



**Date: 20180123**

**Docket: DES-5-08**

**Citation: 2018 FC 62**

**BETWEEN:**

**IN THE MATTER OF a certificate signed pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act* [IRPA];**

**AND IN THE MATTER OF the referral of that certificate to the Federal Court of Canada pursuant to subsection 77(1) of the IRPA;**

**AND IN THE MATTER OF Mohamed HARKAT**

**REASONS FOR ORDER**

**ROUSSEL J.**

**I. Introduction**

[1] The Applicant, Mr. Mohamed Harkat, seeks to vary the terms and conditions of his release from detention pursuant to subsection 82(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. He maintains that the conditions imposed upon him continue to be onerous on him and his family and are disproportionate to any threat he is perceived to present.

[2] The Respondents, the Minister of Citizenship and Immigration [MCI] and the Minister of Public Safety and Emergency Preparedness [MPSEP], submit that the existing terms and

conditions should be maintained to neutralize the danger posed by Mr. Harkat, subject to certain clarifications and changes they propose.

[3] For the reasons that follow, I am prepared to make some adjustments to the terms and conditions of Mr. Harkat's release from detention but not to the extent that he has requested.

## II. Background

[4] For the purposes of this application, it is not necessary to provide a full account of the facts, procedural history and variations brought to Mr. Harkat's terms and conditions of release. Mr. Harkat has a long and detailed history with the courts and much has already been written. The reader is thus invited to review the most recent decisions rendered by this Court regarding the reasonableness of the second security certificate issued against Mr. Harkat (*Harkat (Re)*, 2010 FC 1241) and the relaxation of the terms and conditions of his release (*Harkat (Re)*, 2009 FC 241; *Harkat (Re)*, 2009 FC 1008; *Harkat v Canada (Citizenship and Immigration)*, 2013 FC 795; *Harkat v Canada (Citizenship and Immigration)*, 2014 FC 1034). I shall limit myself to the following brief overview.

[5] Mr. Harkat is a citizen of Algeria. He came to Canada in 1995 and was granted refugee status in 1997.

[6] On December 10, 2002, the Solicitor General of Canada and the MCI issued a first security certificate naming Mr. Harkat as a person inadmissible to Canada on grounds of national

security. He was arrested and detained in a correctional facility until his release under strict conditions in 2006 (*Harkat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 628).

[7] While this Court determined in 2005 that the security certificate was reasonable, the Supreme Court of Canada found in *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 [*Charkaoui #1*] that the procedure established under the IRPA for the judicial confirmation of security certificates, applications for release and review of detention violated sections 7, 9 and 10(c) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11. It suspended the declaration of invalidity of the impugned provisions for a period of one (1) year to allow Parliament to enact a new regime in compliance with its reasons.

[8] 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*, SC 2008, c 3 (SI/2008-24) came into force. The Ministers signed a new security certificate stating that Mr. Harkat was inadmissible to Canada on grounds of security for the reasons described in paragraphs 34(1)(c), 34(1)(d) and 34(1)(f) of the IRPA. After considering evidence tendered in both open and closed hearings, this Court determined on December 9, 2010, that the certificate was reasonable (*Harkat (Re)*, 2010 FC 1241). This finding was upheld by the Supreme Court of Canada on May 14, 2014 (*Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37).

[9] Since Mr. Harkat's release from detention in 2006, the terms and conditions of release have been the subject of ongoing reviews by this Court and over the years, have become more relaxed. Prior to the present review, the most recent hearings were held in June 2013 (both open and closed) and October 2014 (by way of teleconference) and resulted in decisions dated July 7, 2013, and October 31, 2014. The terms and conditions of release were subsequently amended on agreement of the parties by orders of this Court on January 16, 2015, and May 27, 2015.

[10] Generally, under the current terms and conditions of release, eight (8) individuals have executed performance bonds in varying amounts. Mr. Harkat has access to a desktop computer at home with internet connectivity and he is allowed to use a SIM card mobile telephone with the capacity of only receiving and making voice calls and text messages. The use of any internet features on the mobile telephone is prohibited and internet data shall be blocked through the service provider. Both the home computer and the mobile telephone are subject to supervision by the Canada Border Services Agency [CBSA]. While Mr. Harkat may use any landline telephone for employment purposes at his place of employment, he is not allowed to use any other mobile or landline telephone except in the event of an emergency, where he cannot reasonably access his mobile or landline telephone. He is not allowed access to the internet for employment purposes. Mr. Harkat must physically report to the CBSA once every two (2) weeks and, to the extent he wishes to travel outside the National Capital Region [NCR], he must remain in Canada and report to the CBSA by telephone once per day. If he leaves the city he is in after reporting to the CBSA, he is required to report again from the last city he is in that day. He is also required to provide the CBSA with at least five (5) full working days written notice of any such travel, including his itinerary.

[11] In reviewing the submissions of the parties, I noted that the “current conditions of release” listed in Annex I of Mr. Harkat’s memorandum of fact and law are not the most recent terms and conditions. It appears that the conditions listed are those which originate from the order dated January 16, 2015, after Justice Simon Noël of this Court issued his reasons for judgment on October 31, 2014 (*Harkat v Canada (Citizenship and Immigration)*, 2014 FC 1034). The terms and conditions of release were subsequently amended upon agreement by the parties by order dated May 27, 2015. For the most part, the terms and conditions are identical except with regards to the use of a SIM card mobile telephone. The specifics of Mr. Harkat’s current terms and conditions of release from detention are set out in Schedule “A” attached to these Reasons for Order.

[12] In addition, Mr. Harkat has been advised that a danger opinion is being processed which could result in his removal from Canada.

### III. Proposed Changes

[13] In his application record, Mr. Harkat requests a number of changes to the terms and conditions of his release, including:

- a. cancellation of the \$35,000.00 bond paid into Court pursuant to Rule 149 of the *Federal Courts Rules*, SOR 98-106 [Rules] upon Mr. Harkat’s release from incarceration (condition 2 of the order dated May 27, 2015);
- b. reduction of the value of the performance bonds agreed to by two (2) of his sureties (condition 3);

- c. authorization to possess a mobile telephone with SIM card and internet connectivity (condition 4);
- d. authorization to possess and use a mobile telephone for employment purposes (condition 4);
- e. authorization to possess and use a laptop and/or tablet computer with internet connectivity both inside and outside of the home (condition 7);
- f. provision that the CBSA may only access Mr. Harkat's computers without notice upon approval by a designated judge and only where the CBSA has justifiable reason to believe that Mr. Harkat is not complying with the terms and conditions of his release or because it is necessary for the purpose of ensuring the protection of national security and/or the safety of any person (condition 7);
- g. authorization to possess and use a computer (desktop, tablet or laptop) for work-related purposes (condition 7);
- h. cancellation of the condition which provides that Mr. Harkat's wife may only access any computer technology providing she does not allow Mr. Harkat to access it (condition 8);
- i. cancellation of the condition that other persons may not occupy Mr. Harkat's residence without the approval of the CBSA (condition 10);
- j. authorization to report to the CBSA by telephone through voice verification once a month, and if not possible, that the reporting requirement be once every three (3) months instead of once every two (2) weeks (condition 11);
- k. authorization to travel anywhere in Canada without having to provide notice and report to the CBSA (condition 12);

- l. requirement that in order to access Mr. Harkat's residence, the CBSA demonstrate to a designated judge that it has justifiable reason to believe that Mr. Harkat is not complying with the terms and conditions of his release or because it is necessary for the purpose of ensuring the protection of national security or the safety of any person (condition 14); and,
- m. authorization not to appear at all Court hearings and proceedings under the IRPA if his presence is not required (condition 17).

#### IV. The Evidence

[14] To support his application, Mr. Harkat relies on the sworn statements of his wife, Sophie Harkat, his mother-in-law, Pierrette Brunette, her partner, Philippe Parent and three (3) other sureties.

[15] In her affidavit, Ms. Harkat indicates that while she realizes that the security certificate was found to be reasonable, she feels that the process was unfair and believes her husband to be innocent, not a terrorist or a threat to anyone. She portrays her husband as a "kind, gentle, patient, very hard working, smart and extremely funny" person. She also describes the pain, stress and hardship of living under a security certificate regime. In particular, it has been difficult for her husband to find employment given the limitations which result from the terms and conditions of his release such as the inability to use technology at work and his reporting schedule to CBSA. Moreover, she states that the CBSA officers who monitor them are not discreet. For instance, during a trip to Brockville on her birthday in September 2016, they were followed by the CBSA officers the entire ten (10) hours of the trip despite three (3) of

Mr. Harkat's sureties being present with him. Additionally, when the CBSA officers come to pick up her husband's computer, there is a minimum of three (3) officers in bulletproof vests, with guns on their side and who park their dark vehicles outside the front of their house. This raises questions with their neighbours and brings them a lot of negative attention. Finally, Ms. Harkat asserts that she and her husband have been extremely vigilant in following the conditions of his release and requests that the conditions be eased so that their lives may be normalized.

[16] Ms. Brunette declares that Mr. Harkat has integrated well into the family and that he has a good relationship with children and in particular, his niece. She also indicates that the terms and conditions of Mr. Harkat's release have made life "intolerable" for her daughter and her husband. She complains of the CBSA's monitoring and, like her daughter, provides the example of when they travelled to Brockville, Ontario in 2016. According to Ms. Brunette, Mr. Harkat has demonstrated exemplary behaviour in abiding by the strict conditions which have been imposed on him. She states that the current conditions of release have made it difficult for Mr. Harkat to find employment and that he needs to be able to use a mobile telephone. She adds that her daughter's health is precarious and that she must be able to reach her husband at all times. Finally, she confirms that she is still willing to act as a surety to Mr. Harkat.

[17] Mr. Parent declares that he has known Mr. Harkat for over nine (9) years. Mr. Harkat and his wife are currently renting his property in Ottawa. Mr. Parent is of the view that there is no need for Mr. Harkat to be monitored by the CBSA when he travels with one of his sureties. He indicates that it is becoming more difficult to find a payphone or a landline for Mr. Harkat to

make his required daily reporting call to the CBSA. He asks the Court to relax Mr. Harkat's conditions of release so that it will make it easier for all of them to travel out of town. Like Ms. Harkat and her mother, he also would like to see the conditions of release relaxed so that Mr. Harkat may find employment. He further believes that Mr. Harkat needs to be able to use a mobile telephone in order for Ms. Harkat to reach him at all times given her medical condition. Finally, he confirms his continued willingness to act as a surety for Mr. Harkat.

[18] Three (3) of Mr. Harkat's other sureties, Jessica Squires, Leonard Bush and Kevin Skerrett also provided sworn statements supporting the relaxation of Mr. Harkat's conditions, and specifically in relation to the use of computers or other communication devices for employment purposes. They remain committed to being sureties for Mr. Harkat.

[19] In addition to relying on the foregoing sworn statements, Mr. Harkat provided many letters from friends, advocates and members of the public. These letters of support were sent to the MPSEP in January 2016 after the initiation of the danger opinion process. They advocate that Mr. Harkat has always respected the terms and conditions of his release and should be allowed to remain in Canada.

[20] Mr. Harkat also relies on a psychiatric opinion dated January 15, 2016, and a subsequent update letter dated August 4, 2017, prepared by Dr. Colin Cameron, MDCN, FRCPC, Clinical Director of the Integrated Forensic Program – Secure Treatment Unit of the Royal Ottawa Health Care Group. The 2016 medical assessment is addressed to the MPSEP and was prepared in the context of assisting the MPSEP to determine whether Mr. Harkat should be granted a ministerial

exemption to overcome his inadmissibility. It contains a psychiatric opinion on the mental health of Mr. Harkat, his psychological profile and any risk he may pose to Canadian society in terms of violence or other antisocial behaviour.

[21] Dr. Cameron explains that he assessed Mr. Harkat on the basis of a number of forensic tests that gage the potential for future misconduct. While he acknowledges the absence of tools designed to specifically assess the risk of engaging in or actively supporting terrorist acts or activities, he is of the view that the tools applied to assess risk generally can nevertheless be used. It is Dr. Cameron's assessment, based on the results of those tests and over a hundred hours spent with Mr. Harkat, that Mr. Harkat has no identifiable psychopathic traits and is considered to be at very low risk for violence or crime generally. He finds that the only risk items flagged in the assessments were those associated with Mr. Harkat's legal situation, employment and mental health problems as well as prior incarceration. He is also of the view that it is extremely unlikely that Mr. Harkat would engage in or support terrorism and that the status quo remains very detrimental to Mr. Harkat's mental health and prevents him from becoming a productive member of society.

[22] Finally, Mr. Harkat's application record also contains four (4) redacted risk assessments prepared by the CBSA's Intelligence Risk Assessment and Analysis Division, Intelligence Directorate (May 2009, January 2012, September 2014 and October 2016), recent news reports regarding a \$35 million lawsuit by five (5) employees of the Canadian Security Intelligence Service [CSIS], correspondence between Mr. Harkat's counsel and the CBSA and copy of a

September 23, 2009 public summary of the threat assessment conducted by the CSIS concerning Mr. Harkat.

[23] In support of their response, the Ministers filed an affidavit by the Acting Manager for Inland Enforcement for the CBSA Northern Ontario Region, Michel Renaud. He states that his role is to make sure that Mr. Harkat complies with all his conditions of release by assigning officers to monitor him. He further indicates that the monitoring of Mr. Harkat's terms and conditions has been proceeding smoothly since his last review in October 2014 and there have been no breaches of the terms and conditions. The CBSA's last risk assessment was completed in 2016 and concludes that the risks are neutralized by Mr. Harkat's compliance with the existing terms and conditions. However, concerns remain regarding risks of non-compliance if the degree of monitoring is relaxed as there will be more opportunities for Mr. Harkat to engage in non-compliance. Mr. Renaud explains that the danger process is underway. On August 28, 2015, Mr. Harkat received a modified notice of intention to seek a danger opinion pursuant to paragraph 115(2)(b) of the IRPA and, on March 31, 2017, his case was assigned to a senior decision maker for consideration.

[24] While there have been no breaches since Mr. Harkat's last review, the CBSA continues to have a number of concerns with respect to Mr. Harkat's use of computer technology. For instance, under the current conditions of release, Mr. Harkat is required to make his computer available for inspection to the CBSA, at a time to be decided by the CBSA without notice. The conditions also include that Ms. Harkat may have access to any communication technology that she requires providing she does not allow Mr. Harkat access to it. In September 2016, when the

CBSA officers attended Mr. Harkat's home to pick up his computer for inspection, the officers noted the proximity of Mr. Harkat's computer to Ms. Harkat's computer. There was also a mix up in a USB key given to the CBSA. Later, in August 2017, the CBSA officers noted that Ms. Harkat's monitor was left unattended while open to a Facebook page. At the same time, Mr. Harkat's monitor was not turned on and his keyboard and mouse were absent. The same month, the CBSA officers noted that Mr. Harkat had obtained a solid state drive for his computer which raises concerns regarding the evidentiary value of the data imaged for inspection. Furthermore, the use of a tablet does not appear to be feasible at this time as the CBSA has the same concerns with internet connectivity with a tablet as it does with a mobile telephone.

[25] Regarding the use of technology for the purposes of employment, Mr. Renaud indicates that he is advised that Mr. Harkat has seriously considered or applied for three (3) potential jobs: courier, school crossing guard and church custodian. The CBSA advised Mr. Harkat in September 2015 that if he took a position with the courier company, he would possibly be contravening conditions 4(g) (use of a mobile telephone other than his own), 12 (notice to travel outside the NCR) and 18 (possession of weapons, noxious substance or explosives) of the order dated May 27, 2015. The CBSA did not have any concerns regarding the school crossing guard position but has no information on why Mr. Harkat did not take the job. As for Mr. Harkat's current employment as a church custodian, arrangements were made to get around the requirement that Mr. Harkat have access to a mobile telephone for the purposes of his employment. Mr. Renaud states that the CBSA believes it can allow Mr. Harkat to use a computer for employment purposes while at his place of employment, subject to more

information regarding the computer that would be used and the extent of internal monitoring of work computers by the employer.

[26] On the issue of reporting, Mr. Renaud indicates that telephone reporting is not available in the NCR. The CBSA would be willing to provide some flexibility by allowing Mr. Harkat to change the date of his reporting providing he gives a forty-eight (48) hour notice to the CBSA. The CBSA is also prepared to reduce in person reporting to once per month.

[27] Mr. Renaud acknowledges that he has been one of the officers conducting the monitoring of Mr. Harkat along with other CBSA officers. The monitoring is conducted on a regular basis but the frequency and length vary. He states that it is necessary to occasionally monitor Mr. Harkat's travel to ensure compliance with his terms and conditions of release. The officers try to be discreet but they are required to wear their protective gear and there are a limited number of vehicles they can use. The CBSA recognizes that there has been monitoring outside of the NCR during Mr. and Ms. Harkat's recent trips to the cottage in the summer of 2017 and to the funeral of Ms. Harkat's grandmother in November 2016. He adds, however, that the CBSA has agreed to review its monitoring process to ensure the proper balance is maintained between the risks posed by Mr. Harkat and ensuring that the terms and conditions are respected.

[28] Mr. Renaud then discusses Mr. Harkat's use of a mobile telephone. He indicates that while allowed to use one with specific conditions, Mr. Harkat has not sought to obtain one due to cost. He further indicates that the CBSA continues to have concerns about its ability to monitor a mobile telephone and adds that the CBSA would need to periodically inspect such a telephone at

its premises to ensure compliance with the other terms and conditions. Because mobile telephones have a smaller amount of data capability than personal computers, deleted data is more likely to be overwritten by the telephone's operating system on a regular basis. The ability to examine internet usage on a mobile telephone is also more limited than examining internet usage on a personal computer.

[29] In addition to the sworn statements and documentary evidence filed by the parties, the Court also heard testimony from a number of witnesses. Ms. Harkat, Mr. Parent, Dr. Cameron and Mr. Renaud testified and for the most part, their testimony was consistent with their written statements. The Court also heard from Ms. Elizabeth Whitmore regarding Mr. Harkat's compliance with his conditions. She testified that she calls Mr. Harkat four (4) or five (5) times a year for him to come and repair things at her home. At one point, he indicated to her that he could not fix her laptop as he could not touch the laptop or have anything to do with it.

[30] The Court also heard from Mr. Harkat. At the outset of the hearing, the Ministers requested an adjournment of the hearing on the basis that counsel for Mr. Harkat only advised that she intended to call Mr. Harkat as a witness the day before the hearing. Counsel for the Ministers argued that while Mr. Harkat had the undoubted right to testify in these proceedings, no affidavit had been adduced by Mr. Harkat. Counsel argued that it would be unfair to proceed as he was not prepared to cross-examine Mr. Harkat. Counsel for Mr. Harkat responded that she had not filed supporting affidavits in other similar cases involving review of conditions of release. She informed the Court that Mr. Harkat intended to testify about his compliance with the conditions and the impact of those conditions on him and his wife. After hearing from both

counsel, I informed the parties that I would not be granting an adjournment as it would be a waste of judicial time and resources. Given the long-standing involvement of counsel for the Ministers in Mr. Harkat's case, and considering the nature of the testimony Mr. Harkat intended to give, I presented two (2) options to counsel. The first option was to have Mr. Harkat testify in chief that morning and be cross-examined the following day. The second option consisted of having Mr. Harkat's counsel provide the Ministers' counsel with a will-say statement by the end of the morning and having Mr. Harkat testify the next day, both in chief and in cross-examination. The first option was retained.

[31] Mr. Harkat testified that his current conditions of release make it difficult for him to obtain employment as he needs to be able to use a computer at work as well as a mobile telephone. He spoke of the places where he has sought employment and explained that while he is expected to carry a mobile telephone in his current employment, his employer has accommodated him by letting him use a walkie-talkie. He also testified that he has not looked for employment in the last two (2) years because of medical reasons.

[32] He testified about the difficulties that come from having to report once a day by telephone when he is travelling and gave the example of when he and his wife visited his sister-in-law's cottage. Because he is required to call in from a landline, he had to drive to town to make the call from a payphone as there was no telephone at the cottage and he is not allowed to use someone else's mobile telephone. All the while, the CBSA officers were already at the cottage monitoring him. With respect to the monitoring, Mr. Harkat testified that over the last two (2) years, the CBSA had been conducting its monitoring every Sunday.

[33] Mr. Harkat also responded to the CBSA's concerns regarding the location of the computers. He indicated that while his computer has been in the same location since November 2013, the CBSA has never raised the issue despite coming to his house on numerous occasions to pick up the computer for inspection. According to Mr. Harkat, the CBSA has inspected his computer maybe three (3) times in the last two (2) years. As for the missing mouse and keyboard, Mr. Harkat explained that they were in his bedroom because he uses the television as the computer's monitor. He also testified about the issue of his wife's unattended monitor. He explained that the last time the CBSA came without notice to the house, his wife had been on the computer that morning. When the men arrived, he warned her that the CBSA was there to pick up the computer. As she was undressed, she left the room and went to the washroom without turning the computer off.

[34] Regarding the solid state drive installed in his computer, Mr. Harkat testified that when his computer stopped working after being inspected by the CBSA, he was told by the CBSA to have the hard drive repaired at a local store and that it would pay for the repairs. The CBSA was given the receipt and did not raise the issue with him.

[35] Mr. Harkat also believes that the CBSA checks his emails remotely as he is required, under the terms and conditions of his release, to provide the CBSA with his passwords. While he would like to have access to a tablet, he does not want a mobile telephone for personal use because of roaming concerns and the possible interpretation that he would be in breach of his conditions.

[36] Mr. Harkat also testified about how the conditions have affected his relationships with others. He indicated that he would prefer that the CBSA not come to his house because people ask questions.

[37] Finally, Mr. Harkat testified that he does not have any information relating to the individuals he has been found to be associated with in the decision on the reasonableness of the certificate nor does he know how long his case will be before the MPSEP. He will do what Canada asks him to.

#### V. The Legal Framework

[38] For the purposes of this review, I accept the legal framework set out by my predecessor in *Harkat v Canada (Citizenship and Immigration)*, 2014 FC 1034 at paragraph 7 and in *Harkat v Canada (Citizenship and Immigration)*, 2013 FC 795 at paragraphs 25-27 (see also *Charkaoui #1* at paras 108-109, 119). I must determine whether Mr. Harkat's release poses a danger to the security of Canada and if so, whether it can be neutralized through the imposition of terms and conditions.

[39] In conducting this exercise, I may consider the following non-exhaustive list of factors:

- a) the Court's assessment of danger to the security of Canada associated with Mr. Harkat in light of all the evidence presented;
- b) 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;

- c) the decision, if any, on the reasonableness of the security certificate;
- d) the uncertain future as to the finality of the procedures;
- e) the elements of trust and credibility related to the behaviour of Mr. Harkat after having been released with terms and conditions and his compliance with them;
- f) the passage of time; and,
- g) the impact of the terms and conditions of release on Mr. Harkat and his family and the proportionality between the danger posed by Mr. Harkat and the conditions of release.

*(Harkat v Canada (Citizenship and Immigration), 2013 FC 795 at para 26; Charkaoui #1 at paras 108-109).*

[40] The burden lies with the Ministers to establish on the “reasonable grounds to believe” standard that there is a need to maintain stringent conditions of release (*Mahjoub (Re)*, 2013 FC 10 at para 14). The Ministers must identify the terms and conditions and demonstrate that they are proportional to the danger posed (*Harkat v Canada (Citizenship and Immigration)*, 2013 FC 795 at para 27; *Harkat v Canada (Citizenship and Immigration)*, 2014 FC 1034 at para 7).

[41] I now propose to review each of those factors.

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

[42] As indicated above, the Ministers have the burden of establishing that Mr. Harkat poses a danger to national security or the safety of persons. They must show that the threat is serious, in

the sense that it is grounded on objectively reasonable suspicion based on evidence and that the threatened harm is substantial and not negligible (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 90; *Mahjoub (Re)*, 2017 FC 603 at para 49).

[43] The Ministers acknowledge that the level of danger that Mr. Harkat poses to the security of Canada has diminished over the years. However, they contend that the danger has not evaporated, nor have the findings contained in the decision upholding the security certificate. The Court found that while the danger associated with Mr. Harkat had diminished over time, he still posed a danger to the security of Canada (*Harkat (Re)*, 2010 FC 1241 at paras 13, 545). The Ministers argue that the present conditions continue to be necessary to neutralize this danger.

[44] The Ministers also rely on a risk assessment prepared by the CBSA in 2016 which indicates that the degree of risk associated with non-compliance of the terms and conditions is assessed to be “medium to medium low”. This assessment is based on the assumption that the current terms are in place.

[45] Mr. Harkat, on the other hand, submits that there is no current evidence demonstrating that he is a danger to Canada or to the safety of any person. He argues that the evidence of danger is dated and cannot reasonably be relied upon. The last threat assessment conducted by the CSIS was in 2009 and disclosed no new information about his involvement in threat-related activities. Moreover, the assessment was based on information which predated his detention in 2002. As for the CBSA risk assessment upon which the Ministers rely, it does not address the threat he poses but rather the risk of non-compliance with the terms and conditions imposed by

the Court. Mr. Harkat further notes that the CBSA has not identified any actual breach since 2008.

[46] To support the argument that he does not pose a danger, Mr. Harkat relies on the advocacy letters contained in his record where the individuals state that they do not believe he would engage in violence or contribute to harm others and on the conclusions drawn by Dr. Cameron in his report dated January 15, 2016.

[47] In their written submissions, the Ministers submit that Dr. Cameron's report cannot be admitted into evidence on the basis that it does not comply with the Rules of this Court for filing and relying on expert evidence. However, they conceded at the hearing that Dr. Cameron's report could be admitted under section 52.3 of the Rules which creates an exception where the expert is the treating medical professional and his evidence is limited to the topics enumerated in the said Rule.

[48] The Ministers also submit that I should give less weight to Dr. Cameron's evidence to the extent his opinion considers the ultimate questions that I must determine (*R v Mohan*, [1994] 2 SCR 9 at paras 21, 24 (QL)) and generally advocates Mr. Harkat's position.

[49] I have reviewed Dr. Cameron's report and testimony. While I understand he has known Mr. Harkat for a long time and his psychiatric opinion on Mr. Harkat's mental health is worth noting, I am concerned about the line between advocacy and expertise being blurred. When confronted on cross-examination with a number of contradictions between the Court's findings

in the 2010 security certificate reasonableness decision and Mr. Harkat's version of events upon which the assessment was based, Dr. Cameron repeatedly attempted to distinguish the Court's findings with a number of explanations, including "at the time, 1990 to '95, the Taliban were our allies" (Transcript p 211), "one person's supporting terrorism is another person's freedom fighter" (Transcript p 218) and "in the 1990's, the Taliban were our friends" (Transcript p 219). In doing so, Dr. Cameron left me with the impression that he was advocating on Mr. Harkat's behalf instead of providing neutral evidence upon which I could draw my conclusions. Given that Dr. Cameron's written opinion was prepared with the intent of persuading the MPSEP to grant Mr. Harkat a ministerial exemption and that it accepts as fact elements of Mr. Harkat's story despite this Court's findings to the contrary, I will give the opinion limited weight regarding the risks associated with Mr. Harkat.

[50] On the basis of the evidence before me, I find, like my predecessor, that the danger posed by Mr. Harkat is situated at the lower end of the spectrum (*Harkat v Canada (Citizenship and Immigration)*, 2014 FC 1034 at paras 9-10; *Harkat (Re)*, 2009 FC 1008 at para 20; *Harkat v Canada (Citizenship and Immigration)*, 2013 FC 795 at paras 24, 28, 31).

[51] I am cognizant of the fact that the Ministers have adduced no new evidence regarding the level of danger posed by Mr. Harkat. The absence of such evidence clearly weighs in favour of Mr. Harkat. That being said, I cannot totally discount the findings contained in the decision upholding the security certificate and previous conditions review decisions. While the passage of time as well as Mr. Harkat's overall compliance with the conditions of release have significantly attenuated the level of danger he poses, I find that a danger still remains even though it is unclear

to me whether the effectiveness of the conditions of release is responsible for the reduced threat or whether Mr. Harkat has truly turned a new leaf and abandoned his past ideologies.

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

[52] It is not necessary for me to elaborate further on this factor and rely on the previous decisions of this Court. Overall, the terms and conditions of release have evolved proportionally with the danger associated with Mr. Harkat, who has demonstrated compliant behaviour throughout the years since his release in 2006. This also weighs in favour of Mr. Harkat.

**C. The decision on the reasonableness of the certificate, if any**

[53] In the decision upholding the reasonableness of the security certificate (*Harkat (Re)*, 2010 FC 1241), the Court concluded as follows:

[548] Having carefully considered the evidence presented during the public and closed hearings and after having assessed it on a balance of probabilities, I conclude that the Ministerial position on almost all the allegations made against Mr. Harkat must be accepted. I find that Mr. Harkat has engaged in terrorism, that he is a danger to the security of Canada and that he is a member of the Bin Laden Network through his past work for the Khattab group and his association with known terrorists and/or Islamist extremists, such as A. Khadr and Al Shehre. Given the legal framework of the IRPA and the definitions given herein, the Court finds that these factual conclusions link Mr. Harkat to the grounds set out in paragraphs 34(1)(c), (d) and (f) of the IRPA. Therefore, I rule that the certificate based on these three grounds of security against Mr. Harkat is reasonable.

[54] I note this decision was ultimately upheld by the Supreme Court of Canada.

[55] While not determinative, the grounds upon which the Court concluded the security certificate was reasonable are among the most serious grounds of inadmissibility. This factor weighs against Mr. Harkat.

**D. The uncertain future as to the finality of the proceedings**

[56] Relying on the decision in *Charkaoui #1*, this Court found in *Harkat v Canada (Citizenship and Immigration)*, 2013 FC 795 at paragraph 39 that the uncertain future length of the proceedings favours an open-minded approach towards the relaxation of the terms and conditions of release.

[57] It appears from the evidence, at least on a medium-term basis, that Mr. Harkat's future is uncertain.

[58] Although the decision on the reasonableness of the security certificate became final when it was upheld by the Supreme Court of Canada in 2014, the removal process remains outstanding. The CBSA has sought a danger opinion pursuant to paragraph 115(2)(b) of the IRPA whereby the MPSEP's delegate will determine whether Mr. Harkat poses a danger to national security or if the nature and severity of the acts committed reach a serious level of gravity and if so, whether the risk to Mr. Harkat of deporting him outweighs the danger. The danger opinion package with Mr. Harkat's submissions was provided to Immigration, Refugee and Citizenship Canada for decision on March 8, 2017, and a senior officer was assigned to the case on March 31, 2017, for consideration. While the danger opinion process usually takes between eighteen (18) and twenty-four (24) months, Mr. Renaud believes that it may be longer

in Mr. Harkat's case given the complexity of his case. Furthermore, if Mr. Harkat is unsuccessful in the danger opinion process, it is foreseeable that he is likely to seek judicial review of any future decisions, thus prolonging the uncertainty with respect to the finality of the proceedings.

**E. The elements of trust and credibility related to the behaviour of Mr. Harkat after having been released with conditions and his compliance with them**

[59] In *Harkat v Canada (Citizenship and Immigration)*, 2013 FC 795, the Court stated that the elements of trustworthiness and credibility are essential considerations in reviewing the appropriateness of the terms and conditions of release. It noted that since 2009, Mr. Harkat has complied with all the terms and conditions of his release and there have been no problems.

[60] According to Mr. Renaud's sworn statement, this continues to be the case (see para 3 of his affidavit), thus enhancing this Court's level of trust into Mr. Harkat.

**F. The passage of time**

[61] The most recent CSIS threat assessment was prepared in 2009 and the Ministers have presented no evidence demonstrating that Mr. Harkat has been involved in any threat-related activities since that time. Furthermore, Mr. Harkat has complied with the terms and conditions of his release since his release in 2006.

[62] The passage of time, at present, favours the relaxation of the conditions.

**G. The impact of the conditions of release on Mr. Harkat and his family and the proportionality between the danger he poses and the conditions of his release**

[63] The conditions of release must be proportionate and serve to neutralize the threat posed by Mr. Harkat (*Canada (Citizenship and Immigration) v Mahjoub*, 2009 FC 248 at para 65).

[64] Mr. Harkat submits that the conditions are excessive and that the CBSA's monitoring is intrusive and harsh. They have created tension and stress between the couple, causing them to experience medical issues over the years. It is also his view that the conditions prohibiting him from any means of communication make it impossible to find employment. The conditions have also had an impact on his relationship with his wife, his family and friends.

[65] At the hearing, the Ministers conceded that the conditions have a significant impact on the lives of Mr. Harkat and those around him. However, they submit that the conditions are proportional to the threat posed by Mr. Harkat. The absence of new evidence of threat related activity does not mean that the original rationale for imposing conditions no longer exists. Moreover, the lack of any incidents related to breaches of the terms and conditions is an indication that the conditions are working effectively and are serving to mitigate the risk posed by Mr. Harkat.

[66] There is no doubt from the evidence put forward that the conditions imposed by the Court have had an impact on the lives of Mr. Harkat, his family and friends. While they have been relaxed over the years, the conditions remain intrusive and seriously restrain their ability to live their lives freely.

VI. Review of Conditions

[67] Having reviewed all of the existing conditions, I have come to the conclusion that they are disproportionate with the danger posed by Mr. Harkat and that they should be attenuated. I now propose to examine the changes and clarifications proposed by the parties.

A. Cash bond in the amount of \$35,000

[68] Mr. Harkat is requesting that the cash bond of \$35,000 deposited with the Court to secure his release in 2006 be cancelled and returned. To support his request, he relies on the decision of the Supreme Court of Canada in *R v Antic*, 2017 SCC 27 [*Antic*], which found that where a monetary condition of release is necessary on bail review and a satisfactory personal recognizance or recognizance with sureties can be obtained, a bail review judge cannot impose a cash bond under paragraphs 515(2)(d) and 515(2)(e) of the *Criminal Code*, 1985 RCS c C-46.

[69] The Ministers oppose such a request on the basis that Mr. Harkat is attempting to improperly import the legal principles and standards into the immigration security context.

[70] I agree with the Ministers that the decision in *Antic* is inapplicable to this case. This is not a criminal proceeding and the Supreme Court of Canada avoided directly importing the principles of criminal law in the security certificate process (*Charkaoui v Canada (Citizenship and Immigration)*, 2008 SCC 38 at paras 47, 50-53). While the individual's fundamental interests of liberty and security may be equally at stake in the criminal law and security certificate regime, I also note that the review process under the IRPA contains no restrictions on the type of

conditions that can be ordered by the designated judge. The only limitation is that the designated judge be satisfied that the conditions imposed are appropriate to ensure that the person's release will not be injurious to national security or endanger the safety or that, if released, the person will appear at a proceeding or for removal.

[71] Accordingly, I am satisfied that this Court has the authority under the security certificate regime to order both the execution of a cash bond and performance bonds by sureties.

[72] For the reasons identified in the next paragraphs, I am not persuaded that the bond should be cancelled.

**B. Sureties**

[73] Eight (8) individuals have executed performance bonds in varying amounts. The performance bonds will be forfeited to Her Majesty the Queen in Right of Canada if Mr. Harkat breaches any of the terms and conditions of his release. Mr. Harkat is requesting that the performance bonds of Ms. Brunette and Mr. Parent be reduced from \$50,000 to \$25,000. A similar request was presented to the Court in 2014 but denied because no evidence was presented to support such a request (*Harkat v Canada (Citizenship and Immigration)*, 2014 FC 1034 at para 16).

[74] Mr. Parent testified that he is now retired and living on a fixed pension. If he was required to pay the bond, it would create difficulty for him and he would have to sell some of his

assets. Ms. Brunette did not provide any evidence to justify the reduction of her performance bond.

[75] The Ministers do not oppose a reduction in the amount of the performance bonds of both Ms. Brunette and Mr. Parent but suggest that any reduction should be assessed in light of any other changes made by the Court to the current terms and conditions of release.

[76] It is my assessment that the performance bonds of Ms. Brunette and Mr. Parent can be reduced to \$25,000 notwithstanding the lack of evidence by Ms. Brunette to support the reduction in her case. I am satisfied that these two (2) reduced amounts, in addition to the \$35,000 cash bond deposited into Court, will encourage Mr. Harkat to continue complying with his terms and conditions of release. Ms. Brunette and Mr. Parent have been very supportive of Mr. Harkat over the years and I trust that he will do nothing to disappoint them and put their savings at risk. The rest of the conditions provided in condition 3 of Schedule “A” shall remain the same.

**C. Use of a mobile telephone**

[77] In his written representations Mr. Harkat requests the use of a SIM card mobile telephone with internet connectivity. However, he testified at the hearing that he does not want a mobile telephone because he fears that its use might lead to a breach of his terms and conditions of release. As an example, he stated that people have explained to him that when one is driving on Highway 401, roaming from the United States can occur, which in turn might lead to a misunderstanding with the CBSA regarding his reporting requirements when travelling outside

the NCR. Ms. Harkat also stated in her testimony that financial reasons are preventing Mr. Harkat from obtaining a mobile telephone at this time.

[78] The Ministers oppose Mr. Harkat's request that he be allowed to use a mobile telephone with internet connectivity due to the limited ability to examine internet usage. In essence, they ask that no changes be made to condition 4 of the terms and conditions with the exception of certain additions and clarifications.

[79] Given that Mr. Harkat no longer seeks to have access to a mobile telephone with internet connectivity, condition 4 will remain the same, subject to the changes below. The parties can return to Court when Mr. Harkat is ready to possess a SIM card mobile telephone with internet connectivity. At that point, I will expect Mr. Harkat to demonstrate why he requires a mobile telephone with internet connectivity and how he intends to use it and for what purposes. As for the Ministers, they should be prepared to adduce evidence demonstrating how the examination of internet usage on a mobile telephone differs from that of a computer, whether particular models have greater capacity and what type of supervision would be required to accommodate the use of a mobile telephone with internet connectivity.

[80] As for the amendments proposed by the Ministers in condition 4, I am satisfied that the following conditions should be amended.

[81] First, condition 4(b) shall be amended to provide that the mobile telephone may also have voice mail capabilities. The CBSA shall also be entitled to verify that no other features are enabled on the telephone before Mr. Harkat may use the mobile telephone.

[82] Second, condition 4(c) shall be amended to change the inspection provision given that Mr. Harkat has requested that the CBSA's presence at his home be as minimal as possible. The condition will now read:

4(c) Mr. Harkat shall permit any employee of the CBSA, or any person designated by it, to periodically inspect the cell phone at the CBSA's offices. When the CBSA wishes to inspect the cell phone, it will contact Mr. Harkat and arrange for Mr. Harkat to deliver the cell phone to the CBSA offices within 24 hours of being informed of the inspection. The CBSA will return the cell phone as soon as possible after inspection. Mr. Harkat will be notified once inspection is complete and informed that he can attend the CBSA to retrieve the phone. The CBSA shall exercise this inspection authority reasonably.

[83] Third, condition 4(q) shall be amended to reflect the reality that Mr. Harkat has switched from a traditional telephone line to a VOIP line and shall state that Mr. Harkat may use a VOIP line, on the condition that the service is installed directly through his internet modem via an adapter.

[84] Fourth, a new clause will be added to indicate that Mr. Harkat shall not store any solicitor-client communications on his mobile telephone or voice mail.

[85] Finally, in accordance with condition 4(r), Mr. Harkat is currently entitled to use any landline telephone for employment purposes, while at his place of employment. He is not

otherwise to use any other mobile or landline telephone except in the event of an emergency, where he cannot reasonably access his mobile or landline telephone. If so, he is to inform the CBSA of such use as soon as practicable and provide the CBSA with the telephone number and service provider, on consent of the third party.

[86] Mr. Harkat is requesting the ability to use a mobile telephone for employment purposes. He and his wife have testified that the inability to use a mobile telephone is restrictive and has thus far prevented him from obtaining full-time employment with a courier company.

[87] Mr. Harkat has not persuaded me that the prohibition from using an employer provided mobile telephone for employment purposes is the cause of his inability to obtain full-time employment. Not all employers require their employees to use a mobile telephone. Nevertheless, I am prepared to relax this condition providing the employer provided mobile telephone does not have internet connectivity. To the extent Mr. Harkat is required to have a mobile telephone for employment purposes, Mr. Harkat will be required to provide a written undertaking that the mobile telephone will be used for employment purposes only and any unauthorized use will result in a breach of conditions. Mr. Harkat will also be required to advise his employer of this condition and ask his employer to report any unauthorized use to the CBSA. Mr. Harkat will provide the employer with the name and number of the contact person at the CBSA and provide the CBSA with the name and number of his work supervisor.

[88] Regarding Mr. Harkat's prohibition to use any other mobile telephone or landline telephone except in the event of an emergency, I am prepared to allow another exception.

Mr. Harkat shall be entitled to use another mobile telephone or landline telephone when he is travelling and required to report to the CBSA. In the event he uses another telephone, be it mobile or landline, Mr. Harkat will be required to inform the CBSA as soon as possible of the telephone number and service provider on consent of the third party.

[89] On a final note, while I understand Mr. Harkat has concerns with respect to breaching his terms and conditions, it is my view that the possession of a mobile telephone under the present conditions could address some of the other concerns raised in evidence. Ms. Harkat, Ms. Brunette and Mr. Parent have all indicated that Mr. Harkat should be able to have a mobile telephone so that Ms. Harkat is able to reach him if needed, whether at work or elsewhere. The possession of a mobile telephone would certainly address this need. Internet connectivity is not required for such purpose. I also believe that if Mr. Harkat had his own mobile telephone, it would avoid him having to obtain the third party's consent to disclose to the CBSA that person's name and service provider when using another mobile or landline telephone for emergency purposes.

**D. Computers**

[90] In addition to the use of a home computer with internet connectivity, Mr. Harkat requests that he be permitted to possess and use a laptop computer or tablet with internet connectivity. He is also seeking the ability to use them outside his home.

[91] The Ministers have agreed to the use of a laptop in the home as it appears from the preamble of condition 7 and conditions 7(e), 7(h), 7(j) and 7(k) of the proposed conditions found in Exhibit E of Mr. Renaud's affidavit. As a result, the conditions shall be amended accordingly.

[92] The Ministers object, however, to the use of a tablet on the basis that it possesses cellular capabilities and because monitoring and inspection issues arose during testing. They also object to Mr. Harkat's request to use the laptop and tablet with internet connectivity outside his home because the CBSA would not be able to monitor and ensure that Mr. Harkat is not engaging in unauthorized or improper communications.

[93] I am unable to grant Mr. Harkat's request to possess a tablet at this time without more evidence on Mr. Harkat's need for such a device, the type of device he is seeking to possess and how the CBSA can monitor the device to ensure that Mr. Harkat is complying with his terms and conditions of release. Mr. Harkat is already authorized to possess a computer and laptop with internet connectivity in his home. In the event Mr. Harkat wishes to pursue his request to use a tablet in his home, he shall provide the specific details of the device to the CBSA, who in turn shall determine whether the request can be accommodated. If the parties are unable to agree, they may come to the Court for a determination. Mr. Harkat should be prepared to demonstrate why he requires the use of a tablet and to provide the specific details of the device. In turn, the CBSA should be prepared to demonstrate in sufficient detail why Mr. Harkat's request cannot be accommodated. The same reasoning applies to Mr. Harkat's use of a tablet or laptop outside of his home.

[94] The Ministers request the addition of a provision stipulating that “Mr. Harkat’s desktop computer and laptop computer may not contain a solid state drive (SSD), flash SSD, hybrid drive or flash storage devices”. They state in their memorandum that the “advancement and changes in technology have made some technical requirements to the computer specifications necessary to maintain effective monitoring of Mr. Harkat’s computer use”. When asked to further explain the CBSA’s concerns regarding the use of a solid state drive, Mr. Renaud was not able to do so. In the absence of any additional evidence explaining why this condition must now be added, I am not prepared to include it to Mr. Harkat’s terms and conditions.

[95] The Ministers also seek an amendment to condition 7(a) on the basis that it will “increase the speed and functioning of any computer technology used by Mr. Harkat”. As it stands, Mr. Harkat is not entitled to alter or delete any tracking information from his computer. The amendment sought would allow him to do so with the prior consent of the CBSA. I am persuaded that this amendment is justified.

[96] Mr. Harkat requests a change to the computer inspection procedures whereby the CBSA would be required to obtain the Court’s approval and have justifiable reason to believe that he is not complying with the terms and conditions of his release.

[97] Under the current conditions 7(d) and 7(e), Mr. Harkat must make his computer available to the CBSA every month at a time to be decided each month by the CBSA, without notice, so that it may be accessed by the CBSA for inspection at its offices. At any other time, with justification, the CBSA may ask a designated judge for access to Mr. Harkat’s computer without

notice, for the purpose of ensuring that he and other persons are complying with the terms and conditions of release.

[98] The Ministers have agreed to reduce the frequency at which they inspect Mr. Harkat's computer. Instead of every month, it would now be no more than every three (3) months. The Ministers object however to the balance of Mr. Harkat's request on the basis that it would deny them the ability to monitor Mr. Harkat's computer without evidence of a breach. They argue that Mr. Harkat is essentially asking the Ministers and the Court to simply trust that he is not violating the terms and conditions of his release. To support their position, the Ministers refer to the issues raised when they attended Mr. Harkat's home in September 2016 and August 2017 regarding the proximity of the computers, the missing keyboard and mouse and Ms. Harkat's unattended computer.

[99] I am not prepared to grant Mr. Harkat's request. While the danger he poses is situated at the low end of the spectrum, I am satisfied that the threat of danger still exists. Threat-related activity may be conducted online and I agree with the Ministers that their inability to inspect Mr. Harkat's computer without notice would make it practically impossible for the CBSA to know whether he is compliant with the conditions of his release regarding the use of the computer. Without access to his computer, it would be difficult to meet the "justifiable reason" threshold proposed by Mr. Harkat.

[100] In addition to requesting the ability to use a mobile telephone in the course of employment, Mr. Harkat is also seeking this Court's approval to possess and use computer

technology for employment purposes, if required to do so by his employer. His evidence as well as that of his wife, Ms. Brunette and Mr. Parent is that the restrictions regarding the use of technology for employment purposes have made it difficult for Mr. Harkat to find full-time employment. Ms. Harkat testified that Mr. Harkat cannot even operate a cash machine without being in breach of his conditions because internet connectivity is required.

[101] While the Ministers are amenable to relaxing this condition, they oppose the request to a “blanket approval” due to the possibility of unmonitored and anonymous communications. They suggest that each request be dealt with on an individual basis and agree that approval should not be unreasonably withheld.

[102] Examples were provided of the type of employment Mr. Harkat has considered in the past but could not entertain because of the requirement to use computer technology. However, Mr. Harkat also testified that he has not sought other employment in the last two (2) years for medical reasons, with the exception of the courier job, school crossing guard and his current employment as a church custodian. At this time, there is no evidence of prospective employment either.

[103] I understand that the inability to use computer technology for employment purposes, including the internet, can be restrictive. I can think of very few types of employment which require no form of technology or the internet. I also believe that frustration can result from one’s inability to seek gainful employment. It can affect a person’s self-worth, which in turn can lead

to other issues and problems. It was Dr. Cameron's opinion that one of the risk items flagged in his assessment of Mr. Harkat related to his employment problems.

[104] Since his release in 2006, Mr. Harkat has complied with his conditions of release. If he is to fully embrace the values of his adopted country, it is important that he be given the opportunity to obtain gainful employment. Accordingly, I am inclined to allow Mr. Harkat the right to use computer technology, including the internet, for employment purposes but with certain limitations. The parties shall work together to identify in advance the types of technologies Mr. Harkat can use. Then, when Mr. Harkat is contemplating employment, he shall inform the CBSA of the name of his prospective employer, the duties he will be required to perform, the technology he will be required to use and have access to in the course of his employment, including the internet, the use he will make of it, and the number of hours a week he will be required to use it. Upon notification by Mr. Harkat, the CBSA shall consider Mr. Harkat's prospective employment without delay and respond to him in a diligent and expeditious manner. If the parties are unable to reach a consensus, they may come to the Court for a determination. In all cases, Mr. Harkat will be required to sign an undertaking that any use of the technology or the internet will be for employment purposes only and any unauthorized use shall constitute a breach of his conditions. Mr. Harkat will also be required to advise his employer of this condition and ask his employer to report any unauthorized use to the CBSA. Mr. Harkat will provide the employer with the name and number of the contact person at the CBSA and provide the CBSA with the name and number of his work supervisor.

[105] Finally, both parties agree to the inclusion of a provision stipulating that Mr. Harkat is otherwise not permitted to use any other computer or laptop than those he is permitted to possess or use by this order. This is acceptable.

**E. Ms. Harkat's use of computer technology**

[106] Under condition 8 of the current conditions, Ms. Harkat may have access to any computer technology that she requires as long as she does not allow Mr. Harkat access to it. Mr. Harkat seeks the cancellation of this condition. The Ministers, on the other hand, are seeking to amend the condition so that Ms. Harkat will be required to password protect her technology and lock any device not currently in her presence. The condition would also be amended to provide that Mr. Harkat may not have access to the passwords used by Ms. Harkat.

[107] While I consider the condition to be necessary as Ms. Harkat's computer technology is not subject to inspection, I agree with Mr. Harkat's counsel that the amendment proposed by the Ministers is not required. Ms. Harkat knows that Mr. Harkat cannot have access to any computer technology she may own. She is also fully aware of the serious consequences that may result from the failure to comply with this condition.

**F. Residence**

[108] Mr. Harkat does not dispute his obligation to reside at a certain location with his wife or the requirement to inform the Court, the Ministers and the CBSA of any change of address at least seventy-two (72) hours prior to the change taking effect as per conditions 9 and 10 of

Schedule “A”. However, he seeks the removal of the condition prohibiting other persons from occupying the residence without the approval of the CBSA. The Ministers agree to waive the requirement that Mr. Harkat obtain the CBSA’s consent and propose that Mr. Harkat only be required to notify the CBSA of any other persons occupying the residence. I find the Ministers’ proposal to be reasonable as the CBSA certainly has an interest in knowing the identity of the people with whom Mr. Harkat is sharing his residence.

[109] Mr. Harkat is also seeking a modification to the CBSA’s ability to enter the residence for the purpose of ensuring Mr. Harkat or any other person are complying with the terms and conditions of release. Under condition 14 of the current terms and conditions, the CBSA is required to obtain judicial authorization before it may access Mr. Harkat’s residence for the purposes of ensuring that Mr. Harkat and any other persons in the residence are complying with the terms and conditions of release.

[110] Mr. Harkat is requesting that such entry be authorized by a designated judge only where the CBSA has “justifiable reason to believe” that he is not complying with his terms and conditions of release or it is necessary for the purpose of ensuring the protection of national security and or the safety of any person. He is also seeking the removal of the requirement that all other occupants of the residence sign a document, in a form acceptable to counsel for the Ministers, agreeing to abide with the terms and conditions of release and that any new occupant similarly agree to abide by these terms prior to occupying the residence.

[111] The Ministers agree in part with the proposed amendment with an exception for accessing the residence to inspect the computer and with respect to the threshold required to obtain judicial authorization. Instead of “justifiable reason to believe”, the Ministers opine that the threshold of “reasonable grounds to believe” should be applied. It is also the Ministers’ position that other residents should be required to sign a document stating that they will abide by the terms and conditions to avoid any unnecessary issues or unintentional contravention of the Court’s order.

[112] I recognize that Mr. and Ms. Harkat have reservations regarding the CBSA attending their home. Their evidence was that when the CBSA officers show up at their home, they enter the residence and go to the second floor where Mr. Harkat’s computer is located. The last time the CBSA officers attended the Harkat’s home unannounced, Ms. Harkat was not dressed. The CBSA officers also look like police officers, which raises questions with the neighbours who are unaware of Mr. Harkat’s circumstances. I can understand that this might be overwhelming and intrusive for the Harkats.

[113] However, I consider the Ministers’ proposal to be reasonable. With the exception of accessing the residence to inspect Mr. Harkat’s computer, which I have examined earlier, any other entry will have to be authorized by a designated judge and the CBSA will be required to demonstrate that it has reasonable grounds to believe that Mr. Harkat is not complying with his terms and conditions of release. The requirement to seek judicial authorization will ensure that the privacy rights of Mr. Harkat and others occupying the residence are safeguarded and that any

entry is minimally intrusive. It will also avoid situations such as the one which led to the decision of this Court in *Harkat (Re)*, 2009 FC 659.

[114] Nevertheless, I am prepared to direct that the CBSA officers not be allowed to circulate in Mr. Harkat's house when they come to pick up his computer. They will ask Mr. Harkat to get his computer for them. Additionally, the CBSA and Mr. Harkat shall agree on the timeframe within which the CBSA may come unannounced to Mr. Harkat's home to pick up the computer, if this is not already the case.

**G. Reporting**

[115] Under condition 11 of the current terms and conditions of release, Mr. Harkat is required to report in person once every two (2) weeks to the CBSA on a day and at a time as determined by a representative of the CBSA. Mr. Harkat seeks to amend this condition so that he will only be required to report to the CBSA once a month by telephone through voice verification. To the extent his request is not possible, Mr. Harkat recommends that his reporting requirement be once every three (3) months.

[116] The Ministers are open to relaxing Mr. Harkat's reporting requirements but argue that CBSA's flexibility on reporting times is somewhat limited. Telephone reporting is not available in the NCR nor is it open to persons with security and inadmissibility concerns. They also reject his request for quarterly reporting but agree to monthly reporting.

[117] As telephone reporting is not available, I consider reporting in person once a month to be appropriate and reasonable in the circumstances of this case. I also agree with the parties that reporting requirements may hereafter be reduced by the CBSA without seeking the permission of the Court.

**H. Travel outside the NCR**

[118] Mr. Harkat is seeking the cancellation of all requirements of condition 12 that he notify the CBSA when travelling outside the NCR and that it be replaced by the requirement that he remain in Canada. The Ministers oppose this request on the basis that it would greatly hamper the ability of the CBSA to monitor Mr. Harkat or know his location while outside of the NCR. They propose an amendment that would facilitate the ability of Mr. Harkat to take day trips anywhere in Ontario or Quebec without advising the CBSA providing it is for a period of twenty-four (24) hours or less. If the travel outside of the NCR exceeds the twenty-four (24) hours, it would remain subject to the same conditions.

[119] I commend the Ministers for proposing that Mr. Harkat be given the flexibility to take day trips anywhere in Ontario and Quebec without having to advise the CBSA. However, they have not demonstrated how providing a longer period than twenty-four (24) hours will hamper the CBSA's ability to monitor him while he is outside the NCR. To the extent he is allowed to travel anywhere in Ontario and Quebec for twenty-four (24) hours without notice, the CBSA's ability to monitor Mr. Harkat will be the same regardless of whether he is gone for twenty-four (24) hours or for seventy-two (72) hours.

[120] Accordingly, I am inclined to expand the window of opportunity for Mr. Harkat to travel anywhere in Ontario and Quebec without having to notify the CBSA. In my view, a window of seventy-two (72) hours is both proportionate and reasonable given Mr. Harkat's past compliance with his conditions and the minimal risk associated with relaxing this condition. This will give Mr. Harkat and his family more flexibility in their outings by allowing them to visit friends and family on long weekends without the stress of having to report daily to the CBSA when there are no telephones readily available such as when they visited the cottage of Ms. Harkat's sister. While it may not prevent the CBSA from monitoring them, it will at least eliminate the burden that comes from having to report daily.

[121] If Mr. Harkat wishes to travel for a period exceeding seventy-two (72) hours or if he wishes to travel outside of Ontario and Quebec, he shall continue to be bound by the conditions as they are found in condition 12 of the current terms and conditions of release with the exception of condition 12(e) which will be amended to provide that Mr. Harkat will only be required to report when he arrives at destination and when he departs.

**I. Physical surveillance by the CBSA**

[122] I accept that monitoring is necessary to ensure that Mr. Harkat is complying with the terms and conditions of his release. Mr. Harkat's level of privacy is dependent on the risk he poses. It is one of those unfortunate consequences of being the subject of a security certificate. That being said, I have concerns in the present circumstances regarding the degree of intrusiveness of the physical surveillance being conducted and the absence of any framework to

review and ensure that any physical surveillance is conducted in the least intrusive manner possible.

[123] In describing the way in which the terms and conditions of Mr. Harkat's release have affected their lives, Ms. Harkat gave a number of examples of the manner in which the CBSA carries out its mandate of ensuring that Mr. Harkat is compliant. For instance, when Ms. Harkat's grandmother passed away before the holidays, the CBSA escorted them out of town to attend the funeral despite the fact there were three (3) of Mr. Harkat's sureties with him and the trip had been pre-approved. Ms. Harkat stated that she is not one hundred percent certain if they were at the funeral but she saw them leave with them on the trip. However, she is certain that the CBSA sent two (2) cars and four (4) CBSA officers in uniforms to her grandfather's funeral before that.

[124] Ms. Harkat also testified about the CBSA's presence when she and her husband attended a friend's wedding in Toronto. She indicated that when they got to the hotel in Toronto, there was a "crew" waiting for them and the CBSA officers followed them to and from the wedding and were with them the entire time they were in Toronto.

[125] I share the Harkats' view that this level of intrusiveness may not be necessary in all circumstances given Mr. Harkat's other terms and conditions. One of those circumstances would be when Mr. Harkat is accompanied by either of his sureties, Mr. Parent and Ms. Brunette. The value of their performance bonds is sufficiently important to create an incentive for them to ensure that Mr. Harkat abides by his terms and conditions of release.

[126] It also appears from the evidence that on average, with the exception of the trips out of the NCR, the CBSA conducts its surveillance on Sundays. The CBSA officers park their cars outside Mr. Harkat's home and wait for him to leave his residence. If he stays home, the CBSA officers can be parked outside his home for an extended period of time, thus raising questions with Mr. Harkat's neighbours who may not be aware of his personal circumstances and who may not be able to differentiate between a CBSA officer and a police officer. Given the predictability of the surveillance, I question its efficacy and necessity.

[127] Furthermore, Mr. Renaud testified on cross-examination, that when physical surveillance is conducted, the CBSA officers are only instructed to ensure Mr. Harkat is compliant with his conditions of release. He also indicated that the CBSA does not hold any meetings to review whether physical surveillance is required and the level of monitoring that is necessary.

[128] I consider this to be unreasonable. The CBSA officers should be provided better guidance on when physical surveillance is conducted and the manner in which it should be done. There should also be a periodic review of the appropriateness of the monitoring measures in place.

[129] I note that the CBSA has agreed to review its monitoring process to ensure that the proper balance is maintained between the risk posed by Mr. Harkat and ensuring that the terms and conditions are being respected. I strongly urge the CBSA to adopt a monitoring process devoid of arbitrariness which ensures proportionality, guidance and periodic reviews.

[130] In any event, I consider that any surveillance that is carried out should be conducted in the least intrusive manner possible and should not be disproportionate with the danger posed by Mr. Harkat. Mr. Harkat's current terms and conditions of release shall be amended accordingly given that they do not explicitly address the issue of monitoring.

**J. Attendance at Court hearings and proceedings under the IRPA**

[131] Mr. Harkat is currently required to appear at all Court hearings and any proceeding or process under the IRPA as per condition 17. He is requesting that his obligation to appear be limited to those situations where his presence is required. The Ministers agree with the proposed amendment.

[132] I consider this to be reasonable.

**K. All other terms and conditions**

[133] The remaining terms and conditions shall remain unchanged.

**VII. Conclusion**

[134] On the basis of the foregoing reasons, I conclude that in addition to the remaining terms and conditions of release, the adjustments discussed above are sufficient to neutralize the danger Mr. Harkat presents and are proportional to the risk he poses.

[135] Following receipt of these reasons, the Ministers shall have ten (10) days to draft the new terms and conditions of Mr. Harkat's release from detention consistent with the determinations made herein and submit them to Mr. Harkat's counsel for approval. If the parties are unable to agree on the wording of the draft revised terms and conditions, they may report back to the Court for a determination. Once approved by the parties and the Court, the new terms and conditions shall become a schedule to an order to be issued by the Court at a later date. The terms and conditions will take effect on the signing of the order to amend the terms and conditions of Mr. Harkat's release from detention. The Ministers will immediately take whatever steps are necessary to give effect to the new terms and conditions.

#### VIII. Questions for Certification

[136] Pursuant to section 82.3 of the IRPA, an appeal of a decision made under subsection 82(4) may be brought to the Federal Court of Appeal only if the judge certifies that a serious question of general importance is involved and states the question.

[137] To be certified, a question must transcend the interests of the parties to the litigation, must be of broad significance, and must be dispositive of the appeal (*Canada (Minister of Citizenship and Immigration) v Liyanagamage*, [1994] FCJ No 1637, 176 NR 4 (CA) (QL) at paras 4-6; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at paras 7-10; *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at paras 11-12; see also *Mahjoub (Re)*, 2017 FC 334 at paras 8-14).

[138] Mr. Harkat's counsel suggested a number of questions for certification in the event the Court concluded that it is not the responsibility of the Ministers to justify the case for a danger finding after the passage of many years since the last evidence of danger was presented or, if the Court found that compliance with the conditions of release is an indication that they work, not an indication of a reduced threat.

[139] As I have made no such findings, the questions proposed by Mr. Harkat's counsel are inappropriate for certification. Accordingly, no question will be certified.

"Sylvie E. Roussel"

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Judge

Ottawa, Ontario  
January 23, 2018

## SCHEDULE "A"

### Terms and Conditions of Release pursuant to the Order of Justice Simon Noël dated May 27, 2015

1. Mr. Harkat is to be released from incarceration on terms that he sign a document, to be prepared by his counsel and to be approved by counsel for the Ministers, in which he agrees to comply strictly with each of the following terms and conditions.

#### **Sureties**

2. Prior to Mr. Harkat's release from incarceration, the sum of \$35,000.00 is to be paid into Court pursuant to Rule 149 of the *Federal Courts Rules*. In the event that any term of the Order releasing Mr. Harkat 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.
3. Prior to Mr. Harkat's release from incarceration, the following eight individuals shall execute performance bonds by which they agree to be bound to Her Majesty the Queen in Right of Canada in the amounts specified below. The condition of each performance bond shall be that if Mr. Harkat breaches any terms or conditions contained in the Order of release, as it may from time to time be amended, the sums guaranteed by the performance bonds shall be forfeited to Her Majesty. The terms and conditions of the performance bonds shall be provided to counsel for Mr. Harkat by counsel for the Ministers and shall be in accordance with the terms and conditions of guarantees provided pursuant to section 56 of the *Immigration and Refugee Protection Act*. Each surety shall acknowledge in writing having reviewed the terms and conditions contained in this Order.

a) Pierrette Brunette	\$50,000.00
b) Sophie Harkat	\$ 5,000.00
c) Kevin Skerrett	\$ 10,000.00
d) Leonard Bush	\$ 10,000.00
e) Jessica Squires	\$ 1,500.00
f) Josephine Wood	\$ 1,500.00
g) William Baldwin	\$ 5,000.00
h) Philippe Parent	\$ 50,000.00

## Telephone

4. Mr. Harkat may use one (1) mobile telephone, subject to the following conditions:
  - a) Mr. Harkat may obtain a SIM Card mobile telephone based on a make and model number previously approved by CBSA;
  - b) The telephone must only have the capacity of receiving and making voice calls and text messages. The CBSA must verify that no other features are enabled before Mr. Harkat may use the mobile telephone, including voicemail;
  - c) Mr. Harkat shall permit any employee of the CBSA, or any person designated by it, to periodically inspect the cell phone at the CBSA's office. The CBSA will return the cell phone to Mr. Harkat as soon as possible. CBSA shall exercise this inspection authority reasonably;
  - d) Mr. Harkat shall provide the cell phone number to the CBSA;
  - e) Upon request, Mr. Harkat shall provide the CBSA with all passwords required to access any part of the cell phone;
  - f) Mr. Harkat will permit the CBSA to place a seal over the SIM card once activated and inserted into the cell phone. Mr. Harkat shall not use any SIM card in the cell phone other than that which is associated with his monitored account;
  - g) Mr. Harkat shall not use any internet features on his cell phone. Internet data shall be blocked through the cell phone provider. For greater certainty, this includes no use of web browsing or email functions and no use or installation of any applications. Mr. Harkat shall make best efforts to ensure that any wi-fi function remains turned off. If, despite Mr. Harkat's best efforts, the wi-fi function becomes enabled, Mr. Harkat must immediately notify the CBSA;
  - h) Mr. Harkat agrees to pay the service provider a fee if necessary to include data blocking;
  - i) Mr. Harkat may not use any applications that come pre-installed on the cell phone without the prior approval of the CBSA, such approval not to be unreasonably withheld;
  - j) Mr. Harkat shall not use any external memory devices with his cell phone. If Mr. Harkat's cell phone has a memory expansion slot, Mr. Harkat shall permit the CBSA to place a seal over the slot;
  - k) If Mr. Harkat's cell phone has near field exchange (NFC) and/or S-Beam functions, Mr. Harkat shall make best efforts to ensure that these functions remain turned off. If,

- despite Mr. Harkat's best efforts, any of the NFC or S-Beam functions become enabled, Mr. Harkat must immediately notify the CBSA;
- l) If Mr. Harkat's cell phone has a screen mirroring function, Mr. Harkat shall make best efforts to ensure that this function remains turned off. If, despite Mr. Harkat's best efforts, the screen mirroring function becomes enabled, Mr. Harkat must immediately notify the CBSA;
  - m) Mr. Harkat shall not update the cell phone's firmware or operating system without prior approval from the CBSA. For further clarification, Mr. Harkat shall also make best efforts to ensure that any software auto-update feature is turned off. If, despite Mr. Harkat's best efforts, the auto-update function becomes enabled, Mr. Harkat must immediately notify the CBSA;
  - n) Mr. Harkat shall not permit any other person to use his cell phone;
  - o) The CBSA (or any person designated by it) may obtain and monitor the toll records of voice calls and text messages from the service provider. Mr. Harkat shall consent to the CBSA (or any person designated by it) obtaining these records from the service provider. Mr. Harkat's possession of a mobile telephone is subject to the CBSA's ability to obtain such toll records from the service provider. If necessary, Mr. Harkat shall provide his consent to the CBSA obtaining any Court Order that may be required in order to obtain these records;
  - p) Mr. Harkat agrees not to use the call forward features of the mobile telephone, that is, he will not forward the telephone to any line, including his home telephone line;
  - q) Mr. Harkat may change his home telephone from a traditional land line to a VOIP line, on the condition that the service is installed directly through his internet modem via an adapter;
  - r) Mr. Harkat may use any landline telephone for employment purposes, while at his place of employment. Mr. Harkat is otherwise not to use any other mobile or landline telephone except in the event of an emergency, where he cannot reasonably access his mobile or landline telephone. He is to inform the CBSA of the use of a mobile or landline telephone, other than his own, as soon as reasonably practicable and to provide the CBSA with the telephone number and service provider, on consent of the third party.
5. Mr. or Mrs. Harkat may possess a fax machine.
  6. Mrs. Harkat may have access to any other communication technology that she requires as long as she does not allow Mr. Harkat access to it.

## Computer

7. Mr. Harkat shall have access to one (1) desktop computer with internet access at his residence, subject to the following conditions:
  - a) Mr. Harkat, or anyone on his behalf, shall not alter or delete from his computer any tracking information, including, but not limited to internet browsing history; cookies; sent, received or draft electronic mail; records of communication using Skype or any other application or website that provides such service; records of any activity on social media websites, including, but not limited to, websites such as Facebook or Twitter;
  - b) Mr. Harkat shall not use the private browsing feature of any internet browser application, including, but not limited to, Internet Explorer, Chrome, or Firefox. Mr. Harkat may only delete tracking information on consent of the CBSA, which consent shall not be unreasonably withheld and be dealt with expeditiously following a request from Mr. Harkat;
  - c) Mr. Harkat shall not use encryption software and must provide the CBSA with any passwords necessary to access any part of the computer;
  - d) Mr. Harkat shall make the computer (including the hard drive(s), RAM and any peripheral memory), available every month at a time to be decided each month by the CBSA, without notice, so that it can be accessed by CBSA for inspection at its office, for the purpose of ensuring that Mr. Harkat and/or any other persons are complying with the terms and conditions of this Order. For greater certainty, the CBSA may attend at Mr. Harkat's home to request that he make the computer available;
  - e) At any other time, with justification, the CBSA may ask a designated judge for access to Mr. Harkat's computer without notice, for the purpose of ensuring that Mr. Harkat and/or any other persons are complying with the terms and conditions of this order;
  - f) Mr. Harkat may not store on his computer any material over which he may claim solicitor-client or litigation privilege;
  - g) Mrs. Harkat shall not use Mr. Harkat's computer;
  - h) Mr. Harkat is permitted to be in the vicinity of, and view, computer screens present in retail establishments so long as: (i) Mr. Harkat is not operating or controlling said computer; (ii) Mr. Harkat is not directing someone to take actions on the computer on his behalf.
8. Mrs. Harkat may have access to any computer technology that she requires as long as she does not allow Mr. Harkat access to it.

**Residence, reporting and travel**

9. Mr. Harkat shall 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.
10. Mr. Harkat shall inform the Court, the Ministers and the Canada Border Services Agency 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 the CBSA.
11. Mr. Harkat shall report once every two weeks to the CBSA on a day and at a time as determined by a representative of the CBSA.
12. Mr. Harkat may travel outside the National Capital Region (Ottawa, Orleans, Kanata, and Gatineau) subject to the following conditions:
  - a) Mr. Harkat must remain in Canada;
  - b) Mr. Harkat must provide the CBSA with at least five (5) full working days written notice of any such travel, including the itinerary. The itinerary shall include details that outline the times and dates of travel, the proposed destination(s), the route and mode of travel;
  - c) Mr. Harkat shall communicate any change to the itinerary to the CBSA at the earliest opportunity;
  - d) Notice and the itinerary may be provided to CBSA by e-mail;
  - e) Mr. Harkat must report to the CBSA by telephone once per day. If Mr. Harkat leaves one City or Municipality for another after having reported to the CBSA, he shall report to the CBSA from the last City or Municipality he is in on that day;
  - f) Mr. Harkat may, in cases of emergency need to travel, request approval for such travel on 24 hours notice. Such travel will require the approval of CBSA, however, such approval shall not be unreasonably withheld.

**Other Terms**

13. Mr. Harkat shall not, at any time or in any way, associate or communicate directly or indirectly with:
  - a) 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 any entity that supports terrorism or violent Jihad;

- b) any person Mr. Harkat knows, or ought to know, has a criminal record or who poses a threat to national security; or
  - c) any person the Court may in the future specify in an order amending this order.
14. Mr. Harkat shall allow employees of the CBSA, any person designated by the CBSA and/or any peace officer access to the residence at any time (upon the production of identification) for the purposes of ensuring that Mr. Harkat and/or any other persons are complying with the terms and conditions of this order. The CBSA shall notify the Court and obtain judicial authorization for any entry made pursuant to this paragraph. All other occupants of the residence shall sign a document, in a form acceptable to counsel for the Ministers, agreeing to abide by these terms. Prior to occupying the residence, any new occupant shall similarly agree to abide by these terms.
  15. Mr. Harkat shall surrender his passport and all travel documents to a representative of the CBSA. The Ministers shall provide Mr. Harkat with the name of the officer.
  16. If Mr. Harkat is ordered to be removed from Canada, he shall report as directed for removal. He shall also report to the Court as it from time to time may require.
  17. Mr. Harkat shall appear at all Court hearings and any proceeding or process under the *Immigration and Refugee Protection Act*.
  18. Mr. Harkat shall not possess any weapon, imitation weapon, noxious substance or explosive, or any component thereof.
  19. Mr. Harkat shall keep the peace and be of good conduct.
  20. Any officer of the CBSA or any peace officer, if they have reasonable grounds to believe that any term or condition 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 this Court, designated by the Chief Justice, shall forthwith determine whether there has been a breach of any term or condition of this order, whether the terms of this order should be amended and whether Mr. Harkat should be incarcerated.
  21. A breach of this order shall constitute an offence within the meaning of section 127 of the *Criminal Code* and shall constitute an offence pursuant to paragraph 124(1)(a) of the *Immigration and Refugee Protection Act*.
  22. The terms and conditions of this order may be amended in accordance with section 82 of IRPA.

**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* and IN THE MATTER of Mohamed Harkat

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** NOVEMBER 16-17, 2017

**REASONS FOR ORDER:** ROUSSEL J.

**DATED:** JANUARY 23, 2018

**APPEARANCES:**

Barbara Jackman FOR MOHAMED HARKAT

David Tyndale FOR THE MINISTERS  
Nadine Silverman

**SOLICITORS OF RECORD:**

Jackman, Nazami & Associates FOR MOHAMED HARKAT  
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Deputy Attorney General of Canada FOR THE MINISTERS  
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