Federal Court  Cour fédérale

Date: 20160526

Docket: DES-6-08

Citation: 2016 FC 586

Amended: 20160624

BETWEEN:

IN THE MATTER OF a Certificate Signed Pursuant to Subsection 77(1) of the *Immigration and Refugee Protection Act* (*IRPA*)

and

AND IN THE MATTER OF the Referral of a Certificate to the Federal Court Pursuant to Subsection 77(1) of the *IRPA*;

and

AND IN THE MATTER OF MAHMOUD ES-SAYYID JABALLAH

AMENDED REASONS FOR JUDGMENT

HANSEN J.

[1] Mr. Mahmoud Es-Sayyid Jaballah, [Respondent] is named in a February 22, 2008 security certificate signed by the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness [Ministers] pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA* or *Act*]. In the certificate, the

Ministers state their opinion that the Respondent is inadmissible to Canada on security grounds described in paragraphs 34(1)(b), (c), (d) and (f) of the *Act*. Specifically, it is the Ministers' opinion that there are reasonable grounds to believe the Respondent will, while in Canada, engage in or instigate the subversion by force of the government of Egypt; has engaged in terrorism; is a danger to the security of Canada; and was and is a member of Al Jihad [AJ], an organization that has engaged in terrorism. In accordance with the *IRPA*, the security certificate was referred to the Court to determine whether it is reasonable. In these reasons, I conclude that the security certificate filed by the Ministers is not reasonable and will be set aside. Classified reasons will also be issued and will include the information that cannot be disclosed for reasons of national security.

[2] Over the course of this proceeding, the original Security Intelligence Report [SIR] presented to the Ministers in support of the security certificate in February 2008 and the Public Summary of the SIR [PSIR] provided to the Respondent have undergone a number of revisions, in particular, in 2010, 2012, 2013 and in June and August 2014. In these reasons, the references to the SIR and the PSIR, unless otherwise indicated, are to the most recent version dated August 21, 2014. This is the third security certificate issued against the Respondent.

[3] The Respondent, an Egyptian national, was born in Al-Shrqia, Egypt, on January 7, 1962. On May 11, 1996, he, his spouse and four children, travelling on a false Saudi passport, arrived in Canada. He claimed refugee protection on the ground that he was wanted by Egyptian authorities on charges of inciting violence and that he would be killed if he returned to Egypt. Shortly after his arrival, the Respondent was the subject of a Canadian Security Intelligence

Service [CSIS or Service] investigation. This investigation led to the first security certificate issued against the Respondent in March 1999 at which time the Respondent was arrested and detained. The Court quashed this certificate in November 1999 and the Respondent was released from detention.

[4] In August 2001, a second security certificate naming the Respondent issued and he was again arrested and detained. In May 2003, the Federal Court of Appeal set aside this Court's determination that the certificate was reasonable and remitted the matter to this Court for reconsideration. In October 2006, the Court found that the second certificate was reasonable. Between the time of his arrest in August 2001 and October 2006, the Respondent's attempts to secure his release were unsuccessful. Shortly after the Court's determination that the certificate was reasonable, the Respondent brought another application for his release. In February 2007, before this application was concluded, the Supreme Court of Canada in *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 SCR 350 [*Charkaoui I*] held that the provisions in the *IRPA* dealing with the detention of foreign nationals violated section 9 and subsection 10(c) of the *Charter of Rights and Freedoms*, Part I of the *Constitution Act,* 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 [*Charter*] and declared the security certificate provisions in the *Act* to be of no force or effect. However, the Court suspended the declaration of invalidity for one year. In April 2007, the Court released the Respondent on conditions that, as the Court described, "equate to house arrest". It is noted that since that time there have been a number of reviews of the terms and conditions of his release that have resulted over time in a significant lessening of the stringency of the original terms and conditions of release.

[5] In February 2008, with the coming into force of Bill C-3, the relevant provisions of the *Act* were amended and the second security certificate was quashed by operation of law. The third security certificate, the subject of the within proceeding, was issued later that month.

[6] Since the signing of the certificate in February 2008, this case has evolved significantly both in terms of the evidentiary record and the allegations against the Respondent. This is largely attributable to orders made on motions brought by the Respondent, the Ministers' decisions to withdraw information dependent upon all protected human sources and certain other pieces of information, and other evidentiary rulings made during the course of the hearing. Two orders in particular illustrate the change in the record over time. In August 2011, the Court excluded certain evidence on the basis that the information was inadmissible pursuant to paragraph 83(1)(h) and subsection 83(1.1) of the *IRPA* by reason of there being reasonable grounds to believe the information was obtained as a result of torture.

[7] Subsequently, the Respondent brought an application for an order pursuant to subsection 24(1) of the *Charter* staying the within proceeding or, alternatively, for an order excluding all summaries relied on by the Ministers for which the original investigative materials had been destroyed, including but not limited to, summaries of intercepted communications, interviews, and physical surveillance [the abuse of process motion]. At this point, it should be noted that the evidence on this motion was heard in conjunction with the evidence in relation to the reasonableness of the security certificate. However, by agreement, the submissions of the parties and the Special Advocates were not made until the last two weeks of March 2013 after the Ministers had closed their case on the reasonableness of the security certificate.

[8] The Respondent grounded the abuse of process motion on the Service's breach of its obligation to retain and disclose original investigative materials in its possession and the delay in disclosing the public summaries of the materials; the Ministers' reliance on information that had been excluded in this proceeding; the interception of his solicitor-client communications and the misuse of those communications; and the delay in this matter and his prolonged and repeated subjugation to judicial proceedings while confined and, subsequently, under stringent conditions of release.

[9] On September 17, 2013, the Court issued the following order with reasons that followed on October 3, 2013:

> 1. All summaries relied on by the Ministers of intercepted oral communications for which the original recordings have been destroyed are excluded from the evidence in the within proceeding.
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> 2. All summaries relied on by the Ministers of intercepted facsimile communications for which the original intercepts have been destroyed are excluded from the evidence in the within proceeding. For greater clarity, those facsimile communications for which the content purports to be quoted in its entirety in the operational report are not excluded.
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> 3. All summaries relied on by the Ministers of intercepted mail are excluded from the evidence in the within proceeding. However, intercepted mail for which the content purports to be quoted in its entirety in the operational report is not excluded; addresses taken from intercepted mail that appear to be recorded in full in the operational report are not excluded; information in operational reports from intercepted mail in relation to the quantity and title of publications is not excluded.
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> 4. The Ministers shall prepare edited versions of the Security Intelligence Report and the Public Summary of the Security Intelligence Report that reflect the above exclusions.
>
> 5. The decision on the motion for a stay of proceedings in relation to those grounds other than the destruction of original investigative materials is reserved.

[10] Before turning to the case itself, it is convenient to observe that the manner in which the hearing unfolded, that is, the abuse of process motion was heard and decided after the Ministers closed their case, added another layer of complexity to this case. This is because the Ministers' case was advanced on the basis of the record that existed prior to the exclusion order on the abuse of process motion. Additionally, in the public hearing, the witnesses testified by reference to the October 2010 PSIR and in the closed hearing, the witnesses testified by reference to the September 2012 SIR. The testimony of the Ministers' witnesses is, and understandably so, based, in part on and replete with references to evidence that was subsequently excluded.

[11] In the present case, the allegations of inadmissibility based on the grounds found in paragraphs 34(1)(b), (c) and (d) of the *IRPA* are inextricably linked to the ground of inadmissibility in paragraph 34(1)(f), membership in a terrorist organization. As such, the central issue in this proceeding is whether there are reasonable grounds to believe the Respondent was or is a member of a terrorist organization. Before turning to the allegations underpinning the assertion of membership in a terrorist organization, it is necessary to deal with the standard of proof and the role of "reasonable inference".

[12] Section 33 of the *IRPA* provides that the facts constituting inadmissibility under section 34 are facts for which there are reasonable grounds to believe have occurred, are occurring or may occur. The facts may also arise from omissions unless otherwise provided. In *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114, [2005] 2 SCR 100, the Supreme Court of Canada articulated the meaning of the "reasonable grounds to believe" standard of proof as requiring "something more than mere suspicion, but less than the standard

applicable in civil matters of proof on the balance of probabilities". The Court explained that "[i]n essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information".

[13] The Ministers' case, as they acknowledge, is in large measure based on reasonable inferences. The Ministers contend that when viewed in their totality, these inferences establish the evidence the "cumulative impact" of which "leads to the inference that there are reasonable grounds to believe that the Respondent was a member of the AJ and engaged in terrorism."

[14] In *Osmond v Newfoundland (Workers' Compensation Commission)*, 2001 NFCA 21, [2001] NJ No 111, the Newfoundland Court of Appeal provides helpful instruction regarding the drawing of reasonable inferences. At paragraphs 134 and 135, the Court stated:

> 134 This Court, in its judgment on appeal in *Willard Miller*, which is being filed concurrently with this decision, has stressed that an inference is different from speculation. [To that extent, I would not agree with the use of the word "speculative" in the quotation from Ison in the *Nancy Miller* case, *supra*]. Drawing an inference amounts to a process of reasoning by which a factual conclusion is deduced as a logical consequence from other facts established by the evidence. Speculation on the other hand is merely a guess or conjecture; there is a gap in the reasoning process that is necessary, as a matter of logic, to get from one fact to the conclusion sought to be established. Speculation, unlike an inference, requires a leap of faith. As noted in *Canadian Pacific Railway v. Murray* [1932] S.C.R. 112 the dividing line between a conjecture or guess on the one hand and an inference on the other is often a very difficult one to draw. Nevertheless, there is a fundamental difference that requires a distinction to be made. As I observed in *R. v. Hillier (L.) et al* (1993), 109 Nfld. & P.E.I.R. 92 (NFSC, TD), at para. [93] in another context:
>
> > An inference is ... a very different thing, qualitatively, from a guess or suspicion and a suspicion does not acquire evidentiary character just because there are a number of similar suspicions

> related to the case. For an inference to be drawn it must be grounded in some other proven facts.
>
> 135 In *Jones v. Great Western Railway* (1930), 47 T.L.R. 39 (H.L.) cited with approval in *Canadian Pacific Railway v. Murray*, the distinction was put thus:
>
> > A conjecture may be plausible but it is of no legal value, for its essence is that of a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence and if it is a reasonable deduction it may have the validity of legal proof. The attribution of an occurrence to a cause is ... always a matter of inference.

[15] Similarly, the British Columbia Supreme Court in *British Columbia v Abitibi-Consolidated Co of Canada*, 2005 BCSC 409, [2005] BCJ 655 stated, at paragraph 15:

> An inference is a "conclusion reached by considering other facts and deducing a logical sequence from them", Black's Law Dictionary, 7th ed. page 781. Or, in the case of evidence, it is "in the legal sense, … a deduction from evidence, and if it is a reasonable deduction it may have the validity of legal proof", *Montreal Tramways Co. v. Leveille*, [1933] 4 D.L.R. 337 at 350 (S.C.C.).

Thus, it can be seen that to have the "validity of legal proof" a reasonable inference must be based on known, that is, established facts.

[16] Lastly, the designated judge must always be mindful of the Supreme Court of Canada's instruction in *Charkaoui I* at paragraph 39. It reads:

> First, an active role for the designated judge is justified by the language of the *IRPA* and the standards of review it establishes. The statute requires the designated judge to determine whether the certificate is "reasonable", and emphasizes factual scrutiny by instructing the judge to do so "on the basis of the information and evidence available" (s. 80(1)).

[17] Moreover, as the Court observes at the same paragraph, the *IRPA* requires the designated judge to engage in a searching review of the information and the evidence in determining the reasonableness of the certificate. In *Jaballah (Re)*, 2010 FC 79 at paras 46-47, Justice Dawson explained that this will require the designated judge to weigh the evidence in support of the allegations and to determine which facts are accepted. If the preponderance of the evidence is contrary to the Ministers' allegation, there can be no reasonable grounds for the allegation (see also: *Mahjoub (Re)*, 2013 FC 1092 at para 44).

[18] Returning to the inadmissibility ground found in paragraph 34(1)(f) of the *IRPA*, the Ministers claim the Respondent was and is a senior member of AJ, also known as the Egyptian Islamic Jihad [EIJ], a terrorist organization which advocates the use of violence as a means to establish an Islamic state in Egypt, and which is "closely linked" to Al Qaeda. As such, the Respondent is inadmissible to Canada pursuant to paragraph 34(1)(f) of the *Act*. In support of the assertion of membership in AJ, the Ministers rely on evidence about the Respondent's activities prior to his arrival in Canada in May 1996. The Ministers also rely on the Respondent's activities after he arrived in Canada, including: dissemination of propaganda and recruitment; the contact the Respondent maintained with AJ leadership and members in other countries; his ongoing contact with several Islamic extremists; his contact with AJ leadership in the period surrounding the East Africa bombings; and use of clandestine methodology. Reliance is also placed on an Interpol Red Notice issued in relation to the Respondent regarding outstanding charges in Egypt for being a member of a terrorist organization.

[19] According to the Personal Information Form [PIF] the Respondent filed in support of his refugee claim, he is a devout Muslim who fled Egypt after being persecuted, detained and tortured by the Egyptian authorities in connection with his religious and political beliefs. He attended the University of Zagazig between 1981 and 1985 where he was affiliated with a group from the mosque led by Badr, a professor at the university. He states that he was first arrested when he was 19 years old, after the assassination of Anwar al-Sadat in 1981. Following his arrest, he was detained without charge for two years. During this detention, he was interrogated and tortured. Following his release, he was approached by Egyptian security officers who asked him to collect information about people who spoke out against the government, but he refused. He was rearrested and detained several more times over the course of the next decade. At times, his spouse, Husna al-Mashtouli, was also detained and tortured. He was arrested and detained a final time on September 1, 1990 for six months. The Respondent states that he attempted to leave Egypt three times before finally being permitted to leave to make a pilgrimage to the holy sites in Saudi Arabia. He left Egypt for Saudi Arabia with his family in or around July 1991 and did not return.

[20] A brief description of how the Respondent came to the Service's attention will provide a backdrop for the Service's subsequent investigation and the conclusions that were drawn. In the course of its investigation, the Service obtained information from a variety of sources including open sources, human sources, technical sources obtained under the authority of section 21 of the *Canadian Security Intelligence Services Act*, 1985, c C-23 [*CSIS Act*], and domestic and foreign agencies.

[21] Although the Respondent's identity was not yet known, at the end of May 1996, he was observed in the company of an individual under the Service's surveillance. Subsequently, at the end of June 1996, the Service observed the Respondent in a Toronto park with Hassan Farhat, Kassem Daher, Mustafa Krer, and three other adult males along with a number of children. Shortly after, the individual the Service observed at the end of May and in the park was identified as the Respondent and he became a person of interest to the Service.

[22] Within a few days, the Service had the Respondent's statement to a Citizenship and Immigration Canada officer [CIC officer] upon his arrival in Canada, at which time he surrendered the false Saudi passport on which he and his family were traveling and provided the officer with his true identity. The Respondent stated that he purchased the false Saudi passport from Abu Abdallah, a 35-year-old Iraqi he met in Pakistan.

[23] The Respondent told the CIC officer that he left Egypt on January 12, 1991 and was in Pakistan from December 1 to August 30, 1994 on a work visa. From this latter date to September 30, 1995, he was in Yemen illegally and then he was in Azerbaijan illegally until May 4, 1996. On May 11, 1996, he transited illegally through Germany and arrived in Canada on the same day. According to the passport, it was issued on August 2, 1995 at Tarif, Saudi Arabia and it contained the following stamps:

- August 8, 1995, a United Kingdom single entry visa valid until February 8, 1996 issued in Riyhad, Saudi Arabia
- October 16, 1995, Karameh, Jordan entry stamp
- October 23, 1995, Pakistan single entry visa valid until January 22, 1996

- November 1, 1995, Jordan exit stamp
- November 1, 1995, Islamabad, Pakistan entry stamp
- March 25, 1996, Pakistan single entry visa valid until September 24, 1996
- April 7, 1996, Karachi, Pakistan international airport exit stamp
- April 7, 1996, Azerbaijan single entry visa valid until May 7, 1996
- May 4, 1996, Georgia single entry visa valid until June 4, 1996
- May 6, 1996, Artvin, Turkey entry stamp
- May 11, 1996, Istanbul, Turkey exit stamp

As an aside, it appears that there is also a May 4, 1996 Azerbaijan exit stamp that was not included in the reporting about the contents of the passport.

[24] When he entered Canada, the Respondent also had the following documents in his possession:

- three certificates from the International Islamic Relief Organization [IIRO], Pakistan office attesting to the Respondent's work as a teacher and director of an orphanage in Pakistan;
- one certificate from the IIRO certifying that Mohamed Mohamed Abdallah was also a teacher at an orphanage in Pakistan;
- a certificate attesting to the Respondent's work as a teacher on behalf of the Saudi Arabian Ministry of Education in Pakistan;

- a certificate attesting to the Respondent's spouse's work as a teacher on behalf of the Yemeni Ministry of Education in Pakistan from January 1993 to August 1994; and
- a torn piece of note paper with the following phrase, "I want to apply for political refugee condition".

[25] Turning to the Respondent's alleged activities before coming to Canada, the PSIR sets out the Service's belief that the Respondent is an "Afghan war veteran" and the Service's conclusion that he "spent an unidentified period of time in Afghanistan, and that his travel pattern was consistent with that of a mujahid extremist - one who left Egypt to fight in Afghanistan, trained in Yemen, may have fought in Chechnya, and cannot return to Egypt." [PSIR paras 4 and 11].

[26] As counsel for the Ministers stated, in advancing this position, they must establish there are reasonable grounds to believe the Respondent was in Afghanistan and there are reasonable grounds to believe that while in Afghanistan, he participated in jihad and engaged in mujahedeen activities. In support of these allegations, the Ministers rely on the Respondent's statements made during two Service interviews on March 5 and August 21, 1998, the information found in Exhibit 11, Tab A36, a letter the Respondent received from Peshawar, Pakistan in April 1997 and classified information. The Ministers also rely, in part, on the Respondent's alleged travel on false Iraqi and Saudi passports to Egypt, Saudi Arabia, Pakistan, Yemen, Azerbaijan, Jordan and Turkey, successively. They contend that this travel pattern is consistent with the travel pattern of a "mujahid extremist". Additionally, the Ministers submit that the Respondent's presence in

Pakistan was in furtherance of his senior membership in AJ and not simply for his employment as a teacher. As well, the Ministers argue that it may reasonably be inferred that the Respondent's travels to Yemen and Azerbaijan were to further his AJ connections.

[27] Turning to the evidence in the public record regarding the Respondent's travels, in support of the allegation that the Respondent was in Afghanistan, the Ministers rely primarily on the two Service interviews referred to above. The two investigators, Michel Guay and David, who conducted the first and second interviews respectively, testified on behalf of the Ministers.

[28] Mr. Guay joined the service in 1992 and worked as an analyst at CSIS's headquarters. From early 1995 until the spring/summer of 1998, he was an investigator in the Toronto region working on the Sunni Islamic extremism desk. He was the first investigating officer on the Respondent's file.

[29] Mr. Guay stated that he had very little, if any, independent recollection of the interview. Therefore, for the purpose of refreshing his memory before testifying in this proceeding, he reviewed his operational report of the interview which is a summary of the interview and the testimony he gave in 1999 in the first security certificate proceeding. As to the timing of the interview, Mr. Guay explained that the Service had acquired quite a bit of information about the Respondent's contacts and activities in Canada, in particular, his contacts with individuals, some of whom were previously known to the Service. Thus, at that time, the purpose of the interview was to clarify the Respondent's relationships with these individuals and to try to provide some context to the information that had already been collected.

[30] Mr. Guay testified that he brought an Egyptian interpreter to assist him with the interview. The interview lasted approximately an hour-and-a-half. As he had testified in 1999, he did not recall whether or not he took notes at the interview and added that he did not believe the interpreter took notes but he could not recall. He explained that generally speaking, note taking is something that would be avoided and he would only try to take notes when there was something of import or of significance to take down. He also stated that if there was something of specific interest, he would try to write it down as quickly as possible after the interview.

[31] The operational report has thirteen paragraphs, a number of which are not relevant for the purpose of the present discussion. This includes the first three paragraphs that touch on introductory matters; paragraphs five to nine that summarize Mr. Guay's questions regarding the Respondent's knowledge of and his relationships with a number of individuals and the Respondent's frustration at the fact that his answers were not accepted; and paragraphs 12 and 13 which deal with the end of the interview.

[32] Paragraph 4 of the operational report reads:

> The writer then informed JABALLAH that he was aware that JABALLAH had been involved in jihad activities overseas (including Afghanistan) before coming to Canada, and had been involved with individuals and groups who were attempting to bring down the Egyptian government. JABALLAH protested that although he had been arrested various times in Egypt, he had never been charged with anything by Egyptian authorities. The writer indicated that he wasn't referring to activities in Egypt, but elsewhere. JABALLAH was silent.

[Ref. Ind. Tab 141]

[33] Mr. Guay explained that the statement he made to the Respondent in paragraph 4 would have been informed by the various reports he reviewed that showed the Respondent's interests in AJ; in Ayman Al Zawahiri, his philosophy and observations during various interviews; and in the on-going situation in Afghanistan with the Taliban. He added that these and others would have led him to ask the Respondent about his activities in jihad overseas and that he was just attempting to gauge the Respondent's reaction to the statement.

[34] Paragraph 10 of the operational report states:

> The writer then asked JABALLAH why he spent approximately one year in Yemen as a part of his travels prior to coming to Canada. JABALLAH responded that he had been looking for work. The writer then asked about JABALLAH's eight-month sojourn in Azerbaijan. Again, JABALLAH responded that he had been looking for work. When the writer expressed his incredulity that anyone would travel to these two countries simply in search of employment, JABALLAH responded that he had worked for various relief agencies, in support of Afghan refugees and victims of the Afghan conflict.
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> [emphasis added]

[35] Mr. Guay testified that at this point in the interview, the Respondent retrieved a paper from a closet for Mr. Guay to look at that indicated he had been working for a relief agency. As the paper was primarily, if not entirely, in Arabic and he could not read Arabic, he would have given it to the interpreter to read. He testified that given the purpose of the interview, the names of relief agencies and their locations were of very low importance at the time. As well, he stated that he did not take a copy or make any notation of anything in the document. Further, he could not recall if the document shown to him on cross-examination was the same letter that was shown to him during cross-examination in the 1999 hearing. At this juncture, it is observed that

the Respondent's attempt to show Mr. Guay a paper concerning his work for a relief agency is not recorded in the summary of the interview.

[36] At paragraph 11 of the operational report, it states:

> JABALLAH was asked if he knew Dr. Ayman AL ZAWAHIRI. When JABALLAH did not recognize the name, the writer showed him a photograph of ZAWAHIRI. After closely studying the photograph, JABALLAH indicated that during his time at one of the refugee camps in Afghanistan (where he was a teacher) he had seen an individual who resembled the man in the photograph, but had never met the man. JABALLAH also indicated that determining identities was difficult because no one in Afghanistan used their real names.

[37] With reference to paragraph 11 of the operational report, during examination-in-chief, Mr. Guay was asked what significance, if any, he attached to the Respondent's statement that he had been in Afghanistan. He replied:

> Afghanistan was of particular interest to the Service, especially in this period. I mentioned previously that the Service's evaluation or assessment of the Islamic extremist threat evolved from previous years.
>
> …
>
> So the presence of someone in Afghanistan, especially during that period from in '79 to '89, would have indicated had they been there they would have either been fighting or at least in support of the jihad against the Russians.

[Transcript June 12, 2012, pages 114 to 116]

[38] In terms of the accuracy of the operational report, given that it was only a summary of the interview, on cross-examination Mr. Guay observed that as the Respondent's answers were essentially denials or indications of already known information, there was very little new

information and very little to recall. Mr. Guay added that, as was his practice, he sent the draft of the operational report to the interpreter to ensure the accuracy of the reporting and that nothing of significance had been omitted. Mr. Guay acknowledged that at that time he was not particularly interested in what the Respondent was doing when he said he was in Pakistan nor did he ask any follow-up questions about his time in Afghanistan. He also acknowledged that the report was a summary of what is believed to be salient in terms of the "section 12 [of the CSIS Act] interest".

[39] David, the second investigator to interview the Respondent, joined CSIS in 1991 and in 1994, he was deployed to the Toronto regional office where he worked as an investigator for five-and-a-half years. He succeeded Mr. Guay as the investigator on the Respondent's file.

[40] He explained that the timing of the interview was driven by external events, in particular, the August 20, 1998 US cruise missile attacks in Sudan and on training camps in Afghanistan in retaliation for the August 7, 1998 bombings of the US embassies in East Africa. The concern was whether AJ was planning retaliatory action. Thus, the primary purpose of the interview was to collect information about any AJ plans for retaliation. Second, the goal was to try to corroborate information that had been collected through other investigative methodologies and to gather additional information.

[41] David testified that the interview started around midnight and lasted about three-and- a-half hours. He had an Arabic interpreter to assist him with the interview. He essentially held the same view as Mr. Guay about note taking during an interview.

[42] The operational report of the interview has thirteen paragraphs. In general, the Respondent was asked to comment on the US bombing of targets in Afghanistan and Sudan and was asked questions concerning other names he had used in the past, his relationships with various individuals, and his overseas contacts. The Respondent was also asked about his contact with an individual in the UK named Daoud. The Respondent indicated that he may have spoken to an individual by this name when calling the International Office for the Defence of the Egyptian People [IODEP], which he described as a humanitarian organization. Relevantly, he then produced a letter from the IODEP attesting to his mistreatment by the Egyptian authorities. The following excerpts from the operational report are also relevant to this discussion. They read:

> 6. JABALLAH was shown a photograph of Ayrnan AL ZAWAHRI, leader of Egyptian AL JIHAD. JABALLAH stated that he did not recognize the photograph, nor had he ever met AL ZAWAHIRI in person. JABALLAH also denied ever having been in telephone contact with AL ZAWAHRI. …
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> 10. The writer asked JABALLAH whether he had ever met Usama (Osama) BIN LADEN. JABALLAH denied ever meeting BIN LADEN in Afghanistan or anywhere else. JABALLAH insisted that he was in Afghanistan as a teacher and did not participate in the Jihad. JABALLAH produced a document in Arabic attesting to the fact that he worked as a teacher in Afghanistan. JABALLAH noted that what he knows of BIN LADEN, he learned through recent media coverage.
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> 13. … JABALLAH asked the writer - in what appeared to be a hypothetical manner- what would happen if he did, in fact, know some of the individuals mentioned during the interview without being aware of their specific backgrounds. The writer stated that this would be the time to raise the issue. JABALLAH, upon reflection, declined the offer.

[Ref. Ind. Tab 142]

[43] Turning first to the Ministers' submission that there are reasonable grounds to believe the Respondent was in Afghanistan, the Ministers point to the Respondent's acknowledgement in the March 5 and August 21, 1998 Service interviews that he had been in Afghanistan working as a teacher and had spent time in a refugee camp there. The Ministers also rely on a public summary found at Exhibit 10, Tab A36. It states: "Service investigation revealed that Mr. Jaballah travelled to both Afghanistan and Pakistan in 1991."

[44] The Ministers claim the Respondent gave contradictory information in the interviews regarding his recognition of Zawahiri's photograph. The Ministers state that, during the first interview when he was shown a photograph of Zawahiri he stated that he "met" a person who resembled Zawahiri at a refugee camp in Afghanistan. However, the Ministers misstate what was purportedly said during the interview. According to the operational report, the Respondent stated that during his time at one of the refugee camps in Afghanistan "he had seen an individual who resembled the man in the photograph, but had never met the man." During the second interview when he was shown a photograph of Zawahiri, the Respondent stated he did not recognize the photograph and had never been in telephone contact with or met Zawahiri in person. The Ministers note that at the end of the interview, the Respondent asked David what would happen if he did know some of the people mentioned in the interview without knowing their background. The Ministers argue that this illustrates the inconsistencies in the Respondent's answers: on the one hand, denying that he had any overseas contacts and on the other, asking what would happen if he did know some of the individuals.

[45] The Ministers point out that Zawahiri was not known to have spent time in a refugee camp in Afghanistan. In stating that he may have met an individual who resembled Zawahiri's photograph at a refugee camp in Afghanistan, the Respondent was trying to provide an explanation for the reason he knew Zawahiri. Additionally, the Respondent did not list Afghanistan as one of the countries in which he had resided in his PIF and yet he told Mr. Guay and David that he had been a teacher in Afghanistan. Further, at his Immigration and Refugee Board [IRB] hearing on June 15, 1998, when being examined by the Ministers' representative, he denied being associated with the "Returnees from Afghanistan" or with any other group.

[46] The Ministers dispute the Respondent's position that Mr. Guay and David were mistaken when they reported that the Respondent said he was in Afghanistan. They maintain that there is simply no evidence that either Mr. Guay or David, who were experienced intelligence officers accompanied by experienced interpreters, misunderstood the Respondent. The Ministers stress that in contrast to their position, the Respondent is asking the Court to draw an inference based on speculation without any evidence. They, however, are simply asking the Court to accept the Respondent's statements contained in the evidence. The Ministers also question how the Respondent could teach in Afghanistan when he does not speak any of the languages spoken there.

[47] The Respondent submits that the far more plausible inference is that Mr. Guay and David were mistaken in their understanding that he had said he lived in Afghanistan. The Respondent says it is noteworthy that in the operational report of the first interview, if one reads the last two lines in the immediately preceding paragraph 10, it records the Respondent as stating that "he

had worked for various relief agencies, in support of Afghan refugees and victims of the Afghan conflict."

[48] The Respondent notes that the interview was conducted with the assistance of an interpreter. He claims the reporting at paragraph 11 that "he indicated that during his time at one of the refugee camps in Afghanistan (where he worked as a teacher)" could quite consistently relate to his earlier statement regarding his work for "Afghan refugees and victims of the Afghan conflict". It is also argued that it would be odd for the Respondent to be so forthcoming when his statements were at odds with his PIF and his testimony at the IRB hearing. It is contended that it is a matter of simple confusion arising from the more than one meaning that could be given to the statement "I worked in an Afghan refugee camp". It is pointed out that there were no follow-up questions, such as: did you participate in the conflict while you were there; who were you with; where were you; and where did you travel.

[49] The Respondent submits that neither David nor Mr. Guay made contemporaneous notes, both were reliant on an interpreter and the late hour at which the second interview was conducted heightened the possibility of error. During cross-examination, David was shown a document from the IIRO written in Arabic (in the Respondent's possession when he entered Canada), a document that would be entirely consistent with what the Respondent stated in his PIF and before the IRB. David agreed that it was possible an error had been made, however, in fairness, he also stated that he stood by his operational report.

[50] Lastly, it is argued that the Ministers' position regarding the Respondent's alleged presence in Afghanistan is grounded on circular reasoning. That is, the Ministers' assertion that the Respondent is a member of AJ is, in part, based on his alleged travel to Afghanistan. However, at the same time, the Service's conclusion that the Respondent travelled to Afghanistan is based, in part, on the belief that he is a member of AJ.

[51] As set out above, the Ministers allege the Respondent was in Afghanistan for an unidentified period of time. According to the PSIR, the testimony and the submissions of counsel, the allegation is that the Respondent was in Afghanistan between November 1991 and June 1994.

[52] With respect to the Service interviews, there are some matters that call into question the reliability of the information contained in the operational reports. During his testimony, David stressed that the overarching purpose of an interview is to collect information and to corroborate information. He explained that corroboration in the context of intelligence gathering includes the collection of information in relation to known facts, that is, corroboration of facts already supported by direct evidence. Although both David and Mr. Guay had specific goals in mind for each of their respective interviews, the fact that little or no attention was paid to the letter the Respondent produced during the course of the two interviews is at odds with this overarching purpose. It is noted that the operational report for the first interview does not mention that the Respondent had produced a document for Mr. Guay to read and David reported that the Respondent had produced a letter written in Arabic attesting to the fact that he worked as a teacher in Afghanistan. In view of the investigative significance of the Respondent being in

Afghanistan, it is incomprehensible that an important piece of evidence produced by the Respondent himself would not be retained or copied. This is particularly so given that up until that time, the Respondent had consistently denied ever being in Afghanistan.

[53] There is another concern. One cannot help but wonder how the question was posed when it is reported that the Respondent denied ever meeting Bin Laden in Afghanistan. For example, if the question was, did you ever meet Bin Laden in Afghanistan, the Respondent's answer, without some further clarification, is not necessarily an acknowledgement that he was in Afghanistan. This concern is heightened by the fact that the interview was conducted in English and the Respondent's limited proficiency in English.

[54] It must also be observed that, as argued, it is entirely possible the reporting of the Respondent's statement about "his time at one of the refugee camps in Afghanistan (where he worked as a teacher)" was due to a misunderstanding of his prior statement that he worked for relief agencies "in support of Afghan refugees and victims of the Afghan conflict". The possibility of this having occurred is enhanced by the fact that the interview was conducted in English. Or, it could also flow from an unwitting assumption that since the work was in support of Afghan refugees and victims, the work had been done in Afghanistan.

[55] The difficulty faced here is that since both Mr. Guay and David had little independent recollection of their interviews which is certainly understandable, the only surviving information about what was said at the interviews is in the operational reports. In these circumstances, the interviewers' testimony does little to enhance the reliability of the statements contained in the

reports. It must also be stressed that these observations should not be construed in any way as inferring bad faith on the part of the two investigators. To conclude, it is plausible that innocent errors occurred in the reporting, however, a finding of plausibility is insufficient to ground a reasonable inference.

[56] As to the information found in Exhibit 10, Tab A36, it is undated and unsourced and purports to be a summary of a report. However, there is no corresponding report in the classified record on which this summary is allegedly based. As such, it is impossible to assess the reliability of the statement and it will be given no weight.

[57] It remains to be determined whether there are reasonable grounds to believe the Respondent was involved in military activities in Afghanistan. There is insufficient credible and compelling evidence to support an objective belief that he was involved in military activities there. In addition to the classified information in support of the assertion that the Respondent was engaged in military conflict in Afghanistan, the Ministers also point to an April 1997 letter the Respondent received from an individual in Peshawar, Pakistan [Exhibit 11, Tab A19]. The letter provides a detailed update on the Taliban and the situation in Afghanistan. The Ministers claim that only a person who fought in Afghanistan would receive such a letter. This assertion is speculative at best. First, there is no information on the record about the author or the author's motivation for writing the letter. Second, the receipt of the letter is equally if not more consistent with having lived in the region and been part of a community of people who were affected by the conflict.

[58] The Ministers maintain that as it is implausible that the Respondent would have taught in Afghanistan, rather, it is reasonable to infer that he must have been involved in the military conflict while he was there. As an aside, with reference to the Respondent's inability to speak the languages, it is noted that the source relied on by the Ministers about the local languages in Afghanistan does not form part of the record. Of greater import is the testimony of Dr. Daniel Byman, an expert witness for the Ministers. Dr. Byman testified as an expert on terrorism, counterterrorism policy, Middle East security and US national security as it pertains to the Middle East. Regarding the asserted implausibility of the Respondent having taught in Afghanistan, Dr. Byman testified that, while teaching jobs would have been few and far between during the 1990s, it was "not impossible" that someone might have worked in Afghanistan as a teacher during that time [Transcript June 29, 2012, p. 93].

[59] Having regard to the above findings and those made in relation to the classified information, there are insufficient known or established facts from which reasonable inferences can be drawn that taken together give rise to reasonable grounds to believe the Respondent was involved in the military conflict in Afghanistan.

[60] The next question is whether the Respondent was in Pakistan in connection with his senior membership in AJ, as the Ministers allege. The Ministers point out that Pakistan was a safe haven for Islamic militants and that Peshawar, in particular, was known as a centre of "Islamic extremism". As well, members of extremist groups went to Pakistan to train. It is alleged that since the Respondent did not make a refugee claim there, he had to have been there for another purpose.

[61] The preponderance of the evidence is contrary to the Ministers' allegation in this respect. There is ample evidence that the Respondent was a teacher in Pakistan, including his statement in his PIF, his testimony at his IRB hearing [Ref. Ind. Tab 13], letters attesting to his work as a teacher from the IIRO [Exhibit A for identification, subsequently made an exhibit in the *in camera* hearing], and the evidence given by Abdul Rahman Khadr in the *Charkaoui* proceeding [Ref. Ind. Tab 169, pp. 188-189]. The evidence that the Respondent worked in Pakistan as a teacher and worked with Afghan refugees is consistent with Dr. Byman's evidence that many Arabs went to Pakistan to do humanitarian work and that various organizations, including the IIRO, were based there and provided services to the large population of Afghan refugees who were displaced as a result of the conflict [Transcript July 3, 2012, pp. 5-8]. There is no evidence that the Peshawar branch of the IIRO had any links to terrorism or terrorist organizations, aside from the mere fact that various terrorist organizations also operated in Peshawar in the 1990s. While there is evidence that some leaders of AJ and other organizations, such as the Islamic Group and Al Qaeda, were in Pakistan at various times throughout the 1980s and 1990s, the record indicates that around the time the Respondent arrived in Pakistan the leaders of AJ and Al Qaeda were already leaving for Sudan [Transcript June 27, 2012, pp. 159-160]. As there is no evidence that the Respondent did anything other than teach in Pakistan and having regard to Dr. Byman's testimony that a teacher could have worked in Peshawar teaching Arabic [Transcript July 3, 2012, pp. 31-35], there is no basis on which a reasonable inference may be drawn that the Respondent went to Pakistan in connection with AJ.

[62] As to the Respondent's travel to Yemen, the Ministers note that the Respondent told the IRB that he travelled to Yemen because it was the only country where a teacher could find a job

very easily. However, he did not have status in Yemen and gave contradictory evidence regarding whether he had worked in Yemen. At one point he claimed he had worked as a teacher in a Yemeni school, yet later, he said he attempted to find a job in Yemen but was unable to find one [Ref. Ind. Tab 13, p. 16].

[63] The Ministers rely on Dr. Byman's testimony that Yemen had a weak government, which at times was supportive of the jihadist movement. He testified that AJ had a large presence in Yemen and that some of its leadership council were based there [Transcript June 27, 2012, pp. 73, 77, 88, 143-144]. As well, Ali Soufan, the author of *The Black Banners: The Inside Story of 9/11 and the War Against al-Qaeda* (New York: WW Norton & Company Inc., 2011) states that "[A]l-Qaeda sympathizers could be found throughout Yemeni institutions, including in the intelligence services" and that "[s]ome would help terrorists obtain visas and fraudulent documents, or tip them off when foreign governments were looking for them" [Exhibit 57, p. 154]. Dr. Byman testified that this quotation reflected his understanding of what was transpiring in Yemen in the 1990s [Transcript June 28, 2012, pp. 7-8]. Many "notorious terrorists" lived in Yemen and AJ appears to have had a significant presence there: Thirwat Shehata was in Yemen from 1993 to 1995 as were other AJ members; Ayman Al Zawahiri found Yemen useful (though less valuable than Sudan) because of its proximity to Egypt; and some reports claim Zawahiri was in charge of Al Qaeda's Yemeni cell [Exhibit 56, p. 61]. Dr. Byman also indicated that Yemen was not a place many refugees would seek out [Transcript July 3, 2012, pp. 166].

[64] The Ministers claim it is odd that the Respondent would go to Yemen in August 1994 until August 1995 given that, in 1993, Egypt put Yemen on a list of countries supporting anti-

government militants [Exhibit 56, p. 61]. The Respondent would have been aware of this as he kept in contact with his family in Egypt who informed him about what was happening in Egypt.

[65] The Ministers add that the Respondent maintained regular contact with various people from Yemen after his arrival in Canada in 1996. This included Izzat, or Abu Yasser, who served as a communications link between Zawahiri and AJ leaders in the UK, Azerbaijan and Yemen. Izzat was also a supplier of false documents to terrorists.

[66] Even if the Ministers' submissions in relation to the situation in Yemen at the material time is accepted, although the evidence is somewhat more equivocal regarding Yemen's support for extremist movements than the Ministers suggest, without more, it does not support a reasonable inference that the Respondent was there in connection with AJ. In this proceeding, there is no evidence of the Respondent having had any contact with AJ members or having done anything while in Yemen that suggests involvement with AJ. Moreover, there is very little evidence of the Respondent's alleged contacts having been in Yemen at the time he was there.

[67] Lastly, as to the Respondent's evidence before the IRB, he testified that he fled Pakistan for Yemen because he did not need a visa to travel there and planned to look for work. He added that many Arabs were travelling there at the time. As to the Respondent's alleged contradictory testimony before the IRB, in this proceeding, counsel for the Ministers acknowledged that, "in all fairness" this was likely a typographical error in the transcript.

[68] With respect to the Respondent's travel to Azerbaijan, again there is simply no evidence that he had any contact with AJ members or was in any way involved with AJ. The statements about the situation in Azerbaijan alone do not give rise to a reasonable inference that the Respondent was in that country in furtherance of his AJ connections.

[69] Lastly, regarding the Respondent's travel pattern, it is recalled that it has always been and still is the Ministers' position that the Respondent's "travel pattern was consistent with that of a mujahid extremist – one who left Egypt to fight in Afghanistan, trained in Yemen, may have fought in Chechnya, and cannot return to Egypt." To start, it is observed there is no information indicating that the Respondent was ever in Chechnya nor is it alleged he was. More importantly, it cannot be reasonably inferred from the Respondent's presence in Afghanistan at some unidentified time for some unknown duration and his presence in Yemen that he fought in Afghanistan or trained in Yemen or in any way engaged in the activities of a mujahid extremist. Additionally, it does not follow from what others may have done during the course of their travels that the Respondent participated in the same activities during the course of his travels.

[70] The Ministers also submit that the Respondent's "travel patterns are highly consistent with the movements of other AJ members." In support, they assert that the CA "noted that Jaballah had associates in Azerbaijan, Pakistan and Yemen." [Ministers' Written Submissions para 288].As this is evidence grounded on excluded summaries of intercepted oral communications, as explained below, it will be given no weight.

[71] Before dealing with the Respondent's alleged activities after he arrived in Canada, it is useful to recall the Court's ruling on the use that can be made of the testimony of the CSIS Communications Analyst [CA]. In both their written and oral submissions, the Ministers rely on the testimony of the CA who listened to and prepared summaries of the majority of the Respondent's intercepted oral communications as well as that of others. In some instances, the reliance on this testimony is problematic. At paragraphs 92 to 94 of the Ministers' written submissions, they take the following position with regard to the use of the CA's evidence:

> 92. As a highly qualified and experienced Communications Analyst ("CA"), the witness was assigned to Jaballah's file for over three years. In that time, they listened to hundreds of his intercepted phone calls. Summaries of the CA's evidence given *in camera* were provided by Court Orders, dated January 8, 2013 and February 18, 2014. The redacted testimony of the CA was provided in a Court Order dated July 3, 2014.
>
> 93. The evidence shows that Jaballah used the phone extensively to make contact with other terrorists, in spite of tepid attempts to keep his phone number a secret. The CA testified that they became very familiar with Jaballah's voice and that of many of his regular contacts and further observed that Jaballah "was quite comfortable when he was using his cellular telephone…". In this regard, the CA was familiar with the voices of Jaballah's contacts Farhat, Krer, "Abbas", "Mohammed Ali", and "Najib." The CA testified that they would recognize "Mohammed Ali's" voice "anywhere". The CA's reliability on this matter has not been questioned nor an answer provided by Jaballah to deny its credibility.
>
> 94. The CA's evidence unquestionably supports the Ministers allegations as the evidence shows Jaballah's regular (and unexplained) contact with senior members of the AJ.

[72] By way of background, as detailed above, on September 17, 2013, all summaries of intercepted oral communications were excluded from the evidence in this proceeding. The Ministers brought a motion returnable on June 11, 2014 to have the September 17, 2013 amended Order set aside. At the same time, an additional question arose on which submissions

were made: what use, if any, could be made of the CA's evidence? The Court gave oral reasons and rulings on June 17, 2014. The motion to set aside the Order was dismissed and in relation to the use of the CA's evidence, the ruling states:

> Now, turning to the matter of the CA evidence.
>
> On September 18th, 2013 the Court ordered the exclusion of all summaries of intercepted communications for which the original recordings had been destroyed from the evidence in this proceeding.
>
> On November 20, 2012, before this order was issued, the Court heard the testimony of the communications analyst, who briefed and prepared the majority of the summaries that were excluded. The question that now arises is the use, if any, that can be made of the CA's evidence regarding the identification of certain individuals with whom it is alleged the respondent was in contact by telephone.
>
> Special advocates take the position that the CA's evidence should be excluded, for the same rationale as applied to exclude the summaries pursuant to the September 18th exclusion order. The Ministers seek to rely on the CA's identification of the voices of the respondent and other individuals involved in the intercepted communications.
>
> The Ministers characterized the CA's evidence as earwitness testimony. They argue that voice identification is similar to eyewitness identification. They acknowledge the recognized frailties surrounding eyewitness identification, but maintain that this is a matter of weight and eyewitness identification, and applies equally to voice identification.
>
> The Ministers note that pursuant to valid Section 21 CSIS Act warrants, the CA listened to intercepts of the respondent's telephone lines for a number of years. As a result, the CA became very familiar with, not only the respondent's voice, but also the voices of some of his contacts.
>
> The Ministers maintain that the CAs, and I quote from the Ministers:
>
> "... resulting knowledge of and memory of the voices was properly obtained and properly admitted," end quote.
>
> They had that there was, open quote:

"No question about the ability of the CA to identify certain voices." End quote.

As to the consequences flowing from the exclusion of the summaries, the Ministers argue that the ruling excluding the summaries did not deal with the substantive evidence.

It is also argued that the CA's evidence regarding the identification of the voices did not depend on the content of the summaries and was elicited independently. The Ministers submit that this evidence meets the indicia of reliability articulated in a number of criminal cases, such as, for example, the Queen and Bench, the Queen and Castro, Queen and Carter.

It is acknowledged that Mr. Jaballah could not challenge the CA on the basis of the original intercepts. Nevertheless, the Ministers take the position that he was able to challenge the CA's knowledge of each of those persons identified, the number of occasions the CA listened to them, to test the CA's reliability using alleged corroborative material.

The special advocates did not object to or challenge this evidence at the time, even though it was clear the CA was called for substantive purposes.

The Ministers also submit that the special advocates' submission that the CA's voice identification is reliant on the summaries is not supported by the evidence.

In the Ministers' view, I believe it was the case the witness's memory was refreshed by evidence later found to be inadmissible. The witness's viva voce evidence is still admissible in certain circumstances and advance this assertion by reference to the Supreme Court of Canada's decision in the Queen and Fliss.

Obtaining and processing and familiarization with the voices is evidence in the Ministers' view that is not tainted by any breach of Mr. Jaballah's Charter rights. The CA's evidence ought not to be excluded. It provides cogent, reliable and appropriate evidence.

The Ministers also point out that in the past the Court has also admitted evidence of third parties that is completely unsourced. In the Ministers' view, the evidence of the CA reaches a much higher level of reliability.

At the outset, I wish to note that the CA's evidence concerning educational background, linguistic skills, employment history, training, tasking guidelines, the preparation of the summaries, and

other similar matters are clearly admissible and are beyond the scope of the present request for the exclusion of evidence that concerns the identification of parties to intercepted communications.

I also wish to add one additional observation. Throughout their submissions, the Ministers refer to the CA's evidence as voice identification and as being similar to eyewitness identification. However, in my view, a distinction must be drawn between voice identification -- that is, a voice belonging to a particular person -- and recognition of a voice in the sense that it is a voice previously heard.

My use of the term "voice identification" should not be taken in any way as my acceptance that it is synonymous with voice recognition.

I have conducted, again, a detailed review of the CA's evidence. This review has led me to the view that the bulk of the CA's voice identification evidence cannot be separated out from the summaries and, for the most part, is inextricably linked to the summaries.

The CA testified extensively about the ways in which the intercepts were taken and the summaries that were created. The Ministers drew out this information by reading sections of the summaries to the CA verbatim then asking questions. As the special advocates point out, Ministers never took the CA through the CA's evidence to determine what the CA remembered independently and what the CA did not.

Certainly, witnesses are entitled to refresh their memory by reference to excluded evidence as long as they do so out of court. Once in the witness box, their testimony must be sourced from that refreshed memory, and stating this, I'm relying on the decision in Fliss at paragraph 60.

Turning to the Ministers' observation that the special advocates never challenged the reading in of the now excluded summaries during the CA's testimony. Given the history of presenting in this fashion, it is not surprising that the special advocates did not challenge this approach to adducing the evidence. I note as well at that time it was not clear that the Ministers were introducing this evidence for the purposes of voice identification of the individuals involved in the communications identified in the summary.

> I notice, though, that this case is distinguishable from that -- where the impugned transcript had already been excluded when it was read in.
>
> However, having said all of this, the fundamental flaw with the Ministers' position that, as above noted, there is very little of the CA's evidence regarding the identity of the individuals intercepted that is not grounded on a summary. There are some few instances where, arguably, the CA's evidence was not linked to a summary. I say "arguably" because there are other potential difficulties with that evidence.
>
> …
>
> I'm also going to do something that I've said on multiple occasions that I would not do. It seems I've often said that if evidence should be excluded, the trial judge should exclude it and get on with the matter. However, in this case, I'm very concerned that having said "arguably", that by simply excluding all of that evidence, I will now exclude evidence that could actually be admissible.
>
> However, in approaching it in this fashion, I also recognize that I don't leave parties with a lot of certainty. And so I appreciate sometimes that this could be a distinction without a difference. But for the sake of certainty and moving the case forward, I can say that any of the evidence at issue that is grounded on the summary or given by reference to a summary will be given no weight. Those remaining matters will be subject to further submissions at the time of the final argument.
>
> [emphasis added]

[Transcript June 17, 2014, pages 99 to 105]

[73] Lastly, in terms of background, on July 3, 2014, the Court issued an order disclosing to the Respondent "all publicly disclosable excerpts of the communications analyst's November 20, 2012 evidence that survive the Court's September 17, 2013 amended Order".

[74] Thus, it can be seen that the question of the use that can be made of the CA's evidence has been fully canvassed and decided. The fact that there was additional public disclosure of the CA's evidence subsequent to this ruling does not in any way alter the ruling. Accordingly, to reiterate, no weight will be given to CA evidence grounded on or given by reference to excluded summaries of intercepted oral communications.

[75] The starting point for the discussion about the Respondent's alleged activities after he came to Canada concerns what the Ministers describe as the "covert P. O. Box". The Respondent's alleged use of this postal box figures prominently in the position advanced by the Ministers. It is alleged that in 1996, the Respondent established post office box 47559, 939 Lawrence Avenue East, Toronto, Ontario, M3C 3S7, under the alias "Bellal" [P.O. Box] where he received correspondence from within Canada and from international locations including the UK, Belgium, Yemen, and Pakistan. In addition to other uses, the Ministers submit that the Respondent "exchanged and received propaganda materials from well-connected jihadists" using the P. O. Box.

[76] The Ministers claim the following evidence links the Respondent to the P.O. Box:

1. In November 1996, the Respondent sent a fax to Mohammed Ali in which he states: "My mailing address is Bellal, PO Box 47559, 939 Lawrence Avenue East, Toronto, Ontario, M3C 3S7" [Exhibit 10, Tab 10]; and

2. Evidence obtained by the Physical Surveillance Unit places the Respondent at 939 Lawrence Avenue East in and around the area of the P.O. Box. [Exhibit 10, Tabs 89 and 90].

[77] Pursuant to search warrants obtained by CSIS and, as it turns out, the RCMP as well, a number of items were seized from the P.O. Box. The Ministers allege the Respondent was the recipient of all of the seized materials. The following materials were delivered to the P.O. Box [information added about the sender where known]:

- The February-March 1997 issue of the Nida' Ul Islam magazine from Daher [Exhibit 11, Tab A16];

- In April 1997, a lengthy book entitled "The Mainstay of Making Preparations for Jihad in the Cause of God" by Abdel Qader Bin Abdel Aziz, a Jihad Group publication together with a December 1996 Al Mujahidun magazine received from Mr. El Hamid, 30 Belgrav Rd., London, UK [Exhibit 11, Tab A31];

- An April 1998 letter from Gent, Belgium requesting a subscription to Ma'alem Al Jihad [tr. Signs of Jihad] described in the record as a quarterly magazine issued by the Authorized Committee of Al Jihad [Exhibit11, Tab A20];

- The April-May 1997 issue of the Nida Ul Islam magazine from Daher [Exhibit 11, Tab A17];

- In May 1997 – an audio cassette, labelled "The Holy Warrior Sheikh Osama Binladen" from Daher [Exhibit 11, Tab A18];

- A diskette and document prepared by the "Jihad Group authorized committee" which includes an interview with Zawahiri, sender unknown [Exhibit 11, Tabs A11 and A22];

- Between March 1997 and early 1999, issues of Al Fajr, a magazine linked to the Libyan Islamic Fighting Group [LIFG] from the UK [generally ten copies included] [Exhibit 11, Tabs A12, A13, A14, A21, A38, A46, A47];

- A book written by Ayman Al Zawahiri and published by the Jama'at Al-Jihad [the Jihad Group in Egypt] entitled "Muslim Egypt" sent from Pakistan. In the book, Zawahiri asks readers to help their Muslim brothers in Egypt and to publicize the book [Exhibit 11, Tab A45];

- Between April 1997 and May 1999 – issues of Al Mujahidun, issued by the media committee of Jama'at Al-Jihad. The November 1998 and March 1999 issues of Al Mujahidun include a request from the editorial staff asking for advice and requesting that proposals be forwarded to "Mr. Bellal, P.O. Box 47559, 934 Lawrence Ave. East, Toronto, Ont, M3 C357, Canada" [Exhibit 11, Tabs 41 and 44];

- On January 26, 1999, the RCMP seized a letter from an Al Mujahidun reader in Islamabad, Pakistan who thanked the "brothers in the media and legislative committees" for their "activeness in publishing what appears to us to be right". The reader proposed Al Mujahidun magazine include "a page or two of poetry about jihad, zeal, and wise sayings that will boast [sic] and encourage moral" [Exhibit 11, Tab 48];

- In July 1997 and March 1998, issues of Ma'alim Al-Jihad were received from Yemen [Exhibit 11, Tabs A21 and A23]. A covering letter addressed to "Abdel Rahman" inviting him to make and distribute copies of the periodical was

enclosed with the issue received in July 1997. In May 1999, an issue of Ma'alim Al-Jihad was received from Pakistan. In the table of contents, there is a note from the editorial staff asking for proposals and advice, and requested that correspondence be mailed to "Mr. Bellal, P.O. Box 47559, 934 Lawrence Ave. East" [Exhibit 11, Tab A43]; and

– In January 1999, a book entitled "Ramadan is the month of fasting and jihad" by the legal committee of the Jihad Group from Pakistan [Exhibit 11, Tab A40].

[78] The Ministers also allege the Respondent received the following correspondence at the P.O. Box:

– An April 1997 letter from Peshawar, Pakistan in which the salutation reads "beloved brother Abu Abdel-Rahman" [Exhibit 11, Tab A19]. This is the same letter referred to above [at para 57];

– On January 26, 1999, the RCMP seized a letter from Pakistan signed by an individual named "Fatehi". The letter is addressed to Mr. Bellal at the address of the P.O. Box. The writer states that he should be contacted through "Ezzat" [Exhibit 11, Tab A39]; and

– A letter dated April 18, 1999 from Yemen addressed to Mr. Bellal at the address of the P.O. Box. The salutation is to "Mr. Abou Ahmad" and is signed by an individual named "Murad" [Exhibit 11, Tabs A15 and A42].

[79] In addition to the broader assertion that the Respondent exchanged and received propaganda from jihadists through the P.O. Box, the Ministers contend the Respondent received materials that would only have been sent to a person "heavily involved with AJ." In particular, they point to the book entitled "*Muslim Egypt*" written by Zawahiri; the issues of the magazine *Al Mujahidun*; the issues of the magazine "*Ma'alim Al-Jihad*" and the cassette entitled "The Holy Warrior Sheikh Osama Binladen". The Ministers note that responses to the request for advice by the editorial staff of *Al Mujahidun* and a similar request by the editorial staff of the *Ma'alim Al-Jihad* were to be sent to the address of the P.O. Box. Also noted are the thanks extended by a reader of *Al Mujahidun* "to 'you' (according to the Ministers, the Respondent) and to the brothers" for their work and the letter addressed to Abdel Rahman inviting him to distribute copies of the *Ma'alim Al-Jihad* magazine.

[80] Throughout their submissions, the Ministers state the Respondent was the recipient of the above materials. However, the evidence does not support the assertion that the Respondent was the only user of the P.O. Box. Indeed, the record supports a reasonable inference that he was one of multiple users of the P.O. Box or persons who had access to it.

[81] To start, the P.O. Box was rented in the name of Bilal Abaus using a passport as identification. There is no evidence the Respondent had a passport in this name. This information also contradicts the Service's theory that the name "Bilal" was a reference to the name of the Respondent's son. There is also evidence linking another individual to the P.O. Box shortly after it was rented.

[82] At the same time, the evidence also supports a reasonable inference that the Respondent used or had access to the P.O. Box, including: the fax sent by the Respondent to "Mohammed Ali" which provided the name "Bellal" and the address of the P.O. Box as a mailing address referred to above; and, the fact that Eidarous had the mailing address in his CASIO listed under an entry for "Abdul Rahman" which contained other details associated with the Respondent, such as his home and cellular phone numbers [Exhibit 15 p. 1]. As to the April 1997 letter, there is some evidence that the Respondent may have used the name in the salutation, "Abu Abdel-Rahman". As well, it is undisputed that the Respondent lived in Peshawar, Pakistan, where the letter was postmarked. Although it is possible that the letter was intended for the Respondent, there is additional classified evidence that undermines a reasonable inference being drawn that he was the intended recipient. With regard to the letter seized by the RCMP in January 1999, beyond the reference to "Ezzat", an alleged contact of the Respondent that will be discussed below, there is nothing in the letter to suggest that it was intended for the Respondent. Lastly, it is acknowledged that the letter of April 18, 1999 was likely intended for the Respondent given that the salutation was to Abou Ahmad, a name the Respondent acknowledged having used, and the writer made reference to not having heard from him since Eid Ul Adha.

[83] There is little physical evidence linking the Respondent to the P.O. Box itself. There is a surveillance report from September 1998 but this report does not actually contain direct evidence that the Respondent accessed the P.O. Box [Exhibit 10, Tab 89]. The report states the Respondent left the Shoppers Drug Mart where the P.O. Box is located with what appeared to be a rolled-up magazine or newspaper wrapped in brown paper, but it is not apparent whether this

came from the P.O. Box, especially since there is no evidence that CSIS had intercepted any items after March/April 1998 [Exhibit 11, Tab A23].

[84] Although the ledgers for the P.O. Box maintained at the Shoppers Drug Mart and obtained by the RCMP say "Customer Known" in lieu of identification on several pickups from the P.O. Box, neither the manager nor the employees of the Shoppers Drug Mart recognized a photograph of the Respondent in September 2000 [Exhibit 97]. Although the RCMP investigators contemplated conducting a photo line-up in March 1999, it appears to have been inconclusive. The continuation reports indicated that the employee who provided a description to the RCMP investigator also advised that two brothers had leased the mailbox. Finally, the unsuccessful fax to "Murad" that the Respondent had with him when he was arrested in March 1999 suggests that he had, by then, rented a different P.O. Box [Exhibit 11, Tab A37]. However, the letter from "Murad" dated April 18, 1999, was sent to the P.O. Box [Exhibit 11, Tab A15]. Based on the above evidence, it is reasonable to infer that the Respondent was one of multiple users of the P.O. Box.

[85] Having said this and having reviewed each of the items delivered to the P.O. Box, I accept the Special Advocates' submission that few of the items delivered to the P.O. Box can be specifically linked to the Respondent. Although surveillance teams observed the Respondent entering and exiting the Shoppers Drug Mart located at 939 Lawrence Avenue in September 1998 [Exhibit 10, Tab 89] and in January 1999 [Exhibit 10, Tab 90], he was not actually seen checking the mail on either occasion. Moreover, someone collected mail from the P.O. Box on March 15, 1999, but there is no evidence that this person was the Respondent, despite the fact

that he was under surveillance around that time. Finally, the evidence shows that on March 27, 1999, the Respondent had attempted to fax a letter advising Murad to send an item to a different post office box [Exhibit 11, Tab A37]. In my view, the preponderance of the evidence is contrary to the position advanced by the Ministers and it certainly does not support the allegation that the materials the Respondent received would only have been sent to a person "heavily involved with AJ".

[86] The Ministers submit that there are reasonable grounds to believe the Respondent "had an 'institutional link' and was a knowing participant in the recruiting activities of the AJ and Al Qaeda networks." According to the Ministers, a document faxed to the Respondent in July 1997 [Exhibit 10, Tab 28], "tasked [him] with identifying and recruiting individuals for the AJ and who could assist the AJ in its transnational terrorist activities." Moreover, the fax "outlined the characteristics of a good recruit" and advised the Respondent to distribute "our publications" to potential recruits.

[87] Even if the fax of July 1997 can be said to have "tasked" the Respondent to engage in recruitment on behalf of AJ which is somewhat ambiguous in the fax, there is simply no evidence on the record that the Respondent ever engaged in any recruitment activity. Receipt of the fax without more does not establish recruitment.

[88] Similarly, the Respondent's receipt of some materials at the P.O. Box alone does not establish that the Respondent engaged in the dissemination of propaganda on behalf of AJ or, for

that matter, any other organization. Indeed, there is no evidence on the record that the Respondent engaged in any distribution of propaganda materials.

[89] In support of the assertion that the Respondent was a senior member of AJ, the Ministers also rely on his alleged close association and contact with several leading members of AJ, as well as members of other groups that engaged in terrorism or subversion. These contacts will be dealt with below. The Ministers also point to the Respondent's association with the IIRO and his contact with the IODEP. The Ministers claim that only a member of AJ would have these kinds of contacts. Further, the Ministers rely heavily on the Respondent's alleged contacts and attempted contacts with Thirwat Shehata, a member of AJ's ruling Shura council, and Ibrahim Eidarous, a high-ranking member of AJ around the time of the bombings of the US embassies in East Africa. The Ministers adduced a substantial evidentiary record in advancing their position, the majority of which cannot be disclosed for reasons of national security.

[90] Turning first to the Respondent's alleged contact with Zawahiri, the leader of AJ in the 1990s and Bin Laden's deputy, the Ministers rely on the following evidence. Service investigation revealed that the Respondent was a "long-time friend" of Zawahiri and that the Respondent was in contact with known terrorists Zawahiri, Shehata, and Allam.

[91] In May 1998, Service investigation revealed that the number 873682505331 was an Inmarsat satellite number used by Bin Laden, Muhammad Atef and Zawahiri [Exhibit 11, Tab A32]. To establish the Respondent's contact with this number, the Ministers rely on the fact that between mid-March 1998 and mid-April 1998 the Inmarsat number was dialled numerous times

from pay telephones, all within a 4 kilometer radius of the Respondent's home at 30 Tuxedo Court, Scarborough, Ontario [Order, August 20, 2014]. Further, when asked about the significance of someone having the Inmarsat satellite number, Dr. Byman testified that, as the satellite phone was being used by senior members of Al Qaeda, the phone number would not be given out "lightly" [Transcript, June 29, 2012, p. 107, ll. 15 – 18]. The Ministers also rely on additional classified information to establish the Respondent's contact with Zawahiri by way of the Inmarsat satellite number.

[92] In the Ministers' view, it is noteworthy that the Respondent was notified of Hani al-Sebai's expulsion from AJ through a letter authored by "Abu Mohammed", an alias used by Zawahiri [Exhibit 10, Tab 40]. The Respondent also received a book written by Zawahiri under a pseudonym and a publication of an interview with him.

[93] The Ministers maintain that Zawahiri would not have been in contact with a person who was not fully committed to AJ's terrorist agenda. As a senior member of AJ and Bin Laden's deputy, he would have been concerned about operational security and would have exercised caution in his communications. The Ministers contend that Zawahiri would not have contact with an ordinary member of AJ living abroad.

[94] Having reviewed the classified information, it is evident that, aside from the fact that the Inmarsat number is listed in the CASIO diary along with numbers associated with the Respondent, there is no link between the Respondent and this number and there is no evidence

that the Respondent made the calls to this number. Accordingly, the evidence does not support a reasonable inference that the Respondent called the Inmarsat number.

[95] Even though the letter concerning al-Sebai's expulsion was apparently authored by Zawahiri, given that the letter was addressed to a large group, it does not assist in establishing the alleged contact between the Respondent and Zawahiri. Similarly, the fact that the Respondent received a book authored by Zawahiri, as well as a diskette from an unknown sender, does not assist the Ministers' assertion of contact between the Respondent and Zawahiri.

[96] The Ministers submit the Respondent was in regular contact with Thirwat Shehata. There are two aspects to the allegation of contact with Shehata. The first is the broader allegation that the Respondent was in "regular contact" with Shehata between 1996 and 1998. The second aspect concerns the Respondent's alleged contact with Shehata around the time of the East Africa embassy bombings. These latter contacts will be dealt with below.

[97] The evidence in support of the broader allegation that the Respondent was in "regular contact" with Shehata between 1996 and 1998 consists of a fax addressed to Mohammed Ali sent by the Respondent in November 1996 [Exhibit 10, Tab 10] and further classified information. The Ministers also rely on the CAs' testimony that they would recognize the voice of Mohammed Ali "anywhere" because he was a regular caller [Order, July 3, 2014].

[98] The Ministers contend that since there is evidence Shehata used the alias "Mohammed Ali", there are reasonable grounds to believe that the Mohammed Ali, whose voice with which

the CAs became familiar, is Shehata. This contention is problematic. The Ministers position that the Respondent and Shehata were in regular contact is grounded on the CAs' evidence that an individual known as Mohammed Ali was a regular caller. This piece of information has only one source, the intercepted oral communications. The fact that the CAs had an independent recollection of the fact that Mohammed Ali was a regular caller does not overcome the fact that the information itself was derived from excluded summaries of intercepted oral communications.

[99] As to the fax sent by the Respondent to "Mohammed Ali", it is clear that Mohammed Ali is an alias used by Shehata. In these circumstances, it is reasonable to infer that the intended recipient of the intercepted fax was Shehata.

[100] The Ministers submit the Respondent was in frequent contact with Ibrahim Eidarous, also known as "Daoud". It is not disputed that he was a highly placed member of AJ evidenced, in part, by the fact that in 1995 he headed the AJ cell in Baku, Azerbaijan, and subsequently assumed leadership of the London, UK, cell in late September 1997. The Ministers rely heavily on classified information to support the assertion of the Respondent's contact with Eidarous.

[101] The Ministers claim that between February 1998 and August 1998, the Respondent dialled two telephone numbers belonging to Eidarous. The first number is 441819600574. This number is listed in the CASIO diary under "Ibrahim Eidarous" [Exhibit 15]. The second telephone number, 44956657875, is also listed in the CASIO diary under "Ibrahim Eidarous" [Exhibit 15].

[102] The Ministers claim that between February 1998 and August 1998, the Respondent dialled Eidarous' two telephone numbers on at least 10 occasions. The telephone toll records indicate that the Respondent's home telephone was in contact with the two numbers associated with Eidarous a total of five times between February 1998 and March 1998 [Exhibit 11, Tab A9].

[103] The Ministers submit that the fact the CASIO belonging to Eidarous contained the Respondent's contact information supports the assertion that the Respondent and Eidarous knew one another. The Ministers contend that the above evidence, coupled with further classified information, establishes reasonable grounds to believe the Respondent and Eidarous were in "operational" contact.

[104] Having regard to the classified information and the various details in the entry for the second number that can reasonably be connected to Eidarous, it is reasonable to conclude that both telephone numbers belong to or are associated with Eidarous. This, coupled with the toll records for the Respondent's home telephone, establish reasonable grounds to believe the Respondent was in contact with Eidarous between February 1998 and March 1998. However, there is no evidence that these contacts were operational in nature.

[105] The Respondent's alleged contacts with two high-ranking members of AJ around the time of the bombings of the US embassies' in East Africa are key components of the Ministers' assertion that the Respondent was a senior member of AJ. The bombings of the US embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, occurred on August 7, 1998. The Ministers contend that the Respondent's contact with Shehata and Eidarous during the time period when

the bombings were being planned and executed demonstrates the Respondent's seniority within AJ. They add that an ordinary member would not have had such access to senior members around the time of the bombings.

[106] The Ministers rely on telephone toll records and classified information to establish calls they say the Respondent placed to a phone number in Azerbaijan used by Shehata [Exhibit 11, Tab A4]. However, after reviewing the open and classified material, a reasonable inference cannot be drawn on the basis of this evidence that the Respondent was a member of AJ.

[107] With respect to the Respondent's contacts with Eidarous around the time of the East Africa bombings, the Ministers allege the Respondent was contacted on his mobile phone at 05:05 a.m. on August 7, 1998, the morning of the bombings and within ten minutes called a mobile number used by Eidarous. The Ministers rely on information "concerning the domestic usage of cellular telephone (416) 697-3103" between June 1998 and August 1998 [Exhibit 11, Tab A27]. In addition to the date of the call, only the time and duration of the call are provided for the incoming calls. No caller identification is provided. For the outgoing calls, in addition to the date, the number called, the time of the call and the duration of the call are indicated. The Ministers rely on the following information regarding incoming and outgoing calls for the Respondent's mobile phone:

> August 7, 1998:
>
> 05:05 a.m., incoming call, duration two minutes;
>
> 05:09 a.m., outgoing call, number dialled 888193215, duration two minutes; and
>
> 05:11 a.m., outgoing call, number dialled 888193215, duration two minutes.

> August 9, 1998:
>
> 13:14, outgoing call, number dialled 888193215, duration four minutes; and
>
> 13:23, outgoing call, number dialled 8005389357, duration four minutes.

[108] The Ministers also point to classified information which they say establishes contact between the Respondent and Eidarous around the time of the East Africa bombings.

[109] Following a careful review of the above noted evidence and the evidence relied on by the Ministers as part of the *in camera* proceeding, a reasonable inference cannot be drawn that the Respondent was in contact with Eidarous during the period of time surrounding the East Africa embassy bombings.

[110] The Ministers submit that the Respondent was in regular contact with Adel Abdel Al Bari, the head of the IODEP. As well, he had extensive dealings with the IODEP and the people who worked there, an organization implicated in American and British investigations into the East Africa bombings. The Respondent told the Service he was in contact with the IODEP to obtain information about country conditions in Egypt. He also submitted a letter to the IRB from the IODEP in support of his refugee claim.

[111] The Ministers rely on classified information to establish contact between Al Bari and Zawahiri. The Ministers claim that Al Bari was a trusted colleague of Zawahiri. The Ministers note that Al Bari and Hani al-Sebai led the Media Committee of AJ which issued publications,

including *Al Fajar*, *Malim Al Jihad* and *Mujahadin* that the Ministers say the Respondent received at the P.O. Box.

[112] In terms of contact with Al Bari, according to the Ministers, the Respondent made at least 37 known calls to Al Bari between May 1996 and March 1998. There are two telephone numbers associated with Al Bari. The first is telephone number 0181-964-2549 [2549] [Exhibit 11, Tab A30]. This telephone number appears in the CASIO diary under "Adel Abdulmajeed" together with the address for the IODEP at 1A Beethoven Street. A second telephone number, 44956375892 [5892], is linked to Al Bari through the Bin Laden indictment, the CASIO diary and further classified information.

[113] On the basis of the frailties associated with the classified information concerning telephone number 5892, a reasonable inference cannot be drawn that the Respondent was in contact with Al Bari at this number. As to telephone number 2549, a reasonable inference can be drawn from the classified material that the subscriber to this telephone number was Al Bari. As well, telephone toll records indicate that the Respondent's home telephone number dialled this number on 31 occasions (nine of which are one minute calls) between June 1996 and April 1997 [Exhibit 11, Tabs A25, A8, A3, A5 & A6]. After considering this evidence, along with the classified material, there are reasonable grounds to believe the Respondent was in contact with Al Bari.

[114] Although conceding there is no direct evidence of contact, the Ministers submit that Hani al-Sebai, an AJ member in the UK who was expelled from AJ in July 1998, was known to the

Respondent. The Ministers say that, in July 1998, the Respondent was "personally" notified of al-Sebai's expulsion [Exhibit 10, Tab 40]. In the Ministers' view, this notification provides compelling evidence that the Respondent was a senior member of AJ. The Ministers claim that this type of document would only be "transmitted to senior members who were viewed as loyal partners in the terrorist group" and "would have the highest sensitivity and would only be entrusted to the most committed personnel." The Ministers add that it would "certainly not be dispatched to those who were only ordinary members of the organization or terrorist sympathizers."

[115] The letter setting out al-Sebai's expulsion is described as an "Administrative Report" to be supplied "to all the brothers". The fact that the letter was to be distributed to a large group of individuals undermines the assertion that the Respondent was "personally" informed of al-Sebai's expulsion. Moreover, the fact that it is directed to "all the brothers" also undermines the assertion that it would only be sent to a senior member of AJ.

[116] The Ministers submit the Respondent was an established contact of Ahmed Saeed Khadr, a senior well-placed terrorist. Before going further, it is observed that the allegation in this regard in the SIR and, with some immaterial modification, in the PSIR was amended after the Ministers filed their written submissions. The allegation now reads:

> According to Abdurahman Khadr, he knew Jaballah in Pakistan where he went to school with JABALLAH's children. According to a separate source, JABALLAH met Khadr and his spouse, Maha El-Samnah (Elsamnah) while in Pakistan, where the Khadr children were his students. The Service is of the opinion that his relationship with Khadr was not merely based on friendship, but was operational in nature.

[117] Although there is some evidence of friendship between the spouses of the Respondent and Khadr, other than having met in Pakistan, the Ministers do not point to any evidence of interaction or contact between the Respondent and Khadr, let alone evidence of friendship. Moreover, beyond the assertion of a relationship that was "operational in nature" and David's testimony that the Service considered that the Respondent and Khadr had a relationship that was "operational in nature", the Ministers do not give meaning to the phrase or examples of conduct from which such a relationship could be inferred. The fact that Khadr may have had contact with the IIRO, the organization for whom the Respondent worked while he worked for Human Concern International in Pakistan, does not support a reasonable inference that the Respondent was an established contact of Khadr.

[118] The telephone toll records for the Respondent's home telephone indicate that it was in contact with a telephone number in Germany on two occasions in April 1997 [Exhibit 11, Tabs A6 & A7]. However, further information regarding the Respondent's contact with this number implicates issues of national security and will not be discussed further, other than to say that no reasonable inference as to the Respondent's membership in AJ can be drawn from the evidence.

[119] The Ministers submit that the Respondent was in contact with Abu Yasser. In July 1999, Service investigation revealed that telephone number 9677917347 was attributed to Barrakat Fahim Ali Mohammed (aka Ezzat Abu Yasser) [Exhibit 11, Tab A34]. The CASIO also lists the number 9677917347 under the name "Ezzat" [Exhibit 15]. Based on the above evidence and the classified material, there are reasonable grounds to believe that this telephone number is linked

to Abu Yasser. However, as set out in the classified reasons, there is insufficient evidence to establish contact between the Respondent and Yasser.

[120] With regard to the Respondent's contact with Ahmed Mabruk, in an August 22, 2014 email to the Registry, the Ministers advised they are no longer able to establish a direct connection, in open or in closed, between the Respondent and Mabruk.

[121] In addition to the Respondent's alleged contact with AJ members and other Islamic extremists abroad, the Ministers also contend the Respondent associated with AJ members in Canada, including Mohammed Zeki Mahjoub and Islamic extremists, Kassem Daher, Mustafa Mohamed Krer and Hassan Farhat.

[122] In regard to the Respondent's alleged contact with Mahjoub, the Ministers rely on statements made during the Service interview of March 5, 1998, as well as the fact that Mahjoub had the Respondent's home telephone number and the name "Abu Ahmed" in a contact list in his possession at the time of his arrest on a Section 40.1 security certificate [Order, August 20, 2014]. With respect to the Service interview, the Respondent was asked when he first met "Mohammed Mahjoub" and, when he stated that he did not recognize the name, he was provided with Mahjoub's known aliases: "Mahmoud Shaker", "Mohammed Hassan", and "Abu Ibrahim".Following a moment of reflection, the Respondent indicated that he had met an individual named "Ibrahim" at the residence of Ahmed Khadr's in-laws, the Elsamnahs. The Ministers contend that the Respondent was being disingenuous when he told CSIS that he did not recognize Mahjoub's name. The Ministers base this argument on the fact that, as a senior

member of AJ, the Respondent would likely know Mahjoub, a person who the Ministers have reasonable grounds to believe was a Shura Council member and was personally hired by Bin Laden. Additionally, the Ministers contend that the Respondent's statement that he met a person known as Ibrahim at Khadr's in-laws was an attempt to conceal his relationship with Mahjoub.

[123] The evidence relied on by the Ministers does not provide reasonable grounds to believe the Respondent and Mahjoub were in contact or associated in any way. The basis for the Ministers' belief that the Respondent was being disingenuous when he said he did not know Mahjoub is circular and speculative. The Ministers assume the very fact they must establish in order to ground the argument that the Respondent likely knew Mahjoub, namely that the Respondent himself was a senior member of AJ. Furthermore, other than the Ministers' assertion, there is no evidence to suggest that the Respondent was attempting to conceal his relationship with Mahjoub when he said he met a person known as Ibrahim at the Elsamnahs' residence. As to the fact that Mahjoub had the Respondent's home telephone number in his possession upon his arrest, this alone does not establish reasonable grounds to believe the two were in contact. Without additional evidence establishing how the Respondent's telephone number came to be in the possession of Mahjoub, the Court is asked to speculate that this information establishes contact between the two individuals.

[124] The Ministers also submit the Respondent was in contact with Islamic extremists Daher, Krer and Farhat. In support of their submission, the Ministers point to PSU evidence which places these individuals in the company of the Respondent at various points in time, telephone toll information, statements made during Service interviews and sender information linked to

extremist literature received at the P.O. Box. However, none of these three individuals are alleged to be members of AJ. Instead, Daher is believed to be a member of a Sunni Islamic extremist group known as Takfir wal-Hijra, while Krer and Farhat are said to be members of the Libyan Islamic Fighting Group. Therefore, even if there are reasonable grounds to believe the Respondent was in contact with these individuals, there is no evidence to link the Respondent to AJ through these alleged contacts. The alleged contacts also do not allow for a reasonable inference to be drawn that would support a finding of reasonable grounds to believe the Respondent will, while in Canada, engage in or instigate the subversion by force of the government of Egypt, has engaged in terrorism or is a danger to the security of Canada.

[125] The Ministers rely on an Interpol Red Notice issued against the Respondent to support the assertion of his membership in AJ. The Red Notice concerns outstanding charges against the Respondent in Egypt in relation to his membership in a terrorist organization. It was issued on July 13, 1999 and subsequently corrected. Initially, it stated that the penalty for the charge was death which was subsequently amended to "probable hard labour for life" and ultimately to "life imprisonment, not death" by 2003 [Ref. Ind. Tab 5]. The Ministers submit the Red Notice is evidence that the Respondent is viewed by the Egyptian government as being a member of a terrorist organization and is a terrorist himself. The Ministers argue that when the Red Notice is assessed in the context of the larger evidentiary record, there is ample corroboration for its contents. In the Ministers' view, it supports the assertion of reasonable grounds to believe that the Respondent is inadmissible for having engaged in terrorism and being a member of a terrorist organization.

[126] On May 25, 2015, public counsel notified the Court of correspondence from the Commission for Control of Interpol Files confirming that, following the Respondent's challenge to the Red Notice in April 2014, the information had been deleted from Interpol's files. On June 15, 2015, public counsel informed the Court of June 9, 2015 correspondence explaining that the information had been deleted as the Commission considered that it had not received appropriate answers to the questions raised, therefore, it was not in a position to determine whether the data challenged had been processed in compliance with Interpol's rules.

[127] At this stage, it is noted that, as will become evident, a consideration of the Respondent's submission that the Red Notice was issued and used for an improper purpose is unnecessary.

[128] The Red Notice states that the charge faced by the Respondent is "membership in a terrorist organization" under the "Egyptian Criminal Law No. 58/1937" on "Arrest Warrant No. 467/91, issued by judicial authorities Egypt". The Red Notice does not indicate a specific section of the Egyptian law or indicate the name of the signatory of the warrant. Under the "Summary of the Facts of the Case", the Red Notice states that the Respondent is "a member of a terrorist organization responsible for the logistics for attacks carried out in Egypt. The organization provides terrorists with weapons and explosives as well as false passports enabling them to escape. It is also responsible for planning the dates and places of attacks." However, the Red Notice provides no further information about the name of the organization, the Respondent's alleged role in the organization or his alleged actions in support of the organization's terrorist activities.

[129] Given that the Ministers limit their allegation of the Respondent's membership in a terrorist organization to membership in Al Jihad, it cannot be said that the Red Notice corroborates or supports this ground of inadmissibility since the name of the alleged organization is not stated.

[130] As the focus of the present discussion is on the Red Notice, it is convenient, at this point, to also deal with the Ministers' submission that the Red Notice supports the allegation that the Respondent engaged in terrorism. In my view, the Red Notice does not help the Ministers' submission. As Justice Blanchard stated in *Mahjoub (Re)*, 2013 FC 1092 at para 230:

> … the Ministers allege that Mr. Mahjoub is wanted by Egyptian authorities for his involvement in terrorist acts and was accused of the Egyptian embassy bombing in Islamabad and has been charged in numerous cases. Both parties have adduced considerable evidence to establish or disprove the allegation that there have been charges against Mr. Mahjoub. However, even if the Ministers establish this allegation as a fact, the mere fact that he has been charged does not support a finding that Mr. Mahjoub committed the acts that he is wanted for. Consequently, this allegation on its own cannot support inadmissibility on security grounds pursuant to subsection 34(1). Without more information relating to evidence in support of these charges or about the Egyptian legal system, I give these charges no weight. Consequently, I shall not consider this allegation.

[131] The same reasoning applies equally here: even if the fact that the Respondent has been charged is established, without any further information about the particular acts the Respondent is said to have engaged in, it does not follow that the Red Notice supports or in some way corroborates an objective belief that the Respondent engaged in terrorism within the meaning of paragraph 34(1)(c) of the *IRPA*.

[132] There are additional reasons for not giving the Red Notice any weight in relation to the allegation that the Respondent engaged in terrorism. They cannot be disclosed for reasons of national security and will be discussed in the classified reasons.

[133] The last matter to deal with is the Ministers' submission that the Respondent practiced clandestine methodology and was security conscious. The Ministers submit that a reasonable inference can be drawn from the Respondent's behaviours including his extensive use of his mobile phone, pay telephone phones, calling cards, faxes, a covert post office box, coded language and his demeanour during interviews with the Service that he employed clandestine methodology to conceal his involvement with AJ.

[134] At the outset, it must be observed that, in addition to classified information, some of the public evidence relied on by the Ministers is so intertwined with the classified evidence that it renders a public articulation of the evidence almost meaningless. For this reason, only the Court's conclusion is provided.

[135] The Ministers note that in July 1997 the Respondent sent a fax to Daher in which he provided his mobile telephone number and instructed Daher not to share it with anyone [Exhibit 10, Tab 78]. The mobile telephone number was registered to an acquaintance of the Respondent [Exhibit 11, Tab A26]. The Ministers add that the Respondent has failed to explain why he procured a post office box, provided the address to known terrorists, used the post office box under an alias and received terrorist literature and propaganda there. The Ministers contend that the only reasonable inference to be drawn is that the Respondent used the post office box in

furtherance of his work with AJ and did so in a clandestine manner. In this regard, as stated earlier, the evidence supports an objective belief that the Respondent had access to a shared post office box that was opened by someone by the name of "Bilal Abus" and was used to receive propaganda materials and other items. However, few of the items, aside from a few personal letters, can be specifically linked to the Respondent. This does not rise to the level alleged by the Ministers. The evidence also supports an objective belief that the Respondent had access to, and used a mobile phone registered to an acquaintance and that he did not want the mobile phone number given to others without his permission.

[136] With respect to the use of coded language, in public, this assertion is based on the CAs' testimony that the Respondent was heard using coded language during his telephone calls. As this is information derived from excluded summaries of intercepts of oral communications, it will be given no weight.

[137] The Court has also concluded that the large number of calls that were made by the Respondent to his home and other contacts using calling cards at pay telephones, and the absence of evidence linking the Respondent to other calls discussed above, undermines the inference the Ministers seek to have drawn.

[138] Lastly, it is accepted that the Respondent was not cooperative or forthcoming during the Service interviews.

[139] From the above, while there is insufficient evidence to establish that the Respondent used clandestine methodology, there are reasonable grounds to believe that he was security conscious. Based on the record before the Court, any attempt to identify the source of this security consciousness would be speculative at best.

[140] Having concluded that the Ministers failed to establish that there are reasonable grounds to believe the Respondent is or was a member of AJ, the remaining issues are whether the Respondent is inadmissible under paragraphs 34(1)(b), (c) and (d) of the *IRPA*. As to whether the Respondent has engaged in or instigated the subversion by force of any government under paragraph 34(1)(b), the Ministers submit that the Respondent's membership in and activities in the cause of AJ meet the definition of subversion and bring him within the scope of this provision. In addition, the Court may "impugn" to him "the subversion activities of AJ by virtue of his membership." As the Ministers' submission on this ground of inadmissibility is based on the Respondent's membership in AJ and activities in the cause of AJ for which reasonable grounds to believe have not been shown, it follows that the requisite standard of proof has also not been met in relation to paragraph 34(1)(b) of the *IRPA*.

[141] As to the ground of inadmissibility found in paragraph 34(1)(c), engaging in terrorism, it is important to note that there is no allegation the Respondent engaged in violent activity at any time. It is equally important to note that the Ministers have stated for the record that they are not alleging the Respondent played any role in the East Africa bombings or in the Islamabad bombing of the Egyptian embassy.

[142] The Ministers submit that "terrorism" has been given a broad interpretation. In *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3 at para 98, the Supreme Court of Canada articulated the following non-exhaustive definition of "terrorism":

> … "terrorism" … includes any "act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". This definition catches the essence of what the world understands by "terrorism". Particular cases on the fringes of terrorist activity will inevitably provoke disagreement.

[143] With respect to the interpretation of terrorism, the Ministers also rely on Justice Noël's observation in *Harkat (Re)*, 2010 FC 1241at para 80. It reads:

> The definition of terrorism also includes material support. For example, providing financing, training, false documentation, recruitment, shelter, although not directly linked to violent acts on vulnerable civilians [is] an integral part of the activities of individuals involved in terrorism. The provision of support services is as important in terrorism as the commission of violent acts.

[144] The Ministers submit that there are reasonable grounds to believe the Respondent engaged in terrorism. In particular, he engaged in terrorism by providing material support to AJ and Al Qaeda. The Ministers contend the "material received by Jaballah, including guidance of persons to participate in terrorist organizations, falls under the rubric of rendering material support to the organization." The Ministers also claim the Respondent's recruitment activities and the dissemination of propaganda provided material support to AJ and Al Qaeda. As the Court determined above that the Ministers failed to show there are reasonable grounds to believe the Respondent engaged in either of these two activities, further consideration under the rubric of

paragraph 34(1)(c) is unnecessary. It may also be observed that, without more, the receipt of materials alone does not amount to providing material support to an organization.

[145] The Ministers also rely on evidence discussed above, in the context of "membership", that in their view shows the Respondent provided material support for terrorism. The Ministers point to the calls the Respondent made shortly after his arrival in Canada to Pakistan. As stated above, the evidence provided is insufficient to allow the Court to draw any reasonable inference in respect of these calls. As such, it would be purely speculative to rely on these calls in support of a finding that the Respondent provided material support for terrorist activities.

[146] The Ministers also rely on the Interpol Red Notice in support of the assertion that the Respondent engaged in terrorism. As the Court decided above that the Red Notice should not be given any weight, no further consideration is required.

[147] The Ministers submit that the Respondent is a danger to the security of Canada. Despite the relaxation of the terms and conditions of his release due to the finding that the risk he poses has been attenuated since his initial detention, he nonetheless remains a danger. There is no requirement that the danger be current and there is compelling evidence that the Respondent engaged in activities that posed a threat to Canada's security. These activities implicate the integrity of Canada's international obligations. The fact that there is no direct evidence the Respondent sought or attempted to commit a violent act of terrorism on Canadian soil is immaterial to whether he is a danger (*Suresh* at paras 82-83, 85). The actions of AJ had a real possibility of harming Canada's national security as a member of the international community.

The Respondent's support for these activities, including through the dissemination of propaganda and recruitment, is inimical to Canada's security and harmful to its international relationships.

[148] The Ministers note that Canada has a duty under domestic and international law to ensure that terrorists are not permitted to operate in Canada and are not afforded a safe haven. The Ministers submit they have reasonable grounds to believe the Respondent sought permanent residence in Canada to foster relationships with members of terrorist organizations and networks. Before his arrest in 1999, he supported individuals who were terrorists or affiliated with terrorist organizations. As such, the Respondent should not be afforded a safe haven in Canada.

[149] The Ministers contend that there are reasonable grounds to believe the Respondent was in a position to establish a terrorist cell in Canada. The Respondent maintained contact with several individuals known to be involved in terrorism. Moreover, the distribution of propaganda and the recruitment of individuals to support terrorism are activities that may be undertaken by individuals who are attempting to establish a terrorist cell. Whether or not a cell is successfully established, the activities alone constitute a danger to the security of Canada.

[150] The Ministers acknowledge that the terms and conditions of release have helped neutralize the threat he would have otherwise posed, however, he remains a danger. The substantial evidence of his activities in support of AJ and Al Qaeda and his contacts with terrorists indicate that factors such as age and family life have not attenuated his willingness to pursue activities and associations in support of terrorism. It is added, that while the Court has

substantially lessened the Respondent's terms and conditions over time, it has still maintained terms and conditions on the basis that they are necessary to neutralize the threat posed by him.

[151] The Ministers also submit that there are reasonable grounds to believe the Respondent's terrorist contacts extend beyond AJ. In the 2007 detention review, Justice Layden-Stevenson was cognizant of the Respondent's testimony that his acquaintances were not limited to those to which the Ministers referred and thus, restrictive conditions were required to forestall his possible communications and associations with individuals or organizations with terrorist beliefs and objectives. The Ministers argue that the Court should not ignore Justice Layden-Stevenson's conclusions. The Respondent has not adduced any evidence to negate these concerns. The Ministers take the position that in light of his past willingness to undertake activities in support of terrorism including recruitment and the dissemination of propaganda, he is a danger to Canada.

[152] It must first be observed that the evidence does not support reasonable grounds to believe the Respondent is today, a danger to Canada. However, as the Federal Court of Appeal affirmed in *Harkat (Re)*, the combined effect of sections 33 and 34 of the *IRPA* means that a finding of present danger is not required under paragraph 34(1)(d). Accordingly, there is still the question of whether the evidence establishes that the Respondent was, in the past, a danger to the security of Canada.

[153] Given the broad approach to the "security of Canada" developed in *Suresh* and subsequent cases, the Ministers have established that organizations that engage in "global

terrorism" like Al Qaeda pose a real threat to Canada's national security. The Ministers note that Al Qaeda has threatened Canada on several occasions. Canada was listed as a "priority target" of Al Qaeda in 2004 and 2006 and was threatened again by Al Qaeda in 2007 [Ref. Ind. Tabs 84, 85, 86, 87, 88]. The Ministers also note that an email found on Zawahiri's computer dating from 2001 indicated that Zawahiri tasked an agent with gathering information on targets located in Canada (i.e. American soldiers who go to nightclubs around the border area and the Israeli embassy in Canada) [Exhibit 56, p. 71; Exhibit 59, p. 3].

[154] However, the real issue in the present case concerns the Respondent's role, if any, in this milieu. There is no evidence that reasonably supports the view that the Respondent joined or was a member of Al Qaeda. What remains to be determined is whether the facts established on the record support a finding that he was, at one point, a danger to the security of Canada.

[155] Although the case law on "danger to the security of Canada" is not fully settled, it is clear that something more than mere membership is required for the purposes of paragraph 34(1)(d) (*Suresh* at para 82). As the Special Advocates note, the approach taken by Justice Blanchard in *Mahjoub (Re)* to "danger to the security of Canada" is instructive. In his final decision on the reasonableness of the certificate, Justice Blanchard noted as follows:

> [664] The enumerated grounds in subsection 34(1) of the *IRPA* which render a permanent resident or a foreign national inadmissible are disjunctive. To accept that membership in any group described in paragraph 34(1)(*f*) of the *IRPA* automatically renders an individual a danger to the security of Canada described in paragraph 34(1)(*d*) of the *IRPA*, as argued by the Ministers, robs paragraph (*f*) of meaning. The Court is entitled to presume that there is meaning to all legislative provisions. Consequently, the fact that membership pursuant to paragraph 34(1)(*f*) is established does not necessarily also establish that the member is a danger to

> the security of Canada. Membership must be considered in the circumstances of a particular case in order to determine whether the named individual is a danger to the security of Canada as alleged. In this instance, the determination requires an assessment of the evidence relating to the threat posed by Mr. Mahjoub as a member of the AJ and/or the VOC. …

[156] Justice Blanchard then examined the evidence relating to Mr. Mahjoub's actions and the activities of AJ during the period of time when Mr. Mahjoub was found to be a member and to be in contact with other members and individuals involved in global terrorism. The Court concluded that Mr. Mahjoub maintained contact from Canada with established or suspected terrorists, both in Canada and abroad. Many of these contacts were Canadian citizens or had access to Canada and were involved in terrorist groups committed to killing US allies, including Canadians. Thus, Justice Blanchard concluded that AJ members in Canada were a threat to Canadians, and accordingly, there were reasonable grounds to believe that prior to his arrest, as a member of AJ and the VOC, Mr. Mahjoub was a danger to the security of Canada.

[157] While this is very instructive, the Court must reach its own conclusion on the danger posed by AJ members to Canadian security based on the evidence in this proceeding. In my view, the evidence gives rise to reasonable grounds to believe that, in the past, the faction of AJ that became associated with Al Qaeda posed a danger to Canadian security through its participation in global terrorism. In February 1998, Zawahiri and Bin Laden signed the "World Islamic Front for Combat against Jews and Crusaders" declaration, which according to Dr. Byman "marked the moment when Zawahiri and his followers abandoned their focus on the Egyptian government, the near enemy, in favour of Bin Laden's global agenda." The declaration appeared to have issued in connection with the final decision to proceed with the bombing of the

US embassies in East Africa. Though not all members of AJ joined or became associated with Al Qaeda, those members that did, played a role in the East Africa bombings (Exhibit 56, pp. 15-16). However, several leading members of AJ, including Shehata and Mabruk, preferred to focus on Egypt at that time. In Dr. Byman's view, it was not until 2001 that AJ formally became a part of Al Qaeda, after which point it largely ceased to exist as an independent organization (Exhibit 56 pp. 19-20, 78; Transcript July 3, 2012, pp. 100-104).

[158] The record establishes that there are reasonable grounds to believe the Respondent was in contact with individuals who were AJ members and who participated in global terrorism at the time he was in contact with them. Two of these individuals, Al Bari and Eidarous, were based in the UK. In September 2014, Al Bari pleaded guilty to conspiracy in connection with his role in disseminating claims of responsibility for the East Africa embassy bombings. Mr. Al Bari told the Court that he agreed with others, including Ayman al Zawahiri and Eidarous, to transmit the threat and claim of responsibility for the bombing of the American embassies in Tanzania and Kenya, and to kill American citizens anywhere in the world (Exhibit 144, pp. 230-31). The guilty plea was accepted by the New York District Court on September 30, 2014 (Exhibit 150).

[159] However, it is no longer alleged that the Respondent played any role in these activities. Nor is there evidence that establishes, on reasonable grounds to believe, the Respondent's contact with these individuals was "operational" in nature. In this respect, the point made by the Special Advocates, that there is little to no evidence that the Respondent had an interest in, or was involved in global terrorism of the kind practiced by Al Qaeda, is well taken.

[160] In keeping with Justice Blanchard's reasoning, the fact that the Respondent was in contact with AJ members outside Canada for whom there are reasonable grounds to believe were involved in global terrorism could contribute to a finding that the Respondent is himself a danger to the security of Canada, assuming that the allegation of membership in AJ is established. However, the fact that the Respondent was associated with people who either were or went on to become involved in global terrorism does not necessarily provide reasonable grounds to believe that he is, himself, a danger to Canadian security, since there is little to no evidence that establishes that these associations were "operational" in nature. Additionally, there is no evidence that the individuals with whom the Respondent was in contact had "access to Canada" as Justice Blanchard found in *Mahjoub (Re)*.

[161] Lastly, it is observed that while the establishment of terrorist cells in Canada presents a danger to the security of Canada, there is no credible and compelling evidence showing the Respondent was attempting to establish a terrorist cell in Canada.

[162] The Ministers have not established, on reasonable grounds to believe, that the Respondent is a danger to Canadian security. As set out earlier, they have not established that there are reasonable grounds to believe the Respondent was or is a member of AJ. They have not shown there are reasonable grounds to believe he provided material support to AJ, that he distributed propaganda or other materials or that he engaged in recruitment on behalf of AJ. Moreover, there is no evidence the Respondent himself supported the objectives of global terrorism.

[163] One final matter remains. The Ministers strongly urge the Court to draw an adverse inference from the Respondent's failure to testify. However, as the Respondent points out, citing *Chippewas*, 2005 FC 823 at paras 42-43, an adverse inference should only be drawn where a *prima facie* case had been made out and a failure to testify cannot fill the gap in the case of a party who bears the burden of proof. The Ministers, having failed to establish a *prima facie* case in relation to any of the alleged grounds of inadmissibility, no adverse inferences may or should be drawn.

[164] Based on the above reasons, I conclude the security certificate filed by the Ministers is not reasonable and the certificate will be quashed. Having reached this conclusion, a consideration of the remaining grounds in the abuse of process motion is unnecessary and the motion will be dismissed. The parties will be given an opportunity to certify a serious question of general importance in accordance with a direction to follow.

"Dolores M. Hansen"
Judge

Edmonton, Alberta
May 26, 2016
Amended June 24, 2016

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	DES-6-08
STYLE OF CAUSE:	IN THE MATTER OF a Certificate Signed Pursuant to Section 77(1) of the *Immigration and Refugee Protection Act* (*IRPA*) AND IN THE MATTER OF the Referral of a Certificate to the Federal Court Pursuant to Section 77(1) of the *IRPA* AND IN THE MATTER OF MAHMOUD ES-SAYYID JABALLAH
PLACE OF HEARINGS:	OTTAWA, ONTARIO TORONTO, ONTARIO
DATES OF HEARINGS:	VARIOUS DATES BETWEEN OCTOBER 6, 2008 AND DECEMBER 11, 2014
REASONS FOR JUDGMENT:	HANSEN J.
DATED:	MAY 26, 2016
AMENDED REASONS FOR JUDGMENT:	HANSEN J.
DATED:	JUNE 24, 2016

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