thought appropriate, establish their availability and willingness, and inquire about costs. He was then to provide Headquarters with a recommendation of the person he believed most appropriate. Finally, he was to seek Syrian permission to consult with Mr. Arar on selecting his lawyer.¹⁴⁹⁴

August 18, 2003

On August 18, Ms. Pasty-Lupul and Mr. Pardy met with Dr. Mazigh and Kerry Pither (Coordinator of the Solidarity Network, a network for Canadian social justice organizations). They discussed events as they were unfolding, the legal process Mr. Arar likely faced, lawyers and the possibility of Mr. Lockyer acting as an observer. Mr. Pardy emphasized the importance of having the best possible lawyer to try for the best possible outcome of the court case. Dr. Mazigh made no commitment about funding for a lawyer.¹⁴⁹⁵

Mr. Pardy said he had given the names of the two lawyers Dr. Mazigh had requested to the Canadian Embassy in Syria. However, he suggested that it might

not be wise to engage these lawyers, especially Mr. Al Maleh, because they were human rights lawyers who might aggravate the Syrian government. The Canadian Embassy in Syria supported his opinion.¹⁴⁹⁶ Mr. Pardy thought the whole process was designed to allow the Syrians to wash their hands of the case, save face by legitimizing what they done to Mr. Arar, and then kick him out of Syria. He therefore asked Dr. Mazigh to think hard about how much trouble they wanted to make at the trial.¹⁴⁹⁷ He pointed out that if Mr. Arar was found guilty, his lawyer might need to appeal to the president for executive clemency, as had happened with Mr. Sampson in Saudi Arabia.¹⁴⁹⁸ In testimony, Mr. Pardy clarified that he wanted to avoid a situation where the trial became an opportunity for people with other agendas to attack the Syrian government.¹⁴⁹⁹

Mr. Pardy suggested that they might be able to guess the nature of the process once they knew the charges against Mr. Arar. For example, if Mr. Arar was charged with entering Syria illegally, it would strongly indicate that the trial was just a way to get rid of him. If, however, he was charged with being a member of a terrorist organization, it would create a different scenario. He thus felt that the choice of lawyers should wait until the charges were known.¹⁵⁰⁰

Throughout the meeting, Dr. Mazigh expressed her clear preference to not have a trial in Syria, given the lack of due process and transparency. She worried that playing along with the Syrians would somehow legitimize the process, allowing the Syrians to later claim that Mr. Arar had had a fair trial. Mr. Pardy responded that it might be necessary to participate in the sham to get Mr. Arar out. He focused repeatedly on the objective of getting Mr. Arar out.¹⁵⁰¹ In testimony, he clarified that a “force majeure” was at work in Syria. Although he, too, would have preferred to avoid a trial in Syria, he thought that the notion of doing something outside of the Syrian system was a “chimera.”¹⁵⁰²

Dr. Mazigh expressed concerns about her own safety if she went to Syria, and wanted some kind of protection. While acknowledging that there were no guarantees, Mr. Pardy assured her that someone from the Embassy would be with her at all times, and that Ambassador Pillarella and Mr. Martel would be present throughout any proceedings.

Dr. Mazigh asked Mr. Martel several questions about the conditions of Mr. Arar’s detention, his medical state and summaries of consular visits. She and Ms. Pither asked which prison he was in, and whether it was Sednaya.¹⁵⁰³

After an inquiry by Dr. Mazigh, Ms. Pastyr-Lupul read select portions from the latest consular report, in particular, that “Arar was able to express himself freely and said the press will know the truth when he gets home, and that the long detention had destroyed him mentally. He said that he was not being

treated worse than the other prisoners.” Reportedly, this was the first Dr. Mazigh had heard of this and it came as a shock to her. Ms. Pither found the selective reading of the report to be “outrageous.” She wrote as follows:

Note: this was the first time Monia was informed he said any of this and it came as a shock to her — it is quite outrageous how they selected the bits to tell her — and the bits to withhold. It also is not clear if, when asked if he had been tortured, he replied “no” as was reported by the minister to the media, or he replied “I am not being treated any worse than the other prisoners. ... the press will know the truth when I get home.” These are very different answers with very different implications!¹⁵⁰⁴

Ms. Pastyr-Lupul also read the part of the report where Mr. Arar asked that Dr. Mazigh find him a lawyer, and that she do this discreetly, given adverse media attention. Ms. Pither asked how Mr. Arar knew there had been media attention to the case.¹⁵⁰⁵

Dr. Mazigh wanted to know whether Mr. Arar had been able to speak English during the August 14 consular visit. According to Ms. Pither’s report, “Pardy and Myra seemed to initially want to tell us yes, but then had to say that if there was an interpreter there, maybe not — so they would ask. (I am surprised they did not know this).” Ms. Pastyr-Lupul also related that Mr. Arar had asked what law he had broken in Syria, if any, and had affirmed that he was not a member of any organization.¹⁵⁰⁶

That was the extent to which the consular report for August 14 was shared with Dr. Mazigh and Ms. Pither.¹⁵⁰⁷ Mr. Pardy explained in testimony that he did not release the consular reports to Dr. Mazigh because he was worried about press coverage, although he claimed that most of the reports were shared verbally.¹⁵⁰⁸

The four also discussed strategies to secure Mr. Arar’s release. Ms. Pither inquired about the United States intervening on Mr. Arar’s behalf. Mr. Pardy responded that the preference was to do this bilaterally, between Canada and Syria. As the United States had sent Mr. Arar to Syria, U.S. intervention might give the Syrians the wrong message. He did not think the United States could be trusted to do anything positive for Mr. Arar.¹⁵⁰⁹ Dr. Mazigh asked about using bilateral relations. Mr. Pardy noted that although trade relations were insignificant, Syria saw Canada as positive on the Middle East generally and had an overall sense that Canada was trying to be balanced.¹⁵¹⁰

Towards the end of the meeting, Mr. Pardy added that the larger an issue made of this, the less likely it was that Mr. Arar would be released.¹⁵¹¹

August 20, 2003

On August 20, Mr. Martel sent Mr. Pardy a note detailing his efforts to find a lawyer for Mr. Arar. He first mentioned the two lawyers whose names Mr. Pardy had provided. Mr. Al Maleh was willing to take the case for US\$10,000; Mr. Al Bouni, was apparently willing to take the case on a voluntary basis, but would accept any compensation the Canadian government offered.¹⁵¹²

As directed, Mr. Martel had attempted to contact other lawyers. Chief among these was a lawyer from the law firm of Mr. El-Hakim, a prominent lawyer with whom Mr. Martel had been discussing Mr. Arar's case. Although Mr. El-Hakim did not usually do "criminal affairs" work, he was willing to help find out more about Mr. Arar and where his trial might take place. He would recommend a good lawyer if he himself did not take the case.¹⁵¹³

Mr. Martel attempted to reach yet another prominent lawyer that day.¹⁵¹⁴ The day before, he had even contacted the Dean of Faculty (presumably of the Faculty of Law at Damascus University), to see if he would represent Mr. Arar.¹⁵¹⁵

Canadian officials learned from a Syrian contact on August 20 that Mr. Arar's file might have been transferred to the Supreme State Security Court.¹⁵¹⁶ They again asked for consular access and attempted to find out more about the file, but to no avail.¹⁵¹⁷

Mr. Martel would learn from Mr. Arar on the trip home that it was around this date that he was transferred from the Palestine Branch to Sednaya prison, where conditions were much better and he was placed with the general population. General Khalil had promised to improve Mr. Arar's prison conditions during the August 14 consular visit, and had followed through.¹⁵¹⁸

August 21, 2003

On August 21, Mr. Pardy spoke with Steven Watt, from the Center for Constitutional Rights in New York, who planned to soon file a civil suit against the United States. The suit would allege that the United States deported Mr. Arar to Syria knowing full well that torture was practised there, and contrary to U.S. obligations under the Convention Against Torture. Apparently, Mr. Watt was willing to delay filing the case for two reasons: to allow Mr. Arar to give testimony if released; and to avoid a situation where the Americans might put pressure on the Syrians not to release Mr. Arar, thus ensuring he was unavailable for the case.¹⁵¹⁹

August 25, 2003

On August 25, Bassam Arar and Monia Mazigh met with Gar Pardy and Myra Pastyr-Lupul. Mr. Pardy raised the issue of the allegations that Mr. Arar had been in Pakistan and Afghanistan for seven and a half months in 1993.¹⁵²⁰ If the family had any records that would establish where Mr. Arar had been in 1993, Consular Affairs needed to have them quickly. These included bank transactions and proof of attendance at McGill University.¹⁵²¹ Bassam Arar agreed to see what they could come up with to refute the Afghanistan claim.¹⁵²²

This was an issue of particular concern for Mr. Pardy. He wanted to know if there was a financial or academic record that would demonstrate that during the seven and a half months it was alleged Mr. Arar was in Afghanistan, he had actually been in downtown Montreal.¹⁵²³

However, Mr. Pardy testified that he was not aware of Dr. Mazigh's difficulty in getting transcripts of Mr. Arar's attendance at McGill at the time. She required a power of attorney, signed by Mr. Arar, which would have been impossible without access to him. Nor could she get a letter from Mr. Arar for access to academic institutions. As for Mr. Arar's financial records, Mr. Pardy acknowledged during testimony that bank records are kept for only seven years.¹⁵²⁴

In the end, Mr. Pardy did not follow up on his request for this type of information. He would not have had much time to do so, as he retired on August 30, 2003.

September 2, 2003

By September 2, the law firm of Jacques El-Hakim had emerged as the first choice of representation from Mr. Martel's (and presumably Ambassador Pillarella's) perspective, even though Mr. Martel acknowledged in a note to Mr. Pardy that "the decision should rest with the client's family." Mr. Martel stated as follows in his note:

We believe Cabinet d'avocats El-Hakim is the most prominent law firm and is in the best position to take the client's interest. We do not normally recommend any particular firm (as per consular instructions). We understand this case is different and that JPD wishes to identify law firm that can provide the best defense. We, however, believe the decision should rest with the client's family.

Mr. El-Hakim's law firm was willing to take the case. They had already been asked to do some research, but Mr. Martel was still looking for specific instructions on retaining them for Mr. Arar. He needed to know whether the

Government of Canada or Mr. Arar's family would be paying the legal fees. He was also seeking Mr. Pardy's authority to retain Mr. El-Hakim's services, unless Dr. Mazigh had another choice.¹⁵²⁵

Mr. Martel also mentioned several other points in this note, in particular, that any lawyer would require a power of attorney to defend the case. Responding, apparently, to questions from Dr. Mazigh, he related that Mr. Arar was indeed detained in Sednaya prison, but was unable to say whether he was in solitary confinement or with other prisoners. (It is unclear how he learned that Mr. Arar was in Sednaya.) The charges remained unknown.¹⁵²⁶

September 3, 2003

The next day, September 2, Mr. Martel and the Embassy lawyer sent an inquiry to Mr. Dahdouh from the El-Hakim law firm, seeking legal advice for Mr. Arar on the process for appealing a guilty verdict. Mr. Martel had information, likely from the U.S. State Department report, that defendants had the right to appeal verdicts, but that sentences were reviewed by the Minister of the Interior with possible intervention by the President.¹⁵²⁷ Information would later come from Mr. Dahdouh that Mr. Arar's verdict could not be appealed, but was not official until signed off by the President or his representative.¹⁵²⁸

Also this day, the news came from Canada via Ms. Pasty-Lupul that Dr. Mazigh had decided on Mr. Al Maleh as the lawyer. Ms. Mazigh asked if Canada could contribute to Mr. Al Maleh's fee. She was told this could not be done and that she would have to find the funds for the legal fees. Although she was not happy with the news, Dr. Mazigh said she would try to find money.¹⁵²⁹

Dr. Mazigh also had numerous questions for Mr. Martel concerning Mr. Lockyer's observer status, the charges against Mr. Arar, notification of trial, whether consular access had again been sought, and whether Mr. Arar was allowed family visits at Sednaya prison. Ms. Pasty-Lupul asked Mr. Martel to attempt to answer these questions and to continue to apply pressure for consular access. He was also to contact Mr. Al Maleh, tell him that Dr. Mazigh wanted him to take the case, and try to negotiate a lower fee in view of her financial difficulties.¹⁵³⁰

September 7, 2003

Mr. Martel attempted to locate Mr. Arar through Colonel Saleh. The Colonel would only say that Mr. Arar had been transferred to Sednaya and was no longer in his jurisdiction, and that he would do his best to give a contact name to arrange for a consular visit.¹⁵³¹

September 9, 2003

On September 9, rumours circulated through unofficial channels that Mr. Arar might appear before a court the following day or in the very near future. Mr. Martel was still not certain whether the Arar family had formally retained Mr. Al Maleh. He wished to inform the lawyer of this news and ensure his presence in court.¹⁵³² The word quickly came back that Mr. Al Maleh had been retained and that a fundraising effort was apparently in the works for his legal fees. However, no lawyer to date had been able to access Mr. Arar's files.¹⁵³³ Ms. Pither, who was assisting Dr. Mazigh with her husband's case, also inquired through Ms. Pastyr-Lupul whether the Ambassador or someone from the Embassy would attend the hearing, and whether such a formal request should be made.¹⁵³⁴

September 10, 2003

On September 10, the Canadian Embassy in Damascus sent a formal diplomatic note to the Syrian Ministry of Foreign Affairs. The note stated that the Embassy had learned that Mr. Arar's hearing was about to begin and "request[ed] the intervention of the Ministry with the Syrian competent authority to obtain permission for the Ambassador or, should the case arise, for the Chargé d'affaires a.i. or for the Consul to be present during the trial."¹⁵³⁵

September 11, 2003

Mr. Arar's lawyer met with the Prosecutor of the Supreme State Security Court on September 11, but was unable to obtain any information on his case.¹⁵³⁶

That afternoon in Ottawa, Amnesty International and other human rights groups met with U.S. Embassy officials, seeking answers about Mr. Arar's removal and U.S. support in upholding Mr. Arar's rights and securing his release. Minister Graham's office prepared for a barrage of media calls on the matter.¹⁵³⁷

September 12, 2003

The next day, Mr. Al Maleh informed Mr. Martel that Mr. Arar's trial was not expected to take place for at least a week or two. Mr. Martel asked him to tell the Prosecutor that Canadian officials wished to be present at the hearing.¹⁵³⁸

The news from American officials was that they took full responsibility for the removal process, but refused to intervene on behalf of Mr. Arar because he was a Canadian citizen and therefore not their responsibility. Media coverage of Mr. Arar's situation was intense.¹⁵³⁹

September 12 was Ambassador Pillarella's last day as Ambassador to Syria. On his way out of the country, he had an interesting encounter at the airport. At about midnight, he was seated in the VIP lounge for departing ambassadors at the Damascus International Airport. To his great surprise, Syrian Deputy Foreign Minister Haddad arrived, approached him, embraced him four times in the Arab custom, and spoke to him about Mr. Arar. He told the Ambassador that he was not to worry: the case would be over within the next few weeks.¹⁵⁴⁰

Ambassador Pillarella described the conversation as very cryptic, with nothing specific to report, but said it was clear to him that as far as Deputy Minister Haddad was concerned, Mr. Arar's case would be completed to Canada's satisfaction. About three weeks later, Mr. Arar was released.¹⁵⁴¹

September 22, 2003

On September 22, Canadian officials were once again told that Mr. Arar's trial would take place in a week or so.¹⁵⁴² The delay this time was apparently due to missing documents and the need to complete the file before the trial. Mr. Al Maleh's opinion was that a consular official would not be allowed in court, as Mr. Arar was considered a Syrian national. Nonetheless, he would put pressure on the prosecutors to allow this.¹⁵⁴³ Mr. Martel testified that his presence would have been an unusual step, and something he had not done before, although he would later for Mr. Almalki.¹⁵⁴⁴

September 24, 2003

Around this time, the Minister's office reactivated a media campaign pushing for a fair and transparent trial for Mr. Arar, and Minister Graham issued a statement that caused some concern. He told the media he was pleased the trial was going forth, and that Mr. Arar would have an opportunity to defend himself. Ms. Pasty-Lupul wrote the following in a note to a member of Minister Graham's staff:

Monia was very concerned about the Minister's comments this week that "We are pleased that the trial is going forth, as this will give an opportunity for Maher Arar to defend himself in court."

In reality, his lawyer cannot get ahold of the case files to defend his client, we have not been informed of a court date, nor the charges, and all signs indicate the trial will be a closed one. This could very well mean our Embassy officials will not be allowed in the courtroom when the charges are announced, or to hear Mr. Arar's lawyer when given the opportunity to defend his client.¹⁵⁴⁵

As it turns out, this was a strategy the Minister's office used to prepare for a meeting with the Syrian Foreign Minister. However, Ms. Pastyr-Lupul felt the Minister's comments had far-reaching implications. She wrote that, although everyone hoped for a fair and transparent judicial process, the Supreme State Security Court, where Mr. Arar was supposed to be tried, was known for its secretive procedures and lack of appeal once a decision has been rendered.¹⁵⁴⁶

Mr. Martel was also not completely happy with the Minister's strategy. On September 24, he wrote to Ms. Pastyr-Lupul that he required specific instructions from Headquarters if he was to formally convey Canada's concern that Mr. Arar's case be fair and transparent. He expected, though, that this action might be taken as interference in Syrian internal affairs.¹⁵⁴⁷

Robert Fry of the Minister's office explained the strategy in his testimony. Their first preference was always to bring Mr. Arar home. If that was not going to work, the secondary choice had always been to ask what the charges were and insist that Mr. Arar have a chance to defend himself in a transparent judicial process.¹⁵⁴⁸

September 25, 2003

In a CBC news report dated September 25, Minister Graham was reported to have stated that Mr. Arar could get a fair trial in Syria. An excerpt from the article reads as follows:

A Canadian who has been held for a year in a Syrian prison can get a fair and open trial, Canadian Foreign Affairs Minister says.

"They have taken the position that he is guilty of offences under Syrian law, in which case the proper thing to do is to prosecute him and enable him to defend himself," Bill Graham said about the case of Maher Arar.

"I have been given assurances by them that it will be a civil process, not a military process, and that this will be open."

Also on this day, Dr. Mazigh and Liberal MP Irwin Cotler appeared before the Standing Committee on Foreign Affairs and International Trade. According to Ms. Pastyr-Lupul, Dr. Mazigh gave a "very human and poignant presentation," urging action for the sake of Canadians, Arab/Muslim Canadians, and for her sake and that of her children. She made the following three formal requests of the Committee:

- 1) That they ensure Prime Minister Chrétien urgently tell the Syrian President that the upcoming trial was not acceptable, that Maher Arar does not belong in Syria and must be returned to Canada immediately. She asked that

Prime Minister Chrétien clearly state that if Syrian authorities do not comply with this demand that there would be consequences for Syria. Returning Mr. Arar immediately would be a win-win situation for both Canada and Syria as it would be grounds to allow co-operation and trade relations to grow on.

- 2) That the Committee ask the United States to take responsibility for what they have done. She added it was beyond her comprehension that the U.S., which had acknowledged that Syria is not a state which respects human rights, would deport a Canadian citizen in complete disregard for Canada, Mr. Arar's personal rights and its own policy on sending individuals to such places where they knew his life would be in danger.
- 3) That the Government of Canada immediately launch an inquiry into the contradictory statements from the Solicitor General and the RCMP. The RCMP had that day reportedly deflected the question of whether they had provided information to the U.S. prior to Maher Arar's arrest, yet there were allegations that "rogue elements" within the RCMP might have communicated evidence on Mr. Arar to the U.S. She said, whether or not this was the case, the evidence should be made public, in order to remove suspicions about Mr. Arar.

In closing her submission, Dr. Mazigh acknowledged efforts to date to help her husband, but noted that much more could and should be done.¹⁵⁴⁹

Mr. Cotler then outlined a nine-point program of "strategic diplomacy for Canada" that included respect for the Vienna Convention on Consular Affairs, trade and economic sanctions, and calling on the good offices of "friends." He also detailed a "grocery list" of specific next steps to be taken by the Canadian government to rapidly bring back Mr. Arar:

- 1) Involve the U.S.
- 2) Demand that Syria return Mr. Arar to Canada immediately and not after some unfair trial.
- 3) Ask Canada's allies to intervene through their good offices.
- 4) If these first three actions led to no results, apply economic and trade sanctions against Syria.

Mr. Cotler also noted that Mr. Arar's disturbing narrative began while he was in transit in the United States. In Mr. Cotler's words, the Americans were the "precipitating factor" and therefore should immediately be called to act for the return of Mr. Arar to Canada. He believed the United States was in breach of a number of its national and international obligations.¹⁵⁵⁰

On the same day that the House of Commons committee considered the Arar case, Foreign Affairs Minister Graham met with Syrian Foreign Minister Shara'a at the U.N. General Assembly in New York. They discussed various subjects, including bilateral trade, Iraq and the proper observance of human rights. Minister Graham might have said something to the effect that investment in Syria could not occur if people had the impression that they would not be treated fairly.¹⁵⁵¹

Minister Graham made it clear that Canada wanted Mr. Arar back. The Syrian Foreign Minister assured him they would do their best to bring Mr. Arar's situation to a positive conclusion. However, according to Minister Graham, an intelligence official at the meeting commented that the media attention, including Dr. Mazigh's recent press conference, was counterproductive and making things more difficult. Mr. Fry, who was also present, said it was clear to him that the Syrians were not happy about all the publicity, and this official's message was that if they were not happy, they would be in no mood to help. In effect, the intelligence official contradicted Foreign Minister Shara'a and was not admonished for doing so.¹⁵⁵²

October 1, 2003

Back in Syria, Mr. Al Maleh met on October 1 with one of the judges at the court [presumably the Supreme State Security Court], who advised that Mr. Arar's file was still incomplete.¹⁵⁵³

In Ottawa, Minister Graham met with Secretary General Amir Moussa of the Arab League, seeking his assistance to have Mr. Arar released. Mr. Arar's case was raised forcefully. Minister Graham noted that consular cases in the Middle East were seen as a serious problem in Canada, and affected Canadians' perceptions about Middle Eastern governments. He mentioned Messrs. Sampson and Arar, and Zahra Kazemi,¹⁵⁵⁴ saying that these cases reflected badly on the Arab world in the Canadian press. The Minister secured a promise that the Secretary General would inform the Foreign Minister of Syria that the Arar case had to be settled. He added that if Mr. Arar was sent to Canada and was guilty of an offence, he would be tried.¹⁵⁵⁵

October 2, 2003

Mr. Parly's retirement party took place on October 2. Mr. Lockyer was invited to speak at the Foreign Affairs building, and agreed to also meet that day with the new Director General of the Consular Affairs Bureau, Konrad Sigurdson.¹⁵⁵⁶ At least four people from various sectors of DFAIT were present at the meeting. Mr. Lockyer explained what he thought should be done in the Arar case. He

knew from Mr. Pardy about the MPs' visit, the Prime Minister's letter, Senator De Bané's visit, Minister Graham's visit with his counterpart at the United Nations and perhaps other steps taken, but felt it wasn't enough. In his view, cases like this required more effort from the top and more political involvement because that is what gets the attention of authorities.¹⁵⁵⁷

Mr. Lockyer had heard from Mr. Pardy about the lack of unanimity on this case within the government and, in particular, about the problems with the Solicitor General's office and the agencies he supervised. The agencies, he knew, were not keen on getting Mr. Arar back to Canada.¹⁵⁵⁸

Regarding further suggestions to help Mr. Arar, Mr. Lockyer focused on getting to Syria for the potential trial. He wanted the government to push a bit harder because he did not yet have a visa, and suggested that he meet with the Syrian Ambassador to Canada, to show that he was a decent person. In his experience, similar meetings had proved useful in the past with both the Vietnamese and the Saudi Arabians.¹⁵⁵⁹

Mr. Lockyer then mentioned recent media leaks, which he said took the side of the RCMP and presented Mr. Arar as a terrorist. In his opinion, the leaks had the clear purpose of blackening Mr. Arar's reputation. Given Mr. Arar's humanitarian situation, the leaks and media reports were "outrageous" and irresponsible, and put Mr. Arar's security at risk.¹⁵⁶⁰

That same day, Mr. Lockyer met with Dr. Mazigh after Mr. Pardy's retirement party. Given his potential role as an observer, he tried to remain neutral; he had previously agreed that AIDWC would cease to actively advocate for Mr. Arar when he became an observer. Still, he wanted to meet with Dr. Mazigh and perhaps set her at ease. He encouraged her to come to Syria with him if they could get visas. Dr. Mazigh was still concerned for her safety in Syria, and Mr. Lockyer gave his personal opinion that she would be safe if they were together.¹⁵⁶¹

The next significant event in this chronology was Mr. Arar's release on October 5, 2003, which is discussed in the following chapter.

Issues Related to Mr. Arar's Prospective Trial

Three issues that arose during this Inquiry's hearings should be discussed. They concern Mr. Arar's prospective trial in Syria and Canadian officials' actions to prepare for that trial, and are as follows: 1) the question of whether Canadian officials should have tried to secure a lawyer for Mr. Arar before August 14, 2003; 2) the media campaign that Minister Graham and his staff reactivated to push for a fair trial; and 3) the process by which Canadian officials retained

counsel for Mr. Arar after August 14, 2003, and assisted the counsel once retained.

It should be noted that where a Canadian detained abroad is going to trial, consular officials have the general responsibility to assist by providing the family with a list of lawyers and helping to ensure that the accused obtains counsel,¹⁵⁶² without recommending one lawyer over another. They must also try to determine why the person is being detained, i.e., what the charges are, if any. However, Canadian officials will not pay legal expenses, provide legal advice or interpret local laws, or attend trials unless a demonstrable need exists.¹⁵⁶³ When pressed in testimony, Mr. Martel agreed that if Mr. Arar was facing trial, he, as consul, should also ensure to the degree possible that Mr. Arar's lawyer had the tools to promote a fair trial. However, Mr. Martel might have somewhat overstated the duties of consular officials. The *Manual on Consular Instructions* states that consular officials "WILL attempt to obtain case-related information to the extent that this cannot be obtained directly by the prisoner (or the prisoner's representatives) and provided the prisoner so requests;" but "WILL NOT become involved in matters of substance between prisoners and their lawyers." Ambassador Pillarella's testimony was perhaps more in accordance with this policy. He said that consular officials do not get involved in matters of substance between prisoners and their lawyers except to facilitate access.¹⁵⁶⁴

Ms. Pasty-Lupul found that Canadian officials had taken extraordinary actions to prepare for Mr. Arar's trial. She stated that in the 300 arrest and detention cases she had handled in the United States, she had not gone through the steps that Canadian officials went through in Mr. Arar's case. According to Ms. Pasty-Lupul, the consular official usually identifies the charges, suggests possible lawyers and perhaps helps find out information about the status of the person's case.¹⁵⁶⁵ Particularly after the August 14, 2003 news of a trial, Canadian officials took various additional steps to assist Mr. Arar's case.

Turning first to the debate around whether Mr. Arar could have benefited from a lawyer prior to August 14, it has been mentioned in previous sections that there was some discussion in November 2002 about asking the Syrian authorities to allow a lawyer to come with Mr. Martel on his consular visits.¹⁵⁶⁶ Shortly after the MPs' April 22, 2003 visit, further discussion took place about legal representation for Mr. Arar, should he be charged.¹⁵⁶⁷ In neither case were attempts made to actually find him a lawyer.¹⁵⁶⁸

Mr. Martel testified that such attempts would have been pointless prior to August 2003. Even with a list of lawyers, Mr. Arar could not have contacted one himself,¹⁵⁶⁹ nor would Syrian authorities have allowed the lawyer to see Mr. Arar.¹⁵⁷⁰ Thus, it was not until they received serious news of an impending

trial from the Syrians on August 14, coupled with General Khalil's statement that Mr. Arar could have a lawyer, that Canadian officials actively sought one.¹⁵⁷¹

Mr. Martel was asked if he had sought legal advice on whether a lawyer could nonetheless have helped Mr. Arar while in detention. He testified that he had spoken to a lawyer connected to the Canadian Embassy in Damascus about Mr. Arar's situation on different occasions; the lawyer always responded that in Syria, nothing could be done to get Mr. Arar released. It is unclear, however, whether Mr. Martel sought specific legal advice on whether a lawyer could do anything for Mr. Arar while he was in prison,¹⁵⁷² even without direct access to the client.

The second issue concerns the media campaign that Minister Graham and his staff conducted to push for a fair and open trial in the event Mr. Arar's release was not possible. At different points, different people questioned the wisdom of doing so.

Dr. Mazigh and Ms. Pasty-Lupul were very concerned that a fair trial was a virtual impossibility. Mr. Martel could not see the strategic sense of the Minister's actions.¹⁵⁷³ Mr. Parady made a point throughout the year of pushing for Mr. Arar's release because he was fully aware of Syria's judicial track record. Back in May 2003, for example, he noted that if a trial were to take place, one would assume it would be in secret. Mr. Arar would not have appropriate representation, and would certainly be convicted and sentenced to a lengthy period of imprisonment.¹⁵⁷⁴

However, Mr. Parady felt that it might still have been advisable to call for both Mr. Arar's release, and, in the alternative, a fair, transparent and open trial, if only to bring Mr. Arar's case into the public eye. Mr. Lockyer supported this view, suggesting that a trial, however unfair, might have given an identity and existence to an individual who was basically unknown until the end of his time in Syria. On the other hand, when told that Mr. Arar could potentially have faced the death penalty, Mr. Lockyer agreed that it was "a terrible conundrum."¹⁵⁷⁵

Minister Graham testified that the push for a trial was a fallback position, even in light of the clear public record that Syria's judicial system was corrupt and lacking independence. As far back as December 19, 2002, he had asked the Syrian Ambassador to Canada to either release Mr. Arar, or, if they suspected he was guilty, to charge him and give him a chance to defend himself against the accusations.¹⁵⁷⁶ Defending this strategy, he pointed first to evidence around the time of the December 19 request to the Syrian Ambassador that Dr. Mazigh herself was saying that Mr. Arar should not be left in limbo, and that he should have a chance to defend himself against charges.¹⁵⁷⁷ He also pointed to an open

letter from Alex Neve, Secretary General of Amnesty International Canada, dated May 9, 2003, in which that organization also called for the Syrians to “immediately release [Mr. Arar] unless he is charged with a recognizably criminal offence.” Further along in the letter Amnesty International stated the following:

Any trial of recognizably criminal charges, must meet international standards for a fair trial and should not be conducted in secret by a military court or tribunal. Mr. Arar’s right to legal counsel and to visits with his family must be scrupulously respected. If Syrian authorities are not prepared to respect Mr. Arar’s right to a fair trial, he should be released or returned to stand trial in Canada.¹⁵⁷⁸

Minister Graham argued that this position was similar to the Department of Foreign Affairs’, and that his strategy therefore had the agreement of both Dr. Mazigh and Amnesty International.¹⁵⁷⁹

The final issue involved retaining a lawyer for Mr. Arar after the August 14 news, and then providing that lawyer with the tools necessary for a proper trial. Counsel for Mr. Arar argued that Canadian officials did not immediately respect the Arar family’s choice of lawyer. Further, they did not provide that lawyer, once chosen, with the material they had that could have aided in Mr. Arar’s defence, such as the alleged confession passed to Canadian officials by the SMI. Mr. Arar’s counsel also argued that the Canadian observer, Mr. Lockyer, should have received full disclosure of the file against Mr. Arar to properly do his job.

Regarding the choice of a lawyer, as noted earlier, the policy for Canadian consular officials worldwide is that the consul provides a list of lawyers, but leaves the choice up to the detainee.¹⁵⁸⁰ Yet, despite the fact that the two lawyers chosen by Mr. Arar’s family agreed to take the case, Mr. Martel contacted other lawyers. Mr. Martel explained that he was merely conducting research to see if other lawyers would also take the case, even though he knew the ultimate decision was Dr. Mazigh’s.¹⁵⁸¹

As mentioned, Canadian officials were hesitant about Dr. Mazigh’s choice of lawyer because Mr. Al Maleh, although a good lawyer, was a human rights activist who had just been released from prison on a presidential pardon. Knowing how the Syrian authorities worked, they were concerned that he might end up back in prison, leaving Mr. Arar without a lawyer on his trial day. Thus, Mr. Martel, at least, felt that although Dr. Mazigh had decided on a lawyer, nothing was stopping the Canadian Embassy from seeing who else was available, even if the final decision rested with the client.¹⁵⁸²

Mr. Pardy explained his concerns about high-profile, human rights-oriented lawyers in Syria. Mr. Al Maleh, for example, was also the Chairman of the Syrian

Human Rights Committee. He had been charged with spreading false news, belonging to an international political association, and publishing material that caused sectarian friction. To Mr. Pardy, this indicated that he was not greatly admired by the Syrian government. Mr. Pardy wanted to avoid this type of person, who might, in his opinion, have objectives other than simply the best outcome for Mr. Arar, and who might “disappear” during the process. Also, should it become necessary to seek a presidential pardon for Mr. Arar, a lawyer like Mr. Al Maleh might do more harm than good, given the recent charges the Syrian state had levelled against him. Mr. Pardy agreed, though, that it was a balancing act. The objective was to seek a lawyer who had the courage to act, and could do so without losing his or her life in the process.¹⁵⁸³

A further question is whether Canadian officials should have provided Mr. Arar’s counsel with the alleged confession of November 3, 2002, and/or other information relevant to his case. Canadian officials knew that Syrian officials had initially connected Mr. Arar to the Muslim Brotherhood, but had later stated he was connected to al Qaeda. They maintained they had the details of his alleged confession, placing him at a training camp in Afghanistan in 1993, among other things. It appears that Mr. Arar’s lawyer never received this information. However, Mr. Pardy did tell Mr. Arar’s family of the suspicions that Mr. Arar had trained in Afghanistan in 1993, and his comments might have found their way to Mr. Al Maleh.¹⁵⁸⁴

Mr. Pardy said he was unaware of the November 3, 2002 *bout de papier* and did not know if it had ever been given to Mr. Al Maleh. He maintained that Consular Affairs would have given information to assist Mr. Arar’s defence directly to his counsel, via the Embassy, once they had a sense of the allegations. Mr. Pardy felt his role was to ensure that defence counsel had the materials essential to Mr. Arar’s defence. When he retired on August 31, 2003, however, the file had not yet progressed to that point, and Consular Affairs was still discussing retaining a lawyer.¹⁵⁸⁵

Mr. Martel also agreed that if there was relevant and helpful information in Canada, those documents might be transmitted to the defence lawyer.¹⁵⁸⁶ Like Mr. Pardy, Mr. Martel did not know of the information about Mr. Arar back in Ottawa. He acknowledged that if Ottawa had a copy of Mr. Arar’s interrogation, he should have received it to pass on to Mr. Arar’s lawyer, who would need all available documents relative to the defence.¹⁵⁸⁷ He added that the situation never got to the point where the lawyer was actually looking at Mr. Arar’s file and able to determine whether something was missing. The Syrians might also have had a summary of Mr. Arar’s interrogation in their file.¹⁵⁸⁸

Minister Graham agreed with Mr. Pardy's expectation that the Embassy would furnish Mr. Arar's lawyer with Mr. Arar's alleged confession and other information that might be of assistance to defence counsel.¹⁵⁸⁹

Ms. Pasty-Lupul contradicted her colleagues somewhat. She said that normally the consular role does not include providing information to the lawyer retained by the Canadian detainee abroad. The role is to ensure that the Canadian has legal counsel, not to act as a conduit for information. It would be legal counsel's responsibility to obtain information on the client's file. Her understanding was that Mr. Al Maleh pursued only the usual legal channels in Syria for information about Mr. Arar's case and did not directly ask the Embassy for information. She agreed, though, that he wouldn't have known what information the Embassy had. She would not comment on the fact that the Embassy's information on Mr. Arar — his alleged confession — was purportedly obtained to assist him, and yet was not provided to his lawyer.¹⁵⁹⁰

While agreeing that he shared Mr. Arar's statement with other Canadian officials to help Mr. Arar, Ambassador Pillarella said he was not responsible for passing along the alleged confession to Mr. Arar's lawyer. Once he gave the information to Headquarters officials, they decided what to do with it; it was not his job to act as Mr. Arar's lawyer once he had his own. Mr. Al Maleh might have come to him at some point to ask for the Embassy's information on Mr. Arar's case and, in time, might well have been given the alleged confession.¹⁵⁹¹

While he was waiting to be sent to Syria as an official observer at the trial, Mr. Lockyer had some idea of the allegations against Mr. Arar from his discussions with Mr. Pardy. He was never told, however, about Mr. Arar's statements while he was detained by the SMI. He agreed that evidence of such a statement needed to go to defence counsel in anticipation of a trial, and that he, as an observer, should also have had it.¹⁵⁹² He added that there might have been a plan to provide him with this information once he obtained a visa, despite certain security issues surrounding its release.¹⁵⁹³

NOTES

¹ Exhibit C-206, Tabs 57 and 61.

² Ibid.

³ [IC] Martel testimony (April 25, 2005), pp. 15686–15688; Exhibit C-206, Tab 81. Mr. Martel testified that Thursday is the beginning of the weekend in Syria, and that they were entering the Thanksgiving weekend with the holiday falling on Monday Oct. 14 [The diplomatic note is dated Monday October 14]. Ambassador Pillarella explained that the sentence in the diplomatic

- note "...Maher Arar is believed to have entered the Syrian territories during the second week of the month of October 2002" did not mean that Mr. Martel believed or knew that Mr. Arar was in Syria at that time. However, Ottawa had told them that "we think he may be in Syria." [IC] Pillarella testimony (March 30, 2005), pp. 13462-13470.
- 4 [P] Pillarella testimony (June 14, 2005), pp. 6756-6761.
- 5 [IC] Solomon testimony (April 4, 2005), pp. 13980-13983; Exhibit C-206, Tab 61.
- 6 Exhibit C-206, Tab 61.
- 7 [IC] Livermore testimony (March 7, 2005), pp. 12193-12198.
- 8 [P] Pillarella testimony (June 14, 2005), pp. 6756-6761; Exhibit C-206, Tab 106.
- 9 [P] Pardy testimony (June 17, 2005) pp. 7699-7701. Mr. Pardy testified that, at this point, the sense they had was that Mr. Arar was in Syria. The possibility that he was in Jordan came up as a result of a conversation with an INS official, who said to try Jordan in response to Mr. Pardy's comment that they were having trouble [finding Mr. Arar in] Syria. Mr. Pardy explained that Amman was a way station for the United States for moving people.
- 10 Exhibit C-206, Tab 63. Mr. Pardy testified that in his "dance" with the INS official he was trying to draw out information. The official suggested that they look in Jordan when Mr. Pardy told him that they could not find Mr. Arar in Syria. Mr. Pardy passed on this information to Ms. Harris, and it could have been that the official said Mr. Arar was in Jordan on his way to Syria. Mr. Pardy testified that he was not sure of the actual recording of the information. [P] Pardy testimony (May 24, 2005) pp. 3367-3368.
- 11 [IC] Testimony (September 21, 2004) pp. 1334-1336.
- 12 [IC] Testimony (September 21, 2004), pp. 1338-1340. Ambassador Pillarella testified that he had no idea where Mr. Arar was on October 14 and 15. (Exhibit C-1, Tab 72. The document assumes that Ambassador Pillarella knew General Khalil had Mr. Arar, when the Ambassador did not know that Mr. Arar was in Syria and was not even tasked to go see General Khalil at this time. [IC] Pillarella testimony (March 30, 2005), pp. 13464-13466; Exhibit C-1, Tab 72.
- 13 [IC] Pillarella testimony (March 30, 2005), pp. 13472-13480 and [P] (June 14, 2005), pp. 6770-6774; Exhibit C-206, Tab 106. Mr. Pillarella did not elaborate on the inquiries he made on this date, and there is little evidence how they were made, or on their results.
- 14 [P] Pillarella testimony (June 14, 2005), pp. 6761-6765; Exhibit C-206, Tab 96.
- 15 Ibid.; *ibid.*
- 16 [IC] Pardy testimony (August 4, 2005), pp. 16848-16852.
- 17 Exhibit C-206, Tab 105. Mr. Pillarella confirmed that this was the initial indication from Mr. Pardy that he wanted Mr. Arar returned as soon as possible. [P] Pillarella testimony (June 14, 2005), pp. 6761-6765.
- 18 [IC] Pardy testimony (August 4, 2005), pp. 16824-16825.
- 19 Exhibit C-206, Tab 109.
- 20 [IC] Pillarella testimony (March 30, 2005), pp. 13472-13480 and [P] (June 14, 2005), pp. 6765-6770; Exhibit C-206, Tab 109.
- 21 [IC] Pillarella testimony (March 30, 2005), pp. 13472-13480. Exhibit C-206, Tab 109, also notes that Ambassador Pillarella confirmed Mr. Arar did not have American citizenship, as there seemed to be some confusion when he raised the issue with Deputy Foreign Minister Haddad at a reception the previous week. The Ambassador was told that the matter did not concern Canada since Mr. Arar was a Syrian-American citizen. This particular issue of citizenship was not canvassed with Ambassador Pillarella, and there is no evidence regarding the reception at which he had discussed it with Deputy Foreign Minister Haddad. However, Ambassador Pillarella recalled that when he met with Deputy Foreign Minister Haddad, he was asked whether Mr. Arar might have American citizenship. He replied that, to his knowledge, this was not the case. [IC] Pillarella testimony (March 30, 2005), pp. 13474-13475.

- 22 [P] Pillarella testimony (June 14, 2005), pp. 6765–6770; Exhibit C-206, Tab 109. On
 October 21, Ambassador Arnous advised John McKinney (actually John McNee of DFAIT as
 per Exhibit C-372) that Mr. Arar was not in Syria. Exhibit C-303.
- 23 Exhibit C-206, Tab 109.
- 24 [IC] Pardy testimony (August 4, 2005), pp. 16852–16855; Exhibit C-206, Tab 123, p. 3.
- 25 Ibid.; *ibid.* [IC] Testimony (August 5, 2005), pp. 17052–17054; Exhibit C-303.
- 26 [IC] Pillarella testimony (March 30, 2005), pp. 13472–13480 and [P] (June 14, 2005),
 pp. 6770–6774.
- 27 [IC] Pillarella testimony (March 30, 2005), pp. 13472–13480.
- 28 Ibid.
- 29 Exhibit C-206, Tab 119.
- 30 Ibid., Tab 123, p. 7.
- 31 Ibid.
- 32 [IC] Pardy testimony (May 24, 2005), pp. 3421–3424.
- 33 [IC] Gould testimony (March 21, 2005), pp. 12659–12660 and 12663–12665; [IC] (March 24,
 2005), pp. 12915–12918; [P] (August 24, 2005), pp. 10334–10336 and 10392–10400.
- 34 [IC] Pillarella testimony (March 30, 2005), pp. 13472–13480.
- 35 [P] Fry testimony (June 13, 2005), p. 6400.
- 36 Exhibit C-206, Tab 74
- 37 [P] Graham testimony (May 30, 2005), pp. 4097–4102
- 38 Ibid.
- 39 Ibid
- 40 [IC] Graham testimony (August 3, 2005), pp. 16705–16706.
- 41 Exhibit C-206, Tab 84.
- 42 [P] Graham testimony (May 30, 2005), p. 4102.
- 43 Ibid., pp. 4120–4122; Exhibit C-206, Tab 106. Exhibit C-206, Tab 144 notes that the Syrian
 Ambassador intervened with the Syrian Deputy Minister of Foreign Affairs on October 18, fol-
 lowing the Ambassador’s discussion with Minister Graham. However, there is no evidence
 about this meeting.
- 44 Exhibit C-206, Tab 106.
- 45 Ibid.
- 46 [IC] Pardy testimony (August 4, 2005), pp. 16834–16836.
- 47 [P] Pardy testimony (May 24, 2005), pp. 3381–3385.
- 48 [IC] Solomon testimony (April 4, 2005), pp. 13994–13999.
- 49 Exhibit C-206, Tab 84.
- 50 Ibid.
- 51 Ibid.
- 52 [P] Pardy testimony (May 24, 2005), pp. 3381–3385.
- 53 Exhibit C-206, Tab 104.
- 54 Ibid.
- 55 Ibid.
- 56 [P] Pardy testimony (May 24, 2005), pp. 3386–3392; Exhibit C-206, Tab 104.
- 57 Ibid., pp. 3412–3413; *ibid.*, Tab 110.
- 58 [P] Pardy testimony (May 24, 2005), pp. 3417–3421; Exhibit C-206, Tab 121.
- 59 Exhibit C-206, Tab 123, p. 7.
- 60 Ibid., p. 9.
- 61 Ibid., p. 7.
- 62 Exhibit P-48, Tab 3; Exhibit C-221, Tab 3.

- ⁶³ According to a memorandum prepared by a policy analyst dated October 22, the October 8 document seemed to have been prepared on October 22, the printed date of October 8 notwithstanding. Exhibit C-221, Tab 8, without the signatures; Exhibit P-240, Tab 8, with the signatures.
- ⁶⁴ Exhibit P-240, Tab 6.
- ⁶⁵ As noted in footnote 64, this document may actually have been produced on October 22.
- ⁶⁶ Exhibit P-240, Tab 6.
- ⁶⁷ [P] Dickenson testimony (August 29, 2005), pp. 10902–10911. Mr. Dickenson, a public witness, was examined on the public version of the document only (Exhibit P-240, Tab 6, pp. 6–8) and not on the unredacted version (Exhibit C-221, Tab 3).
- ⁶⁸ Exhibit P-240, Tab 8; Exhibit C-221, Tab 8. Again, Mr. Dickenson was examined on the public version of this document only and not on the unredacted version, which further explained the reasoning for the differences.
- ⁶⁹ Exhibit C-221, Tab 8. The policy advisor's name is redacted from the public version of the document. Exhibit P-240, Tab 8.
- ⁷⁰ Exhibit C-221, Tab 8.
- ⁷¹ [IC] Livermore testimony (March 7, 2005), p. 12133.
- ⁷² [P] Livermore testimony (May 17, 2005), pp. 2446–2447.
- ⁷³ [IC] Livermore testimony (March 7, 2005), p. 12133.
- ⁷⁴ [P] Livermore testimony (May 17, 2005), p. 2407; [P] Livermore testimony (May 18, 2005), p. 2748.
- ⁷⁵ Exhibit C-379.
- ⁷⁶ [IC] Livermore testimony (March 7, 2005), pp. 12183–12187. The reports are supposed to be received in the department before DFAIT's annual consultations with the Canadian NGO community. Mr. Livermore testified that DFAIT does exchange frank views privately in consultations with NGOs about human rights. However, DFAIT often tries to keep judgments about a country's human rights record out of the public domain if it might cause difficulties for Canada down the road.
- ⁷⁷ [IC] Livermore testimony (March 7, 2005), pp. 12186–12187.
- ⁷⁸ *Ibid.*, p. 12186.
- ⁷⁹ Exhibit C-228.
- ⁸⁰ Exhibit C-229.
- ⁸¹ Exhibit C-230.
- ⁸² Exhibit C-231.
- ⁸³ [IC] Pillarella testimony (March 31, 2005), p. 13723.
- ⁸⁴ Exhibit C-228, p. 6.
- ⁸⁵ Exhibit C-229, p. 5.
- ⁸⁶ *Ibid.*
- ⁸⁷ *Ibid.*
- ⁸⁸ Mr. Livermore testified that if he was asked to give advice to someone in Consular Affairs about the human rights situation in Syria, he would do so in a number of ways. First, he would pass on DFAIT's classified materials about the situation for the person's review. Second, he would refer the person to documents such as Amnesty International, Human Rights Watch and U.S. State Department reports. [P] Livermore testimony (May 17, 2005), p. 2563, see also pp. 2535–2536, 2560; [IC] Pillarella testimony (March 30, 2005), pp. 13356–13357; [P] Pastyr-Lupul testimony (July 29, 2005), p. 8956.
- ⁸⁹ [IC] Livermore testimony (March 7, 2005), p. 12203; [P] Graham testimony (May 30, 2005), pp. 4114–4115; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 8956, 8988 and 9195; [P] Martel testimony [ET] (August 30, 2005), pp. 11010–11011 and 11023–11024.

- ⁹⁰ [P] Pardy testimony (May 24, 2005), pp. 3300 and 3317; [IC] Pillarella testimony (March 30, 2005), pp. 13343–13344 and 13355; [P] Pastyr-Lupul testimony (July 29, 2005), p. 8957–8958; [P] Martel testimony [ET] (August 30, 2005), pp. 11010–11011 and 11024.
- ⁹¹ [IC] Livermore testimony (March 7, 2005), p. 12203; [IC] Pillarella testimony (March 30, 2005), pp. 13360–13363 and [IC] (March 31, 2005), pp. 13713–13714; [P] Pardy testimony (May 24, 2005), pp. 3400–3403.
- ⁹² [P] Graham testimony (May 30, 2005), pp. 4114–4115. See also [P] Graham testimony (June 2, 2005), pp. 4875–4877 and 4879–4880. Mr. Martel also testified he knew of political detainees detained arbitrarily and imprisoned in conditions that might be extremely difficult. [P] Martel testimony [ET] (August 30, 2005), pp. 11011–11012.
- ⁹³ [P] Livermore testimony (May 17, 2005), p. 2540; [P] Pardy testimony (May 24, 2005), pp. 3400–3403; [P] Martel testimony [ET] (August 30, 2005), pp. 11011–11012 and 11023–11024.
- ⁹⁴ [P] Pillarella testimony (June 14, 2005), pp. 6738–6740.
- ⁹⁵ [P] Pillarella testimony (June 15, 2005), pp. 7049–7050.
- ⁹⁶ [IC] Pillarella testimony (March 30, 2005), p. 13361. See also [P] Pillarella testimony (June 14, 2005), pp. 6724–6725. Ambassador Pillarella testified that when he was appointed ambassador to Syria, he would have made an effort to inform himself about the human rights situation by going to the U.S. State Department reports, the classified DFAIT human rights reports and perhaps the Amnesty International reports. He could not recall specifically if he had reviewed Amnesty International’s 2002 report entered as Exhibit P-29. [P] Pillarella testimony (June 15, 2005), pp. 7047–7049.
- ⁹⁷ [P] Pillarella testimony (June 14, 2005), p. 6725.
- ⁹⁸ [P] Pardy testimony (May 24, 2005), p. 3398.
- ⁹⁹ Exhibit P-192
- ¹⁰⁰ Details of Mr. El Maati’s allegations can be found in Chapter I, Section 3.6.2. The issue of torture in relation to Mr. Almalki is described in Section 6.3 of this chapter. [P] Livermore testimony (May 17, 2005), pp. 2584–2587; [P] Pardy testimony (May 24, 2005), pp. 3297–3300, and [P] (May 26, 2005), p. 3858; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 8949–8952 and 8954.
- ¹⁰¹ [IC] Pillarella testimony (March 30, 2005), pp. 13412–13413, and [P] (June 14, 2005), pp. 6745–6747 and 6789; [P] Martel testimony [ET] (August 30, 2005), 11024–11026.
- ¹⁰² [IC] Pillarella testimony (March 30, 2005), pp. 13412–13413, and [ET] (June 14, 2005), pp. 6745–6747 and 6789.
- ¹⁰³ [P] Pillarella testimony (June 14, 2005), pp. 6745–6747.
- ¹⁰⁴ [P] Graham testimony (May 30, 2005), pp. 4115–4116.
- ¹⁰⁵ [P] Pillarella testimony (June 14, 2005), pp. 6871–6872.
- ¹⁰⁶ Exhibit C-206, Tab 159; Exhibit C-30, Tab 290; [IC] Livermore testimony (March 7, 2005), p. 12222. See Section 6.3.4 below.
- ¹⁰⁷ Exhibit C-21, Tab 13; [IC] Livermore testimony (March 7, 2005), pp. 12242–12251.
- ¹⁰⁸ [P] Livermore testimony (May 17, 2005), pp. 2536, 2538 and 2561–2562; [P] Pillarella testimony (June 14, 2005), pp. 6720–6724, 6727 and 6730–6737.
- ¹⁰⁹ [P] Livermore testimony (May 17, 2005), pp. 2537 and 2587–2589.
- ¹¹⁰ *Ibid.*, pp. 2589–2590.
- ¹¹¹ [P] Pillarella testimony (June 14, 2005), pp. 6786–6787. See also [P] Pastyr-Lupul testimony (July 29, 2005), p. 9201.
- ¹¹² [P] Pillarella testimony (June 15, 2005), pp. 7016–1017 and 7059.
- ¹¹³ [P] Pillarella testimony (June 14, 2005), p. 6790.
- ¹¹⁴ [IC] Pillarella testimony (March 30, 2005), pp. 13375–13376, [P] (June 14, 2005), p. 6861, and [P] (June 15, 2005), pp. 7062–7063.

- 115 [P] Pillarella testimony (June 15, 2005), pp. 7013–7014 and 7062–7063.
- 116 [P] Pillarella testimony (June 14, 2005), pp. 6786–6787.
- 117 [IC] Pillarella testimony (March 30, 2005), pp. 13375–13376, [P] (June 14, 2005), p. 6861, and [P] (June 15, 2005), pp. 7062–7063.
- 118 [P] Pillarella testimony (June 14, 2005), pp. 6728–6730.
- 119 [P] Pardy testimony (October 24, 2005), pp. 12188–12189.
- 120 [P] Pardy testimony (May 26, 2005), pp. 3979–3980, 3861 and 3895–3896, and [P] (June 2, 2005), p. 5055. Throughout Mr. Arar's detention, there was an increasing level of confidence that the abuse did not continue beyond the initial period, but that confidence fell off dramatically after January 7, 2003, when consular visits were almost closed down. *Ibid.*, p. 5056.
- 121 [P] Pardy testimony (May 25, 2005), p. 3748, and [P] (May 26, 2005), pp. 3861 and 3895–3896.
- 122 [P] Pardy testimony (May 24, 2005), p. 3362, [P] (May 26, 2005), pp. 3885–3886 and [P] (June 17, 2005), pp. 7702–7706. Mr. Pardy noted that equally germane in Mr. Arar's case were the experiences of other Canadian detainees in Syria because the public record reported mostly on the experiences of Syrian citizens. [P] Pardy testimony (May 24, 2005), p. 3403.
- 123 [P] Pardy testimony (May 24, 2005), p. 3362.
- 124 [P] Pardy testimony (October 24, 2005), pp. 12187–12188. Mr. Pardy understood that detainees of military intelligence were more vulnerable to abuse or degrading conditions of confinement or torture. He understood that when people found themselves detained by intelligence organizations, not infrequently they were outside of any existing rule of law in a given country. [P] Pardy testimony (May 26, 2005), pp. 3856–3857.
- 125 [P] Pardy testimony (May 25, 2005), pp. 3749–3750 and [P] (June 2, 2005), pp. 5084–5085. See also [P] Pastyr-Lupul testimony (July 29, 2005), p. 9249.
- 126 [P] Pardy testimony (May 26, 2005), pp. 3885–3886, [P] (June 2, 2005), pp. 5078–5081, and [P] (June 17, 2005), p. 7708.
- 127 [P] Pardy testimony (May 26, 2005), pp. 3982–3984.
- 128 [P] Pardy testimony (May 26, 2005), p. 3983 and [P] (June 17, 2005), pp. 7701–7702.
- 129 [P] Pardy testimony (June 17, 2005), pp. 7701–7702.
- 130 [P] Pardy testimony (May 26, 2005), p. 3985 and [P] (June 17, 2005), p. 7699.
- 131 Mr. Pardy testified that he was most frequently in contact with Robert Fry (senior policy analyst for Minister Graham), Michelle Lobo (media liaison for Minister Graham) and one other person. There were only two or three direct meetings between Mr. Pardy and Minister Graham during Mr. Arar's detention in Syria. [P] Pardy testimony (June 2, 2005), pp. 5078–5081; [P] Graham testimony (May 30, 2005), pp. 4088–4089.
- 132 *Ibid.*
- 133 [P] Pardy testimony (June 2, 2005), pp. 5078–5080 and 5085–5087.
- 134 *Ibid.*, pp. 5075–5076.
- 135 [P] Graham testimony (May 30, 2005), pp. 4132–4135.
- 136 [P] Graham testimony (June 2, 2005), pp. 4875–4877.
- 137 [P] Graham testimony (May 30, 2005), pp. 4135–4137.
- 138 [P] Pillarella testimony (June 14, 2005), pp. 6806–6807; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 8987–8988; [P] Martel testimony [ET] (August 30, 2005), pp. 11010–11012.
- 139 *Ibid.*
- 140 *Ibid.*, p. 11022.
- 141 *Ibid.*, pp. 11010–11011 and 11023–11024.
- 142 [P] Pillarella testimony (June 14, 2005), p. 6830; [P] Pillarella testimony (June 15, 2005), pp. 7063–7066; [P] Martel testimony [ET] (August 30, 2005), pp. 11021 and 11070.
- 143 [P] Martel testimony [ET] (August 30, 2005), pp. 11018–11020 and [P] [ET] (August 31, 2005), pp. 11307–11308.

- 144 [P] Pillarella testimony (June 14, 2005), pp. 6828–6830.
 145 Ibid., pp. 6806–6808.
 146 [P] Martel testimony [ET] (August 30, 2005), pp. 11018–11020.
 147 Exhibit P-197; [P] Martel testimony [ET] (August 30, 2005), pp. 11012–11015.
 148 Exhibit P-198.
 149 [P] Elcock testimony (June 21, 2004), pp. 152–153; [IC] testimony (September 13, 2004), pp. 221–223; [IC] Hooper testimony (September 22, 2004), pp. 1517–1518; [IC] Testimony (September 20, 2004), p. 1198; [IC] Testimony (September 21, 2004), pp. 1320–1331 and 1345–1346.
 150 [P] Elcock testimony (June 21, 2004), pp. 247–248; [P] Hooper testimony (June 23, 2004), p. 560; [IC] Hooper testimony (September 23, 2004), pp. 1846–1847.
 151 [P] Elcock testimony (June 21, 2004), pp. 152–155, 243–245.
 152 Ibid., pp. 247–248.
 153 Ibid., pp. 236–237 and 245–248.
 154 [P] Elcock testimony (June 22, 2004), pp. 291–292.
 155 Exhibit P-10; [P] Hooper testimony (June 23, 2004), pp. 568–570.
 156 Ibid., Tab 53.
 157 Ibid., Tab 314; [IC] Testimony (September 29, 2004), pp. 2069–2076.
 158 [IC] Testimony (September 29, 2004), pp. 2150–2153.
 159 [IC] Hooper testimony (September 22, 2004), pp. 1715–1717.
 160 [IC] Hooper testimony (September 23, 2004), p. 1781.
 161 [P] Elcock testimony (June 22, 2004), pp. 291–292
 162 [IC] Hooper testimony (September 23, 2004), pp. 1779–1782.
 163 Ibid., pp. 1780–1781.
 164 CSIS Summary, p. 8, para. 9.
 165 Exhibit C-379. CID periodically receives such reports to address specific situations with heightened security concerns (e.g., G-8 Summits, international sports events, visits of foreign dignitaries, etc.), or in response to major incidents that threaten peace and safety (e.g., terrorist attacks, large-scale demonstrations, political instability, etc.).
 166 [P] Loeppky testimony (June 30, 2004), p. 908.
 167 [P] Loeppky testimony (July 6, 2004), pp. 1384–1385.
 168 Exhibit P-12, Tab 31, para. M.3.b.
 169 [P] Loeppky testimony (July 6, 2004), p. 1374.
 170 [P] Loeppky testimony (July 28, 2005), p. 8807–8811.
 171 [IC] Loeppky testimony (April 19, 2005), pp. 14940–14941, and [P] (July 28, 2005), pp. 8805–8807.
 172 [P] Loeppky testimony (July 28, 2005), pp. 8756–8758.
 173 Deputy Commissioner Loeppky testified that consultation with DFAIT would not be undertaken when sharing information with the United States. See [P] Loeppky testimony (July 27, 2005), pp. 8462–8463 and Exhibit P-12, Tab 50, p. 2, para. 5. [IC] Cabana testimony (October 27, 2004), p. 2924.
 174 [P] Loeppky testimony (June 30, 2004), p. 908, [IC] (April 19, 2005), p. 14936, and [P] (July 27, 2005), pp. 8462–8463 and 8517–8518.
 175 Exhibit P-12, Tab 50.
 176 [P] Loeppky testimony (July 27, 2005), pp. 8462–8463; [IC] Pilgrim testimony (January 26, 2005), p. 10521. The Ministerial Directive on RCMP Agreements provides that advice from DFAIT on Canadian foreign policy considerations must accompany any RCMP agreement with a foreign entity. (Exhibit P-12, Tab 23, p. 2, para. II.A.1–3). While Deputy Commissioner Loeppky testified that this directive did not apply to day-to-day criminal law enforcement in-

- formation exchanges, Mr. Livermore believed that the RCMP was obliged to consult with DFAIT about any issue that might bear upon foreign policy, which would include any arrangement with Syrian intelligence agencies. See [P] Loepky testimony (June 30, 2004), pp. 894, [P] (July 6, 2004), pp. 1107–1109; [IC] Livermore testimony (March 7, 2005), p. 12220.
- 177 Ibid., pp. 12217–12218.
- 178 [IC] Loepky testimony (April 19, 2005), pp. 14982–14984; [P] Flewelling testimony (August 22, 2005), p. 9759; [IC] Pilgrim testimony (January 28, 2005), pp. 10551–10552 and 10787.
- 179 [P] Flewelling testimony (August 22, 2005), p. 9759.
- 180 [P] Flewelling testimony (August 23, 2005), pp. 9836–9837; [P] Lauzon testimony (August 23, 2005), pp. 10177–10178; [IC] Proulx testimony [ET] (December 9, 2004), pp. 7834–7835.
- 181 [IC] Pilgrim testimony (January 26, 2005), pp. 10406 and 10495–10496. Superintendent Pilgrim specifically stated that there were no discussions in November and December 2001 about the possibility of torture when the RCMP became aware of Mr. El Maati's detention in Syria.
- 182 [IC] Pilgrim testimony (January 28, 2005), pp. 10719–10720.
- 183 [P] Loepky testimony (July 27, 2005), pp. 8517–8518.
- 184 [IC] Cabana testimony (October 26, 2004), pp. 2591–2593 and 2663, [IC] (November 1, 2004), p. 3487, [IC] (November 2, 2004), p. 3752, [P] June 29, 2005), pp. 8009–8010, and [P] (June 30, 2005), pp. 8093, 8097 and 8351.
- 185 [IC] Cabana testimony (October 26, 2004), pp. 2679–2680, and [P] (August 9, 2005), pp. 9339–9342 and 9345–9346.
- 186 [IC] Cabana testimony (November 1, 2004), pp. 3491–3492 and [P] (June 29, 2005), pp. 7836 and 8067.
- 187 [P] Cabana testimony (June 29, 2005), pp. 7836 and 8009–8011 and [P] (June 30, 2005), p. 8094.
- 188 [IC] Loepky testimony (April 19, 2005), p. 14936 and [P] (July 27, 2005), pp. 8517–8518; [IC] Pilgrim testimony (January 26, 2005), p. 10521 and [IC] (January 28, 2005), pp. 10551–10552 and 10719–10720.
- 189 [IC] Pilgrim testimony (January 28, 2005), pp. 10719–10720.
- 190 [IC] Fiorido testimony (November 3, 2005), pp. 17947–17948.
- 191 Ibid., pp. 17960–17963, 18054–18055 and 18134.
- 192 Ibid., pp. 17976 and 18052.
- 193 Ibid., pp. 18052–18053 and 18135.
- 194 [IC] Pillarella testimony (March 31, 2005), pp. 13804 and [IC] (March 30, 2005), 13371–13373.
- 195 [IC] Pillarella testimony (March 31, 2005), pp. 13804–13807.
- 196 [P] Pillarella testimony (June 14, 2005), p. 6703.
- 197 [IC] Pillarella testimony (March 31, 2005), p. 13813.
- 198 [P] Pillarella testimony (June 14, 2005), p. 6703.
- 199 [IC] Pillarella testimony (March 30, 2005), pp. 13340–13344 and [IC] (March 31, 2005), p. 13622.
- 200 [IC] Pillarella testimony (March 30, 2005), pp. 13354–13356; Exhibit C-21, Tab 30. See also the U.S. Department of State publication *Syria – Country Reports on Human Rights Practices – 2003*, Exhibit P-28.
- 201 [IC] Pillarella testimony (March 30, 2005), p. 13444.
- 202 [IC] Pillarella testimony (March 31, 2005), pp. 13616–13621.
- 203 Ibid., pp. 13814–13816.
- 204 [P] Hogger testimony (November 10, 2005), p. 12647.
- 205 [IC] Martel testimony (April 26, 2005), pp. 16053–16054.
- 206 [P] Pillarella testimony (June 14, 2005), p. 6780.

- 207 Ibid., p. 6765 and [IC] (March 30, 2005), p. 13482; [P] Pardy testimony (May 24, 2005), pp. 3422–3424.
- 208 [IC] Pillarella testimony (March 30, 2005), pp. 13371 and 13480–13481, [IC] (March 31, 2005), pp. 13621–13623, [P] (June 14, 2005), pp. 6738–6741 and 6779–6781 and [P] (June 15, 2005), pp. 7051–7054. See also Exhibit P-29, Amnesty International’s 2002 report describing the torture and ill-treatment used routinely against political prisoners, particularly during incommunicado detention at the Palestine Branch.
- 209 [P] Pillarella testimony (June 14, 2005), pp. 6794–6798 and [IC] (March 30, 2005), pp. 13483–13486.
- 210 Exhibit C-206, Tab 123, pp. 1–2.
- 211 [P] Pillarella testimony (June 14, 2005), pp. 6781–6791.
- 212 When referred to this report, Mr. Martel testified that “the Ambassador is already assuming that the client is well.” [P] Martel testimony [ET] (August 31, 2005), p. 11481.
- 213 [P] Pillarella testimony (June 14, 2005), pp. 6791–6794.
- 214 [IC] Pillarella testimony (March 30, 2005), pp. 13484–13485.
- 215 [P] Pillarella testimony (June 14, 2005), pp. 6835–6836 and [IC] (March 30, 2005), p. 13484.
- 216 [IC] Pillarella testimony (March 30, 2005), pp. 13488–13489.
- 217 [P] Pillarella testimony (June 14, 2005), pp. 6798–6801.
- 218 [IC] Pillarella testimony (March 30, 2005), pp. 13326 and 13501.
- 219 Ibid., pp. 13313–13314 and 13327.
- 220 [P] Pardy testimony (May 26, 2005) pp. 4004–4005.
- 221 [IC] Livermore testimony (March 7, 2005), pp. 12206–12208.
- 222 Ibid., p. 12209.
- 223 [P] Livermore testimony (May 17, 2005), pp. 2482–2484.
- 224 [IC] Heatherington testimony (April 21, 2005), pp. 15462–15466.
- 225 [IC] Gould testimony (March 24, 2005), pp. 12924–12926.
- 226 [IC] Pardy testimony (August 4, 2005), pp. 16853–16855 and [P] (May 24, 2005), pp. 3424–3428. Mr. Pardy’s best estimate was that Mr. Arar had been in Syria since October 8 or 9, 2002, despite contrary statements from the Syrians. [IC] Pardy testimony (August 4, 2005), pp. 16858–16860.
- 227 [IC] Pillarella testimony (March 30, 2005), pp. 13327–13328.
- 228 [IC] Livermore testimony (March 7, 2005), p. 12211. The copy that went to CSIS is Exhibit C-001, Tab 71. The copy that went to the RCMP is Exhibit C-30, Tab 321.
- 229 [P] Pardy testimony (May 26, 2005), pp. 4007–4008.
- 230 Ibid., p. 4006.
- 231 The October 23, 2002 consular visit and report discussing it is addressed in the next section of this Report.
- 232 [IC] Livermore testimony (March 7, 2005), pp. 12211–12212.
- 233 [P] Livermore testimony (May 17, 2005), pp. 2581–2584.
- 234 [IC] Solomon testimony (April 4, 2005), pp. 13959–13960.
- 235 Ibid., pp. 14055–14057.
- 236 [IC] Corcoran testimony (November 15, 2004), pp. 4918–4919; [IC] Roy testimony (December 6, 2004), pp. 6924–6925; Exhibit P-216.
- 237 Exhibit C-1, Tab 71.
- 238 [P] Roy testimony (August 22, 2005), pp. 9577–9580.
- 239 Exhibit C-30, Tab 321.
- 240 [IC] Roy testimony (December 6, 2004), pp. 6934–6935. There is documentary evidence that Mr. Solomon left a voice mail for Mr. Pardy on November 7, 2002. See Exhibit P-88, Tabs 1 and 2.

- 241 [P] Pardy testimony (June 2, 2005), pp. 5041–5047.
- 242 Exhibits C-307 and C-372.
- 243 [P] Pardy testimony (May 26, 2005), pp. 3983–3984 and [P] (June 17, 2005), pp. 7701–7702.
- 244 [P] Martel testimony [ET] (August 30, 2005), pp. 10996–11004, 11010, [IC] (April 25, 2005), pp. 15661–15671, 15702 and [P] [ET] (August 31, 2005), pp. 11308–11309. Mr. Martel’s CV is Exhibit P-85, Vol. 5, Tab 37.
- 245 [P] Martel testimony [ET] (August 30, 2005), pp. 11077–11078, [P] [ET] (August 31, 2005), pp. 11327–11333, [IC] (April 25, 2005), pp. 15702–15703, 15710–15711, [IC] (April 26, 2005), pp. 15969–15970 and [IC] (April 25, 2005), pp. 15850–15851.
- 246 [P] Livermore testimony (May 18, 2005), pp. 2705–2708.
- 247 Exhibit C-206, Tab 131.
- 248 [IC] Martel testimony (April 26, 2005), pp. 16089, [P] [ET] (August 30, 2005), pp. 11032 and [P] [ET] (August 31, 2005), pp. 11465–11466; Exhibit C-206, Tab 61.
- 249 [P] Martel testimony [ET] (August 31, 2005), pp. 11609–11611.
- 250 [P] Martel testimony [ET] (August 30, 2005), pp. 11033–11035; Exhibit C-206, Tab 80.
- 251 Exhibit C-206, Tab 106.
- 252 [IC] Martel testimony (April 25, 2005), pp. 15712, [P] [ET] (August 30, 2005), pp. 11056–11058 and 11061.
- 253 [IC] Martel testimony (April 25, 2005), pp. 15695–15704, [P] [ET] (August 31, 2005), pp. 11598–11599, [P] [ET] (August 30, 2005), pp. 11042–11047 and 11059; Exhibit C-206, Tab 130.
- 254 Mr. Martel testified that Syrians are terrified by the Palestine Branch and by all security services.
- 255 Mr. Livermore, discussing his own past consular experience in Chile, testified that “when you are on the ground, you basically tailor your activity, how you do your job, to local customs and the way it has to be done locally. And if that means you sit down and have a cup of coffee and chat for an hour before the meeting starts, that’s what you do.” [P] Livermore testimony (May 18, 2005), pp. 2755–2756.
- 256 [P] Martel testimony (August 31, 2005), pp. 11603–11604 and [P] (August 30, 2005), p. 11046.
- 257 [IC] Martel testimony (April 26, 2005), pp. 16126–16127 and [IC] (April 25, 2005), pp. 15706.
- 258 [IC] Martel testimony (April 26, 2005), pp. 16122–16126, [IC] (April 25, 2005), pp. 15705–15706 and [P] [ET] (August 30, 2005), pp. 11047–11048 and [P] [ET] (August 31, 2005), p. 11494.
- 259 [IC] Martel testimony (April 25, 2005), pp. 15708, 15728, [IC] (April 26, 2005), pp. 16125–16130 and [P] [ET] (August 30, 2005), p. 11051.
- 260 [IC] Martel testimony (April 26, 2005), pp. 16140–16141.
- 261 *Ibid.*, p. 16126.
- 262 [IC] Martel testimony (April 25, 2005), pp. 15706–15707, [P] [ET] (August 30, 2005), pp. 11048–11049 and 11052–11053.
- 263 [IC] Martel testimony (April 25, 2005), pp. 15708–15709, 15715 and [P] [ET] (August 30, 2005), pp. 11054–11055.
- 264 [P] Martel testimony [ET] (August 31, 2005), pp. 11495–11497.
- 265 [IC] Martel testimony (April 25, 2005), pp. 15709–15711 and [P] [ET] (August 31, 2005), pp. 11525–11527.
- 266 [IC] Martel testimony (April 25, 2005), pp. 15706, [IC] (April 26, 2005), pp. 16142, 16126–16133 and [P] [ET] (August 31, 2005), pp. 11499–11502.
- 267 [P] Martel testimony [ET] (August 30, 2005), p. 11069.
- 268 [P] Pillarella testimony (June 14, 2005), pp. 6809 and [IC] (March 30, 2005), p. 13492.
- 269 [P] Pillarella testimony (June 14, 2005), pp. 6809–6811.
- 270 *Ibid.*, p. 6825.
- 271 *Ibid.*, pp. 6815–6816.
- 272 [P] Pillarella testimony (June 15, 2005), pp. 7080–7081

- 273 [P] Pillarella testimony (June 14, 2005), p. 6820.
- 274 [IC] Pillarella testimony (March 30, 2005), p. 13494.
- 275 [P] Pillarella testimony (June 14, 2005), pp. 6818–6824. However, at an earlier point in the Inquiry, Ambassador Pillarella had testified that Mr. Arar has a gentle handshake. [IC] Pillarella testimony (March 31, 2005), p. 13840.
- 276 [P] Pillarella testimony (June 14, 2005), pp. 6829–6830.
- 277 [P] Livermore testimony (May 17, 2005), pp. 2485–2487.
- 278 [P] Pardy testimony (May 26, 2005), pp. 4004–4005.
- 279 [IC] Pillarella testimony (March 30, 2005), pp. 13490–13492.
- 280 [P] Pardy testimony (June 17, 2005), pp. 7707–7708.
- 281 [P] Pardy testimony (May 24, 2005), pp. 3456–3459.
- 282 [P] Pasty-Lupul testimony (July 29, 2005), pp. 9202–9203, 8972–8983 and 9169.
- 283 [P] Livermore testimony (May 17, 2005), pp. 2485–2489 and 2540–2541.
- 284 Ibid., pp. 2674–2677.
- 285 Ibid., p. 2539.
- 286 [P] Pardy testimony (May 24, 2005), pp. 3424–3433.
- 287 [IC] Pardy testimony (August 4, 2005), pp. 16852–16855, [P] (May 24, 2005), pp. 3456–3459 and [P] (October 24, 2005), pp. 12162–12163.
- 288 [P] Fry testimony (June 13, 2005), pp. 6650–6653.
- 289 Ibid., pp. 6417–6418.
- 290 Ibid., pp. 6401–6404.
- 291 Ibid., p. 6638.
- 292 [P] Pardy testimony (June 17, 2005), pp. 7708–7709; Exhibit C-206, Tab 137.
- 293 [P] Graham testimony (June 2, 2005), p. 4899.
- 294 [IC] Graham testimony (August 3, 2005), pp. 16708–16709.
- 295 [P] Pardy testimony (May 24, 2005), pp. 3460–3461; Exhibit C-206, Tabs 129 and 132.
- 296 Exhibit C-206, Tab 129, p. 7.
- 297 [P] Pasty-Lupul testimony (July 29, 2005), p. 8983.
- 298 Ibid., pp. 9173–9174.
- 299 Exhibit C-350.
- 300 [P] Pasty-Lupul testimony (July 29, 2005), pp. 9175–9177.
- 301 Ibid., p. 9169.
- 302 [P] Graham testimony (June 2, 2005), pp. 4901–4906.
- 303 [P] Pardy testimony (May 24, 2005), pp. 3469 and [P] (June 2, 2005), p. 5032.
- 304 [P] Roy testimony [ET] (August 22, 2005), pp. 9546–9550.
- 305 Exhibit P-217.
- 306 [P] Roy testimony [ET] (August 22, 2005), pp. 9580–9584; Exhibits P-93, C-285, C-288, C-350.
- 307 [P] Cabana testimony (June 30, 2005), pp. 8117–8119; Exhibit C-285.
- 308 Exhibit P-11, Tabs 21 and 22.
- 309 [IC] Heatherington testimony (April 27, 2005), pp. 16278–16279.
- 310 Exhibit P-11, Tab 22, p. 13.
- 311 Ibid., Tab 14.
- 312 Ibid., p.4.
- 313 [P] Pardy testimony (May 26, 2005), pp. 3985–3986.
- 314 The *Privacy Act*, R.S. 1985, c. P-21, provides at section 8 that
s. 8 (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

...

(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;

...

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or

(ii) disclosure would clearly benefit the individual to whom the information relates.

315 [IC] Pillarella testimony (March 31, 2005), pp. 13818–13819.

316 [P] Pardy testimony (May 26, 2005), pp. 4001–4008.

317 [P] Pardy testimony (June 2, 2005), pp. 5097–5101.

318 With respect to DFAIT disclosing information to CSIS, Mr. Heatherington testified that DFAIT did not use the Treasury Board form required under the Department of External Affairs–CSIS memorandum of understanding for disclosure of DFAIT information to CSIS. [IC] Heatherington testimony (April 27, 2005), pp. 16285–16288 and 16304–16305.

319 [P] Pardy testimony (May 24, 2005), pp. 3470–3478.

320 [P] Pardy testimony (June 2, 2005), pp. 5028–5029.

321 Exhibit C-206, Tab 30.

322 [P] Pardy testimony (May 26, 2005), pp. 3989–4008.

323 [P] Pardy testimony (June 2, 2005), pp. 5021–5036.

324 [IC] Martel testimony (April 25, 2005), pp. 15730–15731 and [P] [ET] (August 31, 2005), p. 11427.

325 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9233–9234.

326 [P] Girvan testimony (May 16, 2005), pp. 2375–2377.

327 Exhibit P-91; [P] Pardy testimony (May 24, 2005), pp. 3449–3450.

328 [P] Pardy testimony (June 2, 2005), pp. 5116–5121.

329 See *Privacy Act*, R.S. 1985, c. P-21, section 8(2)(a).

330 [P] Pardy testimony (May 24, 2005), pp. 3470–3478.

331 [P] Pardy testimony (June 2, 2005), pp. 5094–5097.

332 *Ibid.*, pp. 5021–5036, [P] (May 26, 2005), p. 4008, [P] (May 25, 2005), pp. 3515–3518, [P] (June 2, 2005), pp. 5094–5097 and [P] (May 24, 2005), pp. 3470–3478.

333 [IC] Pardy testimony (August 4, 2005), pp. 16845–16846.

334 [P] Pardy testimony (May 25, 2005), pp. 3515–3518.

335 [IC] Heatherington testimony (April 27, 2005), pp. 16301–16303.

336 [P] Livermore testimony (May 17, 2005), pp. 2554 and 2574–2582.

337 *Ibid.*, pp. 2496, 2574–2584, [IC] (March 7, 2005), p. 12328 and [P] (May 18, 2005), pp. 2770–2780.

338 [P] Cabana testimony (June 30, 2005), pp. 8153–8155 and 8307–8310.

339 *Ibid.*, pp. 8138–8139. The Chief of the CSIS Sunni Islamic Terrorism section also testified that he did not understand that discussions in consular visits were private or confidential. [IC] Testimony (August 5, 2005), pp. 17033–17034.

340 [P] Cabana testimony (June 30, 2005), pp. 8138–8145.

341 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 8990–8991.

- 342 [P] Pardy testimony (May 24, 2005), pp. 3478–3480 and 3482–3483. Mr. Pardy testified that he
 spent more time on this case than on that of any other Canadian detained abroad, and that
 he was directly involved every day, seven days a week. [P] Pardy testimony (June 17, 2005),
 pp. 7718–7720.
- 343 [P] Pardy testimony (May 24, 2005), pp. 3485–3486; Exhibit C-206, Tab 138.
- 344 [IC] Pardy testimony (August 4, 2005), pp. 16859–16860; Exhibit C-206, Tab 137.
- 345 Exhibit C-206, Tab 138.
- 346 [P] Pardy testimony (May 24, 2005), pp. 3483–3485 and [IC] (August 4, 2005), p. 16858.
- 347 Ibid., pp. 3489–3491; Exhibit C-206, Tabs 139, 140 and 149.
- 348 [P] Pasty-Lupul testimony (July 29, 2005), p. 8992.
- 349 [P] Pardy testimony (May 24, 2005), p. 3493; Exhibit C-206, Tab 136.
- 350 Exhibit C-206, Tab 141.
- 351 Ibid., Tab 152.
- 352 [P] Pardy testimony (May 25, 2005), pp. 3521–3522.
- 353 Exhibit C-206, Tab 145; Exhibit P-98.
- 354 [P] Pardy testimony (May 24, 2005), pp. 3496–3498.
- 355 Exhibit P-88, Tab 1, p. 8. Mr. Solomon’s draft memorandum is Exhibit C-206, Tab 159.
- 356 [IC] Solomon testimony (April 4, 2005), pp. 13933–13934 and 14005–14006.
- 357 [P] Pardy testimony (May 25, 2005), pp. 3508–3509 and [P] (June 2, 2005), p. 5092. The evi-
 dence relating to the possibility of visits to Syria by the RCMP and CSIS at this time, and the
 sending of questions for Mr. Almalki, is discussed below in Sections 4 and 6.3.
- 358 [P] Martel testimony [ET] (August 31, 2005), pp. 11401–11406, 11483–11487 and 11598–11601.
- 359 Ibid., pp. 11317–11324 .
- 360 The Manual states: “The right of a consular official to intervene on behalf of a Canadian who
 appears to have been the victim of unlawful (under domestic or international law) discrimi-
 nation or denial of justice is well established in international law. Consistent with Canada’s
 commitment to fundamental human rights, consular officials do what they can to protect
 Canadians against violations of these rights. It is a basic principle of international law that
 whatever a state’s treatment of its own subjects, aliens must be accorded an international min-
 imum standard of treatment, including freedom from arbitrary arrest, due process in the de-
 termination of legal rights, and respect for human rights generally.” Exhibit P-11, Tab 22, p.
 8.
- 361 [IC] Pillarella testimony (March 31, 2005), pp. 13877–13884.
- 362 Mr. Martel’s report of the second consular visit is Exhibit C-206, Tab 147.
- 363 Exhibit C-206, Tab 152.
- 364 [IC] Martel testimony (April 25, 2005), pp. 15725–15728 and [P] (August 30, 2005),
 pp. 11070–11074 and [P] [ET] (August 31, 2005), p. 11320.
- 365 [P] Martel testimony [ET] (August 30, 2005), pp. 11133.
- 366 [P] Martel testimony [ET] (August 31, 2005), pp. 11483–11487. Mr. Martel testified that the
 Syrians allowed him to ask questions about “conditions of detention.” Mr. Martel clearly
 equated “conditions of detention” with “well-being.”
- 367 [P] Martel testimony [ET] (August 30, 2005), p. 11139.
- 368 [P] Martel testimony [ET] (August 31, 2005), pp. 11601–11603 and 11612.
- 369 [IC] Martel testimony (April 25, 2005), p. 15728.
- 370 [P] Martel testimony [ET] (August 31, 2005), pp. 11604–11605.
- 371 [P] Martel testimony [ET] (August 30, 2005), p. 11072.
- 372 [P] Martel testimony [ET] (August 31, 2005), pp. 11483–11487.
- 373 Ibid., pp. 11510–11512 and 11490–11492.
- 374 Ibid., pp. 11487–11491; Exhibit P-246.

- 375 [IC] Martel testimony (April 25, 2005), p. 15727.
- 376 [IC] Pillarella testimony (March 30, 2005), pp. 13506–13507.
- 377 [P] Pillarella testimony (June 14, 2005), pp. 6831–6834.
- 378 [IC] Pillarella testimony (March 30, 2005), pp. 13505–13511 and [P] (June 14, 2005), p. 6834.
- 379 [IC] Pillarella testimony (March 30, 2005), pp. 13508–13509.
- 380 Ibid., p. 13507.
- 381 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 8992–8994.
- 382 [P] Pardy testimony (May 25, 2005), pp. 3519–3520.
- 383 [P] Fry testimony (June 13, 2005), pp. 6639–6640; [P] Pardy testimony (June 17, 2005), pp. 7706–7707.
- 384 [P] Fry testimony (June 13, 2005), pp. 6639–6640.
- 385 [IC] Gould testimony (March 24, 2005), pp. 12927–12928.
- 386 [P] Cabana testimony (June 30, 2005), pp. 8312–8314. The November 6, 2002 meeting is discussed below in Section 4.2.
- 387 Exhibit C-206, Tab 155.
- 388 [P] Pardy testimony (May 25, 2005), pp. 3525 and 3531; Exhibit C-206, Tab 181.
- 389 [P] Pardy testimony (May 25, 2005), pp. 3520 and (May 26, 2005), p. 3838; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 8998–8999; Exhibit C-206, Tabs 148, 150 and 155.
- 390 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 8995–8996; Exhibit C-206, Tab 156.
- 391 [P] Fry testimony (June 13, 2005), pp. 6419–6423; [P] Pardy testimony (May 25, 2005), p. 3552; Exhibit C-206, Tabs 137, 172 and 181.
- 392 Exhibit C-206, Tab 145. Mr. Hooper confirmed that a possible CSIS visit to Syria was under discussion when Mr. Pardy sent this message to Damascus. [P] Hooper testimony (August 25, 2005), pp. 10610–10613.
- 393 Exhibit C-206, Tab 147.
- 394 [IC] Martel testimony (April 25, 2005), pp. 15728–15729.
- 395 [P] Pillarella testimony (June 14, 2005), pp. 6836–6839.
- 396 Ibid. When asked if he had conducted his own investigation of possible visits by the RCMP or CSIS, Ambassador Pillarella replied that he did not recall that anything had been done about it. [P] Pillarella testimony (June 14, 2005), p. 6840. However, Ambassador Pillarella testified *in camera* that he thought this was raised during the next meeting he had with General Khalil. [IC] Pillarella testimony (March 30, 2005), pp. 13511–13512.
- 397 [IC] Pillarella testimony (June 14, 2005), p. 6839.
- 398 Exhibit C-206, Tab 158.
- 399 Ibid. and [P] Pillarella testimony (June 14, 2005), p. 6840. Ambassador Pillarella did not know what Mr. Pardy meant by his comment and did not recall discussing the issue of a letter with Mr. Pardy. [IC] Pillarella testimony (March 30, 2005), pp. 13512–13515.
- 400 [IC] Pardy testimony (August 4, 2005), pp. 16860–16864 and Exhibit C-294, p. 8.
- 401 Exhibit C-206, Tab 159. Mr. Pardy testified that the reference to a letter in his October 30 e-mail was “generic” and that he had not seen Mr. Solomon’s memorandum until shortly before he testified at the Inquiry. However, he explained that the memorandum did “accurately reflect the kind of discussions that we were having and our concerns with questions and visits by either CSIS or the RCMP.” [IC] Pardy testimony (August 4, 2005), pp. 16860–16864. The memorandum drafted by Mr. Solomon is discussed extensively below in Section 6.3.4.
- 402 [IC] Pillarella testimony (March 30, 2005), pp. 13519–13522.
- 403 Exhibit C-206, Tab 160 and [IC] Pillarella testimony (March 30, 2005), pp. 13523–13527 and [P] (June 14, 2005), pp. 6842–6846.
- 404 Exhibit C-206, Tab 160 and [P] Pillarella testimony (June 14, 2005), pp. 6842–6846. The Deputy Foreign Minister committed to calling General Khalil to facilitate the meeting.

- 405 Exhibit C-206, Tab 123. In his first meeting with General Khalil on the Arar case on October
22, the General promised to pass on to Ambassador Pillarella any information which the
Syrians might gather on Mr. Arar's "implication in terrorist activities."
- 406 [P] Pillarella testimony (June 14, 2005), pp. 6842–6846. Ambassador Pillarella explained that
"the pressure is on us to get Mr. Arar back to Canada, but we need to have all the facts, and
that is the reason why I asked for the meeting" with General Khalil.
- 407 Exhibit C-206, Tab 160.
- 408 Ibid., Tab 164.
- 409 Ibid.
- 410 Ibid.
- 411 [IC] Pillarella testimony (March 30, 2005), pp. 13527–13529 and [P] (June 14, 2005),
pp. 6847–6849.
- 412 [P] Pillarella testimony (June 14, 2005), pp. 6847–6849.
- 413 [IC] Pillarella testimony (March 30, 2005), pp. 13486–13488 and 13527–13529 and [P] (June 14,
2005), pp. 6847–6849.
- 414 Exhibit C-206, Tab 164.
- 415 Ibid.
- 416 [P] Pillarella testimony (June 15, 2005), pp. 7132–7134.
- 417 Ibid., pp. 7140–7147.
- 418 Exhibit C-206, Tab 164. General Khalil also advised that "he would do this for us only" and
other countries had not been granted "such privilege" "despite repeated requests."
- 419 Exhibit C-206, Tab 105 and [IC] Pardy testimony (August 4, 2005), pp. 16824–16825 and
16848–16849.
- 420 Exhibit C-206, Tab 164 and [IC] Pillarella testimony (March 30, 2005), pp. 13516–13517.
- 421 Exhibit C-206, Tab 164.
- 422 Ibid.
- 423 [P] Pillarella testimony (June 15, 2005), pp. 7140–7147.
- 424 [IC] Pillarella testimony (March 30, 2005), pp. 13532–13534.
- 425 Ibid.
- 426 Ibid.
- 427 [IC] Pardy testimony (August 4, 2005), pp. 16954–16956 and 16866–16867.
- 428 Ibid.
- 429 Ibid., pp. 16866–16867.
- 430 [IC] Pillarella testimony (March 30, 2005), pp. 13486–13488 and [P] (June 14, 2005), pp.
6849–6850. General Khalil had advised him during their meeting that the information he would
receive would be in Arabic. Exhibit C-206, Tab 164.
- 431 [P] Pardy testimony (May 25, 2005), p. 3523.
- 432 Exhibit C-206, Tab 165 and [IC] Pillarella testimony (March 30, 2005), pp. 13534–13536.
- 433 *Bout de papier* (literally, "scrap of paper") is a term used in diplomacy to describe a relatively
informal communication or record of a meeting.
- 434 Exhibit C-206, Tab 165, Exhibit C-1, Tab 103 and [IC] Heatherington (April 21, 2005),
pp. 15487–15489.
- 435 Exhibit C-1, Tab 97.
- 436 Exhibit C-206, Tab 165.
- 437 Exhibit C-1, Tab 97.
- 438 [IC] Pillarella testimony (March 30, 2005), pp. 13488–13489.
- 439 Ibid.
- 440 [P] Pillarella testimony (June 14, 2005), pp. 6798–6799.
- 441 Ibid.

- 442 Ibid., pp. 6798–6800.
- 443 Ibid., p. 6801.
- 444 [P]Pillarella testimony (June 15, 2005), pp. 7147–7149.
- 445 Ibid.
- 446 Ibid.
- 447 Ibid., pp. 7147–7148.
- 448 [P]Cabana testimony (June 29, 2005), pp. 8032–8034.
- 449 Ibid.
- 450 [P]Pillarella testimony (June 15, 2005), pp. 7149–7158.
- 451 Ibid.
- 452 Ibid.
- 453 [P] Pillarella testimony (June 14, 2005), pp. 6851–6852.
- 454 Ibid., pp. 6830–6833.
- 455 Ambassador Pillarella attended this meeting in Ottawa. This meeting is discussed in greater detail below in Section 4.2.
- 456 [IC] Cabana testimony (November 1, 2004), pp. 3288–3290 and [P] (June 29, 2005), pp. 8030–8035; [IC] Pillarella testimony (March 30, 2005), pp. 13536–13544.
- 457 [P]Pillarella testimony (June 14, 2005), pp. 6853–6859.
- 458 [P] Cabana testimony (June 29, 2005), pp. 8030–8035.
- 459 [P] Pardy testimony (May 26, 2005), pp. 4001–4002.
- 460 Ibid.
- 461 [P] Pardy testimony (June 2, 2005), pp. 5103–5107.
- 462 Ibid.
- 463 Ibid.
- 464 [P] Livermore testimony (May 17, 2005), pp. 2482–2484. According to Mr. Livermore, Ambassador Pillarella was head of all Canadian programs and not acting solely as a DFAIT individual, and it would be natural for a head of mission to wish to pass on to Canadian authorities any information he had on terrorist activities.
- 465 [P] Graham testimony (June 2, 2005), pp. 4864–4870.
- 466 Ibid.
- 467 Ibid.
- 468 Ibid.
- 469 Ibid.
- 470 Ibid.
- 471 Exhibit C-206, Tab 164. Ambassador Pillarella also sent his report to Mr. Pardy via the DFAIT office in Beirut.
- 472 Ibid.
- 473 [IC] Pillarella testimony (March 30, 2005), pp. 13527–13528.
- 474 Exhibit C-1, Tab 82 and [IC] Testimony (September 14, 2004), pp. 396–398.
- 475 Exhibit C-206, Tab 165.
- 476 [IC] Testimony.
- 477 Ibid.
- 478 Ibid. There was apparently some confusion as to who exactly the Americans were supporting, a point that is still debated to this day. Ibid.
- 479 Ibid.
- 480 Ibid.
- 481 Ibid.
- 482 Ibid.
- 483 Ibid.

- 484 Ibid.
- 485 Ibid.
- 486 Ibid.
- 487 Ibid.
- 488 Ibid.
- 489 [P] Martel testimony [ET] (August 31, 2005), pp. 11325–11327.
- 490 [IC] Pillarella testimony (March 31, 2005), pp. 13799–13802.
- 491 [P] Martel testimony [ET] (August 31, 2005), pp. 11363–11364; Exhibit C-206, Tab 163. See also Exhibit P-242, Tab 2.
- 492 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 8996–8997.
- 493 Exhibit C-206, Tab 166.
- 494 [P] Martel testimony [ET] (August 31, 2005), pp. 11361–11362 and 11370, and [IC] (April 25, 2005), pp. 15731–15732.
- 495 [P] Martel testimony [ET] (August 31, 2005), pp. 11366–11367.
- 496 Ibid., pp. 11367–11368. Mr. Martel had agreed earlier in his testimony that Canada's objective was to secure Mr. Arar's release as quickly as possible. [P] Martel testimony [ET] (August 30, 2005), pp. 11036–11038.
- 497 [P] Martel testimony [ET] (August 31, 2005), pp. 11370–11371.
- 498 Exhibit C-206, Tabs 181 and 187; Exhibit P-242, Tab 4; [P] Pardy testimony (May 25, 2005), pp. 3530–3531; [IC] Martel testimony (April 26, 2005), pp. 16099–16100 and [IC] (April 25, 2005), p. 15734.
- 499 Exhibit C-206, Tab 185; [IC] Martel testimony (April 25, 2005), pp. 15732–15733.
- 500 Exhibit C-206, Tab 189; [P] Pardy testimony (May 25, 2005), pp. 3569–3570.
- 501 [P] Martel testimony [ET] (August 30, 2005), pp. 11074–11076 and [IC] (April 25, 2005), pp. 15733–15734.
- 502 Exhibit C-206, Tab 191; [IC] Martel testimony (April 25, 2005), p. 15735.
- 503 Ibid., Tab 192; *ibid.*, pp. 15735–15737.
- 504 [P] Pardy testimony (May 26, 2005), pp. 3889–3992.
- 505 Exhibit C-206, Tab 192; [IC] Martel testimony (April 25, 2005), p. 15737 and [P] [ET] (August 30, 2005), pp. 11079–11080.
- 506 [IC] Martel testimony (April 25, 2005), pp. 15737–15738.
- 507 [P] Martel testimony [ET] (August 31, 2005), pp. 11364–11365 and 11368.
- 508 [IC] Martel testimony (April 25, 2005), pp. 15738–15739 and [P] [ET] (August 30, 2005), pp. 11078–11079.
- 509 [P] Pillarella testimony (June 14, 2005), pp. 6866–6867 and [IC] Pillarella testimony (March 30, 2005), pp. 13548–13549.
- 510 [IC] Pillarella testimony (March 30, 2005), pp. 13548–13549.
- 511 [P] Pillarella testimony (June 14, 2005), pp. 6858 and 6862–6869 and [IC] Testimony (September 20, 2004), pp. 1109–1115. Mr. Hooper, CSIS Assistant Director of Operations, was similarly dismissive of the interrogation report.
- 512 [P] Pillarella testimony (June 15, 2005), pp. 7129–7131.
- 513 [P] Livermore testimony (May 17, 2005), pp. 2498–2499.
- 514 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9001–9003.
- 515 [P] Pardy testimony (May 26, 2005), pp. 3833–3834.
- 516 Ibid., pp. 3834–3838.
- 517 Exhibit C-206, Tabs 171, 185 and 190; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 8998–8999.
- 518 Exhibit C-206, Tab 196; [P] Pardy testimony (May 25, 2005), pp. 3570–3574. This is further discussed below in Section 3.7.

- 519 Exhibit C-206, Tab 206; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9009–9010.
- 520 *Ibid.*, Tab 210; *Ibid.*, pp. 9013–9014.
- 521 Exhibit P-195; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9010–9015.
- 522 Exhibit C-30, Tab 369.
- 523 In the opinion of George Webb, Director of Intelligence for Canada Customs, these items did not constitute core biographical data, which he viewed as comprising information about lifestyle preferences and health. The photocopied items were merely general travel and identification documents. According to Mr. Webb, it is within Canada Customs' authority to verify and copy identification documents to establish a person's identity. [IC] Webb testimony (February 3, 2005), pp. 11585–11588.
- 524 Thériault notes, p. 110.
- 525 Exhibit C-30, Tab 331.
- 526 Exhibit C-190, Tab 35.
- 527 Exhibit C-371; Exhibit P-274.
- 528 Exhibit C-188, Tab 17 "Enforcement Bulletin 02-02."
- 529 [IC] Webb testimony (February 3, 2005), p. 11543.
- 530 As noted in the previous section, Dr. Mazigh had apparently already been interviewed for several hours by Tunisian intelligence before she returned to Canada. [IC] Cabana testimony (November 1, 2004), p. 3296.
- 531 [IC] Cabana testimony (November 1, 2004), pp. 3294–3295.
- 532 See the discussion of the RCMP's negotiations with Mr. Edelson regarding an interview with Mr. Arar in Chapter I, Section 3.10.
- 533 [P] Edelson testimony (June 16, 2005), pp. 7294–7298; and Exhibit P-140, Tabs 4 and 5.
- 534 [P] Pardy testimony (May 25, 2005), pp. 3531–3534; and [P] Edelson testimony (June 16, 2005), pp. 7294–7304, 7522–7525 and 7326. See also Exhibit C-206, Tab 137; Exhibit P-140, Tab 5; and Exhibit P-142.
- 535 [P] Edelson testimony (June 16, 2005), pp. 7309–7311, 7473 and 7474; and Exhibit P-142.
- 536 [P] Edelson testimony (June 16, 2005), p. 7306.
- 537 [IC] Callaghan testimony (November 8, 2004), pp. 4233–4234; Exhibit P-140, Tab 1; Exhibit C-72; and Exhibit C-30, Tab 345.
- 538 Exhibit P-140, Tab 10, pp. 2–3.
- 539 [P] Cabana testimony (June 29, 2005), p. 8019; Exhibit P-140, Tab 10, p. 4; Exhibit C-30, Tabs 350 and 504; and Exhibit P-83, Tab 1, p. 230.
- 540 [P] Cabana testimony (June 29, 2005), p. 8020.
- 541 *Ibid.*, pp. 8019–8027.
- 542 [IC] Proulx testimony [ET] (December 9, 2004), pp. 7892–7902.
- 543 [IC] Loepky testimony (April 19, 2005), pp. 15007–15009.
- 544 [P] Cabana testimony (June 29, 2005), pp. 8019–8027.
- 545 [IC] Cabana testimony (November 1, 2004), pp. 3273–3275.
- 546 [P] Cabana testimony (June 29, 2005), pp. 8019–8027.
- 547 [IC] Proulx testimony [ET] (December 9, 2004), pp. 7884–7886 and 7892–7896.
- 548 Exhibit P-83, Tab 1, p. 232; Exhibit P-140, Tab 10, pp. 5–6.
- 549 [IC] Couture testimony (December 7, 2004), pp. 7260–7264.
- 550 Exhibit C-30, Tabs 361 and 504; Exhibit P-84, pp. 65–66.
- 551 [IC] Pilgrim testimony (January 26, 2005), pp. 10523-10529 and [IC] (January 28, 2005), pp. 10699-10702 and 10759-10761.
- 552 [IC] Pilgrim testimony (January 28, 2005), pp. 10701–10702 and 10754–10758.
- 553 *Ibid.*, pp. 10751–10753.
- 554 Exhibit C-30, Tabs 370 and 504; Exhibit P-140, Tab 10, p. 7; Exhibit P-83, Tab 1, p. 233.

- 555 [IC] Cabana testimony (November 1, 2004), pp. 3296–3302.
- 556 [P] Cabana testimony (June 30, 2005), pp. 8170–8173.
- 557 *Ibid.*, pp. 8165–8169 and 8170–8173.
- 558 [IC] Cabana testimony (November 1, 2004), pp. 3296–3302.
- 559 [P] Cabana testimony (June 30, 2005), p. 8169.
- 560 [IC] Pilgrim testimony (January 26, 2005), pp. 10525–10529.
- 561 [IC] Proulx testimony [ET] (December 9, 2004), pp. 7892–7902.
- 562 [P] Edelson testimony (June 16, 2005), pp. 7340–7341; Exhibit P-150.
- 563 [P] Edelson testimony (June 16, 2005), pp. 7327–7331, 7476 and 7482.
- 564 [P] Pardy testimony (May 25, 2005), pp. 3541–3543.
- 565 [P] Cabana testimony (June 29, 2005), pp. 8028 and 8050–8054; [P] Edelson testimony (June 16, 2005), pp. 7341–7354, 7484–7485 and 7508–7509; Exhibit P-142; Exhibit P-140, Tabs 2 and 7.
- 566 [P] Edelson testimony (June 16, 2005), pp. 7352–7354, 7535–7536 and 7468–7471.
- 567 Exhibit C-206; Tab 248; Exhibit C-30; Tab 404; Exhibit C-28, Tab 2, pp. 2–3; [IC] Pilgrim testimony (January 28, 2005), pp. 10758–10759.
- 568 [IC] Livermore testimony (March 7, 2005), pp. 12317–12319, [IC] (March 9, 2005), p. 12528 and [P] (May 17, 2005), pp. 2515–2516.
- 569 [IC] Livermore testimony (March 7, 2005), pp. 12317–12319 and [P] (May 17, 2005), pp. 2515–2516.
- 570 [P] Livermore testimony (May 18, 2005), pp. 2728–2731.
- 571 [P] Edelson testimony (June 16, 2005), pp. 7529–7532.
- 572 Exhibit C-140.
- 573 [IC] Proulx testimony [ET] (December 13, 2004), pp. 7908–7915.
- 574 [IC] Reynolds testimony (February 1, 2005), pp. 11005–11006.
- 575 [IC] Coons testimony (December 8, 2004), pp. 7496–7498; Exhibit C-138.
- 576 [IC] Livermore testimony (March 9, 2005), p. 12582.
- 577 [P] Graham testimony (May 30, 2005), pp. 4103–4106; see also Exhibit P-117, Tab 7.
- 578 Exhibit P-117, Tab 7.
- 579 [P] Graham testimony (May 30, 2005), pp. 4107–4108.
- 580 *Ibid.*, p. 4109.
- 581 *Ibid.*, pp. 4144–4146; Exhibit C-206, Tab 199.
- 582 [P] Graham testimony (May 30, 2005), pp. 4146–4147; Exhibit C-206, Tab 213. See Chapter II, Section 5.4 for a description of NSEERS.
- 583 Exhibit C-206, Tab 213.
- 584 [IC] Wright testimony (March 24, 2005), pp. 13004–13005; Exhibit C-206, Tab 213.
- 585 [P] Graham testimony (May 30, 2005), pp. 4147–4149.
- 586 [IC] Wright testimony (March 24, 2005), pp. 13007–13008.
- 587 Exhibit C-206, Tab 213.
- 588 [IC] Wright testimony (March 24, 2005), pp. 13081–13082 and 13101; Exhibit C-220, Tab 1, pp. 11–12; Exhibit C-206, Tab 650.
- 589 [IC] Wright testimony (March 24, 2005), pp. 13009–13010; [IC] Graham testimony (August 3, 2005), pp. 16710–16713; [P] Fry testimony (June 13, 2005), p. 6599; Exhibit C-206, Tab 213.
- 590 [IC] Wright testimony (March 24, 2005), pp. 13007 and 13079–13080; [P] Graham testimony (May 30, 2005), pp. 4108–4109, 4148–4149, 4297 and 4311, [IC] (August 3, 2005), pp. 16713–16714.
- 591 [IC] Wright testimony (March 24, 2005), p. 13007; [IC] Graham testimony (August 3, 2005), pp. 16713–16714.
- 592 [P] Graham testimony (May 30, 2005), pp. 4148–4152.

- 593 Ibid., p. 4266.
- 594 Ibid., pp. 4152–4153.
- 595 [P] Graham testimony (May 30, 2005), pp. 4109–4110.
- 596 [P] Loepky testimony (July 28, 2005), p. 8788.
- 597 [P] Loepky testimony (July 27, 2005), pp. 8530–8531.
- 598 [IC] Loepky testimony (April 19, 2005), pp. 15010–15011 and [P] (July 27, 2005), pp. 8524–8525; Exhibit C-259, pp. 24–25.
- 599 [P] Killam testimony (August 2, 2005), pp. 9301–9303 and 9273; Exhibit P-204.
- 600 [IC] Pilgrim testimony (January 28, 2005), pp. 10569–10577; Exhibit C-001, Tab 119.
- 601 Exhibit C-206, Tab 209.
- 602 [IC] Solomon testimony (April 4, 2005), pp. 14030–14031; Exhibit C-206, Tabs 217 and 241.
- 603 [P] Graham testimony (May 30, 2005), pp. 4154–4157; Exhibit C-206, Tab 241.
- 604 [P] Easter testimony (June 3, 2005), pp. 5153–5163.
- 605 Exhibit C-206, Tabs 220 and 221.
- 606 [P] Dickenson testimony (August 29, 2005), pp. 10922–10926.
- 607 [P] Loepky testimony (July 27, 2005), pp. 8532–8535.
- 608 [IC] Callaghan testimony (November 8, 2004), pp. 4245–4248; [IC] Loepky testimony (April 19, 2005), pp. 15011–15013; Exhibit C-30, Tab 372; Exhibit C-259, p. 25.
- 609 Exhibit C-30, Tab 383.
- 610 [IC] Wright testimony (March 24, 2005), pp. 13011–13012; [P] Livermore testimony (May 17, 2005), p. 2506; Exhibit C-206, Tab 218. Mr. Wright did not recall the exact dates of his trip to Prague, but he arrived in Prague in advance of Minister Graham, to participate in some of the preparatory meetings for the Summit.
- 611 [IC] Livermore testimony (March 7, 2005), p. 12305 and [IC] (March 9, 2005), pp. 12547–12548.
- 612 [IC] Wright testimony (March 24, 2005), pp. 13011–13012; [IC] Livermore testimony (March 7, 2005), p. 12284; Exhibit C-206, Tab 218.
- 613 [IC] Livermore testimony (March 7, 2005), pp. 12300–12301 and [P] (May 17, 2005), pp. 2509–2510; Exhibit C-206, Tab 219.
- 614 [IC] Wright testimony (March 24, 2005), pp. 13018–13022.
- 615 Exhibit C-206, Tab 223.
- 616 Ibid.
- 617 [P] Livermore testimony (May 17, 2005), pp. 2508–2509, [IC] (March 7, 2005), pp. 12308–12309 and [IC] (March 9, 2005), pp. 12523–12524.
- 618 [P] Graham testimony (May 30, 2005), pp. 4165–4167 and 4108, [IC] (August 3, 2005), pp. 16724–16725; [IC] Wright testimony (March 24, 2005), pp. 13079–13080.
- 619 [P] Graham testimony (May 30, 2005), pp. 4149–4150 and 4167, and [IC] (August 3, 2005), pp. 16724–16725 and 16759.
- 620 Exhibit C-206, Tabs 212 and 241; [P] Graham testimony (May 30, 2005), pp. 4157–4159.
- 621 [P] Graham testimony (May 30, 2005), pp. 4159–4161.
- 622 Ibid., pp. 4161–4162. Minister Graham’s awareness of the CSIS trip to Syria is discussed below in Section 4.
- 623 [IC] Graham testimony (August 3, 2005), pp. 16714–16723; Exhibit C-206, Tab 218.
- 624 [IC] Wright testimony (March 24, 2005), p. 13013 and [IC] (March 29, 2005), p. 13268.
- 625 [IC] Livermore testimony (March 9, 2005), pp. 12563–12566 and [P] (May 18, 2005), p. 2761.
- 626 [IC] Livermore testimony (March 7, 2005), pp. 12284–12288; Exhibit C-206, Tab 218.
- 627 [P] Fry testimony (June 13, 2005), pp. 6428–6429.
- 628 Ibid., pp. 6657–6662.
- 629 [IC] Pillarella testimony (March 30, 2005), p. 13496.

- 630 [P] Pillarella testimony (June 14, 2005), pp. 6903–6904; Exhibit C-206, Tab 250.
 631 Exhibit C-206, Tab 253.
 632 [IC] Gould testimony (March 21, 2005), pp. 12685–12687; Exhibit C-215, p. 5.
 633 Exhibit C-206, Tab 252.
 634 [IC] Heatherington testimony (April 27, 2005), pp. 16416–16418.
 635 Ibid., pp. 16334–16337.
 636 [IC] Heatherington testimony (April 21, 2005), pp. 15539–15540; Exhibit C-206, Tab 260.
 637 [IC] Pillarella testimony (March 30, 2005), p. 13580; Exhibit C-206, Tab 260.
 638 [P] Pillarella testimony (June 14, 2005), pp. 6907–6909; Exhibit C-206, Tab 260.
 639 Exhibit C-206, Tab 261.
 640 The meeting between Minister Graham and Ambassador Arnous is discussed below in Section
 5.4.
 641 Exhibit C-206, Tab 262.
 642 [IC] Testimony (September 14, 2004), pp. 352–355 and [IC] (September 16, 2004), pp. 880–884;
 Exhibit C-1, Tab 57.
 643 Exhibit C-30, Tab 355 and [IC] Callaghan testimony (November 8, 2004), pp. 4234–4237.
 644 [IC] Cabana testimony (November 1, 2004), pp. 3275–3278.
 645 Exhibit C-30, Tab 355 and [IC] Callaghan testimony (November 8, 2004), pp. 4234–4237.
 646 [IC] Callaghan testimony (November 8, 2004), pp. 4234–4237.
 647 [IC] Cabana testimony (November 1, 2004), pp. 3275–3278.
 648 Ibid.
 649 [IC] Pillarella testimony (March 30, 2005), pp. 13536–13544.
 650 [IC] Cabana testimony (November 1, 2004), pp. 3288–3290.
 651 [IC] Pardy testimony (August 4, 2005), pp. 16865–16867. Mr. Pardy was overseas at this time.
 He was not made aware of the CSIS trip before it happened and only learned about it when
 the CSIS delegation debriefed DFAIT about it on November 28.
 652 [P] Dickenson testimony (August 29, 2005), pp. 10927–10931. Mr. Dickenson explained that
 “there is almost an allergic reaction to providing the political level with operational informa-
 tion. It is inappropriate.” Mr. Dickenson had no recollection of having seen the *bout de pa-
 pier* and PCO was not involved in assessing the reliability of the contents of this document
 because they do not work at that operational level.
 653 [P] Cabana testimony (June 29, 2005), pp. 8030–8035.
 654 [P] Cabana testimony (June 30, 2005), pp. 8108–8112.
 655 [IC] Cabana testimony (November 1, 2004), pp. 3288–3290.
 656 Ibid. and [IC] (November 4, 2005), pp. 18258–18259.
 657 [IC] Testimony (September 14, 2004), pp. 399–403.
 658 Ibid.
 659 Ibid.
 660 Ibid.
 661 Ibid. and [IC] Testimony (September 20, 2004), pp. 1284–1288. The CSIS representative did
 not know how it would “taint” the investigation but thought that RCMP officials were hoping
 at some point to interview Mr. Arar themselves.
 662 [IC] Testimony (September 14, 2004), pp. 399–403.
 663 [IC] Testimony (September 20, 2004), pp. 1284–1288.
 664 [IC] Heatherington testimony (April 27, 2005), pp. 16396–16403. It was Mr. Heatherington’s
 understanding that “we are going to pick up the RCMP interviews at a later stage.”
 665 [IC] Solomon testimony (April 4, 2005), pp. 14006–14009.
 666 Exhibit C-206, Tab 201.
 667 [IC] Solomon testimony (April 4, 2005), pp. 14023–14025.
 668 Exhibit C-206, Tab 226. This draft memorandum was never finalized.
 669 [IC] Solomon testimony (April 4, 2005), pp. 14039–14044.

- 670 Exhibit C-206, Tab 226. Ambassador Pillarella testified that he never went back to the Syrians to say that Mr. Arar's statement did not prove anything, because even though "it doesn't prove anything for us [that] does not mean that it doesn't prove anything for them." [P] Pillarella testimony (June 14, 2005), pp. 6862-6865.
- 671 [IC] Solomon testimony (April 4, 2005), pp. 14039-14044.
- 672 Exhibit C-212. Exhibit C-206, Tab 257 contained the unsigned final version, whereas Exhibit C-212 was the final signed version with the transmittal copy attached.
- 673 Exhibit C-212.
- 674 [IC] Solomon testimony (April 4, 2005), pp. 14023-14025 and 14144-14148. Mr. Solomon acknowledged that by the time of the December 16 memorandum CSIS had conveyed to him its opinion that Mr. Arar was not tortured. And there was also a great deal more context to report to the Minister at that time.
- 675 [IC] Livermore testimony (March 7, 2005), pp. 12274-12276.
- 676 Ibid.
- 677 Ibid.
- 678 Ibid., pp. 12274-12280.
- 679 [IC] Heatherington testimony (April 21, 2005), pp. 15491-15500. Mr. Heatherington noted that he did not know if Mr. Solomon used only Syrian information or whether he also drew on the CSIS trip report when he drafted this memorandum. He thought it possibly drew on different documents, including what came from the Syrians.
- 680 [IC] Heatherington testimony (April 21, 2005), pp. 15491-15522. The trip report can be found at Exhibit C-206, Tab 255.
- 681 [IC] Livermore testimony (March 7, 2005), pp. 12274-12280.
- 682 [IC] Hooper testimony (September 22, 2004), pp. 1516-1571.
- 683 [P] Flewelling testimony (August 23, 2005), pp. 9898-9901. Corporal Flewelling testified that the reliability assessment could have been done by the RCMP CID or an individual in Project A-O Canada familiar with the file.
- 684 Exhibit C-1, Tab 93.
- 685 Ibid. CSIS noted that DFAIT advised that a briefing note on this issue was being prepared for the Minister.
- 686 Ibid.; [IC] Testimony (September 20, 2004), pp. 1284-1287.
- 687 Ibid.; *ibid.*
- 688 Exhibit C-1, Tab 93; [IC] Testimony (September 14, 2004), pp. 404-405.
- 689 Ibid.; [IC] Testimony (September 20, 2004), pp. 1293-1294.
- 690 Exhibit C-206, Tab 218; [IC] Livermore testimony (March 7, 2005), pp. 12282-12288. Mr. Solomon was aware that there was some debate about the timeliness of CSIS' trip, but he could not recall the substance of the debate and noted that there was an issue with the sequencing of a phone call with the Syrian Foreign Minister. [IC] Solomon testimony (April 4, 2005), pp. 14030-14034.
- 691 [IC] Livermore testimony (March 7, 2005), pp. 12282-12288.
- 692 Ibid.
- 693 Ibid. Mr. Livermore testified at a later date that at this time DFAIT was not concerned about sending mixed messages to the Syrians and was more worried about mixed messages to the Canadian public. [IC] Livermore testimony (March 9, 2005), pp. 12574-12577. However, Mr. Wright testified that DFAIT was concerned that, given the public attention to the Arar case, there was an opportunity here for mixed signals to the Syrians. [IC] Wright testimony (March 24, 2005), pp. 13010-13014.
- 694 Exhibit C-215; [P] Hooper testimony (August 25, 2005), pp. 10621-10626.
- 695 Exhibits C-215 and C-215A; [IC] Gould testimony (March 21, 2005), pp. 12677-12685.

- 696 Ibid.; *ibid.* Mr. Hooper testified that these are things he would have said, but he did not know whether they were said in the context of the conference call (which he did not participate in) or whether they were said by others attributing them to him. [P] Hooper testimony (August 25, 2005), pp. 10621–10626.
- 697 Exhibit C-206, Tab 208. Mr. Heatherington recalled that it might have been Mr. Livermore who spoke with CSIS, requesting that the trip be delayed. [IC] Heatherington testimony (April 21, 2005), pp. 15522–15525.
- 698 Exhibit C-206, Tab 208.
- 699 [IC] Livermore testimony (March 7, 2005), pp. 12282–12288.
- 700 *Ibid.*
- 701 [IC] Livermore testimony (March 9, 2005), p. 12577.
- 702 See Section 3.8.4 above. Minister Graham's understanding of the CSIS trip was that it was about a general sharing of information and that the Arar case was a collateral matter and not the purpose of the trip. [IC] Graham testimony (August 3, 2005), pp. 16725–16727.
- 703 Exhibit C-206, Tabs 238 and 243.
- 704 [P] Fry testimony (June 13, 2005), pp. 6429–6438 and 6618. Mr. Fry explained that some staff in the Minister's office might have learned about the trip before the Christmas break, but the first time their office was made aware was when Mr. Pardy advised Mr. Fry in early January 2003.
- 705 [P] Fry testimony (June 13, 2005), p. 6430.
- 706 *Ibid.*, pp. 6429–7439.
- 707 *Ibid.*, p. 6438.
- 708 *Ibid.*, pp. 6618–6620 and 6437–6438.
- 709 [P] Easter testimony (June 3, 2005), pp. 5156–5158.
- 710 [IC] Easter testimony (August 11, 2005), pp. 17738–17741.
- 711 [P] Hooper testimony (August 25, 2005), pp. 10621–10625.
- 712 [P] Dickenson testimony (August 29, 2005), pp. 10931–10935.
- 713 *Ibid.*, p. 10935.
- 714 *Ibid.*, p. 10936.
- 715 *Ibid.*, p. 10937.
- 716 *Ibid.*, p. 10938.
- 717 [IC] Pardy testimony (August 4, 2005), p. 16867; Exhibit C-206, Tab 242.
- 718 [P] Pastyr-Lupul testimony (July 29, 2005), p. 9021.
- 719 Exhibit C-206, Tab 218.
- 720 *Ibid.*, Tab 223.
- 721 *Ibid.*
- 722 *Ibid.*; [IC] Livermore testimony (March 7, 2005), pp. 12304–12307.
- 723 *Ibid.*
- 724 Exhibit C-206, Tab 216.
- 725 *Ibid.*; [IC] Livermore testimony (March 7, 2005), pp. 12289–12291 and 12295–12298.
- 726 *Ibid.*; *ibid.*, pp. 12288–12291 and 12295–12298.
- 727 [P] Martel testimony [ET] (August 30, 2005), p. 11080.
- 728 [IC] Testimony (September 21, 2004), pp. 1360–1361.
- 729 *Ibid.*; [IC] Pillarella testimony (March 30, 2005), p. 13561 and [P] (June 14, 2005), pp. 6883–6889; Exhibit C-206, Tab 227.
- 730 Exhibit C-1, Tab 110.
- 731 [P] Pillarella testimony (June 14, 2005), pp. 6875–6876; Exhibit C-206, Tab 227.
- 732 [IC] Testimony (August 5, 2005), pp. 17081–17085; Exhibit C-1, Tabs 307 and 441.
- 733 *Ibid.*, p. 17086.

- 734 Ibid., pp. 17086–17092; [IC] (September 29, 2004), pp. 2231–2232, 1975–1977 and 1982.
- 735 [P] Hooper testimony (August 25, 2005), p. 10825.
- 736 Ibid., pp. 10816–10817.
- 737 [IC] Testimony (September 20, 2004), p. 1253 and [IC] (August 5, 2005), pp. 17086–17087.
- 738 [IC] Ibid., pp. 2141–2145; Exhibit C–1, Tab 224.
- 739 [IC] Ibid., p. 1975; [IC] Livermore testimony (March 7, 2005), p. 12270; [P] Hooper testimony (August 25, 2005), p. 10655; [P] Cabana testimony (June 29, 2005), p. 8049; [IC] Hooper testimony (September 23, 2004), p. 1919
- 740 [P] Hooper testimony (August 25, 2005), pp. 10828–10829.
- 741 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9219–9220 and 9225–9227.
- 742 [IC] Testimony (September 29, 2004), pp. 2276–2278
- 743 [IC] Testimony (August 5, 2005), p. 17098.
- 744 Ibid., pp. 17100 and 17102.
- 745 Exhibit C-206, Tab 227.
- 746 Ibid.
- 747 [P] Pillarella testimony (June 15, 2005), p. 7137, [P] (June 14, 2005), pp. 6883–6885 and 6927–6930 and [IC] (March 30, 2005), pp. 13561–13563.
- 748 [IC] Testimony (August 5, 2005), pp. 17159–17161 and 17080–17081; Exhibit C-206, Tab 227.
- 749 [IC] Solomon testimony (April 4, 2005), pp. 14044–14047; Exhibit C-233, pp. 37–38; see Exhibit C-206, Tab 242.
- 750 [IC] Solomon testimony (April 4, 2005), p. 14048; Exhibit C-233, pp. 37–38.
- 751 [IC] Testimony (August 5, 2005), p. 17167.
- 752 [IC] Pardy testimony (August 4, 2005), p. 16867; Exhibit C-206, Tabs 242, 227 and 238. It appears that Mr. Hooper and another CSIS official may have also been present, along with an unidentified female representative from PCO.
- 753 Ibid.
- 754 Ibid., Tab 264.
- 755 [IC] Testimony (September 29, 2004), pp. 2087 and 2235–2236.
- 756 Exhibit C-206, Tabs 233 and 240.
- 757 [IC] Pardy testimony (August 4, 2005), pp. 16868–16871 and [P] (May 25, 2005), pp. 3676–3677. The history of the Muslim Brotherhood in Syria is long, complicated and bloody. According to Mr. Pardy, it originated in Egypt 75 to 80 years ago, and spread from there to other countries. He understood that a key event occurred in the late 1970s or early 1980s, when people assumed to be part of the Muslim Brotherhood attacked cadets attending a military college. The Syrian government came down hard in the aftermath, and in 1982, attacked the town of Hama, considered to be the heart of the Muslim Brotherhood. According to published reports, they killed somewhere between 5,000 and 40,000 people. This was seen as the date when the Muslim Brotherhood diminished as a serious threat to the stability of the Syrian government.
- It remains a capital offence in Syria to be a member of the Brotherhood. Mr. Pardy agreed that since Mr. Arar left Syria when he was 17 years old, and would have been 12 or 13 years old at the height of the campaign against the Muslim Brotherhood, linking Mr. Arar to this organization was highly suspect. [P] Pardy testimony (May 26, 2005), pp. 3916–3924.
- 758 [P] Pardy testimony (October 24, 2005), pp. 12167–12170.
- 759 Ibid., pp. 12174–12175.
- 760 [IC] Livermore testimony (March 7, 2005), pp. 12291–12295 and 12279–12280; [IC] Heatherington testimony (April 21, 2005), p. 15576; Exhibit C-206, Tab 247. Mr. Livermore thought that Mr. Arar was probably too young to have had much involvement with the Muslim Brotherhood, but believed that Mr. Arar's family had some associations with the organization.

- 761 [IC] Pillarella testimony (March 30, 2005), pp. 13565–13567 and [P] (June 14, 2005), p. 6954; Exhibit C-206, Tab 247.
- 762 Exhibit C-206, Tab 253. Mr. Martel recalled hearing that the Syrians had alleged that Mr. Arar was a member of the Muslim Brotherhood. However, he testified that he did not recall Colonel Saleh ever making this allegation to him directly; rather, he believed he may have learned of it through the Ambassador. [P] Martel testimony [ET] (August 31, 2005), pp. 11395–11399 and [IC] (April 25, 2005), pp. 15750–15753.
- 763 Exhibit C-206, Tab 264.
- 764 [IC] Pardy testimony (August 4, 2005), pp. 16867–16871.
- 765 [IC] Heatherington testimony (April 21, 2005), pp. 15509–15510.
- 766 [IC] Testimony (September 29, 2004), pp. 2061–2068.
- 767 [IC] Coghlin testimony (September 16, 2004), pp. 923–928; Exhibit C-1, Tab 384.
- 768 [IC] Testimony (August 5, 2005), p. 17168.
- 769 [P] Ofshe testimony (June 8, 2005), pp. 6024–6025.
- 770 [IC] Testimony (August 5, 2005), pp. 17169–17170; [IC] Hooper testimony (September 13, 2004), pp. 55–56; [IC] Flewelling testimony (January 20, 2005), pp. 9581–9582; [IC] Cabana testimony (November 1, 2004), pp. 3346–3347; Exhibit C-1, Tab 122; Exhibit C-30, Tabs 397, 399 and 410.
- 771 [IC] Testimony (August 5, 2005), pp. 17173–17176.
- 772 [P] Cabana testimony (June 29, 2005), pp. 8050–8053.
- 773 [P] Edelson testimony (June 16, 2005), pp. 7341 and 7344–7345.
- 774 [P] Lockyer testimony (June 17, 2005), pp. 7671–7673.
- 775 [IC] Testimony (September 16, 2004), pp. 814–819; Exhibit C-206, Tab 255.
- 776 [IC] Testimony (August 5, 2005), pp. 17170–17171.
- 777 Exhibit C-212.
- 778 Ibid.
- 779 Ibid.
- 780 Ibid.
- 781 Exhibit C-206, Tab 261.
- 782 Ibid. The difficulties listed included scheduling issues and the need for more information about Syrian concerns, something Ambassador Pillarella was attempting to obtain from General Khalil, who was ill at the time.
- 783 Ibid.
- 784 Ibid.
- 785 [IC] Pardy testimony (August 4, 2005), pp. 16881–16884.
- 786 [IC] Heatherington testimony (April 21, 2005), pp. 15547–15554. Mr. Heatherington testified that he did not believe this was the issue and saw no change in approach from calling the Syrian Foreign Minister to calling in the Syrian Ambassador instead. Rather, the problem was one of scheduling.
- 787 [IC] Wright testimony (March 24, 2005), pp. 13037–13038.
- 788 [IC] Graham testimony (August 3, 2005), pp. 16725–16728.
- 789 Exhibit C-28, Tab 4.
- 790 Mr. Martel and Ms. Pasty-Lupul were not aware that only days before, CSIS visited the Syrian Military Intelligence. [P] Martel testimony [ET] (August 30, 2005), pp. 11080–11081; [P] Pasty-Lupul testimony (July 29, 2005), pp. 9020–9021.
- 791 Exhibit C-206, Tab 228.
- 792 [P] Pardy testimony (May 25, 2005), pp. 3583–3587.
- 793 [P] Pillarella testimony (June 14, 2005), pp. 6894–6896.

- 794 Exhibit C-206, Tab 229; [IC] Martel testimony (April 25, 2005), pp. 15740–15742; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9020–9021.
- 795 Exhibit C-206, Tab 229; [IC] Martel testimony (April 25, 2005), pp. 15740–15742; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9020–9022. Mr. Martel said there was no indication that medicine would have been difficult to take, given the conditions Mr. Arar was living under. He also understood that Mr. Arar was getting all the medicine he wanted — it was just a question of preference for Canadian brands. In the end, Mr. Martel was not able to find the Tylenol Mr. Arar wanted, but Mr. Arar said in subsequent visits that it was not important, as all his needs were taken care of. [IC] Martel testimony (April 26, 2005), pp. 16133–16134.
- 796 Exhibit C-206, Tab 229; [IC] Martel testimony (April 25, 2005), pp. 15740–15742.
- 797 Ibid.; *ibid.*, pp. 15740–15744.
- 798 [P] Martel testimony [ET] (August 30, 2005), pp. 11085–11087; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9020–9024; [P] Pardy testimony (May 25, 2005), pp. 3583–3586; [P] Pardy testimony (May 26, 2005), pp. 3861–3864. At no time, to Mr. Martel's best recollection, did he and Ambassador Pillarella discuss the possibility that Mr. Arar had been tortured or mistreated during the initial days of his detention. [P] Martel testimony [ET] (August 30, 2005), pp. 11089–11090.
- 799 [P] Martel testimony [ET] (August 30, 2005), pp. 11085–11087.
- 800 [P] Pardy testimony (May 26, 2005), pp. 3887–3890.
- 801 Exhibit C-206, Tab 245; [IC] Martel testimony (April 25, 2005), pp. 15745–15746.
- 802 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9024–9026.
- 803 Ibid., pp. 9026–9027.
- 804 [P] Pillarella testimony (June 14, 2005), pp. 6901–6904; [P] Pardy testimony (May 25, 2005), pp. 3587–3590.
- 805 [IC] Martel testimony (April 25, 2005), pp. 15746–15747; Exhibit C-206, Tab 246.
- 806 [IC] Martel testimony (April 25, 2005), pp. 15747–15748.
- 807 This was a reference to a disparaging comment about President George W. Bush made by Françoise Ducros, the Prime Minister's press secretary.
- 808 Exhibit C-206, Tab 248.
- 809 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9028–9029.
- 810 [P] Martel testimony [ET] (August 30, 2005), pp. 11092–11094 and 11115–11118.
- 811 Exhibit C-206, Tab 253.
- 812 [P] Pillarella testimony (June 15, 2005), p. 7176.
- 813 [IC] Pillarella testimony (March 30, 2005), pp. 13571–13573; Exhibit C-206, Tab 253.
- 814 [P] Pillarella testimony (June 14, 2005), pp. 6909–6910.
- 815 Ibid., pp. 6910–6915.
- 816 [P] Pardy testimony (May 26, 2005), pp. 3830–3831.
- 817 [P] Graham testimony (May 30, 2005), pp. 4220–4221.
- 818 Exhibit C-206, Tab 254.
- 819 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9029–9034.
- 820 [P] Pardy testimony (May 25, 2005), pp. 3603–3606.
- 821 [IC] Martel testimony (April 25, 2005), pp. 15763–15765; Exhibit C-206, Tab 276.
- 822 [IC] Martel testimony (April 26, 2005), pp. 16104–16108; Exhibit C-206, Tab 276.
- 823 [IC] Martel testimony (April 25, 2005), pp. 15765–15766; Exhibit C-206, Tab 276.
- 824 [IC] Martel testimony (April 25, 2005), pp. 15775–15776. Dr. Mazigh had been asked about Mr. Arar's laptop prior to the visit. [IC] Martel testimony (April 26, 2005), pp. 16134–16135.
- 825 Exhibit C-206, Tab 276.
- 826 [IC] Martel testimony (April 25, 2005), pp. 15772–15773; Exhibit C-206, Tab 276.
- 827 [P] Martel testimony [ET] (August 30, 2005), pp. 11098–11100.

- 828 [P] Pardy testimony (May 26, 2005), pp. 3893–3895.
- 829 [P] Martel testimony [ET] (August 30, 2005), pp. 11099–11101; Exhibit C-206, Tab 276.
- 830 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9029-9034 and 9037–9039.
- 831 [IC] Martel testimony (April 25, 2005), pp. 15763–15769; Exhibit C-206, Tab 276.
- 832 [P] Martel testimony [ET] (August 30, 2005), pp. 11101–11104.
- 833 Exhibit C-206, Tab 276.
- 834 [IC] Martel testimony (April 25, 2005), p. 15775.
- 835 Exhibit C-206, Tab 290.
- 836 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9046–9048.
- 837 [IC] Pillarella testimony (March 30, 2005), pp. 13586–13594; Exhibit C-206, Tab 281.
- 838 [P] Pillarella testimony (June 14, 2005), pp. 6916–6917.
- 839 [IC] Pillarella testimony (March 30, 2005), pp. 13595–13598.
- 840 Exhibit C-206, Tab 313.
- 841 [IC] Martel testimony (April 26, 2005), pp. 16129–16130.
- 842 Exhibit C-206, Tab 313.
- 843 Ibid.
- 844 [IC] Martel testimony (April 25, 2005), pp. 15804–15805.
- 845 [P] Pardy testimony (May 25, 2005), p. 3629.
- 846 Exhibit C-206, Tab 313.
- 847 Ibid.
- 848 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9010–9013. Contact between Minister Graham's office and the Arar family is discussed below.
- 849 As discussed, some of these personal letters were circulated more widely than the Consular Affairs, albeit still within DFAIT.
- 850 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9017–9019.
- 851 Exhibit C-206, Tab 294.
- 852 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9024 and 9026–9027.
- 853 Ibid., pp. 9039–9044.
- 854 Ibid., pp. 9052-9053; Exhibit C-206, Tab 30.
- 855 Exhibit C-206, Tab 290.
- 856 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9062–9065.
- 857 [P] Pardy testimony (May 25, 2005), pp. 3651–3653; Exhibit C-206, Tab 331. Dr. Mazigh's worries about this scaling-down in the Middle East led to several requests from Dr. Mazigh to meet in person with Minister Graham.
- 858 Exhibit C-206, Tab 322.
- 859 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9062–9065.
- 860 Exhibit C-206, Tab 220; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9017–9019.
- 861 [P] Pardy testimony (May 25, 2005), pp. 3594–3595.
- 862 Ibid., p. 3617. One example of the ongoing public campaign was the vigil held for Mr. Arar on December 16, 2002, attended by his wife, children, several supporters and members of Parliament. The event attracted media attention. Exhibit C-206, Tab 261.
- 863 [P] Fry testimony (June 13, 2005), p. 6421.
- 864 Ibid., p. 6615.
- 865 Ibid., pp. 6451-6453.
- 866 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9048–9049.
- 867 [P] Fry testimony (June 13, 2005), pp. 6440–6444.
- 868 Exhibit C-206, Tab 262.
- 869 Ibid.
- 870 Ibid.

- 871 [IC] Pardy testimony (August 4, 2005), pp. 16889–16890.
- 872 [P] Fry testimony (June 13, 2005), pp. 6447–6451.
- 873 Exhibit C-206, Tab 288; [P] Graham testimony (May 30, 2005), pp. 4182–4185.
- 874 Exhibit C-206, Tab 293.
- 875 [P] Graham testimony (May 30, 2005), pp. 4189–4192.
- 876 Exhibit C-206, Tab 293.
- 877 [P] Graham testimony (May 30, 2005), pp. 4192–4194.
- 878 Exhibit C-206, Tab 285.
- 879 Ibid.
- 880 Ibid.
- 881 [IC] Pillarella testimony (March 30, 2005), pp. 13558–13561. However, Ambassador Pillarella also testified that he was given the same message by General Khalil before the January 15 meeting, but could not recall how long before. [P] Pillarella testimony (June 14, 2005), pp. 6925–6933.
- 882 [IC] Pillarella testimony (March 30, 2005), pp. 13558–13561. Mr. Pardy also testified that they had received “this information from the Syrians on three occasions,” from the Deputy Foreign Minister, General Khalil and Ambassador Arnous, and that “it was a consistent message, but it was spread over 6–8 weeks.” [P] Pardy testimony (June 2, 2005), pp. 4964–4968.
- 883 [IC] Pillarella testimony (March 31, 2005), pp. 13626–13633.
- 884 [P] Pillarella testimony (June 14, 2005), pp. 6925–6833.
- 885 [IC] Pillarella testimony (March 30, 2005), pp. 13558–13561 and [IC] (March 31, 2005), pp. 13626–13633.
- 886 [IC] Martel testimony (April 25, 2005), pp. 15776–15783. Mr. Martel testified that this was the only time a Syrian official had made a comment like this in his presence. [P] Martel testimony [ET] (August 30, 2005), pp. 11104–11109.
- 887 [IC] Pillarella testimony (March 30, 2005), p. 13559. Mr. Pardy testified that “from the very first message we sent the embassy, that message was that we wanted Mr. Arar back,” and there was not one message that “would indicate any hesitation on that issue.” [P] Pardy testimony (June 2, 2005), p. 4966.
- 888 [IC] Pillarella testimony (March 31, 2005), pp. 13630–13631.
- 889 Ibid., p. 13632 and [P] (June 15, 2005), p. 7195.
- 890 [IC] Heatherington testimony (April 21, 2005), pp. 15554–15559.
- 891 [P] Hooper testimony (August 25, 2005), pp. 10636–10646.
- 892 [IC] Testimony (August 5, 2005), pp. 17102–17110.
- 893 [IC] Testimony (September 29, 2004), p. 2084.
- 894 [IC] Testimony (August 5, 2005), pp. 17092–17098. One of the other delegates also testified that he would never have said that CSIS did not want Mr. Arar back in Canada. [IC] Testimony (September 21, 2004), pp. 1382–1383.
- 895 See Exhibit P-99, a memorandum documenting the MPs’ lunch with Ambassador Arnous, for this wording.
- 896 [IC] Testimony (August 5, 2005), pp. 17100–17102.
- 897 [P] Hooper testimony (August 25, 2005), pp. 10639–10646. Mr. Hooper explained that he “found this allegation quite surprising” because he had been involved in the initial tasking around the visit to Syria and there had been strict admonitions as to what they would and would not do while over there. This was not in accord with those instructions.
- 898 Ibid., pp. 10638–10640.
- 899 [IC] Livermore testimony (March 9, 2005), pp. 12403–12406.
- 900 Ibid., p. 12404.
- 901 Ibid.

- 902 Ibid., p. 12405.
- 903 [P] Fry testimony (June 13, 2005), pp. 6444–6449.
- 904 Exhibit C-206, Tab 293.
- 905 [IC] Wright testimony (March 24, 2005), pp. 13043–13048.
- 906 Exhibit C-206, Tab 293.
- 907 Ibid.
- 908 Ibid.
- 909 [P] Hooper testimony (August 25, 2005), pp. 10636–10646.
- 910 Ibid., p. 10642.
- 911 Ibid., pp. 10644–10645
- 912 Ibid., p. 10645
- 913 Ibid.
- 914 Ibid.
- 915 [IC] Testimony (August 5, 2005), p. 17105.
- 916 He reported to RCMP Headquarters through the International Operations Branch (IOB), which subsequently became known as the International Liaison Branch and was within the International Policing Operations Branch. His direct reporting relationship was to Superintendent Mike Saunders, Director of the IOB. [IC] Fiorido testimony (November 3, 2005), pp. 17947–17950.
- 917 His position was governed by the Memorandum of Understanding between the RCMP and DFAIT dated October 12, 1998. Exhibit P-12, Tab 50.
- 918 [IC] Fiorido testimony (November 3, 2005), pp. 17959–17961.
- 919 Ibid., pp. 17962–17963.
- 920 Ibid., p. 17955.
- 921 Exhibit C-356.
- 922 [IC] Fiorido testimony (November 3, 2005), pp. 17966–17967.
- 923 [IC] Cabana testimony (October 28, 2004), pp. 3088–3089.
- 924 [IC] Cabana testimony (November 1, 2004), p. 3245.
- 925 [IC] Gould testimony (March 21, 2005), p. 12630.
- 926 Exhibit C-215A; [IC] Gould testimony (March 21, 2005), pp. 12636–12638.
- 927 [IC] Cabana testimony (November 2, 2004), pp. 3755–3756.
- 928 [IC] Gould testimony (March 21, 2005), pp. 12638–12641.
- 929 Exhibit C-357; [IC] Fiorido testimony (November 3, 2005), pp. 17975–17976.
- 930 [IC] Flewelling testimony (January 20, 2005), pp. 9480–9482.
- 931 [IC] Corcoran testimony (November 15, 2004), pp. 4860–4861; Roy notes, p. 11. Chief Superintendent Couture, Inspector Cabana and Staff Sergeants Callaghan and Corcoran were present from Project A-O Canada, as were Ambassador Pillarella, Don Saunders, Scott Heatherington, James Gould and Jonathan Solomon from DFAIT. The RCMP LO to DFAIT, Inspector Richard Roy, was also present, and perhaps others. Callaghan notes, p. 279. A series of questions had been prepared for the Syrians to put to Mr. Almalki if Project A-O Canada officials were not permitted direct access.
- 932 Ibid.
- 933 [IC] Pillarella testimony (March 30, 2005), pp. 13416–13420 and [IC] (March 31, 2005), pp. 13768–13771.
- 934 Mr. Solomon's comment was not recorded in the contemporaneous notes of the Project A-O Canada officers present. It is mentioned in Staff Sergeant Callaghan's notes for November 23, 2003, more than a year later, after Mr. Arar's return to Canada and his press conference. In November 2003, Inspector Cabana had asked about any discussions Project A-O Canada may have had about sending questions for Mr. Arar to Syria. Staff Sergeant Callaghan could not re-

call any such discussions, but reminded Inspector Cabana of the September 10, 2002 meeting and the comment by Mr. Solomon.

- 935 [IC] Solomon testimony (April 4, 2005), pp. 13912–13916.
 936 Ibid., pp. 14078–14082.
 937 Ibid., pp. 13915–13916.
 938 [IC] Pillarella testimony (March 30, 2005), pp. 13413–13414 and 13427.
 939 [IC] Pillarella testimony (March 31, 2005), pp. 13749–13750.
 940 [IC] Roy testimony (December 6, 2004), pp. 6815–6822.
 941 [IC] Heatherington testimony (April 27, 2005), pp. 16164–16171.
 942 [IC] Cabana testimony (August 8, 2005), pp. 17291–17296.
 943 Exhibit C-30, Tab 290; [IC] Solomon testimony (April 4, 2005), pp. 13983–13991.
 944 Exhibit C-30, Tab 290.
 945 Ibid. Ambassador Pillarella testified that to his knowledge, he had never pointed out to the RCMP that the questioning might involve torture. [IC] Pillarella testimony (March 30, 2005), p. 13460.
 946 [IC] Solomon testimony (April 4, 2005), pp. 13987–13991. Mr. Livermore was not aware of the September 10 meeting and so could not confirm whether this referred to that meeting. He testified that it was information Mr. Solomon had brought to their attention based on his contacts interdepartmentally. [IC] Livermore testimony (March 7, 2005), pp. 12201–12204.
 947 [IC] Solomon testimony (April 4, 2005), pp. 14115–14117.
 948 Ibid.
 949 Ibid.
 950 [IC] Gould testimony (March 24, 2005), pp. 12951–12952.
 951 See Exhibit C-219, Tabs 2 and 3, for Corporal Flewelling’s acknowledgement of the fax to Staff Sergeant Fiorido.
 952 Exhibit C-219, Tab 1.
 953 [IC] Fiorido testimony (November 3, 2005), pp. 17981–17982. Inspector Cabana also proposed extending an invitation to the Syrians “to come to Canada and meet with our team to share information of common interest,” because the Syrian authorities had expressed an interest in the information the RCMP had concerning Mr. Almalki. Exhibit C-219, Tab 1; [IC] Cabana testimony (November 4, 2005), pp. 18251–18253. See Exhibit C-219, Tabs 3 and 4, for exchanges between Inspector Cabana and Corporal Flewelling on the issue of RCMP policy regarding invitations to foreign agencies for operational purposes.
 954 [IC] Fiorido testimony (November 3, 2005), pp. 17984–17985.
 955 [IC] Cabana testimony (November 1, 2004), pp. 3241–3245.
 956 Exhibit C-31, p. 287; [IC] Cabana testimony (November 1, 2004), pp. 3241–3245 and [IC] (November 4, 2005), pp. 18254–18255. Mr. Gould did not recall asking whether there were any messages the RCMP would like conveyed. [IC] Gould testimony (March 21, 2005), pp. 12666–12668.
 957 [IC] Gould testimony (March 21, 2005), pp. 12666–12670.
 958 [IC] Cabana testimony (November 4, 2005), pp. 18254–18255.
 959 Exhibit C-206, Tab 112.
 960 Ibid.
 961 [IC] Fiorido testimony (November 3, 2005), pp. 17995–17996.
 962 Exhibit C-359, Tab 1.
 963 [IC] Solomon testimony (April 4, 2005), pp. 13923–13927. Mr. Solomon did not have any notes on this meeting and could not recall who attended.
 964 Ibid.
 965 Ibid., pp. 14166–14167.

- 966 Exhibit C-233, p. 24; [IC] Solomon testimony (April 4, 2005), pp. 13923–13927. The draft letter was the one referred to in the October 30 memorandum. Exhibit C-206, Tab 159. Mr. Solomon testified that he did not know if the comments he had written down had come from what he had “picked up” himself or from discussions with colleagues in the Legal Affairs Bureau. *Ibid.*, pp. 13923–13927.
- 967 [IC] Solomon testimony (April 4, 2005), pp. 14163–14168.
- 968 Exhibit C-206, Tab 159.
- 969 [IC] Livermore testimony (March 7, 2005), p. 12222.
- 970 [IC] Cabana testimony (August 8, 2005), pp. 17287–17298.
- 971 [IC] Pillarella testimony (March 30, 2005), pp. 13519–13521.
- 972 [IC] Cabana testimony (November 4, 2005), pp. 18315–18317.
- 973 [IC] Solomon testimony (April 4, 2005), pp. 13931–13933 and 14118–14122.
- 974 [IC] Livermore testimony (March 7, 2005), pp. 12224–12225.
- 975 [IC] Livermore testimony (March 9, 2005), pp. 12521–12522.
- 976 [IC] Livermore testimony (March 7, 2005), pp. 12222–12225.
- 977 [IC] Heatherington (April 21, 2005), pp. 15472–15479. Mr. Heatherington explained that, all along, DFAIT ISI had tried to tell the RCMP their concerns with respect to Syria and expressed the view that it would be preferable for them to interview him. [IC] Heatherington testimony (April 27, 2005), pp. 16174–16177.
- 978 [IC] Heatherington (April 21, 2005), pp. 15472–15479.
- 979 *Ibid.*
- 980 [IC] Cabana testimony (November 4, 2005), pp. 18255–18257.
- 981 [IC] Cabana testimony (August 8, 2005), pp. 17357–17360.
- 982 Exhibit C-98, Tab 2, pp. 11–12; [IC] Fiorido testimony (November 3, 2005), pp. 17996–18002.
- 983 [IC] Fiorido testimony (November 3, 2005), pp. 18002–18003. Staff Sergeant Fiorido testified that the strategy of submitting questions had been initiated by Project A-O Canada and he had merely reported to them that the first option of interviewing Mr. Almalki was not going to work. *Ibid.*, pp. 18080–18081.
- 984 *Ibid.*, p. 18003.
- 985 *Ibid.*, p. 18008.
- 986 [IC] Cabana testimony (November 4, 2005), pp. 18265–18275. Inspector Cabana did not know if the comment “DFAIT was aware” was the result of a conversation he or Staff Sergeant Fiorido had had with DFAIT. Staff Sergeant Fiorido testified that he never had any dealings with DFAIT Headquarters and had dealt only with Ambassador Pillarella.
- 987 Exhibit C-359, Tab 3; [IC] Fiorido testimony (November 3, 2005), pp. 18010–18011.
- 988 [IC] Fiorido testimony (November 3, 2005), pp. 18083–18085. Corporal Flewelling stated that anything going to the LOs from Project A-O Canada should have gone through him. [IC] Flewelling testimony (January 21, 2005), pp. 9611–9612. He confirmed that CID had been copied on this, but could not recall if he had sent any communication to the LO advising him to hold off until CID decided what to do. Corporal Flewelling testified that he had had discussions with Project A-O Canada later regarding matters of that type coming through CID, but could not recall whether he had discussed the issue of content. [IC] Flewelling testimony (January 21, 2005), pp. 9611–9612.
- 989 Exhibit C-219, Tab 7. The copy of this document that Staff Sergeant Fiorido received on December 24 (Exhibit C-359, Tab 3) did not contain Superintendent Pilgrim’s signature, but did contain Chief Superintendent Couture’s. Superintendent Pilgrim was examined on the January 7 version of this document (Exhibit C-30, Tab 418, which is the same as Exhibit C-219, Tab 8), which did not contain his signature. He was not shown the December 20 version (Exhibit C-219, Tab 7) with his signature because it was filed after his testimony. With

- reference to the January 7 version, he explained that his preference was that CID be the funnel for information like this to ensure a central coordinating role; however, he did “relax to some degree where the divisions were permitted to deal directly with the LO with notification and also simultaneously going through CID.” Superintendent Pilgrim confirmed that CID had been kept in the loop here by being faxed a copy of the questions sent directly to the LO. He indicated that if CID had had a concern, they would have acted on it and communicated with both the investigators and the LO. [IC] Pilgrim testimony (January 28, 2005), pp. 10703–10706 and 10786–10790.
- 990 [IC] Cabana testimony (August 8, 2005), pp. 17357–17360.
- 991 [IC] Proulx testimony (December 14, 2004), pp. 8333–8337.
- 992 Exhibit C-359, Tab 4; [IC] Fiorido testimony (November 3, 2005), pp. 18008–18009. An information copy of this version was also sent to Corporal Flewelling and the ILPO branch, as well as to Steve Fedor at “O” Division INSET. *Ibid.*, pp. 18083–18085. The only difference between the final version and the draft version is that the word “Draft” was removed. [IC] Cabana testimony (November 4, 2005), p. 18274.
- 993 Exhibit C-359, Tab 4.
- 994 [IC] Fiorido testimony (November 3, 2005), pp. 18015–18017.
- 995 Exhibit C-359, Tab 5.
- 996 [IC] Fiorido testimony (November 3, 2005), pp. 18025–18026 and 18137.
- 997 Exhibit C-359, Tab 8; [IC] Fiorido testimony (November 3, 2005), pp. 18023–18025. [***]. [IC] Testimony (November 3, 2005), pp. 18166–18168.
- 998 [IC] Fiorido testimony (November 3, 2005), pp. 18025–18026; [IC] Cabana testimony (November 4, 2005), pp. 18280–18281.
- 999 [IC] Fiorido testimony (November 3, 2005), pp. 18027–18029. Staff Sergeant Fiorido explained that, in his dealings with unit OICs, as long as requests did not cause him alarm with respect to hindering his relations with the agency in question, he was comfortable with them. *Ibid.*, p. 18082.
- 1000 [IC] Cabana testimony (August 8, 2005), pp. 17360–17361.
- 1001 Exhibit C-359, Tab 10.
- 1002 [IC] Fiorido testimony (November 3, 2005), pp. 18027–18030. *Ibid.*, pp. 18157–18158.
- 1003 *Ibid.*, pp. 18032–18033.
- 1004 [IC] Cabana testimony (November 4, 2005), pp. 18282–18284.
- 1005 [IC] Fiorido testimony (November 3, 2005), pp. 18027–18034. The second set of questions for Mr. Almalki (Exhibit C-365), entitled “Abdullah Almalki: Questions for the Syrian Authorities” and dated August 14, listed Mr. Arar under the heading “Associates” and provided some background information.
- 1006 Exhibit C-359, Tab 9; [IC] Fiorido testimony (November 3, 2005), pp. 18034–18035.
- 1007 [IC] Fiorido testimony (November 3, 2005), pp. 18051–18052.
- 1008 *Ibid.*, pp. 10853–10854.
- 1009 [IC] Cabana testimony (August 8, 2005), pp. 17314–17315.
- 1010 [IC] Callaghan testimony (November 8, 2004), pp. 4252–4254.
- 1011 [IC] Cabana testimony (August 8, 2005), pp. 17315–17319.
- 1012 This term was used by Commission Counsel. [IC] Cabana testimony (November 4, 2005), pp. 18285–18291. The list of questions for Mr. Almalki included references to numerous people, some of whom were under investigation and suspected of being involved in terrorist activities.
- 1013 [IC] Cabana testimony (November 4, 2005), pp. 18286–18291.
- 1014 *Ibid.*
- 1015 *Ibid.*, pp. 18328.

- 1016 Exhibit C-361; Exhibit C-219, Tab 15; Exhibit C-359, Tab 11; [IC] Fiorido testimony (November 3, 2005), pp. 18037–18038; [IC] Testimony (November 3, 2005), pp. 18205–18207.
- 1017 [IC] Fiorido testimony (November 3, 2005), pp. 18039–18040.
- 1018 Exhibit C-359, Tab 11; [IC] Fiorido testimony (November 3, 2005), pp. 18039–18040. He could not recall whether he had also provided the Ambassador with a copy of the cover letter as a courtesy.
- 1019 [IC] Pillarella testimony (March 30, 2005), p. 13439.
- 1020 [IC] Pillarella testimony (March 31, 2005), pp. 13771–13774.
- 1021 Exhibit C-359, Tab 11.
- 1022 [IC] Fiorido testimony (November 3, 2005), p. 18044.
- 1023 *Ibid.*, p. 18044.
- 1024 *Ibid.*, p. 18040.
- 1025 *Ibid.*, p. 18042.
- 1026 [IC] Pillarella testimony (March 30, 2005), pp. 13440–13442.
- 1027 *Ibid.*, pp. 13423–13426.
- 1028 [IC] Proulx testimony (December 14, 2005), pp. 8336–8337.
- 1029 [IC] Pillarella testimony (March 30, 2005), pp. 13431–13433.
- 1030 *Ibid.*, pp. 13441–13442.
- 1031 [IC] Fiorido testimony (November 3, 2005), pp. 18135–18136.
- 1032 *Ibid.*, p. 18136.
- 1033 Exhibit C-219, Tab 6 (same as Exhibit C-206, Tab 159); [IC] Fiorido testimony (November 3, 2005), pp. 17997–17998.
- 1034 [IC] Pillarella testimony (March 30, 2005), pp. 13409–13411 and 13427–13433.
- 1035 *Ibid.*, pp. 13408–13411.
- 1036 *Ibid.*, pp. 13421–13422 and [IC] (March 31, 2005), pp. 13761–13762.
- 1037 *Ibid.*, p. 13426.
- 1038 *Ibid.*, p. 13423.
- 1039 [IC] Martel testimony (April 25, 2005), pp. 15788–15790.
- 1040 *Ibid.*, and [IC] (April 26, 2005), pp. 16149–16150. Ambassador Pillarella believed that the letter had been delivered by Mr. Martel during the February consular visit with Mr. Arar (Exhibit C-219, Tab 11), but Mr. Martel testified that he was mistaken about the date and there was “no question in my mind” that the letter had been delivered on a separate occasion. Mr. Martel recalled meeting Colonel Saleh at the Carleton, not the detention centre, and asking Colonel Saleh at that time when he would be able to see his client again. [IC] Martel testimony (April 26, 2005), pp. 16149–16150.
- 1041 [IC] Martel testimony (April 25, 2005), pp. 15787–15793.
- 1042 Staff Sergeant Fiorido testified that he and Ambassador Pillarella likely had other informal contact between January and August. [IC] Fiorido testimony (November 3, 2005), pp. 18055–18058.
- 1043 Exhibit C-362; [IC] Fiorido testimony (November 3, 2005), pp. 18056–18058.
- 1044 Exhibit C-219, Tab 11; [IC] Fiorido testimony (November 3, 2005), pp. 18057–18058.
- 1045 Exhibit C-219, Tab 11.
- 1046 *Ibid.* However, Ambassador Pillarella testified that, in his view, it was coincidence that the relationship with the SMI deteriorated after the questions were submitted. [IC] Pillarella testimony (March 31, 2005), p. 13684.
- 1047 Exhibit C-219, Tab 11.
- 1048 *Ibid.*
- 1049 *Ibid.*
- 1050 [IC] Pillarella testimony (March 31, 2005), pp. 13684–13691.

- 1051 Ibid., pp. 13690–13691.
- 1052 Exhibit C-219, Tab 12.
- 1053 Ibid.; [IC] Fiorido testimony (November 3, 2005), pp. 18061–18062.
- 1054 Exhibit C-30, Tab 488; [IC] Fiorido testimony (November 3, 2005), pp. 18063–18069.
- 1055 Exhibit C-30, Tab 488.
- 1056 [IC] Fiorido testimony (November 3, 2005), pp. 18062–18069.
- 1057 [IC] Livermore testimony (March 9, 2005), pp. 12577–12578.
- 1058 [IC] Heatherington testimony (April 27, 2005), p. 16178.
- 1059 [IC] Pardy testimony (August 4, 2005), pp. 16826–16827.
- 1060 Ibid., pp. 16827–16828.
- 1061 [P] Leverett testimony (November 9, 2005), pp. 12287–12288.
- 1062 Exhibit C-206, Tab 216.
- 1063 Ibid.
- 1064 [IC] Livermore testimony (March 7, 2005), pp. 12295–12297.
- 1065 Exhibit C-221, Tab 15.
- 1066 Ibid. In attendance were representatives of DFAIT, the RCMP and PCO, including Messrs. Reynolds, Roy, Lauzon, Pardy, Sinclair, Gould and Ritchie. [P] Dickenson testimony (August 29, 2005), pp. 10947–10948.
- 1067 Exhibit C-221, Tab 15.
- 1068 Exhibit C-206, Tab 324. Mr. Pardy testified that in terms of the impact on consular access, it made no difference whether Mr. Arar was to be interviewed as a witness or a suspect. [IC] Pardy testimony (August 4, 2005), pp. 16901–16902.
- 1069 [IC] Pardy testimony (August 4, 2005), pp. 16901–16902.
- 1070 [P] Cabana testimony (June 30, 2005), p. 8269.
- 1071 [P] Catterall testimony (May 31, 2005), pp. 4474–4477; Exhibit P-42, Tab 264; Exhibit C-206, Tab 264.
- 1072 Ibid.; Exhibit P-88, p. 17.
- 1073 [P] Fry testimony (June 13, 2005), p. 6458.
- 1074 [P] Catterall testimony (May 31, 2005), p. 4482; Exhibit P-42, Tab 327; Exhibit C-206, Tab 327; Exhibit P-88, p. 17.
- 1075 [IC] Pillarella testimony (March 31, 2005), pp. 13640–13641; Exhibit P-42, Tab 324; Exhibit C-206, Tab 324.
- 1076 [IC] Pillarella testimony (March 31, 2005), pp. 13641–13643.
- 1077 Ibid.
- 1078 [P] Pardy testimony (May 25, 2005), pp. 3653–3654; Exhibit P-42, Tab 333; Exhibit C-206, Tab 333.
- 1079 [P] Fry testimony (June 13, 2005), pp. 6458–6459; Exhibit P-42, Tab 336; Exhibit C-206, Tab 336.
- 1080 [P] Catterall testimony (May 31, 2005), pp. 4500–4501; Exhibit P-42, Tab 343; Exhibit C-206, Tab 343.
- 1081 [P] Pardy testimony (May 25, 2005), pp. 3657–3659; Exhibit P-42, Tab 345; Exhibit C-206, Tab 345.
- 1082 [IC] Pillarella testimony (March 31, 2005), pp. 13643–13645; [IC] Martel testimony (April 25, 2005), pp. 15811–15812; Exhibit P-42, Tab 356; Exhibit C-206, Tab 356.
- 1083 Ibid.
- 1084 [IC] Pillarella testimony (March 31, 2005), pp. 13643–13645.
- 1085 [IC] Martel testimony (April 25, 2005), pp. 15811–15812.
- 1086 [IC] Pillarella testimony (March 31, 2005), pp. 13645; [IC] Martel testimony (April 25, 2005), pp. 15812–15813; Exhibit P-42, Tab 357; Exhibit C-206, Tab 357.

- 1087 [P] Pardy testimony (May 25, 2005), pp. 3670–3671; Exhibit P-42, Tab 389; Exhibit C-206, Tab 389; Exhibit P-48, Vol. 1, Tab 16.
- 1088 [P] Pardy testimony (May 25, 2005), p. 3670; Exhibit P-42, Tab 384; Exhibit C-206, Tab 384.
- 1089 [P] Catterall testimony (May 31, 2005), pp. 4539–4540; Exhibit P-42, Tab 389; Exhibit C-206, Tab 389.
- 1090 [P] Catterall testimony (May 31, 2005), pp. 4512–4514.
- 1091 Ibid., pp. 4512–4515; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9057–9059; Exhibit P-99
- 1092 [P] Catterall testimony (May 31, 2005), pp. 4514–4517; [P] Catterall testimony (June 1, 2005), pp. 4739–4740; Exhibit P-99.
- 1093 [IC] Pardy testimony (August 4, 2005), p. 16929.
- 1094 [P] Catterall testimony (May 31, 2005), pp. 4521–4522.
- 1095 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9060–9061.
- 1096 Ibid.; Exhibit P-99.
- 1097 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9059–9061.
- 1098 [IC] Pardy testimony (August 4, 2005), pp. 16903–16904.
- 1099 [P] Easter testimony (June 3, 2005), pp. 5180–5182. Minister Easter testified that he was aware the Syrian ambassador had said the Syrians believed that CSIS did not want Mr. Arar back, but was not sure where he had heard this. Ibid., pp. 5325–5327.
- 1100 Ibid., pp. 5180–5184.
- 1101 [P] Hooper testimony (August 25, 2005), pp. 10646–10653.
- 1102 Ibid. See Section 6.2 above for an explanation of CSIS' position about this matter.
- 1103 [P] Fry testimony (June 13, 2005), pp. 6457–6459; Exhibit P-42, Tabs 332 and 336; Exhibit C-206, Tabs 332 and 336.
- 1104 Exhibit P-42, Tab 385; Exhibit C-206, Tab 385.
- 1105 [P] Catterall testimony (May 31, 2005), p. 4491.
- 1106 Ibid., pp. 4506–4509.
- 1107 [P] Fry testimony (June 13, 2005), pp. 6466–6467.
- 1108 [P] Easter testimony (June 3, 2005), pp. 5172–5175.
- 1109 [P] Fry testimony (June 13, 2005), p. 6465; Exhibit P-42, Tab 388; Exhibit C-206, Tab 388.
- 1110 Ibid., pp. 6467–6468; Exhibit P-42, Tabs 366 and 385; Exhibit C-206, Tabs 366 and 385.
- 1111 [P] Catterall testimony (May 31, 2005), p. 4485.
- 1112 Ibid., p. 4533.
- 1113 [P] Catterall testimony (June 1, 2005), pp. 4773–4774.
- 1114 [P] Fry testimony (June 13, 2005), pp. 6470–6471.
- 1115 Ibid.
- 1116 Exhibit P-42, Tab 388; Exhibit C-206, Tab 388.
- 1117 Exhibit P-42, Tab 385; Exhibit C-206, Tab 385.
- 1118 [P] Fry testimony (June 13, 2005), pp. 6468–6469.
- 1119 Ibid.
- 1120 [P] Catterall testimony (May 31, 2005), pp. 4533–4536.
- 1121 Exhibit P-42, Tab 385; Exhibit C-206, Tab 385.
- 1122 [P] Catterall testimony (May 31, 2005), pp. 4541–4542.
- 1123 Ibid.
- 1124 Ibid., p. 4545.
- 1125 Ibid., pp. 4546–4547.
- 1126 Ibid., p. 4546.
- 1127 Ibid., pp. 4547–4548.
- 1128 Exhibit P-117, Tab 20.
- 1129 [IC] Martel testimony (April 25, 2005), p. 15814.

- 1130 [P] Catterall testimony (May 31, 2005), pp. 4550–4551; Exhibit P-117, Tab 20.
- 1131 [P] Catterall testimony (May 31, 2005), p. 4553.
- 1132 Ibid., pp. 4550–4551; Exhibit P-117, Tab 20.
- 1133 [P] Catterall testimony (May 31, 2005), pp. 4555–4557; Exhibit P-117, Tab 20.
- 1134 [P] Catterall testimony (May 31, 2005), pp. 4555–4558; Exhibit P-117, Tab 20.
- 1135 Ibid.; *ibid.*
- 1136 [P] Catterall testimony (May 31, 2005), p. 4553; Exhibit P-117, Tab 20.
- 1137 [P] Catterall testimony (May 31, 2005), p. 4554.
- 1138 Ibid., pp. 4558–4561; Exhibit P-117, Tab 20.
- 1139 Ibid.; *ibid.*
- 1140 Ms. Catterall testified that she would not have made this comment had she not heard this from Minister Easter. [P] Catterall testimony (May 31, 2005), pp. 4562–4563. When asked whether he was aware that Ms. Catterall would be advising the SMI that this was the case, Minister Easter testified that he would have probably said to Ms. Catterall that “we operate under the presumption of innocence.” When asked whether he thought Ms. Catterall went too far with her comment or was just asserting a fact, Minister Easter acknowledged that Mr. Arar was not wanted for criminal activity in Canada, he was a person of interest, and stated that there are different slants on that fact [that Mr. Arar was not wanted in Canada for criminal activity] and he would rather have used the words “presumption of innocence.” [P] Easter testimony (June 3, 2005), pp. 5187–5189.
- 1141 [P] Catterall testimony (May 31, 2005), pp. 4558–4561; Exhibit P-117, Tab 20.
- 1142 Ibid.; *ibid.*
- 1143 Ibid.; *ibid.*
- 1144 Exhibit P-117, Tab 20.
- 1145 [P] Catterall testimony (May 31, 2005), p. 4564.
- 1146 Ibid.; Exhibit P-117, Tab 20.
- 1147 [IC] Pillarella testimony (March 31, 2005), pp. 13654–13656.
- 1148 Ibid.
- 1149 [P] Catterall testimony (May 31, 2005), p. 4566.
- 1150 Ibid., pp. 4566–4567.
- 1151 Ibid., p. 4567.
- 1152 [P] Catterall testimony (May 31, 2005), pp. 4566 and 4571; Exhibit P-117, Tab 20.
- 1153 [P] Catterall testimony (May 31, 2005), p. 4566.
- 1154 Ibid.; Exhibit P-117, Tab 20.
- 1155 [P] Catterall testimony (May 31, 2005), p. 4568.
- 1156 Ibid., pp. 4568–4569.
- 1157 Ibid., pp. 4570 and 4572–4573; Exhibit P-117, Tab 20.
- 1158 [P] Catterall testimony (May 31, 2005), pp. 4575–4577.
- 1159 Ibid., p. 4575.
- 1160 [IC] Pillarella testimony (March 31, 2005), pp. 13659–13660.
- 1161 [P] Catterall testimony (June 1, 2005), pp. 4681–4682.
- 1162 Ibid., pp. 4682–4684.
- 1163 Ibid., p. 4684.
- 1164 Exhibit P-117, Tab 20.
- 1165 [P] Catterall testimony (June 1, 2005), pp. 4682–4683.
- 1166 [P] Pillarella (June 14, 2005), pp. 6966–6968.
- 1167 [P] Fry testimony (June 13, 2005), pp. 6471–6473; Exhibit P-42, Tab 395; Exhibit C-206, Tab 395.
- 1168 [P] Fry testimony (June 13, 2005), pp. 6473–6474.

- 1169 [IC] Livermore testimony (March 7, 2005), pp. 12335–12336.
- 1170 [P] Parly testimony (May 25, 2005), p. 3680.
- 1171 Ibid.
- 1172 Ibid.
- 1173 [P] Graham testimony (May 30, 2005), pp. 4221–4223.
- 1174 [P] Graham testimony (June 2, 2005), pp. 4936–4937.
- 1175 [P] Graham testimony (May 30, 2005), pp. 4221–4223.
- 1176 [P] Catterall testimony (June 1, 2005), pp. 4692–4694.
- 1177 See above, Section 3.3.
- 1178 [P] Roy testimony [ET] (August 22, 2005), pp. 9605–9606; Exhibit P-94; Exhibit C-286; Exhibit P-208; Exhibit C-288.
- 1179 [P] Roy testimony [ET] (August 22, 2005), pp. 9605–9606; Exhibit P-208; Exhibit C-288.
- 1180 [P] Roy testimony [ET] (August 22, 2005), p. 9607.
- 1181 Ibid., pp. 9545.
- 1182 Ibid., pp. 9546–9547.
- 1183 Ibid., p. 9546.
- 1184 [P] Parly testimony (May 24, 2005), pp. 3469–3470.
- 1185 Exhibit C-2, Tab 62.
- 1186 [IC] Heatherington testimony (April 27, 2005), pp. 16297–16305; Exhibit C-1, Tab 178. Mr. Heatherington also explained that when reviewing the consular reports distributed to both CSIS and the RCMP, he may have been aware that some were “passed across” to CSIS and the RCMP, but not aware that others may have been. Ibid., p. 16301.
- 1187 [P] Parly testimony (May 26, 2005), pp. 4007–4008.
- 1188 Ibid., pp. 4003–4004.
- 1189 [P] Parly testimony (June 2, 2005), pp. 5097–5100.
- 1190 Ibid., p. 5099.
- 1191 [P] Graham testimony (June 2, 2005), p. 4885.
- 1192 Exhibit P-42, Tab 307, p. 2; [P] Graham testimony (May 30, 2005), p. 4195.
- 1193 [IC] Livermore testimony (March 7, 2005), p. 12326.
- 1194 Ibid., pp. 12131–12132; [IC] Parly testimony (August 4, 2005), p. 16938.
- 1195 [IC] Livermore testimony (March 7, 2005), p. 12326.
- 1196 Ibid., p. 12132. Minister Graham testified that it is the role of the Privy Council Office to resolve interdepartmental differences at the bureaucratic level and it is the role of the Cabinet and personal relationships between the Prime Minister and ministers to resolve them at the political level. The objective is to resolve differences at the bureaucratic level, if possible, before taking them to meetings between ministers and the Prime Minister, but this may be done in the normal course of government. [P] Graham testimony (June 2, 2005), p. 4940.
- 1197 Mr. Livermore disagreed with Mr. Thibault’s underlying perception that there was a problem of coordination or consultation in these cases, for the reasons discussed above. [IC] Livermore testimony (March 7, 2005), p. 12325.
- 1198 [IC] Livermore testimony (March 7, 2005), pp. 12324–12326; [P] Parly testimony (May 25, 2005), p. 3631.
- 1199 Exhibit P-42, Tab 317.
- 1200 Ibid., Tab 325; Exhibit C-206, Tab 325; Exhibit P-238; Exhibit C-290.
- 1201 [P] Fry testimony (June 13, 2005), pp. 6641–6642.
- 1202 [IC] Livermore testimony (March 7, 2005), p. 12333.
- 1203 Exhibit C-213; Exhibit P-183; Exhibit P-42, Tabs 317 and 317A. [IC] Livermore testimony (March 7, 2005), p. 12331; [P] Livermore testimony (May 17, 2005), p. 2526; [P] Dickenson testimony (August 29, 2005), pp. 10947–10948.

- 1204 [P] Hooper testimony (August 25, 2005), pp. 10706–10707.
- 1205 Exhibit P-42, Tab 317A; Exhibit C-206, Tab 317A. Later versions of the deck were also entered as exhibits: Exhibit C-237 (dated March 6, 2003) and Exhibit P-42, Tab 419; Exhibit C-206, Tab 419 (undated); however, all of these versions were substantially similar. Mr. Pardy testified that the recommendations in the deck did not go beyond DFAIT. [P] Pardy testimony (May 25, 2005), p. 3644.
- 1206 For example, the *Privacy Act* protects consular information except in certain specified circumstances. Mr. Pardy testified that these exceptions were consistent use and disclosure, individual consent to share information with other agencies, and sharing information with members of Parliament. [P] Pardy testimony (May 25, 2005), p. 3640.
- 1207 A draft version of this memo was entered as Exhibit P-42, Tab 325; Exhibit C-206, Tab 325. The final signed memorandum that went to the Minister was entered as Exhibits P-238 and C-290.
- 1208 When Minister Graham testified publicly, he was only shown a draft of the action memorandum, and therefore he could not confirm whether or not he had seen it. [P] Graham testimony (May 30, 2005), pp. 4198, 4201, and 4204. The final signed memo of April 7, 2003 was presented to the Commission on July 28, 2005, after Minister Graham completed his public testimony. See Commission counsel comments during Graham's testimony [IC] (August 3, 2005), p. 16737. When Minister Graham later testified *in camera* and was shown the final signed memo, he said that he would have seen it or been briefed on its contents. *Ibid.*, p. 16739.
- 1209 Exhibit C-206, Tab 325; Exhibit P-42, Tab 325.
- 1210 Minister Graham testified that he discussed these issues a couple of times with Solicitor General Wayne Easter. [P] Graham testimony (June 2, 2005), p. 4859.
- 1211 [P] Graham testimony (May 30, 2005), p. 4202.
- 1212 *Ibid.*, p. 4204.
- 1213 See Exhibit P-99. [P] Graham testimony (May 30, 2005), pp. 4208–4209; [P] Fry testimony (June 13, 2005), pp. 6461–6462, 6626 and 6628.
- 1214 [P] Graham testimony (May 30, 2005), pp. 4218–4219.
- 1215 [P] Pardy testimony (May 25, 2005), p. 3665; [P] Fry testimony (June 13, 2005), pp. 6461 and 6463.
- 1216 Exhibit P-42, Tab 376.
- 1217 [P] Pardy testimony (May 25, 2005), p. 3665.
- 1218 *Ibid.*
- 1219 *Ibid.*, p. 3666.
- 1220 Exhibit P-42, Tab 452; Exhibit C-28, Tab 10.
- 1221 [P] Pardy testimony (May 25, 2005), p. 3666.
- 1222 Exhibit P-196; [P] Pastyr-Lupul testimony (July 29, 2005), p. 9067.
- 1223 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9070–9071.
- 1224 *Ibid.*, p. 9070.
- 1225 *Ibid.*, pp. 9070–9071.
- 1226 [P] Graham testimony (May 30, 2005), p. 4225 and Exhibit P-107 entry for April 30, 2003; Exhibit P-48, Tab 21.
- 1227 [P] Graham testimony (May 30, 2005), p. 4227.
- 1228 Exhibit C-28, Tab 2.
- 1229 [P] Pardy testimony (May 25, 2005), p. 3692.
- 1230 It is standard practice for the RCMP to provide few details about ongoing investigations. [P] Pardy testimony (June 2, 2005), p. 5008.
- 1231 *Ibid.*, p. 4959.
- 1232 [P] Pardy testimony (May 25, 2005), p. 3691.

- 1233 [P] Graham testimony (May 30, 2005), pp. 4179–4182, and [P] (June 2, 2005), pp. 4931–4936.
- 1234 Exhibit P-42, Tab 505; [P] Graham testimony (May 30, 2005), pp. 4278–4279 and [P] (June 2, 2005), pp. 4931–4936.
- 1235 [P] Dickenson testimony (August 29, 2005), pp. 10957–10958; [P] Pardy testimony (May 25, 2005), pp. 3696–3697. Attendees at the May 12 meeting included officials from PCO (Glenn Robinson), DFAIT (Gar Pardy, Scott Heatherington, Myra Pastyr-Lupul), the Solicitor General’s office (Helen Banalescu), CSIS and the RCMP (Inspector Rick Reynolds, Maury Medjuck, Diane Gagnon). Exhibit C-379; [P] Dickenson testimony (August 29, 2005), pp. 10955–10956; Exhibit P-19, pp. 40–41.
- 1236 Exhibit C-288; Exhibit P-85, Vol. 5, Tab 45, p. 4.
- 1237 Exhibit C-28, Tab 4.
- 1238 Ibid.; [IC] Pardy testimony (August 4, 2005), p. 16913.
- 1239 Exhibit C-28, Tab 4.
- 1240 Ibid.
- 1241 [P] Easter testimony (June 3, 2005), p. 5201.
- 1242 [P] Hooper testimony (August 25, 2005), p. 10660.
- 1243 Ibid., p. 10669.
- 1244 Ibid., p. 10670.
- 1245 Ibid., pp. 10671–10672.
- 1246 Ibid., p. 10676.
- 1247 Ibid., pp. 10677–10678.
- 1248 Exhibit C-271.
- 1249 Ibid.
- 1250 [IC] Loepky testimony (April 19, 2005), p. 15030.
- 1251 [P] Easter testimony (June 3, 2005), p. 5207.
- 1252 [P] Hooper testimony (August 25, 2005), p. 10674.
- 1253 [P] Dickenson testimony (August 29, 2005), p. 10958; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9073–9074.
- 1254 [IC] Pardy testimony (August 4, 2005), p. 16914.
- 1255 [P] Pardy testimony (May 25, 2005), p. 3699.
- 1256 Exhibit C-272.
- 1257 Ibid.
- 1258 Ibid.
- 1259 Exhibit P-42, Tab 443, p. 2.
- 1260 Exhibit P-102.
- 1261 Exhibit P-42, Tab 417; Exhibit C-206, Tab 417.
- 1262 Exhibit P-102.
- 1263 Ibid.
- 1264 Exhibit P-42, Tab 426.
- 1265 Exhibit C-28, Tab 5. Mr. Heatherington recalled that all of these government departments and agencies were involved in developing a draft of the Minister’s letter. [IC] Heatherington testimony (April 21, 2005), pp. 15597–15598.
- 1266 Exhibit P-103.
- 1267 Exhibit P-42, Tab 404. Monia Mazigh wrote to Minister Graham on May 1, 2003, stating that she had been trying for two months to meet with him.
- 1268 [P] Pardy testimony (May 25, 2005), pp. 3715–3716.
- 1269 Exhibit P-103.
- 1270 Exhibit P-42, Tab 439. [P] Pardy testimony (May 25, 2005), pp. 3710–3711.
- 1271 Exhibit P-42, Tab 385. [P] Graham testimony (May 30, 2005), p. 4245.

- 1272 [P] Hooper testimony (August 25, 2005), pp. 10681–10682.
- 1273 [P] Graham testimony (May 30, 2005), p. 4246.
- 1274 Exhibit P-85, Tab 15, p. 1; [IC] Burns testimony (April 18, 2005), pp. 14818–14819. Mr. Hooper had first tried to reach Jim Wright, his ADM counterpart at DFAIT. When Mr. Wright was not available, he called Ms. McCallion. Mr. Hooper testified that he called her instead of Mr. Parly because Ms. McCallion was a fellow ADM. Mr. Hooper assumed that the ADM responsible for consular affairs would have been engaged in the issues around the Arar case at this point [P] Hooper testimony (August 25, 2005), pp. 10698–10699. His explanation was supported by Ms. McCallion when she testified that she was not surprised to receive a call from Mr. Hooper. She assumed that the directors general in each government department would have been informed that the June 5 memorandum had been finalized and was making its way up to the ADM level. If someone wanted to speak to an ADM about the matter, he or she would be free to do so. [P] McCallion testimony (August 24, 2005), p. 10518. At the same time, she testified that, to her recollection, a member of CSIS had never before called her about a consular case. *Ibid.*, pp. 10524–10525.
- 1275 [P] Hooper testimony (August 25, 2005), pp. 10695.
- 1276 *Ibid.*, pp. 10697–10698.
- 1277 *Ibid.*, pp. 10725–10726.
- 1278 *Ibid.*, pp. 10700–10703.
- 1279 *Ibid.*, pp. 10703–10704.
- 1280 *Ibid.*, p. 10850.
- 1281 *Ibid.*, pp. 10708–10709.
- 1282 *Ibid.*, pp. 10709–10710.
- 1283 *Ibid.*, p. 10848.
- 1284 *Ibid.*, pp. 10710–10712.
- 1285 *Ibid.*, pp. 10704–10707.
- 1286 [P] McCallion testimony (August 24, 2005), pp. 10507–10508.
- 1287 *Ibid.*, pp. 10511–10514.
- 1288 *Ibid.*, p. 10516.
- 1289 *Ibid.*, pp. 10549–10550 and 10563.
- 1290 *Ibid.*, pp. 10556 and 10563–10565.
- 1291 *Ibid.*, pp. 10519–10520 and 10555.
- 1292 *Ibid.*, pp. 10528–10529.
- 1293 *Ibid.*, pp. 10525–10528.
- 1294 [IC] Dyet testimony (April 18, 2005), pp. 14700, 14701, 14703, and 14754.
- 1295 [P] McCallion testimony (August 24, 2005), p. 10506.
- 1296 [IC] Dyet testimony (April 18, 2005), p. 14710–14711.
- 1297 *Ibid.*, pp. 14719–14720 and 14724.
- 1298 *Ibid.*, pp. 14710–14711 and 14714–14715.
- 1299 Exhibit P-236, Tab 1, p. 9; [P] Gould testimony (August 24, 2005), pp. 10339–10340.
- 1300 [IC] Dyet testimony (April 18, 2005), pp. 14715–14717 and 14722.
- 1301 *Ibid.*, pp. 14722, 14749–14754 and 14756–14759. Mr. Dyet was clear that someone had given him this information, and he believed that it was tied into the Hooper-McCallion call. At the same time, his testimony was unclear as to whether the call between Mr. Hooper and Ms. McCallion had already taken place at the time of his meeting with Mr. Gould and what discussions, if any, he had had with Ms. McCallion after the call. His testimony also left open the possibility that whoever had shared this information with him might have been referring to internal discussions among DFAIT officials about CSIS' position on the return of Mr. Arar.
- 1302 [P] McCallion testimony (August 24, 2005), pp. 10523–10524.

- 1303 [IC] Livermore testimony (March 7, 2005), pp. 12359–12361.
- 1304 [P] Gould testimony (August 24, 2005), pp. 10420–10421.
- 1305 [P] Hooper testimony (August 25, 2005), pp. 10723–10724.
- 1306 Exhibit P-42, Tab 443. The minutes of the meeting were drafted by Ms. Pasty-Lupul, who attended the June 12 meeting. [P] Pasty-Lupul testimony (July 29, 2005), p. 9079.
- 1307 Exhibit P-42, Tab 443. See also Mazigh letter to Minister Graham delivered at this meeting; Exhibit P-42, Tab 438. Subsequent to this meeting, Alex Neve, Secretary General for Amnesty International (Canada), also sent an e-mail to Mr. Fry, advocating stronger “no evidence” language: Exhibit P-42, Tab 442.
- 1308 Exhibit P-42, Tab 443.
- 1309 [P] Graham testimony (May 30, 2005), p. 4246.
- 1310 Exhibit C-28, Tab 6; Exhibit P-110. Minister Graham testified that this proposed language was an attempt to strengthen the letter. [P] Graham testimony (May 30, 2005), p. 4251.
- 1311 [P] Fry testimony (June 13, 2005), pp. 6483–6484 and 6486.
- 1312 [P] Graham testimony (May 30, 2005), pp. 4252 and 4255–4256, and [P] (June 2, 2005), pp. 4885–4886. See also [P] Fry testimony (June 13, 2005), pp. 6486–6488 and 6503–6504.
- 1313 Exhibit C-28, Tab 6; Exhibit P-110.
- 1314 Exhibit C-1, Tab 199.
- 1315 [IC] Hooper testimony (August 26, 2005), pp. 17929–17932.
- 1316 Ibid.
- 1317 Ibid., p. 17933.
- 1318 [IC] Hooper testimony (September 22, 2004), p. 1610 and [P] (August 25, 2005), pp. 10712–10714.
- 1319 [IC] Hooper testimony (August 26, 2005), pp. 17935–17936.
- 1320 Exhibit C-28, Tab 7.
- 1321 Ibid.
- 1322 Mr. Heatherington testified that he thought CSIS had agreed on the phone to this language. [IC] Heatherington testimony (April 21, 2005), pp. 15610–15611.
- 1323 Exhibit C-28, Tab 8, p. 3.
- 1324 [IC] Pardy testimony (August 4, 2005), pp. 16922–16923.
- 1325 [P] Pardy testimony (May 25, 2005), pp. 3700 and 3714.
- 1326 [P] Graham testimony (May 30, 2005), p. 4255.
- 1327 [P] Loeppky testimony (July 27, 2005), p. 8576.
- 1328 [P] Pardy testimony (June 2, 2005), pp. 4975–4976; [P] Fry testimony (June 13, 2005), pp. 6497–6498.
- 1329 [IC] Pardy testimony (August 4, 2005), pp. 16922–16923.
- 1330 [P] Pardy testimony (June 2, 2005), pp. 4975–4976; [P] Fry testimony (June 13, 2005), pp. 6496–6498. Exhibit P-136.
- 1331 [P] Pardy testimony (June 2, 2005), pp. 4977–4978.
- 1332 [P] Hooper testimony (August 25, 2005), p. 10719.
- 1333 [IC] Livermore testimony (March 7, 2005), pp. 12355–12356.
- 1334 [P] Hooper testimony (August 25, 2005), pp. 10679–10680.
- 1335 Ibid., p. 10711.
- 1336 [IC] Loeppky testimony (April 19, 2005), p. 15048.
- 1337 [P] Fry testimony (June 13, 2005), pp. 6486–6491
- 1338 Ibid., p. 6490.
- 1339 [P] Easter testimony (June 3, 2005), pp. 5182–5184.
- 1340 Ibid., pp. 5222–5223.
- 1341 Exhibit P-108, Tab 2.

- 1342 [P] Graham testimony (May 30, 2005), pp. 4257–4258
- 1343 Ibid., pp. 4258–4260.
- 1344 Ibid., pp. 4260–4261.
- 1345 Exhibit C-28, Tab 9.
- 1346 Ibid.
- 1347 Exhibit C-28, Tab 10.
- 1348 Ibid.
- 1349 On June 26, 2003, *The Globe and Mail* printed an article quoting Mr. Parady's e-mail to Dr. Mazigh dated April 12, 2003.
- 1350 [IC] Loepky testimony (April 19, 2005), pp. 15046–15047, and [P] (July 27, 2005), p. 8582.
- 1351 [P] Loepky testimony (June 30, 2004), p. 914.
- 1352 [IC] Loepky testimony (April 19, 2005), p. 15009.
- 1353 Ibid., p. 15049.
- 1354 Exhibit P-117, Tab 23; [P] Gould testimony (August 24, 2005), pp. 10417–10418.
- 1355 [P] Gould testimony (August 24, 2005), pp. 10420–10421.
- 1356 [P] Hooper testimony (August 25, 2005), pp. 10723–10724.
- 1357 [P] Parady testimony (May 25, 2005), p. 3720.
- 1358 Ibid., p. 3723.
- 1359 [IC] Parady testimony (August 4, 2005), p. 16921.
- 1360 [P] Fry testimony (June 13, 2005), p. 6501.
- 1361 Exhibit P 42, Tab 445; [P] Parady testimony (May 25, 2005), p. 3723.
- 1362 [P] Parady testimony (May 25, 2005), pp. 3700–3701.
- 1363 Ibid., p. 3777.
- 1364 [P] Parady testimony (June 2, 2005), pp. 4968–4969.
- 1365 [P] Parady testimony (May 25, 2005), p. 3784.
- 1366 Ibid., pp. 3799–3800.
- 1367 [P] Fry testimony (June 13, 2005), pp. 6499–6500.
- 1368 Ibid., pp. 6500–6501. There is no difference between the Prime Minister visiting a head of state and the Prime Minister sending a special envoy with a letter on his behalf. A special envoy attends in the place of the Prime Minister when the Prime Minister is unable to travel. He or she acts as the Prime Minister's personal representative. [IC] Pillarella testimony (March 31, 2005), p. 13847.
- 1369 Exhibit P-42, Tab 466, p. 3.
- 1370 [P] De Bané testimony [ET] (June 1, 2005), pp. 4588–4591.
- 1371 Ibid., pp. 4592–4593.
- 1372 Ibid., pp. 4601–4602.
- 1373 Exhibit P-132, Tab 10, p. 1; [P] De Bané testimony [ET] (June 1, 2005), pp. 4604–4605.
- 1374 [P] De Bané testimony [ET] (June 1, 2005), pp. 4614–4616.
- 1375 Exhibit P-132, Tab 18, p. 3.
- 1376 [P] De Bané testimony [ET] (June 1, 2005), pp. 4607–4608.
- 1377 Exhibit P-229, p. 19; [P] De Bané testimony [ET] (June 1, 2005), p. 4606 and [P] (August 23, 2005), pp. 10093–10100; [P] Parady testimony (June 2, 2005), pp. 4987–4992; [P] Fry testimony (June 13, 2005), pp. 6504–6506.
- 1378 Exhibit P-88, Tab 1, p. 27; Exhibit P-132, Tab 10, p. 1; [P] De Bané testimony [ET] (June 1, 2005), pp. 4617–4623.
- 1379 [P] De Bané testimony [ET] (June 1, 2005), pp. 4626 and 4631–4632. On July 17, 2003, Mr. Parady wrote to Syria's ambassador to Canada, asking that, in accordance with their conversation the previous day, Syria's ambassador deliver a letter from Prime Minister Chrétien to President Assad. Exhibit P-42, Tab 471.

The second letter from the Prime Minister to the President of Syria, dated July 17, indicated that Senator De Bané was travelling to Syria in the coming days to meet with the President and discuss various matters in the Canada–Syria relationship. The letter closed by asking that the President take a few moments to meet with the Senator so that the Prime Minister could have the President’s views on the many issues and developments in his region. Exhibit P-42, Tab 472.

1380 [P] De Bané testimony [ET] (June 1, 2005), p. 4629; [P] Pillarella testimony (June 15, 2005), p. 6989.

1381 [P] De Bané testimony [ET] (June 1, 2005), p. 4632.

1382 Ibid., pp. 4633–4634.

1383 Exhibit P-42, Tab 476.

1384 Exhibit P-237, Tab 8, pp. 14–15.

1385 [P] De Bané testimony [ET] (June 1, 2005), pp. 4652–4653.

1386 Exhibit P-42, Tab 476; [P] De Bané testimony [ET] (June 1, 2005) pp. 4646–4647.

1387 [P] De Bané testimony [ET] (June 1, 2005), p. 4654.

1388 Exhibit P-42, Tab 478.

1389 [P] Pardy testimony (May 25, 2005), pp. 3731–3732; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9082–9084.

1390 “Émigré organization” is a common reference to an organization run by persons who have had to emigrate to a foreign country, usually for political reasons.

1391 [P] Pardy testimony (May 25, 2005), pp. 3733–3734, [P] (May 26, 2005), pp. 3924–3928, and [P] (June 17, 2005), pp. 7709–7711.

1392 Exhibit P-42, Tab 573, Tab 11.

1393 [P] Pardy testimony (May 25, 2005), p. 3735.

1394 [P] Pardy testimony (June 17, 2005), p. 7711.

1395 Exhibit P-42, Tab 486, p. 3.

1396 Exhibit P-42, Tab 489, p. 1.

1397 Exhibit P-117, Tab 32. For example, the suggested reply to the question, “What is the Canadian Government response to the reports of the Syrian Human Rights Committee that Mr. Arar is being tortured?” was:

“During previous Consular visits, we saw no evidence of torture or abuse. The Canadian Government is troubled by these recent reports, as we cannot confirm or deny them.

We are also concerned that we have not had consular access to Mr. Arar since April. Consular visits are one way that we can determine Mr. Arar’s state of health and well-being.

“The Canadian Embassy in Damascus will continue to pursue all Diplomatic efforts to seek Consular access to Mr. Arar.” (Exhibit P-117, Tab 32).

1398 Exhibit P-132, Tab 11, pp. 5–6.

1399 Exhibit P-42, Tabs 491 and 497. Minister Graham elaborated on why recalling Ambassador Pillarella was not a viable option at that time.

There are a series of diplomatic and other responses, short of going to war, to deal with a dispute with a foreign state. These include calling in the other state’s ambassador, recalling Canada’s ambassador, imposing embargoes, etc. In considering his options, Minister Graham was guided by experts at DFAIT and their experiences in past cases.

Recalling the Canadian ambassador to Syria would have signalled extreme displeasure with the actions of the Syrian government. However, the downside was that Canada would be left without an ambassador in the country. Mr. Arar was not the only Canadian in detention in Syria at that time. It was DFAIT’s judgment that it was necessary to have a Canadian ambassador in the country if DFAIT was going to effectively represent the detainees’ interests.

Secondly, Canada’s global interests had to be considered. Syria was in a key geographic

position in terms of the Middle East peace process, and there were many issues in which Canada was engaged. Recalling Ambassador Pillarella might have impeded Canada's ability to have effective representation in that respect.

Minister Graham strongly believed that keeping the Canadian ambassador in Syria was the right decision in this case. It was unlikely that recalling the ambassador would have furthered Mr. Arar's case and it might, in fact, have made matters worse. [P] Graham testimony (May 30, 2005), pp. 4272–4275.

1400 Exhibit P-42, Tab 492.

1401 Exhibit P-132, Tab 11, p. 3; Exhibit P-42, Tab 521, p.13; [P] Graham testimony (May 30, 2005), pp. 4275–4277; [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9094–9095.

1402 [P] Pastyr-Lupul testimony (July 29, 2005), p. 9095.

1403 Exhibit P-134, Tab 23, p. 9. Robert Fry, Minister Graham's Senior Policy Advisor, was away on holiday during this time but believes that it was probably his suggestion that Minister Graham consider raising the issue with the Syrian Foreign Minister in a phone call that got the ball rolling. Mr. Fry also discussed the suggestion with Mr. Parfy. In Mr. Fry's absence, Minister Graham's chief of staff, Dan Costello, helped to coordinate the effort from the Minister's office. [P] Fry testimony (June 13, 2005), pp. 6513–6516.

1404 The Canadian Embassy sent diplomatic notes to Syria's Ministry of Foreign Affairs on June 2 and July 1 requesting consular access to Mr. Arar. (Exhibit C-206, Tabs 424 and 460) On July 2, Ambassador Pillarella met with Syria's Deputy Foreign Minister Mouallem and pressed for consular access. (Exhibit C-206, Tab 462) Three weeks later, on July 22, 2003, Senator De Bané, Prime Minister Chrétien's special envoy, delivered a letter concerning Mr. Arar from the Prime Minister to Foreign Deputy Minister Mouallem. (Exhibit C-206, Tab 476) Consular access was still not forthcoming. Finally, on August 4, Ambassador Pillarella met with Mr. Suleiman Haddad, a Member of Parliament and Chairman of Syria's Parliamentary Committee on Foreign Relations, and pressed for access to Mr. Arar. (Exhibit C-206, Tab 485)

1405 Exhibit P-134, Tab 23, p.1.

1406 [P] Pillarella testimony (June 15, 2005), pp. 7004–7007 and 7014–7016.

1407 Ibid., pp. 7006–7007 and 7010–7011.

1408 Ibid., pp. 7016–7018.

1409 [IC] Martel testimony (April 25, 2005), pp. 15826–15827.

1410 [P] Martel testimony [ET] (August 30, 2005), pp. 11129–11130.

1411 Exhibit P-134, Tab 24, p. 1.

1412 Exhibit C-206, Tab 507.

1413 [P] Pillarella testimony (June 15, 2005), p. 7021.

1414 [IC] Pillarella testimony (March 31, 2005), p. 13697.

1415 [IC] Martel testimony (April 26, 2005), pp. 16110–16112.

1416 [IC] Martel testimony (April 25, 2005), p. 15832.

1417 [P] Martel testimony [ET] (August 30, 2005), p. 11132.

1418 [IC] Martel testimony (April 25, 2005), p. 15833.

1419 Exhibit P-134, Tab 24.

1420 [P] Martel testimony [ET] (August 30, 2005), pp. 11132–11133.

1421 Exhibit P-134, Tab 24.

1422 Ibid.

1423 [IC] Martel testimony (April 25, 2005), pp. 15836–15837 and [P] [ET] (August 30, 2005), pp. 11133–11134.

1424 Exhibit P-134, Tab 24.

1425 [P] Martel testimony [ET] (August 30, 2005), p. 11135.

1426 Exhibit P-134, Tab 24.

- 1427 [IC] Martel testimony (April 25, 2005), pp. 15837–15838.
- 1428 [P] Martel testimony [ET] (August 30, 2005), pp. 11134–11135.
- 1429 Ibid., p. 11135.
- 1430 [IC] Martel testimony (April 25, 2005), p. 15838.
- 1431 Exhibit P-134, Tab 24.
- 1432 [P] Martel testimony [ET] (August 30, 2005), p. 11136.
- 1433 [IC] Martel testimony (April 26, 2005), pp. 15978–15979.
- 1434 [P] Martel testimony [ET] (August 30, 2005), pp. 11136–11138. Upon his return to Canada, Mr. Arar prepared a chronology of events starting from his detention in the United States on September 26, 2002, up to his release from Syrian custody on October 5, 2003. Part of his written account of the August 14 consular visit stated: “The Consul asks if he has been tortured, and Arar replies, ‘Yes, of course, at the beginning.’ After the meeting, Arar can see his captors are very angry and he is terrified that he will be physically tortured again, but he is not.” Exhibit P-242, Tab 17, p. 9.
- Mr. Martel disputes this record that he asked Mr. Arar if he had been tortured. He testified that under no circumstances would he have asked Mr. Arar directly if he had been tortured. [P] Martel testimony [ET] (August 30, 2005), pp. 11196–11197.
- 1435 [P] Martel testimony [ET] (August 31, 2005), pp. 11531–11532.
- 1436 Exhibit P-42, Tab 508.
- 1437 Ibid.
- 1438 [P] Martel testimony [ET] (August 30, 2005), pp. 11142–11144 and [P] [ET] (August 31, 2005), pp. 11541–11542.
- 1439 [P] Martel testimony [ET] (August 30, 2005), pp. 11138–11139.
- 1440 In December 2002, Mr. Arar’s brother told Ms. Pasty-Lupul that Mr. Arar was being held underground and did not have access to natural light except when he attended consular visits. This information was contained in a CAMANT note sent to and read by Mr. Martel. Exhibit P 42, Tab 254; [P] Martel testimony [ET] (August 30, 2005), p. 11094.
- 1441 [IC] Martel testimony (April 26, 2005), pp. 15970–15971 and [P] [ET] (August 30, 2005), p. 11145. Mr. Arar’s demeanor at this visit stands apart from the previous eight visits he received from Canadian officials. Mr. Arar’s chronology of events from September 26, 2002, to October 5, 2003, describes the visit this way: “Arar has decided he cannot survive living in these conditions anymore, and that it is worth risking more physical torture to stop the ongoing psychological torture of remaining in the ‘grave.’ He bursts and tells the Canadian Consular, in English, in front of the Syrian officials, about his cell and the conditions he is living in.” Exhibit P-242, Tab 17 p. 8.
- In a November 3, 2003, memorandum, Mr. Martel wrote: “During the August 14 meeting Arar complained to officials about his detention conditions. At that moment, he seemed to have lost any hope of ever getting out of jail and decided to speak his mind. General Hassan Khalil listened and then promised to improve his detention conditions.” Exhibit C-206, Tab 647 p. 2.
- 1442 [P] Martel testimony [ET] (August 31, 2005), pp. 11535–11538.
- 1443 [P] Martel testimony [ET] (August 30, 2005), pp. 11146–11147. Mr. Martel knew that Mr. Arar was kept in separate quarters from other inmates, which begs the question of how Mr. Arar would be aware of his fellow inmates’ detention conditions. Mr. Martel was not sure how Mr. Arar knew this information. He could only speculate that Mr. Arar may have had a neighbour alongside his cell or other detainees in the vicinity of his cell. [P] Martel testimony [ET] (August 31, 2005), pp. 11546–11547.
- 1444 [P] Martel testimony [ET] (August 30, 2005), pp. 11148–11150.
- 1445 Ibid., p. 11147.

- 1446 See *Manual of Consular Instructions*, section 2.4.1., Principle of international law. P-11, Tab 22, p. 8.
- 1447 [P] Martel testimony [ET] (August 30, 2005), pp. 11155–11158 and 11162–11164.
- 1448 Exhibit P-42, Tab 508. Mr. Martel’s notes stated: “3 x 6 x 7 – sleeping on ground – mentally destroyed.”
- 1449 [P] Martel testimony [ET] (August 30, 2005), pp. 11151–11152. Mr. Martel believed that there would have been a general awareness among DFAIT staff copied on the consular report about the human rights situation in the geographic region to which they were assigned. He did not think this knowledge necessarily extended to the size of the cells in foreign detention facilities. He had never heard of the cells being visited by anyone, including such widely respected humanitarian organizations as the International Red Cross. [P] Martel testimony [ET] (August 31, 2005), pp. 11608–11609.
- Mr. Parly supported this assertion by Mr. Martel when he testified to being generally aware of the poor prison conditions for political or national security prisoners in Syria, as laid out in human rights and government reports. He was unaware of specific details about the prison conditions, such as the size of the cell, and did not believe this information was available in the literature. [P] Parly testimony (October 24, 2005), pp. 12175–12179.
- 1450 [P] Martel testimony [ET] (August 30, 2005), p. 11152–11154.
- 1451 [P] Hogger testimony (November 10, 2005), p. 12592.
- 1452 Ibid., pp. 12597–12604.
- 1453 Exhibit P-134, Tab 24.
- 1454 Ibid.; [IC] Martel testimony (April 25, 2005), pp. 15847–15848.
- 1455 [P] Pillarella testimony (June 15, 2005), pp. 7026–7027.
- 1456 Ibid., pp. 7074–7075.
- 1457 Ibid., pp. 7075–7078.
- 1458 [IC] Martel testimony (April 25, 2005), pp. 15860–15861.
- 1459 Exhibit C-206, Tab 511.
- 1460 Exhibit P-134, Tab 24.
- 1461 Exhibit P-95.
- 1462 Exhibit P-42, Tab 505. The transcript of the scrum is dated August 13, 2003. This is incorrect. The press scrum occurred on August 14, 2003. [P] Graham testimony (May 30, 2005), p. 4278.
- 1463 [P] Graham testimony (May 30, 2005), pp. 4281–4283.
- 1464 Ibid., p. 4283.
- 1465 [P] Graham testimony (June 2, 2005), pp. 4918–4919.
- 1466 Ibid., p. 4917.
- 1467 Ibid.
- 1468 Ibid., pp. 4915–4916.
- 1469 Ibid., p. 4916.
- 1470 Ibid., pp. 4917–4918.
- 1471 [IC] Martel testimony (April 26, 2005), p. 15977; [P] Pillarella testimony (June 15, 2005), pp. 7024–7025.
- 1472 Exhibit P-134, Tab 23.
- 1473 [P] Pastyr-Lupul testimony (July 29, 2005), p. 9101.
- 1474 Ibid., pp. 9247–9248.
- 1475 Ibid., p. 9103.
- 1476 Ibid.
- 1477 [P] Pillarella testimony (June 15, 2005), pp. 7194–7195; Exhibit C-206, Tab 507. Later that day, Ambassador Pillarella spoke with Deputy Foreign Minister Mouallem, who knew about

- the earlier meeting, but not the outcome. The Deputy Minister reportedly would have been happier if Mr. Arar had been released, but felt the last word was with military intelligence.
- 1478 Ibid.; [IC] Martel testimony (April 25, 2005), pp. 15842–15844. Dr. Mazigh, upon learning of her husband's recommendation, found it a strange suggestion. Dr. Mazigh and her supporters had contacted this man in the beginning of Mr. Arar's detention, but he had been too intimidated to do anything. Exhibit P-100.
- 1479 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9117–9118; Exhibit C-206, Tab 512.
- 1480 Syria has been under a state of emergency and martial law since 1963.
- 1481 Exhibit P-27. See also the Amnesty International Report for Syria, 2002. (Exhibit P-29) It also discusses the blatant shortcomings of the Supreme State Security Court.
- 1482 [P] Pillarella testimony (June 14, 2005), pp. 6736–6738.
- 1483 Exhibit C-206, Tabs 507 and 514.
- 1484 These two lawyers were recommended to Dr. Mazigh by Amnesty International in London, the Syrian Human Rights Committee, and Liberal MP and International Law professor Irwin Cotler. Exhibit P-100.
- 1485 Exhibit C-206, Tab 514.
- 1486 [P] Martel testimony [ET] (August 31, 2005), pp. 11412–11414.
- 1487 [P] Lockyer testimony (June 17, 2005), pp. 7551–7557; Exhibit C-206, Tab 531.
- 1488 [P] Lockyer testimony (June 17, 2005), pp. 7611–7614.
- 1489 Ibid.
- 1490 Ibid., p. 7622.
- 1491 Exhibit P-100.
- 1492 [IC] Martel testimony (April 25, 2005), pp. 15870–15872; Exhibit C-206, Tab 516. The following day another diplomatic note was sent, informing the Syrian Ministry of Foreign Affairs that Mr. Lockyer was Canada's choice for an observer. Exhibit C-206, Tab 517.
- 1493 Exhibit C-206, Tab 514; [P] Martel testimony [ET] (August 31, 2005), p. 11407; Exhibit C-206, Tabs 563 and 565.
- 1494 Exhibit C-206, Tab 519.
- 1495 Exhibit C-206, Tab 518.
- 1496 Ibid., Tab 519.
- 1497 Exhibit P-100.
- 1498 Ibid.
- 1499 [P] Pardy testimony (May 25, 2005), pp. 3755–3756.
- 1500 Exhibit P-100.
- 1501 Ibid.
- 1502 [P] Pardy testimony (May 25, 2005), p. 3758.
- 1503 Exhibit C-206, Tab 518.
- 1504 Exhibit P-100.
- 1505 Ibid.
- 1506 Ibid.
- 1507 Ibid.
- 1508 [P] Pardy testimony (June 2, 2005), pp. 5120–5121.
- 1509 Exhibit C-206, Tab 518.
- 1510 Ibid.
- 1511 Ibid.
- 1512 Ibid., Tab 519; P-100.
- 1513 Exhibit C-206, Tab 519.
- 1514 Ibid, Tab 519.
- 1515 Exhibit C-206, Tab 523.

- 1516 [IC] Martel testimony (April 25, 2005), pp. 15872–15873; Exhibit C-206, Tab 524.
 1517 Exhibit C-206, Tab 524.
 1518 [IC] Martel testimony (April 25, 2005), pp. 15863–15868.
 1519 Exhibit C-206, Tab 528.
 1520 [P] Pardy testimony (May 26, 2005), p. 3959.
 1521 [P] Pardy testimony (June 17, 2005), pp. 7684–7687; Exhibit P-165.
 1522 [P] Pardy testimony (May 26, 2005), pp. 3953–3954.
 1523 Ibid., pp. 3954–3961.
 1524 Ibid.
 1525 Exhibit C-206, Tab 536.
 1526 [IC] Martel testimony (April 25, 2005), pp. 15873–15876; Exhibit C-206, Tabs 536 and 538. In his note, Mr. Martel also relayed other information to Dr. Mazigh, via Mr. Pardy, concerning Mr. Arar's status. This included what information Mr. Martel had on his medical needs, whether he had money, the court in which he would be tried (Supreme State Security Court) and the language used in previous consular meetings.
 1527 Exhibit C-206, Tab 539; [IC] Martel testimony (April 25, 2005), pp. 15876–15877.
 1528 Exhibit C-206, Tabs 541 and 543. The information that the Canadian Embassy in Damascus received from Mr. Dahdouh was that judgments from the Supreme State Security Court cannot be appealed, but are only valid once certified by the President or someone authorized by the President. The President's decision is final.
 1529 Exhibit C-206, Tab 540.
 1530 Ibid.
 1531 Exhibit C-206, Tab 546; [IC] Martel testimony (April 25, 2005), pp. 15879–15880.
 1532 Exhibit C-206, Tab 551.
 1533 Ibid., Tab 552.
 1534 Exhibit C-206, Tab 552; *ibid.*, Tab 557.
 1535 Ibid., Tab 556.
 1536 Ibid., Tab 559.
 1537 Ibid.
 1538 Exhibit C-206, Tab 562.
 1539 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9131–9133.
 1540 [IC] Pillarella testimony (March 31, 2005), pp. 13706–13708.
 1541 Ibid., pp. 13706–13707.
 1542 In the interim period, Canadian officials took steps to address consular issues in situations like that of Mr. Arar. At a meeting attended by consular officials and ministerial staff, possibly including Minister Graham, Canadian officials decided to strike a committee to study consular roles. On September 19, 2003, a meeting took place with Alex Neve from Amnesty International, Dr. Mazigh, Mr. Sigurdson, Ms. Pastyr-Lupul and others, where Mr. Arar's case was presumably discussed. [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9134–9141.
 1543 Exhibit C-206, Tab 569.
 1544 [IC] Martel testimony (April 26, 2005), pp. 16113–16114.
 1545 Exhibit C-206, Tab 576.
 1546 Ibid.
 1547 Exhibit C-206, Tab 574. Mr. Martel never did get instructions to this effect. [P] Martel testimony [ET] (August 31, 2005), pp. 11445–11447. On September 24, 2003, another diplomatic note was sent to the Syrian Ministry of Foreign Affairs. No specific call was made for a fair and open trial, but the note did seek permission for the Canadian consul to attend at Mr. Arar's trial, for Mr. Arar's lawyer to be provided with access to Mr. Arar's file and for general consular access. Exhibit C-206, Tab 575.

- 1548 [P] Fry testimony (June 13, 2005), pp. 6529–6531.
- 1549 Exhibit C-206, Tab 587.
- 1550 Ibid.
- 1551 [P] Graham testimony (May 30, 2005), pp. 4288–4293.
- 1552 Exhibit C-206, Tab 580; [P] Fry testimony (June 13, 2005), pp. 6532–6535; [P] Graham testimony (May 30, 2005), pp. 4288–4293.
- 1553 Exhibit C-206, Tab 589.
- 1554 Zahra Kazemi was an Iranian-Canadian photojournalist who died after being beaten in Iranian custody on July 10, 2003.
- 1555 [P] Fry testimony (June 13, 2005), pp. 6535–6536; [IC] Graham testimony (August 3, 2005), pp. 16748–16751; Exhibit C-291.
- 1556 [P] Pardy testimony (June 17, 2005), pp. 7564–7566. Earlier, on September 16, 2003, Mr. Lockyer had spoken to Mr. Sigurdson and Ms. Pastyr-Lupul about the Arar case, and about possibly meeting with him and other interested persons in the field of human rights. As Ms. Pastyr-Lupul put it in a DFAIT case note, it would be to “discuss the limitations of Canadian diplomacy in a case like this one, and to propose solutions for Canadian foreign policy approaches to Consular cases that do not fit into our conventional services.” Ibid., pp. 7561–7563; Exhibit C-206, Tab 566.
- Mr. Lockyer did indeed feel that it would be helpful if some consideration were given to the idea of setting up a body of outside citizens, along with members of the Department of Foreign Affairs, who had expertise in the area of consular affairs, could meet on a regular basis and look at these types of difficult cases: death penalty cases, cases where people are arrested and there is good reason to believe they are innocent, and/or cases where torture is likely occurring. This group might be able to think outside the box, and thereby develop strategies to deal with these issues. Ibid., pp. 7643–7646.
- 1557 Ibid., pp. 7564–7566.
- 1558 Ibid.
- 1559 Ibid., pp. 7563–7570.
- 1560 Ibid. These media leaks are discussed in the following chapter.
- 1561 Ibid., pp. 7570–7571.
- 1562 [P] Pastyr-Lupul testimony (July 29, 2005), p. 9118.
- 1563 [IC] Pillarella testimony (March 31, 2005), pp. 13796–13802; [P] Martel testimony [ET] (August 31, 2005), pp. 11326–11329; Exhibit P-11, Tabs 21 and 22.
- 1564 [P] Martel testimony [ET] (August 31, 2005), pp. 11326–11329; Exhibit P-11, Tabs 21 and 22; [IC] Pillarella testimony (March 31, 2005), pp. 13796–13802.
- 1565 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9235–9236.
- 1566 Exhibit C-206, Tab 166.
- 1567 Exhibit P-196; [P] Catterall testimony (May 31, 2005), pp. 4574–4576 and [P] (June 1, 2005), pp. 4689–4691.
- 1568 [P] Martel testimony [ET] (August 31, 2005), pp. 11387–11389.
- 1569 Ibid., pp. 11365 and 11389–11390.
- 1570 Ibid., pp. 11364–11366.
- 1571 Ibid., pp. 11385–11387.
- 1572 Ibid., pp. 11393–11399.
- 1573 Ibid., pp. 11449–11451.
- 1574 [P] Pardy testimony (May 25, 2005), pp. 3690–3696.
- 1575 [P] Lockyer testimony (June 17, 2005), pp. 7631–7632.
- 1576 Exhibit C-206, Tab 262; [P] Graham testimony (May 30, 2005), pp. 4179 and 4171–4173. As noted above, in their January 16, 2003 phone call, the Syrian Foreign Minister assured Minister

- Graham that if their investigation showed Mr. Arar was associated with al-Qaeda, he would have a fair trial. Minister Graham made it clear, however, that the preferred option was to have Mr. Arar returned to Canada. [P] Graham testimony (May 30, 2005), pp. 4189–4190; Exhibit C-206, Tab 293.
- 1577 Exhibit C-206, Tab 262; [P] Graham testimony (May 30, 2005), pp. 4179–4182.
- 1578 Exhibit C-206, Tab 505.
- 1579 [P] Graham testimony (May 30, 2005), pp. 4278–4279; [P] Graham testimony (June 2, 2005), pp. 4930–4936.
- 1580 [IC] Martel testimony (April 26, 2005), pp. 16112–16113; [IC] Pillarella testimony (March 31, 2005), pp. 13704–13705.
- 1581 [P] Martel testimony [ET] (August 31, 2005), pp. 11415–11417.
- 1582 Ibid., pp. 11417–11419.
- 1583 [P] Pardy testimony (May 26, 2005), pp. 3928–3937.
- 1584 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9237–9239; [P] Pillarella testimony (June 15, 2005), pp. 7030–7032.
- 1585 [P] Pardy testimony (May 26, 2005), pp. 3962–3964.
- 1586 [P] Martel testimony [ET] (August 31, 2005), pp. 11326–11329.
- 1587 Ibid., pp. 11426–11429.
- 1588 Ibid., pp. 11429 and 11431–11437.
- 1589 [P] Graham testimony (June 2, 2005), pp. 4795–4797.
- 1590 [P] Pastyr-Lupul testimony (July 29, 2005), pp. 9239–9247.
- 1591 [P] Pillarella testimony (June 15, 2005), pp. 7149–7158.
- 1592 [P] Lockyer testimony (June 17, 2005), pp. 7621–7631.
- 1593 Ibid., pp. 7671–7673.