

Federal Court



Cour fédérale

Date: 20130717

Docket: DES-5-08

Citation: 2013 FC 795

BETWEEN:

MOHAMED HARKAT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION
AND THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS CANADA**

Respondents

REASONS FOR ORDER

NOËL S. J.

I. Introduction

[1] Mr. Mohamed Harkat [Mr. Harkat or the Applicant] is asking the Court to vary his terms and conditions of release in order to bring them in line with more “standard” release conditions pursuant to subsection 82(4) and paragraph 82(5)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In summary, he is asking for the Global Positioning System [GPS] ankle

bracelet condition to be removed, the notice requirement to travel outside Ottawa to be changed and to be granted the right to access a mobile phone and a laptop.

[2] The Ministers, although open to some accommodation in relation to some of the requests, argue that the current terms and conditions should be preserved to neutralize the danger posed by Mr. Harkat and that there is no need for any further relaxation of the conditions.

A. Brief history of the detention and the review of the terms and conditions of release from detention

[3] Mr. Harkat was released from detention with conditions on May 23, 2006. As time passed and as a result of threat assessments made by the Canadian Security Intelligence Service [CSIS], the terms and conditions of release were adapted to the evolving circumstances surrounding Mr. Harkat. The Court's objective in determining the appropriate terms and conditions of release was to neutralize the danger posed by the Applicant. For a review of the proceedings and the evolving terms and conditions of release, the reader is invited to consult *Harkat (Re)*, 2010 FC 1241 at paras 14-38, 380 FTR 61 and *Harkat (Re)*, 2009 FC 241 at paras 4-31, 339 FTR 104.

[4] The most recent hearing concerning the review of the terms and conditions of release was held in the fall of 2009, and a decision was rendered on October 7, 2009 (see *Harkat (Re)*, 2009 FC 1008, 351 FTR 313). Since then, the Court found the certificate to be reasonable in a decision rendered on December 9, 2010 (see *Harkat Re*, 2010 FC 1241, 380 FTR 61). The Federal Court of Appeal allowed the appeal of the decision and ordered that a new determination should be made on the basis of the record as amended by the Federal Court of Appeal judgment (see *Harkat (Re)*, 2012

FCA 122, 429 NR 1). The Supreme Court of Canada granted leave to appeal the decision of the Federal Court of Appeal, and the hearing is scheduled for October 10, 2013.

[5] This Court issued its most recent Order reviewing the conditions of release, without appearance and on consent, on November 1, 2011.

[6] As indicated above, the most recent public hearing dealing with the terms and conditions of release resulted in the October 7, 2009 decision. The decision relied in part on a CSIS threat assessment of September 2009, which is the most recent threat assessment that the Minister asked the Court to consider for the purposes of the present review.

[7] Mr. Harkat then asked the Court to remove the GPS ankle bracelet condition because of its intrusiveness. He also proposed that he be relieved of his weekly obligation to report in person to the Canada Border Services Agency [CBSA]. Furthermore, Mr. Harkat sought permission to have possession of a mobile phone and access to a computer. Regarding the mobile phone, Mr. Harkat suggested that he could use a phone without Internet access and that he would provide CBSA with his phone number. As for his request for access to a computer, Mr. Harkat submitted that he would only use it in the presence of one of his sureties. Mr. Harkat then made other requests for relaxation of his conditions of release, such as the removal of the condition prohibiting him from traveling outside the National Capital Region. The Ministers agreed to the latter request but objected to Mr. Harkat's requests for the removal of the GPS ankle bracelet condition, possession of a mobile phone and access to a computer. The main reason given by the Ministers was that these terms and conditions were proportional to the threat that Mr. Harkat posed to national security.

[8] The Court decided to maintain these terms and conditions as it found that they were essential to neutralize the danger as it was then assessed. Issues of trust and credibility were also discussed and the threat assessment of September 2009 which determined that “[...] the threat to national security has diminished over time [...]”, was also considered.

[9] In the decision on the reasonableness of the certificate dated December 9, 2010 (*Harkat (Re)*, 2010 FC 1241, at paras 539-547, 380 FTR 61), this Court also dealt with the danger to the security of Canada posed by Mr. Harkat. I found that compared to 1995 when he posed a high risk to the security of Canada, this risk was “much lower” as of December 9, 2010.

B. The evidence in support of the motion

[10] For the purposes of his motion seeking an Order reviewing the terms and conditions of release pursuant to subsection 82(4) of the IRPA, Mr. Harkat filed affidavits signed by him and others in support of the motion, and neither party performed an examination of any of the affiants.

[11] In his affidavit, Mr. Harkat claims that he has complied scrupulously with the terms and conditions, that they seriously affect his health and that they impact negatively on his quality of life and his family. Although Mr. Harkat recognizes that the present terms and conditions are a significant improvement when compared with the previous terms and conditions, they are still invasive. This is therefore why Mr. Harkat wants the conditions pertaining to the GPS ankle bracelet, the notice required for traveling, the mobile phone and the use of computers to be removed or changed.

[12] Mrs. Sophie Harkat attests that she acknowledges and appreciates the changes made to the terms and conditions but that those that remain impact seriously on her husband's health and her own. She explains why Mr. Harkat seeks the changes by describing how it affects them as a couple and as a family. She states that respect for the terms and conditions is of utmost importance for both of them and that they both view complying with them as an obligation.

[13] Mr. William Baldwin, a priest and a surety who also pledged \$5,000.00 as a bond, attests that he has seen the impact of the terms and conditions of release on the health of both Mr. Harkat and his wife. Furthermore, he states that compliance with the terms and conditions is an obligation for the Harkats. He also supports the changes sought to the terms and conditions.

[14] Mrs. Pierrette Brunette, the mother of Sophie Harkat, makes an impassioned appeal to this Court in support of the changes to the terms and conditions sought. She describes how the terms and conditions have negatively affected her daughter and her son in law as well as her own life. She considers the supervision of the Canadian Border Services Agency [CBSA] to be intrusive and unacceptable. She is of the opinion that Mr. Harkat is not a terrorist and that the terms and conditions of release imposed are useless and must change significantly.

[15] Mr. Philippe Parent made a similar statement to that of his partner, Mrs. Brunette. Mr. Parent has observed that the terms and conditions of release have negatively impacted on the Applicant and his wife. CBSA, in its supervisory role, is omnipresent. There is no freedom of movement for them and the Harkats. He supports the changes sought to the terms and conditions.

[16] The remaining affiants are either members of the “Justice for Mohamed Harkat Committee,” sureties and/or professors, or friends of the family. They all attest to the negative impact of the terms and conditions of release and to the constant respect for them demonstrated by the Harkats. They express their support for the request to vary the terms and conditions of release.

[17] There is also an update, dated January 25, 2013, of the medical assessment of Mr. Harkat previously made by Dr. Colin Cameron, MDCN, FRCPS of the Royal Ottawa Health Care Group on August 21, 2009. The doctor saw Mr. Harkat sixty-five (65) times for a period of fifty (50) minutes each since 2009 and up to January 25, 2013, and a number of tests were administered (HAM-D17, HAM-A, BDI-II, BAI and PCL-C). Dr. Cameron’s medical opinion is that Mr. Harkat continues to present significant depressive, post-traumatic stress and anxiety symptoms. His health situation varies depending on the developments in his legal case, the perceived rigidity or unfairness of the enforcement of his bail conditions and the perceived imminence of his possible deportation from Canada. The medical opinion explains that Mr. Harkat disagrees with the findings made in this Court’s decision on the reasonableness of the certificate (see *Harkat (Re)*, supra) and considers himself mistreated by the Canadian judicial system. He is also critical of the terms and conditions of release, their actualization and the impact they have on him and his wife.

[18] I have compared this medical report with the one submitted in the fall of 2009 for the purposes of another review of terms and conditions of release and have noted that the medical situation of Mr. Harkat remains generally stable. I also note that there has been no improvement since then.

C. The Ministers' evidentiary response

[19] In support of their response, the Ministers have also filed an affidavit, and they rely on both a CBSA assessment dated January 2012 and the CSIS threat assessment of September 2009 referred to earlier in these reasons.

[20] The Ministers' affidavit is signed by the Acting Inland Enforcement Supervisor for the CBSA, Mr. Michel Connelly [Mr. Connelly] and can be summarized as follows:

1. The monitoring by CBSA of the compliance with the terms and conditions of release from detention has proceeded without incident since the last review.
2. Out of nine requests to travel outside of Ottawa, two (2) were denied because it was not feasible to monitor the trips.
3. Mr. Harkat's inability to access the Internet did not delay the issuance of Mr. Harkat's work permit. He was provided with a paper copy of the forms and was later granted a work permit which is valid until February 2015.
4. The GPS ankle bracelet's functioning was generally acceptable, and each time the CBSA made an inquiry concerning the bracelet, Mr. Harkat cooperated.

5. It is CBSA's view that the GPS ankle bracelet should remain in place because without it, the monitoring of Mr. Harkat's movement or whereabouts at any time within or outside the National Capital Region would not be possible.

6. Mr. Connelly considers that Mr. Harkat's compliance with the terms and conditions of release and the passage of time makes it possible to consider less restrictions on his travel outside of the National Capital Region by asking him to provide seven (7) days written notice containing the itinerary of the trip by fax and requiring him to inform CBSA of any changes to the itinerary as soon as possible. Mr. Harkat requests a two (2) day notice period.

7. In addition, CBSA agrees to the possession and use of one (1) basic mobile phone as long as the telephone number and service provider is given to CBSA for the purposes of obtaining and monitoring the mobile phone use and obtaining its records. Mr. Harkat would have to agree to CBSA having such access. The mobile phone would be limited to receiving and making calls, as well as forwarding features from his mobile phone and from his landline telephone but not to any other telephone line. The mobile phone, in CBSA's opinion, should be limited to voice capability and voice mail only.

8. CBSA is of the opinion that mobile phone use may also include text messaging capacity as long as CBSA agrees to the modalities of use and the supervision that it may involve.

9. As for Mrs. Harkat, CBSA considers that she may have access to a mobile phone for her personal use, but it shall be protected with a password. She may also have a laptop computer with internet access, protected with a password. She shall have control of it at all times, and no access shall be given to Mr. Harkat.

10. In Mr. Connelly's opinion, the Harkats may have the use of a fax machine.

[21] The Ministers have provided a CBSA Risk Assessment dated January 2012. It indicates that the risk associated with Mr. Harkat is low as long as the existing terms and conditions remain in place. Up until January 2012, there has been no significant incident of non-compliance with any of the terms and conditions of release. There has been erratic and unusual driving by Mr. Harkat associated with counter-surveillance techniques, but as CBSA notes in the Risk Assessment, this does not constitute a breach of the terms and conditions of release. The most recent information, as noted in the affidavit of Mr. Connelly, is that as of May 8, 2013, the monitoring of the terms and conditions of release is running smoothly and no breaches have been reported.

[22] I have reviewed the CBSA Risk Assessment of May 2009 and note that there has been a major improvement in the Harkat's compliance with the terms and conditions of release and in CBSA assuming its monitoring role. I predict that this new climate will facilitate a better relationship between the parties concerned.

[23] A public summary of the most recent CSIS threat assessment dated September 2009 which refers to an earlier assessment dated July 2009 states the following:

The July assessment considered that CSIS had no new information to indicate that Harkat was engaged in threat-related activities; Harkat is not known to have engaged in acts of violence; that his role in the international Islamic extremist movement prior to his arrival in Canada appears to have been largely logistics and facilitation confirmed by his immediate connections within the Canadian network of extremists; that it is not clear whether he could re-establish ties if released without conditions, owing in part to his significant public profile; and, that the threat posed by Harkat is believed to have been mitigated by the terms and conditions of his release.

In September 2009, CSIS prepared another threat assessment of Mr. Harkat for the purposes of the upcoming review by the Federal Court of his release conditions. This assessment considered the July 2009 CSIS assessment and reached the same conclusions. That is, in regards to Mr. Harkat the threat to national security has diminished over time but remains a concern for the Ministers.

[24] This last statement is the most recent CSIS assessment made available to this Court for the purposes of this procedure. Almost four (4) years have gone by without incidents occurring or new activities that could have impacted on CSIS's assessment of threat to national security associated with Mr. Harkat. What remains is the Court's assessment of danger associated with Mr. Harkat made in its December 9, 2010 decision (para 9). Compared to 1995, the danger was assessed as "much lower." The passage of time can only make it lower still.

D. The legal parameter within which the danger associated with Mr. Harkat is assessed and identification of terms and conditions required to neutralize it

[25] As required by subsection 84(2) and paragraph 92(5)(b) of the IRPA and as noted by the Supreme Court of Canada, the Court is asked to consider whether Mr. Harkat's release poses a danger to the security of Canada and, if possible, whether the terms and conditions of release can neutralize the danger (see *Charkaoui v Canada (Minister of Citizenship and Immigration)*, 2007 SCC 9, at para 119, 59 Imm LR (3d) 1 [*Charkaoui* # 1]). Mr. Harkat's release with conditions since

2005, as seen earlier, has not posed a danger to Canada and as of today, the situation has not changed.

[26] At this stage, in balancing the danger to the security of Canada associated with Mr. Harkat against the terms and conditions of release that would neutralize the danger, a designated judge may consider the following factors:

1. The Court's assessment of danger to the security of Canada associated with the Applicant in light of all the evidence presented.
2. Past decisions relating to danger and the history of the procedures pertaining to reviews of detention, release from detention with conditions and the decisions made.
3. The decision, if any, on the reasonableness of the certificate.
4. The uncertain future as to the finality of the procedures.
5. The elements of trust and credibility related to the behaviour of the Applicant after having being released with terms and conditions and his compliance with them.
6. The passage of time.

7. The impact of the terms and conditions of release on the Applicant and his family and the proportionality between the danger posed by Mr. Harkat and the conditions of release (see *Charkaoui #1*, above at paras 108-109 and see *Harkat v Canada (Minister of Citizenship and Immigration)*, 2007 FC 416 at para 9, 312 FTR 50).

[27] The burden is on the Ministers to establish that the danger is such that the terms and conditions of release must be created and maintained (see *Mahjoub (Re)*, 2013 FC 10 at para 14, 225 ACWS (3d) 122). In order to satisfy that burden, the Ministers must present evidence that identifies the danger, as well as an assessment of whether the danger is minimal or severe and the justification for that assessment. The Minister must then identify the terms and conditions. To make such a determination, the designated judge will consider all of the evidence presented by both parties in closed and public hearings during prior reviews in addition to the submissions made by all counsels including the special advocates.

[28] Keeping in mind that the danger posed to the security of Canada by Mr. Harkat was considered low as of thirty (30) months ago and much lower now, the question I shall answer is the following: what are the appropriate terms and conditions in the current circumstances?

[29] The factors referred to earlier are useful for the purpose of identifying the terms and conditions of release that would neutralize this diminished danger to the security of Canada associated to Mr. Harkat.

[30] Following the public hearing held on June 11, 2013, both parties were invited to submit a draft of the terms and conditions they consider as being reasonable and which would, in their view, address the threat posed by Mr. Harkat. Furthermore, there has since been an *ex parte* hearing that dealt with the different options being discussed and a public summary of the *ex parte* hearing was issued. There has also been an exchange of correspondence between all counsels, including the special advocates and the Court. I have also agreed to a request made by the special advocates to speak to public counsel about the options being discussed. As a result of all of that, I have made the following determinations.

II. The assessment of the threat to the security of Canada posed by Mr. Harkat in light of all the evidence presented

[31] The danger is assessed to be low, and with the passage of time and considering the behaviour of the Applicant in complying with the terms and conditions of release, it is even lower.

[32] Comparing the time at which the first certificate was filed and the surrounding events and the current circumstances, I conclude that we have reached the opposite end of the spectrum. At the time that the first certificate was filed, the danger assessed was high. The present danger is at the low end of the spectrum. This favours a further relaxation of the terms and conditions of release.

III. Past decisions relating to danger, the history of the procedures pertaining to reviews of detention, release from detention with terms and conditions

[33] Mr. Harkat was detained from December 10, 2002 as a result of the referral to the Court of the 2002 certificate, until his release with conditions on June 1, 2006. During that period of the detention, Mr. Harkat asked to be released without success.

[34] At the time of his release from detention, the terms and conditions imposed to neutralize the danger associated to Mr. Harkat were comparable to that of a house arrest with constant surveillance by CBSA. To leave the house, the Applicant had to obtain permission from CBSA and wear a GPS ankle bracelet. Supervision by his wife or other accredited persons was continuous. Access to the residence was restricted to a limited number of individuals, such as those who had deposited sureties, and his legal counsel. The conditions authorized CBSA to intercept all telephone conversations. Mr. Harkat was not permitted to use a mobile phone or a computer. Any breach would trigger a re-arrest. The Court determined at the time that these terms and conditions neutralized the danger to the security of Canada.

[35] Since the second certificate was referred to the Court on February 22, 2008, the situation has evolved. The Court periodically assessed the danger and adjusted and relaxed the terms and conditions of release from detention. The court gradually permitted outings. Mr. Harkat required diminished supervision, and over time, he was permitted visits within and outside the National Capital Region. The Applicant and his wife had to adapt to these stringent terms and conditions, and sometimes they objected. Having said that, they have both adapted in an exemplary way and as seen above, they have complied with the terms and conditions. CBSA has also accumulated knowledge of its supervisory obligations and it is assuming them with improved care and understanding of the life of the Harkats. This environment has created a better climate of cooperation between the parties involved and mutual understanding of their respective roles.

[36] It has been the approach of both judges (Justice Dawson for the first certificate procedure and the undersigned for the second certificate procedure) to follow and analyze the events as they

unfold. Except for a few incidents that occurred which raised issues relating either to Mr. Harkat's compliance with the terms and conditions or the attitude of CBSA in assuming its supervisory role, I found the danger to be diminishing and as a consequence, I relaxed the terms and conditions of release. There was no need for some of the stricter terms and conditions to neutralize the danger.

IV. The decision on the reasonableness of the certificate, if any

[37] Based on the evidence submitted by the parties and admitted by the Court, findings were made which led to the Court's determination that the certificate was reasonable. The Court also concluded that the danger related to Mr. Harkat still existed although at a lesser degree. As seen earlier, the Federal Court of Appeal granted leave to appeal this decision, and the Supreme Court of Canada will again be reviewing the certificate procedure and other matters in early October 2013.

[38] The findings made then dealt with Mr. Harkat's explanation of the events surrounding his life before coming to Canada and in Canada up to his time of arrest. These findings did not deal with the matters related to his release from detention with conditions and his behaviour and compliance with the terms and conditions while living with them. These behaviour and compliance components will be dealt with later.

V. The uncertain future as to the finality of the proceedings

[39] There is no definite finality to these proceedings on a short or even medium-term basis. The Supreme Court of Canada will likely render its decision sometime in 2014. It would be inappropriate for the Court to predict the future of these proceedings, and there is therefore an uncertain future ahead. This factor must be taken into consideration. As noted by the Supreme Court

of Canada in *Charkaoui #1*, above at paras 112, 115, this is a significant factor to consider when determining whether to release the named person from detention, and it is also, in my view, significant when evaluating the terms and conditions of release. In the context of detention, the Supreme Court of Canada considered that uncertainty in the length of detention favours release. Likewise, the uncertain future length of the proceedings also favours an open-minded approach towards the relaxation of the terms and conditions of release.

VI. The elements of trust and credibility related to the behaviour of the Applicant after being released with conditions and his compliance with them

[40] As already mentioned in *Harkat (re)*, 2009 FC 241 at paras 88-92, the elements of trustworthiness and credibility are essential considerations in any judicial review of the appropriateness of the terms and conditions of release, and such elements are the key components for a Court when considering them. This is still the case today.

[41] In that same decision, at paragraphs 67 and 68, the Court dealt with the element of trust and credibility required of Mr. Harkat. It also indicated that Mrs. Harkat's involvement and trustworthiness were also helpful in ensuring compliance with the terms and conditions of release (see also paragraphs 78 and 79).

[42] Since 2009, as mentioned earlier, Mr. Harkat has complied with all the terms and conditions of release, and there has not been any problem. The CBSA Inland Supervisor clearly stated that "there have been no breaches of the terms and conditions." (See paragraph 3 of his affidavit.)

[43] The recent affidavits filed by both Mr. and Mrs. Harkat also demonstrated their respect for the terms and conditions of release and why it is important for the Harkats to ensure that they are in compliance (see the affidavit of Mr. Harkat at paras 25, 26 and 27 and the affidavit of Mrs. Harkat at para 19). I have no reason to doubt these statements. The reality is that they have actualized them over a relatively long period.

[44] However, having said this, although Mr. Harkat has demonstrated compliance with the terms and conditions of release, I continue to have lesser concerns (at the lower end of the spectrum) about the danger he poses. My concerns warrant maintaining a number of the conditions to neutralize the danger, notwithstanding the fact that it has diminished over time.

VII. The passage of time

[45] As noted by the Supreme Court of Canada in *Charkaoui #1*, above at para 113, the passage of time, when considered in the context of the circumstances, may show that the imminence of the danger posed by the named person declines.

[46] In the 2009 decision, above at para 77, the Court noted that the period of detention diminished the danger considerably. Since Mr. Harkat's release from detention, from 2006 to 2013, for a period of seven (7) years, as noted by CSIS's most recent threat assessments and CBSA's most recent risk assessment, there has been no event whatsoever that would justify an elevated assessment of the danger posed by Mr. Harkat. Consequently, the Court's assessment of the danger has continually diminished and it is now at the lower end of the spectrum. Time has had its positive effect.

VIII. The impact of the conditions of release on the Applicant and his family and the proportionality between the danger posed by Mr. Harkat and the conditions of release

[47] At this stage, the Court is being asked to review the terms and conditions of release, to consider whether or not they neutralize the danger and also to consider whether or not the said conditions are disproportionate when considering the danger as the Court currently assesses it (see *Charkaoui #1*, above at paras 116, 119 and the 2009 decision of the Court, above at paras 72-87).

[48] Although the terms and conditions of release have diminished over time, they are, in their current state, still demanding, intrusive and seriously restrain Mr. Harkat's freedom as well as that of his family and friends.

[49] The affidavits of Mr. and Mrs. Harkat describe their life while having to comply with the terms and conditions of release. It is not surprising to note that they impact strongly on the Harkats' lives. They negatively impact the health of Mr. Harkat as the recent medical report explains. Mrs. Harkat suffers the consequences of living under the umbrella of the terms and conditions of release. It also has an impact on the family relationship which includes Mrs. Harkat's close family. Be it the GPS ankle bracelet, the contacts with CBSA personnel, the extra demands on Mrs. Harkat in coordinating compliance with the conditions with CBSA, or the prohibition on Mr. Harkat from accessing a mobile phone except in an emergency or a computer with Internet access, all of the terms and conditions result in major inconveniences that are difficult to live with.

A. *The determination*

[50] The Ministers have relied on a threat assessment of September 2009 from CSIS that has not been updated. The Court in its decision on the reasonableness of the certificate concluded that in December 2010, the danger to the security of Canada associated with Mr. Harkat was “much lower” than it had been at the time that the first security certificate was signed. Since that time, the CBSA’s risk assessment of January 2012 has shown that Mr. Harkat has complied with the terms and conditions of release. The May 8, 2013 affidavit of CBSA Inland Supervisor, Mr. Connelly, confirms that there has been no breach since January 2012 and that the monitoring of the terms and conditions of release has proceeded smoothly. It was also his opinion that some relaxing of the conditions of release was necessary but limited to the following modifications: a seven (7) day notice to CBSA for travel within Canada as long as Mr. Harkat provides the itinerary, the right to use the land-based telephone for both voice and fax transmissions, and access to a basic mobile phone without Internet capacity as long as CBSA has the phone number and supervises it by proper access to the service provider. Moreover, Mrs. Harkat should have the use of a mobile phone with Internet capacity that can only be accessed by her. In the Ministers’ views, the GPS supervision must remain in order to be able to determine Mr. Harkat’s whereabouts within Canada.

[51] For the purposes of these reasons, I have read the decision of my colleague Justice Blanchard in *Mahjoub (Re)*, above and I agree with his approach and analysis. I am aware that he has relaxed the terms and conditions of release considerably and, as an example, he lifted the conditions requiring a GPS ankle bracelet. However, each procedure must be assessed on its own set of facts. Furthermore, in this case a determination has been made by the Federal Court as to the

reasonableness of the certificate which has been overturned by the Federal Court of Appeal and which will be dealt with by the Supreme Court of Canada in October 2013.

[52] Having reviewed all of the current terms and conditions, I have come to the conclusion that they are disproportionate to the assessment of the danger to the security of Canada which is now at the lower end of the spectrum. Here are some of the reasons for this comment:

1. Mr. Harkat has been under the watchful eyes of the Canadian authorities since his arrival in Canada in 1995, was detained from 2002 to 2006 and was since released from detention with conditions that kept him under full supervision.
2. Mr. Harkat has not contacted, at least since 2002, any undesirable individual that may connect him directly or indirectly to terrorism.
3. The terms and conditions of release issued initially and as they were adapted through time have neutralized the danger to the security of Canada as it was periodically assessed.
4. The last threat assessment dates back to September 2009 and was then considered low. No update has been filed recently. I find that, as of today, the risk of danger remains although it is at the lower end of the spectrum.

5. At least going back to 2008, Mr. Harkat has respected and complied with the terms and conditions of release. Through his compliant behavior, he has earned a higher level of trust from this Court.

6. Mrs. Harkat has constantly made sure that Mr. Harkat abided by the terms and conditions of release, and her support of her husband has also added to the trust factor that the Court will take into consideration.

7. There is medical evidence indicating that Mr. Harkat suffers from the impact of the terms and conditions of release and from the consequences of being subjected to a security certificate.

[53] Mr. Harkat's request to lift some of the terms and conditions of release therefore must be reviewed so that they may be adapted to this new situation.

[54] The question is not about permitting Mr. Harkat to engage in everyday activities as it was in the past but rather to ensure a proper supervision of these activities. There is a time for everything and it is now time to move to other considerations.

[55] There was a time for house arrest, outings with strict supervision and then alone with a GPS and no computer access. As seen above, the circumstances have changed. The initial danger has diminished considerably. Mr. Harkat has complied through time with the strict conditions. Conditions of release therefore have to be adapted to this new favourable reality for Mr. Harkat.

[56] It is my assessment that the time for a GPS has passed. Since his marriage, Mr. Harkat has adapted to his new environment. He is a well-known person who has developed a stable relationship and new friends. He owes a lot to his family and friends, and he is not in a position to disappoint them by breaching any of the remaining conditions of release. The consequences for him are too important.

[57] It is also my assessment that a mobile phone, having only the capacity of receiving and making calls and text messaging can be used by Mr. Harkat as long as Mr. Harkat agrees to the CBSA supervision by having the telephone number and access to the information detained by the service provider. Furthermore, at home, he may have access to a desktop computer which shall have internet capacity. Every month, at a time to be decided by CBSA, Mr. Harkat will make the computer available so that it can be accessed by CBSA for inspection at its office. At any other time, with justification, CBSA may ask a designated judge for access to Mr. Harkat's computer. It goes without saying that Mr. Harkat shall not use his computer to access jihad sites or any other sites of this nature and shall not communicate with anyone who may have direct or indirect connections with jihad or terrorism.

[58] Mr. Harkat will be able to continue using a family landline telephone with fax capabilities.

[59] As for the notice of travel outside the National Capital Region, Mr. Harkat shall be required to give a five (5) full working days notice to CBSA of his travels, including the itinerary and Mr. Harkat shall communicate any change to the itinerary to CBSA at the earliest opportunity.

[60] As for Mrs. Harkat, she may have access to any communication technology that she requires as long as she has exclusive access to it.

[61] I conclude that these adjustments to the terms and conditions of release, in addition to the remaining terms and conditions, will suffice to neutralize the danger as assessed in the present reasons.

[62] The remaining terms and conditions of release are summarized as follows:

1. The sum of \$35,000 which was paid into Court pursuant to Rule 149 of the *Federal Courts Rules*, upon Mr. Harkat's release from incarceration, shall remain with the Court. In the event that any terms of the order is breached, an order may be sought by the Ministers that the full amount, plus any accrued interest, be paid to the Attorney General of Canada.
2. The existing performance bonds remain as a condition of release.
3. Mr. Harkat shall continue to reside at _____ in the City of Ottawa, Ontario (residence) with Sophie Harkat. In order to protect the privacy of those individuals, the address of the residence shall not be published within the public record of this proceeding.

4. Mr. Harkat shall inform the Court, the Ministers and CBSA of any change of address at least 72 hours prior to the change taking effect. No other persons may occupy the residence without the approval of CBSA.
5. Mr. Harkat shall report to CBSA once per week on a day and at a time as determined by a representative of CBSA.
6. Mr. Harkat shall not, at any time or in any way, associate or communicate directly or indirectly with:
 - i. any person whom Mr. Harkat knows, or ought to know, supports terrorism or violent Jihad or who attended any training camp or guest house operated by an entity that supports terrorism or violent Jihad and shall not access through electronic means any sites that promote Jihad in any way;
 - ii. Any person Mr. Harkat knows, or ought to know, has a criminal record, or who poses a threat to national security; or
 - iii. Any person the court may in the future specify in an order amending this order.
7. With judicial authorization, CBSA may access the residence of Mr. Harkat only for the purpose of verifying the compliance with the terms and conditions of release.
8. Mr. Harkat's passport and travel documents are to remain with CBSA.

9. If ordered to be removed from Canada, Mr. Harkat shall report as directed for removal.
10. Mr. Harkat shall appear at all Court hearings and any proceedings or process under the IRPA.
11. Mr. Harkat shall not possess any weapon, noxious substance or explosive, or any component thereof.
12. Mr. Harkat shall keep the peace and be of good conduct.
13. Any officer of the CBSA or any peace officer, if they have reasonable grounds to believe that any terms or conditions of this order has been breached, may arrest Mr. Harkat without warrant and cause him to be detained. Within 48 hours of such detention, a Judge of the Court, designated by the Chief Justice, shall forthwith determine whether there has been a breach of any terms or conditions of this Order, whether the terms of this Order should be amended and whether Mr. Harkat should remain incarcerated.
14. A breach of the Order shall constitute an offence within the meaning of section 127 of the *Criminal Code*, RSC 1985, c C-46 and shall constitute an offence pursuant to paragraph 124(1)(a) of the IRPA.

[63] The parties are being asked to discuss the modalities of the implementation of the new conditions and any changes to the remaining ones and to draft a new terms and conditions of release from detention. These shall become an Annex to an Order, with the approval of the Court, to be eventually signed by the Court and issued. In case that the parties cannot come to an agreement, they shall report back to the Court so that it can decide the matter(s) at issue. The GPS ankle bracelet can be removed as of today.

“Simon Noël”

Judge

SOLICITORS OF RECORD

DOCKET: DES-5-08

STYLE OF CAUSE: MOHAMED HARKAT v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION AND THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS CANADA

PLACES OF HEARINGS: Ottawa, Ontario

DATES OF HEARINGS: Public hearing: June 11, 2013
Closed hearing: June 18, 2013

REASONS FOR ORDER: NOËL J.

DATED: July 17, 2013

APPEARANCES:

Mr. David Tyndale FOR THE MINISTERS
Mr. Philippe Lacasse (closed hearing)

Mr. M. Webber, FOR THE RESPONDENTS
Mr. L. Russomanno

Mr. P. Copeland SPECIAL ADVOCATE

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada
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Webber Schroeder Goldstein FOR MOHAMED HARKAT
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