



# REPORT OF THE EVENTS RELATING TO MAHER ARAR

## FACTUAL BACKGROUND

---

VOLUME I, II, AND ANALYSIS & RECOMMENDATIONS

### **ADDENDUM**

Disclosure of information authorized by the  
Federal Court of Canada in accordance with  
Sections 38.04 and 38.06 of the  
*Canada Evidence Act*

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

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

© Her Majesty the Queen in Right of Canada,  
represented by the Minister of Public Works  
and Government Services, 2006

Cat. No: CP32-88/1-1-2006E

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

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

Printed by: Gilmore Print Group

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

[www.ararcommission.ca](http://www.ararcommission.ca)



REPORT OF THE EVENTS  
RELATING TO MAHER ARAR

FACTUAL BACKGROUND

---

VOLUME I

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



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

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

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

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

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

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

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

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

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

A current copy of the presentation, excluding speaking notes, was sent to the Americans on July 22, 2002.<sup>676</sup> **However, Project A-O Canada was not successful in convincing the FBI to institute a criminal investigation, and the relationship between the two agencies did not change.**<sup>677</sup>

## 4.5

### MR. ARAR'S DEPARTURE FOR TUNISIA — JULY 2002

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

CSIS was informed of Mr. Arar's apparently permanent departure for Tunisia in the Project A-O Canada situation report for July 12, 2002.<sup>678</sup> In a meeting on July 15, Project A-O Canada officials informed the Americans of Mr. Arar's departure. They discussed possible reasons for his departure, including whether it was as a result of the investigation, or if it had already been planned.<sup>679</sup>

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

However, he did not have any notes relating to this matter. In any event, it appears that, as of September 30, it was a commonly-held belief within Project A-O Canada that Mr. Arar had been removed from the United States to Zurich.<sup>57</sup>

It is unclear precisely when, after September 30, the members of Project A-O Canada were first informed that Mr. Arar was still in the United States. However, the exact timing is not critical to this Inquiry. At the latest, on October 2, Project A-O Canada was informed by DFAIT that Mr. Arar remained in custody in New York.<sup>58</sup>

There is no evidence of any contact between the RCMP and American authorities between the American official's phone call at 1:15 p.m. on September 27 and the late afternoon of October 3, other than one conversation between Staff Sergeant Corcoran and an FBI agent. On October 1, Staff Sergeant Corcoran was told by the agent that it was his understanding that Mr. Arar was going to be refused entry into the U.S. and sent back to his original port of call.<sup>59</sup>

## 3.2

### THE AMERICAN QUESTIONS — OCTOBER 3

Late in the afternoon of October 3, **the CIA** sent a fax to RCMP CID, asking a number of questions about Mr. Arar.<sup>60</sup> The next morning, Corporal Flewelling sent a fax to Project A-O Canada,<sup>61</sup> attaching **CIA's** questions. On the cover page, Corporal Flewelling wrote:

**The CIA** contacted this office after hours looking for Project A-O Canada's assistance with information pertaining [to Mr. Arar]. On behalf of American law enforcement **the CIA** is seeking any evidence that can assist in the support of criminal charges.

Find attached request forwarded by **the CIA** with a list of questions. They would be most appreciative of any additional information you can supply on this subject. They further request that any response be channeled through the FBI for evidentiary purposes.

Due to time restrictions facing investigator in the U.S.; **the CIA** would be grateful for your attention to this matter.<sup>62</sup>

**This was the first contact Project A-O Canada had with the CIA concerning Mr. Arar's detention; up to this point, the Project had been dealing solely with the FBI.**

When Staff Sergeant Callaghan read the fax, he thought it most likely that the FBI — as the American law enforcement agency — would use the responses to pursue criminal charges against Mr. Arar. He did not consider whether he had any discretion in answering the questions. For him, it was a matter of responding to a request by RCMP Headquarters.<sup>63</sup>

Inspector Cabana was not involved in preparing a reply to the request. However, when questioned on the issue of Project A-O Canada's authority to send a reply, he testified that the request was channeled through CID to the Project in order for officials there to comply with it.<sup>64</sup>

**\*\*\*]. It stated that the U.S. Immigration and Naturalization Service was currently processing Mr. Arar for removal. [\*\*\*].**

The request included seven questions regarding Mr. Arar's contacts or possible connections with other individuals, sleeper cell members, or known terrorists. The memorandum also asked that the information be provided to Project A-O Canada because the questions were related to an American investigation.

According to RCMP witnesses, the request did not cause any alarm or concern on their part, despite the strong language it used.

Based on the request, it was clear to the RCMP that the Americans considered Mr. Arar to be a member of al-Qaeda. In Staff Sergeant Callaghan's view, the American authorities were not being aggressive in their assessment of Mr. Arar. In fact he wondered if they had more information than Canadian authorities on Mr. Arar in relation to the period of time when Mr. Arar worked for The MathWorks, Inc. in Boston.<sup>65</sup> He also wondered if Canada had additional information that would confirm that Mr. Arar was a member of al-Qaeda. The al-Qaeda assessment did not give him cause for concern about sharing information with the United States.<sup>66</sup>

Superintendent Pilgrim was one of the officers at RCMP Headquarters to whom the fax was directed. He did not recall seeing or reading a copy of it when it came in.<sup>67</sup> Asked if Canadians should have been careful about the type of information that was given to the Americans, especially in respect of young Muslim men just a year after 9/11, Superintendent Pilgrim replied that Mr. Arar was a person of interest in an ongoing criminal investigation. It was appropriate for the RCMP to share relevant information with agencies **such as the FBI and CIA**, due to the events of 9/11 and the ongoing investigations that they were or might have been involved in. He assumed that the assessment of Mr. Arar as a member of al-Qaeda, was an assertion that the Americans could support on some level.<sup>68</sup>

It is noteworthy that the request appears to indicate that there were two potential purposes underlying the request — removal and law enforcement. The Immigration and Naturalization Service (INS) was currently processing Mr. Arar for removal, and the request was in support of this process. In effect, the Americans intended to use the information from Canadian authorities for that process. The request also inquired about the RCMP's ability to pass the information to the FBI for potential use in law enforcement proceedings.

### 3.3

#### THE CANADIAN RESPONSE — OCTOBER 4

Detective Constable David Beardsley and Sergeant Mona La Salle of Project A-O Canada drafted a response to **the CIA's** request,<sup>69</sup> which was reviewed by Staff Sergeants Callaghan and Corcoran. Inspector Cabana was not personally involved. The response was sent to the National Operations Centre (NOC) at RCMP Headquarters, to be forwarded to the FBI legal attaché's office and the RCMP's Washington liaison officer (LO). A copy of the response was also sent to Corporal Flewelling, RCMP CID.<sup>70</sup>

Deputy Commissioner Leoppky testified that it was not CID's practice to look at individual exchanges in each investigation. Literally hundreds of investigations were underway at any given time and it would be beyond CID's capacity to examine each step in an investigation. CID would ensure that a reply was within the acceptable parameters, but would not become involved in second-guessing every exchange.<sup>71</sup>

Although the cover sheet indicated the response was sent on October 2, this date was incorrect. In fact, the fax was sent out on Friday, October 4 at 5:05 p.m.<sup>72</sup>

Although Corporal Flewelling received this fax, he did not see it before it was sent out. However, he had not specifically requested or indicated to Project A-O Canada that the reply should be sent to him before going to the American authorities.<sup>73</sup>

The fax cover sheet accompanying the October 4 reply stated:

Project A-O Canada received a facsimile this date (through RCMP HQ) from **the CIA** requesting information on Maher ARAR. A-O Canada have responded to each of the requests contained in the facsimile. This information is being provided to the FBI, who are coordinating the request for information. The supporting documents will be forwarded on a later date...It is important to note that the information contained in the attached report only addresses the issues raised. Project A-O Canada has significant documentation on this individual that could be of assistance in your investigation.<sup>74</sup>

The supporting documents mentioned in the fax cover sheet were not sent out. Staff Sergeant Callaghan could not explain why. The Americans did not follow up to request them between October 4 and October 8 (the day Mr. Arar was removed from the United States).<sup>75</sup>

Project A-O Canada's response included information obtained during Mr. Arar's secondary examination at the Canadian border on November 29,

2001.<sup>76</sup> It also included information indicating a relationship between Mr. Arar and Mr. Almalki, such as a reference to the meeting between Messrs. Almalki and Arar at Mango's Café in October 2001.

The reply made it clear that Project A-O Canada had yet to establish definitive ties between Mr. Arar and al-Qaeda. Specifically, Project A-O Canada stated that "a link analysis has yet to be completed on ARAR and while he has had contact with many individuals of interest to this project we are unable to indicate links to al-Qaida." The reply also mentioned that a detailed investigation into Mr. Arar had not been completed to date.

The memorandum was accompanied by two caveats. One identified the information as the property of the RCMP and noted that it could not be reclassified, distributed or used without first obtaining the authorization of the RCMP. The other highlighted the third-party rule and the fact that it "may affect the disclosure of... information" the RCMP had received from CSIS.<sup>77</sup>

### 3.3.1

#### Use of the Information

Three facts bear repeating. First, **the CIA** requested the information for use in supporting the INS removal process. Second, **the CIA** inquired about the RCMP's ability to pass the information to the FBI for law enforcement purposes. Finally, the RCMP reply contained the following caveat:

This document is the property of the Royal Canadian Mounted Police. It is loaned to you in confidence and it is not to be reclassified, distributed or acted upon without the prior authorization of the originator.<sup>78</sup>

Three members of the RCMP — Staff Sergeant Callaghan, Staff Sergeant Corcoran and Corporal Flewelling — testified in some detail about how they anticipated the Americans would use the answers to their questions. Although the details of their evidence and the language they used differs somewhat, the general thrust of the testimony is the same. All three understood that the information might be used either for criminal charges or INS removal proceedings. However, because of the caveat attached to the answers, they believed that American authorities would have to get RCMP approval before using the information for either purpose. Put another way, without consent the information could be used for intelligence purposes only, and not for any legal proceedings. In arriving at these conclusions, at least two of the witnesses considered that INS proceedings would be covered by this caveat.<sup>79</sup>

The FBI official agreed to pursue Project A-O Canada's request to interview Mr. Arar, if the RCMP so wished. Staff Sergeant Callaghan told him that he would discuss the matter with his colleagues and call him back.<sup>161</sup>

That afternoon, Project A-O Canada's assistant managers advised Inspector Cabana that Mr. Arar would likely be released and refused entry to the United States, and the American authorities were planning to send him to Canada. Inspector Cabana asked them to explore the possibility of interviewing Mr. Arar in the United States while he was in custody. First, however, they were to find out the results of the FBI interview, including Mr. Arar's responses to the questions provided by Project A-O Canada on September 26. Inspector Cabana also requested information on the cost of flights to New York, as officials would have to travel either that day or the day after, since Mr. Arar was possibly going to be released that Wednesday.<sup>162</sup>

By the afternoon of October 7, Project A-O Canada officials were making tentative travel plans, even though they understood that Mr. Arar would possibly be sent to Canada two days later. According to Inspector Cabana, they were simply pursuing the original request to interview Mr. Arar, made on October 4.<sup>163</sup>

Inspector Cabana also testified that the final decision to go to New York would be determined in part by Mr. Arar's willingness to talk. The team was most interested in whether Mr. Arar was being cooperative with American authorities, and if he would agree to an interview with Project A-O Canada. Inspector Cabana understood that RCMP policy requires a Canadian detainee to give his or her consent before the RCMP can conduct an interview in a foreign country.<sup>164</sup>

Another determining factor was whether Mr. Arar was going to be removed to Zurich. If he was, then the RCMP would likely go to New York to question him.<sup>165</sup>

Between noon and about 4:15 p.m. on October 7, Staff Sergeant Callaghan called the FBI to inquire about the results of Mr. Arar's interview on September 27. [\*\*\*]. Subsequently, Staff Sergeant Callaghan left the FBI a voice mail message about the importance of speaking directly with the official who had interviewed Mr. Arar.<sup>166</sup>

In a conference call at 4:15 p.m. on October 7,<sup>167</sup> this FBI official was not able to remember many of the details of his interview with Mr. Arar, as he did not have his notes with him. **Mr. Arar was asked the questions provided by Project A-O Canada.** [\*\*\*].

Project A-O Canada was also told that the U.S. Department of Justice was still trying to iron out some issues regarding the Project's interview with Mr. Arar.<sup>168</sup>

The RCMP's situation reports about Mr. Arar were not delivered to CSIS until several days after they were prepared. The CSIS holdings state that on Friday, September 27, CSIS received the RCMP's situation report for Thursday, September 26, which stated that Mr. Arar was about to arrive in New York and that he would be denied entry into the United States.<sup>219</sup> However, this record in the holdings was incorrect, as a CSIS employee testified that CSIS received and read the report on October 3.<sup>220</sup>

The RCMP's situation report for Friday, September 27 stated that the RCMP informed CSIS Mr. Arar was being detained and interrogated in New York. Moreover, the report indicated that Mr. Arar would be denied entry to the United States, and would be denied permission to enter Canada via the United States.<sup>221</sup> Again, a record in the CSIS holdings erroneously indicated that CSIS received this report on Monday, September 30. According to the CSIS employee's testimony, in fact, CSIS received and read the report on October 3.<sup>222</sup>

It was customary for Sergeant Glenn Kibsey, the RCMP liaison officer for CSIS, to deliver Project A-O Canada's situation reports to CSIS. In this case, he did not deliver the situation reports for September 26 and September 27 to CSIS until October 3. The situation report for Thursday, September 26 was completed on Friday, September 27, after Sergeant Kibsey had already returned to his office at CSIS following a trip to Project A-O Canada. The situation report for Friday, September 27 was completed on Monday, September 30. However, Sergeant Kibsey was attending an off-site course from September 30 to October 2 and did not return to the office until October 3.<sup>223</sup>

After receiving the two reports on October 3, a CSIS employee e-mailed other CSIS staff about the situation.<sup>224</sup> A briefing note was prepared the same day for Jack Hooper, Assistant Director, Operations, entitled "Maher Arar, Contact of Almalki, Arrested in NY," outlining the action CSIS had taken to date.

As mentioned, on October 2 CSIS sought to contact its American counterparts for clarification about the circumstances and rationale for Mr. Arar's detention.<sup>225</sup> This was followed by a similar request on October 4. **However, this time the FBI was to be contacted directly** to find out about Mr. Arar's recent activities, why he was arrested, his current status, and any information that had been gleaned from him. **The FBI was also to be informed** [\*\*\*].<sup>226</sup> The request from CSIS Headquarters contained a written text that was to be passed to the Americans. It had two caveats attached.<sup>227</sup>

[\*\*\*] **CSIS Headquarters wanted it included in the letter to the FBI because it was routine for intelligence agencies to provide such information as context to their requests.**<sup>228</sup>

It is unclear what became of the October 2 request. The October 4 request was delivered via a letter to the Americans on October 10, following Mr. Arar's removal from the United States.

On October 9, CSIS learned from two sources that Mr. Arar had been removed from the United States the previous day. An employee of another government agency who was seconded to CSIS was told by a colleague seconded to RCMP Headquarters that Mr. Arar had been sent to Syria. This information was passed on to CSIS; shortly after, the CSIS LO in ISI telephoned with the same news.<sup>229</sup>

On hearing about Mr. Arar's removal, CSIS sought information from the Americans about Mr. Arar's whereabouts and the circumstances surrounding his removal to Syria. The request had two caveats attached.<sup>230</sup>

**The message for the CIA was sent the same day.** The letter was marked "Urgent" and contained caveats.<sup>231</sup> The message **for the FBI** was sent to Washington on October 9. The text of the message was transferred to a letter and delivered **to the FBI** on October 10, along with a second letter based on CSIS Headquarters' October 4 request for information concerning Mr. Arar's detention in New York. Both letters had caveats.<sup>232</sup>

**The CIA** replied to the October 9 request in a message dated November 5, 2002.<sup>233</sup> An identical reply was also sent to RCMP Headquarters.

**For its part, the FBI** replied verbally to the CSIS Washington office on October 11, but did not send a formal reply until June 9, 2003.<sup>234</sup> This delay was considered to be normal.<sup>235</sup>

Despite the limited role CSIS had played during Mr. Arar's detention in the United States, there was speculation within CSIS that the RCMP might have been involved in Mr. Arar's removal.

For example, in an October 10, 2002 e-mail exchange, a CSIS official stated her opinion that the RCMP had significantly contributed to Mr. Arar's removal.<sup>236</sup> However, this official downplayed the e-mail during her testimony, saying that her comment only referred to CSIS information suggesting that information had been flowing back and forth between Project A-O Canada and American officials.<sup>237</sup>

According to an October 10 briefing note, it was not known if the RCMP had any role in Mr. Arar being sent to Syria. However, a notation in brackets attributed to the CSIS Director indicated that it was likely the RCMP was involved.<sup>238</sup> CSIS witnesses who were asked about this notation did not comment further on it.<sup>239</sup>

a CSIS Country Profile on Syria's human rights record. Specifically, the CSIS report did not mention the use of torture in Syria. Mr. Hooper questioned whether, in light of the audience for which the Country Profile was intended, CSIS needed to provide greater detail in the report. In contrast to the U.S. State Department reports, CSIS Country Profiles are designed for police and security officials only, not to inform policy decisions.<sup>155</sup>

In October 2002, CSIS officials knew that the United States might have sent Mr. Arar to a country where he could be questioned in a "firm manner." In a report to his superiors dated October 11, 2002, the CSIS security liaison officer (SLO) in Washington **spoke of a trend they had noted lately that when the CIA or FBI cannot legally hold a terrorist subject, or wish a target questioned in a firm manner, they have them rendered to countries willing to fulfill that role. He said Mr. Arar was a case in point.**

**On October 10, 2002, Mr. Hooper stated in a memorandum: "I think the U.S. would like to get Arar to Jordan where they can have their way with him."**<sup>156</sup> Mr. Arar's whereabouts were unknown at the time.

It should also be noted that a few months earlier, CSIS officials had been advised of credible evidence of torture in Syria. In July 2002, a memo to Mr. Hooper reported information that was identical to that contained in the State Department and Amnesty International reports. In particular, the memo reported that torture was most likely to occur at a detention centre run by one of the security services, especially when information in a confession was being extracted by the authorities.

During the relevant period, CSIS also became familiar with Syria's human rights record through its efforts to deport Hassan Almrei, who was detained pursuant to a security certificate. Mr. Almrei's deportation was contingent on the Canadian government demonstrating that he would not be at substantial risk of torture were he returned to Syria. CSIS had previously obtained assurances from foreign governments and intelligence services that no harm would befall individuals subject to a security certificate if they were returned to their country of origin. However, assurances had never been tested with Syria,<sup>157</sup> and it was unlikely that Canada would obtain the quality of assurances that would satisfy the Canadian government and the Federal Court.

CSIS was concerned that the allegations of torture in Mr. Arar's case might hinder its ability to deport Mr. Almrei. CSIS believed that any indication at all that Mr. Arar was being mistreated would make its chances of deporting anyone to Syria very remote.<sup>158</sup>

### *Sharing Information with Syria*

The decision to disclose information about an individual to Syria or to act upon information received from Syria requires balancing the protection of individual rights and Canada's national security. For example, if the individual might be part of a serious and imminent threat to Canada or foreign interests, and the consequences of CSIS doing — or not doing — something could result in the loss of

the Minister's phone call, Mr. Heatherington said no. It is not known whether the Ambassador and Mr. Heatherington discussed the information CSIS had recently obtained in Syria or other developments occurring in mid-December 2002.

As events turned out, the proposed phone call for December 16 was cancelled because of scheduling problems.

On December 18, DFAIT changed its advice on the phone call, in a memorandum to the Minister from the Middle East Division.<sup>639</sup> It noted that, following discussions between the Middle East Division, ISD and Consular Affairs, their recommendation was that the Minister meet with Ambassador Arnous instead.<sup>640</sup> The following day, the Middle East Division instructed Ambassador Pillarella not to take any action at that time on any possible phone call to Minister Shara'a.<sup>641</sup>

The matter of the call to the Syrian Foreign Minister lay dormant over the Christmas holidays. In January 2003, the subject resurfaced and the phone call took place on January 16. The circumstances leading to the phone call and its context are discussed below in Section 6.

## 4. THE CSIS TRIP TO SYRIA

### 4.1 CSIS INQUIRIES INTO MR. ARAR

CSIS' efforts to obtain further information from American agencies about Mr. Arar immediately after his removal have been described in Section 4 of the preceding chapter. On October 11, 2002, **the FBI** responded verbally to CSIS' request for information about Mr. Arar's recent activities, the reason for his arrest, his current status and any other information gleaned from Mr. Arar. **An FBI agent** advised CSIS' Washington office that Mr. Arar had been detained on September 26; that **the FBI** had searched him; and that he was subsequently excluded from the US.<sup>642</sup>

On November 5, **the CIA** sent CSIS and Project A-O Canada a written response to CSIS' October 10 request for information about the circumstances of Mr. Arar's removal. Some CSIS witnesses were offended by the "fairly terse" **CIA** response.

#### 4.1.1 [\*\*\*]

**Despite information received from the CIA, the Americans and other sources, [\*\*\*].**

Inspector Cabana noted down that “it was agreed that more detailed information was required from the Syrians relative to **their interview of Almalki, El Maati, and now** Arar before a decision could be made on whether or not we could attend.”<sup>655</sup> They also agreed that before going any further, CSIS would travel to Syria to meet with SMI officials in order to “try and gain access to their [Syrian] detailed information.”<sup>656</sup>

The CSIS representative explained that several issues were discussed during this meeting.<sup>657</sup> CSIS saw this as an opportunity to obtain information about Mr. Arar and, even more important, to discuss other matters with the Syrians and get the wider context.<sup>658</sup> DFAIT viewed this as a chance to clarify the issues around Mr. Arar.<sup>659</sup> The CSIS representative said that DFAIT officials were very interested in having CSIS go, but one of their primary concerns was that CSIS not take on any consular duties with respect to Mr. Arar.<sup>660</sup> The RCMP representatives expressed their view that CSIS should not interview Mr. Arar if provided the opportunity because it might “taint any possible future evidence” about Messrs. Almalki and El Maati and the other active criminal investigations.<sup>661</sup>

Since CSIS did not want to become involved in the consular process and risk tainting any criminal investigation, it fully agreed with the concerns expressed by DFAIT and the RCMP.<sup>662</sup> At the end of this meeting, there was a consensus from the three agencies that it would be a good idea to send a CSIS delegation to Syria.<sup>663</sup> It was Mr. Heatherington’s understanding that the delegation was to go to Syria and obtain information about international terrorism, but not interview Mr. Arar or question the Syrians about him.<sup>664</sup>

#### 4.2.1

##### *The Reliability of the Bout de Papier*

As described above in Section 3.5, both Ambassador Pillarella and Inspector Cabana testified that there was no discussion at the November 6 meeting about the risk or possibility of torture with respect to the statement that Mr. Arar had given to the Syrians. Mr. Solomon did not recall any specific discussions about torture, but believed that at some time during the meeting concern about Mr. Arar’s treatment would have arisen.<sup>665</sup>

Mr. Solomon prepared a draft memorandum for the Minister, dated November 14, which dealt with the upcoming CSIS trip to Syria and stated that the “reliability of the confession Syrian authorities have obtained from Arar [is] also uncertain” and “there are concerns as to whether a visit to Arar by Canadian intelligence officials may make Canada appear complicit in his detention and possible poor treatment by Syrian authorities.”<sup>666</sup> Mr. Solomon testified that the conclusion about the reliability of the statement would have been that of DFAIT

General Khalil for November 24. However, Ambassador Pillarella confirmed that he did not facilitate any meetings and that CSIS made contact with the SMI without his intervention.<sup>731</sup>

#### 4.4.2

##### CSIS Meets with the SMI

The CSIS delegation began its meetings with the SMI on November 23. The first meeting, with General Khalil and four SMI officials, was a general discussion of security politics, the war on terrorism, and the Middle East. Mr. Arar was not discussed.<sup>732</sup> Following this meeting, two SMI officials gave them lengthy briefings on other matters.<sup>733</sup>

The first briefing was about Mr. Arar. It lasted for approximately one and a half hours and was slowed down by the translation process. The entire briefing was verbal and no paper was exchanged.<sup>734</sup> A CSIS representative took notes.

Mr. Hooper did not believe that CSIS would have revealed that Mr. Arar was of interest to a Canadian investigation and he testified that the CSIS delegation did not provide the SMI with any information about Mr. Arar.<sup>735</sup> He explained that CSIS met with the SMI to “elicit information,” not to “exchange information.”<sup>736</sup> SMI officials were not asked any questions at all about their briefing. The CSIS delegation did not make any comments or provide any assessment about how SMI information compared with CSIS information. No information whatever was shared about Mr. Arar.<sup>737</sup>

**In an e-mail sent much later to CSIS Headquarters, the SCIS delegation advised that “the Syrians did not appear to view this as a major case and seemed to look upon the matter as more of a nuisance than anything else.” It was explained that, in light of the relatively minor information about Mr. Arar that SMI officials passed during this visit, the Syrians could not view this as a major case.**<sup>738</sup>

The CSIS delegation did not see or interview Mr. Arar during the trip to Syria, nor did the Syrians offer any opportunity to meet with him or suggest they would hand him over.<sup>739</sup>

Mr. Hooper did not agree that CSIS had posed any danger to Mr. Arar by communicating it had some interest in him.<sup>740</sup> Ms. Pastyr-Lupul was not aware of the CSIS visit before it occurred and was not briefed on it. However, she agreed that, had she known of the visit, she would have been concerned it might encourage the SMI to interrogate Mr. Arar further.<sup>741</sup>

#### 4.4.3

##### CSIS' Position on Mr. Arar

One of the CSIS delegates testified that he did not express to the Syrians any position on whether Mr. Arar should be returned to Canada. In his discussions with SMI officials, he believed that he had made it quite clear that this case was a consular matter and had advised them that they must deal with the Embassy and the Ambassador regarding Mr. Arar. According to him, they appeared to





REPORT OF THE EVENTS  
RELATING TO MAHER ARAR

FACTUAL BACKGROUND

---

VOLUME II

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



However, SIRC writes that, according to CSIS, it only learned of Mr. Arar's detention on October 2, 2002, through contact with DFAIT. CSIS informed SIRC that it had not actually read the RCMP situation reports until after October 2, 2002.<sup>225</sup>

CSIS then sought information regarding Mr. Arar's status and arrest from **the FBI** via the CSIS security liaison officer (SLO) in Washington. The written request was not delivered **to the FBI** until October 10, 2002. SIRC was told that the SLO would have made a verbal request **to the FBI** prior to that date.<sup>226</sup>

[\*\*\*].<sup>227</sup>

SIRC did not find any record of CSIS approval for the RCMP to disclose CSIS information about Mr. Arar to a third party.<sup>228</sup>

However, SIRC did find that CSIS received an invitation on November 4, 2002, via DFAIT, from the Syrian Military Intelligence to travel to Syria to review information provided to them by Mr. Arar. CSIS agreed to go.<sup>229</sup> SIRC also found that existing CSIS policy did not require consideration of the lawfulness of Mr. Arar's detention, or the likelihood that he had been subject to torture, as part of the authorization process for CSIS' travel to Syria.<sup>230</sup>

SIRC made seven strongly worded recommendations following its findings:<sup>231</sup>

- 1) that CSIS examine its agreements and policies with the RCMP to determine whether they provide the necessary protection against third-party disclosure, while still recognizing the importance of information sharing between the two organizations;
- 2) that the O'Connor Commission determine whether the RCMP shared CSIS-obtained information with American agencies;
- 3) that CSIS amend an operational policy in relation to foreign travel proposals including consideration of human rights concerns;
- 4) that CSIS amend an operational policy to require consideration of human rights issues when seeking to use information for targeting approval;
- 5) that SLOs maintain written records when requests for information are transmitted to foreign intelligence agencies and that formal letters be sent to confirm verbal requests;
- 6) that CSIS identify an effective means of prioritizing sensitive requests to their Washington SLOs, and explore ways to reduce delays when seeking information from U.S. agencies; and
- 7) that CSIS examine its practices relating to the receipt, prioritization, and review of RCMP reports to ensure more timely identification of time-sensitive or important information.<sup>232</sup>





REPORT OF THE EVENTS  
RELATING TO MAHER ARAR  
ANALYSIS AND RECOMMENDATIONS

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



3.	Early Investigative Steps	78
4.	Border Lookouts	80
4.1	Canadian Lookouts	80
4.1.1	Mr. Arar	81
4.1.2	Dr. Mazigh	84
4.2	U.S. Lookouts	85
5.	Canada Customs Secondary Examinations	87
5.1	Examinations	87
5.2	Policy Issues Arising from Secondary Examinations	89
5.2.1	Examination and Photocopying of Documents	90
5.2.1.1	Mr. Arar	90
5.2.1.2	Dr. Mazigh	92
5.2.2	Examination of Mr. Arar's Computer and PDA	94
5.2.3	Provision of Information to RCMP	96
5.2.4	Uploading of Profiles of Dr. Mazigh and Children into IMS	98
6.	January 22, 2002 Searches and Interviews	99
6.1	Searches	99
6.2	Attempt to Interview Mr. Arar	99
7.	Information Sharing with U.S. Agencies	101
7.1	Overview	101
7.2	Importance of Information Sharing	102
7.3	Need for Caution	103
7.3.1	Content of Shared Information	103
7.3.2	Control of Information	105
7.3.3	Centralization of Decision Making	106
7.3.4	Post-9/11	107
7.4	Original Arrangement	108
7.5	Project A-O Canada's Approach	111
7.6	Investigation of Mr. Arar	112
7.6.1	U.S. Border Lookout Request	115
7.6.2	February FBI Visit	118
7.6.3	Supertext Database on Three CDs	119
7.6.3.1	Background	119
7.6.3.2	Products of January 22, 2002 Searches	120
7.6.3.3	The Three CDs	122
7.6.3.4	Authority to Transfer CDs	124
7.6.3.5	May 31 Presentation	125
7.6.3.6	Mr. Arar's Departure for Tunisia	127
7.6.3.7	<b>Application for Telephone Warrant</b>	127

investigative reason for sending the questions, as Mr. Arar was a person of interest in the Project's investigation and might have information as a witness that would further the investigation. Moreover, the Project members believed that the American authorities would extend a person in Mr. Arar's position similar protection to that provided by Canadian law.

However, in sending the questions, Project A-O Canada included information about Mr. Arar that was inaccurate and portrayed him in an unfair way. It indicated that Mr. Arar had been in the vicinity of Washington, D.C. on September 11, 2001, which was false. This information could have unfairly raised a suspicion about Mr. Arar's connections. Also, a concluding section of the fax stated that Mr. Arar had declined to be interviewed in January 2002 and, soon after, had suddenly left Canada for Tunisia. There are a number of problems with this information. Mr. Arar did not decline an interview. He agreed to be interviewed, subject to certain conditions. He did not leave Canada soon after the interview request. He left five months later. There is no evidence that he left "suddenly." Linking these inaccurate pieces of information together painted an incorrect and potentially inflammatory picture of someone who had refused to be interviewed, probably because he had had something to hide, and had quickly pulled up roots and left Canada, where he had been living with his family, in order to avoid further investigation. The Project did not attach a caveat to this information.

Earlier in this chapter, I discuss the importance of providing accurate and precise information. The provision of this inaccurate information, particularly without a caveat, at what turned out to be a critically important time in Mr. Arar's ordeal was unfortunate, to put it mildly, and totally unacceptable.

On October 3, 2002, **the CIA and FBI** sought the assistance of the RCMP's CID in a fax containing seven specific questions about Mr. Arar and his activities and associations. The fax indicated two potential purposes for the information: Mr. Arar's removal from the United States pursuant to the INS process, and law enforcement proceedings. CID forwarded the fax to Project A-O Canada, which responded the next day.

I am satisfied that it was appropriate for the RCMP to respond to the questions. Importantly, the response made it clear that the Project had yet to complete a detailed investigation of Mr. Arar and was unable to indicate links to al-Qaeda. Moreover, the information in the response was accurate, the way it was provided complied with RCMP screening policies, and a caveat was attached. It is also worth noting that, at the time, the RCMP still did not know that the United States was contemplating sending Mr. Arar to Syria.

Again, members of Project A-O Canada had little experience or training to assist them in handling the information-sharing challenges confronting them. This was a new environment for them. **For example, they had never dealt with the CIA. As observed by the Assistant Criminal Operations (CROPS) officer, with “A” Division, Inspector Garry Clement, the CIA had a lot more latitude than law enforcement agencies when it came to the war on terror.** Project A-O Canada was dealing with American agencies that were more sophisticated in matters of national security and might not always play by the rules Project members would expect.

The third aspect of the Project A-O Canada investigation that differed from other investigations was that its mandate was primarily preventative in nature. Preventative investigations can be significantly different from investigations focused on prosecution, which are directed at obtaining evidence about specific, concrete events. They can be more nebulous. While such investigations must be connected with criminal behaviour, investigators collect and analyze information about something that has not yet occurred and may never occur. The capacity to assess how information relates to a threat and to evaluate in what direction investigative efforts should be channeled is obviously important. Given that the threats being investigated may be far from certain, investigators in preventative investigations must make judgments about whether or not leads are worth pursuing. Doggedly following every possible lead, as one would in a prosecution-oriented investigation, in order to establish, for example, that an individual does not constitute a threat — essentially proving a negative — could be a highly unproductive, not to mention interminable, exercise. A different type of analytical and investigative approach is sometimes called for in a prevention-oriented investigation.

The fourth aspect of the Project A-O Canada investigation that made it different from other criminal investigations was the need to have regard for certain human rights and cultural sensitivities. Certainly, all criminal investigators must give appropriate consideration to these issues. However, national security investigations can sometimes raise them in a context unfamiliar to the standard criminal investigator. Moreover, the human rights issues that arose during the Project A-O Canada investigation were different from any the Project members had encountered previously.

For instance, Project A-O Canada officers had to weigh how to use information from Syria, a country with a poor record of human rights. Evaluating such information required an informed appreciation of the role Syrian practices might have played in obtaining the information and, importantly, the impact those practices might have had on the information's reliability. The Project was also confronted with issues about sharing information with Syria, including how Syrian authorities might use such information and how they might interpret the fact that the RCMP was investigating certain individuals.

## 6. JANUARY 22, 2002 SEARCHES AND INTERVIEWS

### 6.1 SEARCHES

On January 22, 2002, Canadian agencies conducted simultaneous searches, pursuant to search warrants, of a number of locations in Ottawa, Toronto and other Canadian cities. At the same time, the RCMP interviewed various individuals.

Project A-O Canada considered and decided against applying for a search warrant for Mr. Arar's residence. It did not have sufficient evidence to obtain one. Nonetheless, Project members decided that they would attempt to interview Mr. Arar, as a witness, regarding his associations with Mr. Almalki and others.

**When applying for the search warrants, Project A-O Canada relied on information received from a country with a poor human rights record.** The reliability of such information is always in question. As Deputy Commissioner Garry Loepky explained in reference to RCMP policy, the RCMP has significant concerns about information that is received from another country where human rights abuse may occur. The information is noted because it relates to law enforcement, but so is its questionable validity or worth. If the information cannot be substantiated or corroborated, it is given little weight.

**When applying for the search warrants, Project A-O Canada provided the name of the country from which the information relied upon had been received. However, it did not mention that country's poor human rights record or the fact that the information might be the product of torture. Moreover, no assessment was made of the reliability of the information.**

The question of the validity of the search warrants is not before me and it is not, therefore, appropriate for me to comment further at this time.

In Chapter IX, I recommend that, when information is received from countries that have questionable human rights records, the information be identified as such and steps be taken to assess its reliability. Further, reliability assessments should be updated from time to time and the most current assessments should be used by all Canadian agencies making use of such information or sharing it with other agencies.

I deal with the issue of the documents and articles obtained by Project A-O Canada during the searches in Section 7 of this chapter.

### 6.2 ATTEMPT TO INTERVIEW MR. ARAR

On January 22, 2002, the day the searches were conducted, members of Project A-O Canada went to Mr. Arar's residence with a view to interviewing him. On learning that he was in Tunisia and might be back in a few days, they left a business card.

Apparently, Mr. Arar learned of the visit and tried to contact the RCMP while he was still in Tunisia, without success. On January 25, after Mr. Arar had

## 7.6.3.6

**Mr. Arar's Departure for Tunisia**

In July 2002, Project A-O Canada learned that Mr. Arar and his family had left for Tunisia several weeks earlier. There were some indications that the move had been a permanent one. On July 15, 2002, Project A-O Canada verbally informed American authorities of Mr. Arar's departure. They discussed whether Mr. Arar's departure had been prompted by the Project A-O Canada investigation or whether it had already been planned.

## 7.6.3.7

**Application for Telephone Warrant**

**In September 2002, the RCMP filed an application for a Telephone Warrant. In the application, the RCMP referred to Mr. El Maati's confession to the Syrians that he undertook pilot training at the request of his brother and that he accepted a mission to be a suicide bomber by exploding a truck bomb on Parliament Hill.**

**After learning of his confession, the RCMP was advised that Mr. El Maati stated that any previous statements he made to the Syrians were made under extreme coercion. Regardless of this, the RCMP stated that its investigation had corroborated much of the information in the El Maati confession.**

**In the application, the RCMP stated that the information concerning the El Maati confession "is still accurate and continues to be true."**

**In regard to Mr. El Maati's public statement to DFAIT that his confession to the Syrians was the product of torture, the RCMP affiant stated in the application that he doesn't know about the justice system in Middle Eastern countries but he advised that much of the information in the confession was corroborated. He also would not comment on whether Mr. El Maati was tortured into giving his confession but he noted that DFAIT observed that when he was interviewed he appeared to be in good physical condition. There were no DFAIT notations made about marks, scars, bruises, etc. He stated that at this time he could only surmise that Mr. El Maati told the truth and his recantation was an attempt to now "damage control".**

**The RCMP did not give the following information to the presiding judge:**

- (i) the human rights record of Syria;**
- (ii) the public record that the Syrian Military Intelligence (SMI) was known to torture detainees in order to get information while the detainees are held in comunicado at the Palestine Branch. At the material time, Mr. El Maati was held in comunicado at the Palestine Branch by the SMI;**

**(iii) when reference was made that Mr. El Maati appeared to be in good physical condition by DFAIT, DFAIT observed Mr. El Maati in August 2002 while the “confession” given to the SMI was in November 2001, nine months earlier.**

## 8.

### PROJECT A-O CANADA’S RELATIONSHIP TO HEADQUARTERS

In this section, I discuss the relationship between Project A-O Canada and the Criminal Intelligence Directorate (CID) at RCMP Headquarters. In earlier sections, I have described this relationship in connection with several investigative steps taken by Project A-O Canada. Here, I draw these descriptions together and summarize how that relationship functioned.

#### 8.1

##### CENTRALIZATION OF NATIONAL SECURITY INVESTIGATIONS

Normally, RCMP investigations are carried out at the divisional level with little, if any, reporting to Headquarters. Thus, criminal investigators operate in a relatively autonomous fashion, reporting up the chain of command within a division to the Criminal Operations (CROPS) officer, not to Headquarters in Ottawa.

However, for some time now, RCMP investigations involving national security matters have been treated differently. While investigators in these types of investigations report to the CROPS officer at the divisional level, they are also required to report to CID at Headquarters, the premise being that CID should exercise greater control and coordination over national security investigations than it does over other types of criminal investigation. Assistant Commissioner

was still being held in New York and reiterated that he would be sent back to Zurich. When no further news was received from the FBI in the days that followed, Project members concluded, reasonably in my view, that Mr. Arar had been sent back to Zurich.

The RCMP did not hear directly from the Americans again until late afternoon on October 3, when **the CIA** sent a fax to CID asking seven specific questions about Mr. Arar and his activities and associations. The U.S. official indicated two potential purposes for the information sought about Mr. Arar, whom it described as an al-Qaeda operative: removal from the United States pursuant to the Immigration and Nationalization Service (INS) process and law enforcement proceedings. The questions largely concerned Mr. Arar's contacts and possible connections with other individuals, sleeper cell members and known terrorists. The U.S. official asked that the response be sent to the FBI for evidentiary purposes.

The next morning, CID forwarded the U.S. official's fax to Project A-O Canada, which sent a response that same day, with a copy to CID.

The response included information obtained from Mr. Arar's secondary examination at the Canadian border on November 29, 2001 and the searches executed on January 22, 2002, as well as a reference to Mr. Arar's meeting with Mr. Almalki at Mango's Café. It also included information provided by CSIS,<sup>8</sup> which was subject to CSIS caveats.

Importantly, the reply made it clear that Project A-O Canada had yet to complete either a detailed investigation of Mr. Arar or a link analysis on him. The Project indicated that, while Mr. Arar had had contact with many individuals of interest, it was unable to indicate links to al-Qaeda.

The RCMP's response contained two caveats: one stating that the information was the property of the RCMP and could not be distributed or acted upon without the authorization of the RCMP, and the other, that the "third-party rule" might affect the disclosure of specified information in the response that had been obtained from CSIS.<sup>9</sup>

I am satisfied that it was appropriate for the RCMP to respond to **the CIA's** questions and that the manner in which it responded complied with RCMP policies respecting caveats and respecting relevance, reliability and personal information.

In the first place, the RCMP still had no idea that American authorities were considering sending Mr. Arar to Syria. While the communication requesting information referred to the possibility of removal or law enforcement proceedings, there was no hint of removal to Syria.

Further, the information requested met the “relevance” requirement for sharing information. The questions sought information about Mr. Arar’s associations and activities with Mr. Almalki and others who were subjects of the Project A-O Canada investigation. Mr. Arar was properly a person of interest in the investigation, and his associations and activities were relevant in that respect. Project A-O Canada was aware that the Americans were interested in the investigation. It had been co-operating and sharing information with them over an extended period of time. **The CIA official’s** request was specific about the uses to which the information might be put, that is, removal or law enforcement, and the information sought was relevant to the purposes identified. Finally, the U.S. Agencies could be said to have had a “need to know” the information.

I see no problem with respect to the reliability of the information provided in this instance. It was accurate and precise. Moreover, while the assessment of reliability of some information was not worded as precisely as it might have been, I am satisfied that, when read as a whole, the response would not have misled the recipients.<sup>10</sup> Project A-O Canada properly pointed out that its investigation did not indicate links between Mr. Arar and al-Qaeda. Unfortunately, Project A-O Canada did not take this opportunity to set the record straight concerning the several inaccuracies concerning Mr. Arar contained in earlier disclosures to American authorities.<sup>11</sup>

Project A-O Canada’s response did include some information that might be considered personal information about Mr. Arar, but none of it was core biographical data. In any event, the information was given to the FBI, a law enforcement agency **and to the CIA, which was working with the FBI**. RCMP policy permits the disclosure of personal information to law enforcement agencies under the “consistent use” exception in the *Privacy Act*.<sup>12</sup> In my view, the RCMP did not improperly disclose personal information about Mr. Arar in the October 4 response to the **CIA’s** questions.

It is important to remember that the RCMP attached a caveat to its response, precluding the use of the information without its authorization. That was clearly the proper thing to do. Project A-O Canada had no reason to suspect that U.S. authorities would not respect the caveat. It was reasonable for it to assume that, if the information was to be used in any proceeding affecting Mr. Arar, American officials would seek the RCMP’s consent, and the RCMP would have the option of refusing after considering the use to which the Americans intended to put this information and the consequences for Mr. Arar. Certainly, the thrust of the testimony of RCMP witnesses was that, had they been asked if the information could be used in a process that could result in Mr. Arar’s removal to Syria, they would have said no. As it turned out, the American agencies did not seek the

on October 4 and 7, Project A-O Canada had indicated that it did not have sufficient information to link Mr. Arar to al-Qaeda. Thus, it was contended, the American authorities must have had independent information to show that Mr. Arar was a member of al-Qaeda and, therefore, had had no need to rely on information received from the RCMP.

The evidence about the scope of the American investigation is not clear. However, accepting that there was a separate U.S. investigation and even that some information from that investigation was relied upon to support the removal order, that does not invalidate the otherwise logical conclusion that information received from Canada was also relied upon.

It is worth noting that the American agencies never provided their Canadian counterparts, **the RCMP or CSIS** with any information about Mr. Arar emanating from the U.S. investigation that would come close to showing that Mr. Arar was linked to al-Qaeda. If they had such evidence, it is hard to fathom why they never shared it. That failure would be particularly surprising in the context of the co-operative investigation conducted during the months leading up to Mr. Arar's detention. Senior RCMP officers testified that, after 9/11, there had been an agreement with the American agencies that information would be exchanged freely, albeit in accordance with existing policy. I accept that evidence. One would expect that, if anything, the Americans would have had a greater incentive than the Canadians to share information in the circumstances.

The American authorities knew that Mr. Arar resided in Canada. They also knew that the RCMP had collected some information about him, in particular information relating to his associations with Mr. Almalki. In the post-9/11 world, the Americans were enormously concerned about terrorist threats, including any that might originate in Canada. If U.S. authorities had significant information about Mr. Arar showing links to al-Qaeda, one might reasonably ask why they would not have shared it with their Canadian counterparts. If they had information tending to link Mr. Arar, a Canadian, to al-Qaeda, why not provide that information to the Canadian investigators, so that the supposed threat posed by him could be dealt with? Why hoard the information? When, on October 5, they asked the RCMP whether Mr. Arar could be charged criminally if they sent him to Canada and the RCMP responded in the negative, why would they not have offered any information in their possession?

It is important to keep in mind that, when the American authorities were considering what to do with Mr. Arar after detaining him on September 26, they did not rely solely on their own, independently obtained information. Why would they ask the RCMP for questions to pose and for information about Mr. Arar, and why would they ask whether the RCMP had evidence linking

of the Factual Background, I describe the way in which CSIS responded to Mr. Arar's detention in New York. For reasons of national security confidentiality, I am unable to refer to some of that detail in the public version. As a result, my discussion here is briefer and my conclusions are not explained as fully as might otherwise have been the case.

CSIS was first informed of Mr. Arar's detention in New York by DFAIT on October 2. The following day, the RCMP delivered to it the Project A-O Canada situation reports for September 26 and 27, which indicated among other things that Project A-O Canada had sent the FBI questions for Mr. Arar on September 26.

When CSIS learned about Mr. Arar's detention, one of its officials in Ottawa sent two communications to the CSIS Washington office, in part to ask that inquiries be made about what was happening with respect to Mr. Arar. **One contained a specific request to be passed on to the FBI.** The communications were not viewed as urgent, however, as there had been nothing in the messages CSIS had received about Mr. Arar's circumstances in New York to indicate that there was any urgency.

It appears that the CSIS official in Washington did not contact the American authorities about Mr. Arar's situation until October 10, at least two days after Mr. Arar had been removed to Syria.

In my view, CSIS should not be faulted for not contacting U.S. authorities and making inquiries about Mr. Arar sooner. It was clear to CSIS that DFAIT and the RCMP were involved in the matter and were in contact with U.S. authorities. Moreover, as far as CSIS knew, there was no indication that any action was imminent or, in particular, that Mr. Arar was in danger of being sent to Syria. Given its lack of previous involvement with the Americans in connection with Mr. Arar, it did not make much sense for CSIS to insert itself into the situation.

On October 4, the RCMP provided the Americans with information about Mr. Arar that it had received from CSIS without first consulting CSIS or seeking its consent to transfer the information. I am satisfied that, had it been consulted, CSIS would have followed its usual practice and inquired into the use to which the information might be put. It is far from clear, however, whether this would have led the American authorities to disclose their intentions regarding Mr. Arar's removal to Syria.

## 5.

**LACK OF INTERAGENCY COMMUNICATIONS**

The RCMP was notified of Mr. Arar's detention in New York on September 26, 2002. There was a period during which Project A-O Canada members believed that Mr. Arar might have been sent back to Zurich, Switzerland, but by October 2 at the latest, they knew that he was still in New York. Between then and October 8, when Mr. Arar was sent to Syria, members of the Project had several communications about Mr. Arar with their U.S. counterparts.

Meanwhile, on October 1, 2002, DFAIT was informed by Mr. Arar's brother that Mr. Arar had said the Americans were going to send him to Syria. Mr. Arar told Ms. Girvan the same thing during the consular visit on October 3. While DFAIT officials did not consider it likely that Mr. Arar would be sent to Syria, they nevertheless were aware of the concern.

The sole point of contact between DFAIT and the RCMP during Mr. Arar's detention was Inspector Roy, the RCMP liaison officer assigned to DFAIT. Inspector Roy testified that he had not been informed of the concerns about Syria expressed by Mr. Arar and his brother until October 7 or possibly October 8. He had passed on the information to Project A-O Canada officers on the morning of October 8. This was the first time members of Project A-O Canada heard of this concern.

After DFAIT became aware of Mr. Arar's concern about being sent to Syria, Project A-O Canada had several communications with the Americans, two of which are germane to this discussion. First, on October 4, in response to a request from **the CIA and the FBI**, the Project sent the FBI answers to seven questions about its investigation as it related to Mr. Arar. The American request indicated that the information was required for one of two purposes: removal or law enforcement. There was no mention of Syria, and Project members assumed that the removal being referred to was a return to Zurich.

Second, on October 5, Corporal Flewelling of CID spoke with an FBI official about Mr. Arar and answered questions about what Canada might do if Mr. Arar was sent to Canada. There was no mention of possible removal to Syria during this conversation.

What is initially striking about these events is that two Canadian government agencies, DFAIT and the RCMP, were each dealing directly with American authorities in relation to Mr. Arar's situation without knowing what the other was doing and without having the benefit of information in the other's possession. DFAIT officials were not aware that the RCMP was providing information about Mr. Arar to the American investigators. The RCMP, on the other hand,

