Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin

The Honourable Frank Iacobucci, Q.C.
Commissioner

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Muayyed Nureddin

L'honorable Frank Iacobucci, c.r.
Commissaire

To Her Excellency
The Governor General in Council

October, 2008

May it please Your Excellency:

Pursuant to an Order in Council dated December 11, 2006, I have inquired into the actions of Canadian officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin. With this letter I respectfully submit my report.

Frank Iacobucci
Commissioner

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COMMISSIONER'S STATEMENT

In the Executive Summary that follows, I provide a précis of my report, including a brief review of the nature of my mandate, the process that I followed, and my findings. Before I do so, I believe it worth while to pause to reflect on the fundamental importance of the values implicated by the mandate of this Inquiry. At its core, this Inquiry involves the appropriate response of our democracy in Canada to the pernicious phenomenon of terrorism, and ensuring that, in protecting the security of our country, we respect the human rights and freedoms that so many have fought to achieve.

This respect for rights and freedoms is a constraint on a democracy that terrorists do not share. Indeed by their very actions they repudiate these rights and freedoms. For the terrorist, the end justifies the means. A democracy, however, must justify the means to any end—including, in this case, its response to terrorism. Canada must choose means to deal with terrorism that are governed by the rule of law and respect for our cherished values of freedom and due process. This is a balance that is easy to describe but difficult to attain. However, difficulty of achievement cannot be an excuse for not trying to achieve that equilibrium.

It seems inevitable, in the struggle against terrorism, that mistakes of various kinds will be made. This is unfortunate: mistakes can carry serious consequences not only for individuals affected but also for our institutions and our collective faith in our institutions. But we should be very grateful to the many men and women who as Canadian officials must daily confront the challenges discussed in this report, and exercise their best judgement to try to attain the delicate balance that both protects our democracy and preserves and enhances our fundamental freedoms.

This Inquiry is about the actions of Canadian officials relating to three Canadian citizens who were detained and mistreated abroad. Conducting the Inquiry has reinforced my conviction that we can and must continue to do everything possible to protect our country, and to do so with genuine respect for the fundamental rights and freedoms of Canadian citizens.

CONTENTS

EXECUTIVE SUMMARY 29

1 INTRODUCTION 41

2 THE INQUIRY PROCESS 51

3 BACKGROUND AND CONTEXT 63

4 ACTIONS OF CANADIAN OFFICIALS IN RELATION TO AHMAD ABOU-ELMAATI 109

5 ACTIONS OF CANADIAN OFFICIALS IN RELATION TO ABDULLAH ALMALKI 193

6 ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MUAYYED NUREDDIN 253

7 AHMAD ABOU-ELMAATI'S EXPERIENCE IN SYRIA AND EGYPT 269

8 ABDULLAH ALMALKI'S EXPERIENCE IN SYRIA 297

9 MUAYYED NUREDDIN'S EXPERIENCE IN SYRIA 323

10 TESTS FOR ASSESSING THE ACTIONS OF CANADIAN OFFICIALS 333

11 FINDINGS REGARDING THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO AHMAD ABOU-ELMAATI 345

12 FINDINGS REGARDING THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO ABDULLAH ALMALKI 397

13 FINDINGS REGARDING THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MUAYYED NUREDDIN 437

APPENDICES 457

DETAILED CONTENTS

EXECUTIVE SUMMARY 29

Nature and purpose of the Inquiry 29

Inquiry process 30

The government institutions 34

Context of the actions in question 34

Tests applied in making my findings 35

Ahmad Abou-Elmaati 35

Abdullah Almalki 37

Muayyed Nureddin 38

1 INTRODUCTION 41

The Inquiry 41

My mandate 41

Nature and purpose of the Inquiry 42

The Inquiry was an inquisitorial and not an adversarial proceeding 43

This was not an inquiry into the conduct of Mr. Almalki, Mr. Elmaati and Mr. Nureddin 43

The Inquiry was required to be internal and presumptively private 44

Appearances of Counsel 46

Acknowledgments 47

2 THE INQUIRY PROCESS 51

Counsel and advisors 51

Participation and funding 51

Interpretation of the Terms of Reference 52

Document collection and review 53

Requests to the United States, Syria, Egypt and Malaysia 55

Interviews 56

Adoption of testimony and findings from the Arar Inquiry 56

Public hearings 57

Preparation of draft factual narratives 58

National security review process 59
Section 13 notices 61
Final written submissions 61
Application for disclosure and public hearing 62
Medical reports 62

3 BACKGROUND AND CONTEXT 63
Overview of CSIS, the RCMP and DFAIT 63
Introduction 63
Mandate and functions of CSIS 63
Organization of CSIS 65
Section 12 and targeting 65
Judicial control of CSIS' investigations 67
Relationships with foreign intelligence organizations 68
The role of security liaison officers 69
Disclosure of information and the use of caveats 69
Mandate and functions of the RCMP 71
General mandate 71
Mandate with respect to national security 71
RCMP's relationship with CSIS 72
Organization of the RCMP and its national security activities 72
NSIB 74
NSOB 75
Threat Assessment Branch 76
NSISs and INSETs 77
CROPS 77
Relationships with foreign countries and police agencies 78
Operational Manual 78
Ministerial directives 78
Role of the liaison officer 80
RCMP policies about information sharing 81
Content of shared information 81
Control of shared information 82
Caveats in the post-9/11 period 83
Human rights considerations 84

Mandate and functions of DFAIT 85
Security and Intelligence Bureau 85
Consular Affairs Bureau 86
The CAMANT system 87
The role of the ambassador 87
Consular services for Canadians detained abroad 88
Training to detect signs of torture and abuse 90
Dual nationality and consular protection 91
Confidentiality of consular information and the *PrivacyAct* 92
CSIS AND RCMP INVESTIGATIONS IN THE POST-9/11 ENVIRONMENT 93
Push for cooperation in the face of a possible "second wave" 93
Transfer of investigations from CSIS to the RCMP 94
Creation of Projects A-O and O Canada 96
Project O Canada 96
Project A-O Canada 96
Composition of Project A-O Canada 97
Training and experience of Project A-O Canada members 98
Project A-O Canada reporting structure 98
The practice of sharing travel itineraries 99
SYRIA'S AND EGYPT'S HUMAN RIGHTS RECORDS 100
Introduction 100
Syria's human rights record 100
U.S. State Department and Amnesty International reports 100
Human Rights Watch and SHRC reports 100
DFAIT's assessment 101
CSIS' assessment 102
RCMP's assessment 103
Egypt's human rights record 104
U.S. State Department and Amnesty International reports 104
DFAIT's assessment 106
CSIS' assessment 107
RCMP's assessment 107

4 ACTIONS OF CANADIAN OFFICIALS IN RELATION TO AHMAD ABOU-ELMAATI 109
Canadian officials' interest in Mr. Elmaati 109
CSIS' initial interest in Mr. Elmaati 109
Mr. Elmaati detained at U.S. border 109
CSIS' September 11, 2001 interview 110
CSIS sharing of information 111
RCMP's initial interest in Mr. Elmaati 112
RCMP sharing of information 112
Border lookouts and watch lists 114
Canada Customs lookouts 114
U.S. border lookouts 115
FBI watch list 115
Media reporting regarding "Kuwaiti man" 116
Mr. Elmaati travels to Syria 117
Allegations against Mr. Elmaati's brother Amr 117
RCMP alerts Canadian authorities about Mr. Elmaati's planned departure 117
RCMP shares Mr. Elmaati's itinerary with U.S. authorities 118
Information shared without express caveats 119
Syrian authorities not informed 119
Mr. Elmaati monitored from Toronto to Vienna 120
Mr. Elmaati detained in Syria 121
DFAIT learns of detention 121
DFAIT opens a CAMANT file for Mr. Elmaati 121
CSIS learns of detention 122
RCMP learns of detention 122
RCMP interviews Mr. Elmaati's aunt 123
Suggestion that RCMP "complicit" in Mr. Elmaati's detention 124
Mr. Elmaati's alleged confession 126
CSIS assessment of alleged confession 126
Consideration whether information derived from torture 127
RCMP assessment of alleged confession 127
Consideration whether information derived from torture 129
Mr. Elmaati's description of the alleged confession 129

CSIS attempts to clarify information 130
CSIS learns that alleged confession shared with multiple foreign countries 130
DFAIT CONSULAR OFFICIALS NOT INFORMED OF ALLEGED CONFESSION 130
Sharing of information with DFAIT ISI 130
Consular Affairs Bureau unaware of interrogation 131
CSIS SENDS QUESTIONS TO BE PUT TO MR. ELMAATI 132
DFAIT not consulted about sending of questions 132
CONSULAR SERVICES IN SYRIA 133
Diplomatic note to Syria 133
Diplomatic note to Egypt 133
Ambassador Pillarella discusses Mr. Elmaati with Deputy Minister Haddad 134
Syrian Ministry of Foreign Affairs confirms detention 135
Consular attempts to obtain response to diplomatic notes 136
Regular contact with Mr. Elmaati's family 136
RCMP ATTEMPTS TO INTERVIEW MR. ELMAATI IN SYRIA 136
RCMP SEARCH WARRANTS AND JANUARY 2002 SEARCHES 138
RCMP requests warrants 138
The possibility that the alleged confession was obtained by torture 139
Validity of the warrants 140
Execution of the searches 140
RCMP shares results of the searches 140
Mr. Elmaati's will 141
CSIS SENDS ANOTHER ROUND OF QUESTIONS 142
MR. ELMAATI'S TRANSFER TO EGYPT 142
Interview with Badr Elmaati 143
DFAIT learns of Mr. Elmaati's transfer 143
RCMP learns of Mr. Elmaati's transfer 144
RCMP informs CSIS of Mr. Elmaati's transfer and possible interview 144
CSIS attempts to confirm the transfer 145
DFAIT confirms Mr. Elmaati was transferred 145
Official confirmation from Egyptian authorities 146
RCMP ATTEMPTS TO INTERVIEW MR. ELMAATI IN EGYPT 146

Efforts through a foreign agency 146
Efforts through its liaison officer in Rome 148
RCMP and DFAIT meet with SyMI 149
Presentation to the Americans 150
DFAIT attempts to gain consular access 151
Concerns about Mr. Elmaati's treatment in Egypt 152
ISI memorandum suggests possibility of torture 152
RCMP concerned about "extreme treatment" 153
Canadian officials' knowledge of Egypt's human rights record 155
DFAIT officials' knowledge of Egypt's human rights record 155
CSIS' knowledge of Egypt's human rights record 156
RCMP's knowledge of Egypt's human rights record 157
Mr. Elmaati's first consular visit and allegation of torture in Syria 157
DFAIT shares report of the first consular visit with CSIS and RCMP 159
DFAIT's reaction to allegation of torture 159
CSIS' reaction to allegation of torture 159
RCMP meetings in response to allegation of torture 160
Inter-agency meeting in response to torture claim 162
Joint meeting to discuss the RCMP's plans for an interview 163
DFAIT aware of potential for interview by the RCMP 163
Ambassador Pillarella attempts to assist the RCMP 164
Consular Activities in Egypt 164
Training to detect signs of torture and abuse 164
Requests for consular access alone 165
Second consular visit 167
Third consular visit 168
Consular Affairs Bureau provides DFAIT ISI with access to CAMANT notes 169
Providing CSIS with access to consular information 170
Providing the RCMP with access to consular information 171
Consular Affairs Bureau changes practice on sharing consular information 172
Fourth consular visit 172
DFAIT informs RCMP of Mr. Elmaati's release and re-arrest 173

Meetings with Badr Elmaati 174
Mr. Elmaati's continued detention in Egypt 174
Egypt provides a reason for detention 174
Further consular services in Egypt 175
Fifth consular visit 175
Sixth consular visit 176
Consular efforts to arrange family visits 177
April 2003 action memorandum 177
Egyptian Ministry of Foreign Affairs provides justification for Mr. Elmaati's detention 177
RCMP refuses to consent to sharing of Mr. Elmaati's will 178
RCMP's continued efforts to obtain access to Mr. Elmaati 178
Service's characterization of Mr. Elmaati 180
Consular Services in late 2003 181
Seven month gap between consular visits 181
Seventh consular visit 181
DFAIT seeks local legal advice 183
Eighth and final consular visit 183
RCMP Requests Assistance from DFAIT 184
Request for Intervention by Egyptian Ambassador to Canada 184
Request for assistance from Canadian Ambassador to Egypt 185
DFAIT drafts letter to Egyptian Foreign Minister 185
DFAIT concerns about possible mixed messages 185
Mr. Elmaati released from detention 187
CSIS and the RCMP learn of Mr. Elmaati's release 187
Attempts to obtain access to Mr. Elmaati through DFAIT 188
Mr. Elmaati meets with Embassy officials 189
Embassy did not disclose Mr. Elmaati's information 190
CSIS obtains information about Mr. Elmaati's release 190
Request for detention and questioning 190
Mr. Elmaati's request for security escort from DFAIT 190
Mr. Elmaati's return to Canada 192

5 ACTIONS OF CANADIAN OFFICIALS IN RELATION TO ABDULLAH ALMALKI 193
CANADIAN OFFICIALS' INTEREST IN MR. ALMALKI 193
CSIS 193
RCMP 194
Project A-O Canada 195
Investigative tools used by Project A-O Canada 195
Canada Customs lookouts 195
U.S. Customs lookouts 196
MR. ALMALKI GOES TO MALAYSIA 196
November 27 departure 196
RCMP searches for Mr. Almalki 197
Luggage search 198
EVENTS DURING MR. ALMALKI'S STAY IN MALAYSIA 198
Information sharing 199
Possible extradition to Syria 199
Border interview by Malaysian authorities 201
January 2002 searches and interviews 201
FBI / Project A-O Canada meeting in February 2002 201
Sharing of the Supertext database 202
MR. ALMALKI DETAINED IN SYRIA 203
Mr. Almalki leaves Malaysia 203
CSIS learns that Mr. Almalki is detained in Syria 203
RCMP learns of Mr. Almalki's detention 203
DFAIT learns of Mr. Almalki's detention 204
Discussions regarding criminal investigation of Mr. Almalki 206
RCMP / FBI meetings regarding an FBI criminal investigation 206
RCMP / CSIS meetings regarding criminal charges 207
ROLE OF MALAYSIA IN MR. ALMALKI'S DETENTION/INTERROGATION IN SYRIA 208
MR. ALMALKI'S TORTURE ALLEGATION / IMPACT OF MR. ELMAATI'S TORTURE ALLEGATION 208
CSIS' view 209
DFAIT's view 210
RCMP's view 212

CONSULAR ACTIONS 213
First steps 213
Diplomatic notes 213
Ambassador Pillarella meets with Deputy Minister Haddad and General Khalil 214
Relationship between Ambassador Pillarella and General Khalil 215
DFAIT makes contact with Mr. Almalki's family 215
Mr. Martel's meetings with Colonel Saleh 216
Consular visits to Mr. Arar and Mr. Elmaati 217
Intensity of consular activities 217
RCMP'S MEETING WITH MICHAEL EDELSON 218
CSIS' TRIP TO SYRIA 218
Purpose of the trip 218
Meeting with the Syrian authorities 219
Debriefing DFAIT 220
Mr. Almalki's interrogation in November and December 2002 220
QUESTIONS FOR MR. ALMALKI 221
Interview or questions 221
Consulting with DFAIT about gaining access and sharing information 222
July 29 meeting 222
August 6 DFAIT memorandum 223
September 10 meeting 223
September 10 fax to Staff Sergeant Fiorido 224
October 10 memorandum 226
October 21 discussion between Inspector Cabana and Mr. Gould 226
October 30 memorandum and draft letter 227
Questions sent 228
Decision to send the questions 228
Content of the questions 230
Questions translated 231
Questions sent to Staff Sergeant Fiorido 231
Cover letter to General Khalil 232
Delivery of questions to Ambassador Pillarella 233

Mr. Almalki's interrogation in mid-January 2002 234
No reply from the SyMI 234
No further questions or sharing of information 235
Possibility of mixed messages 235
Consular actions following Mr. Arar's press conference 235
Minister Graham's meeting with Ambassador Arnous 235
November 6 meeting with Mr. Almalki's family 236
DFAIT's efforts to meet with Syrian officials 237
Senator De Bané's meeting with Syrian officials 238
RCMP letter to Mr. Edelson 239
Mr. Almalki's possible release 240
Ambassador Davis' conversation with Mr. Haddad 240
CSIS communications regarding Mr. Almalki's release 240
Possible interview of Mr. Almalki in January 2004 241
Consultation with DFAIT 241
Purpose of the interview 242
Possibility that the interview would affect Mr. Almalki's release 242
Interview never took place 243
Plans for Daniel McTeague's visit to Syria 243
Mr. Almalki's release from detention 244
Pre-release meetings between Canadian and Syrian officials 244
Mr. Almalki released 245
Lunch with Mr. Martel 246
Mr. McTeague's meeting with Syrian officials 246
Information to CSIS 246
Post-release interrogation of Mr. Almalki 247
Mr. Almalki's court hearing and exit from Syria 247
DFAIT's efforts to secure Ambassador's attendance at Almalki's trial 247
Mr. Almalki's trial 248
DFAIT sends Syria a diplomatic note regarding Mr. Almalki's military service 248
Embassy's final contact with Mr. Almalki 249
Mr. Almalki returns to Canada 249
Canadian officials learn of Mr. Almalki's return to Canada 249

Sharing of consular information 250

6 ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MUAYYED NUREDDIN 253

Canadian officials' interest in Mr. Nureddin 253

CSIS 253

RCMP 254

RCMP's requests for more information 254

Sharing information about Mr. Nureddin's September 2003 travel plans 255

Mr. Nureddin's departure for Iraq; interviews and searches at the airport 255

Sharing the itinerary 256

CSIS shares Mr. Nureddin's full itinerary 256

Decision not to send the itinerary to Syria 257

Decision to send the itinerary to a U.S. agency 257

RCMP shares Mr. Nureddin's travel information 258

Foreign agency refuses permission to share information with Syria 258

Foreign agency advises Syria of Mr. Nureddin's travel plans and asks Syria to question him 259

Mr. Nureddin detained in Syria 259

DFAIT learns of the detention 259

CSIS learns of the detention 260

RCMP learns of the detention 260

Consular actions 260

Possible release / CSIS' inquiries of Syria 261

RCMP Briefing Notes regarding Mr. Nureddin 262

Mr. Nureddin's release and return to Canada 262

Mr. Nureddin released to Mr. Martel 262

Mr. Nureddin recounts his experience in detention 263

Mr. Nureddin's medical examination 264

Concerns about publicity 264

Mr. Nureddin returns home 265

Sharing of consular information with CSIS 265

RCMP briefing note regarding Mr. Nureddin's release 266

Post-release interviews of Mr. Nureddin 267
Sharing of DFAIT email message regarding Mr. Nureddin 267

7 AHMAD ABOU-ELMAATI'S EXPERIENCE IN SYRIA AND EGYPT 269
Arrival in Damascus and detention at the airport 269
Transfer to Far Falestin 270
Arrival at Far Falestin 270
Cell number 5 271
Interrogation and treatment on the first day 271
Interrogation and treatment over the next 48 hours 273
Drafting the alleged confession 274
Remaining time in Syria 275
Prison conditions at Far Falestin 276
Transfer to Egypt 277
Arrival in Egypt 278
General Intelligence headquarters in Abdeen 278
Interrogations on the first day at Abdeen 279
Subsequent interrogations at Abdeen 280
Prison conditions at Abdeen 281
Markaz Amen El Dawla (State Security headquarters) in Nasr City 282
Prison Conditions in Nasr City 282
Interrogations in Nasr City 283
Lazogley State Security branch 284
Tora Prison 286
Consular visits at Tora prison 287
Abu Zaabal prison in Cairo 289
Court-ordered "release" 289
Intermittent transfers to Nasr City for interrogation 290
Interrogation in November/December 2002 291
Interrogation and mistreatment in March 2003 291
Interrogation in October 2003 292
Further consular visits 293
Ministerial release 294
Departure from Egypt 295

8 ABDULLAH ALMALKI'S EXPERIENCE IN SYRIA 297
Decision to travel to Syria 297
Arrival in Damascus and detention at the airport 298
Transfer to Far Falestin 299
Interrogation and treatment on the first day 299
Interrogation on the second day 301
Interrogation and treatment on the third day 302
Late May and June: less interrogation, less mistreatment 303
Interrogation and treatment in July 304
Interview by the Malaysians 306
Interrogation in early October 307
Interrogation in November and December 307
Interrogations in January, February and March 309
Life at Far Falestin 310
Family visits to Far Falestin 313
Transfer to the Far' 'al-Tahqia al-'Askari branch 315
Transfer to Sednaya branch 316
Family visits to Sednaya 318
Release of Mr. Almalki 319
Post-release interrogation 321
Departure from Syria 322

9 MUAYYED NUREDDIN'S EXPERIENCE IN SYRIA 323
Decision to travel to Syria 323
Arrival at the Syrian border 323
General Security Department in Al Qamishli 324
Transfer to Far Falestin 324
Cell number 8 325
First interrogation 326
Subsequent interrogations in December 2003 328
Other incidents in prison 329
Interrogations in January 2004 330
Release from prison 330
Departure from Syria 331

10 TESTS FOR ASSESSING THE ACTIONS OF CANADIAN OFFICIALS 333
Introduction 333
Determining whether detention or mistreatment resulted, directly or indirectly, from the actions of Canadian officials 334
Determining whether the actions were "deficient in the circumstances" 340
Summary 342

11 FINDINGS REGARDING THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO AHMAD ABOU-ELMAATI 345
Overview 345
Did the detention of Mr. Elmaati result directly or indirectly from actions of Canadian officials and, if so, were those actions deficient in the circumstances? 347
Did the detention of Mr. Elmaati in Syria result directly or indirectly from actions of Canadian officials? 347
Were these actions of Canadian officials deficient? 349
RCMP's description of Mr. Elmaati as an "imminent threat" 349
CSIS' labelling of Mr. Elmaati 351
RCMP's sharing of Mr. Elmaati's travel itinerary 353
Did the detention of Mr. Elmaati in Egypt result directly or indirectly from actions of Canadian officials? 357
Did any mistreatment of Mr. Elmaati result directly or indirectly from actions of Canadian officials and, if so, were those actions deficient in the circumstances? 358
Was Mr. Elmaati mistreated in Syria and Egypt? 358
Actions of Canadian officials in relation to Mr. Elmaati's mistreatment in Syria 360
Failure of Canadian officials to advise DFAIT Consular Affairs Division of Mr. Elmaati's detention and interrogation in Syria 360
Did any mistreatment result directly or indirectly from this omission? 361
Was this omission a deficiency? 362
CSIS' sending of questions to be asked of Mr. Elmaati in Syria 363
Did any mistreatment result directly or indirectly from the sending of the questions? 364
Was sending the questions deficient in the circumstances? 365

ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MR. ELMAATI'S MISTREATMENT IN EGYPT 367
Sharing by CSIS in May 2003 of statements of concern about Mr. Elmaati 368
Did any mistreatment result directly or indirectly from sending this statement of concern? 368
Was sending this statement of concern deficient? 369
RCMP's requests to interview Mr. Elmaati in Egypt 370
Did any mistreatment result directly or indirectly from the RCMP's requests to interview Mr. Elmaati in Egypt? 372
Were the RCMP's actions deficient? 372
RCMP's sharing of information with foreign agencies 374
Inaccurate or imprecise labels 374
Sharing of the RCMP Supertext database with U.S. authorities 375
Did any mistreatment result from the sharing of the database? 376
Was the sharing of the database deficient? 377
RCMP's failure to advise the RCMP Commissioner of the allegations that Mr. Elmaati was mistreated in Syria and Egypt 377
Did any mistreatment result, directly or indirectly, from the RCMP's failure to advise the RCMP Commissioner of the allegations that Mr. Elmaati was mistreated in Syria and Egypt? 378
Comments on the RCMP's failure to advise the RCMP Commissioner of the allegations that Mr. Elmaati was mistreated in Syria and Egypt 378
RCMP's reliance on Mr. Elmaati's alleged confession in Syria to obtain search warrants 379
Did any mistreatment result, directly or indirectly, from the RCMP's reliance on Mr. Elmaati's alleged confession to obtain search warrants? 379
Comments on the RCMP's reliance on Mr. Elmaati's alleged confession to obtain search warrants 379
WERE THERE DEFICIENCIES IN THE ACTIONS OF CANADIAN OFFICIALS TO PROVIDE CONSULAR SERVICES TO MR. ELMAATI? 380
Did DFAIT act promptly and effectively after learning Mr. Elmaati was detained in Syria? 382
Did DFAIT act promptly and effectively after learning Mr. Elmaati had been transferred to Egypt? 384
Did DFAIT make consular visits sufficiently frequently? 386

Were consular officials adequately trained to assess whether Mr. Elmaati was being mistreated? 387

Should the consular officials have asked for private visits with Mr. Elmaati? 388

Failure to advise the Minister that Mr. Elmaati might have been tortured in Syria and Egypt 389

Should DFAIT officials have repeatedly asked Mr. Elmaati if he would be willing to meet with CSIS and the RCMP? 390

Was sharing consular information with CSIS and the RCMP deficient? 392

The consent exception 393

The public interest exception 393

The benefit to the individual exception 393

The law enforcement exception 394

12 FINDINGS REGARDING THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO ABDULLAH ALMALKI 397

Overview 397

Did the detention of Mr. Almalki result directly or indirectly from actions of Canadian officials and, if so, were those actions deficient in the circumstances? 399

Did the detention of Mr. Almalki result directly or indirectly from actions of Canadian officials? 399

Comments on the actions of Canadian officials during the period leading up to Mr. Almalki's detention in Syria 399

The RCMP's description of Mr. Almalki as an "imminent threat" 400

The RCMP's description of Mr. Almalki as an "Islamic extremist" 402

Sharing of the RCMP's Supertext database with U.S. agencies 403

Other information sharing 405

Did any mistreatment of Mr. Almalki result directly or indirectly from actions of Canadian officials and, if so, were those actions deficient in the circumstances? 405

Was Mr. Almalki mistreated in Syria? 405

Role of Canadian officials 408

Sharing of the RCMP's Supertext database with U.S. authorities 408

Did any mistreatment result directly or indirectly from the sharing of the database? 408

Was the sharing of the database deficient in the circumstances? 410

July 4 meeting between the Ambassador, the RCMP liaison officer and General Khalil of the SyMI 410
Did any mistreatment result directly or indirectly from the July 4 meeting? 410
RCMP's questions for Mr. Almalki 410
Did any mistreatment result directly or indirectly from the sending of questions? 411
Was sending questions deficient in the circumstances? 411
CSIS' trip to Syria 415
Did any mistreatment result directly or indirectly from CSIS' trip to Syria? 415
Comments on CSIS' trip to Syria 416
CSIS' request for an interview 417
Did any mistreatment result directly or indirectly from CSIS' request for an interview? 417
Comments on CSIS' request for an interview 418
CSIS' inquiries of the SyMI 419
Did any mistreatment result directly or indirectly from CSIS' inquiries of the SyMI? 419
Comments on CSIS' inquiries of the SyMI 419
Reports from Canada 420
WERE THERE ANY DEFICIENCIES IN THE ACTIONS OF CANADIAN OFFICIALS TO PROVIDE CONSULAR SERVICES TO MR. ALMALKI? 421
Failure to act promptly after learning of detention 422
Failure to promptly advise the Consular Affairs Bureau 422
Failure to promptly ascertain location and obtain consular access 424
Failure to make effective representations to Syria—August 2002 to November 2003 424
Diplomatic notes 425
Meetings with Syrian officials 425
Intensity of consular efforts in Elmaati and Arar cases 426
Explanations for the failure to make effective representations 426
Family visits 430
The submission that "more would have made no difference" 430
Effective representations—November 2003 to March 2004 431

Failure to sufficiently consider the possibility of mistreatment 432
DFAIT officials' knowledge of Syria's human rights record 432
Conclusions about likelihood of torture in specific cases 432
The impact of Mr. Elmaati's torture allegation 433
Raising possibility of mistreatment 434
Improper disclosure of confidential consular information 434

13 FINDINGS REGARDING THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MUAYYED NUREDDIN 437
Overview 437
Did the detention of Mr. Nureddin result directly or indirectly from the actions of Canadian officials and, if so, were those actions deficient? 438
Did the detention of Mr. Nureddin in Syria result directly or indirectly from the actions of Canadian officials? 439
Were these actions of Canadian officials deficient? 441
Sharing information about suspected involvement in terrorist activities 441
Sharing of Mr. Nureddin's travel itinerary and travel information 443
CSIS' response upon learning that a foreign agency planned to advise Syria that Mr. Nureddin was on his way there 444
Did any mistreatment of Mr. Nureddin result directly or indirectly from the actions of Canadian officials and, if so, were those actions deficient? 446
Was Mr. Nureddin mistreated in Syria? 446
Did any mistreatment of Mr. Nureddin result from the actions of Canadian officials? 448
Sharing of information prior to Mr. Nureddin's detention 449
Did any mistreatment result, directly or indirectly, from sharing this information? 449
Was sharing this information deficient? 449
CSIS' failure to advise DFAIT that Mr. Nureddin was at risk of being detained and mistreated 449
Did any mistreatment result, directly or indirectly, from CSIS' failure to advise DFAIT that Mr. Nureddin was at risk of being detained and mistreated? 450
Comments on CSIS' failure to advise DFAIT that Mr. Nureddin was at risk of being detained and mistreated 450

CSIS' December 22 communication to Syria 451
Did any mistreatment result, directly or indirectly, from CSIS' December 22 communication to Syria? 451
Comments on CSIS' December 22 communication to Syria 452
CSIS' early January 2004 inquiries 453
Did any mistreatment result, directly or indirectly, from CSIS' early January 2004 inquiries? 453
Comments on CSIS' early January 2004 inquiries 453
WERE THERE ANY DEFICIENCIES IN THE ACTIONS OF CANADIAN OFFICIALS TO PROVIDE CONSULAR SERVICES TO MR. NUREDDIN? 453
Initial response 454
Follow-up 454
Coordination of Canadian response 454
APPENDICES 457

EXECUTIVE SUMMARY

Nature and purpose of the Inquiry

1. By Order in Council dated December 11, 2006, I was appointed under Part I of the *Inquiries Act* to conduct an internal inquiry into the actions of Canadian officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin. The Order in Council set out the Terms of Reference by which the Inquiry was to be governed. The Terms of Reference directed me to determine:

(1) whether the detention of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances;

(2) whether there were deficiencies in the actions taken by Canadian officials to provide consular services to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin while they were detained in Syria or Egypt; and

(3) whether any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances.

The Terms of Reference also directed me to prepare and submit to the Governor in Council both a confidential report and a separate report suitable for disclosure to the public, one that would not disclose information properly subject to national security confidentiality.

2. Three points concerning the nature and purpose of the Inquiry deserve special emphasis.

(1) The Inquiry was an investigative and inquisitorial proceeding and not a judicial or adversarial one. Many of the features of an adversarial proceeding therefore did not apply. My counsel and I have nonetheless attempted to be as fair and as respectful as possible to all those involved.

(2) The subject matter of the Inquiry was the actions of Canadian officials, not the conduct of Mr. Amalki, Mr. Elmaati and Mr. Nureddin. They were not charged with anything, were not on trial, and had no case to meet. In setting out the factual background to my findings, I have necessarily made references to certain allegations about these three individuals. However, making determinations concerning these allegations was not within my mandate, and nothing in this report should be taken as an indication that those allegations are founded.

(3) The Inquiry was required to be internal and presumptively private. The Terms of Reference were very specific in describing the Inquiry as an "internal inquiry" and in requiring that I take all steps necessary to ensure that the Inquiry was conducted in private, except to the extent that I determined that, to ensure the effective conduct of the Inquiry, specific portions should be conducted in public.

3. The requirement that the Inquiry be conducted in private originated in the comments of Justice O'Connor in the Report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. Justice O'Connor recommended that the cases of Mr. Almalki, Mr. Elmaati and Mr. Nureddin be reviewed, but in a manner more appropriate than a full scale public inquiry, which, when national security issues are involved, can be complicated, unduly protracted and expensive.

Inquiry process

4. There was no template for pursuing an inquiry of this kind. Within the framework of the Terms of Reference, I adopted a process that enabled me to carry out a private but thorough investigation that allowed for all Inquiry participants to have input into the fact-finding process. This process, described in detail in **Chapter 2**, *The Inquiry Process*, resulted, in my view, in an investigation into the actions of Canadian officials with respect to Mr. Almalki, Mr. Elmaati and Mr. Nureddin that was thorough, efficient and fair.

5. The process included the following elements.

- **Participation and funding**. Following a public hearing in March 2007 in Ottawa, I granted Participant status to the three individuals and three government organizations, and granted Intervenor status to six organizations and one coalition of two organizations, and recommended that funding be provided to the individuals and to a number of the Intervenors. Funding was provided in accordance with my recommendations.

- **Interpretation of the Terms of Reference.** I received submissions from the Participants and Intervenors on how certain aspects of the Inquiry's Terms of Reference should be interpreted. Following a public hearing in April 2007 in Ottawa, I ruled, among other things, that the words "any mistreatment" as used in the Terms of Reference are to be interpreted broadly, to include any treatment that is arbitrary or discriminatory or resulted in physical or psychological harm. I also concluded that it was appropriate for the Inquiry to ascertain whether any mistreatment suffered by the three individuals amounted to torture.
- **Rules of Procedure and Practice.** Based in part on the submissions I heard at the April 2007 hearing, I adopted *General Rules of Procedure and Practice* to guide the Inquiry.
- **Document production.** Early on, my counsel sent to the Attorney General of Canada a comprehensive request for production of relevant documents. The Attorney General of Canada produced some 40,000 documents in response to this request and a series of follow-up requests. The Attorney General provided documents without redactions, with the exception of certain documents subject to privilege or immunity and information that might disclose the name of a foreign human source. This facilitated the expeditious review of the documents. Other Inquiry Participants and Intervenors also provided certain documents. Mr. Almalki, Mr. Elmaati and Mr. Nureddin each provided the Inquiry with certain medical records.
- **Requests to other countries.** Inquiry counsel sent letters to the appropriate authorities in the United States, Syria, Egypt and Malaysia, requesting that they participate in the Inquiry's activities. Regrettably, authorities in the United States, Egypt and Malaysia did not respond to the Inquiry's initial or follow-up requests. Although Syria responded in late August 2008 by requesting further information about Mr. Almalki, Mr. Elmaati and Mr. Nureddin—which information was provided—I have not received from Syrian authorities any concrete indication that the information and cooperation requested by the Inquiry will be forthcoming and I therefore determined that I should proceed to complete my report.
- **Interviews**. In light of the internal and private nature of the Inquiry, I determined that obtaining viva voce evidence through *in camera* interviews instead of more formal hearings would be the most practical means to obtain information in an efficient and timely manner. Inquiry

counsel interviewed 44 witnesses under oath or affirmation. Having reviewed the transcripts of these interviews, I then conducted further interviews of many of these witnesses. Inquiry counsel and I also conducted detailed interviews of Mr. Almalki, Mr. Elmaati and Mr. Nureddin under affirmation about their alleged torture and mistreatment in Syria and in Mr. Elmaati's case, Egypt.

- **Meetings with Inquiry Participants and Intervenors.** During the interview process, in an effort to ensure appropriate participation of the Participants and Intervenors and their counsel in the workings of the Inquiry, my counsel had a series of meetings with the Participants and their counsel and, separately, with the Intervenors and their counsel, to discuss questions to be asked of witnesses and to share testimony provided by witnesses that could be disclosed without jeopardizing national security confidentiality.
- **Evidence and findings from the Arar Inquiry**. Where appropriate, the Inquiry made use of evidence and findings from the Arar Inquiry. This was consistent with the Terms of Reference, which authorized me, as I considered appropriate, to accept as conclusive or give weight to the findings of other examinations that may have been conducted into the actions of Canadian officials in relation to Mr. Elmaati, Mr. Almalki and Mr. Nureddin.
- **Public hearings.** In addition to public hearings on participation and funding and interpretation of the Terms of Reference, I held a public hearing in Ottawa in January 2008 to receive submissions on the standards that I should apply in assessing the conduct of Canadian officials. Like the submissions I received on other matters, I found the submissions on standards very helpful.
- **Draft factual narratives**. I directed Inquiry counsel to prepare draft factual narratives for my review, based on documents, interviews and other information. I also directed that Inquiry counsel make these draft narratives available for review by counsel for Inquiry Participants and Intervenors on a confidential basis. Counsel for Inquiry Participants and Intervenors provided detailed comments and suggestions concerning the draft factual narratives both orally, in discussions with Inquiry counsel, and in writing. Inquiry counsel took these comments and suggestions into account in finalizing the narratives for my consideration.
- **Section 13 notices**. In accordance with section 13 of the *Inquiries Act,* I directed Inquiry counsel to send notices of potential findings of misconduct to institutions of the Government of Canada. The individual

officials whose actions were material to my mandate were employed with these institutions, and were acting within the chain of command established by them. I found no evidence that any of these officials were seeking to do anything other than carry out conscientiously the duties and responsibilities of the institutions of which they were a part. My findings (which are set out in Chapters 11, 12 and 13) are therefore directed to these institutions. It is neither necessary nor appropriate that I make findings concerning the actions of any individual Canadian official, and I have not done so.

- **Final submissions.** To assist me further in making my findings, I invited counsel for the Participants and Intervenors, based on the draft factual narratives that they had reviewed, to provide me with final written submissions and reply submissions. These submissions were of great assistance to me. Except for the portion of the Attorney General's submissions based on information protected by national security confidentiality, these submissions are available on the Inquiry's website.
- **National security confidentiality review**. In preparing a version of the report suitable for public disclosure, Inquiry counsel and I considered the constraints imposed by the Terms of Reference (which required that I must take all steps necessary to prevent the disclosure of information subject to national security confidentiality), section 38 of the *Canada Evidence Act* (which prohibits disclosure of information that would be injurious to international relations, national defence or national security), and the factors identified by Mr. Justice Simon Noël in *Canada (Attorney General) v. Canada (Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar)*.[1] With these factors in mind, I engaged in the national security review process with a view to providing the public with as complete as possible an account of the actions of Canadian officials and my findings in respect of those actions. With one exception, I am satisfied that the information contained in the confidential version of my report, but omitted from the public version, is properly subject to national security confidentiality. The information that forms the exception is, in my view, directly relevant to my mandate and should be disclosed to the public. However, the responsible Minister is of the opinion that disclosure of this information would be injurious to national security, national defence, and/or international relations. If it is ultimately determined

[1] 2007 FC 766, [2007] F.C.J. No. 1081.

that further information can be publicly disclosed, I intend to take the necessary steps to supplement the public version of my report.

- **Medical reports**. Inquiry counsel, together with counsel for Mr. Almalki, Mr. Elmaati and Mr. Nureddin, arranged for each of the men to meet with Dr. Judith Pilowsky, a psychologist, and with Dr. Rosemary Meier, a psychiatrist. Both Dr. Pilowsky and Dr. Meier have experience in dealing with victims of torture. Both were asked to provide reports of their assessments to the Inquiry. Counsel for the Attorney General was afforded an opportunity to comment on their reports.

The government institutions

6. Actions carried out on behalf of three institutions of the Government of Canada—CSIS, the RCMP and DFAIT—are the focus of the Terms of Reference.

7. CSIS is Canada's civilian security intelligence agency, charged with the role of advising government on threats to Canada's security. CSIS collects and analyzes information and intelligence, and provides the Government of Canada with intelligence reports about activities that may threaten the security of Canada.

8. The RCMP is Canada's national police force, charged with primary responsibility over national security law enforcement, including the prevention and investigation of terrorism offences as defined in section 2 of the *Criminal Code* or arising out of conduct that constitutes a threat to the security of Canada.

9. DFAIT is mandated to oversee the external affairs of Canada, including the management of Canadian embassies, high commissions and consulates, all of which provide assistance to Canadians in foreign countries. When a Canadian citizen has been arrested and detained abroad, DFAIT mandates its consular officers to investigate the circumstances of the detention and to seek access to the detainee.

Context of the actions in question

10. The actions that I reviewed took place in the period 2001 to 2004. This period forms part of what is sometimes referred to as "the post-9/11 environment." This period imposed unprecedented and intense demands on Canadian officials. There was intense pressure on intelligence and law enforcement agencies, including CSIS and the RCMP, to cooperate and share information with foreign agencies, particularly those of the United States. There were new challenges for Canadian consular officials in foreign states who, for the first

time, were seeking access to Canadian dual nationals detained by Middle Eastern security services on terrorism-related grounds.

11. The context also included information, some publicly available, concerning the human rights records of Syria, where all three of Mr. Almalki, Mr. Elmaati and Mr. Nureddin were detained, and of Egypt, where Mr. Elmaati was also detained. This information included reports that torture and mistreatment of detainees were common and persistent in both countries.

Tests applied in making my findings

12. In determining whether the detention or mistreatment of the three men resulted, directly or indirectly, from actions of Canadian officials, I have asked whether, on a consideration of all of the evidence and the rational inferences to be drawn from it, the actions can be said to have likely contributed to the detention or mistreatment of the individual concerned. In view of the purpose of this Inquiry, I do not consider it either necessary or appropriate that I weigh the role played by the actions of Canadian officials relative to other factors.

13. In considering whether the actions of Canadian officials that likely contributed to the detention or mistreatment of one of the three men were deficient in the circumstances, or whether the provision of consular services was deficient in the circumstances, I have applied the ordinary meaning of the term "deficiency," that of conduct falling short of a norm. In the context of this Inquiry, any of the following types of actions can constitute a deficiency:

(1) failing to meet a standard or norm that existed at the time;
(2) failing to establish a standard or norm when there should have been one; or
(3) maintaining a standard or norm that was itself deficient.

Ahmad Abou-Elmaati

14. Mr. Elmaati, a dual Canadian-Egyptian citizen, travelled to Syria from Canada in November 2001 to be married. When he arrived at the airport in Damascus, he was immediately taken into Syrian custody and transferred to Far Falestin detention centre, where he remained for over two months. In January 2002, Mr. Elmaati was transferred from Syria to Egypt, where he spent another 24 months in detention. While in detention in Syria and Egypt, Mr. Elmaati was held in degrading and inhumane conditions, interrogated and mistreated.

15. During his two months in Syrian detention, Mr. Elmaati did not receive consular visits from the Canadian Embassy in Damascus. During his two years

in Egyptian detention, Mr. Elmaati received eight consular visits from Canadian Embassy officials in Cairo and was visited periodically by his family. Mr. Elmaati returned to Canada in March 2004.

16. **Chapter 4** of this report, the *Actions of Canadian officials in relation to Ahmad Abou-Elmaati*, is a summary of information obtained by the Inquiry, largely from interviews of Canadian officials and review of relevant documents, regarding the actions of Canadian officials with respect to Mr. Elmaati. **Chapter 7** of this report, *Mr. Elmaati's experience in Syria and Egypt*, is a summary of Mr. Elmaati's description of what he experienced and how he was treated while in detention in Syria and Egypt.

17. **Detention.** I do not find that Mr. Elmaati's detention in Syria resulted directly from any action of Canadian officials. However, I do conclude that the combination of three instances of sharing of information by Canadian officials in the period leading up to Mr. Elmaati's detention likely contributed to his detention, so that the detention in Syria can be said to have resulted indirectly from these actions. For the reasons set out in **Chapter 11**, I also conclude that these actions were deficient in the circumstances. I do not find that Mr. Elmaati's detention in Egypt resulted, directly or indirectly, from any actions of Canadian officials.

18. **Mistreatment.** Based on a careful review of the evidence available to me, including the thorough interview of Mr. Elmaati conducted by me and my counsel and the publicly available information about Syria's and Egypt's human rights records, I conclude that, while in Syrian and Egyptian detention, Mr. Elmaati suffered mistreatment amounting to torture as that term is defined in the United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UN Convention Against Torture")*.

19. I do not conclude that any mistreatment resulted directly from any action of Canadian officials. However, I find that mistreatment resulted indirectly from several actions of Canadian officials. These actions include the failure of Canadian officials to advise DFAIT's Consular Affairs Bureau of Mr. Elmaati's detention and interrogation in Syria and CSIS' sending of questions to a foreign agency to be put to Mr. Elmaati while in Syrian detention. These actions likely contributed to mistreatment of Mr. Elmaati in Syria. I find that they were deficient in the circumstances. CSIS' statement of concern about Mr. Elmaati and his activities if released in a communication to the Egyptian authorities, the RCMP's attempts to interview Mr. Elmaati in Egypt and the RCMP's sharing of information all likely contributed to mistreatment of Mr. Elmaati in Egypt. I find that these actions were deficient in the circumstances.

20. Consular Services. I conclude that there were a number of deficiencies in the actions of Canadian officials to provide consular services to Mr. Elmaati. First, DFAIT failed to act sufficiently promptly and robustly in its initial efforts to locate and obtain access to Mr. Elmaati after learning that he had been detained in Syria and then again after learning that he had been transferred to Egypt. Second, while consular visits were in general provided regularly to Mr. Elmaati while he was detained in Egypt, during a portion of this period DFAIT failed to provide visits sufficiently frequently. Third, consular officials were not given sufficient training to assess whether Mr. Elmaati was being mistreated, and were not directed to ask for private visits. Fourth, DFAIT should have informed the Minister of Foreign Affairs about Mr. Elmaati's allegation of torture. Finally, DFAIT consular officials should not have repeatedly asked Mr. Elmaati whether he would be willing to meet with CSIS and the RCMP and should not have disclosed information collected in the course of providing consular assistance to Mr. Elmaati to other Canadian officials.

Abdullah Almalki

21. Abdullah Almalki, a dual Canadian-Syrian citizen, travelled to Syria from Malaysia in May 2002. Mr. Almalki told the Inquiry that the purpose of this trip was to visit his ill grandmother. When he arrived at the airport, he was immediately taken into Syrian custody, where he remained for 22 months. While in Syrian detention, Mr. Almalki was held in degrading and inhumane conditions, interrogated and mistreated. Though he was visited periodically by family and friends, Mr. Almalki did not receive any consular visits during his detention. Mr. Almalki left Syria at the end of July 2004 and returned to Canada in August 2004.

22. Chapter 5 of this report, the *Actions of Canadian officials in relation to Abdullah Almalki*, is a summary of information obtained by the Inquiry, largely from interviews of Canadian officials and review of relevant documents, regarding the actions of Canadian officials with respect to Mr. Almalki. **Chapter 8** of this report, *Mr. Almalki's experience in Syria* is a summary of Mr. Almalki's description of what he experienced and how he was treated while in detention in Syria.

23. Detention. I do not find that Mr. Almalki's detention in Syria resulted directly from any action of Canadian officials. I find myself unable to determine, on the record available to me, whether or not the actions of Canadian officials likely contributed to, and therefore resulted indirectly in, Mr. Almalki's detention in Syria. While it is possible that information shared by Canadian officials

might have contributed in some way to the decision by the Syrian authorities to detain him, in my judgment that possibility does not meet the threshold of likelihood required for me to infer an indirect link. However, certain actions of Canadian officials in the period leading up to Mr. Almalki's detention raised concerns for me. These concerns are discussed in detail in Chapter 12.

24. Mistreatment. Based on a careful review of the evidence available to me, including the thorough interview of Mr. Almalki conducted by me and my counsel and the publicly available information about Syria's human rights record and the medical reports, I conclude that, while in Syrian detention, Mr. Almalki suffered mistreatment amounting to torture as defined in the UN *Convention Against Torture*.

25. I do not conclude that any mistreatment resulted directly from any action of Canadian officials. However, I find that mistreatment suffered by Mr. Almalki in Syria resulted indirectly from two actions of Canadian officials: (1) in April 2002, the RCMP shared its Supertext database, which contained a considerable amount of information regarding Mr. Almalki, with U.S. agencies; and (2) in January 2003, the RCMP sent Syrian officials questions to be posed to Mr. Almalki while in Syrian detention. I find that these actions were deficient in the circumstances.

26. Consular services. I conclude that the actions of Canadian officials to provide consular services to Mr. Almalki in Syria were deficient in four respects. First, DFAIT failed to act sufficiently promptly after learning that Mr. Almalki was in custody in Syria. Second, DFAIT failed to make effective representations to obtain consular access to Mr. Almalki during the period from August 2002 to November 2003. Third, DFAIT officials failed to consider sufficiently the possibility that Mr. Almalki might be mistreated in Syrian custody. Fourth, in one instance DFAIT improperly disclosed to CSIS information that officials had collected in the course of providing consular assistance to Mr. Almalki.

Muayyed Nureddin

27. Muayyed Nureddin, a dual Canadian-Iraqi citizen, travelled to Syria in December 2003 on his way home to Toronto from Iraq, where he had been visiting for approximately two months. When he arrived at the border, he was immediately taken into Syrian custody, where he remained for 33 days. While in Syrian detention, Mr. Nureddin was held in degrading and inhumane conditions, interrogated and mistreated. During the 33 days that Mr. Nureddin was detained, he did not receive any consular visits from the Canadian Embassy. Mr. Nureddin returned to Canada in January 2004.

28. Chapter 6 of this report, the *Actions of Canadian officials in relation to Muayyed Nureddin*, is a summary of information obtained by the Inquiry, largely from interviews of Canadian officials and review of relevant documents, regarding the actions of Canadian officials with respect to Mr. Nureddin. **Chapter 9** of this report, *Mr. Nureddin's experience in Syria* is a summary of Mr. Nureddin's description of what he experienced and how he was treated while in detention in Syria

29. Detention. I do not find that Mr. Nureddin's detention in Syria resulted directly from any action of Canadian officials. However, I conclude that the following actions of Canadian officials in the period leading up to Mr. Nureddin's detention likely contributed to his detention, so that the detention can be said to have resulted indirectly from these actions: (1) CSIS and the RCMP shared with several foreign agencies, including U.S. agencies, information about Mr. Nureddin's suspected involvement in terrorist activities; and (2) in September 2003, CSIS shared with a U.S. agency Mr. Nureddin's travel itinerary, which indicated that he would be returning to Canada via Damascus in mid-December 2003. I also conclude that CSIS' decision to share the travel itinerary was not deficient in the circumstances, though the sharing of information about Mr. Nureddin's activities was deficient in certain respects.

30. Mistreatment. Based on a careful review of the evidence available to me, including the thorough interview of Mr. Nureddin conducted by me and my counsel and the publicly available information about Syria's human rights record, I conclude that, while in Syrian detention, Mr. Nureddin suffered mistreatment amounting to torture within the meaning of the UN *Convention Against Torture*.

31. I do not find that any mistreatment resulted directly from any action of Canadian officials. However, I find that the same sharing of information that likely contributed to Mr. Nureddin's detention also likely contributed to mistreatment of Mr. Nureddin there.

32. Consular services. I conclude that the provision of consular services to Mr. Nureddin during his 33-day detention in Syria was not deficient in the circumstances. DFAIT responded promptly after learning of Mr. Nureddin's detention and, following its initial contact with Syrian officials, DFAIT continued to follow up with efforts to secure consular access to Mr. Nureddin.

1

INTRODUCTION

The Inquiry

1. By Order in Council dated December 11, 2006, I was appointed under Part I of the *Inquiries Act* to conduct an internal inquiry into the actions of Canadian officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin (the "Inquiry"). The conduct of the Inquiry is governed by Terms of Reference set out in the Order in Council. A copy of the Order in Council is Appendix A to this report.

My mandate

2. The Terms of Reference directed me to determine the following:

(i) whether the detention of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances;

(ii) whether there were deficiencies in the actions taken by Canadian officials to provide consular services to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin while they were detained in Syria or Egypt; and

(iii) whether any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances.

3. The Terms of Reference directed me to submit to the Governor in Council both a confidential report setting out my determinations and, simultaneously, a separate report suitable for disclosure to the public, one that would not disclose information that, if it were disclosed to the public, would be injurious to international relations, national defence, national security or the conduct of any investigation or proceeding. The date for submission of my reports was initially set as January 31, 2008. At my request, to ensure that I had adequate time to complete the Inquiry and prepare my reports, this date was extended twice, first to September 2, 2008 and then to October 20, 2008.

4. The Terms of Reference also directed me, while adopting any procedures and methods that I considered expedient for the proper conduct of the Inquiry, to take all steps necessary to ensure that the Inquiry was conducted in private. Despite this general requirement, I was authorized to conduct specific portions of the Inquiry in public if I was satisfied that it was essential to do so to ensure the effective conduct of the Inquiry.

5. I was, in addition, directed to conduct the Inquiry in a manner that would ensure that there was no disclosure to persons or bodies other than the Government of Canada of information the disclosure of which would be injurious to international relations, national defence, national security, or the conduct of any investigation or proceeding. My mandate included the direction that I follow established security procedures, including the requirements of the Government Security Policy, in the handling of information at all stages of the Inquiry.

Nature and purpose of the Inquiry

6. In the chapter that follows I will describe in some detail certain other aspects of the Terms of Reference and the process that I followed in the conduct of the Inquiry. Before I do so I wish to emphasize three points concerning the nature and purpose of the Inquiry. This is important both to ensure a proper understanding of what the Inquiry was about and what it was not about, and to ensure fairness as much as possible for the individuals involved in the events and actions that I was called upon to review.

7. The three points are the following: (1) the Inquiry was an inquisitorial and not an adversarial proceeding; (2) the Inquiry was an inquiry into the actions of Canadian officials, not an inquiry into the conduct of Mr. Almalki, Mr. Elmaati and Mr. Nureddin; and (3) the Inquiry was required to be internal and presumptively private. I will address these three points in turn.

The Inquiry was an inquisitorial and not an adversarial proceeding

8. As I stated in my Ruling of April 2, 2007[1] and repeated in my Ruling of May 31, 2007,[2] the Inquiry was an investigative and inquisitorial proceeding, not a judicial or adversarial one: "There is no one charged, no one is on trial, and no one has a case to meet." The Inquiry concerned the conduct of Canadian officials as it related to the detention, alleged mistreatment, and provision of consular services to three individuals. As a consequence of the investigative nature of the Inquiry, many of the features of criminal or other adversarial proceedings did not apply in this context.

9. This is not to say the Inquiry has taken place without safeguards or protections for those affected by it. While assiduously pursuing the mandate of the Inquiry, my counsel and I have attempted to be as fair and respectful as possible to all involved. Our efforts in this regard are described below and in the next chapter. In accordance with the dictum of Chief Justice McLachlin in *Charkaoui v. Canada (Citizenship and Immigration)*,[3] I "took charge of the gathering of evidence in an independent and impartial way."

This was not an inquiry into the conduct of Mr. Almalki, Mr. Elmaati and Mr. Nureddin

10. Following on the observation that the Inquiry was investigative and not adversarial, I cannot emphasize enough that the subject matter of the Inquiry was the actions of Canadian officials, not the conduct of Mr. Amalki, Mr. Elmaati and Mr. Nureddin. They are not charged with anything, are not on trial, and have no case to meet. They have certainly not been convicted of any crime.

11. In setting out the factual background to my findings, I have necessarily made references to certain allegations about these three individuals. However, nothing that I state in this report should be taken as an indication that those allegations are founded. Making determinations concerning these allegations is plainly and simply not within my Terms of Reference.

12. I recognize that the mere fact of being named in allegations, especially allegations that are repeated publicly, can affect the reputations of those named and their families. That is regrettable, but unfortunately, largely unavoidable in view of the matters that I have been mandated to examine. But I reiterate that Mr. Amalki, Mr. Elmaati and Mr. Nureddin are not charged with and have not

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1 Appendix B (*Ruling on Participation and Funding, April 2, 2007*), p. 3.
2 Appendix C (*Ruling on Terms of Reference and Procedure, May 31, 2007*), p. 12.
3 [2007] 1 S.C.R. 350 at para. 50.

been convicted of any offence. Both the law and fundamental fairness dictate that they be presumed innocent of any wrongdoing.

13. Not only was it not within my Terms of Reference to inquire into the conduct of Mr. Amalki, Mr. Elmaati and Mr. Nureddin, it was also not within my Terms of Reference to inquire into or express any opinion on whether any of the three men was properly the subject of investigation by Canadian officials in the first place. My mandate as I understood it was to inquire into the actions of Canadian officials that might have been connected to the detention or mistreatment of the three men, and to the provision of consular services to them. While I appreciate that an argument could be made that none of these actions would have taken place if the men had not been the subject of investigation, I am confident that the Terms of Reference were not intended to authorize me to investigate the propriety of the initial decision to investigate the three men. If it had been intended that I carry out that task, I would have expected a clear expression of that intention. I therefore express no opinion on this question.

The Inquiry was required to be internal and presumptively private

14. The Terms of Reference were very specific in describing the Inquiry as an "internal inquiry" and in requiring that I take all steps necessary to ensure that the Inquiry was conducted in private, except to the extent that I was "satisfied that it is essential to ensure the effective conduct of the Inquiry" to conduct specific portions in public.

15. I will discuss in more detail in the next chapter how I interpreted these provisions of the Terms of Reference, after I received submissions concerning them. But from the outset they meant that this was in many respects not a "typical" public inquiry, if there is indeed such a thing. Nor was it intended to be.

16. As I explained in my opening remarks at the first public hearing in the Inquiry, to deal with applications for participation and funding,[4] this Inquiry originated in the comments of Associate Chief Justice Dennis O'Connor in the Report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (the "Arar Inquiry") that the cases of Mr. Almalki, Mr. Elmaati and Mr. Nureddin "raise troubling questions," and in his recommendation that their cases be reviewed. However, Justice O'Connor did not recommend that the review take the form of a traditional public inquiry. He stated:

> My experience in this Inquiry indicates that conducting a public inquiry in cases such as these can be a tortuous, time-consuming and expensive exercise….

[4] Opening Statement of Commissioner, online, www.iacobucciinquiry.ca/en/hearings/index.htm (accessed October 3, 2008).

> [T]here are more appropriate ways than a full-scale public inquiry to investigate and report on cases where national security confidentiality must play such a prominent role.[5]

17. The Terms of Reference referred to, and sought to implement, Justice O'Connor's recommendation. No participant in the Inquiry, or anyone else for that matter, challenged the provisions of the Terms of Reference that called for the Inquiry to be internal and presumptively private.

18. There was no template for pursuing an inquiry of this kind. Within the framework of the Terms of Reference, I sought to adopt a process that would enable me to carry out a private but thorough investigation, accompanied by measures aimed at allowing all Inquiry participants to have input into the fact-finding process. I directed my counsel to make every practicable effort to keep counsel for participants in the Inquiry informed and to seek their input as the Inquiry proceeded, and to consider at every stage the advisability of pursuing portions of the Inquiry in public. I am satisfied that they did so.

19. My counsel took the following initiatives, among others, to involve counsel for Participants and Intervenors, and the Participants and Intervenors themselves, in the workings of the Inquiry. I joined my counsel at a number of the meetings described below.

- First, my counsel had various meetings with the Participants and their counsel and, separately, with the Intervenors and their counsel, to discuss questions to be asked of witnesses and to share testimony provided by witnesses that could be disclosed without jeopardizing national security confidentiality.
- Second, my counsel had numerous meetings and discussions with counsel for the Participants and at least one with the Participants themselves to establish a process that allowed me to conduct detailed interviews of Mr. Almalki, Mr. Elmaati and Mr. Nureddin about their alleged torture and mistreatment in a manner that adequately protected their interests. These discussions were particularly protracted and time-consuming, but resulted in agreement on a process that I consider sufficiently robust to enable me to make the important determination of whether the individuals were subjected to mistreatment amounting to torture.
- Third, as discussed in the next chapter, my counsel shared with counsel for Participants and Intervenors on a confidential basis detailed draft

[5] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006), p. 267.

factual narratives prepared by Inquiry counsel (without information subject to national security confidentiality) in order to give them a further opportunity to have input into the Inquiry process. Counsel for Inquiry Participants and Intervenors provided detailed comments concerning the draft factual narratives both orally and in writing. This is the only instance of which I am aware in which counsel for Participants and Intervenors in an inquiry have been given an opportunity to review and comment on portions of a draft inquiry report before it is released to the public.

20. As I will describe in the next chapter, three public hearings were held on matters central to the Inquiry — on applications for participation and funding, Inquiry procedures and the interpretation of the Terms of Reference, and the standards that I should apply in evaluating the actions of Canadian officials. In preparing my public report, I have kept uppermost in my mind the desirability of informing the public as fully as possible, consistent with the requirement to maintain national security confidentiality.

Appearances of Counsel

Inquiry Counsel

John B. Laskin, Lead Counsel
John Terry, Co-Lead Counsel
Daniel Jutras, Special Counsel
Danielle Barot, Senior Counsel
Simon Richard, Counsel
Jennifer Conroy, Counsel
Tessa Kroeker, Counsel
Annik Wills, Counsel
Sarah Huggins, Counsel

Counsel for Abdullah Almalki

Paul Copeland[6]
Jasminka Kalajdzic

Counsel for Ahmad Abou-Elmaati

Barbara Jackman
Hadayt Nazami

Counsel for Muayyed Nureddin

John Norris[7]
Breese Davies

[6] Mr. Copeland withdrew as counsel for Mr. Almalki effective June 4, 2008.
[7] Mr. Norris withdrew as counsel for Mr. Nureddin effective June 9, 2008.

Counsel for the Attorney General of Canada

Michael Peirce

Alain Préfontaine

Gregory Tzemenakis

Roger Flaim

Yannick Landry

Counsel for the Ontario Provincial Police

Michele Smith

Darrell Kloeze

Counsel for the Ottawa Police Service

Vincent Westwick

Counsel for Amnesty International Canadian Section (English Branch)

Alex Neve

Counsel for Human Rights Watch

Robert A. Centa

Brydie C. M. Bethell

Counsel for the Canadian Council on American Islamic Relations (CAIR-CAN) and the Canadian Muslim Civil Liberties Association (CMCLA)

Faisal Kutty

Akbar Sayed Mohamed

Counsel for the British Columbia Civil Liberties Association (BCCLA)[8]

Shirley Heafey

Paul Champ[9]

Counsel for the International Civil Liberties Monitoring Group (ICMLG)

Warren Allmand

Counsel for the Canadian Arab Federation

James Kafieh

Counsel for the Canadian Coalition for Democracies

David B. Harris

Acknowledgments

21. The Inquiry was faced with many challenges and proved to be complicated for all who were associated with it. Inquiries that involve questions of national security are inherently difficult because of the need to respect confidentiality yet at the same time provide a process that is fair and independent.

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[8] The BCCLA withdrew from participation in the Inquiry effective December 11, 2007.

[9] Mr. Champ replaced Ms. Heafey as counsel for the BCCLA effective October 3, 2007.

22. In reviewing the work of all those involved and the path leading to this point, I wish to acknowledge the efforts and dedication of the many people who have made substantial contributions to the completion of the Inquiry.

23. I begin with my Inquiry Lead Counsel, John B. Laskin, and Co-Lead Counsel, John Terry. Their efforts, judgment, and commitment were superb and their contributions to every phase of the Inquiry were outstanding. No inquiry could be better served by its counsel. Worthy of special mention are the tireless efforts and impressive skills of Jennifer Conroy, Sarah Huggins, and Tessa Kroeker whose long hours of work in secure but hardly elegant premises was exemplary. I wish also to recognize a number of lawyers whose labours were most important and helpful: Danielle Barot, Simon Richard, and Annik Wills. Their professionalism in the performance of their tasks was impressive. Of great help to the Inquiry in many facets of its work was Special Counsel, Professor Daniel Jutras of the Faculty of Law of McGill University, who made major contributions on a variety of legal and non-legal issues.

24. I also wish to acknowledge the talents, wisdom and commitment of Nicole Viau-Cheney, Director, Finance and Administration, whose supervision and handling of the administrative issues facing the Inquiry was invaluable. Thanks are also due to the office staff Mary Ann Allen, Lise Scharf, Gilles Desjardins, Gisèle Malette and Éric Fournier for their support and help.

25. I also wish to record my gratitude to a group of assistants at Torys who were of enormous help to the Inquiry: Sharon Fitchett, Terri Palmateer and Ruth Anne Flear. I also am indebted to the law firm of Torys LLP, particularly Managing Partner Les Viner, and Chief Operating Officer Alan Pearson, for their support and co-operation.

26. I should also recognize the Privy Council Office for its help and advice on security, information technology, finance and other matters. With respect to media relations, I thank Francine Bastien for her talents and expertise and advice on communications matters and related activities.

27. I am also most grateful to a talented group of special advisors: Professor Peter Burns, of the University of British Columbia, the former Chair of the United Nations Committee against Torture, who provided advice concerning matters relating to mistreatment and possible torture; Paul Heinbecker, former Canadian Ambassador and Permanent Representative to the United Nations and former Ambassador to Germany, who is the Director of the Laurier Centre for Global Relations, and Distinguished Fellow, International Relations, at the independent research Centre for International Governance Innovation, and who

provided advice on certain DFAIT-related and national security confidentiality matters; Ray Protti, a former Director of CSIS, who advised the Inquiry on national security confidentiality issues; and Dr. Lisa Ramshaw of the Centre for Addiction and Mental Health in Toronto, a forensic psychiatrist who provided advice concerning certain medical information that the Inquiry obtained relating to Mr. Almalki, Mr. Elmaati and Mr. Nureddin.

28. In the final preparation of this Report, I wish to acknowledge the assistance of editors Brian Cameron for the English version and Alphonse Morrisette for the French version. I also express my sincere thanks to the translators, Pierre Cremer and Danielle Bérubé.

29. Lastly, I wish to acknowledge all the counsel who represented the Participants and Intervenors.

30. I wish to mention especially the Government of Canada lawyers, including Alain Préfontaine, Gregory Tzemenakis, Roger Flaim and Yannick Landry, and led by Michael Peirce, the main contact person for the Attorney General of Canada, who worked ably with my Counsel in dealing with many issues between the Government and the Inquiry that had to be addressed and resolved.

31. The lawyers for the three individuals, Barbara Jackman, Hadayt Nazami, Paul Copeland, Jasminka Kalajdzic, John Norris and Breese Davies, deserve special recognition as do the lawyers for the other Participants and Intervenors, Michele Smith, Darrell Kloeze, Vincent Westwick, Alex Neve, Robert A. Centa, Brydie C. M. Bethell, Faisal Kutty, Akbar Sayed Mohamed, Shirley Heafey, Paul Champ, Warren Allmand, James Kafieh, and David B. Harris. Despite the difficult assignments these counsel had, their submissions, suggestions, and views on many issues were most helpful to me, particularly in view of the constraints arising from the confidential nature of the Inquiry.

32. Without hesitation, I can say that counsel for all Inquiry Participants and Intervenors represented their clients most effectively, and acted professionally and responsibly throughout.

2

THE INQUIRY PROCESS

Counsel and advisors

1. As authorized by the Terms of Reference, in addition to retaining counsel, I engaged the services of advisors to assist me in the conduct of the Inquiry. The special advisors that I engaged were Professor Peter Burns of the University of British Columbia, the former Chair of the United Nations Committee against Torture, who provided advice concerning matters relating to mistreatment and possible torture; Paul Heinbecker, former Canadian Ambassador and Permanent Representative to the United Nations and former Ambassador to Germany, who is the Director of the Laurier Centre for Global Relations, and Distinguished Fellow, International Relations, at the independent research Centre for International Governance Innovation, and who provided advice on certain DFAIT- and national security-related matters; Raymond Protti, a former Director of the Canadian Security Intelligence Service, who provided advice on certain national security-related matters; and Dr. Lisa Ramshaw of the Centre for Addiction and Mental Health in Toronto, a forensic psychiatrist who provided advice concerning certain medical information that the Inquiry obtained relating to Mr. Almalki, Mr. Elmaati and Mr. Nureddin.

Participation and funding

2. The Terms of Reference authorized me to make decisions regarding who should participate in the Inquiry and to recommend to the Clerk of the Privy Council that funding be provided to those participants who would otherwise be unable to participate in the activities of the Inquiry.

3. I made decisions about participation and recommendations for funding following a public hearing held on March 21, 2007 in Ottawa. In advance of this

hearing, and to guide persons seeking to participate in the Inquiry's activities, I adopted and published on the Inquiry's website, www.iacobucciinquiry.ca, *Rules of Procedure and Practice Respecting Participation and Funding* ("*Participation Rules*"). Rules 6 and 7 of the Participation Rules set out two levels of participation: persons who could demonstrate that they had a substantial and direct interest in the subject matter of the Inquiry ("Participants"), and persons who could demonstrate that they had a genuine concern about the subject matter of the Inquiry and a particular perspective or expertise that might assist me in making factual findings ("Intervenors").

4. I received 16 applications from individuals and organizations seeking to participate in the work of the Inquiry. Nine of these applications were from persons seeking Participant status and seven were from organizations seeking Intervenor status. Several of these applications also included a request for funding of counsel and office space and for reimbursement of certain expenses (such as travel and accommodation expenses).

5. In a ruling dated April 2, 2007 (a copy of which is Appendix B to this report), I granted Participant status to three individuals and three government organizations, and granted Intervenor status to six organizations[1] and one coalition of two organizations. I subsequently made recommendations for additional funding in light of experience as the Inquiry proceeded.

Interpretation of the Terms of Reference

6. Participants and Intervenors were invited to provide submissions on how certain aspects of the Inquiry's Terms of Reference should be interpreted, and to comment on a set of *Draft Rules of Practice and Procedure* prepared with a view to exercising my authority under the Terms of Reference to adopt the procedures and methods that I considered expedient for the proper conduct of the Inquiry.

7. With respect to the interpretation of the Terms of Reference, I asked for submissions on:

- the meaning of the term "mistreatment;"
- whether the Terms of Reference mandated me to determine whether, and the extent to which, Mr. Elmaati, Mr. Almalki and Mr. Nureddin were tortured in Syria and (in Mr. Elmaati's case) Egypt;
- who should be entitled to attend hearings conducted in private;

[1] One of the six organizations granted Intervenor status, the British Columbia Civil Liberties Association, withdrew from the Inquiry on December 11, 2007.

- what steps I should take to ensure that those excluded from private hearings could participate in the Inquiry's process; and
- what considerations I should take into account in determining when to conduct portions of the Inquiry in public.

8. I received submissions on these issues at a public hearing held on April 17, 2007 in Ottawa. A copy of my ruling on the issues, dated May 31, 2007, is Appendix C to this report.

9. As set out in my ruling, I found with respect to the first issue that the words "any mistreatment" as used in the Terms of Reference are to be interpreted broadly, to include any treatment that is arbitrary or discriminatory or resulted in physical or psychological harm. With respect to the second issue, I concluded that it was appropriate for the Inquiry to ascertain whether any mistreatment suffered by the three individuals amounted to torture. I found that, on a common sense reading of the Terms of Reference, the nature and extent of any mistreatment, and whether that mistreatment amounted to torture, might at a minimum be relevant to whether there were deficiencies in the actions of government officials, or whether their actions were "deficient in the circumstances." I also expressed the view that, from the standpoint of the public interest, it is important to ascertain whether these individuals suffered mistreatment amounting to torture. Canada is a party to the United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Torture is prohibited under both international law and the domestic laws of most countries, including the *Criminal Code* of Canada. As I stated in my ruling, the Canadian public has an interest in knowing not just whether mistreatment occurred but also whether that mistreatment amounted to torture.

10. Based in part on the submissions made at the April 17 hearing, and my consideration of the other issues that I asked Participants and Intervenors to address, the *Draft Rules* were revised and became the *General Rules of Procedure and Practice* ("*General Rules*"). A copy is Appendix D to this report.

Document collection and review

11. Rule 15 of the *General Rules* requested Participants and Intervenors to provide to the Inquiry all relevant documents in their possession, power or control, but also provided for the production of documents as I considered appropriate.

12. Given the nature of this Inquiry, it was apparent from the outset that I would have to rely to a substantial extent on documents and information that would be provided by counsel for the Attorney General of Canada on behalf of institutions including the Department of Foreign Affairs and International Trade (DFAIT), the Canadian Security Intelligence Service (CSIS), and the Royal Canadian Mounted Police (RCMP). On March 6, 2007, the Inquiry sent a document request to the Attorney General, requesting production of all documents related to the three matters set out in the Terms of Reference in the possession, custody or control of the Government of Canada, all reports or other documents containing the findings of other examinations that might have been conducted into the actions of Canadian officials in relation to Mr. Elmaati, Mr. Almalki and Mr. Nureddin, and the formal record of the Arar Inquiry. A copy of the request is Appendix E to this report.

13. The Attorney General of Canada produced some 40,000 documents. These comprised both the Government's initial production in response to the Inquiry's request and additional documents provided subsequently, many in response to further requests arising from the Inquiry's document review and interviews. The Attorney General provided documents without redactions, with the exception of certain documents subject to privilege or immunity and information that might disclose the name of a foreign human source. This facilitated the expeditious review of the documents.

14. The Attorney General's document production was governed by a *Protocol for the Protection of Privileged and Immune Information* (the "*Protocol*") executed by counsel for the Attorney General and the Inquiry. A copy of the *Protocol* is Appendix F to this report. In the *Protocol* it was agreed that, to facilitate the work of the Inquiry, the Attorney General would produce documents that in some cases had not been reviewed for any applicable privilege or immunity. The Inquiry agreed that it would take steps to protect these documents, including by not disclosing the documents without the prior written consent of the Attorney General.

15. At my request, the Attorney General has provided me with a certificate of production of documents, confirming that the Attorney General directed the government and its agents, servants, contractors, agencies, boards, commissions and Crown corporations that might reasonably be expected to have documents relevant to the Terms of Reference to conduct a diligent search for the documents related to Mr. Almalki, Mr. Elmaati and Mr. Nureddin and the actions of Canadian officials as set out in the document request; that he established a system to ensure that the document requests were acted upon

appropriately; and that he is fully satisfied that all documents requested in the document request have been produced to the Inquiry. A copy of the certificate is Appendix G to this report. My findings are based on the premise that I have been provided with all relevant documentation and information from Canadian government officials.

16. Other Participants and several Intervenors also provided the Inquiry with documents, all of which the Inquiry reviewed. Among the documents produced by Mr. Almalki, Mr. Elmaati and Mr. Nureddin were medical records that the men obtained from medical professionals who have examined and evaluated them in the years following their return to Canada.

Requests to the United States, Syria, Egypt and Malaysia

17. At an early stage in the Inquiry, Inquiry counsel sent letters to the appropriate authorities in the United States, Syria, Egypt and Malaysia, requesting that they participate in the Inquiry's activities by providing relevant documentation and information (including any reports or communications from Canadian officials), facilitating interviews by Inquiry staff with officials with relevant information, and, if necessary, facilitating the attendance of these officials as witnesses. The letters stated that the Inquiry was prepared to travel to the countries for the purpose of conducting interviews. The letters also described steps that the Inquiry would take to protect any sensitive information. Inquiry counsel sent follow-up letters to the appropriate authorities in the four countries in December 2007.

18. Regrettably, authorities in the United States, Egypt and Malaysia did not respond to the Inquiry's initial or follow-up requests. Syria responded in late August 2008, through its Ministry of Foreign Affairs, by requesting further information about Mr. Almalki, Mr. Elmaati and Mr. Nureddin. With the cooperation of the three individuals and their counsel, the requested information was provided to the Syrian Ministry of Foreign Affairs in mid-September 2008. However, I have not received from Syrian authorities any concrete indication that the information and cooperation requested by the Inquiry will be forthcoming. In the absence of any indication of this kind, and in view of the time it took for Syria to respond, I determined that I should proceed to complete my report. No Inquiry Participant submitted that I should seek an extension of my report deadline to await whatever information Syria might decide to make available.

Interviews

19. Rule 18 of the *General Rules* provided that Inquiry counsel could interview any person who might have information or documents relevant to the mandate of the Inquiry.

20. In light of the internal and private nature of the Inquiry, I determined that obtaining oral evidence through *in camera* interviews instead of more formal hearings would be the most practical means to obtain information in an efficient and timely manner.

21. Between June 2007 and August 2008, Inquiry counsel interviewed 44 witnesses under oath or affirmation. These witnesses included individuals associated with CSIS, the RCMP and DFAIT. Inquiry counsel also interviewed Mr. Elmaati's aunt. All of the interviews were conducted *in camera*. A list of the interviews conducted by Inquiry counsel is Appendix H to this report.

22. I reviewed the transcripts of the interviews of all of the 44 witnesses interviewed by Inquiry counsel, and conducted further interviews of many of these witnesses. In my view the interview process served the Inquiry well. The private interview format encouraged candour on the part of those interviewed. Taken together with the other elements of the Inquiry's procedures, the interviews contributed in my view to an information-gathering and fact-finding process that was practical, efficient and fair.

23. In December 2007, Inquiry counsel and I conducted detailed interviews of Mr. Almalki, Mr. Elmaati and Mr. Nureddin under affirmation about their alleged torture and mistreatment in Syria and in Mr. Elmaati's case, Egypt. Professor Burns assisted with the conduct of the interviews and provided expertise on the issue of torture. At the request of Mr. Almalki, Mr. Elmaati and Mr. Nureddin, the transcripts of these interviews were kept confidential and provided only to one agreed-upon representative of each of the Attorney General, the RCMP, DFAIT and CSIS. Summaries of the interviews are found at Chapters 7, 8 and 9.

Adoption of testimony and findings from the Arar Inquiry

24. Where possible, the Inquiry made use of evidence and findings from the Arar Inquiry. This was consistent with the Terms of Reference, which authorized me, as I considered appropriate, to accept as conclusive or give weight to the findings of other examinations that may have been conducted into the actions of Canadian officials in relation to Mr. Elmaati, Mr. Almalki and Mr. Nureddin.

25. The Inquiry used evidence from the Arar Inquiry to supplement the evidence collected in the Inquiry's document collection and interview process. At the interviews conducted by Inquiry counsel, witnesses who had testified before the Arar Inquiry were presented with a list of relevant excerpts from their Arar Inquiry testimony and asked to either adopt the excerpts or advise the Inquiry of any modifications. In addition, throughout the Inquiry, Inquiry counsel and I had access to all of the exhibits filed at the Arar Inquiry.

26. As will be apparent from the chapters of this report setting out my findings, I have also adopted some of Justice O'Connor's findings on issues material to this Inquiry, including general matters such as Syria's human rights record, CSIS' arrangements with foreign intelligence agencies, the RCMP's Project O Canada and Project A-O Canada investigations, and the transfer of certain national security investigations from CSIS to the RCMP, and on some matters specific to the cases of Mr. Elmaati, Mr. Almalki and Mr. Nureddin. I determined that there would be no advantage in revisiting Justice O'Connor's careful and well-documented findings on these matters.

27. However, in making my findings concerning the treatment of Mr. Almalki, Mr. Elmaati and Mr. Nureddin in Syria and (in the case of Mr. Elmaati) in Egypt, I have not relied, as I have done with respect to other matters, on evidence and findings from the Arar Inquiry or on the approach that it took to the matter. I have conducted an independent investigation of the allegations of mistreatment and torture of the three men. I have proceeded in this way for two reasons. The first is the fundamental importance of my findings on mistreatment and torture, both for the individuals and for others who may in any way be affected by these findings. The second is Mr. Justice O'Connor's observation that he did not fully review the cases of the three men and his recommendation that their cases be examined through an independent process.

Public hearings

28. In addition to the public hearings on participation and funding (held on March 21, 2007) and the interpretation of the Terms of Reference (held on April 17, 2007), the Inquiry held a public hearing to receive submissions on standards of conduct.

29. In November 2007, I issued a notice of hearing and amended notice of hearing on standards of conduct requesting submissions on the standards that I should apply in assessing the conduct of Canadian officials relating to sharing information with foreign authorities, questioning Canadian citizens detained in foreign states, provision of consular services to Canadian citizens detained in

foreign states, disclosure of information obtained by consular officials, and the role of consular officials in national security or law enforcement matters. A copy of the Amended Notice of Hearing is Appendix I to this report. I received nine written submissions and two reply submissions on standards of conduct. On January 8 and 9, 2008, I heard oral submissions on these issues at a public hearing in Ottawa. A number of supplementary submissions were provided following the hearing at my request. I found these written and oral submissions very helpful in framing the issues that I had to consider.

Preparation of draft factual narratives

30. Rule 22 of the *General Rules* authorized Inquiry counsel to prepare draft factual narratives for my consideration based on documents, interviews and the findings of other examinations that may have been conducted into the actions of Canadian officials in relation to Mr. Almalki, Mr. Elmaati or Mr. Nureddin in order to facilitate the expeditious conduct of the Inquiry. In accordance with this Rule, Inquiry counsel prepared detailed draft factual narratives for my review.

31. In a ruling dated November 6, 2007, a copy of which is attached as Appendix J, I directed that the draft factual narratives prepared by Inquiry counsel would be provided to counsel for Inquiry Participants and Intervenors on a confidential basis. The purpose of this step was to provide Participants and Intervenors with a further opportunity to make an effective contribution to the Inquiry's process, and to help ensure that my understanding of the relevant facts would be accurate and complete. A version of the draft factual narratives, which did not include information subject to national security confidentiality claims, was provided to counsel for Inquiry Participants and Intervenors. Counsel for Inquiry Participants and Intervenors were invited to make comments on and suggestions for changes in the factual narratives.

32. Counsel for the Attorney General was provided with two versions of the draft factual narratives: a confidential version and a public version. It was necessary to proceed in this way so that the national security review process (as described below) could take place at the same time as the review of the draft factual narratives.

33. My ruling directed that counsel for Inquiry Participants and Intervenors, but not their clients, could review the draft factual narratives on a confidential basis. Counsel for Inquiry Participants and Intervenors were, however, permitted to consult with their clients in preparing any comments and suggestions for the draft factual narratives. Counsel for Inquiry Participants and Intervenors

sought reconsideration of my ruling on this issue, and requested disclosure of the draft factual narratives to their clients. I was not persuaded at that time to change my decision to limit access to the factual narratives to counsel.

34. Over the course of several weeks, counsel for Inquiry Participants and Intervenors provided detailed comments and suggestions concerning the draft factual narratives both orally, in discussions with Inquiry counsel, and in writing. Inquiry counsel took these comments and suggestions into account in finalizing the narratives for my consideration. I accepted the factual narratives as finalized; they are reproduced as Chapters 4, 5 and 6 of my report.

National security review process

35. As stated above in paragraphs 3 to 5 of chapter 1, the Terms of Reference directed me to take all steps necessary to prevent the disclosure of information subject to national security confidentiality in my final report. Information subject to national security confidentiality includes information the disclosure of which would be injurious to international relations, national defence or national security.

36. The language used in the Terms of Reference directing that I prevent disclosure of information that, if disclosed, would "be injurious to international relations, national defence or national security" is similar to language in section 38 of the *Canada Evidence Act*, which prohibits disclosure of this type of information. I was guided by the recent decision by Mr. Justice Simon Noël in *Canada (Attorney General) v. Canada (Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar)*[2] in determining what type of information could be disclosed publicly. While I benefited from guidance provided by the national security review process in the Arar Inquiry, I undertook my own, independent national security review and was not limited by any prior decisions.

37. The Terms of Reference set out the process for dealing with information that was subject to national security concerns. Paragraph (k) directed that the determination of whether certain information should not be disclosed was to be made either by me or by the Minister responsible for the department or government institution in which the information was produced or first received. Paragraph (l) directed that if I disagreed with a determination of the Minister, I could notify the Attorney General, and that this notice would constitute notice under section 38.01 of the *Canada Evidence Act*.

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[2] 2007 FC 766, [2007] F.C.J. No. 1081.

38. The confidential version of the draft factual narratives (which with certain revisions now forms part of my confidential report) was prepared without any restrictions concerning national security confidentiality; it provides a comprehensive account of the factual background to my determinations. In preparing a version of the draft factual narratives suitable for public disclosure, Inquiry counsel considered the constraints imposed by the Terms of Reference, section 38 of the *Canada Evidence Act* and the factors listed by Justice Noël in his judgment.

39. During the national security review process, Inquiry counsel and I consulted with two special advisors to the Inquiry, Raymond Protti, a former Director of CSIS, and Paul Heinbecker, a former Ambassador and Permanent Representative to the United Nations and former Ambassador to Germany, to assist with disclosure decisions. Taking into account the applicable constraints and the discussions with the special advisors, Inquiry counsel proposed to counsel for the Attorney General language for inclusion in the public version of the draft factual narratives (and ultimately the public version of my report). At my urging, Inquiry counsel proposed retaining as much information as possible, so that I could be in a position to provide to the public as complete as possible an account of the actions of Canadian officials and the setting in which they took place.

40. Many discussions occurred between Inquiry counsel and counsel for the Attorney General, on behalf of the responsible Ministers, to address and resolve national security confidentiality claims. After these extensive discussions, I am satisfied that, with one exception, the information contained in the confidential version of my report but omitted from the public version is properly subject to national security confidentiality.

41. In preparing the public version of my report, I chose not to use the technique of indicating where information has been omitted through black-outs or ellipsis marks. In my view, doing so would have impaired the intelligibility and coherence of the public report, particularly since, in many instances, the best solution to a national security confidentiality concern was to summarize the information or convey its essence in a different way, rather than omit specific words or phrases. The text of the public report includes approximately 20% fewer words than the text of the confidential report (excluding footnotes).

42. There remains certain information that bears directly on my mandate that I believe can and should be included in the public version of my report. However, the responsible Minister is of the opinion that disclosure of this information would be injurious to national security, national defence, and/or

international relations. If it is ultimately determined that further information can be publicly disclosed, I intend to take the necessary steps to supplement the public version of my report.

Section 13 notices

43. Section 13 of the *Inquiries Act* states that no report may be made against any person until reasonable notice has been given to the person of the charge of misconduct alleged against him and the person has been allowed full opportunity to be heard in person or by counsel.

44. The "actions of Canadian officials" that are the focus of the Terms of Reference are with only very limited exceptions actions of officials who are or were employed by three institutions of the Government of Canada — DFAIT, CSIS and the RCMP. These officials were acting on behalf of, and within the chain of command established by, these institutions in acting in the manner they did. While, as I will explain in setting out my findings, I consider that some of the actions of some of these officials did not meet the standards to be expected of them, I saw no evidence that any of these officials were on a frolic of their own, or seeking to do anything other than carry out conscientiously the duties and responsibilities of the institution of which they were a part.

45. In these circumstances, and taking into account the refusal of the United States, Syria, Egypt and Malaysia to provide information to the Inquiry that would have shed further light on the actions of Canadian officials and their consequences, I concluded that it would be fair and appropriate to direct notices under section 13 to institutions of the Government of Canada rather than to any individual official. In my view these institutions bear responsibility for any actions of Canadian officials that I find to have been deficient.

Final written submissions

46. To provide me with further assistance in making my findings, I invited counsel for the Participants and Intervenors to make final written submissions, based on the draft factual narratives. They were also given the opportunity to file reply submissions (other than reply to the portion of submissions of counsel for the Attorney General based on information contained only in the confidential version of the narratives.) I found these submissions very helpful. Except for the portion of the Attorney General's submissions to which I have just referred, they will be made available on the Inquiry's website simultaneously with or shortly after the release of the public version of my report.

47. Following the filing of the written submissions, counsel for Mr. Almalki, Mr. Elmaati and Mr. Nureddin, together with counsel for all but one of the Intervenors, brought a motion requesting that I convene a further public hearing to receive oral final submissions on the following issues: DFAIT, Embassy and consular conduct; the Canadian government's practice and policy on torture; information sharing with foreign regimes; appropriate use of labels in national security investigations; and the appropriate "standard of proof" that I should apply in making findings of deficient conduct.

48. I denied the motion for a number of reasons. First, in my view the issues set out in the motion had already been thoroughly canvassed by Participants and Intervenors in the written and oral submissions made at or in connection with the public hearings on the interpretation of the Inquiry's Terms of Reference and on standards of conduct, as well as in their final written submissions. Second, I had found all of those earlier submissions to be of considerable help, and doubted that further oral submissions would add much of significance. Third, I considered it in the best interests of the Inquiry and all those affected by it to pursue its completion without taking the additional time that hearing oral submissions would inevitably entail, given that such submissions would not add very much of value to what I had already read and heard.

Application for disclosure and public hearing

49. On September 26, 2008, counsel for Mr. Almalki, Mr. Elmaati and Mr. Nureddin brought an application requesting an opportunity to review and comment on the most current draft of the factual narratives, and to discuss the narratives and the final written submissions of all participants with their clients. They also sought an oral hearing to make submissions on the interpretation of subparagraph (a)(ii) of the Terms of Reference. My ruling on these matters is Appendix K to this report.

Medical reports

50. As one of the final steps in the Inquiry's fact-gathering process, Inquiry counsel arranged with counsel for Mr. Almalki, Mr. Elmaati and Mr. Nureddin for each of the men to meet with Dr. Judith Pilowsky, a psychologist, and with Dr. Rosemary Meier, a psychiatrist, and for Dr. Pilowsky and Dr. Meier to provide reports. Both Dr. Pilowsky and Dr. Meier have experience in dealing with victims of torture. Counsel for the Attorney General was afforded an opportunity to comment on their reports.

3

BACKGROUND AND CONTEXT

Overview of CSIS, the RCMP and DFAIT

Introduction

1. This section provides an overview of the organization and roles of CSIS, the RCMP and DFAIT, particularly with respect to Canada's national security activities and the provision of consular services to Canadians detained abroad, as they were at the time of the events examined by this Inquiry. The purpose is to describe the organizational contexts for the actions of Canadian officials in relation to the three men who are the subjects of this Inquiry. In what follows, I summarize the mandate and functions of each organization, and any policies and legislation relating to national security and consular affairs at the relevant time. I note that there have been some significant policy and organization changes since that time.

2. For CSIS and the RCMP, I review the relationships between the organizations and foreign agencies, including the exchange of information with foreign agencies. I also discuss some aspects of the post-9/11 environment in which CSIS and the RCMP were conducting their investigations. In the case of DFAIT, I review the provision of consular services to Canadian citizens detained abroad, and in particular, the provision of these services to Canadians holding dual nationality.

Mandate and functions of CSIS

3. CSIS (or "the Service") is Canada's civilian security intelligence agency. The Director of CSIS, under the direction of the Minister of Public

Safety and Emergency Preparedness, has control and direction over CSIS and all matters connected with CSIS.[1]

4. CSIS' primary role is to advise government on threats to Canada's security. CSIS collects and analyzes information and intelligence, and provides the Government of Canada with intelligence reports about activities that may threaten the security of Canada.[2] The information comes from many sources, including:

- members of the public;
- foreign governments and their agencies;
- human sources;
- interception of telecommunications and electronic surveillance of targeted persons or places;
- other government national security actors; and
- open sources, including newspapers, periodicals, academic journals, foreign and domestic broadcasts, official documents and other published materials.[3]

5. At the relevant time, CSIS had six priority areas with respect to investigating and reporting on threats to Canada's security:

- terrorism (primarily religious extremism);
- proliferation of weapons of mass destruction;
- espionage and foreign-influenced activities;
- transnational criminal activity;
- information security threats; and
- security screening and assessments (of federal government employees, immigrants, visa applicants and refugees, for example).[4]

6. According to CSIS Public Reports for 2001, 2002, 2003 and 2004-2005, the Service's highest priority was to safeguard the Canadian public against terrorist threats.[5] At the Arar Inquiry, former Director of CSIS Ward Elcock testified

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1 Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Public Works and Government Services Canada, 2006), p. 129 [Arar Inquiry, *New Review Mechanism*], citing *Canadian Security Intelligence Service Act,* R.S.C. 1985, c. C-23, section 6(1) [*CSIS Act*].

2 Canadian Security Intelligence Service, *Public Report 2004-2005*, p. 9, online, www.csis-scrs.gc.ca/pblctns/nnlrprt/2004/rprt2004-eng.asp (accessed July 3, 2008).

3 Arar Inquiry, *New Review Mechanism*, pp. 129-130.

4 Arar Inquiry, *New Review Mechanism*, p. 130. A detailed description of these six priority areas can be found in the same report, pp. 131-136.

5 Canadian Security Intelligence Service, *Public Report 2004-2005*, *2003 Public Report*, *2002 Public Report* and *2001 Public Report*, online, www.csis-scrs.gc.ca/pblctns/nnlrprt/index-eng.asp (accessed July 3, 2008).

that, at that time, roughly two-thirds of CSIS' resources were directed towards counter-terrorism investigations.

Organization of CSIS

7. CSIS is headed by the Director, who reports directly to the Minister of Public Safety and Emergency Preparedness. The Director is assisted by one deputy director (the Deputy Director Operations) and four assistant directors (Assistant Director Human Resources, Assistant Director Secretariat, Assistant Director Administration and Finance, and Assistant Director Legal Services). The Director and his or her deputy and assistant directors work out of CSIS headquarters in Ottawa.

8. Investigating and reporting on threats to the security of Canada is the responsibility of the Operations directorate, under the direction of the Deputy Director Operations. The Operations directorate is further divided into four areas: Operations, Intelligence, Corporate and Regions.[6] Each of the Operations, Intelligence and Corporate divisions is led by an Assistant Director, who is assisted by three to four director generals. These assistant directors and director generals and their staff work out of CSIS headquarters in Ottawa. The Regions division consists of regional offices, each led by a director general. There are six regional offices: Atlantic Region, Quebec Region, Ottawa Region, Toronto Region, Prairie Region and B.C. Region.[7]

9. Investigating and reporting on the threats posed by terrorist activity was, during the relevant period, primarily the domain of the Counter Terrorism division of the Operations branch, under the direction of the Director General of Counter Terrorism. Counter Terrorism was divided into several areas, including Sunni Islamic Terrorism, which was led by several chiefs and deputy chiefs and further divided into several units, each led by a unit head.

Section 12 and targeting

10. Section 12 of the *CSIS Act* mandates CSIS to collect, analyze and retain information and intelligence regarding activities that, on reasonable grounds, may be suspected of posing a threat to the security of Canada. The *CSIS Act* defines a "threat to the security of Canada" as:

> (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage;

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[6] At the time of writing, there was no longer a Corporate division.

[7] Canadian Security Intelligence Service, "Our Organization," online, www.csis.gc.ca/bts/rgnztn-eng.asp (accessed July 8, 2008).

(b) foreign-influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person;
(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state; and
(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.[8]

Lawful advocacy, protest or dissent, unless carried on in conjunction with any of the above activities, is not considered a "threat to the security of Canada."[9]

11. In order to initiate and engage in the collection of information or intelligence about a person, group, organization, issue or event under section 12 of the *CSIS Act*, CSIS policy requires that targeting approval be obtained from the appropriate authority. During the time period relevant to this Inquiry, there were three levels of targeting approval—level 1, level 2 and level 3.[10] A higher targeting approval level allowed for more intrusive investigative techniques but had to be approved by a higher authority.[11]

12. A level 1 targeting approval could be granted by a CSIS supervisor or manager and allowed for the use of minimally intrusive investigative techniques.[12] A level 2 targeting approval could only be granted by a CSIS regional or branch director general and allowed for the use of moderately intrusive techniques.[13] A level 3 targeting approval, which allowed for the use of the most intrusive

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8 *CSIS Act*, section 2.
9 *CSIS Act*, section 2.
10 *Security Intelligence Review Committee Report 2003-2004*, pp. 14-15 [*SIRC Report 2003-2004*]. SIRC Reports are online at: www.sirc-csars.gc.ca/annran/index-eng.htm (accessed July 3, 2008).
11 *SIRC Report 2003-2004*, p. 15.
12 *SIRC Report 2003-2004*, p. 14. Minimally intrusive investigative techniques include reporting of open information and querying of records held by foreign police, security or intelligence organizations.
13 *SIRC Report 2003-2004*, p. 15. Moderately intrusive investigative techniques include all investigative techniques provided by a level 1 targeting approval, and some physical surveillance and interviews of the target.

techniques available,[14] had to be sought from the Target Approval and Review Committee (TARC).[15]

13. At the relevant time, the members of TARC included CSIS' Director (who was the chairperson of TARC), several senior Service staff, CSIS' General Counsel and a representative of the Deputy Minister of Public Safety and Emergency Preparedness Canada.[16]

14. Targeting approvals are granted for a limited duration, but may be renewed or terminated by the appropriate authority at any time prior to expiry.

15. The targeting approval process was, at the relevant time, governed by several general principles, including the following:

- the rule of law must be observed;
- the investigative means must be proportional to the gravity and imminence of the threat;
- the need to use intrusive investigative techniques must be weighed against possible damage to civil liberties or to fundamental societal institutions; and
- the least intrusive investigative methods must be used first, except in emergency situations or where less intrusive investigative techniques would not be proportionate to the gravity and imminence of the threat.

Judicial control of CSIS' investigations

16. In order to use certain intrusive investigative techniques, the Service must obtain a warrant from a Federal Court judge. Section 21 of the *CSIS Act* provides that a judge, on the application of the CSIS Director or a CSIS employee designated by the Minister, may issue a warrant authorizing the Service to intercept any communication or obtain any information, record, document or thing (from a target's home or office, for example).[17] Before issuing any warrant, the judge must be satisfied:

- on reasonable grounds that a warrant is required to enable the Service to investigate a threat to the security of Canada; and

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[14] *SIRC Report 2003-2004*, p.15. The most intrusive techniques available include all techniques provided by level 1 and level 2 targeting approval, and as outlined in section 21 of the *CSIS Act*, including warrant powers such as telephone intercepts.

[15] *SIRC Report 2003-2004*, p. 14.

[16] *SIRC Report 2003-2004*, p.14.

[17] *CSIS Act*, section 21.

- that other investigative techniques have been tried and have failed or that other investigative techniques are unlikely to succeed, that the matter is so urgent that it would be impractical to carry out the investigation using only other investigative procedures, or that without a warrant it is likely that information regarding the threat to the security of Canada would not be obtained.[18]

17. The duration of any warrant issued under section 21 must not exceed one year, except in the case of a warrant to enable the investigation of a threat to the security of Canada within the meaning of section 2(d) of the *CSIS Act*, the duration of which must not exceed 60 days.[19]

Relationships with foreign intelligence organizations

18. Section 17 of the *CSIS Act* provides that the Service may, with the approval of the Minister of Public Safety and Emergency Preparedness after consultation with the Minister of Foreign Affairs, enter into an arrangement or otherwise cooperate with an institution of the government of a foreign state. Unless a section 17 arrangement is in place, CSIS is not permitted to pass classified information to foreign agencies. It may, however, accept unsolicited information.[20]

19. The Ministerial Direction for CSIS Operations allows CSIS, with ministerial approval, to enter into an arrangement for cooperation with a foreign security or intelligence organization. Arrangements may be established and maintained as long as they meet the following criteria:

- arrangements must remain compatible with Canada's foreign policy objectives toward the country or international organization in question (the Minister of Foreign Affairs must be consulted);
- arrangements are to be established as required to protect Canada's security;
- the human rights record of the country or agency is to be assessed and the assessment weighed in any decision to enter into a cooperative relationship; and
- arrangements must respect the applicable laws of Canada.[21]

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18 *CSIS Act*, sections 21(2)(a), (b), and 21(3).

19 *CSIS Act*, section 21(5). Threat to the security of Canada is defined in section 2(d) as "activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada."

20 *SIRC Report 2003-2004*, p. 21.

21 *SIRC Report 2003-2004*, p. 23. Since the relevant time, changes have been made to the wording of this ministerial direction.

The role of security liaison officers

20. The Service's section 17 relationships are maintained by security liaison officers. The locations of the security liaison officers' posts are classified except for Paris, Washington and London.[22]

21. Security liaison officers have four main functions. First, security liaison officers are responsible for maintaining and developing channels of communication for the purpose of exchanging information under approved arrangements, and seeking and proposing new arrangements that will benefit the Service. Second, security liaison officers manage the Immigrant Screening Program. They conduct security screening interviews and security inquiries and provide recommendations concerning the admissibility of persons wishing to immigrate to Canada. Third, security liaison officers provide CSIS headquarters with reports on any events or developments related to Canadian security interests. Fourth, security liaison officers provide assistance to Canada's foreign missions; for example, they provide security-related advice to the head of mission.[23]

Disclosure of information and the use of caveats

22. The fundamental principle of intelligence services and intelligence investigations is the control of information. According to Jack Hooper, former Assistant Director of Operations and Deputy Director of Operations for the Service, CSIS must control where its information is going and what uses can be made of it. In order to control its information, the Service attaches caveats when it discloses information to others.

23. CSIS policy OPS-603, "Disclosure of Operational Information and Intelligence—Caveats," provides that the appropriate caveat must be added to all information or intelligence disclosed in written or print form to any person, agency or department outside the Service.

24. Caveat 1 relates to information and intelligence subject to the *Access to Information Act* and the *Privacy Act* and, according to policy, should appear on all letters, telex messages and attached memoranda sent to Canadian departments/agencies or organizations. It provides:

> This document constitutes a record which may be subject to mandatory exemption under the *Access to Information Act* or the *Privacy Act*. The information or intelligence may also be protected by the provisions of section 37(1) of the *Canada Evidence Act.* The information or intelligence must not be disclosed

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22 *SIRC Report 2003-2004*, p. 31.

23 *SIRC Report 2004-2005*, pp. 31 and 33.

> or used as evidence without prior consultation with the Canadian Security Intelligence Service.

25. Caveat 2 relates to the reclassification and further dissemination of information and intelligence. It is to be used if the information or intelligence contained in the document is obtained through normal investigative means. According to OPS-603, this caveat should be used for disclosures to foreign agencies and organizations. It provides:

> This document is the property of the Canadian Security Intelligence Service. It is loaned to your agency/department in confidence, for internal use only. If you are subject to public access to information laws which do not allow you to protect this information from disclosure, notify CSIS immediately and return the document.

26. Caveat 3 is to be used if the information or intelligence in the document is collected from sensitive or human or technical sources or other sensitive investigative techniques. According to OPS-603, this caveat instructs that no action may be taken that would jeopardize the Service's sources or techniques on the basis of the information or intelligence that has been provided. It provides:

> This document is the property of the Canadian Security Intelligence Service. It is loaned to your agency/department in confidence. The information or intelligence contained in this document emanates from sensitive sources and no action may be taken on the basis of this information or intelligence which may jeopardize those sources. It must not be reclassified or disseminated, in whole or in part, without the consent of the originator.

27. Caveat 4 is related to security information and intelligence that is being disclosed to Canadian law enforcement agencies. This caveat must be used in all documents that contain privileged information (which includes information described in section 37 of the *Canada Evidence Act*, information relating to solicitor-client privilege and information that could jeopardize confidential sources). Caveat 4 provides:

> Because disclosure of this document would be injurious to national security, the Canadian Security Intelligence Service objects to its disclosure before a court, person or body with jurisdiction to compel the production. The Service reserves its right to certify [in] the above instances, pursuant to section 37(1) of the *Canada Evidence Act*, that the information or intelligence contained in this document should not be disclosed on the grounds of national security.

28. In late 2003, the Service started to use, in addition to the caveats discussed above, a caveat aimed at ensuring that the information it provided to a foreign agency would not be used to violate an individual's human rights. According to

a CSIS official, an initial version of this caveat was first used in an earlier case, and was used again in the case of Mr. Nureddin. Since then, the Service has formalized the caveat, which now states;

> Our Service recognizes the sovereign right of your government to undertake reasonable measures under the law to ensure your public safety. Should you deem some form of legal action against the individual is warranted, our Service trusts that the individual will be fairly treated within the accepted norms of international conventions, accorded due process under law and afforded access to Canadian diplomatic personnel if requested.
>
> Furthermore, should you be in possession of any information that originated from our Service regarding the individual we ask that this information not be used to support the detention or prosecution of the individual without prior formal consultation with our Service.

Mandate and functions of the RCMP

General mandate

29. The *Royal Canadian Mounted Police Act* establishes the RCMP (or "the Force") as Canada's national police force.[24] The Force's website describes its mandate as follows:

> We prevent and investigate crime, maintain order, enforce laws on matters as diverse as health and the protection of government revenues, contribute to national security, ensure the safety of state officials, visiting dignitaries and foreign missions, and provide vital operational support services to other police and law enforcement agencies.[25]

Mandate with respect to national security

30. By section 6(1) of the *Security Offences Act*, the RCMP has primary responsibility over national security law enforcement. This includes responsibility for preventing and investigating offences that arise out of conduct constituting a threat to the security of Canada.[26] The definition of "threat to the security of Canada" is the same as the definition set out in the *CSIS Act* (see paragraph 10 above), and includes sabotage, espionage, foreign-influenced activities, clandestine activities, threat or use of serious violence and undermining by covert unlawful acts.[27]

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[24] *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, section 3 [*RCMP Act*].

[25] RCMP, "Programs and Services," online, www.rcmp-grc.ca/prog_serv/index_e.htm (accessed July 3, 2008).

[26] *Security Offences Act*, R.S.C. 1985, c. S-7, section 6 [*Security Offences Act*].

[27] *Security Offences Act*, section 2(a).

31. As part of its national security mandate, the RCMP is also responsible for preventing and investigating terrorism offences as defined in section 2 of the *Criminal Code*. These include various terrorism-related crimes introduced in 2001 by the federal *Anti-terrorism Act* (often referred to as Bill C-36), such as providing or collecting property intending that it be used or knowing that it will be used to carry out terrorist activity,[28] using or possessing property for terrorist purposes,[29] participating in or contributing to the activity of a terrorist group[30] and facilitating terrorist activity.[31]

RCMP's relationship with CSIS

32. The RCMP and CSIS use similar investigative techniques to acquire information on the activities of individuals and groups, but use this information for different purposes. CSIS collects security intelligence for the purpose of advising the Canadian government about threats to the security of Canada. The RCMP gathers criminal intelligence in support of an investigation, with the goal of preventing and deterring criminal acts or arresting or laying charges against persons who have committed criminal acts.[32]

33. The relationship between CSIS and the RCMP is governed by a Memorandum of Understanding (MOU). It provides that the RCMP will rely on CSIS for intelligence relevant to national security offences, and requires CSIS to provide the RCMP with information and intelligence that may assist the RCMP in fulfilling its national security-related responsibilities. In turn, the RCMP is to provide CSIS with information relevant to the CSIS mandate. The MOU directs CSIS and the RCMP to consult with each other about the conduct of national security investigations.[33]

Organization of the RCMP and its national security activities

34. The RCMP is managed and controlled by the RCMP Commissioner, who is subject to the direction of the Minister of Public Safety and Emergency Preparedness.[34] During the time period relevant to this Inquiry, Giuliano Zaccardelli was the RCMP Commissioner. The Commissioner is assisted by several deputy commissioners: one for each RCMP region or division (Atlantic,

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28 *Criminal Code*, R.S.C. 1985, c. C-46, section 83.02 [*Criminal Code*].

29 *Criminal Code.*, section 83.04.

30 *Criminal Code.*, section 83.18(1).

31 *Criminal Code*, section 83.19.

32 Arar Inquiry, *New Review Mechanism*, p. 44. A detailed discussion of the RCMP's approach to the collection of criminal intelligence can be found in the same report, pp. 42-44.

33 Arar Inquiry, *New Review Mechanism*, p. 139. There is now a revised RCMP-CSIS Memorandum of Understanding in place.

34 *RCMP Act*, section 5(1).

Central, North-West and Pacific) and one each for Operations, Strategic Direction and Corporate Management.[35] The Deputy Commissioner, Operations was, at the relevant time, responsible for the RCMP's national security mandate.[36]

35. The RCMP is headquartered in Ottawa and divided into 15 geographical divisions, each managed by a commanding officer. Each division is alphabetically designated. For example, RCMP "A" Division has jurisdiction in the Ottawa area and RCMP "O" Division has jurisdiction in the Toronto area.[37]

36. Activities related to the RCMP's national security mandate were, at the relevant time, coordinated by the Criminal Intelligence Directorate (CID) at the RCMP's national headquarters in Ottawa. The CID is mandated to provide a national program for the management of criminal information and intelligence, with a view to detecting and preventing crime having an organized, national security dimension. The Assistant Commissioner, CID, who reports to the RCMP Deputy Commissioner, Operations, was, at the relevant time, responsible for the overall operation, administration and coordination of all the components of CID. At the relevant time, Richard Proulx was the Assistant Commissioner, CID.

37. In 2003, the RCMP created the position of Director General, National Security, reporting to the Assistant Commissioner of CID. At that time, the National Security Directorate had three branches: the National Security Intelligence Branch (NSIB), National Security Operations Branch (NSOB) and Threat Assessment Branch, each of which is described in some detail below.[38]

38. Also in 2003, and in consultation with the RCMP, a ministerial direction regarding the conduct and control of national security investigations was issued by the Solicitor General of Canada (the Minister who then had direction over the Force). The Ministerial Direction—National Security Responsibility and Accountability (November 2003) requires that the national security activities of the RCMP be under the control of the Commissioner, subject to direction by the Minister, and that national security investigations be "centrally coordinated at RCMP national headquarters." Deputy Commissioner Loeppky testified at the Arar Inquiry that this ministerial direction was a response to the concern that the coordination of high risk and highly sensitive investigations should be conducted at headquarters to ensure that there was more of a "hands-on approach" and that the RCMP was addressing the right threats. In his interview for this Inquiry, former Commissioner Zaccardelli stated that the ministerial direction

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35 Arar Inquiry, *New Review Mechanism*, p. 84.

36 Arar Inquiry, *New Review Mechanism*, p. 85.

37 RCMP, "Organization of the RCMP," online, www.rcmp.ca/about/organi_e.htm (accessed July 3, 2008).

38 Arar Inquiry, *New Review Mechanism*, p. 85.

was issued in response to the increased workload for the RCMP on national security matters after 9/11. He also stated that the directive was intended to address some of the key issues arising in this area, including the Minister's expectations of the RCMP and the RCMP's role in national security investigations.

39. The direction also directs the Commissioner to keep the Minister apprised of all national security investigations that may give rise to controversy.[39] In his interview, former Commissioner Zaccardelli stated that he was briefed by his deputies on the investigations of Mr. Almalki, Mr. Elmaati and Mr. Nureddin and that he, in turn, would brief the Minister in accordance with this ministerial direction. Former Commissioner Zaccardelli stated that although there was no specific direction as to when or about what matters he should be briefed by his deputies, his deputies were accountable and responsible for ensuring that he was briefed in a timely manner on matters that he had to know for "the sake of knowing" or on matters as to which he had to provide direction.

40. Former Commissioner Zaccardelli also stated that he briefed the Minister on the investigations of Mr. Almalki, Mr. Elmaati and Mr. Nureddin, but that in order to maintain the Force's independence, the briefings did not include operational matters or details of the investigation. When asked specifically if the Minister was briefed on the issue of torture, former Commissioner Zaccardelli stated he was never apprised of any concerns about torture and that as a result, the Minister was never briefed on the issue. When asked whether he would have discussed with the Minister the issue of torture if it had been brought to his attention, he said that he was not ready to speculate on what he would do in a hypothetical situation.

41. Most of the investigative work on national security matters is carried out at the divisional level (for example in "A" Division or "O" Division) by Integrated National Security Enforcement Teams (INSETs) or National Security Investigation Sections (NSISs).[40] INSETs and NSISs are discussed in more detail below.

NSIB

42. The NSIB is responsible for the assessment, coordination, monitoring and direction of all national security investigations and intelligence at the national and international levels. Its primary role is to collect and analyze intelligence in relation to the RCMP's national security mandate. It is also responsible for identifying potential strategic approaches to national security investigations and producing tactical analytical products, intelligence products that make the case

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[39] Arar Inquiry, *New Review Mechanism*, p. 89.
[40] Arar Inquiry, *New Review Mechanism*, p. 85.

for the commencement of criminal investigations. On occasion, the NSIB will ask INSETs or NSISs to assist with preparing tactical analytical products.[41]

43. The NSIB is involved in the day-to-day flow of national security information both within the RCMP and between the RCMP and other government departments or domestic and foreign intelligence agencies. The NSIB is the primary point of contact for intelligence agencies that have information to provide to the RCMP or that wish to request information from the RCMP. Liaison with other police agencies is generally the responsibility of the NSOB.[42]

44. There are several sections and groups that come within the responsibility of the NSIB, including the Anti-terrorist Financing Group (ATFG). The ATFG supports counter-terrorism strategies, financial intelligence gathering and financial investigations. It also monitors financial operations from a national perspective and implements counter-terrorism financing strategies, activities, procedures, policies and standards.[43]

45. The NSIB is led by the Superintendent, NSIB, a position held by Wayne Pilgrim during the relevant period.

NSOB

46. The NSOB coordinates national security investigations throughout the country. It is also responsible for ensuring compliance with RCMP policies (including policies relating to national security investigations); preparing subject profiles, case briefs and briefing notes for senior management; and assisting the Commissioner in his responsibility for informing the Minister of high-profile national security investigations that may give rise to controversy.[44]

47. The NSOB is responsible for providing headquarters' approval for the national security investigations undertaken by INSETs and NSISs (which are discussed below) and for coordinating these investigations. A NSOB "reviewer" is assigned to each investigation file and is responsible for coordinating the flow of information between headquarters and the field officers assigned to the matter, finding specialized resources within the RCMP to support the file, interacting with domestic and foreign police agencies and with CSIS and RCMP liaison officers abroad and ensuring compliance with RCMP policies and procedures. The NSOB is also responsible for oversight of information sharing with

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41 Arar Inquiry, *New Review Mechanism*, p. 96.
42 Arar Inquiry, *New Review Mechanism*, p. 97.
43 Arar Inquiry, *New Review Mechanism*, p. 98.
44 Arar Inquiry, *New Review Mechanism*, p. 98.

domestic agencies and provides approval for information exchanges between RCMP liaison officers and foreign police agencies.[45]

Threat Assessment Branch

48. The Threat Assessment Branch is responsible for collecting, assessing and analyzing information about potential threats to Canadian institutions, in support of the RCMP's protective policing operations.[46] These protective policing operations involve protection of the Prime Minister, the Governor General, Ministers of the Crown, Supreme Court judges, visiting dignitaries, internationally protected persons under the *Criminal Code*, and federal government facilities such as the Parliament Buildings.

49. The Threat Assessment Branch collects and analyzes information about possible threats, and then presents this information and analysis in threat assessment reports, which are distributed within the RCMP and to other branches of government. Some threat assessment reports provide an overall assessment of the threat environment at a point in time, while others focus on a specific threat to an individual, event or facility.

50. The Threat Assessment Branch uses four threat levels—imminent, high, medium and low—to describe the significance of a reported threat. The threat level is set at "imminent" when:

> intelligence or information has identified an individual or group in or outside Canada, with the stated intent to commit, in the immediate future, an act of serious violence against a specific person or property in Canada.

The threat level is set at "high" when:

> intelligence or information indicates the presence in Canada of an individual or group with the stated intent to commit acts of serious violence against persons or property within Canada. While no specific target has been identified, intelligence or information confirms the individual or group possesses the capability and intends to carry out the threat. An attack could occur anywhere in Canada.

The threat level is set at "medium" when:

> intelligence or information has identified the presence in Canada of an individual or group with the capability and stated intent to commit acts of serious

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45 Arar Inquiry, *New Review Mechanism*, pp. 98-99.

46 Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Factual Background, Volume II* (Ottawa: Public Works and Government Services Canada, 2006) , p. 509 [Arar Inquiry, *Factual Background, Vol. II*].

> violence. Historically, the capability to carry out these acts has been demonstrated, however, there is no intelligence or information that indicate[s] such an act is forthcoming.

The threat level is set at "low" when:

> intelligence or information has identified an individual or group within Canada, capable of performing acts of serious violence against persons or property, but which to date has confined its activities to countries outside of Canada.

NSISs and INSETs

51. The majority of the investigative work on national security matters is done at the divisional level in INSETs and NSISs.[47] INSETs, which were introduced after 9/11, are integrated teams comprised of both RCMP officers and personnel from provincial and municipal police forces and non-police agencies. There are four INSETs, one in each of Vancouver, Toronto, Ottawa and Montreal.[48] RCMP divisions without an INSET have an NSIS, which carries out the same functions as an INSET, but is comprised entirely of RCMP personnel.[49]

52. The work of both INSETs and NSISs is coordinated by national headquarters. They both report to the NSOB, through the Division Criminal Operations Branch.[50]

CROPS

53. The activities of each RCMP division are managed by Criminal Operations (CROPS), which is the operational nerve centre of each division. CROPS, under the direction of the CROPS officer, is responsible for directing and coordinating the activities of the division's various units (for example, commercial crime, drugs, customs and excise, national security and criminal intelligence) in accordance with the mandate of the division. This includes responsibility for allocating the division's budget to the various units. The CROPS officer is assisted by an assistant CROPS officer, who takes a hands-on approach to overseeing the division's units.[51] From September 2001 until January 2003, the CROPS Officer for "A" Division was Antoine Couture. Garry Clement was "A" Division's Assistant CROPS Officer until 2002.

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47 Arar Inquiry, *New Review Mechanism*, p. 102.

48 Arar Inquiry, *New Review Mechanism*, p.102.

49 Arar Inquiry, *New Review Mechanism*, p.102.

50 Arar Inquiry, *New Review Mechanism*, p. 85.

51 Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Factual Background, Volume I* (Ottawa: Public Works and Government Services Canada, 2006) , p. 120 [Arar Inquiry, *Factual Background, Vol. I*].

54. Each unit within a division is headed by an officer in charge, who is responsible for the day-to-day management of the unit. The officer in charge of a unit that conducts investigations (some units do not conduct investigations) reports to CROPS through the assistant CROPS officer.[52]

Relationships with foreign countries and police agencies

55. Like CSIS, the RCMP shares national security information and intelligence with foreign government agencies. It shares extensively with foreign law enforcement agencies, particularly in the United States, and occasionally with foreign security intelligence agencies.[53] Unlike the *CSIS Act*, the *RCMP Act* and the *Security Offences Act* are silent on relationships between the RCMP and foreign governments or government agencies. Instead, rules and policies about establishing relationships and sharing information with other agencies are set out in RCMP policy documents, including the RCMP Operational Manual ("the RCMP Manual") and various ministerial directives.

Operational Manual

56. The RCMP Manual, in the chapter on Information Sources, provides for the exchange of security and criminal intelligence between the RCMP and "approved foreign authorities" under the direction of the RCMP's International Liaison Branch. The term "approved foreign authorities" is not defined. The RCMP Manual also states that DFAIT formalizes agreements between the RCMP and foreign police, security or intelligence agencies.

57. The RCMP Manual also sets out guidelines for RCMP officials who travel abroad for investigational purposes. Among these is a guideline about interviewing or contacting Canadians in custody in a foreign country. It provides that Canadians detained abroad should not be contacted or interviewed unless: (1) the interview was requested through a Canadian government representative or consent to the interview is given in writing; and (2) the interview has been approved by the head of the foreign post.

Ministerial directives

58. Several ministerial directives provide guidance regarding the RCMP's relationships with foreign agencies in the national security context.

59. The Ministerial Directive on RCMP Agreements (April 2002) deals with agreements (which includes arrangements and understandings) entered into

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[52] Arar Inquiry, *Factual Background, Vol. I*, p. 120.
[53] Arar Inquiry, *New Review Mechanism*, p. 121.

by the RCMP to provide or receive services, information, assets, or assistance to or from other domestic governments, agencies and departments, foreign governments and international organizations. The directive sets out several principles governing these agreements, including: (1) all agreements must be supported by legal advice; (2) agreements with a foreign entity must be supported by advice from DFAIT; and (3) where DFAIT advises that it would not be in the best interests of Canada's foreign policy either to enter into a proposed agreement or to let an existing agreement continue, the RCMP Commissioner must bring the matter to the attention of the Solicitor General.[54]

60. The Ministerial Direction—National Security Related Arrangements and Cooperation (November 2003) permits the RCMP, with the Minister's approval, to enter into written or oral arrangements, or otherwise cooperate, with foreign security or intelligence organizations for the purpose of carrying out its national security mandate. These arrangements are managed by the RCMP Commissioner, who must direct a periodic evaluation or audit of each arrangement and report annually to the Minister on the status of all arrangements. While the Ministerial Direction permits the RCMP to enter into arrangements with foreign agencies, the RCMP did not have formalized agreements with Syria or Egypt during the time period relevant to this Inquiry.

61. This Ministerial Direction—National Security Related Arrangements and Cooperation also states that arrangements may be established and maintained only as long as they remain compatible with Canada's foreign policy towards the country or international organization in question, including consideration of that country or organization's respect for democratic or human rights, as determined through ongoing consultations with DFAIT. According to former Commissioner Zaccardelli, the Ministerial Direction simply formalized the considerations that were already taken into account by the RCMP before entering an arrangement with a foreign organization. Prior to and after the introduction of this Ministerial Direction, he expected that RCMP members would inform themselves and use good judgment in deciding whether human rights issues were a consideration. If the RCMP member required more information on human rights prior to entering into an agreement, he or she could consult internally within the division or with the Policy Centre. The RCMP member could also consult with the other government department or agencies including the Department of Justice, DFAIT and CSIS.

62. The Ministerial Direction also states that, with respect to matters related to threats to the security of Canada (as defined in the *CSIS Act*), CSIS is the lead

[54] Arar Inquiry, *New Review Mechanism*, p. 89

agency for liaison and cooperation with foreign security or intelligence agencies, and the RCMP must inform CSIS whenever it exchanges information with these agencies. [55]

63. The Ministerial Direction—National Security Related Arrangements and Cooperation does not apply to foreign law enforcement agencies or organizations, and there are no similar requirements with respect to arrangements with foreign law enforcement agencies. In his report, Justice O'Connor noted that, at the time of the Arar Inquiry, the RCMP's relationships with other police agencies were governed by common understandings and protocols. He also noted that, according to the RCMP, negotiating and maintaining "written agreements with all agencies that provide or receive information internationally and domestically would effectively bring investigations and international cooperation to a halt." Justice O'Connor acknowledged a recent effort by the RCMP to develop a generic Memorandum of Understanding to codify guiding principles and expectations for information and intelligence sharing with other domestic and foreign police agencies, but stated that the RCMP did not intend this template to replace case-by-case information sharing among police agencies in accordance with accepted principles.[56]

Role of the liaison officer

64. Relationships between the RCMP and foreign governments and government agencies are maintained by RCMP foreign liaison officers posted abroad. The role of liaison officers is set out in the Memorandum of Understanding between DFAIT and the RCMP ("DFAIT-RCMP MOU"), which provides that the liaison officer is responsible for maintaining relationships with foreign criminal police agencies and related institutions to provide support and assistance to Canadian law enforcement agencies in the prevention and detection of offences under Canadian federal laws. In the national security context, information and intelligence exchanged with a foreign police agency flows through the liaison officer responsible for the area in which the foreign agency is located. This exchange is generally accomplished without coordination with CSIS. If the information is relevant to CSIS' mandate, the RCMP must seek the foreign police agency's permission before sharing it with CSIS.[57]

65. The DFAIT-RCMP MOU requires the relevant head of mission—the Ambassador in the case of Syria and Egypt—to ensure that the liaison officer is

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55 Arar Inquiry, *New Review Mechanism*, p. 113

56 Arar Inquiry, *New Review Mechanism*, p. 113.

57 Arar Inquiry, *New Review Mechanism*, pp. 194-195.

kept fully informed of Canadian assessments of political, economic, and social developments in the country concerned.

66. During the relevant period, the liaison officer stationed in Rome was accredited to and responsible for both Syria and Egypt. Inspector Stephen Covey occupied the post from 1999 until July 2002, when he was replaced by Staff Sergeant Dennis Fiorido.

RCMP policies about information sharing

67. The RCMP has developed various policies regarding sharing information with domestic and foreign agencies. These policies direct that the content of the information be screened for relevance, reliability and personal information before it is shared. The policies also direct that caveats be attached to certain sensitive information so that the RCMP can exercise some control over how and for what purpose the information may be used.[58] Finally, the policies require the RCMP to consider the implications of sharing information with a country that has a poor human rights record.

Content of shared information

68. As noted above, RCMP policy requires that information that the RCMP is going to share with a foreign agency be carefully screened for relevance, reliability and personal information. Screening for relevance involves considering why another agency is requesting the information, including the nature of that agency's investigation and how the agency might use the information. The policy directs that information should only be shared with those who have a need to know the information.[59]

69. Screening for reliability requires that information be screened for the reliability of the sources of the information so that the recipient is not misled about the value of the information. The policy sets out different categories of reliability ("reliable," "believed reliable," "unknown reliability" or "doubtful reliability") and requires that the appropriate label be attached to each source. Related to reliability screening, the RCMP also has a practice (not specifically set out in the policy) of screening information for accuracy. Justice O'Connor commented on the value of screening for accuracy: "Providing unreliable or inaccurate information to other agencies is in no one's best interests and can

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[58] Arar Inquiry, *Factual Background, Vol. I*, p. 31.
[59] Arar Inquiry, *Factual Background, Vol. I*, pp. 32-33.

create potentially serious problems for those who rely on it and possibly those who are the subjects of the inaccuracies."[60]

70. Finally, RCMP policy requires that information provided to other agencies be screened to ensure compliance with the *Privacy Act*. The *Privacy Act* forbids the RCMP to disclose personal information without the consent of the person to whom the information relates, subject to exceptions for consistent use disclosure (a use consistent with the purpose for which the information was obtained or compiled by the RCMP), disclosure for law enforcement purposes and public interest disclosure.[61]

Control of shared information

71. The RCMP uses caveats to control how and for what purposes classified and designated information is used.[62] Information is "classified" if it is considered sensitive to the national interest. Information is "designated" when it merely warrants safeguarding. Since most of the RCMP information of concern to this Inquiry was classified information, the discussion that follows deals only with the RCMP caveats that must be attached to classified information.

72. Rules about caveats are set out in Part XI of the RCMP Administrative Manual. According to the Manual, when the RCMP shares classified information with CSIS, a federal government department or another Canadian police agency, the information must be accompanied by the following caveat:

> This document may be subject to mandatory exemption under the Access to Information and Privacy Acts. If access is requested under that legislation, no decision should be taken without prior consultation with the Departmental Privacy Coordinator of the RCMP.

73. Where classified information is passed to other domestic and foreign law enforcement agencies and departments, the Manual directs that one of the following caveats must be attached:

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

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60 Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006), pp. 103-104 [Arar Inquiry, *Analysis and Recommendations*].

61 Arar Inquiry, *Analysis and Recommendations*, p. 104.

62 Arar Inquiry, *Factual Background, Vol. I*, pp. 30-31.

> government and that it not be declassified without the express permission of the Government of Canada.

74. The Manual also provides that if considered necessary, the following statement can be attached to classified information being disseminated within the RCMP:

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

75. In addition to prescribing the caveats that must be used on outgoing messages and correspondence, RCMP policy directs that caveats attached to information received from other agencies must be respected, and that the RCMP must seek the consent of the originating agency before releasing or downgrading classified information.

76. Several RCMP witnesses testified at the Arar Inquiry and told this Inquiry about the use of "implied caveats," a term that refers to unwritten understandings among law enforcement agencies that when information is exchanged, it will not be disseminated or used without first obtaining the originator's consent.[63] The use of these caveats is not addressed in the RCMP Administrative Manual. Justice O'Connor disagreed with the suggestion of some Arar Inquiry witnesses that implied caveats were an adequate substitute for the written ones required by RCMP policy. He wrote:

> While written caveats do not provide a complete assurance of compliance, those who are considering breaching a caveat, which is a type of agreement, will be less likely to do so in the face of a clear and express written directive. It leaves little, if any, opportunity to justify the breach of trust.[64]

Caveats in the post-9/11 period

77. At the Arar Inquiry, several RCMP officers testified that, in the aftermath of the events of September 11, 2001, it was not practical or desirable to adhere to policies on screening information and using caveats for information shared with the United States. As some expressed it, "caveats were down." Both Deputy Commissioner Loeppky and Assistant Commissioner Richard Proulx, the Officer in Charge of CID, rejected this position. They were clear that the RCMP, as an institution, had not intended that RCMP officers deviate from RCMP policies on screening of information and use of caveats. In his interview for this Inquiry, former Commissioner Zaccardelli stated that he was not aware that the normal

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63 Arar Inquiry, *Factual Background, Vol. I*, p. 31.

64 Arar Inquiry, *Analysis and Recommendations*, p. 106.

practices of information-sharing were not being followed. He stated that he did not provide any specific direction on information-sharing during the investigations of Mr. Almalki and Mr. Elmaati because there were policies and practices on information-sharing in place. Justice O'Connor agreed with Assistant Commissioner Proulx and Deputy Commissioner Loeppky that "there was no basis for changing RCMP information-sharing policies after 9/11."[65] He wrote:

> I am satisfied that, in the period after 9/11, there was no need to depart from established policies with respect to screening and the use of caveats. The urgency of investigations and the workload of investigators did not justify such a departure.[66]

Human rights considerations

78. The RCMP's Operational Manual provides some guidance as to when the RCMP may share information with countries that have poor human rights records. Under the heading "Enquiries from Foreign Governments that Violate Human Rights", the Manual states that the RCMP "will not become involved or appear to be involved in any activity that might be considered a violation of the rights of an individual" unless there is a need to comply with certain international conventions related to terrorist activity. The Manual also provides that information may be disclosed to a country with a poor human rights record in certain circumstances:

> The disclosure of information to an agency of a foreign government that does not share Canada's respect for democratic or human rights may be considered if it:
>
> 1. is justified because of Canadian security or law-enforcement interests,
> 2. can be controlled by specific terms and conditions, and
> 3. does not have a negative human rights connotation.

With respect to the third of these three requirements, Justice O'Connor stated that he was not made aware of any guidelines covering more specific issues—for example, what level of certainty is required that no rights violation will occur before information can be passed on or who should make the assessment about whether such level of certainty exists. This Inquiry was also not made aware of any guidelines of this kind. Justice O'Connor recommended that more formalized rules and guidelines relating to information sharing are required.[67]

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65 Arar Inquiry, *Analysis and Recommendations*, p. 108.
66 Arar Inquiry, *Analysis and Recommendations*, p.108.
67 Arar Inquiry, *New Review Mechanism*, pp. 114-115.

79. In his public testimony before the Arar Inquiry, Deputy Commissioner Loeppky testified that the issue of dealing with countries that have a poor human rights record is an extremely important one, and that the RCMP condemns any form of human rights abuses. However, he said that in rare cases the RCMP might have to deal with a country that has less than a perfect human rights record in order to fulfill its obligation under section 18 of the *RCMP Act* to preserve the peace and prevent crime. In the Arar Inquiry report, Justice O'Connor expressed reservations about this exception, because it appeared to exempt terrorism investigations from the primary requirement of not being involved in rights violations.[68]

Mandate and functions of DFAIT

80. DFAIT, under the management and direction of the Minister of Foreign Affairs, is mandated by the *DFAIT Act* to oversee the external affairs of Canada.[69] This includes managing Canadian embassies, high commissions and consulates, all of which provide assistance to Canadians in foreign countries.[70]

81. During the period when Mr. Almalki, Mr. Elmaati and Mr. Nureddin were incarcerated in Syria and (in Mr. Elmaati's case) Egypt, the Honourable William Graham was Minister of Foreign Affairs. He was assisted by the Deputy Minister of Foreign Affairs, first Gaëtan Lavertu and later Peter Harder, as well as the Associate Deputy Minister, Paul Thibault and later Jonathan Fried.

82. DFAIT is divided into several branches, each headed by an Assistant Deputy Minister. The branches are either geographic or functional. The geographic branches are responsible for bilateral relations between Canada and other countries, and include Africa and the Middle East, the Americas, Asia-Pacific and Europe.

83. Each branch at DFAIT comprises a number of bureaus, each headed by a director general. During the relevant period, the Security and Intelligence Bureau (in the Global and Security Policy Branch) was led by Paul Dingledine and later Daniel Livermore. The Consular Affairs Bureau was led by Gar Pardy and later by Konrad Sigurdson.

Security and Intelligence Bureau

84. DFAIT's Security and Intelligence Bureau (ISD) is made up of two divisions: security and foreign intelligence. The Foreign Intelligence Division (ISI), the

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[68] Arar Inquiry, *New Review Mechanism*, p. 114.

[69] *Department of Foreign Affairs and International Trade Act*, R.S.C. 1985, c. E-22, section 10(1) [*DFAIT Act*].

[70] *DFAIT Act*, section 10(2)(h).

work of which is most relevant to this Inquiry, is further divided into three divisions: intelligence policy, intelligence coordination and client relations. During the relevant period, ISI was headed by Director Scott Heatherington, who was assisted by three deputy directors, including Jim Gould, the Deputy Director of ISI's intelligence policy division. Mr. Gould was assisted by policy advisers Don Saunders, Bill Gusen and later Jonathan Solomon.[71]

85. ISD was described by its Director General, Daniel Livermore, as a client service bureau. It provides support and assistance to a wide variety of bureaus and divisions within DFAIT. This includes receiving and distributing intelligence materials to clients and assisting clients in analyzing intelligence. In some cases, ISD will directly assist a bureau or division in managing a file with an important intelligence dimension.[72]

86. Among ISD's clients is the Consular Affairs Bureau. When the Consular Affairs Bureau receives word that a Canadian citizen has gone missing abroad, ISD can assist the Bureau in locating the individual by conducting a search using its Canadian and foreign intelligence sources. As well, the Consular Affairs Bureau may seek ISD's help to obtain information regarding the complexities of a given consular situation, such as why an individual was detained, what the complications of his or her continued detention might be, who holds power in the country of detention and how Canadian influence might best be used to meet its consular obligations. In trying to assist, ISD draws on a wide range of information and sources within and beyond the Government of Canada. Occasionally, ISD assists the Consular Affairs Bureau by providing personnel to help manage consular case files or assist with the management of crises or other issues.[73]

Consular Affairs Bureau

87. The Consular Affairs Bureau is responsible for providing information and assistance to Canadians living and travelling abroad. Most consular services are provided by consular officials and heads of mission at Canadian missions abroad. These services include dealing with passport or notary issues, and facilitating medical assistance. The Consular Affairs Bureau in Ottawa will generally get directly involved only in the most complex and difficult consular cases, including those of Mr. Almalki, Mr. Elmaati and Mr. Nureddin.

88. Consular cases that require the assistance of the Consular Affairs Bureau in Ottawa are managed by a case management officer. Each case management

[71] Arar Inquiry, *Factual Background, Vol. II*, Annex 3, p. 579.
[72] Arar Inquiry, *Factual Background, Vol. II*, Annex 3, p. 580.
[73] Arar Inquiry, *Factual Background, Vol. II*, Annex 3, p. 580.

officer is responsible for a geographic region, and will liaise with consular officers in the region. In some cases, the Director of the Consular Affairs Bureau will become involved, and will generally be in contact with and provide instructions to the head of mission in the relevant mission. During the time period relevant to this Inquiry, the case management officer responsible for Africa and the Middle East was Myra Pastyr-Lupul.

89. The actions of Consular officials, both at the Consular Affairs Bureau and at missions abroad, are guided by the *Manual of Consular Instructions*. This *Manual*, first published by DFAIT in 1993, provides general guidelines to consular officers in handling a consular case. The *Manual* provides guidelines on the steps to be taken upon notification of a detained Canadian, intervention with local authorities, sharing of consular information, conducting consular visits to a detained Canadian and the frequency of consular visits. Consular officials are expected to be familiar with the *Manual* before taking on a consular position.

The CAMANT system

90. The CAMANT system is a database used by the Consular Affairs Bureau to record all consular activities related to Canadians abroad. As soon as a consular matter is brought to the attention of the Consular Affairs Bureau, the responsible case management officer will create a file in the CAMANT system in order to track consular activities related to that file. The CAMANT system is password-protected and accessible only to consular officers.

The role of the ambassador

91. Each mission abroad is directed by a head of mission. The title of that person is ambassador, consul-general or, in the case of Commonwealth countries, high commissioner.[74] Franco Pillarella served as Canadian Ambassador to Syria from November 1, 2000 to September 13, 2003, when he was replaced by Brian Davis. Michel de Salaberry served as the Canadian Ambassador to Egypt during the relevant period.

92. The ambassador is appointed by the Governor in Council and is responsible not only for the activities of DFAIT, but also for the activities of other departments and agencies of the Government of Canada in the country to which the ambassador is appointed.[75]

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[74] Arar Inquiry, *Factual Background, Vol. II*, Annex 3 p. 575.

[75] Arar Inquiry, *Factual Background, Vol. II*, Annex 3 p. 575; *DFAIT Act*, section 13(2).

93. The specific objectives of an ambassador are established by a geographic branch at DFAIT, in consultation with the functional branches and other government departments. For example, the Ambassador to Syria takes guidance and assistance from DFAIT's Middle East Branch. Other relevant branches, bureaus or divisions may also provide instructions, depending on their areas of responsibility in relation to the Syrian mission.[76]

94. With respect to consular cases, an ambassador takes direction from the Consular Affairs Bureau, which acts in consultation with the geographic and legal bureaus. The role of the Consular Affairs Bureau in instructing the ambassador is particularly significant where more than one interest of the Canadian government is engaged – for example, where consular, law enforcement and security intelligence responsibilities are engaged. If different government objectives conflict, the Consular Affairs Bureau must make a decision and issue instructions to the ambassador, in consultation with the relevant political division and, if necessary, the Deputy Minister or the Minister.[77]

95. According to Mr. Pardy, the ambassador does not have discretion to make decisions that could adversely affect others, especially in a country with a poor human rights record. For example, the ambassador should refer to DFAIT headquarters questions relating to sharing information about a Canadian detained in a country with a poor human rights record. Mr. Pardy also stated that the ambassador is to use his or her judgment before referring a matter to headquarters and, in exercising that judgment, should apply a test of possible injury, especially where the fate of an individual is concerned.[78]

96. RCMP and CSIS officers abroad are expected to report to the ambassador when visiting the ambassador's post and to be guided by the ambassador's instructions while carrying out their responsibilities for the home agency. If conflicts arise between police liaison and consular matters, the *Manual of Consular Instructions* directs that they "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 with Headquarters."[79]

Consular services for Canadians detained abroad

97. According to the *Manual of Consular Instructions*, one of the primary functions of Canadian missions is to "protect the lives, rights, interests, and

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[76] Arar Inquiry, *Factual Background, Vol. II*, Annex 3, p. 576.
[77] Arar Inquiry, *Factual Background, Vol. II*, Annex 3, p. 577.
[78] Arar Inquiry, *Factual Background, Vol. II*, Annex 3, p. 577.
[79] Arar Inquiry, *Factual Background, Vol. II*, Annex 3, p. 576.

property of Canadian citizens…when these are endangered or ignored in the territory of a foreign state." This includes providing services to a Canadian citizen who has been arrested or detained in a foreign country.

98. The *Manual of Consular Instructions* states that, when a Canadian citizen has been arrested and detained abroad, consular officers should investigate the circumstances of the arrest and detention. The *Manual* directs that this investigation should be designed to reveal whether there was unlawful discrimination or denial of justice, harsh treatment during arrest, or denial of due process of law.

99. DFAIT's *Service Standards*, which are provided to employees and available to all overseas offices, also set out guidelines for consular services. The *Service Standards* state that "every effort is made to adhere to these standards" and that DFAIT's commitment is to service characterized at all times by sensitivity, empathy, courtesy, speed, accuracy and fairness.[80] According to the *Service Standards*, the first contact with the detained person should be made within 24 hours of notification of the detention. The response time, however, is subject to factors that may be beyond DFAIT's control.[81]

100. Once consular officials make contact with the detained Canadian, the *Manual of Consular Instructions* directs them to provide the following services:

- visit and maintain contact with the prisoner;
- attempt to obtain case-related information;
- provide available information on local judicial and prison systems;
- liaise with local authorities in order to seek regular access to the prisoner;
- verify that the conditions of detention are at least comparable to the best standards applicable to nationals of the country of incarceration; and
- obtain information about the status of the prisoner's case and encourage local authorities to process the case without unreasonable delay.[82]

101. A Canadian citizen detained abroad has the right to meet with a consular official as enshrined in the *Vienna Convention on Consular Relations* ("the *Vienna Convention*"),[83] to which Canada, Syria and Egypt are parties. Consular

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[80] Foreign Affairs and International Trade Canada, *Service Standards*, online, http://www.voyage.gc.ca/main/about/service_standards-en.asp (accessed July 3, 2008) [*Service Standards*].

[81] *Service Standards*.

[82] Arar Inquiry, *Factual Background, Vol. II*, Annex 3, p. 574.

[83] Article 36.

officials are expected to report any refusal of access to a detained Canadian or refusal to permit the detainee to communicate with them immediately to the diplomatic mission or to DFAIT headquarters.[84]

102. The *Manual of Consular Instructions* provides that the appropriate frequency of consular visits to a Canadian detained abroad will vary depending on:

> the location of the prison, the conditions within the prison, the number of Canadians incarcerated, as well as the size of the consular staff and competing priorities at the Canadian mission. In countries where the prison conditions are good and communication with the outside world is relatively easy, visits may be made only on request.

Training to detect signs of torture and abuse

103. Several DFAIT witnesses at the Arar Inquiry and this Inquiry testified that during the relevant period, consular officials did not receive training in recognizing the signs of torture and abuse of Canadians detained abroad.

104. In his testimony at the Arar Inquiry, consul Léo Martel acknowledged that he was not an expert in recognizing the signs of torture and that he had read expert reports to the effect that it was almost impossible to detect signs of torture. Despite the lack of formal training in detecting signs of torture and abuse, Mr. Martel testified that his years of experience assisted him in looking for different indicators of abuse during a consular visit. Mr. Martel stated he would assess the detainee's walk, take into account whether the detainee answered his questions, determine whether the detainee's hands shook and look for any visible signs of abuse, among other indicators.

105. At this Inquiry, consuls Stuart Bale and Roger Chen confirmed that they had not received training in detecting the mistreatment of detainees. According to Mr. Chen, consuls received general training on different types of consular cases, but there were no specific courses on cases involving detainees. In addition, Mr. Chen did not recall having any exposure to information about human rights in Egypt.

106. In his report, Justice O'Connor recommended that consular officials posted to countries that have a reputation for abusing human rights should receive training on conducting interviews in prison settings in order to be able to make the best possible determination of whether torture or harsh treatment

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[84] Arar Inquiry, *Factual Background, Vol. II*, Annex 3, p. 573.

has occurred.[85] At the time of writing his report, Justice O'Connor understood that DFAIT had implemented or was considering implementing a training program. He stated that it was an important initiative.[86]

107. In response to Justice O'Connor's recommendation stated above, DFAIT revised a workshop presentation entitled "Torture and Abuse Awareness," which had originally been developed in 2004. According to DFAIT, the publication is designed to educate consular officials about the protocols for dealing with cases of torture and abuse and to ensure these protocols are followed.

Dual nationality and consular protection

108. The *Manual of Consular Instructions* provides consular officials with some direction on how to approach cases of Canadian dual nationals detained in the country of their other citizenship. The *Manual* notes that some countries will not recognize the right of Canadian consular officials to formally intervene in these cases, and that consular officers may be limited to making informal representations. The *Manual* also states that DFAIT and diplomatic missions "WILL NOT provide services to dual nationals in the country of their nationality if that country does not recognize the prisoner's Canadian citizenship." One DFAIT witness stated that while dual citizenship may affect the ability of consular officials to gain access to a detained Canadian dual national, it should not affect the intensity of activity that consular officials devote to the case.

109. DFAIT prepares and makes available on its website an information brochure for Canadian dual nationals planning to travel to the country of their other citizenship. The brochure, entitled "Dual Citizenship: What Travellers Should Know," warns that dual citizenship is not legally recognized in all countries, which can lead to serious difficulties for Canadians when they are in the country of their second citizenship.[87] It specifically notes that the authorities of the country of second citizenship may not recognize Canada's right to provide a dual citizen with consular assistance.[88] The brochure also includes a section on military service, and states that dual citizens may be legally required to register for military service and to respond to call-up orders in the country of their second citizenship. The brochure further warns:

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[85] Arar Inquiry, *Analysis and Recommendations*, p. 352.

[86] Arar Inquiry, *Analysis and Recommendations*, p. 353.

[87] Foreign Affairs and International Trade Canada, "Dual Citizenship: What Travellers Should Know," online, http://www.voyage.gc.ca/main/pubs/dual_citizenship-en.asp (accessed July 3, 2008) ["Dual Citizenship"].

[88] "Dual Citizenship."

> This legal obligation may exist even if you do not reside in the country of your second citizenship. Your obligations could be enforced even if you're just visiting at some point in the future. [...]
>
> The consequences could be imprisonment or immediate induction into military service the next time you arrive in the country or attempt to leave.[89]

Confidentiality of consular information and the *Privacy Act*

110. Information regarding individual Canadians gathered by consular personnel in the performance of their duties is confidential, subject to the provisions of the *Privacy Act*.[90] The *Manual of Consular Instructions* specifically directs that this information is "not to be divulged to Liaison and Security Intelligence officers [such as CSIS security liaison officers or RCMP liaison officers] without the prior agreement of the person concerned." Similarly, DFAIT's "Guide for Canadians Imprisoned Abroad" states that any information given by a Canadian detainee to a Canadian consular official will not normally be passed on to anyone, other than consular officials concerned with the detainee's case, without the detainee's permission.[91]

111. The *Vienna Convention* also contains a provision that can be interpreted to require the confidentiality of consular information. Article 33 of the *Vienna Convention* provides that "[t]he consular archives and documents shall be inviolable at all times and wherever they may be." DFAIT has interpreted "consular archives" in article 33 to include communications or documents received and information gained by consular officers.

112. The *Privacy Act* permits disclosure of information subject to it in certain circumstances—for example, where the person to whom the information relates gives his or her consent, where the public interest in disclosure clearly outweighs any invasion of the person's privacy or where disclosure would clearly benefit the individual to whom the information relates.[92] As well, the *Privacy Act* provides that personal information may be disclosed to certain investigative bodies, including the RCMP and CSIS, on the written request of the investigative body, for the purpose of enforcing any law of Canada.

113. In her interview, Ms. Pastyr-Lupul suggested that the practice of DFAIT regarding the sharing of consular information changed after the events of

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89 "Dual Citizenship."

90 *Privacy Act*, R.S.C. 1985, c. P-21, sections 2 and 3 [*Privacy Act*].

91 Foreign Affairs and International Trade Canada, "Guide for Canadians Imprisoned Abroad," online, http://www.voyage.gc.ca/main/pubs/imprisoned_abroad-en.asp (accessed July 3, 2008).

92 *Privacy Act*, sections 8(1) and 8(2)(m).

September 11, 2001. She stated that until that time, consular information would not be disclosed to an individual in another DFAIT division or another government department, but that after September 11, 2001, in cases where Canadians were detained for security-related reasons, there was a reason to share information in the best interests of the individual with a wider audience.

114. In the fall of 2003, when Mr. Sigurdson arrived at DFAIT, he became concerned about the dissemination of consular information. One of the measures taken by Mr. Sigurdson to address this problem was to prohibit the sharing of CAMANT notes with anyone other than consular staff. This prohibition, according to Mr. Sigurdson, was particularly enforced with consular offices abroad.

CSIS and RCMP investigations in the post-9/11 environment

Push for cooperation in the face of a possible "second wave"

115. In the weeks and months after the terrorist attacks of September 11, 2001, there was intense pressure on intelligence and law enforcement agencies, including CSIS and the RCMP, for maximum cooperation and collaboration. According to Mr. Hooper, after 9/11 western intelligence agencies had a significant body of credible intelligence suggesting that there would be a second wave of attacks directed against the United States. In light of this information, these agencies spent considerable effort trying to identify and track individuals who might in some way be implicated in or supportive of another round of attacks.

116. In this environment, there was an emphasis on maximum cooperation and maximum sharing of information. The Americans led this push for maximum cooperation and information-sharing. A CSIS official testified at the Arar Inquiry that after the 2001 attacks there was a lot of pressure on everybody around the world to cooperate with the Americans. The same CSIS official stated that, post-9/11, the Americans took a very aggressive approach towards security intelligence, so much so that the rest of the world found it was difficult to keep up with them.

117. The close relationship between Canadian law enforcement agencies and U.S. authorities was acknowledged by the federal government in late September 2001. At that time, then Prime Minister Jean Chrétien established an Ad Hoc Committee of Ministers on Public Security and Anti-Terrorism, which reviewed policies, legislation, regulations and programs across government to adjust all

aspects of Canada's public security approach to respond to the "new realities."[93] The Anti-Terrorism Plan had five objectives: (1) prevent terrorists from getting into Canada; (2) protect Canadians from terrorist acts; (3) activate tools to identify, prosecute, convict and punish terrorists; (4) keep the Canada-US border secure; and (5) work with the international community to bring terrorists to justice and address the root causes of terrorism.[94] In listing the government's immediate measures, the federal government recognized that the RCMP and CSIS were participating actively in "the intensive international investigation to track down and catch terrorists, and disable their networks."[95] Further, the federal government stated that all Canadian law enforcement agencies were collaborating very closely with the U.S. authorities in the investigation of the terrorist attacks of September 11.[96]

Transfer of investigations from CSIS to the RCMP

118. In the face of what western intelligence and law enforcement agencies described as credible intelligence pointing to a possible second wave of attacks, CSIS put several Toronto-based targets under around-the-clock surveillance. According to Mr. Hooper, by September 22, 2001 CSIS officials in Toronto were exhausted. They had been working 12-hour days. Mr. Hooper decided to seek assistance from law enforcement agencies.[97]

119. On September 22, 2001, Mr. Hooper chaired a meeting at the CSIS Toronto office involving officials from CSIS, the RCMP, the Ontario Provincial Police, the Toronto Police Service and the Peel Regional Police, at which 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 specialty investigators and surveillance teams. According to Mr. Hooper, however, as the meeting progressed, 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.[98]

120. Before proceeding further, the police requested that Mr. Hooper provide information demonstrating that the activities of these individuals constituted a

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93 Foreign Affairs and International Trade Canada, "Backgrounder: Canada's Actions Against Terrorism Since September 11," online, www.dfait-maeci.gc.ca/anti-terrorism/canadaactions-en.asp (accessed July 3, 2008) ["Backgrounder: Canada's Actions Against Terrorism"].

94 "Backgrounder: Canada's Actions Against Terrorism."

95 "Backgrounder: Canada's Actions Against Terrorism."

96 "Backgrounder: Canada's Actions Against Terrorism."

97 Arar Inquiry, *Factual Background, Vol. I*, p. 14.

98 Arar Inquiry, *Factual Background, Vol. I*, pp. 14-15.

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.[99] "Advisory letters" are letters prepared by CSIS for the RCMP to provide the RCMP with background information regarding possible criminal activity.

121. Shortly after the meeting held on September 22, 2001, American authorities requested that Canadian agencies investigate certain Canadian individuals suspected of supporting Islamic extremism in Canada. The agencies were to provide further information about these individuals, and if possible, detain them for interviews. The RCMP did not act on the request from the Americans, as it was not yet prepared to detain and interview the individuals named.[100]

122. In accordance with the request made at the meeting on September 22, 2001, CSIS provided the RCMP with a September 24, 2001 letter, two advisory letters (dated September 26 and October 5, 2001) and a profile of al-Qaeda, sent in the month following 9/11, containing information about several individuals. The effect of these three letters was to transfer to the RCMP primary responsibility for certain national security investigations. One CSIS witness testified before the Arar Inquiry that this was the most extensive transfer of investigations ever made at one time by CSIS to the RCMP. In his interview for this Inquiry, former Commissioner Zaccardelli stated that this was not the normal process and that this was the only time that the Director of CSIS had ever called him to advise that CSIS was transferring files to the RCMP. The transfer allowed CSIS to focus on security threats that were less apparent, and to investigate new threats.[101]

123. Attached to the letter sent on September 24, 2001 was an unclassified "Terrorist Group Profiler" prepared by CSIS, which included general information, compiled from a variety of open sources, about al-Qaeda. The document included information about Osama bin Laden, as well as descriptions of al-Qaeda's structure, training camps, recent activity, presence in Canada and its links to key Islamic organizations and individuals.

124. CSIS' September 24 letter and its advisory letters dated September 26 and October 5, 2001, led to the formation of two RCMP-coordinated investigation projects—Project O Canada and Project A-O Canada.[102]

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99 Arar Inquiry, *Factual Background, Vol. I*, p. 15.
100 Arar Inquiry, *Factual Background, Vol. I*, p. 14.
101 Arar Inquiry, *Factual Background, Vol. I*, p. 16.
102 Arar Inquiry, *Factual Background, Vol. I*, pp. 15-16.

Creation of Projects A-O and O Canada

Project O Canada

125. Project O Canada had its origins in CSIS' September 24, 2001 letter. This letter advised the RCMP that CSIS had reason to believe that the activities of several Toronto-based individuals posed an "imminent threat to the public safety and security of Canada." Two days later, on September 26, 2001, CSIS sent an advisory letter containing detailed information from CSIS files about these same individuals and general information about al-Qaeda.[103] Mr. Hooper testified at the Arar Inquiry that the September 26 letter constituted an extraordinary disclosure of information to law enforcement agencies.[104]

126. After receiving this information, the RCMP created a coordinated investigation—Project O Canada—involving other police agencies, including the Ontario Provincial Police (OPP) and the Toronto Police Service (TPS). Project O Canada was based at RCMP "O" Division in Toronto. The case management team included Chief Superintendent Ben Soave of the RMCP, Monitoring Officer; Inspector Brian Raybould from the TPS, the Lead Investigator; and Detective Inspector Al Bush from the OPP, the Operational Support Officer. Inspector Keir MacQuarrie of the RCMP was appointed Case Manager of Project O Canada to oversee and manage the project. The goals of the project were prevention, intelligence-gathering and prosecution, in that order.[105] To these ends, Project O Canada conducted 24-hour surveillance and police background checks on the identified targets.

127. At the end of November 2001, Project O Canada ceased its investigation of the Toronto-based subjects. According to Inspector Michel Cabana, many of the subjects of Project O Canada had left Toronto and the project moved on to other priorities.[106]

Project A-O Canada

128. In early October 2001, RCMP "O" Division in Toronto asked RCMP "A" Division in Ottawa for assistance in investigating the activities of Mr. Almalki, an Ottawa resident who the RCMP believed to be connected to al-Qaeda.[107] In response to this request, "A" Division created Project A-O Canada. In a relatively short time, Project A-O Canada's role evolved from assisting

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103 Arar Inquiry, *Factual Background, Vol. I*, p. 15.
104 Arar Inquiry, *Factual Background, Vol. I*, p.15.
105 Arar Inquiry, *Factual Background, Vol. I*, p. 17.
106 Arar Inquiry, *Factual Background, Vol. I*, p. 27.
107 Arar Inquiry, *Factual Background, Vol. I*, p. 16.

Project O Canada with the Almalki investigation to conducting its own investigation of Mr. Almalki.

129. The primary goals of Project A-O Canada, in addition to investigating Mr. Almalki's activities, were prevention, intelligence-gathering and prosecution. The project's first priority was preventing a possible "second wave" of terrorist attacks. In the words of Inspector Michel Cabana, the Officer in Charge of Project A-O Canada, the RCMP was to do everything legally available to it to prevent any further attack in Canada and abroad. The project's second priority was intelligence-gathering to identify potential threats to Canada and its allies. Prosecution, usually the primary focus of any RCMP investigation, was Project A-O Canada's third priority.[108]

Composition of Project A-O Canada

130. According to the RCMP, two factors were considered when choosing the investigators for Project A-O Canada. First, senior officers at "A" Division expected that, since A-O Canada would be investigating Mr. Almalki's alleged involvement with al-Qaeda, the investigation would involve analyzing a large amount of documentary evidence. As a result, the officers reasoned that they should draw extensively on the experience of "A" Division's Integrated Proceeds of Crime (IPOC) unit. Second, since there was continuing concern about an imminent terrorist attack, officials felt that the new project should have the best investigators available.[109]

131. Assistant CROPS Officer, Superintendent Garry Clement, with input from the Officer in Charge of "A" Division's CROPS unit, Chief Superintendent Antoine Couture, appointed Inspector Cabana the Officer in Charge of Project A-O Canada in early October 2001.

132. Superintendent Clement and Inspector Cabana worked together to determine an appropriate balance for the Project A-O Canada team. They gave preference to officers with criminal investigation expertise—for example, writing affidavits, conducting covert entries, developing operational plans and following a paper trail.[110] They also focused on creating an integrated team with officers from a number of different police services, because it was thought that no single agency had sufficient resources to address the complexities involved in Project A-O Canada's investigation. Two officers from outside the RCMP were assigned to serve as assistant managers: Staff Sergeant Patrick Callaghan, a member of the Ottawa Police Service (OPS) and Staff Sergeant Kevin Corcoran, a member

108 Arar Inquiry, *Factual Background, Vol. I*, p. 17.
109 Arar Inquiry, *Factual Background, Vol. I*, p. 18.
110 Arar Inquiry, *Factual Background, Vol. I*, p. 18.

of the OPP. Other officers from the OPP and OPS, as well as officers from the Sûreté du Québec, Gatineau Police Service and Hull Police Service, were also added to the A-O Canada team.[111]

Training and experience of Project A-O Canada members

133. The Arar Inquiry report contains a detailed discussion of the training and experience of Project A-O Canada members.[112] Justice O'Connor concluded that the officers assigned to Project A-O Canada, including the project's managers, lacked experience and training in conducting national security investigations and in addressing human rights and cultural sensitivity issues that might arise in such investigations.[113] While he thought that the circumstances surrounding the creation of Project A-O Canada—that is, in the midst of the post-9/11 crisis—made the lack of training and experience understandable, Justice O'Connor said it was incumbent on senior RCMP personnel to provide the project with clear instructions and to ensure that the lack of training and experience was properly addressed.[114]

Project A-O Canada reporting structure

134. Since Project A-O Canada was conducting a criminal investigation, it reported to "A" Division CROPS, rather than directly to headquarters as would be required in a national security investigation being conducted by an INSET or NSIS. Inspector Cabana reported to the Assistant CROPS Officer, Superintendent Clement, who in turn kept Chief Superintendent Antoine Couture, the CROPS Officer, up to date on the investigation. In addition to regular briefings, the CROPS officers were provided with A-O Canada's daily situation reports (SITREPs), which detailed the progress of the investigation.[115]

135. Project A-O Canada also kept CID at RCMP headquarters informed of the investigation by providing it with copies of its daily SITREPs, holding periodic meetings and preparing briefing notes. However, because A-O Canada members and senior officers at "A" Division considered this to be solely a criminal investigation, the Project reported to and received instructions from the "A" Division CROPS officers rather than headquarters personnel.[116]

136. Justice O'Connor was critical of this reporting structure. He wrote that "[g]iven the potentially far-reaching implications of a national security

111 Arar Inquiry, *Factual Background, Vol. I*, p. 19.
112 Arar Inquiry, *Factual Background, Vol. I*, pp. 21-23.
113 Arar Inquiry, *Analysis and Recommendations*, p. 17.
114 Arar Inquiry, *Analysis and Recommendations*, p. 72.
115 Arar Inquiry, *Factual Background, Vol. I*, pp. 23-24.
116 Arar Inquiry, *Factual Background, Vol. I*, pp. 24-25.

investigation, one would expect that such an investigation would be subject to greater coordination and control from CID at RCMP national headquarters."[117]

The practice of sharing travel itineraries

137. The Attorney General submitted to this Inquiry that several international conventions and other instruments, such as the *International Convention for the Suppression of Terrorist Bombings* and the *International Convention for the Suppression of the Financing of Terrorism*, oblige Canada to share terrorism-related information, including travel information.

138. With respect to sharing of travel information by CSIS, the Attorney General stated that CSIS may share the travel plans of Canadian citizens suspected on reasonable grounds of engaging in activities which constitute a threat to national security. The Attorney General stated that when CSIS shares travel information, it expects that receiving agencies will reciprocate in the sharing of information and respect the caveats that CSIS has attached to the information.

139. Several CSIS witnesses were asked about the practice of sharing the travel itineraries of persons of interest with foreign intelligence services. Two CSIS officials stated that the practice of passing a travel itinerary to a country that would have an interest in the person travelling is, or at least was at the time, standard and routine.

140. In his interview for this Inquiry, Mr. Hooper explained that the practice of sharing travel itineraries with foreign intelligence services is driven by at least two factors. The first is the axiom in the intelligence business that in order to develop intelligence around the intentions of a terrorist organization, "you follow the money, you follow the people, and you follow the documents." This, Mr. Hooper stated, became increasingly imperative in the post-9/11 environment. The second factor is the existence of various international conventions which, according to Mr. Hooper, oblige Canada to share terrorism-related information and to inform other intelligence services when known or suspected terrorists, operatives or supporters are travelling in an international arena.

141. The Attorney General stated that the RCMP has the same expectation as CSIS that a foreign agency will respect the caveats when travel information is shared. The Attorney General also stated that the RCMP may share travel information to prevent the commission of a criminal act or in the course of an investigation involving a threat to national security.

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[117] Arar Inquiry, *Analysis and Recommendations*, p. 76.

Syria's and Egypt's human rights records

Introduction

142. The following provides a summary of Syria's and Egypt's human rights records during the time period relevant to this Inquiry, as described in publicly available reports and in assessments by CSIS, DFAIT and the RCMP. Canadian officials' specific knowledge about Syria's and Egypt's human rights records is discussed in Chapters 4, 5 and 6.

Syria's human rights record

U.S. State Department and Amnesty International reports

143. The main sources of information about Syria's human rights record for Canadian officials during the relevant time were the U.S. State Department Country Reports on Human Rights Practices and Amnesty International annual reports. Canadian officials considered these two sources to be authoritative and reliable. Both provided an unequivocal account of serious human rights abuses by Syria, including:

- 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.[118]

A more detailed discussion of the State Department and Amnesty International reports on Syria can be found in the Arar Inquiry *Factual Background, Volume II*, Annex 2.

Human Rights Watch and SHRC reports

144. Canadian officials also relied on Human Rights Watch (HRW) reports to inform themselves of Syria's human rights practices. HRW, an international human rights organization, reported in its *World Report 2005* that "Syria has a long record of arbitrary arrests, systematic torture, prolonged detention of suspects, and grossly unfair trials."[119] HRW also cited information from the

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118 Arar Inquiry, *Factual Background, Vol. I*, pp. 235-236.

119 Human Rights Watch, "Syria," from *World Report 2005*, online, http://hrw.org/english/docs/2005/01/13/syria9812.htm (accessed July 3, 2008) [Human Rights Watch, "Syria"].

London-based Syrian Human Rights Committee (SHRC) about political prisoners dying in custody in 2004 as a result of torture.[120]

145. On its website, SHRC states that it is a human rights organization concerned with defending general liberties and human rights of the Syrian people, including by exposing and publishing violations against human rights of Syrian citizens.[121] The SHRC annual reports for 2003 and 2004 described unlawful detentions, and the torture and abuse of detainees. In 2003, SHRC reported that "torture and maltreatment of detainees remain common practice in all detention centres and prisons" and in particular, the Palestine Branch for Military Interrogation.[122] The report also listed the names of detainees, including Mr. Arar. According to the SHRC, the security forces were holding Mr. Arar and he had been subjected to "severe torture and intensive interrogation and charged with cooperating with al Qaeda."[123]

146. The SHRC annual report for 2004 referred to the release of Mr. Arar and Mr. Almalki from Syrian custody and noted that, at the time of reporting, Mr. Almalki was not permitted to leave the country.[124] The report also documented the arbitrary detention, torture and death of political prisoners in Syrian prisons and interrogation centres.[125]

DFAIT's assessment

147. DFAIT produces annual human rights reports for various countries, including Syria. These reports are classified "confidential" and therefore not made available to the public. They are only available to Canadian officials who possess the proper security clearance and who need to know a country's human rights situation in order to carry out their functions or develop government policy (certain consular officers, for example). There was no evidence before the Arar Inquiry or this Inquiry that officials in either the RCMP or CSIS received or reviewed DFAIT's annual reports on Syria.[126]

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120 Human Rights Watch, "Syria."

121 www.shrc.org (accessed July 3, 2008).

122 Syrian Human Rights Committee, *Annual Report 2003*, p. 17, online, www.shrc.org/data/pdf/ANNUALREPORT2003.pdf (accessed July 3, 2008) [Syrian Human Rights Committee, *Annual Report 2003*].

123 Syrian Human Rights Committee, *Annual Report 2003,* p. 10.

124 Syrian Human Rights Committee, *Annual Report on Human Rights Situation in Syria 2004*, p. 11, online, www.shrc.org/data/pdf/ANNUALREPORT2003.pdf (accessed July 3, 2008) [Syrian Human Rights Committee, *Annual Report on Human Rights Situation in Syria 2004*].

125 Syrian Human Rights Committee, *Annual Report on Human Rights Situation in Syria 2004*, pp. 6-11 and 16-19.

126 Arar Inquiry, *Factual Background, Vol. I*, p. 236.

148. DFAIT's *Syria: Annual Human Rights Reports* for 2001 (dated February 8, 2002), 2002 (dated January 9, 2003) and 2003 (dated December 23, 2003) described the human rights situation in Syria as poor. With respect to conditions of detention, the reports incorporated the U.S. State Department's findings of arbitrary arrests and extended periods of detention 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. The reports also referred to Amnesty International's findings of routine torture and ill-treatment of prisoners, secret arrests in cases involving political or national security offences, and prolonged detentions without due process.[127]

149. The 2001, 2002 and 2003 reports all concluded with a general statement that "[t]he Canadian Embassy, along with other Western embassies in Damascus, monitors the situation of human rights and raises issues of concern when appropriate with Syrian authorities and government institutions."[128]

150. None of the three reports referred to Mr. Elmaati's allegations of torture in Syrian detention. The 2003 report outlined Mr. Arar's allegations of torture, indicating that:

> While the Embassy saw no evidence of physical torture during meetings with him, Arar did tell an Embassy official following his release that he had a difficult first two weeks in Syrian custody while he was being interrogated. He told the Embassy that he had been mistreated during that period and after that he had been left alone.

CSIS' assessment

151. CSIS officials obtained information about Syria's human rights record from several different sources, including publicly available reports by organizations such as the U.S. State Department, Human Rights Watch and Amnesty International, and internal documents and the Country Profile prepared by CSIS.[129]

152. Internal documents prepared by CSIS in 2002 and 2004 described the human rights situation in Syria as poor. The internal documents relied on open-source reports, including the U.S. State Department and Amnesty

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127 Arar Inquiry, *Factual Background, Vol. I*, pp. 237-238.
128 Arar Inquiry, *Factual Background, Vol. I*, pp. 237-238.
129 Arar Inquiry, *Factual Background, Vol. I*, pp. 238 and 244.

International reports, in discussing the use of torture to extract a confession or information.[130]

153. In addition to these internal documents, CSIS officials obtained information from the Country Profile for Syria prepared by CSIS' Analysis and Production Branch. The Country Profile reviewed by the Arar Inquiry, which was valid to July 2003 and unclassified, stated that the international community continued to suspect Syria of human rights violations, but that there had been some improvement in recent years. It noted that although numerous political prisoners had been released, human rights organizations estimated that between 700 and 800 political prisoners of conscience were still imprisoned in Syria. This assessment was based on open-source information, including Amnesty International reports.

154. The Service's Country Profile for Syria was less inclusive and complete than the U.S. State Department human rights report. The CSIS report did not refer to the use of torture in Syria. However, Mr. Hooper questioned whether CSIS needed to provide greater detail in the report, in light of the audience for which the Country Profile was intended. Mr. Hooper stated that, 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.[131]

RCMP's assessment

155. In contrast to DFAIT and CSIS, the RCMP does not produce human rights assessments of countries. As discussed above, however, Deputy Commissioner Loeppky testified before the Arar Inquiry that dealing with countries with poor human rights records is an extremely important issue, and RCMP policy provides guidelines regarding respect for human rights and dealing with countries with a poor human rights record.[132]

156. RCMP witnesses testified before the Arar Inquiry and this Inquiry that they rely on DFAIT, and occasionally CSIS, 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. The Memorandum of Understanding between DFAIT and the RCMP, as well as ministerial directives, require the RCMP to consult with DFAIT before embarking on certain acts that may have an international

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130 Arar Inquiry, *Factual Background, Vol. I*, p. 238.
131 Arar Inquiry, *Factual Background, Vol. I*, pp. 244-245.
132 Arar Inquiry, *Factual Background, Vol. I*, pp. 246-247.

dimension.[133] The RCMP Operational Manual also refers to post profiles that can be obtained from the CROPS officer. According to the RCMP, the post profiles are the human rights reports prepared by DFAIT. As stated above in paragraph 61, RCMP members are expected to use good judgment in deciding when it is necessary to consider human rights issues and consult with DFAIT.

Egypt's human rights record

U.S. State Department and Amnesty International reports

157. Credible public sources of information on Egypt's human rights record during the relevant period, including U.S. State Department and Amnesty International reports, generally described Egypt's human rights record as poor. The reports, which are summarized in some detail below, provided an account of serious human rights abuses, including:

- mistreatment and torture of prisoners,
- arbitrary arrest and detention and detention without charge,
- prolonged pre-trial detention,
- poor prison conditions,
- incommunicado detention, and
- improper use of State Security Emergency Courts and military courts.[134]

158. During the period preceding Mr. Elmaati's detention and while he was detained in Egypt, Canadian officials were aware of the existence of the State Department and Amnesty International reports and used them in assessing Egypt's human rights record.

159. During the relevant period, state of emergency legislation (the "Emergency Law")—enacted in 1981 to combat terrorism and grave threats to national security—was in force in Egypt. The legislation restricted many basic rights.[135] For example, the Emergency Law allowed authorities to obtain a warrant upon showing that an individual posed a danger to security and public order, and then detain the individual indefinitely without charge.[136] Also, under the Emergency Law, cases involving terrorism and national security could be tried in military, State Security, or State Security Emergency Courts, in which the accused did

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133 Arar Inquiry, *Factual Background, Vol. I*, pp. 247-248.

134 U.S. State Department, *2001, 2002, 2003 Country Reports on Human Rights Practices: Egypt* [State Department Report], online, http://www.state.gov/g/drl/rls/hrrpt/ (accessed July 3, 2008); *Amnesty International Reports 2002, 2003, 2004*, online, http://www.amnesty.org/ailib/aireport/index.html (accessed July 3, 2008).

135 2002 State Department Report, p. 1; *Amnesty International Report 2004*, p. 1.

136 2002 State Department Report, p. 6; 2003 State Department Report, p. 6.

not receive all the normal constitutional protections of the civilian judicial system.[137] According to the State Department Report, some of the cases tried in these courts had no obvious security dimension despite the purpose for which the Emergency Law was enacted.[138]

160. According to Amnesty International, following the September 11, 2001 terrorist attacks, several people suspected of being affiliated to militant Islamist groups were arrested under provisions of the Emergency Law.[139]

161. While the Egyptian Constitution prohibits the infliction of "physical or moral harm" upon persons who have been arrested or detained, both the U.S. State Department and Amnesty International reported that torture and abuse of detainees by police, security personnel and prison guards was common and persistent.[140] Similarly, Human Rights Watch reported in a 2003 world report that police and security personnel continued to routinely torture or mistreat detainees, in some cases leading to death in custody.[141] Human Rights Watch noted that a number of political suspects on trial before military or state security courts alleged that they had been tortured during interrogation. Human Rights Watch also reported that deaths resulting from torture and ill-treatment in custody were not uncommon and showed a disturbing rise in 2002 and 2003.[142]

162. According to the Amnesty International and State Department reports, torture and mistreatment at the hands of state security personnel was particularly common. The United Nations Special Rapporteur on Torture concluded in 2001 that "torture is systematically practiced by the security forces in Egypt, in particular by State Security Intelligence."[143] Human rights groups believed that the State Security Investigations Sector (SSIS) employed torture to extract information, to coerce victims to end oppositional activities, and to deter others from similar activities.[144]

163. Principal methods of torture reportedly employed by police and security forces included electric shocks, beatings with fists, metal rods or other objects, suspension by the wrists or ankles and various forms of psychological torture, including death threats and threats of rape or sexual abuse of the detainee or a

137 2002 State Department Report, p. 8; *Amnesty International Report 2003*, p. 2; *Amnesty International Report 2004*, p. 2; 2003 State Department Report, pp. 7-8.

138 2003 State Department Report, p. 8.

139 *Amnesty International Report 2002*, p. 2.

140 2002 State Department Report, p. 3.

141 Human Rights Watch, "Egypt," from *World Report 2003*, online, http://www.hrw.org/wr2k3/mideast2.html (accessed July 3, 2008).

142 Human Rights Watch, *Egypt's Torture Epidemic*, Briefing Paper, February 2004, p. 1, online, http://hrw.org/english/docs/2004/02/25/egypt7658.htm (accessed July 3, 2008).

143 *Amnesty International Report 2002*, p. 2.

144 2002 State Department Report, p. 3.

female relative.[145] Victims also frequently reported being subjected to threats and forced to sign blank papers to be used against the victim or the victim's family in the future should the victim complain of abuse.[146]

164. Reports of incommunicado detention for prolonged periods, which was authorized by the Emergency Law, frequently accompanied allegations of torture.[147]

165. Both the U.S. State Department and Amnesty International reported poor prison conditions. According to the U.S. State Department, tuberculosis was widespread, and prisoners suffered from overcrowding of cells, lack of proper hygiene, food, clean water, proper ventilation and recreational activities, and inadequate medical care.[148] Amnesty International reported that conditions in some prisons amounted to cruel, inhuman or degrading treatment.[149]

DFAIT's assessment

166. DFAIT produces an annual human rights report for Egypt. The reports for Egypt, like those described above for Syria, are marked "confidential" and only available to Canadian officials with the proper security clearance who need to know the human rights profile of a given country. This includes some consular officers.

167. DFAIT's *Egypt: Annual Human Rights Reports* for 2001 (dated January 30, 2002), 2002 (dated March 17, 2003) and 2003 (dated January 8, 2004) were available to some DFAIT officials during the period of Mr. Elmaati's detention in Egypt. They described Egypt's human rights record as questionable, and highlighted the Emergency Law as a primary human rights concern.

168. According to the reports, after September 11, 2001, some Islamic individuals were arrested and detained arbitrarily. Trials were conducted *in camera* by military tribunals, with no right of appeal, and often resulted in the accused person being tried in absentia and being sentenced to death upon conviction. Any criticism of this process from a foreign embassy was ignored.

169. The opening line of DFAIT's 2001 report, quoting the Editor in Chief of the Cairo Times, stated that 2001 was one of the worst human rights years on record. Both the 2001 and 2002 reports indicated that a number of people alleged having been tortured while in detention. The reports also stated

145 2002 State Department Report, p. 3; *Amnesty International Report 2002*, p. 2; *Amnesty International Report 2003*, p. 2; 2003 State Department Report, p. 3.

146 2002 State Department Report, pp. 3-4; 2003 State Department Report, p. 3.

147 2002 State Department Report, pp. 3, 7; 2003 State Department Report, p. 3.

148 2002 State Department Report, p. 5.

149 *Amnesty International Report 2002*, pp. 1-2.

that Islamic militants continued to be arrested, detained and tortured on a regular basis.

170. The 2003 report described 2003 as a year with both highs and lows with respect to human rights. The State Security Court was abolished and a National Council on Human Rights was created to report and make recommendations to the Egyptian government on human rights issues. At the same time, the Emergency Law was renewed for three further years and activists advocating against the war in Iraq were regularly arrested, detained and tried by military courts. According to the report, torture continued to be widespread in detention centres and jail conditions continued to be deplorable.

171. The reports recommended that the Embassy send a clear message to the Egyptian authorities that Canada places a high value on respect for human rights.

CSIS' assessment

172. CSIS obtained information on Egypt's human rights record from several different sources, including internal documents and the Country Profile for Egypt prepared by CSIS, and reports from DFAIT. The Country Profile for Egypt prepared in 2001, citing Amnesty International reports, stated that the practice of torture continued to be systematic in the headquarters of the SSI in Cairo, in SSI branches elsewhere in the country and in police stations. The Country Profile, again citing Amnesty International, listed the most common methods of torture as electric shocks, beatings, suspension by the wrists or ankles and various forms of psychological torture, including death threats and threats of rape or sexual abuse of the detainees or female relatives. The Service did not prepare a Country Profile report for 2002 or 2003.

173. Other internal CSIS documents regarding Egypt discussed Egypt's human rights record. Citing Amnesty International reports, they stated that torture and ill treatment of detainees continued to be systematic.

174. According to a CSIS official, CSIS officials also read DFAIT's annual human rights reports about Egypt.

RCMP's assessment

175. As noted above in paragraphs 155 and 156, the RCMP does not produce its own human rights assessment, but relies on DFAIT and CSIS for information about a country's human rights record.

4

ACTIONS OF CANADIAN OFFICIALS IN RELATION TO AHMAD ABOU-ELMAATI

1. The following is a summary of information obtained by the Inquiry, largely from interviews of Canadian officials and review of relevant documents, concerning the actions of Canadian officials in relation to Mr. Elmaati.

Canadian officials' interest in Mr. Elmaati

CSIS' initial interest in Mr. Elmaati

2. Starting in the 1990s, CSIS was actively investigating potential security threats posed by Canada-based supporters of Islamic extremism, al-Qaeda and Osama bin Laden. In 2000, in the normal course of its investigation, CSIS learned that Ahmad Abou-Elmaati might have some knowledge of the threat to Canada and Canadian interests abroad. The Service's concern arose from information suggesting, in the Service's view, that he had links to Islamic extremists, that he had spent several years in Afghanistan engaged in insurgent activities, and that there was a possibility that he might engage in violent activities.

Mr. Elmaati detained at U.S. border

3. In mid-August, 2001, Mr. Elmaati was stopped at a New York border crossing. He was questioned by U.S. Customs and law enforcement officials, and the truck that he was driving that day was searched. According to a report of the incident, Mr. Elmaati was the subject of a TECS lookout (described at paragraphs 24 and 25 below), which is likely what caused him to be detained and questioned. Neither CSIS nor the RCMP requested this detention, but both were informed of it after it occurred. The items seized by U.S. authorities from the cab of the truck included a map of Canadian Government buildings in Tunney's Pasture, Ottawa, a pair of reading glasses, and a document apparently

printed from the Internet entitled "Know your rights if you are approached by CSIS." CSIS informed the Inquiry that it was aware, at the time, that documents about CSIS such as this one were being disseminated by various organizations, including the Canadian Arab Federation, to the Arab and Muslim communities in Canada.

4. On August 27, 2001, Mr. Elmaati spoke to his manager at Highland Transport about the incident at the U.S. border and showed her the map. He told her that the items seized at the border did not belong to him. At Mr. Elmaati's request, his manager wrote a letter explaining that the map could have belonged to a previous driver. Approximately one month later, in late September 2001, the RCMP interviewed Mr. Elmaati's manager with respect to the incident at the U.S. border. She told the RCMP that the items seized might have belonged to a previous driver and gave them a copy of the letter that she had written to that effect. She also stated that as a result of this incident, Mr. Elmaati had said that he did not think that he could continue to fulfill his duties since he felt he could not cross the U.S. border. He had therefore requested work in the city.

5. In October 2001 the RCMP contacted the driver who had used the truck immediately prior to Mr. Elmaati. He stated that he did not own the personal property that had been left in the truck. By this time the RCMP had obtained information that suggested that Mr. Elmaati's employer did not make deliveries to Tunney's Pasture, although CSIS had obtained information that it had done so. Some months later, the RCMP interviewed another previous driver of the truck, who advised that he had never been in possession of the Tunney's Pasture map, although he stated that he had made deliveries to Tunney's Pasture.

6. Further inquiries by the RCMP in October 2001 revealed that the map of Tunney's Pasture was at least 10 years old, and showed buildings that had since been torn down. In mid-October, the RCMP advised CSIS that the map was likely 10 years old and showed three government agencies that were no longer there. When asked whether the fact that the map was out of date diminished its significance, CSIS told the Inquiry that it did not. According to the Service, it was an accurate map of a major Government of Canada facility at Tunney's Pasture. In late October, CSIS advised U.S. authorities that no sinister plan towards Tunney's Pasture had been uncovered and that the map was likely 10 years old.

CSIS' September 11, 2001 interview

7. In the afternoon of September 11, 2001, two CSIS investigators interviewed Mr. Elmaati regarding his background, family, travel, his job as a truck driver,

the incident at the U.S. border in August, and the map of Tunney's Pasture. According to Mr. Elmaati, he showed them a copy of the letter from Highland Transport. They continued to ask him questions. After some time, Mr. Elmaati requested that a lawyer be present for the remainder of the interview. According to Mr. Elmaati, the investigators told him that he should cooperate with them or they would make the immigration application for his intended wife difficult.[1] Mr. Elmaati also recalled that the investigator used the term *mukhabarat* (the Arabic word for an intelligence service) and he interpreted this to be a threat.

8. The CSIS investigator who conducted the interview stated that he did not recall being presented with a letter and that Mr. Elmaati requested a lawyer be present before he would answer questions regarding time spent in Afghanistan in the 1990s. The CSIS investigator told the Inquiry that while they did discuss Mr. Elmaati's sponsorship application, this was because they wanted to ask Mr. Elmaati questions about his intended wife to obtain more information about her, not as a means to compel answers to questions. The CSIS investigator also stated that he had used the word *mukhabarat* for the purpose of distinguishing the Service from the way Mr. Elmaati might have perceived intelligence services in the Middle East. The investigator told the Inquiry that he used the term to highlight that CSIS is not a coercive organization, as Mr. Elmaati might have expected, and that they were simply having a discussion.

CSIS sharing of information

9. On several occasions in 2000 and 2001, CSIS shared information about Mr. Elmaati with the RCMP and foreign intelligence and law enforcement agencies, including U.S. agencies. The Inquiry found no evidence that CSIS shared or received information about Mr. Elmaati with Syrian authorities during this time.

10. The information shared variously described Mr. Elmaati as an individual who had spent seven years in Afghanistan involved in *jihad*-related activities, an individual involved in the Islamic extremist movement and an individual with links to local religious and Islamic extremists, including Ahmed Said Khadr.

11. Several CSIS witnesses were asked about the manner in which individuals are described in information exchanges with foreign agencies. One CSIS official told the Inquiry that there are no fence posts or policies about how people are described in communications with foreign agencies. He stated that the description depends on what is in the mind of the analyst who drafts the com-

[1] Mr. Elmaati had initiated an immigration sponsorship application to bring his intended wife to Canada from Syria in June of 2001.

munication (and the CSIS officials who approve it), as well as on the information currently available, and the description can change daily as new information surfaces. Terms used such as "suspected" and "believed" frame CSIS assessments and put the information into context for the receiving agency. According to another senior CSIS official, sometimes the Service categorizes people in order to give the receiving agency the proper perspective and information about how the Service views them. Sometimes these types of characterizations are used, in part, to elicit information from the foreign agency; by stating that a given individual might be an Islamic extremist, the Service is trying to prompt a response that corroborates or refutes that statement.

RCMP's initial interest in Mr. Elmaati

12. On September 23, 2001 the FBI sent a letter to RCMP Commissioner Zaccardelli identifying possible members of a terrorist cell in Canada. In this letter, the RCMP was asked to provide further information about the individuals identified in the letters and if possible, detain them for interviews. During this time, similar request letters were sent by the FBI and another U.S. agency to the RCMP and CSIS. As noted by Justice O'Connor, the RCMP did not act on the FBI's request. CSIS also did not do so, and would not have had the authority in any event to detain anyone for questioning.

13. As described in Chapter 3, on September 24, 2001, CSIS provided a letter to the RCMP that resulted in the creation of Project O Canada. In late September 2001, based on information provided by CSIS and the U.S. authorities, Project O Canada began an investigation of which Mr. Elmaati was a primary target.

14. During the fall of 2001, material from Project O Canada was provided to CSIS on an ad-hoc basis. During the period of the Project O Canada investigation, CSIS continued to exchange information regarding alleged Islamic extremists with foreign intelligence and law enforcement agencies and shared further information about Mr. Elmaati with the RCMP.

RCMP sharing of information

15. On September 28, 2001, based on the information it received from CSIS and U.S. authorities, rather than on any independent information of its own, the RCMP sent a fax to the FBI and to a number of the RCMP's liaison officers stationed abroad, requesting that they seek information on an urgent basis with respect to certain individuals, including Mr. Elmaati, who were described as posing an imminent threat to public safety and the security of Canada.

16. In response to this request, on September 29, 2001, the RCMP's liaison office in Rome sent an urgent request for assistance to law enforcement agencies in several countries including Syria and Egypt. The request letter stated that the RCMP had received current and reliable information that a group of individuals, including Mr. Elmaati, were engaged in activities in support of politically motivated violence and posed an imminent threat to public safety and the security of Canada. The letter also urgently requested that each country conduct background and verification checks on all subjects identified in the letter. The requests included a caveat that prohibited the distribution of the message without consent.

17. The RCMP's liaison officer in Rome, Inspector Stephen Covey, told the Inquiry that he believed that the information the RCMP had received and then shared regarding an imminent threat to public safety and the security of Canada was true, which is why that phrase was included in the requests to the foreign agencies and why he felt the sharing of this information with foreign agencies was justified. Inspector Covey told the Inquiry that RCMP headquarters had indicated that it was reliable information and, given that it was two weeks after 9/11 and the targeted individuals were alleged to have things in common with members of al-Qaeda (alleged extremist views, military training and combat experience in Afghanistan), he also believed that it was reliable and gave it high priority. In early October 2001, Inspector Covey contacted the law enforcement agencies of several countries, including Syria, asking that the request be made a priority.

18. On October 2, 2001, the RCMP sent a follow-up fax to a number of its liaison officers that contained additional information it had received on the individuals identified as an imminent threat in the previous fax, including Mr. Elmaati, and listing Mr. Almalki as an additional imminent threat. In response, the liaison office in Rome sent follow-up letters to the same countries, including Syria and Egypt, disclosing the additional information and requesting any intelligence that surfaced on any of the subjects. The letters were sent with the caveat that this information could not be further disseminated by the receiving agency without the express consent of the RCMP. However, according to Inspector Covey, whenever the RCMP gives information to a foreign country, particularly a country such as Syria, it loses complete control over the information; therefore if there was something that Canada should not share with the Syrian authorities, he would not send it. Inspector Covey was of the same view with respect to the sharing of information with Egypt.

19. The Officer in Charge of Project A-O Canada, Inspector Michel Cabana, was not involved in these communications and was not asked about them specifically. When asked about the sharing of information generally with foreign agencies and the manner in which individuals might be characterized, Inspector Cabana stated that it would be problematic to take a piece of correspondence in relation to an individual, send it to a third party with little knowledge of an investigation, and misrepresent the individual's role in the matter under investigation. However, this was not a concern that applied to the U.S. agencies, because they had a better understanding of the context of the communication and could not be considered third parties. Inspector Cabana stated that the RCMP had a mandate to work in an integrated fashion with the CIA and the FBI, which meant the RCMP shared everything "in real time" with the American agencies. In sharing information with third parties other than U.S. authorities, Inspector Cabana stated, the RCMP would first send the information to its foreign liaison officers. They, he stated, have the appropriate training to know how to structure requests of foreign authorities, and could therefore modify the language of the communication as appropriate for the particular country.

20. In his interview, Inspector Richard Reynolds of the RCMP's Criminal Intelligence Directorate (CID) stated that describing an individual as an imminent threat was somewhat unusual. In the normal course, the RCMP would use the term imminent threat to refer to a threat against individuals or property rather than to describe an individual. Inspector Reynolds also stated that he did not believe that a communication was ever sent to the Syrian or Egyptian authorities changing this assessment of Mr. Elmaati.

21. Since neither Syria nor Egypt participated in the Inquiry, the Inquiry did not receive any information regarding whether the RCMP's letters to Syria and Egypt in September and October of 2001 had any effect on Syria's or Egypt's actions in respect of Mr. Elmaati.

Border lookouts and watch lists

Canada Customs lookouts

22. Canada Customs[2] conducts border checks through its Integrated Customs Enforcement Service (ICES) system. An authorized Canada Customs officer may initiate a lookout by entering a person's name, vehicle or other information into

[2] Prior to December 12, 2003, Canada Customs was part of the Canada Customs and Revenue Agency (CCRA); however it is now part of the Canada Border Services Agency (CBSA). For the sake of convenience (and since this change in organizational structure is not significant for the purposes of this report) we have used the term "Canada Customs".

ICES. A lookout allows Canada Customs to monitor a person's cross-border movement into Canada and is triggered when the person's passport is swiped or the customs officer enters identifying information into the system. A lookout can also direct customs officers to conduct a secondary examination of a traveller who crosses the border into Canada. The level of secondary examination is at the discretion of the front line customs officer; it might involve a brief interview or a more thorough search of the traveller's bags.[3]

23. On September 29, 2001, Project O Canada requested lookouts for a number of Project O Canada targets, including Mr. Elmaati. Lookouts were registered in ICES and in the Canadian Police Information Centre (CPIC). CPIC is a central computerized information system that provides all Canadian law enforcement agencies with information on crimes and criminals. It is operated by the RCMP. In the event of a criminal offence or conviction CPIC can receive information from the ICES database.

U.S. border lookouts

24. Lookouts in the United States are conducted through the U.S. Customs Treasury Enforcement Communications System (TECS). A variety of databases feed into TECS, including terrorist watch list databases. Nineteen U.S. federal agencies, as well as the RCMP, provide information for TECS. One of the functions of TECS is to facilitate lookouts and checks on suspect individuals, businesses, vehicles, aircraft and vessels; these lookouts are similar to Canadian lookouts. Canadian agencies may request a TECS lookout for a given individual but do not have access to the TECS system.[4]

25. In September 2001 CSIS learned that U.S. authorities had registered a TECS lookout in Mr. Elmaati's name so that he would be stopped, questioned, and searched each time that he attempted to enter the U.S. Neither CSIS nor the RCMP requested this lookout.

FBI watch list

26. In late September 2001, the FBI advised the RCMP that Mr. Elmaati had been added to the FBI watch list. CSIS was also aware of this information. A senior CSIS official told the Arar Inquiry that in the majority of cases the Service

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[3] For further information on Canadian lookouts, please see Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Factual Background, Volume I* (Ottawa: Public Works and Government Services Canada, 2006), pp. 57-58 [Arar Inquiry, *Factual Background, Vol. I*].

[4] For further information on U.S. lookouts, please see Arar Inquiry, *Factual Background, Vol. I*, pp. 61-63.

is unaware that an individual has been placed on a watch list. He did not think that the Service had ever requested that anyone be put on a U.S. watch list.

27. In response to its inquiries about the watch list, the RCMP was told that inclusion on the watch list did not necessarily mean that an individual was a knowing or willing participant in criminal activity; rather it indicated that the individual might possess information of value to an investigation.

Media reporting regarding "Kuwaiti man"

28. In mid-October 2001, there were media reports regarding a 36-year-old Kuwaiti man who had been arrested by Canadian authorities in possession of government maps. In response to these reports, a foreign agency wrote to CSIS and requested further information on the identity of this individual. CSIS informed the agency that the individual in question was Mr. Elmaati, and stated that although there appeared to be no reason why Mr. Elmaati would have had the map in his possession, further inquiries had revealed no sinister plans towards the government buildings by Mr. Elmaati. The Service's response also stated that the map was likely 10 years old, and the newspaper article was speculative in nature. The message was accompanied by two CSIS caveats.

29. Mr. Elmaati has publicly alleged that his lawyer left several telephone messages for the CSIS investigator who had previously interviewed Mr. Elmaati on September 11, 2001 regarding Mr. Elmaati's concerns over the media reporting, but his calls were never returned. When interviewed by Inquiry counsel, this investigator responded that he had received one telephone message from Mr. Galati, but that at that time the Service was in passive collection mode and he did not have the authority to return the call without the approval of his supervisor. According to the Service, there would have been a concern about doing anything that might interfere with the RCMP's investigation.

30. On October 31, 2001, CBC reporter Krista Erickson sent an email to the Canadian Embassy in Kuwait asking the Embassy to clarify whether Mr. Elmaati was suspected of being involved in terrorist activity. The Embassy in Kuwait forwarded the email to DFAIT's Foreign Intelligence Division (DFAIT ISI). Scott Heatherington, the Director of DFAIT ISI, stated that he passed the information to the RCMP, who, in accordance with its standard practice, would neither confirm nor deny any investigation into Mr. Elmaati.

Mr. Elmaati travels to Syria

Allegations against Mr. Elmaati's brother Amr

31. On November 8, 2001, the RCMP received information that a foreign agency believed that Mr. Elmaati's brother, Amr Elmaati, had recently entered Canada for the purpose of boarding a flight in Canada and diverting it to a target in the United States. It is a matter of public record that U.S. authorities considered Amr Elmaati to be a serious terrorist threat. RCMP CID considered the information received from the foreign agency to be credible and shared it with the National Security Investigation Section of the RCMP, CSIS, Canada Customs, Transport Canada, and Immigration Canada.

RCMP alerts Canadian authorities about Mr. Elmaati's planned departure

32. On November 9, 2001, Project O Canada learned that Mr. Elmaati was planning to travel from Toronto to Syria on November 11, 2001, for his impending wedding. The RCMP considered Mr. Elmaati a threat to the security of Canada and the U.S. and feared that he might be planning to fulfill his brother's alleged hijacking plans. A member of RCMP CID took steps to ensure that no person with the name Elmaati would be permitted to board a Canadian aircraft.

33. Unbeknownst to the member of RCMP CID, "O" Division had made a decision to have Mr. Elmaati monitored on his journey and therefore took steps to ensure that Mr. Elmaati would be allowed to board the aircraft. Project O Canada planned to interview Mr. Elmaati at the airport in Toronto and then have two members of the RCMP covertly accompany him on his flight through Frankfurt to Vienna. Assistant Commissioner Richard Proulx, Head of RCMP CID, authorized the RCMP covert escort of Mr. Elmaati to Vienna.

34. Inspector Keir MacQuarrie, the Officer in Charge of Project O Canada, explained that the decision to accompany Mr. Elmaati to Vienna was made to ensure that there was no security threat on the plane and to obtain information from him during the flight. Inspector MacQuarrie told the Inquiry that the RCMP wanted to monitor Mr. Elmaati to Vienna because the RCMP was concerned about Mr. Elmaati diverting an airplane in accordance with his brother's alleged plan. The RCMP was of the view that if he travelled all the way to Vienna and then boarded a flight for Damascus, there would no longer be a threat of his diverting a plane because he would have demonstrated that he was indeed travelling to Syria to be married. Inspector MacQuarrie told the Inquiry that he did not have any knowledge or information about what would happen to Mr. Elmaati when he arrived in Syria. Inspector Cabana told the Arar Inquiry

that the RCMP was concerned about Mr. Elmaati boarding a plane, not the final destination to which he was travelling.

35. On November 9, 2001, in anticipation of Mr. Elmaati's departure, the RCMP advised its liaison officers in Germany and Vienna of Mr. Elmaati's travel itinerary. They were directed to share the information with local agencies as required. Inspector MacQuarrie told the Inquiry that the liaison officer in Frankfurt was directed to alert local German authorities in case, during Mr. Elmaati's stop-over in Frankfurt, he decided to leave the airport; the RCMP needed to have resources in place to follow him. Inspector MacQuarrie also stated that the RCMP's liaison officer in Vienna was alerted so that he could confirm that Mr. Elmaati boarded the flight to Damascus, thereby negating the threat.

36. On November 9, 2001, the RCMP also informed CSIS that Mr. Elmaati had flight reservations for travel to Syria on November 11. According to a CSIS official, the planned departure of Mr. Elmaati caused significant anxiety. The Service had received the same information as the RCMP regarding Amr Elmaati's alleged plot to hijack a plane in Canada, and like the RCMP, was concerned that perhaps Mr. Elmaati's brother had asked him to do it for him. In its message to CSIS, the RCMP requested that CSIS not advise any other agencies of Mr. Elmaati's itinerary, because it could, and probably would, interfere with the RCMP's plans to monitor him covertly throughout his journey. A senior CSIS official confirmed that CSIS did not communicate Mr. Elmaati's itinerary to any foreign agencies.

RCMP shares Mr. Elmaati's itinerary with U.S. authorities

37. On November 10, 2001, the RCMP advised the CIA and FBI of Mr. Elmaati's travel plans and itinerary.

38. On November 10 and 11, 2001, Inspector Cabana met with Superintendent Garry Clement, Assistant Criminal Operations (CROPS) Officer of "A" Division, to discuss the issue of alerting American authorities. Superintendent Clement then advised the CIA and FBI of Mr. Elmaati's travel itinerary. However, it was his understanding that the CIA was already aware of this information because it had obtained the information from RCMP headquarters. Superintendent Clement stated that it was within his purview to make the decision to disclose this type of information to the American authorities without consulting anyone more senior. He advised the Inquiry that in light of the information the RCMP had received regarding the alleged threat to a U.S. target, it was his view that

the American authorities must be notified. Around this same time, RCMP CID had also notified the FBI of Mr. Elmaati's intended departure.

39. The RCMP advised that sharing this information with the American authorities was consistent with the information sharing agreement that it understood existed between the RCMP, CSIS, CIA, and FBI.

40. Inspector Cabana told the Inquiry that in light of the information received about Amr Elmaati's alleged plot to hijack a plane, the RCMP had a responsibility to advise the U.S. that Mr. Elmaati was about to board a plane in Canada. Inspector Cabana testified in the Arar Inquiry that the decision to notify the American authorities of Mr. Elmaati's travel plans was a troubling one but he felt that the RCMP had no choice: the U.S. authorities considered Amr Elmaati to be a serious terrorist threat; Ahmad Elmaati had been stopped at the Canada-U.S. border under suspicious circumstances; and the threat level in Canada at the time was high. In his interview, Inspector Cabana further stated that whether or not the RCMP provided Mr. Elmaati's itinerary to the CIA, the itinerary would have been available to the CIA. Other members of the RCMP agreed that since there was a threat to the U.S., it was mandatory to pass along this intelligence; the RCMP would have been remiss if it had not shared the information with the U.S. authorities.

41. Former Commissioner Giuliano Zaccardelli did not recall having been advised that the RCMP had shared Mr. Elmaati's itinerary with the U.S. However, in his view the sharing was acceptable because it was part of the critical exchange of information. He stated that, at the time, the U.S. authorities were working with the RCMP and had full access to everything the RCMP was doing.

Information shared without express caveats

42. In advising the CIA and FBI of Mr. Elmaati's travel information, the RCMP did not include express caveats about how the information could be used. Assistant Commissioner Proulx told the Inquiry that while he did not know whether the information shared with the CIA and FBI was shared with express caveats, there is always an implied caveat that attaches to all information that is shared.

Syrian authorities not informed

43. The RCMP did not notify the Syrian authorities of Mr. Elmaati's itinerary. According to Inspector Cabana, it did not do so because the threat was directed at the American government, not the Syrian government, and the RCMP did

not have a working relationship with the Syrian authorities. As stated at paragraph 34 above, according to Inspector Cabana, the RCMP was concerned about Mr. Elmaati boarding a plane, not the destination to which he was travelling.

44. Another RCMP member testified at the Arar Inquiry that the RCMP did not share this information with Syria because it did not have any kind of working relationship with the Syrians. He also stated that he did not think the information was given to the Americans knowing that they would pass it along to the Syrian authorities; he thought only that surveillance would be conducted on Mr. Elmaati while in Syria. He told the Arar Inquiry that if the Americans had passed the information along, it would potentially have been in breach of the RCMP's understanding regarding the sharing of information with the American authorities.

Mr. Elmaati monitored from Toronto to Vienna

45. On November 11, 2001, Mr. Elmaati and his mother arrived at Pearson International Airport. Mr. Elmaati was to depart Canada for Damascus connecting through Frankfurt and then Vienna. After obtaining their boarding passes and just before passing through security, they were taken aside and separated. Detective Sergeants Scott Mills and Dave Truax of the OPP (seconded to Project O Canada) took Mr. Elmaati downstairs to an interview room. They asked Mr. Elmaati about the purpose of his trip (which he said was to get married), the planning of his trip (which he said had occurred ten days prior to departure), and other details about his itinerary and items in his possession. Another officer took Mr. Elmaati's mother aside and questioned her about their itineraries. The officers then escorted Mr. Elmaati and his mother through security and to the boarding gate, where they received new boarding passes with new seat assignments.

46. Mr. Elmaati and his mother were covertly monitored on the flight to Vienna by two RCMP officers. The RCMP had made a decision to accompany Mr. Elmaati as far as Vienna and not to Damascus because its concern was the flight from Canada to Vienna; it did not have a concern that he might divert an airplane from Vienna. The RCMP was of the view that if it could ensure that he boarded the plane and carried on with his travels from Vienna, the threat level would dissipate.

47. The RCMP liaison officer stationed in Vienna, Inspector Patrick McDonell, was asked to co-ordinate with Austrian authorities to ensure surveillance of Mr. Elmaati and his mother from the time of their arrival in Vienna to the time of their departure to their final destination. On November 11, Inspector McDonell

met with several Austrian investigators at the airport in Vienna to request their assistance in the surveillance of Mr. Elmaati and his mother the following morning. During this meeting, Inspector McDonell disclosed that Mr. Elmaati was of interest to the RCMP based on a terrorism investigation in Canada.

48. On November 12, 2001, a foreign agency asked Inspector McDonell to make arrangements with Austrian authorities to have Mr. Elmaati arrested once he arrived at the airport in Vienna. Inspector McDonell refused. He had only been asked by Project O Canada to monitor Mr. Elmaati and nothing more. Mr. Elmaati was observed at the airport and permitted to board his next plane as planned. Although the RCMP officers did not accompany Mr. Elmaati to Damascus, they did confirm that he was on the plane. Inspector McDonell reported his interaction with the foreign agency to Project O Canada the following day.

Mr. Elmaati detained in Syria

49. On November 12, 2001, CSIS learned that a foreign agency had taken steps to have Mr. Elmaati detained and questioned along his travel route, including a request to the Syrian authorities to do so. When CSIS received this information, Mr. Elmaati had already departed from Europe and was on his way to Syria. CSIS did not become aware of his detention until a few days later. The RCMP was made aware of this same information on November 27, 2001.

DFAIT learns of detention

50. On November 13, 2001, Scott Heatherington, the Director of DFAIT ISI, advised the Consular Affairs Bureau that DFAIT had learned that Mr. Elmaati had been detained by Syrian authorities in Damascus, and suggested that inquiries be made regarding whether he had sought consular access. Myra Pastyr-Lupul, then case management officer for the Middle East at the Consular Affairs Bureau, confirmed with the Embassy in Damascus on November 15 that Mr. Elmaati had not yet sought consular access.

51. At the time DFAIT learned of Mr. Elmaati's detention (on November 13, 2001), Gar Pardy, the Director General of the Consular Affairs Bureau, was out of the country. He was in London from November 9 to November 19 and had no knowledge of or involvement with the Elmaati case until his return.

DFAIT opens a CAMANT file for Mr. Elmaati

52. On November 16, 2001, having been advised by Sergeants Mills and Truax of the OPP (who were seconded to Project O Canada) to do so, Mr. Elmaati's

aunt called DFAIT to advise that her nephew, Ahmad Elmaati, had gone missing while en route to Syria from Vienna. DFAIT then created its first CAMANT note for Mr. Elmaati in which it asked the mission in Vienna to check on Mr. Elmaati's whereabouts.[5] Mr. Elmaati's CAMANT file was originally opened as a Vienna file because Vienna was the last place that Mr. Elmaati had been seen. Ms. Pastyr-Lupul was therefore not copied on the first CAMANT note, but it was brought to her attention by the case management officer for Europe.

CSIS learns of detention

53. On November 15, 2001, the Service learned that Mr. Elmaati had been detained in Syria. When forwarding this information from headquarters to its offices in Washington and Toronto, CSIS headquarters commented that it was possible that he had been detained at the request of a foreign agency.

54. A senior CSIS official could not recall whether anybody within CSIS briefed DFAIT ISI about Mr. Elmaati's detention in Syria, but stated that it was standard operating practice to do so. He further stated that when information about a Canadian in detention overseas is shared with ISI, the Service would expect ISI to share this information with DFAIT's Consular Affairs Bureau. According to this official, the Service did not usually deal with the Consular Affairs Bureau directly, but instead dealt with ISI and allowed ISI to pass the information along to the Consular Affairs Bureau. In this case, a senior CSIS official stated that he did not think that CSIS had alerted ISI. CSIS has no written record of having advised DFAIT of Mr. Elmaati's detention in Syria. It appears that DFAIT learned of the detention two days before CSIS did, and that CSIS was not aware at that time that DFAIT had this information.

RCMP learns of detention

55. Superintendent Clement, Assistant CROPS Officer at RCMP "A" Division, learned of Mr. Elmaati's detention on November 13, 2001. Superintendent Clement told the Arar Inquiry that he assumed that there would be some justification for the arrest and that Mr. Elmaati would receive "some sort of process," albeit not necessarily to Canadian standards. He further stated that the RCMP had no relationship with DFAIT at the investigative level and there was no obligation to notify DFAIT.

56. The RCMP instructed its liaison officer in Rome, Inspector Covey, to determine whether Mr. Elmaati had been detained upon arrival in Syria and

[5] The CAMANT System is a database used by the Consular Affairs Bureau to record all consular activities related to Canadians abroad. For a more detailed discussion of the CAMANT System see Chapter 3, paragraphs 22-28.

where he was being detained. On November 15, 2001, Inspector Covey advised Project O Canada that DFAIT would be approaching the Syrian authorities and inquired whether he should still do so. In light of DFAIT's involvement in the case, Inspector Covey was told to refrain from approaching Syrian authorities about Mr. Elmaati's suspected detention.

57. On the same day, Inspector Covey exchanged a number of emails with the RCMP liaison officer at DFAIT ISI regarding the detention of Mr. Elmaati. In one of these emails, Mr. Covey wrote that if Mr. Elmaati was not already being held in detention, as soon as consular officials started making inquiries with the local police, he would be arrested and interrogated "Syrian style". When asked by Inquiry counsel about what he meant by "Syrian style," Inspector Covey stated that Syrian police and intelligence do not interview people in the same way that Canadian authorities would. Inspector Covey told the Inquiry that he had no indication of torture occurring in Syria, and no first- or second-hand knowledge as to how Syrian authorities would interrogate people, but he was convinced that detainees in Syria are treated worse than they are in Canada. To what extent the treatment was worse, he could not comment. Inspector MacQuarrie told the Inquiry that at the time he had no idea what was meant by "Syrian style," but he does now.

58. When interviewed, several members of the RCMP stated that, in all likelihood, Mr. Elmaati was detained as a result of information the U.S. authorities had given to the Syrian authorities. When asked by Inquiry counsel whether the RCMP had considered, at the time Mr. Elmaati's itinerary was shared with the U.S., whether it was reasonable to assume that the U.S. might take steps that could cause Mr. Elmaati to be detained, Inspector Cabana stated that, in retrospect, it was reasonable to assume that this was a possibility but at that time the RCMP did not consider the issue. Its primary concern was the threat to the U.S. As Justice O'Connor found in the Arar Inquiry, it is reasonable to assume that Syria was informed of Mr. Elmaati's arrival by U.S. authorities, and that Project A-O Canada would have been aware that the Americans had informed the Syrians of Mr. Elmaati's arrival in Syria.

RCMP interviews Mr. Elmaati's aunt

59. On November 16, 2001, Detective Sergeants Mills and Truax interviewed Mr. Elmaati's aunt in furtherance of Project O Canada's investigation into Mr. Elmaati (who had been seen at her residence on numerous occasions). Mr. Elmaati's aunt told the Inquiry that based on their questions, she felt that she had to convince the detectives that her nephew had gone to Syria for the

purpose of getting married. She recalled that one of the detectives seemed surprised to learn that Mr. Elmaati had gone to Syria for a wedding, saying that if he had known, he would have advised Mr. Elmaati not to go when he stopped him at the airport. She did not ask the detectives how he would have stopped Mr. Elmaati from going, nor did the detective suggest that he had the power to do so. When interviewed by Inquiry counsel, Detective Sergeant Mills stated that he could not recall having made this statement to Mr. Elmaati's aunt and that he had had an indication in advance of the interview of Mr. Elmaati that the purpose of his trip to Syria was to be married. He said that this was confirmed by Mr. Elmaati when he interviewed him at Pearson International Airport on November 11. At this meeting, as discussed at paragraph 52 above, Detective Sergeants Mills and Truax advised Mr. Elmaati's aunt to contact DFAIT and report that Mr. Elmaati was missing.

Suggestion that RCMP "complicit" in Mr. Elmaati's detention

60. A year after Mr. Elmaati's arrest in Syria, a briefing note was prepared for RCMP Commissioner Zaccardelli, dated November 21, 2002 and signed by Assistant Commissioner Proulx, regarding the RCMP's exchange of information with the U.S. authorities prior to Mr. Elmaati's departure from Canada. The briefing note stated that based on the travel information that the RCMP had provided to the American authorities, the RCMP could be considered "complicit" in Mr. Elmaati's detention in Syria. The briefing note also stated that there "was NO RCMP complicity or involvement" in Mr. Almalki's detention by Syrian authorities.

61. Former Commissioner Zaccardelli stated that he reviewed the briefing note at the time but could not recall taking any action as a result of it. He stated that the issue of complicity flowed from allegations in newspaper articles, and that he would have expected that the RCMP Policy Centre that wrote the briefing note would follow up on the allegations. Former Commissioner Zaccardelli could not recall having briefed the Minister on the issue of complicity and was of the view that there were no grounds to do so. He stated that more work would have had to be done to determine whether the RCMP was indeed complicit before it would have been appropriate to brief the Minister.

62. Assistant Commissioner Proulx told the Arar Inquiry that he did not believe the RCMP was in fact complicit, and that, when he signed the briefing note, he was not referring to complicity in the criminal sense. He stated that it was the public and the media who would consider the RCMP's actions to be complicit. The briefing note was drafted in response to published news articles regarding

the RCMP's alleged involvement in the arrest and detention of Canadian citizens abroad. The purpose of the briefing note was therefore to advise the Commissioner on the cases of Mr. Elmaati, Mr. Almalki and Mr. Arar. Since the RCMP had directly advised the CIA of Mr. Elmaati's travel plans and provided the CIA with his specific travel itinerary on request, there was a concern that the public and the media might consider the RCMP's actions in respect of Mr. Elmaati to be complicit.

63. Superintendent Pilgrim told the Inquiry that although the RCMP provided the Americans with Mr. Elmaati's travel information he did not think that the RCMP was complicit. According to Superintendent Pilgrim, the information was provided to the Americans in good faith. However, what the Americans did with the information after that was, in Superintendent Pilgrim's view, beyond the RCMP's control.

64. There were several drafts of the briefing note. An earlier draft, dated November 15, 2002, stated that Mr. Elmaati's subsequent detention by Syrian authorities was "NOT based on any cooperation/information provided by the RCMP." Assistant Commissioner Proulx told the Inquiry that he crossed out those words and made notes in the margin that "the RCMP never requested the detention of Elmaati by the Syrian authorities." Other handwritten notes on this earlier draft suggest a further revision to the second paragraph of the briefing note to reflect that "American agencies were directly advised by RCMP that Almaati (sic) was travelling to Syria. The American agencies were unaware of this and requested travel specifics which were given to them by RCMP. AlMaati (sic) was then arrested by Syrian authorities." The RCMP was unable to provide the Inquiry with information that would identify the author of these notes. When asked about the revisions to the final briefing note and the comments made on this earlier draft, Assistant Commissioner Proulx told the Inquiry that these comments reflected what was known at the time: that the RCMP had given Mr. Elmaati's travel itinerary to the Americans and, as it later found out, Mr. Elmaati was arrested in Syria seemingly on the information provided by the Americans—who could be considered complicit—without the RCMP having ever asked for his arrest. Assistant Commissioner Proulx added that it was not in the RCMP's interest for Mr. Elmaati to be arrested in Syria.

65. Other members of the RCMP stated that they did not view the statement as an admission that the RCMP was in fact complicit, and it would have been more appropriate to have said the RCMP's actions might be considered complicit.

Mr. Elmaati's alleged confession

66. In mid-November 2001, CSIS and the RCMP received unsolicited information from a foreign agency that was said to have been obtained from Mr. Elmaati while in detention in Syria. This information included the existence of an alleged plot by Mr. Elmaati to blow up the Canadian Parliament buildings with a truck bomb and the existence of an alleged terrorist cell in Canada.

CSIS assessment of alleged confession

67. When it received this information in November 2001, the Service immediately sought details concerning Mr. Elmaati's detention in Syria and the specific line of questioning used in his interrogation. The Service had some concerns regarding the information in the alleged confession. It was concerned about how much information might have been passed to the Syrian authorities by foreign agencies before the interrogation began and how much prompting might have been provided.

68. Jack Hooper, then the Director General of CSIS' Toronto office, thought that the document could not be credibly viewed as the exclusive product of statements by Mr. Elmaati, given the detail and quality of the information provided. Mr. Hooper considered the alleged confession to be a blend of actual statement, analysis, assessment and conjecture.

69. In late November 2001, CSIS shared the Service's concerns about the reliability of the alleged confession with the RCMP.

70. A senior CSIS official stated that, while the Service had a credible basis on which to dismiss some of the information, the Service considered the alleged threat to Parliament Hill to be fairly credible. In late November, 2001, the Service issued a threat assessment based on this information.

71. Threat assessments are issued if the Service has information about a credible threat. An assessment of the alleged threat to Parliament Hill was drafted by the Service and sent to a number of government departments including the RCMP, DFAIT, Solicitor General, Communications Security Establishment, National Defence, Privy Council, Transport Canada, and Canada Customs. The assessment discussed the alleged planning of an attack on the Canadian Parliament buildings and stated, without naming the individual involved, that the individual was currently detained abroad. The threat assessment did not identify how or from whom the information had been obtained.

Consideration whether information derived from torture

72. According to Mr. Hooper, the Service rarely dealt with intelligence reports derived from sources where torture was of concern. Information received by the Service, irrespective of the source, would be evaluated in fundamentally the same way in order to determine its reliability and veracity. Mr. Hooper commented that the Service does not put stock in information that derives from abusive or coercive means. If it was determined that the sources of the information were questionable, the Service would not share the information and would make little if any use of it. Mr. Hooper stated that the art of the business is performing the balancing act between the consequences of acting on information that was likely the product of torture and the potential consequences of not acting. According to Mr. Hooper, he never took the next step of trying to determine whether or not Mr. Elmaati's alleged confession was extracted through the use of torture because as an intelligence product, it was virtually useless as a stand-alone report.

73. A senior CSIS official told the Arar Inquiry that there were no personnel within the Service who had been trained in, or had particular expertise in, assessing whether a statement was the product of torture. When asked whether there were outside experts on this issue, the same official stated that he believed that there were people in Amnesty International and human rights groups who had interviewed people who had been tortured and who would be able to provide as close as one could get to expert testimony on the issue. However, he said that there were no such experts within the Service, and he had never personally consulted such an expert outside the Service. Like Mr. Hooper, this official stated that the Service would assess any statement to determine its validity and whether it was capable of corroboration.

RCMP assessment of alleged confession

74. The RCMP had some concerns regarding the reliability of Mr. Elmaati's alleged confession. Superintendent Wayne Pilgrim, the Officer in Charge of the National Security Investigations Branch (NSIB) at RCMP headquarters, felt that some of the information was too specific and detailed. It therefore raised a concern that some of the information might have been fed to Mr. Elmaati by the interviewers and then subsequently documented as having come from Mr. Elmaati himself.

75. Similarly, Inspector MacQuarrie's view was that the alleged confession was too perfect a statement and it contained answers to questions the RCMP would have expected to get before the interview was even conducted. When

asked what he meant, Inspector MacQuarrie told the Inquiry that the information contained in the alleged confession suggested that the interrogators had the same information as the RCMP regarding Mr. Elmaati and that Mr. Elmaati had somehow corroborated it all. This caused Project O Canada to question the validity of the information. According to Inspector MacQuarrie, it was possible that it reflected circular reporting, although he was not aware of anyone having provided the interrogators with RCMP information.

76. The RCMP conducted an analysis of the alleged confession which involved comparing it to the information the RCMP had previously obtained. Despite the concerns expressed by some members of the Force, and the concerns communicated to the RCMP by representatives of the Service, the analysis corroborated significant portions of the alleged confession. For example: (1) the RCMP confirmed that Mr. Elmaati had taken flying lessons in August 1999, which, in its view, corroborated Mr. Elmaati's alleged statement that he had been instructed by his brother in February 1999 to do so; (2) the RCMP confirmed that Mr. Elmaati was a truck driver and had made several trips to Ottawa in 2001, which, in its view, corroborated Mr. Elmaati's alleged statement that he planned to bomb the Parliament Buildings using a truck bomb; and (3) the RCMP viewed the map of Tunney's Pasture as corroborative of Mr. Elmaati's alleged statement that his brother had sent him the map and instructed him to select a target location. The RCMP was therefore of the view that the alleged confession was reliable and valid.

77. In late November 2001, Project A-O Canada held a meeting to discuss the direction of the investigation in light of Mr. Elmaati's alleged confession. Although Mr. Elmaati had been a target of Project O Canada up to this point, based on this new information the Project A-O Canada investigation was expanded to include Mr. Elmaati and the alleged threat to Parliament Hill. The meeting agenda included the use of the alleged confession to obtain search warrants, sending Project A-O Canada investigators to Syria, and corroboration of the information. According to Superintendent Clement, the RCMP wanted to interview Mr. Elmaati regarding the alleged threat to Parliament Hill because it could not simply rely on what he described as a chopped-up version of a statement that came in pieces through other sources.

78. Former Commissioner Zaccardelli did not recall having been briefed on Mr. Elmaati's alleged confession and, consequently, did not recall anyone from the RCMP raising any concerns relating to it. When asked by Inquiry counsel whether the alleged confession should have been brought to his attention,

former Commissioner Zaccardelli said that he would not speculate and the best answer he could give was that he had not been made aware of it at that time.

79. In light of Mr. Elmaati's alleged confession, the Threat Assessment Branch of CID issued a threat assessment level of "high" for Parliament Hill in late November 2001. In December 2002, the threat level was reduced to "medium" on the grounds that the alleged threat had been made over a year earlier and the RCMP's investigations had not revealed any corroborative evidence that the plot would be executed, especially since the person the RCMP considered to be the "main player," Mr. Elmaati, was now detained in Egypt. The threat level remained at "medium" for several years. The RCMP did not know the location of the threat's alleged instigator, Amr Elmaati, or whether there were others associated with the threat to Parliament Hill.

Consideration whether information derived from torture

80. Superintendent Pilgrim could not recall any discussion of the possibility that Mr. Elmaati had been ill-treated or tortured at the time the RCMP was conducting its assessment of the information. Both Inspector MacQuarrie and Corporal O'Neil told the Inquiry that in analyzing the information, no consideration was given to the conditions under which the information might have been provided to the Syrian authorities. Similarly, Assistant Commissioner Proulx stated that the possibility of torture was not a common subject at the time, and to his knowledge, there was never anyone who said that Mr. Elmaati had been tortured.

81. Inspector Cabana had no direct knowledge of State Department reports or reports from Amnesty International that claimed that Syria engages in torture. He stated that he knew that Syria had a different approach to human rights and that the Charter of Rights did not apply; however he was unaware of these reports. Superintendent Clement stated that while detention facilities would not meet RCMP standards, there are many countries with similarly poor detention facilities.

Mr. Elmaati's description of the alleged confession

82. Paragraphs 12 to 25 of Chapter 7 set out Mr. Elmaati's description of his interrogation and treatment during his first few days of detention in Syria. As outlined in that chapter, Mr. Elmaati told the Inquiry that his statements were the product of torture.

CSIS attempts to clarify information

83. According to a senior CSIS official, in order to assess the credibility of the information, it was important to understand what information had been injected into the process. The Service therefore drafted and sent a number of clarification questions to a foreign agency in order to determine whether other intelligence or law enforcement agencies had played a role in the Syrian information-gathering process. The questions pertained to how Mr. Elmaati came to be detained and the circumstances that led to his alleged confession. There were no questions about his treatment during interrogation. A senior CSIS official stated that there were no questions about treatment because, at the time, the Service had no information to indicate that Mr. Elmaati's treatment should be a subject of inquiry. Based on the results of these clarification questions, the Service concluded that Syrian authorities had relied on their own information.

84. CSIS provided its analysis of the alleged confession, including its concerns over certain discrepancies in the information allegedly obtained and discussed above at paragraphs 67 to 71, to the RCMP and a foreign agency. The analysis contained standard CSIS caveats.

CSIS learns that alleged confession shared with multiple foreign countries

85. In late November 2001, the Service received a summary version of Mr. Elmaati's alleged confession from a foreign agency. CSIS then provided that agency with a copy of its analysis of the alleged confession. Soon afterwards, in January 2002, the Service learned that another foreign agency might have shared the summary version of Mr. Elmaati's alleged confession with another foreign agency, which might then have shared it with a number of other foreign agencies, and thus created a risk of circular reporting. Aside from its concerns over the possible circular reporting, the Service was also concerned that this information had been shared without the Service's assessment.

DFAIT consular officials not informed of alleged confession

Sharing of information with DFAIT ISI

86. It is unclear on what date DFAIT ISI became aware of Mr. Elmaati's alleged confession in Syria. While Mr. Heatherington's notes for November 19, 2001 contain information similar to that provided to CSIS concerning Mr. Elmaati's interrogation, Mr. Heatherington was not able to specifically recall who shared that information with him.

87. Don Saunders, policy advisor for DFAIT ISI, stated that he first learned of Mr. Elmaati's alleged confession from a foreign intelligence partner in early January 2002. He further stated that he could not explain where Mr. Heatherington would have obtained the information that is reflected in his notes dated November 19, 2001 and that if Mr. Heatherington shared that information with him at the time, he could not recall it.

88. In early February 2002, CSIS provided DFAIT ISI with information obtained from Mr. Elmaati while he was in detention in Syria.

Consular Affairs Bureau unaware of interrogation

89. The Consular Affairs Bureau was not made aware of Mr. Elmaati's interrogation or his alleged confession at this time. Mr. Pardy stated that he was aware Mr. Elmaati had been interviewed prior to his departure from Toronto. However, he was not informed of the interrogation, or the resulting alleged confession.

90. Mr. Pardy stated that, based on his experience, he would not have had an expectation that this kind of information would be shared with the Consular Affairs Bureau by CSIS or the RCMP because the Consular Affairs Bureau was considered to be civilian. However, it was Mr. Pardy's opinion that in the best of all worlds, that kind of information should be made available. According to Mr. Pardy, the information shared by CSIS or the RCMP would not have had to include details because the only thing that the Consular Affairs Bureau would be looking for is confirmation; it took some time before the Consular Affairs Bureau could be definitive that Mr. Elmaati was even in Damascus.

91. Mr. Pardy told the Inquiry that, if he had been aware of Mr. Elmaati's interrogation, he would have been more definitive in his communications with the Syrian authorities. According to Mr. Pardy:

> The worst treatment always occurs up front, literally within hours or within days of the person that is detained. Over time probably the abuse and torture lessens. But at the same time, this is why you would like to be in there almost at the same time as the individual who was detained, but that doesn't happen.

92. During her interview by Inquiry counsel, Ms. Pastyr-Lupul learned for the first time that CSIS had been aware, as of November 19, 2001, that Mr. Elmaati was being detained and interrogated by Syrian authorities. Ms. Pastyr-Lupul was surprised that this information had not been shared with her at the relevant time and stated that it would have been very helpful for case management to have been informed that Mr. Elmaati was in custody. She told the Inquiry that DFAIT would have dealt with the Syrian authorities in a different way had it known

this was an arrest and detention case. Its focus would have extended beyond trying to determine where Mr. Elmaati was being held.

CSIS sends questions to be put to Mr. Elmaati

93. In early December 2001, the Service sent questions to a foreign agency to be sent to Syrian authorities to be put to Mr. Elmaati. The questions addressed various topics, including Mr. Elmaati's background, his move to Canada, the places he has lived, his training in Afghanistan, his flight training, his associates, his communications with his brother, and the alleged plan to bomb the Parliament Buildings. These questions were sent with two standard CSIS caveats (described above in Chapter 3, paragraphs 22 to 28).

94. A CSIS official stated that the Service was developing its questions to test the veracity of the information derived from Mr. Elmaati's interrogation and determine whether any other agencies had added an assessment of the information along the way. The official stated that the Service was trying to make the questions very specific; it did not want to identify additional areas of questioning to pursue. The Service's expectation was that some of the questions would be put to Mr. Elmaati. To the knowledge of the CSIS official, the Service did not reflect on whether this would require that Mr. Elmaati continue to be detained. The official said that the Service did not have any expectation about whether the questions could possibly prolong Mr. Elmaati's detention; since this was the first time that a Canadian had been detained in this atmosphere, the Service did not know how things were going to go. Mr. Elmaati was the first Canadian to be detained in the Middle East on security-related grounds after September 11, 2001.

95. Mr. Hooper stated that when questions are sent to a foreign agency to be put to a detainee, it can sometimes make the situation better, and sometimes make it worse. However, in every case the decision whether to send questions involves a judgment call: the Service must weigh the interests of Canadian security and the possible detriment to the individual. He further stated that questions can be crafted to mitigate the adverse consequences to an individual.

96. In early January 2002, the Service received answers, through a foreign agency, to some of the questions that it had submitted in December 2001.

DFAIT not consulted about sending of questions

97. Neither the Consular Affairs Bureau nor DFAIT ISI was informed or consulted about the Service's plan to send questions to be asked of Mr. Elmaati by Syrian authorities. Mr. Saunders stated that he was unaware that CSIS was

sending these questions. When asked whether he would have expected that CSIS would consult ISI about this, Mr. Saunders stated it might not be required by the terms of agreement between the Service and DFAIT. According to Mr. Saunders, the main instrument that governs the relationship between DFAIT and CSIS is a Memorandum of Understanding (MOU) written in 1985. The MOU requires CSIS employees abroad to keep heads of mission apprised of Service activities without revealing operational details. Mr. Saunders indicated that the MOU is sufficiently vague that the sending of questions could be considered operational in nature and therefore there would be no obligation for CSIS to consult ISI.

98. Mr. Pardy stated that he would have liked to have been informed that CSIS was sending the questions because DFAIT had no information regarding Mr. Elmaati's situation with the Syrian authorities. Mr. Pardy stated that if he had been informed of the Service's intention to send questions to be asked of Mr. Elmaati, he would have assumed that the Syrian authorities would use their traditional methods of extracting information from detainees and that the methodology they would use would not be gentle.

Consular Services in Syria

Diplomatic note to Syria

99. On November 21, 2001, DFAIT directed consular officials at the Canadian Embassy in Damascus to send a diplomatic note to the Syrian government inquiring whether it had any information with respect to Mr. Elmaati. On November 22, nine days after DFAIT first learned of his detention, consular officials sent the diplomatic note. The text of the note was drafted primarily by Mr. Pardy. The Consular Affairs Bureau recognized that the Syrian Ministry of Foreign Affairs (MFA) was notorious for not acknowledging or responding to diplomatic notes. Mr. Pardy told the Inquiry that, if he had been aware that Mr. Elmaati had been interrogated, he would have used "more definitive" language in the diplomatic note. For instance, he would have included information that Mr. Elmaati had arrived in Damascus on a specific date and was being detained by the Syrian authorities. On December 2, 2001, consular officials met with officials from Syria's Ministry of Foreign Affairs, who confirmed that the diplomatic note of November 22 had been sent to the Ministry of the Interior.

Diplomatic note to Egypt

100. Between November 21 and December 2, 2001 consular officials received conflicting reports from Mr. Elmaati's family about where Mr. Elmaati was being

detained. On November 21, Mr. Elmaati's aunt called Ms. Pastyr-Lupul and advised that family in Syria had received information that Mr. Elmaati had been arrested by Syrian authorities upon his arrival and the parents of Mr. Elmaati's fiancée were searching for him. The following day, Ms. Pastyr-Lupul spoke to Mr. Elmaati's father, Badr Elmaati, who advised that, according to the family of Mr. Elmaati's fiancée, Mr. Elmaati had been detained in Damascus for two and a half days, before being transferred to the External Security Section of the Police Department in Cairo, Egypt. A few days later, DFAIT directed the Canadian Embassy in Cairo to send a diplomatic note to Egyptian State Security inquiring about Mr. Elmaati.

101. On November 25, 2001, based on the information described above, DFAIT sent a diplomatic note to the Egyptian government inquiring whether it had any information with respect to Mr. Elmaati.

102. On November 28, 2001, the Canadian Embassy in Cairo received a fax from Mr. Elmaati's Member of Parliament, John Godfrey. The fax said that Mr. Elmaati was being held at the External Security section of the Police Department in Cairo and had been held there since November 14. The fax also stated that Mr. Elmaati's father wanted to know why he was being detained and wanted him to be provided with a lawyer.

103. Later that same day, the Embassy was advised by its contacts at Egyptian State Security that Mr. Elmaati was not in Cairo and that there was no record of him entering Egypt. Stuart Bale, consul at the Canadian Embassy in Cairo, considered these contacts to be bona fide sources of information. On November 29 and December 2, the Canadian Embassy in Damascus spoke to Mr. Elmaati's fiancée's family, who said that they had no idea of Mr. Elmaati's whereabouts, but that they assumed he was in Cairo.

104. In late November 2001, Egypt responded to DFAIT's diplomatic note of November 25, stating that it had no record of Mr. Elmaati entering Egypt.

105. Throughout this period, Ms. Pastyr-Lupul spoke on several occasions with Badr Elmaati and on one occasion with Mr. Elmaati's family in Egypt to update them on the efforts that were being taken to locate Mr. Elmaati.

Ambassador Pillarella discusses Mr. Elmaati with Deputy Minister Haddad

106. By the end of December 2001, the Consular Affairs Bureau had not yet received confirmation of Mr. Elmaati's detention in Syria; nor was it aware of his interrogation, his resulting alleged confession, and the follow-up questions sent by CSIS. Despite several attempts by consular officials to follow up on the

first diplomatic note to Syria, the Consular Affairs Bureau had not yet received a response. In an effort to address the matter at a "higher level," Mr. Pardy requested that Ambassador Franco Pillarella, the Canadian Ambassador to Syria, contact the Syrian MFA directly.

107. On December 24, 2001, the Ambassador met with Deputy Minister Haddad, of the Syrian MFA, and provided him with a letter from Austrian Airlines confirming Mr. Elmaati's flight to Damascus.

Syrian Ministry of Foreign Affairs confirms detention

108. On December 30, 2001, DFAIT received a diplomatic note from the Syrian MFA advising that Mr. Elmaati had entered Syria on November 12, 2001 and was residing in Damascus. The following day, on December 31, Ambassador Pillarella received a phone call from the office of Deputy Minister Haddad, confirming that Mr. Elmaati was being detained by Syrian authorities. He was also advised that Mr. Elmaati was considered to be Syrian, and therefore fell under Syrian jurisdiction. Ambassador Pillarella told the Inquiry that whenever the Syrian authorities consider that an individual is of Syrian origin or a Syrian citizen, it is standard for them to consider the individual not to be a concern of the Canadian Embassy.

109. On January 2, 2002, Ambassador Pillarella telephoned the RCMP's liaison office in Rome to advise that he had received a telephone call from the Syrian Ministry of Foreign Affairs on December 31, 2001, confirming that Mr. Elmaati was being detained in Syria and advising that Canadian authorities should not concern themselves with the case because Mr. Elmaati was considered Syrian. Ambassador Pillarella informed the liaison office that the Embassy in Syria was treating the case as a consular matter and would be sending a diplomatic note to request access. In the report of this telephone call to Project O Canada, the Rome liaison office wrote that it would refrain from making further inquiries of Syrian authorities because DFAIT was treating the matter as consular. The letter also noted that Ambassador Pillarella had already or would shortly be briefing DFAIT headquarters in Ottawa and suggested that perhaps the RCMP and DFAIT would discuss the best way to proceed. When asked about this telephone call, Ambassador Pillarella stated that he was simply informing the liaison office of what he had been told by the Syrian authorities. According to DFAIT, the Head of Mission is responsible for every program under his purview, not just consular services. The Inquiry was advised that the Ambassador had been aware, since the outset of Mr. Elmaati's detention, of the RCMP's interest in the case. Mr. Covey had, in November 2002, been directed to coordinate his

activities with Ambassador Pillarella and share information with him on a "priority basis". According to DFAIT, in these circumstances it was appropriate for the Ambassador to promptly notify both DFAIT and the RCMP when he received confirmation from the Syrian MFA.

110. Ms. Pastyr-Lupul shared the news of Syria's response with Badr Elmaati on January 2, 2002. Badr Elmaati was surprised to learn that Syrian authorities considered Mr. Elmaati a Syrian citizen; he advised Ms. Pastyr-Lupul that Mr. Elmaati was an Egyptian citizen. The Embassy later obtained a legal opinion from a Syrian lawyer confirming that since Syrian law traces nationality through a person's father, and Mr. Elmaati's father was Egyptian, Mr. Elmaati was also Egyptian.

Consular attempts to obtain response to diplomatic notes

111. On January 3, 2002, DFAIT sent a second diplomatic note to Syria stating that Mr. Elmaati was a Canadian citizen and requesting consular access. On February 5, DFAIT sent a follow-up diplomatic note to Syria requesting a response to the diplomatic note of January 3. On the same day, representatives of the Embassy met with the consular section of the Syrian MFA. They were told that Mr. Elmaati was not being detained but was "residing" in Damascus.

Regular contact with Mr. Elmaati's family

112. Throughout this period, DFAIT provided Badr Elmaati with regular updates regarding Mr. Elmaati's case.

RCMP attempts to interview Mr. Elmaati in Syria

113. By December 2001, Project A-O Canada officials had formed the view that an interview of Mr. Elmaati in Syria would be an important step in their investigation, and had discussed that possibility with a U.S. agency. The RCMP felt that it could not completely rely on the information in Mr. Elmaati's alleged confession. In order to move its investigation forward, it sought access to Mr. Elmaati to determine whether there was a bona fide threat against Canadian interests and to shed some light on the relationship between Mr. Elmaati and Mr. Almalki.

114. On January 9, 2002, the RCMP contacted its liaison officer in Rome, Inspector Covey, to request assistance in gaining access to Mr. Elmaati in Syria for the purpose of conducting an interview. The RCMP provided Inspector Covey with details of its investigation and interest in Mr. Elmaati, and referred to efforts that had already been made to gain access. Project A-O Canada

officials made representations to, and sought the assistance of, the U.S. agency in this regard.

115. The RCMP did not consider torture to be an issue at that time; what was of concern was whether Mr. Elmaati's alleged confession would be admissible in a Canadian court, and whether there had been non-compliance with Canadian law in the way the statement was taken. Superintendent Clement told the Arar Inquiry that, although Project A-O Canada investigators had some concerns about whether Mr. Elmaati's alleged confession had been the product of physical abuse, Project A-O Canada investigators had no evidence of any torture at that time.

116. The RCMP made efforts to get access to Mr. Elmaati through both its liaison officer in Rome and its contacts with the U.S. agency. In January 2002, there were different views within the RCMP as to which approach would prove most effective. Inspector Covey was concerned that having many different groups contacting the Syrian authorities was creating confusion and that he was best situated to pursue the RCMP's interests with the Syrian authorities. By contrast, Superintendent Clement was of the view, from the beginning, that the RCMP should work with the U.S. agency to get access.

117. Superintendent Clement told the Inquiry that in his view, the fact that the RCMP was making efforts to interview Mr. Elmaati in Syria would have been beneficial to his treatment. Although Superintendent Clement knew very little about Syria, he held a strong belief that the RCMP's interest in interviewing Mr. Elmaati would have put Mr. Elmaati into an international spotlight and had a positive, and not a negative, effect on his treatment. Similarly, Superintendent Pilgrim stated that if the RCMP was pursuing an interview with Mr. Elmaati, the authorities who were detaining him would probably treat him in a better manner.

118. Former Commissioner Zaccardelli was aware that attempts were being made to interview Mr. Elmaati while he was in detention. He became aware of these attempts as part of the general discussions that occurred during his normal briefings. Former Commissioner Zaccardelli stated that it was normal practice, as part of an investigation, to attempt to interview someone who is believed to be of interest to the investigation or to have information relative to a serious threat. In pursuing an interview, the RCMP would take into account "a whole series of factors," including consultation with key partners at the government level. Former Commissioner Zaccardelli did not recall that any question of the conditions under which Mr. Elmaati was being detained was raised at these briefings. Former Commissioner Zaccardelli did not provide the RCMP with any

guidance on whether an interview of Mr. Elmaati should be pursued; nor would he expect to be asked for guidance, because there was a Deputy responsible for operations who would have had access to the relevant information.

119. At the end of January 2002, Superintendent Clement discussed the possibility of an RCMP interview of Mr. Elmaati with a U.S. agency. In a discussion between Superintendent Clement, Inspector Cabana and a representative of the U.S. agency, the representative asked what the RCMP's position would be if Mr. Elmaati claimed torture. In his interview for the Inquiry, Superintendent Clement stated that if the RCMP had interviewed Mr. Elmaati in Syria and he had alleged torture, he would have documented the allegations, noted Mr. Elmaati's demeanour and apparent injuries, and then immediately gone to the Ambassador, who could then have followed up with consular officials. Inspector Cabana agreed with Superintendent Clement that if Mr. Elmaati had alleged torture, the responsibility of the RCMP would be to inform DFAIT of the issue.

120. The RCMP did not succeed in obtaining an interview of Mr. Elmaati in Syria.

RCMP search warrants and January 2002 searches

121. Justice O'Connor made extensive factual findings with respect to the RCMP's application for a search warrant and its conduct of searches in January 2002. Consistent with the Terms of Reference for this Inquiry, those findings are largely not repeated here. For further discussion of these matters, please refer to the *Report of the Events Relating to Maher Arar: Factual Background, Volume I*, chapters 3.9 and 4.1-4.3. The following narrative highlights some of the facts particularly relevant to the issues in this Inquiry.

RCMP requests warrants

122. By the end of 2001, Project A-O Canada had exhausted its domestic leads and decided to conduct searches to determine whether the original threats were founded, and whether anyone still in Canada might be considered a threat. As the Arar Inquiry publicly reported, when applying for the search warrants, the RCMP relied on information derived from Mr. Elmaati's alleged confession in Syria. Project A-O Canada identified Syria as the source of the information but, as discussed at paragraph 128 below, did not mention its human rights record.

123. Project A-O Canada investigators were of the view that Mr. Elmaati's alleged confession would be useful in obtaining the warrants. When it first considered applying for the search warrants, Project A-O Canada had only a summary of the alleged confession, not the original Arabic version. Project

A-O Canada did not receive a more detailed, un-translated version of the alleged confession until the summer of 2002, when it was received directly from the Syrian Military Intelligence (SyMI). The translated version did not conflict with the summary the RCMP had received earlier.

124. To the extent that Project A-O Canada wanted to use information from foreign agencies in its applications for search warrants in January 2002, it first sought the consent of the providing agencies.

The possibility that the alleged confession was obtained by torture

125. Inspector Cabana told the Arar Inquiry that, prior to drafting the Information to Obtain (ITO), the investigative team had discussions with CID, CSIS, Department of Justice (DOJ) lawyers and a foreign agency regarding use of the alleged confession because of the concern that it might have been the product of torture. However, Inspector Cabana told the Inquiry that, while the group realized that the statement was likely not taken pursuant to Canadian standards, Project A-O Canada had no evidence at that time that torture had been used to obtain the statement.

126. Staff Sergeant Callaghan of the Ottawa Police Service (seconded to Project A-O Canada) testified in the Arar Inquiry that he could not recall any discussions about Syria's human rights record or the possibility of torture having been raised at that time.

127. When interviewed for the Inquiry, Superintendent Clement stated that Project A-O Canada investigators had no information that Mr. Elmaati had been tortured when they applied for the search warrants, that the vast majority of investigators who draft ITOs would not have first-hand knowledge of Syria's human rights record to make a statement like that, and it would have been wrong to cast aspersions against a country without first having the facts straight. Superintendent Clement also stated that the judge who issued the search warrants would have been aware that the information was derived from Mr. Elmaati's alleged confession while in Syrian custody. According to Superintendent Clement, Project A-O Canada had no evidence indicating that Syria was a "human rights violator" and therefore to comment on that in an application for a warrant would have been expressing an opinion on a political issue.

128. Justice O'Connor found that in its request to obtain the warrants, Project A-O Canada identified Syria as the source of the information derived from Mr. Elmaati's alleged confession but did not mention Syria's poor human rights record or the fact that the information might have been the product of torture.

In addition, as noted by Justice O'Connor, no assessment of the reliability of the information was made or included in the ITO. The Inquiry has reviewed the ITO and has no reason to disagree with this conclusion.

Validity of the warrants

129. Justice O'Connor stated that the question of the validity of the search warrants was not before him and it was not, therefore, appropriate for him to comment further at this time. It is similarly not within the mandate of this Inquiry to determine the validity of the search warrants.

Execution of the searches

130. On January 21, 2002, search warrants for seven residences and a sealing order were issued based on the ITO. Project A-O Canada members in cooperation with RCMP "C" and "O" Divisions conducted searches of the residences on January 22. The searches resulted in seizure of an extensive amount of material, including computer hard drives, VHS videotapes, CDs and documents. Faced with a large amount of data that had to be processed within a short timeframe, the RCMP convened a meeting with U.S. agencies, CSIS and various police force representatives on January 31 to provide an update on the progress of the investigation and to request assistance, in personnel and resources, in translating and analyzing this information. Project A-O Canada offered to share copies of all of the seized data with U.S. agencies and CSIS in order for them to assist in the analysis. Superintendent Pilgrim recalled that an agreement was reached with the U.S. agencies to have them assist in analyzing the information from the searches. CSIS did not offer any assistance because its post-September 11 resources were already stretched.

RCMP shares results of the searches

131. In mid-February 2002, U.S. authorities officially requested the fruits of the searches, including an inventory of the seized items, a mirror image of all of the hard drives, copies of CDs, audio and video tapes, investigative reports and computer analysis reports. The RCMP had copied all documents related to the Project A-O Canada investigation, including surveillance reports relating to Mr. Elmaati's activities prior to his departure from Canada – for example, his purchase of a remote control for a television – as well as all documents seized during the January 22 searches, on to its Supertext database. In early April 2002, Project A-O Canada prepared CDs containing the entire Supertext database and provided them to U.S. agencies without caveats. As noted by the Arar Inquiry, the ITO was also shared with the Americans in February 2002.

132. Inspector Cabana explained that this sharing of information was consistent with Project A-O Canada's mandate to work in partnership with outside agencies to prevent further terrorist attacks. He further stated that the entire database was shared because the information derived from the searches could not be properly analyzed in isolation. Superintendent Clement stated that this sharing of information was in keeping with his original direction for everything to be open book, but acknowledged that certain documents such as legal opinions should not have been shared.

133. Justice O'Connor made extensive public findings regarding the transfer of the Supertext database to U.S. agencies. He found several problems with the transfer of documents contained in the three CDs sent by the RCMP: the information on the CDs should not have been provided to the U.S. agencies without written caveats; the portion of the documents that were not related to the executed searches should have been reviewed for relevance, reliability, and personal information; and third party materials to which caveats were attached, such as letters received from CSIS and documents received from Canada Customs, should not have been transferred without the originator's consent.

Mr. Elmaati's will

134. During the searches conducted on January 22, 2002 the RCMP discovered Mr. Elmaati's last will and testament, which included a statement of his desire to be awarded a certificate of martyrdom. The will was dated March 1999, which the RCMP noted was one month after Mr. Elmaati had allegedly been instructed by his brother to take flying lessons. Further inquiries by the RCMP revealed that Mr. Elmaati had taken flying lessons in August 1999 at Buttonville airport but discontinued them in September 1999. Project A-O Canada investigators advised that they could not recall whether, at the time they found the will, they knew of the practice of making an Islamic will when embarking on a trip to the Hajj. They did, however, have the will analyzed by a U.S. agency in 2002 and another foreign agency in 2003.

135. Mr. Elmaati's will was also shared with U.S. agencies when the RCMP shared its Supertext database in April 2002. As found by Justice O'Connor, there were no express written caveats attached to the sharing of this information.

136. The RCMP gave CSIS a translated copy of the will in December 2002. Like the RCMP, CSIS also noted that the will had been written shortly after Mr. Elmaati had allegedly been advised by his brother Amr to take flying lessons. A CSIS official further stated that the fact that the will was dated March 1999, after Mr. Elmaati's return to Canada, and not earlier when he was in Afghanistan,

was of particular concern. When asked whether the Service had consulted any religious or other experts for an assessment of the will, another CSIS official told the Inquiry that the Service had been receiving information about martyrdom certificates for years, and therefore to some extent they were themselves the experts. The Service stated that it had expertise in many facets of Islam, including the practice of Islamic wills.

137. The will was viewed as an expression of Mr. Elmaati's desire to die as a martyr in support of the *mujahedeen*.

138. In 2002, a U.S. agency requested consent from the RCMP to question Mr. Elmaati about the will in Egypt, but the RCMP refused to allow it to do so. The RCMP wanted to get access to Mr. Elmaati in Egypt and intended itself to put the will to him.

CSIS sends another round of questions

139. In the latter part of January 2002, the Service sent another list of questions to a foreign agency to be sent to the Syrian authorities for use in "debriefing" Mr. Elmaati. These were follow-up questions based on the answers that the Service had received to its first set of questions. In its cover letter to the foreign agency, the Service asked for information about Mr. Elmaati's current location, health and future prospects. A senior CSIS official told the Inquiry that these questions (about health and future prospects) were added because at this point Mr. Elmaati had been in detention for six weeks, it was no longer a simple border interview, and the Service was wondering what was going to happen next. According to this official, the Service did not have much experience with Canadian citizens detained abroad, and there was no protocol or standard operating procedure in place to dictate after what length of time in detention these types of questions were to be asked. All of these questions were provided with two standard CSIS caveats.

140. A senior CSIS official stated that he did not believe that a response to any of these questions was ever received. The Inquiry found no evidence to suggest that CSIS received answers to the questions. It seems likely that the Syrian authorities never put this second set of questions to Mr. Elmaati because he was transferred to Egypt around this time.

Mr. Elmaati's transfer to Egypt

141. As described in Chapter 7 at paragraphs 39 to 41, Mr. Elmaati told the Inquiry that, on approximately January 25, 2002, he was taken from his cell at Far Falestin prison in Syria and, with his hands handcuffed and a hood over

his head, transported via jet plane to Egypt. However, as discussed below, Canadian officials only began to learn of this transfer in mid-February 2002. Mr. Elmaati's description of his treatment while in detention in Egypt can be found in Chapter 7.

Interview with Badr Elmaati

142. In mid-February 2002, Badr Elmaati met CSIS representatives in relation to his son's detention in Syria. He told them that he believed that his son was still in custody in Damascus, and he gave no indication that he expected that his son would be released or relocated any time in the near future. Badr Elmaati reported having had no direct contact with his son since his detention, but said that he had been in regular contact with DFAIT Ottawa.

DFAIT learns of Mr. Elmaati's transfer

143. On February 12, 2002, Mr. Heatherington of DFAIT ISI received information that Mr. Elmaati had been moved to Egypt.

144. It is unclear when the Consular Affairs Bureau was made aware of this transfer. When questioned about this, Mr. Pardy stated that he did not recall having any knowledge of Mr. Elmaati's presence in Egypt before he received a diplomatic note from Syria on April 4, 2002, stating that Mr. Elmaati had voluntarily left Syria for Egypt. However, DFAIT consular reports from this time period suggest that some new information had been received by March 7, 2002, prompting diplomatic notes to the Egyptian Ministry of Foreign Affairs on March 18, April 3, and April 10, as well as contact with immigration officials and calls to Egyptian State Security. Mr. Heatherington indicated that he is not certain when Mr. Pardy would have learned of Mr. Elmaati's transfer to Egypt; however, it would have been consistent with the practice at the time to have provided Mr. Pardy with this information.

145. Mr. Saunders, also of DFAIT ISI, was similarly unable to account for the delay in Mr. Pardy's receipt of the information about Mr. Elmaati's transfer to Egypt. Mr. Saunders stated that when ISI received the information that Mr. Elmaati had been "handed over" to Egyptian intelligence, ISI believed the information to be accurate. However, at the time it was not clear where he was actually being held. Mr. Saunders stated that it was possible Mr. Pardy had "held off" for a while before approaching Egyptian authorities on the whereabouts of Mr. Elmaati while ISI sought confirmation of his location.

146. Mr. Pardy attributed the delay between the date that ISI learned of the transfer on February 13, 2002 and the diplomatic notes sent to Egypt on

March 18, April 3, and April 10, 2002 to a number of factors: the inherent delay in sending the information received by Mr. Heatherington to the Deputy Minister for his approval; the fact that Mr. Saunders of ISI had informally advised Mr. Pardy orally that ISI had learned that Mr. Elmaati had been transferred; and the fact that confirmation of the transfer was received from the Syrian authorities only on April 4, 2002. Mr. Pardy stated that the information received from the Syrian authorities was the conclusive evidence required for DFAIT to send the diplomatic notes. Mr. Pardy also stated that the delay was neither unusual nor excessive.

RCMP learns of Mr. Elmaati's transfer

147. On February 11, 2002, Superintendent Clement was advised by a foreign agency that Mr. Elmaati had been transferred from Syria to Egypt. The advising agency did not provide a reason for the transfer. Superintendent Clement immediately asked, through this same foreign agency, whether the RCMP would have the opportunity to interview Mr. Elmaati in Egypt. On February 13, 2002, Superintendent Clement was advised that an interview might be possible within the next two to three weeks.

148. On the same date, February 13, 2002, Mr. Heatherington spoke to members of Project A-O Canada by telephone to discuss Mr. Elmaati's transfer to Egypt and to seek assurances, in light of consular concerns, that DFAIT would be kept informed of any developments with respect to any potential interviews of Mr. Elmaati.

149. Although Project A-O Canada had received information that Mr. Elmaati had been moved to Egypt, the RCMP liaison officer stationed in Rome, Inspector Covey, and Ambassador Pillarella continued to try to determine Mr. Elmaati's location in Syria. On February 18, 2002, Inspector Covey sent a letter to "A" Division, "O" Division and CID, detailing his recent trip to Syria, his meetings with the Ambassador and Interpol Syria, and confirmation he had received regarding Mr. Elmaati's detention in Syria. On February 19, Superintendent Clement sent a letter to Inspector Covey stating that the RCMP had received reliable information that Mr. Elmaati was no longer in Syria and was in custody in Egypt.

RCMP informs CSIS of Mr. Elmaati's transfer and possible interview

150. On February 14, 2002, RCMP CID informed CSIS that it had learned that Mr. Elmaati had been moved to Egypt, and that the RCMP could be permitted to conduct an interview in Egypt within the next couple of weeks. In anticipation

of a potential interview of Mr. Elmaati, a meeting took place on February 20 between representatives of the Service and the RCMP. Following the meeting, the Service sent a list of questions to the RCMP to be asked of Mr. Elmaati. This list of questions included two standard CSIS caveats.

CSIS attempts to confirm the transfer

151. Based on the information from the RCMP, the Service sought to confirm the transfer by making inquiries of foreign agencies. The Service also sent an official request for confirmation to the RCMP.

152. On March 3, 2002, the RCMP informed CSIS that, while it was not in a position to corroborate any information that Mr. Elmaati has been transferred from Syria to Egypt, it had no reason to doubt that he was now in the custody of the Egyptian authorities. The RCMP further stated that it had never been officially confirmed that Mr. Elmaati had been detained by the Syrian authorities and that the Canadian Ambassador to Syria had told the RCMP not to concern itself with Mr. Elmaati's case because of his alleged Syrian citizenship. When asked about this statement, Ambassador Pillarella told the Inquiry that, as discussed at paragraph 109 above, he simply told the RCMP what he had been told by the Syrian authorities on December 31, 2001 when they confirmed Mr. Elmaati's detention in Syria and the RCMP was obviously passing that on.

DFAIT confirms Mr. Elmaati was transferred

153. On April 4, 2002, DFAIT received a diplomatic note from the Syrian Ministry of Foreign Affairs dated April 1, 2002 indicating that Mr. Elmaati had left Syria for Egypt at his own request. Ms. Pastyr-Lupul told the Inquiry that she found this diplomatic note from Syria to be obscure, and that she did not believe the information was accurate. The diplomatic note was received from Syria in response to a diplomatic note sent by the Canadian Embassy to Syria on February 5, 2001. The Syrian diplomatic note was entered into DFAIT's CAMANT system and a copy was provided to Project A-O Canada through Chief Superintendent Antoine Couture, the Officer in Charge of "A" Division's Criminal Operations Unit. DFAIT shared this diplomatic note with the RCMP because the RCMP had demonstrated an interest in gaining access to interview Mr. Elmaati.

154. On April 12, 2002, Mr. Heatherington informed a CSIS official that DFAIT was in receipt of the diplomatic note. This was entered in the Service's records as the first official confirmation of Mr. Elmaati's transfer.

155. On May 8, 2002, at the request of DFAIT, the Canadian Embassy in Syria sent a diplomatic note to the Syrian MFA requesting the date of Mr. Elmaati's departure and the flight information for his alleged trip to Egypt. The Syrian MFA responded on June 24, advising that it did not have additional information about Mr. Elmaati's departure.

Official confirmation from Egyptian authorities

156. On August 4, 2002, Mira Wassef, a consular officer with the Canadian Embassy in Cairo, was informed by the Egyptian authorities, by telephone, that Mr. Elmaati was being detained as "an extremist element" in Egypt. Ms. Wassef's CAMANT note states that the Egyptian authorities did not disclose when Mr. Elmaati had entered the country or where he was being held, except that it was a high-security facility. Ms. Wassef asked the Egyptian authorities for access to Mr. Elmaati. She was advised that she should send a written request to the appropriate authorities, who would approve the request. Ms. Wassef sent the letter immediately.

157. On August 6, 2002, CSIS was informed of this telephone call confirming Mr. Elmaati's detention in Egypt. It was entered in the Service's records as the first confirmation by Egyptian authorities of Mr. Elmaati's incarceration.

RCMP attempts to interview Mr. Elmaati in Egypt

158. In mid-February 2002, once the RCMP learned that Mr. Elmaati had been transferred to Egypt, Project A-O Canada began making efforts to interview Mr. Elmaati in Egypt. It was thought, based on Mr. Elmaati's alleged confession regarding a plot to bomb the Parliament Buildings, that Mr. Elmaati might have information vital to the RCMP's ongoing investigation into threats to the security of Canada. The RCMP had discussions regarding a possible interview with senior RCMP officials, the RCMP liaison officer in Rome, CSIS, DFAIT, and a foreign agency.

Efforts through a foreign agency

159. In mid-February 2002, Superintendent Clement was advised by a foreign agency that before the Egyptian authorities would make Mr. Elmaati available for an interview, the RCMP would have to provide the Egyptian authorities with copies of any documents it had relevant to its interest in Mr. Elmaati. The RCMP was also advised that since Mr. Elmaati's location had not been officially confirmed at this time, the RCMP would have to provide an assurance that it would not reveal the fact that he was being detained in Egypt. The RCMP did

not agree to either request. According to Superintendent Clement, at the time of this request the RCMP was very interested in obtaining an independent and objective interview of Mr. Elmaati that would be admissible in Canadian courts. Superintendent Clement told the Inquiry that the Egyptian authorities had not provided sufficient grounds to justify disclosure of the RCMP's documents, and the RCMP was concerned about the use that could be made of them if disclosed. Similarly, the RCMP would not agree to an interview if it had to keep Mr. Elmaati's location a secret. Superintendent Clement stated that he informed the foreign agency that if Mr. Elmaati's parents ever filed a complaint, the RCMP would have a legal obligation to disclose his location.

160. In late February 2002, the RCMP considered whether it would be appropriate to have a foreign agency conduct the interview of Mr. Elmaati in Egypt on the RCMP's behalf. The collective view of the RCMP was that it needed to proceed with its own interview. Superintendent Clement testified in the Arar Inquiry that asking another agency to conduct an interview on its behalf could have created more harm than good, would not allow the RCMP to document any human rights abuse or health issues, and would have produced nothing of evidentiary value.

161. In late February 2002, Superintendent Clement spoke to Mr. Heatherington, at DFAIT ISI, regarding the RCMP's intentions to gain access to Mr. Elmaati in Egypt. Superintendent Clement's notes indicate that Mr. Heatherington expressed the view that an RCMP interview of Mr. Elmaati would require sanctioning of senior government officials. Mr. Heatherington did not recall the conversation as described by Inspector Clement; however, he assumed that sanctioning of senior government officials, as described in Inspector Clement's notes, referred to DFAIT's need to obtain approval from its senior officials before it could discuss the possibility of facilitating RCMP access to Mr. Elmaati in Egypt. Superintendent Clement stated that it was his understanding that there were subsequent discussions between DFAIT and the RCMP; however, he did not participate in them since he had left his position shortly after his discussion with Mr. Heatherington. Chief Superintendent Couture also recalled meeting with Mr. Heatherington in April 2002 to discuss a proposed RCMP interview of Mr. Elmaati.

162. Further inquiries of DFAIT indicate that, although DFAIT did not discuss the possibility of facilitating RCMP access until August 2003 (see paragraphs 318 to 325 below), it did brief its senior officials about the RCMP's position in early 2002. Mr. Bale told the Inquiry that he could not recall any other cases, other than the case of Mr. Elmaati, where consular officers communicated,

by diplomatic note or other means, a request by the RCMP for access to a detained Canadian.

163. In early March 2002, Project A-O Canada was advised by a foreign agency that it had recently been given limited access to Mr. Elmaati and made efforts to interview him. The foreign agency advised that Mr. Elmaati's level of cooperation had apparently declined and that those conducting the interviews were having difficulty because they did not have intimate knowledge of the investigation. It was the RCMP's view that limited access by the foreign agency meant that it did not have clear and unfettered access to Mr. Elmaati and that all requests had to be passed through Egyptian authorities. The RCMP did not know which authorities were conducting the interviews or what was meant by the apparent decline in cooperation. The foreign agency was of the view that access to Mr. Elmaati would be given to the RCMP if it (the foreign agency) made the request to Egyptian authorities on the RCMP's behalf. When asked whether the RCMP had considered how Mr. Elmaati might be treated during any interview by the foreign agency, the RCMP told the Inquiry that it believed that any interview conducted by the foreign agency would be conducted in a similar fashion to the interview proposed by the RCMP and would be admissible in a Canadian court.

164. In the spring of 2002, the RCMP was advised that the Egyptian authorities were not being very responsive to requests by a foreign agency and the RCMP should not expect an interview to occur any time soon. By this time, Syrian authorities had confirmed that Mr. Elmaati had been transferred to Egypt. Egyptian authorities took the position, communicated to the RCMP through a foreign agency, that if it was urgent for the RCMP to interview Mr. Elmaati, the RCMP would have agreed to its earlier requests for preconditions on the interview.

Efforts through its liaison officer in Rome

165. The RCMP also made efforts to secure access to Mr. Elmaati through its liaison officer in Rome, Inspector Covey. In the spring of 2002, Project A-O Canada sent a fax to Inspector Covey requesting that he contact his Egyptian counterparts to determine the availability of Mr. Elmaati for an interview by members of the RCMP. In this request letter, Project A-O Canada told Inspector Covey that in making these inquiries he could share information about Mr. Almalki with the Egyptian authorities. Inspector Covey did not recall sharing any information about Mr. Almalki with Egyptian authorities. Further inquiries of the

RCMP confirmed that it had no information to suggest that Inspector Covey ever shared this type of information.

166. In late May 2002, Inspector Covey met with representatives from various security agencies in Egypt regarding Mr. Elmaati. They informed Inspector Covey that none of their agencies had Mr. Elmaati in custody; it was possible Mr. Elmaati was being held by intelligence. They also informed him that it was possible that there would be no record of his detention. The RCMP followed up this meeting with a message to CSIS and Interpol Cairo, requesting information on the status of Mr. Elmaati in Egypt.

167. In late June 2002, members of Project A-O Canada and CSIS met to discuss access to Mr. Almalki in Syria and Mr. Elmaati in Egypt. According to Corporal Richard Flewelling of RCMP CID, a CSIS official had advised that while the chances of the RCMP being granted access to Mr. Elmaati for the purpose of an interview might be very slim, it was worth trying. Corporal Flewelling told the Arar Inquiry that despite Egypt's poor human rights record, Project A-O Canada members had no evidence at the time that Mr. Elmaati had been tortured and did not question the propriety of an interview in Egypt on that basis. In any event, the RCMP considered torture of a Canadian detained abroad to be more a concern for DFAIT.

168. In July 2002, Inspector Cabana had a meeting with the former liaison officer in Rome, Inspector Covey, who had by then returned to Canada, regarding Mr. Elmaati and Mr. Almalki. Inspector Covey informed Inspector Cabana that the RCMP should not expect either Mr. Elmaati or Mr. Almalki to be returned to Canada because neither the Syrian nor the Egyptian authorities recognized their Canadian citizenship. The RCMP concluded that it should continue to seek to question Mr. Elmaati while in Egypt regarding any alleged threats to Canada.

169. The RCMP was never granted access to interview Mr. Elmaati in Egypt.

RCMP and DFAIT meet with SyMI

170. On July 4, 2002, Ambassador Pillarella arranged a meeting with General Khalil of the Syrian Military Intelligence (SyMI) and Inspector Covey, the RCMP's liaison officer in Rome. Ambassador Pillarella stated that he arranged the meeting for Inspector Covey, at Inspector Covey's request, because he recognized that no one else could have done so. According to Ambassador Pillarella, Inspector Covey sought information about Mr. Elmaati from Syrian intelligence but did not have any contacts in the intelligence field in Syria. Inspector Covey's contacts and dealings in Syria had, until this meeting, been limited to the Syrian National Police. Inspector Covey told the Inquiry that he asked Ambassador

Pillarella to facilitate a meeting with a Syrian official who would have the requisite knowledge to confirm where in fact Mr. Elmaati had been transferred to. Inspector Covey stated that at this point in time the Egyptian authorities had not yet confirmed his detention in Egypt and before leaving the post of liaison officer in Rome, he hoped to clarify if he could where Mr. Elmaati was being held. This meeting was the first time that the Ambassador had met General Khalil. Ambassador Pillarella stated that he was able to arrange the meeting as a result of his past involvement with intelligence as well as his good relationship with Deputy Minister Haddad.

171. At this meeting, General Khalil confirmed that Mr. Elmaati had been detained by Syrian Military Intelligence and held for questioning at great length. General Khalil gave Inspector Covey a copy, in Arabic, of the report of Mr. Elmaati's interview by Syrian officials. General Khalil also confirmed that Mr. Elmaati had been transferred to Egypt and stated that the Egyptian authorities had been unable to obtain any further information from Mr. Elmaati than had already been included in the Syrian report. He offered nonetheless to have questions put to Mr. Elmaati in Egypt on behalf of the RCMP. The Inquiry has received no information suggesting that the RCMP ever sent any questions to the Syrian authorities to be put to Mr. Elmaati in Egypt.

172. In his interview for the Inquiry, Inspector Covey stated that he sensed that General Khalil took pride in the fact that the Egyptian authorities were not able to extract any further information than the Syrian authorities had obtained in Syria. Inspector Covey reported that although General Khalil had offered to have questions put to Mr. Elmaati in Egypt, the General did not think that should be necessary because the Syrian authorities had obtained "all the information" that Canada would need for its investigations.

173. According to Inspector Covey's report of this meeting, General Khalil stated that in his view the most effective means to deal with people such as Mr. Elmaati must be employed. Inspector Covey stated he did not know what was meant by "the most effective means;" however, he never considered that Mr. Elmaati might have been tortured into providing information. Inspector Cabana stated that he understood "the most effective means" to mean that the RCMP should use all investigative tools at its disposal and he did not understand it to mean abusive treatment or torture.

Presentation to the Americans

174. During this period, when attempts were being made to locate and interview Mr. Elmaati, the RCMP gave several presentations to the American authori-

ties regarding its investigation. As discussed in Chapter 5 at paragraphs 49 to 54, on May 31, 2002, Inspector Cabana and Staff Sergeants Callaghan and Corcoran gave a presentation to representatives of the FBI and other agencies at FBI headquarters in Washington D.C.

175. The RCMP's presentation, entitled "The Pursuit of Terrorism: A Canadian Response," included a general description of the Project A-O Canada investigation and an overview of several individuals who were of interest to Project A-O Canada, including Mr. Almalki and Mr. Elmaati. The presentation stated that Mr. Elmaati was the primary target of Project O Canada and characterized him as a confessed terrorist/conspirator. The notes from the presentation stated that Mr. Elmaati had identified an alleged terrorist cell in Canada and a conspiracy against Parliament Hill. The notes also referred to the will found during the January 22 searches, which outlined his debts and apologies. The notes stated that an analyst was of the opinion that the will was similar in style and content to wills of terrorists dedicated to suicide-type missions. A concluding slide, entitled "Project A-O Canada: What's Next," indicated that the RCMP intended to interview Mr. Elmaati. An updated version of the presentation, excluding speaking notes, was sent to the Americans, at the request of the FBI, on July 22, 2002.

DFAIT attempts to gain consular access

176. In May, June and July 2002, the Consular Affairs Bureau and the Embassy in Cairo made several efforts to obtain confirmation from the Egyptian Ministry of Foreign Affairs of Mr. Elmaati's detention and obtain consular access to him. In this period, the Embassy sent four diplomatic notes, made several follow-up telephone calls, and met with Egyptian officials. The Consular Affairs Bureau and the Embassy were, at the same time, keeping Mr. Elmaati's family up to date on their efforts to gain access to Mr. Elmaati. This included frequent contact between consular officials and Badr Elmaati. On one occasion, in late May 2002, they advised him that DFAIT was very confident that Mr. Elmaati was in Egypt and that while DFAIT would continue to push Egyptian officials for information about Mr. Elmaati, his dual Egyptian-Canadian citizenship meant that it was doubtful that Egyptian officials would respond. At Badr Elmaati's request, DFAIT faxed him a list of Egyptian lawyers for his consideration.

177. On July 16, 2002, Mr. Pardy sent a note to Mr. Bale regarding additional information that Mr. Bale should include in his diplomatic note and representations to the Egyptian authorities. Mr. Pardy suggested that the note should include a statement to the following effect: "The Royal Canadian Mounted Police

Liaison Officer in Rome is planning to request access to Mr. Elmaati in order to further a major investigation in Canada. Changes are underway in the staffing of the Liaison Office in Rome and as soon as these have been resolved a request for access from the RCMP to the Egyptian police will be made." On July 17, 2002, the Canadian Embassy in Cairo sent a diplomatic note to the Egyptian Ministry of Foreign Affairs. The note included the two sentences suggested by Mr. Pardy regarding the RCMP's plans to request access to Mr. Elmaati. The note also included information that DFAIT had received from Syria confirming that Mr. Elmaati had left Syria for Egypt and the strong beliefs of Mr. Elmaati's family that he was indeed in Egypt.

178. As described at paragraph 156 above, on August 4, 2002, the Canadian Embassy was advised by Egyptian authorities that Mr. Elmaati was being detained in Egypt. On the same date, it was also advised that it should write a letter to Egyptian prison authorities in order to arrange a consular visit. The Embassy immediately sent a letter to this effect.

179. After receiving confirmation of Mr. Elmaati's detention in Egypt, consular officials took steps to obtain more precise information about his location and to gain access to him. By August 6, they had received a response from prison authorities advising that Mr. Elmaati was not listed in any of the prisons. A consular official from the Embassy then followed up with Egyptian authorities to find out in which prison Mr. Elmaati was being detained.

180. Consular officials tried to contact the Elmaati family on August 4, 2002 to advise that Mr. Elmaati's detention in Egypt had been confirmed, but did not make contact with a family member until August 6. According to DFAIT, when advised of the news and the efforts DFAIT had made to obtain access to Mr. Elmaati, a family member expressed gratitude for DFAIT's efforts.

181. On August 7, 2002, the Embassy was advised that Mr. Elmaati was being held at Tora prison. The Embassy immediately sent the prison authorities a letter requesting access.

Concerns about Mr. Elmaati's treatment in Egypt

ISI memorandum suggests possibility of torture

182. In July 2002, DFAIT ISI, CSIS and the Privy Council Office received information regarding Mr. Elmaati's detention in Egypt that, according to DFAIT ISI, suggested that Mr. Elmaati might have been tortured while in detention in Egypt. Unlike DFAIT ISI, CSIS did not conclude that this information was indicative

of torture. The RCMP became aware of this information as a result of an inter-agency meeting on July 8, 2002.

183. On August 6, 2002, Mr. Saunders of DFAIT ISI drafted a memorandum to the Associate Deputy Minister, at the time Paul Thibault, which stated that ISI had obtained information that suggested that Mr. Elmaati might have been tortured during his detention and/or interrogation in Egypt. When interviewed by Inquiry counsel, Mr. Saunders confirmed his belief that the information obtained suggested that Mr. Elmaati had been tortured while in Egyptian custody.

184. The August 6, 2002 memorandum was shared with the Consular Affairs Bureau. Mr. Saunders told the Inquiry that when ISI received information such as this, its ordinary practice was to share it with Mr. Pardy. Mr. Pardy told the Inquiry that although he could not recall having seen the same information as ISI, information that suggested that Mr. Elmaati had been tortured by Egyptian authorities would not have been a surprise to him. According to Mr. Pardy, given the long delay between Mr. Elmaati's transfer to Egypt in January 2002 and the granting of consular access in August 2002, his working assumption at the time was that he was being tortured.

185. The Inquiry obtained no information to suggest that DFAIT made any inquiries in response to the information contained in the memorandum to determine whether Mr. Elmaati had been subjected to torture in Egypt.

RCMP concerned about "extreme treatment"

186. As the Arar Inquiry publicly reported, in July 2002 the RCMP was concerned that Mr. Elmaati might have been exposed to "extreme treatment" while in detention in Egypt. A briefing note to the Commissioner dated July 8, 2002, prepared by Corporal Tim O'Neil of NSIB and approved by Superintendent Pilgrim and Assistant Commissioner Proulx, included the statement, "Indications are that Elmaati has been exposed to extreme treatment while in Egyptian custody."

187. The briefing note further stated that the RCMP was continuing to negotiate with its Canadian and international partners to gain access to Mr. Elmaati and assist in returning him to Canada. This same information was contained in another briefing note to the Commissioner dated July 18, 2002.

188. Former Commissioner Zaccardelli did not recall reviewing the briefing note or being briefed on the issue of extreme treatment. When asked whether this type of information should have been brought to the attention of the Commissioner, he replied that it was dependent on the situation and that without the context, he could not say one way or the other.

189. On July 8, 2002, a meeting was held between Project A-O Canada, CID, CSIS, DOJ, and DFAIT to discuss the possibility of interviewing Mr. Elmaati in Egypt. At the time of this meeting the RCMP was advised, likely by DFAIT, that information had been received, as discussed at paragraph 182 above, suggesting that Mr. Elmaati might have been exposed to extreme treatment while in Egyptian custody. Apart from this meeting, there is no evidence that indicates the source of the RCMP's information that Mr. Elmaati had been exposed to extreme treatment. According to the RCMP, a consensus was reached at the meeting that RCMP employees stationed abroad and CSIS employees, supported by consular officials, would apply pressure for immediate RCMP access to Mr. Elmaati.

190. When Corporal O'Neil was questioned about what the briefing note meant by indications of extreme treatment, he could not recall what the indications were. As for the meaning of extreme treatment, Corporal O'Neil stated that he meant treatment other than what would be found in a Canadian or western detention facility. He added that if he felt that Mr. Elmaati had been tortured, he would have indicated that.

191. Superintendent Pilgrim, who approved the briefing note, also could not recall what was meant by indications of extreme treatment. He stated that extreme treatment could mean a number of things, such as lack of sleep, inadequate food and water, or length of interviews. He drew a distinction between extreme treatment and torture, stating that the RCMP would have written the word torture if it had meant torture. He could not recall whether there was any follow-up to determine what the indications of extreme treatment might have been.

192. Assistant Commissioner Proulx confirmed that he signed the briefing note dated July 8, 2002, but had no recollection of its content. When asked about the meaning of extreme treatment, he stated that while it sounded serious, since there was no accompanying description he did not know what it meant.

193. Inspector Reynolds stated that he did not see the briefing note at the time it was submitted to the Commissioner and he was not sure what was meant by extreme treatment. When asked why the RCMP continued to persist in seeking an interview of Mr. Elmaati in Egypt after it became known that there were indications that he had been exposed to extreme treatment there, Inspector Reynolds stated:

> As reprehensible as torture is and as the practices of these nations are that have poor human rights records, we still have to pursue the investigation because there

> is a threat. If in fact they were successful, there was an existing plot and they were successful in planting a bomb, say on Parliament Hill, regardless of the incarceration of one individual, and people died as a result, it would be very difficult to explain why we didn't pursue interviewing the individual.
>
> By interviewing the individual also, we know the conditions under which the questions are answered that we pose, and we are posing the questions, as opposed to sending them off to somebody else and having the questions posed.

194. Staff Sergeant Dennis Fiorido replaced Inspector Covey as the RCMP's liaison officer in Rome in July 2002. Staff Sergeant Fiorido was not given a copy of the July 8, 2002, briefing note when he started his post in Rome and was never informed by anyone at the RCMP that it had indications that Mr. Elmaati had been exposed to extreme treatment while in Egyptian custody. Staff Sergeant Fiorido explained that the briefing notes were designed for executive-level management and distributed through the chain of command on a need-to-know basis. When asked whether he needed to know that there were indications that Mr. Elmaati had been exposed to extreme treatment, Staff Sergeant Fiorido said that it might have changed his approach. He might have sought clearer directions concerning the best way for the RCMP to proceed in passing on questions or asking the Syrians to conduct an interview on the RCMP's behalf. Staff Sergeant Fiorido stated that he had no specific view at the time regarding whether the Egyptian authorities engaged in torture, but agreed that, hypothetically, if he had known about the extreme treatment memorandum at the time, it would have caused him to consider the issue of treatment while in detention, and more specifically the issue of whether the Egyptian authorities engaged in torture; although he could not state whether or how it might have affected his actions.

195. The Inquiry found no evidence to suggest that the RCMP made any inquiries concerning the indications of extreme treatment to which the briefing note referred.

Canadian officials' knowledge of Egypt's human rights record

DFAIT officials' knowledge of Egypt's human rights record

196. The human rights reports prepared by DFAIT, and described in Chapter 3 at paragraphs 166 to 171, were made available to the Consular Affairs Bureau, although it did not receive them immediately after publication. When questioned about their knowledge of human rights in Egypt, the responses of DFAIT officials varied.

197. Mr. Pardy and Michel de Salaberry, Canadian Ambassador to Egypt, understood that Egypt had a poor human rights reputation. Mr. Pardy stated that when individuals came to be detained in certain countries with rigorous conditions of detention, not only in the Middle East, there was a working assumption that they were being mistreated. Ambassador de Salaberry stated that he worked closely with non-governmental organizations such as the Egyptian Organization for Human Rights, and that he received and read all the reports from Amnesty International and the U.S. State Department regarding human rights in Egypt. Ambassador de Salaberry's understanding of conditions of detention in Egypt was that human rights violations were widespread and there was a problem with prison overcrowding. Ambassador de Salaberry also agreed that the likelihood that a detainee will be the victim of mistreatment is highest during the early stages of detention, when the detaining authorities would be looking for new information.

198. Consular officials did not all share the same understanding of Egypt's human rights record. Both consuls in Egypt during the relevant period acknowledged knowing that DFAIT's human rights reports were available to them, but could not specifically recall having read them. Mr. Bale told the Inquiry that he might have read these reports. Mr. Bale also stated that he had not formed an opinion about the likelihood that torture was being employed in Egyptian jails and that the issue would not have come up. Roger Chen, who would replace Mr. Bale as consul at the Canadian Embassy in Cairo, stated that he did not read any reports on human rights or jail conditions in Egypt.

CSIS' knowledge of Egypt's human rights record

199. Although CSIS would have received information from DFAIT regarding conditions in Egyptian detention centres, CSIS had no evidence as to how individuals would be treated while in Egyptian detention, given the minimal occurrence of Canadians detained abroad for security-related reasons at that time. A CSIS employee abroad told the Inquiry that before Mr. Elmaati came to be detained in Egypt, he had very minimal knowledge about conditions of detention in Egypt. He knew from reading internal documents and open press about the country that there was an issue of overcrowding in the jails, but had not read any specific reporting on the issue. After Mr. Elmaati came to be detained in Egypt, the CSIS employee read reports prepared by Amnesty International and Human Rights Watch and came to understand that the conditions in Egypt did not generally meet western standards.

RCMP's knowledge of Egypt's human rights record

200. The RCMP liaison officers posted to Rome during the relevant period, Inspector Covey and Staff Sergeant Fiorido, both stated that they had no first-hand knowledge of torture occurring in Egypt. Inspector Covey stated that, while he had no first- or second-hand knowledge of the use of torture, he knew that prisoners would not be treated in the same way that they would be treated in Canada.

201. When Staff Sergeant Fiorido took up the post of liaison officer to Rome in July 2002, he had no direct knowledge about, and did not receive a briefing on, the conditions of detention that might exist in Egyptian prisons. However, his own view was that prison conditions in the Third World and in the Middle East would not meet Canadian standards. Staff Sergeant Fiorido told the Inquiry that he did not recall ever forming an opinion regarding the use of torture in Egypt and that he did not review any human rights reports related to those issues.

Mr. Elmaati's first consular visit and allegation of torture in Syria

202. On August 12, 2002, Mr. Elmaati received his first consular visit, at Tora prison from Consul Stuart Bale, Vice-Consul Jean Ducharme and a consular officer. Two Egyptian security officials were present during the consular visit. One worked at the prison. The other, Mr. Bale assumed, worked at State Security. Neither would provide information to DFAIT regarding Mr. Elmaati's detention. Consular officials were not directed to ask, and did not ask, to speak to Mr. Elmaati alone.

203. Mr. Bale reported that Mr. Elmaati appeared to be in good physical condition, good spirits, was calm and spoke in a rational manner, and had advised that he was being well treated and was provided with sufficient food. Mr. Ducharme made similar observations about Mr. Elmaati's demeanour, which he reported to Ms. Myra Pastyr-Lupul at a meeting on August 19, 2002. He told Ms. Pastyr-Lupul that Mr. Elmaati was in good spirits and in a good mood. Paragraphs 83 to 85 of Chapter 7 set out Mr. Elmaati's description of this first consular visit, including his statement that at the time he felt that he had no choice but to tell consular officials that he was being well treated since the Egyptian officials were in the room and could hear and understand what was said.

204. During this visit, Mr. Elmaati asked consular officials to contact his mother and father to let them know where he was and that he was okay. He also asked that his uncle and aunt in Cairo be contacted and advised of his location and situation.

205. Mr. Elmaati described his experience in Syria to Mr. Bale. According to Mr. Bale, Mr. Elmaati related that prior to leaving Toronto he was approached by two CSIS officials and asked about where he was travelling to, and that he was followed on each flight by a security official. Mr. Elmaati stated that upon arrival at the Damascus airport, he was taken into custody by Syrian security officials. During the two and a half months that he spent detained in Syria, Mr. Elmaati said that he was beaten, subjected to electric shocks, and forced to give false information. Mr. Elmaati would not provide details of the false information but said that he would be willing to speak to a CSIS official back in Canada. (He also advised he had been interviewed by CSIS on September 11, 2001.)

206. Mr. Bale reported that Mr. Elmaati had explained that he had requested contact with the Canadian Embassy in Damascus but was denied access by Syrian authorities. Mr. Elmaati said that he was transferred to Cairo via small jet around the end of January 2002. Since that time he had been held in four separate facilities in Egypt, the latest being Tora prison, where he arrived on July 30, 2002. Mr. Bale asked Mr. Elmaati if the authorities in either Syria or Egypt had advised him why he was being detained, but Mr. Elmaati replied that they had not. He said that he himself did not know why he had been detained but suspected that he had been set up by CSIS in Canada. He also said that CSIS knew everything about his life from the time he was born.

207. According to Mr. Bale, Mr. Elmaati asked consular officials whether the Embassy could help him. They responded that they would request further background information from Egyptian authorities regarding the reason for his detention and when he might be released. Consular officials also advised Mr. Elmaati that he should retain the services of a lawyer who could initiate legal proceedings on his behalf and arrange for visits by his family members. At the conclusion of the visit, consular officials asked Mr. Elmaati if he needed anything (such as food, reading material or clothing); he responded that he did not need anything and, according to Mr. Bale, said that his morale was high.

208. Following the consular visit, the Embassy sent a diplomatic note to the Egyptian Ministry of Foreign Affairs regarding the detention of Mr. Elmaati. The note cited the *Vienna Convention on Consular Relations* and protested Egypt's failure to notify DFAIT of the detention. It requested the reasons for Mr. Elmaati's detention and asked whether there were any formal charges pending. The note also asked the Ministry to facilitate family visits to Mr. Elmaati and to permit Mr. Elmaati to write a letter or make a phone call to his father in Canada.

209. Consular officials contacted Mr. Elmaati's family on August 14, 2002 to provide information about the August 12 consular visit. Between August 14 and 20, consular officials were in regular contact with the family, primarily on the issues of arranging family visits and the process of hiring a lawyer.

DFAIT shares report of the first consular visit with CSIS and RCMP

210. The report summarizing this consular visit was provided to CSIS on August 12, 2002 and to the RCMP on August 13. Although Mr. Pardy was out of town at the time this report was shared, he indicated that during this period (August 2002), the Consular Affairs Bureau was getting a sense of the magnitude of the activities of the RCMP and CSIS in this area. The report was therefore provided to the two agencies because it was thought it would be useful for them to have Mr. Elmaati's account of what had happened in Syria.

211. Mr. Saunders stated that the report was shared with the RCMP and CSIS because of the information that it contained regarding Mr. Elmaati's allegation of torture and the recanting of his alleged confession. Mr. Saunders acknowledged that while this information was very important, in hindsight DFAIT ISI should have blacked out some of the more personal information in the document.

DFAIT's reaction to allegation of torture

212. Mr. Bale stated that he found strange Mr. Elmaati's calm demeanour in describing the torture he had endured while in Syria. Mr. Bale recalled thinking that for someone who had gone through as much as Mr. Elmaati had gone through, including what he endured in Syria and since his arrival in Egypt, he was very calm and very soft spoken, and was not agitated or proclaiming his innocence as other detainees, in his experience, often did.

213. Ms. Pastyr-Lupul stated that there was no protocol in place at the time for dealing with allegations of torture. Upon receipt of Mr. Bale's report, Ms. Pastyr-Lupul made her superiors, including Mr. Pardy, aware of Mr. Elmaati's allegations and believed that they would take them up with others in DFAIT.

CSIS' reaction to allegation of torture

214. A CSIS employee abroad stated that his initial reaction on learning of Mr. Elmaati's allegation of torture was to wonder whether Mr. Elmaati had accurately depicted what had happened. He told the Inquiry that the possibility of torture is always at the back of a person's mind when dealing with countries that do not have stellar human rights records. However, whether a particular allegation is true must always be verified.

215. Another CSIS official stated that if the Service was aware that information had been derived from torture, then that would affect CSIS' confidence in the information. He recalled discussion, in light of Mr. Elmaati's allegations of torture, of the reliability of the information from Syria.

216. Mr. Hooper stated that he did not form a view at the time, and still has not formed a view, as to whether the allegation of torture was true. On the one hand, Mr. Hooper considered the Syrian human rights record, which indicated that the types of abuses alleged by Mr. Elmaati had occurred. On the other hand, he thought Mr. Elmaati would have to rationalize the amount and nature of information he provided. Mr. Hooper also expected that a claim of torture might be made even if there had been no mistreatment amounting to torture; this expectation was based on the publicly available al-Qaeda manual[6] that instructs individuals who are operating in association with al-Qaeda to allege torture if they are taken into incarceration by security intelligence or law enforcement services. Mr. Hooper was of the view that there was insufficient information available to allow a reasonable conclusion, one way or the other, about whether the statements made by Mr. Elmaati were true or about the treatment to which he was subjected in Syria or Egypt.

217. When asked whether CSIS had considered approaching the Syrian authorities about Mr. Elmaati's claims of torture, a CSIS official stated that it was not something that he concerned himself with at the time and he did not recall having discussed it; his view, like that of the RCMP, was that it was the responsibility of DFAIT.

RCMP meetings in response to allegation of torture

218. On August 14, 2002 two meetings were held among representatives from Project A-O Canada, CID, Criminal Operations (CROPS), the Integrated National Security Enforcement Team (INSET), and the RCMP's in-house Department of Justice (DOJ) counsel. The purpose of the first meeting was to discuss the response to expected media inquiries concerning Mr. Elmaati's allegations of torture, and to prepare for an inter-agency meeting to be held the following day. A briefing note regarding this meeting stated that, despite Mr. Elmaati's belief to the contrary, his arrest was not at the request of Canadian authorities.

219. The second meeting was convened to allow representatives from across the RCMP to discuss Mr. Elmaati's allegation of torture, the impact on his

[6] The al-Qaeda training manual became publicly available in December 2001 when it was entered into evidence during a trial being conducted in Manhattan and uploaded to the U.S. Department of Justice website. The first documented reference to the manual in CSIS' records is in April 2001, and in the RCMP's records it is first referred to in January 2002.

alleged confession, and the investigative options available to the RCMP going forward—for example, whether RCMP investigators should travel to Egypt to interview Mr. Elmaati, and strategies to deal with his anticipated return to Canada. Inspector Reynolds stated that Mr. Elmaati's allegation that he had been tortured into making his alleged confession, certainly diminished the statement. Inspector Reynolds further stated, however, that regardless of how much torture is inflicted, a person is only capable of disclosing facts that they know. Similarly, Inspector Cabana stated that the truthfulness of the statement and the circumstances under which the statement was taken were two different issues. However, Inspector Cabana also stated that the focus of the RCMP at the time was not on the admissibility of the statement but on the validity of the threat information that it contained. As a result, despite Mr. Elmaati's allegation of torture, the RCMP's focus continued to be to try to corroborate the information in the alleged confession.

220. On August 15, 2002, Project A-O Canada sent a fax to Staff Sergeant Fiorido, who, as noted above, had replaced Inspector Covey as the RCMP's liaison officer in Rome, stating that it had been agreed that the RCMP must take steps to interview Mr. Elmaati in Egypt, and asking Staff Sergeant Fiorido to contact Egyptian authorities and request access. The fax also referred to Mr. Elmaati's allegation of mistreatment in Syria and stated that the consular officials who had spoken to Mr. Elmaati were not aware of the RCMP's investigation of Mr. Elmaati in Canada.

221. When asked about the RCMP's desire to question Mr. Elmaati in Egypt after learning of his allegations of mistreatment in Syria, Assistant Commissioner Proulx stated that the RCMP needed to interview him in order to learn more about the alleged threat and whether there were any co-conspirators. On August 22, 2002 Staff Sergeant Fiorido was informed that Egyptian authorities had agreed to allow Canadian investigators to interview Mr. Elmaati in Egypt. However, the Egyptian authorities never did grant an interview.

222. Former Commissioner Zaccardelli stated that he was not advised at the time of Mr. Elmaati's allegations of torture and could not recall having been informed of the allegations while he held the position of Commissioner, or of having been asked for direction on how to deal with them. When asked whether the Commissioner should be advised of an allegation of torture, Mr. Zaccardelli stated that it depended on the circumstances of the investigation. He stated that if that type of information came to the attention of one of his investigators, he would expect the investigator to take the appropriate steps to deal with the

situation, including making a decision regarding whether it should be brought to the attention of the Commissioner.

223. In the middle of August 2002, the INSET, discussed further in Chapter 3, had a meeting in which it discussed, among other things, the alleged terrorist cell in Canada. In discussing its significance, the INSET characterized the alleged confession by Mr. Elmaati as somewhat questionable in light of the possibility that Mr. Elmaati might have been tortured by Syrian authorities into making his statements.

Inter-agency meeting in response to torture claim

224. In response to Mr. Elmaati's allegation that he had been tortured, an inter-agency meeting was held on August 15, 2002 among representatives from CSIS, DFAIT, RCMP, Privy Council Office and Solicitor General. The purpose of this meeting was to prepare media lines to be used by each of the agencies if the responsible Ministers received media inquiries about Mr. Elmaati's welfare. There was no discussion about the torture allegations; it had been determined that the torture issue would be handled by DFAIT.

225. Ms. Pastyr-Lupul was asked by ISI to attend the inter-agency meeting. At the beginning of the meeting, Ms. Pastyr-Lupul was shocked to learn that everyone else in attendance had a copy of Mr. Bale's report on the consular visit with Mr. Elmaati. Ms. Pastyr-Lupul then learned that the subject of the meeting was a potential national security concern. She stated that at the meeting other Canadian officials questioned her about her contacts with the Elmaati family. Ms. Pastyr-Lupul described feeling under extreme duress, as she realized that there was something more to the situation than she had been led to believe. She felt at the time that she needed to be honest because of these national security concerns. However, in retrospect, she said that she would not have been as honest and forthright with them.

226. According to an RCMP report of the meeting, DFAIT had advised that it would only address Mr. Elmaati's claims about torture with the Syrian authorities after he was released from Egyptian custody, and that he had not made any complaints about his treatment in Egypt. When asked about DFAIT's decision to wait to pursue Mr. Elmaati's torture claims until after his release, Mr. Pardy stated that, while he did not attend that meeting, there were a number of things to consider before deciding what to do with that information, including what benefits or potential consequences would be derived from going to the Syrian authorities with that information. According to Mr. Pardy, it was determined that confronting the Syrian authorities with Mr. Elmaati's allegations of torture

would have no direct benefit to Mr. Elmaati, and had the potential to cause harm to Mr. Almalki, who was at the time detained in Syria.

227. Mr. Saunders stated in his interview that he had discussions with Jim Gould and Scott Heatherington about the possible implications for Canadians who were still detained in Syria of Canada going public with complaints about mistreatment of prisoners. According to Mr. Saunders, they would have discussed trying to press for Mr. Elmaati's release first and foremost, with a view to dealing with these other issues after he was safely out of the country. He further stated, however, that the decision as to what strategy was to be employed would not have been for ISI, but for the Consular Affairs Bureau, reporting through the chain of command.

Joint meeting to discuss the RCMP's plans for an interview

228. On August 28, 2002, after confirmation had been received from Egyptian authorities that Mr. Elmaati was in custody in Egypt, a joint meeting was convened between representatives of CSIS and the RCMP to discuss the RCMP's plans for a possible interview. At this meeting, the RCMP discussed its investigation of Mr. Elmaati and its intention to interview him in the near future; the RCMP also requested the Service's input into questions to be asked if granted an interview.

229. Inspector Cabana told the Inquiry that in the summer of 2002 the RCMP had received information from DFAIT that the Egyptian authorities were contemplating the release of Mr. Elmaati. As a result, the RCMP felt there was an urgent need to gain access to Mr. Elmaati to conduct its interview. Inspector Cabana told the Arar Inquiry that the RCMP wanted to interview Mr. Elmaati before he was released because there was a concern that once released he might not return to Canada, and the RCMP did not want to lose track of his whereabouts given his alleged confession. The urgency subsided when, shortly thereafter, an RCMP liaison officer posted abroad was informed by the Egyptian authorities that there was no plan for Mr. Elmaati's release any time soon. However, despite the lack of urgency, Project A-O Canada advised Staff Sergeant Fiorido, on September 10, 2002, that the RCMP felt the interview was important and was developing the appropriate background information to ensure its efforts would be successful.

DFAIT aware of potential for interview by the RCMP

230. DFAIT ISI was aware that the RCMP wanted to interview Mr. Elmaati once he was transferred from Egyptian intelligence to Egyptian police custody.

ISI reporting indicates that it was believed that the RCMP would have a better chance of getting access to Mr. Elmaati through the police than through the intelligence services. In a memorandum dated June 26, 2002, Mr. Saunders noted that both the RCMP and a foreign agency were seeking interviews of Mr. Elmaati, and that, although Mr. Elmaati had allegedly confessed during interrogation to a plot to blow up the Parliament Buildings and had given details about an alleged terrorist cell in Canada, it was unclear how much of this information was fact and how much was fiction. When interviewed about this statement, Mr. Saunders stated that he was reflecting on a conversation he had had with a CSIS official about the accuracy of some of the information that was contained in the document. Mr. Saunders' recollection was that this CSIS official had been skeptical of the alleged confession because it would be very unlikely that a man in Syrian custody would have been able to produce such detailed information; Mr. Saunders' view was that the CSIS official believed that Mr. Elmaati had been fed this information and then asked to confirm it.

Ambassador Pillarella attempts to assist the RCMP

231. In a meeting between DFAIT and the RCMP on September 10, 2002 to discuss sending questions for Mr. Almalki to Syria, as described in Chapter 5, paragraphs 125 to 128, there was some discussion regarding Syrian information on Mr. Elmaati. Mr. Solomon does not have a strong recollection of this meeting; however, he believes the RCMP asked Ambassador Pillarella to approach the Syrian authorities to obtain more information about Mr. Elmaati and request RCMP access to any documents the Syrians might have in relation to him. It was Mr. Solomon's belief that Ambassador Pillarella would approach General Khalil on that issue. Mr. Pillarella does not recall having agreed to approach the Syrian authorities with respect to Mr. Elmaati at the September 10 meeting; nor did he do so.

Consular Activities in Egypt

232. In addition to the first consular visit on August 12, 2002, Mr. Elmaati would receive seven other consular visits, as well as other forms of assistance provided by DFAIT consular officials to him and his family, while in detention in Egypt. All eight consular visits were conducted in English although, on occasion, consular officer Mira Wassef would converse with Mr. Elmaati in Arabic.

Training to detect signs of torture and abuse

233. As discussed in Chapter 3 at paragraphs 103 to 107, during the relevant period, consular officials did not receive training in recognizing the signs of

torture and abuse of Canadians detained abroad. Both consuls at the Canadian Embassy in Cairo, Mr. Bale and Mr. Chen, confirmed that they had received no training in detecting the mistreatment of detainees. According to Mr. Chen, consuls received general training on different types of consular cases, but there were no specific courses on cases involving detainees. In addition, Mr. Chen did not recall having any exposure to information about human rights in Egypt.

234. Even without formal training to detect the signs of torture, Mr. Bale and Mr. Chen stated that they had considered several indicators to determine whether Mr. Elmaati was being mistreated. During his first consular visit with Mr. Elmaati, Mr. Bale assessed several aspects of Mr. Elmaati's physical appearance. He noted that Mr. Elmaati did not look as if he was suffering from malnutrition, he did not have any scars or bandages, he spoke rationally and he was coherent. In Mr. Bale's view, Mr. Elmaati was fine. As discussed at paragraph 203 above, Mr. Elmaati told the Inquiry that at the time of this consular visit he felt that he had no choice but to tell consular officials that he was being well treated since the Egyptian officials were in the room and could hear and understand what was said. Mr. Elmaati's evidence about how well he was doing at the time is discussed in Chapter 7.

235. According to Mr. Chen, there were no indications that Mr. Elmaati was mistreated. Mr. Chen stated that Mr. Elmaati provided consular officials with information about the conditions of his incarceration and, in his view, there were no clues from that information that there was anything out of the ordinary.

Requests for consular access alone

236. During the time that Mr. Elmaati was detained in Egypt, there was no DFAIT policy that instructed or required consular officials to request private visits with individuals being held in detention.

237. Mr. Bale's experience with consular visits was that it was standard practice to expect prison or security officials to be in attendance during visits and he therefore did not, during his consular visits to Mr. Elmaati in Egypt, ever ask to visit privately with Mr. Elmaati, nor was he ever ordered by DFAIT to do so. Further, Mr. Bale advised the Inquiry that he recalled several instances when security officials were sufficiently distracted or temporarily absent, and when Mr. Elmaati would have had the opportunity to convey information that he felt he was unable to provide in the presence of prison officials. As discussed at paragraph 104 of Chapter 7, Mr. Elmaati told the Inquiry that he was never alone with Canadian consular officials while in detention in Egypt and did not feel that he ever had the opportunity to share this information.

238. Mr. Chen, who occupied the post of consul in Egypt after Mr. Bale's departure, also never asked, and was never directed by DFAIT to ask, to visit privately with Mr. Elmaati. Mr. Chen's experience in other countries was that consular visits were always accompanied with a host country official present. He recalls inquiring whether consular visitation practices in Cairo were any different in this regard, and was informed by Mira Wassef that the standard procedure was that an Egyptian official was always in attendance at prison visits.

239. Konrad Sigurdson, who replaced Mr. Pardy as Director General of the Consular Affairs Bureau in September 2003, told the Arar Inquiry that consular officials, in dealing with a country that might be suspected of engaging in torture, have the right to request access to the Canadian detainee alone. However, the foreign country has no obligation to allow this access. Mr. Sigurdson further stated that a consular official in a country that may be suspected of torture should ask prison officials to see the Canadian detainee alone.

240. After having adopted his testimony from the Arar Inquiry (as set out in the preceding paragraph), Mr. Sigurdson advised the Inquiry that he wanted to provide the following clarification of his Arar Commission testimony:

> The statement that the consular officers should ask for private visits refers to the fact that in cases of detention, irrespective of the conditions or location of detention, consular officials should give consideration to whether or not to ask for private visits. However, there is no DFAIT policy or requirement that a request in fact be made. Although a private session is preferable, the first priority is to gain access to determine the Canadian's well being. If a demand for private access jeopardizes access generally, it is not made. The judgment is with the officer in the field in consultation with Headquarters. In respect of Syria and Egypt, the experience of the Consular Bureau was that no such private access would ever be granted and therefore no such request was made.

241. Mr. Saunders told the Inquiry that before he joined DFAIT ISI, he had occupied several positions at DFAIT during the 1960s and 1970s that involved the provision of consular services. In these postings, he had the opportunity to meet with Canadians who were being held in detention. When he did so, Mr. Saunders stated, it was his practice to request to speak with the Canadian detainee alone. When asked whether there was a practice at DFAIT of requesting that any foreign officials leave the room to enable a private interview, Mr. Saunders stated that it might not have been a practice; however, it was always something that he requested, and he never had anyone refuse. When asked a similar set of questions, Mr. Livermore, Director General of DFAIT's Security and Intelligence Bureau (DFAIT ISD), also stated that in his experience

in the consular area more than 25 years ago, his practice was to ask the detaining authorities if he could see the detained individual alone. Mr. Livermore further stated that one had to assume that answers might be conditioned by the presence of someone else. His practice was therefore to ask to see the individual alone, and ask to speak to the person in English or French. In his experience, however, these requests were never granted.

Second consular visit

242. In the fall of 2002, Mr. Elmaati remained in detention at Tora prison. In anticipation of the second consular visit to Mr. Elmaati, Ms. Pastyr-Lupul instructed Consul Stuart Bale to try to inquire of Mr. Elmaati, discreetly if possible, how he was being treated, keeping in mind that he might not feel in a position to express himself openly or truthfully given the presence of Egyptian officials.

243. On September 1, 2002 Mr. Elmaati received his second consular visit, from Mr. Bale and a consular officer. Mr. Elmaati inquired whether Mr. Bale had any news about his situation and if and when he might be released. Mr. Bale advised Mr. Elmaati that a diplomatic note had been sent to Egypt seeking information regarding his detention and pending charges but that no response had yet been received. Mr. Bale noted that he appeared to be in good spirits and good physical condition. Mr. Elmaati advised that he was sharing a cell with seven others. Mr. Bale asked Mr. Elmaati if he knew the reason why his cell mates were being detained. According to Mr. Bale, Mr. Elmaati responded that they were political prisoners who were being detained because of their religious beliefs.

244. Mr. Bale reported that Mr. Elmaati advised that he was permitted in the recreation yard only once per week and that he had trouble breathing at times because of poor ventilation. Mr. Bale inquired with prison officials about the possibility of providing Mr. Elmaati with more time outside. Mr. Bale was informed that this would be possible upon completion of the renovations to the yard.

245. Mr. Elmaati informed Mr. Bale that his money was being kept in storage by prison officials but it had been counted and he had been issued a receipt. Mr. Elmaati also advised that he had been permitted to exchange US$100 for Egyptian currency to allow him to purchase items from the prison kitchen. Mr. Elmaati requested a family visit as soon as possible and asked that they provide him with some clothing, food, reading materials and personal items.

246. In a report dated September 1, 2002, Mr. Bale reported that consular officials were able to introduce a few questions to Mr. Elmaati regarding prison conditions while prison officials were busy attending to another issue. According to Mr. Bale's report, Mr. Elmaati advised that he was being well treated, was well fed, and had adequate access to shower and toilet facilities. Mr. Bale reported that every time he asked prison officials about Mr. Elmaati's rights and treatment, Mr. Elmaati repeatedly advised prison officials that it was the Embassy asking these questions and not him.

247. As suggested in the report, during this visit prison officials left the room for a few minutes. Mr. Bale told the Inquiry that he felt that, during this time, Mr. Elmaati could have told him that he was being tortured. In his interview by Inquiry counsel, Mr. Bale stated that he asked Mr. Elmaati if he was being abused and Mr. Elmaati said that he was "fine" and that prison officials were not doing anything to him. Mr. Bale then asked if prison officials were interrogating him. Mr. Elmaati replied that they were not. Paragraphs 87 to 88 of Chapter 7, set out Mr. Elmaati's description of this second consular visit, including his recollection that the Egyptian officials never left the room and sat close enough that they could hear everything that was being said. Mr. Elmaati could not recall Mr. Bale asking any questions about Mr. Elmaati's treatment in the jail or asking for a private meeting, although he stated that maybe Mr. Bale knew that he could not meet privately.

248. On September 3, 2002, the Embassy followed up on its visit with a diplomatic note to Egypt, stating that it had not yet received a response to the diplomatic note of August 14, 2002 and asking for the reasons for Mr. Elmaati's detention.

249. DFAIT officials advised Mr. Elmaati's family of this second consular visit and informed them that he was being well fed and treated. Consular officials also provided Mr. Elmaati's sister with a letter that Mr. Elmaati had written to her during this visit.

Third consular visit

250. On September 11, 2002, Mr. Elmaati received a third visit from consular officials, accompanied by Mr. Elmaati's sister and her husband. The only difference noted by Vice-Consul Jean Ducharme at this meeting was that security officials were not paying very much attention to the discussions between Mr. Elmaati and his family members. The report of this meeting is very brief, and includes no mention of conditions of detention.

251. On September 19, 2002, Ms. Pastyr-Lupul sent a note to the Embassy in Cairo advising that since a consular presence had now been established with Mr. Elmaati, consular officials were not obliged to visit him as often. She advised that the guideline for consular visits is one visit every three months. She also suggested that the family visits be facilitated directly with the Director of the Prison so they would not have to wait until each consular visit to have contact.

252. Throughout the summer and fall 2002, Mr. Elmaati's family was in contact with the Consular Affairs Bureau, which kept the family up to date on the efforts being made in Mr. Elmaati's case. Consular officials also assisted the family with the procedures required to visit Mr. Elmaati in prison.

253. In October and November 2002, consular officials and Embassy staff made efforts to facilitate a meeting between Mr. Elmaati and his mother. On December 23, 2002, consular officials were successful in obtaining permission for Mr. Elmaati's mother to visit her son. This meeting took place on January 5, 2003.

Consular Affairs Bureau provides DFAIT ISI with access to CAMANT notes

254. Ms. Pastyr-Lupul stated that prior to November 2001, the Consular Affairs Bureau did not share CAMANT notes with DFAIT ISI. However, the Consular Affairs Bureau had realized that Mr. Elmaati's case represented a very different kind of environment and situation than any previous cases. In the interests of assisting with providing consular assistance to Mr. Elmaati, a decision was made to share certain CAMANT notes with members of ISI. ISI has the ability to canvass intelligence sources and provide the Consular Affairs Bureau with information that might help it understand who has the power in a given country and how best to utilize Canadian influence to fulfill consular obligations.

255. Mr. Livermore stated that ISI requested consular information from Mr. Pardy on fairly urgent national security grounds. Mr. Livermore explained that ISI was having discussions with CSIS and the RCMP about these cases. It was not interested in the private lives of these individuals but simply wanted access to information such as what these men were doing, who their associates were, and why they were incarcerated.

256. In October 2002, Jonathan Solomon of DFAIT ISI was granted access to the CAMANT system in order to facilitate his work with the Consular Affairs Bureau in these cases.

Providing CSIS with access to consular information

257. Some consular information was shared with CSIS. The first report containing confidential information shared with the Service was the August 12, 2002 report regarding Mr. Elmaati's first consular visit in Egypt, when he alleged he had been tortured in Syria. In September 2002, Consul Stuart Bale advised a CSIS employee about additional consular visits with Mr. Elmaati, including his impression that Mr. Elmaati appeared to be treated well by Egyptian authorities. Mr. Bale stated in his interview that he did not ask for permission from headquarters before discussing consular information with CSIS because he had asked in the past, had noticed that headquarters was allowing other agencies to see this information, and therefore did not see anything wrong in it. Mr. Bale went on to say that, in retrospect, consular information should not have been shared.

258. In addition to these oral disclosures of information to CSIS, DFAIT provided copies of certain CAMANT notes to the Service in response to a request from the Service for access to information regarding Mr. Bale's interview reports, or summaries and assessments of those reports. Aside from the report of Mr. Elmaati's first consular visit in August 2002, DFAIT also provided the Service with the reports of its consular visits to Mr. Elmaati on September 1, September 11 and November 18, 2001, as well as translated copies of two diplomatic notes received from the Egyptian Ministry of Foreign Affairs regarding Mr. Elmaati.

259. Mr. Solomon of DFAIT ISI explained that there were specific rules about how, and under what circumstances, consular information could be shared. Over and above the rules governing general consular information, if DFAIT received a request for production of a CAMANT note, then specific permission of Mr. Pardy was required before it could be shared with anyone other than persons already having access to the CAMANT system. Mr. Solomon stated that while he did not have a specific recollection of doing so, he likely would have been the person who passed the CAMANT notes to CSIS, and would have done so with Mr. Pardy's permission.

260. Mr. Pardy explained that consular information could be shared to assist a person in trouble. According to Mr. Pardy's understanding of the *Privacy Act*, DFAIT could use the information for the purposes for which it was collected. If the information was collected to assist a Canadian in difficulty, and if DFAIT officials were of the view that they could assist that Canadian citizen by sharing the consular information, then they did so. In deciding whether or not to share information with CSIS or the RCMP, Mr. Solomon and Mr. Pardy examined

each document, and weighed the pros and cons of sharing that particular piece of information.

261. Ms. Pastyr-Lupul stated that she discussed consular information with CSIS in the spirit of cooperation with other agencies and their mutual attempts to prevent any terrorist attacks on Canada. Ms. Pastyr-Lupul believed that she could share information that was relevant to a national security concern. However, she stated that in retrospect, it was probably naïve to think that this information would be received as innocently as she had collected it.

262. Consular officials continued to meet with Mr. Elmaati, and shared certain consular information with the Service, through the fall of 2002. A CSIS official stated that the Service had not provided him with any information regarding Foreign Service policies on the sharing of information obtained during consular visits; nor had anybody ever suggested that it was inappropriate for DFAIT to share information. He stated that the Service would ask but it was up to the person disclosing the information to decide whether they were permitted to give it to them. A senior CSIS official stated that it was not his understanding that consular reports were confidential, and that it would not be unusual for the Service to receive consular reports on security-related matters.

263. The Service received these reports from DFAIT ISI, rather than the Consular Affairs Bureau. A senior CSIS official stated that DFAIT does not have a standard caveat that it attaches to these consular reports, although it would sometimes say "please protect" or "be cautious about" or "do not disseminate further." This same CSIS official did not believe that these reports ever moved beyond the Service in any event. He stated that consular information can be helpful to the Service and that he was not aware of any standards or policy with respect to the sharing of consular information by DFAIT officials, or of any training or communication by the Service on the subject. He also stated that under the *Privacy Act,* CSIS could request access to information that was deemed relevant to the security of Canada and Canadians. Aside from formal consular reports from DFAIT, it would not be uncommon for the Service to have discussions with consular officials if it required information.

Providing the RCMP with access to consular information

264. In addition to sharing certain information with CSIS, DFAIT also provided the RCMP with information obtained from Mr. Elmaati in the course of providing consular services to him. DFAIT shared the report of Mr. Elmaati's first consular visit, on August 12, 2002 and shared CAMANT note from its November 18, 2002 consular visit to Mr. Elmaati with the RCMP.

Consular Affairs Bureau changes practice on sharing consular information

265. As noted above, Konrad Sigurdson replaced Mr. Pardy as Director General of the Consular Affairs Bureau in September 2003. In his interview, Mr. Sigurdson indicated that at that time, he was aware that information was being broadly shared and that there were no reservations about sharing CAMANT notes. As a result, Mr. Sigurdson began taking steps to obtain a better understanding of where the information was going and to ensure that any sharing was in the context of DFAIT's work and mandate. One of the measures implemented by Mr. Sigurdson was to stop the dissemination of CAMANT notes outside of the Consular Affairs Bureau. Consular offices abroad were also instructed not to talk about their consular cases with RCMP or CSIS employees abroad.

266. The confidentiality of consular information is discussed further in Chapter 3 at paragraphs 110 to 114.

Fourth consular visit

267. On November 13, 2002, consular officials attempted to visit Mr. Elmaati at Tora prison, but were unable to do so because he had been moved to the Abu Zaabal jail. On November 18, 2002, Consul Stuart Bale and a consular officer met with Mr. Elmaati and provided him with food items that were sent by his sister. Mr. Bale reported that Mr. Elmaati appeared to be in good health.

268. During this visit, Mr. Bale asked Mr. Elmaati about his willingness to talk to officers from the RCMP or CSIS. Mr. Bale told the Inquiry that he raised the prospect of speaking with the RCMP and CSIS because during his first consular visit with Mr. Elmaati, he had asked Mr. Elmaati why he thought he was being detained, and Mr. Elmaati had responded that he did not want to talk about it with anyone other than CSIS or the RCMP. Mr. Bale further stated that he was not asking Mr. Elmaati to meet with law enforcement officials because anyone had asked him to do so, but rather, as an attempt to get some answers about why Mr. Elmaati was being detained. Mr. Bale stated that he was making an effort to explore all possibilities and that he wanted to move the consular case forward to get Mr. Elmaati back to Canada. Mr. Elmaati responded that he was willing to talk to them on Canadian soil only. As discussed at paragraph 104 of Chapter 7, Mr. Elmaati told the Inquiry that he recalled being regularly asked if he would be willing to meet with Canadian security officials.

269. During this visit, Mr. Elmaati informed Mr. Bale that he had been released by the court back in October and sent to State Security for six days, after which State Security had renewed his detention. Mr. Bale described Mr. Elmaati as very vague regarding who he saw at court and what the proceedings were all about.

Mr. Bale told Mr. Elmaati that he had not previously been made aware of this information and made some inquiries of the Egyptian officials present in the room during the visit. Mr. Bale was told that it had not been a release and that changing prisons was a regular occurrence. Mr. Bale indicated to Mr. Elmaati that DFAIT would follow up on the issue.

270. On November 19, 2002, the Canadian Embassy sent a diplomatic note to the Egyptian Ministry of Foreign Affairs requesting information on the reason for Mr. Elmaati's continued detention despite his court-ordered release. The note stated:

> To date, the Embassy has yet to receive a reply as to the reason why Egyptian authorities have detained Mr. Abou El Maati, if there are any formal charges pending, or when he may be expected to be released. Canadian media interest in this case is now just starting. The questions which the Embassy has raised are very basic in nature and will surely be raised by the media.

271. The Consular Affairs Bureau and consular officials informed the Elmaati family of the consular visit as well as Mr. Elmaati's request that they bring him clothing and blankets and retrieve his suitcases from Tora prison. In the weeks following the fourth consular visit, consular officials assisted the family in its attempts to visit Mr. Elmaati and to bring him the items he had requested.

DFAIT informs RCMP of Mr. Elmaati's release and re-arrest

272. On November 18, 2002, DFAIT orally advised Project A-O Canada that Mr. Elmaati had apparently had a court appearance in Cairo, been released from custody, and then been re-arrested by Egyptian intelligence officials. On November 25, Project A-O Canada requested that Staff Sergeant Fiorido, its liaison officer in Rome, attempt to clarify Mr. Elmaati's status and current location. On November 28, DFAIT provided Project A-O Canada with a November 18 CAMANT note summarizing the meeting between consular officials and Mr. Elmaati on November 18.

273. On December 5, 2002, Staff Sergeant Fiorido informed Inspector Cabana that Mr. Elmaati had appeared before a judge who had apparently determined that there were no grounds to further detain him, that he had then been transferred to another facility, and that he was now pressuring consular officials to secure his release. On December 12, Staff Sergeant Fiorido further advised Inspector Cabana that he had been informed by a consular official that Mr. Elmaati would not be released any time soon.

Meetings with Badr Elmaati

274. In early and late November 2002, representatives of the Service met with Mr. Elmaati's father, Badr Elmaati. It has been alleged, publicly, that about this time, Badr Elmaati was told that the Service would attempt to get Mr. Elmaati out of Egyptian detention if he agreed to stay in Egypt and not return to Canada. According to Ms. Pastyr-Lupul, who heard about this alleged promise from Badr Elmaati, it was unclear whether this was supposed to be a long-term or short-term proposal. A CSIS official told the Inquiry that the Service did not make those statements and could not have made those statements; it was not within the Service's ability to make that kind of a proposal. Mr. Hooper could not recall any discussions, with members of DFAIT or others, about a proposal along the lines of that which Badr Elmaati said was made to him, and stated that it would be difficult for him to believe that a Service representative would have made that proposal. The Inquiry has found no documentary evidence that this proposal was ever considered or made by the Service.

Mr. Elmaati's continued detention in Egypt

275. By January 2003, DFAIT had written many letters to the Egyptian authorities requesting information on Mr. Elmaati, including one letter that mentioned that there was now media interest in the detention. According to Mr. Bale, there was a concern that the Minister of Foreign Affairs would have to answer questions about Mr. Elmaati in the House of Commons. In late January 2003, Canadian Immigration Minister Denis Coderre, who was visiting Egypt, had a meeting with the Canadian Ambassador to Cairo, Michel de Salaberry and another Canadian official concerning circumstances in Egypt at the time. Minister Coderre asked about Mr. Elmaati's situation. The Minister learned from the Canadian official what had been done and was being done to try to ascertain information about the detention. The discussion was very general, and not an in-depth briefing.

Egypt provides a reason for detention

276. On December 17, 2002, consular officials met with the Egyptian Deputy Minister of Foreign Affairs responsible for consular matters and raised the case of Mr. Elmaati. They requested information about the charges, if any, pending against Mr. Elmaati and reminded the Deputy Minister of the rising media interest in Mr. Elmaati's case back in Canada.

277. In response to several requests by Embassy officials for information on why Mr. Elmaati was being detained, the Egyptian Ministry of Foreign Affairs

finally advised, in a letter dated January 26, 2003 and received by DFAIT on February 6, 2003, that Mr. Elmaati had been arrested because he was an element of an extremist group, and that he continued to be detained to prevent him from "his activities." The Ministry of Foreign Affairs went on to advise that in accordance with prison regulations, Mr. Elmaati would not be permitted to have contact with his family through telephone calls or letters.

Further consular services in Egypt

Fifth consular visit

278. The fifth consular visit, held on January 21, 2003, was different from the first four in a number of ways. First, Mr. Bale noticed that instead of low-ranking officials, he and his consular officer were joined in the interview room by two generals. Second, Mr. Elmaati was offered tea or something to drink if he wanted it. However, the generals refused to answer any specific questions about Mr. Elmaati's detention.

279. Mr. Bale noted in his report, which was sent to the Consular Affairs Bureau, that Mr. Elmaati appeared in good condition and had stated that he was being well treated. Mr. Elmaati advised that he had not yet received a visit from a lawyer and questioned whether DFAIT had received an explanation for his detention from the Egyptian government. When asked whether he was being interviewed by Egyptian authorities, Mr. Elmaati advised that when he first arrived in Egypt he was questioned on a regular basis but that he had not been questioned for several months.

280. During this consular visit, Mr. Elmaati appeared to have changed his mind about meeting with Canadian officials. According to Mr. Bale, when asked whether he wanted to meet with Canadian security or police officials in Egypt, Mr. Elmaati said that if he was forced to, he would meet with them in Egypt, but he preferred not to. In his interview, Mr. Bale stated that he understood this to mean that Mr. Elmaati was giving in a bit in comparison to his earlier refusals to meet with CSIS or the RCMP at all. Mr. Bale also stated that he thought that "if forced to" meant that Mr. Elmaati would prefer to meet in Canada but was prepared to meet with CSIS and the RCMP in Egypt as a last resort. Mr. Bale stated that he might have informed a CSIS employee abroad that Mr. Elmaati had agreed to meet with the Service in Egypt, but he did not tell the RCMP.

Sixth consular visit

281. A sixth consular visit occurred on February 27, 2003 at Tora prison. Consul Stuart Bale and a consular officer were accompanied by Mr. Elmaati`s mother, sister and brother-in-law on this visit. In his report of the meeting, which he sent to the Consular Affairs Bureau, Mr. Bale described Mr. Elmaati as being in good health and very happy to see his family. When asked about this assessment, Mr. Bale told the Inquiry that on every visit consular officials asked Mr. Elmaati how he was doing, feeling, and being treated in order to assess the state of his health and wellbeing. Mr. Bale stated that in his view, Mr. Elmaati was not showing or communicating any signs that he was being mistreated at this visit.

282. According to Mr. Bale's report of this meeting, Mr. Elmaati informed him that he had been transferred from Abu Zaabal jail to Tora prison approximately one week earlier and upon arrival at Tora had been questioned briefly (for approximately five minutes) by State Security officials. Mr. Elmaati told Mr. Bale that the questions seemed to be an attempt to verify previous answers to questions Mr. Elmaati had been asked when he first arrived in Egypt. According to this report, Mr. Elmaati also advised that he had never been questioned at Abu Zaabal. Mr. Elmaati asked about the two release orders from the Egyptian courts and Mr. Bale advised that the Embassy was trying to verify the authenticity of the release orders by contacting his Egyptian lawyer and sending a diplomatic note to the Egyptian Ministry of Foreign Affairs.

283. During this visit, according to Mr. Bale, Mr. Elmaati advised that he would now be willing to talk with CSIS or RCMP officials as long as Egyptian authorities agreed. Mr. Bale remarked in his report that this was a change in his previous stance and that Mr. Elmaati had stated that he had nothing to hide and he had done nothing wrong. On March 4, Mr. Bale sent an email to Staff Sergeant Fiorido advising that Mr. Elmaati was now willing to meet with the RCMP or CSIS officials as long as the Egyptian authorities approved. Mr. Bale told the Inquiry that he did not recall whether he ever communicated Mr. Elmaati's willingness to speak with CSIS and the RCMP to CSIS. CSIS has no record that this information was ever communicated.

284. According to Mr. Elmaati, after one of the consular visits from the Embassy, he was called to meet with a security officer who understood English and wanted to know why Mr. Elmaati was refusing to meet with Canadian security officials. As described in Chapter 7, paragraphs 106 to 107, Mr. Elmaati told the Inquiry that he explained the basis for his refusal to the Egyptian security officer, who then instructed Mr. Elmaati to agree to meet with them the next

time he was asked. Mr. Elmaati recalled that he conveyed his willingness to Mr. Chen in the fall of 2003.

Consular efforts to arrange family visits

285. During the sixth consular visit, in February 2003, Mr. Elmaati's mother, sister and brother-in-law were able to bring food and personal items for him. On March 25, 2003, the Embassy assisted in arranging a further prison visit by Mr. Elmaati's family. Throughout this period, Ms. Pastyr-Lupul was in contact with Badr Elmaati to advise him of recent consular efforts and attempts to arrange for visitation by his family members. Ms. Pastyr-Lupul also attempted to assist the family in respect of the difficulties the family was having with Mr. Elmaati's lawyer.

April 2003 action memorandum

286. On April 7, 2003, Mr. Pardy wrote an action memorandum for the Minister of Foreign Affairs regarding improving coordination across government on security-related consular cases. Mr. Pardy told the Inquiry that because of the myriad of Canadian government interests that were involved in cases such as these where there is a security aspect, it was important to develop coherence in the way these cases were thought about and dealt with from a consular perspective. In the annex to this memorandum, Mr. Pardy wrote that "Mr. Elmaati seems to be a case of little evidence to support the allegations of involvement in terrorist activities but rather one of associating with others who may have." When asked what he meant by that statement, Mr. Pardy was unable to provide an explanation but suggested that he might have been confusing Mr. Elmaati with Mr. Arar, about whom he had made a similar statement in the same memorandum.

Egyptian Ministry of Foreign Affairs provides justification for Mr. Elmaati's detention

287. On May 20, 2003, DFAIT received a letter from the Egyptian Ministry of Foreign Affairs dated April 29, 2003 and addressed to the Canadian Embassy, responding to inquiries from DFAIT regarding Mr. Elmaati's temporary release and subsequent detention. The letter stated that Mr. Elmaati had been arrested after his arrival in Egypt under the provisions of the Emergency Law and then released from jail by court order dated October 15, 2002. It went on to state that since it had been determined that Mr. Elmaati continued to be a "criminal danger," he had been subsequently re-arrested and remained in detention.

RCMP refuses to consent to sharing of Mr. Elmaati's will

288. In early February 2003, the Service requested the RCMP's permission to pass the translated contents of Mr. Elmaati's will (described above at paragraphs 134 to138) directly to a foreign agency. The RCMP refused CSIS' request to share the will. Since it was the RCMP's intention to continue its efforts to interview Mr. Elmaati, the RCMP thought it inappropriate to release the document for use by CSIS or any other agency. The RCMP intended to show the will to Mr. Elmaati when it got the chance to interview him. Neither CSIS nor the RCMP ever provided Mr. Elmaati's will to this foreign agency or told the agency that it could obtain a copy of the will from the American authorities.

289. Chapter 7, paragraphs 99 to 102, sets out Mr. Elmaati's evidence that in March of 2003 he was transferred to State Security headquarters in Nasr City and was interrogated about his Islamic will. As outlined in that chapter, Mr. Elmaati told the Inquiry that he was tortured while being interrogated about the will, including being subjected to electric shocks.

290. In early April 2003, members of Project A-O Canada met with a representative of a foreign agency and provided him with a copy of both Mr. Elmaati's original Arabic will and the translated English version for analysis by this agency. In the cover letter accompanying these documents, the RCMP wrote that the will had been seized from the residence of a potential suicide bomber. In a report of this exchange, Project A-O Canada investigators noted that the representative of this agency had agreed that the information would be kept in confidence between the RCMP and this foreign agency. The RCMP received no indication that this agency shared the will with anyone else.

RCMP's continued efforts to obtain access to Mr. Elmaati

291. On December 17, 2002, Inspector Cabana submitted a request for travel authorization to the officer in charge of "A" Division Criminal Operations in the event that the RCMP gained access to Mr. Elmaati in Egypt. With this request, Inspector Cabana provided an "Investigational Planning and Report" dated November 18, 2002 for Mr. Elmaati. The report provided a summary of the information received from foreign agencies about Mr. Elmaati and his alleged links to al-Qaeda. The report also referred to Mr. Elmaati's alleged confession, corroboration of parts of his alleged confession and his Islamic will. The objective of the proposed interview was to assess the actual threat to Parliament Hill, identify other individuals involved in the alleged conspiracy and gather other information that would be relevant to the investigation. The report also recommended a cautioned interview, included an interview plan and proposed inter-

view team, and made reference to discussions regarding use of any statements made during the interview back in Canada, particularly in light of Mr. Elmaati's allegation that he had been tortured in Syria.

292. As discussed at paragraph 221 above, when asked about the RCMP's desire to question Mr. Elmaati in Egypt despite his allegation of torture in Syria, Assistant Commissioner Proulx stated that the RCMP needed to interview him in order to learn more about the threat and possible co-conspirators. Assistant Commissioner Proulx did not recall this request ever being approved. In any event, since the RCMP was never granted access to Mr. Elmaati in Egypt, the interview plan was never implemented.

293. During the winter and spring of 2003, the RCMP continued, through its liaison officer in Rome, to make efforts to secure access to Mr. Elmaati. In late February 2003, Staff Sergeant Fiorido sent an update to Project A-O Canada on the detention of Mr. Elmaati and his efforts to secure access. Staff Sergeant Fiorido reported that DFAIT had received a letter from the Egyptian authorities that stated that Mr. Elmaati was being detained as a result of his alleged memberships in an extremist element and in al-Qaeda. He also wrote that Mr. Elmaati had informed Embassy officials that he had been initially interviewed and interrogated by police authorities approximately six months earlier when first brought to Egypt, but had not been interviewed since.

294. Staff Sergeant Fiorido reported that while in Cairo he had met with representatives from various Egyptian agencies regarding an interview of Mr. Elmaati. He also reported that he had been advised by DFAIT that Mr. Elmaati would rather meet with the RCMP than CSIS, but would like to meet back in Canada and not in Egypt. DFAIT provided Staff Sergeant Fiorido with copies of two court documents, obtained from Mr. Elmaati's mother, from two separate court appearances in which the judge ruled that Mr. Elmaati should be released. On both occasions, the Egyptian authorities would not release him but returned him to custody. Paragraphs 93 to 96 of Chapter 7 set out Mr. Elmaati's description of the process whereby he was repeatedly released from detention by Court Order and then immediately re-detained.

295. On March 4, 2003, Staff Sergeant Fiorido was informed that Mr. Elmaati was now willing to meet with Canadian officials in Egypt provided that the Egyptian authorities did not object. On March 12, Project A-O Canada, after consulting representatives from Project O Canada and RCMP members from "A" and "C" Divisions, determined that the methodology to be used in an interview of Mr. Elmaati would be to conduct a "cautioned" interview, one that complied with the *Canadian Charter of Rights and Freedoms*.

296. By June 2003, the RCMP was still awaiting permission from the Egyptian authorities. On June 5, Staff Sergeant Fiorido sent a letter to Egyptian authorities requesting a meeting in Cairo to discuss two files, including that of Mr. Elmaati. In his request, Staff Sergeant Fiorido, relying on descriptions of Mr. Elmaati found in previous correspondence from the RCMP, CSIS and other agencies (and located in the Rome liaison office file that he reviewed on arrival in Rome), described Mr. Elmaati as the "terrorist detained in Egypt" and stated that the RCMP was still very much interested in interviewing him. When interviewed by the Inquiry, Staff Sergeant Fiorido stated that after his meetings in Cairo he became quite certain that access according to the conditions specified by the RCMP (a direct face-to-face interview) would never be granted. Indeed it never was.

297. A July 25, 2003 unsigned briefing note to the Commissioner stated that a face-to-face interview with Mr. Elmaati would never be granted and described the only conditions under which an interview could possibly be facilitated. Inspector Reynolds told the Inquiry that an interview on these conditions would have been of no value since it could not guarantee the truthfulness of the answers and would not constitute useful evidence. Assistant Commissioner Proulx stated that an interview under these conditions was unacceptable.

Service's characterization of Mr. Elmaati

298. In March 2003, the Service expressed concern to DFAIT ISI about Mr. Elmaati's activities if he were to be released.

299. In May 2003, the Service wrote to the Egyptian authorities asking about Mr. Elmaati's continued detention. The request included similar concerns to those it had communicated to DFAIT ISI two months earlier, and one additional concern. (The details of these concerns cannot be disclosed here for reasons of national security confidentiality.)

300. Mr. Hooper stated that regardless of the language used by the Service, or whether the Service expressed any concerns at all, in his view, the Egyptian authorities would have the same choices: they could keep Mr. Elmaati in custody or release him back to Canada. When asked whether the statements created a risk of mistreatment, a senior CSIS official expressed the view that the Service's characterization of Mr. Elmaati would not have had any effect on Egyptian authorities.

301. A CSIS employee with experience abroad stated that he did not believe that CSIS' comments would have had any impact on Mr. Elmaati's continued

detention and treatment in Egypt. Another CSIS official stated that he had not considered whether the characterization of Mr. Elmaati would have an effect on the length of Mr. Elmaati's detention, that CSIS' characterization was not evidence, and that he always considered legal processes to be separate from the intelligence process.

302. According to a senior CSIS official, the Service's purpose was to try to elicit a response from Egyptian authorities, as the Service had not received any information from them. He also stated that he did not know how the Egyptian authorities would have interpreted the comments, but that he did not think that they were relying on anything the Government of Canada was doing to keep Mr. Elmaati in detention. This senior CSIS official further stated that it was important to both the Service and DFAIT to know what the Egyptian authorities intended for Mr. Elmaati.

303. The Inquiry was unable to obtain any information from Egyptian authorities about the impact, if any, of CSIS' expressions of concern on the detention of Mr. Elmaati.

Consular Services in late 2003

Seven month gap between consular visits

304. During the summer of 2003, both the consul and vice-consul at the Embassy in Cairo changed. In June 2003, Stuart Bale left the position of consul and was replaced by Roger Chen. On July 29, 2003, Ms. Pastyr-Lupul instructed Mr. Chen to arrange for a visit to Mr. Elmaati, since it had been five months since the last consular visit. However, the next consular visit did not take place until September 24, 2003, some two months later, and seven months after the previous consular visit.

305. Throughout this period, Mr. Elmaati's family was in contact with Ms. Pastyr-Lupul and consular officials at the Embassy, who kept them informed of the efforts being made in Mr. Elmaati's case. Consular officials assisted the family by requesting and obtaining permission letters for its visits to Mr. Elmaati unaccompanied by Embassy staff.

Seventh consular visit

306. When consular officials attempted to visit Mr. Elmaati on September 19, 2003, they were informed that he had been moved to the Abu Zaabal jail. On September 24, 2003, Consul Roger Chen and Vice-Consul Anna Pappas visited the Abu Zaabal jail. Mr. Chen described the visit as routine; they asked the

typical list of questions regarding medical needs, information to be passed on, and any special requests. When asked whether the typical list of questions included questions about mistreatment, Mr. Chen stated that they would never directly ask Mr. Elmaati whether he was being mistreated but did ask him questions about his well-being, such as how he found the prison conditions, how he was being treated and whether he had any special needs.

307. Mr. Elmaati advised Mr. Chen that he required medical attention for his knee. Mr. Elmaati had fallen six months earlier and thought he might have torn a ligament; his knee was inflamed and he could barely walk. Mr. Elmaati told Mr. Chen that he had reported the problem to the prison doctor but no further action had been taken. Mr. Chen told Mr. Elmaati that he would inquire with prison authorities and the Egyptian Ministry of Foreign Affairs to see that his request for medical attention was attended to.

308. Mr. Chen described Mr. Elmaati as very agitated over the delay in consular visits and family visits. Mr. Chen reminded Mr. Elmaati that consular officials had assisted the family each time they wanted to arrange a visit. Mr. Elmaati's mother had visited him a few days prior to this consular visit. Mr. Chen told Mr. Elmaati that departmental consular policy and procedures dictate quarterly consular visits but the increased delay in this case had been a result of departmental changeover.

309. Mr. Elmaati indicated his belief that CSIS played a role in his incarceration and that the Canadian government was not doing enough to secure his release. Mr. Elmaati asked Mr. Chen about his previous two court releases and suggested that a third release was forthcoming.

310. During this meeting, Mr. Elmaati stated that he was being transferred every three to four months between Tora and Abu Zaabal prisons. According to Mr. Chen's report of the meeting, Mr. Elmaati initially advised that he did not know why he was being transferred but later, when the prison officials stepped out of the room, told Ms. Wassef in Arabic that he was being transferred for interrogation by Egyptian State Security. Ms. Wassef could not recall the exact wording used by Mr. Elmaati but confirmed that it most probably was "interrogation."

311. The Embassy followed up its consular visit with a diplomatic note to Egypt asking for verification of the authenticity of the court order releasing Mr. Elmaati from detention. The Embassy also informed the family of the consular visit and kept the family updated regarding its efforts over the following

weeks. The family informed the Embassy of its visits to see Mr. Elmaati on November 17, December 1, and December 22, 2003.

DFAIT seeks local legal advice

312. In late October 2003, after DFAIT received confirmation that the Egyptian courts had issued a third release order for Mr. Elmaati, consular officials sought the assistance of Egyptian legal counsel in order to better understand a hypothetical case of a foreigner detained in the Egyptian prison system. They sought clarification of Egypt's ability to detain a prisoner despite his having been released by an order of the court, what impact national security concerns might have on Egypt's ability to detain a person, and whether a person detained under these circumstances would be entitled to legal representation.

313. Egyptian counsel informed the consular officials that while any prisoner in Egypt is in ordinary circumstances entitled to legal counsel and to a *habeas corpus* remedy if there is no reason for his detention, under the current state of martial law, these rights were suspended. Under martial law there was no limit to the Minister of the Interior's ability to detain someone deemed to be a security risk.

Eighth and final consular visit

314. On December 29, 2003, Mr. Chen and Ms. Wassef had their final consular visit with Mr. Elmaati. On their arrival at the Abu Zaabal jail, prison officials asked whether the visit was as a result of a human rights complaint by Mr. Elmaati. Mr. Chen stated that it was not and that the visit was a quarterly consular visit to which Mr. Elmaati was entitled. According to Mr. Chen, Mr. Elmaati stated that during his interrogations Egyptian officials had told him they had nothing against him and therefore, in Mr. Chen's view, Mr. Elmaati was convinced that he was being detained because Canadian authorities wanted him there. Mr. Elmaati advised that he had not yet met with his Egyptian lawyer but the lawyer was working with his mother.

315. In Mr. Chen's report of this meeting, he wrote that Mr. Elmaati had requested that he and Ms. Wassef take note of the fact that he had been tortured in Syria in the same facility in which Maher Arar had been tortured, and that he believed that it might have been the same official who tortured them both. Mr. Chen's report also stated that Mr. Elmaati advised that Egyptian intelligence officials had taken his Canadian citizenship certificate, as well as his credit cards and other identification cards when he first arrived in Egypt, and that Syrian

officials had taken over C$5,000 worth of his personal belongings contained in three bags that he brought to Syria.

316. During this period, consular officials were told that Mr. Elmaati was being held in solitary confinement but was allowed out of his cell between 9:00 a.m. and 3:00 p.m. every day. He had access to toilet facilities and blankets; however, he indicated that it was cold in the prison. He also advised that he had been seen by the prison doctor and that an MRI for his knee had been scheduled. Although Mr. Elmaati had access to recreational facilities, he could not use them because of problems with his knee.

317. Mr. Chen attempted to have Mr. Elmaati sign a retainer agreement permitting Mr. Paul Copeland, a Toronto lawyer, to act for him in conjunction with Amnesty International. Prison officials refused to allow Mr. Elmaati to sign the document and directed Mr. Chen to go through official channels to have the document approved. Mr. Chen reported that Mr. Elmaati asked him whether his oral agreement to the retainer, as witnessed by Mr. Chen and Ms. Wassef, would be sufficient but Mr. Chen advised that he was not qualified to confirm whether this would have any legal effect or be acceptable to the firm in Canada. According to Mr. Chen, Mr. Elmaati suspected that this was because the retainer agreement made mention of human rights concerns. During this meeting, Mr. Elmaati gave consular officials an envelope which Mr. Chen understood to be a card or letter for his intended wife (on September 22, 2003 DFAIT had been advised by Badr Elmaati that Mr. Elmaati's Syrian bride-to-be had decided that she would wait for Mr. Elmaati to be released), which was to be passed to Mr. Elmaati's mother.

RCMP Requests Assistance from DFAIT

Request for Intervention by Egyptian Ambassador to Canada

318. In late August 2003, RCMP Chief Superintendent Dan Killam wrote a letter to Mr. Livermore requesting that he approach the Egyptian Ambassador to Canada to ask for her assistance in facilitating access to Mr. Elmaati in Egypt. Project A-O Canada understood that the Ambassador had been of assistance to Canadian law enforcement in the past, and it was hoping that she could assist the RCMP in obtaining an interview of Mr. Elmaati in Egypt. In this letter, the RCMP stated that an interview of Mr. Elmaati was necessary, as a matter of national security, in order to determine whether the information contained in Mr. Elmaati's alleged confession was true. The RCMP further stated that the interview would have to be conducted under appropriate conditions that met the evidentiary standards expected by Canadian courts.

Request for assistance from Canadian Ambassador to Egypt

319. In late October 2003, Project A-O Canada managers met with the Canadian Ambassador to Egypt, Ambassador de Salaberry, and Mr. Livermore to discuss Project A-O Canada's request for an interview of Mr. Elmaati. At this meeting, the Ambassador stated that he would wait for a letter from DFAIT outlining the need to interview Mr. Elmaati before he approached the Egyptian government.

DFAIT drafts letter to Egyptian Foreign Minister

320. On November 25, 2003, Robert Fry, then Senior Policy Advisor in the office of then Minister of Foreign Affairs, William Graham, Ms. Pastyr-Lupul and Konrad Sigurdson, then Director General of the Consular Affairs Bureau, met with Badr Elmaati, father of Mr. Elmaati. In his interview, Mr. Fry stated that after the Arar experience, he felt it was important to meet with Badr Elmaati. After this meeting, Mr. Fry indicated he would attempt to have Minister Graham write a letter to the Egyptian Foreign Minister to request that Mr. Elmaati be given due process. Mr. Fry told the Inquiry that it was unusual to have the Minister write a letter and it had only been done on two other occasions while he occupied his post (including for Mr. Arar), but that it was reasonable in the circumstances because it seemed that Mr. Elmaati was being unfairly detained. According to Mr. Fry, the fact that Mr. Elmaati was repeatedly released and then re-detained suggested that parts of the Egyptian system were willing to let him go and parts were not. Mr. Fry told the Inquiry that a letter requesting due process was therefore appropriate in these circumstances. According to Ms. Pastyr-Lupul, a Canadian who is detained abroad is subject to the laws of that country, and consular officials cannot intervene in the legal jurisdiction of that country by requesting that the detainee be released. In these types of circumstances, all DFAIT can do is request that the individual be granted due process.

321. Mr. Fry also stated that he would have briefed then Minister Graham on Mr. Elmaati, although the briefing would have been limited to stating that Mr. Elmaati went to Syria, was mistreated in Syria, was now in Egypt, was doing better in Egypt, and DFAIT had access to him and he was not in any imminent danger. The letter to the Foreign Minister was drafted but never sent because the final draft was prepared the day before Mr. Elmaati's final release.

DFAIT concerns about possible mixed messages

322. On December 2, 2003, a meeting was held among a number of DFAIT divisions regarding the draft consular letter from the Minister and the RCMP's

request for assistance in obtaining access to Mr. Elmaati. One of the issues raised at this meeting was whether confusion could arise from putting forward two seemingly competing interests—of consular access and police access. According to Mr. Heatherington's summary of this meeting, the two initiatives (one asking for Mr. Elmaati's release on humanitarian grounds and the other asking for police access to Mr. Elmaati in order to collect evidence that could be used against him in Canada) could seem contradictory. In his interview for the Inquiry, Mr. Livermore stated that in his view the two interests were not inconsistent, and it would have been relatively easy to protect against the Egyptians forming the wrong impression by making Ambassador de Salaberry aware of both initiatives and managing the two interests very carefully on the ground. Ambassador de Salaberry, however, stated that by this time he had grown impatient because he had been reporting the divergence between the two interests and yet there was still no Government of Canada position.

323. As a result of this meeting, and consultations with counsel at DOJ who advised that there might be issues with evidence obtained in an Egyptian prison, ISI recommended to DFAIT Deputy Minister Gaëtan Lavertu that DFAIT convey its concerns regarding the admissibility of evidence obtained in the course of an overseas interview to the RCMP, and proceed with the letter from the Minister. ISI also stated that if the letter were to prove successful, and Mr. Elmaati was able to return to Canada following his release, then the RCMP would be able to pursue its interview in more favourable conditions.

324. Mr. Saunders could not recall having attended the meeting on December 2, 2003. However, he did recall having discussed whether DFAIT should assist the RCMP in getting access to Mr. Elmaati. According to Mr. Saunders, telling the Egyptians that there were national security dimensions to this particular consular case would have neither impeded nor delayed the ultimate release of Elmaati because they were already aware that there was a national security interest.

325. As stated above, the Minister's letter was never sent because it was prepared the day before Mr. Elmaati's final release. Nor did DFAIT ISI ever approach the Egyptian Ambassador to Canada with a request for RCMP access to Mr. Elmaati.

Mr. Elmaati released from detention[7]

326. On January 11, 2004, Mr. Elmaati was informed that the Minister of the Interior had ordered that he be released from detention. He was then sent from the jail to State Security, where he remained for three days before being sent to his mother's home on January 14, 2004. DFAIT was informed of Mr. Elmaati's possible release on January 14, 2004. On this same day, Ms. Pastyr-Lupul was able to confirm this information with Mr. Elmaati's mother.

327. Ms. Papas spoke with Mr. Elmaati on January 15, 2004. According to Ms. Papas, Mr. Elmaati indicated that he was feeling good and was happy for his mother and father who had been through so much. Mr. Elmaati said that his release came as a surprise and that he had been advised by prison officials that his release was ordered by the Ministry of the Interior. Ms. Papas asked Mr. Elmaati about his health and knee surgery; he responded that he had not had the surgery although the surgery had been booked. According to Ms. Papas, Mr. Elmaati thanked the Embassy; he stated that he appreciated the help that he had received. He indicated that he had not made any travel plans yet and would be spending some time with his family. He agreed to come to the Embassy and said he would arrange to make an appointment to meet with consular officials.

CSIS and the RCMP learn of Mr. Elmaati's release

328. CSIS learned of Mr. Elmaati's release in mid January 2004. In the same time period, the Service also learned that the reason for his release was that he was no longer considered to be a threat to the security of Egypt.

329. When CSIS learned of Mr. Elmaati's release, it explored with DFAIT the possibility of interviewing him. Because the intention was to gather threat-related information, the proposed interview would be conducted without other officials present. The Service intended to ask a number of questions regarding Mr. Elmaati's knowledge of threats to Canada, as well as whether he was mistreated in Syria and/or Egypt, and if so, how. CSIS also recommended that a doctor examine Mr. Elmaati for any abuse he might have suffered.

330. On the same date as Mr. Elmaati's release, January 14, 2004, the Service advised a U.S. agency that Mr. Elmaati had been released from custody and asked whether it had any further information regarding the circumstances

[7] This section of this chapter contains a discussion of events that occurred after Mr. Elmaati's release. The Terms of Reference do not require any examination of actions of Canadian officials in this post-release period, and no findings have been made in respect of them. A discussion of the post-release period has been included to provide context and for the sake of completeness.

of the release. This communication included a statement of concern about Mr. Elmaati's activities if he were to depart Egypt. This correspondence included CSIS caveats. According to the Service, it shared this information with, and sought information from, the U.S. agency because of their previous exchanges and mutual interests.

331. On January 14, 2004, CSIS (as well as NSIB, CID and the RCMP's liaison office in Rome) informed Project A-O Canada that Mr. Elmaati had been released from custody and that it was believed that he was still in Egypt but wanted to return to Canada. CSIS also, on January 14, advised DFAIT and the Canada Border Services Agency of Mr. Elmaati's release. The following day, on January 15, 2004, the CBSA, in response to a request from the Service, amended the status of its border lookout on Mr. Elmaati.

332. On January 16, 2004, a meeting was held in Ottawa between representatives from the RCMP and CSIS to discuss Mr. Elmaati's release from detention. Topics of discussion included whether Mr. Elmaati would be returning to Canada and whether the RCMP could interview him in Egypt. The RCMP did not consider laying any charges against Mr. Elmaati to be a viable option at the time.

Attempts to obtain access to Mr. Elmaati through DFAIT

333. Both CSIS and the RCMP were interested in interviewing Mr. Elmaati after his release. On January 19, 2004, a senior CSIS official contacted Mr. Heatherington by email regarding the Service's interest in interviewing Mr. Elmaati. Mr. Heatherington confirmed DFAIT ISI's continuing support. Mr. Heatherington stated, however, that his support of CSIS' efforts was on the understanding that Mr. Elmaati would have to agree to meet with CSIS. On January 21, the RCMP liaison officer requested notification of any visits to the Embassy by Mr. Elmaati.

334. Further to the Service's interest in interviewing Mr. Elmaati without other officials present, the Service requested that DFAIT facilitate contact between Mr. Elmaati and a Service representative. The Head of Mission, Cairo, was supportive as long as it was voluntary and Mr. Elmaati was advised it would be with a CSIS representative. On January 18, 2004, Vice-Consul Anna Papas advised that she was not in a position to facilitate contact with the Service without express approval by the DFAIT Consular Management officer, who at the time was Ms. Pastyr-Lupul. Approval was never given because Mr. Elmaati did not want to meet with, or be contacted by, the RCMP or CSIS.

335. On January 21, 2004, Ms. Papas requested the advice of Mr. Sigurdson concerning CSIS' interest in contacting Mr. Elmaati. Ms. Pastyr-Lupul, on behalf of Mr. Sigurdson, instructed Ms. Papas not to provide any information about Mr. Elmaati without his permission.

Mr. Elmaati meets with Embassy officials

336. Mr. Elmaati and his mother paid a visit to the Canadian Embassy in Cairo on January 25, 2004. According to a report prepared by Ms. Papas, Mr. Elmaati stated that he was feeling fine but that his knee was still bothering him. Mr. Elmaati advised that the Egyptian authorities did not inform him why he was finally released. When asked about the treatment he had received while in detention, Mr. Elmaati replied that it could take him hours or days to recount all that had happened to him and so he would simply summarize certain events. According to Ms. Papas' report, Mr. Elmaati then described how he had been treated in Syria from his arrest at the airport in Damascus to his transfer to Egypt. This included his description of his cell as being like a "tomb," and an account of the torture that had been inflicted during interrogations, such as being doused with cold water and beaten with cables. According to Ms. Papas' report, when asked about his treatment in Egypt, Mr. Elmaati would say nothing more than that it was "a little bit better" than Syria, that he had access to a doctor and that the food was "no problem."

337. Mr. Elmaati stated that since his release, he was required to report to State Security every five days to provide details on his whereabouts, who he talked to and what was said. According to Ms. Papas' report, Mr. Elmaati was afraid, based on his last uneasy post-release interview with State Security, that he might be detained again. Ms. Papas wrote that when asked about his future plans, Mr. Elmaati stated that his first priority was his intended wife, who was expected to travel from Syria to Egypt in the next couple of days, and Mr. Elmaati would not leave for Canada without ensuring that she could go too.

338. When Mr. Elmaati was released from detention, both his Canadian passport, which would expire in February 2004, and his Egyptian passport, which had expired 20 years earlier, were returned to him. However, his citizenship, social insurance, health insurance and credit cards were not. Mr. Elmaati therefore requested the assistance of the Embassy in obtaining a new Canadian passport and citizenship card. According to Ms. Wassef, Mr. Elmaati was advised that the Embassy would attempt to retrieve his citizenship card from the Egyptian authorities but he was provided with an application for both a citizenship card and a passport just in case. At the end of the meeting, Ms. Papas asked whether

Mr. Elmaati would require the assistance of the Embassy should he decide to travel back to Canada. Mr. Elmaati responded that he would probably require some assistance because he was nervous about going back alone and would be in touch if he decided to go back.

Embassy did not disclose Mr. Elmaati's information

339. On January 25, DFAIT advised CSIS that Mr. Elmaati had visited the Canadian Embassy requesting consular services. Ms. Papas reported that she provided the necessary services and then asked Mr. Elmaati if he would have any objection to being contacted by CSIS. Mr. Elmaati replied that he did not want his information to be disclosed to the Service; nor did he want to be contacted by the Service. Based on this response, the Embassy did not provide either CSIS or the RCMP with Mr. Elmaati's information.

340. On January 28, 2004, DFAIT advised Project A-O Canada that Mr. Elmaati had refused to allow his contact information to be disclosed to any other Canadian agencies. On February 12, 2004, CSIS advised Project A-O Canada that Mr. Elmaati had attended at the Canadian Embassy in Cairo and had declined the opportunity to speak with CSIS or the RCMP. According to the RCMP's report of the communication, CSIS stated that it did not have any plans to interview Mr. Elmaati but suggested that if the RCMP had the opportunity (through Mr. Elmaati's lawyer) it should take advantage of it.

CSIS obtains information about Mr. Elmaati's release

341. In February 2004, a senior CSIS official obtained information from a foreign agency concerning Mr. Elmaati's detention in Egypt and possible reasons for his release.

Request for detention and questioning

342. In the middle of February 2004, the Service learned that steps had been taken by a foreign agency to have Mr. Elmaati detained and questioned if he attempted to enter an allied country.

Mr. Elmaati's request for security escort from DFAIT

343. On February 17, 2004, Mr. Elmaati telephoned the Canadian Embassy in Cairo and requested a meeting to discuss his return to Canada. Mr. Elmaati expressed concern that while in transit back to Canada he might be detained or arrested in another country. He was also concerned that the Egyptian authorities might arrest him again or prevent him from leaving the country. Mr. Elmaati

therefore requested a security detail. The Embassy responded that Canada could not interfere in the lawful administration of Egyptian law: if the Egyptians or any other police legally arrested him, there was nothing that DFAIT could do to stop them.

344. In February and March 2004, the Consular Affairs Bureau and the Embassy made various attempts to assist Mr. Elmaati's return to Canada in the face of bureaucratic difficulties in Egypt. Consular officials sent a diplomatic note to Egyptian authorities requesting confirmation that Mr. Elmaati would not have any difficulties leaving the country. They also assisted Mr. Elmaati in obtaining travel documents, replacing personal documents, attempting to secure funding from his family for his airfare back to Canada, making arrangements for Mr. Elmaati to consult a doctor, and arranging for a consular official to meet Mr. Elmaati at his point of transit. Consular officials advised Mr. Elmaati of all actions taken on his behalf.

345. Despite Mr. Elmaati's requests, the Consular Affairs Bureau did not provide him with an escort to Canada. In her interview, Ms. Pastyr-Lupul stated that the Consular Affairs Bureau only provided an escort by a consular official in extraordinary situations, assessed at the highest levels, where there was a fear for someone's safety, security, and physical well-being if not accompanied. Ms. Pastyr-Lupul stated that in the fall of 2003, after the release of Mr. Arar, there had been discussions at the consular level about whether the provision of an escort back to Canada would become a consular service. DFAIT decided that it would not become a standard consular service because this would create a significant financial burden. DFAIT was therefore conscious of the danger in setting a precedent that all Canadians in trouble abroad would receive a DFAIT escort back to Canada. In Mr. Elmaati's case, the Consular Affairs Bureau was concerned about his safe passage out of Egypt and therefore arranged to have Mr. Elmaati escorted by consular officials through the security channels at the airport, and then monitor his journey at his point of transit.

346. On March 4, 2004, DFAIT provided the Service with the anticipated travel schedule for Mr. Elmaati's return to Canada. According to this schedule, Mr. Elmaati would depart Cairo on March 7 and would return to Toronto via Amman and Frankfurt. When asked whether the Service had informed DFAIT of the foreign agency's request to have Mr. Elmaati detained and questioned on his return journey, as discussed above at paragraph 342, the Service stated that it had no information to suggest that the authorities in Frankfurt (through which Mr. Elmaati would travel) had considered the request to detain and question.

The Service also noted that it had been advised by DFAIT that DFAIT had made arrangements to facilitate Mr. Elmaati's return to Canada.

347. DFAIT told the Inquiry that consular officers have no authority to intervene in local legal matters and would have been unable to prevent any detention of Mr. Elmaati while in transit. When asked if it would have come to a different decision regarding an escort for Mr. Elmaati if it had known of the foreign agency's request to detain, DFAIT told the Inquiry that while the question is hypothetical, it is unlikely DFAIT would have taken a different approach. According to DFAIT, providing an escort would not have afforded Mr. Elmaati any additional protection beyond what he received by being accompanied to the airport and provided with a travel facilitation letter.

Mr. Elmaati's return to Canada

348. On March 5, 2004, Project A-O Canada learned that Mr. Elmaati was to return to Canada on March 7. On March 7, the Service was informed that Mr. Elmaati was on his way to the airport in Cairo and was scheduled to depart on a flight bound for Canada, through Frankfurt. Although Mr. Elmaati checked into his flight in Cairo, he was not permitted to board the plane.

349. On March 22, 2004, Staff Sergeant Fiorido, the RCMP's liaison officer in Rome, sent an update to Project A-O Canada regarding Mr. Elmaati's delayed departure from Egypt, apparently because Mr. Elmaati's name had not been removed from a list of persons of interest.

350. On March 29, 2004, Mr. Elmaati returned to Canada.

5

ACTIONS OF CANADIAN OFFICIALS IN RELATION TO ABDULLAH ALMALKI

1. The following is a summary of information obtained by the Inquiry, largely from interviews of Canadian officials and review of relevant documents, concerning the actions of Canadian officials in relation to Mr. Almalki.

Canadian officials' interest in Mr. Almalki

CSIS

2. Starting in the early 1990s, CSIS was actively investigating potential security threats posed by Canada-based supporters of Sunni Islamic extremism, al-Qaeda and Osama Bin Laden. In the late 1990s, in the normal course of this investigation, CSIS learned that Abdullah Almalki might have some knowledge of the threat to Canada and Canadian interests abroad. The Service had concerns arising out of information that linked Mr. Almalki to Islamic extremists.

3. On two occasions during the summer of 1998, Mr. Almalki agreed to be interviewed by a CSIS investigator. According to CSIS records, during the first interview Mr. Almalki was asked about his family, his business, his business travel and his work in Pakistan and Afghanistan with Human Concern International, a Canada-based charitable organization. According to CSIS' report of the second interview, the CSIS investigator asked Mr. Almalki about the August 1998 attacks in Sudan, Afghanistan, Tanzania and Kenya, and about Osama Bin Laden.

4. Mr. Almalki agreed to be interviewed by CSIS investigators again in February 2000. According to Mr. Almalki and to CSIS records, the investigators questioned him about his business. Around that same period, Mr. Almalki recalls being told that people in the Muslim community had been questioned about him by CSIS.

5. On several occasions starting in the late 1990s, CSIS shared information about Mr. Almalki with the RCMP and various foreign intelligence and law enforcement agencies, including U.S. agencies and Malaysian agencies. The nature of the shared information varied, but generally related to the threat from Islamic extremists. CSIS' communications were in all cases accompanied by caveats. The Inquiry found no evidence that CSIS shared with or received from Syrian authorities information about Mr. Almalki during this time.

RCMP

6. The RCMP became interested in Mr. Almalki at some point in 2000 and began corresponding and cooperating with the FBI regarding possible investigative steps. In July 2000, the FBI informed the RCMP that Mr. Almalki was suspected of attempting to procure restricted items from the United States for shipment abroad.

7. Following the events of September 11, 2001, the RCMP received several letters from CSIS and U.S. authorities advising it of individuals suspected of supporting Islamic extremism in Canada. Among these letters was a September 26, 2001 letter from CSIS that mentioned but did not name an individual believed to be an "al Qaida procurement officer in Canada," and a September 23, 2001 letter from the FBI describing Mr. Almalki as the "Ottawa-based procurement officer" for Osama Bin Laden. Based on these letters, on October 2, 2001, the RCMP sent a fax to the RCMP liaison officers in Islamabad, Rome, Delhi, Washington, London, Berlin and Paris identifying Mr. Almalki as an "important member" of al-Qaeda. The letters attributed the description of Mr. Almalki as an "important member" of al-Qaeda to another agency; the description was not a product of the RCMP's own investigation. Two days later, on October 4, 2001, the RCMP's liaison office in Rome sent letters to law enforcement agencies in several countries, including Syria and Egypt, providing biographical data about several Canadian residents, including Mr. Almalki, and requesting any intelligence that might surface on any of them.

8. These October 4 letters were sent further to letters that the liaison office had sent to the same entities on September 29, in which certain Canadian residents (not including Mr. Almalki) were described as being linked through association to al-Qaeda and engaged in activities that posed an "imminent threat" to the public safety and security of Canada. This description was not a product of the RCMP's own investigation, but reflected information from another source.[1] At

[1] A more detailed discussion of the September 29, October 2 and October 4 letters is at paragraphs 15 to 21 of chapter 4.

the end of each of the October 4 letters was a caveat prohibiting dissemination without the RCMP's consent.

9. Since Syria did not participate in the Inquiry, the Inquiry did not receive any information regarding whether the RCMP's letters to Syria of October 4 and September 29 had any effect on Syria's actions in respect of Mr. Almalki.

Project A-O Canada

10. CSIS provided information to the RCMP, including an advisory letter dated October 5, 2001, at the RCMP's request. In October 2001, Mr. Almalki became the primary target of the Project A-O Canada investigation, which focused on Mr. Almalki's alleged involvement with al-Qaeda. Project A-O Canada investigators were instructed to try to uncover Mr. Almalki's business relationships around the world with a view to collecting evidence that might support a charge of facilitating terrorist activity.[2]

11. During the period of the Project A-O Canada investigation, CSIS continued to exchange information regarding Islamic extremists with foreign intelligence and law enforcement agencies, and provided the RCMP with additional advisory letters containing information on Mr. Almalki.

Investigative tools used by Project A-O Canada

12. In its investigation into Mr. Almalki, Project A-O Canada obtained information about Mr. Almalki from various sources, including surveillance, execution of search warrants, exchanges of information with foreign law enforcement agencies and border lookouts placed with Canadian and United States customs agencies. One of these investigative tools—the lookouts—is described immediately below.[3]

Canada Customs lookouts

13. On November 1, 2001, at the request of the RCMP, Canada Customs issued a lookout against Mr. Almalki and four of his family members. On November 2, 2001, at the request of Project A-O Canada, the lookout was changed.

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[2] The crime of "facilitating terrorist activity" was created by Bill C-36 (the *Anti-Terrorism Act*), which came into force on December 24, 2001, and is now found at section 83.19(1) of the *Criminal Code*.

[3] Background information on American and Canadian lookouts is included in Chapter 4, paragraphs 22 to 25.

U.S. Customs lookouts

14. On June 11, 2001, a TECS lookout was entered for Mr. Almalki, so that he would be detained for questioning if he attempted to enter the United States.[4] RCMP documents suggest that the RCMP was aware as of early October 2001 that this lookout was in place. On October 31, 2001, Inspector Michel Cabana, the Officer in Charge of Project A-O Canada, authorized a request to the United States Customs Service to issue TECS checks and lookouts on Mr. Almalki and several of his family members. Though Project A-O Canada was aware that Mr. Almalki was already a subject of a TECS lookout, it made this request so that it would be notified of any cross-border activity. The request described Mr. Almalki and his family members as "Islamic extremist individuals suspected of being linked to the Al Qaeda terrorist movement". A United States customs agent advised the RCMP on November 6, 2001 that the individuals named in the lookout request, and their vehicles, had been entered into the TECS system.

15. According to the RCMP, the language "Islamic extremist individuals suspected of being linked to the Al Qaeda terrorist movement" contained in the lookout request was formulated in part based on information received from other agencies, and in part based on information obtained from its own investigations.

16. A copy of the RCMP's October 31, 2001 request to the U.S. Customs Service was included on the CDs provided to U.S. agencies in April 2002.

Mr. Almalki goes to Malaysia

November 27 departure

17. On November 27, 2001, Mr. Almalki left Canada for Malaysia, with a return ticket and a scheduled return date of December 25, 2001. His family—his pregnant wife, his four children and his parents—all flew to Malaysia the following day. Project A-O Canada was aware of Mr. Almalki's parents' travel plans prior to November 28, but did not become aware of the travel plans of Mr. Almalki's wife and children until immediately prior to their departure on November 28. Project A-O Canada did not learn of Mr. Almalki's departure until several days after he left Canada.

18. The Inquiry found no evidence to suggest that the RCMP or any other Canadian officials were aware of Mr. Almalki's itinerary or communicated it to foreign agencies before he left Canada.

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[4] Inspector Clement believed that this lookout may have been entered at the request of a U.S. agency.

RCMP searches for Mr. Almalki

19. After learning that Mr. Almalki's family had departed for Malaysia, Project A-O Canada officials, unaware that Mr. Almalki had already left the country, spent several days trying to locate him in Canada. According to Inspector Cabana's notes from November 30, 2001, Inspector Cabana met that day with Staff Sergeant Patrick Callaghan (a member of the Ottawa Police Service, who was seconded to Project A-O Canada) and requested that the airport special squad be advised of the situation, so that if Mr. Almalki was located, the squad could arrest him for breach of the peace. The notes indicate that the purpose of arresting Mr. Almalki was to interview him. In his interview with the Inquiry, Inspector Cabana stated that the goal of arresting Mr. Almalki would not have been to prosecute him, but to detain and question him and confront him with some of the evidence that the RCMP had uncovered; he thought that he needed to take advantage of every opportunity to apprehend and interview Mr. Almalki, because there was no guarantee that he would return to Canada. Inspector Cabana said that he could not remember what led the RCMP to believe that it had grounds to arrest Mr. Almalki for breach of peace. However, he said that, at a later date, he looked at the breach of peace provisions of the Criminal Code and determined that they do permit peace officers to arrest individuals whom the officers believe, on reasonable grounds, are going to be or will be breaching the peace. Inspector Cabana said that arresting Mr. Almalki for breach of the peace, and interviewing him, was consistent with Project A-O Canada's mandate, which was to do everything lawfully within its powers to prevent anything from happening anywhere.

20. On November 30, 2001, a Project A-O Canada investigator learned that Mr. Almalki had purchased a plane ticket to Malaysia, with a departure date of November 27 and a return date of December 25. Later that day, Corporal Randy Buffam of Project A-O Canada notified the FBI that Mr. Almalki had departed for Malaysia. 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.[5]

21. On December 1, 2001, Corporal Buffam asked the RCMP liaison officer in Singapore to liaise with foreign agencies to find out if Mr. Almalki had arrived in Kuala Lumpur on November 29, and to obtain copies of any documentation he might have produced. However, six days later, on December 7, the RCMP's

[5] The understanding that there was to be an open sharing of information is discussed above at Chapter 3, paragraph 77.

Criminal Intelligence Directorate (CID) instructed the liaison officer to immediately discontinue all efforts to obtain information from foreign agencies, on the basis that such efforts could jeopardize the integrity of the investigation.

22. On December 2, 2001, the RCMP finally confirmed that Mr. Almalki had left Canada for Malaysia on November 27. The RCMP also became aware on that day that Mr. Almalki's brother had been with him at the airport. Inspector Cabana advised Superintendent Garry Clement (the Assistant Criminal Operations Officer at RCMP "A" Division) of Mr. Almalki's confirmed departure, and Superintendent Clement advised the Ottawa Police Service and a foreign agency. When asked why he had advised this foreign agency of Mr. Almalki's departure, Superintendent Clement said that he believed that Mr. Almalki had left Canada under very suspicious circumstances, and the RCMP wanted the foreign agency's assistance in monitoring and locating him. Mr. Almalki's departure was suspicious, Superintendent Clement elaborated, because he was so surveillance conscious and because, though he spoke of concern for his wife and children, he flew separately from them to Amsterdam (en route to Malaysia). Superintendent Clement told the Inquiry that he did not have information as to why Mr. Almalki might have been travelling on his own, and that he did not specifically consider that there might be legitimate reasons for Mr. Almalki to decide to fly to Amsterdam separately from his wife and children.

Luggage search

23. Prior to the departure of Mr. Almalki's wife and children on November 28, 2001, the RCMP recommended to officials at Dorval airport in Montreal that the family's baggage (which consisted of six to eight suitcases) be x-rayed. When airport officials x-rayed and searched the luggage, they found a computer tower. On the instructions of Inspector Cabana, officials seized the computer, and Inspector Cabana obtained a warrant to copy the hard drive. In early January 2002, a U.S. agency requested a copy of the data from the hard drive and the RCMP's analysis of that data. While the data and analysis were not shared with the U.S. agency at that time, the data from the analysis of the hard drive was uploaded to the RCMP Supertext database and included on the CDs that were provided to U.S. agencies in April 2002 (as discussed below).

Events during Mr. Almalki's stay in Malaysia

24. Mr. Almalki stayed in Malaysia from late November 2001 until approximately April 2002. He did not return to Canada on December 25, 2001 as scheduled. CSIS learned in late January 2002 that Mr. Almalki had postponed his return to Canada because of an illness in the family. Project A-O Canada

learned on January 22, 2002, during an interview of one of Mr. Almalki's brothers, that Mr. Almalki and his family had extended their stay in Malaysia because Mr. Almalki's wife had encountered medical complications surrounding her pregnancy and could not travel back to Canada in time to give birth to the baby.

Information sharing

25. During the time that Mr. Almalki was in Malaysia, CSIS was in contact and shared information with the Malaysian authorities regarding Mr. Almalki. In late April 2002, the Service provided the Malaysians with a message containing business information and information relating to the threat from Islamic extremism. The message was accompanied by a caveat.

26. In March 2002, the Service granted a foreign agency permission to share information regarding one of Mr. Almalki's business contacts with authorities in Bahrain, and that information was apparently shared with Bahraini authorities. Though Mr. Almalki travelled to Bahrain in early April 2002, on his way to Syria, the information that the foreign agency apparently shared with Bahraini authorities was not about Mr. Almalki's travel plans. The Inquiry found no evidence that the Service was aware of Mr. Almalki's plan to travel to Bahrain.

Possible extradition to Syria

27. In December 2001, several weeks after Mr. Almalki had arrived in Malaysia, CSIS learned that Malaysian authorities allegedly had a Syrian warrant for Mr. Almalki's arrest and were considering extraditing Mr. Almalki to Syria. The RCMP also learned about the alleged warrant, and its assistance was sought in convincing Malaysian authorities to arrest and extradite Mr. Almalki. Neither the RCMP nor CSIS was provided with evidence of the arrest warrant, and neither organization requested evidence of it. Superintendent Clement testified at the Arar Inquiry that the normal practice with respect to a warrant having cross-border effect was to put a notice of the warrant in Interpol, but that there was no Interpol notice of the alleged Syrian warrant.

28. The Service's position on the possible arrest/extradition, which it shared with foreign agencies, including Malaysian authorities, was that it would defer to Malaysian law and judgment, but wished to be notified of any arrest. The RCMP, in response to at least two requests from a foreign agency that it share information that might assist the foreign agency in convincing the Malaysians to make the arrest, told the foreign agency that it would not collaborate in any way or support its plan.

29. The RCMP also had discussions with the same foreign agency about a possible plan to arrest Mr. Almalki (apparently without the participation or concurrence of Malaysia) prior to his scheduled return to Canada (on December 25). At a meeting on December 10, 2001 between representatives of the foreign agency, Superintendent Clement, Inspector Cabana, Corporal Buffam, Staff Sergeant Callaghan and Staff Sergeant Corcoran (a member of the Ontario Provincial Police seconded to Project A-O Canada), the foreign agency advised that it would try to locate and apprehend or intercept Mr. Almalki before December 25. Superintendent Clement and Inspector Cabana assumed that the foreign agency would only arrest Mr. Almalki if he travelled through the country in which that foreign agency had jurisdiction, or through a country with which the agency had some sort of relationship. According to Superintendent Clement, the RCMP attendees at the meeting made it clear to the foreign agency that it would not be permitted to arrest Mr. Almalki on Canadian soil.

30. Late in December 2001, CSIS also learned that a request had been made of authorities in another country to arrest and deport Mr. Almalki to Syria. CSIS was advised of this request and was asked whether it had any information to warrant an arrest, and how it felt about the request. The Service responded by stating that Canadian officials would meet Mr. Almalki once he arrived in Canada and that this would suffice for CSIS.

31. The Service did not notify or consult with DFAIT about the possible arrest or extradition of Mr. Almalki. According to a senior CSIS official, the Service would have notified DFAIT if it obtained information that Mr. Almalki had been arrested. The official said that CSIS' operating practice was to inform DFAIT if it became aware that a Canadian living or travelling abroad has had legal action taken against him.

32. It is not clear whether or not the RCMP consulted with DFAIT about Mr. Almalki's possible arrest or extradition. Superintendent Clement said he had reason to believe that a representative of the foreign agency that was seeking the RCMP's assistance with the extradition would be contacting DFAIT, most likely Scott Heatherington, the Director of DFAIT's Foreign Intelligence Division (DFAIT ISI). Superintendent Clement also told the Inquiry that the foreign agency's efforts to engage the RCMP in the arrest and extradition of Mr. Almalki were documented in RCMP situation reports (SITREPS), which were sent to RCMP headquarters, and that it was the responsibility of headquarters and not the investigators to brief other government agencies, including DFAIT. However, the Inquiry did not receive any evidence of either a conversation between a representative of the foreign agency and Scott Heatherington (or

anyone at DFAIT), or any briefing of DFAIT by RCMP headquarters, regarding the possible arrest or extradition of Mr. Almalki.

Border interview by Malaysian authorities

33. In early January 2002, Mr. Almalki travelled to the border of Singapore and Malaysia to renew his visa, which was going to expire in February. According to Mr. Almalki, when he crossed the border back into Malaysia, he was questioned by Malaysian immigration officials about when he would be returning to Canada, his religion and his business. Mr. Almalki observed that the "regional chief" was getting questions and sharing answers with someone on the phone. According to Mr. Almalki, the regional chief advised him that the Canadian government had asked Malaysian authorities to question him.

34. The Inquiry found no evidence that the January 2002 interview of Mr. Almalki by Malaysian officials was conducted at the request of the Canadian government. CSIS told the Inquiry that it did not request the border interview, and that it did not learn until late January 2002 that the interview had taken place. The RCMP told the Inquiry that neither the RCMP database nor inquiries with various members involved in Project A-O Canada supported the conclusion that the RCMP had asked Malaysian authorities to question Mr. Almalki.

January 2002 searches and interviews

35. As discussed in chapter 4, paragraphs 121 to 133, as part of its investigation, Project A-O Canada carried out searches and conducted interviews on January 22, 2002. Among the residences searched were those of Mr. Almalki and one of his brothers. Project A-O Canada members also interviewed several of Mr. Almalki's family members, including two of his brothers and a cousin who had sold the Almalki family plane tickets to Malaysia. According to Mr. Almalki, the officers who interviewed his cousin asked the cousin whether she thought that Mr. Almalki would go to Syria. One of the RCMP officers who conducted this interview told the Inquiry that she does not recall asking Mr. Almalki's cousin this question.

FBI / Project A-O Canada meeting in February 2002

36. In mid-February 2002, members of the Project A-O Canada team met with five FBI personnel over several days. During the visit, the FBI sought and received access to Project A-O Canada files, which included documents seized during the January 22 searches. Among these documents were documents related to Mr. Almalki's businesses.

Sharing of the Supertext database

37. As discussed at Chapter 4, paragraphs 131 to 133, in April 2002, the RCMP provided U.S. agencies with three CDs containing the RCMP's Supertext database. The CDs were sent at the request of those agencies. Among the documents contained on the CDs were documents that had been seized during the January 22, 2002 search of Mr. Almalki's residence and copied from Mr. Almalki's hard drives, such as:

- email messages regarding Mr. Almalki's business activities, including one email from Mr. Almalki to Industry Canada requesting a corporate name change (from TS Linktk International Corp. to DSP Group Inc.);[6]
- other documents from Mr. Almalki's business, including invoices and Ontario Ministry of Finance information questionnaires; and
- a typewritten report prepared by Mr. Almalki containing his recollection of his early 2000 CSIS interview.

38. The CDs also contained documents related to Project A-O Canada's investigation of Mr. Almalki, including:

- Project A-O Canada SITREPs containing information about the investigation of Mr. Almalki, including one that listed Mr. Almalki's companies and described Mr. Almalki as a "procurement officer;"
- documents concerning the time that Mr. Almalki had spent in Afghanistan;[7]
- notes made by RCMP officers involved in Project A-O Canada's investigation;
- notes made by RCMP officers involved in the January 22, 2002 searches, including a note indicating that two switchblades were found in Mr. Almalki's residence;[8]
- documents stating names alleged to be Mr. Almalki's "aliases", including a document dated August 2001 in which the name "Abu Wafa" appeared;[9]

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[6] As discussed at Chapter 8, paragraph 40, Mr. Almalki told the Inquiry that Malaysian officials interrogated him in Syria, and that they had a report listing several trade names that Mr. Almalki had tried (unsuccessfully) to register in Canada.

[7] As discussed at Chapter 8, paragraph 33, Mr. Almalki told the Inquiry that his Syrian interrogators questioned him about the time he had spent in Afghanistan.

[8] As discussed at Chapter 8, paragraph 38, Mr. Almalki told the Inquiry that his Syrian interrogators had a report, which they told him had been provided by Canada, indicating that a search of Mr. Almalki's parents' home in Canada had turned up weapons.

[9] As discussed at Chapter 8, paragraph 25, Mr. Almalki told the Inquiry that his Syrian interrogators showed him a report that referred to him as an "active member of al Qaeda" with the code name "Abu Wafa." According to CSIS records, Mr. Almalki advised CSIS during an interview in the summer of 1998 that the name "Abu Wafa" appeared on his Syrian birth certificate.

- photographs of Mr. Elmaati, Mr. Almalki and other targets of or persons of interest to the investigation;[10]
- documents referring to a named associate of RCMP targets;[11] and
- an organizational chart linking Mr. Almalki to Ottawa-based "Bin Laden associates."

Mr. Almalki detained in Syria

Mr. Almalki leaves Malaysia

39. On May 10, 2002, CSIS and Project A-O Canada learned from foreign agencies that Mr. Almalki was no longer residing in his apartment in Malaysia. The foreign agencies did not know where Mr. Almalki had gone. On May 30, 2002, a foreign agency advised Project A-O Canada that Mr. Almalki had left Malaysia and travelled from Singapore to Bahrain on April 4, 2002 and then to Qatar on April 6. The Inquiry found no evidence to suggest that Canadian authorities either were aware of or communicated Mr. Almalki's plans to travel to Syria.

CSIS learns that Mr. Almalki is detained in Syria

40. In late May 2002, the Service learned that Mr. Almalki might be under detention in Syria. On May 31, 2002, the Service shared this information with DFAIT and the RCMP CID, and asked the RCMP to keep the information tightly controlled until the RCMP and Service had an opportunity to discuss the Canadian implications of Mr. Almalki being detained abroad. In the middle of June 2002, the Service obtained information confirming that Mr. Almalki was detained in Syria.

41. According to one senior CSIS official, the Service did not view Mr. Almalki's detention in Syria as an opportunity to obtain information from him, in part because the Service had conducted several interviews with Mr. Almalki. The same senior CSIS official, when asked whether the Service had any concerns about how Mr. Almalki would be treated in Syria, said that matters concerning Mr. Almalki's detention were left to DFAIT.

RCMP learns of Mr. Almalki's detention

42. As noted above, the RCMP learned of Mr. Almalki's possible detention from CSIS on May 31, 2002. On that day, a senior CSIS official telephoned

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[10] As discussed at chapter 8, paragraph 106, Mr. Almalki told the Inquiry that during a post-release interrogation in April 2004, his Syrian interrogators had a report containing photographs of individuals; he observed that the report had been faxed on March 29, 2004.

[11] Mr. Almalki told the Inquiry that his Syrian interrogators asked him about this individual.

Corporal Richard Flewelling of CID and advised him that Mr. Almalki might be in custody. According to Corporal Flewelling's notes of that conversation, the CSIS official wanted to know if the RCMP had enough information to support charges and if the RCMP wanted him back. Corporal Flewelling and the CSIS official agreed that they would discuss these issues further at a meeting on June 3. (The meeting is discussed in more detail below.) Following the conversation, CSIS sent Corporal Flewelling a message with more details about Mr. Almalki's possible detention.

DFAIT learns of Mr. Almalki's detention

43. Though CSIS reported that it orally advised DFAIT on May 31, 2002 that Mr. Almalki might be detained in Syria, the first DFAIT record of Mr. Almalki's possible detention is dated June 6, 2002. On June 6, Scott Heatherington of DFAIT ISI made a note that Mr. Almalki was in custody in Syria. Mr. Heatherington could not recall who gave him this information, but thought that it could have been CSIS. On June 7, James Gould, the Deputy Director of DFAIT ISI's intelligence policy division, wrote in his notebook that, according to the RCMP, Mr. Almalki was of "major interest" to both the United States and Canada and was in custody in Syria. He also noted that, according to the RCMP, the Embassy in Damascus probably didn't know about the possible detention.

44. Though DFAIT ISI had knowledge of Mr. Almalki's possible detention by June 6, 2002, DFAIT ISI did not immediately share the information with the Consular Affairs Bureau. The reason for this, according to Mr. Heatherington and to Don Saunders, a policy advisor in DFAIT ISI, is that ISI has a practice of passing only confirmed, or at least reliable, information to the Consular Affairs Bureau, and the information about Mr. Almalki's detention had not yet been confirmed. Mr. Saunders explained that DFAIT had only received snippets of information from CSIS and a foreign agency, and that these snippets were too tentative to warrant passing them on to the Consular Affairs Bureau.

45. Mr. Saunders stated that DFAIT ISI's practice of confirming information before passing it on to the Consular Affairs Bureau included making inquiries with the source of the information, but he could not recall whether ISI made any inquiries of the foreign agency or CSIS. Nor could he recall when the information about Mr. Almalki's detention was sufficiently confirmed and specific that it could be passed along. He thought that the information might have been confirmed later in June, but he could not recall exactly when.

46. According to Mr. Heatherington, ISI received confirmation by June 26, 2002 that Mr. Almalki was in custody in Syria, though he could not recall the

source of the confirmation. He made a note sometime at the end of June suggesting that Mr. Almalki had gone to Syria via Bahrain and that he was awaiting CSIS' advice. He noted on June 26 that Mr. Almalki had been arrested in Syria. Also on June 26, Mr. Heatherington prepared a classified memo for the Deputy Minister of Foreign Affairs, copied to the Consular Affairs Bureau, regarding the status of several Canadians detained abroad. The memo said that Mr. Almalki was in detention somewhere in Syria and that CSIS was trying to ascertain his location. Another memorandum, dated August 6, 2002 and signed by Mr. Heatherington stated, "We do not know the precise date he was arrested but we only became aware of his presence in Syria in late June."

47. Gar Pardy, Director General of DFAIT's Consular Affairs Bureau, recalled learning of Mr. Almalki's detention at some point in late July 2002, when he received a copy of Mr. Heatherington's June 26 memo.[12] Mr. Pardy stated that the June 26 memo triggered the Consular Affairs Bureau's action. When he received it in late July, he asked Myra Pastyr-Lupul, the consular case management officer responsible for Africa and the Middle East, to see what she could find out about Mr. Almalki.

48. Franco Pillarella, Canadian Ambassador to Syria, learned of the detention on July 4, 2002 at a meeting with Stephen Covey (the RCMP liaison officer in Rome) and General Khalil of the Syrian Military Intelligence ("SyMI").[13] The embassy took no consular action at that time; Ambassador Pillarella believed that the Consular Affairs Bureau was aware of Mr. Almalki's detention and that the Embassy could not act until it received instructions from the Consular Affairs Bureau.[14] As discussed above, however, while Ambassador Pillarella believed that the Consular Affairs Bureau was aware on July 4, 2002 of Mr. Almalki's detention, according to Mr. Pardy the Consular Affairs Bureau did not learn of the detention until late July 2002.

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[12] Mr. Pardy explained that classified memoranda from ISI were communicated to him by way of a special courier. The courier would make an appointment to meet with Mr. Pardy and show him the information. Mr. Pardy would not be permitted to retain that information. According to Mr. Pardy, the courier would only come when there was more than one piece of information to be delivered and therefore it would not be unusual for him not to see a memorandum until several days or even weeks after it was written.

[13] This meeting is discussed in some detail in at paragraphs 170 to 173 of Chapter 4. Ambassador Pillarella does not have any notes of the meeting. Inspector Covey's report of the meeting indicates that "other priority cases" were discussed, but does not mention Mr. Almalki. When interviewed, Inspector Covey stated that he was unsure whether or not Mr. Almalki's name was raised at the meeting.

[14] Ambassador Pillarella's belief that the Consular Affairs Bureau was already aware of the detention in early July was based on his expectation that if the RCMP (Inspector Covey) was obtaining information about a detained Canadian, the appropriate consultation to facilitate such action had occurred at DFAIT headquarters.

Discussions regarding criminal investigation of Mr. Almalki

RCMP / FBI meetings regarding an FBI criminal investigation

49. In late May 2002, Project A-O Canada members had discussions with members of the FBI and other U.S. agencies regarding a possible FBI criminal investigation of Mr. Almalki and his associates. At a meeting on May 21, 2002, an FBI member urged the Project A-O Canada members to present the status of their investigation to FBI prosecutors in Washington. The hope was that such a presentation would convince the FBI prosecutors to launch their own criminal investigation.

50. Project A-O Canada members determined that it would be desirable to lobby for a criminal investigation in the United States. Chief Superintendent Couture said he believed that this would enable the RCMP to obtain information from the FBI more quickly. Inspector Cabana said he thought that an FBI criminal investigation would allow the RCMP to get access to more information for its own investigation, and in a format that would be admissible in court. Superintendent Clement also believed that an FBI criminal investigation would generate information that could be used by the RCMP in court.

51. On May 31, 2002, Inspector Cabana and Staff Sergeants Callaghan and Corcoran gave a presentation to members of the FBI and other agencies at FBI headquarters in Washington D.C. The Project A-O Canada members asked the U.S. officials to consider the possibility of commencing a criminal investigation with respect to Mr. Almalki and his associates.

52. The RCMP's presentation, entitled "The Pursuit of Terrorism: A Canadian Response" included a general description of the Project A-O Canada investigation and an overview of several individuals who were of interest to Project A-O Canada, including Mr. Almalki and Mr. Elmaati. The presentation characterized Mr. Almalki as an alleged procurement officer and referred to the accounting records for Mr. Almalki's businesses. A concluding slide, entitled "Project A-O Canada: What's Next" indicated that the RCMP intended to interview Mr. Almalki.

53. An updated version of the presentation, excluding speaking notes, was sent to the Americans, at the request of the FBI, on July 22, 2002.

54. Project A-O Canada was not successful in convincing the FBI to commence a criminal investigation.

RCMP / CSIS meetings regarding criminal charges

55. On June 3, 2002, CSIS and RCMP officials (including Chief Superintendent Couture, the Officer in Charge of "A" Division's Criminal Operations Unit, Inspector Cabana, Staff Sergeants Corcoran and Callaghan and Corporal Flewelling) met at CSIS headquarters to discuss possible criminal charges against Mr. Almalki. The RCMP indicated that it was not yet prepared to lay charges because it did not have sufficient evidence. As well, according to Inspector Cabana, there was no urgency to lay a charge against Mr. Almalki because he (like Mr. Elmaati) had left Canada and was not expected to return.[15]

56. The RCMP's summary of the June 3 meeting reported that "CSIS was hoping to approach the Syrians on the basis that the RCMP were charging Almalki with terrorist offences and wanted him returned back to Canada." When interviewed, a senior CSIS official who attended the June 3 meeting stated that this report did not precisely describe the position taken by CSIS at that meeting. According to the CSIS official, CSIS asked the RCMP about the status of its investigation and advised the RCMP representatives that, if they decided to lay charges, the Service was prepared to assist by engaging foreign agencies.

57. When asked about this offer to assist the RCMP, the senior CSIS official stated that these were just discussions. He said that in situations where CSIS can assist the RCMP in moving an investigation forward, it generally will try to do so.

58. Whether the RCMP could lay charges against Mr. Almalki was discussed again at a June 21, 2002 meeting between RCMP and CSIS officials. Corporal Flewelling, who attended the meeting, noted that the officials discussed whether the RCMP had enough evidence to charge Mr. Almalki under Bill C-36 and, if so, whether the RCMP wanted him back in Canada so that he could be charged. When asked at the Arar Inquiry whether the RCMP decided at the meeting to charge Mr. Almalki, Corporal Flewelling said he could not recall if a definitive decision was made.

59. According to Corporal Flewelling's notes of the June 21 meeting, the attendees also discussed gaining access to Mr. Almalki in Syria for the purposes of conducting an interview. Corporal Flewelling noted, "The question is really how is Syria going to play," by which he meant that the main issue was whether the Syrians would allow the RCMP to interview Mr. Almalki. As discussed below

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[15] As discussed below at paragraph 115, Project A-O Canada had been advised by Inspector Stephen Covey (then the RCMP liaison officer in Rome) that, because Syria did not recognize Mr. Almalki's dual Canadian-Syrian citizenship, it would likely not extradite him to Canada if the RCMP laid charges.

at paragraphs 114 to 168, starting in the summer of 2002, Canadian officials (primarily in the RCMP and DFAIT) had extensive discussions about interviewing Mr. Almalki in Syria and sending questions for Syrian officials to put to Mr. Almalki.

Role of Malaysia in Mr. Almalki's detention/interrogation in Syria

60. As discussed in chapter 8, paragraphs 39 to 43, Mr. Almalki stated that he was interrogated in Syria in July 2002 by several people whom he believed to be Malaysian officials. Since Malaysia did not respond to the Inquiry's requests that it participate in the Inquiry, the Inquiry was unable to confirm whether a Malaysian agency went to Syria to question Mr. Almalki. CSIS, DFAIT and the RCMP appear to have no information that indicates whether or not this occurred.

61. As discussed at paragraph 40 of chapter 8, Mr. Almalki stated that he believes that the Malaysian officials questioned him in Syria at the request of the Canadian government, or at least based on information that Malaysian officials received from the Canadian government. The Inquiry found no evidence that Canadian officials asked Malaysian officials to interrogate Mr. Almalki in Syria or elsewhere, or that Canadian officials supplied Malaysian officials with questions, information or documents with which to interrogate Mr. Almalki.

Mr. Almalki's torture allegation / Impact of Mr. Elmaati's torture allegation

62. While Mr. Almalki was arrested and detained in Syria in May 2002, Canadian officials did not learn of his allegation that he was tortured in Syria until November 4, 2003. On that day, Maher Arar, who had just been released from Syrian detention, gave a press conference at which he reported meeting Mr. Almalki at Sednaya prison. Mr. Arar stated that, when they met, Mr. Almalki told him that he had been severely tortured while in detention.

63. Though Canadian officials did not learn of Mr. Almalki's allegation until November 2003, they were generally aware that Syria had a poor human rights reputation. They were also aware that another Canadian citizen, Mr. Elmaati, had made a similar allegation. In August 2002, while in detention in Egypt, Mr. Elmaati told DFAIT consular officials that he was tortured while in Syrian detention.

CSIS' view

64. In the Arar Inquiry, Justice O'Connor found that CSIS officials had or likely had during the relevant time knowledge of Syria's poor human rights reputation, including reports that Syrian security agencies used torture to interrogate detainees. He also found that CSIS officials were familiar with the Amnesty International and U.S. State Department reports on Syria and assessed these documents as credible. He noted, however, that CSIS Director Ward Elcock testified that, without knowing the evidence on which these reports relied, CSIS could not conclude absolutely that Syria engaged in torture.

65. CSIS had contrary information from a European intelligence agency, which advised the Service that it was not aware of any Western citizens being tortured by a certain Syrian agency. CSIS had previously assessed this information in conjunction with public information regarding Syria's human rights record and concluded that there was no solid information linking the specific Syrian agency to human rights abuses. However, Jack Hooper, who during the relevant period was Director General of CSIS' Toronto Region, and then CSIS' Assistant Director of Operations, testified during the Arar Inquiry (though not in relation to the torture allegations of Mr. Elmaati and Mr. Almalki) that the Service put undue reliance on the foreign agency's information and performed an improper balancing act when assessing these reports against information in the public record.

66. CSIS learned of Mr. Elmaati's torture allegation on August 12, 2002. Two factors caused the Service to question the credibility of the allegation. First, the Service was aware of an al-Qaeda training manual that instructed individuals, if they were detained, to claim that they had been abused or tortured. Second, the Service had information suggesting that Mr. Almalki was in good health, despite his incarceration, and being treated well by Syrian officials.

67. One CSIS official was asked how he reconciled the information suggesting that Mr. Almalki was in good health with Mr. Elmaati's torture allegations. The official said that he was reluctant to draw a direct correlation between the treatment of one person and another because people can be treated differently in similar circumstances. He also said that assessing the conditions in which Mr. Almalki and Mr. Elmaati were being held was a DFAIT function, and not something that, in view of his role, he was particularly concerned about.

68. While most of the information that CSIS had concerning Mr. Almalki's treatment suggested that he was in good health and not being mistreated, CSIS also had some information suggesting that he had not been treated fairly earlier. A senior CSIS official was asked how this affected his assessment of

Mr. Almalki's situation. He responded that he did not know what to make of the information. The official was also asked whether he was aware of the view that mistreatment, where it occurs during incarceration, generally occurs early in the period of incarceration. He responded that he would not know what happens to individuals at different periods of their detention.

DFAIT's view

69. DFAIT officials from the Consular Affairs Bureau and DFAIT's Security and Intelligence Bureau (DFAIT ISD) generally testified before the Arar Inquiry to having some understanding that Syria had a poor human rights reputation. They based their conclusions on media reports, first-hand experience with Syrian officials, communications with Syrian citizens, DFAIT human rights reports, U.S. State Department reports, reports from various human rights organizations and other open sources.

70. DFAIT officials' specific knowledge of Syria's human rights reputation varied. Many testified to having some knowledge that Syrian security authorities might use torture. Many were also aware that Syria might hold prisoners incommunicado for a period of time to extract information before disclosing the individual's whereabouts. The then-Minister of Foreign Affairs, William 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. Ambassador Pillarella, then Canada's ambassador to Syria, stated that in 2002 and 2003 he knew of the allegations of torture in the U.S. State Department reports, but that it was extremely difficult to verify. He said that as the Ambassador to Syria during those years he did not have any indication that there were serious human rights abuses that he could verify. However, he cited one example of a Syrian woman detained incommunicado by Syrian security forces for six months without charges. She told Ambassador Pillarella that prison conditions were appalling but that she had not otherwise been mistreated or tortured.

71. Léo Martel, who served as consul at the Canadian Embassy in Damascus starting in September 2002, told the Inquiry that, prior to taking up this position, he had read extensively about Syria and the human rights situation there. He was aware that political dissidents and opponents of the regime had been mistreated by the Syrian government, but when he arrived in Syria in 2002, he did not think that dual nationals (dual Canadian-Syrian citizens for example) would be treated the same way. Mr. Martel said that during the three years

that he occupied the position of consul in Damascus, he became aware of many dual nationals (Canadian-Syrians and Australian-Syrians, to whom the Embassy also provided services) being detained by the Syrian security services. He said that some of these dual citizens told him that they had been mistreated while in detention, while others told him they had not. He said that no two cases were the same.

72. When Mr. Martel took up the position of consul at the Canadian Embassy in Damascus in 2002, he was not provided with the current DFAIT human rights report or the publicly available reports by Amnesty International and Human Rights Watch as part of his orientation, but he said that he was already very familiar, from his past experience and reading, with the situation in Syria. He also said that each individual at the Embassy had a responsibility to keep himself or herself apprised of the situation in the region, by reading relevant documents and attending weekly meetings with the Head of Mission.

73. While DFAIT officials were generally aware of Syria's poor human rights reputation, two DFAIT officials (Ambassador Pillarella and Daniel Livermore, the Director General of DFAIT ISD) said they were reluctant to draw conclusions about the treatment of specific detainees without specific evidence. In contrast, while Mr. Pardy 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 was not. Mr. Pardy based this assumption on the public record and his experience with other consular files in the region.

74. There is no document that clearly sets out 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. Mr. Pardy believed that DFAIT officials—both at his level and above—were aware of and shared his working assumption.

75. Konrad Sigurdson, who replaced Mr. Pardy as Director General of the Consular Affairs Bureau on September 1, 2003, stated that he worked under the assumption that there was some mistreatment of individuals imprisoned in Syrian jails. He said that he believed most of his colleagues worked under the same assumption, but that no one knew the extent of the mistreatment.

76. On August 12, 2002, Mr. Elmaati told consular officials in Egypt that he had been tortured while in Syrian detention. The Canadian Embassy in Syria was not immediately advised of Mr. Elmaati's torture allegation. Ambassador Pillarella said that he did not learn of the allegation until later in 2002, possibly

in November or December of 2002, and could not recall how he had learned about it. Léo Martel, who arrived in Damascus in September 2002, did not learn of Mr. Elmaati's torture allegation until approximately September 2005. When asked why consular officials in Damascus learned of Mr. Elmaati's allegation so late, Mr. Pardy explained that when the Embassy in Cairo sent the email message reporting the allegation, it did not include the Embassy in Damascus on the distribution list. Mr. Pardy said that consular officials in Ottawa should have noticed this, and forwarded the message to Damascus, but that unfortunately they did not.

77. Mr. Pardy and Ms. Pastyr-Lupul, consular officials based in Ottawa, suggested that Mr. Elmaati's torture allegations influenced DFAIT's assessment of Mr. Almalki's situation. When asked about the likelihood that Mr. Almalki was being tortured while in Syrian detention, Mr. Pardy said that, while one could not be absolutely certain, there was a probability, based on his knowledge of Syrian behaviour in these kinds of circumstances, that "something nasty" was happening to Mr. Almalki. In Mr. Pardy's view, Mr. Elmaati's allegation of torture, which was the first direct information of a Canadian being mistreated in Syrian custody, increased the probability that Mr. Almalki was being mistreated. When Ms. Pastyr-Lupul was asked whether she was concerned that Mr. Almalki might be facing the same risk of torture that Mr. Elmaati had alleged, she said that the thought had crossed her mind.

RCMP's view

78. At the Arar Inquiry, investigators in Project A-O Canada, officials in RCMP CID and the RCMP liaison officer with responsibility for Syria were questioned regarding their knowledge of Syria's human rights reputation. 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 from Canada. RCMP 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. Staff Sergeant Fiorido, the liaison officer responsible for facilitating the RCMP's contact with Syrian agencies, testified to having basic knowledge from media sources that Syria was a country in which human rights abuses might be a concern.

79. The RCMP learned about Mr. Elmaati's torture allegation from DFAIT ISI on August 12, 2002. Several RCMP and/or Project A-O Canada members stated that they had doubts about the validity of the allegation. One Project A-O Canada member stated that he was aware that CSIS believed that there were gaps in

Mr. Elmaati's alleged confession indicating that he was not tortured. The same member was also aware of the al-Qaeda training manual instructing detainees to claim that they were tortured. Another Project A-O Canada member cited several reasons to doubt the validity of Mr. Elmaati's allegation, including the al-Qaeda training manual, and a comment that Mr. Elmaati had made about a non-existent Guantanamo Bay camp. An RCMP member suggested that Mr. Elmaati might be looking for leverage to gain something that he wanted.

Consular actions

First steps

80. The first consular action with respect to Mr. Almalki was taken on July 30, 2002. Mr. Pardy instructed Ms. Pastyr-Lupul to make inquiries into Mr. Almalki's citizenship in order to verify that he was a Canadian citizen and therefore entitled to consular assistance. Ms. Pastyr-Lupul carried out this request that day.

81. On August 2, 2002, Ms. Pastyr-Lupul wrote a note to remind herself to work on the "Dip Note for Almalki". On August 13, Ms. Pastyr-Lupul advised the Embassy in Damascus that Mr. Almalki had been detained by Syrian authorities and asked that the Embassy send a diplomatic note requesting consular access. Ms. Pastyr-Lupul attributed this 11-day gap to her heavy caseload (which included the Kazemi case,[16] the Elmaati case, and other cases spanning 61 countries) and a medical condition for which she was under a doctor's care.

Diplomatic notes

82. On the request of Ms. Pastyr-Lupul, the Canadian Embassy in Damascus sent a diplomatic note to Syria on August 15, 2002, requesting consular access to Mr. Almalki. In her instructions, Ms. Pastyr-Lupul had requested that the Embassy follow up on the diplomatic note if a response was not received within two weeks. The Embassy agreed to follow up in two weeks, but advised Ms. Pastyr-Lupul that previous experience suggested that the Syrian Ministry of Foreign Affairs (MFA) would likely not respond in less than one month. The Embassy also advised her that this delay could be longer if the detention was for political reasons or if Mr. Almalki was a Syrian citizen, and that pressure from the Embassy rarely resulted in a more rapid response.

83. On September 3, 2002 and again on September 12, 2002, the Embassy contacted the Consular Department of the Syrian MFA to follow up on the

[16] Zahra Kazemi was an Iranian-Canadian journalist who died in Iranian custody on July 11, 2003 after she was arrested for taking pictures outside a prison during a student protest in Tehran.

diplomatic note. The MFA informed the Embassy that it had sent the note to the Syrian Minister of the Interior and was waiting for a response.

84. Syria did not respond to the Embassy's August 15, 2002 diplomatic note until April 26, 2003. Its response was that Mr. Almalki was Syrian and therefore subject to Syrian laws. Neither the Embassy nor the Consular Affairs Bureau responded to this note. Upon receiving the note, Mr. Martel passed it on to the Consular Affairs Bureau and Ambassador Pillarella. He did not receive instructions to follow up with another note or otherwise pursue the issue of consular access further.

85. In August 2003, DFAIT provided to CSIS a copy of the CAMANT note containing the text of Syria's April 26, 2003 diplomatic note.

Ambassador Pillarella meets with Deputy Minister Haddad and General Khalil

86. On October 20, 2002, Ambassador Pillarella met with Deputy Minister Haddad of the Syrian MFA to discuss Mr. Arar. At the request of Mr. Pardy, Ambassador Pillarella also raised the case of Mr. Almalki, and was told that Deputy Minister Haddad would look into the case. Though the Inquiry did not find any evidence to suggest that Deputy Minister Haddad looked into Mr. Almalki's case, as promised, he did arrange a meeting between Ambassador Pillarella and General Khalil for November 3, 2002 to review the case of Mr. Arar.

87. On October 22, 2002, Ambassador Pillarella met with General Khalil. The report of this meeting suggests that the focus of the meeting was Mr. Arar, and that Mr. Almalki was not discussed.

88. Ambassador Pillarella met with General Khalil again on November 3, 2002 at the meeting set up by Deputy Minister Haddad. According to Ambassador Pillarella's report of the November 3 meeting, Ambassador Pillarella raised the issue of Mr. Almalki and observed that General Khalil seemed "disposed to accept" that Mr. Almalki could meet with a Canadian official. Ambassador Pillarella's report of the November 3 meeting does not include any other reference to Mr. Almalki.

89. On November 5, 2002, Ambassador Pillarella and Mr. Pardy discussed the Ambassador's observation that General Khalil seemed disposed to accept that Mr. Almalki could meet with a Canadian official. They concluded that "Canadian official" in this context likely meant an intelligence official and not a consular official. As discussed below in paragraphs 102 to 113 ("CSIS' Trip to Syria"), DFAIT ISI communicated this to CSIS along with General Khalil's offer to allow a Canadian intelligence official to visit Damascus to review the information

provided by Mr. Arar. The result was that CSIS officials travelled to Syria in late November 2002 to meet with Syrian officials.

90. According to Mr. Pardy, no one in the Consular Affairs Bureau used General Khalil's November 3, 2002 invitation as a basis on which to pursue consular access to Mr. Almalki. According to DFAIT, the crucial focus of the October 20, 22 and November 3 meetings with Syrian officials was on establishing access to Mr. Arar.

Relationship between Ambassador Pillarella and General Khalil

91. Ambassador Pillarella testified at the Arar Inquiry to having a relatively direct relationship with General Khalil, the head of the SyMI, and, according to the Ambassador, an extremely powerful figure within the Syrian political framework. He said that this relationship was cultivated over the course of 2002, and that the situation regarding consular access to detainees changed tremendously as a result. Ambassador Pillarella testified that he was generally received by General Khalil "in a most friendly manner" and that he believed that the General's relationship with him was genuine. He also said that General Khalil could always be relied on to keep his word and would respond quickly to requests for consular access and information.

92. Mr. Hooper also commented at the Arar Inquiry on the relationship between Ambassador Pillarella and General Khalil. He attributed what was considered to be the extraordinary consular access to Mr.Arar, at least in part, to the relationship between General Khalil and the Ambassador. He believed that this relationship was the reason that the General extended to CSIS an offer to visit Syria and meet with SyMI officials. According to Mr. Hooper, these were indicators that Ambassador Pillarella and General Khalil had a "reasonable dialogue going on."

DFAIT makes contact with Mr. Almalki's family

93. On December 10, 2002, Ms. Pastyr-Lupul spoke with Nazih Almalki, brother of Mr. Almalki, and informed him both of who she was and of the measures that DFAIT had taken in an attempt to gain consular access. Mr. Almalki's brother told Ms. Pastyr-Lupul that the family had been pursuing the matter through its own channels for several months, but gave Ms. Pastyr-Lupul no indication that the family had, by that point, had any contact with Mr. Almalki. The Inquiry received evidence that the Almalki family had earlier met with Senator Terry Stratton to discuss Mr. Almalki's circumstances and that Senator Stratton's office had made calls to DFAIT respecting Mr. Almalki.

94. In June 2003, Ms. Pastyr-Lupul met with Safa Almalki, another of Mr. Almalki's brothers, to discuss the case. Ms. Pastyr-Lupul's report of this meeting states that the family reiterated its wish not to have Mr. Almalki's name released publicly.[17] Her report also says that Safa Almalki asked for Ms. Pastyr-Lupul's assistance in obtaining an "Ottawa Police Certificate" stating that Mr. Almalki did not have a criminal record in Canada. A CAMANT note from October 2003 indicates that the family needed the certificate in order to obtain a postponement of Mr. Almalki's Syrian military service requirements. At some point in October or November of 2003, Ms. Pastyr-Lupul sent a letter to the Ottawa Police, on the family's behalf, requesting this certificate. Michael Edelson, Mr. Almalki's then lawyer, made two similar requests of the RCMP. In June 2003, Mr. Edelson sent a letter to Sergeant Walsh of the RCMP asking for confirmation that Mr. Almalki had no criminal conviction known to the Canadian authorities. According to an RCMP SITREP, the RCMP responded in mid-July 2003 by leaving a telephone message asking that Mr. Edelson confirm in writing that he was Mr. Almalki's counsel before the RCMP provided any criminal record information. As discussed below in paragraph 184, in November 2003, Mr. Edelson again asked the RCMP for a letter confirming, among other things, that Mr. Almalki had no criminal record in Canada.

95. On October 10, 2003, Ms. Pastyr-Lupul spoke again with Safa Almalki and assured him that DFAIT was still trying to obtain consular access to Mr. Almalki. In her report of this conversation, she requested that Mr. Martel advise her of any recent diplomatic notes or consular efforts. Mr. Martel's response confirmed that the only diplomatic note was the one sent to Syria in August 2002, and did not mention any other efforts to gain consular access to Mr. Almalki.

Mr. Martel's meetings with Colonel Saleh

96. In his interview, Mr. Martel indicated that during the period of Mr. Almalki's detention, he was meeting with Mr. Arar through Colonel Saleh of the SyMI. On more than one occasion, Mr. Martel asked Colonel Saleh unofficially whether he had any information on Mr. Almalki, and whether Mr. Martel could have access to Mr. Almalki. Colonel Saleh refused on every occasion. These unofficial requests and refusals were not documented in a CAMANT note or any other DFAIT document.

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[17] With respect to the family's concern about publicity, CSIS had information suggesting that the family was concerned that releasing its name publicly could lead to reprisals against family members.

Consular visits to Mr. Arar and Mr. Elmaati

97. Mr. Arar was detained at Far Falestin starting in early October 2002. He received his first consular visit, from Mr. Martel, on October 23, 2002. He received eight other consular visits (on October 29, November 12 and 26, December 10, 2002, January 7, February 18, April 22 and August 14, 2003) before he was released on October 5, 2003.

98. As discussed in Chapter 4 above, Mr. Elmaati was detained in Syria from November 12, 2001 until about late January 2002, and during that time he did not receive any consular visits. He received eight consular visits while he was detained in Egypt (from late January 2002 until mid-January 2004).

Intensity of consular activities

99. Ambassador Pillarella was asked to explain why the consular efforts in Mr. Almalki's case were less intense than the consular efforts undertaken in the cases of Mr. Arar and Mr. Elmaati. Ambassador Pillarella's explanation was that the Embassy had been instructed by the Consular Affairs Bureau in Ottawa not to treat Mr. Almalki's case as a consular case. He stated that Mr. Pardy had informed him that Mr. Almalki's family did not want DFAIT to pursue his case as a consular case, and as a result the Embassy, from the start, desisted in pursuing the matter.

100. In their interviews, Mr. Martel, Ms. Pastyr-Lupul and Mr. Pardy disagreed with Ambassador Pillarella on this issue. Mr. Martel stated that while he was aware that the family had some concerns about publicity, he would not have said that the family did not want DFAIT to pursue Mr. Almalki's case. Ms. Pastyr-Lupul, who was the Almalki family's contact person at DFAIT, stated that there was a misconception that the family did not want DFAIT to intervene in Mr. Almalki's case. According to Mr. Pardy, the Almalki family did not instruct DFAIT not to pursue the matter as a consular case; the family was merely concerned that the diplomatic efforts did not cut across what the family was trying to achieve using its own channels in the Syrian government. Mr. Pardy stated that there was no ambiguity with respect to the status of Mr. Almalki's case as a consular case and something that DFAIT had to pursue. He acknowledged, however, that the level of consular activity in Mr. Almalki's case was less than that in the cases of Mr. Elmaati and Mr. Arar, and that the Consular Affairs Bureau lost focus.

RCMP's meeting with Michael Edelson

101. On October 4, 2002, Project A-O Canada managers and Department of Justice counsel met with Michael Edelson, Mr. Almalki's then lawyer. According to the SITREP from October 4, Mr. Edelson expressed concern over the detention of Mr. Almalki in Syria and Mr. Arar in New York, and was assured that they had not been arrested at the request of Project A-O Canada. The SITREP also stated, "The reality about foreign governments also investigating the same A-O Canada targets for terrorist related activities was explained to [Mr. Edelson]."

CSIS' trip to Syria

102. In November 2002, a CSIS delegation travelled to Syria to meet with officials from the Syrian Military Intelligence ("SyMI"). The trip was arranged in response to an invitation from the SyMI that had been communicated to Ambassador Pillarella at a November 3, 2002 meeting. At that meeting, General Khalil told Ambassador Pillarella that he would agree to allow a Canadian intelligence official to visit Damascus to review the information provided by Mr. Arar. With respect to Mr. Almalki, Ambassador Pillarella observed that General Khalil seemed "disposed to accept" that Mr. Almalki could meet with a Canadian official. The November 3 meeting is discussed above at paragraph 8.

103. DFAIT advised the Service of General Khalil's invitation in early November 2002. The invitation was discussed by representatives from the RCMP, CSIS, DFAIT ISI, and by Ambassador Pillarella, at meetings on November 4 and 6, and then CSIS communicated its acceptance to the SyMI in the middle of November.

Purpose of the trip

104. The Service's trip to Syria had several purposes. Among the main ones, it was thought that the trip would allow CSIS to acquire critical intelligence in support of its Sunni Islamic terrorism investigation and to receive and evaluate information about Mr. Arar. CSIS also intended to raise Mr. Almalki's case with the Syrians, in part to determine what was likely to happen, i.e., whether he was going to be charged under Syrian law, released or otherwise.

105. Though CSIS intended to raise Mr. Almalki's case with the Syrians, the intent of the trip was not to raise or discuss the conditions under which Mr. Almalki was being held. In fact, according to one CSIS official, CSIS had specifically decided that it would not become involved in the consular process. He recalled a meeting, held prior to the Syria trip, in which DFAIT was quite adamant that the Service not become involved in consular issues. Mr. Saunders,

a DFAIT official who attended this meeting, does not recall anyone from DFAIT being adamant that the Service not become involved in consular issues. In his view, it would have been nice for any Canadian official, DFAIT or not, to meet with Mr. Almalki, because at that time DFAIT did not have access to him and did not know how he was doing.

106. According to Mr. Hooper, it was not CSIS' role to raise Mr. Almalki's treatment with the Syrian authorities. He stated that there would be some jeopardy in the Service inserting itself into affairs that were appropriately the purview of DFAIT's Consular Affairs Bureau. He said that while CSIS has a duty to notify other stakeholders if it suspects that reporting it receives is the product of a human rights abuse, and to take precautions to ensure that Canadian assets are not used to perpetrate human rights abuses, it does not have a duty to ask an intelligence interlocutor whether he is torturing somebody or violating a person's human rights. He said that that is the purview of DFAIT.

107. While DFAIT was apparently concerned that CSIS not become involved in consular issues, the RCMP was concerned that CSIS not do anything in Syria that could affect the criminal investigation into Mr. Almalki and others. At a meeting held prior to the Syria trip, Inspector Cabana asked CSIS not to interview Mr. Almalki, because he thought that an interview could adversely affect the admissibility of any future statement from Mr. Almalki and potentially make a CSIS official a compellable witness at a criminal trial of Mr. Almalki. Inspector Cabana left the meeting with the impression that CSIS would not attempt to speak to Mr. Almalki during the trip.

Meeting with the Syrian authorities

108. The CSIS delegation met with officials from the SyMI in Syria on November 23 and November 24. At one of the meetings, Mr. Almalki was discussed. The delegation received information obtained from the questioning of Mr. Almalki, and obtained information about the date of Mr. Almalki's official arrest (which was different than the date of detention) and the basis of the charges against him. The delegation also received information indicating that the case was before the Syrian courts, but it did not get any indication of what the outcome might be.

109. One of the CSIS officials who had travelled to Syria and met with the SyMI was responsible for evaluating the information that had been provided to the delegation (including the information obtained from the questioning of Mr. Almalki). He had no prior experience in determining if information might be the product of mistreatment, and he did not specifically turn his mind to the

possibility of torture or interrogation methods when evaluating the information. However, he emphasized that while he had no specific expertise in evaluating information that might have been obtained by torture, he had a lot of experience in determining how intelligence information might have been acquired.

110. The official stated that if he had turned his mind to the issue of mistreatment, he would not have concluded that the information resulted from mistreatment. For one thing, he found the reporting from the Syrians to be incomplete. He said that he would expect that a person being abused would give up a lot of information, and that the reporting would be more detailed than what the Service had received from the Syrians. In addition, as noted above, he said that the Service had information suggesting that Mr. Almalki was in good health and not being mistreated. Finally, as discussed above at paragraph 65, the CSIS official was aware that a European intelligence agency had previously advised CSIS that the SyMI does not resort to torture or physical abuse during questioning.

Debriefing DFAIT

111. The CSIS delegation did not debrief Ambassador Pillarella before leaving Damascus, but one member of the delegation debriefed DFAIT officials about the trip at a meeting in Ottawa on November 28, 2002. The individual who gave the debriefing could not recall if Mr. Almalki was mentioned during the meeting, but said that it would have been normal for him to debrief the attendees on Mr. Almalki as well. Notes made by Jonathan Solomon, a policy advisor in DFAIT ISI who attended the meeting, suggest that Mr. Almalki was discussed. He noted "-Reason to believe Arar & Al-Malki not tortured – significant gaps". The Inquiry found no evidence that the Service delegation provided DFAIT with details about the information it had received in respect of Mr. Almalki, including, for example, information about when Mr. Almalki was officially arrested and what charges he was facing.

Mr. Almalki's interrogation in November and December 2002

112. As discussed at paragraph 48 of Chapter 8, Mr. Almalki stated that he believes that he was interrogated in November and December 2002 based on information that Syrian officials had obtained during meetings with the CSIS delegation. He told the Inquiry that he observed one of his interrogators reviewing a typed report entitled "Meeting with the Canadian delegation November 24th 2002."

113. The Inquiry found no other evidence to suggest that CSIS provided any reports or information about Mr. Almalki to the Syrian authorities during the

November 2002 trip to Syria. One member of the CSIS delegation told the Inquiry that (for reasons that I am precluded by national security confidentiality from disclosing here) information could not have been shared with Syria.

Questions for Mr. Almalki

114. Between July and December of 2002, the RCMP, at times in consultation with DFAIT ISI (and occasionally with other organizations, including CSIS and the Department of Justice), discussed various possibilities for gaining access to Mr. Almalki in Syria and cooperating with the Syrians to share information about Mr. Almalki.

115. At least four factors drove these discussions. First, according to Staff Sergeant Callaghan, the RCMP hoped that obtaining information from Mr. Almalki would aid the RCMP in fulfilling its mandate of prevention, disruption, gathering of intelligence and, if possible, an eventual prosecution. Second, there was a belief within the RCMP that Mr. Almalki might have information about the alleged threat to Parliament Hill (see Chapter 4 , paragraph 79). Third, Project A-O Canada had been advised by Inspector Stephen Covey (then the RCMP liaison officer in Rome) that Mr. Almalki would probably not return to Canada. Inspector Covey told Project A-O Canada that, because Syria did not recognize Mr. Almalki's dual Canadian-Syrian citizenship, it would likely not extradite him to Canada if the RCMP laid charges. Based on this advice, Project A-O Canada shifted its focus from charging Mr. Almalki to obtaining information from him. Fourth, prior to Mr. Almalki's detention, and during Mr. Elmaati's detention in Syria, the Syrian authorities had expressed willingness to question a detainee on the RCMP's behalf and share information about (or from) a detainee with the RCMP.

Interview or questions

116. The RCMP first considered travelling to Syria to interview Mr. Almalki directly. However, the RCMP's efforts to obtain interview access to Mr. Almalki failed. Moreover, both Ambassador Pillarella and the RCMP liaison officer in Rome advised the RCMP that the Syrian authorities would likely not agree to permit a police agency to interview Mr. Almalki in Syria.

117. After several failed attempts to set up an interview in Syria, the RCMP began to consider sending questions to Syria to be posed to Mr. Almalki by Syrian officials. Aware that Syria might expect something in exchange for questioning Mr. Almalki on its behalf, the RCMP also started to make plans to share with Syria information from the Project A-O Canada investigation.

118. Several RCMP witnesses stated that they believed a direct interview of Mr. Almalki was preferable to sending questions to be asked of him. They explained that with a direct interview, the RCMP would know the conditions under which the questions were answered, and that the results of an interview could be used in court, while the answers to questions posed by the Syrians could not.

Consulting with DFAIT about gaining access and sharing information

119. In the course of considering and planning for sending questions to and sharing information with the Syrian authorities, the RCMP held several meetings with officials from DFAIT ISI.

July 29 meeting

120. On July 29, 2002, Inspector Cabana met with DFAIT ISI officials to discuss the possibility of sending questions to, and sharing information with, Syrian authorities. According to Inspector Cabana, the discussions about sharing information with Syria were initiated at this meeting. An RCMP SITREP for that day reported that "[t]hey discussed the repercussions of disclosing [the Almalki] investigation to the Syrians and its potential impact on Almalki".

121. According to Mr. Saunders of DFAIT ISI, he and his colleague Mr. Gould expressed concerns at the meeting about the possibility of sending questions for Mr. Almalki. Mr. Saunders said that he and Mr. Gould did not have a problem with the RCMP questioning Mr. Almalki in a Syrian jail, but were quite concerned about the idea of them sending questions to the Syrians, because they had no way of knowing what kind of interrogation techniques they might employ. Mr. Saunders recalled telling the RCMP that Syria has a reputation for being fairly brutal with prisoners, that Syria would probably not interrogate Mr. Almalki the same way the RCMP would, and that he thought sending questions was a bad idea. He said that Mr. Gould agreed with his view. Mr. Gould testified at the Arar Inquiry that, while he recalled the discussion about the RCMP sharing information with the Syrians and sending questions for Mr. Almalki, he could not recall whether DFAIT stated a position about the appropriateness of sending questions. Mr. Gould also could not recall the outcome of the meeting or whether there was any agreement regarding information sharing.

122. Inspector Cabana's recollection of the July 29 meeting differs from Mr. Saunders'. Inspector Cabana testified at the Arar Inquiry, in evidence that he confirmed to this Inquiry, that the individuals who attended the meeting did

not appear to have any major issue with the potential sharing and that everyone seemed to be in agreement that it was the thing to do.

123. The day after the July 29 meeting, Inspector Cabana instructed Staff Sergeant Callaghan to draft a list of questions to be asked of Mr. Almalki and to start preparing a "disclosure package" for the Syrian authorities. This task was delegated to a Project A-O Canada investigator who prepared a 26-page report dated July 31, 2002 containing both background information and proposed questions. The questions, which derived from the criminal investigation, addressed Mr. Almalki's background, business dealings, charity dealings, associates, immigration matters, banking, investments and international travel. The background information was about Mr. Almalki and his family, and included information about his siblings' occupations and recent activities, his alleged military training, his companies and the names of people who had worked in his companies, his work with various charitable organizations and his associations with people suspected of having direct connections to terrorism and al-Qaeda. In one place, the report said that Mr. Almalki was a member of a Canadian terrorist cell. The Inquiry found no evidence that the July 31, 2002 report was circulated outside of the RCMP.

August 6 DFAIT memorandum

124. The RCMP's efforts to engage the Syrians in the questioning of Mr. Almalki were addressed in an August 6, 2002 DFAIT ISI memorandum drafted by Mr. Saunders, signed by Mr. Heatherington and sent to senior DFAIT officials.[18] The memorandum noted that there was a danger that the Syrians would employ "rougher interrogation techniques" than would the RCMP. When asked what he meant by the term "rougher interrogation techniques," Mr. Saunders responded "torture". Mr. Pardy, who received a copy of the memo, said that he understood the term "rougher interrogation" to include torture, abuse and mistreatment.

September 10 meeting

125. On September 10, 2002, RCMP Chief Superintendent Couture and senior officers from Project A-O Canada met with a number of DFAIT ISI officials and Ambassador Pillarella, who attended the meeting because he happened to be on vacation in Ottawa. The meeting dealt primarily with the type of assistance DFAIT could provide the RCMP, either in sending questions for Mr. Almalki, or in arranging an interview. At this meeting, Mr. Solomon of DFAIT ISI, who

[18] The memo was sent to the Associate Deputy Minister of Foreign Affairs, and copied to the Consular Affairs Bureau, DFAIT ISD, the Deputy Minister of Foreign Affairs and one Assistant Deputy Minister.

had recently completed a posting with the Human Rights and Humanitarian Law division of DFAIT, raised the possibility that sending the questions would put Mr. Almalki at risk of being tortured. He used words to the effect of: "if you are going to send questions to the Syrians, would you ask them not to torture him?"

126. Mr. Heatherington of DFAIT ISI did not recall the September 10 meeting, but he did not dispute that the meeting had taken place or what others said was discussed during the meeting. Ambassador Pillarella recalled the meeting but did not recall Mr. Solomon's comments about the possibility of torture. According to Inspector Cabana's notes on the meeting, Ambassador Pillarella agreed to facilitate any requests to the Syrian authorities, but suggested that the Syrian authorities would likely expect the RCMP to share information with Syria in exchange. When asked about this comment, Ambassador Pillarella said he did not know if he made the comment at this meeting, but that it is only logical that if you ask someone for information, that person will expect to receive information in return.

127. Inspector Cabana recalled there being some discussion at the meeting about the possibility of torture, but could not recall specific comments. One of the RCMP attendees noted that Inspector Cabana commented at the meeting that individuals may claim torture when it has not actually occurred. Though Inspector Cabana could not recall making this comment, he stood by it. Inspector Cabana did not recall Mr. Solomon's comment about torture, but said that since the Ambassador and the other senior DFAIT officials in attendance did not have any objection to sending questions and were in fact offering to facilitate the RCMP's efforts, the issue of torture did not concern him.

128. Staff Sergeant Callaghan recalled Mr. Solomon's comment, but regarded it as off-the-wall and absurd; he thought that communicating the comment to Syria would be a slap in the face for the Syrians. Staff Sergeant Callaghan went on to say that others in the meeting did not pay any attention to the comment and just kept on dealing with the issue at hand. He also stated that, apart from this comment, no one from the RCMP, Project A-O Canada, CSIS or DFAIT had expressed a concern that sending the questions might result in Mr. Almalki being tortured.

September 10 fax to Staff Sergeant Fiorido

129. After the September 10 meeting, Inspector Cabana, with the authorization of Superintendent Wayne Watson, sent a fax to Staff Sergeant Fiorido (the RCMP's liaison officer in Rome), with a copy to Corporal Flewelling of RCMP

CID, requesting him to approach his Syrian contacts to see if they would grant the RCMP access to conduct an interview of Mr. Almalki. The fax stated that an interview by the RCMP would be in the RCMP's best interests but that, as an alternative, the RCMP was contemplating providing the Syrian officials with questions for Mr. Almalki. Both Inspector Cabana and Chief Superintendent Couture thought that interviewing Mr. Almalki was preferable to sending questions to Syria. Inspector Cabana explained that the results of an interview could be used in court while the answers to questions posed by Syrian officials could not. Inspector Richard Reynolds of RCMP CID also suggested that a direct interview would be preferable to sending questions because the RCMP would know the conditions under which the questions were answered.

130. Although Inspector Cabana asked Staff Sergeant Fiorido to approach his Syrian contacts about the possibility of the RCMP interviewing Mr. Almalki in Syria, Staff Sergeant Fiorido understood (based on previous correspondence from the former liaison officer in Rome, Inspector Covey) that the SyMI would likely not want to speak with a police agency about this issue. Staff Sergeant Fiorido thought that it would make more sense to ask Ambassador Pillarella to facilitate the RCMP's request. When he contacted the Ambassador on October 24 to discuss the issue, Ambassador Pillarella advised him that General Khalil did not like to deal with police agencies and there was not much chance of the RCMP gaining access to Mr. Almalki, but he offered his continued support of RCMP efforts.

131. Inspector Cabana's September 10 fax also said that the Syrian authorities had expressed an interest in gaining access to the information that the RCMP had on Mr. Almalki. The fax proposed that the RCMP extend an invitation to Syrian investigators to come to Canada and meet with the Project A-O Canada team to "share information of common interest". Notwithstanding the statement in the September 10 fax that the Syrian authorities had expressed an interest in information the RCMP had on Mr. Almalki, the RCMP is not aware of any interest expressed by the Syrian authorities for RCMP information regarding Mr. Almalki. The RCMP told the Inquiry that it is likely that this statement reflects advice that Inspector Cabana received from Ambassador Pillarella at the September 10 meeting. As discussed above, according to Inspector Cabana, Ambassador Pillarella advised the RCMP that it would have to give information to the Syrians in order to get direct access to Mr. Almalki or to Syrian information regarding Mr. Almalki.

132. The invitation proposed by Inspector Cabana was never extended to Syrian authorities. After a discussion with Superintendent Wayne Pilgrim (the

Officer in Charge of the National Security Investigations Branch at RCMP headquarters), Corporal Flewelling advised Inspector Cabana that he did not have the power to invite a foreign country to come to Canada to discuss an investigation—such an invitation could only be extended by the RCMP Commissioner in conjunction with DFAIT.

October 10 memorandum

133. In an internal memorandum dated October 10, 2002, Mr. Livermore updated one of the Assistant Deputy Ministers of Foreign Affairs on the status of the RCMP's initiative to send questions. He stated that both ISI and the Embassy had pointed out to the RCMP that such questioning might involve torture, but that the RCMP had nonetheless decided to proceed.

October 21 discussion between Inspector Cabana and Mr. Gould

134. In late October 2002, Inspector Cabana spoke with Mr. Gould of DFAIT ISI about the possibility of sharing RCMP information with Syria. Mr. Gould called Inspector Cabana on October 21 to advise him that Ambassador Pillarella would be meeting with Syrian authorities the next day. According to Inspector Cabana's notes and his testimony at the Arar Inquiry, Mr. Gould wanted to confirm whether the RCMP was interested in Mr. Almalki and if charges were pending. Inspector Cabana told him that the RCMP and Crown were confident that there was enough evidence to charge Mr. Almalki. (Mr. Almalki has never been charged by the RCMP.) Mr. Gould also asked if the RCMP had any messages that it wanted the Ambassador to convey, to which Inspector Cabana responded that the RCMP had intelligence and evidence in relation to both Mr. Arar and Mr. Almalki that it was prepared to share with Syrian authorities. In his notes on the conversation, Mr. Gould wrote that "[t]he RCMP has generated a great deal of information about al-Malki 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)."

135. Ambassador Pillarella met with General Khalil the following day (October 22, 2002). The report of this meeting suggests that the focus of the meeting was Mr. Arar, and that Mr. Almalki was not discussed. The Inquiry found no evidence to suggest that Ambassador Pillarella conveyed to General Khalil any messages on behalf of the RCMP or shared with him any information about Mr. Almalki.

October 30 memorandum and draft letter

136. On October 30, 2002, Mr. Solomon drafted a memorandum for Mr. Livermore's signature to James Wright, a DFAIT Assistant Deputy Minister. The memorandum stated that both ISI and the Ambassador to Syria had told the RCMP that sending questions to Syria would raise a "credible risk" of torture. It went on to propose that DFAIT send a letter to Assistant Commissioner Proulx, the head of RCMP CID, setting out DFAIT's concerns about torture, and indicating that DFAIT would not support or assist the RCMP in its effort to send questions to Syria.

137. A draft of the proposed letter was attached to the October 30 memorandum. The draft letter said that DFAIT had advised the RCMP of the risk of torture, but that RCMP representatives were nonetheless prepared to send questions for the Syrians to ask Mr. Almalki. The letter also urged the RCMP "in the strongest possible terms not to send the Syrian security services questions to be put to Al-Malki", because it "would be contrary to Canadian domestic law, international law and foreign policy for a Canadian citizen to be questioned under duress at the behest of the Government of Canada."

138. The letter was never sent to Assistant Commissioner Proulx. Mr. Livermore believed that the Deputy Minister of Foreign Affairs at the time, Gaëtan Lavertu, would be speaking to RCMP Commissioner Giuliano Zaccardelli about the issue, but told the Inquiry that he does not know whether the conversation took place. Former Commissioner Zaccardelli did not recall a conversation with Mr. Lavertu, and was not aware that DFAIT expressed concerns about sending the questions. When asked if he should have been made aware of these concerns, former Commissioner Zaccardelli responded that he could not comment because he did not know the circumstances and context in which the concerns were raised. Mr. Heatherington thought the matter might have been resolved by a November 3, 2002 meeting between General Khalil and Ambassador Pillarella, at which General Khalil suggested he would be willing to allow Mr. Almalki to meet with a Canadian official (obviating the need to send questions). Mr. Solomon believed that the matter was resolved by Mr. Livermore. He explained that when the draft letter got to Mr. Livermore, Mr. Livermore felt it was a big step and conveyed a fairly strong tone, and indicated to Mr. Solomon that he would check with the RCMP before sending it. Mr. Solomon recalled Mr. Livermore communicating with someone in the RCMP with the result that it was no longer necessary to send the letter.

139. The Inquiry found no evidence that the RCMP advised DFAIT that it was not going to send the questions or that DFAIT specifically confirmed with the RCMP that it was not going to do so.

Questions sent

Decision to send the questions

140. By December 11, 2002, Project A-O Canada had decided to send questions to Syria. Staff Sergeant Fiorido told Inspector Cabana that, based on a discussion with Ambassador Pillarella, Staff Sergeant Fiorido thought that the best approach would be to send questions, rather than attempting to obtain an interview. He also suggested to Inspector Cabana that, if the answers provided by Mr. Almalki were not conclusive, the Syrians might consider granting an interview.

141. Inspector Cabana recognized that a decision to send questions for Mr. Almalki could put Mr. Almalki at risk of being tortured. However, he stated that based on a balancing of all the issues, and following the RCMP's consultations with DFAIT and Ambassador Pillarella, the RCMP decided to send them. Inspector Cabana believed that the importance of gaining access to Mr. Almalki in order to get information about the threat level in Canada warranted sending questions.

142. Though the RCMP apparently considered Mr. Elmaati's torture allegation in coming to the decision to send questions, the impact of the allegation was, according to Staff Sergeant Callaghan, minimal. Staff Sergeant Callaghan explained that the RCMP had doubts about the credibility of Mr. Elmaati's allegation, and that these doubts were, in effect, reinforced by DFAIT's offer to facilitate the sending of questions for Mr. Almalki.

143. Inspector Cabana emphasized that the decision to send questions for Mr. Almalki was a troubling one, but one that he did not make on his own. He said that Superintendent Clement and Chief Superintendent Couture, his superiors in Criminal Operations, had, earlier in the year instructed him to gain access to Mr. Almalki, whether by sending questions or interviewing him, and then were directly involved in the process of sending questions. Furthermore, he stated that the decision to send questions flowed from a lengthy consultation process that took place with different players, including DFAIT, the RCMP liaison officers, CSIS and the Department of Justice. Apart from the limited involvement referred to below in paragraph 157, the Inquiry found no evidence

that CSIS was involved in the process of formulating or sending the questions for Mr. Almalki.

144. The decision to send questions apparently did not involve Assistant RCMP Commissioner Proulx. He was under the impression that the questions for Mr. Almalki were not going to be sent to Syria, and was surprised when he learned otherwise. At the Arar Inquiry, Assistant Commissioner Proulx was asked if sending the questions was appropriate. He replied that, if DFAIT had advised that the person would be tortured and recommended that the RCMP not send questions, then the RCMP should not have done it. However, he said, the Ambassador in the country had the final authority on the matter.

145. Former Commissioner Zaccardelli does not recall when he first learned that the RCMP was going to send questions to be posed to Mr. Almalki—it might have been after the questions were sent. He stated that sending the questions did not raise any concerns in his mind because he knew, from briefings by Deputy Commissioner Garry Loeppky, that the RCMP was having extensive discussions with various partners, including DFAIT, and that the RCMP was receiving the best advice and guidance possible in dealing with what he described as "the most serious threat to Canada." By "the most serious threat to Canada," former Commissioner Zaccardelli meant allegations that Canadian residents were involved in terrorist activities that posed an "imminent threat" to Canada. These allegations were based on information that had been communicated to the RCMP in late September and early October 2001, by U.S. agencies and CSIS.

146. When asked about CID's involvement in the decision to send questions for Mr. Almalki, Superintendent Pilgrim said that the decision to send the questions was an operational matter in which CID would not have been extensively engaged. He said that, while CID might have been involved in the discussions and in facilitating the sending of the questions to Syria, the final decision would have been left with the operational unit or the division. Superintendent Pilgrim said that, if CID had any serious concerns about sending the questions, it would have raised them. However, Superintendent Pilgrim could not recall if CID voiced any serious concerns, and the Inquiry has not seen any information to suggest that it did.

147. Superintendent Clement suggested that sending questions for Mr. Almalki might have been beneficial to his treatment. He thought that showing interest in Mr. Almalki would put his case in an international spotlight, which would make a big difference. As an example, he raised the case of detainees in Hong Kong; he believed that when the RCMP expressed interest in interviewing

the detainees, they received better treatment. Superintendent Clement acknowledged, however, that he did not have knowledge about the situation in Syria. Superintendent Pilgrim made similar comments with respect to Mr. Elmaati. He said that pursuing an interview of Mr. Elmaati might have resulted in him being treated in a better manner.

Content of the questions

148. The final draft of the questions for Mr. Almalki was not nearly as extensive as those set out in the July 31, 2002 report that had been prepared by a Project A-O Canada investigator (discussed above at paragraph 123). The final list was three pages long and contained 23 questions, derived from the criminal investigation, which addressed only some of the topics set out in the July 31 report, including Mr. Almalki's alleged military training, his former employer, the Canadian Global Relief Foundation (a charity), the purpose of some of his business shipments, and his relationship with Mr. Elmaati, Mr. Arar, Mr. Khadr and others. The list also included questions that asked whether Mr. Almalki was a member of a terrorist cell in Canada, whether he was acting as a procurement officer for any terrorist group, and whether he was aware of any terrorist threats in Canada. The final list of questions did not contain any information about Mr. Almalki and his family members or state that he was a member of a Canadian terrorist cell.

149. Staff Sergeant Callaghan, who had instructed the Project A-O Canada investigator to prepare the draft list of questions in July 2002, was asked why the RCMP stripped down the investigator's initial draft before sending it to the Syrian authorities. Staff Sergeant Callaghan stated that Inspector Cabana and others felt that the initial draft contained too much information and that it was not advisable to disclose the entire investigation to a foreign body (the Syrian authorities) with which the RCMP had no appropriate liaison relationship or past experience. He also said that Inspector Cabana and others made the decision to pare down the questions and try to establish some level of cooperation with the Syrian authorities in order to see what the RCMP could get back from them. Inspector Cabana said that the RCMP's goal in sending the questions was not to get answers to those questions but to offer something to Syrian officials in the hope that they would ultimately grant the RCMP access to Mr. Almalki.

150. Though the questions were stripped down from the initial draft, Staff Sergeant Callaghan thought that that they were still pretty strong in themselves. He stated that someone reading the questions might think that, if Mr. Almalki was possibly associated with the people listed in the questions, "maybe the

Canadians have something here." Inspector Cabana, on the other hand, stated that the questions were, for the most part, innocuous types of questions to which the RCMP knew, or reasonably assumed it knew, the answers.

Questions translated

151. On December 11, on the recommendation of Staff Sergeant Fiorido, Inspector Cabana asked Staff Sergeant Callaghan to have the proposed questions translated into Arabic. The next day, Inspector Cabana noted that the questions were being translated, that DFAIT was aware of the translation, and that the questions would be sent to the Ambassador. However, he had no notes as to who at DFAIT he had spoken to in this regard, and the Inquiry found no other information concerning this discussion.

Questions sent to Staff Sergeant Fiorido

152. Mr. Fiorido asked that the questions for Mr. Almalki be sent to him ahead of time so he could ensure that the contents were appropriate. On December 20, 2002, he received a fax from Inspector Cabana and Staff Sergeant Callaghan (and approved by Superintendent Wayne Watson), to which was attached a draft list of questions and a handwritten Arabic translation.[19] Each list of questions was three pages long. The fax, which had been approved by Superintendent Pilgrim, stated:

> You can advise the Syrian authorities that this is only a portion of the information we would like discussed with Almalki…we would like to treat this offering of questions as an opportunity to establish cooperation between the Syrians and the RCMP.[20]

153. The list of questions sent to Staff Sergeant Fiorido did not include a caveat. Mr. Fiorido explained that he did not think there should have been a caveat given the nature of the inquiries and the secrecy under which agencies in the Middle East operate. He said that information passed by a police agency is always treated as being subject to the third-party rule, and it was only when you got burned that you wanted to start including the caveat.

154. In his interview, Staff Sergeant Fiorido was asked whether, in reviewing the questions and arranging for them to be delivered to the Syrian authorities, he had any concerns about the style of interrogation that the Syrian authorities might employ. He said he thought that the Syrians would be concerned

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[19] The questions were sent to Staff Sergeant Fiorido again on January 7, 2003 as the copy sent on December 20 was illegible in part.

[20] Corporal Flewelling of RCMP CID also received a copy of this fax, but he could not recall whether he objected to the content of the fax.

about the way they are perceived in the eyes of the big democratic powers and therefore carry out the interrogation of Mr. Almalki in a professional manner. He said that it was his understanding that Canadian citizens detained in Syria were less likely to be mistreated than individuals of other nationalities, though he acknowledged that a dual Syrian-Canadian citizen would likely not be treated as well as a person with Canadian citizenship only.

155. Staff Sergeant Fiorido did not make any independent inquiries—of DFAIT for example—regarding how Mr. Almalki might be interrogated; he stated that this issue was not on his radar screen and that he assumed a level of professionalism and a way of operating that would be in keeping with the expectations of a truly democratic society. He also stated that, given the other demands on his time, unless he received direct information that mistreatment was occurring, he would not investigate the possibility of abuse.

Cover letter to General Khalil

156. Staff Sergeant Fiorido prepared a draft cover letter addressed to General Khalil to send with the list of questions for Mr. Almalki. He sent a copy of this draft to Inspector Cabana on January 8, 2003; he wanted the Inspector to review the wording to ensure it was accurate and consistent with the RCMP investigator's operational goals. He also sent a copy to an official at CSIS, as CSIS was mentioned in the letter. Staff Sergeant Fiorido did not send a copy of the draft letter to RCMP headquarters or his own branch, the International Operations Branch; nor did he send a copy to DFAIT.[21]

157. Several RCMP documents suggest that a CSIS official was consulted about the draft cover letter, and that he told Staff Sergeant Fiorido that he was comfortable with the contents of the letter and willing to assist in any way he could. This official vaguely recalled being consulted about the cover letter. However, he said that he always believed that the questions prepared by the RCMP to be delivered to the SyMI were destined for Mr. Arar, and not Mr. Almalki. His understanding was based on two factors. First, the name "Almalki" did not appear in any of the correspondence or arise in any of the discussions between Staff Sergeant Fiorido and the CSIS official, as all of their communications were open (i.e. not secure) communications. This includes the actual draft cover letter, which did not refer to Mr. Almalki by name, but referred to him as "this person". Second, at the time, the Arar case was the most topical, and the CSIS official recalls that Arar's was the name on everyone's mind.

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[21] According to Mr. Fiorido, this type of material is rarely shared with the International Operations Branch in Ottawa.

158. The final draft of the cover letter, dated January 10, 2003, and approved by Inspector Cabana, said that depending on the quality and accuracy of Mr. Almalki's answers to the questions, the RCMP might deliver to the SyMI a second series of questions. The letter also proposed that Staff Sergeant Fiorido and a CSIS official meet with officials from the SyMI to further discuss the matter. Finally, the letter advised that the RCMP was "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" and offered to share this information with the SyMI.

Delivery of questions to Ambassador Pillarella

159. On January 14, 2003, Ambassador Pillarella met with Staff Sergeant Fiorido and received a sealed envelope containing the RCMP's questions for Mr. Almalki. Although he did not open the envelope, Ambassador Pillarella was aware of its contents. The Ambassador recalled being told by Staff Sergeant Fiorido that the instructions to deliver the questions had come from Ottawa. Therefore, Ambassador Pillarella assumed that the appropriate consultations had taken place regarding any possible issues that DFAIT might have had with submitting these questions. Ambassador Pillarella understood that the questions were being passed on to the Syrians in the context of what he considered to be the extraordinary cooperation shown by the Syrians in the Arar case.

160. Staff Sergeant Fiorido, on the other hand, testified at the Arar Inquiry that he did not make any reference to approval from Ottawa when he gave the questions to Ambassador Pillarella. However, he recalled telling the Ambassador that the questions were not his, that he had received them directly from investigators and that he was just facilitating the exchange.

161. While Ambassador Pillarella was aware of Mr. Elmaati's torture allegation at the time he passed on the questions to the Syrians, he testified that he was unaware that Mr. Solomon had, in an October 30, 2002 draft memorandum, expressed a concern that there was a "credible risk" of torture if the questions were submitted.

162. Ambassador Pillarella arranged for Consul Léo Martel to deliver the envelope to Colonel Saleh to be passed on to General Khalil. Mr. Martel delivered the envelope to Colonel Saleh, as instructed, on January 15, 2003. When asked why he would ask a consular officer to provide these questions to the Syrians for Mr. Almalki, Ambassador Pillarella stated that it was merely a matter of coincidence that Mr. Martel was meeting Colonel Saleh that day. Mr. Martel, however, testified before the Arar Inquiry that he made a special trip to see

Colonel Saleh in order to deliver the envelope at the request of Ambassador Pillarella. Mr. Martel also testified that he was not aware, and was not advised by the Ambassador, of the contents of the envelope. In fact, Mr. Martel thought that the envelope might contain pleas from Ambassador Pillarella on behalf of Mr. Arar.

Mr. Almalki's interrogation in mid-January 2002

163. As discussed at paragraphs 51 to 52 of chapter 8, Mr. Almalki stated that he was interrogated in Syria on January 16, 2003 on the basis of what he observed to be a two-page typed list of questions and a half-inch thick report. According to Mr. Almalki, the interrogator told him that the questions were provided by Canada, and that Mr. Almalki had to answer them so that the interrogators could send the answers to Canada. The questions he was asked on January 16 included questions about whether he was trained and what he was trained on. He was also asked questions about the names of various individuals, most of which Mr. Almalki did not recognize.

No reply from the SyMI

164. The RCMP does not know whether its questions were ever put to Mr. Almalki. Neither DFAIT nor the RCMP received any response from the SyMI to the questions or to the RCMP's offer to share investigative material. Ambassador Pillarella attributed this to a number of factors, including the deterioration in relations between Canadian officials and the SyMI, possibly as a result of pressures to secure the release of Mr. Arar. He believed that the Syrians were "really annoyed with Canada because [Canada was] causing problems for them."

165. Ambassador Pillarella also attributed the SyMI's failure to respond to its aversion to working with a police organization. Ambassador Pillarella said that when he met with General Khalil in the middle of August 2003 and raised the issue of Mr. Almalki, General Khalil told him that SyMI officials had read the questions and determined that all the answers to the questions had been communicated during the briefing given to CSIS on November 24, 2002, and that he did not wish to interact with a police force.

166. In mid-August 2003, following discussions and correspondence with Ambassador Pillarella, Staff Sergeant Fiorido sent a fax message to Project A-O Canada indicating that there had been a deterioration of relations between Canadian officials and the SyMI, that the list of questions for Mr. Almalki

would not be responded to, and that the SyMI did not wish to deal with any police agencies.

No further questions or sharing of information

167. In his interview, Staff Sergeant Callaghan stated that the RCMP only provided Syrian authorities with the list of questions and the cover letter to General Khalil; it did not give the Syrian authorities any documents or summaries of information. Staff Sergeant Callaghan also stated that the RCMP did not send the Syrian authorities a second series of questions, as had been suggested might occur in the cover letter.

Possibility of mixed messages

168. Brian Davis, who replaced Ambassador Pillarella as the Canadian Ambassador to Syria on September 13, 2003, and was involved in DFAIT's efforts to obtain consular access to Mr. Almalki, was asked about the possibility that the RCMP's questions, combined with DFAIT's efforts to gain consular access to Mr. Almalki, sent mixed messages to Syrian officials. He said that while he was not aware at the time that the RCMP had sent questions to Syria, none of the Syrian officials he spoke to expressed any confusion about what he was trying to achieve. He said that his Syrian counterparts never mentioned that there was information or questions coming in from other sources, or how they were dealing with CSIS on cases like Mr. Almalki's. Ambassador Davis also said that Mr. Haddad, with whom he had regular contact on the Almalki case, was the most likely of his Syrian contacts to raise issues unrelated to Canada's diplomatic efforts, but that he did not do so.

Consular actions following Mr. Arar's press conference

169. As noted above, on November 4, 2003, Mr. Arar gave a press conference at which he described meeting Mr. Almalki at Sednaya prison. Mr. Arar stated that Mr. Almalki told him that he had been severely tortured while in detention.

Minister Graham's meeting with Ambassador Arnous

170. After Mr. Arar's press conference, on November 4, 2003, Minister Graham called Syrian Ambassador Arnous in for a brief meeting to discuss both

Mr. Arar and Mr. Almalki.[22] At their meeting, Mr. Graham expressed a concern to Ambassador Arnous that Syria act appropriately towards Mr. Almalki and said that they (Canada and Syria) would have to work together and openly for a positive outcome. Following the meeting, Minister Graham's office issued a press release calling on the Syrian government to investigate Mr. Arar's torture allegation, as well as the detention of all other Canadians being held in Syria.

November 6 meeting with Mr. Almalki's family

171. On November 6, 2003, DFAIT officials including Dave Dyet (then the Director of the Consular Case Management Division of the Consular Affairs Bureau) and Ms. Pastyr-Lupul met with several of Mr. Almalki's family members. According to a transcript of the meeting prepared by DFAIT, the family expressed concern about the possibility that Mr. Almalki was being tortured, and asked that the Canadian government send a strong statement to the Syrian government requesting that Mr. Almalki be released. The DFAIT officials advised the family that Minister Graham had contacted the Syrian Ambassador and requested consular access to Mr. Almalki. They also said that DFAIT could not force the Syrians to release him.

172. The transcript of the November 6 meeting also indicates that DFAIT officials asked the family members for some information about how and why Mr. Almalki ended up in Syria. According to the transcript, Safa Almalki advised that, to the best of his knowledge, Mr. Almalki had travelled to Syria to visit his parents, who were in Syria at that time, and to conduct some business. The transcript states that Safa advised the DFAIT officials that, in advance of Mr. Almalki's trip to Syria, his parents had checked his Syrian "intelligence file" to determine if it could be dangerous for him to travel to Syria, and found that there was "nothing at that time."[23] The transcript also indicates that DFAIT officials asked why the family had not approached the Consular Affairs Bureau sooner, and Safa explained that they did not want to endanger family members in Syria or

[22] In his interview, former Minister of Foreign Affairs William Graham indicated that he was not made aware of Mr. Almalki's case until Mr. Arar's release. While an "Action Memorandum for the Minister of Foreign Affairs" dated April 7, 2003, referred to Mr. Almalki's case in an annex and stated that Syrian authorities refused to acknowledge that he was being held, former Minister Graham was not fully briefed on the details of Mr. Almalki's case until he personally intervened in November 2003.

[23] According to the transcript of the November 6 meeting, Safa Almalki explained Syrian "intelligence files" as follows: the Syrian government keeps an intelligence file on every Syrian. Syrians in Canada can inquire about their intelligence files at the Syrian Embassy in Canada. Often Syrian-Canadians will check their intelligence file before deciding whether to travel back to Syria. The Syrian Embassy may advise a person not to travel back to Syria or to travel at his/her own risk. If the Syrian government "really really wanted someone" the Syrian Embassy might not instruct that person not to travel; however, generally the system is intended to encourage people to travel to Syria and not to trap them into travelling there.

make things worse. According to the transcript, Safa also explained that, until this time, the family had favoured quiet diplomacy over going public with Mr. Almalki's story, because they felt it would be more effective and because they did not want to take any action that could adversely affect Mr. Almalki; he noted that it was the family's choice to use quiet diplomacy, and that it had not been pressured by DFAIT to do so.

DFAIT's efforts to meet with Syrian officials

173. As a result of Minister Graham's meeting with Ambassador Arnous, the Canadian Embassy in Syria was asked to follow up with the Syrian MFA, ideally with Vice-Minister Mouallem, in order to press for access to Mr. Almalki. Between November 6 and November 13, Embassy staff made at least five unsuccessful attempts[24] to set up a meeting with Vice-Minister Mouallem. They speculated that the Vice-Minister's office was avoiding the meeting because it knew what the subject matter was.

174. On November 11, 2003, Ambassador Davis requested that the Embassy draft a second diplomatic note asking Syria to investigate the allegations of torture, grant consular access to Mr. Almalki, and allow Mr. Almalki to have a legal defence at his trial.[25] This note was sent to the Syrian MFA on November 30, 2003. When asked whether he felt it was appropriate for DFAIT to have left a 15-month gap between diplomatic notes in Mr. Almalki's case, Ambassador Davis explained that when dealing with military security, diplomatic notes are not very useful and that it was the contacts they had and the phone calls they made that would move things ahead.

175. On November 18, 2003, in an email message to his consular officers, Ambassador Davis emphasized the importance of documenting every effort to set up a meeting with Vice-Minister Mouallem. Ms. Pastyr-Lupul made a similar comment in a CAMANT note, urging the consular officers to document each step taken in the Almalki case. She explained that a record of the actions taken would be necessary to explain the consular efforts to Mr. Almalki's family and to the Minister.

176. On November 19, 2003, the Embassy was successful in setting up a meeting between Ambassador Davis and the Deputy Minister of Foreign Affairs for November 30. However, on November 30, when the Ambassador arrived at

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[24] Phone calls were placed on November 6, 9, 11, 12 and 13.

[25] According to a DFAIT document, Mr. Almalki advised DFAIT in May 2004 that he had been charged under article 278 of the Syrian *Punishment Act* of "Doing actions that the Syrian Government did not allow…These actions expose/exploit Syria to the danger of being retaliated against".

the Deputy Minister's office, no one in the office seemed to have any knowledge of the meeting, and the Ambassador was told that the Deputy Minister was out of town. In a diplomatic note to the Deputy Minister of Foreign Affairs dated December 1, 2003, Ambassador Davis protested the cancellation of the November 30 meeting and requested that it be rescheduled as soon as possible.

177. At various points in late 2003, Ambassador Davis raised Mr. Almalki's case with several Syrian government officials, including the Minister of Expatriates, the Deputy Prime Minister, and the Speaker of the House.

Senator De Bané's meeting with Syrian officials

178. At the request of DFAIT, Senator Pierre De Bané agreed to raise the case of Mr. Almalki with Syrian officials during a previously scheduled trip to Syria and Lebanon as chair of the Canadian Parliamentary Delegation. Prior to the trip, DFAIT officials briefed the Senator on Mr. Almalki's case, and advised that DFAIT wanted Syria to permit consular access as soon as possible, to provide Mr. Almalki with immediate medical attention and an independent medical exam and to respond to Mr. Arar's torture allegations.

179. On December 4, 2003, Senator De Bané and Ambassador Davis met with former Deputy Minister Haddad of the Syrian MFA and President Al-Assad to discuss the cases of Mr. Almalki and another Canadian citizen detained in Syria. In response to Senator De Bané's request that the Canadians be released, concerns were raised about Canada's failure to defend Syria's actions in its recent release of Mr. Arar.

180. Following the meeting, Senator De Bané raised Mr. Almalki's case with the Syrian Prime Minister, who promised to do the best he could. Also following the meeting, Ambassador Davis spoke again with Mr. Haddad. It was noted that there might be reasons that the Syrians would not be able to release Mr. Almalki, and Mr. Almalki's alleged membership in al-Qaeda was cited as one example. The Ambassador responded that, even if release was not possible, the Embassy should at least be given access and Mr. Almalki should be given a fair trial. It was agreed that access would be justifiable. Ambassador Davis also asked the Minister what the next steps should be, and whether the Embassy should be sending diplomatic notes or doing something else. It was indicated that this was not necessary, that the matter was being looked after, and that things were going to happen. Ambassador Davis stated that he felt encouraged by these comments.

181. In his report on the meeting and subsequent discussions of December 4, 2003, which was sent to Konrad Sigurdson and others in DFAIT, Ambassador Davis suggested that DFAIT consider taking steps to manage public reaction to the case of Mr. Almalki and others so as to avoid undermining DFAIT's efforts to secure Syria's cooperation. The concern was that an unbalanced portrayal of Mr. Almalki's case in the media, including a persistent focus on Syria's human rights reputation, might further complicate cooperation in the resolution of this case and future cases. With respect to information about the Senator's trip to Syria and meetings with Syrian officials, Ambassador Davis asked that, in accordance with the Senator's express wishes, every effort be made to minimize disclosure to the families, the public and the press. The concern was that such disclosure might jeopardize the possible resolution of Mr. Almalki's case.

182. The results of Senator De Bané's trip and the comments by Syrian officials were communicated to Canada's Minister of Foreign Affairs in an Information Memorandum dated December 10, 2003. The memorandum concluded that "…a low-key, incremental approach which avoids controversy is the best way to serve the interests of the two detainees as it will help to encourage continuing Syrian cooperation."

183. As a follow-up to Senator De Bané's trip, Ambassador Davis kept in regular contact with Mr. Haddad about Mr. Almalki's case.

RCMP letter to Mr. Edelson

184. In November 2003, Michael Edelson, Mr. Almalki's then-lawyer, sought the RCMP's assistance in obtaining Mr. Almalki's release from Syrian detention. At a meeting between Mr. Edelson, Safa and Nazih Almalki (Mr. Almalki's brothers) and Project A-O Canada managers on November 7, Mr. Edelson asked the RCMP to draft a letter confirming that:

- Mr. Almalki had no criminal record in Canada;
- Mr. Almalki was not, as of the date of the letter, the subject of an arrest warrant anywhere in Canada; and
- there was no legal impediment to Mr. Almalki's return to Canada given his status as a Canadian citizen.

Mr. Edelson also sought clarification as to whether or not the RCMP provided Mr. Almalki's business records to the Syrian authorities, as he had reason to believe that some business records were put to Mr. Almalki during interviews in Syria.

185. In response to Mr. Edelson's request, and after consulting with the RCMP's legal counsel, Assistant Commissioner and Commanding Officer "A" Division Ghyslaine Clément sent a letter to Mr. Edelson on December 11, 2003. The letter confirmed that Mr. Almalki did not have a criminal record in Canada, that there was no warrant for his arrest, and that the RCMP did not request that Mr. Almalki be detained. With respect to Mr. Almalki's citizenship and any possible impediments to his return, the letter recommended that Mr. Edelson consult with DFAIT and Citizenship and Immigration Canada. The letter did not comment on the issue of Mr. Almalki's business records. However, Project A-O Canada managers were confident that, while a series of questions was sent to the Syrian authorities to be posed to Mr. Almalki, no supporting documentation was provided. The Inquiry found no evidence that the RCMP (or CSIS) provided any of Mr. Almalki's business records to Syrian authorities. As discussed above, the Supertext database shared with U.S. agencies in April 2002 contained records from Mr. Almalki's businesses. As well, Mr. Almalki's laptop was seized and searched by Syrian authorities while he was detained in Syria.

Mr. Almalki's possible release

Ambassador Davis' conversation with Mr. Haddad

186. On January 5, 2004, Ambassador Davis received a call from Mr. Haddad, with whom he had been in regular contact since Senator De Bané's trip, advising that Mr. Almalki had been acquitted by a non-military court on December 31, 2003, and would be set free shortly. Ambassador Davis learned that since Syrian authorities had been criticized domestically for handing over a Syrian citizen (Mr. Arar) to a foreign government (Canada), they had decided to set Mr. Almalki free in Syria and leave it to him to decide where to go. In a confidential note to the Consular Affairs Bureau, Ambassador Davis indicated that while Mr. Haddad had been reliable and effective in the release of Mr. Arar, he was hesitant to become too excited until he received evidence of Mr. Almalki's release. Ambassador Davis stated that he was in regular contact with Mr. Haddad after receiving this information in order to find out why Mr. Almalki had not yet been released. Despite his efforts, Ambassador Davis was never told why Mr. Almalki was not released until mid-March 2004.

CSIS communications regarding Mr. Almalki's release

187. In early January 2004, the Service communicated with the SyMI regarding Mr. Almalki. The Service wanted to know whether the SyMI was planning to release Mr. Almalki and whether the SyMI would permit CSIS to interview

Mr. Almalki prior to his release. In making these inquiries, the Service did not want to comment on Mr. Almalki's detention or put forth its position on the situation. The Service, aware that the Syrians were upset about allegations that they had tortured Mr. Arar, also wanted the SyMI to respond to these allegations and to advise if it had made any extraordinary efforts to ensure the fair treatment of Canadian citizens detained in Syria.

188. The Service received information that Syrian authorities were astonished by the hostile media campaign launched by those who were demanding the release of Mr. Arar and that they hoped other cases did not cause the same media uproar. With respect to the treatment of detained Canadians, the Service received information that the prisoners were detained under "normal" prison conditions and that health care was provided to them. The Service also received information about the basis of the charges against Mr. Almalki, and that he would be tried and released shortly.

189. A senior CSIS official was asked how he assessed the response from the Syrians. He said that CSIS was not able to draw any conclusions from it, in part because the Syrians did not provide the Service with any additional background information or supporting documents. The Service did not, to this official's recollection, follow up with the Syrians to obtain further elaboration or information, and the Inquiry found no evidence that it did.

Possible interview of Mr. Almalki in January 2004

Consultation with DFAIT

190. As part of its efforts to gain interview access, CSIS consulted with Mr. Heatherington and Mr. James Wright about how the interview should be conducted. Mr. Wright insisted that the interview be on a voluntary basis, that Mr. Almalki be informed of his right to consular assistance, that the Ambassador be briefed on the interview, and that the interviewer evaluate Mr. Almalki's physical and mental condition, identify any possible signs of torture, and report this evaluation to DFAIT. Mr. Wright also emphasized that Mr. Almalki's release was imminent, and asked that CSIS make clear to the SyMI that the interview should not affect his release.

191. Mr. Wright was asked whether (assuming that the Service agreed to these conditions) he was comfortable with the Service going ahead with an interview. Mr. Wright cited four factors that gave him some comfort about the interview. First, the interview was going to be conducted by a Canadian, not a Syrian. Second, Mr. Wright's conditions (to which the Service ultimately

agreed) ensured that Mr. Almalki would be reminded of his rights and of the standing offer of assistance from the Canadian Embassy. Third, DFAIT believed at that time that Mr. Almalki's release was imminent. Fourth, DFAIT had not enjoyed any consular access to Mr. Almalki and though, in a perfect world, a consular officer would be the first Canadian official to speak to Mr. Almalki, a Service interview was better than no access at all.

192. Mr. Heatherington was asked why DFAIT would support the Service's efforts to obtain interview access to Mr. Almalki, even though it did not support the RCMP's efforts to send questions to Syria. Mr. Heatherington explained that the critical thing was that DFAIT was supportive of face-to-face meetings between CSIS and the RCMP and Canadian citizens, but was very uncomfortable with questions being sent to third parties to be asked of detained Canadians.

Purpose of the interview

193. The proposed interview was to serve several purposes. Among them, the Service hoped to gain insight into potential threats to the security of Canada. At DFAIT's request, the interview was also to be an opportunity for the Service to evaluate Mr. Almalki's physical and mental condition, identify any possible signs of torture, and report this evaluation to DFAIT.

194. Though one of the purposes of the proposed interview was to evaluate Mr. Almalki's condition, the proposed interviewer, a CSIS official, had not received any training regarding the physical or mental signs of torture. The official stated, however, that he would have looked for visual indications of mistreatment, such as a haggard appearance, bruises and welts. The official also stated that, had the SyMI granted the Service access to Mr. Almalki, CSIS headquarters would probably have provided him with additional information and instructions regarding the conduct of the interview.

Possibility that the interview would affect Mr. Almalki's release

195. Since the Service and DFAIT believed that Mr. Almalki might be released imminently, they wanted to ensure that CSIS' request for an interview did not affect the Syrian authorities' decision regarding Mr. Almalki's release. One senior CSIS official said that CSIS did not want to give the Syrians the impression that CSIS wanted the Syrian authorities to keep Mr. Almalki. He explained that this concern was motivated by the Arar case, which had been very problematic for the Service and which the Service did not want to see repeated.

196. When questioned by the Inquiry, the official who was to interview Mr. Almalki said that he had no information to suggest that the timing of

Mr. Almalki's release was influenced by the Service's request to interview him. Since Syria did not participate in the Inquiry, the Inquiry did not receive any information regarding whether or not CSIS' request for an interview influenced the timing of Mr. Almalki's release.

Interview never took place

197. Ultimately, the Service's efforts to secure interview access to Mr. Almalki were unsuccessful. The SyMI never refused the Service's request for an interview, but Mr. Almalki was released before any interview could take place.

Plans for Daniel McTeague's visit to Syria

198. In mid- to late January 2004, during a DFAIT inter-departmental meeting including the geopolitical offices, the Consular Affairs Bureau and the Minister's office, Daniel McTeague, then the Parliamentary Secretary to the Minister of Foreign Affairs with a special emphasis on Canadians abroad, expressed an interest in travelling to Syria.[26] He wanted to engage the Syrians on consular issues in general and discuss sensitive cases involving dual nationals.

199. During the latter part of January 2004, there were many discussions within DFAIT regarding the possibility of Mr. McTeague travelling to Syria. On January 21, 2004, Ambassador Davis, in a message regarding the proposed visit, wrote that while the Embassy would be pleased to receive a visit from Mr. McTeague, he believed it would be far more effective if he visited after the release of Mr. Almalki and another Canadian who was detained in Syria. He explained that because these cases fell under the authority of the Syrian security forces, they were not amenable to normal diplomatic pressures. He also said that because the Syrians considered Mr. Almalki and the other detained Canadian to be Syrian citizens only, the best way to deal with the cases was through Syrian "back channels." Furthermore, Ambassador Davis wrote that, given Syria's "displeasure about the aftermath of the Arar case," a visit by Mr. McTeague might be confrontational and prove unproductive.[27] In addition to the Ambassador's concerns about the proposed visit, then Deputy Prime Minister Anne McLellan was apparently anxious that visits to Syria and similar statements/actions by Mr. McTeague not undermine Canada's security relationship with key allies.

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[26] The position of Parliamentary Secretary with a special emphasis on Canadians abroad was created in late 2003 because, according to Mr. McTeague, consular cases were becoming a very important matter of public policy for Canadians. Mr. McTeague was the first appointee to the position. He was appointed in December 2003 by then Prime Minister Paul Martin.

[27] Syrian officials were apparently displeased at what they perceived to be Canada's failure to publicly acknowledge Syria's release of Mr. Arar

200. While Mr. McTeague was apparently aware of these concerns, his "gut instinct" was to make the attempt. Mr. McTeague emphasized that he had a mandate from and reported directly to then Prime Minister Paul Martin, who had told him to do what he thought was the right thing. With respect to apparent concerns about Canada's security relationship with key allies, Mr. McTeague said that he was not an expert in security, but could not see how his visiting Syria would pose a problem. He said that his mission was to improve damaged relations between Canada and Syria.

201. At the end of February 2004, in an email to Mr. Robert Wright (then the National Security Advisor to the Prime Minister), Mr. James Wright noted that, despite recommendations to the contrary, Mr. McTeague was "as determined as ever to travel to Syria" and had asked that DFAIT send a diplomatic note to the Syrian government proposing that he visit in March.

202. In the middle of March 2004, after some correspondence and discussions between the Embassy and the Syrian MFA, Ambassador Davis received a call from the office of Vice-Minister Mouallem indicating that he was now prepared to meet with Mr. McTeague. As a result, a meeting between Mr. McTeague, Vice-Minister Mouallem and Ambassador Davis was arranged for March 22, 2004. The substance of this meeting is discussed below, in paragraph 210.

Mr. Almalki's release from detention[28]

Pre-release meetings between Canadian and Syrian officials

203. On January 29, 2004, Ambassador Davis met with Vice-Minister Mouallem and raised the case of Mr. Almalki, drawing attention to Canada's concerns about Syria's treatment of Mr. Almalki's case. Ambassador Davis believed that Vice-Minister Mouallem might not have been aware of the Almalki case. Ambassador Davis left the meeting with the impression that Syria was concerned about the negative impact of the Arar case and unhappy about the manner in which Canada had responded to the release of Mr. Arar.

204. On February 5, 2004, Ambassador Davis and DFAIT's Special Coordinator for the Middle East Peace Process, who was visiting Syria at the time, raised Mr. Almalki's case with Minister Sharaa and Vice-Minister Mouallem. The DFAIT officials were again left with the impression that their Syrian counterparts were

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[28] This section of this chapter, and the sections that follow it, contain a discussion of events that occurred after Mr. Almalki's release. The Terms of Reference do not require any examination of actions of Canadian officials in this post-release period, and no findings have been made in respect of them. A discussion of the post-release period has been included to provide context and for the sake of completeness.

not aware of the case. DFAIT took this as evidence of the limited involvement of the Syrian MFA in security cases of this type.

205. Ambassador Davis met with Vice-Minister Mouallem again on March 10, 2004. At that meeting, Ambassador Davis raised Mr. Arar's allegation that Mr. Almalki had been tortured while in Syrian custody, urged the Syrians to investigate the allegation and encouraged Vice-Minister Mouallem to release Mr. Almalki. Vice-Minister Mouallem replied that lengthy detention was sometimes necessary, but indicated that one of the Canadian detainees (Mr. Almalki or the other Canadian detainee) could soon be released. Finally, Vice-Minister Mouallem promised to do his best to facilitate consular access to Mr. Almalki.

Mr. Almalki released

206. Mr. Almalki was released from custody on March 9, 2004 but was not allowed to leave Syria at that time. He was required to report to the Syrian authorities and a large bond was posted to secure his release and to make sure he remained in Syria for a court appearance (possibly a trial) scheduled for June 6, 2004. Mr. Martel described Mr. Almalki's status in Syria as similar to being out on bail.

207. DFAIT did not learn of his release until March 18, 2004, when Mr. Almalki visited the Canadian Embassy in Damascus to get assistance renewing his passport, which had expired while he was in detention. Mr. Almalki met with Mr. Martel that day, and Mr. Martel provided him with a passport application. The two men discussed the conditions on which Mr. Almalki had been released and arranged a future meeting. They agreed that future visits to the Embassy would have to be under the guise of passport renewal, because Mr. Almalki had been ordered by Syrian officials not to visit or call the Embassy. According to Mr. Martel's report of the meeting, he asked Mr. Almalki about the reasons for his arrest, and Mr. Almalki said that he had been informed by the Syrian authorities that they had acted on information received from Canada. Also according to Mr. Martel, he noticed during the meeting that Mr. Almalki was limping and asked him whether this was a result of his detention; Mr. Almalki answered, "This is a long history" and Mr. Martel did not press further. According to Mr. Almalki, he advised Mr. Martel that he had been tortured but that he could not talk about the details.

208. In the period between his release from detention and his departure from Syria, Mr. Almalki visited the Canadian Embassy in Damascus on a regular basis. Mr. Martel explained that Mr. Almalki would often spend two or three hours at the Embassy, and while he was there consular staff let him make phone calls—to

his family and lawyers in Canada for example—and tried to facilitate his life and help him maintain contact with Canada. Mr. Martel stated that this kind of service was not given to everybody.

Lunch with Mr. Martel

209. On March 22, 2004, Mr. Martel and Mr. Almalki met for lunch. According to the chronology of public information filed by the intervenors, Mr. Martel told Mr. Almalki that the Syrian president had told Senator De Bané in December 2003 that he was frustrated because Syria was being blamed for the detentions of people that Canadians had asked them to detain. Mr. Martel told the Inquiry that he did not say this to Mr. Almalki. He recalls mentioning to Mr. Almalki that Canada was doing its best to assist Canadian detainees and that Senator De Bané had recently met with the Syrian president to discuss the matter. However, Mr. Martel told the Inquiry that he did not convey to Mr. Almalki any further information about the meeting; he was not aware of what had transpired at the meeting.

Mr. McTeague's meeting with Syrian officials

210. On March 22, 2004, Mr. McTeague and Ambassador Davis met with Vice-Minister Mouallem and an official from Far Falestin. Mr. McTeague was told that Mr. Almalki had been released because of close cooperation between Canada and Syria and because of a Canadian request. Mr. McTeague attempted to discuss the need for pragmatic cooperation in the cases of a growing number of dual nationals, but was unsuccessful in engaging Vice-Minister Mouallem on that issue.

211. Following his meeting with Syrian officials, Mr. McTeague met with Mr. Almalki. According to a report of their meeting prepared by an Embassy official, Mr. Almalki did not want to discuss his treatment in detention, but stated he had lost some teeth and that his foot and leg had been damaged during his detention.

Information to CSIS

212. In late March 2004, DFAIT provided CSIS with the text of two email messages regarding Mr. Almalki's release and his visits to the Embassy in Damascus. The messages had been drafted by consular officials, approved by the Ambassador, and sent to officials in DFAIT headquarters. The first message, dated March 18, 2004, reported details of Mr. Almalki's visit to the Embassy on March 18. It recounted what Mr. Almalki had told consular officials about the

conditions of his release, the reasons for his arrest, and his current living situation in Syria. It indicated that Mr. Almalki had asked consular officials to keep his visit confidential. The second email message, dated March 23, 2004 reported details of Mr. McTeague's March 22 meeting with Mr. Almalki.

Post-release interrogation of Mr. Almalki

213. As discussed at paragraphs 105 to 106 of Chapter 8, Mr. Almalki stated that in late March or early April he was asked to return to Far Falestin to retrieve his laptop. He stated that when he did so he was interrogated about information contained in a report that had been faxed on March 29, 2004. The Inquiry found no evidence that Canadian officials supplied a report or other information to Syrian officials on or around March 29, 2004.

214. Embassy officials learned about Mr. Almalki's post-release interrogation shortly after it occurred. According to Mr. Almalki, he advised Mr. Martel and Maha Kotrache (a consular officer) of the interrogation and the report when he met them for lunch in late April 2004. According to an April 27, 2004 CAMANT note, Mr. Almalki's brother told Ms. Pastyr-Lupul that Mr. Almalki had, about one week before, been interrogated by Syrian officials and asked about "a report from Canada." His brother advised that Mr. Almalki had been released when he told them that there was no substance to the report, but that Mr. Almalki was terrified during the interrogation. According to DFAIT documents from early May 2004, Mr. Almalki visited the Embassy on May 6, 2004 to collect his passport, and while he was there, advised Embassy officials that he had been called back to the "Military Intelligence Branch" on April 22 and interrogated about several individuals, asked to identify persons shown in 10 pictures, and accused of being the spiritual leader of "The Prayer Group".

Mr. Almalki's court hearing and exit from Syria

DFAIT's efforts to secure Ambassador's attendance at Almalki's trial

215. In mid- to late April 2004, the Consular Affairs Bureau and the Canadian Embassy in Damascus made efforts to secure the attendance of Ambassador Davis at Mr. Almalki's trial. Mr. Almalki indicated to the Embassy that he felt its involvement would put pressure on the Syrians and force them to proceed with a more transparent trial. The Embassy sent a diplomatic note on May 12, 2004 requesting confirmation of Mr. Almalki's charges and permission for Ambassador Davis to attend the trial.

216. In late April, Ambassador Davis met with the head of the Security Court about the possibility of his attending Mr. Almalki's trial. During this meeting, Ambassador Davis was asked why he cared about such a "dangerous person." Ambassador Davis explained to the head of the Security Court that he was primarily concerned that Mr. Almalki be granted due process. At the end of the meeting, the head of the Security Court said he could not make a decision that day and therefore had to postpone Mr. Almalki's trial. Ambassador Davis suspected that Mr. Almalki's case was adjourned on that day because of his presence.

Mr. Almalki's trial

217. Mr. Almalki's trial was held on July 25, 2004, and Ambassador Davis and a senior consular officer were allowed to attend. According to DFAIT documents, at the conclusion of the trial, the judge found Mr. Almalki not guilty on the basis that there was insufficient evidence, but ruled that, as a dual national, Mr. Almalki had to report for military duty on July 27, 2004. According to a Syrian court document, which was provided to the Inquiry by Mr. Almalki's counsel, the majority of the judges panel hearing his case held that he did not have the legal intent required for the crime with which he had been charged,[29] but that, because he was released, he had to go to the Military Recruiting Unit to settle his military drafting status. He was not required to report to the Military Recruiting Unit for 48 hours.

218. Following the verdict, Mr. Almalki left the court with Embassy staff.

DFAIT sends Syria a diplomatic note regarding Mr. Almalki's military service

219. To assist Mr. Almalki, DFAIT took what Ambassador Davis considered to be the exceptional measure of sending a diplomatic note to Syria on July 26, 2004, requesting a deferral of Mr. Almalki's military service. Ambassador Davis explained that he pursued the issue quite aggressively, because although it might be considered an intervention in local law on military service, he felt that it was warranted nonetheless.

220. The diplomatic note sent to the Syrian authorities on July 26 requested that the authorities reconsider their decision to order Mr. Almalki to report for military service. The note explained that Mr. Almalki had been unable to apply for deferral of his military service because he was detained in Syria, and stated:

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[29] Mr. Almalki had been charged under Article 278 of the Syrian General Penal Act with doing acts not permitted by the government, that expose Syria to the danger of hostile acts.

> Now that the reasons for his detention of over two years have been dismissed by the High Security Court, it would seem only reasonable and equitable for the Government of Syria to agree to renew the deferment of his military [sic].

Embassy's final contact with Mr. Almalki

221. On July 27, 2004, the day he was required to report for military duty, Mr. Almalki visited the Embassy and spent some time there making telephone calls and speaking with Embassy officials. Mr. Almalki told Mr. Martel that Mr. McTeague's office had contacted Mr. Almalki's brothers in Ottawa and told them to tell Mr. Almalki to go to the Canadian Embassy and stay there until the military service issue was resolved. Mr. Martel was surprised by this message because the Embassy had not received instructions to this effect. He told Mr. Almalki that it was not the Embassy's policy to allow anyone to stay after hours. He also told Mr. Almalki that he was not authorized to help him circumvent the local law and that this was something that Mr. Almalki had to settle with his country of birth. At 4:30 p.m., the Embassy closed for the day, and Mr. Almalki was told by the receptionist that he had to leave.

222. July 27 was the last time that Mr. Martel, or anyone from DFAIT, saw Mr. Almalki in Syria. Mr. Martel explained in his interview that he went away for the weekend and upon his return attempted to contact Mr. Almalki by cell phone. After a few days, he contacted Mr. Almalki's family members and was told nothing. At that point, Mr. Martel suspected that Mr. Almalki had left the country.

Mr. Almalki returns to Canada

223. According to Mr. Almalki, on July 28, 2004 he sought advice from people he knew in the Syrian government, who advised that if the judge had really wanted him to fulfill his military service, he would not have been allowed to leave the court; they told him that the judge had let him go because he wanted him to leave the country. Mr. Almalki went to a Syrian immigration office to make arrangements to leave Syria. According to Mr. Almalki, when he asked the immigration officials to transfer his entry visa from his old passport to his new passport they gave him an exit visa instead and then sent him to the head of immigration, who signed the exit visa. Mr. Almalki immediately booked a flight to Vienna and departed the same day.

Canadian officials learn of Mr. Almalki's return to Canada

224. On August 9, 2004, CSIS and the RCMP learned that Mr. Almalki was back in Canada. On two occasions in August 2004, CSIS made inquiries of officials

at the Canadian Embassy in Damascus regarding Mr. Almalki's return to Canada, and Embassy officials provided CSIS with their belief as to how Mr. Almalki might have made it back to Canada, as well as information about Mr. Almalki's trial, and about his activities in Syria prior to his departure. The officials also provided CSIS with details of a conversation that a DFAIT official had had with Mr. Almalki regarding his military service obligations.

225. The RCMP learned about Mr. Almalki's return to Canada from a CBC radio report, and then inquired with Canada Customs to determine why the Canada Customs lookouts on Mr. Almalki (one of which had been requested by Project A-O Canada) were not triggered upon his re-entry into Canada. Canada Customs advised that, when Mr. Almalki passed through customs upon arriving in Canada, his documents had been checked by a summer student customs officer. Since Mr. Almalki's passport had been issued outside of Canada, it was not machine-readable, and information from his passport had to be entered manually. The officer entered Mr. Almalki's first and last name as they appeared on his passport, details which were insufficient to trigger the lookout.

Sharing of consular information

226. On at least two occasions during the period following Mr. Almalki's release, Mr. Martel of the Canadian Embassy in Damascus shared information about Mr. Almalki with CSIS. During a discussion in early May 2004, Mr. Martel volunteered to CSIS some information that Mr. Almalki had shared with him since his release: that Mr. Almalki had no travel plans in the near future, that Mr. Almalki was living in Damascus with his family, and that Mr. Almalki had been summoned to the SyMI two weeks before and questioned about some individuals in Canada. Later in 2004, after Mr. Almalki had left Syria, CSIS asked Mr. Martel for information about Mr. Almalki, and Mr. Martel provided it.

227. When interviewed, Mr. Martel was asked about the propriety of sharing information obtained in the course of providing consular services to Mr. Almalki with CSIS. Mr. Martel said that while he generally tried to avoid getting into discussions with CSIS officials about Mr. Almalki, he wanted to keep the lines of communication open because he thought that CSIS might be able to provide him with some helpful information about Mr. Almalki.

228. At some point Mr. Martel became aware that DFAIT headquarters might be sending his confidential consular reports to CSIS. He said that while he was not certain and had no firm knowledge that the reports were being shared, he was under the impression and would not have been surprised if they were. When asked whether this sort of sharing would be a breach of Consular Affairs

Bureau policy, he again said that he was not certain, but that it would depend on the terms of the agreements between DFAIT and the government departments or agencies that received the reports. He went on to say, however, that if the reports dealt with his clients, they were confidential, and that giving them to another agency would be a breach of paragraph 2.4.10 of the Manual of Consular Instructions.[30]

[30] Paragraph 2.4.10 of the Manual of Consular Instructions states, "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."

6

ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MUAYYED NUREDDIN

1. The following is a summary of information obtained by the Inquiry, largely from interviews of Canadian officials and review of relevant documents, concerning the actions of Canadian officials in relation to Mr. Nureddin.

Canadian officials' interest in Mr. Nureddin

CSIS

2. Starting in the 1990s, CSIS was actively investigating potential security threats posed by Canada-based supporters of Islamic extremism, al-Qaeda and other related organizations. In the late 1990s, in the normal course of this investigation, CSIS learned that Muayyed Nureddin might have some knowledge of the threat to Canada and Canadian interests abroad.

3. Based on its Sunni Islamic extremism investigations, the Service suspected that Mr. Nureddin was acting as a financial courier for individuals believed to be supporters of Islamic extremism. In late 2002, the Service communicated this suspicion to U.S. agencies and another foreign agency. In one case, CSIS' communication to a U.S. agency did not include any caveats.

4. In early July 2003, CSIS shared information regarding Mr. Nureddin with several foreign intelligence agencies, including U.S. agencies. The communication said that the Service had confirmed that Mr. Nureddin acted as a courier in the transfer of money to the Ansar al Islam (AAI) in Northern Iraq.[1] This information was accompanied by a caveat.

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[1] AAI appears on the list of entities designated as terrorist organizations pursuant to section 83.05 of the *Criminal Code* R.S., 1985, c. C-46; Public Safety Canada, "Currently listed entities," online, www.publicsafety.gc.ca/prg/ns/le/cle-en.asp (accessed July 9, 2008).

RCMP

5. The RCMP became interested in Mr. Nureddin in September 2001 because of his association with a subject of the Project O Canada investigation. Project O Canada's interest increased in October 2002 after one of its foreign law enforcement partners advised that it had discovered a probable connection between a senior al-Qaeda facilitator and Mr. Nureddin.

6. Upon learning this information, the RCMP began corresponding and cooperating with American authorities in gathering background information on Mr. Nureddin. In January 2003, the RCMP's Criminal Intelligence Directorate (CID) sent American authorities a copy of a Project O Canada situation report (SITREP) containing information about Mr. Nureddin. The SITREP stated that Mr. Nureddin's telephone number had been found in the possession of a subject of the Project O Canada investigation, described Mr. Nureddin's suspected role as a financial courier for people believed to be supporters of Islamic extremism, and said that the RCMP would be conducting surveillance on Mr. Nureddin prior to his expected departure on a pilgrimage trip in late January. At the bottom of the SITREP was a caveat prohibiting dissemination of the document without the RCMP's consent.

RCMP's requests for more information

7. At the end of January 2003, Project O Canada sent faxes to the RCMP CID and the RCMP Financial Intelligence Branch (FIB) advising them of the possible link between Mr. Nureddin and al-Qaeda, and requesting that they liaise with other police and intelligence agencies to obtain more information. Project O Canada wanted additional information to confirm Mr. Nureddin's "association with criminal extremism" and substantiate an application for court-authorized search warrants.

8. In early February 2003, the RCMP's CID sent a fax to the RCMP liaison officer in Washington indicating that Mr. Nureddin had recently become a subject of interest to Project O Canada, and requesting that a U.S. agency provide any information that would assist the RCMP with its investigation. On the same day, CID directed the RCMP liaison officer in Washington to provide U.S. authorities with a copy of a Project O Canada SITREP from late January 2003. This SITREP reported that Mr. Nureddin had travelled to Paris, France en route to the Hajj in January 2003 and that he had declared that he was carrying approximately $6,000 in U.S. and Canadian currency. At the bottom of the SITREP was a caveat prohibiting dissemination of the document without the RCMP's consent.

9. In late May 2003, Project O Canada provided a U.S. agency with information about Mr. Nureddin's current status and residence. Project O Canada stated that Mr. Nureddin was "an active target" of its investigation.

Sharing information about Mr. Nureddin's September 2003 travel plans

10. In July 2003, the Service advised a U.S. agency and two foreign intelligence agencies that Mr. Nureddin might travel to Iraq via Turkey at some point in the coming weeks. In its message to one of the foreign agencies, the Service stated that while Mr. Nureddin's trip might be for legitimate reasons, the Service had reason to believe that it might be an opportunity for him to courier money to members of the AAI. In its communication to the U.S. agency and one of the foreign intelligence agencies, the Service stated that Mr. Nureddin might be acting as a human courier and facilitator in the transfer of money to Islamic extremist causes. The Service did not, in this latter communication, indicate that Mr. Nureddin's trip might be for legitimate reasons. All of the Service's communications were accompanied by two caveats.

11. In early September 2003, the Service and a U.S. agency exchanged further correspondence regarding Mr. Nureddin's possible travel to Iraq. The messages and discussions that followed led to the sharing of information regarding Mr. Nureddin's possible travels with two other foreign agencies. Neither of the agencies was Syrian. CSIS' messages were accompanied by the same caveats.

12. In mid-September 2003, the Service advised the same U.S. agency and multiple foreign intelligence agencies (not including any Syrian agencies) that Mr. Nureddin planned to travel to Iraq, via Germany, on September 16, 2003. The Service advised the agencies that Mr. Nureddin might be acting as a courier in the transfer of money to the AAI. This information was accompanied by the same CSIS caveats.

13. The Inquiry found no evidence that the Service advised or permitted disclosure to the Syrian authorities of Mr. Nureddin's travel plans.

Mr. Nureddin's departure for Iraq; interviews and searches at the airport

14. On September 16, 2003, RCMP Integrated National Security Enforcement Team (INSET) investigators learned that Mr. Nureddin was scheduled to travel from Toronto to Turkey the same day. INSET investigators subsequently made inquiries about Mr. Nureddin's itinerary and learned that he would be returning to Canada from Damascus, Syria on December 13, 2003.

15. Prior to Mr. Nureddin's departure, INSET investigators and Canada Customs officers at Pearson International Airport interviewed and searched Mr. Nureddin. According to handwritten notes from the INSET interview, investigators asked Mr. Nureddin for information about the money he was carrying and Mr. Nureddin declared that he was carrying approximately US$12,000 and EUR4,000, most of which he told them was destined for friends and family in Iraq. The notes indicate that Mr. Nureddin was also asked about the number of times he had visited Iraq and the amount of money he had carried with him on previous trips. The notes also report that Mr. Nureddin told the investigators that his brother would be meeting him in Germany and that they would then drive together to the Middle East. The INSET investigators also questioned Mr. Nureddin about his relationship to three individuals, all of whom, Mr. Nureddin told the Inquiry, he was later questioned about during his interrogations in Syria.

16. According to notes from the interview by Canada Customs officers, Mr. Nureddin told the officers that he was carrying US$12,000 and EUR4,000, and that the money had been given to him by three different friends to carry to his final destination. The notes indicate that the Canada Customs officers subsequently counted Mr. Nureddin's currency, and found a total of US$10,020 and EUR4,000. The notes also indicate that one of the officers examined Mr. Nureddin's telephone book, and copied several of the phone numbers into her notes.

17. Canada Customs shared the report of its September 16, 2003 interview/search of Mr. Nureddin with CSIS on October 8, 2003 and with the RCMP at some point in September or October 2003. The Inquiry found no evidence that Canada Customs, CSIS or the RCMP shared this report with any foreign agency. As discussed below at paragraph 24**,** the RCMP shared the results of the search and interview, along with some of Mr. Nureddin's travel information, with U.S. authorities later in September 2003.

Sharing the itinerary

18. In the days following Mr. Nureddin's departure from Canada, CSIS and the RCMP provided various foreign agencies with information about his scheduled travel plans, as follows.

CSIS shares Mr. Nureddin's full itinerary

19. On September 16, 2003, CSIS provided a U.S. agency and two other foreign intelligence agencies with Mr. Nureddin's travel itinerary, including

his scheduled return from Damascus, Syria on or about December 13, 2003. Along with the itinerary, CSIS advised the agencies of its suspicions about Mr. Nureddin, noting that he was known to the Service for his involvement in Islamic extremist causes and that he might be acting as a human courier in the transfer of money to the AAI.. The messages containing Mr. Nureddin's itinerary were accompanied by one CSIS caveat. The use of this one caveat alone was considered sufficient by the Service to instruct the receiving party not to disseminate the information further without the Service's consent.

Decision not to send the itinerary to Syria

20. The Service considered, but decided against, sending a copy of Mr. Nureddin's itinerary to the Syrian authorities. The decision was made after a CSIS official expressed concerns about the sensitivities surrounding the Arar affair. The official was concerned about "the political storm [that was] brewing" and about the strained relations between Canada and Syria. The CSIS official was also concerned that if the itinerary was passed to Syria, Mr. Nureddin might be inadvertently detained, and he did not want the Service to take the risk of causing an incident.

Decision to send the itinerary to a U.S. agency

21. Jack Hooper, then CSIS' Assistant Director Operations, explained that sending Mr. Nureddin's itinerary to a U.S. agency was simply good faith and reflected the Service's obligation to advise allied services of any terrorists, affiliates or operatives moving around the international arena. Further, he said that withholding the itinerary from the U.S. agency might have had an adverse impact on this important relationship, particularly given the U.S.'s interest in Iraq, Mr. Nureddin's destination.

22. Inspector Rick Reynolds of the RCMP recalled having asked a senior CSIS official not to send the itinerary to any other agency, as the RCMP wanted Mr. Nureddin to continue his journey uninterrupted and possibly carry out activities that could form the basis of a criminal charge. According to Inspector Reynolds, the CSIS official told him that the Service had an obligation to notify other agencies of Mr. Nureddin's departure and if they failed to do so, the other agencies would not, in turn, warn the Service of the travels of individuals who might be a threat to the security of Canada. The senior CSIS official could not recall this conversation, but indicated that he would not have agreed to withhold the itinerary in any case**.**

23. CSIS has no information indicating that the U.S. agency passed on Mr. Nureddin's travel itinerary provided to it by CSIS to Syria, or to any other country. Mr. Hooper expressed doubt that the U.S. agency would compromise its relationship with CSIS by passing on information protected by caveat. The Inquiry heard evidence from Mr. Hooper and other witnesses that they believed that the U.S. agency could have obtained the travel information itself through other means.

RCMP shares Mr. Nureddin's travel information

24. The RCMP shared the results of its September 16, 2003 INSET interview of Mr. Nureddin, as well as some of his travel information, with the FBI (on September 24) and the CIA (on September 25). The U.S. authorities were provided with a copy of a Project O Canada SITREP, which said that Mr. Nureddin was scheduled to travel to Turkey from Toronto, that he was flying on KLM flight 692, and that he and his brother would meet in Germany and drive from there to the Middle East. The SITREP also included other information that INSET investigators had obtained during their interview of Mr. Nureddin, including information about the amount of money he was carrying and about his relationship to the three individuals about whom he had been questioned by INSET investigators. At the bottom of the SITREP was a caveat preventing dissemination of the information without the RCMP's consent.

25. According to Inspector Reynolds, though Mr. Nureddin's travel information was shared with the CIA and FBI, it was shared so late that it could not have been connected to Mr. Nureddin's detention. Moreover, Inspector Reynolds stated that the information shared with the CIA and the FBI did not state that Mr. Nureddin was going to return to Canada via Syria.

Foreign agency refuses permission to share information with Syria

26. In early October 2003, the Service learned that, in late September, Mr. Nureddin had been stopped, searched and questioned while en route to Syria. The Service asked the originator of the information for permission to share it with the RCMP and other foreign agencies, including Syria. The originator granted the Service permission to share the information with several foreign agencies, but not with Syria. The Service did not share the information with Syria.

Foreign agency advises Syria of Mr. Nureddin's travel plans and asks Syria to question him

27. In October 2003, CSIS learned that one of the foreign agencies to which CSIS had sent Mr. Nureddin's itinerary on September 16 was searching for Mr. Nureddin, and that it intended to arrange for him to be detained for interview purposes. In communications to the agency, the Service acknowledged that Mr. Nureddin might be arrested or detained in one of the countries through which he travelled, and requested that, if he was detained, he be treated in accordance with international conventions and due process.

28. On December 11, 2003, the same foreign agency notified CSIS that it felt obliged to advise Syrian authorities that Mr. Nureddin was on his way to Syria. CSIS did not object because, according to the CSIS official who communicated with the foreign agency, the foreign agency was not asking if it could advise Syria of Mr. Nureddin's travel plan, but telling CSIS that it was going to do so. However, CSIS requested that the agency seek assurances with respect to Mr. Nureddin's treatment.

29. The following day, CSIS learned that Syrian authorities had been advised of Mr. Nureddin's travel to Syria, had been asked to question him when he arrived there, and had been provided with questions for this purpose. Syrian authorities had not, to CSIS' knowledge, been asked to arrest Mr. Nureddin or detain him other than for interview purposes. The Service was advised that reasonable assurances with respect to Mr. Nureddin's treatment and respect for his human rights would be sought from Syrian authorities. However, the Service never received or sought specific confirmation that these assurances had, in fact, been obtained.

Mr. Nureddin detained in Syria

30. Mr. Nureddin was detained by Syrian officials on the afternoon of December 11, 2003 when he tried to cross the border from Iraq into Syria.[2]

DFAIT learns of the detention

31. On December 18, 2003, a friend of one of Mr. Nureddin's brothers contacted Myra Pastyr-Lupul, a consular case management officer in the DFAIT Consular Affairs Bureau, and informed her of Mr. Nureddin's detention at the Syrian border. Ms. Pastyr-Lupul immediately opened a file for Mr. Nureddin, and notified the then-Director General of the Consular Affairs Bureau, Konrad

[2] See chapter 9, paragraphs 3 to 8 for Mr. Nureddin's account of his arrival and detention at the Syrian border.

Sigurdson, that another Canadian had been detained in Syria. Ms. Pastyr-Lupul explained that by the time Mr. Nureddin was detained, DFAIT was seeing "a pattern of Canadians detained in Syria who disappear." Case management officers were therefore instructed to inform their superiors as soon as such a case was brought to their attention.

CSIS learns of the detention

32. On December 19, 2003, the Service learned (from a source other than DFAIT) that Mr. Nureddin had been detained in Syria on December 11. The Service immediately advised DFAIT's Foreign Intelligence Division (ISI) of the possible arrest (unaware that DFAIT had already learned of the arrest). A CSIS official stated that at that time, it was standard operating practice to notify DFAIT when the Service learned that a Canadian citizen had been detained abroad.

33. On December 22, 2003, the Service sent a message to three foreign agencies, including Syrian authorities, asking if they had any information pertaining to Mr. Nureddin's arrest and detainment. The message described Mr. Nureddin as having recently come to the attention of the Service for his involvement in "Islamic extremist causes" and stated that he might be acting as a human courier in the transfer of money to the AAI. The message was followed by caveats. This was the first time that the Service directly shared information about Mr. Nureddin with Syrian authorities.

RCMP learns of the detention

34. On December 22, 2003, CSIS sent a message to Inspector Reynolds at RCMP CID advising that the Service had learned that Mr. Nureddin had been detained in Syria on December 11.

Consular actions

35. DFAIT sent a diplomatic note to Syria on December 21, 2003, the first business day after it learned of Mr. Nureddin's detention. On December 22, consular officials contacted the friend of Mr. Nureddin's brother. They informed him of their efforts to obtain consular access to Mr. Nureddin and said that they would apprise him of any developments. The friend advised that the family was worried about torture.

36. By December 30, 2003, the Canadian Embassy in Damascus had followed up with the chief of the consular section of the Syrian Ministry of Foreign Affairs to indicate that it was still waiting for a response to the December 21 diplomatic note. The consul from the Canadian Embassy in Damascus, Léo Martel, met

with the chief of the consular section on January 3, 2004. During their meeting, Mr. Martel was informed that the Syrian Ministry of Foreign Affairs does not have much power in situations involving security services, and in some cases the *Vienna Convention on Consular Relations* and *Optional Protocols* is not followed.

37. As Mr. Nureddin's detention continued, Mr. Sigurdson expressed a concern that the case could escalate seriously, and requested to be kept up to date of any news on the file.

Possible release / CSIS' inquiries of Syria

38. In early January 2004, the Service learned that Mr. Nureddin was to be released "immediately." The Service reported this information to the Canadian Embassy in Damascus the same day.

39. Around the same time, the Service communicated with the Syrian Military Intelligence (SyMI) regarding Mr. Nureddin. The Service wanted to know why Mr. Nureddin had been detained and whether he had been formally charged with any offence. The Service, aware that the Syrians were upset about allegations that they had tortured Mr. Arar, also wanted the SyMI to respond to these allegations and to advise if it had made any "extra-ordinary efforts" to ensure the fair treatment of Canadian citizens detained in Syria. A senior CSIS official told the Inquiry that the Service did not have any concern that sending these inquiries to Syria would in some way affect Mr. Nureddin's treatment. He described them as "fairly benign."

40. The Service received information that Syrian authorities were astonished by the hostile media campaign launched by those who were demanding the release of Mr. Arar, and that they hoped other cases did not cause the same media uproar. With respect to the treatment of detained Canadians, the Service received information that the prisoners were detained under "normal" prison conditions and that health care was provided to them. The Service also learned the reasons for Mr. Nureddin's detention.

41. Several days later, the Service learned that Mr. Nureddin was still detained, but that he would be released in a day or two because there were no charges against him. CSIS reported this information to a consular official at the Canadian Embassy.

42. CSIS did not know why Mr. Nureddin was still detained, but one CSIS official guessed that the Syrians had transferred him to a detention centre with better conditions in order to prepare him for his release. The official understood,

based on discussions with consular officials, that this had happened in the Arar case.

RCMP Briefing Notes regarding Mr. Nureddin

43. On January 5, 2004, the RCMP's Anti-Terrorist Financing Group (ATFG) drafted a briefing note for the RCMP Commissioner regarding Mr. Nureddin's situation. The note advised that Mr. Nureddin had been detained in Syria and that media reports had drawn a parallel between Mr. Nureddin's situation and that of Mr. Arar. The note also said that at the time of Mr. Nureddin's travel, the RCMP had not consulted with any other foreign or domestic agency.[3] The note went on to say, however, that because Mr. Nureddin was known to Project O Canada, information about him had been shared in the past with U.S. authorities, and that a report of Mr. Nureddin's travel had been forwarded to these authorities in the weeks following his departure from Canada.

44. In October 2006, a second briefing note drafted by the RCMP's National Security Offences Branch stated that the RCMP had had "no communication with any agency besides CSIS regarding Nureddin's travel and detention". The omission of any reference to the sharing of the RCMP SITREP with U.S. authorities in late September 2003 was, according to the RCMP, merely an oversight.

Mr. Nureddin's release and return to Canada[4]

45. On the morning of January 13, 2004, CSIS learned that Mr. Nureddin had been released and was awaiting consular assistance. CSIS immediately notified Brian Davis (Canada's Ambassador to Syria) and Mr. Martel of Mr. Nureddin's release.

Mr. Nureddin released to Mr. Martel

46. Mr. Martel arrived at the prison at 11:00 a.m. and was taken to the SyMI headquarters for a one-hour discussion with General Khalil, the head of the

[3] As discussed above at paragraph 22, Inspector Reynolds recalls having a discussion with a CSIS official, around the time of Mr. Nureddin's departure for Iraq in September 2003, about CSIS' decision to share Mr. Nureddin's itinerary with U.S. authorities. According to the RCMP, neither Project O Canada investigators in Toronto, nor the author of the briefing note, were privy to the discussion between Inspector Reynolds and the CSIS official, and therefore information about this discussion was not included in the January 5 briefing note. Moreover, according to Inspector Reynolds, this conversation was not at the time considered to be critical to the briefing of the RCMP Commissioner.

[4] This section of this chapter and the sections that follow it contain a discussion of events that occurred after Mr. Nureddin's release. The Terms of Reference do not require any examination of actions of Canadian officials in this post-release period, and no findings have been made in respect of them. A discussion of the post-release period has been included to provide context and for the sake of completeness.

SyMI. Following this discussion, Mr. Nureddin was brought by the guards with all his belongings to see Mr. Martel. After confirming that Mr. Nureddin was free to go and that he would not have any problems at the airport, Mr. Martel brought Mr. Nureddin directly to the Embassy.

Mr. Nureddin recounts his experience in detention

47. Mr. Martel and Maha Kotrache (a Consular Officer at the Canadian Embassy in Damascus) took Mr. Nureddin for lunch, where he recounted in detail the events that had taken place while he was detained, while Ms. Kotrache took notes.

48. Mr. Nureddin described his arrest at the Yaarouba Iraq/Syrian border, where he was told by authorities that he was wanted for terrorist activities. The next day, December 12, 2003, he was transferred to Damascus Military Intelligence detention centre where he was placed in a room close to the interrogation rooMs. On December 14, Mr. Nureddin was interrogated on his past and accused of being a member of AAI, which he denied. He was interrogated about the cash he had with him when he left Canada. He explained that he was carrying money for three friends in Canada in order to carry out transactions for them, but the interrogators did not believe him.

49. Mr. Nureddin described being told to remove his clothes and lie face-down on the floor. His interrogators then poured cold water on him and directed a fan to blow on him. He was then beaten on the soles of his feet with black rubber cables. Mr. Nureddin recalled receiving approximately 45 lashings on the first day.

50. On approximately the eighth day of detention, Mr. Nureddin told the officials, he was interrogated again, this time about two individuals residing in Canada. Mr. Nureddin explained that he suspected this information came from Canada because he had been questioned about these same two individuals at Pearson airport prior to leaving Canada. Mr. Nureddin also told the Inquiry that he was questioned by SyMI about two of the individuals he was asked about by Canadian officials before he left Canada on September 16, 2003.

51. On December 23, 2003, Mr. Nureddin told Mr. Martel and Ms. Kotrache, he was brought to see the director of the detention centre and questioned about whether he had been beaten. When Mr. Nureddin answered that he had, the director stated that this had been a mistake. On this same day, Mr. Nureddin was offered coffee and tea and questioned casually about the money he had been carrying.

52. On January 6, 2004, Mr. Nureddin recounted, he was forced to write a false declaration about his life, the money he had been carrying, as well as the two individuals he had been questioned about. He was then forced to sign a declaration to the effect that he had not been mistreated or tortured.

53. Mr. Martel told the Inquiry that he considered Mr. Nureddin's allegations of torture to be very credible, because he had described his experience in very fine detail.

Mr. Nureddin's medical examination

54. Prior to Mr. Nureddin's release, Mr. Martel received instructions from the Consular Affairs Bureau to arrange a medical examination of Mr. Nureddin to determine whether he was fit to travel. Mr. Martel arranged for a full medical examination, and accompanied Mr. Nureddin to the appointment. Mr. Martel did not advise the doctor that Mr. Nureddin had just been released by the Syrian security services; he did not want the doctor to be afraid of the local authorities or tempted to provide a medical report that would be favourable to the Syrians.

55. During the appointment, Mr. Martel saw Mr. Nureddin undressed and did not observe any evidence of torture. Following the examination, the doctor provided a written report stating that Mr. Nureddin was "fit to work without prescription."[5]

56. In Mr. Martel's view, the medical report (stating that Mr. Nureddin was "fit to work") and Mr. Martel's observations of Mr. Nureddin (suggesting no evidence of torture) were not inconsistent with Mr. Nureddin's allegations of torture, because the alleged torture had occurred at the early stage of Mr. Nureddin's detention and some torture techniques do not leave a trace.

Concerns about publicity

57. Following Mr. Nureddin's release, and before he returned to Canada, Ambassador Davis expressed to the Minister's office some concerns about publicizing Mr. Nureddin's release. He noted that any involvement of the Canadian government in publicizing Mr. Nureddin's release could give the appearance that the Canadian government was trying to embarrass Syria, and affect Syria's willingness to cooperate in other consular cases, including Mr. Almalki's. He suggested that Canada's handling of Mr. Nureddin's release might have

[5] The doctor wrote that Mr. Nureddin was "fit for work" even though Mr. Martel told him to determine whether Mr. Nureddin was fit for travel. Mr. Martel attributed the doctor's language to possible miscommunication (the business of the doctor's office was conducted in Arabic) and to a possible misunderstanding on the part of the office staff who typed up the report.

a direct impact on the timing of the release of Mr. Almalki, and expressed a strong preference for the Canadian government's involvement to be as low key as possible.

Mr. Nureddin returns home

58. On January 15, 2004, Mr. Nureddin travelled home to Canada, accompanied by Mr. Martel. (DFAIT had instructed Mr. Martel to escort Mr. Nureddin home.)

59. On January 18, 2004, Mr. Nureddin sent an email to Ms. Kotrache and Mr. Martel expressing his appreciation for their efforts in his case.

Sharing of consular information with CSIS

60. On several occasions, DFAIT officials shared consular information regarding Mr. Nureddin with CSIS officials. For example, on January 13, 2004, after learning that Mr. Nureddin would be released that day, Mr. Martel and a CSIS official discussed Mr. Nureddin's situation. During this discussion, Mr. Martel advised the CSIS official that Mr. Nureddin was to undergo medical examinations that afternoon and that he and Mr. Nureddin might depart for Canada in the evening. The CSIS official asked Mr. Martel if someone from CSIS could question Mr. Nureddin once he was in Mr. Martel's custody. Mr. Martel refused, but, according to the CSIS official, agreed to provide the Service with any relevant security-related information that he might learn from Mr. Nureddin during their time together. The CSIS official understood this to mean that, if there was any relevant security-related information, it would be passed between DFAIT and CSIS headquarters. In his interview, Mr. Martel disputed the CSIS official's characterization of his comment. He said that while he might have told the CSIS official that he would keep him posted, he did this just to be polite and had no intention of doing so.

61. In their interviews, both Mr. Martel and the CSIS official with whom he had discussed Mr. Nureddin on the morning of January 13 were asked about the propriety of exchanging consular information about Mr. Nureddin. Though the CSIS official understood that discussions between a consular officer and a citizen were presumptively confidential, he stated that, if security-related information is provided, the Service will accept it. Mr. Martel stated that he did not initiate the conversations with CSIS about Mr. Nureddin, but he agreed that he told CSIS about Mr. Nureddin's medical examination and about their possible departure that evening. Mr. Martel stated that he did not know why he gave CSIS this information. He went on to say that, at times, he felt pressure

to divulge information to CSIS because, as a consular official, he might need the assistance of CSIS in the future. When asked whether sharing the information about Mr. Nureddin with CSIS was consistent with consular practice, Mr. Martel agreed that it was not and that in retrospect he should not have shared this information.

62. On January 15, 2004, the day that Mr. Nureddin returned home to Canada, the Service sent a message to DFAIT requesting any significant information exchanged between Mr. Nureddin and Mr. Martel during their trip from Syria to Canada. The senior CSIS official who approved this message understood that the relationship between a consular official and a Canadian citizen was privileged, but accepted what she understood to be Mr. Martel's offer to provide the Service with any security-related information.

63. Also on January 15, Ambassador Davis discussed with a CSIS official a meeting he had had with Mr. Nureddin the day before. When the CSIS official asked whether Mr. Nureddin had talked about his treatment by the Syrians, Ambassador Davis responded that he would only discuss that in person and not over the telephone. He also suggested to the CSIS official that Mr. Martel, to whom Mr. Nureddin had spoken openly about his treatment in Syria and his journey to Iraq, would be in a better position to discuss the treatment issue.

64. On February 8, 2004, after Mr. Nureddin had returned to Canada, Mr. Martel and a CSIS official discussed matters related to Mr. Nureddin (among other things). The CSIS official had been asked by his superiors to meet Mr. Martel because the Service understood that Mr. Martel would be able to provide security-related information. According to the CSIS official, Mr. Martel advised that Mr. Nureddin had spoken openly about his incarceration and that Mr. Nureddin had said that he had not been treated too badly and did not consider his punishment to be serious. Mr. Martel told the CSIS official that the information about Mr. Nureddin was consular-related and therefore privileged.

RCMP briefing note regarding Mr. Nureddin's release

65. On January 14, 2004, the RCMP's National Security Intelligence Branch drafted a briefing note for the RCMP Commissioner stating that Mr. Nureddin had been released from Syrian custody on January 13 and was due to arrive in Canada on January 14. The briefing note advised that, because of Mr. Nureddin's association with several of the subjects of Project O Canada, RCMP members would observe Mr. Nureddin's arrival and note who, if anyone, arrived to meet him. The note also said that the RCMP's Media Relations Unit had been advised.

Post-release interviews of Mr. Nureddin

66. On February 12, 2004, two CSIS agents interviewed Mr. Nureddin at his home. Mr. Nureddin was hesitant to discuss his incarceration in Syria without his lawyer present, so they scheduled a second interview to be held the following day at his lawyer's office.

67. On February 13, 2004, the same agents met with Mr. Nureddin and his lawyer, Barbara Jackman. Ms. Jackman supplied the agents with a draft document outlining Mr. Nureddin's travel to Iraq and incarceration in Syria. The draft document suggested that Mr. Nureddin had been detained on the basis of a report that the Syrians had received on November 14, 2003. According to the Service, it had no knowledge of this report. The Inquiry did not find any evidence of a November 2003 report regarding Mr. Nureddin or of any other report about Mr. Nureddin sent by Canadian officials to Syrian authorities or anyone else.

Sharing of DFAIT email message regarding Mr. Nureddin

68. In late March 2004, DFAIT provided CSIS with the text of an email message that contained information about Mr. Nureddin. The message, dated March 23, 2004, reported details of a meeting between Daniel McTeague, then Parliamentary Secretary to the Minister of Foreign Affairs with a special emphasis on Canadians abroad, and officials from Far Falestin. According to the message, these officials spoke to Mr. McTeague about Mr. Nureddin, indicating that they believed he was connected to Ansar al Islam, that Syrian authorities had treated him carefully and responded to his requests, that he had received new clothes and had been permitted to move around the prison, that he had asked to speak honestly about his experiences in Syria prior to his release, and that Syrian authorities had been unpleasantly surprised by Mr. Nureddin's "lies" following his return to Canada.

7

AHMAD ABOU-ELMAATI'S EXPERIENCE IN SYRIA AND EGYPT

1. The following is a summary of information provided by Mr. Ahmad Abou-Elmaati in the interview of him that I conducted with assistance from Inquiry counsel and Professor Peter Burns (special advisor to the Inquiry), on December 6–7, 2007.

Arrival in Damascus and detention at the airport

2. Mr. Elmaati arrived at the Damascus airport at approximately 3:00 p.m. on November 12, 2001. His wife and father-in-law were waiting for him, but he never saw them and they never saw him. Mr. Elmaati's wife and father-in-law telephoned Mr. Elmaati's mother that night to report that he had not showed up at the airport, and his father-in-law later visited his mother in Cairo and told her the same thing.

3. When Mr. Elmaati arrived at the airport's immigration booth and passed the officer his passport, the officer entered his name into the computer and told him that there was "something about [his] name" and asked him to go to an office that was located beside the immigration line. Mr. Elmaati went to the door of this office (he could not recall whether there was a name on the office door) and, within a few seconds, four or five big men in plain clothes came out of the office and surrounded him. These men were "huge…like body builders." Mr. Elmaati had felt that something like this would happen because he had been stopped in Toronto and interrogated by the OPP, stopped by the German Border Police, and been accompanied by two people throughout his plane journey.

4. The men told Mr. Elmaati to come with them, and escorted him to the luggage area, where they made him pay 50 liras (equivalent to US$1) of his own money for a trolley to pick up his luggage. He had brought a minimal amount

of Syrian currency with him, left over from a previous trip to Syria, as well as approximately US$3,500, which was to be half the dowry for his wife. After collecting his three big bags, the men escorted Mr. Elmaati through Customs, where they were not stopped, and outside the airport.

Transfer to Far Falestin

5. The moment they were outside the airport, a four-door unmarked car pulled up. Mr. Elmaati's hands were handcuffed behind his back and he was put inside the back seat of the car with a man on either side. Once he was inside the car, a black bag was put over his head. In addition to the men on either side of him, there was a driver and a person in the front passenger seat. The man in the passenger seat would become known to Mr. Elmaati as the General; the other men referred to him as *Amid* (which means Brigadier).

6. The man in the front passenger seat asked Mr. Elmaati for his name. When Mr. Elmaati provided it, the man responded, "No, tell me your other names." Mr. Elmaati stated that he did not know what that meant, and the General responded, "Okay, we'll see, we'll see." Mr. Elmaati understood this as a threat.

7. Shortly after the car left the airport, it stopped by the side of the road. Mr. Elmaati heard the men in the car saying to each other that they needed to "wait for the other car." After waiting for some time, the car sped up again; Mr. Elmaati assumed the other car had arrived. Mr. Elmaati was never informed where they were going. The trip to what he later learned was Far Falestin took approximately 30 minutes, including the stop to wait for the other car.

Arrival at Far Falestin

8. Mr. Elmaati heard the car go through what he assumed to be a gate, and heard the guards saluting each other (by stamping their feet and clicking their heels together). The car then stopped and he was taken out, with his hands still handcuffed behind his back and the bag still over his head. One man was on each side of him, guiding him up two flights of stairs into an office. There, a man whom Mr. Elmaati assumed was sitting behind a desk, said, "Ahmad, tell us everything." From the sound of his voice, Mr. Elmaati assumed that the man was approximately two or three metres away. Mr. Elmaati responded: "What do you want to know? Everything about what?" The man replied, "We will teach you how to speak," and then directed the guards to "take him." They took Mr. Elmaati down the same flights of stairs he had ascended, outside for a few metres and then into another room.

9. The room that he entered would later become known to him as the prison manager's office. The room was about three metres wide, with a small desk, two or three beds and one small window. It was very old and dirty inside. The man who would become known to Mr. Elmaati as the prison manager took Mr. Elmaati's money and passport.

10. Mr. Elmaati was then taken to an interrogation room. His handcuffs were removed and the bag taken from his head. The room looked like a small, very dirty classroom. There were approximately four plainclothes guards. They searched his luggage, asking him, "Where are the documents?" When Mr. Elmaati responded, "What documents?," they said they would teach him "how to speak," and began punching him (with fists) in the face. The punching went on for several rounds. During this time the interrogators stole what they liked from Mr. Elmaati's luggage.

Cell number 5

11. Mr. Elmaati was then taken down two flights of stairs to the basement of the prison. At the bottom of the stairs was a long hallway (approximately 25 metres long) with a number of common cells on either side that could house a number of detainees. At the end of the hallway was another hallway, perpendicular to the first, which contained 10 solitary confinement cells. Mr. Elmaati was pushed into solitary confinement cell number 5. It was "like a grave." The cell was approximately 1 metre wide, 4.6–4.8 metres high, and not quite long enough for Mr. Elmaati to keep his legs fully extended when lying down. There was a grate in the ceiling and a window in the metal door. Both were covered with metal or wire mesh and neither was ever opened; it was therefore always completely dark in the cell. The two blankets in the cell smelled very badly of urine. On this first day, Mr. Elmaati was in his cell alone for a few hours, and was very afraid because he thought that something very bad was going to happen to him based on the way he had been treated.

Interrogation and treatment on the first day

12. After a few hours in his cell, Mr. Elmaati was taken upstairs to the interrogation room. Before entering the room, the guard took a rubber blindfold (possibly made out of a tire) out of the bucket to his left and put it on Mr. Elmaati. Some interrogators entered the room, and told Mr. Elmaati, "Tell us your story." Mr. Elmaati thought, based on his experiences with CSIS in Canada, that the Canadians had probably sent questions they wanted to ask him. In response to "Tell us your story," Mr. Elmaati told the Syrian interrogators what he thought the Canadian authorities wanted to know about: that he had been to

Afghanistan, that his brother had called him once from Afghanistan, and that he had taken flying lessons. He also gave his explanation for the map of Tunney's Pasture. (During his interview, Mr. Elmaati told the Inquiry that he kept a copy of the letter written by Anne Armstrong, Manager of Highland Transport, which explained that the map did not belong to him, in his pocket at all times when he travelled because he was afraid of being stopped. The letter was in his pocket when he arrived in Syria, but was taken from him upon arrival at Far Falestin when all his belongings were confiscated.) The interrogators told Mr. Elmaati that this was not the story they wanted to hear, and accused him of not telling the truth.

13. The interrogators then began beating Mr. Elmaati. They repeatedly punched him in the face and head, kicked him in his abdomen and thighs, and continued to tell him that he had to say something else. After a while, the interrogators left the room. They returned some time later and began making the same demand ("Tell us your story"). Mr. Elmaati answered in the same manner as before and was beaten in the same manner. This occurred three times before Mr. Elmaati was returned to his cell.

14. After a few hours in his cell, Mr. Elmaati was brought back up for a second interrogation. Before entering the room he was blindfolded and his hands were handcuffed behind his back. He was told to take off his clothes, and when he asked why, he was beaten. His handcuffs were briefly removed; Mr. Elmaati took off his shoes and all his clothes with the exception of his boxer shorts. He was told to lie down on his stomach with his knees bent. His hands were again handcuffed behind his back and his feet were then tied to his hands. Once he was in that position the interrogators poured very cold ice water all over his body and then started whipping and slashing him with a black electrical cable. Mr. Elmaati described the cable as braided and approximately an inch thick. The interrogators hit him on his feet, legs, knees, and back. The lashes came very hard and very quickly, and were administered for several minutes at a time. Mr. Elmaati screamed, cried and begged for it to stop.

15. While Mr. Elmaati was being beaten, several interrogators continued to demand that he tell them "his story." Mr. Elmaati gave them the same answers he had given previously. The interrogators laughed at his screaming and begging, and told him that they did not accept his story and he would have to change it. From the voices in the room, Mr. Elmaati understood that the General, another high-ranking officer, and several guards were in the room during the interrogation. Mr. Elmaati recalls that those who hit him also swore and cursed him, using filthy words. At one point during this interrogation, the interrogators told

him that they were going to bring in his wife and rape her in front of him. He was not aware of it at the time, but Mr. Elmaati would later learn that his wife was called for interrogation several times; he does not know whether she was ever physically abused.

16. At some point, the beating stopped, the handcuffs were taken off and the interrogators told Mr. Elmaati to jump up and down in one place; Mr. Elmaati assumed this was for the purpose of circulation, although the interrogators never told him the reason. He was then tied up again, and the interrogation and beatings continued.

17. At some point in the night, several hours after he was first detained, Mr. Elmaati told the interrogators that he could not say anything other than what he had already said. The beatings stopped and they returned him to his cell. Mr. Elmaati could barely walk because his feet were severely beaten and swollen. He was given nothing to eat or drink during the first 24 hours.

Interrogation and treatment over the next 48 hours

18. Over the next 48 hours Mr. Elmaati was called back to the interrogation floor for three or four more interrogation sessions identical to those of the first day: he was blindfolded; forced to remove all his clothes; had his hands and feet tied behind his back; had cold water poured over his body; and was beaten very badly with black electrical cables. The interrogators, believed to be the same individuals as the previous day, continued to ask the same questions, and Mr. Elmaati continued to deliver the same answers.

19. After three or four interrogation sessions, Mr. Elmaati begged the interrogators to stop, and agreed to say whatever they wanted him to say. The beatings then stopped, and his handcuffs were removed but not his blindfold. The officer told Mr. Elmaati that the Syrian authorities had a report that he had been planning to blow up the U.S. Embassy in Ottawa. When Mr. Elmaati heard that accusation, it was "one of the longest moments" of his life, because he concluded that the Syrian authorities were probably planning to hand him over to the Americans. He said he thought that this was something "very huge" and they were trying to implicate him in something false that he had never done. He was concerned about being handed over to the Americans because he felt he would not have any rights in American custody, and wanted to be handed over to the Canadian authorities instead. Although he had never heard of Guantanamo, he had heard about the "terrorist hype" in the U.S. and did not know what would happen to him there. He assumed the accusation about the U.S. Embassy was because of the map of Tunney's Pasture, and therefore

decided to select another target in Ottawa, a Canadian target, to satisfy his interrogators. He chose the Parliament Buildings because they were the biggest target he could think of.

20. The Syrian authorities seemed to accept Mr. Elmaati's story about the Parliament Buildings being the target; they instructed him to give them the outline of the attack. The officer told Mr. Elmaati that his brother had given him the instruction for the attack and that it was going to be done with a truck bomb; Mr. Elmaati agreed. When the officer asked for other names, Mr. Elmaati told him that he did not have any other names because his brother had been going to take care of everything.

21. The interrogators then took Mr. Elmaati's blindfold off and asked him to write this all down. Mr. Elmaati had great difficulty writing because of the treatment he had received, and wrote very slowly. The interrogators let him return to his cell for a break and then brought him back up to finish writing out his confession. It took a couple of days to finish the first draft of this statement.

Drafting the alleged confession

22. Despite his instructions to do so, Mr. Elmaati did not draft the version of events he had discussed with his interrogators during his interrogation. He felt that he could not implicate himself in a plot to blow up the Parliament Buildings in writing and, instead, wrote down "exactly what happened."

23. Once the interrogators discovered what Mr. Elmaati had written, approximately four men dragged Mr. Elmaati out of his cell during the night and immediately began beating him very hard. They punched, kicked, and slapped him, and pulled his beard and hair. They took Mr. Elmaati upstairs, blindfolded him, handcuffed his hands behind his back, and brought him into an interrogation room. The interrogators cursed him and told him that he needed to change his story. One interrogator was smoking a cigarette; he told Mr. Elmaati that he was going to burn his eyes. Mr. Elmaati felt very scared. He was lying on the ground and the interrogators kicked him and burned his shin with a cigarette. (During his interview, Mr. Elmaati showed Inquiry counsel that he has a round scar on his left shin about 1.3 centimetres in diameter.) Mr. Elmaati screamed for them to stop and promised to write whatever they wanted him to write. The man with the cigarette said: "Okay, now we teach you how to behave."

24. From then on Mr. Elmaati wrote down whatever the interrogators told him to: that he wanted to blow up the Parliament Buildings; that his brother had instructed him to do so; and that he was going to drive the truck. He had

trouble writing and wrote very slowly, sometimes getting his interrogators to dictate the story or write it out themselves.

25. Approximately four or five days after Mr. Elmaati's second statement was completed, he was brought back up from his cell and told to sign official papers. These papers had the words "Syrian General Intelligence" and an official stamp. Mr. Elmaati signed the papers without reading them and administered his thumbprint.

Remaining time in Syria

26. After Mr. Elmaati signed these papers, he spent most of his remaining time in Syria in his cell. He would occasionally be called up and asked questions about photographs of people, or names of people, or to verify his answers to some of the other questions that he had been asked. There was no pattern to when he would be brought up for questioning.

27. In one session, he was asked a series of questions in which the interrogators read from papers and asked him to confirm biographical facts about himself: the licence plate of his car, the colour of his car, his address, and the addresses of certain relatives. Mr. Elmaati was not blindfolded during this interrogation, but he did not see what the papers looked like or read the papers himself. He could not recall whether this questioning occurred before or after he signed the official papers.

28. On one occasion, Mr. Elmaati was called up to the prison manager's room for a meeting with the General. He was not blindfolded. The General addressed him by name and told him that they wanted him to work for them, and to send him to Afghanistan to bring back his brother. He immediately responded that even if they kept him "in this graveyard cell for 20 years" he was not going to work for them; he would rather die than do that. The General responded by calling Mr. Elmaati names, but did not slap him or beat him in any way. Mr. Elmaati was returned to his cell. The Syrian authorities never asked him to work for them again.

29. During this time, Mr. Elmaati was not beaten as he had been during the initial week to 10 days of interrogations. From time to time when he was brought up for questioning the guards would slap him or punch him on the way by. One day the guards wanted to shave his beard. Mr. Elmaati pleaded with the guards not to do so because his beard had religious significance for him and shaving it would cause him humiliation. The guards ignored his plea, and beat him while they shaved off his beard.

Prison conditions at Far Falestin

30. Mr. Elmaati was provided with food for the first time 24 to 48 hours after his arrival at Far Falestin. In the normal course, prisoners received three meals a day. For breakfast they were given a loaf of pita bread, tea, and one hard-boiled egg; for lunch, rice or bulgur and sometimes, although not usually, a very small piece of chicken such as a wing; and for dinner, lentil soup which was too bad to drink and tasted like dirty dishwashing water. Mr. Elmaati was given two one- or two-litre bottles, one to drink from and one for urine.

31. The food was distributed by other prisoners in buckets. A guard would come to his cell, open the door, and the prisoner carrying the bucket of food would pour it into Mr. Elmaati's containers. Whenever he went to the washroom, he would have to clean and empty his food containers and bottles, if he had the chance. On two occasions, Mr. Elmaati was given the opportunity to purchase provisions such as soap and food items (sardines, halva, and vegetable oil) with the money he had when he arrived at Far Falestin.

32. The process of going to the washroom at Far Falestin was "another torture by itself." He was allowed to go to the washroom only twice a day, and had to be very quick or he would get badly beaten. He only had two to three minutes to wash his dishes, fill up his water bottle, clean out his urine bottle, and relieve and wash himself. If he took any longer, the guard would swear at or hit him.

33. Mr. Elmaati's cell was very cold, "like a freezer." It was wintertime, and approximately a month into his detention Mr. Elmaati heard people in other cells screaming from the cold. Living in the cell for over two months was "like a grave and you are a dead man…you are living in a grave but you are still alive."

34. Mr. Elmaati found it very difficult to keep track of time while at Far Falestin. His only markers of time were a man in cell number 10 who was able to keep track of time and announced the daily prayer, and the guards' announcement only three or four days after he arrived at the prison that it was Ramadan. He did, however, develop a system for counting the days by telling himself every morning: "Today is this date, tomorrow is this date and yesterday was this date." Mr. Elmaati was later able to confirm these dates with his Egyptian guards.

35. Mr. Elmaati could hear the screams of people being interrogated in the interrogation rooms from his cell; this, he said, was a torture by itself.

36. Mr. Elmaati shared a cell wall with the women's cell, and occasionally he would communicate with the women prisoners. In one of these conversations

he was told the story of a 17-year-old girl who had been detained when she was 16, newlywed and pregnant. The prison officials did not want to care for her medically, and beat her until she lost the baby. He was "out of this world" with grief when he heard this story.

37. Mr. Elmaati also communicated with the man in cell number 10, who had been at the prison for over two years and knew the system. Mr. Elmaati told this man that he had been tortured into giving a false confession and wanted to recant. The man told him not to recant because the guards would likely kill him if he did.

38. It was through a covert communication with a fellow detainee that Mr. Elmaati first learned that the place of his detention was called Far Falestin, or Palestine Branch.

Transfer to Egypt

39. On approximately January 25, 2002, Mr. Elmaati was taken from his cell. The guards shaved his head and his beard, and then brought him upstairs to an interrogation room. This time he was not blindfolded. They brought him his suitcase, instructed him to change into clean clothes, and took him to the prison manager's office. The prison manager returned all of the money that had been confiscated on his arrival, US$3,500. He was then escorted out of the prison and into a dark-coloured (probably blue) unmarked station wagon. The guards waited with Mr. Elmaati for some time for the General to arrive at the car. When the General arrived, he told the guards to handcuff Mr. Elmaati's hands behind his back. The guards placed a black hood made of fabric over his head, and he was then driven to an airport. He assumed, based on the sound of a chain being moved, that the car entered through a side entrance.

40. The guards removed Mr. Elmaati from the car, marched him forward a few metres, and then removed the hood from his head. He saw that he was standing in front of a plane, with a lot of people around. A Syrian guard showed Mr. Elmaati both his Canadian and expired Egyptian passports and asked him to confirm his identity, which he did. He counted Mr. Elmaati's money, replaced the hood over his head, and escorted him up the staircase onto the plane. He was able to see out from the bottom of the blindfold, and noted that he was taken 10 or 12 rows back through the plane before he was seated, still handcuffed and hooded. Based on the number of stairs he had climbed and the size of the rows, Mr. Elmaati understood that this was a large plane.

41. From the sounds of the voices on the plane, and his observations on the walk to his seat, Mr. Elmaati noticed that the plane was empty except for the approximately 10 people who were escorting him. He was not told what was happening or where he was going. The pilot made no announcements, and relied on a bell to alert the men that the plane was taking off and landing. Although he could hear voices, Mr. Elmaati could not make out the language spoken or the accent. At one point during the flight Mr. Elmaati asked the guard if he could get up and use the washroom, but the guard denied his request.

Arrival in Egypt

42. When the plane landed, Mr. Elmaati was taken from his seat, still blindfolded and handcuffed. When they reached the doors to the plane, he screamed in fear that he was going to be thrown from the plane. He had no idea where he was. He assumed it was around 3:00 a.m. because he had asked a Syrian guard for the time while still at Far Falestin, and it took approximately an hour to get to the airport and the flight was approximately two hours.

43. Once removed from the plane, Mr. Elmaati was forced onto the floor of a vehicle, which he recognized from the sound of the sliding side door was a van. He suspected that he was in Egypt because the guard who instructed him to get into the van spoke with an Egyptian accent.

44. Mr. Elmaati had asked the Syrian authorities many times to be transferred to Canada. He suspects that he was sent to Egypt because it is the country of his other citizenship. He had no idea why the Syrian authorities did not just keep him in Syria.

General Intelligence headquarters in Abdeen

45. Mr. Elmaati was taken to General Intelligence headquarters (Mukhabarat Alama) in the Abdeen area of Cairo. He would spend the next four and a half months there. On arrival at the prison, he was escorted from the van into a rectangular-shaped room. Several plainclothes men removed the handcuffs and the hood, photographed him, and made him change into a blue prison uniform that consisted of a slip-on shirt and trousers. He was then handcuffed with his hands behind his back. The hood was placed back on his head, and he was taken to another room where he was asked to lie down while his pulse and blood pressure were taken. He was then immediately taken to what he would come to learn was an interrogation room.

Interrogations on the first day at Abdeen

46. The room smelled smoky. Mr. Elmaati was kept blindfolded, but from the sounds of voices he noted there were many people present. (In Egypt it is not permitted to see an officer. Mr. Elmaati was therefore always blindfolded when he was brought up for interrogation.) One of the officers immediately started swearing at Mr. Elmaati using very filthy words. In a mocking tone, he asked Mr. Elmaati to tell them his story. Mr. Elmaati had been waiting for the opportunity to recant his confession in Syria, and so he told the Egyptian authorities that what he had told the Syrian authorities was false and that he had been forced to say it under torture. One of the officers immediately kicked Mr. Elmaati very hard in the chest, sending him flying into the wall behind him. The officer continued punching him in the face and kicking him, sending him flying around the room. The kicks felt like "martial arts" types of kicks. While he was being beaten, the officer asked, "You want to change your story now?"

47. When the beating stopped, the officer told Mr. Elmaati that his sister was in the room next door. The officer then called his guards and instructed them to go next door and take off her clothes because he would be coming to rape her. Mr. Elmaati screamed as he had never screamed before in his life, because he thought they might really do something to his sister. He told his interrogators that he was willing to do anything that they wanted if they would refrain from doing anything to her. He told them that what he had said in Syria was the truth, and began telling the same story that he had told his Syrian interrogators.

48. The interrogators forced Mr. Elmaati to squat for several minutes. Each time he began to fall or tried to stand up because of the pain in his knees, the guards would beat him very hard. The Egyptian interrogators told him that they did not believe him and that they wanted him to "say the truth." Mr. Elmaati responded that he was telling them the truth but they did not want to hear it. At some point the interrogators stopped the beating and took Mr. Elmaati to his cell.

49. Once Mr. Elmaati was in his cell, his blindfold and handcuffs were removed. The cell was approximately two metres wide by two metres long, with high ceilings. The walls were solid concrete and the door was solid metal. The door had a window that the guards could open if they wished to speak to Mr. Elmaati without opening the door. Inside the cell there was a concrete bench, a thin sponge-like mattress and approximately three blankets. The temperature was a bit on the cool side, but bearable, and the cell was generally clean. It was cleaned every Friday. Approximately 3 of the 16 available solitary confinement cells were occupied while he was there.

50. After approximately one hour in his cell, Mr. Elmaati was brought back upstairs for another session of interrogation. A guard came to his cell, handcuffed his hands behind his back (later, they would begin handcuffing his hands in front), and blindfolded him before escorting him to the interrogation room. This blindfold was very different from the Syrian blindfold. It was not made from a rubber tire, but from a stretchy fabric that could be pulled over his face and head.

51. The same officer who had interrogated him earlier asked questions again, but in a much softer tone. He called Mr. Elmaati by his first name and told him that he wanted to know the truth. Mr. Elmaati explained what had happened to him in Syria, and asked his interrogators to read the letter written by Highland Transport. The officer instructed his guards to retrieve the letter from Mr. Elmaati's papers. The officer then read the letter aloud in an educated English accent, and cursed the Syrians, stating that they had no idea how to interrogate, and if they had just read this letter they would have understood everything. Mr. Elmaati requested that his interrogators contact Canada and ask them to verify his story; he told them that if he were lying they could hang him. The officer told Mr. Elmaati that he would verify this information with Canada, and then Mr. Elmaati was returned to his cell.

52. Approximately one hour later, Mr. Elmaati was again handcuffed and blindfolded. This time he was escorted upstairs to a different interrogation room, where a different person asked him the same questions as in his second session. Mr. Elmaati was again told that they would verify his story with Canadian authorities. The interrogation sessions occurred approximately three or four times over the course of Mr. Elmaati's first day at Abdeen. Each time, Mr. Elmaati was taken from his cell and brought to a different room, where a different person asked the same questions and concluded the interrogation in the same way. Only the third interrogation ever involved going upstairs.

53. At the end of these initial interrogations, Mr. Elmaati was told to write his entire life story. The interrogators brought a small table, some papers and a pen to his cell. It took him a very long time to write the approximately 80-page story, but eventually he finished it and gave it to his interrogators. He never heard about it again.

Subsequent interrogations at Abdeen

54. Over the next four and a half months there were a series of interrogations. In all but one instance, Mr. Elmaati was pushed around and cursed by the guards but not beaten. The exception occurred when he was interrogated about

whether he had lost or ruined his Canadian passport. Mr. Elmaati explained to his interrogators that he had accidentally put his passport through the washing machine (because it was in the pocket of his pants), but they did not believe him. They accused him of having deliberately tried to ruin his passport, and hit and kicked him repeatedly. Mr. Elmaati then agreed that he had done it on purpose; his interrogators made him write that down. When he did, the beatings stopped.

55. On other occasions, Mr. Elmaati was questioned in detail about the time he had spent in Afghanistan and whether he knew any Egyptians while he was there. He was often shown pictures and asked about specific names, none of which he knew or recognized. When his blindfold was removed so that he could look at the pictures, Mr. Elmaati could also observe the room, but he never saw the guard, who remained behind him, with his hand on his shoulder.

56. On one occasion, Mr. Elmaati was escorted by a guard into an interrogation room, where he heard a voice over a microphone call his name and instruct the guard to remove his blindfold. In front of him was a television screen that apparently contained a microfilm picture of a map. The voice on the microphone asked Mr. Elmaati if it was his map. Mr. Elmaati did not recognize it, and told the guard so. When the voice insisted that it was his, Mr. Elmaati requested to see the actual map. When the guard brought the map back to the interrogation room, Mr. Elmaati recognized it right away and screamed in relief that this was indeed the map of Tunney's Pasture.

57. Mr. Elmaati was also interrogated about why he had bought a remote control in Toronto. When he explained that the remote control for his sister's television was broken and he wanted to replace it, his interrogators accepted this answer, and he was not physically beaten. He thought it very obvious that the interrogators had obtained the information about his buying the remote control from those who had been following him in Toronto.

Prison conditions at Abdeen

58. Abdeen was "180 degrees" from what Mr. Elmaati had experienced in Syria in terms of cleanliness. Even the interrogation rooms were very clean; in some instances, they had wall-to-wall carpet. The cells formed an L-shaped wing with one washroom in the middle. Next to the washroom was a tiny cell that was used as a "torture chamber;" it had an oven-like door too small to walk through. A person could be pushed through on a stretcher; the room had a basin and water pipes that suggested it was used for torture involving water.

59. Mr. Elmaati was allowed to use the washroom whenever he liked, as long as the guard on duty could escort him. The washroom consisted of a sink, a Turkish toilet (which also functioned as the shower), and a regular toilet. Mr. Elmaati was permitted to take a bath or shower once a week, usually on a Friday, and was also permitted to change his uniform once a week.

60. The food was very good. Although there were usually four meals a day, Mr. Elmaati would fast during the day and therefore only consume one meal daily, which consisted of a quarter-chicken, rice, salad, and yogurt. Approximately once a week Mr. Elmaati would break his fast and have breakfast, which would consist of a fava bean sandwich. He fasted to raise his spirits and feel strong on the inside, and the guards did not object.

61. While at Abdeen, Mr. Elmaati was never permitted to go outside or engage in physical exercise.

Markaz Amen El Dawla (State Security headquarters) in Nasr City

62. Near the end of May 2002, the guards at Abdeen brought Mr. Elmaati some fresh clothes they had taken from his luggage and told him to change. They handcuffed his hands behind his back, placed a hood on his head, took him outside and made him lie down on the floor of a van. Approximately 30 minutes later they arrived at what Mr. Elmaati would come to know as Markaz Amen El Dawla (State Security headquarters) in Nasr City.

63. When he entered the prison, the guards removed his hood. He saw that he was standing in a room that was being used as a check-in for the prison. He was instructed to remove his clothes and put on a blue prison uniform, like the uniform at Abdeen, while the guards (in plain clothes) completed his paper-work. It was crowded; there were a number of people sitting on the floor in the hallway with hoods over their heads.

Prison Conditions in Nasr City

64. Mr. Elmaati was then taken to a solitary confinement cell where he would spend the next 10 days. The cell was about two metres wide and three metres deep and had a high ceiling from which water was constantly dripping. There was a Turkish washroom inside the cell, as well as a tap, a cement bench and one or two very dirty blankets. The hood over Mr. Elmaati's head was made from a piece of rotten blanket.

65. Mr. Elmaati said that he endured the most severe treatment of his whole ordeal in this cell. His hands were handcuffed behind his back 24 hours a day.

This was severely painful. The guards would move his handcuffs from behind his back to the front for about 10 minutes a day to allow him to eat and go to the washroom. Being handcuffed from the front felt like a huge relief. Occasionally the guards would bring him food, which consisted of a loaf of bread with some rice and sometimes beans. When he wanted something to drink he would open the tap with his leg, kneel down like an animal and suck from the tap. The handcuffs were so painful that Mr. Elmaati could not sleep at all during this period, and he felt that he was losing his mind as a result. For the 45 days that Mr. Elmaati was detained in Nasr City, his hands remained handcuffed behind his back in this manner, including when he was sent for interrogation. There was no light inside his cell, so that he could not tell day from night.

66. By the summer of 2002, Mr. Elmaati felt that he was "literally rotting away" in Nasr City. Because the handcuffs were only removed once a day for ten minutes, Mr. Elmaati sometimes had to urinate on himself. The urine, combined with his sweat, left him smelling "very, very bad." At one point, when he was brought up for interrogation, the officer ordered the guards to wash him. They took him to the showers, removed his handcuffs and permitted him to pour water on himself. Afterwards, however, he was forced to wear the same rotten clothes. This was the only time that he was permitted to wash in his 45 days at this facility. The rotten blindfold gave Mr. Elmaati a rash on his face.

67. When the guards delivered the food, they would toss it onto the floor of Mr. Elmaati's cell. However, the food did not come during the 10-minute period when his handcuffs were moved from back to front. Cockroaches and rats (the size of his hand to just past his wrist) that lived in the Turkish toilet would eat his food until his hands were freed.

Interrogations in Nasr City

68. From his cell, Mr. Elmaati could hear the sounds of electric shock and screams. He spent the first 10 days imagining that he would be next. At the end of 10 days, Mr. Elmaati was brought to the interrogation room. He was questioned about whether he had known any Egyptians in Afghanistan, and asked to tell his whole story from the beginning. The interrogations lasted for several hours at a time, and occurred over many days. Occasionally he was slapped, punched in the face and kicked in different parts of his body. The interrogators kept asking him to verify the same information over and over again, and kept writing down his answers.

69. On one occasion, his interrogator told him that he had prayed beside him at the Salahedeen Mosque, and asked Mr. Elmaati whether he recognized him.

He could not see his interrogator because of his blindfold, and he did not know whether the man was bluffing or telling the truth. On another occasion, his interrogators kept prompting him to try and remember something odd that had happened to him. In response to this question, Mr. Elmaati told his interrogators two very odd stories that he had not shared with the Syrian authorities because he did not think they were relevant or significant.

70. The first story involved a man who had expressed a great deal of interest in Mr. Elmaati and his brother, had travelled to Afghanistan, and had permitted Mr. Elmaati's brother to call Mr. Elmaati in Canada from Afghanistan using his special satellite phone. Mr. Elmaati was of the view that this man had tried to set him up. The second story involved a man whom Mr. Elmaati had known when he was in Pakistan. This man contacted Mr. Elmaati when he was in Syria in early 2001 and requested Mr. Elmaati's assistance in finding a Canadian wife. Mr. Elmaati made some efforts, both in Syria and back in Canada, to find a wife for him, but was unsuccessful. Subsequently, this man requested $500 from Mr. Elmaati. Mr. Elmaati refused and this was their last contact. A year later, the man was killed in Syria.

71. In response to both of these stories, the Egyptian interrogators told Mr. Elmaati that "they were playing games on you;" "they were trying to entrap you;" and "they were trying to set you up." Mr. Elmaati was not sure who "they" referred to—it might have been the Canadians, or the Americans, or another government. Mr. Elmaati also did not know why they were asking him to tell them odd stories, but it appeared that they expected him to do so. The interrogations in Nasr City ended after Mr. Elmaati told these stories.

Lazogley State Security branch

72. At some point in late June or early July 2002, Mr. Elmaati was given new clothes from his luggage, handcuffed and blindfolded and thrown on the floor of a van, this time with a spare tire and some blankets thrown on top to hide him. After approximately 30 minutes through a lot of traffic, Mr. Elmaati arrived at what he would later learn was the Lazogley State Security branch in Cairo.

73. Mr. Elmaati was initially taken to a long hallway where he was kept for approximately two weeks, blindfolded and his hands handcuffed in front of him. Initially Mr. Elmaati was happy to be there: it was a "smaller hell" than Nasr City and his hands were handcuffed in the front rather than the back. However, Mr. Elmaati said that having to sit on a tiled floor for two weeks with his hands in handcuffs and a blindfold over his head, prohibited from sleeping, standing, or speaking, was another torture. As a result of sitting on the tiles for

two weeks straight, Mr. Elmaati developed an inflammation problem that made it very painful to defecate. Upon his return to Canada he had surgery to try to correct this problem.

74. There were many prisoners seated in the hallway. Twice a day, the guards would bring them food, which consisted of bread, rice, and occasionally a small piece of meat. The guards would also allow them to use the washroom twice a day. Whenever he started falling asleep, the guards would come and kick him to remind him to stay awake. Aside from a brief initial interview upon arrival, Mr. Elmaati was not interrogated during these first two weeks at Lazogley. Before he was transferred to the common cell, one of the officers warned him that he was not permitted to speak about his case to anyone and that they would be watching him.

75. After the first two weeks, Mr. Elmaati was transferred downstairs to a common cell where he spent a further two weeks. There were two common cells, each with a washroom including a toilet and a tap, that were joined by a hallway. Mr. Elmaati's cell was approximately four metres by four metres, and the hallway was about two metres wide and three or four metres long.

76 This was the first time that Mr. Elmaati had had open contact with other detainees since his detention. In the beginning there were approximately 10 or 12 detainees in his cell, but the number quickly grew to 60 or 70. Conditions were very bad. It was the summer and the ceiling was made of iron. People, including Mr. Elmaati, were having difficulty breathing, and some were fainting in the heat. (Mr. Elmaati later learned that he has sleep apnea, which also affects breathing.) Eventually the guards opened up the hall and allowed the detainees to use both the cell and the hallway. At one point the other cell was also opened. However, it contained as many people as Mr. Elmaati's cell, and space remained very tight. A head count indicated that there were approximately 120 people in the two cells.

77. The other detainees were all Egyptian nationals who were being held as political prisoners. They were not charged with criminal offences and they were not handcuffed or blindfolded when they were in the common cells. They would sleep on blankets on the floor in shifts because there was not enough room for everyone to lie down at once. Since the washroom was in the cell, Mr. Elmaati was able to use it whenever he liked, subject to the long lineups. The guards would bring food to the cell and the prisoners would then distribute it among themselves.

78. During the two weeks that Mr. Elmaati spent in this common cell, he was not interrogated. At the end of the two weeks, he was brought upstairs and asked to verify his belongings, including his luggage, money and passports. When he returned to the common cell and reported what had occurred, he was informed that it was probable that a detention letter was about to be issued for him and he would be sent to jail.

Tora Prison

79. On approximately July 31, 2002, a police officer (in a white police uniform), accompanied by a number of uniformed soldiers, arrived at Lazogley, took Mr. Elmaati's fingerprints, handcuffed him and loaded him into a police van. Mr. Elmaati was wearing clothes from his own luggage and was not blindfolded. This was the first time since his detention that Mr. Elmaati had seen the sunlight. As the truck made its way from Lazogley to what Mr. Elmaati would come to learn was Tora Intake Prison, he saw the Nile for the first time since he was a teenager, and saw people on the streets.

80. When Mr. Elmaati arrived at Tora, he was taken into a large intake area where prison intelligence officers in plain clothes sorted through his luggage. They removed anything that was white and gave it to Mr. Elmaati to wear, because political prisoners in Egypt had to wear white. Mr. Elmaati changed into his white clothes and was permitted to keep his Syrian money with him; the rest of his luggage and his passports were taken from him. Mr. Elmaati had rarely seen his money or his identity documents while he was in Egypt, although both had moved with him from detention centre to detention centre. At each detention centre, an individual would take custody of his belongings, and that custody would be transferred when he was transferred. His U.S. money was eventually transferred to his mother. Neither the Syrian nor the Egyptian authorities stole his money or his passports, although both stole his other valuables and possessions. By the time he arrived at Tora, he was down to two suitcases from his original three.

81. While waiting for the state security officer to assign him to a wing, Mr. Elmaati was taken to Ward A, where he was introduced to a young Canadian citizen of Egyptian origin who was being detained there. The man told Mr. Elmaati that he received regular visits from the Canadian Embassy. Mr. Elmaati gave the man his passport number and his father's phone number in Canada and asked him to contact either his family or the Canadian Embassy as soon as he got the chance, to advise them of his location. The man promised

that he would do so, and Mr. Elmaati later found out that someone from this man's family did in fact telephone Mr. Elmaati's father.

82. Approximately 15 minutes later, Mr. Elmaati met with the state security officer, who assigned him to Ward D of the prison. Mr. Elmaati was then escorted past the offices of the prison manager and state security officer, down a hallway and into his cell. Mr. Elmaati's cell was approximately 4.6 by 6.0 metres and housed between 8 and 10 people at a given time. There was a washroom inside the cell. Each detainee was assigned four blankets that could be used for sleeping. Mr. Elmaati was neither handcuffed nor blindfolded while in this cell. The prisoners were given three meals a day, consisting of fava beans and bread in the morning, rice and vegetables at lunch, and rice and the occasional piece of meat at night. The atmosphere was more relaxed, and Mr. Elmaati no longer felt that he needed to fast in order to have the strength to survive. He was never questioned by security officials while in this cell.

Consular visits at Tora prison

83. On August 12, 2002, Mr. Elmaati received his first consular visit. A guard came to his cell and escorted him to the state security officer's office where consul Stuart Bale, interpreter Mira Wassef and another embassy official were waiting for him. The state security officer and two other Egyptian officials (oddly, wearing huge sunglasses) were also present. Mr. Elmaati told Mr. Bale that he had been tortured in Syria and forced to provide a false confession. Mr. Bale seemed stunned by this information. All three Canadian officials took notes of everything that Mr. Elmaati said. Mr. Bale asked Mr. Elmaati about his allegation of torture, and requested details about his false confession, which Mr. Elmaati was unwilling to discuss.

84. Mr. Elmaati could not recall whether Mr. Bale asked him about his treatment in Egypt, but stated that he had no choice but to say that he was being treated well, since the Egyptian officials could hear and understand everything that was being said (at least one of them spoke English) and they remained in the room throughout the visit. Mr. Elmaati could not recall Mr. Bale asking the Egyptian officials to leave the room so that they could talk in private. Mr. Bale asked Mr. Elmaati if he would be willing to meet with a Canadian security official. Mr. Elmaati responded that he would only do so on Canadian soil (meaning at the Canadian Embassy or back in Canada). Mr. Bale apologized to Mr. Elmaati and said that the Embassy had been trying hard to find him. This angered Mr. Elmaati. He told Mr. Bale that, in his opinion, CSIS had known from

A to Z where he was being detained and therefore he did not believe that the Canadian government had experienced difficulties in trying to find him.

85. Mr. Elmaati could not recall whether Mr. Bale had explained at the outset the purpose of the consular visit and what services and assistance he could provide. However, Mr. Elmaati did request that the Embassy contact his family and tell them that he was okay. He also asked to see his family as soon as possible, and requested that his family provide him with underwear, undershirts, shorts, a robe and some other personal items. Mr. Elmaati also advised the embassy officials that he had been experiencing some breathing problems such as asthma, and that the colour of his skin was bad because he had had no fresh air or sunshine since he had first been detained.

86. A few days later, the prisoners in Ward D started getting access to a closed courtyard for thirty minutes a day. Many of the other prisoners had not seen the sun in years and were very happy to go outside. The guards tried to intimidate Mr. Elmaati by telling him that the outdoor privilege was being provided especially for him since he had made a complaint to the Canadian Embassy about the prison. Mr. Elmaati believes that his subsequent transfer to the Abu Zaabal jail in Cairo was, at least in part, designed to punish him for these complaints.

87. Around September 1, 2002, Mr. Elmaati received his second consular visit. Mr. Elmaati's sister and brother-in-law attended, along with consular officials Stuart Bale and Mira Wassef. This meeting was very emotional. It took place in the prison manager's office in the presence of the prison manager and one or two other Egyptian officials. This room was similar in size and set-up to the security officer's office in which the first consular visit had been conducted. The Egyptian officials never left the room, and sat close enough that nothing could be said without them hearing.

88. When Mr. Bale again asked Mr. Elmaati whether he would be willing to meet with Canadian security officials, Mr. Elmaati again responded that he would only do so on Canadian soil. Mr. Elmaati could not recall Mr. Bale asking any questions about Mr. Elmaati's treatment in the jail or asking for a private meeting, but stated that maybe Mr. Bale knew that he could not meet privately. The family members could tell from his face that he had been badly treated, but never asked him about it because they knew better than to do so in front of the Egyptian authorities. He thought it very odd that his jailers brought his family tea when they came to visit.

89. Several weeks after this visit, around mid-September 2002, Mr. Elmaati was told to pack up his things because he was being transferred to Abu Zaabal prison.

Abu Zaabal prison in Cairo

90. Mr. Elmaati recognized the name Abu Zaabal. It was a place that he had feared as a child because it was known as "a very scary place." As Mr. Elmaati was about to board the large prison truck to go there, he realized that all he had were some clothes and four prison blankets, but not his other luggage. He requested that his luggage be transferred with him; however, the prison manager convinced him to leave his luggage behind because it would be taken from him if he brought it to Abu Zaabal, and it was safer to keep it at Tora for the time being. Mr. Elmaati's hands were handcuffed in front of him throughout the journey, but he was not blindfolded. When they arrived, the prisoners were taken into a large courtyard so that the guards could search through their belongings. The guards seized Mr. Elmaati's clothes and blankets, including a cashmere blanket that Mr. Elmaati had asked to keep for his cell.

91. Mr. Elmaati was kept in a solitary confinement cell, which he shared with another man whom he believed to be an informant for the Egyptian authorities. This man threatened to beat him and made his stay in solitary confinement "very bad." This shared solitary confinement cell was approximately two by three metres and contained a Turkish toilet and a tap. The tap often did not work and therefore Mr. Elmaati had a plastic container that he could fill with water when it was working. He was unable to clean the container, and noticed over time that it developed a green film, but he still had to drink from it. Breakfast at Abu Zaabal consisted of fava beans, which were infested with black insects that looked like flies.

92. Mr. Elmaati was not permitted to leave the cell for several weeks, but he was not blindfolded or handcuffed while there. From this point, in mid-September 2002, until his release in January 2004, Mr. Elmaati would spend the bulk of his time at Abu Zaabal prison, but would be periodically transferred to other facilities for interrogation or as a result of a court-ordered "release."

Court-ordered "release"

93. On October 15, 2002, Mr. Elmaati gathered his belongings and was transferred by prison truck to Lazogley state security branch because the Egyptian court had ordered that he be "released." Mr. Elmaati understood, from speaking with other political prisoners who had been in this cycle for years, that he

would not in fact be released. According to the provisions of the Emergency Law, state security could detain political prisoners without explanation unless and until their case was put before the Supreme Court. Once a case was brought before the Court, the Court would usually order the person to be released immediately. The court order would be sent to the prison where the person was being detained; prison authorities would have no choice but to grant the release. However, instead of releasing the prisoner to the public, the prison would release the prisoner to the local state security branch. It would act under the pretext that the prisoner had on his "release" immediately returned to his previous political activities and therefore had to be re-arrested. A detention letter would then be issued and the prisoner would be sent back to jail.

94. For approximately five days, Mr. Elmaati was kept in a common cell at Lazogley pending the issuance of a new detention letter. During this time, he was not interrogated. On October 20, 2002, Mr. Elmaati was returned to the same cell he had previously occupied at Abu Zaabal prison. He continued to share it with the man he believed was an informant.

95. On November 3, 2002 Mr. Elmaati was again transferred to Lazogley state security branch as a result of a second release order from the court. The same process occurred as that which followed the first order: Mr. Elmaati was again returned to the cell he had previously occupied at Abu Zaabal, which he continued to share with the informant. Mr. Elmaati recalls that, at some point, he could no longer tolerate sharing such a small space with this man. He went on a hunger strike for several days until prison officials agreed to move him. The suspected informant was then transferred to a different ward at Abu Zaabal; Mr. Elmaati never saw him again.

96. On August 20, 2003, a third judicial release order was issued for Mr. Elmaati. This time, Mr. Elmaati was transferred to Giza state security branch, where he stayed for three or four days in a common cell without being interrogated, before being returned to Abu Zaabal.

Intermittent transfers to Nasr City for interrogation

97. On three or four separate occasions during Mr. Elmaati's detention at Abu Zaabal, he was transferred to Nasr City for interrogation. Each time the transfer was done in the same way: he would be sent in a prison truck from Abu Zaabal to Tora prison, where he would spend a few hours in Ward D waiting for nightfall; once it got dark a plainclothes guard would handcuff his hands behind his back, put a hood over his head, and put him on the floor of a van covered with blankets and a spare tire; he would then be transported from Tora

prison to Nasr City. After interrogation, he would be returned to Abu Zaabal, through Tora prison, in the same way. Mr. Elmaati understood that because he was under the care of the prison system there was no legal means by which state security could take possession of him. Since Tora prison was more connected to state security than other prisons, state security could keep control of him unofficially in this manner.

Interrogation in November/December 2002

98. This transfer to Nasr City for interrogation happened for the first time around the end of November 2002. There was no significant questioning; they simply reviewed old information with him and did not ask him anything new. The style of interrogation was similar to that of his previous interrogation at Nasr City, although not as severe. He was blindfolded, but there were no physical beatings (other than the rough treatment of the guards pushing and kicking him as they escorted him to and from his cell) and his hands were handcuffed from the front. After 10 days of interrogation and solitary confinement, Mr. Elmaati was returned to his cell at Abu Zaabal.

Interrogation and mistreatment in March 2003

99. At some point in March 2003, Mr. Elmaati was transferred in the usual manner to Nasr City and, upon arrival, taken directly to interrogation. As soon as he entered the interrogation room, the guards began slapping and punching him in the face and telling him that he had been hiding his will. Mr. Elmaati did not know what they were referring to and told them that he did not have a will. This simply made the beating more severe. The interrogators then held Mr. Elmaati down so that he could not move and used a metal rod of some kind to deliver electric shocks to Mr. Elmaati's hands, back and genitals. Mr. Elmaati screamed and begged them to stop. He had prepared a will before his travels regarding money that he had borrowed from friends, but his interrogators told him that was not the will they were referring to. It never crossed Mr. Elmaati's mind, until his interrogators gave him a hint, that they could be referring to the Hajj will that he had written in 1999. Mr. Elmaati told his interrogators that he had created it when he went to the Hajj in 1999 and it did not mean anything. They accepted this explanation and the beating stopped.

100. The interrogators switched back to asking him questions about the same kinds of topics he had been asked about in the past. They also questioned him about why he was refusing to cooperate with the Canadian Embassy by not agreeing to meet with Canadian security officials. Mr. Elmaati explained that he did not want to meet with Canadian officials for fear that it would antagonize

Egyptian officials. His interrogator told him that should not be his concern, and that in the future he should agree to meet with them. When the interrogation ended, Mr. Elmaati was brought to a solitary confinement cell.

101. In the 10 days that Mr. Elmaati remained at Nasr City in March 2003, he was subject to further interrogation. At some point after the first interrogation with the electric shock, he endured an interrogation session that lasted for about 10 hours. Mr. Elmaati was taken to an interrogation room, allowed to sit in a chair, and the hood was removed from his head, although he remained handcuffed from the front. A man, in plain clothes, sat across the desk from Mr. Elmaati, asking him questions "from the beginning." Mr. Elmaati felt as though this man was reviewing the whole file and whole history of the interrogation. Mr. Elmaati thought that he recognized his interrogator from the news and that he might be Omar Soleiman, the head of Egyptian Intelligence. The interrogator had a pile of papers in front of him and wrote down the answers that Mr. Elmaati gave. On one side of the room there was one-way glass; Mr. Elmaati assumed there were people observing from the other side. It was also very significant that they brought him tea during this interrogation. He assumed that the tea was provided only because there were people watching from behind the one-way glass. Periodically they would send Mr. Elmaati back to his cell for 15-minute breaks, and then bring him back for more questioning. By the end of the 10 hours he was exhausted. Mr. Elmaati does not think that the guards placed the hood back on his head when he was returned to his cell.

102. Mr. Elmaati was returned to Abu Zaabal in the same manner as he was taken, except that on this one occasion he was returned to a different part of the prison, referred to as Liman Abu Zaabal. Mr. Elmaati was detained overnight in a solitary confinement cell that measured approximately 1.8 metres by 3.0 metres and was very old. The cell contained a bucket so that Mr. Elmaati could relieve himself; he was only allowed to go to the washroom for one hour a day. Mr. Elmaati assumed that he was sent to this part of the prison as some form of punishment. He was not interrogated while at Liman Abu Zaabal. After one night, he was returned to his regular cell at Abu Zaabal maximum security.

Interrogation in October 2003

103. Sometime in October 2003, Mr. Elmaati was again transferred in the usual manner to Nasr City. He spent a week in a solitary confinement cell, followed by a 30-minute interrogation, during which he was handcuffed and blindfolded. On this occasion, the interrogator spoke in a very soft tone. He told Mr. Elmaati

that they (the Egyptian authorities) knew that the Canadians were responsible for what had happened to him. The interrogator advised Mr. Elmaati that he would soon be released and that he should return to Canada, stick to his Canadian citizenship, retain a lawyer, and fight back. Mr. Elmaati promised that he would do so. In his view, the Egyptians, unlike the Syrians, were very smart and knew how to interrogate people.

Further consular visits

104. Mr. Elmaati received periodic consular visits throughout 2003. At each visit, Egyptian officials remained in the room, seated very close to Mr. Elmaati and the Canadian officials. At no time was Mr. Elmaati ever alone with Canadian consular officials while in detention in Egypt. Mr. Elmaati could not recall whether the Canadian officials ever requested a private meeting. Nor could he recall whether he was asked about his treatment in Egypt. However, he recalled being regularly asked whether he would be willing to meet with Canadian security officials. While he appreciated the visits from Mr. Bale, he thought that as a consular official Mr. Bale should have been more concerned about his well-being than with whether he was willing to meet with a Canadian security official.

105. In January 2003, Mr. Elmaati received a visit from his mother at Abu Zaabal. The visit took place in the prison manager's office; the prison manager was present, as well as several other Egyptian officials. He felt very lucky to be able to meet with his mother free from the mesh barriers that usually separate prisoners from their visitors. The meeting was very emotional. Mr. Elmaati's mother commented that he was blue in colour. When the guards were not paying much attention, Mr. Elmaati was able to whisper to his mother that he had been treated very badly in Syria and in Egypt. At the end of this visit, Mr. Elmaati's mother took possession of his money, his two passports, and his luggage. The rest of his identity cards (Canadian citizenship card, credit cards, driver's licence, and other cards) were never returned. He had brought his Egyptian passport with him to Syria because he had intended to get married in Syria and thought that he might need Arab-language identification.

106. After one of the consular visits from the Embassy, Mr. Elmaati was called to meet with the security officer, who understood English and wanted to know why Mr. Elmaati was refusing to meet with Canadian security officials. Mr. Elmaati explained that he did not want to antagonize the Egyptian officials by meeting with foreign officers without their permission. The security officer responded that he wanted Mr. Elmaati to agree to meet with them the next time

he was asked. The officer also asked Mr. Elmaati to act as an informant for the Egyptian authorities, but Mr. Elmaati refused. It was shortly after this sequence of events that he was interrogated with electric shocks at Nasr City.

107. After having been instructed by the state security officials to do so, he agreed to meet with Canadian security officials and advised consul Roger Chen accordingly at a consular visit in the fall of 2003. Mr. Elmaati also advised Mr. Chen that he was experiencing pain in his knee as a result of a fall that he had sustained while at Nasr City. Since Mr. Elmaati's return to Canada, he has had several operations on his right knee, including a knee reconstruction.

108. Mr. Elmaati was angry about the long delay between consular visits and his inability to request a visit. In the long interval between visits, he wrote his name and prison location on a piece of paper. While being transferred in the prison truck, he threw it to a passenger in a nearby car, whom he asked to call the Canadian Embassy. Mr. Elmaati stated that in Egypt people are sympathetic to political prisoners and will help them when they can. He believes that an anonymous caller did call the Embassy on his behalf.

Ministerial release

109. On January 11, 2004, the Ministry of the Interior ordered Mr. Elmaati's release. The Ministerial release was a true release, as compared to the court-ordered release that simply resulted in re-arrest and subsequent detention. After packing his belongings, he was transferred to Giza state security branch. When he arrived, he was handcuffed in the front and hooded, and was then interrogated for four days. There were several sessions every day, accompanied by the usual punching and kicking that was part of harsh interrogations. The interrogators reviewed all of the information that Mr. Elmaati had been asked about over the preceding two years, and also asked many questions about Mr. Elmaati's brother. The interrogators called Mr. Elmaati's mother and told her that they would release him if she would disclose the location of her other son. On his last day at Giza, the interrogator got very angry that Mr. Elmaati could not answer any questions about his brother and pulled Mr. Elmaati's beard very hard, to the point where a chunk of the beard came out in the interrogator's hand. Thirty minutes after this incident, Mr. Elmaati was released.

110. His interrogators told him to retrieve his belongings and change into his own clothes. Then they removed the hood from his head, offered congratulations, and told him he could go home. Mr. Elmaati took a taxi to his mother's home. Approximately every four days, Mr. Elmaati had to report to state security and inform them of everything that he had done and everyone to whom

he had spoken. After his release, Mr. Elmaati did not communicate with any of the other detainees that he had met while in detention in Egypt, either while he was still in Egypt or after his return to Canada.

111. Mr. Elmaati was hesitant to board a plane because he was afraid that something would happen to him again. He had been informed (through articles in the newspaper and reporters who had called him from Canada) that Mr. Arar and Mr. Nureddin had received a Canadian escort back to Canada, and he requested the same from the Embassy in Cairo. The Canadian Embassy refused his request but gave him a letter to ensure that if anything happened to him in Frankfurt while he was in transit, the Canadian Embassy would be notified.

Departure from Egypt

112. On March 7, 2004, Mr. Elmaati attempted to leave Egypt but was stopped at airport Immigration. Mr. Elmaati understood that this was because of a conflict between the General Intelligence Service and the State Security Service. On March 29, 2004, Mr. Elmaati successfully left Egypt.

8

ABDULLAH ALMALKI'S EXPERIENCE IN SYRIA

1. The following is a summary of information provided by Mr. Abdullah Almalki in the interview of him that I conducted with assistance from Inquiry counsel and Professor Peter Burns (special advisor to the Inquiry), on December 4, 5 and 17, 2007.

Decision to travel to Syria

2. In May 2002, Mr. Almalki, a dual Syrian-Canadian citizen, travelled to Syria to visit his sick grandmother. It was his first visit to the country in 15 years.

3. Mr. Almalki was not particularly concerned about the prospect of travelling to Syria, even though he had had several encounters with intelligence agencies in Canada and Malaysia. In January 2002, Mr. Almalki had been interrogated by Malaysian officials at the Singapore/Malaysia border. He told his interrogators that he did not like being treated like a criminal and that if he was not welcome in Malaysia, he would cut his trip short and go back to Canada. His interrogators responded by saying that the Canadian government had asked the Malaysians to stop and interrogate him. At some later date, Mr. Almalki contacted the Malaysian authorities to try to clear his name and was told that the Canadians had asked the Malaysians to arrest him and hand him over to the Canadians.

4. Mr. Almalki's main concern about travelling to Syria, though one that he did not consider especially significant, was his military service obligations, which he had successfully deferred when he was in Canada. With the assistance of his father, Mr. Almalki had completed and sent to Syria the necessary papers, and had obtained a deferral that was valid for three years.

5. Before Mr. Almalki travelled to Syria, friends and relatives told him that everything had changed in Syria, and that the circumstances prevailing in the

1980s (when Mr. Almalki had lived there) had given way to a more liberal and open society.

Arrival in Damascus and detention at the airport

6. Mr. Almalki arrived at the Damascus airport at approximately 4:00 p.m. on May 3, 2002. His mother and a cousin were waiting for him in the airport's VIP lounge. Shortly after he joined his mother and cousin in the VIP lounge, a uniformed officer approached his cousin and advised him that Mr. Almalki would have to go with the officer to the security office. Mr. Almalki and his cousin followed the officer to what Mr. Almalki understood to be the airport's Office of the Head of Security.

7. When they arrived at the Office of the Head of Security, there were several uniformed officers in the room. His cousin started speaking with the officers about why they were interested in Mr. Almalki. When his cousin demanded information about what was going on and why Mr. Almalki had been stopped, the officers insisted that his cousin leave the room.

8. Mr. Almalki saw the officers reviewing a list, on which his name apparently appeared. He also overheard one of the officers refer to a report that had been received from "the Embassy" on April 22. Mr. Almalki did not know which Embassy the officer was referring to, but he assumed it was the Canadian Embassy. This assumption was based on his prior interactions with intelligence and police agencies in Malaysia and Canada.

9. Mr. Almalki was then taken to what he thought was a detention room in the airport, where two officials in airport uniform asked him questions about where he had travelled from, when he had last been in Syria, his parents' names and his profession and business. The officials told him that he was wanted by the Far Falestin intelligence branch, and they explained that the branch was probably interested in seeing him because he had been away from Syria for such a long time.

10. Mr. Almalki did not, at that time, ask if he could contact a lawyer. When he asked if he could see his cousin to tell him where he was being taken, the officers refused, and told him that his cousin already knew where Mr. Almalki was going.

11. Though Mr. Almalki was aware that the Far Falestin branch was not a very nice place, he assumed that his family would try to find out where he was going and take care of things. He also thought that since he had nothing to hide and

had done nothing wrong, he would be able to sit down with any logical person and clear up any problems.

Transfer to Far Falestin

12. At approximately 5:00 or 6:00 p.m. that same day, the two airport officials took Mr. Almalki from the airport detention room to a bus headed for Far Falestin (and other unknown destinations). Prior to boarding the bus, Mr. Almalki was instructed to exchange some of his money into Syrian lira, and the airport officials escorted him to the airport exchange booth so that he could do so. The airport officials told him that he would need the money to pay for a cab from Far Falestin to wherever he would be staying in Damascus. Mr. Almalki believed that the officials might also be expecting him to give them some money.

13. The bus ride to the gates of Far Falestin took approximately 30-45 minutes. The two airport officials accompanied Mr. Almalki on the bus. When he arrived at Far Falestin, Mr. Almalki was taken to an interrogation room. He was told that he would probably be staying for a few days, and was directed to take the things he needed from his luggage. He removed a pair of pants, a fleece vest, underwear, a toothbrush, toothpaste, a comb, a handkerchief and a sarong from his bag. He also removed some Tums and Tylenol, but was not allowed to have them until the next day. The rest of his luggage and possessions, including the laptop computer and PalmPilot that he used in his business, were taken from him.

Interrogation and treatment on the first day

14. Mr. Almalki was then blindfolded and taken to another interrogation room. He was told by an interrogator that he was not in Canada anymore, that he would not have a lawyer and that he had to speak. Mr. Almalki's Syrian interrogator then asked him a question to the effect of "Which treatment do you prefer? Do you prefer the friendly treatment or the other one?" Mr. Almalki responded that he preferred the friendly way. Mr. Almalki then said that if the interrogator gave him 15 minutes, he could explain things. He began to speak, referring to one of his Muslim-Canadian friends, and the concerns that CSIS had expressed to him when they interviewed him shortly after 9/11. The interrogator did not want to hear his explanation however, and cut him off before he could finish. The interrogator began to question him about various individuals, including the Muslim-Canadian friend Mr. Almalki had already told them about, as well as others called "Wadah" or "Mamdouh" and "Ahmad Abou-Elmaati." Mr. Almalki

insisted that he did not know these other individuals. (Though Mr. Almalki knew Mr. Elmaati, he knew him by the name "Ahmad Badr" and did not recognize the name "Ahmad Abou-Elmaati.") The situation then escalated very quickly and the interrogator slapped Mr. Almalki across his face. Mr. Almalki still remembers that slap very clearly. He said that with that slap, everything changed; the slap crushed his humanity and destroyed his dignity.

15. Over the next seven to eight hours, Mr. Almalki was interrogated while being severely beaten. He was told to take off his shoes, socks and jacket, and lie down on his stomach with his legs at 90 degrees to the floor and his hands behind his back. Once he was in that position, the interrogators started hammering the soles of his feet with an electrical cable. It felt like they were pouring lava on the soles of his feet or immersing his legs in fire. It was unbelievably painful, and the pain caused him to flip over onto his back and grab his legs. When he did so, the interrogators started shouting at him to turn over. When he turned back onto his stomach, someone stepped on his head and another person stepped on his back, so that he could not flip over again. While one interrogator lashed him with the cable, others kicked him with their wooden-soled shoes. The lead interrogator threatened Mr. Almalki with other forms of mistreatment, including the tire (or "dulab", described in more detail below), the chair, electricity, and fingernail-pulling. Periodically throughout the interrogation session, Mr. Almalki was forced to stand up and jog in place while his interrogators poured cold water on his hands and feet. He later learned that the purpose of this was to restore feeling to his legs and ensure that he would continue to feel pain.

16. While Mr. Almalki was being beaten, several interrogators asked him questions. They asked him what he sold to the Taliban and to al-Qaeda, where he trained, what he did when he was in Pakistan, what kind of plot he had been planning in Canada, and what sort of relationship he had with Osama bin Laden and Khadr. They insisted that he was Osama bin Laden's right-hand man. When Mr. Almalki answered these questions truthfully, the interrogators continued to beat him; so, in an effort to stop the beating, he lied and told them that he met Osama bin Laden in Pakistan and that he was bin Laden's left-hand man. When he gave those answers, the beating stopped.

17. The interrogators left Mr. Almalki, blindfolded and in pain, in the interrogation room. When they returned sometime later, they swore at him, and insulted and humiliated him. They accused Mr. Almalki of lying about meeting Osama bin Laden in Pakistan (they said that Osama Bin Laden had not been in Pakistan at the same time as Mr. Almalki), and started to beat him again, this time more

intensely than before. The beating continued until he passed out. When he came to, a man was checking his blood pressure, and one of the interrogators brought him half a sandwich.

18. Around dawn, one of the prison guards removed Mr. Almalki's blindfold. Mr. Almalki saw that he had blood all over his legs. The guard told Mr. Almalki to take off all his clothes, and he stood in his underwear as the guard searched his body. At one point, the guard told Mr. Almalki to pull down his underwear so that he could search that part of his body as well. Mr. Almalki then put his clothes back on and the guard took him to cell number 3 in the basement of the Far Falestin prison.

19. Months after this first day of interrogation and torture, Mr. Almalki's interrogators told him that he had received over a thousand lashes that day.

Interrogation on the second day

20. Following his interrogation on the first day, Mr. Almalki lay on the floor of cell number 3 for a few hours until he was called back to the interrogation floor. When he arrived, he was immediately blindfolded and then interrogated, though not beaten or tortured, for almost 19 hours without any break. The Syrian interrogators asked him about his family, certain people in Canada (including one of his Muslim-Canadian friends, Ahmed Said Khadr, and Mr. Elmaati) and his business activities. The interrogators wanted to know everything about his life. During the entire 19-hour interrogation, Mr. Almalki was seated on the floor with his legs crossed and was not permitted to get up from this position or to go to the bathroom. He drank almost nothing that day, and was not offered any food, but was too exhausted to care about food and drink.

21. Following his interrogation, Mr. Almalki was sent back to his cell and, for the first time since he arrived at Far Falestin, was permitted to use the washroom. Mr. Almalki described the washroom as torture by itself. It was about one square metre large, and about 190 centimetres high, and had a tap and a Turkish toilet. When the door to the washroom was shut, it was almost totally dark. Outside the washroom were two broken sinks. Generally, Mr. Almalki was permitted only two minutes, three times each day, to use the washroom. In that short time, he had to wash the urine bottle that he kept in his cell, fill up his water bottle, clean his food containers and do everything else he needed to do in the washroom. If he did not emerge from the washroom after two minutes, the guards would start calling him names, humiliating him, and pushing the door inwards so as to crush him. On Fridays at noon, Mr. Almalki was usually

allowed 10 minutes to use the washroom, during which time he would do all of his regular washroom activities, and take a bath and wash his clothes.

Interrogation and treatment on the third day

22. On the third day of his detention at Far Falestin, Mr. Almalki was called to the interrogation floor at about 8:00 a.m., blindfolded, interrogated and tortured. When he got to the interrogation room, the lead interrogator from the first day told Mr. Almalki to strip down to his shorts. He was forced into a car tire, his neck shoved against an inner rim, his back bent double and the backs of his knees against the other side of the inner rim, to be subjected to a torture method known as "dulab." Once in this position, he was questioned while his interrogators lashed his feet, head and genitals and kicked him. Throughout this session, the interrogators poured cold water on most of his body. The questions on that day focused on one of Mr. Almalki's Muslim-Canadian friends. The interrogation and torture continued for about three or four hours, and only stopped when Mr. Almalki falsely agreed, under torture and at the interrogators' insistence, that his Muslim-Canadian friend had a "*jihadi* mentality."

23. When the interrogation was finished, and Mr. Almalki was removed from the tire, he could not move his body from the waist down. The interrogators poured cold water on him (as they had on the first day) but he was not able to stand up and jog in one place. Someone brought him lunch, consisting of chicken, bulgur and an orange. He found it extremely painful to eat the orange; it felt as if the screaming had stripped the skin off his mouth.

24. After lunch, the interrogators returned and Mr. Almalki was interrogated until approximately midnight. At midnight, the interrogators removed Mr. Almalki's blindfold, helped him stand up and walk, and sent him back to his cell. Mr. Almalki could not walk to the cell on his own; he had to lean up against the wall for support.

25. While Mr. Almalki was left in the tire for several hours that day, he later learned that interrogators in Far Falestin usually did not leave a prisoner in the tire for more than 15 minutes. When Mr. Almalki asked an interrogator, in June, "Why did you do all that?," the interrogator showed him a report and suggested that Mr. Almalki had been tortured and interrogated based on that report and the manner in which it characterized him. While the interrogator covered up most of the report, Mr. Almalki could see that it was in Arabic. He also saw a line that referred to him as an "active member of al-Qaeda" with the code name "Abu Wafa", and he recalls the interrogator saying something to the effect of : "We got that you are even an active member of al-Qaeda."

26. "Abu Wafa" was a nickname that Mr. Almalki's father had given to him when he was born, and Mr. Almalki believed that the only place where that name was written was the inside cover of a Koran that Mr. Almalki stored in his home in Ottawa. Mr. Almalki told the Syrians about the name "Abu Wafa" early in his detention, because the Syrians had asked him for every name he had ever been called.

Late May and June: less interrogation, less mistreatment

27. As time passed, Mr. Almalki's treatment improved and his interrogation sessions became shorter. He was interrogated without the blindfold; the interrogators stopped calling him names; and he was able to speak with his interrogators more freely, and ask them why he was detained, when he might be released and whether they had contacted his family.

28. During an interrogation session in late May or early June 2002, a person whom the interrogators claimed was from Canada and knew Ottawa, entered the interrogation room. Mr. Almalki had his back to this person and so could not see him. The man spoke Arabic with an accent that Mr. Almalki could not recognize, and he told Mr. Almalki that he knew him from Ottawa. Mr. Almalki asked the man whether he could name Ottawa's most important building, but the man could not.

29. On the 40th day of Mr. Almalki's detention (in the middle of June 2002), he was called up to the interrogation floor and blindfolded. He became worried because he had come to associate the blindfold with torture. When he arrived in the interrogation room, a voice that Mr. Almalki had not heard before started to ask him questions about his business, companies he dealt with, names of relief organizations and bank accounts. At one point during the interrogation, the interrogators removed Mr. Almalki's blindfold and showed him a typed report, which was written in Arabic but contained an English acronym. Mr. Almalki believes that this was the same report as the one discussed in paragraph 25, above. The report was about 10 to 20 pages thick and the interrogators referred to it as "Questions." It included information about companies that Mr. Almalki's business had shipped to, and that CSIS had asked him about during an interview in 2000. Mr. Almalki had not, during previous interrogations, provided the names of these companies to his Syrian interrogators because they were not names that he remembered at the time; nor had he stored these names in his laptop computer or PalmPilot. The report also referred to the name of a Toronto resident. This was a name that Mr. Almalki had not mentioned to the Syrians in earlier interrogations (because the name did not cross his mind at

that time) or stored in his laptop or PalmPilot. The interrogators did not tell Mr. Almalki where this report came from, but one of them said, "This is what they are sending to us about you."

30. On the 45th day of Mr. Almalki's detention, one of Mr. Almalki's interrogators told him that he would be released before the end of the summer of 2002.

31. At points during his interrogation at Far Falestin, Mr. Almalki heard several of his interrogators say that they had no evidence to suggest that he had done anything wrong. For example, he heard one interrogator say something to the effect of "Oh, he's a good guy. There is nothing against him." Mr. Almalki asked the interrogator why, if they had nothing against him, he was still being detained. He was told that Canadians said he had escaped from Canada and that the Canadians wanted him. Mr. Almalki asked if the Canadians gave them any proof that he was wanted in Canada or evidence of the accusations against him, and was told not to worry, and that the Syrian officials did not take anything at face value.

Interrogation and treatment in July

32. In mid-July 2002, after almost a month and a half of improved treatment, shorter interrogation sessions and indications that release was imminent, everything changed. On the evening of July 17, an interrogator blindfolded Mr. Almalki, and then spent two hours slapping him and calling him a liar before returning him to his cell for the night.

33. The next morning (July 18), he was summoned to an interrogation room where he was interrogated, beaten and verbally abused until past midnight. The interrogators forced him to stand on one leg facing the wall with his arms up in the air. They slapped, punched and kicked him while calling him a liar, questioning him about his "training" in Afghanistan and membership in al-Qaeda, and insisting that he tell them what he had not told them. They beat him until he bled from his mouth and ear and lost his balance. When he could not regain his balance, the interrogators forced him into the same position he had assumed on the first day—lying flat on his stomach with his legs at 90 degrees to the floor—and they took turns lashing him with a cable, while continuing to insist that he had attended a training camp and that his company supplied al-Qaeda and financed Osama bin Laden. To make the beating stop, Mr. Almalki finally falsely told his Syrian interrogators that he had gone to a training camp. The interrogators then questioned him about the training camp, asking him the name of the camp, and the names of the individuals who had attended the camp with

him and trained him. Mr. Almalki made up answers to some of their questions about the training camp; when he could not come up with answers, he was tortured. Eventually, he told his interrogators that he did not actually attend a training camp, and that he had only admitted to attending a camp in order to stop the torture.

34. The interrogators continued to question Mr. Almalki until after midnight. They threatened to starve him, keep him awake and beat him so badly that he would be hospitalized. They also forced him to write out and then sign a document containing all the information that he had not already shared with them. In order to fill a page with writing, Mr. Almalki wrote several untrue statements that he believed would convince his interrogators that he had done something illegal during his life.

35. On the morning of July 19, Mr. Almalki was called back to the interrogation floor. He was forced to remove his shirt and hang backwards by his hands from a metal rail affixed to the wall. His interrogators then questioned him, lashing him with a belt if he did not answer a question immediately. Mr. Almalki's hands kept slipping from the metal rail, causing him to fall to the ground and his interrogators to intensify their beating. Eventually, Mr. Almalki's interrogators tied his hands to the metal rail so that he was suspended and could not slip to the floor, and continued to question and lash him. Mr. Almalki's hands became so raw that he could not see skin, only blood and flesh. During the interrogation, the interrogators gloated about the situation Mr. Almalki was in; they said that though he had left Syria to go to Canada for a better life and better human rights, the Canadian government was behind what he was going through in Syria.

36. Mr. Almalki remained suspended from the metal rail for at least two hours, until he was so drained of energy that he could not speak or move any part of his body. His interrogators cut him free and he fell, semi-conscious, to the floor. The pain in his hands was unbearable. While he lay in a heap on the floor, one of the interrogators sat with him, forcing him to stay awake, and threatening to put him in "the chair." The interrogator told him that had it not been for a new report that the Syrians had received, he would have been a free man.

37. The following morning (July 20), Mr. Almalki was called to the interrogation floor and questioned about a list of flights that a "computer guy" at Far Falestin had allegedly found in Mr. Almalki's computer. The interrogator accused him of being a member of al-Qaeda and using the flight lists to plan another 9/11 terrorist attack. No flight list was ever shown to Mr. Almalki, and he told his interrogator that there was no such list on his computer. The interrogator also referred to the pictures of Mr. Almalki's children that were stored

on the laptop and told him that if he confessed to being al-Qaeda, he would see his children.

38. Some months later, Mr. Almalki asked one of his interrogators why he had been treated so brutally in July. The interrogator responded by showing him portions of a report that, according to the interrogator, had been provided by Canada. The report was in Arabic, and said that a search of Mr. Almalki's parents' home in Canada had turned up weapons and proof of links to al-Qaeda and Osama bin Laden. It also said something to the effect of "we hope that he's handed over to us."

Interview by the Malaysians

39. During the month following the July 2002 torture and interrogation sessions, Mr. Almalki was regularly interrogated, threatened with torture and humiliated, but was not physically beaten. This relatively uneventful period ended on the morning of August 24, 2002, when Mr. Almalki was taken to an interrogation room, questioned and beaten with a cable. The next morning (August 25), a guard told him to get dressed and cleaned up. He was taken to a white car waiting outside, handcuffed and driven, along with one of the lead interrogators and the prison manager, to what Mr. Almalki later learned was Far' Ma'alount, or the Branch of Information. When they arrived, Mr. Almalki was blindfolded and led to what he understood to be the office of the director of the Branch of Information. Several people whom Mr. Almalki believed to be Malaysian officials were in the office, including one who was seated behind a table. The man behind the table asked Mr. Almalki questions about his wife (who was from Malaysia), his business, Pakistan, Afghanistan and Malaysia. At one point, the interrogator asked him something to the effect of: "Why did you do 9/11?" Some of the Malaysian interrogator's questions implied that Mr. Almalki was a member of al-Qaeda; when Mr. Almalki corrected him and told him that he was not a member of al-Qaeda, the interrogator seemed surprised.

40. During the interrogation, Mr. Almalki could see that the Malaysian interrogator had two reports—one in English marked "Secret" and the other in Malay. He observed that one page of one of the reports listed several trade names that Mr. Almalki had tried (unsuccessfully) to register in Canada, and that Mr. Almalki believed could only have been obtained from his filing cabinet in Ottawa; they had not been stored on his laptop or PalmPilot and he had not shared them with Malaysian authorities or with his Syrian interrogators. (He had not mentioned them to his interrogators because they were not so important as to be at the forefront of his mind, and he did not believe that they were

relevant.) Mr. Almalki believes that this information linked the reports and the Malaysian interrogation to the Canadian government, and that the Malaysian officials questioned him in Syria at the request of the Canadian government, or at least based on information that the Malaysian officials received from the Canadian government.

41. At the end of the Malaysian interrogation, Mr. Almalki asked his interrogator why the Malaysian authorities had come to Syria to interview him rather than asking him these questions when he was in Malaysia. He was told that the Malaysian authorities only became interested in him after he was captured by the Syrians. Also at the end of the interrogation, Mr. Almalki's blindfold was removed and the Malaysian officials asked him to smile before taking a photograph of him.

42. Mr. Almalki believes that had the Malaysian officials not come to Syria to interview him on August 25, he would not have been tortured on August 24.

43. Following the Malaysian interrogation, Mr. Almalki was taken back to Far Falestin, and was called for interrogation. His interrogator told him that the Canadians had asked if they could see him and question him directly, but that it was up to the *kiada* (or leadership) to decide whether to grant the Canadians access to him.

Interrogation in early October

44. For about one week between September 30 and October 9, 2002, Mr. Almalki was intensely interrogated about Maher Arar and threatened with torture. Mr. Almalki's interrogators told him that Mr. Arar was detained and would be transferred to Syria soon, and that Mr. Arar would be asked to confirm all of the information that Mr. Almalki had provided. They threatened to torture Mr. Almalki if they found out that any of the information he provided was inaccurate.

Interrogation in November and December

45. On November 24, 2002, Mr. Almalki was called to the interrogation floor and questioned by an interrogator he had never seen before. The interrogator asked him about Ahmed Said Khadr, one of Mr. Almalki's Muslim-Canadian friends and someone named Fadel. The interrogation was not hostile, and Mr. Almalki was not tortured or threatened with torture.

46. Mr. Almalki was interrogated again on November 28, and the questions that day focused on his alleged visits to Internet cafes in Ottawa and his business

shipments. When asked if he visited Internet cafes in Ottawa, Mr. Almalki told his interrogators that he did not know of any in Ottawa, but that he might have gone to a library or bookstore once or twice when the Internet connection at home was malfunctioning. He was asked to tell his interrogators about all the items that he shipped by sea during the entire life of his business. His interrogators were especially interested in his practice of shipping equipment from one country to another country without first shipping the equipment to Canada, and insisted that Mr. Almalki had used this shipping technique in order to hide something. Mr. Almalki explained to them that that such shipping techniques were part of international business practice, and also tried to explain to them how business practices in Syria differ from business practices in Canada. Upon hearing Mr. Almalki's explanation, one of his interrogators insisted that it was not true "because the information that we have from the Canadian consul says otherwise."

47. For several days, Mr. Almalki's interrogators continued to ask him about his business' shipping practices. At one point, after his interrogator asked him several times about what he had shipped by sea, Mr. Almalki observed that the interrogator was looking at or reading from a document, and suggested that the interrogator read aloud from the document so that Mr. Almalki could provide a specific explanation. The interrogator read a passage about the American army searching a ship for equipment that Mr. Almalki had allegedly sold to terrorist groups. The passage said that this would be proof of Mr. Almalki's guilt. Mr. Almalki told the interrogator that this passage clearly acquitted him and could not possibly be true. He said to the interrogator: "Why would they need proof of my guilt if they have…evidence?" He also pointed out to the interrogator that he had been detained for the past eight months and could not have bought or sold anything, transferred any money, or made arrangements to have anything shipped. His interrogator responded, "Maybe they messed up in the translation," but did not tell Mr. Almalki what the document had been translated from.

48. At some point in late November or early December 2002, Mr. Almalki observed one of his interrogators reviewing a typed report entitled "Meeting with the Canadian delegation November 24th 2002" and addressed to the head of intelligence and head of Far Falestin. The report was written in Arabic, and said something to the effect of "…has been under surveillance since 1998." Mr. Almalki believed that this was the same report from which his interrogator had read the passage about the American army. He also believed that all of his interrogations in November and December had been based on this report.

49. At another point in November or December, Mr. Almalki asked his interrogators when they were going to release him. He was told that he would be released when the Canadians wanted him to be released.

50. At some points during his interrogations in November and December, Mr. Almalki was threatened with torture.

Interrogations in January, February and March

51. On January 16, 2003, Mr. Almalki was called to the interrogation floor and questioned on the basis of what Mr. Almalki observed to be a two-page typed list of questions and a half-inch thick report. According to Mr. Almalki, the interrogator told him that the questions were provided by Canada, and that Mr. Almalki had to answer them so that the interrogators could send the answers to Canada. The questions asked that day included questions about where he had been trained and what he had been trained on. There were also a lot of questions about names of people, most of which Mr. Almalki did not recognize.

52. Mr. Almalki was not beaten during the interrogation session on January 16; the interrogator did not touch him. However, throughout the interrogation session, the interrogator was going into adjacent interrogation rooms to interrogate and torture other prisoners. Mr. Almalki could hear the screams of the prisoners being tortured, and the sound of slaps and the cable hitting their flesh. When the interrogator returned from these adjacent interrogation rooms, Mr. Almalki was frightened because the interrogator's face "spelled trouble."

53. About two days later, Mr. Almalki was called back to the interrogation floor. He was told that the Canadians said he was very smart and that there was no evidence against him because he knew how to cover his tracks. The interrogator threatened him that day—he said that if he ever found out that Mr. Almalki had lied to him, everything that Mr. Almalki had experienced would be nothing compared to what the interrogator would do to him. The interrogator also said that he would never trust another detainee again and that Mr. Almalki would "cause a huge amount of misery for everyone downstairs."

54. During an interrogation in February 2003, an interrogator observed that Mr. Almalki looked very weak. Mr. Almalki told the interrogator that he had had diarrhea for weeks, but the prison staff would not give him any medication for it. During the same interrogation, the interrogator said that the Canadians were still asking to see him, but that the decision to grant access had to be made by the leadership.

55. Following this February interrogation session, the prison nurse visited Mr. Almalki and gave him some medication for his diarrhea. The prison nurse observed that Mr. Almalki had many large pimples on his back, but did not do anything to treat the pimples.

56. In March 2003, Mr. Almalki was called to the interrogation floor and asked only one question: "Did you fund terrorist organizations in Canada?" Mr. Almalki said he did not, and told his interrogators that they had asked him this question before. His interrogators responded that they had not yet asked this question officially. On the same day, Mr. Almalki's interrogators told him that a person from the Canadian Embassy, whom the interrogator had met many times, wanted to see him and see how he was doing. The interrogator described the man as a nice man in his 60s, short and bald with some grey hair.

57. Mr. Almalki had always hoped that someone from the Embassy would visit him in prison. He thought that regular visits from a foreigner would cause the prison officials to treat him better or even release him. On the other hand, he did not want to ask his interrogators if he could meet with an Embassy official, out of fear that they would get the impression that he was "dissing" the Syrians and then retaliate or punish him in some way. He was afraid to give the Syrians any impression that he was less Syrian than Canadian or that he valued his Canadian citizenship more than his Syrian citizenship.

58. Mr. Almalki continued to be detained at Far Falestin from March until August 2003, but was not interrogated during that period. At one point in the spring or summer of 2003, one of the prison guards beat Mr. Almalki and threatened to take him to the jail manager. In August 2003, Mr. Almalki was transferred to the Far' 'al-Tahqia al-'Askari branch and then to Sednaya branch.

Life at Far Falestin

59. Mr. Almalki lived alone in Far Falestin's cell number 3 for approximately 482 days. According to one of Mr. Almalki's interrogators, this was an unusually long time for a person to be kept in solitary confinement in Far Falestin; most prisoners were in solitary confinement for only a few weeks or months. Mr. Almalki described the cell as dark and extremely small. It was approximately 1.75 metres deep, 85 centimetres wide and two metres tall, and was separated from the corridor by a steel door. Near the top of the steel door was a small opening onto the corridor, through which a few rays of artificial light entered the cell. Mr. Almalki could not see the corridor through the pocket. Between the bottom of the steel door and the floor was a gap large enough to

permit rats to enter the cell. Mr. Almalki had to use some of his belongings and a blanket to block the gap and stop the rats from entering.

60. The floor of the cell was covered by filthy, lice-infested blankets. During much of Mr. Almalki's detention, the cell was filled with cockroaches, some as long as 10 centimetres.

61. The back wall of cell number 3 was shared with the women and children's cell. Mr. Almalki could hear voices from that cell, and always paid careful attention to the voices out of fear that his interrogators might follow through with their threats to detain and interrogate his mother or somehow lure his wife from Malaysia to a Syrian prison.

62. In addition to hearing the voices of women and children in the neighbouring cell, Mr. Almalki constantly heard screams from the interrogation floor. He said that hearing these screams was sometimes harder than certain types of torture.

63. The cell was extremely cold in the winter and hot in the summer. During the winter Mr. Almalki took baths in icy cold water, which he found extremely painful. To keep warm in the winter, he would wear his underwear on his head, even though he considered this to be humiliating, and his socks on his hands.

64. Mr. Almalki was given food containers to hold the food that the prison guards distributed, a few water bottles and a one and a half-litre urine bottle. Mr. Almalki cleaned his food containers, filled his water bottle and emptied his urine bottle in the washroom. Since this left him little time to do other business in the washroom, he told one of the guards that he was going to stop eating. That guard, whom Mr. Almalki described as one of the nicer guards, said that if Mr. Almalki agreed to eat, he would, during his shift at least, give him an extra minute in the washroom.

65. Breakfast was distributed to detainees between 7:00 a.m. and 7:30 a.m. daily, lunch at 1:00 p.m. daily, and dinner at 4:00 p.m. daily. Breakfast usually consisted of tea, olives, a spoon of jam, yogurt or sesame seed paste and, about once per week, a boiled egg. At lunchtime, the prisoners were offered rice or bulgur, some boiled vegetables, a piece of seasonal fruit and, occasionally, some chicken or red meat. When chicken or red meat was served, the guards would typically take most of the good meat, and leave only the fat, skin or bony pieces for the prisoners. Dinner usually included three loaves of pita bread, one vegetable piece (such as cucumber or tomato), a piece of boiled potato and lentil soup. Mr. Almalki avoided the lentil soup, the chicken and the olives, because he found that they caused him diarrhea.

66. As noted above, Mr. Almalki filled water bottles with water from the prison washroom. He drank this water and used it to wash some of the food that he received. For a long period of time, he had only one water bottle to drink from. This posed a problem in the summer of 2002, when the water supply to the washrooms was cut off for as long as 20 hours at a time. During those long periods without running water, he survived on only one bottle of water.

67. Very occasionally, Mr. Almalki was given an opportunity to purchase provisions such as soap, clothing, clothing detergent, a toothbrush and toothpaste, and food (such as sesame paste, cheese, sardines, tuna, cooking oil and zatar), and pay for them using the money that he had with him when he arrived at Far Falestin as well as money he was later given by his family. This opportunity was not offered on a regular basis, but usually only after he pleaded, sometimes for several months, with the prison guards. The quantity of goods that he could buy at any one time was limited to what he could store in his small cell.

68. Because Mr. Almalki's clothes became infested with lice, he had to wash and change them regularly. He changed his underwear and undershirt once per day. He washed his clothing by soaking it with soap in a food container and then hanging it to dry from a string which he affixed to the ceiling of his cell.

69. Mr. Almalki at first kept track of his detention and relevant dates by markings on the cell wall. When this became impossible (in about June 2002), he printed a calendar onto a piece of Kleenex. He recorded important events, such as days on which he was interrogated or tortured, by marking the date with a dot. Mr. Almalki stored the Kleenex calendar in the pocket of his cargo pants. Mr. Almalki managed to preserve this Kleenex through his detention. When he was released he took the Kleenex back to Canada and photocopied it, but has since lost the original. He provided a copy of the Kleenex to the Inquiry.

70. On at least two occasions, Mr. Almalki observed what he believed to be a prison inspection. In each case, he heard the guards frantically and quickly cleaning up the prison, followed by a visit from a person who inspected and asked questions of the prison manager about parts of the prison. For example, the inspector asked whether the women had access to hot water. Mr. Almalki also heard one of the inspectors ask whether the cells he saw were washrooms, and the prison manager responded that they were solitary confinement cells. The inspector then asked the prison manager how long prisoners typically stayed at the prison, to which the prison manager responded that prisoners stayed only two or three weeks until their interrogation was over. This frustrated Mr. Almalki, because by that time he and other prisoners had been detained in Far Falestin for over one year.

71. Very rarely, Mr. Almalki and his fellow prisoners would be allowed to go outside to the prison's "breathing yard" for 5 to 20 minutes at a time. The guards escorted the prisoners out to the yard one at a time so that they could not see each other or interact with one another. When Mr. Almalki went to the breathing yard, which he was permitted to do only four times during his detention at Far Falestin, he took the blankets from his cell floor along with him in order to shake the dust out of them and expose them to the sun.

72. Once per week, the guards shaved the prisoners' beards. Mr. Almalki said that being shaved was frightening because some guards would deliberately cut and bruise him with the clipper, and make shaving as hard and painful as possible.

Family visits to Far Falestin

73. Mr. Almalki believes that his mother and cousin, who greeted him at the airport on May 3, 2002, learned that day that he had been taken to Far Falestin and then immediately left the airport and drove to the prison. Mr. Almalki believes that his cousin tried to speak with the Director of Far Falestin, but that there was nothing much his family could do because his situation was an international issue.

74. During his detention at Far Falestin, Mr. Almalki received five family visits. Mr. Almalki did not, at the time of the visits, know who arranged them or how they came about, but he later learned that his uncle's friend, who was a *Lewa'a* (General) in the army, had, at the family's request, asked officials in the intelligence branch to permit family members to visit him.

75. Mr. Almalki's first visit, on July 7, 2002, was from the same cousin who had met him at the airport. The two men spoke for about 15 minutes in the prison manager's office, while the prison manager sat about two metres away and listened to their conversation. During the visit, Mr. Almalki's cousin asked Mr. Almalki how he had been treated. Mr. Almalki told him that while it was rough at the beginning, he was being treated fine and everything was good. Mr. Almalki did not want to tell his cousin about the torture because he thought he was going to be released soon and did not want to jeopardize his release. His cousin offered Mr. Almalki money, but Mr. Almalki refused it, again because he thought his release was imminent. His cousin told Mr. Almalki that he would have to be patient because his situation was an international issue and because the Canadians wanted him. Mr. Almalki did not ask his cousin whether the family had contacted the Canadian Embassy. He reasoned that because his cousin was not Canadian, he would not expect him to have contacted the

Embassy. He also believed that the Canadian government was behind his detention and mistreatment.

76. The day after the July 7 visit, one of the guards told Mr. Almalki that it was very rare for a person in solitary confinement to receive a visit, and that Mr. Almalki should consider the visit as a sign that the investigation was over and that things were looking very good.

77. At some point after the July 7 family visit, Mr. Almalki's family sent him a package of items (including clothes and some food) and deposited some money in his account with the prison manager.

78. Mr. Almalki received his second family visit in November 2002. Once again, he and his cousin met in the prison manager's office while the prison manager monitored the meeting. Over the prison manager's objections, Mr. Almalki told his cousin that he had been beaten severely, and described the conditions of his cell. His cousin politely criticized the prison manager for subjecting Mr. Almalki to mistreatment, and said that Mr. Almalki looked like he was not getting food. Mr. Almalki told his cousin that he wanted blankets and warm clothes for the winter, but the prison manager said that there was no need for his relatives to provide these items because the prison was going to provide them. The prison never did provide Mr. Almalki with these items, however. Mr. Almalki did not ask his cousin to contact the Canadian Embassy. He reasoned that since the Canadian government was allegedly behind his detention in Far Falestin, he should not trust the government to assist him. He felt betrayed by the Canadian government, because he had hoped they would protect him. He also hoped that his cousin would work harder to get him released.

79. At one point during the November visit, his cousin told Mr. Almalki and the prison manager that he had been to the prison director's office, where he had looked at Mr. Almalki's file. He also told him that he believed that the Canadians were behind Mr. Almalki's detention. Mr. Almalki does not know how his cousin was able to get access to the prison director or to his file, but he believes it was generally known at the time that, in Syria, a person could get anything from anyone if he knew the right people.

80. About two weeks after the second family visit, Mr. Almalki's family sent him a shipment of food.

81. In December 2002, Mr. Almalki received a third family visit, this time from an uncle, and another cousin who was a lawyer in Syria. Prior to the visit, a guard came to Mr. Almalki's cell, cut his hair and told him to wash himself and dress well. During the visit, guards sat with Mr. Almalki and his cousin and

uncle, and listened to their conversation. Mr. Almalki's uncle told him that the prison director had advised that Mr. Almalki had a foot injury from Afghanistan. Mr. Almalki was shocked to hear this; he told his uncle that it was not true and that his injury resulted from being tortured. Mr. Almalki did not go into further detail about how he had been treated, because he was concerned about frightening his uncle, and about the information getting to his father and mother. He did not want his parents to find out about the torture because the well-being of his parents was more important to him than anything else and he thought that knowing of his torture would kill them. Mr. Almalki also considered it a big risk to talk about torture within earshot of the guards; he thought that it could result in his being mistreated. Mr. Almalki acknowledged that holding back information about his treatment from his family might have affected the family's ability to put pressure on the Canadian government to take action on his behalf.

82. Mr. Almalki received his fourth family visit, from his father and the cousin who had met him at the airport, in April 2003. Mr. Almalki's father brought him some food. Once again, the visit took place in the office of the prison manager, who monitored the conversation. Mr. Almalki observed his father to be very emotional, and tried to comfort him by telling him not to worry and that he was treated well. He told his cousin to do something because he was "rotting in here;" his cousin told him to be patient. Mr. Almalki did not ask his father or his cousin to contact the Canadian Embassy because he did not want the prison officials to think that he felt more Canadian than Syrian. In addition, as noted above, he believed that the Canadian government was behind his detention in Far Falestin, and that he should therefore not trust the Canadian government to assist him.

83. The same cousin returned to Far Falestin in June 2003, this time with Mr. Almalki's mother. Once again, the prison manager was present for the entire visit, and there was no opportunity for Mr. Almalki to speak privately with his family. Mr. Almalki told his mother that everything was fine and not to worry about him. He did not ask his mother or cousin to contact the Canadian Embassy. His cousin and mother left him food and a copy of the Koran.

Transfer to the Far' 'al-Tahqia al-'Askari branch

84. At the end of August 2003, Mr. Almalki's interrogators told him that they had found nothing against him and that the court was going to release him, but that he would first be transferred to a better place. Mr. Almalki asked if he

would need a lawyer, and was told that he would not need a lawyer because he had not done anything illegal.

85. The night before Mr. Almalki left Far Falestin, he was called up to the interrogation floor and forced to sign and thumbprint three documents. One was a summary, dictated to and written by him, of all the information he had given to prison officials during his time at Far Falestin; the second document contained information about his family; and the third was a document he was not permitted to read.

86. On the morning of August 28, 2003, Mr. Almalki was given back his luggage (which had been taken from him when he arrived at Far Falestin) and driven a short distance from Far Falestin to the Far' 'al-Tahqia al-'Askari branch (the military interrogation branch), where he stayed for the next 10 days. He was met there by several officials who insulted him, called him names and then left him alone for several hours in a basement interrogation room before taking away most of his belongings and transferring him to Room 12.

87. Room 12 was a 25-square-metre communal cell. When Mr. Almalki arrived, it had about 25 inhabitants, many of whom could not believe that he had spent 16 months in solitary confinement at Far Falestin. Each of the inhabitants occupied a space measuring about 20–25 centimetres in width; they had to sleep on their sides because space was so limited. Room 12 had a washroom with a Turkish toilet, a tap, a very small sink and a limited amount of hot running water. Mr. Almalki had a hot shower for the first time in 16 months. The food served to prisoners in Room 12 was similar to what was served in Far Falestin, but the prisoners were permitted to buy food almost daily.

Transfer to Sednaya branch

88. Mr. Almalki spent 10 days in Room 12 at the Far' 'al-Tahqia al-'Askari branch, but was never interrogated or tortured. On the 10th day, he was blindfolded, handcuffed and escorted along with about 14 other prisoners to a bus headed for Sednaya branch, where he would spend the next six months. The prisoners were accompanied on the bus by several guards carrying AK-47 guns.

89. When he arrived at Sednaya branch, Mr. Almalki was threatened with torture. He was told something to the effect of, "Once we hook you…to the electricity we will get things out of you." Mr. Almalki was then taken to a large (approximately 20 by 30 metres) room. The guards searched his things, took his money and passport, made sarcastic statements about him, and then partially shaved his head, leaving small random patches of hair. Mr. Almalki found the

head-shaving to be extremely painful, because the guard who did it was ordered to jam the clipper into his head and pull out the hair. At one point, he was told to "take stuff from your bag." He did so, and set the items aside.

90. The guards left, but returned a short time later and beat Mr. Almalki severely. They slapped him, punched him and lashed him with what he later learned was called a "tank belt." When they were finished, another guard approached Mr. Almalki, asked the other guards if he was "the Canadian" and, when he received a positive response, beat him.

91. After the guards beat him, Mr. Almalki was taken to a solitary confinement cell. The cell was much bigger than his cell in Far Falestin but it was very dark, cold and dirty and smelled like human waste. While the cell had a small washroom, there was no running water in the washroom.

92. After 10 days of solitary confinement, Mr. Almalki was taken upstairs to meet with the "Musyad Awar" (or first assistant) who asked him about the accusation that he was linked to al-Qaeda and about Adnan Al-Malki, a relation of Mr. Almalki's who had been assassinated in the 1950s or 1960s.

93. Following their meeting, the Musyad sent Mr. Almalki to one of the "wings" or "wards" of Sednaya where Mr. Almalki would live until he was transferred out of Sednaya on March 1, 2004. The wing comprised 10 communal cells, each measuring approximately 48 square metres, and the prisoners were allowed to choose which cell they wanted to stay in. Each cell had its own washroom, where the detainees bathed, and used the Turkish toilet. Prisoners in the wings were allowed to buy various supplies, such as food, pencils, notebooks, glue, razors and light bulbs.

94. Mr. Almalki met Maher Arar in Sednaya; they spent about two to three weeks in the same cell. During that time, they discussed their experiences. They agreed that the first one of them to be released from Syrian prison would tell the Canadian public and Canadian government about the other one. Mr. Almalki was aware that Mr. Arar had received consular visits and so asked him, during one of his visits, to tell the Embassy officials that another Canadian was also detained in Syria. Mr. Almalki did not, however, ask the prison staff whether he could see someone from the Canadian Embassy. He was afraid of what the consequences might be.

95. In October or November 2003, about one or two months into his stay in the "wing" of Sednaya, Mr. Almalki was beaten because he smiled at a guard. He had been going to retrieve a bucket of water, part of the daily routine at Sednaya, when a guard congratulated him on his recent release from solitary

confinement. Mr. Almalki replied to the guard with a smile and a second guard saw the smile and insisted that the other guards "bring that person who was smiling." Mr. Almalki was brought to the second guard, who slapped and kicked him. The guard then took him to a room, where he was forced to his knees and kicked by several guards. Mr. Almalki said it felt like a circle of 10 people was surrounding him and kicking him everywhere. At one point, the *Musyad* (an official with a military rank) entered the room. The Musyad pulled on Mr. Almalki's ears, slapped him, insulted him, and accused him of beating a guard. Mr. Almalki was then forced into a tire, and the individuals in the room took turns hammering his legs and the soles of his feet with the tank belt. When the beating was finished, Mr. Almalki was forced to confess that he had beaten a guard and therefore deserved the beating that he had received.

96. When Mr. Almalki returned to the wing after the beating, his fellow detainees took care of him by cleaning his wounds and washing his clothes. Mr. Almalki's foot was seriously injured in the beating, and some days after the beating, the injury became so serious that he could not stand on his own at all; his fellow detainees had to carry him to the washroom. At one point, Mr. Almalki's fellow prisoners took him to see a detainee at Sednaya who was also a doctor. Upon looking at Mr. Almalki's foot, he told the *Musyad* that Mr. Almalki should see a doctor or go to the hospital. Mr. Almalki was eventually sent to the prison doctor, but only after his family made a big fuss at one of the family visits. The prison doctor looked at his foot (from some distance away), but refused to send him to the hospital.

97. On February 25, 2004, two interrogators from Far Falestin travelled to Sednaya to interrogate Mr. Almalki. They asked him about a family from Canada and threatened him with torture.

Family visits to Sednaya

98. Mr. Almalki received three family visits while he was detained at Sednaya branch. The first visit, in September 2003, was from his mother and the cousin who had met him at the airport. Like all of the visits at Far Falestin, the visit was monitored by several prison officials who listened to their conversation. Though Mr. Almalki was afraid of the possible consequences of discussing his treatment, he told his mother and cousin that he had been beaten. He felt that by this point there was absolutely no hope, that he might never get out of jail, and that he therefore had nothing to lose by telling them about the beating.

99. Mr. Almalki did not tell his mother and cousin to contact the Canadian Embassy; he was still afraid that doing so would give prison officials the

impression that he was "dissing" Syria. He had also learned from Maher Arar that, even if he got a consular visit, he would not be free to say everything he wanted to during that visit; nor (he believed) would he have the courage to say everything. Mr. Almalki told his mother and cousin about the April 22 and November 24 reports, which he had seen or heard about during his detention and believed originated with Canada, and told them to tell his brothers and other people in Canada about the reports so that they might be able to push for his release. Mr. Almalki believes that his family ultimately passed this information to Michael Edelson, an Ottawa lawyer, and that Mr. Edelson used this information as part of his efforts to get the letter from the RCMP described at paragraph 101 below. At the end of the visit, Mr. Almalki asked his mother and cousin for money so that he could buy provisions for himself and for others in his cell.

100. Some time after the visit in September 2003, Mr. Almalki's cousin returned to Sednaya and brought him money and a long coat. Mr. Almalki met with his cousin in the office of the Musyad, the prison official who had beaten Mr. Almalki for smiling at a guard. When his cousin arrived, Mr. Almalki embraced him and whispered in his ear, "They tortured me." As they sat down, his cousin repeated aloud, "You told me they tortured you." The Musyad heard this comment and cautioned them to speak about important things and that they did not have much time. Mr. Almalki did not during this visit ask his cousin to contact the Canadian Embassy; he was terrified of the Musyad and did not want to say anything that might set him off again.

101. Mr. Almalki received his last family visit, from his mother, father and his cousin who had visited him previously at Sednaya, in January 2004. They met in the Musyad's office. His father told him that a court hearing had been scheduled for February, that the family had appointed a lawyer for him, and that the family had obtained from Canada and submitted to the Syrians a letter saying that he had no criminal record and was not the subject of an arrest warrant in Canada. Mr. Almalki did not ask his family to contact the Canadian Embassy, again out of fear that doing so could have negative consequences for his treatment. While Mr. Almalki's family was hopeful about his release and court hearing, he felt that he would have to stay at Sednaya for years and so made a long list of things for his family to send to him.

Release of Mr. Almalki

102. On February 29, 2004, Mr. Almalki was ordered to be released on bail. However, he was not released that day. On the morning of March 1, he was called up to an office and forced to sign papers, including a paper acknowledging

that he was to appear in court on April 25. He was then put into a car, handcuffed and taken to the office of the head of the military police. The head of the military police asked Mr. Almalki several questions, including about his father, where he used to live in Damascus, and how he was treated in prison. With respect to his treatment in prison, Mr. Almalki responded that "there are people Syria would be proud of and other people they would be ashamed of" and then named a prison official who had treated him very poorly. Following this meeting, Mr. Almalki was taken back to the car and driven to Far' 'al-Tahqia al-'Askari branch and then to Far Falestin, where a guard searched his belongings, took his documents and then escorted him downstairs to a communal cell in which approximately 20 other prisoners were detained. Mr. Almalki spent 10 days in that communal cell but was not interrogated or tortured.

103. On March 10, 2004, Mr. Almalki was taken upstairs to meet an *Amid* (Brigadier) whom he had never seen before. The *Amid* told him that the whole world had been looking for him and that the Syrians had to do their work and find the truth. Mr. Almalki reminded the *Amid* that he had told everyone from day one that he had not done anything illegal. To this, the *Amid* responded that the Americans and Canadians were "after [him]" and wanted Syria to hand him over to Canada, but that Syria does not under any circumstances hand over Syrian citizens to other countries. Mr. Almalki referred to the letter that his family had obtained from the RCMP (which said that he had no criminal record and was not the subject of an arrest warrant in Canada) but the *Amid* was not aware of the letter and said something to the effect of, "If they issued such a letter then it's because of our reports which cleared you of any terrorism charges…" Finally the *Amid* advised him not to "say anything in Canada which [he] could not say [in Syria]."

104. Following his meeting with the *Amid*, Mr. Almalki was taken to the office of the *Lewa'a* (General) who had supposedly facilitated Mr. Almalki's family visits. When Mr. Almalki arrived at the *Lewa'a*'s office, the *Lewa'a* and Mr. Almalki's cousin who had met him at the airport were waiting for him. The *Lewa'a* apologized to Mr. Almalki for what he had gone through and said that he wished that he could have been released earlier, but explained that the Syrians were under a lot of pressure to cooperate in the war on terror. Mr. Almalki left the office of the *Lewa'a* with his cousin, who drove him to his parents' house.

Post-release interrogation

105. Following his release on March 10, 2004, Mr. Almalki spent four and a half months in Syria, waiting for the trial that cleared him of all charges. At some point in late March or early April 2004, one of Mr. Almalki's Far Falestin interrogators called him and asked him to return to Far Falestin to retrieve his laptop, which the prison officials had not yet returned to him. While Mr. Almalki was afraid to go back to Far Falestin, he wanted to get his laptop back. He also thought it would be better to cooperate with the prison officials than to be dragged back to Far Falestin. As well, his cousin told him that he had received assurances from a Syrian official that Mr. Almalki would not be re-detained.

106. Mr. Almalki returned to Far Falestin in mid-April, and was told that there were Independence Day celebrations going on and that he should come back later. When he returned, he was taken to the second floor of the branch, where the interrogators' offices were located. An interrogator showed him a small part of a faxed report in Arabic containing photographs of individuals, and then told him that all the interrogators were busy downstairs, and that he would have to come back another day. When Mr. Almalki returned some days later, he was again taken to the second floor of the branch. His interrogators had the same faxed report, which contained photographs of individuals, a list of names and at least one birthdate. Mr. Almalki observed that the report had been faxed on March 29, 2004, but he could not see what number it had been faxed from and his interrogators did not tell him where the report had come from. Mr. Almalki did not recognize any of the pictures and only recognized one of the names on the list, the name of a man who used to work in Mr. Almalki's company. When he told his interrogators this, two of them said he was "not cooperative" and threatened to torture him with the tire if he did not talk. One of the interrogators questioned why Mr. Almalki did not know the individuals listed in the report; he said that, according to the report, the individuals were members of "The Prayers Group" in Ottawa, and that Mr. Almalki was their spiritual leader. Mr. Almalki told the interrogator that this was just another inaccurate report; he noted that the men listed in the report were children when Mr. Almalki was in Canada, reminded the interrogator that he had been detained in Syria for two years, and emphasized that it was therefore implausible that he would be their spiritual leader. Mr. Almalki asked the interrogators, "When are these reports going to stop?" The interrogators responded that the Canadians did not want him to be released and wanted him back in jail, and that the reports would stop once he left the country.

108. When the interrogation was finished and Mr. Almalki started to leave, one of the interrogators asked him when he was going to return to Canada, and Mr. Almalki responded, "Once you allow me." His interrogator told him that the intelligence officials had no problem with his leaving the country.

Departure from Syria

109. On July 28, 2004, Mr. Almalki left Syria.

9

MUAYYED NUREDDIN'S EXPERIENCE IN SYRIA

1. The following is a summary of information provided by Mr. Nureddin in the interview of him that I conducted with assistance from Inquiry counsel and Professor Peter Burns (special advisor to the Inquiry), on December 13, 2007.

Decision to travel to Syria

2. In the fall of 2003, Mr. Nureddin travelled to the Middle East for business and to visit his family in Kirkuk, Iraq. Mr. Nureddin was scheduled to take a flight from Damascus, Syria to Toronto on December 13, 2003. He planned to stay in Damascus for two days and one night and explore the city before taking his flight to Toronto.

Arrival at the Syrian border

3. On December 11, 2003, Mr. Nureddin, his mother, two sisters and two brothers drove from Kirkuk to the Syrian border. At 1:00 p.m., the Nureddin family reached the Al-Yahroubia border crossing.

4. While Mr. Nureddin's mother and two sisters stayed with the car, Mr. Nureddin and two brothers, Ahmed and Aydin, went to the Iraqi side of the border crossing. Ahmed planned to wait at the border until his brothers crossed safely into Syria and then return to his mother and sisters. Aydin planned to accompany Mr. Nureddin to Damascus to familiarize himself with the city and learn the car import/export business.

5. Mr. Nureddin and Aydin crossed the Iraqi side of the border without any difficulty. At the Syrian side, the border official took their passports and told them to wait. After a two-hour wait, the border official permitted Aydin to enter Syria but detained Mr. Nureddin. The border official told Mr. Nureddin

that he was "wanted." He handcuffed Mr. Nureddin to a bed in a building at the border crossing.

6. The border officials searched Mr. Nureddin. They asked him if he had a bomb and why he was going to Syria. They also asked him if he knew that he was "wanted." Mr. Nureddin said he had a plane to catch on December 13, 2003 and showed them his ticket and passport. The officials started to ask him questions about his date of birth, his education and his military experience.

7. During the search, Mr. Nureddin overheard a border official question why Mr. Nureddin had not been detained when he crossed the Syrian border on September 27. Another border official answered that "the report" had only been received on November 14. Mr. Nureddin believed that the report directed that he be arrested, but acknowledged that he did not have any basis for his belief other than this overheard conversation.

8. After the interrogation, Mr. Nureddin saw Aydin in the waiting area and told him to continue on to Damascus and wait for him there. He asked him to phone a friend in Canada if he did not see him in two days, but said that it would be safer to make the call from Iraq. Aydin asked the border officials where they were taking his brother. One official told him to leave with Mr. Nureddin's luggage and said, "He will not see the sun again."

General Security Department in Al Qamishli

9. Mr. Nureddin was taken to the General Security Department in what he believed to be Al Qamishli. Mr. Nureddin believed it was Al Qamishli because it is the closest major city to the Syrian border and he could see lights from the front of the car. At the detention centre, Mr. Nureddin was sent to solitary confinement.

10. The solitary confinement cell was one metre by two metres, and four metres in height, with an iron door. The cell was made of concrete and had one blanket on the floor. Mr. Nureddin was given bread with falafel and he was able to use the washroom for two minutes. During the night, Mr. Nureddin was very cold and asked a guard for a second blanket. Even with two blankets, Mr. Nureddin was still cold and he could not sleep. He remained in a seated position all night to keep warm.

Transfer to Far Falestin

11. At 7:00 or 7:30 p.m. the next day (December 12, 2003), Mr. Nureddin was transferred to what he would soon learn was Far Falestin prison in Damascus.

The car trip to Damascus took approximately six to seven hours. On arrival he was told that he was at Far Falestin prison. He was also told that the director was away and he would not be assigned a cell until the director returned. Mr. Nureddin and two other prisoners were sent to an interrogation room to sleep for the night. They slept on a tiled floor and shared two blankets.

12. The next morning (December 13), Mr. Nureddin and the two other prisoners were taken to the director's office. The director had Mr. Nureddin's passport, money, airline ticket, and watch in his hands (the first three having been taken on his arrest in Syria and the last on his arrival at Far Falestin). The director asked Mr. Nureddin to verify his name and the amount of money he was carrying when he was arrested, and to state his nationality. Mr. Nureddin replied that he was Canadian. The director said he wanted to know his original nationality and he replied Iraqi. The director also wanted to know why he had come to Syria. Mr. Nureddin said that he had a flight to catch. After the interview, the director sent him to cell number 8.

Cell number 8

13. Cell number 8 was a communal cell that housed 30 people. As soon as Mr. Nureddin entered the cell, other prisoners approached him and asked him for news from the outside. Mr. Nureddin learned at a later date that some of the prisoners had been imprisoned for over a year. The cell was five metres by six metres. The prisoners slept in shifts because of the cramped quarters.

14. There was a washroom in the corner of the cell with an electric water boiler, a small sink and a Turkish style toilet. While the washroom was used by all 30 inhabitants of the cell, the water boiler boiled only enough water for three or four showers a day. To shower, Mr. Nureddin took an oil bucket and filled it with hot and cold water and doused himself while standing on the toilet. There were cockroaches larger than 2.5 centimetres that crawled on him when he showered.

15. The prisoners shared the food provided by the guards. Breakfast consisted of three loaves of bread with jam and one additional item—yogurt, boiled eggs or tahini. The prisoners were also provided with one bucket of tea for the day. Lunches alternated between bean soup and bulgur. Once a week, the prisoners shared a chicken. The prisoners ate boiled potatoes for dinner every night, but there were never enough potatoes to share. The prisoners used communal plates; five or six prisoners shared one large plate. The food was very dirty, the meat smelled bad and the rice was either not properly cooked or too "mushy."

16. The prisoners could buy goods (including cigarettes, clothes and drinks) from the guards at a marked-up price. At one point, Mr. Nureddin wanted to buy a pair of pants and a sweater because his clothes were full of lice, but the director gave him clothes free of charge. Otherwise, Mr. Nureddin did not buy anything from the guards.

17. Mr. Nureddin was able to keep track of the date and time by using the Casio watch that hung on the wall of the cell.

First interrogation

18. After spending one day in the cell, Mr. Nureddin was brought to an interrogation room at approximately 10:30 p.m. on December 14. Two interrogators entered the room. One interrogator sat down in a chair and asked Mr. Nureddin to kneel on the floor next to him. The interrogator asked Mr. Nureddin for his name and his mother's name and background information about his life, his employment and his nationality. After Mr. Nureddin answered his questions, the interrogator screamed at him, called him a liar and said, "I show you our way."

19. Next, the interrogator asked Mr. Nureddin questions about the amount of money he had in his possession when he left Canada. Mr. Nureddin replied that he had approximately US$10,000. The interrogator said he had a report which stated Mr. Nureddin had US$10,500[1] and €4,000 when he left Canada. The interrogator did not indicate where this report had come from or if it contained any other information about Mr. Nureddin. Mr. Nureddin replied that he was telling the truth.

20. The interrogators left Mr. Nureddin alone in the room to think about whether he had anything else to tell them. After six or seven minutes, they returned. Mr. Nureddin did not have anything new to add. One of the interrogators brought in a cable and Mr. Nureddin's passport and photos. The cable resembled a hose and was 2.5 centimetres thick and 60 centimetres long. One of the interrogators put the cable on the desk and looked at Mr. Nureddin's passport and photos. The photos included shots of a car that Mr. Nureddin had sent to Iraq through Jordan, which he had taken for insurance purposes. The interrogator questioned why Mr. Nureddin was in Iraq for three months and

[1] The transcript states this amount as US$500. However, Mr. Nureddin told the Inquiry that either he misspoke at the interview or there was an error in the translation or the transcript because he has always maintained that the report in the possession of the Syrian authorities on which he was questioned accurately stated the amount of U.S. money he had when he departed Canada: US$10,500.

asked where he had gone other than to Kirkuk. Mr. Nureddin replied that he had only travelled to Jordan and Kirkuk.

21. The interrogator asked Mr. Nureddin if he was linked to an Islamic organization and he said no. The interrogator called him a liar. Mr. Nureddin said that he was telling the truth. The interrogator told him to take off his shoes and all of his clothes except his underwear. After Mr. Nureddin took off his clothes, the interrogator ordered him to stand under a ceiling fan that was on full power while the other interrogator poured cold water on his head. The interrogators left Mr. Nureddin alone in the room, shaking from the cold, for 5 to 10 minutes.

22. The interrogators returned and asked him if he had anything new. They told him to lie on his stomach, then poured cold water on him. Mr. Nureddin was again left alone in the interrogation room for five minutes before the interrogators came back in. The interrogators turned off the ceiling fan and told Mr. Nureddin to lie on his stomach and bend his knees at a 90 degree angle to the floor with his feet close together. One of the interrogators started to beat the soles of his feet with the black cable. This was very painful and felt as if fire was touching the soles of his feet. The interrogator beat him continuously for 10 to 15 minutes and repeatedly asked him if he had anything new. The interrogator also asked about his whereabouts during the last three months, the people he had met during his travels and the people who had given him money. Mr. Nureddin screamed for the interrogator to stop and shouted, "Oh, my God." The interrogator continued to beat him, and hit him more when he invoked Allah.

23. The interrogator stopped beating Mr. Nureddin with the cable and told him to stand up and run on the spot. The other interrogator brought in more cold water and poured it on his feet while he ran on the spot. Mr. Nureddin felt relief from the pain of being beaten by the black cable. He ran on the spot for five minutes and then was permitted to have a drink in the washroom.

24. When he came back from the washroom, the interrogator asked him again if he had anything new. He was told to lie on the floor with his knees bent at a 90-degree angle. One interrogator hit the soles of his feet with the black cable while the other asked him the same questions: "Do you have anything new? Did you meet anyone? Did you give the money to someone? What organization do you belong to?" Mr. Nureddin answered no to all of the questions and pleaded with the interrogators to stop beating him.

25. At one point, when Mr. Nureddin almost lost consciousness, the interrogator stopped beating him. Mr. Nureddin was ordered to stand up and run on the spot. One of the interrogators poured water on his feet as he did so. The interrogators repeated the same process of beating Mr. Nureddin on the soles of his feet, but this time the interrogators did not ask any questions. Mr. Nureddin screamed and asked the interrogators to stop, but the interrogator said that he would only stop if Mr. Nureddin had something new.

26. After 15 minutes, the interrogator stopped beating him and told him that he would call for him the next morning. The interrogator threatened to hang Mr. Nureddin from the hooks on the wall of the interrogation room if he did not say anything new. The interrogator warned Mr. Nureddin not to tell anyone in the cell what had happened in the interrogation room. The interrogator also threatened him with the chair frame and said he would have to spend one year in prison if he did not speak. The interrogator did not elaborate on what he would do with the chair or the hooks.

27. After the interrogation, Mr. Nureddin could not touch his feet for four days. He found it difficult to use the washroom because he could not stand up longer than two minutes. That night, Mr. Nureddin could not sleep because any sound made him think that the guards were coming to take him to the interrogation room.

Subsequent interrogations in December 2003

28. Mr. Nureddin was not interrogated again until December 21, 2003. At 10 a.m. that day, Mr. Nureddin was taken from cell number 8 to the interrogation room and asked if he had anything new. When he responded that he did not, the interrogator asked for the names of his friends in Iraq and Canada. He was specifically asked about two individuals. Mr. Nureddin said that he saw the first individual when he was leading the prayer during Ramadan, and that the second individual had left Canada with his family. The interrogation lasted 5 to 10 minutes, after which Mr. Nureddin returned to his cell.

29. At approximately 7:00 or 8:00 p.m. on December 23, Mr. Nureddin was brought to the director's office. The director asked him if anyone had touched or beaten him. Mr. Nureddin replied that he had been tortured. The director told him that no one would touch him again, and Mr. Nureddin understood from their conversation that he was to receive special treatment. In Mr. Nureddin's view, the director was being nice to him because "something happened from Canada." Mr. Nureddin was then taken back to his cell.

30. About two hours later, Mr. Nureddin was taken to the interrogation room. A Colonel entered the room and called Mr. Nureddin "Abdul." Mr. Nureddin told him his name was Muayyed, and the Colonel shook his hand. The Colonel asked Mr. Nureddin if something bad had happened to him, and Mr. Nureddin said yes. The Colonel said, "Mistakes happen."

31. One of his interrogators entered the room and apologized to Mr. Nureddin and said, "This is our job." A second interrogator then came into the room. All three men asked Mr. Nureddin questions about the amount of money in his possession when he left Canada, who the money was for, where the two individuals about whom he had been asked were located, the job of a third individual in Canada, and if that individual had sent or received money. One of the interrogators took notes of Mr. Nureddin's answers. One of the interrogators also told Mr. Nureddin that the reason he was not taken to the interrogation room on the second day was because he had a "gut feeling" that he was telling the truth. The interrogation ended around 1:00 a.m. They told Mr. Nureddin that he would be released in two or three days.

Other incidents in prison

32. On December 24, 2003, the guards gave the prisoners less food than usual and some of the prisoners protested. One prisoner harmed himself to avoid being tortured by the guards; the guards took him away. The guards later brought the prisoner back to the cell unconscious and badly beaten.

33. After this incident, Mr. Nureddin was moved to a larger cell with eight other prisoners. The cell was 4 metres by 5 metres with no washroom. The prisoners had washroom breaks three times a day for about 15 or 20 minutes.

34. Mr. Nureddin learned from other prisoners that the room had been used as a holding area for prisoners transferred from Sednaya prison who had served their sentence and were about to leave. Mr. Nureddin was told that once a foreigner left the cell, he was sent to the immigration centre and then handed over to a representative of his country. Mr. Nureddin was not informed how the other prisoners had come to learn this information.

35. At one point, an English-speaking professor from India was brought into the cell. Mr. Nureddin acted as his translator. The professor requested the guards to contact the Indian Embassy, but the guards refused because it was forbidden. The guards told Mr. Nureddin that the professor was not allowed to ask for consular services and no one was allowed to know that he was in the prison. During his incarceration, Mr. Nureddin did not ask the Syrian officials to

contact his family or the Canadian Embassy because he feared that they would torture him and because he believed that they would refuse.

Interrogations in January 2004

36. On January 6, 2004, Mr. Nureddin was taken to an interrogation room, where he was asked questions about his family. The interrogator asked for the names of Mr. Nureddin's father, his mother and his brothers and sisters, as well as the names of their spouses and children. This was the first time he had been asked about his brothers and sisters. He was told to write down all the information he could about his brothers, and it took him approximately one hour to do so. Mr. Nureddin was also asked whom he would call in case of emergency and he replied the Canadian Embassy. Mr. Nureddin thought that it was safer to have the Syrian officials contact the Canadian Embassy than his family. The interrogator asked Mr. Nureddin where he would want to go if he was released, and Mr. Nureddin told him Canada.

37. Over the next few days, Mr. Nureddin was repeatedly taken to the interrogation room and the director's office to drink coffee or tea.

38. On January 8, an interrogator and the Colonel asked Mr. Nureddin to sign three documents. Mr. Nureddin was not permitted to read the first document, but he signed and put a thumbprint on it. The second document was the report Mr. Nureddin had written about his brothers on January 6. The third document was a letter dictated by an interrogator that stated: "I … Muayyed Nureddin, was treated nicely. I never been tortured and they were very nice to me."

Release from prison

39. On January 13, the guards told Mr. Nureddin that he was going to be released and advised him to get ready. Mr. Nureddin was taken to the office of the Colonel, who told him that if anyone asked about his treatment in prison, he should say that he was treated "nicely" and not mention torture. Next, Mr. Nureddin was brought into the General's office, where Léo Martel was waiting for him. Mr. Martel introduced himself as the consul from the Canadian Embassy and gave Mr. Nureddin his card. The General then greeted Mr. Nureddin and, in the presence of Mr. Martel, asked him how he had been treated. Mr. Nureddin said that he was treated "nicely" and did not disclose that he had been tortured.

40. Mr. Nureddin left the prison with Mr. Martel. Once they arrived at the Canadian Embassy and were seated in Mr. Martel's office, Mr. Nureddin described his experiences since the day of his arrest, including the mistreatment.

Mr. Martel took Mr. Nureddin to a medical centre in Damascus where he was treated for scabies. The next day Mr. Nureddin met with the Ambassador and described how he had been beaten and tortured while in detention.

Departure from Syria

41. On January 15, 2004, Mr. Nureddin left Syria.

10

TESTS FOR ASSESSING THE ACTIONS OF CANADIAN OFFICIALS

Introduction

1. Having reviewed the process followed in this Inquiry, set out certain background facts and summarized the evidence that I reviewed, I will now deal with the important question of the tests that I should apply in assessing the actions of Canadian officials, as the Inquiry's Terms of Reference mandate me to do. This task principally involves interpreting the Terms of Reference in light of the meaning of the words used, the purpose of the Inquiry, and the context that surrounds it.

2. The mandate of the Inquiry calls on me to ascertain a number of factual issues. We know that Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin were detained in Syria and that Mr. Elmaati was also detained in Egypt. I must determine whether these detentions "resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries." I must also determine whether Mr. Almalki, Mr. Elmaati and Mr. Nureddin suffered any mistreatment in Syria or Egypt and, if so, whether any mistreatment "resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries."

3. In addition to making these key factual determinations, the mandate of the Inquiry requires me to evaluate the actions of Canadian officials. I must determine whether any actions taken by Canadian officials that resulted, directly or indirectly, in the detention or any mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin were deficient in the circumstances, and whether there were any deficiencies in the consular services provided to the three men while they were detained in Syria or Egypt.

4. There is obviously some potential overlap between the determination of the role played by actions of Canadian officials, and the evaluation of these actions. For instance, a finding that mistreatment or torture resulted from certain actions (a factual determination) would very likely lead to a conclusion that these actions were deficient in the circumstances (an evaluative conclusion). Similarly, a finding that actions of Canadian officials created a serious risk of detention or mistreatment might be relevant both in assessing whether it is reasonable to infer that detention or mistreatment resulted from those actions and in evaluating the actions (because creating this risk could itself amount to a deficiency). Nonetheless, the factual role played by actions of officials must be kept analytically separate from an evaluation of the actions.

5. Accordingly, the discussion in this chapter is divided into two main sections. First, I will discuss the test I intend to apply in determining whether detention or mistreatment resulted, directly or indirectly, from actions of Canadian officials. I will then discuss the meaning to be ascribed to the terms, "deficient in the circumstances" and "deficiencies."

Determining whether detention or mistreatment resulted, directly or indirectly, from the actions of Canadian officials

6. The question whether the detention and mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin resulted, directly or indirectly, from the actions of Canadian officials must be addressed within the specific context of this Inquiry and on the evidence that has been presented before it. The premise of this report is that I have had access to all the relevant evidence of Canadian officials and all relevant documents in the possession, control or power of the Attorney General, as well as all relevant information and documents from the individuals who testified before the Inquiry. As noted in Chapter 2 above, the Attorney General has at my request provided a certificate confirming that he has made full production to the Inquiry of all relevant documents. However, I have not had the benefit of any evidence from the police forces, intelligence services or other government officials of Syria, Egypt, Malaysia or the United States. Although invited to do so, these countries all failed to participate in the Inquiry and to provide the Inquiry with access to relevant evidence.

7. As a consequence, there is no evidence from Syria, Egypt, Malaysia or the United States of the role that actions of Canadian officials might have played in decisions and actions of the police forces, intelligence services or other government officials of those countries relating to the three men. I have heard no testimony and seen no documentary evidence from the officials of those countries

that would help me determine whether the detention or any mistreatment of the three men had some connection to actions of Canadian officials.

8. In their final written submissions, both the Attorney General and other participants addressed the implications of the absence of evidence from foreign officials on my ability to carry out my mandate to determine whether the detention and any mistreatment of the three men resulted, directly or indirectly, from the actions of Canadian officials.

9. In his final submissions, the Attorney General argued that I can conclude that the detention or mistreatment of the men "resulted, directly or indirectly" from actions of Canadian officials only if the evidence establishes that the detention or mistreatment would not have occurred "but for" actions of Canadian officials. On the evidence presented to the Inquiry, the Attorney General argued, the sequence of events is simply unknowable. The Attorney General went on to submit that, in these circumstances of uncertainty, I must refrain from making any findings concerning the role played by actions of Canadian officials in the detention or any mistreatment of the three individuals. The Attorney General's position was that any findings in these circumstances would amount to speculation, and that speculating as to the causal sequence of events would take the Inquiry beyond its Terms of Reference. The Attorney General added that speculation would serve no useful purpose, that the Government would gain no guidance from conclusions drawn on that basis, and that in the absence of direct and conclusive evidence that actions of Canadian officials played a causal role in the detention and any mistreatment of the men, I am foreclosed from characterizing those actions as deficient.

10. Counsel for Mr. Almalki, Mr. Elmaati and Mr. Nureddin argued in their final submissions that the test I should apply to determine if the detention or mistreatment of the individuals resulted, directly or indirectly, from actions of Canadian officials was whether those actions "created a serious risk of the events that befell the three men." In their final and reply submissions, they argued that the Terms of Reference do not require a strict "but for" test, and that this test is inappropriate in addressing possible violations of human rights, particularly when the violations might have come about through the actions of officials of more than one state. They submitted that any conduct that contributed to the detention or mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin could properly be regarded as having "resulted in" the mistreatment or detention.

11. Amnesty International also argued for an interpretation of the Terms of Reference that would not limit me to making findings that detention or mistreatment resulted from actions of Canadian officials only where I can find

it conclusively proven that the actions of Canadian officials were the sole and direct cause. While recognizing that the non-involvement of the United States, Syria and Egypt makes it more difficult to identify the impact of actions of Canadian officials, Amnesty International submitted that it was nonetheless possible and appropriate for me to draw inferences based on established facts.

12. I find the submissions on this issue of counsel for the individuals and for some of the Intervenors helpful. For a number of reasons, I am not prepared to accept that I should apply a "but for" test or that I am precluded from making findings concerning the role played by the actions of Canadian officials in the detention or any mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin.

13. First, given the Terms of Reference for this Inquiry and the strictures that apply generally to public inquiries, I must be careful not to draw any conclusions that would be tantamount to a finding of legal liability on the part of Canadian officials. My mandate requires me to determine whether the detention or mistreatment of the men "resulted, directly or indirectly, from" actions of Canadian officials, without resorting to the notion of causation that would be operative in a court of law. However, the "but for" test for determining causation is drawn directly from the conceptual structure of tort law and criminal law. Assuming that I were able to state unequivocally that the men would not have been detained or suffered mistreatment "but for" the actions of Canadian officials, unlikely as that would be in light of the absence of testimony from foreign officials, doing so would bring me dangerously close to making an explicit finding of legal liability, and that is not the purpose or jurisdiction of this Inquiry.[1]

14. Second, the causation standard proposed by the Attorney General is too strict, because the detention or mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin may be said to have "resulted, directly or indirectly" from actions of Canadian officials even though those actions were not shown to have been the sole factor, or even the determining factor, that led to the detention or mistreatment. The ordinary meaning of "result" includes not only "arise as the actual consequence" of, but also "follow as a logical consequence" from, an action or cause. The ordinary meaning of "direct" includes "without intermediaries or the intervention of other factors," and that of "indirect" includes "not

[1] I nonetheless observe that, even in the legal context, the strict "but for" test does not invariably apply; a less definitive "material contribution" test applies where, among other things, application of the "but for" test is unworkable because it is impossible to prove what a particular person in the causal chain would have done had the defendant not engaged in the actions in question: *Athey v. Leonati,* [1996] 3 S.C.R. 458 at para. 15; *Resurfice Corp. v. Hanke,* 2007 SCC 7 at paras. 24-28.

directly sought or aimed at."[2] In other words, an action may be said to have resulted indirectly in a state of affairs even though there were other intermediaries or factors.

15. On the ordinary meaning of "resulted directly or indirectly," therefore, I am entitled to draw inferences based on the evidence before the Inquiry as to the consequences of actions of Canadian officials. I also need not find that actions of Canadian officials were the sole or even the predominant factors leading to detention or mistreatment. The detention or mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin may still be said to have resulted indirectly from actions of Canadian officials even though other factors, such as actions or decisions of foreign officials, combined with those actions to produce the result. In view of the purpose of this Inquiry, I do not consider it either necessary or appropriate that I weigh the role played by the actions of Canadian officials relative to other factors. The Government of Canada would no doubt be quick to confirm that it has an interest in knowing whether actions of its officials contributed to any degree to the detention or mistreatment of Canadian citizens.

16. Third, if it is correct that I am precluded by the Terms of Reference from making any findings as to whether the detention or mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin resulted, directly or indirectly, from actions of Canadian officials in the absence of evidence from foreign officials, then the Inquiry was bound from the outset to be a largely hollow exercise. When the Terms of Reference for this Inquiry were first set, it must have been known to be very likely that foreign officials would decline to participate, in view of the decisions by Syria and the United States (and also Jordan) not to act on requests that they participate in the Arar Inquiry.[3] There was from the very inception of this Inquiry only a remote possibility at best that I would be able to rest my factual conclusions on full and direct evidence of the chain of events as it unfolded. I cannot accept that the drafters of the Terms of Reference intended that the absence of evidence from foreign officials would foreclose me from carrying out my mandate.

17. I agree with the Attorney General that it would be inappropriate for me to speculate as to the sequence of events that led to the detention and mistreatment of the men in Syria and Egypt. But drawing reasonable inferences from the evidence before me is not speculation. Speculation involves making guesses in the absence of evidence. Drawing inferences involves making

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[2] *The Concise Oxford Dictionary of Current English* (9th ed., 1995), pp. 1175, 381, 692.

[3] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006), p. 11.

rational connections between facts in evidence and other facts for which direct evidence is not available. Inference drawing of this kind is well accepted in both legal and non-legal settings. Indeed, the Attorney General himself relied on inferences to urge me to conclude that the actions of Canadian officials did not result in detention or mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin. Leaving aside the fact that this position is inconsistent with the argument that the sequence of events is simply "unknowable," it confirms my conclusion that I can and should base the determinations that I am mandated to make on inferences where I am in a position to draw reasonable inferences based on the evidence before me.

18. For these reasons, I conclude that the "but for" test is inappropriate, that the connection between the action of Canadian officials and the detention or mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin can be established on the basis of rational inferences, and that the role played by these actions need not have been predominant in the sequence of events for me to find that there was a connection. I am not called upon to determine whether these actions were the principal cause of the detention and mistreatment, but rather to determine whether the detention and mistreatment resulted, directly or indirectly, from the actions of Canadian officials. Accordingly, I interpret the Terms of Reference as mandating me to determine the relationship between the detention or mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin and the actions of Canadian officials by assessing whether, considering all of the evidence and the rational inferences to be drawn from it, actions of Canadian officials can be said to have likely contributed to the detention or mistreatment.

19. I now proceed to address the relationship between any findings as to whether the detention or mistreatment resulted, directly or indirectly, from actions of Canadian officials and any findings that I might make that certain actions were "deficient in the circumstances." This question arises because two of the three subparagraphs of paragraph (a) of the Terms of Reference—the part of the Terms of Reference that sets out what I am to determine—expressly state that I am to determine whether the detention (in subparagraph (i)) or the mistreatment (in subparagraph (iii)) of Mr. Almalki, Mr. Elmaati and Mr. Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries "and, *if so*, whether those actions were deficient in the circumstances" (emphasis added). The other subparagraph mandates me to determine "whether there were deficiencies in the actions taken by Canadian officials to provide consular services," without any link to the result that any deficiencies might have had.

20. I accept that on the literal meaning of the words used in the Terms of Reference, I may not make a finding that any actions of Canadian officials other than their actions in providing consular services were "deficient in the circumstances" unless I can first find that either the detention or the mistreatment of Mr. Almalki, Mr. Elmaati and Mr. Nureddin resulted, directly or indirectly from the actions. The "and, if so" language of subparagraphs (i) and (iii) of paragraph (a) of the Terms of Reference, particularly when contrasted with the language of subparagraph (ii), appears to compel this conclusion. Accordingly, except with respect to actions of Canadian officials in providing consular services, before making a finding that their actions were deficient, I must first determine that the detention and mistreatment of Mr. Almalki, Mr. Elmaati or Mr. Nureddin resulted, directly or indirectly, from these actions.

21. However, I am not prepared to accept that I may not comment on the nature and quality of these actions unless this prerequisite is met. The purpose of an inquiry is to investigate and report on matters connected with "the good government of Canada or the conduct of any part of the public business."[4] The public has made a considerable investment in the Inquiry. Inquiry counsel and I have devoted substantial efforts to the assembly and review of evidence. Inquiry Participants and Intervenors have worked diligently to provide me with helpful submissions on all issues.

22. While I do not wish to overestimate the contribution that my evaluation of the actions of Canadian officials might make to the good government of Canada and the conduct of the public business, I believe that my comments on how Canadian officials conducted the public business might be instructive even where I am unable to conclude that detention or mistreatment resulted directly or indirectly from these actions. I believe it reasonable to assume that the Government would always want to be made aware of—in part so that it can learn from—actions of its officials that might fall below the expected standard. I am also confident that the Government would want to know if actions of its officials might have exposed Canadian citizens to the risk of detention involving loss of liberty, with all that entails, or the risk of mistreatment and possibly torture, with all that entails, even though I am unable to conclude that these risks did in fact materialize. That is especially so when the main reason that I am unable to reach a conclusion is that governments of other countries have refused me access to relevant information that they no doubt possess. In my view, not only the Government of Canada, but also Inquiry Participants and Intervenors and the public, would not derive full value from the Inquiry if I proceeded on the basis that I can say nothing about the nature and quality of

[4] *Inquiries Act*, R.S.C. 1985, c. I-11, s. 2.

any actions of officials (other than in providing consular services) that I cannot conclude resulted, directly or indirectly, in detention or mistreatment of one or more of Mr. Almalki, Mr. Elmaati and Mr. Nureddin.

23. I therefore intend in setting out my findings to comment on actions of Canadian officials where I consider it appropriate to do so, whether or not the detention or mistreatment of Mr. Almalki, Mr. Elmaati and Mr. Nureddin resulted, directly or indirectly, from these actions.

24. This brings me to the test by which I intend to determine whether the actions of Canadian officials were deficient in the circumstances.

Determining whether the actions were "deficient in the circumstances"

25. Two subparagraphs of paragraph (a) of the Terms of Reference direct me to determine whether the actions of Canadian officials were "deficient in the circumstances." The other subparagraph directs me to determine whether there were "deficiencies" in the actions taken by Canadian officials to provide consular services. I take the meaning of the two variants of the concept of "deficiency" to be the same: under all three subparagraphs I will consider the relevant circumstances in determining whether the actions of Canadian officials were deficient.

26. On the ordinary meaning of the term, an action may be said to be deficient if it falls short of an appropriate norm. The dictionary definition of "deficiency" includes "a thing lacking," and that of "deficient" includes "incomplete; not having enough of a specified quality or ingredient" and "insufficient in quantity, force, etc."[5]

27. An essential starting point in assessing whether the actions of Canadian officials were deficient in the circumstances is therefore to identify the applicable norms or standards against which these actions can be assessed. As discussed in Chapter 2 above, in November 2007 I called on Participants and Intervenors to submit written representations regarding those standards, and a two-day public hearing to receive oral submissions was held in January 2008. I found the written and oral submissions concerning standards of great assistance.

28. I wish to make five observations concerning the standards for assessing officials' actions.

29. First, I must repeat that the mandate of this Inquiry is limited by its nature. It does not lie within my mandate to draw conclusions about civil, criminal or

[5] *The Concise Oxford Dictionary of Current English* (9th ed., 1995), p. 353.

constitutional responsibility. The standards that I intend to apply are not legal standards; despite the very able submissions concerning these standards offered by many Inquiry participants, I do not intend to make findings about whether torts, or crimes, or breaches of the Canadian *Charter of Rights* or other constitutional and international norms might have occurred. Nonetheless, the basic principles that emerge from legal sources including Canadian law, the *Charter*, and various international instruments are helpful in informing my determinations as to whether Canadian officials acted properly in the circumstances.

30. Second, a further comment concerning the source of applicable standards or norms is warranted. Many of the standards or norms governing Canadian officials will be found in internal policies, mandate, legislation, ministerial directions and other like instruments of DFAIT, CSIS, and the RCMP. Departmental practice or convention may provide appropriate standards, subject to what I say below about deficient norms and so-called "settled practices."

31. Third, I am of the view that the actions of Canadian officials should be characterized as deficient only if they fell short of the norms that would have been followed by a reasonable person placed in comparable circumstances. Officials should not be expected to act with extraordinary or superhuman care, insight or skill. We expect much from our officials, but they can only be faulted for failing to meet a standard of reasonable behaviour, even taking into account the extraordinarily high stakes involved in the matters that I have been mandated to review, from national security to the right to life, liberty and security of the individual.

32. Fourth, in my view there are a number of bases on which it is open to me to find that actions of Canadian officials were deficient: (1) they were in breach of the relevant standards that existed at the time; (2) they were pursued in the absence of an applicable standard, in a context in which a proper standard should have been set and followed; or (3) they were pursued in accordance with a standard that was itself deficient. I recognize that the actions of Canadian officials must be assessed in relation to standards as they stood at the relevant time, but these standards do not necessarily correspond with whatever "settled practices" were in place at the time. I intend to assess the actions of Canadian officials on the basis of an objective standard that may well be different from the established practices of the agencies involved. Nonetheless, this objective standard should be the one that would have been operative during the period of 2001 to 2004, when the relevant events occurred, and not a new standard developed with the benefit of hindsight.

33. Indeed, with the benefit of hindsight, it may be possible today to conclude that Canadian officials should have acted differently, but that would not be a sufficient basis on which to conclude that their actions were deficient. Among other things, in the aftermath of the Arar Inquiry we now know much more about the possible consequences of labelling and of the sharing of information with foreign countries. Commissioner O'Connor has formulated recommendations in this respect, which the federal government has accepted. Changes have been and are being implemented in Canadian intelligence, investigative and consular practice. Those recommendations and changes, and the standards of behaviour which they set, cannot by themselves be determinative of whether there were deficiencies in the actions of Canadian officials that took place before the publication of the *Report of the Events Relating to Maher Arar*.

34. On the other hand, the fact that standards may have evolved, and that new standards are being developed, should not be taken to mean that there were no standards at the relevant time, or that the failure to establish standards at the time was appropriate. While it is true that the sharing of information with foreign authorities and the provision of consular services to Canadian citizens detained in the Middle East on security grounds raised unprecedented challenges, it is also true that the officials involved in those activities were required to meet the expectation of Canadians that they would act with care and caution and that they would respect the fundamental rights of Canadian citizens. These principles of care, caution and respect for human rights were in effect at the relevant time, and will necessarily inform the appropriate standards of conduct.

35. Fifth, I have been urged by the Attorney General of Canada to consider the climate that existed in the 2001 to 2004 period, and to take account of the fact that the actions that I am called upon to evaluate took place in the aftermath of the September 11th attacks in the United States and of the recognition that Islamist terrorism posed a great threat to Canada's national security. I recognize that the actions of Canadian officials must now be examined within the particular context in which they took place. However, I do not take the Attorney General of Canada to be suggesting, and I do not accept, that this context would provide a justification for engaging in behaviour that would otherwise be deficient.

Summary

36. Before I turn to my findings on the question whether the detention or any mistreatment of Mr. Almalki, Mr. Elmaati and Mr. Nureddin resulted from actions of Canadian officials, and on any deficiencies in these actions and the provision

of consular services to them, it might be helpful to summarize my interpretation of the salient elements of the Terms of Reference set out above.

1. In determining whether the detention or mistreatment of the three men resulted, directly or indirectly, from the actions of Canadian officials, I have asked whether, on a consideration of all of the evidence and the rational inferences to be drawn from it, the actions can be said to have likely contributed to the detention or mistreatment of the individual concerned.
2. The term "deficiency" in the Terms of Reference should be given its ordinary meaning of conduct falling short of a norm. In the context of this Inquiry, any of the following three types of actions can constitute a deficiency:
   (a) failing to meet a standard or norm that existed at the time;
   (b) failing to establish a standard or norm when there should have been one; and
   (c) maintaining a standard or norm that was itself deficient.

11

FINDINGS REGARDING THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO AHMAD ABOU-ELMAATI

Overview

1. Ahmad Abou-Elmaati, a dual Canadian-Egyptian citizen, travelled to Syria in November 2001 to be married. When he arrived at the airport in Damascus, he was immediately taken into Syrian custody and transferred to Far Falestin detention centre, where he would remain for over two months. In January 2002, for reasons that the Inquiry has been unable to determine, Mr. Elmaati was transferred from Syria to Egypt, where he would spend another 24 months in detention. While in detention in Syria and Egypt, Mr. Elmaati was held in degrading and inhumane conditions, interrogated and mistreated. During his time in Egyptian detention Mr. Elmaati received eight consular visits from Canadian Embassy officials in Cairo and was visited periodically by his family. I have described the actions of Canadian officials with respect to Mr. Elmaati in Chapter 4, and summarized Mr. Elmaati's evidence about his mistreatment in Syria and Egypt in Chapter 7.

2. In this chapter, I set out my findings concerning the actions of Canadian officials as they related to Mr. Elmaati. I will first provide an overview before setting out in more detail my findings and the basis on which they are made. For the reasons discussed in Chapter 2, my findings are directed to the actions of the institutions of the Government of Canada. It is neither necessary nor appropriate that I make findings concerning the actions of any individual Canadian official, and I do not do so.

3. The Terms of Reference call upon me, first, to consider whether the detention of Mr. Elmaati resulted directly or indirectly from actions of Canadian officials and, if so, whether those actions were deficient in the circumstances. For the reasons set out below, I conclude that three instances of sharing of

information by Canadian officials in the period leading up to Mr. Elmaati's detention—the RCMP's description of Mr. Elmaati as an "imminent threat to public safety and the security of Canada," CSIS' description of Mr. Elmaati as, among other things, an individual "involved in the Islamic extremist movement," and the sharing of Mr. Elmaati's travel itinerary with U.S. agencies—likely contributed to his detention in Syria. I go on to conclude that these actions of Canadian officials were deficient in the circumstances. I do not find that any actions of Canadian officials resulted, directly or indirectly, in Mr. Elmaati's detention in Egypt.

4. The Terms of Reference also direct me to assess whether any mistreatment of Mr. Elmaati resulted directly or indirectly from actions of Canadian officials and, if so, whether those actions were deficient in the circumstances. Before making any findings in this regard, it was necessary for me to determine whether Mr. Elmaati was mistreated in Syria or Egypt. Based on a careful review of the evidence available to me, I conclude below that, while in Syrian and Egyptian detention, Mr. Elmaati suffered mistreatment amounting to torture. For the reasons set out below, I conclude that two actions of Canadian officials—the failure to advise DFAIT's Consular Affairs Bureau of Mr. Elmaati's detention and interrogation and the sending of questions to be asked of him in detention—likely contributed to Mr. Elmaati's mistreatment in Syria and were deficient in the circumstances. I go on to assess several actions of Canadian officials during Mr. Elmaati's detention in Egypt—requesting an interview of Mr. Elmaati while in detention, sharing information about Mr. Elmaati's suspected past or future activities with Egyptian authorities and sharing the RCMP Supertext database, failing to elevate allegations of torture to the Commissioner, and relying on information derived from torture—and conclude that certain of these actions likely contributed to mistreatment of Mr. Elmaati in Egypt and were deficient in the circumstances. In my confidential report, I discuss certain other actions of Canadian officials and conclude that these actions likely contributed to his mistreatment and were deficient in the circumstances. Because the responsible Minister is of the opinion that disclosure of this information would be injurious to national security, national defence and/or international relations, I am unable to refer to these actions and my assessment of them in this report. As set out at paragraph 42 of Chapter 2, if it is ultimately determined that further information can be publicly disclosed, I intend to take the necessary steps to supplement the public version of my report.

5. Finally, the Terms of Reference direct me to consider whether there were any deficiencies in the actions of Canadian officials to provide consular services to Mr. Elmaati in Syria and Egypt. Below I examine eight aspects of the consular

efforts made in Mr. Elmaati's case. I examine DFAIT's initial efforts to locate and obtain access to Mr. Elmaati after learning that he had been detained in Syria and then learning that he had been transferred to Egypt, and conclude that, in both cases, DFAIT officials failed to act sufficiently promptly and effectively. I also examine the conduct of consular officials in providing consular services to Mr. Elmaati and conclude that, in certain instances, consular visits were not provided sufficiently frequently, that consular officials were not given sufficient training to assess whether Mr. Elmaati was being mistreated, and that they were not directed to ask for private visits. I examine whether DFAIT should have informed the Minister of Foreign Affairs about Mr. Elmaati's allegation of torture, and conclude that, in these circumstances, it should have. I then turn to examine whether DFAIT consular officials should have repeatedly asked Mr. Elmaati whether he would be willing to meet with CSIS and the RCMP and conclude that they should not have done so. Finally, I address the disclosures by DFAIT officials to other Canadian officials of information collected in the course of providing consular assistance to Mr. Elmaati, and conclude that this information should not have been disclosed.

Did the detention of Mr. Elmaati result directly or indirectly from actions of Canadian officials and, if so, were those actions deficient in the circumstances?

Did the detention of Mr. Elmaati in Syria result directly or indirectly from actions of Canadian officials?

6. On November 11, 2001, Mr. Elmaati embarked from Pearson International Airport for Damascus, with stopovers in Frankfurt and Vienna. Mr. Elmaati travelled to Syria of his own accord for the purpose of getting married. When he arrived at the airport in Damascus, Mr. Elmaati was immediately taken into custody by Syrian officials.

7. Without evidence from Syrian or U.S. authorities, I am unable to determine exactly how Mr. Elmaati came to be detained. In the *Report of the Events relating to Maher Arar*, Justice O'Connor found that it was reasonable to assume that Syria was informed of Mr. Elmaati's arrival by U.S. authorities. From the evidence I have been able to review, I agree.

8. While the American role in Mr. Elmaati's detention might well have been important, my mandate is to assess whether the actions of Canadian officials resulted directly or indirectly in Mr. Elmaati being detained in Syria and, if so, whether they were deficient. I examine below the potential link between three

instances of sharing of information by Canadian officials about Mr. Elmaati and Mr. Elmaati's detention:

(a) In September 2001, the RCMP described Mr. Elmaati to various foreign law enforcement authorities, including Syrian authorities, as "linked through association to al Qaeda" and an "imminent threat to public safety."
(b) In 2000 and 2001, CSIS described Mr. Elmaati to foreign intelligence agencies as, among other things, "involved in the Islamic extremist movement" and "an associate" of an Osama Bin Laden aide.
(c) On November 10, 2001, the RCMP notified the FBI and CIA of Mr. Elmaati's intended departure the following day and provided them with his itinerary. Handwritten notes on a briefing note dated November 15, 2002 suggest that the CIA was unaware of Mr. Elmaati's travel plans until advised by the RCMP. Although it may well be that the CIA would have been able to obtain Mr. Elmaati's itinerary through its own sources, the fact is that the itinerary was provided by the RCMP to the CIA.

9. The Inquiry found no evidence to suggest that Canadian officials requested that Mr. Elmaati be detained or advised Syrian authorities that Mr. Elmaati was travelling to Syria. To the contrary, the evidence before me demonstrates that Canadian officials expressly decided not to share Mr. Elmaati's travel itinerary with the Syrian authorities.

10. However, in my view, the three actions described above, considered in combination, likely contributed to Mr. Elmaati being detained in Syria. The sharing by the RCMP of Mr. Elmaati's itinerary with the FBI and CIA is more proximate to Mr. Elmaati's detention than the sharing of descriptions of him with foreign law enforcement and intelligence agencies. However, it is reasonable to infer that the risk that Mr. Elmaati might be detained as a result of Canadian officials sharing his travel itinerary was increased by the fact that Canadian officials had previously used labels such as "imminent threat" in describing Mr. Elmaati to their foreign partners. Accordingly, I conclude on the evidence available to me that these actions of Canadian officials resulted indirectly in Mr. Elmaati being detained by Syrian authorities. I need not, and cannot on the evidence available to me, go farther and determine the role that these actions played relative to other factors.

Were these actions of Canadian officials deficient?

11. Having concluded that these actions of Canadian officials resulted indirectly in Mr. Elmaati's detention in Syria, I consider now whether those actions were deficient in the circumstances. I do so below by examining each of these actions in some detail.

RCMP's description of Mr. Elmaati as an "imminent threat"

12. On September 28, 2001, based on the information it received from CSIS and U.S. authorities, rather than any independent information of its own, the RCMP sent a request for information to the FBI and to a number of the RCMP's liaison offices abroad. In its requests, the RCMP stated that it had received "current and reliable information" that a group of individuals linked through association to al Qaeda, including Mr. Elmaati, were currently engaged in activities in support of politically motivated violence and which posed "an imminent threat to public safety and the security of Canada."

13. The following day, in response to a request for information about the identified individuals, the RCMP's Rome liaison office sent an urgent request for information to law enforcement officials in several countries including Syria and Egypt, in which it repeated the message from headquarters stating that the RCMP had reliable information that a group of individuals, including Mr. Elmaati, posed "an imminent threat to public safety and the security of Canada."

14. To describe an individual as an "imminent threat" is a very serious matter. One RCMP member interviewed by the Inquiry said that describing an individual in this way was somewhat unusual. Further, this description was shared at a time that made it particularly significant—it was sent less than one month after the events of September 11, 2001, when governments around the world were under intense pressure to cooperate and collaborate in what has been described as the war on terror. As discussed above, several witnesses told the Inquiry that U.S. agencies were exerting pressure on intelligence and law enforcement agencies everywhere to detain and question individuals who might in some way be implicated in or supportive of another round of attacks. At this time, being labelled a member or associate of al-Qaeda potentially entailed serious consequences for an individual's rights and liberties. Justice O'Connor found that inaccurate information can have grossly unfair consequences for individuals, and the more often it is repeated, the more credibility it seems to assume. I agree with this view.

15. The RCMP appears to have described Mr. Elmaati in this way without taking steps to ensure that the description was accurate or properly qualified.

The description of Mr. Elmaati as an individual who was linked through association to al Qaeda and "an imminent threat to public safety and the security of Canada" did not originate from the RCMP's own investigation; in fact, the RCMP's investigation of Mr. Elmaati did not even begin until late September 2001 when Project O Canada was formed. The descriptions appear to have originated from another source; when it sent the requests, the RCMP had very little independent information about Mr. Elmaati.

16. While the RCMP's requests stated that the information was "believed reliable," in view of the timing the "belief" could not have been that of the RCMP. The RCMP liaison officer in Rome told the Inquiry that he believed the information was reliable because RCMP headquarters had indicated that it was reliable information, no doubt because of the source of that information. In my view, it is at a minimum problematic simply to relay these kinds of characterizations without more.

17. In addition, the RCMP Operational Manual in effect at the time required RCMP members to consider the human rights record of a country before sharing information with the country's government. RCMP officials were aware, or should have been aware, of Syria and Egypt's reputations for serious human rights abuses, particularly against individuals detained on security-related grounds. Officials should have considered that describing a dual Egyptian-Canadian citizen as an imminent threat in a communication to Syrian and Egyptian police might expose that individual to the risk of being detained and mistreated in those countries if he were to travel there.

18. Yet there is no evidence that the RCMP considered these factors before sending to Syria and Egypt a letter describing Mr. Elmaati as linked to al-Qaeda and engaged in activities that posed an "imminent threat" to Canada. There is no evidence that any consideration was given to how these countries might interpret an inflammatory label like "imminent threat" and what that could mean for Mr. Elmaati. Even when RCMP headquarters became aware that the letter was sent, it did not raise the issue of human rights or the possibility of adverse consequences for the individuals named in the letter.

19. I should note that the RCMP followed its policy on the control of information by attaching written caveats to the letters that were sent to law enforcement officials in several countries including Syria and Egypt. However, caveats are not guarantees. They cannot ensure that the information shared will not be shared in breach of the caveats. In my view, the inclusion of caveats also did not relieve the RCMP of its obligations to test the accuracy of information before

sending it to foreign agencies and to consider potential adverse consequences to the individual involved.

20. As a result, I find that the RCMP's use of the term "imminent threat" in correspondence shared with foreign agencies, especially countries like Syria and Egypt, without taking any steps to ensure that the description was accurate or justified, and without considering the potential consequences for Mr. Elmaati, was deficient in the circumstances.

CSIS' labelling of Mr. Elmaati

21. During 2000 and 2001, CSIS shared information about Mr. Elmaati with the RCMP and foreign intelligence and law enforcement agencies, including U.S. agencies. CSIS described Mr. Elmaati in quite definitive terms, variously referring to him as:

- an individual of Egyptian descent who had recently arrived in Canada from Afghanistan where he spent approximately seven years involved in *jihad*-related activities;
- an individual with links to local religious and Islamic extremists;
- an associate of Osama Bin Laden aide Ahmed Said Khadr; and
- an individual involved in the Islamic extremist movement.

22. I note that CSIS did not describe Mr. Elmaati as a person "suspected" or "believed" to be involved in the Islamic extremist movement, but a person involved in the Islamic extremist movement. This description, which appears to be an assertion of fact rather than a suspicion, was sent to foreign agencies in early October 2001. While I recognize that the weeks following 9/11 posed unprecedented challenges for those involved in national security investigations, it is precisely this environment that made a factual assertion about someone's involvement in the Islamic extremist movement particularly serious at this time. As I have already stated in discussing the labels used by the RCMP, in my view, the use of these kinds of labels, without proper qualification where appropriate, not only can be misleading, but can also create serious consequences for the individual so described.

23. The Attorney General submitted that the level of certainty attached to descriptions depends on the nature and sources of the information and the degree to which it is corroborated or refuted. CSIS witnesses told the Inquiry that the Service categorizes people in order to give the receiving agency the proper perspective and inform them of how the Service views a particular person. Terms used such as "suspected" or "believed" frame CSIS assessments and

put the information into context for the receiving agency. However, in the case of Mr. Elmaati, terms such as "suspected" or "believed" were sometimes not used. Omitting to say that a particular piece of information is only "suspected" or "believed" can lead to what Justice O'Connor identified as the danger that inaccurate information becomes credible the more often it is repeated. The Supreme Court of Canada has endorsed Justice O'Connor's conclusion that "[i]naccurate information or mislabelling, even by a degree, either alone or taken together with other information, can result in a seriously distorted picture."[1]

24. The evidence from the CSIS witnesses was that there are no guidelines or policies about how people are described in communications with foreign agencies: what descriptions are applied depends on what is in the mind of the analyst who drafts the communication (and the CSIS officials who approve it), as well as the information currently available, and the description can change daily as new information surfaces. One CSIS witness also told the Inquiry that characterizations are sometimes used to elicit information from the foreign agency. He said that the Service will characterize an individual, at least in part, to prompt a response from the receiving agency that will confirm or deny the assessment that the characterization reflects. In my view, this is a very dangerous practice, one that puts the person labelled in this manner at risk, and increases the possibility that inaccurate information will be treated as credible. In my opinion, CSIS' approach to labelling, as explained to me, is not adequate. It appears to me to be desirable that the Service have a clear policy concerning the manner in which people are described in communications with foreign agencies. This policy should extend not only to the use of appropriate qualifiers as discussed above, but also to the use of certain labels (as discussed below at paragraphs 81 to 85). This is an example of the type of deficiency that can arise when there is a complete absence of a norm.

25. Justice O'Connor found that information sharing with domestic and foreign agencies is necessary to effectively investigate threats to the national security of Canada. I agree with that finding. Several CSIS witnesses told the Inquiry that Canada is a net importer of intelligence and that, in order for it to effectively investigate terrorist threats, it must obtain as much information as possible from domestic and foreign sources. I accept the evidence of the Service that in order for it to receive information, it must be prepared to provide information in return.

26. I can also conclude, based on my review of Service communications with foreign agencies, that the Service followed its policy concerning the control of

[1] *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 at para. 41.

information by attaching the required caveats to all of the information shared with foreign agencies about Mr. Elmaati. However, as noted above, the use of caveats in descriptions shared with foreign agencies is not a panacea. Caveats are an important tool in the control of information; they are intended to limit what use can be made of the information by the foreign agency. As described in Chapter 3, paragraphs 22 to 28, at the time relevant here, the Service was using several types of caveats. Each was designed to ensure that the agency receiving the information would not share the information, or use the information for any purpose other than its own internal purposes, without first seeking and obtaining consent of the Service. But caveats are not guarantees. They cannot ensure that the information shared will not be shared in breach of the caveats. For that reason, the inclusion of caveats does not detract from the need for agencies such as CSIS to use care in describing individuals in their dealings with others, including foreign agencies, and to consider the consequences that may arise where an individual is mis-described.

27. I therefore conclude, for the reasons described above, that the sharing of information by CSIS that used language such as "involved in the Islamic extremist movement" and "an associate" of an Osama Bin Laden aide, was deficient in the circumstances.

RCMP's sharing of Mr. Elmaati's travel itinerary

28. On November 8, 2001, the RCMP received information that a foreign agency believed that Mr. Elmaati's brother, Amr Elmaati, had recently entered Canada for the purpose of boarding a flight in Canada and diverting it to a target in the United States. The RCMP believed this information to be reliable. The following day, the RCMP learned that Mr. Elmaati was intending to travel from Toronto to Syria on November 11. The RCMP became concerned that Mr. Elmaati might be intending to carry out his brother's plan. A decision was made to notify U.S. authorities.

29. On November 10, 2001, the RCMP advised the CIA and FBI of Mr. Elmaati's travel plans and itinerary. According to the RCMP members interviewed by the Inquiry, the RCMP had an obligation to advise the U.S. agencies of Mr. Elmaati's travel plans because of the potential threat to a U.S. target.

30. The Attorney General submitted that sharing travel information is one of the most important forms of information sharing with authorities of other countries to combat global terrorism. According to the Attorney General, it is common practice for security intelligence and law enforcement agencies to share travel information with foreign authorities. I was told that the RCMP

may share travel plans of a Canadian citizen to prevent the commission of a criminal act, advance an investigation or assist the RCMP in investigating any threats to national security. I accept that there is an obligation on Canada, and therefore on Canada's law enforcement agencies, to share travel information of individuals suspected of involvement in criminal acts or threats to national security. Justice O'Connor strongly endorsed the importance of information sharing, recognizing that information sharing across borders is essential for protecting Canada's national security interests. This is especially important where one country has information that it reasonably believes constitutes a threat to another country. However, like Justice O'Connor, I do not accept that this obligation is without limits.

31. In the case of Mr. Elmaati, the RCMP believed that there was a credible and imminent threat to the United States that necessitated that it share Mr. Elmaati's travel itinerary with U.S. authorities. Arguably, the RCMP would have been remiss if it had not shared this information. By contrast, the RCMP did not share Mr. Elmaati's travel itinerary with the Syrian authorities because it understood that the alleged threat was directed at the U.S. not at Syria, and because the RCMP did not have a working relationship with the Syrian authorities. In my view, it was reasonable, based on the circumstances that existed at the time, including the nature of the perceived threat and intended target, for the RCMP to share Mr. Elmaati's itinerary with U.S. authorities. However, even in circumstances where information is shared to prevent what is believed to be a credible threat from materializing, appropriate controls must be attached to the information and the potential consequences of sharing the information must be considered.

32. In the public hearing on standards, the Attorney General advised the Inquiry that RCMP policies require all sensitive information collected or received by the RCMP to be either "designated" or "classified" with caveats attached. As described in Chapter 3, most of the RCMP information of concern to this Inquiry is "classified" information, which means that it is considered sensitive to the national interest. The RCMP Administrative Manual states that when the RCMP shares classified information with other domestic or foreign law enforcement agencies, it must attach one of two standard RCMP caveats (also discussed in Chapter 3, at paragraphs 71 to 76). As Justice O'Connor stated, the "reasons behind the need for the RCMP to control shared information are obvious." According to Justice O'Connor, "Recipients may wish to use information in unacceptable ways, ways that would lead the RCMP to refuse to share the information if it knew about them in advance." I agree with this statement. It is very important for the RCMP to control, to the extent that it can, how its

information is used by foreign agencies. As found by Justice O'Connor, caveats are "a means of attempting to ensure that Canadian information is not used in a way that would be inconsistent with Canadian values and objectives."[2]

33. In sharing Mr. Elmaati's itinerary with the U.S. agencies, the RCMP did not expressly include any caveats about how the information could be used. The evidence of RCMP witnesses included the suggestion that there is an unwritten rule in intelligence that an implied caveat always attaches to information that is shared. An implied caveat means an unwritten understanding between law enforcement agencies that information that is shared will not be disseminated or used without first obtaining the originator's consent. The RCMP Administrative Manual does not address the use of implied caveats. In my view, an implied caveat is not an adequate substitute for an express caveat.

34. Several members of the RCMP testified at the Arar Inquiry that, in the months following the events of September 11, 2001, it was not practical or desirable to adhere to policies on screening information and using caveats when information was shared with U.S. authorities. Similarly, in his final submissions to this Inquiry, the Attorney General acknowledged that, given the time, nature of events and operational requirements, some members of Project A-O Canada shared information with the U.S. authorities without express caveats, but stated that they did so on the understanding that a caveat was always implied. Justice O'Connor did not accept this justification and concluded that there was no need to depart from established policies with respect to screening of information and the use of caveats. I adopt this conclusion.

35. In sharing Mr. Elmaati's travel itinerary with the U.S., the RCMP should have taken steps to ensure there were adequate controls as to how that information could be used and by whom. Relying on an implied understanding was not sufficient to ensure that the information shared would be adequately protected. Even if, as happened here, the information is shared orally, express caveats must be communicated. In my view, the RCMP's failure to abide by established practice and include express caveats when sharing Mr. Elmaati's travel information with U.S. authorities was deficient in the circumstances.

36. Counsel for the individuals and certain Intervenors submitted that the sharing of travel information creates a unique risk that requires added care and consideration. They submitted that a Canadian citizen who travels abroad leaves behind the protections of Canadian law and becomes vulnerable to the

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[2] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006), p. 105 [Arar Inquiry, *Analysis and Recommendations*].

whims of other regimes. I accept this submission. During this Inquiry, I heard evidence that DFAIT will not interfere with the lawful administration of foreign law. Once a Canadian citizen is detained abroad, DFAIT will request that he or she be provided with due process but will not request the individual's release or any other remedy that would conflict with the laws of the detaining state. This leaves Canadians vulnerable to the justice systems of other states, whether or not they follow norms that would be acceptable in Canada. This is of increased concern when Canadians travel to countries with a poor human rights record, such as Syria.

37. In my view, the RCMP failed to consider adequately the possible consequences for Mr. Elmaati of sharing his itinerary with the CIA and FBI. The RCMP provided the American authorities with Mr. Elmaati's travel itinerary on November 10, 2001. This was two months after September 11 and one month after the RCMP had sent a letter to the FBI that characterized Mr. Elmaati as an "imminent threat to public safety and the security of Canada." Counsel for the individuals submitted that providing the travel information of a person who has been labelled in this way creates a serious and palpable risk that this information will be used by foreign agencies to orchestrate his detention, interrogation and torture. While the itinerary was not provided at the same time that Mr. Elmaati was labelled an "imminent threat," in my view the two communications were sufficiently close in time and context that the RCMP should have considered the possible consequences for Mr. Elmaati of sharing his itinerary with U.S. authorities at a time when it knew that they had been told that he was an "imminent threat."

38. The RCMP also should have considered, before providing Mr. Elmaati's travel itinerary to the U.S., that U.S. authorities might take steps to have Mr. Elmaati detained and questioned. Less than two months earlier, the RCMP had received letters from the FBI and another U.S. agency requesting that it provide further information about the individuals identified in the letters, and if possible, detain them for interviews. The evidence of the RCMP regarding those letters was that it was reasonable to conclude that U.S. authorities were making these kinds of requests to other countries as well. These earlier requests to have individuals detained for questioning should have been an indication to the RCMP that the U.S. might use travel information to have a person detained and questioned. A senior RCMP member told the Inquiry that he knew that Mr. Elmaati was on a watch list and that, in retrospect, it was reasonable to assume that the Americans would take steps to detain and question him; however, this was not something that was considered at the time. Another RCMP member stated that it did not cross his mind at the time that passing on this

information might lead to Mr. Elmaati's detention and questioning. In my view, the failure of the RCMP to consider the possible consequences for Mr. Elmaati of sharing his travel information, and take steps to share the relevant portions of this travel information in a manner and with controls that lessened the likelihood that these consequences would occur, was deficient in the circumstances.

39. A year after Mr. Elmaati was first detained in Syria, on November 21, 2002, the RCMP drafted a briefing note to the Commissioner that stated that the RCMP could be considered "complicit" in Mr. Elmaati's detention in Syria based on the information that it had passed to the U.S. agencies regarding his travel to Syria. I find this note troubling. The RCMP members interviewed by the Inquiry uniformly stated that this briefing note was drafted in response to media scrutiny of the RCMP, and it did not mean that the RCMP was in fact complicit. However, immediately following the statement about the RCMP's complicity in Mr. Elmaati's detention, the note states that there was no RCMP complicity or involvement in Mr. Almalki's detention. Also, handwritten notes on an earlier draft of the briefing note suggest that the briefing note was amended to better capture the fact that the CIA had been directly advised by the RCMP of Mr. Elmaati's travel plans, and that the CIA was previously unaware of this information. The language used in the note with respect to Mr. Elmaati and Mr. Almalki, combined with the notes on the earlier draft, leave me questioning whether the note was, as I was told, simply a reaction to media scrutiny, or whether it was intended to acknowledge that the RCMP was in fact complicit in the detention.

Did the detention of Mr. Elmaati in Egypt result directly or indirectly from actions of Canadian officials?

40. Without evidence from Syria and Egypt, I am unable to determine how or why Mr. Elmaati came to be transferred from Syria to Egypt. However, the evidence satisfies me that Canadian officials had no involvement in, or knowledge of, Mr. Elmaati's transfer. Indeed, the evidence before me indicates that at the time Mr. Elmaati was transferred, and for several weeks after the transfer, Canadian officials had no knowledge of Mr. Elmaati's whereabouts and did not even know that he had left Syria. I do not find that any actions of Canadian officials resulted, directly or indirectly, in Mr. Elmaati's detention in Egypt.

Did any mistreatment of Mr. Elmaati result directly or indirectly from actions of Canadian officials and, if so, were those actions deficient in the circumstances?

Was Mr. Elmaati mistreated in Syria and Egypt?

41. As described in Chapter 2, at the outset of this Inquiry, I determined that the words "any mistreatment" in the Inquiry's terms of reference should be interpreted broadly. The word "mistreatment" is broader than torture. Mistreatment includes any treatment that is arbitrary or discriminatory or results in physical or psychological harm, as well as denial of properly entitled assistance and other forms of treatment that would normally be included in the meaning of mistreatment. "Mistreatment" may also include detention itself, where that detention is arbitrary, or where the detainee is held under conditions that cause him serious physical or psychological harm. The Attorney General acknowledged in his submissions at the hearing on the Terms of Reference, and again in his final submissions, that for the purposes of the Inquiry, the detention of Mr. Elmaati under the conditions in Syria and Egypt constituted mistreatment. To the extent that certain actions of Canadian officials directly or indirectly prolonged his detention under such conditions, I will consider these actions to have also resulted directly or indirectly in mistreatment.

42. In my ruling on the Terms of Reference, I determined that it would be both appropriate and important for the Inquiry to try to ascertain whether Mr. Elmaati, Mr. Almalki and Mr. Nureddin suffered mistreatment that amounted to torture. The nature and extent of any mistreatment, and whether that mistreatment amounted to torture, is, at a minimum, relevant to whether the actions of government officials were deficient in the circumstances.

43. Article 1 of the United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* sets out the generally accepted definition of torture. It provides that:

> torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

44. Based on a careful review of the evidence available to me, which as I have emphasized does not include information from Syrian or Egyptian authorities, I conclude that while in Syrian and Egyptian detention Mr. Elmaati suffered mistreatment amounting to torture. Using the words of the *Convention Against Torture*, I find that both Syrian and Egyptian officials intentionally inflicted physical and mental pain and suffering on Mr. Elmaati in order to obtain information from him. Mr. Elmaati's account of his treatment while in Syrian and Egyptian custody is set out in detail in Chapter 7; I will not repeat that description here.

45. I find Mr. Elmaati's account of his mistreatment by Syrian and Egyptian officials to be credible. I base this assessment on a number of factors. The most important of these factors are the nature and particularity of the information that Mr. Elmaati provided during the thorough interview that Inquiry counsel and I conducted of him, with assistance from Professor Peter Burns, former Chair of the United Nations Committee against Torture, concerning the conditions under which he was detained and the manner in which he was treated while in detention, and his demeanour during the two-day interview. In addition, Mr. Elmaati's account of what happened to him has been consistent over time, since he first alleged in August 2002 that he was tortured while in Syrian detention.

46. I have also taken into account in coming to my conclusion the fact that Mr. Elmaati's evidence is consistent with the evidence of other individuals who have been held in Syrian detention, including Mr. Almalki. The Attorney General has asked that I consider the possibility of collusion among the three individuals. Although Mr. Elmaati and Mr. Almalki acknowledged to the Inquiry that since their return to Canada, they had discussed their experiences in detention with one another, I do not find it surprising or troubling that they would do so. In any event, their accounts are far too detailed, and far too different in important ways, to support a finding of collusion. I have, in addition, used publicly available reports and other background information concerning the treatment of detainees in Syria and Egypt as context in assessing Mr. Elmaati's account of events.

47. As mentioned in Chapter 2, the Inquiry received certain medical records from Mr. Elmaati, which I considered in making my determination. I also considered it desirable to obtain current medical assessments of Mr. Elmaati from a psychologist and a psychiatrist retained by the Inquiry. While I recognize the limitations of these kinds of assessments as evidence of what actually occurred, and in distinguishing between types of trauma that an individual might have suffered, particularly when the events in question took place some years ago, I

nonetheless thought it desirable to ensure that the current medical assessments of Mr. Elmaati were not inconsistent with his account of his mistreatment. As I indicated in Chapter 2, the assessments that I obtained were from a psychologist and a psychiatrist with experience in assessing victims of torture. I have reviewed their reports with the assistance of my medical advisor, Dr. Lisa Ramshaw. I found no inconsistency between their reports and Mr. Elmaati's account of his mistreatment.

48. Having concluded that Mr. Elmaati suffered mistreatment amounting to torture in Syria and Egypt, I now turn to the question of whether this resulted directly or indirectly from the actions of Canadian officials and, if so, whether these actions were deficient in the circumstances.

Actions of Canadian officials in relation to Mr. Elmaati's mistreatment in Syria

49. In this section, I analyze the actions of Canadian officials during the time that Mr. Elmaati was detained in Syria to assess whether Mr. Elmaati's mistreatment in Syria resulted directly or indirectly from those actions and, if so, whether those actions were deficient. I am concerned in this section with the following two actions (or in one instance, an omission to act) on the part of Canadian officials:

(a) the failure of Canadian officials to advise DFAIT's Consular Affairs Division that they were aware that Mr. Elmaati had been detained and interrogated in Syria; and
(b) the sending of questions by CSIS to be asked of Mr. Elmaati by his interrogators in Syria.

Failure of Canadian officials to advise DFAIT Consular Affairs Division of Mr. Elmaati's detention and interrogation in Syria

50. On November 19, 2001, CSIS and the RCMP received unsolicited information from a foreign agency that was said to have been obtained from Mr. Elmaati while in detention in Syria. This information included the existence of an alleged plot by Mr. Elmaati to blow up the Canadian Parliament Buildings with a truck bomb, and the existence of an alleged terrorist cell in Canada. This information was of concern to CSIS and the RCMP. Both agencies set about analyzing it.

51. It is unclear on what date DFAIT's Foreign Intelligence Division (DFAIT ISI) was made aware that Mr. Elmaati had been interrogated in Syria. Although it appears from the notes of a DFAIT ISI official dated November 19, 2001 (the

same date that CSIS and the RCMP received the unsolicited information) that he was made aware of the interrogation, this official's recollection was that he learned of the interrogation only later. Another DFAIT ISI official told the Inquiry that he was not informed of the interrogation until January 2002, when he was informed by a foreign intelligence partner. The Inquiry obtained no evidence, other than the notes described above, to suggest that CSIS or the RCMP promptly advised DFAIT of this interrogation.

52. The Attorney General submitted that, based on the note described above, DFAIT had been informed of the interrogation on the same day that CSIS and the RCMP were advised of it. Regardless of when DFAIT ISI learned of the interrogation, we know that the Consular Affairs Bureau was never informed, at the relevant time, of the interrogation.

Did any mistreatment result directly or indirectly from this omission?

53. Based on the evidence available to me, it is reasonable to infer that mistreatment of Mr. Elmaati in Syria resulted indirectly, at least in some part, from the failure of Canadian officials to inform DFAIT's Consular Affairs Bureau of Mr. Elmaati's detention.

54. A senior Consular Affairs Bureau official told the Inquiry that while there would not have been an expectation that this kind of information would necessarily have been shared with the Consular Affairs Bureau by CSIS or the RCMP, it would have been beneficial to have received it. The official told the Inquiry that if he had known that Mr. Elmaati had been interrogated, he would have been more definitive in his communications with the Syrian authorities. As described above in Chapter 4, at the time CSIS and the RCMP learned that Mr. Elmaati had been interrogated, on November 19, 2001, DFAIT's Consular Affairs Bureau was still seeking to establish whether Mr. Elmaati was detained in Syria or Egypt. This same senior Consular Affairs Bureau official stated that, in his experience, the worst treatment for detainees in countries such as Syria always occurs in the first few hours or days of detention. As I state at paragraph 124 below, in my view it is implicit in the seriousness with which the international community, including our government, regards consular access, that a failure by Canadian officials to effectively pursue consular access will increase the risk that mistreatment may occur. In light of this evidence, it is reasonable to infer that the failure of Canadian officials to notify DFAIT's Consular Affairs Bureau likely contributed to his mistreatment.

Was this omission a deficiency?

55. In my view, CSIS, the RCMP and DFAIT ISI have a responsibility to inform DFAIT's Consular Affairs Bureau when they learn that a Canadian is being detained abroad and when they learn that this person is being interrogated. Although the Consular Affairs Bureau has the responsibility within the Government of Canada to make representations on behalf of Canadian citizens detained in foreign countries, it can carry out that mandate effectively only if it has the cooperation of other departments and agencies, such as CSIS and the RCMP, which are likely to have information respecting detainees such as Mr. Elmaati. A senior CSIS official told the Inquiry that it was standard operating practice for the Service to advise DFAIT whenever a Canadian citizen is detained overseas. The same practice should apply for both CSIS and the RCMP when they become aware that a Canadian citizen has been interrogated in a foreign jail.

56. This is especially important where the jail is located in a country with respect to which there have been credible reports that torture is used in interrogation. The evidence of both CSIS and RCMP witnesses suggested that neither agency considered whether the information it received about Mr. Elmaati's alleged confession might have been the product of torture. According to CSIS witnesses, the Service would evaluate all information received in fundamentally the same way, to determine validity and whether it was capable of corroboration. In the case of Mr. Elmaati, CSIS never considered that the statements might have been the product of torture. Similarly, according to RCMP witnesses, in analyzing the information received, no consideration was given to the conditions under which the information might have been provided to Syrian authorities.

57. Justice O'Connor found that CSIS officials had or likely had during the relevant time knowledge of Syria's poor human rights reputation, including reports that Syrian security agencies used torture to interrogate detainees. He also found that CSIS officials were familiar with the Amnesty International and U.S. State Department reports on Syria and assessed these documents as credible. He noted, however, that the Director of CSIS testified that, without knowing the evidence on which these reports relied, CSIS could not conclude absolutely that Syria engaged in torture.

58. The RCMP Operational Manual refers to post profiles that can be obtained from the Criminal Operations (CROPS) officer. According to the RCMP, these post profiles consist of the human rights reports prepared by DFAIT. The RCMP therefore had access to publicly available reports regarding Syria's human rights

reputation, such as the reports prepared by Amnesty International, as well as the annual human rights reports prepared by DFAIT.

59. Despite the availability of these reports, investigators for Project A-O Canada and the RCMP's Criminal Intelligence Directorate (CID) told the Arar Inquiry that, while they were aware that Syria operated under different standards from Canada, they were not aware that Syria might use torture to elicit information through interrogation of detainees. In an email to DFAIT in mid-November 2001, the RCMP's Rome liaison office stated that, if Mr. Elmaati were arrested in Syria, he would be interrogated "Syrian style." When interviewed by Inquiry counsel, the RCMP's liaison officer told the Inquiry that he simply meant that Syrian police and intelligence do not interview people in the same way Canadian authorities would and that he had no indication of torture occurring in Syria at the time.

60. In my view, the officials from CSIS and the RCMP who received and analyzed Mr. Elmaati's alleged confession knew or should have known about Syria's human rights record and therefore should have considered the possibility that Mr. Elmaati's alleged confession might have been the product of torture. They should have advised DFAIT that Mr. Elmaati had been interrogated, and possibly tortured, in Syria. If, in fact, CSIS and the RCMP had advised DFAIT ISI of this, DFAIT ISI should have provided this information promptly to DFAIT's Consular Affairs Bureau. Whether responsibility ultimately rests with CSIS, the RCMP or DFAIT ISI, the Consular Affairs Bureau was not made aware of this crucial information and the actions of Canadian officials were therefore deficient in the circumstances.

CSIS' sending of questions to be asked of Mr. Elmaati in Syria

61. After CSIS received Mr. Elmaati's alleged confession (as described above), the Service became concerned about how much information might have been passed to the Syrian authorities by foreign agencies before the interrogation began and how much prompting might have been provided. The Service was concerned that the alleged confession might be the product of "circular reporting." The Service therefore sent a number of clarification questions to a foreign agency to try to determine the extent of involvement, if any, of other intelligence or law enforcement agencies in Mr. Elmaati's interrogation. Based on the results of these clarification questions, the Service concluded that Syrian authorities had relied on their own information.

62. When it sent these clarification questions, the Service did not ask any questions about Mr. Elmaati's treatment during the interrogation or the conditions

under which he was being detained. The Inquiry was told that questions of this kind were not asked because, at the time, the Service did not have any information to indicate that Mr. Elmaati's treatment should be a subject of inquiry.

63. In early December 2001, CSIS sent questions to a foreign agency to be sent to Syrian authorities to be put to Mr. Elmaati. The questions addressed various topics, including Mr. Elmaati's background, his move to Canada, the places he had lived, his training in Afghanistan, his flight training, his known and unknown associates, his communications with his brother, and the alleged plan to bomb the Parliament Buildings. According to the Service, the questions were sent for the purpose of testing the accuracy and reliability of the information contained in Mr. Elmaati's alleged confession and seeking to clarify certain information that would be of use to the Service in its investigations. According to the Attorney General, the Service was required to seek additional information and test the veracity of the information it had received about a threat to Canadians.

Did any mistreatment result directly or indirectly from the sending of the questions?

64. In my view, it is reasonable to infer that Mr. Elmaati's mistreatment by Syrian officials resulted indirectly, at least in part, from sending questions to be asked of Mr. Elmaati by Syrian officials. As stated above, I accept Mr. Elmaati's evidence that he was subjected to mistreatment amounting to torture during his interrogation by Syrian officials. I also accept that the conditions of Mr. Elmaati's detention in Syria constituted mistreatment. It appears from his evidence that this mistreatment continued in the period after the questions were sent by CSIS in early December 2001. In my opinion, it is reasonable to infer that the provision of additional, follow-up questions by CSIS through a foreign agency to the Syrian interrogators led to further questions and further mistreatment. It is also reasonable to infer that the sending of additional questions by CSIS, in light of the topics addressed in those questions, would be perceived by his interrogators as legitimizing the interrogation that they had conducted and the way in which they had elicited the information that the Service was seeking to clarify.

65. Put simply, I infer from all the evidence that I have heard and reviewed that Syrian officials would likely have viewed these additional questions sent by Canadian officials as a "green light" to continue their interrogation and detention of Mr. Elmaati, rather than a "red light" to stop. While I acknowledge that Mr. Elmaati's interrogation and detention would likely have continued and the Syrians might well have asked many of these same questions regardless of whether CSIS had sent the questions, I find that the sending of these questions

by CSIS likely contributed to mistreatment of Mr. Elmaati in Syria. I need not, and cannot on the evidence available to me, assess the degree to which this was so.

Was sending the questions deficient in the circumstances?

66. I also consider that the sending of the questions was deficient in the circumstances. In light of what I have said above regarding what the Service knew, or should have known, about the treatment of political detainees in Syria, the Service failed to give adequate consideration to how Mr. Elmaati would be treated when he was interrogated on the basis of its questions. The Service knew, from its previous correspondence with the foreign agency that it sent its questions to, that it was not the foreign agency that would be conducting the interviews. Yet it did not request any information as to how the interrogation would be conducted or under what conditions the questions would be asked. The Service did not even ask any questions about the prison conditions generally.

67. In sending the questions to Syria, the Service not only failed to make inquiries about how Mr. Elmaati would be treated during subsequent interrogations but, as discussed above, also legitimized the manner of interrogation that had already taken place. The Service knew, or should have known, that the information contained in Mr. Elmaati's alleged confession could have been obtained by torture. By sending questions about that information, the Service created a risk that the Syrians would not only torture Mr. Elmaati into providing answers to the Service's follow-up questions, but would also think that it was an acceptable means of eliciting information.

68. The sending of questions to be asked of Mr. Elmaati in Syria also created a risk that his detention could be prolonged. When the Service sent these questions, it had an expectation that some of the questions would be put to Mr. Elmaati. However, according to one CSIS official, it had not reflected on whether this would require Mr. Elmaati to continue to be detained or whether the sending of questions would prolong Mr. Elmaati's detention. These are potential consequences that the Service should have considered. In my view, as set out above, detention in these circumstances constitutes mistreatment. By sending these questions to be asked of Mr. Elmaati in Syria, the Service increased the risk that Mr. Elmaati's detention might be prolonged and thereby created a further risk of mistreatment.

69. The Attorney General submitted that the Service would have been remiss in fulfilling its mandate if it had not pursued information regarding a possible

threat to national security. I was referred to the testimony of one CSIS official who stated that the Service was looking for answers to very specific questions and did not want to feed the Syrian authorities additional information to pursue. I accept that the Service must take investigative steps that are consistent with its mandate. However, I do not accept that the Service should be permitted to do so without adequate consideration for the consequences of its actions.

70. As stated by the Canadian Arab Federation, Canadian Council on American Islamic Relations and the Canadian Muslim Civil Liberties Association in their submissions for the Inquiry's public hearing on standards, sending questions to the authorities of a foreign state to be posed to a Canadian detainee "can only be considered in the context of the nature of the foreign state, the urgency and relevance of the information being sought and the likely result in terms of the human rights of the detained Canadian." Before a Canadian agency such as CSIS should send questions to a foreign agency, it must assess the human rights record of the detaining state and risk of mistreatment to the detainee against the urgency of the information being sought.

71. A senior CSIS official who did not participate in the drafting of these questions acknowledged that sending these questions could have made Mr. Elmaati's situation worse, but stated that in every case it is a balancing of interests and one hopes that the questions can be crafted to mitigate the adverse consequences to the individual. I agree that there should be a balancing of interests. However, in this case, the Service appears to have sent the questions without consideration for who would be asking them, under what conditions they would be asked, and what message the sending of the questions might convey to the Syrian authorities.

72. In contrast to the deliberations that took place prior to the sending of questions to be asked of Mr. Almalki (as discussed in Chapter 5), the Service did not consult with or even advise DFAIT prior to the sending of questions to be asked of Mr. Elmaati. The Attorney General submitted that the Service was not required to consult DFAIT before sending questions to be asked of Mr. Elmaati. I was told that, when the Service engages in operational activity outside of Canada in the investigation of threats to the security of Canada, the Service is required to consult with DFAIT when the operational activity has been assessed by the Director as high risk. Factors that constitute high risk include a clear risk to human life, grave damage to Canada's international reputation or severe damage to the reputation of the Service. In my view, this standard is inadequate in these circumstances. The Service should consult DFAIT not only

when there is a clear risk to human life, but also where there is a serious risk of mistreatment, as there was in Mr. Elmaati's case.

73. The Service knew or should have known about the human rights record of Syria and the possibility that Mr. Elmaati could be subjected to torture while in detention. The Service knew that Mr. Elmaati had already been interrogated and provided an alleged confession, and it did not know who was going to be asking the questions or under what conditions. In light of what it knew and did not know, the Service should have assessed the sending of questions to be asked of Mr. Elmaati in detention as creating a serious risk that Mr. Elmaati would be mistreated, and consulted DFAIT about the risks associated with sending the questions. The Service's failure to consult DFAIT was therefore deficient in the circumstances.

74. Where a Canadian agency such as CSIS or the RCMP is engaging in operational activity that involves interaction with the detaining state, such as sending questions, that agency must consider and weigh the effect those actions might have on the human rights of the detainee. While consular officials may have primary responsibility for monitoring the health and well-being of the Canadian detainee, it must at least be an incidental function of the RCMP and the Service, when engaging in these types of activities, to consider the potential effect of its actions on the detainee and adjust its actions to minimize those effects. As stated by Justice O'Connor, "Conflicts between the investigative interests of Canada and the need to respect the consular and human rights of Canadians held abroad must be resolved on a case-by-case basis, but I would think that officials would strive to ensure the greatest possible respect for human rights."[3] No Canadian officials should consider themselves exempt from this responsibility.

Actions of Canadian officials in relation to Mr. Elmaati's mistreatment in Egypt

75. In this section, I examine actions of Canadian officials as they relate to the mistreatment, amounting to torture, that I have concluded Mr. Elmaati suffered during his detention in Egypt. I assess whether any mistreatment of Mr. Elmaati in Egypt resulted directly or indirectly from those actions and, if so, whether they were deficient in the circumstances. I consider the following actions of Canadian officials in this section:

(a) the May 2003 sharing by CSIS of a statement of concern with Egyptian authorities about Mr. Elmaati and his activities if he were to be released;

[3] Arar Inquiry, *Analysis and Recommendations*, p. 351.

(b) the RCMP's requests to interview Mr. Elmaati while he was detained in Egypt;
(c) the sharing of information by the RCMP with foreign officials;
(d) the RCMP's failure to advise the RCMP Commissioner of the allegations that Mr. Elmaati had been mistreated in Syria and Egypt; and
(e) the RCMP's reliance on Mr. Elmaati's alleged confession in Syria to obtain search warrants.

76. In my confidential report, I have also identified another action that, in my view, likely contributed to mistreatment of Mr. Elmaati in Egypt and was deficient in the circumstances. As described above at paragraph 4 of this chapter and at paragraph 42 of chapter 2, because the responsible Minister is of the opinion that disclosure of this information would be injurious to national security, national defence and/or international relations, I am unable to refer to these actions and my assessment of them in this report.

Sharing by CSIS in May 2003 of statements of concern about Mr. Elmaati

77. In May 2003, the Service sent a request to the Egyptian authorities for a status update on Mr. Elmaati's continued detention and whether it was expected that he would be released. The request included a statement of concern about Mr. Elmaati and about his activities if he were to be released.

78. To provide the statement of concern that it did was, as acknowledged by one CSIS witness, serious. Several CSIS witnesses testified that they believed the labels used in this communication were accurate and represented the Service's institutional assessment at the time. Similarly, the Attorney General submitted that the descriptions and terminology used by CSIS in its communications with foreign agencies regarding Mr. Elmaati were accurate, reliable and appropriate at the times they were provided to domestic and foreign agencies.

Did any mistreatment result directly or indirectly from sending this statement of concern?

79. I conclude that it is reasonable to infer that the sending by CSIS to the Egyptian authorities of this statement of concern likely contributed to mistreatment of Mr. Elmaati. I reach this conclusion bearing in mind the Attorney General's acknowledgement that detention in these circumstances is a form of mistreatment, and my view that the prolongation of detention is a form of mistreatment. Mr. Elmaati remained in detention for many months after the statement was sent. In view of the nature of the concern that was communicated (the details of which I cannot disclose, as set out in paragraph 299 of Chapter 4),

in my view the statement of concern likely contributed to Mr. Elmaati's prolonged detention and thereby his mistreatment.

Was sending this statement of concern deficient?

80. The sending of this communication was also deficient in the circumstances. It was deficient because the Service sent the communication without taking adequate steps to ensure the accuracy of the information or to consider the potential consequences for Mr. Elmaati.

81. As I stated above at paragraph 24, it appears to me to be desirable that the Service should have a clear policy containing standards governing the use of labels in communications with foreign agencies. For example, communicating a statement of concern about an individual, or about an individual's activities if released, should be based on more than the discretion of particular CSIS officials. In my view, the Service did not take adequate measures to ensure the accuracy or qualification of these labels. I have come to this conclusion for several reasons.

82. Based on the evidence available to me, it appears that this communication to the Egyptian authorities was the first time that the Service expressed these concerns about Mr. Elmaati to Egyptian authorities. On the evidence available to me, I am not aware of any credible new information obtained by CSIS that would merit the use for the first time in May 2003 of such inflammatory language. This inaccuracy is exactly the kind of inaccurate and imprecise information that Justice O'Connor identified as being particularly serious in terrorism investigations in the post-9/11 environment. As Justice O'Connor stated, "The use of loose or imprecise language about an individual or an event can have serious and unintended consequences."[4]

83. The evidence of CSIS witnesses about the consequences for Mr. Elmaati of sending these statements of concern varied. One CSIS official stated that he had never considered whether this communication would have an effect on the length of Mr. Elmaati's detention. Two other CSIS officials stated that they were not concerned that this characterization would affect Mr. Elmaati's continued detention and treatment in Egypt because, in their view, the Service had already shared its information about Mr. Elmaati with the Egyptians and this was not anything new. A fourth CSIS official stated that regardless of the language used, or whether this assessment had been sent to the Egyptian authorities, the detaining authorities always had but two options: continue to detain Mr. Elmaati, or release him.

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[4] Arar Inquiry, *Analysis and Recommendations*, p. 337.

84. In February 2004, a senior CSIS official obtained information from a foreign agency regarding Mr. Elmaati which, in my view, contradicts the perception of several CSIS witnesses that the communications CSIS sent to Egypt would not have any effect on Mr. Elmaati's detention and treatment. In the circumstances, it seems reasonable to conclude that the Egyptian authorities did consider the information it received from the Service. It is also consistent with my conclusion above that the statement of concern provided by the Service in May 2003 likely contributed to Mr. Elmaati's prolonged detention and thereby his mistreatment.

85. In my view, sending the statement of concern about Mr. Elmaati and his activities if released to the Egyptian authorities created a risk that the Egyptian authorities would continue to keep Mr. Elmaati in custody. I consider that CSIS' failure to give adequate consideration to the fact that the communication of this assessment might prolong Mr. Elmaati's detention or lead to physical mistreatment was deficient in the circumstances.

RCMP's requests to interview Mr. Elmaati in Egypt

86. Throughout the period of Mr. Elmaati's detention in Egypt the RCMP continued to make efforts to obtain access to interview him there. The RCMP made efforts through a foreign agency, through its liaison officer in Rome and through DFAIT. However, the RCMP was never granted access and never did conduct an interview of Mr. Elmaati in Egypt.

87. As soon as the RCMP was advised by a foreign agency that Mr. Elmaati had been transferred to Egypt, the RCMP requested that the foreign agency make inquiries about an interview in Egypt on its behalf. The Inquiry was told that the RCMP immediately sought assistance from the foreign agency because it had a relationship with the Egyptian authorities that the RCMP did not have.

88. In March 2002, the RCMP was advised that the foreign agency had been given limited access to Mr. Elmaati and had made efforts to interview him. The foreign agency told the RCMP that Mr. Elmaati's level of cooperation had apparently declined and those conducting the interviews were having difficulty because they did not have sufficient knowledge of the investigation. The RCMP was unable to identify for the Inquiry what the foreign agency might have meant by the apparent decline in cooperation. Nor was it able to identify who at this time was conducting the interrogations—whether the Egyptian authorities or the foreign agency. The evidence of the RCMP was that it believed that any interview conducted by the foreign agency would be conducted in a similar fashion to an interview conducted by the RCMP.

89. In the spring of 2002, the primary objective of Project A-O Canada was to interview Mr. Elmaati in Egypt on the basis that he had allegedly confessed to a plot to bomb the Parliament Buildings in Canada and the RCMP wanted to investigate that threat. The RCMP therefore directed its liaison officer in Rome to meet with representatives of Egyptian law enforcement and intelligence to find out where Mr. Elmaati was being held and whether it could get access to him. According to one RCMP member, there were no discussions at this time about whether it would be appropriate to interview a detainee in Egypt given its poor human rights record, because it was thought that the RCMP would discuss this subject with DFAIT. Based on the evidence before me it seems DFAIT ISI was aware, as early as June 2002, that the RCMP wanted to interview Mr. Elmaati in Egypt, although it is not clear what discussions, if any, took place at that time about any human rights concerns.

90. Efforts to interview Mr. Elmaati continued throughout the winter and spring of 2003. The RCMP's liaison officer had meetings with Egyptian police and intelligence officials regarding access to Mr. Elmaati. At certain points in time, first in February 2002 and later in 2003, the Egyptian authorities seemed willing to allow access to the RCMP based on certain conditions that the RCMP felt compelled to reject. These conditions ranged from having to keep Mr. Elmaati's location a secret (in February 2002) to agreeing to an indirect interview by use of one-way glass (in July 2003). The RCMP was unwilling to conduct an interview under these conditions because of a concern that the evidence would be inadmissible in a Canadian court. According to several witnesses, a direct interview of a detainee is desirable because the interviewer can control the circumstances in which the questions are posed.

91. In the fall of 2003, Project A-O Canada managers met with the Canadian Ambassador to Egypt to discuss the RCMP's requests for access to Mr. Elmaati. The RCMP requested the Ambassador's assistance in facilitating access to Mr. Elmaati. At this meeting, the Ambassador stated that he would wait for a letter from DFAIT before approaching the Egyptian government. As described in detail in Chapter 4, at paragraphs 322 to 325, consultations then took place at DFAIT regarding whether it should be requesting access on behalf of the RCMP at the same time that it was considering sending a letter from the Minister requesting that Mr. Elmaati be given due process. It was decided that the Minister would send a letter and DFAIT ISI would advise the RCMP that it should pursue its interview back in Canada under more favourable conditions. In the end, the letter was never sent. Nor was the interview ever conducted. Shortly after these events, Mr. Elmaati was released.

Did any mistreatment result directly or indirectly from the RCMP's requests to interview Mr. Elmaati in Egypt?

92. In my view, it is reasonable to infer that the repeated requests by the RCMP to interview Mr. Elmaati in Egypt resulted indirectly in mistreatment. The fact that Canada's national law enforcement agency was making repeated requests to meet with him, on the basis that he was a potential threat to Canada's national security, increased the risk that the Egyptian authorities would see Mr. Elmaati as a dangerous individual and that, at the least, his detention would be prolonged. Among the various factors that resulted in his mistreatment, I believe it reasonable to infer that these actions of the RCMP were a likely contributor. As I have said in relation to other similar findings, I need not go further.

Were the RCMP's actions deficient?

93. Although there may be cases in which it is reasonable for the RCMP to request to interview a Canadian detained in a foreign country, there were deficiencies in the manner in which the RCMP approached Egyptian authorities with respect to Mr. Elmaati.

94. First, the RCMP initially sought access to Mr. Elmaati through a foreign agency when it had uncorroborated reports that Mr. Elmaati had been detained in Egypt but did not know where he was detained, for what reason or under what conditions. In my view, it is problematic for a Canadian agency to seek access to a detained Canadian through another foreign agency when so little is known about the circumstances of the detention. Engaging the foreign agency without first determining where and how Mr. Elmaati was being detained, why the foreign agency was involved and what interest it had in Mr. Elmaati, was deficient in the circumstances.

95. Second, the RCMP did not give adequate consideration to the potential consequences of its requests for Mr. Elmaati, and to how it might take steps to address them. The RCMP knew or ought to have known about the treatment of political detainees in Egypt. Although the RCMP does not produce human rights assessments of countries as DFAIT and CSIS do, a senior RCMP official testified before the Arar Inquiry that dealing with countries with poor human rights records is an extremely important issue, and RCMP policy provides guidelines regarding respect for human rights and dealing with countries with a poor human rights record.

96. As described in detail in Chapter 4, paragraphs 186 to 195, in July 2002 the RCMP became concerned that Mr. Elmaati might have been exposed to "extreme treatment" in Egypt. A briefing note to the Commissioner stated that

"indications are that Elmaati has been exposed to extreme treatment while in Egyptian custody." The Inquiry questioned a number of RCMP members closely about the briefing note. However, none of them, including the member who was identified as the author of the briefing note and those who approved and signed it, recalled any discussion about Mr. Elmaati's treatment in Egypt and none could recall what might have been the intended meaning of "indications" of "extreme treatment."

97. Furthermore, the RCMP failed to take the information about "extreme treatment" into account in pursuing access to Mr. Elmaati in Egypt. One RCMP member told the Inquiry that the RCMP continued to persist in seeking an interview of Mr. Elmaati in Egypt even after it became known that there were indications that he had been exposed to "extreme treatment" there because the RCMP was compelled to pursue its investigation of the alleged threat to Parliament Hill.

98. The treatment that Mr. Elmaati was receiving while in Egyptian custody was a factor that the RCMP should have taken into account in deciding whether to pursue requests for an interview. At the time it received information that suggested "extreme treatment," the RCMP did not know which agency was holding Mr. Elmaati, but it did know, through its discussions with the foreign agency, that Mr. Elmaati was being interrogated. In my view, the RCMP should not have continued to pursue an interview of Mr. Elmaati until it had properly investigated these "indications" of "extreme treatment" and satisfied itself that its actions in pursuing an interview with Mr. Elmaati in Egypt would not contribute to the likelihood that he would suffer further "extreme treatment."

99. In August 2002, in response to Mr. Elmaati's allegation that he had been tortured in Syria, the RCMP convened a meeting to discuss the allegation of torture, the impact on his alleged confession and the investigative options available to the RCMP. It was decided that despite Mr. Elmaati's allegation of torture in Syria, the RCMP would continue to try to corroborate the information contained in Mr. Elmaati's alleged confession by seeking to interview him in Egypt. In my opinion, the RCMP failed to properly consider the significance of Mr. Elmaati's torture allegation before it continued to pursue an interview of Mr. Elmaati in Egypt. I say this for two reasons. First, the purpose of the RCMP's proposed interview of Mr. Elmaati was to try to corroborate the information contained in his alleged confession—information that the RCMP now knew was alleged to be the product of torture. Second, the torture allegation should at the least have alerted the RCMP to the possibility that asking questions could lead to mistreatment in Egypt as well.

100. Finally, even assuming the RCMP was unaware of Egypt's human rights record, the Memorandum of Understanding between DFAIT and the RCMP and the ministerial directive discussed above at Chapter 3, paragraphs 59 to 61 require the RCMP to consult with DFAIT before embarking on certain acts that may have an international dimension. I have found no evidence that the RCMP consulted with DFAIT before requesting immediate access through the foreign agency. Unlike its efforts in the fall of 2003, when the RCMP requested the assistance of, and consulted with, DFAIT about its desire to interview Mr. Elmaati, its efforts to obtain access to Mr. Elmaati through the foreign agency in the spring and summer of 2002 occurred without the advice of DFAIT.

101. It was suggested to me that by taking steps that would allow the results of the interview to be admissible in Canadian courts, RCMP investigators selected the method of attaining their investigatory objective that would be the least intrusive to the interests of the individual. However, this submission ignores the possibility that a detainee could be mistreated in preparation for or as a result of an interview. It bears repeating that, whether in crafting questions to be sent to a foreign agency or requesting an interview, it is difficult, as the Intervenor Human Rights Watch has submitted, to take into account all the antecedent or subsequent risks of mistreatment that can arise in a context where torture may be a part of interrogation. Requesting an interview of a detainee creates a risk that a detainee will be tortured before or after the scheduled interview. A detainee might be tortured before the interview in order to "soften him up" or ensure that he provides "the right answers" to the visiting agents. A detainee might be tortured after the interview if the local interrogators are dissatisfied with something the detainee says or because the local interrogators conclude that the detainee has lied or concealed something from them earlier.

102. It is not sufficient, in my view, for the RCMP to have considered the consequences of any interview from the perspective of the admissibility of the evidence obtained. The RCMP should have also considered the potential consequences for Mr. Elmaati and the treatment that he would receive while in Egypt.

RCMP's sharing of information with foreign agencies

Inaccurate or imprecise labels

103. I have discussed at paragraphs 32 to 35 of this chapter the risks associated with sharing information without caveats and sharing information, even with caveats, that is inaccurate or imprecise. I will not repeat those points here.

However, I would like to comment on two examples of such sharing during Mr. Elmaati's detention in Egypt.

104. First, in the spring of 2002, when attempts were being made to locate and interview Mr. Elmaati, the RCMP gave a presentation to American authorities in which it characterized Mr. Elmaati as the primary target of Project O Canada and as a "confessed terrorist/conspirator." The presentation was oral and did not include any caveats.

105. Second, in June 2003, in a communication to the Egyptian authorities, the RCMP's liaison office in Rome described Mr. Elmaati as the "terrorist detained in Egypt." There were no caveats attached to this communication either.

106. Both of these characterizations are examples of the imprecise or inaccurate labelling that I have discussed in detail above. In both cases, Mr. Elmaati was definitively identified as a terrorist without qualification. In the first case, there was also no comment on the way in which the confession might have been obtained. In the second case, although the label used by the RCMP's liaison office in Rome was not created by its officers stationed in that office but was based directly on descriptions of Mr. Elmaati derived from previous correspondence from the RCMP, CSIS and other agencies, the RCMP should not have used this label without taking steps to ensure that it was accurate or justified. While I am unable to infer in these circumstances that the use of these labels likely contributed to Mr. Elmaati's mistreatment, I find it troubling for the reasons I have expressed above.

Sharing of the RCMP Supertext database with U.S. authorities

107. As discussed in detail in Chapter 4, paragraphs 131 to 133, in April 2002 Project A-O Canada provided U.S. agencies with three CDs containing the RCMP's Supertext database. The CDs were provided without caveats. They contained all of the documents relating to the Project A-O Canada investigation, including the documents seized during the January 2002 searches.

108. Justice O'Connor made extensive findings about the sharing of the Supertext database. As I explain in greater detail in my findings relating to Mr. Almalki (Chapter 12, paragraph 23), consistent with my Terms of Reference and the evidence that I have reviewed, I adopt these findings for the purpose of this Inquiry. To summarize, Justice O'Connor found several problems with the transfer of documents contained in the three CDs sent by the RCMP: the information on the CDs should not have been provided to the U.S. agencies without written caveats; the portion of the documents not related to the executed searches should have been reviewed for relevance, reliability, and personal

information; and third-party materials to which caveats were attached, such as letters received from CSIS and documents received from Canada Customs, should not have been transferred without the originator's consent. Justice O'Connor found that this departure from established policies with respect to screening and the use of caveats was not justified.

Did any mistreatment result from the sharing of the database?

109. There is a correspondence between the substance of certain of Mr. Elmaati's interrogations in Egypt as he described them to the Inquiry and the information contained in the RCMP Supertext database, which (as discussed above) was shared with U.S. agencies in early April 2002, approximately six months after Mr. Elmaati came to be detained in Syria (in November 2001) and two to three months after Mr. Elmaati was transferred to Egypt (in late January 2002). Mr. Elmaati told the Inquiry that while in detention in Egypt he was questioned about certain facts that he said must have come from Canada:

- Mr. Elmaati told the Inquiry that his Egyptian interrogators showed him a copy of the map of Tunney's Pasture; a copy of this map, originally provided to CSIS and the RCMP by U.S. authorities, was included in the Supertext database.
- Mr. Elmaati told the Inquiry that his Egyptian interrogators asked him about a remote control that he had purchased in Toronto; several documents, including surveillance reports, regarding Mr. Elmaati's purchase of a remote control in Toronto were included in the Supertext database.
- Mr. Elmaati told the Inquiry that he was severely beaten and subjected to electric shocks during an interrogation at Egyptian State Security headquarters regarding his Islamic will; a copy of Mr. Elmaati's Islamic will was included in the Supertext database.

110. I found no evidence that Canadian officials shared any of this information with Egyptian officials at any time prior to, or during, Mr. Elmaati's detention in Egypt. Nor did I find any evidence that the RCMP gave permission to U.S. agencies to share any of this information with Egyptian authorities. To the contrary, the evidence before me demonstrates that the RCMP expressly denied the U.S. requests to share information about Mr. Elmaati's will with the Egyptian authorities. I am also satisfied that neither the RCMP nor CSIS told the Egyptian authorities that they could get access to Mr. Elmaati's will through the U.S. agencies.

111. However, based on the common elements described above and the fact that the database was provided without caveats at a time when Mr. Elmaati was

detained in Egypt and when foreign agencies were interested in him, I believe it is reasonable to infer that documents provided in the Supertext database, or information from or corroborated by those documents, made their way into the hands of Egyptian officials, and were then used by those officials, together with other information, to interrogate Mr. Elmaati in Egypt. On this basis, I conclude that the actions of Canadian officials in sharing the Supertext database likely contributed in some measure to, and therefore resulted indirectly in, mistreatment of Mr. Elmaati in Egypt.

Was the sharing of the database deficient?

112. As I discuss in paragraph 108 above, the sharing of the Supertext database without proper screening or caveats was a departure from RCMP policy and was deficient in the circumstances. In addition, the RCMP appears to have made this exceptional disclosure of information without adequate, if any, consideration of the possible consequences for the individuals whose information was being shared. At the time the RCMP shared the database, it knew that Mr. Elmaati was already in detention in Egypt. It also knew that the American agencies had a very strong interest in Mr. Elmaati and had been at least partly responsible for his detention in Syria. At the time the RCMP shared the Supertext database it was engaged in discussions with a foreign agency about getting access to Mr. Elmaati in Egypt and had been informed, in March 2002, that the foreign agency had been given "limited access" already and that Mr. Elmaati's cooperation had apparently been on the decline. In my view, sharing the Supertext database with U.S. agencies was deficient in these circumstances.

RCMP's failure to advise the RCMP Commissioner of the allegations that Mr. Elmaati was mistreated in Syria and Egypt

113. Former Commissioner Zaccardelli told the Inquiry that he did not recall reviewing the briefing note stating, or having otherwise been advised, that there were indications that Mr. Elmaati had been subjected to "extreme treatment." He said that he could not recall having been informed of Mr. Elmaati's allegation of torture in Syria while he held the position of RCMP Commissioner. He stated that whether information of this nature should have been brought to his attention depended on the circumstances of the investigation. He added that he would expect the investigator who received this information to take the appropriate steps to deal with the situation, including making a decision regarding whether it should be brought to the attention of the Commissioner. He confirmed that no one put this issue in front of him for discussion, guidance or direction.

Did any mistreatment result, directly or indirectly, from the RCMP's failure to advise the RCMP Commissioner of the allegations that Mr. Elmaati was mistreated in Syria and Egypt?

114. I cannot conclude that the RCMP's failure to advise the RCMP Commissioner of Mr. Elmaati's allegation that he had been tortured in Syrian detention or that the RCMP had received information that Mr. Elmaati had been exposed to "extreme treatment" while in detention in Egypt, resulted directly or indirectly in mistreatment (including prolonged detention) of Mr. Elmaati. I found no evidence that would permit me to infer a direct or indirect link.

Comments on the RCMP's failure to advise the RCMP Commissioner of the allegations that Mr. Elmaati was mistreated in Syria and Egypt

115. In my view, the RCMP nonetheless should have ensured that the Commissioner was advised both when the RCMP received information that Mr. Elmaati had been exposed to "extreme treatment" in Egypt and when it learned that Mr. Elmaati had alleged he had been tortured in Syria. An allegation of torture of a subject of an RCMP investigation is a very serious matter. It is the kind of allegation of which the Commissioner must be made aware if he is to be in a position to discharge his responsibilities.

116. As set out in Chapter 3, paragraph 40, former Commissioner Zaccardelli told the Inquiry that he briefed the Minister on the investigations of Mr. Almalki, Mr. Elmaati and Mr. Nureddin but that the briefings did not include operational matters or details of the investigation. Former Commissioner Zaccardelli also told the Inquiry that he was never apprised of any concerns about torture and that, as a result, he never briefed the Minister on that issue. The Attorney General submitted that, even if the RCMP had informed the Commissioner, it would not have made any difference since the practice of the Commissioner at the relevant time was not to brief the Minister on what the Attorney General referred to as operational details. It was also pointed out that a Ministerial Directive implemented in November 2003 now requires the Commissioner to inform the Minister of all "controversial cases." In my opinion, for the reasons expressed above, Mr. Elmaati's case was a controversial matter that should have been brought to the attention of the Minister. Even before the Ministerial Directive came into force, given the seriousness of Mr. Elmaati's allegations of torture and the information received by the RCMP about "extreme treatment," I believe it is reasonable to infer that had the Commissioner been informed about these allegations, he likely would have informed the Minister.

RCMP's reliance on Mr. Elmaati's alleged confession in Syria to obtain search warrants

117. As described in detail in Chapter 4, paragraphs 122 to 128, in January 2002 the RCMP applied for and obtained search warrants to conduct searches of various locations in furtherance of its investigation. Project A-O Canada investigators were of the view that Mr. Elmaati's alleged confession would be useful in obtaining search warrants and therefore used this information in the Information to Obtain (ITO).

118. Project A-O Canada did not, however, raise the possibility that the confession could have been obtained by torture. Nor did the RCMP address, in its ITO, Syria's reputation for engaging in human rights abuse and torture. In addition, as found by Justice O'Connor, no assessment of the reliability of the information was made or included in the ITO.

Did any mistreatment result, directly or indirectly, from the RCMP's reliance on Mr. Elmaati's alleged confession to obtain search warrants?

119. I cannot find that the RCMP's reliance on Mr. Elmaati's alleged confession to obtain search warrants resulted directly or indirectly in mistreatment or prolonged detention of Mr. Elmaati. I found no evidence that would permit me to infer a direct or indirect link between Mr. Elmaati's treatment and the RCMP's use of the alleged confession in its application to obtain search warrants.

Comments on the RCMP's reliance on Mr. Elmaati's alleged confession to obtain search warrants

120. Nonetheless, I find the RCMP's reliance on information obtained by torture to be troubling. The Attorney General submitted that the RCMP had no information at the time it first applied for the search warrants that Mr. Elmaati might have been mistreated while detained in Syria. The Attorney General pointed out that Mr. Elmaati made his allegation of torture in August 2002 and the search warrants were obtained in January 2002. However, as discussed in my findings at paragraph 60 of this chapter, in my view the RCMP ought to have known that Mr. Elmaati's alleged confession could have been the product of torture: it knew or ought to have known about Syria's human rights record and it knew that this information had been obtained by interrogation. Like Justice O'Connor, I am of the view that when information is received from countries that have questionable human rights records, the source of the information should be identified and steps taken to assess its reliability.

121. I understand that the current policy on National Security Criminal Investigations requires the RCMP to assess the reliability of information received from countries with questionable human rights records to evaluate "the risk that the country may provide misinformation or false confessions induced by torture, violence or threats." The current policy also requires that all national security criminal investigators and analysts be trained on the risk of dealing with countries with poor human rights records, including the risk of torture and the impact of the recommendations made by Justice O'Connor. Although these standards had not been formally articulated as RCMP policy in 2002 when it applied for the search warrants, these standards are in my view the same standards that existed or, if they did not, ought to have been applied by the RCMP in 2002. For the reasons set out above, the RCMP's actions in 2002 did not meet those standards and were therefore deficient in the circumstances.

Were there deficiencies in the actions of Canadian officials to provide consular services to Mr. Elmaati?

122. Mr. Elmaati was detained in Syria for over two months and detained in Egypt for approximately two years. During the time that Mr. Elmaati was detained in Egypt, he received eight consular visits. In this section, I consider whether there were any deficiencies in the actions of Canadian officials in the provision of consular services to Mr. Elmaati in Syria and in Egypt. I discuss below the following issues:

(a) whether DFAIT acted sufficiently promptly and effectively after learning that Mr. Elmaati had been detained in Syria;
(b) whether DFAIT acted sufficiently promptly and effectively after learning that Mr. Elmaati had been transferred from Syria to Egypt;
(c) whether DFAIT provided consular visits to Mr. Elmaati in Egypt sufficiently frequently from the date on which DFAIT was able to make those visits to the date he was released;
(d) whether the DFAIT consular officials who visited Mr. Elmaati had sufficient training to assess whether he was being mistreated;
(e) whether the DFAIT consular officials who visited Mr. Elmaati should have asked for private visits;
(f) whether DFAIT should have told the Minister of Foreign Affairs about the allegations that Mr. Elmaati had been tortured in Syria and Egypt;
(g) whether DFAIT officials should have repeatedly asked Mr. Elmaati during consular visits whether he was willing to meet with RCMP and CSIS officials; and

(h) whether the sharing of consular information by DFAIT officials with CSIS and the RCMP was deficient.

123. As I have noted above, the portion of my Terms of Reference that specifically addresses the actions taken by Canadian officials to provide consular services to Mr. Almalki, Mr. Elmaati and Mr. Nureddin directs me to assess whether there were any deficiencies in these actions, without calling on me to determine whether any mistreatment of any of the individuals resulted directly or indirectly from them. For that reason, in the section that follows, as well as in the consular services sections in the chapters that set out my findings concerning the actions of Canadian officials in relation to Mr. Almalki and Mr. Nureddin, I do not attempt to determine whether there was a link between the nature of the consular services provided by Canadian officials and any mistreatment of the three individuals.

124. Nonetheless, in my view it is implicit in the seriousness with which the international community, including our government, regards consular access, that a failure by Canadian officials to effectively pursue consular access will increase the risk that mistreatment may occur.

125. A state's obligation to grant consular access to a detained national of another state is a core obligation that states owe to one another under international law. The *Vienna Convention on Consular Relations*, which contains this obligation, has been ratified by the vast majority of states. The consular access obligation, set out in Article 36 of the *Vienna Convention*, requires the detaining state, at the request of the state of which the detainee is a national, to inform the requesting state's consular officials without delay of the arrest or detention of the detainee and to grant the requesting state consular access to the detainee. It is noteworthy that the detaining state's obligation under the *Vienna Convention* to inform the requesting state of the detention and grant consular access is triggered only at the request of the requesting state—a requirement that highlights the importance for each state to vigilantly assert its rights to obtain information about and access to its detained nationals.

126. While the *Vienna Convention* makes no link between the right of consular access and the risk that a foreign detainee will be mistreated, that link has in my view been made by the United Nations Committee against Torture, which oversees compliance with the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. In its 2005 conclusions and recommendations in respect of Canada, the Committee expressed concern about the Arar case and reports that Mr. Arar had been tortured in Syria. It recommended that Canada "should insist on unrestricted consular access to its

nationals who are in detention abroad, with the facility for unmonitored meetings and, if required, appropriate medical expertise." The Committee was not explicit in saying that a failure to insist on unrestricted consular access would lead to mistreatment. However, given the Committee's express mandate to deal only with matters involving torture, this statement in my view confirms the reasonable inference that if a state does not vigorously exercise its rights to consular access—particularly in a state where there are credible reports that detainees are mistreated—there is an increased likelihood that the detainee will suffer mistreatment, and possibly mistreatment amounting to torture.

127. As set out in detail in Chapter 3, paragraph 89, the actions of consular officials, both at the Consular Affairs Bureau and at missions abroad, are guided by the *Manual of Consular Instructions*. The Manual provides guidelines on many aspects of consular assistance that are relevant to Mr. Elmaati's case, including the steps to be taken upon notification of a detained Canadian, the sharing of consular information, conducting consular visits and the frequency of those visits. According to the Manual, one of the primary functions of Canadian missions is to "protect the lives, rights, interests, and property of Canadian citizens…when these are endangered or ignored in the territory of a foreign state." This includes providing services to Canadian citizens who have been arrested or detained in a foreign country.

Did DFAIT act promptly and effectively after learning Mr. Elmaati was detained in Syria?

128. The *Manual of Consular Instructions* directs that, when a Canadian citizen has been arrested and detained abroad, consular officials should investigate the circumstances of the arrest and detention to determine whether there was unlawful discrimination, denial of justice or due process or harsh treatment during arrest. DFAIT's *Service Standards*, which are provided to employees and available to all overseas offices, set out guidelines for consular services. According to the *Service Standards*, the first contact with the detainee should be made within 24 hours of notification of the detention, though it is acknowledged that the response time might be subject to factors beyond DFAIT's control.

129. On November 13, 2001, DFAIT ISI advised the Consular Affairs Bureau that it had received information that Mr. Elmaati had been detained by Syrian authorities in Damascus and suggested that inquiries be made regarding whether he had sought consular access. A CAMANT file was opened for Mr. Elmaati on November 16 and the first diplomatic note sent to the Syrian government on November 22—nine days after DFAIT first learned of his detention.

130. In my view, DFAIT should have sent a diplomatic note immediately rather than waiting a full nine days to do so. In reviewing the evidence before me, I can understand why DFAIT's *Service Standards* acknowledge that response time is sometimes subject to factors beyond DFAIT's control. As is clear from all three cases that are the subject of this Inquiry, DFAIT can only obtain access to a detainee in a foreign country when it is permitted to do so by the detaining state. I also accept that the exceptional nature of security-related cases, in which a foreign security service controls the detention, may compromise DFAIT's potential effectiveness. However, it is precisely because there are so many factors that are beyond DFAIT's control that DFAIT must be vigilant about acting promptly when it is within its power to do so.

131. On December 2, 2001, consular officials met with officials from Syria's Ministry of Foreign Affairs (MFA). They confirmed that Syria had received the diplomatic note. On December 24, the Canadian Ambassador to Syria met with Deputy Minister Haddad and provided him with proof that Mr. Elmaati had travelled to Damascus. On December 30, the Syrian MFA confirmed to DFAIT that Mr. Elmaati had entered Syria, and on December 31 it confirmed that he was being detained by Syrian authorities. In response to this confirmation, DFAIT sent two diplomatic notes, on January 3 and February 5, 2002, requesting consular access. It received no response to either note. By the end of January 2002, Mr. Elmaati had been transferred to Egypt.

132. In my view, DFAIT failed to make adequate efforts to ascertain the location of Mr. Elmaati and assess how he was being treated once it learned that he was being detained in Syria. DFAIT also failed to make effective representations to the Syrian government on Mr. Elmaati's behalf. Two meetings with Syrian government officials and a total of three diplomatic notes (one of which was sent after Mr. Elmaati had already been moved to Egypt) do not represent the satisfactory investigation of the circumstances surrounding the detention required by the *Manual of Consular Instructions*. I acknowledge that part of the delay can be attributed to the fact that DFAIT was receiving conflicting information from Mr. Elmaati's family about where he was being detained, and at one point believed it was possible that he was being detained in Egypt. However, on November 28, 2001, DFAIT was advised by Egypt that Mr. Elmaati was not in the country. This factor therefore cannot explain the month's delay between diplomatic notes and the fact that consular officials did very little to follow up on the diplomatic notes that went unanswered by the Syrian Ministry of Foreign Affairs.

133. In coming to these conclusions, I am not suggesting that DFAIT should necessarily have succeeded in ascertaining Mr. Elmaati's location and making contact with him right away; I acknowledge that there were many obstacles that were outside of DFAIT's control. However, I am of the view that DFAIT should have made more persistent efforts to get access to Mr. Elmaati and should have done so in a more timely manner. As submitted by counsel for the individuals, DFAIT's efforts to locate Mr. Elmaati were not robust.

134. I note that a large part of this delay could have been avoided had there been effective communication within DFAIT, and among DFAIT, CSIS and the RCMP. As discussed at paragraphs 50 to 60 above, officials from CSIS, the RCMP and apparently DFAIT ISI were aware as of November 19, 2001 that Mr. Elmaati had been interrogated while in Syrian detention but the Consular Affairs Bureau was not made aware of this crucial information at the time.

Did DFAIT act promptly and effectively after learning Mr. Elmaati had been transferred to Egypt?

135. As described in detail in Chapter 7, paragraphs 39 to 41, on approximately January 25, 2002 Mr. Elmaati was transferred from Syria to Egypt.

136. On February 12, 2002, DFAIT ISI received information that Mr. Elmaati had been moved to Egypt. However, DFAIT did not send a diplomatic note to Egyptian authorities in response to receiving this information until March 18, 2002—more than one month later. It is not clear what caused this delay, or exactly when the Consular Affairs Bureau learned from DFAIT ISI that Mr. Elmaati had been transferred to Egypt. A senior consular affairs official told the Inquiry that the delay could be attributed to a number of factors, including delays inherent in top secret communications between ISI and the Consular Affairs Bureau or the fact that DFAIT was awaiting confirmation of the transfer from Syrian authorities (confirmation that was received on April 4, 2002).

137. DFAIT sent three diplomatic notes to the Egyptian authorities in March and April 2002. From May through July, the Canadian Embassy in Cairo intensified its efforts, sending four more diplomatic notes, making several follow-up phone calls and meeting with Egyptian officials. At the same time, DFAIT kept Mr. Elmaati's family informed of its efforts and provided Badr Elmaati, Mr. Elmaati's father, with a list of Egyptian lawyers at his request. When DFAIT received confirmation of Mr. Elmaati's detention on August 4, 2002, it immediately wrote a letter requesting consular access. Mr. Elmaati received his first consular visit on August 12.

138. Although DFAIT's efforts to ascertain Mr. Elmaati's location in Egypt were more vigorous than they had been in Syria, I am troubled by the length of time that elapsed before DFAIT sent its first diplomatic note to Egypt after learning that Mr. Elmaati had been transferred there. In addition, while DFAIT intensified its efforts after April 2002, I believe the representations it made to the Egyptian authorities could have been made more effectively by increasing the involvement of the Ambassador or more senior DFAIT officials in the representations that were made. For example, the Inquiry found no evidence that, when faced with unanswered diplomatic notes and a refusal by Egypt to admit Mr. Elmaati was being detained, DFAIT took any steps to address the issue beyond the level of its consular officials in Egypt and the Consular Affairs Bureau.

139. I am also troubled by the language used in DFAIT's diplomatic note to Egypt dated July 17, 2002, in which it advised the Egyptian government that the RCMP was planning to request access to Mr. Elmaati through the Egyptian police "in order to further a major investigation in Canada." At the time of this diplomatic note, DFAIT did not know who was holding Mr. Elmaati or under what conditions. By advising the Egyptian authorities that the RCMP was interested in interviewing Mr. Elmaati to further "a major investigation" in Canada, DFAIT created a risk that it would be seen by the Egyptian authorities to be acting on behalf of the RCMP, and that access by law enforcement was at least as important as, if not more important, than obtaining consular access.

140. In finding that DFAIT's consular efforts should have been more robust, I note the evidence of DFAIT consular officials who were aware of Egypt's problematic human rights record and who knew that the most serious abuse of detainees often occurs during the early stages of detention. A senior Consular Affairs Bureau official told the Inquiry that, in light of the long delay between Mr. Elmaati's transfer to Egypt in January and the granting of consular access in August, his working assumption at the time was that Mr. Elmaati was being tortured. In addition, DFAIT ISI received information in July 2002 that, in its view, suggested that Mr. Elmaati had been tortured during interrogation in Egypt. Although the senior Consular Affairs Bureau official could not recall whether ISI shared the memorandum with him, in light of his working assumption at the time, he was not surprised by the suggestion that Mr. Elmaati was being tortured in Egypt. The Inquiry obtained no information to suggest that DFAIT made any specific inquiries in response to the information that Mr. Elmaati had been tortured in Egypt.

141. It was submitted that, in light of the fact that Egypt did not acknowledge Mr. Elmaati's detention until August 2002, any delay by the Consular Affairs

Bureau would not, in any event, have had any impact on Mr. Elmaati's case. I find myself unable to agree with this submission. It is impossible to know, without the participation of Egypt, whether earlier and more intense efforts by DFAIT would have prompted an earlier confirmation of his detention or affected his treatment in the interim. As I have stated above, I believe it is reasonable to infer that consular efforts do make a difference in cases where Canadians are detained abroad.

Did DFAIT make consular visits sufficiently frequently?

142. Once consular officials make contact with a detained Canadian, the *Manual of Consular Instructions* directs them to provide a number of services. These include: visiting and maintaining contact with the prisoner; attempting to obtain case-related information; providing available information on local judicial and prison systems; liaising with local authorities in order to seek regular access to the prisoner; verifying that the conditions of detention are at least comparable to the best standards applicable to nationals of the country of incarceration; obtaining information about the status of the prisoner's case; and encouraging local authorities to process the case without unreasonable delay. The Manual also states that the frequency of consular visits will vary depending on the location of the prison, the conditions within the prison, the number of Canadians incarcerated, as well as the size of the consular staff and competing priorities at the Canadian mission.

143. According to the Attorney General's submissions on standards, DFAIT will strive for greater frequency of visits at the outset of incarceration where there may be concerns about a country's human rights record and the conditions of detention. Similarly, several witnesses told the Inquiry that it was generally recognized among DFAIT officials that the normal interval between consular visits was three months, with more frequent visits in the beginning. I accept the evidence of these witnesses that, despite a more intense effort in the beginning, the standard practice appears to be that consular visits with detained Canadians should ordinarily occur every three months.

144. During the time that Mr. Elmaati was detained in Egypt, he received eight consular visits. He received his first three consular visits between August 12 and September 11, 2002 and his next three between November 18, 2002 and February 27, 2003. During this period, DFAIT acted diligently and promptly in conducting consular visits and providing other forms of assistance to Mr. Elmaati and his family, such as arranging for family visits and legal representation.

145. Between February and September 2003, however, for a period of seven months, Mr. Elmaati received no visits at all from any consular official. In my view, this seven-month gap in consular visits was too long, and DFAIT's failure to provide consular visits during this period was deficient in the circumstances.

146. I acknowledge that Mr. Elmaati was visited by his family during this period, a fact that may mitigate somewhat the harm caused by the lack of a consular visit. But family visits are not a substitute for regular consular visits. Family members are not representatives of the Canadian government and are not in a position to advise the detainee of his or her rights to consular and other forms of assistance.

147. I also acknowledge the submission of the Attorney General that the delay in consular visits was affected by two events—the outbreak of war in the Middle East, which the Attorney General submitted encroached on consular resources, and the regular rotation of DFAIT staff posted overseas in May through July. But Mr. Elmaati's was a serious case—the first Canadian citizen to be detained in the Middle East on security grounds following 9/11—that required serious attention. By the time the seven-month gap in consular visits began, Mr. Elmaati had been detained for more than a year. DFAIT had received information suggesting he had been tortured. Despite the outbreak of war in the Middle East and the rotation of Embassy officials, it should have been possible for DFAIT to provide at least one consular visit in seven months. DFAIT must bear responsibility for ensuring that sufficient resources are in place so that consular efforts can be made in a timely way without significant interruption.

Were consular officials adequately trained to assess whether Mr. Elmaati was being mistreated?

148. As I discuss in detail in Chapter 3, paragraphs 103 to 107, during the relevant time period, consular officials did not receive training to assess whether Canadians detained abroad had been subjected to torture or other mistreatment. Both consular officials who visited Mr. Elmaati stated that they had received no training in assessing whether detainees had been mistreated. In addition, neither consular official recalled having received any briefings on human rights in Egypt.

149. While acknowledging they had not received training to assess whether Mr. Elmaati was being mistreated, the two consular officials stated that when they visited Mr. Elmaati they considered several indicators to determine whether Mr. Elmaati was being treated well. The consular official who visited Mr. Elmaati during the first August 2002 visit said that he assessed several aspects of

Mr. Elmaati's physical appearance. He noted that Mr. Elmaati did not appear to be suffering from malnutrition, did not have any scars or bandages, spoke rationally, and was coherent. In the consular official's view, Mr. Elmaati was fine. According to the consular official who carried out the visits following the seven month gap, there were no indications that Mr. Elmaati was mistreated. He stated that Mr. Elmaati provided consular officials with information about the conditions of his incarceration. In the official's view, there were no clues from that information that there was anything out of the ordinary.

150. In his report, Justice O'Connor recommended that consular officials posted to countries that have a reputation for abusing human rights should receive training on conducting interviews in prison settings in order to be able to make the best possible determination of whether torture or harsh treatment has occurred. I agree with this finding. As set out in Chapter 7, Mr. Elmaati told the Inquiry that while he was being detained in Egypt he felt that he had no choice but to tell consular officials that he was being treated well because the Egyptian officials were in the room and could hear and understand what was said. In my view, the consular officials who visited Mr. Elmaati would have been less likely to assume he was being well-treated if they had been properly trained to detect signs of mistreatment.

151. In response to Justice O'Connor's recommendation, DFAIT revised a workshop presentation entitled "Torture and Abuse Awareness," which had originally been developed in 2004. According to DFAIT, the publication is designed to educate consular officials about the protocols for dealing with cases of torture and abuse and to ensure these protocols are followed. While it is beyond the scope of my mandate to assess whether DFAIT's publication has had widespread application or proven to be a useful tool in detecting torture abroad, the establishment of this training program is consistent with my conclusion about the essential nature of this training.

Should the consular officials have asked for private visits with Mr. Elmaati?

152. During the time that Mr. Elmaati was detained in Egypt, there was no DFAIT policy that instructed or required consular officials to request private visits with individuals being held in detention. Neither of the officials who visited Mr. Elmaati in Egypt ever requested a private visit with him, and no private visits occurred. Both officials told the Inquiry that, in their experience, a prison official was always present when they made consular visits in other countries, and they never expected that Egypt would be any different.

153. One of the consular officials recalled several instances when security officials were sufficiently distracted or temporarily absent, and when Mr. Elmaati would have had the opportunity to convey information that he felt he was unable to provide in the presence of prison officials. However, as discussed at Chapter 7, paragraphs 84, 87 and 104, Mr. Elmaati's recollection was that he was never alone with Canadian consular officials while in detention in Egypt and did not feel that he ever had the opportunity to share this information. In my view, it is understandable that an individual being held and tortured by Egyptian authorities would not be very forthcoming about his complaints in the presence of Egyptian officials. Even if the evidence of the consular official indicates that the prison guards briefly stepped out of the room, I accept Mr. Elmaati's evidence that he did not feel he had the opportunity to share this information during the visit with consular officials.

154. The Director General of DFAIT's Consular Affairs Bureau in 2003 told the Arar Inquiry that a consular official visiting a detainee in a country with a record of torture should ask prison officials to visit the Canadian detainee in private. He initially adopted this view in his evidence before this Inquiry, but subsequently provided a clarification expressing a somewhat different view. Two witnesses from DFAIT ISI told this Inquiry that, earlier in their careers, when each occupied consular postings, they had adopted a practice of always requesting to speak with a Canadian detainee alone. According to one of these officials, it had to be assumed that answers might well be conditioned by the presence of someone else in the room. While one of these officials never had his requests refused, the other official told the Inquiry that his requests were never granted.

155. In my view, DFAIT should have directed its consular officials when visiting Mr. Elmaati to ask for a private visit with him in order to most effectively assess whether he was being mistreated. I appreciate that Egyptian authorities might not have permitted Canadian consular officials to meet with Mr. Elmaati alone. But in light of the length of time it had taken for Egyptian authorities to grant consular access to Mr. Elmaati and the information DFAIT had earlier received suggesting he had been tortured in Egypt, DFAIT should have instructed its officials to ask to meet with Mr. Elmaati alone.

Failure to advise the Minister that Mr. Elmaati might have been tortured in Syria and Egypt

156. As described in detail in Chapter 4, paragraphs 202 to 209, on August 12, 2002 Mr. Elmaati told consular officials, during his first consular visit in Egypt, that he had been tortured while in detention in Syria. The Canadian consul

wrote a detailed report of this meeting that was shared with the Consular Affairs Bureau, ISI, CSIS and the RCMP. According to a DFAIT witness, there was no protocol in place at the time for dealing with allegations of torture. The Consular Affairs Bureau official who received the report stated that she made her superiors aware of Mr. Elmaati's allegations of torture and believed that they would take them up with others at DFAIT. The Inquiry found no evidence that this information was shared with any others at DFAIT. DFAIT did not brief the Minister of Foreign Affairs on Mr. Elmaati's allegations of torture.

157. Justice O'Connor stated in his report that:

> Torture is a grave abuse of human rights. Decisions on how to address serious concerns about a Canadian being tortured must be made in a manner that will ensure as much transparency and political accountability as possible. The Minister of Foreign Affairs is, in my view, the appropriate person to inform in all cases where there is credible information that a Canadian detained abroad is being or has been tortured.[5]

158. I agree with this recommendation. It is regrettable that DFAIT did not inform the Minister of Mr. Elmaati's allegations that he had been tortured in Syria. Mr. Elmaati's case was particularly important because, as stated above, he was the first Canadian citizen detained abroad on security-related grounds following 9/11. In addition, his allegations were relevant to the security of other Canadian citizens detained in Syria. At the time that Mr. Elmaati made these allegations, Mr. Almalki was already detained in Syria and Mr. Arar would come to be detained in Syria less than two months later. Even after Mr. Arar was detained and his case was being dealt with at the ministerial level, the Minister was not informed of Mr. Elmaati's allegations.

Should DFAIT officials have repeatedly asked Mr. Elmaati if he would be willing to meet with CSIS and the RCMP?

159. On almost every occasion that consular officials visited Mr. Elmaati while in detention in Egypt, they asked him whether he would be willing to meet with officials from CSIS and the RCMP. According to witnesses from DFAIT, they put the question to Mr. Elmaati (1) in an attempt to move his case forward and not at the behest of CSIS or the RCMP; and (2) because Mr. Elmaati had himself stated during his first consular visit that there were certain aspects of his detention that he would only discuss with CSIS or the RCMP back in Canada.

160. Counsel for the individuals submitted that it was not appropriate for consular officials to continue to press Mr. Elmaati about meeting with CSIS and

[5] Arar Inquiry, *Analysis and Recommendations*, p. 353.

the RCMP. According to their submissions, doing so created the appearance that consular officials were taking on an enforcement role that was better left for CSIS or the RCMP. The Attorney General, on the other hand, submitted that consular officers were neither relaying messages on behalf of either CSIS or the RCMP, nor attempting to arrange an interview with Mr. Elmaati to further a law enforcement or national security investigation.

161. I agree with the submissions of counsel for the individuals. While I accept the evidence from DFAIT officials that they were not asking the question at the behest of CSIS or the RCMP, they nonetheless created the appearance that they were acting as agents of CSIS and the RCMP. Mr. Elmaati told the Inquiry that he thought consular officials should have been more concerned about his well-being than whether he was willing to meet with a Canadian security official. Based on all the evidence before me, I accept that consular officials were concerned about Mr. Elmaati's well-being. However, it is reasonable to conclude that their actions, despite their genuine concern, likely communicated the wrong message.

162. In his submissions on standards, the Attorney General stated that DFAIT is obliged to ensure that any conflict between consular and policing/security programs is avoided both in reality and appearance. I agree. By repeatedly asking Mr. Elmaati whether he would be willing to meet with a member of the RCMP or CSIS, consular officials appeared to be acting on behalf of the RCMP and the Service and in conflict with their consular responsibilities. As set out in paragraph 139 above, when DFAIT communicates a message concerning the RCMP, it creates a risk that it will be seen to be acting on its behalf.

163. The Attorney General submitted that DFAIT is responsible for all matters relating to Canada's external affairs. This includes playing a role in assisting its security and policing partners when such matters extend beyond Canada's borders. According to the Attorney General, the head of mission is responsible for supervising official activities of the Canadian government abroad. For example, the Attorney General submitted, it is as much a part of the head of mission's role to seek consular access as it is to assist in arranging for CSIS or RCMP questions. I accept the Attorney General's submissions about the head of mission and agree that he or she must be a representative of the Government at large. However, I note the concern expressed by Justice O'Connor in the Arar Inquiry report that the ambassador's role as representative of all Canadian departments and agencies may put him or her in a difficult position of conflict. As I discuss in Chapter 12, paragraphs 59 to 61, I recognize that DFAIT's mandate extends beyond the provision of consular services and may include the provision of

assistance to CSIS and the RCMP in appropriate circumstances. However, I believe care must be taken to ensure that this kind of assistance does not conflict with DFAIT's consular role. This is particularly important in countries such as Egypt, with a well-known record for human rights abuses, where detainees face a serious risk of being mistreated, and the need for consular assistance is acute.

Was sharing consular information with CSIS and the RCMP deficient?

164. On several occasions during Mr. Elmaati's detention in Egypt, DFAIT shared consular information with members of CSIS and the RCMP. The first report containing consular information that was shared was the August 12, 2002 report regarding Mr. Elmaati's first consular visit in Egypt, when he alleged that he had been tortured in Syria. Following disclosure of this first report, CSIS sent a written request to DFAIT, through ISI, requesting copies of the consular reports from visits with Mr. Elmaati or, if those were not available, any summaries or assessments of those reports. DFAIT shared five other consular reports with CSIS and one report with the RCMP. The report sent to the RCMP and three of the reports sent to CSIS contained personal information about Mr. Elmaati that had been obtained by DFAIT officials in the course of providing consular visits to Mr. Elmaati in the fall of 2002. Aside from the sharing of these documents, over the course of Mr. Elmaati's detention in Egypt, DFAIT provided consular information to CSIS through informal discussions between consular officials in Cairo and representatives of the Service.

165. As described in detail in Chapter 3, paragraphs 110 to 114, information regarding individual Canadians gathered by consular personnel in the performance of their duties is confidential, subject to the provisions of the *Privacy Act*. The *Manual of Consular Instructions* in force at the time specifically directed that such information was not to be disclosed to representatives of CSIS or the RCMP, unless the person to whom the information related had given consent. Similarly, DFAIT's *Guide for Canadians Imprisoned Abroad* states that any information given by a Canadian detainee to a Canadian consular official will not normally be passed on to anyone, other than the consular officials concerned with the case, without the detainee's permission.

166. The Attorney General submitted that the information was shared because these cases engaged issues of national security, because sharing would promote inter-departmental communication and coordination, and because DFAIT believed sharing this information would prove helpful to Mr. Elmaati. I was told that the *Privacy Act* allows sharing for these reasons provided certain administrative steps are completed.

167. The *Privacy Act* provides for certain exceptions to the confidentiality of consular information where (1) the person to whom the information relates consents; (2) the public interest in disclosure clearly outweighs any invasion of the person's privacy; (3) disclosure would clearly benefit the individual to whom the information relates; or (4) an investigative body such as CSIS or the RCMP requires the information for the purpose of enforcing any law of Canada, and makes a written request to DFAIT.

168. The violation of an individual's privacy rights through the sharing of consular information is a serious matter. While the sharing of consular information could be necessary in certain circumstances, it is important to have a clear process to govern any sharing of information. In my view, as set out below and as acknowledged by the Attorney General, the disclosures that occurred in this case did not fall within the exceptions set out in the *Privacy Act*.

The consent exception

169. Mr. Elmaati was not informed that the information that he provided to consular officials during these consular visits would be shared with the RCMP or CSIS and accordingly did not give his consent to any of the disclosures. In fact, and as discussed above, on several occasions Mr. Elmaati was asked by consular officials whether he would like to speak with the RCMP or CSIS and he expressly declined to do so.

The public interest exception

170. I received no evidence that disclosure was in the public interest or even thought to be in the public interest. While the prevention of a terrorist attack in Canada would justify resort to the public interest exception, I heard no evidence that the consular information was shared for that purpose. In addition, to rely on the public interest exception would have required a balancing between that interest and the invasion of Mr. Elmaati's rights. I heard no evidence from any DFAIT witnesses that they engaged in any balancing of these kinds of public interests against Mr. Elmaati's interests before disclosing this information. In addition, I note that DFAIT did not notify the Privacy Commissioner of its intention to disclose Mr. Elmaati's personal information pursuant to the public interest exception, as it is required to do under the *Privacy Act*.

The benefit to the individual exception

171. A senior Consular Affairs Bureau official told the Inquiry that in October 2002 the Consular Affairs Bureau came to an arrangement with ISI regarding the sharing of consular information. According to the senior official, DFAIT would

share the information with CSIS or the RCMP only if it considered it helpful to the individual involved to do so.

172. When an individual is detained in a foreign country and must rely on consular officials for assistance, the disclosure of information obtained within the confines of that consular relationship must only occur after careful consideration of all the consequences. To justify reliance on the exception in the *Privacy Act* for disclosure that was for Mr. Elmaati's benefit, DFAIT should have considered the potential benefit and potential consequences for Mr. Elmaati each time it made a decision to share reports with CSIS and the RCMP. In this case the evidence before me does not indicate that both the benefits for and consequences to Mr. Elmaati were adequately considered before consular information about him was shared. For example, DFAIT did not make any efforts to redact or otherwise limit the information that it shared about Mr. Elmaati but simply provided entire consular reports. I am not satisfied that all of the personal and confidential information contained in these reports needed to be shared for the benefit of Mr. Elmaati.

173. Furthermore, there is no evidence that when, as discussed above at paragraph 164, DFAIT provided consular information to CSIS through informal discussions between consular officials and representatives of the Service, it did so for the benefit of Mr. Elmaati. I received no evidence that these disclosures were preceded by any consideration or discussion within DFAIT. There appear to have been no discussions about how the information was obtained, whether it was subject to the confidentiality requirement, or whether DFAIT was required to take other steps before disclosing it. One of these consular officials told the Inquiry that he did not consult with DFAIT headquarters before orally disclosing the information to CSIS because he had asked in the past, had noticed that headquarters was allowing other agencies to view consular information, and therefore did not see anything wrong in it. This same official acknowledged that, in retrospect, consular information should not have been shared.

The law enforcement exception

174. Although some of the consular reports discussed above were shared by DFAIT with CSIS following a brief written request from CSIS, in my view, as the Attorney General acknowledges, this request was not adequate to justify DFAIT's sharing of information under this exception. In any event, neither the sharing of the August 2002 consular report with CSIS, nor the sharing of the August 2002 and November 2002 reports with the RCMP, nor the informal dis-

cussions that took place between consular officials in Cairo and representatives of the Service, were carried out pursuant to the written request.

175. I note that, starting in late 2003, DFAIT began to make changes to its information-sharing practices with a view to complying with the requirements of the *Privacy Act*. Among these changes, the Director General of the Consular Affairs Bureau prohibited the sharing of CAMANT notes with anyone other than consular staff. As well, re-stated guidelines for consular officials now emphasize the importance of consular confidentiality, and provide information regarding what may be shared, with whom and in what circumstances.

176. While responsibility for the protection of confidential consular information belonged primarily to DFAIT, the recipient agency might bear some responsibility in situations where it requested information that it knew or ought to have known was confidential. I accept the submission of the Attorney General that CSIS' mandate requires it to accept, and consider, any information that is provided to it. And I recognize that it might not be consistent with this mandate for CSIS officials to reject unsolicited information provided by DFAIT, even though that information might be confidential. However, where CSIS wishes to actively seek out information that might be subject to consular confidentiality, the *Privacy Act* requires that the request be made in writing. While this procedure might not be practical in all cases (for example, in cases where the CSIS official does not know that a request seeks confidential information, or in cases where the information is being sought in connection with the investigation of an imminent threat), it should be followed whenever reasonably possible.

177. In this case, the Service sent a request for the written consular reports to ISI. It would therefore not have been difficult or impractical for CSIS to have made all requests in writing, rather than making informal requests of consular officials in Cairo. By making requests informally, the Service circumvented a process whereby officials in DFAIT would have had sufficient time to consider the request and provide a response in accordance with DFAIT policies about confidential information, and instead created an atmosphere of pressure for the consular officials.

12

FINDINGS REGARDING THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO ABDULLAH ALMALKI

Overview

1. Abdullah Almalki, a dual Canadian-Syrian citizen, travelled to Syria in May 2002. The purpose of his trip, according to Mr. Almalki, was to visit his ill grandmother. When he arrived at the airport, he was immediately taken into Syrian custody, where he would remain for 22 months. While in Syrian detention, Mr. Almalki was held in degrading and inhumane conditions, interrogated and mistreated. Though he was visited periodically by family and friends, Mr. Almalki did not receive any consular visits during his 22-month detention. I have described the actions of Canadian officials with respect to Mr. Almalki in Chapter 5, and summarized Mr. Almalki's evidence about mistreatment in Syria in Chapter 8.

2. In this chapter, I set out my findings concerning the actions of Canadian officials as they related to Mr. Almalki. I will first provide an overview before setting out in more detail my findings and the basis on which they are made. For the reasons discussed in Chapter 2, my findings are directed to the actions of the institutions of the Government of Canada. It is neither necessary nor appropriate that I make findings concerning the actions of any individual Canadian official, and I do not do so.

3. The Terms of Reference call upon me, first, to consider whether the detention of Mr. Almalki resulted directly or indirectly from actions of Canadian officials and, if so, whether those actions were deficient in the circumstances. For the reasons I set out below, I find myself unable to determine, on the record available to me, whether or not the actions of Canadian officials likely contributed to, and therefore indirectly resulted in, Mr. Almalki's detention in Syria. While it is possible that information shared by Canadian officials might

have contributed in some way to the decision by the Syrian authorities to detain him, in my judgment that possibility does not meet the threshold of likelihood required for me to infer an indirect link. Below, I nonetheless identify and comment on three actions that raise concerns for me: the RCMP's description of Mr. Almalki as an "imminent threat," the RCMP's description of Mr. Almalki as an "Islamic extremist," and the sharing of the RCMP's Supertext database with U.S. authorities.

4. The Terms of Reference also call upon me to consider whether any mistreatment of Mr. Almalki resulted directly or indirectly from actions of Canadian officials and, if so, whether those actions were deficient in the circumstances. Before making any findings in this regard, it was necessary for me to determine whether Mr. Almalki was mistreated in Syria. Based on a careful review of the evidence available to me, I conclude below that, while in Syrian detention, Mr. Almalki suffered mistreatment amounting to torture. I go on to assess several actions of Canadian officials in the period leading up to his detention, and during his detention in Syria, and conclude that two of these actions—the sharing of the RCMP's Supertext database, and the sending of questions to Syria to be posed to Mr. Almalki—resulted indirectly in mistreatment of Mr. Almalki and were deficient in the circumstances.

5. Finally, the Terms of Reference direct me to consider whether there were any deficiencies in the actions of Canadian officials to provide consular services to Mr. Almalki in Syria. Below I examine five aspects of the consular efforts made in Mr. Almalki's case. I examine the steps that DFAIT took to communicate information about Mr. Almalki's detention within the department, and DFAIT's initial efforts to provide Mr. Almalki with consular assistance, and conclude that DFAIT failed to act sufficiently promptly after learning that Mr. Almalki was in custody in Syria. I also examine the representations that DFAIT made to Syrian officials with a view to obtaining consular access to Mr. Almalki during several periods of Mr. Almalki's detention. I conclude that DFAIT failed to make effective representations to obtain consular access to Mr. Almalki during the period from August 2002 to November 2003, but made reasonable efforts thereafter. I then turn to examine the extent to which DFAIT officials considered Syria's human rights record, and the possibility of torture, when carrying out their consular duties with respect to Mr. Almalki. I conclude that DFAIT failed to sufficiently consider the possibility that Mr. Almalki might be mistreated in custody. Finally, I address the disclosure by DFAIT officials of information collected in the course of providing consular assistance to Mr. Almalki, and conclude that in one instance DFAIT should not have disclosed information to CSIS officials.

Did the detention of Mr. Almalki result directly or indirectly from actions of Canadian officials and, if so, were those actions deficient in the circumstances?

Did the detention of Mr. Almalki result directly or indirectly from actions of Canadian officials?

6. In large part because the Inquiry has not had access to the information that Syrian, U.S. and Malaysian authorities could have provided, I find myself unable to determine, on the record available to me, whether or not the actions of Canadian officials likely contributed to Mr. Almalki's detention in Syria. Mr. Almalki's circumstances in this respect are different from those of Mr. Elmaati and Mr. Nureddin. Both Mr. Elmaati and Mr. Nurredin began their trips to Syria from Canada, were interviewed by Canadian officials at the airport before they left, and had their travel itineraries shared by Canadian officials with U.S. agencies. In contrast, Mr. Almalki travelled to Syria from Malaysia, where he had been living for over four months, and Canadian officials were not aware that he intended to travel to Syria. Canadian officials did not learn until late May 2002 that Mr. Almalki had left Malaysia and that he might be in Syria. It is possible that information shared by Canadian officials, as discussed in the paragraphs below, might have contributed in some way to the decision by the Syrian authorities to detain him. But, in my judgment, that possibility does not meet the threshold of likelihood required for me to infer that the actions of Canadian officials resulted in Mr. Almalki's detention.

Comments on the actions of Canadian officials during the period leading up to Mr. Almalki's detention in Syria

7. As discussed above in Chapter 10, I do not believe that, having been unable to find that Mr. Almalki's detention in Syria resulted, directly or indirectly, from actions of Canadian officials, I am precluded from commenting on the nature and quality of the actions of Canadian officials during the period leading up to Mr. Almalki's detention.

8. Below I comment on three instances of Canadian officials sharing information about Mr. Almalki with U.S. and other foreign agencies prior to his detention. In these instances, Canadian officials shared information about Mr. Almalki without in all cases (1) taking steps to ensure that it was accurate and properly qualified; (2) attaching necessary caveats; and (3) considering the potential consequences for Mr. Almalki.

The RCMP's description of Mr. Almalki as an "imminent threat"

9. First, in a letter to law enforcement officials in Syria dated October 4, 2001, the RCMP suggested that Mr. Almalki was linked through association to al-Qaeda and engaged in activities that posed an "imminent threat" to the public safety and security of Canada. While the October 4 letter did not explicitly describe Mr. Almalki this way, it was sent as a follow-up to the RCMP's September 29 letter to law enforcement officials in Syria (see Chapter 4, paragraphs 16 to 17), which said that the RCMP had received "current and believed reliable information" that various individuals linked through association to al-Qaeda, not including Mr. Almalki, were engaged in activities that posed an "imminent threat" to the public safety and security of Canada. The October 4 letter referred to the September 29 letter and stated that the RCMP was striving to provide Syrian officials with the information required to conduct complete verification of the subjects identified in the RCMP's September 29 letter. It went on to provide information about several individuals, including Mr. Almalki.

10. In my view, a reasonable recipient of the October 4 communication would conclude based on the chain of communications that the RCMP considered Mr. Almalki to be among the group of individuals who posed an "imminent threat."

11. The RCMP appears to have described Mr. Almalki in this way without taking steps to ensure that the description was accurate or properly qualified. The descriptions "linked through association to al Qaeda" and "imminent threat" did not originate in the RCMP's own investigation; in fact, the RCMP's investigation of Mr. Almalki and his business activities did not begin in earnest until October 5, 2001. The descriptions appear to have originated from another source; however, this source used these descriptions in respect of other individuals, and not in respect of Mr. Almalki.

12. The words "imminent threat" in particular were inflammatory, inaccurate, and lacking investigative foundation. While it is outside of my mandate to draw conclusions about the accuracy of Canadian officials' investigative conclusions, I can say that even if all of the officials' suspicions about Mr. Almalki were correct (that is, that Mr. Almalki engaged in procurement activities for al-Qaeda), the label "imminent threat" would not have been.

13. The RCMP applied and shared the descriptions "linked through association to al Qaeda" and "imminent threat" without adequately considering the potential consequences for Mr. Almalki. The description was shared at a time that made it particularly serious for Mr. Almalki—it was sent less than one month

after the events of September 11, 2001, when governments around the world were under intense pressure to cooperate and collaborate in the U.S.' "war on terror." Several witnesses told the Inquiry that U.S. agencies were exerting pressure on intelligence and law enforcement agencies everywhere to detain and question individuals who might in some way be implicated in or supportive of another round of attacks. At this time, being labelled a member or associate of al-Qaeda potentially entailed serious consequences for an individual's rights and liberties.

14. The RCMP Operational Manual in effect at the time required RCMP members to consider the human rights record of a country before sharing information with the country's government. RCMP officials were aware, or should have been aware, of Syria's reputation for serious human rights abuses, particularly against individuals detained on security-related grounds. Officials should have considered that describing a dual Syrian-Canadian citizen as an "imminent threat" in a communication to Syrian police might expose that individual to the risk of being detained and mistreated in Syria if he were to travel there.

15. Yet there is no evidence that the RCMP considered these factors before sending to Syria a letter describing Mr. Almalki as linked to al-Qaeda and engaged in activities that posed an imminent threat to Canada. The letter was sent without any discussion with or approval by more senior RCMP members or RCMP headquarters. The letter was sent on the basis that it was necessary to send it to exhaust all avenues of investigation with the countries covered by the Rome office. Even when RCMP headquarters became aware that the letter had been sent, it did not raise the issue of human rights or the possibility of adverse consequences befalling Mr. Almalki or other individuals named in the letter.

16. I should note that the RCMP followed its policy on the control of information by attaching a written caveat to the letter sent to Syria. However, the inclusion of caveats did not relieve the RCMP of its obligations to test the accuracy of information before sending it to foreign agencies and to consider potential adverse consequences for the individual involved. I reiterate what I said above in my findings regarding the actions of Canadian officials in relation to Mr. Elmaati: caveats are not a panacea; their inclusion does not guarantee that information will not be shared in breach of those caveats. Therefore, the inclusion of caveats does not detract from the need for agencies such as the RCMP to use care in describing individuals in their dealing with others, and to consider the consequences that might arise if an individual is mis-described.

The RCMP's description of Mr. Almalki as an "Islamic extremist"

17. Second, in an October 2001 letter to the U.S. Customs Service, Project A-O Canada described Mr. Almalki as an "Islamic extremist individual suspected of being linked to the Al Qaeda terrorist movement," and requested that U.S. Customs issue TECS checks and lookouts on him. The description was provided without a written caveat. A copy of the RCMP's letter to the U.S. Customs Service was also included on the CDs provided to U.S. agencies in April 2002 (discussed below at paragraphs 22 to 24).

18. The RCMP formulated this description without taking adequate measures to ensure that it was accurate, reliable or properly qualified. The RCMP appears to have formulated the description primarily based on information from other foreign and domestic agencies. By October 31, 2001, when the description was sent, the RCMP had done very little of its own investigative work to verify or support the description. Furthermore, the information that the RCMP apparently relied on to formulate this description did not describe Mr. Almalki as an "Islamic extremist individual," but indicated only that he was believed to be engaged in procuring equipment on behalf of Islamic extremists. The difference between qualifying a description as being believed, suspected or alleged, and stating a description as a matter of fact or as a foregone conclusion is significant. I am not prepared to assume that words do not carry meaning.

19. In providing this description to the U.S. Customs Service in late October 2001, the RCMP also failed to give adequate consideration to the potential consequences for Mr. Almalki. Justice O'Connor, when considering the same description used in respect of Mr. Arar and his wife Dr. Mazigh, found that the description, and the context in which it was provided to U.S. authorities, created a serious risk for Mr. Arar. He wrote:

> Branding someone an Islamic extremist is a very serious matter, particularly in the post-9/11 environment, and even more so when it is done in information provided to American agencies investigating terrorist threats. In the world of national security intelligence and counter-terrorism, anyone viewed as an Islamic extremist is automatically seen as a serious threat in regard to involvement in terrorist activity.
>
> ...
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> The [letter to the U.S. Customs Service was] sent at a time that made the consequences particularly dangerous to those named: not even two months after 9/11 and two weeks after the invasion of Afghanistan in pursuit of al-Qaeda. It was obvious to Canadian investigators that the threshold for taking steps that might be very intrusive to an individual's rights and liberties was lower for American authorities

> involved in counter-terrorism investigations than for their Canadian counterparts. A number of witnesses at the [Arar] Inquiry testified that Canadian officials were aware of the U.S. authorities' propensity to deal with anyone suspected of terrorist links, particularly Muslim or Arab men, in ways that were different from what Canadian authorities would do in similar situations, ways that would be unacceptable under Canadian law.[1]

Justice O'Connor also noted that the description provided to the U.S. Customs Service was for a lookout to be placed in TECS, an information and communication system to which more than 30,000 U.S. officials had access.[2]

20. The RCMP also failed to attach a written caveat to its October 31 letter to the U.S. Customs Service, creating a risk that the unqualified description of Mr. Almalki as an "Islamic extremist" could be passed on to other U.S. agencies, and to foreign governments, without the RCMP's consent.

21. In his final submissions to this Inquiry, the Attorney General argued that American authorities had reached their own conclusions about the profile of Mr. Almalki before Canadian agencies became involved. He argued that the description of Mr. Almalki provided to the U.S. Customs Service in the RCMP's October 31 letter did not contain new information, and that "American agencies had already generated it." If this were the case (and without the participation of the U.S. it is impossible to know for certain), I do not agree that it would render the RCMP's conduct appropriate. The fact that American agencies might have been generating, and communicating to Canadian officials descriptions of Mr. Almalki that might have been inflammatory, unqualified, and potentially inaccurate would not mean that Canadian officials should send similar communications to American officials. If anything, Canadian officials had a responsibility to correct any faulty descriptions, and communicate these corrections to their American counterparts.

Sharing of the RCMP's Supertext database with U.S. agencies

22. Third, in April 2002, one month before Mr. Almalki was arrested by Syrian authorities, the RCMP's Project A-O Canada provided U.S. agencies with three CDs containing the RCMP's Supertext database. The CDs were provided without written caveats. The Supertext database contained a considerable amount of material related to Mr. Almalki, including documents that had been seized

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[1] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006), pp.. 115–116 [Arar Inquiry, *Analysis and Recommendations*].

[2] Arar Inquiry, *Analysis and Recommendations*, pp. 116–117.

during the January 22, 2002 search of Mr. Almalki's residence (such as email messages and business-related invoices) and other documents related to Project A-O Canada's investigation of Mr. Almalki. Examples of these documents are listed in Chapter 5, paragraphs 37 to 38.

23. Justice O'Connor made extensive findings about the sharing of the Supertext database. He found that: (1) the written information on the CDs should not have been provided to U.S. agencies without written caveats; (2) the portion of the documents not related to the searches should have been reviewed for relevance, reliability and personal information; and (3) third-party materials to which caveats were attached, such as letters received from CSIS and documents received from Canada Customs, should not have been transferred without the originators' consent.[3] Justice O'Connor found that the sharing of information with U.S. agencies in this way reflected Project A-O Canada members' understanding that "caveats were down" post-September 11, 2001: Project A-O Canada members understood that RCMP officers at "A" Division and RCMP Criminal Intelligence Directorate (CID) had authorized them to conduct an "open-book investigation" in cooperation with CSIS and the American agencies.[4] As discussed above in Chapter 3, paragraph 77, Justice O'Connor found that this departure from established policies with respect to screening and the use of caveats was not justified. These findings are consistent with the evidence that I have reviewed. I adopt them for the purpose of this Inquiry.

24. I should add that the Supertext database was transferred without adequate consideration of the consequences for Mr. Almalki. The failure to attach caveats to the database created a risk that it would be shared with other foreign agencies. The RCMP knew, at the time it shared the database with U.S. agencies, that some foreign agencies had an intense interest in Mr. Almalki. One foreign agency had, several months earlier, asked for the RCMP's assistance in arresting Mr. Almalki on his way home from Malaysia and in putting pressure on Malaysian authorities to arrest Mr. Almalki and extradite him to Syria. The foreign agency specifically asked the RCMP if it would supply RCMP investigative material that would assist the foreign agency in convincing Malaysian authorities to make the arrest. The RCMP also knew, by April 2002, that Mr. Elmaati, also a subject of the Project A-O Canada investigation, had been detained by Syrian officials, apparently at the request of U.S. agencies. The RCMP should have considered these factors before providing such a significant amount of information regarding Mr. Almalki, without express written caveats, to U.S. agencies.

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[3] Arar Inquiry, *Analysis and Recommendations*, pp. 122–124.

[4] Arar Inquiry, *Analysis and Recommendations*, p. 119.

Other information sharing

25. Aside from the three instances of information sharing discussed above, there were other occasions during the period leading up to Mr. Almalki's detention on which Canadian officials shared information about him with foreign intelligence and law enforcement agencies. Starting in the late 1990s, CSIS shared information about Mr. Almalki with various foreign intelligence and law enforcement agencies, including U.S. agencies and Malaysian agencies; in December 2001, the RCMP advised a foreign agency that Mr. Almalki had departed for Malaysia; and in early 2002, CSIS granted a foreign agency permission to share background information regarding Mr. Almalki with Singapore and Bahrain.

26. I have considered these instances of information sharing by Canadian officials, and concluded that they were appropriate in the circumstances. Canadian officials shared the information in circumstances that made it reasonable for them to do so. The information shared was generally properly qualified (using words such as "suspected" or "believed" or phrases such as "reason to believe"), and had been assessed for credibility and accuracy. In all cases, caveats were attached to the information. I am satisfied that, on these occasions, Canadian officials found an appropriate balance between individual liberties and Canada's obligations to share information in the national security context.

Did any mistreatment of Mr. Almalki result directly or indirectly from actions of Canadian officials and, if so, were those actions deficient in the circumstances?

Was Mr. Almalki mistreated in Syria?

27. As I discussed above in my findings regarding Mr. Elmaati, the word "mistreatment" is broader than torture. It includes any treatment that is arbitrary or discriminatory or results in physical or psychological harm, as well as denial of properly entitled assistance and other forms of treatment that would normally be included in the meaning of mistreatment. "Mistreatment" may also include detention itself, where that detention is arbitrary, or where the detainee is held under conditions that cause him serious physical or psychological harm. To the extent that certain actions of Canadian officials directly or indirectly prolonged an individual's detention under such conditions, I will consider these actions to have also resulted directly or indirectly in that individual's mistreatment.

28. The Attorney General acknowledged in his submissions at the hearing on the interpretation of the Terms of Reference that, for the purposes of this

Inquiry, the detention of the three individuals under the conditions prevailing in Syria and, in Mr. Elmaati's case, in Egypt, constituted mistreatment.

29. In my ruling on the interpretation of the Terms of Reference, I determined that it would be both appropriate and important for the Inquiry to try to ascertain whether Mr. Elmaati, Mr. Almalki and Mr. Nureddin suffered mistreatment amounting to torture. The nature and extent of any mistreatment, and whether that mistreatment amounted to torture, is, at a minimum, relevant to whether the actions of government officials were deficient in the circumstances.

30. Article 1 of the United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* sets out the generally accepted definition of torture. It provides that:

> torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

31. Based on a careful review of the evidence available to me, which as I have emphasized does not include information from Syrian authorities, I conclude that, while in Syrian detention, Mr. Almalki suffered mistreatment amounting to torture. Using the words of the *Convention Against Torture*, Syrian officials intentionally inflicted physical and mental pain and suffering on Mr. Almalki in order to obtain information from him. This mistreatment is described in detail in Chapter 8, and I will not repeat that description here.

32. I find Mr. Almalki's account of mistreatment by Syrian officials to be credible. I base this assessment on a number of factors. The most important of these factors are the nature and particularity of the information that Mr. Almalki provided during the thorough interview of him that Inquiry counsel and I conducted, with assistance from Professor Peter Burns, former Chair of the United Nations Committee against Torture, concerning the conditions under which he was detained and the manner in which he was treated while in detention, and his demeanour during the three-day interview. In addition, I am satisfied that Mr. Almalki's account of his experience in Syria has remained largely consistent over time. Notably, the account that Mr. Almalki gave to the

Inquiry is very similar to the account documented by Alex Neve of Amnesty International during the interview of Mr. Almalki that he conducted within months of Mr. Almalki's return to Canada.

33. I have also taken into account in coming to my conclusion the fact that Mr. Almalki's evidence is consistent with the evidence of other individuals who have been held in Syrian detention, including Mr. Elmaati, who told consular officials in August 2002 that he had been tortured while being detained and interrogated at Far Falestin. I cannot accept the submission that there might have been collusion among the three individuals. Though Mr. Almalki and Mr. Elmaati told the Inquiry that they had discussed their experiences with one another, I do not find it surprising or troubling that they would do so. In any event, their accounts are in my view far too detailed, and different in important ways, to support a finding of collusion.

34. I have, in addition, used publicly available reports and other background information concerning the treatment of detainees in Syria as context in assessing Mr. Almalki's account of events.

35. As mentioned in Chapter 2, the Inquiry received certain medical records from Mr. Almalki, which I considered in making my determination. I also considered it desirable to obtain current medical assessments of Mr. Almalki from a psychologist and a psychiatrist retained by the Inquiry. While I recognize the limitations of these kinds of assessments as evidence of what actually occurred, and in distinguishing between types of trauma that an individual might have suffered, particularly when the events in question took place some years ago, I nonetheless thought it desirable to ensure that the current medical assessments of Mr. Almalki were not inconsistent with the account of his mistreatment. As I indicated in Chapter 2, the assessments that I obtained were from a psychologist and a psychiatrist with experience in assessing victims of torture. I have reviewed their reports with the assistance of my medical advisor, Dr. Lisa Ramshaw. I found no inconsistency between their reports and Mr. Almalki's account of his mistreatment.

36. The Attorney General has not expressly submitted that Mr. Almalki was not tortured. However, the Attorney General argued, in his final submissions, that Mr. Almalki's account of torture was directly contradicted by other evidence presented to the Inquiry, including: (1) an apparent statement by Mr. Almalki's family, at a November 6, 2003 meeting with DFAIT, that "Nobody thought he was being tortured;" and (2) information suggesting that Mr. Almalki was in good health, despite his detention, and being treated well by Syrian officials.

37. I do not agree that this information detracts from Mr. Almalki's account. First, while most of the information that CSIS had concerning Mr. Almalki's treatment suggested that he was in good health and not currently being mistreated, CSIS also had some information suggesting that he had not been treated fairly earlier. Second, the fact that Mr. Almalki's family members might not have known that he was being tortured (as is suggested by the statement apparently made by his family on November 6) is consistent with what Mr. Almalki told the Inquiry about the family visits he received while detained in Syria: he was reticent to tell his family members about the torture because he did not want to upset them, and because he feared retribution by his Syrian interrogators (who were always present at family visits). I did not consider it necessary to confirm this statement with Mr. Almalki's family members.

Role of Canadian officials

38. Having concluded that Mr. Almalki suffered mistreatment amounting to torture in Syria, I now turn to the question whether this resulted, directly or indirectly, from actions of Canadian officials and whether, if so, these actions were deficient in the circumstances. I consider in this section the following actions of Canadian officials:

(a) Prior to Mr. Almalki's detention, the RCMP shared the Supertext database, which contained a considerable amount of material regarding Mr. Almalki, with U.S. agencies.
(b) On July 4, 2002, after Mr. Almalki had been detained in Syria, the Ambassador and the RCMP liaison officer met with General Khalil of the Syrian Military Intelligence (SyMI).
(c) In November 2002, CSIS travelled to Syria and met with officials from the SyMI.
(d) In January 2004, CSIS asked the SyMI if it could interview Mr. Almalki in detention.
(e) In January 2004, CSIS made various inquiries of the SyMI to obtain information about its intentions in respect of Mr. Almalki, the possibility of his release, and the treatment of Canadian detainees.

Sharing of the RCMP's Supertext database with U.S. authorities

Did any mistreatment result directly or indirectly from the sharing of the database?

39. There is substantial correspondence between the substance of Mr. Almalki's interrogations in Syria and the information contained in the RCMP's Supertext database, which (as discussed above) was shared with U.S. agencies in early

April 2002, approximately one month before Mr. Almalki came to be detained in Syria (in early May 2002). For example:

- Mr. Almalki told the Inquiry that his Syrian interrogators asked him about an individual from Canada; the Supertext database contained documents referring to this same individual as an associate of RCMP targets.
- Mr. Almalki told the Inquiry that his Syrian interrogators showed him a report, which they said had been provided by Canada, indicating that a search of Mr. Almalki's home had turned up weapons; the Supertext database contained a note indicating that two switchblades had been found in Mr. Almalki's residence.
- Mr. Almalki told the Inquiry that Malaysian officials interrogated him in Syria based on a report that listed several trade names that Mr. Almalki had tried (unsuccessfully) to register in Canada; the Supertext database included an email message from Mr. Almalki to Industry Canada requesting a corporate name change.
- Mr. Almalki told the Inquiry that his Syrian interrogators asked him about his alleged "training" in Afghanistan, and insisted that he had attended a training camp; the Supertext database contained documents concerning the time that Mr. Almalki had spent in Afghanistan.
- Mr. Almalki told the Inquiry that his Syrian interrogators showed him a report containing photographs of individuals whom Mr. Almalki did not recognize; the Supertext database contained photographs of Mr. Elmaati and other targets of or persons of interest to the Project A-O Canada investigation.

40. I found no evidence that the RCMP provided Syrian or Malaysian authorities with the Supertext database, or with any of the documents contained in it. Nor did I find any evidence that the RCMP gave permission to U.S. agencies to share the Supertext database, or any of the information in it, with Syrian or Malaysian authorities.

41. However, based on the correspondence described above, the fact that the database was provided without caveats, and the fact that the U.S. had its own investigative interest in Mr. Almalki prior to the events under review, I believe it is reasonable to infer that the documents provided in the Supertext database, or information from those documents, made their way into the hands of Syrian officials, and were then used by them, together with other information, to interrogate Mr. Almalki in Syria. On this basis, I conclude that the actions of Canadian officials in sharing the Supertext database likely contributed to, and therefore resulted indirectly in, mistreatment of Mr. Almalki in Syria.

Was the sharing of the database deficient in the circumstances?

42. For the reasons that I discussed in detail above (at paragraphs 22 to 24), sharing the Supertext database with U.S. agencies was deficient in the circumstances. In summary, the sharing of the Supertext database was deficient in four main respects: (1) the written information on the CDs was provided to U.S. agencies without written caveats; (2) the portion of the documents not related to the searches was not reviewed for relevance, reliability and personal information; (3) third-party materials to which caveats were attached, such as letters received from CSIS and documents received from Canada Customs, were transferred without the originators' consent; and (4) the database was transferred without adequate consideration of the possible consequences for the subjects of the Project A-O Canada investigation, including Mr. Almalki, the main subject of the investigation.

July 4 meeting between the Ambassador, the RCMP liaison officer and General Khalil of the SyMI

Did any mistreatment result directly or indirectly from the July 4 meeting?

43. On July 4, 2002, Canada's Ambassador to Syria and the RCMP's Rome-based liaison officer met with General Khalil of the SyMI. Counsel for Mr. Elmaati, Mr. Almalki and Mr. Nureddin, in their final submissions, suggested that information about Mr. Almalki was shared at this meeting, and that Mr. Almalki was, as a result, interrogated and mistreated several days later.

44. I found no evidence that the Canadian officials present at the meeting provided General Khalil with any information about Mr. Almalki. The evidence I received suggests that Mr. Almalki might have been discussed in passing, but that the focus of the meeting was on "other priority cases." As a result, I cannot conclude that the meeting was in any way directly or indirectly linked to any mistreatment of Mr. Almalki.

RCMP's questions for Mr. Almalki

45. As discussed in detail at paragraphs 116 to 162 of Chapter 5, starting in the summer of 2002, shortly after Mr. Almalki was detained in Syria, the RCMP began discussing the possibility of interviewing Mr. Almalki in Syria. When the RCMP's attempts to set up an interview were not successful, it turned its attention to sending questions to Syrian officials to be posed to Mr. Almalki. On January 15, 2003, after extensive discussions with DFAIT, the RCMP transmitted to Syrian officials, through Canada's Ambassador to Syria, a two-page list of questions to be asked of Mr. Almalki.

Did any mistreatment result directly or indirectly from the sending of questions?

46. Based on the evidence available to me, I believe it is reasonable to infer that sending questions to be posed to Mr. Almalki in Syria resulted indirectly in mistreatment by Syrian officials. I reach this conclusion for three main reasons. First, Mr. Almalki was being detained on terrorism-related grounds, in a prison run by one of Syria's security services. Reports regarding Syria's human rights record, prepared by DFAIT, Amnesty International, Human Rights Watch and other organizations, stated that torture was very likely to occur during the interrogation of individuals detained in these circumstances.

47. Second, though RCMP officials told the Inquiry that they had reason to believe that the questions they sent to Syrian officials were never put to Mr. Almalki, Mr. Almalki told the Inquiry that he was interrogated and mistreated on January 16, 2003, one day after the questions were delivered. The topics about which Mr. Almalki said he was questioned on that day are the same or similar to many of the topics addressed in the RCMP's questions. Mr. Almalki identified the date of this interrogation within months of his return to Canada in 2004, when he was interviewed by Alex Neve of Amnesty International, and before information about the questions sent by the RCMP became public through the Arar Inquiry.

48. Third, as I discuss below, several of the Canadian officials involved in the decision to send questions for Mr. Almalki were aware that doing so created a serious risk that Mr. Almalki would be tortured. Where officials determine that a proposed action is likely to result in a particular outcome, and that outcome materializes, I believe it is reasonable to infer, in the absence of evidence to the contrary, that the action resulted, at least indirectly, in the outcome.

Was sending questions deficient in the circumstances?

49. Having determined that the sending of questions to be posed to Mr. Almalki resulted indirectly in mistreatment of Mr. Almalki in Syria, I now turn to examine the question of deficiency. For the reasons that follow, I conclude that the conduct of DFAIT and RCMP officials in coming to the decision to send, and then sending, the questions for Mr. Almalki was deficient in the circumstances.

50. The RCMP members who made the decision to send the questions knew or should have known about Syria's human rights record and, specifically, about the possibility that Syrian officials might use torture to extract answers to the RCMP's questions. The RCMP had access to publicly available reports regarding Syria's human rights reputation, as well as the annual human rights reports

prepared by DFAIT. The RCMP knew, by August 12, 2002, that Mr. Elmaati had told consular officials that he had been interrogated and tortured in Syria. Most significantly, at a meeting on September 10, 2002, at which senior officers of Project A-O Canada, DFAIT ISI officials and the Ambassador to Syria discussed sending questions for Mr. Almalki, an official in DFAIT ISI raised the possibility of torture.

51. Some of the RCMP members involved in the decision to send questions for Mr. Almalki displayed a dismissive attitude towards the issue of human rights and the possibility of torture. When torture was raised at the September 10, 2002 meeting, some of the RCMP members present disregarded it as merely a one-off comment from a junior DFAIT official. Another RCMP member, who did not attend the September 10 meeting, but played a critical role in facilitating the preparation and sending of questions, told the Inquiry that the issue of mistreatment was not on his radar screen, and that he assumed a level of professionalism and a way of operating that would be in keeping with the expectations of a democratic society. At least two RCMP members suggested that sending questions to be posed to Mr. Almalki might have been beneficial to his treatment.

52. I do not believe that the decision to send questions was warranted by a need to obtain information about the threat level in Canada, a justification that was put forward in some of the evidence that I heard. I was told that that while it was recognized that sending questions for Mr. Almalki could put Mr. Almalki at risk of being tortured, the importance of gaining access to Mr. Almalki in order to get information about the threat level in Canada warranted sending questions. This justification was considered, and rejected, by Justice O'Connor—he found that by January 2003, when the questions were sent to Syria, the threats being investigated no longer fell within the "imminent" category. He wrote: "Without diminishing the importance of [Project A-O Canada's] investigation, I think it is fair to say that, by that time, the threats being investigated fell short of being 'imminent'."[5]

53. Furthermore, it appears that the purpose of the questions was not primarily to obtain information about an imminent threat to Canada's security, but to open a dialogue and establish cooperation with the Syrians regarding Mr. Almalki. One Project A-O Canada member said that the RCMP hoped to establish some cooperation in order to see what the RCMP could get in return. The Officer in Charge of Project A-O Canada said that the goal in sending the questions was not to get answers to the questions but to offer something to Syrian officials in the hope that they would ultimately grant the RCMP access

[5] Arar Inquiry, *Analysis and Recommendations*, p. 213.

to Mr. Almalki. In my view, these goals did not, in the face of a serious risk of human rights abuses, justify sending questions to Syria in January 2003.

54. The nature of the questions and the language used in the cover letter sent to Syrian officials with the questions increased the risk that Mr. Almalki would be mistreated. Though the list of questions did not include any information about, or descriptions of, Mr. Almalki, it suggested that he was involved with a terrorist cell, that he might be acting as a procurement officer for a terrorist group, and that he might have knowledge of terrorist threats in Canada. One Project A-O Canada member suggested that, while the list of questions did not label Mr. Almalki as an associate of al-Qaeda, someone reading the questions might draw that conclusion. The cover letter that accompanied the list of questions offered to share with its Syrian recipients "large volumes of highly sensitive documents and information, seized during investigative efforts or obtained from confidential informants associated to terrorist cells operating in Canada," an offer which, in my view, suggested some association between Mr. Almalki and a Canadian terrorist cell.

55. Responsibility for the risk created by sending questions for Mr. Almalki does not fall only on the RCMP. In coming to the decision to send questions, the RCMP engaged in extensive discussions with DFAIT ISI and Canada's Ambassador to Syria, and was entitled, in my view, to place considerable reliance on their advice.

56. DFAIT determined that sending questions to be posed to Mr. Almalki raised a serious risk that he would be tortured. At least three memoranda drafted between August 6 and October 30, 2002 and sent to senior DFAIT officials indicated that sending questions to be posed to Mr. Almalki in Syria could result in his being tortured.

57. DFAIT failed, however, to properly communicate its concerns about torture to the RCMP. While the possibility of torture was raised by a junior DFAIT official at the September 10, 2002 meeting, the overall message communicated by DFAIT at that meeting was that it supported, or at least did not object to, the RCMP's efforts to send questions. The junior official's comment (to the effect that sending questions raised the possibility of torture) was interpreted by other attendees as a casual off-hand remark, and was not supported or even acknowledged by the official's senior DFAIT colleagues. In fact, Canada's Ambassador to Syria offered at the meeting to facilitate the RCMP's requests to Syrian authorities, and suggested to the RCMP attendees that Syrian authorities would likely expect the RCMP to share information in exchange. As well, while DFAIT ISI officials proposed in late October that DFAIT send a letter to Assistant

Commissioner Proulx of the RCMP setting out DFAIT's concerns about torture, and indicating that DFAIT would not support or assist the RCMP in its effort to send questions to Syria, no letter was ever sent. There appears to have been a breakdown of communication within DFAIT with respect to the proposed letter: each official involved in discussions about the letter believed that some other official was taking care of the issue, or that the RCMP had decided not to send the questions after all, with the result that the proposed letter was not sent to the RCMP.

58. Having failed to properly communicate to the RCMP its concerns about torture, DFAIT assisted the RCMP in delivering its list of questions to the SyMI—conduct that suggested to the RCMP that DFAIT supported its efforts. On January 15, 2003, Canada's Ambassador to Syria received from the RCMP's liaison officer in Rome an envelope containing the questions. The next day, the Ambassador arranged for a consular official to deliver the questions to the SyMI. The Ambassador had received no instructions to consider the possibility of torture; he was aware of Mr. Elmaati's August 12 torture allegation, but was apparently unaware that DFAIT had raised concerns that sending the questions could result in Mr. Almalki being tortured. The Ambassador stated that he believed that the questions were being passed on to the Syrians in the context of what he considered to be the extraordinary cooperation shown by the Syrians in the Arar case, and that DFAIT officials in Ottawa had sanctioned the RCMP's decision to send questions.

59. The role of the Canadian Embassy in Damascus in sending questions for Mr. Almalki raises questions about the proper role of the head of mission and his or her consular officers, particularly in countries with records of serious human rights abuses. In his final submissions, the Attorney General argued that part of DFAIT's mandate is to assist Canada's security and policing agencies when their work extends beyond Canada's borders. He argued that it was therefore appropriate for the head of mission to assist in arranging for CSIS or RCMP questions to be put to a Canadian detained abroad.

60. Recognizing that DFAIT's mandate extends beyond the provision of consular services, and may include the provision of assistance to CSIS and the RCMP in appropriate circumstances, I believe care must be taken to ensure that such assistance does not conflict with DFAIT's consular role. This is particularly important in countries such as Syria, with a well-known record of human rights abuses, where detainees face a serious risk of being mistreated, and the need for consular assistance is acute. The Embassy's role in arranging for the RCMP's questions to be put to Mr. Almalki in my view created a risk that

Syrian authorities would not take the Embassy's requests for consular access as seriously as they might have otherwise. By assisting in sending the questions, the Embassy risked compromising its efforts to obtain consular access to Mr. Almalki, in a situation where consular access might have been extremely beneficial to Mr. Almalki.

61. I note that Justice O'Connor expressed a similar concern in the Arar Inquiry report. He acknowledged that an ambassador's role as representative of all Canadian departments and agencies may put him or her in a difficult position of conflict. He recommended that, when a Canadian is detained in a terrorism-related matter, the ambassador refer any questions about what should be done with respect to the detainee to a consultation process led by DFAIT. His recommended consultation process is described in detail in his report. Justice O'Connor was of the view that this approach would facilitate prompt communications between DFAIT and the ambassador and lessen any conflicts the ambassador might face.[6]

CSIS' trip to Syria

62. As discussed in Chapter 5, paragraphs 102 to 107, in late November 2002, a CSIS delegation travelled to Syria to meet with officials from the SyMI. The trip had several purposes. Among the main ones, it was thought that the trip would allow CSIS to acquire critical intelligence in support of its Sunni Islamic terrorism investigation and to receive and evaluate information about Mr. Arar. However, for various reasons, CSIS also intended to raise with the SyMI the case of Mr. Almalki.

63. It is not clear from the evidence that I received whether CSIS raised Mr. Almalki's case with the SyMI. However, it appears that the CSIS delegation received information about Mr. Almalki during a meeting on November 23, 2002. The substance of this meeting is discussed at paragraphs 108 to 110 of Chapter 5.

Did any mistreatment result directly or indirectly from CSIS' trip to Syria?

64. There is correspondence between the timing of CSIS' trip to Syria and some of Mr. Almalki's interrogation sessions in Syria. Mr. Almalki told the Inquiry that he was interrogated in November and December 2002 on the basis of a typed report, in Arabic, entitled "Meeting with the Canadian delegation November 24th 2002."

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[6] Arar Inquiry, *Analysis and Recommendations*, pp. 349–352.

65. Despite this correspondence, I cannot infer that CSIS' trip to Syria, and the actions of the CSIS delegation while in Syria resulted, directly or indirectly, in mistreatment of Mr. Almalki in Syria. I say this for two reasons. First, I did not find any evidence to support Mr. Almalki's suggestion that CSIS provided any reports or information about him to the Syrian authorities during the trip. In fact, one member of the CSIS delegation told the Inquiry that (for reasons that I am precluded by national security confidentiality from disclosing here) information could not have been shared with Syria. Mr. Almalki was not of course in a position to observe what occurred at the meeting between the CSIS officials and the SyMI. The information that he provided about the title of the report cannot form a proper basis for inferences concerning its content or the source of its content.

66. Second, I found no evidence to suggest that CSIS took any steps, in advance of or during the trip to Syria, that might have caused Syrian authorities to mistreat Mr. Almalki or prolong his detention. For example, I found no evidence that CSIS posed questions for Mr. Almalki, requested an interview of or access to Mr. Almalki, encouraged the SyMI to further interrogate Mr. Almalki, or suggested to the SyMI that CSIS did not want Mr. Almalki released and returned to Canada.

Comments on CSIS' trip to Syria

67. I am satisfied that CSIS' decision to send a delegation to Syria in November 2002, in part to receive information about Mr. Almalki, was appropriate in the circumstances. I agree with Justice O'Connor's finding that there was appropriate consultation among Canadian officials before the trip took place, and that the CSIS delegation was careful not to encroach on matters that were more properly the domain of DFAIT's Consular Affairs Bureau.[7] Furthermore, CSIS was pursuing its mandate in meeting with the SyMI. CSIS had reason to believe that the SyMI might have information relevant to the security of Canada.

68. I am also satisfied that it was appropriate for CSIS not to raise or discuss with the SyMI the conditions under which Mr. Almalki was being held. I accept the evidence of one CSIS witness that CSIS had been asked by DFAIT in advance of the trip to Syria not to become involved in consular issues. While it would not have been appropriate for CSIS to ignore any indications that Mr. Almalki had been mistreated, it was not CSIS' role to discuss Mr. Almalki's treatment with the SyMI, or to gain access to Mr. Almalki in order to assess his condition. This was more properly the domain of trained consular officials. The fact that consular officials did not have access to Mr. Almalki at this time does not affect

[7] Arar Inquiry, *Analysis and Recommendations*, p. 198.

my conclusion. Any failure of DFAIT to diligently seek access to Mr. Almalki (a subject discussed below) did not, absent some request from DFAIT, shift responsibility for consular issues to CSIS.

69. Having said that, I agree with Justice O'Connor that, while it may be necessary on occasion for Canadian investigative officials to interact with countries with poor human rights records, such as Syria, investigative officials proposing to do so must take great care, particularly when a Canadian is being detained in that country. Decisions to interact with officials from these countries must be made on a case-by-case basis, but in accordance with applicable policies, and following consultation with all Canadian agencies with an interest or expertise in the area. I also agree that any interactions that do take place must be as controlled as possible, to safeguard against Canadian complicity in human rights abuses or the perception that Canada condones such abuses. If it is determined that there is a credible risk that Canadian interactions would render Canada complicit in torture or create the perception that Canada condones the use of torture, then a decision should be made that no interaction is to take place.[8]

CSIS' request for an interview

70. As discussed in Chapter 5, paragraphs 187 to 197, in early January 2004, two months before Mr. Almalki was released from Syrian custody, CSIS raised with the SyMI the possibility of obtaining access to Mr. Almalki in Syria for the purposes of interviewing him. Ultimately, the Service's efforts to secure interview access to Mr. Almalki were unsuccessful. The SyMI never refused the Service's request for an interview, but Mr. Almalki was released before any interview could take place.

Did any mistreatment result directly or indirectly from CSIS' request for an interview?

71. I am satisfied that CSIS' request to interview Mr. Almalki at this time did not result, directly or indirectly, in mistreatment of Mr. Almalki in Syria. The CSIS official who made the interview request made it clear to SyMI officials that the interview would be voluntary, that Mr. Almalki should be made aware of his right to consular access, and that the request should not delay Mr. Almalki's release. I acknowledge that conditions such as these are not always respected, particularly by countries like Syria with a reputation for arbitrary detention and prisoner abuse. I acknowledge also that, despite these conditions, CSIS' request might have nonetheless conveyed to Syria a message that continued

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[8] Arar Inquiry, *Analysis and Recommendations*, pp. 198–199.

detention of Mr. Almalki was necessary or appropriate in order to accommodate CSIS' request.

72. However, I did not receive any evidence from Canadian officials or from Mr. Almalki that CSIS' request affected either the manner in which Mr. Almalki was treated between January and March 2004, or the timing of his release. Nor am I able to draw an inference, based on the evidence available to me, that the request resulted indirectly in Mr. Almalki's mistreatment or prolonged detention.

Comments on CSIS' request for an interview

73. In my view, CSIS' request to interview Mr. Almalki in Syria was reasonable in the circumstances. I say this for three reasons. First, CSIS consulted with DFAIT about how the interview should be conducted, and DFAIT supported the proposed interview, subject to recommendations that CSIS accepted. These recommendations reflected adequate consideration of how a request for an interview, and the interview itself, might affect Mr. Almalki. Second, at the time the interview was proposed, DFAIT consular officials had not obtained consular access to Mr. Almalki, and had not had an opportunity to assess his mental and physical state. Therefore, among the recommendations agreed to by CSIS was that the interviewer would evaluate Mr. Almalki's physical and mental condition, identify any possible signs of torture and report his evaluation to DFAIT. Though this would not have been an ideal alternative to a consular visit, it would have been better than no access at all. Third, CSIS believed that Mr. Almalki might possess information relevant to the security of Canada. The Service also had reason to believe that Mr. Almalki might be released from Syrian custody in the near future.

74. In making this finding, I am not suggesting that it would in all cases be appropriate for Canadian officials to request interviews of Canadians detained in countries with poor human rights records. Decisions about whether to request and then conduct interviews must be made on a case-by-case basis, in light of all the circumstances. A request should only be made after careful weighing of the reasons for the request against the possible consequences for the detainee. With respect to the possible consequences for the detainee, several witnesses told the Inquiry that a direct interview of a detainee is desirable because the interviewer can control the circumstances in which the questions are posed. However, I agree with the submission of the Intervenor Human Rights Watch that this ignores any antecedent or subsequent risks of mistreatment that would arise in a context where torture is a routine part of interrogation. An interview by a visiting official might create a risk that the detainee will be tortured before

and after the interview. A detainee might be tortured before the scheduled interview with visiting agents in order to "soften him up" or ensure that he provides the "right answers" to the visiting agents. A detainee might be tortured after the interview if the local interrogators are dissatisfied with something the detainee says or because the local interrogators conclude that the detainee had lied or concealed something from them earlier.

CSIS' inquiries of the SyMI

75. Also in early January 2004, as discussed at Chapter 5, paragraphs 187 to 189, CSIS made other inquiries of the SyMI. CSIS asked the SyMI for an update of Mr. Almalki's case, including information about what charges he would be facing, whether a trial was scheduled, whether it was true that he was soon to be released, and whether there was any new information that would be of relevance to CSIS. CSIS also asked the SyMI to respond to allegations that Mr. Arar had been tortured while in Syrian detention, and to advise if it had made any extraordinary efforts to ensure the fair treatment of Canadian citizens detained in Syria.

Did any mistreatment result directly or indirectly from CSIS' inquiries of the SyMI?

76. I am satisfied that these inquiries did not result directly or indirectly in mistreatment or prolonged detention of Mr. Almalki. I found no evidence that would permit me to infer a direct or indirect link.

Comments on CSIS' inquiries of the SyMI

77. For three reasons, I am also satisfied that these inquiries were reasonable in the circumstances. First, the Service had reason to believe that Mr. Almalki might be released from Syrian custody in the near future and wanted to obtain concrete information about Syria's intentions in respect of Mr. Almalki. Second, the inquiries themselves were relatively benign, and the CSIS official who put them to the SyMI had been instructed not to put forth CSIS' position on the situation or comment on Mr. Almalki's detention. Third, it was likely in the interest of Canadian officials at this time to obtain information about Syria's response to Mr. Arar's allegations of torture. This was information that officials required in order to better manage the cases of Canadian citizens detained in Syria (which at this time included Mr. Nureddin, Mr. Almalki and others). Among Canadian government agencies, CSIS was arguably best positioned to obtain this information from the SyMI, a military security organization that was apparently reticent to deal with police and political officials.

Reports from Canada

78. Mr. Almalki told the Inquiry that, during his interrogations in Syria, he observed several reports in the possession of his Syrian interrogators that he suggested might have originated with Canadian officials. He said that Syrian officials detained, interrogated and tortured him at least in part based on these reports. Some of Mr. Almalki's allegations concerning reports have been addressed above. I now address the remainder.

- Mr. Almalki told the Inquiry that, shortly after he arrived at the Damascus airport on May 3, he overheard one of the officers refer to a report that had been received from "the Embassy" on April 22. I found no evidence that the Canadian Embassy or any other Canadian officials supplied any foreign agency with a report about Mr. Almalki on or around this date.
- Mr. Almalki told the Inquiry that, in June 2002, he was interrogated and tortured based on a 10–20 page report, written in Arabic, which his interrogators referred to as "Questions." According to Mr. Almalki, the report described him as an "active member of al Qaeda" with the code name "Abu Wafa," included information about companies that Mr. Almalki's business had shipped to, and referred to the name of a Toronto resident. I found no evidence that Canadian officials supplied any foreign agency with a report matching this description. Nor did I find any evidence that Canadian officials described Mr. Almalki to any foreign agency as an "active member of al Qaeda." It is difficult to attribute the name "Abu Wafa" to any specific source. The name was included in documents that were transferred to U.S. agencies on the CDs containing the RCMP's Supertext database; however, according to CSIS records, Mr. Almalki told CSIS during a 1998 interview that the name "Abu Wafa" appears on his Syrian birth certificate. The name of the Toronto resident appeared in documents contained in the RCMP's Supertext database. I concluded above that the sharing of this database with U.S. agencies in April of 2002 resulted indirectly in mistreatment of Mr. Almalki in Syria.
- Mr. Almalki told the Inquiry that, in July 2002, he was interrogated and tortured based on a report, written in Arabic, which said that a search of Mr. Almalki's parents' home in Canada had turned up weapons and proof of links to al-Qaeda and Osama Bin Laden. I found no evidence that Canadian officials supplied any foreign agency with a report matching this description. However, as discussed above, as part of the transfer of its Supertext database, the RCMP provided U.S. agencies with

a note indicating that two switchblades were found in Mr. Almalki's residence.

- Mr. Almalki told the Inquiry that, on August 25, 2002, he was interrogated by Malaysian officials, possibly at the behest of Canada or based on information that Malaysian officials had received from Canada, and that he was tortured by Syrian officials in preparation for this interrogation. He stated that the officials had a report listing several trade names that Mr. Almalki had tried (unsuccessfully) to register with Industry Canada, and that Mr. Almalki believed could only have been obtained from his filing cabinet in Canada. I found no evidence that Canadian officials supplied Malaysian officials or any foreign agency with a report containing this information. As noted above, however, the Supertext database shared with U.S. agencies included an email message from Mr. Almalki to Industry Canada. I also found no evidence to suggest that Canadian officials asked Malaysian officials to interrogate Mr. Almalki in Syria, or that Canadian officials supplied questions for this purpose.
- Mr. Almalki told the Inquiry that, in mid-April 2004, after he was released from Syrian custody, he was asked to return to Far Falestin, where he was interrogated based on a report that had been faxed on March 29, 2004. He said that the report contained photographs of individuals and a list of names and birthdates, and, according to his interrogator, indicated that the individuals were members of an Ottawa-based religious group led by Mr. Almalki. I found no evidence that Canadian officials supplied any foreign agency with a report matching this description or containing this information.

Were there any deficiencies in the actions of Canadian officials to provide consular services to Mr. Almalki?

79. In this section, I consider whether there were any deficiencies in the actions of Canadian officials to provide consular services to Mr. Almalki in Syria. I discuss below the following issues:

(a) DFAIT's failure to act promptly after learning that Mr. Almalki had been detained;
(b) DFAIT's failure to make effective representations to Syria between August 2002 and November 2003;
(c) DFAIT's effective representations to Syria between November 2003 and Mr. Almalki's release in March 2004;
(d) DFAIT's failure to sufficiently consider the possibility of mistreatment; and

(e) the improper disclosure by DFAIT of confidential consular information.

80. As I discussed above in my findings regarding the actions of Canadian officials in relation to Mr. Elmaati, the portion of the Terms of Reference that specifically addresses the actions taken by Canadian officials to provide consular services to Mr. Almalki directs me to assess whether there were any deficiencies in these actions, without calling on me to determine whether any mistreatment of Mr. Almalki resulted directly or indirectly from them. I therefore do not address this possibility below. However, I should reiterate my view that it is implicit in the seriousness with which the international community, including our government, regards consular access, that a failure by Canadian officials to effectively pursue consular access will increase the risk that mistreatment, and possibly mistreatment amounting to torture, might occur.

Failure to act promptly after learning of detention

81. As I have set out above in my findings regarding the actions of Canadian officials in relation to Mr. Elmaati, the standards operative at the relevant time, including DFAIT's *Service Standards*, the *Manual of Consular Instructions* and best practices, required DFAIT to respond promptly once it learned that a Canadian citizen had been detained abroad. The Service Standards indicated that first contact with the detainee should be made within 24 hours of notification of the detention, though it acknowledged that the response time would be subject to factors beyond DFAIT's control. The *Manual* required DFAIT officials to, upon learning that a Canadian citizen had been arrested and detained abroad, investigate the circumstances of the arrest and detention with a view to determining whether there was unlawful discrimination, denial of justice or due process or harsh treatment during arrest.

82. In the case of Mr. Almalki, DFAIT failed to meet this standard. It did not act promptly after learning that he might be detained in Syria.

Failure to promptly advise the Consular Affairs Bureau

83. DFAIT officials who first learned of Mr. Almalki's detention failed to promptly share this information with the Consular Affairs Bureau, the DFAIT bureau charged with providing consular assistance to Canadians detained abroad. Officials in DFAIT ISI knew by early June 2002 that Mr. Almalki might be in custody in Syria. However, they did not advise the Consular Affairs Bureau of the possible detention until late June 2002, and did so through a memorandum dated June 26 that did not reach the Consular Affairs Bureau until late July.

Canada's Ambassador to Syria recalled learning of Mr. Almalki's detention on July 4, 2002, at a meeting with the RCMP's liaison officer in Rome and General Khalil of the SyMI, but did not notify the Consular Affairs Bureau at that time.

84. I do not believe that the various explanations provided by DFAIT witnesses are sufficient to justify these delays. The Ambassador told the Inquiry that he believed that the Consular Affairs Bureau was already aware of the detention on July 4, 2002. However, his belief was based on his expectation that if the RCMP was meeting with General Khalil, appropriate consultation had occurred at DFAIT headquarters. No steps were taken to confirm that this was the case.

85. DFAIT ISI explained the delay by invoking ISI's policy of passing only reliable or confirmed information to the Consular Affairs Bureau. According to two DFAIT ISI officials, the information about Mr. Almalki's detention was not sufficiently confirmed and specific in early June 2002 to be shared with the Consular Affairs Bureau. However, DFAIT ISI did not, upon learning that Mr. Almalki might be in custody, make inquiries with the source of the information in order to confirm it. In my view, the possibility of detention was sufficiently significant, and the potential consequences for Mr. Almalki so serious, that DFAIT ISI should have at least made some effort to confirm the information. Furthermore, when DFAIT ISI finally did receive confirmation of the detention, in late June 2002, it should have immediately contacted the Consular Affairs Bureau. Instead, it merely copied the Bureau on a memorandum that mentioned Mr. Almalki's detention, a memorandum that DFAIT ISI knew or ought to have known would not reach officials in the Bureau for some time.

86. What makes these delays particularly troubling is that DFAIT officials were aware of information that the most serious and intense abuse of detainees in Syria often occurs during the early stages of detention. This reality was highlighted in several of the public reports regarding Syria's human rights record, to which all DFAIT officials had access and which most had read. The Director General of the Consular Affairs Bureau operated under a "working assumption" that a political prisoner detained in Syria would be tortured, and his understanding was that torture usually took place early on in the detention. Mr. Almalki's treatment appears to have followed the pattern identified by the publicly available reports and by the Director General of the Consular Affairs Bureau. Some of the most serious and intense abuse took place during the first month of his detention in Syria.

87. In my view, the fact that serious mistreatment might be occurring is reason for DFAIT to act as quickly as possible in seeking consular access to the detainee.

88. I reiterate what I said in my findings regarding the actions of Canadian officials in relation to Mr. Elmaati: although the Consular Affairs Bureau has the responsibility within the Government of Canada to make representations on behalf of Canadian citizens detained in foreign countries, it can carry out that mandate effectively only if it has the cooperation of other sections in DFAIT. Cooperation and coordination between DFAIT ISI and the Consular Affairs Bureau is particularly important in cases involving individuals detained on security-related grounds, where DFAIT ISI will often be privy to information that is of relevance to those who are in a position to provide detainees with consular assistance.

Failure to promptly ascertain location and obtain consular access

89. Once officials in the Consular Affairs Bureau learned that Mr. Almalki was detained in Syria, they failed to take prompt steps to ascertain his location and obtain consular access to him. Officials confirmed on or about July 30, 2002 that Mr. Almalki was a Canadian citizen and entitled to consular assistance, and one official made a note on August 2 reminding herself to work on a diplomatic note. However, the first diplomatic note was not sent until August 15. By this time Mr. Almalki had already been detained in Syria for over three months. I accept that in view of the official's caseload and personal situation it was difficult for the official who drafted the note to proceed more promptly. However, DFAIT and its Consular Affairs Bureau bear responsibility for ensuring that sufficient resources are in place so that consular efforts can be made in a timely way.

Failure to make effective representations to Syria—August 2002 to November 2003

90. As I have set out above in paragraphs 97 to 102 of Chapter 3, and in my findings regarding the actions of Canadian officials in relation to Mr. Elmaati, the standards operative at the relevant time required DFAIT to make representations to the detaining country regarding the whereabouts of the detainee and the reasons for his arrest and detention, and to make requests for consular access to the detainee. Once initial consular access was secured, the *Manual of Consular Instructions* directed DFAIT to visit and maintain contact with the detainee, attempt to obtain case-related information, liaise with local authorities in order to seek regular access, investigate the conditions of detention, and encourage local authorities to process the case without unreasonable delay. In my view, more strenuous efforts to obtain and maintain access to the detainee may have been required where the detainee was detained on terrorism or national security-related grounds in a country with a poor human rights record.

91. Between August 15, 2002, when DFAIT sent the first diplomatic note requesting consular access to Mr. Almalki, and November 2003, DFAIT failed to make effective representations to Syria regarding Mr. Almalki. DFAIT failed to make sufficient efforts to ascertain Mr. Almalki's location and the reasons for his detention, and to obtain consular access to him.

Diplomatic notes

92. DFAIT sent only one diplomatic note to Syria—to the Ministry of Foreign Affairs (MFA)—during the first 18 months of Mr. Almalki's detention. That note, sent August 15, 2002, requested the reasons for Mr. Almalki's detention and for permission to visit him. I found no evidence that the Embassy conducted further follow-up or that the Consular Affairs Bureau instructed it to do so. Syria responded to the August 15 diplomatic note on April 26, 2003, advising that Mr. Almalki was Syrian and therefore subject to Syrian laws. DFAIT did not respond to this note. The Embassy passed it on to the Consular Affairs Bureau and did not receive instructions to follow up with another note or otherwise pursue the issue of consular access further. A second diplomatic note regarding Mr. Almalki was not sent until November 30, 2003.

Meetings with Syrian officials

93. While officials at the Canadian Embassy in Damascus were meeting relatively regularly with officials from the MFA and the SyMI (the agency detaining Mr. Almalki) the issue of consular access to Mr. Almalki was generally not aggressively pursued with these officials. At a meeting with an MFA official on October 20, 2002, the Ambassador raised Mr. Almalki's case and the official told him that he would look into it. When the Ambassador met with General Khalil of the SyMI on October 22, Mr. Almalki was not discussed. At a November 3 meeting with General Khalil, the Ambassador raised the issue of Mr. Almalki and observed that General Khalil seemed disposed to accept that Mr. Almalki could meet with a Canadian official; however, this appears to have been interpreted by DFAIT as an invitation addressed to intelligence officials and not consular officials, and no one in the Consular Affairs Bureau used the invitation as a basis for pursuing consular access to Mr. Almalki.

94. The one possible exception to this pattern was the meetings between a consular official at the Canadian Embassy in Damascus and Colonel Saleh of the SyMI. The consular official told the Inquiry that, during the period of Mr. Arar's detention (October 2002 to October 2003), he met regularly with Colonel Saleh, and unofficially made several requests for information about Mr. Almalki and for permission to visit him.

95. I note, however, that these meetings were focused on Mr. Arar, and that the requests for consular access to Mr. Almalki were not reported in any DFAIT documents. I also note that because the meetings at which the official made these requests of Colonel Saleh were focused on Mr. Arar, the requests for access to Mr. Almalki might well have come across as an afterthought.

Intensity of consular efforts in Elmaati and Arar cases

96. DFAIT's efforts to obtain consular access to Mr. Almalki between August 2002 and late 2003 were much less intense than the consular efforts undertaken in the cases of Mr. Arar and Mr. Elmaati. Mr. Arar, who was detained at Far Falestin starting in early October 2002, received nine consular visits—the first in late October 2002—before he was released on October 5, 2003. Mr. Elmaati did not receive any consular visits during his two-and-a-half-months' detention in Syria, but received eight consular visits while he was detained in Egypt (from late January 2002 until mid-January 2004). The Director General of the Consular Affairs Bureau acknowledged that the level of consular activity in Mr. Almalki's case was less than that in the cases of Mr. Elmaati and Mr. Arar, and said that the Consular Affairs Bureau lost focus. The Attorney General in his final submissions also acknowledged that the level of consular activity in Mr. Almalki's case, prior to November 2003, was "not in keeping with that carried out in the cases of Mr. Arar and Mr. Elmaati."

Explanations for the failure to make effective representations

97. Several explanations were put forward for DFAIT's failure to make effective representations with respect to Mr. Almalki. Three main explanations were advanced: (1) Syria refused to cooperate; (2) Mr. Almalki's family was not engaged; and (3) the Consular Affairs Bureau had instructed the Embassy not to pursue Mr. Almalki's case as a consular case. For the reasons discussed below, I do not accept any of these explanations.

98. ***Syria's refusal to cooperate.*** First, the Attorney General argued that DFAIT's effectiveness was severely compromised by Syria's refusal to cooperate in providing consular access to Mr. Almalki. It was submitted that it is difficult for DFAIT to secure the cooperation of the detaining state in security-related cases involving dual nationals (such as Mr. Almalki's case) because: (1) detaining states, particularly in the Middle East, do not generally recognize a dual national's Canadian citizenship; and (2) these cases are controlled by state security services, with which DFAIT has no formal connection.

99. While I have acknowledged (above at paragraphs 108 to 109 of Chapter 3) that cases with these characteristics may present challenges for DFAIT, and that the effectiveness of DFAIT's representations may be questionable, I do not believe that these challenges were sufficient to explain DFAIT's failures in Mr. Almalki's case. DFAIT did not require Syria's cooperation to draft and send a diplomatic note. Nor did DFAIT require Syria's cooperation to telephone its contacts in the Syrian MFA and the SyMI, or to raise Mr. Almalki's case during face-to-face meetings with officials from these agencies. I am not satisfied that, upon receiving one response to a diplomatic note, in April 2003, advising that Mr. Almalki was Syrian and subject to Syrian law, DFAIT was justified in giving up. If anything, the challenges presented by Mr. Almalki's case required DFAIT to be especially vigilant. DFAIT should have taken every opportunity to vigorously advance its case for consular access to Mr. Almalki.

100. DFAIT had several opportunities to advance the case for consular access with General Khalil of the SyMI. Canada's Ambassador to Syria met with him at least three times during the early stages of Mr. Almalki's detention—in July, October and November 2002. Evidence given at the Arar Inquiry suggests that the Ambassador had a close, if informal, working relationship with General Khalil, who, as head of the SyMI reported directly to the President and was extremely powerful in the Syrian political framework. The Ambassador testified that he was generally received by General Khalil in a friendly manner, that he believed that the General's relationship with him was genuine, and that the General could always be relied on to keep his word and would respond quickly to requests for consular access and information.

101. DFAIT was effective in advancing the case for consular access to Mr. Arar, even though his case raised the same challenges as Mr. Almalki's—he was a dual national detained on security grounds in a prison controlled by one of Syria's security services. DFAIT's efforts in respect of Mr. Arar yielded a consular visit within one month of Mr. Arar's arrest, and another eight consular visits thereafter. While similar efforts on Mr. Almalki's behalf might not have yielded the same results—without evidence from Syrian officials, that is impossible for me to say—that does not mean that the efforts should not have been made.

102. ***The role of Mr. Almalki's family***. A second explanation offered by the Attorney General for DFAIT's failure to make effective representations with respect to Mr. Almalki was "the relative lack of engagement by Mr. Almalki's family." It was argued that the participation of a detainee's family is invaluable, particularly in cases of dual nationals detained in countries that do not recognize

an individual's Canadian citizenship, and that Mr. Almalki's family, "like other families, could have been an important source of information and assistance."

103. While it might have been desirable for family members who did visit Mr. Almalki in prison to communicate to consular officials that they had done so, and to provide information regarding his well-being, I find troubling the suggestion that DFAIT's failures can be explained by the family's "relative lack of engagement." It certainly provides little assurance to Canadian citizens who are without close family members. It also does not account for any legitimate reasons that a family might have for not engaging DFAIT when one family member is detained abroad. The family might not be familiar with the services that DFAIT provides, or be unable for language or other reasons to contact DFAIT and explain the situation. A family might also be concerned about possible adverse consequences of its intervention. While I did not receive any evidence from Mr. Almalki's family members, evidence that I received from Canadian officials suggests that the Almalki family was worried that its intervention might have some negative impact on the safety of Mr. Almalki or other family members living in Syria.

104. It is unfair to the Almalki family to suggest that family members were not engaged in Mr. Almalki's case. The detention of a close family member is no doubt a trying and emotional time for a family, and family members may find it difficult and frightening to visit the detained person or take steps to secure his or her release. Furthermore, the evidence I received from Canadian officials and from Mr. Almalki suggests that Mr. Almalki's family was taking steps to assist him. Members of the Almalki family met with a Senator in August 2002 to discuss Mr. Almalki's case and ask for the Senator's help. Mr. Almalki's brother told a DFAIT official in December 2002 that the family had been pursuing the matter through its own channel for several months. In October 2002, Mr. Almalki's lawyer met with Project A-O Canada managers and Department of Justice counsel to express concern over Mr. Almalki's detention. In June 2003, Mr. Almalki's brother asked DFAIT for its assistance in obtaining a certificate stating that Mr. Almalki did not have a criminal record in Canada. Finally, as noted above, between August 2002 and November 2003, Mr. Almalki received seven family visits.

105. But even if it could be said that Mr. Almalki's family members were not engaged, I do not accept that the efforts of the Consular Affairs Bureau to secure at least initial consular access to a detainee should be contingent on the degree of the family's engagement. If, once access is obtained, the detainee advises consular officials that (whether because the family is looking after

things or for other reasons) further consular visits are not welcome, that might provide a basis for limiting their efforts. But that did not of course occur in Mr. Almalki's case.

106. ***Not a consular case.*** When interviewed for this Inquiry, Canada's former Ambassador to Syria offered a third explanation for the paucity of consular efforts between August 2002 and November 2003. He said that the Consular Affairs Bureau in Ottawa had instructed him that, in accordance with the wishes of the Almalki family, Mr. Almalki's case would not be treated as a consular case.

107. Other DFAIT officials, including a consular official at the Embassy, the Director General of the Consular Affairs Bureau and the case management officer responsible for Mr. Almalki's case, disagreed with the Ambassador. They all agreed that the Almalki family had not instructed DFAIT not to pursue the matter as a consular case.

108. The Attorney General argued that this apparent difference of opinion had no bearing on DFAIT's effort in Mr. Almalki's case. He submitted that because the case was managed by the Consular Affairs Bureau, the Ambassador's view of whether Mr. Almalki's case was a consular one was immaterial to the actual conduct of the case, and emphasized that the Ambassador carried out every single instruction provided to him in respect of all consular cases in Syria.

109. I am not convinced that the apparent difference of opinion within DFAIT about the status of Mr. Almalki's case had no bearing on DFAIT's efforts to gain access to him. The Embassy had day-to-day oversight over the consular efforts in Mr. Almalki's case, and was in a position to exercise considerable influence over officials responsible for his fate, including General Khalil of the SyMI. The belief that Mr. Almalki's case was not a consular one very likely coloured the interactions with those officials, and affected the instructions to Embassy staff. The Ambassador's own evidence is that his belief about the status of Mr. Almalki's case did affect the Embassy's efforts: he told the Inquiry that as a result of this belief, the Embassy "desisted almost from the start basically in pursuing the matter."

110. Responsibility for the apparent miscommunication about the status of Mr. Almalki's case lies with DFAIT, which had an obligation to ensure that all officials involved in Mr. Almalki's case were regularly briefed about the status of Mr. Almalki's case. During the period of August 2002 to November 2003, DFAIT's Consular Affairs Bureau appears to have provided little instruction or

direction to the Embassy with respect to Mr. Almalki and the actions and efforts necessary to gain consular access to him.

Family visits

111. I should note that, while DFAIT was not effective in gaining consular access to Mr. Almalki, his family members did periodically visit him in detention. Between July 2002 and November 2003, he received a total of seven family visits, which he believed had been arranged by his uncle's friend, who was a General in the army. Mr. Almalki's family also sent him some clothes, food and money during this period.

112. I think family visits do, and did in Mr. Almalki's case, fulfill some of the functions of consular visits. They may reassure the detainee that he has not been forgotten or neglected, and present some limited opportunity for family members to assess the detainee's well-being. Family visits may take the place of consular visits in situations where a pattern of regular consular visitation has already been established. Mr. Elmaati's case is an example.

113. However, family visits are not a substitute for regular consular visits. Family members are not trained to detect signs of torture or other abuse. Nor are they representatives of the Government of Canada or in a position to advise the detainee of his or her rights to consular and other assistance from the Canadian government.

The submission that "more would have made no difference"

114. The Attorney General argued that, irrespective of the impediments to DFAIT's efforts, greater effort would not have produced a different outcome in Mr. Almalki's case. He argued that further requests of the Syrian authorities would have been futile, and that "more would have made no difference."

115. I observe that "more" did make a difference in the case of Mr. Arar. Vigorous representations to Syrian officials resulted in nine consular visits over the course of Mr. Arar's year-long detention, the first within one month of his arrest in Syria. DFAIT's efforts to secure consular access were successful even though Mr. Arar, like Mr. Almalki, was a dual Syrian-Canadian citizen and detained in Far Falestin prison on terrorism-related grounds. I also observe that, in Mr. Almalki's case, DFAIT's intensified consular efforts starting in late 2003 and continuing until Mr. Almalki's release in 2004 yielded positive results.

116. More strenuous efforts by DFAIT to secure access to Mr. Almalki would have at least sent Syria the message that the Canadian government was concerned

about his well-being. Instead, DFAIT's failure to make such efforts, juxtaposed against its vigorous representations and concern for Mr. Arar, can reasonably be regarded as suggesting to Syria that Canada did not want Mr. Almalki back in Canada, and that Canada was not, or at least not as, concerned about his prolonged detention.

Effective representations—November 2003 to March 2004

117. I am satisfied that in the period from November 2003 to Mr. Almalki's release in March 2004, DFAIT made effective and appropriate representations to Syrian authorities. DFAIT's efforts during this period included the following:

- Minister Graham met with Syrian Ambassador Arnous on November 4, 2003 and asked the Ambassador to facilitate consular access to Mr. Almalki.
- Between November 6 and November 13, Embassy staff made at least five unsuccessful attempts to set up a meeting between the Ambassador and the Vice-Minister of the Syrian MFA.
- On November 30, the Embassy sent a diplomatic note asking Syria to investigate the allegations of torture, grant consular access to Mr. Almalki, and allow Mr. Almalki to have a legal defence at his trial.
- At meetings on December 4, 2003, a Canadian Senator and the Ambassador met with the former Deputy Minister of the Syrian MFA and the President of Syria to discuss Mr. Almalki's case. The Senator also raised Mr. Almalki's case with the Syrian Prime Minister.
- Starting in early January 2004, the Ambassador was in regular contact with the former Deputy Minister of the Syrian MFA regarding Mr. Almalki's case.
- In early January 2004, when CSIS officials consulted DFAIT about a possible interview of Mr. Almalki in Syria, DFAIT requested that CSIS use the interview as an opportunity to evaluate Mr. Almalki's physical and mental condition, identify any possible signs of torture, and report this evaluation to DFAIT.
- In late January and early February 2004, the Ambassador raised Mr. Almalki's case with the Minister and Vice-Minister of the Syrian MFA.
- The Parliamentary Secretary to the Minister of Foreign Affairs with a special emphasis on Canadians abroad made plans to travel to Syria to discuss sensitive cases involving dual nationals, including Mr. Almalki's case. For reasons that I do not attribute to Canadian officials, the trip did not occur until late March, after Mr. Almalki was released.

Failure to sufficiently consider the possibility of mistreatment

118. Exacerbating DFAIT's failure to act promptly after learning of Mr. Almalki's detention, and its failure to make effective representations to Syria between August 2002 and November 2003, was DFAIT's failure to sufficiently consider the possibility that Mr. Almalki was being tortured in Syrian detention.

DFAIT officials' knowledge of Syria's human rights record

119. DFAIT officials responsible for Mr. Almalki's case were generally knowledgeable about Syria's human rights record. The Director General of the Consular Affairs Bureau until September 1, 2003 operated under a "working assumption" that political prisoners detained in Syria would be subjected to torture. The individual who replaced him in September 2003 told the Inquiry that he worked under the assumption that there was some mistreatment of individuals imprisoned in Syrian jails. The consul at the Canadian Embassy in Damascus, who took up his position in September 2002, told the Inquiry that he was aware from his reading that political dissidents and opponents of the regime had been mistreated by the Syrian government, but that when he first arrived in Syria in September 2002 he did not think that dual nationals would be treated the same way. Canada's Ambassador to Syria (until mid-September 2003) testified at the Arar Inquiry that in 2002 and 2003 he knew of the allegations of torture in the U.S. State Department reports.

Conclusions about likelihood of torture in specific cases

120. Though DFAIT officials responsible for Mr. Almalki's case were generally knowledgeable about Syria's human rights record, some of them were reluctant to draw from that record any conclusions about the possibility that Canadians detained in Syria were being mistreated.

121. I find this view troubling, particularly since it was a view that was held by those who oversaw the day-to-day consular efforts in Mr. Almalki's case. It is in my view a far too cautious approach given the very serious consequences for an individual of being tortured or abused. I agree with Justice O'Connor's comments about the reluctance of officials to draw conclusions about the likelihood of torture:

> Detecting torture in countries such as Syria will always be difficult. It is unrealistic to expect torturers to admit to their actions or allow outsiders to make observations that would prove conclusively that torture has occurred. Thus, an assessment that depends solely on "hard facts" is unlikely to ever uncover torture. Canadian officials must be more sophisticated in their assessments, taking into consideration

> all of the available information in order to draw reasonable inferences about what may have happened. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment…provides that the human rights record of a country must be considered in assessing the risk of torture.[9]

122. Furthermore, as I will discuss below, DFAIT officials had, by August 2002, relatively "concrete" evidence of torture. On August 12, 2002, Mr. Elmaati told consular officials in Egypt that he had been tortured while in Syrian custody.

The impact of Mr. Elmaati's torture allegation

123. At least two officials in the Consular Affairs Bureau in Ottawa concluded, based on Mr. Elmaati's torture allegation, that Mr. Almalki was at risk of being tortured. The Director General of the Consular Affairs Bureau said that Mr. Elmaati's allegation was the first direct information of a Canadian being mistreated in Syrian custody, and that his allegation increased the already significant probability that Mr. Almalki was being tortured. The case management officer responsible for Mr. Almalki's case said that upon learning of Mr. Elmaati's allegation, it crossed her mind that Mr. Almalki might be facing the same risk of torture.

124. Unfortunately, not all DFAIT officials responsible for Mr. Almalki's case were aware of Mr. Elmaati's torture allegation. The message reporting the allegation was not immediately sent to the Embassy in Damascus and, as a result the Ambassador and his staff did not learn about it until much later. The Ambassador recalled learning of it in late 2002 (possibly November or December). The consul at the Embassy, who took up the position in September 2002, did not learn of the allegation until September 2005.

125. This delay in communicating Mr. Elmaati's allegation to the Embassy in Damascus should not have occurred. The Attorney General acknowledged in his final submissions that information about the allegation should have been passed to consular officers who were seeking access to Mr. Almalki. This information was material to the Embassy's efforts in respect of Mr. Almalki. It would not have been difficult for officials at the Consular Affairs Bureau to immediately forward to the Embassy the email message reporting the allegation, or to telephone the Ambassador.

126. Furthermore, once the allegation was communicated to the Embassy in late 2002, it should have immediately been shared with key members of the Embassy staff, including the consul.

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[9] Arar Inquiry, *Analysis and Recommendations*, p. 192.

Raising possibility of mistreatment

127. It was suggested by counsel for the individuals and by Amnesty International that DFAIT should have, at points during Mr. Almalki's detention, reminded Syrian officials of the prohibition on torture and arbitrary arrest and detention, and that DFAIT's failure to do so was a deficiency in the provision of consular services to Mr. Almalki.

128. While DFAIT must take all appropriate steps to ensure that Canadian citizens detained abroad are not being tortured, and that international obligations regarding the treatment of detainees are being respected, I do not believe that it will be appropriate in all cases to raise with the detaining state the possibility of torture, or remind the state of its international obligations. Decisions to do so will necessarily be context-specific, and informed by past experience with the detaining state. In some cases, DFAIT officials will reasonably conclude that it would not be in the interest of the detainee to make representations with respect to his or her treatment. There is some evidence that DFAIT was concerned that raising with Syria the possibility of mistreatment would worsen the situation of Canadians detained there, including Mr. Almalki. According to the Director of the Consular Affairs Bureau, an important consideration for DFAIT at that time was the case of William Sampson, a Canadian citizen who was arrested and detained in Saudi Arabia in December 2000. In that case, shortly after DFAIT made representations to Saudi Arabia regarding Mr. Sampson's treatment, Mr. Sampson was summarily tried and sentenced to death. (Mr. Sampson was ultimately released in August 2003.)

Improper disclosure of confidential consular information

129. On one occasion during Mr. Almalki's detention, DFAIT disclosed to CSIS information that it had obtained in the course of providing consular services to Mr. Almalki. The information that was disclosed consisted of an August 2003 CAMANT note containing the text of a diplomatic note regarding Mr. Almalki that the Embassy had received from Syria in April 2003.

130. As I discussed at paragraphs 165 to 168 of my findings regarding the actions of Canadian officials in relation to Mr. Elmaati, information regarding individual Canadians gathered by consular personnel in the performance of their duties is confidential, subject to the provisions of the *Privacy Act*. As I also discussed, the *Privacy Act* provides for certain exceptions to this requirement of confidentiality, and allows for disclosure in situations where (1) the individual has consented, (2) the public interest in disclosure outweighs the invasion of privacy, (3) disclosure would clearly benefit the individual, or (4) an

investigative body such as CSIS or the RCMP needs the information for the purpose of enforcing any law of Canada, and make a written request to DFAIT.

131. The disclosure to CSIS of the diplomatic note regarding Mr. Almalki appears not to fall within any of these exceptions. Mr. Almalki did not give his consent to the disclosure of the information. CSIS did not make a written request to DFAIT, or suggest to DFAIT at any point that it required information about Mr. Almalki for the purpose of enforcing any law of Canada. I received no evidence that disclosure was in the public interest. I accept that, by the time this information was shared, DFAIT ISI and the Consular Affairs Bureau had come to an arrangement whereby ISI would share consular-related information with CSIS only if it considered it helpful to the individual involved to do so. I discussed this arrangement above, in my findings regarding the actions of Canadian officials in relation to Mr. Elmaati. However, I received no evidence that the possibility of "benefit" to Mr. Almalki was considered before information about him was shared. In any event, I am not satisfied that sharing an entire CAMANT note containing personal information about Mr. Almalki could be justified on this basis. It would be more appropriate, in my view, for DFAIT to share with CSIS some information from this CAMANT note, if it considered that it was to Mr. Almalki's benefit to do so.

132. Furthermore, I received no evidence that the disclosure to CSIS was preceded by any consideration or discussion within DFAIT. There appear to have been no discussions about how the information was obtained, whether it was subject to the confidentiality requirement, or whether DFAIT was required to take administrative or other steps before disclosing it.

133. I note that, starting in late 2003, DFAIT began to make changes to its information sharing practices with a view to complying with the requirements of the *Privacy Act*. Among these changes, the Director General of the Consular Affairs Bureau prohibited the sharing of CAMANT notes with anyone other than consular staff. As well, re-stated guidelines for consular officials now emphasize the importance of consular confidentiality, and provide information regarding what may be shared, with whom and in what circumstances.

13

FINDINGS REGARDING THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MUAYYED NUREDDIN

Overview

1. Muayyed Nureddin, a dual Canadian-Iraqi citizen, travelled to Syria in December 2003 on his way home to Toronto from Iraq, where he had been visiting for approximately two months. When he arrived at the border, he was immediately taken into Syrian custody, where he would remain for 33 days. While in Syrian detention, Mr. Nureddin was held in degrading and inhumane conditions, interrogated and mistreated. I have described the actions of Canadian officials with respect to Mr. Nureddin in Chapter 6, and summarized Mr. Nureddin's evidence about his mistreatment in Syria in Chapter 9.

2. In this chapter, I set out my findings concerning the actions of Canadian officials as they related to Mr. Nureddin. I will first provide an overview before setting out in more detail my findings and the basis on which they are made. For the reasons discussed in Chapter 2, my findings are directed to the actions of the institutions of the Government of Canada. It is neither necessary nor appropriate that I make findings concerning the actions of any individual Canadian official, and I do not do so.

3. The Terms of Reference call upon me, first, to consider whether the detention of Mr. Nureddin resulted directly or indirectly from actions of Canadian officials and, if so, whether those actions were deficient in the circumstances. For the reasons set out below, I conclude that two actions of Canadian officials in the period leading up to Mr. Nureddin's detention—the sharing of information, by CSIS and the RCMP, about Mr. Nureddin's suspected involvement in terrorist activities, and the sharing by CSIS of Mr. Nureddin's travel itinerary—likely contributed to his detention in Syria. I go on to conclude that, while aspects of the sharing of information about Mr. Nureddin's suspected involvement in

terrorist activities were deficient, CSIS' decision to share the travel itinerary was not.

4. The Terms of Reference also direct me to assess whether any mistreatment of Mr. Nureddin resulted directly or indirectly from actions of Canadian officials and, if so, whether those actions were deficient in the circumstances. Before making any findings in this regard, it was necessary for me to determine whether Mr. Nureddin was mistreated in Syria. Based on a careful review of the evidence available to me, I conclude below that, while in Syrian detention, Mr. Nureddin suffered mistreatment amounting to torture. I go on to assess several actions of Canadian officials in the period leading up to his detention, and during his detention in Syria, and conclude that the same sharing of information that likely contributed to Mr. Nureddin's detention also likely contributed to mistreatment of Mr. Nureddin there.

5. Finally, the Terms of Reference direct me to consider whether there were any deficiencies in the actions of Canadian officials to provide consular services to Mr. Nureddin in Syria. I conclude that the provision of consular services to Mr. Nureddin during his 33-day detention in Syria was not deficient in the circumstances. DFAIT responded promptly after learning of Mr. Nureddin's detention and, following its initial contact with Syrian officials, DFAIT continued to follow up with efforts to secure consular access to Mr. Nureddin.

Did the detention of Mr. Nureddin result directly or indirectly from the actions of Canadian officials and, if so, were those actions deficient?

6. On September 16, 2003, Mr. Nureddin left Toronto and travelled to the Middle East, through Germany. The purpose of the trip, according to Mr. Nureddin, was to develop his fledgling car import/export business, and to visit family in Kirkuk, Iraq. On December 11, 2003, at the conclusion of his trip, Mr. Nureddin drove from Kirkuk to the Syrian border, on his way to Damascus to catch a flight back to Toronto. When he arrived at the Syrian border, he was searched, interrogated and then taken into custody by Syrian officials.

7. The evidence that I received from Canadian officials establishes that officials took the following actions in the period leading up to Mr. Nureddin's detention in Syria:

(a) Starting in November 2002, CSIS and the RCMP shared with several foreign agencies, including U.S. agencies, information about Mr. Nureddin's suspected involvement in terrorist activities. They advised these agencies that Mr. Nureddin was suspected of couriering

money between Islamic extremists, including to a member of the terrorist group Ansar al-Islam, and that he was associated with several individuals suspected of involvement in terrorism. In one case, CSIS advised several foreign agencies, including a U.S. agency, that CSIS' investigation had "confirmed" that Mr. Nureddin had acted as a money courier for members of Ansar al-Islam.

(b) On September 16, 2003, CSIS shared Mr. Nureddin's travel itinerary, which indicated that he would be returning to Canada from Damascus on December 13, 2003, with a U.S. agency and two other foreign intelligence agencies. The itinerary was accompanied by a caveat prohibiting dissemination without the Service's permission.

(c) The RCMP also shared some of Mr. Nureddin's travel information, in late September 2003, but the information shared did not indicate that Mr. Nureddin would be travelling to Syria or returning to Canada via Syria.

(d) In early December 2003, one of the foreign agencies that had received Mr. Nureddin's itinerary from CSIS advised CSIS that it felt obliged to inform Syrian authorities that Mr. Nureddin was on his way there. CSIS did not object, but requested that the foreign agency seek assurances with respect to Mr. Nureddin's treatment. Then, on December 12, 2003, the day after Mr. Nureddin was detained in Syria, CSIS learned that Syrian authorities had been advised of Mr. Nureddin's travel to Syria, had been asked to question him when he arrived there, and had been provided with questions for this purpose.

8. In the two sections that follow, I assess the link between these actions and Mr. Nureddin's detention and, to the extent that I determine that there is a link, examine whether the actions were deficient in the circumstances. Where I am unable to determine that there is a link, I comment on the nature and quality of Canadian officials' conduct.

Did the detention of Mr. Nureddin in Syria result directly or indirectly from the actions of Canadian officials?

9. Without the evidence of Syrian and U.S. officials, I am unable to conclude with certainty what role the actions described above played in Mr. Nureddin's detention. However, on the evidence available to me, I am satisfied that actions (a) and (b) described above (the sharing of information about Mr. Nureddin's suspected involvement in terrorist activities and the sharing of the itinerary by CSIS), when taken together, likely contributed to Mr. Nureddin's detention in Syria, and that they therefore can be said to have resulted indirectly in that

detention. The sharing by CSIS of Mr. Nureddin's itinerary with a U.S. agency is more proximate to Mr. Nureddin's detention than is the sharing of other information about Mr. Nureddin. It is reasonable to infer that the risk that Mr. Nureddin might be detained as a result of CSIS sharing his travel itinerary was increased by the fact that Canadian officials had previously advised their foreign partners that, for example, CSIS had confirmed that Mr. Nureddin acted as a human money courier for members of Ansar al-Islam.

10. I recognize that CSIS provided Mr. Nureddin's travel itinerary with a caveat prohibiting dissemination, and I received no evidence that the U.S. agency that received the itinerary breached this caveat. I recognize that this U.S. agency might have corroborated the itinerary information from its own sources, and then passed the information to Syria. Several CSIS officials told the Inquiry that the U.S. agency could have obtained the travel information itself through other means. I accept that when a foreign agency corroborates information provided to it by CSIS, that information is no longer the property of CSIS or protected by CSIS caveats. Nevertheless, even independent corroboration by a U.S. agency, if that is what occurred, would not be sufficient to break the link between the conduct of Canadian officials in sharing the itinerary with this U.S. agency, and the detention of Mr. Nureddin in Syria.

11. By contrast, I am not satisfied that Mr. Nureddin's detention resulted directly or indirectly from the sharing of his travel information by the RCMP. As I noted above, the information shared did not indicate that Mr. Nureddin would be travelling to Syria.

12. Nor do I believe that Mr. Nureddin's detention resulted directly or indirectly from CSIS' failure to object upon learning that a foreign agency felt obliged to advise Syria that Mr. Nureddin was on his way there. To conclude otherwise, I would have to infer on the evidence available to me that, had CSIS expressed an objection upon learning from the foreign agency that it planned to tell the Syrian authorities that Mr. Nureddin was on his way to Syria, things would have been different for Mr. Nureddin. For at least two reasons, the specifics of which are subject to national security confidentiality, I very much doubt that the foreign agency would have altered its plans in response to CSIS' objection. As the CSIS official who was involved in the December 11, 2003 correspondence with the foreign agency stated, "They weren't asking me. They were telling me that they were going to tell the Syrians."

Were these actions of Canadian officials deficient?

13. Having concluded that the conduct of Canadian officials in sharing information about Mr. Nureddin's suspected terrorist involvement, and the conduct of CSIS in sharing Mr. Nureddin's itinerary, resulted indirectly in Mr. Nureddin's detention in Syria, I now turn to consider whether these actions were deficient in the circumstances. I also comment on the manner in which CSIS responded upon learning that a foreign agency planned to advise Syria that Mr. Nureddin was on his way there.

Sharing information about suspected involvement in terrorist activities

14. CSIS and the RCMP began sharing information about Mr. Nureddin in the fall of 2002, after receiving information from foreign agencies that Mr. Nureddin might be linked to terrorist activity in Iraq. Starting in late 2002, and continuing into 2003, CSIS advised several foreign agencies that Mr. Nureddin was suspected of couriering money between Islamic extremists, including to a supporter of Ansar al-Islam. On one occasion, the Service advised several foreign agencies that the Service had "confirmed" that Mr. Nureddin acted as a money courier in the transfer of money to Ansar al-Islam. The RCMP also shared information regarding Mr. Nureddin, though apparently only with U.S. agencies. The information shared included the results of an interview of Mr. Nureddin that the RCMP had conducted on September 16, 2003, prior to Mr. Nureddin's departure from Canada, and documents indicating that Mr. Nureddin was suspected of acting as a financial courier for people believed to be supporters of Islamic extremism.

15. In the circumstances, I do not believe it was deficient for Canadian officials to supply foreign agencies, including U.S. agencies, with information about Mr. Nureddin's suspected activities. I am satisfied that, when officials received information linking Mr. Nureddin to possible terrorist activities taking place in Iraq, it was appropriate to respond by providing certain foreign agencies with the information that they had collected.

16. I am also satisfied that the manner in which the RCMP carried out this sharing of information was not deficient in the circumstances. The information that was shared was properly qualified (using terms such as "suspected" or "believed" or the phrase "reason to believe") and in each case was accompanied by a caveat prohibiting dissemination without the RCMP's consent.

17. However, the manner in which CSIS shared information regarding Mr. Nureddin was deficient in two respects. First, CSIS failed to attach caveats to messages that it sent to a U.S. agency and a foreign agency in November 2002.

These messages advised that Mr. Nureddin was suspected of couriering money to a suspected supporter of Ansar al-Islam.

18. In his final submissions, the Attorney General acknowledged CSIS' failure to attach caveats to this information, and explained this failure as "inadvertence." He argued that the exclusion of caveats in this case was inconsequential because: (1) the messages provided background information only; (2) the messages were disseminated to two trusted partners who respect the third party rule to not share information without consent; and (3) there has been no indication that those agencies did not respect the third party rule.

19. Without evidence from the recipients of CSIS' uncaveated message, I have no way of knowing whether the failure to attach caveats was "inconsequential." However, I do not believe that there is room for inadvertence where individual rights are at stake. Care must be taken within CSIS to ensure that the proper written caveats are attached to all outgoing messages, regardless of how reliable or trustworthy the recipient agency is perceived to be. Clear written caveats are particularly important where the message expresses a suspicion that an individual is involved in terrorist-related activity.

20. Second, when CSIS shared information with several foreign agencies, indicating that its investigation had "confirmed" that Mr. Nureddin acted as a human courier and facilitator in the transfer of money to members of Ansar al-Islam in Northern Iraq, it did so without first taking adequate measures to ensure the accuracy and reliability of the information or qualify it as appropriate. The statement that CSIS communicated to these foreign agencies was a stronger statement than others that CSIS had communicated previously to some of the same foreign agencies (which generally indicated only that Mr. Nureddin was "suspected" of couriering money to members of Ansar al-Islam); for other foreign agencies, this was the first information they had received from CSIS about Mr. Nureddin. The Service appears not to have given much consideration to the change from "suspected" to "confirmed." This message is the only one in which such conclusive language was employed; I note that subsequent communications regarding Mr. Nureddin's activities used more qualified and tentative language.

21. As I have said above in my findings regarding the actions of Canadian officials in relation to Mr. Elmaati and Mr. Almalki, the importance of accuracy in communications to foreign agencies cannot be overstated. I reiterate Justice O'Connor's conclusion, recently endorsed by the Supreme Court of Canada, that

"[i]naccurate information or mislabelling, even by a degree, either alone or taken together with other information, can result in a seriously distorted picture."[1]

Sharing of Mr. Nureddin's travel itinerary and travel information

22. As discussed in detail at paragraphs 9 to 23 of Chapter 6, and as noted above, CSIS shared Mr. Nureddin's travel itinerary, including information about his planned return from Damascus on December 13, 2003, with a U.S. agency and two other foreign intelligence agencies on September 16, 2003, the day on which Mr. Nureddin departed Toronto for the Middle East. CSIS advised these agencies that Mr. Nureddin was known to the Service for his involvement in Islamic extremist causes and that he might be acting as a human courier and facilitator in the transfer of money to Ansar al-Islam. The itinerary was accompanied by a caveat, which prohibited further dissemination of the itinerary without the Service's permission. As I also noted above and discussed at paragraphs 24 to 25 of Chapter 6, in late September 2003, the RCMP shared some of Mr. Nureddin's travel information with U.S. agencies, though the information did not indicate that Mr. Nureddin would be returning to Canada through Syria. The information was accompanied by a caveat prohibiting dissemination without the RCMP's consent.

23. I accept the submission of the Attorney General that the Service has an obligation to share the travel information that it collects in the course of investigating the activities of individuals who are reasonably suspected of posing a threat to the security of Canada or another country, provided that appropriate steps are taken to safeguard the interests of those individuals. I also recognize that CSIS relies to a great extent on information provided by its foreign partners, and that if CSIS does not share information regarding possible threats to the security of those partner nations, its ability to collect accurate and timely information about potential threats to Canada's security will be significantly compromised.

24. With this in mind, I am satisfied that CSIS' decision to share Mr. Nureddin's itinerary on September 16, 2003 was not deficient in the circumstances. Mr. Nureddin was travelling to Northern Iraq. At the time, the U.S. had a significant military presence in Iraq, and Ansar al-Islam was thought to have been responsible for the deaths of coalition forces there.

25. CSIS appears to have considered the possible implications for Mr. Nureddin of sharing the itinerary. This is evident in CSIS' deliberate decision not to send the itinerary to Syria, a decision apparently made because of concerns about

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[1] *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 at para. 41.

what had happened to Mr. Arar, and about the possibility that Mr. Nureddin might be detained in Syria.

26. Furthermore, as I have noted above, the itinerary was provided to the three agencies with a caveat prohibiting dissemination to third parties without the Service's permission. In my view, at the time that CSIS shared the itinerary, and subject to the concerns that I discuss below in paragraphs 33 to 34, CSIS had reason to believe that this caveat would be sufficient to protect the information in the itinerary from being passed beyond the agencies to which CSIS sent it. This includes the U.S. agency to which the itinerary was passed. The evidence available to me suggests that this U.S. agency was not in the habit of breaching CSIS caveats—I saw several examples of the U.S. agency requesting CSIS' permission to share CSIS information (including information about Mr. Nureddin) with another foreign agency. One CSIS official expressed doubt that the U.S. agency would compromise its relationship with CSIS by passing Canadian information that it could acquire through other means.

27. For many of the same reasons, I am also satisfied that it was reasonable for the RCMP to share some of Mr. Nureddin's travel information with U.S. agencies in late September 2003. Significantly, the travel information was accompanied by a caveat, and did not indicate that Mr. Nureddin would be returning to Canada via Syria.

CSIS' response upon learning that a foreign agency planned to advise Syria that Mr. Nureddin was on his way there

28. As I discussed above, in early December 2003, one of the foreign agencies that had received Mr. Nureddin's itinerary from CSIS advised CSIS that it felt obliged to inform Syrian authorities that Mr. Nureddin was on his way to Syria. CSIS did not object, but requested that the agency seek assurances with respect to Mr. Nureddin's treatment.

29. In doing so, CSIS reiterated requests that it had made of the same foreign agency in October 2003. In late October 2003, after CSIS advised that foreign agency that it was no longer aware of Mr. Nureddin's location, the foreign agency sent CSIS a message saying that it was searching for and would arrange for the detention of Mr. Nureddin, if he was encountered. In communications to the agency, the Service acknowledged that Mr. Nureddin might be arrested or detained in one of the countries through which he travelled, and requested that, if he was detained, he be treated in accordance with international conventions and due process.

30. In my view, the manner in which CSIS responded to the foreign agency, upon learning in October 2003 that the agency was searching for and would arrange for the detention of Mr. Nureddin, and upon learning in December 2003 that the agency planned to tell Syria that Mr. Nureddin was on his way there, was reasonable in the circumstances. Recognizing that it would not be practical to dissuade the foreign agency from its plans, CSIS responded by requesting assurances with respect to Mr. Nureddin's treatment.

31. I accept that in many cases assurances such as these are of questionable effectiveness. In the Arar Inquiry report, Justice O'Connor canvassed the issue of diplomatic assurances against torture (an analogous form of assurance) rather extensively, noting that human rights advocates generally regard them as unreliable and unenforceable.[2] Justice O'Connor referred to a concern expressed by the current United Nations Special Rapporteur on Torture that it is difficult, if not impossible, for the country seeking the assurances to ensure that they are complied with. He also cited a decision of the United Nations Committee against Torture, in which the Committee held that Sweden's expulsion of a terrorism suspect to Egypt violated Article 3 of the United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and that obtaining unenforceable diplomatic assurances was insufficient to protect against the manifest risk that the individual would be tortured in Egypt.[3]

32. Even accepting that assurances against torture are generally unreliable and unenforceable, I believe that CSIS' request for assurances in Mr. Nureddin's case was reasonable. This was not a situation in which Canada obtained diplomatic assurances against the torture of an individual it had deported to Syria. CSIS requested the assurances in a situation where the alternative would plainly have had no effect. I am satisfied that requesting, and then reiterating its request for, assurances with respect to Mr. Nureddin's treatment, was reasonable in the circumstances.

33. However, one aspect of CSIS' communications with the foreign agency in December 2003 does cause me concern: when advised by the foreign agency that it intended to advise Syria that Mr. Nureddin was on his way there, CSIS did not make inquiries to confirm that the foreign agency was not passing information that had originated with CSIS. (As discussed above, CSIS shared Mr. Nureddin's itinerary information, including information about his planned

[2] Though they were not sought in the diplomatic context, I see no principled basis on which to distinguish the assurances sought by CSIS in Mr. Nureddin's case from the diplomatic assurances against torture discussed by Justice O'Connor.

[3] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Factual Background, Volume II* (Ottawa: Public Works and Government Services Canada, 2006), pp. 525-527.

return from Damascus, with this foreign agency on September 16, 2003). The Attorney General argued in his final submissions that the Service was not required, and had no basis, to inquire into whether the foreign agency was breaching CSIS caveats in order to advise Syria of Mr. Nureddin's intention to travel there. He argued that respect for caveats is a fundamental underpinning of the intelligence community, and that the Service had no reason to doubt that its caveats would not be respected.

34. While I do not think it would be practical or appropriate for CSIS to, in all cases, make inquires to ensure that caveats are being respected, it would be a reasonable step in a case such as this where an individual's rights and liberties are directly at stake, and where the opportunity to raise the issue of respect for caveats arises. CSIS knew that Mr. Nureddin could be exposed to harsh treatment if arrested and detained in Syria; CSIS' insistence that the foreign agency obtain assurances with respect to Mr. Nureddin's treatment confirms this. With that knowledge came an enhanced responsibility to ensure that its caveats were being respected. It would not have been difficult for CSIS to pose the question to the foreign agency at the time that the foreign agency advised CSIS of its intention to notify Syria.

Did any mistreatment of Mr. Nureddin result directly or indirectly from the actions of Canadian officials and, if so, were those actions deficient?

Was Mr. Nureddin mistreated in Syria?

35. As I discussed above in my findings regarding Mr. Elmaati and Mr. Almalki, the word "mistreatment" is broader than torture. It includes any treatment that is arbitrary or discriminatory or results in physical or psychological harm, as well as denial of properly entitled assistance and other forms of treatment that would normally be included in the meaning of mistreatment. "Mistreatment" may also include detention itself, where that detention is arbitrary, or where the detainee is held under conditions that cause him serious physical or psychological harm. To the extent that certain actions of Canadian officials directly or indirectly prolonged an individual's detention under such conditions, I would consider these actions to have also resulted directly or indirectly in that individual's mistreatment.

36. The Attorney General acknowledged in his submissions at the hearing on the interpretation of my Terms of Reference that, for the purposes of this Inquiry, the detention of Mr. Nureddin under the conditions prevailing in Syria constituted mistreatment.

37. In my ruling on the interpretation of the Terms of Reference, I determined that it would be both appropriate and important for the Inquiry to try to ascertain whether Mr. Elmaati, Mr. Almalki and Mr. Nureddin suffered mistreatment amounting to torture. The nature and extent of any mistreatment, and whether that mistreatment amounted to torture, is, at a minimum, relevant to whether the actions of government officials were deficient in the circumstances.

38. Article 1 of the UN *Convention Against Torture* sets out the generally accepted definition of torture. It provides that:

> torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

39. Based on a careful review of the evidence available to me, which as I have emphasized does not include information from Syrian authorities, I conclude that while in Syrian detention, Mr. Nureddin suffered mistreatment amounting to torture. Using the words of the *Convention Against Torture*, Syrian officials intentionally inflicted physical and mental pain and suffering on Mr. Nureddin in order to obtain information from him. This mistreatment is described in detail in Chapter 9, and I will not repeat that description here.

40. I find Mr. Nureddin's account of mistreatment by Syrian officials to be credible. I base this assessment on a number of factors. The most important of these factors are the nature and particularity of the information that Mr. Nureddin provided during the thorough interview of him that Inquiry counsel and I conducted, with assistance from Professor Peter Burns, former Chair of the United Nations Committee against Torture, concerning the conditions under which he was detained and the manner in which he was treated while in detention, as well as his demeanour during the many hours of the interview. In addition, I am satisfied that Mr. Nureddin's account of his experience in Syria has remained largely consistent over time. Notably, the account that Mr. Nureddin gave to the Inquiry is very similar to the account that he gave to Embassy officials immediately after his release from Syrian detention in January 2004.

41. In coming to my conclusion, I have also taken into account the fact that Mr. Nureddin's evidence is consistent with the evidence of other individuals who have been held in Syrian detention, including Mr. Almalki and Mr. Elmaati. As noted in Chapter 4, Mr. Elmaati told consular officials in August 2002 that he had been tortured while being detained and interrogated at Far Falestin. I cannot accept the submission that there may have been collusion among the three individuals. Mr. Nureddin told the Inquiry that he had not discussed his experience in detention with Mr. Almalki or Mr. Elmaati. In any event, their accounts are in my view far too detailed, and different in important ways, to support a finding of collusion.

42. I have, in addition, used publicly available reports and other background information concerning the treatment of detainees in Syria as context in assessing Mr. Nureddin's account of events.

43. As mentioned in Chapter 2, the Inquiry received certain medical records from Mr. Nureddin, which I considered in making my determination. I also considered it desirable to obtain current medical assessments of Mr. Nureddin from a psychologist and a psychiatrist retained by the Inquiry. While I recognize the limitations of these kinds of assessments as evidence of what actually occurred, and in distinguishing between types of trauma that an individual might have suffered, particularly when the events in question took place some years ago, I nonetheless thought it desirable to ensure that the current medical assessments of Mr. Nureddin were not inconsistent with the account of his mistreatment. As I indicated in Chapter 2, the assessments that I obtained were from a psychologist and a psychiatrist with experience in assessing victims of torture. I have reviewed their reports with the assistance of my medical advisor, Dr. Lisa Ramshaw. I found no inconsistency between their reports and Mr. Nureddin's account of his mistreatment.

Did any mistreatment of Mr. Nureddin result from the actions of Canadian officials?

44. Having concluded that Mr. Nureddin suffered mistreatment amounting to torture in Syria, I now turn to the question whether this resulted directly or indirectly from the actions of Canadian officials and whether, if so, these actions were deficient in the circumstances. Below I examine several actions of Canadian officials—the sharing of information prior to Mr. Nureddin's detention, CSIS' failure to advise DFAIT that Mr. Nureddin was at risk of being detained and mistreated, CSIS' December 22 communication to Syrian authorities, and CSIS' inquiries of the Syrian Military Intelligence (SyMI) in early January 2003—and

assess the link between these actions and the mistreatment that Mr. Nureddin suffered in detention.

Sharing of information prior to Mr. Nureddin's detention

45. As I discussed above in paragraphs 14 and 22, starting in approximately November 2002, CSIS and the RCMP shared information about Mr. Nureddin with various foreign agencies, including U.S. agencies.

Did any mistreatment result, directly or indirectly, from sharing this information?

46. The same factors that led me to my conclusion that these actions likely contributed to Mr. Nureddin's detention in Syria lead me now to conclude that they also likely contributed to his being mistreated in Syrian detention. I accept Mr. Nureddin's evidence that he was subjected to inhumane prison conditions, and interrogated and tortured from the outset of his detention. On this basis, it is reasonable to infer that the information sharing that likely contributed to Mr. Nureddin's detention also likely contributed to his mistreatment in Syria.

47. Supporting this conclusion is the apparent correspondence between the substance of Mr. Nureddin's interrogations and some of the information that Canadian officials shared with foreign agencies prior to Mr. Nureddin's detention. For example, Mr. Nureddin told the Inquiry that he was questioned by his Syrian interrogators about two individuals from Canada. These same individuals had been identified by Canadian officials, in communications to foreign agencies, as being suspected associates of Mr. Nureddin.

Was sharing this information deficient?

48. I discussed above the deficiencies in the information sharing that took place prior to Mr. Nureddin's detention. In summary, while in my view it was not deficient for Canadian officials to share information about Mr. Nureddin, including Mr. Nureddin's travel itinerary, with foreign agencies, the manner in which CSIS shared information was deficient in two respects: CSIS failed to attach caveats to all of its outgoing messages about Mr. Nureddin, and CSIS shared information without in all cases taking adequate measures to ensure the accuracy and reliability of the information or qualify it as appropriate.

CSIS' failure to advise DFAIT that Mr. Nureddin was at risk of being detained and mistreated

49. On December 12, 2003, only days after a foreign agency had advised CSIS that it felt obliged to inform Syrian authorities that Mr. Nureddin was on his

way to Syria, and one day after Mr. Nureddin had become detained in Syria, CSIS learned that Syrian authorities had been advised (at some point prior to December 11) of Mr. Nureddin's plan to travel to Syria, had been asked to question him when he arrived there, and had been provided with questions for this purpose. CSIS was advised that reasonable assurances with respect to Mr. Nureddin's treatment and respect for his human rights would be sought from Syrian authorities. CSIS appears not to have taken any action upon receiving this information. It did not conduct follow-up to confirm that the assurances with respect to Mr. Nureddin's treatment had in fact been sought and obtained. Nor did CSIS share this information with officials in DFAIT.

Did any mistreatment result, directly or indirectly, from CSIS' failure to advise DFAIT that Mr. Nureddin was at risk of being detained and mistreated?

50. While, as I discuss below, I am very troubled by CSIS' failure to advise DFAIT that Mr. Nureddin was at risk of being detained and mistreated in Syria, I find myself unable to draw an inference as to whether the failure to do so resulted, directly or indirectly, in Mr. Nureddin's mistreatment. Based on the evidence available to me, including the evidence concerning the timing of his mistreatment, I cannot determine whether, if DFAIT had been advised, it would have been able to interfere so as to prevent what befell Mr. Nureddin following his detention, or to secure his release any earlier than it occurred.

Comments on CSIS' failure to advise DFAIT that Mr. Nureddin was at risk of being detained and mistreated

51. In my view, upon receiving this information, CSIS should have notified DFAIT that Mr. Nureddin was at risk of being detained and mistreated in Syria. CSIS officials who received and reviewed the information were clearly aware of the risks that Mr. Nureddin faced. They had decided in September 2003 not to provide Syria with a copy of Mr. Nureddin's itinerary, out of concern about the sensitivities surrounding the Arar case, and the possibility that Mr. Nureddin might be detained. They had also requested, in October 2003 and again in early December 2003, assurances with respect to Mr. Nureddin's treatment. These two actions were an acknowledgement on the part of CSIS officials involved in Mr. Nureddin's case that Mr. Nureddin was at risk of being detained and, if he were detained, mistreated.

52. While CSIS officials were aware that Mr. Nureddin faced a serious risk of detention and mistreatment abroad, CSIS did not have the capacity or the mandate to address, and take reasonable steps to mitigate, this risk. The responsibility to provide protection to Canadian citizens abroad rests with DFAIT.

However, DFAIT cannot address a risk of which it is not aware. It is therefore essential that when CSIS learns that a Canadian citizen will likely be detained in a country with a questionable human rights record, it communicate this information to DFAIT as soon as is reasonably possible.

53. I cannot say precisely what DFAIT would have done had CSIS notified it of the risk that Mr. Nureddin was facing or whether, if DFAIT had been notified, any action that it might have taken would have made any difference to Mr. Nureddin's situation. However, only DFAIT had the expertise and mandate to take action. Putting DFAIT in a position to take action is an important element of the coordination to be expected of Canadian officials in these circumstances.

CSIS' December 22 communication to Syria

54. On December 22, 2003, approximately three days after CSIS learned that Mr. Nureddin was in detention in Syria, CSIS sent a message to Syrian authorities asking if they had any information pertaining to Mr. Nureddin's arrest and detention. The messages described Mr. Nureddin as having recently come to the attention of CSIS "for his involvement in Islamic extremist causes" and stated that he might be acting as a human courier in the transfer of money to members of Ansar al-Islam.

Did any mistreatment result, directly or indirectly, from CSIS' December 22 communication to Syria?

55. I am not able to infer based on the evidence available to me that this communication resulted directly or indirectly in mistreatment of Mr. Nureddin in Syria. Mr. Nureddin's account, as well as documents that I received from Canadian officials, suggest that the gist of the information that CSIS provided in this December 22 message was already available to Mr. Nureddin's Syrian interrogators before December 22. I received evidence that Syrian authorities had been provided, though not by Canadian officials, with very similar information, at some point in early December. Moreover, Mr. Nureddin told the Inquiry that he was asked on December 14 and 15, before the CSIS message was sent, about what organization he belonged to, who gave him money and to whom he gave the money.

56. The fact that Syrian officials already had access to similar information prior to December 22, 2003 is not sufficient on its own to support a conclusion that CSIS' communication to Syria did not result directly or indirectly in mistreatment of Mr. Nureddin. It is conceivable that, by essentially confirming

or corroborating information that Syria had received earlier, CSIS' December 22 message gave Syria another reason to interrogate and mistreat Mr. Nureddin on the basis of that information. However, Mr. Nureddin's own account of mistreatment suggests that the description provided by CSIS on December 22 did not figure in his treatment after that date. Between December 22 and Mr. Nureddin's release on January 13, he was apparently interrogated only briefly, and the manner in which he was treated improved considerably—he was moved to a more roomy cell, was not physically beaten, and was taken several times to the director's office to drink coffee or tea.

57. I also received no evidence to suggest that CSIS' December 22 communication had any effect on the length of Mr. Nureddin's detention.

Comments on CSIS' December 22 communication to Syria

58. I am concerned that CSIS officials did not adequately consider the potential consequences for Mr. Nureddin of sending this message when it did. CSIS officials knew, if only from their experiences with the Arar, Elmaati and Almalki cases, about Syria's reputation for mistreating individuals suspected of being involved in terrorist activities. CSIS officials were, or ought to have been, aware of the significance, particularly for the Syrian recipients of their message, of describing an individual as being involved in "Islamic extremist causes" and linked to Ansar al-Islam. CSIS' conduct in the period leading up to Mr. Nureddin's departure from Canada, and detention in Syria, confirms that officials were alive to the possibility of mistreatment in Syria—they made a conscious decision not to share Mr. Nureddin's itinerary with Syria, because of the sensitivities surrounding the Arar case; and when they learned that a foreign agency planned to advise Syria of Mr. Nureddin's intention to travel there, they insisted that the foreign agency seek reasonable assurances that he would be accorded due process of law, and that he would not be mistreated.

59. Yet despite being aware of the potential consequences of sending this message to Syrian officials, CSIS sent the message, and apparently with little ceremony. There appears to have been no significant discussion among CSIS officials, before the message was sent, about what consequences might befall Mr. Nureddin as a result. While CSIS attached caveats to the message, these caveats merely prohibited dissemination without CSIS' permission. By December 2003, CSIS had developed another caveat, which requested that the subject of the information being provided be treated fairly within the norms of international conventions and accorded due process under law. But CSIS did

not attach this caveat to its December 22 message to Syria. In my view, this is the least that CSIS could have done in the circumstances.

CSIS' early January 2004 inquiries

60. In early January 2004, upon learning that Mr. Nureddin would be set free "immediately," CSIS made inquiries of the SyMI regarding Mr. Nureddin. CSIS asked the SyMI why Mr. Nureddin had been detained and whether he had been charged with any offence. CSIS also asked the SyMI to respond to allegations that Mr. Arar had been tortured while in Syrian detention, and to advise if it had made any extraordinary efforts to ensure the fair treatment of Canadian citizens detained in Syria.

Did any mistreatment result, directly or indirectly, from CSIS' early January 2004 inquiries?

61. I am satisfied that these inquiries did not result directly or indirectly in mistreatment of Mr. Nureddin, whether by prolonging his detention or otherwise. I found no evidence that would permit me to infer a direct or indirect link.

Comments on CSIS' early January 2004 inquiries

62. For two reasons, I am satisfied that CSIS' inquiries of the SyMI in early January 2004 were reasonable in the circumstances. First, the Service had reason to believe that Mr. Nureddin might be released from Syrian custody in the very near future and wanted to obtain concrete information about the reasons for his detention, and whether he had been charged with anything. Second, the inquiries themselves were relatively benign; notably, they did not contain any information about Mr. Nureddin or suggest to Syrian officials that there was reason to further interrogate him or prolong his detention. Third, it was likely in the interest of Canadian officials at this time to obtain information about Syria's response to Mr. Arar's allegations of torture. This was information that officials required in order to better manage the cases of Canadian citizens detained in Syria (which at this time included Mr. Nureddin, Mr. Almalki and others). Among Canadian government agencies, CSIS was arguably best positioned to obtain this information from the SyMI, a military security organization that was apparently reticent to deal with police and political officials.

Were there any deficiencies in the actions of Canadian officials to provide consular services to Mr. Nureddin?

63. I turn now to examine the consular services provided to Mr. Nureddin over the course of his 33-day detention in Syria. I conclude that the provision of

consular services in Mr. Nureddin's case was not deficient in the circumstances. DFAIT responded promptly upon learning of Mr. Nureddin's detention and, following its initial contact with Syrian officials, DFAIT continued to follow up with efforts to secure consular access to Mr. Nureddin.

Initial response

64. DFAIT responded promptly upon learning that Mr. Nureddin had been detained in Syria. When DFAIT learned of the detention on December 18, 2003, officials at the Consular Affairs Bureau immediately notified the Director General, and opened a file for Mr. Nureddin. On the next business day, December 21, DFAIT sent a diplomatic note requesting the reasons for and place of Mr. Nureddin's detention, and permission for consular officials to visit him as soon as possible. I am satisfied that DFAIT could not have responded any more quickly in the circumstances.

Follow-up

65. In the two weeks following the first diplomatic note, officials at the Canadian Embassy in Damascus followed up with Syrian officials on at least two occasions. In late December, the Embassy contacted the chief of the consular section of the Syrian Ministry of Foreign Affairs, and was told that the diplomatic note had been forwarded to the competent authorities but that he was still waiting for a reply. On January 3, 2004, an Embassy official met with the chief of the consular section.

66. Between January 6 and January 12, the Embassy had discussions with CSIS officials and with officials from the SyMI regarding the possible release of Mr. Nureddin, and received information that he would be released very soon. Mr. Nureddin was finally released on the morning of January 13.

67. Without the evidence of Syrian officials, I cannot know why Mr. Nureddin was released when he was, or whether DFAIT's actions played any role in securing his release. However, I am satisfied that DFAIT made sufficient efforts to follow up on its December 21 diplomatic note and secure consular access to Mr. Nureddin.

Coordination of Canadian response

68. Counsel for Mr. Elmaati, Mr. Almalki and Mr. Nureddin urged me to find that Canadian officials failed to coordinate their response to Mr. Nureddin's detention and that, as a result, Canadian officials sent mixed messages to Syrian officials, creating an unacceptable risk that Mr. Nureddin would be further

detained and tortured by the SyMI. They argued that officials' response was uncoordinated in two respects. First, they argued, Canadian officials did not coordinate their response upon learning of Mr. Nureddin's initial detention—according to counsel's submission, CSIS was the first to contact Syrian officials and DFAIT did not send a diplomatic note until December 21. (As discussed above, CSIS contacted Syria on December 22, after the diplomatic note was sent.) Second, they argued, upon learning that Mr. Nureddin was going to be released "immediately," CSIS made inquiries of the SyMI while DFAIT continued to make efforts to secure consular access to Mr. Nureddin.

69. For several reasons, even apart from the incorrect premise about the relative timing of the communications by DFAIT and CSIS, I do not agree with this submission. First, I received evidence that CSIS and DFAIT were in fact coordinating their activities to a certain extent—for example, upon receiving information that Mr. Nureddin was going to be released soon, CSIS shared this information with the Embassy, and the Embassy was able to follow up with its own contacts. Second, with the possible exception of CSIS' December 22 message which I discussed in detail above at paragraphs 54 to 59, CSIS and DFAIT's communications with Syrian officials were relatively consistent in their objective, which was to obtain more information about Mr. Nureddin's situation. Third, I believe it is appropriate, and consistent with the very different mandates of the two organizations, that DFAIT and CSIS would to some degree, and subject to proper coordination and organization, be communicating independently with their Syrian contacts. CSIS had a responsibility to follow up with its main contact organization—the SyMI—if it had reason to believe that the SyMI might possess any security-related information. The main responsibility of DFAIT, on the other hand, was to coordinate consular access to Mr. Nureddin through its main contact—the Syrian Ministry of Foreign Affairs.