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**Docket: DES-5-08**

**Citation: 2009 FC 241**

**Ottawa, Ontario, March 6, 2009**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**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 a motion to review the conditions of  
release pursuant to section 82(4) and 82(5) of *IRPA*;**

**AND IN THE MATTER OF Mohamed HARKAT**

**REASONS FOR JUDGMENT**

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**1. Issues to be determined**

[1] Mr. Harkat filed a notice of application September 18, 2008, seeking an order reviewing the conditions of his release pursuant to section 82 of the *Immigration and Refugee Protection Act*, S.C. 2001, C. 27 (“IRPA”).

[2] An application under Subsection 82(4) IRPA requires a Designated Judge to review the reasons for continuing the conditions. In accordance with paragraph 82(5)(b) where a person is already released under conditions, the judge must confirm the release and determine what conditions are appropriate to neutralize the danger posed by that release.

[3] To facilitate the reading of these reasons, I will follow the index set out above, beginning with a history of the proceedings.

**2. History of Proceedings**

[4] On December 10, 2002, the Solicitor General of Canada and the Minister of Citizenship and Immigration (together, “the Ministers”) signed a certificate pursuant to then s. 77 of the *Immigration and Refugee Protection Act* (the “previous legislation”), in which they stated that they were of the opinion that Mohamed Harkat is foreign national who is inadmissible to Canada on grounds of national security (the “2002 certificate”). Specifically, it was alleged that Mr. Harkat supported terrorist activity as a member of the terrorist group know as the Bin Laden Network (“BLN”), which includes Al Qaeda.

[5] Pursuant to section 77(1) of former IRPA, the 2002 certificate was referred to the Federal Court for a determination of its reasonableness. Mr. Harkat was arrested and detained pursuant to section 80 of the previous legislation. Former section 84(2) prevented him from seeking judicial release from detention until 120 days after the certificate was held to be reasonable.

[6] A hearing into the reasonableness of the 2002 certificate was held before Justice Dawson in March 2005. Mr. Harkat challenged the constitutionality of sections 78 through 80 of the previous legislation on the grounds that it was contrary to section 7 of the *Canadian Charter of Rights and Freedoms* (“the Charter”). Justice Dawson upheld the constitutionality of the security certificate process based on the Federal Court of Appeal’s decision in *Charkaoui (Re)*, [2005] 2 F.C.R. 299 and concluded that there were reasonable grounds to believe that Mr. Harkat had engaged in terrorism by supporting terrorist activity as a member of the BLN (*Harkat (Re)*, [2005] F.C.J. 418).

[7] Mr. Harkat appealed Justice Dawson’s findings with respect to the constitutionality of the certificate proceeding. On September 6, 2005, the Federal Court of Appeal dismissed Mr. Harkat’s appeal on the grounds that he had not demonstrated any manifest error which would justify a departure from its previous decisions in *Charkaoui (Re)*, *supra*, and *Almrei v. Canada (Minister of Citizenship and Immigration)*, [2005] 3 F.C.R. 142, in which the constitutionality of the same provisions of former IRPA was upheld.

[8] On September 23, 2005, Mr. Harkat applied to the Federal Court for judicial release from detention pursuant to s. 84(2) of the previous legislation. On December 30, 2005, the application was denied by Justice Lemieux on the basis that Mr. Harkat failed to demonstrate that he would not be removed from Canada within a reasonable period of time (*Harkat v. Canada*, [2005] F.C.J. 2149).

[9] Mr. Harkat's second application for release was heard on March 8 and 9, 2006. Justice Dawson rendered her decision in relation to this application on May 23, 2006. The Court was satisfied that Mr. Harkat had demonstrated that he would not be removed from Canada within a reasonable period of time and ordered Mr. Harkat released under conditions aimed at neutralizing the danger posed by him (*Harkat v. Canada*, [2006] F.C.J. 770).

[10] On June 9, 2006, the Ministers moved to stay the Order of Justice Dawson pending an appeal of her decision to the Federal Court of Appeal. Justice Décary dismissed the motion to stay the order on the grounds that the Ministers had not established irreparable harm or demonstrated that the balance of convenience required a stay of proceedings (*Harkat v. Canada (Minister of Citizenship and Immigration)*, [2007] 1 F.C.R. 370). Justice Décary expedited the appeal, which was heard on July 13, 2006. From the bench, Justice Létourneau rendered judgment on behalf of a unanimous court dismissing the appeal (*Canada v. Harkat*, 2006 FCA 259).

[11] In August and September 2006, the Federal Court heard an application for the variation of Mr. Harkat's conditions of release. Justice Dawson varied the order to allow Mr. Alois Weidemann to be added as a supervising surety, but refused to grant a request permitting Mr. Harkat to move to a new residence until it was inspected by the CBSA. A further liberalization of conditions sought by Mr. Harkat was denied on the grounds that insufficient time had passed since his release from detention (*Harkat v. Canada*, [2006] F.C.J. 1394 at par. 13).

[12] On February 9, 2007, the Ministers consented to Mr. Harkat changing residences on the condition that the occupants of the home consent in writing to the installation of video surveillance equipment at all entrances.

[13] On February 23, 2007, the Supreme Court of Canada found that the procedure for the judicial approval of certificates under former IRPA violated section 7 of the *Charter* and declared the relevant provisions to be of no force or effect. Chief Justice McLachlin, writing for a unanimous Court concluded that the judicial approval procedure violated section 7 because it did not enable the designated judge to render a decision on the facts and the law, and because it violated the named person's right to know and answer the case against him or her. The Court found that these violations could not be saved by section 1 of the *Charter* because they did not minimally impair the rights in question.

[14] The Supreme Court also declared that former section 84(2), which governed applications for judicial release, violated sections 9 and 10(c) of the *Charter* because it did not provide a timely detention review for foreign nationals.

[15] The Supreme Court suspended the declaration of invalidity of the impugned provisions of previous legislation for a period of one year to allow Parliament to enact constitutionally compliant legislation. As a result, Mr. Harkat remained subject to the 2002 security certificate and conditions of release imposed by Justice Dawson on May 23, 2006.

[16] In February and March 2007, Mr. Harkat brought a second application to vary his conditions of release. In his application, Mr. Harkat sought changes to the conditions relating to: his residence, his activities while on approved outings and the frequency of these outings, and the necessity of constant supervision by a surety. In particular, Mr. Harkat sought variations which would allow him to be alone in his house without a supervising surety, and increase the number of approved weekly outings from three to five. In a decision rendered on April 20, 2007, (2007 FC 416), I granted the application in part and allowed Mr. Harkat to take regular one-hour supervised walks in his neighborhood, to seek pre-approval to speak to media personnel and Members of Parliament, relaxed the pre-approval requirement for visitors to conduct emergency repairs in the home, granted an amendment allowing two individuals with criminal records to visit the Harkat residence, and varied the geographic boundaries. Several of Mr. Harkat's requests were denied, including a variation to allow him to remain home alone and a request for longer and more frequent outings.



[17] When the 2002 certificate was found to be reasonable in March, 2005, it had the effect of becoming a removal order pursuant to the previous legislation. As such, Mr. Harkat's file was referred to the Minister's delegate for a pre-removal risk assessment and an opinion on danger. In May, 2007, Mr. Harkat applied for a stay of proceedings regarding the judicial review of the ministerial delegate's danger opinion, as a consequence of the decision in *Charkaoui v. Canada (Citizenship and Immigration)* [2007] 1 S.C.R. 350 ("*Charkaoui #1*"). Justice Lemieux granted a stay of proceedings pending the enactment of amendments to the legislation.

[18] On January 29, 2008, agents of the Canada Border Services Agency ("CBSA") arrested and detained Mr. Harkat for breaching his conditions of release when one of his supervising sureties, Ms. Brunette, moved out of the residence without notifying CBSA. This occurrence was clearly contrary to the conditions of Mr. Harkat's release which required him to reside with two supervising sureties. In February, 2008, the Ministers argued that Mr. Harkat should remain in detention, and the breach should result in forfeiture of monies paid by Mrs. Harkat, Mrs. Brunette and Mr. Weidemann.

[19] In the same proceeding, Mr. Harkat asked Justice Dawson to amend his conditions by allowing him to remain home alone.

[20] In her decision, Justice Dawson held that the decision of Ms. Brunette to move out of the residence on a permanent basis constituted a breach of the conditions set out in her order. Justice Dawson also found that the failure of the supervising sureties to report the breach to CBSA was a breach of their obligations under the order. Nevertheless, she determined that Mr. Harkat should be released from detention since there were conditions capable of neutralizing the danger that the release posed. Justice Dawson declined to order the forfeiture of the performance bonds given the existence of unique and extraordinary circumstances. She also declined to permit Mr. Harkat to stay alone in his home.

[21] On February 22, 2008, Bill C-3, an *Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act* (“Bill C-3” or the “new legislation”), came into force. Bill C-3 made substantial modifications to the procedure governing the judicial review of certificates and applications for detention release in that context. These amendments included the addition of special advocates to represent the interest of the persons named in a certificate during the closed hearings and the elimination of the distinction between permanent residents and foreign nationals for the purposes of the judicial interim release.

[22] On February 22, 2008, the Ministers signed a new certificate under the authority of the new legislation, alleging that Mr. Harkat was inadmissible to Canada on the grounds of national security (the “2008 certificate”).

[23] On June 26, 2008, the Supreme Court of Canada rendered a second decision concerning the certificate process in *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 (“*Charkaoui #2*”). In that appeal, Mr. Charkaoui sought a stay of proceedings given the destruction of original notes taken by CSIS during interviews with him. The Supreme Court allowed Mr. Charkaoui’s appeal in part. While a stay of proceedings was held to be premature, the Court held that the destruction of operational notes was a serious breach of CSIS’s duty to retain and disclose information. Justices Lebel and Fish wrote on behalf of the Court at paragraph 53:

But whether or not the constitutional guarantees of s. 7 of the *Charter* apply does not turn on a formal distinction between the different areas of law. Rather, it depends on the severity of the consequences of the state’s actions for the individual’s fundamental interests of liberty and security and, in some cases, the right to life. By its very nature, the security certificate procedure can place these rights in serious jeopardy, as the Court recognized in *Charkaoui*. To protect them, it becomes necessary to recognize a duty to disclose evidence based on s. 7.

[24] Throughout this time, Mr. Harkat continued to live under conditions at the residence of Mr. Weidemann who is Ms. Brunette’s former partner. In October, 2008, the Ministers consented to a change of residence, and to the removal of a condition that required Mr. Harkat to reside with two supervising sureties. The Minister’s consent was conditional upon Mr. Harkat’s agreement with the following conditions: CBSA would be allowed to the install video surveillance equipment at the front and rear entrances of the new residence; the Harkats would provide the CBSA with unobstructed access to the driveway; all visitors would be pre-approved and required to provide photo identification to the CBSA prior to visiting the new residence; and, the Harkats would not use the garage. The Ministers also agreed to have Mr. Weidemann removed as a supervising surety.

[25] In September, November and December 2008, this Court heard evidence, oral argument and received written submissions on the current application for a review of the conditions of release. Among those who testified were Mr. and Mrs. Harkat, several individuals who have committed themselves to performance bonds in this case, a CSIS witness and several witnesses on behalf of CBSA.

[26] Counsel for Mr. Harkat are seeking a robust review of the conditions of release as required by the Supreme Court of Canada in *Charkaoui #1*, and note that, as of today, Mr. Harkat has been on conditional release for close to three years.

3. **May 23, 2006 decision releasing Mr. Harkat from detention on conditions of this Court rendered by Justice Dawson**

[27] On March 22, 2005, Justice Dawson determined that the 2002 certificate naming Mr. Harkat as a person inadmissible to Canada was reasonable. As a consequence of this finding, the certificate became a removal order against Mr. Harkat.

[28] In public reasons for order dated May 23, 2006, pursuant to section 84(2) of the previous legislation, Justice Dawson came to the conclusion that Mr. Harkat should be released from detention with conditions tailored to neutralize the danger posed by him. In order to understand summarily her conclusion, a number of extracts from her decision (*Harkat v. Canada (Minister of Citizenship and Immigration)*), 2006 FC 628, are helpful:

Par. 68: ... Having considered the sources of all of that confidential information, the reliability of those sources, and the extent to which the confidential information is corroborated by independent sources, I am satisfied that Mr. Harkat's release without the imposition of any term or condition would pose a threat to national security or to the safety of any person. For example, unchecked, Mr. Harkat would be in a position to recommence contact with members of the Islamic extremist network.

Par. 76: I remain convinced that throughout this proceeding Mr. Harkat's testimony to the Court has been untruthful on a number of significant points.<sup>5</sup> Thus, any terms and conditions for release must be based upon something other than Mr. Harkat's assumed good faith or trustworthiness. This militates, in my view, against terms and conditions such as that proposed that would allow him to remain in his residence alone with unrestricted access to visitors, and that would allow him to leave his residence at will from 8:00 a.m. to 9:00 p.m. every day, albeit with a surety.

Par. 82: It would be, however, erroneous to reject Mr. Harkat's application for release if there are conditions that, on a balance of probabilities, would neutralize or contain the danger posed by his release. In that circumstance, his continued incarceration cannot be justified because of Canada's respect for human and civil rights, and the values protected by our Charter.

Par. 83: In considering whether there are terms and conditions that would neutralize or contain the danger, I have borne in mind the need for terms and conditions to be specific and tailored to Mr. Harkat's precise circumstances. They must be designed to prevent Mr. Harkat's involvement in any activity that commits, encourages, facilitates, assists or instigates an act of terrorism, or any similar activity. The terms and conditions must be proportionate to the risk posed by Mr. Harkat.

[29] Dawson J. felt that release with strict conditions was permissible based on the following eight factors:

1. Mrs. Harkat and her mother were capable of providing supervision (para. 85);
2. Mr. Harkat had been incarcerated since December 10, 2002; therefore, his ability to communicate with members of the Islamic extremist network had been disrupted (para. 86);
3. Mr. Harkat is well known, which could hamper his ability to engage in covert or clandestine activity (para. 87);

4. If released from incarceration Mr. Harkat shall remain a person of interest to Canadian authorities, and would be subject to the laws of Canada that permit supervision of his activities if so required (par. 88);
5. Mr. Harkat's knowledge of the ability of the Canadian authorities to monitor his activities can act as a deterrent (par. 89);
6. Any person that could have an interest in Mr. Harkat should know that the Canadian Authorities have an interest in him (par. 90);
7. Dawson J., having reservations about his truthfulness, believed Mr. Harkat when he said that a breach of the conditions of his release would result in his detention and possibly his deportation, which was a compelling reason to abide by the conditions (par. 91);
8. To a lesser degree of importance than the factors above, the Court took notice of the fact that in England and Canada, others in comparable legal situations have been released on conditions (par. 92)

[30] Justice Dawson concluded that if Mr. Harkat were to be released without conditions he would pose a threat to national security of Canada, but that the danger could be neutralized by the imposition of appropriate conditions.

[31] Justice Dawson then established a set of terms and conditions which were described as "rigorous" by the Supreme Court at par. 116 of *Charakaoui #1*. These conditions have been modified as changes in circumstances have arisen but have, in essence, remained the same. At this time, Mr. Harkat is asking for the review of these conditions.

#### **4. The new legislative regime**

[32] On February 22, 2008, Bill C-3 came into force. Clause 7 of Bill C-3 contained several transitional provisions. By virtue of clause 7(3)(b) of Bill C-3, Mr. Harkat's release under existing conditions was continued. Clause 7(6) entitled Mr. Harkat to apply for a review of the reasons for continuing the conditions if a period of six months had elapsed from the coming into force of Bill C-3 and he had not sought a review pursuant to clause 7(4).

[33] On September 18, 2008, Mr. Harkat filed an application to confirm his continued release under conditions and to review the appropriateness of the existing conditions.

[34] An application to review conditions of release is brought pursuant to subsections 82(4) and (5) of the new legislation. The judge seized of an application pursuant to subsection 82(4) and (5) must confirm the release of the applicant and then consider what conditions are necessary to neutralize the danger posed by the applicant to national security or to the safety of any person and any risk of flight.

[35] Mr. Harkat has a right to a meaningful and rigorous review of his release under conditions, and the Ministers must justify the continued imposition of the conditions. As noted by the Supreme Court in *Charkaoui #1*, the onus is on the Ministers to justify detention, and by analogy, the imposition of rigorous conditions of release grows heavier with the passage of time. (*Charkaoui #1* at par. 113)

[36] Where the review of the conditions occurs prior to the determination of the reasonableness of the certificate, the review must be based on an assessment of the danger to national security in evidence at the time of the review taking the following principles set out in *Charkaoui #1* into consideration:

- The review must be meaningful and rigorous (par. 107);
- The procedure must be consistent with the principles of fundamental justice including a real opportunity for the named person to present his or her case (par. 107);
- The Court must review the context and the circumstances related to the particular proceeding (par. 107). I would read this as including the type of allegations made in the certificate which is referred to the Court;
- The conditions imposed by the judge to neutralize the danger must be proportionate to the danger posed by the named person and must be tailored to neutralize any such danger (see par. 111, 116, 120); and
- The length of time during which the named person has been living under conditions of release, and his or her compliance with the conditions (par. 112 refers to the length of detention as a factor to be considered, I extend this criteria to the length of the period of the release with conditions).

[37] Having reviewed the pertinent and applicable law, it is now the intention of the Court to determine this application on the basis of the record before it.



[38] The Court has heard the Ministers' evidence on the reasonableness of the certificate in both closed and public hearings, as well as their position in response to the amendments to the new conditions of release being sought by Mr. Harkat. The Court has also had the benefit of public written submissions from each party, public oral argument concerning the review of conditions, and closed oral arguments from the special advocates and counsel for the Ministers.

[39] However, neither counsel for Mr. Harkat nor the special advocates have cross-examined any ministerial witness on the reasonableness of the certificate. Nor has Mr. Harkat presented his evidence and argument in response to the certificate.

[40] Given the incomplete record, the determination of the issues arising in the present review should not in any way be interpreted as an indication of future factual findings. It is only when all of the evidence is before me, and submissions have been presented, that I will be in a position to make a final determination on the reasonableness of the certificate. The key elements of a final determination are not present at this time.

[41] Nevertheless, I have sufficient information to review the conditions of release as required by subsections 82(4) and 82(5) IRPA. It is consistent with the intent of Parliament, in the interests of justice and in the interest of Mr. Harkat that I deal with these issues in an interim way.

**5. Should this Court confirm Mr. Harkat's release under conditions?**

[42] Paragraph 82(5)(b) requires the judge to confirm the release from detention of the named person. Pursuant to paragraph 82(5)(a), release from detention will be ordered where a judge is satisfied that the release, under conditions, would not be injurious to national security or endanger the safety of any person. Like Justice Mosley, I conclude that the change in wording from “danger” to national security to “would be injurious to national security” does not result in a substantive change (*Re Almrei*, 2009 FC 3 at par. 47)

[43] The concept of “danger to the security of Canada” was defined by the Supreme Court in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, at paragraph 90:

These considerations lead us to conclude that a person constitutes a “danger to the security of Canada” if he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be “serious”, in the sense that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible.

This interpretation was referred to by this Court in *Re Harkat*, 2006 FC 628, at paragraph 54-59, *Re Charkaoui*, 2005 FC 248, at paragraph 36, and *Re Almrei*, 2009 FC 3 at paragraph 48.

[44] Therefore, when assessing the facts of this case (as presented to me to date in both public and closed hearings), the concept of “danger to national security” as it was interpreted by the Supreme Court in *Suresh* is to be applied.

[45] The allegations of the Ministers in relation to the alleged danger posed by Mr. Harkat are contained in the public Security Intelligence Report (“SIR”) filed in the present proceeding. The Ministers summarize the conclusions reached by CSIS as follows:

58. The Service concludes, based on the information presented in this summary, that HARKAT assisted Islamist extremists entering Canada, and received funds from Islamist extremists abroad. HARKAT’s method and route of travel to Canada, untrue statements made to Canadian officials, his support for individuals and groups involved in political violence or terrorist activity, his alliances with Islamist extremists, and his use of security techniques, lead the Service to conclude that HARKAT has been associated with organizations that support the use of political violence and terrorism

59. The Service also concludes that HARKAT is a member of an international extremist network of groups and individuals who follow and support Osama Bin Laden. This network engages in acts of terrorism to attain its stated objective of purging all secular and Western influences from the Islamic world and establishing Islamist states based on a fundamentalist interpretation of Islamic law, or sharia. The Service also concludes that HARKAT is a sleeper agent of the Bin Laden Network.

[46] The factual basis to support these allegations of danger was presented by the Ministers during public and closed hearings. As mentioned before no cross-examination, either in public by counsel for Mr. Harkat or by the special advocates in the closed hearings, was done on the issue of the reasonableness of the certificate; questions were limited to the notion of danger related to Mr. Harkat.

[47] John, the Ministers’ witness who appeared in public and gave testimony in support of the allegations of danger, briefly explained what, in his opinion, the alleged danger consists of:

“Q. Do you believe that Mohamed Harkat remains a threat to the security of Canada and, if so, why?

A. I do so believe. The reason why is that we have found in our investigations that people who become committed to the cause rarely lose that commitment. Often we will find that people, even after a period of incarceration, once they are given freedom to act will re-engage in activity.

A prime example of this was as a result of the Madrid bombings. A number of the key leaders had in fact been incarcerated -- in some cases for a period of years -- on various charges, immediately prior to becoming involved in the planning for the Madrid bombings. We have found that a period of time does not diminish the threat posed by individuals.

Q. It's obvious that Mr. Harkat is a person of interest to the media. There is some media present today. There have been a number of media stories. There is also, I believe, a group to aid Mohamed Harkat.

What is your view on the publicity surrounding him and his notoriety? I don't mean that in the pejorative sense, but the fact that he is well known. What impact would that have, in your view, on his present dangerousness?

A. In my view, the notoriety in and of itself does not reduce the danger presented. There are other individuals in the past who have had notoriety and continue to pose a threat. Ahmed Said Khadr is a very good example. From 1995 on he was increasingly known to the Canadian media and others, and yet he became more active and his family became more active as the time passed.

At the end of the day, my assessment would be that the level of threat is based on opportunity rather than whether or not someone is still in the shadows.”

(Pages 321-323, Volume 2, November 4, 2008)

[48] Similar evidence was presented during closed hearings.

[49] It is also important to note that counsel for Mr. Harkat has admitted both during oral argument and in his written submissions that, for the purposes of the present review, there exists an assumption that his unconditional release will pose a danger. He argued, however, that the current conditions are overbroad and unnecessary to neutralize the danger (see opening paragraphs and par. 121 of the written submissions of Mr. Harkat dated December 8, 2008).

[50] Since the Court is required, pursuant to paragraph 82(5)(b) IRPA, to confirm Mr. Harkat's release before proceeding with a review of the condition of the release, I have assessed the evidence for that purpose.

[51] I conclude, on a review of the evidence before me, that the Ministers have established a *prima facie* case that Mr. Harkat's release without conditions would be injurious to national security.

[52] Once more, it is essential to note that the evidence before the Court was limited to the Ministers' point of view on danger, and that I have not received, at this time, the response of Mr. Harkat to the allegations in the SIR. Moreover, I have not had the benefit of cross-examination of the Ministers' witnesses by counsel for Mr. Harkat or by the special advocates on the issue of the reasonableness of the certificate. While my conclusion is subject to change once a full picture of the evidence is before the Court, for the purposes of this review of conditions, I confirm Mr. Harkat's release from detention under appropriate conditions.

**6. Factors to be considered in determining which conditions are appropriate**

[53] In the following paragraphs, I will rely on six factors to assist in the evaluation of the changes to the conditions being sought. They are the following:

- The context and circumstances related to this proceeding;
- The proportionality between the danger posed by Mr. Harkat and the conditions of his release;
- The passage of time;
- The elements of trust and credibility;
- Applicability of the 2006 reasons of Justice Dawson to the current proceeding;
- The importance to be attributed to the presence of Mr. Harkat at a proceeding or at removal from Canada;

[54] After having reviewed each of these factors, I will keep them in perspective when addressing each request to change the conditions made by Mr. Harkat and determine whether these amendments should be granted at this time.

[55] When the Ministers filed a certificate naming Mr. Harkat on February 22, 2008, the public Security Intelligence Report contained more information than was disclosed in support of the 2002 certificate.

[56] The ongoing disclosure process, occurring with the participation of the Special Advocates, has resulted in additional important information being communicated to counsel for Mr. Harkat. Further disclosure will likely result from the Special Advocates' review of the *Charkaoui #2* documents filed pursuant to an order of this Court dated September 24, 2008.

[57] Mr. Harkat, a foreign national, arrived in Canada in the fall of 1995. As the amended 2008 public SIR and the recent disclosure reveal, upon his arrival in Canada, he was monitored by Canadian authorities who employed human sources and communication intercepts to collect information and intelligence about his activities.

[58] Mr. Harkat was arrested and detained as a result of the referral of the 2002 certificate to this Court on December 10, 2002 (s. 77(1) & 82(2) of former IRPA). He remained in detention until his release under conditions on June 21, 2006.

[59] Since Mr. Harkat's release, the conditions have been amended on several occasions, but the core conditions established by Justice Dawson to neutralize the danger in 2006 remain unchanged. The modification of some conditions, such as the installation of video surveillance equipment at all entrances to permit a move to a new residence where physical surveillance was problematic, have been negotiated between counsel for the Ministers and Mr. Harkat and have been achieved with the consent of all parties.

[60] On October 10, 2008, this Court allowed further modifications to the conditions of release so that Mr. Harkat could move to his third residence since 2006. In particular, the Court removed the condition which required Mr. Harkat to reside with multiple supervising sureties, which had the effect of allowing Mr. Harkat to live alone with his wife, Mrs. Sophie Lamarche Harkat.

[61] The evidence indicates that Mr. Harkat has been under the watchful eyes of Canadian authorities since the mid-1990s. He was incarcerated for a period of close to four years, and has been released under rigorous conditions for almost three years. I conclude that Mr. Harkat has been under the surveillance or control of Canadian authorities for well over a decade.

[62] Since at least December 10, 2002, there is no evidence that Mr. Harkat has associated or communicated directly or indirectly with persons who support terrorism, violent jihad or have a serious criminal record. This covers a period of more than eight years.

[63] This Court has noted that the release of Mr. Harkat under conditions has allowed him to reside with his family instead of remaining in prison. The Court notes that on the evidence before it, the conditions appear to have neutralized the danger posed by Mr. Harkat.



[64] Since Mr. Harkat's release under conditions, the CBSA, led by Mr. Foley, has been in charge of supervising Mr. Harkat and ensuring his compliance with the release order. I have congratulated them publicly for the manner in which they have assumed this duty.

[65] Since Mr. Harkat's release from detention, he and his wife have been required to adapt to a new life, restricted by the conditions of his release. Ms. Pierrette Brunette and her partners have also made many sacrifices to ensure Mr. Harkat's compliance with the conditions of his release. There is evidence that sometimes the Harkat family has not strictly abided by the conditions. All breaches of a Court order are serious; however, this Court has only determined one established breach to have been significant.

[66] While their record of compliance is not perfect, the professionalism and dedication of the CBSA, paired with the commitment of the Harkat family into insuring respect of the conditions of release, has resulted in very few breaches of the conditions. This finding is based on an evaluation of the past and does not guarantee future compliance. It is simply one indicator among others to consider when assessing the appropriateness of the conditions at issue before the Court.

[67] In November, 2008, the Court heard testimony from Mr. Harkat in support of his application to review the conditions of his release. He explained to the Court that he views compliance with these conditions as essential because his life is on the line and he does not want to disappoint his family and supporters. He also noted that he did not want to give the Ministers an opportunity to deport him from Canada (see testimony of Mr. Harkat, Volume 3, at page 387, November 5, 2008).

[68] In reference to his past credibility, which was strongly questioned in judgments of my colleague Justice Dawson, he had this to say:

“Q: Judgments rendered in the past concerning you have concluded that you have lied on numerous occasions. Why should I trust you?

A: Because when I came to the court, it would be that one because I lied to the CSIS. Before I don't speak English good and I was, like, scared and I came to the court to say, or there is some things I don't see it, and if there is some things, there is clarification for that. I didn't have that to answer that question. I am not have that disclosure, what I didn't answer yet. At the same time, I have two years outside and I have money on my head and I have a family. My life is not going to be normal. If there is any breach, it's going to get worse. You like to ask for some things to get better. If you want to do stupid things or breaking conditions, you are going to end up in jail, deportation. It's not easy things. You come to the court again and you fight it. It's not easy for me. It's very hard to come in front of you if something is happened on purpose, mistakes like that, and the yard, taking the grass. It's very -- if I just come in front of you and say what happened, but doing it on purpose, putting myself on more complicated situation, I don't think so. It's, even for you, easy to give me opportunity again. I just prevent it completely, it's never going to happen. This is kind of -- I believe it build a little bit of trust. I am not alone in this situation. There is money. There is people life going to be shattered.” (See Volume 3, pages 451-452)

On the trust element, he said:

“For now almost two years on the bail and following every single order Judge Dawson and you put me on, I didn't -- there is some understanding of breach Judge Dawson find about Pierette moving. But in my opinion, that's my English reading and it looks like not, but accept her order final. I am trying to do every single thing right because some people going to lose. Plus, the time I spent in jail and the time factor and people behind me and circumstances if I am going to break that trust, there is a big circumstance. It's not regular thing.” (See Volume 3, page 459)

[69] Again, the Court does not consider these statements as being a predictor of future compliance. As mentioned before, the trust element is only one factor to consider when assessing the conditions necessary to neutralize the danger posed by Mr. Harkat.

[70] Having said that, I heard Mr. Harkat's testimony, I saw him testify, and I have carefully reviewed the transcript of his evidence.

#### **6.1 Specific context and circumstances related to this proceeding**

[71] This is the second time a ministerial certificate naming Mr. Harkat has been referred to this Court for a determination of its reasonableness. The 2008 certificate contains comparable allegations concerning Mr. Harkat as those set out in the 2002 certificate.

#### **6.2 Proportionality between the danger posed by Mr. Harkat and the conditions of his release**

[72] At paragraph 27, I have intentionally identified key paragraphs of the reasons for judgment of Justice Dawson. These paragraphs describe the danger that she found Mr. Harkat posed to the national security of Canada. Having made a determination of danger she subsequently identified conditions she felt would specifically neutralize that danger and ordered the release of Mr. Harkat from detention under those conditions.

[73] A close reading of the conditions originally imposed indicates that Justice Dawson considered the danger associated with Mr. Harkat to be significant; therefore, the conditions she imposed had to be rigorous to ensure that the danger was neutralized.

[74] An important factor was Justice Dawson's conviction that Mr. Harkat had not been truthful on a number of significant points during his testimony. Consequently, she relied on a third party (a supervising surety) to ensure compliance with the conditions of his release. This is why she decided that Mr. Harkat should not be permitted to stay home alone.

[75] The objective of the original conditions was to prevent Mr. Harkat's participation in any act of terrorism, support of a terrorist organization or similar activity. The conditions had to be proportional to the risk posed.

[76] The original conditions were established in May, 2006, almost three years ago. The release with conditions has generally been successful. There is no evidence showing that the objectives sought to be attained by my colleague were not met. Since that time, the Supreme Court has found the certificate process under which the 2002 certificate was found to be reasonable violated section 7 of the Charter. This must be taken into consideration.

[77] It is logical to conclude that, during the time in which he was incarcerated, the danger posed by Mr. Harkat has diminished considerably. There is no evidence that would indicate otherwise. Moreover, for more than six years, the danger found to be associated with Mr. Harkat by Justice Dawson has been neutralized. This must also be taken into consideration.

[78] The constant presence and devotion of Mrs. Harkat to her husband must also be considered. Her testimony, her involvement in the monitoring of her husband's conditions, her strong influence and character must be considered as another factor. Without her involvement, it is unlikely that her husband would have been released from detention under conditions by Justice Dawson. Mrs. Harkat ensures stability in her husband's life. She understands the importance of the conditions of release and does not leave any doubt about her commitment to ensuring that they are respected:

“Yes. I would like to add that if I broke any condition, I would let down myself first, my husband who I am fighting to keep in Canada because I believe that he will clear his name, my mom, my sisters, everybody in my family and, most importantly, the supporters. We wouldn't be here if it weren't for them. The spokesperson of my committee is sitting here, Mr. Baldwin, Len and Kevin who have put huge sums of money. The amount of money wouldn't matter – you put \$1 million or \$1 on my husband's head – my job is my job. Like I said, we want to win this case. We want to clear my husband's name. I would never jeopardize that.”

(See transcript, Volume 4, page 600)

[79] Mrs. Harkat's devotion to her husband is genuine and has been considered and will be by this Court.

## 6.2 The passage of time

[80] In the Fourth Report of the Independent Reviewer Pursuant to Section 14(3) of the *Prevention of Terrorism Act 2005* Lord Carlile of Berriew Q.C. noted at par. 58:

“My view is that it is only in a few cases that control orders can be justified for more than two years. After that time, at least the immediate utility of even a dedicated terrorist will seriously have been disrupted. The terrorist will know that the authorities will retain an interest in his or her activities and contacts, and will be likely to scrutinize them in the future. For those organising terrorism, a person who has been subject to a control order for up to two years is an unattractive operator, who may be assumed to have the eyes and ears of the State upon him/her. Nevertheless, the material I have seen justifies the conclusion there are a few controlees who, despite the restrictions placed upon them, manage to maintain some contact with terrorist associates and/or groups, and a determination to become operational in the future.”

[81] The passage of time must be taken into account when the Court is assessing which conditions are necessary to neutralize the danger posed by the judicial release of an individual named in a certificate. In *Charkaoui #1*, the Supreme Court agreed with two prior decisions of this Court (*Charkaoui (Re)* 2005 FC. 248, par 74 and *Harkat*, 2006 C.F. 628, par. 86). Both of those decisions found that the length of time in detention resulted in the interruption of relationships with extremist groups. As a consequence, the passage of time was held to be a factor that diminishes the danger associated with the release of an individual. In clear terms, the Supreme Court stated at paragraph 112 that the longer the period of incarceration, the less an individual is susceptible to remain a danger. The Court also added that such incarceration also gave an opportunity to the Canadian authorities to complete their investigation.

[82] As noted before, Mr. Harkat has been under investigation by Canadian authorities, detained or released under conditions for well over a decade. As the public SIR reveals, specific investigatory methods were used in the course of this investigation. Mr. Harkat was arrested and incarcerated from December, 2002 until the end of June, 2006, when he was released under conditions. He has been judicially released under conditions for nearly three years.

[83] The fact of having been a person subject to the interest and control of Canadian authorities for more than a decade has had an impact on the danger that his release may pose to national security. Mr. Harkat's social and professional contacts have been disrupted. The limitations imposed by the conditions of release on communication by land-line telephone, cellular phone, and internet paired with the interception of telecommunications and mail has severely limited the possibility of contact with individuals, whether internationally, nationally or locally. The GPS which tracks Mr. Harkat's movements ensures a daily and real-time monitoring of his whereabouts.

[84] The type of danger posed by Mr. Harkat's release must be assessed realistically. Allegations that the relaxation of conditions may give Mr. Harkat the opportunity to make or maintain contacts, to plan operations or otherwise assist in activities contrary to the national security of Canada must be considered. Danger must be considered by the Court and it must be assessed in the context of all of the circumstances of this proceeding. The passage of time is one factor among others to consider.

[85] During the 2002 certificate proceeding, Justice Dawson concluded that Mr. Harkat was or is a member of the BLN. I cannot determine this question until counsel for Mr. Harkat and the special advocates have had an opportunity to present their cases and make their final submissions. Evidence relating to his alleged status as a member of the BLN has been adduced by the Ministers in the present proceeding.

[86] That said, it is difficult to imagine what interest an organization falling under the umbrella of the BLN, would have in somebody who has been the subject of ongoing control by Canadian authorities for more than ten years? This Court also wonders, for example, who would approach such an individual with such a high media profile? How could an organization consider asking somebody with such a high profile to undertake secret activities? The Court does not have an answer to these questions, but they are obvious questions in the mind of a decision maker who must assess the danger posed by an individual released under conditions aimed at neutralizing such danger. Proportionality is an instrument that requires the adaptation of the two factors (danger and conditions) to a changing reality. Circumstances are not frozen; they evolve over time.

[87] A last comment: this Court is conscious of the lengthy nature of this process. When will these procedures come to a close? The ultimate objective of the Ministers is the removal of Mr. Harkat from Canada. Before this may occur many procedural steps must be taken. The end is not yet in sight. Meanwhile, Mr. Harkat remains subject to conditions. This weighs heavily on the shoulders of the judiciary who must assume their duties.



#### **6.4 The elements of trust and credibility**

[88] Justice Dawson noted in her decision of May 23, 2006, that the credibility findings made against Mr. Harkat in her decision regarding the reasonableness of the 2002 certificate, impacted strongly on the trust factor and the type of conditions for release that would neutralize the danger posed by Mr. Harkat.

[89] I have not had the benefit of hearing Mr. Harkat testify on the reasonableness of the certificate; this may happen when full disclosure has been made to the Court, and further disclosure has been made to counsel for Mr. Harkat. I have, however, heard some testimony from Mr. Harkat regarding his application to review the conditions of his release.

[90] Trust is an important consideration when evaluating the appropriateness of one condition versus another. That is why I find, as my colleague did before me, that the role of a supervisor is important to the conditions of Mr. Harkat's release, specifically when he is going on authorized outings. The presence of a supervising surety gives the Court confidence that Mr. Harkat will likely abide by the conditions of his release where his credibility is in question. This Court has relied on supervising sureties in the past, for example in the cases of Mr. Charkaoui ([2005] 3 F.C. 389), Mr. Mahjoub (2007 FC 171), Mr. Jaballah (2007 FC 379), and previously in the case of Mr. Harkat.

[91] One of Mr. Harkat's supervising sureties, Ms. Pierrette Brunette, no longer lives with Mr. Harkat pursuant to my October 10, 2008 order which permitted Mr. Harkat to live alone with his wife. I have noted, however, that Mr. William Baldwin, a retired priest and one of Mr. Harkat's supervising sureties, has stayed in the residence with Mr. Harkat on occasion while Mrs. Harkat is out. Recently, Mr. Phillip Parent was appointed a supervising surety. It is in the interest of Mr. Harkat to appoint more supervising sureties; it would certainly relieve Mrs. Harkat of her strenuous obligations under the conditions as imposed.

[92] Credibility and trust are essential considerations in any judicial review of the appropriateness of conditions. When considering whether conditions will neutralize danger, the Court must consider the efficacy of the conditions. The credibility of and the trust the Court has in a person who is the subject of the conditions will likely govern what type of conditions are necessary.

#### **6.5 Applicability of the 2006 reasons of Dawson J. to the present situation in 2009**

[93] After a careful review of the May 23, 2006, reasons of Justice Dawson releasing Mr. Harkat under conditions, I conclude that her factual findings continue to be of importance in 2009. They will be taken into consideration as I review whether the conditions remain appropriate today.

[94] Having said this, the 2006 Reasons for Judgment were made under the former IRPA which was found to violate section 7 of the *Charter*. Under the new legislative regime, the Special Advocates participate in closed hearings. The disclosure made by the Ministers in the SIR as filed in February, 2008, was more complete than that filed in support of the original certificate, and recent disclosure gives out additional information. Depending on the review of new material filed with the Court required by *Charkaoui #2*, there might be more information released publicly. This does not necessarily change the factual matrix of the case presented by the Ministers, but it does give Mr. Harkat and the public a better understanding of the situation.

**6.6 Importance to be attributed to the presence, or not, of Mr. Harkat at a proceeding or at removal**

[95] Since the 2002 certificate naming Mr. Harkat was referred to this Court, Mr. Harkat has always demonstrated clear interest in being present in court whenever hearings or case management conferences were held.

[96] On the second matter, as explain above, the removal stage is not imminent. In time, depending on the evolution of the proceeding, this may become an issue, but not at this time.

**7. Changes to the conditions of his release sought by Mr. Harkat**

**7.1 Home Alone**

[97] Mr. Harkat seeks permission to stay in his house without the presence of a supervising surety.

[98] At the present time, the conditions do not allow Mr. Harkat to remain in his home alone without a supervising surety. The presence of a supervisor is required. Justice Dawson did not agree to this in the past mainly because of her lack of trust in Mr. Harkat.

[99] The undersigned has concerns about Mr. Harkat's trustworthiness. Mr. Harkat has testified and did, in response to question relating to his trustworthiness, address this issue. It is a good beginning. Hopefully, in the future, Mr. Harkat will improve the Court's trust in him which is a key factor in setting appropriate conditions. The ball, as they say, is in Mr. Harkat's court.

[100] The Court has reviewed the testimony of Mrs. Harkat on the issue of home alone privileges sought by Mr. Harkat. I understand that Mrs. Harkat has a need for a life outside the home. I also understand that living together on a 24 hour, 7 day a week basis is a challenge in itself.

[101] Considering the passage of time and the principle of proportionality, I have come to the conclusion that it would be appropriate to allow Mr. Harkat to remain alone in his home. Being home alone is subject to the conditions set out in the following paragraphs.

[102] The Court feels that the conditions imposed on this new situation are such that they will meet the goal of neutralizing any danger posed by Mr. Harkat's release.

[103] Mr. Harkat will be permitted to be home alone between 8 a.m. and 9 p.m.

[104] Before Mr. Harkat may be home alone, the CBSA must be satisfied that he is not able to access any computer equipment.

[105] The Harkats shall give the CBSA 36-hour notice of any occasion on which Mr. Harkat will be home alone. Mrs. Harkat must telephone CBSA when she leaves and upon her return to the residence. While unsupervised, Mr. Harkat will telephone Mr. Foley or his delegate at the CBSA every hour on the hour from his home telephone.

[106] The Court considers that the measures already in existence such as GPS, telephone interception, surveillance cameras at the entrances to the residence, the pre-approved visitor list with photo identification, the reporting of visitors prior to visits, mail interception, and CBSA spot checks are sufficient to neutralize the danger posed by this relaxation of the supervising surety requirement.

[107] I do not believe that these home alone periods will impose an additional burden on the CBSA.

**7.2 Increased mobility without the necessity of pre-approval routes and destinations within pre-determined geographic areas between the hours of 8 am and 11 pm, or increased and extended weekly outings with a shorter notice period to CBSA, and 6 new “family holiday” outings per month**

[108] Mr. Harkat is requesting the right to move about freely within pre-approved geographic boundaries between the hours of 8am and 11pm, without seeking pre-approval for the outing from the CBSA, without having the routes he will follow pre-approved, and without adhering to the current four hour time limit for outings. In the alternative, he is seeking an increased number of weekly outings (from 3 to 5), the addition of six extended family/holiday outings per month, and a reduced period of notice to the CBSA (from 48 to 24 hours).

[109] The main request will not be granted at this time. Again, the future may dictate a different result. The way in which the Harkats comply with the new conditions and the relationship they cultivate with the CBSA will be of importance.

[110] There will be no change to the time period allowed for outings. All outings shall occur between 8 am and 9 pm. Should there be a specific need for an extension of this time period in the future, Mr. Harkat can make a request, on proper notice, to the CBSA. This Court grants the CBSA the discretion to grant or refuse such requests. Relevant factors to consider in exercising this discretion are the type of outing sought and the resources of the CBSA.

[111] That said, outings will be increased to five per week. These five outings are to include holidays and family outings. Outings shall be for a six-hour period, with a notice period of 36 hours.

### **7.3 Attendance at political and university events, and other speaking engagements**

[112] Mr. Harkat wishes to attend political events and speak at public conferences when he is invited to do so. This modification is granted, but is conditional on assurances by Mr. Harkat that the official presence of CBSA will be accepted by those present at the events if CBSA considers its presence is required. Employees of the CBSA must not be put in danger or verbally abused while in attendance.

[113] The past experience of the CBSA at these types of events has not been positive. It seems that there is a tendency to identify the CBSA employees as being the villains in this proceeding. Attention has been drawn to them, and the actions and comments from supporters of Mr. Harkat have not been positive. This does not facilitate the work of employees of the CBSA, and, in effect, limits the scope of the activities in which Mr. Harkat can participate.

[114] It is the responsibility of Mr. and Mrs. Harkat to make it clear to their supporters that the CBSA employees are simply doing their job. The actions of their supporters limit Mr. Harkat's ability to attend political and public events. Employees of the CBSA cannot be asked to put themselves in harm's way.

[115] The Court proposes that Mr. Harkat prepare a plan with the objective of assuring the safety of CBSA officers assigned to monitor the conditions of his release at political or public events or rallies.

[116] If Mr. Harkat prepares such a plan, it should be presented to CBSA for collaborative discussions. Mr. Harkat must satisfy concerns of the CBSA that employees will not be mistreated or put in harm's way. Some events might be easier to deal with than others. The Court remains available to assist the parties at their request.

#### **7.4 Contact with the accredited media**

[117] The undersigned granted a request to facilitate communication with the media in May, 2007. Condition 20 of that order indicates that Mr. Harkat can attend genuine press conferences and give interviews to accredited media outlets.

[118] Mr. Harkat is requesting a shorter notice period of 24 hours for media interviews, as the media sometimes has to react to stories within a short timeframe. This notice to CBSA of 24 hours for a media interview is acceptable to the Court. Further, if an event occurs and members of the accredited media are seeking an interview with Mr. Harkat and the 24-hour notice period is not possible, the CBSA will have discretion to grant the request on short notice without the intervention of counsel or the Court. Such requests absent exceptional circumstances should be granted.



**7.5 Meetings with legal counsel**

[119] Mr. Harkat is requesting the opportunity to meet with his legal counsel between the hours of 8am and 9pm for a period of six hours, on six hours notice to the CBSA. The existing conditions require Mr. Harkat to notify the CBSA 24 hours in advance of any meeting with his legal counsel, and such meetings are restricted to between the hours of 8 a.m. and 5 p.m.

[120] The Court is aware that Mr. Harkat will have to meet his counsel often in the months ahead in order to review the coming disclosure and prepare for the public hearings scheduled for May and June, 2009.

[121] In order to give Mr. Harkat and his legal counsel sufficient flexibility to prepare for these hearings, the Court grants this request. It should not be burdensome for the CBSA and it is in the interests of justice.

[122] These meetings with legal counsel are not considered “outings” for the purposes of calculating the number of weekly outings permitted under the conditions of release.

**7.6 Expansion of the geographic boundaries to include the city of Gatineau, Québec**

[123] This initial request which sought an extension of the current geographic boundaries to the city of Gatineau, Quebec so that Mr. Harkat may visit friends and family in that city was presented to me in 2007. It was granted in part (2007 FC 416 at par. 35).

[124] At present, Mr. Harkat is able to travel within certain limits in the city of Ottawa to pre-approved locations and to specific locations with a pre-approval route in the city of Gatineau. The Court has not heard evidence that would enlarge the boundaries to include the city of Gatineau in the same category as the city of Ottawa.

[125] The present limits offer some freedom to the Harkats and ensure that they can visit members of their family. The Court will wait for further evidence on this matter before amending the condition. The present condition shall remain.

#### **7.7 The use of public restroom facilities**

[126] The need for privacy and dignity requires the modification of this condition which has been reviewed by the Court in the past and still requires fine-tuning. At the present, the supervisor or Mr. Harkat must inform the CBSA when either of them has to use public facilities and the other must remain close to the entrance.

[127] The new conditions shall not include a requirement to call the CBSA.

[128] Mr. Harkat is required to use a family restroom facility whenever possible.

### **7.8 Communication with an Imam and worshipers at the mosque**

[129] At present, Mr. Harkat is authorized to attend at the mosque if he is accompanied by a supervising surety. He wants to communicate with the Imam and other members of the community in the presence of his supervising surety.

[130] The Court has no objection to Mr. Harkat speaking with the Imam, as long as the Imam has been pre-approved by CBSA in accordance with the normal visitor approval protocol. A religious official or member of the clergy is a person like any other, and must be pre-approved; much like Mr. Baldwin was required to submit a request for pre-approval despite being a retired priest of the Anglican Church.

[131] The second request, to be able to speak freely with other worshippers, is refused even in the presence of a supervisor.

### **7.9 Physical Activity Outings**

[132] Mr. Harkat did not submit a request to add or extend physical activity outings. He is currently permitted three one-hour outings, on days when he does not go on an outing.

[133] The Court, however, has taken notice of Mrs. Harkat's testimony on the issue of physical activity outings. Mrs. Harkat testified that their quality of life has greatly improved since the addition of the physical activity outings to the conditions of release.

[134] The Court is ready to take a proactive step in regards to the physical activity outings, and in increasing the number of physical activity outings to seven per week. The duration of the physical activity outings with supervision will continue to be one hour, and the same rules on notifying CBSA and on departure and return will continue to apply.

## **8. Other Changes Sought**

### **8.1 CBSA parking (driveway)**

[135] The parking space in front of the Harkat residence is to be made available to CBSA when required. If the parking space is occupied by the car of Mr. and Mrs. Harkat when CBSA wants to use it, Mr. Harkat is authorized to move the car in the absence of a supervisor. Since street parking is unavailable, priority must be given to the CBSA. The Court is open to other suggestions that would improve the situation, such as the use of the garage.

### **8.2 Computer Room**

[136] As mentioned earlier, the CBSA must be satisfied that any room with a computer in it is not accessible to Mr. Harkat. The home alone conditions will not become effective until arrangements to this effect have been made.

### **8.3 Telephone communications with counsel**

[137] On the solicitor-client privilege matter, the parties are invited to suggest any additional restrictions designed to protect that privilege.

**9. Changes sought in written submissions where evidence was not presented**

[138] The following changes were requested but no evidence to support them has been presented:

- the performance bond of 50,000\$ of Ms. Pierrette Brunette should be cancelled;
- the requirement for surveillance camera be cancelled;
- the GPS unit should be exchanged for a lighter one;

Therefore, no determination will be made at this time.

**10. A word for CBSA**

[139] The CBSA has had three years of experience supervising Mr. Harkat. In the present reasons, the Court has reviewed the danger situation. This judgment should be taken into consideration when CBSA conducts a risk assessment in relation to Mr. Harkat. Such a risk assessment must be done and the manner on which CBSA supervises Mr. Harkat should be done in accordance with this risk assessment.

**11. Judgment will be prepared by counsel and submitted for signature**

[140] For judgment purposes, counsel for the parties are being asked to prepare a new amended set of conditions for release which shall take in consideration the reasons of the present judgment.

Then, after the signature of such judgment, the new set of conditions will become effective.

**12. Suggestion of a certified question**

[141] The parties are invited to submit a question for certification in accordance with section 82.3 of IRPA within ten days of the date of the reasons for judgment.

**13. Conclusion**

[142] The reasons for judgment of the review of conditions are summarized as follows:

- Subject to the conditions in paragraphs 104, 105 of these reasons Mr. Harkat may be home alone between 8 a.m. and 9 p.m.;
- The weekly outings will now be five (5) in lieu of three (3); their duration will be six (6) hours and notice to the CBSA shall be thirty-six (36) hours;
- Mr. Harkat shall be able to attend political and academic events as long as CBSA is satisfied that its employees will not be endangered if it determines that a CBSA presence is required;
- In accordance with paragraph 118 of these reasons contact with the accredited media is permitted;
- The boundaries of the city of Ottawa, as defined, and the boundaries of the city of Gatineau consistent with existing conditions, shall be the area where Mr. Harkat may travel;
- No notice must be given to the CBSA when Mr. Harkat or his supervising surety must use a public restroom facility;
- Communication with the Imam at the mosque will be permitted if the Imam is pre-approved by the CBSA;

- Mr. Harkat will be able to exercise on a daily basis if he so desires;
- It is important that the Harkats understand that their relationship with the CBSA will likely impact on the future improvement of these conditions;
- CBSA must proceed with a new risk assessment;
- These conditions may be reviewed with a view to amending them if circumstances require;
- The Court is available if assistance is required.

**“Simon Noël”**

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**Judge**

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** DES-5-08  
**STYLE OF CAUSE:** **In the matter** of a Certificate pursuant to Section 77(1)  
of the *Immigration and Refugee Protection Act* and  
**In the matter** of Mohamed Harkat

**PLACE OF HEARING:** Ottawa, Ontario  
**DATES OF HEARING:** Public hearings  
October 7, 8, 2008  
November 3, 4, 5, 6, 2008  
December 15, 16, 2008  
February 25, 2009  
  
Closed  
September 18, 2008  
December 19, 2008

**REASONS FOR JUDGMENT:** NOËL S. J.  
**DATED:** March 6, 2009

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