

Date: 20081103

Docket: DES-5-08

Citation: 2008 FC 1288

Ottawa, Ontario, November 3, 2008

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

**IN THE MATTER OF a certificate signed pursuant to subsection
77(1) of the *Immigration and Refugee Protection Act*, S.C. 2001,
c.27, (“IRPA”);**

and

IN THE MATTER OF Mohamed HARKAT

REASONS FOR ORDER AND ORDER

[1] June 4, 2008, after consultation with counsel for the parties and the Special Advocates, the Court issued an order which included a schedule of in camera and public hearings. It was determined that the week of November 3, 2008 would be reserved for public hearings that would deal with, amongst other things, the issue of the determination of the reasonableness of the certificate.

[2] June 26, 2008, the Supreme Court issued a judgment in the matter of *Charkaoui v. Canada (Minister of Citizenship and Immigration)*, 2008 SCC 38 (Charkaoui #2). The impact of this decision led this Court to issue an order dated September 24, 2008 which established the scope of disclosure required from the Ministers. The time frame required by CSIS for the collection and

production of the extensive disclosure required by Charkaoui #2 was estimated at six (6) months. A witness that testified to this effect noted that CSIS will transfer as much material to the designated proceedings section as soon as it becomes available.

[3] In a communication from the Court to Mr. Harkat and his counsel issued September 24, 2008 with the collaboration of counsel for the Ministers and the Special Advocates, a summary of the in camera hearings held in September, 2008 was rendered public. In this communication, the Court explained that counsel for the Ministers had presented their in camera evidence in support of the reasonableness of the certificate, dangerousness, and the scope of disclosure to be made to Mr. Harkat. The Special Advocates, for their part, cross-examined on the issues of the scope of disclosure and the danger, if any, posed by Mr. Harkat in respect to the variation of the release order, subject to their right to resume the cross-examination if further disclosure is as such that it warrants such a situation.

[4] Counsel for Mr. Harkat filed a motion with the Court for an order granting an adjournment of the public hearing scheduled for the week of November 3, 2008 to allow the Ministers an opportunity to complete their disclosure obligations, and to ensure that all counsel for Mr. Harkat can be present at the hearing.

[5] As it can be understood from the preceding paragraph, the basis for the motion to adjourn is the further disclosure to be made to the designated proceedings section of the Court as a result of the Charkaoui #2 decision, and the unavailability of one of the three counsel of Mr. Harkat during the week of November 3, 2008.

[6] Counsel for the Ministers submit that they are ready to proceed with their witnesses in support of the reasonableness of the certificate and the danger posed by Mr. Harkat.

[7] The Court has noted the clear and express intention of the legislator to ensure that the proceedings shall proceed as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit (see paragraph 83(1)(a) of the *Immigration and Refugee Protection Act* (IRPA)).

[8] The Court further notes that the legislator has also made provisions for ongoing summaries of information, which will not be injurious to national security or endanger the safety of any person, to be disclosed “throughout the proceeding” to the named person and his counsel (see paragraph 83(1)(e) of IRPA).

[9] On the topic of the reasonableness of the certificate, the Court does not intend to impose on counsel for Mr. Harkat, at this time, a cross-examination of the Ministers witnesses until further disclosure is made by the Ministers to the designated proceedings section of the Court and that a review of it is ongoing by the Special Advocates and the Court.

[10] Counsel for the Ministers have taken the position that the secret evidence in support of the reasonableness of the certificate is also evidence that speaks to the assessment of danger associated to Mr. Harkat. Mr. Harkat would also like the Court to review the conditions of his release. Furthermore, this evidence is useful for the purposes of these proceedings on a short-term basis only. Therefore, I fail to see in this situation a real prejudice to Mr. Harkat if this Court hears evidence from the Ministers on the reasonableness of the certificate and the danger associated to

Mr. Harkat. On the contrary, I can perceive some benefits to Mr. Harkat, if only that it permits the Court to be in a better position to assess this evidence in light of the request made by him to vary the conditions of his release.

[11] The other ground in support of an adjournment is the unavailability of Mr. Webber for the week of November 3, 2008. Mr. Webber's agenda has been the subject of discussion for scheduling purposes since the time of the teleconference of May 30, 2008 which led to the order dated June 4, 2008 setting the schedule of the in camera and public hearings. A close reading of the order reflects already the impact of Mr. Webber's busy schedule on the original scheduling of the public hearings.

[12] Now, this Court is informed that due to unforeseen developments, Mr. Webber will, in all likelihood, still be before the jury in a second degree murder trial at the Superior Court of Justice during the week of November 3, 2008, and will therefore be unable to attend the commencement of the reasonableness hearing. The Court is also informed that Mr. Webber is scheduled to begin litigating another second degree murder trial on November 17, 2008, which will last four weeks.

Mr. Boxall has now updated this information and there is now a possibility that this litigation will not proceed.

[13] Without wanting to diminish the importance of Mr. Webber for the purposes of his role in these proceedings, Mr. Harkat is also represented by an experienced counsel in the person of Mr. Norman Boxall and he is seconded by a lawyer working in Mr. Webber's office, Mr. Leonardo Russomanno. Mr. Harkat is not without legal representation. As a matter of fact, he is professionally well represented.

ORDER

THIS COURT ORDERS that:

The motion to adjourn the public hearings scheduled for the week of November 3, 2008, is dismissed.

“Simon Noël”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: DES-5-08

STYLE OF CAUSE: **IN THE MATTER OF** a Certificate signed pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act, S. C. 2001, c. 27, (IRPA)*,
and
IN THE MATTER OF the referral of Mohamad Harkat

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 3, 2008

REASONS FOR ORDER: NOËL S. J.

DATED: November 3, 2008

APPEARANCES:

Mr. D. Tyndale, Mr. G. Lee, Mr. A. Seguin	FOR THE APPLICANT
Mr. N. Boxall, Mr. L. Russamanno	FOR THE RESPONDENT
Mr. P. Copeland	SPECIAL ADVOCATE

SOLICITORS OF RECORD:

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