



VIA MAIL

October 4, 2011

The Honourable Robert Nicholson
Minister of Justice and Attorney General of Canada
Department of Justice Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8

The Honourable Vic Toews
Minister of Public Safety
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Ministers:

Re: Leak of CSIS Report to *La Presse*

On behalf of the British Columbia Civil Liberties Association, I write to express our very serious concerns about a recent government leak of purported intelligence information implicating two Canadians in a terrorist plot.

The BCCLA is the oldest civil liberties organization in Canada. We have spent almost 50 years working to preserve, defend, maintain and extend civil liberties and human rights in British Columbia and across Canada. We have longstanding and extensive involvement in working to ensure that security concerns are balanced with respect for the rule of law and the rights of individuals.

In August, *La Presse*, a Montreal newspaper, published an article describing an alleged conspiracy between Adil Charkaoui and Abousfian

Abdelrazik to place an explosive device on an aircraft.¹ The alleged conspiracy was outlined in a document leaked to *La Presse*, which purported to be a 2004 report from the Canadian Security Intelligence Service ("CSIS") summarizing a conversation between Mr. Charkaoui and Mr. Abdelrazik that was intercepted by CSIS in 2000.

The allegations in the article were quickly seized upon and reported by the national media. The CBC ran a story with the headline "CSIS file reveals plot to bomb plane: La Presse"², and *The Globe and Mail* declared "Abdelrazik and Charkaoui plotted plane bomb: report"³. And in response to these reports, Immigration Minister Jason Kenney stated:

"I read the protected confidential dossiers on such individuals, and I can tell you that, without commenting on any one individual, some of this intelligence makes the hair stand up on the back of your neck. I just think people should be patient and thoughtful and give the government and its agencies the benefit of the doubt."⁴

The contents of this leak, the timing of it, and the government's public statements in response to it all raise serious concerns.

Transparency in government conduct is crucial to protecting fundamental rights and ensuring fidelity to the rule of law. Leaks of this sort – decontextualized and selective – do little by way of providing a complete and truthful account of events. Instead, selective disclosure only leads to concerns about whether the full story is being told, or whether the story is instead being manipulated.

As the Federal Court very recently remarked, with respect to government efforts to limit disclosure of documents to the Military Police Complaints Commission in the Afghan Public Interest Hearings, "it is self-evident that document disclosure is fundamental to the ability of the Commission to discharge its mandate and conduct a full, independent investigation."⁵ Importantly, the Court criticized the

¹ Pierre-André Normandin, "Une conversation compromettante entre Charkaoui et Abdelrazik" *La Presse* (5 August 2011), online: *La Presse* <http://www.cyberpresse.ca/actualites/quebec-canada/politique-canadienne/201108/04/01-4423588-une-conversation-compromettante-entre-charkaoui-et-abdelrazik.php>.

² "CSIS file reveals plot to bomb plane: La Presse" *CBC News* (5 August 2011), online: *CBC News* <http://www.cbc.ca/news/politics/story/2011/08/05/pol-la-presse-plane-plot.html>.

³ Jill Mahoney and Colin Freeze, "Abdelrazik and Charkaoui plotted plane bomb: report" *The Globe and Mail* (5 August 2011), online: *The Globe and Mail* <http://www.theglobeandmail.com/news/national/abdelrazik-and-charkaoui-plotted-plane-bomb-report/article2120732/>.

⁴ Campbell Clark and Colin Freeze, "CSIS leak aimed at keeping Abdelrazik on no-fly list, lawyer says" *The Globe and Mail* (6 August 2011), online: *The Globe and Mail* <http://m.theglobeandmail.com/news/national/csis-leak-aimed-at-preventing-removal-of-clients-name-no-fly-list-lawyer-says/article2121734/?service=mobile>.

⁵ *Garrick, et al. v. Amnesty International Canada and the British Columbia Civil Liberties Association*, 2011 FC 1099 at para. 90.

government's practice of selectively producing materials to the Commission, stating that the MPCC "should not have to rely on selected documents provided on the basis of an opaque screening process conducted in-house by government officials. ... If the Commission does not have full access to relevant documents, which are the lifeblood of any inquiry, there cannot be a full and independent investigation."⁶

The notion that a full and complete accounting cannot be accomplished through selective and cherry-picked sharing of information is reflected in the disclosure requirements in the judicial system – of which one of the key and primary goals is getting at the truth. In civil litigation, the rules of discovery compel disclosure of all relevant materials. In the criminal context, the Supreme Court of Canada's teachings in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326, show that the constitutional rights of the criminally accused require the Crown to provide full and complete disclosure of all relevant evidence.

For years, the government has suggested that Mr. Charkaoui and Mr. Abdelrazik are threats to Canada's national security, through neither Mr. Charkaoui, Mr. Abdelrazik, nor the Canadian public has been fully informed as to why Canada insists on their dangerousness.

Adil Charkaoui spent six years living under a security certificate, during which time he was subjected to detention, house arrest and constant surveillance. Being named on a security certificate signaled his dangerousness. However, he himself was never provided with the reasons why the government thought it necessary to issue a security certificate against him. His constitutional challenges to the security certificate regime resulted in two important rulings from the Supreme Court of Canada, both of which served to compel the government to provide courts with sufficient evidence to justify the use of the security certificate, and to provide Mr. Charkaoui with the opportunity to test the reliability of the evidence against him.

While Mr. Charkaoui was in the process of challenging his security certificate and litigating to compel government disclosures, there was a leak to *La Presse* in 2007, which included allegations that Mr. Charkaoui was engaged in a conversation with two other persons concerning plans to hijack and attack an aircraft. The contents of the 2007 *La Presse* article were considered by the Federal Court, which declared the allegations to be "unproven".⁷ Ultimately, the Federal Court found that there was insufficient evidence to justify the security certificate against Mr. Charkaoui, and the certificate was quashed in September 2009. Notwithstanding the allegations in the 2007 *La Presse* leak, no charges have ever been laid against Mr. Charkaoui for a terrorism offence, or any other offence.

⁶ *Id.* at paras. 94-96.

⁷ *Charkaoui (Re) (F.C.)*, 2008 FC 61, [2009] 1 F.C.R. 507, at para. 14.

The August 2011 leak to *La Presse* also involves allegations that Mr. Charkaoui was involved in a plan to bomb an aircraft. According to *La Presse*, however, this leaked document explicitly names Abousfian Abdelrazik as a co-conspirator in the plot.

Mr. Abdelrazik is a dual citizen of Canada and Sudan. In 2009, the Federal Court of Canada found that the Canadian government had violated Mr. Abdelrazik's constitutional rights by obstructing his attempts to return home to Canada from Sudan and ordered that he be repatriated to Canada. While in Sudan, Mr. Abdelrazik was detained by the Sudanese secret police without charge, and, according to the Federal Court, at the request of CSIS. Mr. Abdelrazik has alleged that he was subjected to torture and abuse while in Sudanese custody. No charges have ever been laid against Mr. Abdelrazik for a terrorism offence, or any other offence; indeed, by the end of 2007, both CSIS and the RCMP filed reports with the Canadian government officially clearing Mr. Abdelrazik of involvement in any terrorist activity. Upon his return to Canada, Mr. Abdelrazik requested meetings with the government to learn why it had blocked his return to Canada, and had requested his arrest in Sudan. His requests for these meetings were denied.

Presently, both Mr. Charkaoui and Mr. Abdelrazik have civil claims pending against the Canadian government for violations of their constitutional and human rights. Mr. Charkaoui is suing the government for \$24.5 million, while Mr. Abdelrazik has claimed damages in the amount of \$27 million for what he alleges to be Canadian complicity in his torture at the hands of the Sudanese. The United Nations Security Council is also currently considering Mr. Abdelrazik's petition to be removed from an anti-terrorist blacklist.

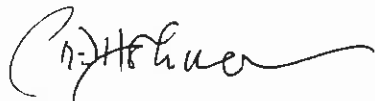
In the context of the government's dealings with Mr. Charkaoui and Mr. Abdelrazik, this recent leak to *La Presse* is troubling. The contents of the leak make serious allegations against two men who have never been criminally charged, and against whom the government has had ample opportunity to present evidence of misconduct before the courts. Conspiracy to hijack and bomb an aircraft is a crime now, and was a crime in 2000, when the alleged conversation between Mr. Charkaoui and Mr. Abdelrazik was intercepted, and in 2004, when the leaked memo was purportedly written. Yet no charges were laid then, or now. Moreover, at no time was the proof supporting these allegations ever presented before the courts considering Mr. Charkaoui's security certificate, or Mr. Abdelrazik's application for an order permitting him to come home. To date, there has simply been no real explanation for why Canada spent years litigating to maintain the security certificate against Mr. Charkaoui, or for why it repeatedly refused to repatriate Mr. Abdelrazik. Perhaps the full narratives may be disclosed through the pending civil suits, but given the very public allegations that have been made against both these men, the Canadian public has an interest in a full and complete accounting, as well.

Finally, we cannot help but be reminded of a series of very similar leaks in 2003, in which sensitive information allegedly implicating Maher Arar in terrorist activities was disclosed by government sources to the media. As you know, Justice Dennis O'Connor found that prior to Mr. Arar's return to Canada following his extraordinary rendition to Syria, "classified information about Mr. Arar was selectively leaked to the media by Canadian officials."⁸ Leaks continued after Mr. Arar's return home, and Justice O'Connor found that they were "timed to implicate Mr. Arar in a terrorist scheme just after his return to Canada," and observed that "obviously, being called a terrorist in the national media will have a severe impact on someone's reputation."⁹ We now know that there was simply no evidence linking Mr. Arar to terrorist activities, but his reputation was only salvaged following a historic public inquiry.

It is axiomatic that the system of justice requires that litigation take place in a court of law – not in the press. We are concerned by Minister Kenney's comments to the media, suggesting that the allegations in the *La Presse* leak and his own secret review of confidential dossiers should carry more weight than the evidence presented to and found to be credible by the Federal Court. As you both are undoubtedly aware, intelligence is only informative when properly contextualized and rigorously updated. Selective leaking of decade-old intelligence does not help the Canadian public understand national security threats, and instead, only serves to erode public confidence in everything that government says, while potentially tarnishing the reputations of targeted individuals along the way.

Given the damage this leak may cause, we urge the government to launch an investigation into the leak and to do what the public interest requires – make a full and fair disclosure of all information that the government has that bears on this matter so that the public can assess whether its elected representatives and civil servants are doing the job they have been put in place to do: to uphold the law, respect the rights of individuals and administer the policies democratically chosen by the people. Anything less compromises the integrity of the government and erodes the public's confidence.

Yours truly,



Robert D. Holmes, Q.C.
President

⁸ *The Report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*, Vol. II (2006) at 485.

⁹ *Id.* at 487.