

**Date: 20071109**

**Docket: DES-3-03**

**Citation: 2007 FC 1163**

**Ottawa, Ontario, the 9th day of November 2007**

**Present: the Honourable Mr. Justice Simon Noël**

**BETWEEN:**

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

**IN RE the filing of this certificate in the Federal Court of Canada  
pursuant to subsection 77(1) and sections 78 and 80 of the IRPA;**

**IN RE an application to amend preventive condition No. 9,  
limiting movements to the area of the Island of Montréal;**

**AND IN RE Adil Charkaoui.**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This proceeding is a temporary application to revise the conditions of a parole order regarding Mr. Charkaoui filed in the Court on Friday, November 2, 2007, pursuant to the written motions procedure of Rule 369 of the *Federal Courts Rules*. The motion at bar seeks to amend preventive condition 9 to authorize Mr. Charkaoui to leave the Island of Montréal to attend the meeting of the youth wing of Amnesty International on Saturday, November 10, 2007, to be held at the Pointe-Lévis high school in Lévis, so he can address it (topic: [TRANSLATION] “use of

security certificates in Canada: Adil Charkaoui's experience") and answer questions for a total of 30 minutes.

[2] Mr. Charkaoui was invited on September 27, 2007 and it was not until the afternoon of November 2, 2007 that the Court was informed of such an invitation for November 10, 2007. The Ministers had not been approached for possible consent to a departure from the conditions already imposed on October 24, 2007.

[3] In his motion Mr. Charkaoui simply made his application without further explanation, except to mention that his father and mother would be accompanying him as supervisors if the leave was granted and to provide information on the organization of the meeting, the location and the participants: the event was intended to bring together several hundred people, mostly teenagers. Mr. Charkaoui's affidavit simply stated that [TRANSLATION] "the facts alleged in this affidavit are true".

[4] Yet, in its judgment *Re Charkaoui*, 2006 FC 891, at paragraph 12, the Court took the trouble to indicate that the territorial limit was important (condition 9), but that exceptions could be made based on the complete record and submissions made. In the same judgment, while allowing family trips outside the Island, it stated that the purpose of the preventive conditions was to neutralize the risk to national security, taking into account "his day-to-day needs and obligations". This is what the Court has always done since Mr. Charkaoui was released on February 17, 2005. The background to

the case speaks for itself. In view of Mr. Charkaoui's application and its content, or what may be regarded as his justification for such an application, it is worth citing paragraph 12:

In closing, the Court reiterates the importance of the territorial limit described in condition 9 of the order and adds that requests for temporary exceptions to this principle will be dealt with taking into account the complete record and submissions made. In granting this exception, the Court reiterates its goal of applying preventive conditions to neutralize the danger to national security or to other persons while granting a certain level of independence to Mr. Charkaoui, taking into consideration his day-to-day needs and obligations. Although the Ministers are of the view that the visits to the Granby Zoo and to Parc Safari do not have the same importance as those to which they already agreed (Mr. Charkaoui's presence at the Supreme Court hearing, etc.), this type of family outing including his relatives is acceptable, taking into consideration the special circumstances of the request. Nevertheless, trips are to be made to specific places, which are known to be family-oriented, in the presence of two supervisors (one of whom is obliged to draft a detailed report), within the hours already specified in the order, with the obligation of advising the Canada Border Services Agency before and after the trips. Thus, all the preventive conditions remain, except for the temporary exception created for condition 9 of the order. In my humble opinion, considering the request and the limits I am placing on it, there is a balance between the goal of neutralizing the danger to national security and to other persons on the one hand and the day-to-day needs and obligations of Mr. Charkaoui on the other.

[5] On other occasions the Court has allowed Mr. Charkaoui to travel outside the Montréal area to, *inter alia*, spend more time with his family or to attend court hearings on his case. The Court has also allowed Mr. Charkaoui to participate with his counsel in public hearings of the International Commission of Jurists. On the other hand, in the application at bar there is nothing to explain how such a trip outside the Island of Montréal (a return journey of some 500 kilometres outside the prescribed area) for several hours is justifiable in terms of Mr. Charkaoui's day-to-day needs and

obligations. Mr. Charkaoui's motion and affidavit in support of the said motion maintain complete silence on this point. The Court cannot itself compensate for such silence.

[6] However, even more significant is the fact that the procedure does not discuss why alternative solutions to physical presence could not be considered. This is an important point to be considered when such an application is in question.

[7] The Ministers objected to the lifting of the condition because in their view Mr. Charkaoui had not shown that the event was so important to him that the Court should agree to modifying the condition or that alternatives had been considered (such as participation by videoconferencing, teleconferencing or in the Montréal office of Amnesty International). They referred to the criteria set out by the Supreme Court in *Charkaoui* and to those identified by this Court in *Harkat* and *Charkaoui* and maintained that it would not be suitable for this Court to agree to the modification of the condition sought in the case at bar.

[8] The result of this is not to prevent Mr. Charkaoui speaking to any particular group. The preventive conditions were not designed with such a purpose in mind. Since February 2005 Mr. Charkaoui has attended several meetings without the Court stopping him. He can still do so on Saturday, November 10, 2007, by using the appropriate means without leaving the Island of Montréal. As worded, his application does not allow the Court to assess the situation on the basis of the particular facts of the case at bar and "his day-to-day needs and obligations". The Court cannot make a decision in such circumstances.

[9] The Court has no choice but to deny the temporary application as made.

**JUDGMENT**

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

- the temporary application to amend condition 9 is dismissed.

**“Simon Noël”**  
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**Judge**

Certified true translation

Brian McCordick, Translator

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

**DOCKET:** DES-3-03  
**STYLE OF CAUSE:**

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of the *Immigration and Refugee Protection Act*,  
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AND IN RE Adil Charkaoui (Mr. Charkaoui)

**MOTION IN WRITING CONSIDERED WITHOUT APPEARANCE BY PARTIES**

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:**

The Honourable Mr. Justice Simon Noël

**DATED:** November 9, 2007

**APPEARANCES:**

Daniel Roussy  
Luc Cadieux

FOR THE SOLICITOR GENERAL  
OF CANADA

Daniel Latulippe

FOR THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

Dominique Larochelle  
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FOR ADIL CHARKAOUI

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FOR THE SOLICITOR GENERAL  
OF CANADA AND MINISTER OF  
CITIZENSHIP AND IMMIGRATION

FOR ADIL CHARKAOUI