

**Date: 20041006**

**Docket: DES-3-03**

**Citation: 2004 FC 1377**

**Ottawa, Ontario, the 6th day of October 2004**

**Present: THE HONOURABLE MR. JUSTICE SIMON NOËL**

**BETWEEN:**

**IN RE a certificate pursuant to subsection 77(1)  
of the *Immigration and Refugee Protection Act*,  
signed by the Minister of Citizenship and Immigration  
and the Solicitor General of Canada  
S.C. 2001, c. 27 (the I.R.P.A.);**

**IN RE the filing of this certificate in the  
Federal Court of Canada pursuant to  
subsection 77(1) and sections 78 and 80  
of the I.R.P.A.**

**IN RE the warrant for the arrest and  
detention and review of the reasons justifying  
continued detention pursuant to subsections 82(1)  
and 83(1) and (3) of the I.R.P.A.**

**AND IN RE the motion to postpone the hearing  
scheduled for November 22, 23, 24, 25 and 26, 2004  
and December 13, 14, 15, 16 and 17, 2004  
by Mr. Adil Charkaoui (Mr. Charkaoui)**

## **REASONS FOR ORDER AND ORDER**

### **INTRODUCTION**

[1] This is another application to postpone dates set by order on September 15, 2004, both for scheduling and for a hearing on the reasonableness of the certificate and legality of the Minister's decision. The hearing on the reasonableness of the certificate was scheduled for five days in the week of November 22, 2004, and that regarding the legality of the Minister's decision for five days in the week of December 13, 2004. A schedule was prepared accordingly.

[2] Following that order Mr. Charkaoui asked the Federal Court of Appeal to temporarily stay the aforesaid hearing, the reason being the hearing on appeal of the decision on December 5, 2003, dismissing the arguments dealing with the unconstitutionality of sections 33 and 77 to 85 of the I.R.P.A.

[3] The Federal Court of Appeal (in a decision dated September 24, 2004, *Adil Charkaoui v. M.C.I. and S.G.C.*, A-603-03 F.C.A.) dismissed the application for a temporary stay. Essentially, Létourneau J.A. concluded that although the appeal raised a serious question (the Act is new and the argument concerned questions of freedom and security, both individual and national), there was no irreparable harm or major hardship involved in having both the proceedings, the appeal in the Court of Appeal and the review of the certificate in the Federal Court, take place sequentially, even if they are close together in time.

[4] The order of September 15, 2004, including the reasons dated September 21, 2004, was appealed by Mr. Charkaoui on September 27, 2004 (case A-502-04).

[5] Since the Federal Court of Appeal hearing on September 24, 2004, Mr. Charkaoui's application for legal aid was accepted and Dominique Larochelle, permanent legal aid attorney, was assigned [TRANSLATION] "with possible additional support from another permanent legal aid colleague in Montréal" (see affidavit of Jean Fauteux, Acting Director for the immigration legal aid office in Montréal, dated September 29, 2004, at paragraph 11). Accordingly, Mr. Charkaoui, in addition to Ms. Larochelle and possibly another legal aid attorney to be identified, has use of the services of Johanne Doyon. The latter acted for Mr. Charkaoui from the start of the proceedings and is the solicitor of record under the Court Rules.

[6] Mr. Charkaoui sought this new postponement as the recent assignment of Ms. Larochelle was too recent and, in view of the scope of the case and the work to be done, did not allow for an adequate defence of Mr. Charkaoui.

[7] Since the start of the proceedings the Court has tried unsuccessfully to give Mr. Charkaoui "an opportunity to be heard regarding [his] inadmissibility" (see section 78 of the I.R.P.A.) and the reasonableness of the certificate (see subsections 80(1) and (2) of the I.R.P.A.). The Court has already said that it was concerned by the length of Mr. Charkaoui's detention (over 16 months), knowing that a finding that the certificate was not reasonable would end the

matter overall and the fact that the Court must proceed expeditiously (see paragraph 78(c) I.R.P.A.). This concern was discussed in the reasons dated September 21, 2004, in support of the order of September 15, 2004.

[8] In the Federal Court of Appeal judgment mentioned in paragraph 2 above, Létourneau J.A. supported this concern, at paragraphs 14 and 19, as follows:

I would add that, like the designated judge of the Federal Court, I am sensitive to the fact that the moving party is in detention and that section 78 of the Act requires that proceedings in review of the reasonableness of certificates proceed expeditiously. That is stated legislative intent which militates against a stay, unless of course it is necessary . . . the interest of justice - including the interest of a moving party in detention to having a review of the lawfulness of his arrest, his detention and his departure order - demands that the administration of procedures be somewhat expeditious, if not assuredly expeditious.

[9] At the hearing held by teleconferencing call on September 7, 2004, in which Mr. Charkaoui sought a postponement of the hearing scheduled for September 20, 21 and 22, 2004, to examine the reasonableness of the certificate, the Court indicated its concern to the parties again. The application to postpone was granted but new hearing dates were chosen. At some point, the parties must accept that the reasonableness of the certificate has to be dealt with. That is what Parliament intends and it is in the interests of the parties and of justice for the case to proceed in accordance with the rules set out in the Act.

[10] The tribunal considers that the application for postponement is not justified. The order of September 15, 2004, determining the hearing dates has been known since that date. At that time, Ms. Doyon was the solicitor of record. Since that time, we learn that Ms. Larochelle is on the record, with possibly another legal aid counsel. The Federal Court of Appeal has dealt with the situation and chosen November 8, 2004, as the date to hear the appeal from the decision of December 5, 2003, knowing the hearing dates in the Federal Court scheduled for November and December 2004 and approving the fact that the proceedings should go forward sequentially “even if they are close together in time”. The tribunal has a duty to proceed expeditiously, and over 16 months have elapsed since the start of the proceedings, with Mr. Charkaoui detained since that time. Further, the reasonableness or otherwise of the certificate is at the heart of these proceedings and affects the next stages to be followed, if necessary. It is important that the hearing take place on the dates suggested. The parties have, since September 15, 2004, had the time needed to prepare in accordance with the schedule given.

[11] Additionally, the Court has already suggested it is available to hear motions which could facilitate the submission of the evidence. It repeats that offer.

**FOR THESE REASONS, THE COURT ORDERS THAT:**

- The motion to postpone the hearing scheduled for November 22, 23, 24, 25 and 26 and December 13, 14, 15, 16 and 17, 2004, is dismissed.

“Simon Noël”

---

Judge

Certified true translation

Jacques Deschênes, LLB

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** DES-3-03

**STYLE OF CAUSE:** IN RE A CERTIFICATE PURSUANT TO  
SUBSECTION 77(1) OF THE  
*IMMIGRATION AND REFUGEE  
PROTECTION ACT*  
AND ADIL CHARKAOUI

**DATE OF HEARING:** WRITTEN MOTION HEARD WITHOUT  
APPEARANCE BY PARTIES

**REASONS BY:** THE HONOURABLE MR. JUSTICE  
SIMON NOËL

**DATED:** OCTOBER 6, 2004

**WRITTEN SUBMISSIONS BY:**

DANIEL ROUSSY  
and  
LUC CADIEUX  
FOR THE SOLICITOR GENERAL OF  
CANADA

DANIEL LATULIPPE  
FOR THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

JOHANNE DOYON  
FOR ADIL CHARKAOUI

**SOLICITORS OF RECORD:**

MORRIS ROSENBERG  
DEPUTY ATTORNEY  
GENERAL OF CANADA  
FOR THE SOLICITOR GENERAL OF  
CANADA AND MINISTER OF  
CITIZENSHIP AND IMMIGRATION

DOYON, MORIN  
MONTRÉAL, QUEBEC  
FOR ADIL CHARKAOUI