

Dockets: DES-3-08
DES-5-08
DES-6-08
DES-7-08

Ottawa, Ontario, April 14, 2008

PRESENT: The Honourable Mr. Justice Blanchard

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 an alleged conflict of
interest raised by the Ministers concerning the proposed
appointments of Mr. John Norris and Mr. P. Copeland
as special advocates

AND IN THE MATTER OF Hassan ALMREI
AND IN THE MATTER OF Mohamed HARKAT
AND IN THE MATTER OF Mahmoud JABALLAH
AND IN THE MATTER OF Mohamed Zeki MAHJOUR

ORDER

UPON the Court being informed by Messrs. Mahmoud Jaballah and Mohamed Zeki Mahjoub that they wish to have Mr. John Norris appointed as their special advocate pursuant to section 83(1)(b) of the IRPA;

UPON the Court being informed by Mr. Mohamed Harkat that he wishes to have Mr. Paul Copeland appointed as his special advocate pursuant to section 83(1)(b) of the IRPA;

UPON a preliminary objection being raised by the Ministers concerning the appointment of Mr. Norris as a special advocate for Messrs. Jaballah and Mahjoub, and Mr. Copeland as the special advocate for Mr. Harkat, pursuant to subsections 83(1.2)(b) and (c) of the IRPA;

UPON the direction of the Chief Justice on March 12, 2008, that the final decision on the appointment of the special advocate for Messrs. Almrei, Harkat, Jaballah and Mahjoub shall be made by the designated judge presiding at each DES proceeding;

UPON my being designated by the Chief Justice on March 20, 2008, to conduct the *in camera* hearing on the merits of the preliminary objection raised by the Ministers with respect to the alleged conflict of interest pursuant to section 83(1.2) of the IRPA concerning the request that Mr. Copeland be appointed special advocate in the Harkat proceeding and Mr. Norris be appointed special advocate in the Jaballah and Mahjoub proceedings (the Conflict Proceedings);

UPON the Court being advised that Mr. Hassan Almrei wishes to have Mr. Copeland appointed as his special advocate if he is not permitted to continue to act as counsel for him in the open proceedings;

UPON counsel for the Ministers advising that the Ministers object to Mr. Copeland's appointment as a special advocate in one DES file if he continues to act as counsel in another DES file;

UPON a preliminary objection being raised by the Ministers concerning the appointment of Mr. Copeland as the special advocate for Mr. Almrei pursuant to section 83(1.2) of the IRPA;

UPON appointing Ms. Nancy Brooks special advocate on behalf of Mr. Harkat, Mr. Brian Gover special advocate on behalf of Mr. Jaballah, Mr. Anil K. Kapoor special advocate on behalf of Mr. Mahjoub pursuant to paragraph 83.(1)(b) of the IRPA for the purpose of protecting the respective interests of Messrs. Harkat, Jaballah and Mahjoub in the conflict proceedings;

UPON finding that I have jurisdiction to consider at the Conflict Proceedings the preliminary objection raised by the Ministers concerning the appointment of Mr. Copeland as the special advocate for Mr. Almrei;

UPON Messrs. Almrei and Copeland being informed at the March 27, 2008 Common Case Management Conference, by Mr. Justice Noël that the Ministers' objection in relation to the appointment of Mr. Copeland as special advocate for Mr. Almrei, be dealt in the within proceedings along with the Ministers' other preliminary objection;

UPON neither Mr. Almrei nor Mr. Copeland requesting that a special advocate be appointed for the purpose of protecting of Mr. Almrei's interest in the within conflict proceedings;

UPON having authorized a public summary by order dated April 4, 2008, for the purpose of reasonably informing the interested persons and their respective counsel of the case made by the Ministers in the conflict proceedings, which summary is attached as Schedule "A" to this order;

UPON having authorized limited communications in writing by orders dated March 26, 2008, March 28, 2008, April 4, 2008, April 10, 2008 and April 11, 2008;

UPON being advised by Messrs. Anil Kapoor and Brian Gover, the special advocates for Messrs. Mahjoub and Jaballah respectively on the Conflict Proceedings, that Mr. Norris, in accordance with Schedule "B" to this order, has agreed, upon his appointment as special advocate for either Mr. Jaballah or Mr. Mahjoub, or both of them, in their respective DES files, to:

- a) cease to act for Mr. Jaballah in the open proceeding or in any proceeding involving national security issues;
- b) cease to act for Mr. Mahjoub in the open proceeding or in any proceeding involving national security issues;
- c) cease to act as counsel for Mr. Muayyed Nureddin in relation to the "Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin" (the Iacobucci Inquiry);

- d) confirm that he is not counsel for Mr. Nureddin with respect to any litigation pertaining to the matters being reviewed by the Iacobucci Inquiry;
- e) confirm that he will not act for any person involved in the Iacobucci Inquiry insofar as the retainer might relate to matters under consideration by the Inquiry or in any proceeding relating to national security issues;
- f) confirm that he will not act for Mr. Abdellah Ouzghar in any proceedings that involve national security issues;
- g) acknowledge his reliance upon the Ministers' position that there is no objection to his being appointed a Special Advocate for Messrs. Jaballah and Mahjoub and
 - i) continuing to act for Mr. Ouzghar on his appeal against the order for his committal pursuant to s.49 of the *Extradition Act* (Court of Appeal for Ontario File No. C46541) and any further proceedings arising from the disposition of that appeal;
 - ii) continuing to act for Mr. Ouzghar on his application for judicial review for the order for his surrender pursuant to s. 57 of the *Extradition Act* (Court of Appeal for Ontario File No. C48310) and any further proceedings arising from the disposition of that application.

UPON being advised by Ms. Nancy Brooks, special advocate for Mr. Harkat on the Conflict Proceedings, that Mr. Copeland, in accordance with Schedule "C" to this order, has undertaken, upon his appointment as special advocate for either Mr. Almrei or Mr. Harkat, or both of them, in their respective DES proceedings, to:

- a) withdraw as counsel for Mr. Almrei in DES-3-08 and as counsel for Mr. Harkat in DES-5-08;
- b) withdraw as counsel for Mr. Almalki in respect of the Iacobucci Inquiry and in respect of any litigation pertaining to the matters being reviewed by the Iacobucci Inquiry;
- c) not act as counsel for Mr. Elmaati or any other persons involved in the Iacobucci Inquiry insofar as those retainers might relate to the matters under consideration by the Inquiry;

- d) not act for Messrs. Almrei and Harkat in any future proceedings arising out of national security issues;
- e) agree that these undertakings herein may be incorporated into an order of the Court.

UPON being advised by counsel for the Ministers that given that Mr. Norris and Mr. Copeland are prepared to comply with the conditions set out in Schedules “B” and “C” respectively, the Ministers have withdrawn their objection in the Conflict Proceedings to the appointment of Messrs. Norris and Copeland as special advocates, based on the evidence and other information filed at the Conflict Proceedings;

UPON examining the information and evidence filed by the Ministers, the agreement of Mr. Norris as set out in Schedule “B” and the undertaking of Mr. Copeland as set out in Schedule “C”, and upon hearing the submissions of counsel;

AND UPON considering that section 83(1.2) of the IRPA requires that the judge designated pursuant to section 76 of the IRPA for the purpose of section 78 of the IRPA shall, if the permanent resident or foreign national requests that a particular person be appointed under paragraph (1)(b), appoint that person unless the judge is satisfied that the appointment would result in the proceeding being unreasonably delayed; the appointment would place the person in a conflict of interest; or the person has knowledge of information or other evidence whose disclosure would be injurious to national security or endanger the safety of any person and, in the

circumstances there is a risk of inadvertent disclosure of that information or other evidence;

THIS COURT ORDERS that:

1. The preliminary objections raised by the Ministers concerning the appointment of Mr. Norris and Mr. Copeland having been withdrawn on the basis of the agreement of Mr. Norris set out in Schedule “B” and the undertaking of Mr. Copeland set out in Schedule “C”; this Court is no longer required to make and makes no findings with respect to the alleged conflict of interest concerning the requests that Mr. Copeland be appointed as special advocate in the Almrei and Harkat proceedings and that Mr. Norris be appointed as special advocate in the Jaballah and Mahjoub proceedings;
2. In accordance with the March 12, 2008 direction of the Chief Justice, the matter of the appointment of the special advocates for Messrs. Almrei, Harkat, Jaballah and Mahjoub in their respective DES files is reserved to be decided by the designated judge in each of those files, based on any evidence and other information that may be placed before him or her.

“Edmond P. Blanchard”

Judge

SCHEDULE “A”

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BETWEEN:

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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 Hassan ALMREI
AND IN THE MATTER OF Mohamed HARKAT
AND IN THE MATTER OF Mahmoud JABALLAH
AND IN THE MATTER OF Mohamed Zeki MAHJOUB**

**SUMMARY OF INFORMATION IN RELATION TO THE
APPOINTMENT OF SPECIAL ADVOCATES**

1. The Minister of Citizenship and Immigration and the Minister of Public Safety (the Ministers) are aware that John Norris and Paul Copeland have applied to be Special Advocates in the security certificate cases of Mahmoud Jaballah and Mohamed Zeki Mahjoub, and of Hassan Almrei and Mohammed Harkat respectively.

2. The Ministers are aware that in the event that Mr. Norris and Mr. Copeland are appointed as Special Advocates, Mr. Norris has agreed to withdraw as counsel for Mr. Jaballah

and Mr. Mahjoub, and Mr. Copeland has agreed to withdraw as counsel for Mr. Almrei and Mr. Harkat.

3. The Ministers understand that Mr. Norris is counsel for Muayyed Nureddin and Abdellah Ouzghar, and that Mr. Copeland is counsel for Abdullah Almalki in other proceedings.

4. Mr. Nureddin and Mr. Almalki are participants in the Iacobucci Inquiry concerning the actions of Canadian officials in relation to whether the detention of Mr. Almalki, Ahmad Abou-Elmaati and Mr. Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances; whether there were deficiencies in the actions taken by Canadian officials to provide consular services to Mr. Almalki, Mr. Elmaati and Mr. Nureddin while they were detained in Syria or Egypt; and, whether any mistreatment of Mr. Almalki, Mr. Elmaati and Mr. Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances. Mr. Ouzghar is the subject of a pending extradition request commenced in Canada by the Attorney General of Canada in 2001 on behalf of France.

5. The Ministers are concerned about the need to protect sources of information including relationships with domestic and foreign agencies as well as methods of operation in the interests of national security and the safety of persons. The Ministers believe that allowing Mr. Norris and Mr. Copeland to view the classified information in their capacity as Special Advocates will bring into play the principles of the informed reader and the mosaic effect if they continue to represent Mr. Nurreddin, Mr. Ouzghar, Mr. Almalki, Mr. Almrei, Mr. Harkat, Mr. Jaballah or Mr. Mahjoub in court or other proceedings involving national security issues.

6. The Ministers are also concerned pursuant sections 83(1.2) (b) and (c) of the *Immigration and Refugee Protection Act*, about a conflict of interest and a risk of inadvertent disclosure.

Schedule "B"

**ANIL K. KAPOOR
BARRISTERS**

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April 8, 2008

via email Donald.MacIntosh@ppsc-sppc.gc.ca
Mr. Donald
MacIntosh Senior
Counsel
Immigration Law
Section Department of
Justice Ontario
Regional Office The
Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Dear Mr. MacIntosh:

**RE: Mr. Norris' Appointment as Special Advocate for Mahmoud Jaballah
& Mohamed Zeki Mahjoub**

Further to our telephone conversation this afternoon, I confirm that the Ministers' objection to Mr. Norris' appointment as a Special Advocate for Messrs. Jaballah and Mahjoub will be withdrawn in accordance with the terms set out in this letter. Mr. Gover, who represents Mr. Jaballah's interests, has participated in the preparation of this letter and agrees with its contents. We are content that you bring this letter to the attention of Blanchard J. upon the return of this matter on Thursday April 10, 2008.

In terms of the closed proceeding we have agreed that in light of the resolution reached, there is nothing for Blanchard J. to adjudicate under the limited terms of his involvement. Accordingly, you have agreed that there is no need for either Mr. Gover or myself to attend on April 10th and 11th you will simply withdraw the objection and, if need be, advise Blanchard J. of the nature of the resolution.

In terms of the open proceeding, Mr. Norris will seek his appointment without objection from the Ministers provided that Mr. Norris files a certificate setting out that upon his appointment he will:

- a) cease to act for Mr. Jaballah in the open proceeding or in any proceeding involving national security issues;

Anil K. Kapoor
Clerk)

(akk@20adelaide.com)
@20adelaide.com)

Lindsay L. Daviau

(lld @ 20adelaide.com)

Lucy Chiappetta (Law

(lch

- b) cease to act for Mr. Mahjoub in the open proceeding or in any proceeding involving national security issues;
- c) cease to act as counsel for Muayyed Nureddin in relation to the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almaki, Ahmad Abou-Elmaati and Muayyed Nureddin (the Iacobucci Internal Inquiry”)
- d) confirm that he is not counsel to Muayyed Nureddin with respect to any litigation pertaining to the matters being reviewed by the Iacobucci Internal Inquiry;
- e) confirm that he will not act for any person involved in the Iacobucci Internal Inquiry insofar as the retainer might relate to matters under consideration by the Inquiry or in any proceeding relating to national security issues;
- f) confirm that he will not act for Mr. Abdellah Ouzghar in any proceedings that involve national security issues;
- g) acknowledge his reliance upon the Ministers’ position that there is no objection to his being appointed a Special Advocate for Messrs. Jaballah and Mahjoub and
 - i) continuing to act for Mr. Ouzghar on his appeal against the Order for his committal pursuant to s.49 of the *Extradition Act* (Court of Appeal for Ontario File No. C46541) and any further proceedings arising from the disposition of that appeal;
 - ii) continuing to act for Mr. Ouzghar on his application for judicial review for the Order for his surrender pursuant to s. 57 of the *Extradition Act* (Court of Appeal for Ontario File No. C48310) and any further proceedings arising from the disposition of that application.

These matters, including the Ministers’ position that the Ouzghar Extradition proceedings do not engage any objection to Mr. Norris’ appointment, will all form part of the recitals to the Order appointing Mr. Norris.

Please confirm that this accurately reflects our agreement on this issue. If you have any questions, comments or concerns please do not hesitate to contact me.

Yours truly,



Anil K. Kapoor

AKK:lc

cc: John Norris via email - john@ruby-edwardh.com
Brian Gover via email - briang@stockwoods.ca
Toby Hoffmann via email - hoffmannto@smtg.gc.ca
Bob Batt via email - rbatt@justice.gc.ca

Schedule "C"

DES-3-08

DES-5-08

UNDERTAKING OF PAUL D. COPELAND

WHEREAS Mohamed Harkat has nominated me to be one of his Special Advocates in DES-5-08;

AND WHEREAS counsel for the Ministers have advised the Court that they object to my appointment as a Special Advocate pursuant to subsections 83(1.2) (h) and (c) of the *Immigration and Refugee Protection Act* and those conflicts proceedings are currently before the Court;

AND WHEREAS I advised the Court by letter dated March 17, 2008 that if I am forced to make a choice *between* being Special Advocate in the Harkat case and counsel for Mr. Almrei in DES-3-08, that I would act as Special Advocate for Mr. Harkat and apply to take on the role of Special Advocate in Mr. Almrei's case, and I advised the Court further that if this should occur Mr. Almrei has advised me that he would want me to be one of the Special Advocates in his case;

AND WHEREAS counsel for the Ministers have advised me and the Court by letter dated April 1, 2008 that the Ministers object to my designation as a Special Advocate in one DES file if I intend to continue to act as counsel in another DES file;

AND WHEREAS I have read the public Summary of Information in Relation to the Appointment of Special Advocates issued by the Court in its order dated April 4, 2008;

AND WHEREAS counsel for the Ministers have advised the Court that if I am willing to give certain undertakings, the Ministers would inform the Court that there is no matter to be litigated in relation to the issues of conflict of interest and inadvertent disclosure in my acting as Special Advocate for Messrs Almrei and/or Harkat in respect of their outstanding security certificates in DES-3-08 and DES-5-08, respectively;

AND WHEREAS I have been informed by the Special Advocate for Mr. Harkat in the conflicts proceedings, Nancy Brooks, in her communication with me as authorized by the Court in its order dated April 4, 2008, that if the following undertakings are given, the Ministers will inform the Court that there is no matter to be litigated in relation to the issues of conflict of interest and inadvertent disclosure in my acting as Special Advocate for Messrs Almrei and/or Harkat in respect of their outstanding security certificates in DES-3-08 and DES-5-08, respectively;

NOW THEREFORE, I, Paul D. Copeland, undertake as follows:

In the event I am appointed by the Court as Special Advocate for Mr. Almrei in security certificate proceeding DES-3-08 or for Mr. Harkat in security certificate proceeding DES-5-08, or as Special Advocate to both of them in their respective DES proceedings;

Upon my appointment as a Special Advocate for either or for both:

1. I undertake to withdraw as counsel for Mr. Almrei in DES-3-08 and as counsel for Mr. Harkat in DES-5-08.
2. I undertake to withdraw as counsel for Mr. Almalki in respect of the Iacobucci inquiry and in respect of any litigation pertaining to the matters being reviewed by the Iacobucci Inquiry;

I undertake that I will not act as counsel for *Mr. Elmaati* or any other persons involved in the Iacobucci Inquiry insofar as my retainer might relate to the matters under consideration by the Inquiry;
4. I undertake not to act for Messrs. Almrei and Harkat in any future proceedings arising out of national security issues.
5. I agree that my undertakings herein may be incorporated into an Order of the Court

Signed by me at Toronto, Ontario the 10th day of April, 2008


PAUL D. COPELAND
