Date: 20101209

Docket: DES-5-08

Citation: 2010 FC 1241

Ottawa, Ontario, December 9, 2010

PRESENT : The Honourable Mr. Justice Simon Noël

BETWEEN:

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

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

AND IN THE MATTER OF Mohammed HARKAT

REASONS FOR JUDGMENT

Opening Statement

[1] Mr. Harkat is the subject of a security certificate and has not offered a credible testimony to the Court. He has surrounded himself in layers of clouds in which he does not let any light come through. At times, his testimony has been inconsistent, not only with his earlier statements, but also in comparison with the public and closed evidence presented by both parties. At times, his testimony was simply incoherent, implausible if not contradictory. The Ministers have provided sufficient evidence to demonstrate that the issuance of the certificate was reasonable. Therefore, the security certificate issued against Mr. Harkat on security grounds is upheld.

Findings

[2] I find that the evidence and information adduced by the Ministers is credible and provides reasonable grounds to make the following non-limitative conclusions. On a balance of probabilities, the Ministers have established the following facts:

[3] I find that Osama Bin Laden and Al-Qaeda supplied money and resources to the Chechen terrorist cause through Ibn Khattab and the Basayev group;

[4] I find that the Basayev and Khattab groups were not part of the Al-Qaeda core, but were part of the Bin Laden Network;

[5] I find that for at least 15 months, Mr. Harkat operated a guesthouse for Ibn Khattab and as such demonstrated active membership in a group involved in terrorist activities in Chechnya which was affiliated with the Basayev group;

[6] I find that, contrary to his testimony and evidence, Mr. Harkat visited Afghanistan during his stay in Pakistan;

[7] I find that Mr. Harkat had links to Al Gamaa Al Islamiya (AGAI), an Islamic extremist group in Egypt ;

[8] The evidence adduced by the Ministers demonstrates that Mr. Harkat used "sleeper agent" methods. More precisely, he arrived in Canada using false documents, employed various anti-surveillance techniques and, for a while, concealed his aliases used while in Pakistan;

[9] I find that the Ministers' evidence, contrary to that of Mr. Harkat, demonstrates that Mr. Harkat did assist Abu Messab Al Shehre and Mohammed Aissa Triki, two Islamist extremists, in Canada. Indeed, I also find that the evidence supports a finding that Mr. Harkat provided financial assistance to Mr. Al Shehre by paying legal fees with the involvement of Abu Zubaydah;

[10] I find that the evidence demonstrates that Mr. Harkat knew Abu Dahhak, an individual related to Al-Qaeda;

[11] I also find that, while in Canada, Mr. Harkat maintained existing contacts with Islamist extremists such as Ahmed Said Khadr and Abu Zubaydah;

[12] Furthermore, the Ministers' evidence has consequently persuaded the Court that there are reasonable grounds to believe that Mr. Harkat was a member of an entity that is part of the Bin Laden Network ("BLN") prior to his arrival in Canada. The Ministers have also established that there are reasonable grounds to believe that, after coming to Canada, Mr. Harkat continued to be an active member of the BLN and provided support to the network.

[13] I find that although the danger associated to Mr. Harkat has diminished over time, he still poses a danger to Canada, but at a lesser level, for the reasons set out herein.

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History of Proceedings and Comments

[14] A certificate stating that Mr. Harkat was inadmissible on security grounds (the "2008 Certificate") was signed by the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration and referred to the Federal Court under the *Immigration and Refugee Protection Act* ("IRPA") legislation on February 22, 2008.

[15] Previously, on December 10, 2002, the Solicitor General of Canada and the Minister of Citizenship and Immigration ("the Ministers") had signed a certificate pursuant to then subsection 77(1) of the *Immigration and Refugee Protection Act* (the "2002 certificate"), in which they stated that they were of the opinion that Mohamed Harkat was a foreign national who is inadmissible to Canada on security grounds.

[16] A hearing as to the reasonableness of the 2002 certificate was held before Justice Dawson in March 2005. In the course of that proceeding, Mr. Harkat challenged the constitutionality of sections 78 through 80 in force at that time on the grounds that they violated the principles of fundamental justice guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms* ("the Charter"). Justice Dawson upheld the constitutionality of the security certificate process, following the Federal Court of Appeal's decision in *Charkaoui (Re)*, 2004 FCA 421 and concluded that there were reasonable grounds to believe that Mr. Harkat had engaged in terrorism for a number of

reasons, in particular by supporting terrorist activity as a member of the BLN (*Harkat (Re)*, 2005 FC 393).

[17] Mr. Harkat appealed Justice Dawson's rulings with respect to the constitutionality of the certificate procedure. On September 6, 2005, the Federal Court of Appeal dismissed Mr. Harkat's appeal on the grounds that he had not demonstrated any manifest error which would justify the overruling of *Charkaoui (Re)*, *supra*, and *Almrei v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 54, where it had upheld the constitutionality of the same provisions of the former IRPA (see *Harkat (Re)*, 2005 FCA 285). Mr. Harkat sought leave to the Supreme Court, which was granted.

[18] On February 23, 2007, the Supreme Court of Canada held that the judicial review of the reasonableness of the certificate under the IRPA violated section 7 of the *Charter* and consequently declared the relevant provisions to be of no force or effect. Chief Justice McLachlin, writing for a unanimous Court, held that the judicial process violated section 7 by limiting the named person's right to know and answer the case against him or her. The Court held that such violation could not be saved by section 1 of the *Charter* because it did not minimally impair the rights in question (*Charkaoui v. Canada (Citizenship and Immigration),* 2007 SCC 9, ("Charkaoui #1")).

[19] The Supreme Court declared that the former subsbection 84(2) governing applications for judicial release, violated section 9 and subsection 10(c) of the *Charter* because it did not provide a timely detention review for foreign nationals.

[20] The Supreme Court suspended the declaration of invalidity of the impugned provisions of the previous legislation for one year to allow Parliament to enact a constitutionally valid legislation. As a result, Mr. Harkat remained subject to the 2002 security certificate and conditions of release as imposed by Justice Dawson on May 23, 2006, until the coming into force of 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*.

[21] On February 22, 2008, Bill C-3 came into force in response to the rulings of the Supreme Court of Canada in *Charkaoui #1*. Bill C-3 made substantial modifications to the procedure governing the judicial review of certificates as well as applications for detention release in that context. These amendments included a new disclosure process and the appointment of special advocates to represent the interests of the named persons during the closed hearings. Bill C-3 also eliminated the distinction between permanent residents and foreign nationals for the purpose of mandatory detention review. The transitional provisions found in Bill C-3 stayed the conditions of release until further review by the Court.

[22] On June 26, 2008, the Supreme Court of Canada rendered a second decision concerning the constitutionality of the certificate process under the former IRPA: *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 ("*Charkaoui #2*"). In that appeal, Mr. Charkaoui sought a stay of proceedings in view of the destruction of original notes taken by the Canadian Security Intelligence Service ("CSIS" or the "Service") during interviews with him. The Supreme

Court allowed Mr. Charkaoui's appeal in part. While it was held that a stay of proceedings was premature, the Court concluded that the destruction of operational notes was a serious breach of the Service's duty to retain and disclose information. Justices Lebel and Justice Fish wrote on behalf of the Court at paragraph 53:

> But whether or not the constitutional guarantees of s. 7 of the *Charter* apply does not turn on a formal distinction between the different areas of law. Rather, it depends on the severity of the consequences of the state's actions for the individual's fundamental interests of liberty and security and, in some cases, the right to life. By its very nature, the security certificate procedure can place these rights in serious jeopardy, as the Court recognized in *Charkaoui*. To protect them, it becomes necessary to recognize a duty to disclose evidence based on s. 7.

[23] On September 24, 2008, in conformity with *Charkaoui #2*, this Court ordered the Ministers to "… file all information and Intelligence related to Mohammed Harkat including, but not limited to, drafts, diagrams, recordings and photographs in CSIS's possession or holdings with the designated proceedings section of the Court".

[24] This order resulted in the filing of thousands of records, many of them redacted in part. The production of such documents required more than six months. However, the process was ongoing and began as soon as some redacted documents were ready to be filed. The redactions were necessary since a good number of documents did not only deal with Mr. Harkat, but with other matters that were not related to the case. The special advocates had access to the information relating to Mr. Harkat in accordance with the legislation but to nothing else. The Court therefore assumed an additional task in reviewing the relevance of the redactions. This exercise was time-consuming. The review identified questionable redactions, but some were warranted. The special

advocates reviewed the *Charkaoui #2* disclosure and identified some information which they felt was pertinent to the proceeding. As a result of the *Charkaoui #2* review, documents were entered as exhibits (see ex. M13, M15, M17, M18, M25 and M26). Therefore, as a result of the *Charkaoui #2* review, additional information was entered as exhibits. This disclosure process extended the proceeding by several months.

[25] In the fall of 2008, closed hearings were held concerning the *Charkaoui #2* disclosure issue. Also, evidence was presented through a ministerial witness in support of the allegations made against Mr. Harkat and the reasonableness of the certificate. Since the *Charkaoui #2* disclosure was ongoing, the cross-examination of the witness by the special advocates was limited to the issue of the danger associated to Mr. Harkat in relation to the review of conditions of release. The cross-examination concerning the reasonableness of the certificate was postponed to November 23, 2009. During those closed hearings, the Court dealt with other matters such as the request of the special advocates to access a CSIS employee file and human sources files. This resulted in the issuance of reasons for judgment in response to both requests (see *Harkat (Re),* 2009 FC 203; and *Harkat (Re),* 2009 FC 1050).

[26] In October 2008, the Ministers consented to a change of residence, and to the removal of a condition that required Mr. Harkat to reside with two supervising sureties. The Ministers' consent was conditional on Mr. Harkat's acceptance of a number of conditions, including the installation of surveillance cameras on the premises by the Canada Border Services Agency ("CBSA"). The Ministers also agreed to have one of his supervising surety removed.

[27] In March 2009, this Court conducted a public review of the conditions imposed on Mr. Harkat. It concluded that his release without conditions would be injurious to national security but, however, confirmed his release under more appropriate conditions. Among others, Mr. Harkat could stay home alone between 8AM and 9PM provided he gave the CBSA a 36-hour notice and call them every hour on the hour (see *Harkat (Re),* 2009 FC 241).

[28] On April 23, 2009, as a result of the ongoing closed hearings, the Ministers disclosed facts publicly that had not been previously disclosed and on which they relied upon, as well as a summary and further disclosure of *Charkaoui #2* documents (see ex. M15, which contains part of the *Charkaoui #2* disclosure. The Ministers and public counsel agreed to include only the parts of that document that were put before the witnesses in examination and cross-examination).

[29] On May 12, 2009, nineteen days before the public hearings into the reasonableness of the security certificate were to begin, the CBSA conducted a search of Mr. Harkat's residence. Sixteen law enforcement officers were involved, including three canine units. Searches were authorized by the conditions of release. Having become cognisant of how the search was done, this Court immediately cancelled such authority given to the CBSA, and subjected them to a prior authorization by the designated judge (See Order dated May 12, 2009 amending the conditions of release). Upon request by Mr. Harkat, the search was reviewed by the Court. It was ruled that the search authorization provided for in paragraph 16 of the conditions of release did not authorize the

intrusive and broad nature of the search and seizure conducted on May 12, 2009 (see *Harkat (Re),* 2009 FC 659).

[30] On May 26, 2009, a Ministers' letter was delivered to the Court providing new information in relation to the reliability of a human source that had provided information on Mr. Harkat (the "polygraph issue"). Based on the content of this letter, The Court ordered the Ministers to file, on a confidential basis, the complete human source file, as the Court then had information that led it to question the completeness of the information provided by the Ministers. On June 16, 2009, the Court issued a public direction offering three CSIS witnesses an opportunity to explain their testimony and their failure to provide relevant information to the Court. They accepted the Court's invitation.

[31] In their submissions, the special advocates sought the exclusion of all information provided by the human source in question as a remedy pursuant to subsection 24(1) of the *Charter*. On October 15, 2009, the Court issued its public reasons for order and order (*Harkat (Re),* 2009 FC 1050). The Court concluded that the failure to provide the information was systemic, but found that there was no intent to filter or conceal the information concerning the human source on the part of the CSIS employees and that there were insufficient grounds to rule that Mr. Harkat's rights as guaranteed by the *Charter* had been violated. The remedy sought by the special advocates was thus denied. However, the Court ordered that another human source file relied upon by the Ministers be made available to the special advocates and to the Court, setting aside the human source privilege, to ensure that there was no further concern in relation to the special advocates' ability to fully test

the evidence. This was found to be necessary to repair the damage done to the administration of justice and to re-establish a climate of trust and confidence in this proceeding. The review of the human source files by the special advocates and the Court did not disclose any new evidence to the effect that the information presented to the Court was incomplete or not reflective of the information gathered. The Ministers filed a new classified exhibit which reflected more properly the content of the human source file related to the polygraph test. The other human source file reviewed by the special advocates and the Court did not contain information inconsistent with the original ministerial exhibits filed on human sources (see also footnotes 1 and 2).[1*]

[32] On September 21, 2009, Mr. Harkat filed an application for a review of his conditions of release. In light of a new threat assessment provided by the Ministers, an important number of restrictions were removed. Among others, Mr. Harkat could now go on outings without the presence of his sureties and was allowed to travel outside the Ottawa region under certain conditions (*Harkat (Re),* 2009 FC 1008). Some restrictions remain such as having to wear a GPS bracelet.

[33] During the closed hearing prior to the beginning of the public hearing on the reasonableness of the certificate, an issue arose in relation to third party information that the special advocates considered needed to be transmitted to Mr. Harkat. This information is in principle protected; of course, it is open to the third party to allow the intelligence authorities to disclose the information. This sensitive issue was dealt with at length during closed hearings. The special

[1] References to footnotes will be made and shall contain pertinent sensitive information in support of these public Reasons. They shall be included at the end of these Reasons and only be accessed by those having such authority.

advocates agreed that some of the information was such that permission should be sought from that specific source of information. A process was established by the Ministers to seek such permission in specific cases. Some of this information was eventually disclosed to Mr. Harkat through summaries.

[34] The special advocates and public counsel aimed to obtain updated information about Abu Zubaydah and Wazir, two individuals alleged to have links with Mr. Harkat. Closed hearings were held and the matter was reviewed at length. When possible, public communications of the information was made (see communication dated May 12, 2010). At the end of the public hearings, the Court informed the parties that any new information concerning these two individuals could be filed with the Court until August 31, 2010. As a result, a communication was issued (see communication dated September 1, 2010).

[35] In accordance with the legislation and *Charkaoui #2*, full access to the bank of information in the hands of CSIS in regards to Mr. Harkat, and other Intelligence information has been given to those involved in closed hearings. It gave the special advocates access to information about targets, individuals of concern, methodologies and methods of operation, exchanges of information with foreign agencies, investigative reports, potential names of human sources, etc. This information is highly protected and such material cannot be shared with anyone. That information shall remain secret and, depending on future mandates assumed by any counsel involved, this may raise unforeseen issues such as potential conflicts of interest (see also footnote 3).

[36] The new approach to the security certificate cases can also open up discussions on the application of criminal law concepts to such procedure. This is not a criminal proceeding; Intelligence evidence cannot be compared to conventional evidence. It requires its own set of rules and procedures that cannot be imported from classical criminal law concepts and procedures. Mr. Harkat's life is not at stake at the stage of the examination of the reasonableness of the certificate. At this time, his inadmissibility to Canada for security reasons is. The Ministers, in applying the IRPA, are of the opinion that Mr. Harkat is inadmissible to Canada. His deportation, if required, is not the issue here. It may become an issue in the future, in which case other IRPA provisions will be relevant and Mr. Harkat will have available other legal resources applicable to such situations.

[37] Many lawyers were involved in this proceeding, all paid from the public purse. There were five lawyers for the Ministers, three public counsel for Mr. Harkat, and two special advocates. The involvement of so many people generated a multitude of motions and requests which required months of preparation, hearings and necessary time to write. Other lawyers intervened as to the polygraph issue, which made the whole process more time consuming.

[38] These proceedings are supposed to unfold as informally and as expeditiously as the circumstances and considerations of fairness and natural justice permit (see paragraph 83(1)(a) of the IRPA). From February 2008 to October 2010, more than thirty-two (32) months have passed. It was impossible for the Court to proceed more expeditiously. A lot of work was generated by the intervention of numerous lawyers in the interest of their respective clients. Sufficient time had to be allowed for the Ministers to comply with *Charkaoui #2* and the reviewing process had to take place,

including consideration as to the pertinence of the redactions. The search of Mr. Harkat's home and the polygraph issues also required judicial time. The scheduling of public hearings for so many counsel involved was time-consuming as well and the process of public disclosure also created hurdles. These have been lengthy proceedings.

The Hearing as to the reasonableness of the certificate

[39] The public hearing on the reasonableness of the certificate of Mr. Harkat was held on November 4, 2008, from January 18 to February 12, 2010 and from March 8 to March 11, 2010. Public and closed oral submissions were heard between May 25 and June 1, 2010. Public and closed hearings were held on and off from September 2008 to May 2010.

[40] During the public hearings, the Ministers called John, an Intelligence officer with CSIS, as their first witness. The examination-in-chief of John begun on November 8, 2008. He gave a very concise testimony in relation to the CSIS mandate, as well as to how a security certificate is prepared under IRPA. Although he had reviewed the Public Security Intelligence Report ("Public SIR"), he did not review the classified information in order not to inadvertently reveal material that is not in the public realm, and did not participate in the preparation of Mr. Harkat's security certificate. Mr. Webber, public counsel for Mr. Harkat, did thank him for his professionalism (see Transcript of Proceedings, Vol. 6 at 144). I concur. His testimony was informative, well presented and balanced. For the purposes of these reasons, his testimony was very useful.

[41] The Ministers' second witness, Doctor Martin Rudner, is an expert in Intelligence, national security matters as well as terrorism studies. He gave evidence on counterterrorism in relation to Al-Qaeda and its affiliated groups, on Ibn Khattab, on Algeria and on sleeper agents. He also gave insightful evidence on the evolution of modern Islamic extremism. His testimony was useful to the Court. He gave an impression of neutrality when testifying and his written report and oral testimony were well documented (concerning the closed hearing witnesses, see also footnote 4).

[42] Mr. Harkat testified on his behalf. He also testified before Justice Dawson at the hearing into the reasonableness of the 2002 certificate. In a recent decision, Justice Dawson stated that "the Ministers may cross-examine him upon any prior statement made in prior security certificate proceedings or before the IRB" (see *Jaballah (Re),* 2010 FC 224 at para. 116). The Ministers did so. As a result, the assessment of Mr. Harkat's credibility is outlined below.

[43] The respondent called Mr. Thomas Quiggin, an expert in Intelligence collection and reliability. Although he has never worked for an intelligence agency, he has done some extensive work on the subject. He testified at length on the BLN, on Ibn Khattab and on "sleeper agents". Mr. Quiggin is the only witness who testified that Al-Qaeda did not deploy sleeper agents to the West.

[44] Professor Wesley Wark was retained by Mr. Harkat to provide independent critical analysis of the public SIR with regards to Mr. Harkat. Professor Wark is an expert on Canadian national security, on global trans-national terrorism and on Al-Qaeda. He reviewed the public SIR and other documents, and concluded that CSIS had prepared a weak and flawed case against Mr. Harkat. The

Court noted that Professor Wark criticized the public SIR to the point of giving an impression of advocating for Mr. Harkat. However, he was useful when informing the Court of his factual knowledge and of his views on some subject matters.

[45] Ms. Lisa Given, a professor in Librarian information science at the University of Alberta, testified as an expert for Mr. Harkat in relation to the reliability of the public information gathered in this instance. Although Professor Given had no in-depth knowledge of the case presented by the Ministers, she gave insightful evidence into the importance of corroborating the information gathered in order to ascertain the veracity of facts when dealing with public information.

[46] Mr. Harkat also brought Professor Brian Williams to testify as an expert on Al-Qaeda, on Chechnya and on Ibn Khattab. He offers the only course on the history of the Chechen conflict at the University of Massachusetts; in addition, he has done some field work in Afghanistan and in a number of former Soviet countries. He has never been to Chechnya due to the precarious situation there. Although critical of other experts in the field, Professor Williams gave an eloquent depiction of Chechnya in the mid-1990s. Professor Williams mentioned that he does not accept any mandate to testify as an expert unless he has concluded that the person in question is innocent in the light of his review of the case. The report he filed was based on his view that Mr. Harkat was innocent (see Transcript of Proceedings, Vol. 22 at 8, 9 and 11). That being said, his statement report, his publications and testimony were useful in informing the Court on the Chechen political situation.

[47] Professor George Joffé also testified as an expert on behalf of Mr. Harkat via teleconference from the United Kingdom. Professor Joffé has provided reports in a number of cases. He is an expert on the Maghreb region, and more specifically on Algeria. Although he was not originally called to testify, Mr. Harkat felt it was important for him to explain his recollection of the atmosphere in Algeria in the late 1980s and early 1990s, resulting response to the evidence given by Dr. Rudner (who described Algeria as living under new democratic values and where freedom of expression was gaining strength), but also in view of some discrepancies that had been raised earlier in relation to two distinct reports Professor Joffé provided to the Court. In these reports, he described the climate in Algeria in the late 1980's and early 1990's as democratically open; in his opinion, while freedom of expression prevailed, this did not prevent unwarranted arrests of politically active people.

[48] Both Mr. Warren Creates and Mr. Suleiman Khan gave their own recollection of facts in relations to Mr. Harkat. Mr. Creates is an immigration lawyer who represented Mr. Harkat on his refugee claim before the Immigration and Refugee Board ("IRB"). Although Mr. Creates does not have a great recollection of the events, he does remember that he was present during two meetings between CSIS' officers and Mr. Harkat. He also said that he had not sought to represent Al Shehre while in Canada, contrary to what Mr. Harkat said. He also filed part of his handwritten notes of a CSIS interview with Mr. Harkat which may contradict part of the summary of the interview of the Intelligence officers. Mr. Khan is responsible for the management and operation of the Islam Care Centre in Ottawa. He is also one of the founding members of Human Concern International ("HCI") and had contact with Ahmed Said Khadr ("A. Khadr" or "Khadr") on numerous occasions. Mr.

Khan also testified that he was very close to A. Khadr and was not aware of his involvement with Islamic extremists until later. The witness visited Al Shehre in prison as part of his volunteer work at the Ottawa Carleton Detention Centre, where he also met with Mr. Harkat years later when he was detained.

[49] Close to twenty (20) witnesses have been crossed-examined in closed hearings on numerous subject matters, such as the reasonableness of the certificate, the polygraph issue, the assessment of danger, *Charkaoui #2* disclosure issues, human sources, etc.

Other Comments on the Expert Evidence

[50] The public hearings dealt with more than six expert witnesses, most of them *viva voce*, but some only through their respective reports. There was considerable contradiction between experts to the extent that I raised that question in the public hearings. Professor Wark gave the following explanation:

> This happens frequently – to come back to Your Honour's general question, this happens frequently in academic debate on issues. We try and arrive at the best authorities for statements. It is often difficult in the field of terrorism because terrorist organizations, by their nature, don't keep and allow us to see archival records that we can validate various kinds of theories about their operations, so we do our best.
> (see Transcript of Proceedings, Vol. 17 at 118)

[51] Being left with many contradictions on most of the subject matters, the Court has to keep in mind that experts are not allowed to take over the functions of the trier of fact. Expert evidence

cannot be allowed to be a substitute for the Court's own evaluation of the evidence (see *R. v. Mohan,* [1994] 2 S.C.R. 9 at para. 21).

[52] It is trite law that any lack of objectivity, neutrality or independence on the part of an expert impacts on the weight to be given to opinions (see *R. v. Klassen,* 2003 MBQB 253 at para. 28).

[53] Intelligence (only accessible to a few) helps to provide more knowledge as to the modes of operation, the actors, and the objectives of terrorist networks. It is indispensable. Expert evidence has to be understood in view of that consideration. Therefore, any opinion given has to be weighed carefully. To give value to expert evidence and recognize it as valid, one must look at the supporting references. Opinions are not sufficient, they must be factually based.

[54] The Court has noted that some of the experts had strong feelings and opinions about the subject matters discussed. As well, some of Mr. Harkat's experts contradicted themselves (see Mr. Quiggin and Professor Williams on Khattab, or Mr. Quiggin, Mr. Wark and Mr. Williams on sleeper agents). Professor Joffé contradicted his report filed on the political climate in Algeria in the late 1980s and early 1990s. However, at the end of the day, all experts were helpful to some extent.

Relevant provisions of the Immigration Refugee Protection Act

[55] The Ministers are of the opinion that Mr. Harkat, a foreign national born in Algeria on August 6, 1968, is inadmissible on security grounds under paragraphs 34(1)(c), (d) and (f) of the IRPA, for:

[…]	[…]
c) engaging in terrorism;	c) se livrer au terrorisme;
d) being a danger to the security of Canada;	d) constituer un danger pour la sécurité du Canada;
[…]	[…]
f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).	f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c)

[56] The Ministers base their opinion on inadmissibility under the above security grounds on a rule of interpretation of IRPA according to which one is to include facts arising from omissions, unless otherwise provided, and also those for which there are reasonable grounds to believe have occurred in the past, are occurring or may occur in the future. In short, evidence may be based on past, present or anticipated future circumstances. Section 33 of the IRPA reads as follows:

33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	33. Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

[57] If the evidence presented supports only one of the security grounds invoked upon by the Ministers, this is sufficient to establish inadmissibility on that ground only (see *Almrei (Re)*, 2009 FC 1263, at para. 59; *Zûndel (Re)*, 2005 FC 295, at paras. 16-17).

[58] At this stage, the Court is to determine whether the certificate is reasonable or not (see section 78 of the IRPA).

[59] The review process is not limited to an examination of the material that was before the Ministers, but additional evidence as well, such as documentary evidence, witness and expert evidence (see paragraphs 83(1)(c) and (g) of the IRPA and *Charkaoui v. Canada* (M.C.I.), 2008 SCC 38 at paras. 70 to 73). Both parties are provided "with an opportunity to be heard" (see paragraph 83(1)(g) of the New IRPA), but the burden of proof rests initially on the Ministers who allege that, in their opinion, Mr. Harkat is inadmissible on the basis of security grounds (see subsection 77(1) of IRPA).

[60] With the proviso that any piece of evidence must be ruled reliable and appropriate by the Court, all evidence can be admitted and relied upon, even if it is inadmissible in a court of law (see paragraph 83(1)(h) of the IRPA).

[61] There is an exception: when there are reasonable grounds to believe that evidence has been obtained through the use of torture as defined by section 269.1 of the *Criminal Code,* (R.S., 1985, c. C-46), or cruel, inhumane or degrading treatment or punishment within the meaning of the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (December 10, 1984, Can. T.S. 1987 No. 36). That evidence will be excluded (see subsection 83(1.1) of the New IRPA). Earlier this year, my colleague Justice Blanchard issued his Reasons for Order and Order, explaining what type of information secured in conditions amounting

to torture had to be excluded (see *Mahjoub (Re),* 2010 FC 787). In the present certificate proceeding, the evidence in support of the allegations does not raise issues related to torture. Whenever a concern was raised in relation to this matter, the Ministers' counsel immediately agreed to have that information withdrawn.

[62] The standard of proof with respect to the facts constituting inadmissibility under section 33 of the New IRPA is "reasonable grounds to believe".

[63] This standard requires something more than mere suspicion, but is less stringent than the criminal standard of "beyond a reasonable doubt". Therefore, after having assessed the adverse evidence on a balance of probabilities, the opinion of the Ministers that the named person is inadmissible on security grounds has to be assessed as to whether or not it is a *bona fide* belief and a serious possibility based on credible evidence. It is important to keep in mind that the designated judge has additional evidence to consider which was not before the Ministers at the time they made their decision. In this case, there was considerable new evidence adduced by both sides, some of which came from the named person in the form of documentary evidence, expert evidence and testimonies. The Court is to make its assessment according to the preponderance of probabilities. At the end of the day, the Court must decide, only after having examined the adverse evidence, if the certificate is based on reasonable evidence.

[64] As Mosley J. most aptly explained in *Almrei*, 2009 FC 1263, at para. 101:

> I am of the view that "reasonable grounds to believe" in s. 33 implies a threshold or test for establishing the facts for an inadmissibility

> determination which the Ministers' evidence must meet at a minimum, as discussed by Robertson, J.A. in *Moreno*, above. When there has been extensive evidence from both parties and there are competing versions of the facts before the Court, the reasonableness standard requires a weighing of the evidence and findings of which facts are accepted. A certificate can not be held to be reasonable if the Court is satisfied that the preponderance of the evidence is to the contrary of that proffered by the Ministers.

Factual Allegations against Mr. Harkat

[65] The security certificate is supported by a Confidential Security Intelligence Report ("CSIR" or "TS SIR") (see also footnote 5). A Public Security Intelligence Report ("PSIR" – ex. M5) was filed on February 22, 2008, and provided to Mr. Harkat. A Revised Public Security Intelligence Report ("RPSIR" – ex. M7), the result of an ongoing review of the classified information in closed hearing which brought the disclosure of additional information, was filed on February 6, 2009. Generally, the RPSIR alleges that prior to and after arriving in Canada, Mr. Harkat engaged in terrorism by supporting terrorist activity as a member of the terrorist entity known as the BLN. The specific allegations made by the Ministers are as follows:

(a) Prior to arriving in Canada in October 1995, Harkat was an active member of the Bin Laden Network and was linked to individuals believed to be in this Network. He was untruthful about his occupation in Pakistan as he had concealed from Canadian authorities his activities in support of Islamist extremist organizations;

(b) In Algeria, Harkat was a member of the Front Islamique du Salut ("FIS"), a legal political party at the time. Harkat acknowledged his support for the FIS from 1989. After being outlawed in 1992, the FIS created a military wing, the Armée islamique du salut, which supported a doctrine of political violence, and was linked with the Group islamique armé ("GIA"). The GIA supported a doctrine of depraved and indiscriminate violence, including against civilians. When the FIS severed its links with the Group islamique armé ("GIA"), Harkat indicated that his loyalties were with the GIA.

Harkat's decision to align himself with the GIA is an indication of support for the use of terrorist violence;

(c) Harkat was associated with Ibn Khattab;

(d) The Algerian Mohammad Adnani (a.k.a. Harkat), a former soldier in Afghanistan, was a member of the Egyptian terrorist organization Al Gamaa al Islamiya ("AGAI");

(e) After arriving in Canada, Harkat engaged in activities on behalf of the Bin Laden Network using methodologies typical of sleepers;

(f) In support of clandestine activities, members of the Bin Laden Network use false documents. When Harkat arrived in Canada he was in possession of two passports, a Saudi Arabian passport and an Algerian passport. The Saudi Arabian passport bearing the name Mohammed S. Al Qahtani was declared and was verified as fraudulent. Saudi passports were determined to be the passports of choice for Muslim extremists entering Canada because prior to 2002, Saudi passport holders did not require a visa to travel to Canada;

(g) Harkat used aliases such as Mohammed M. Mohammed S. Al Qahtani, Abu Muslim, Abu Muslima, Mohammad Adnani, Mohamed Adnani, Abu Muslim, Mohammed Harkat, and Mohamed – the Tiarti, and concealed them in order to hide his identity and his real activities on behalf of the Bin Laden Network;

(h) Harkat kept a low profile as he needed status in Canada following which he would be "ready". He was a sleeper who entered Canada to establish himself within the community to conduct covert activities in support of Islamist extremism;

(i) Harkat used security techniques and displayed a high level of security consciousness to avoid detection;

(j) Harkat concealed his previous whereabouts, including the period that he spent in Afghanistan. Harkat also concealed his links with Islamist extremists, including his relationship with persons in Canada, in part to disassociate himself from individuals or groups who may have supported terrorism;

(k) Harkat maintained links to the financial structure of the Bin Laden Network and concealed these links. He had access to and received, held or invested money in Canada originating from the Bin Laden Network. He also had a relationship with Hadje Wazir, a banker Harkat knew from Pakistan, who is

believed to be the same individual as Pacha Wazir – an individual involved in terrorist financing through financial transactions for Ibn Khattab and the Bin Laden Network;

(l) Harkat assisted Islamist extremists in Canada and their entry into Canada, and concealed these activities. Harkat counselled Wael (a.k.a. Mohammed Aissa Triki) on his processing through Canadian immigration including denying knowledge of anyone living in Canada, and contacting Harkat once cleared through immigration. Harkat spoke to Abu Messab Al Shehre while he was in London, U.K. Al Shehre was searched upon arrival in Canada and found to be in possession of various documents (i.e. a shopping list of munitions and weapons) and paraphernalia (i.e. weapons or parts thereof), including a head banner usually worn by Islamist extremists when in combat, and believed to be covered with written Koranic verses. Al Shehre was detained and Harkat visited him in jail, but denied any previous contact; and

(m) Harkat had contacts with many international Islamist extremists, including those within the Bin Laden Network, and other numerous Islamist extremists, including Ahmed Said Khadr and Abu Zubaydah.

[66] The appendices contain a brief description of organizations or individuals such as Al-Qaeda, the Groupe Islamique Armé ("GIA"), Ibn Khattab and Ahmed Said Khadr. They also include six CSIS interviews with Mr. Harkat from May 1, 1997 to September 14, 2001, as well as 13 summaries of conversations (the "K conversations"). These summaries relate to Mr. Harkat, either as a participant or as the subject of the conversation, from September 1996 to September 1998. They are used by the Ministers as support evidence to the allegations. Finally, the RPSIR also contains the public information relied on by the Ministers and other immigration documentation pertaining to Mr. Harkat.

[67] As a result of an ongoing review of the classified information during closed hearings, more detailed factual allegations were provided to Mr. Harkat on April 23, 2009 (ex. M10):

(a) Harkat operated a "guesthouse" in a suburb of Peshawar, Pakistan. There is information to suggest that the guesthouse may be linked to Ibn Khattab, and was used by mujahideen who were on their way to or from training camps in Afghanistan with the facilitation of Harkat;

(b) There is information that demonstrates that Harkat had access to sums of money when he required it. After he arrived in Canada, Harkat received money from contacts abroad; and

(c) There is information to the effect that Harkat worked for the same organization (Human Concern International) as Ahmed Said Khadr and was acquainted with Khadr before Harkat came to Canada. Also, there is information to suggest that Harkat was entrusted with specific tasks on behalf of Khadr.

[68] On February 10, 2009, the Ministers filed a Supplementary Confidential SIR, and a Supplementary Public SIR (ex. M11) which alleges that:

(a) From 1994 to 1995 Abu Muslim (a.k.a. Harkat) was an active jihadist in Peshawar who was in the service of Ibn Al Khattab, not Al-Qaeda, for whom he ran errands and worked as a chauffeur;

(b) From 1994 to 1995 one of HARKAT's friend's was Dahhak. In February 1997, HARKAT contacted an individual in Pakistan whom he addressed as Hadje Wazir. Identifying himself as Muslim from Canada, HARKAT asked Wazir whether he knew Al Dahhak. Wazir advised in the negative. It is believed that Dahhak, Al Dahhak and Abu Dahhak (aka Ali Saleh Husain) are the same person, and that this person is associated to Al Qaeda; and

(c) While in Pakistan, HARKAT was known to have had shoulder length hair and a noticeable limp.

[69] As a result of the special advocates' review of the *Charkaoui #2* disclosure, further information was disclosed to Mr. Harkat:

"**1996**

Contacts with Mohammed Aissa Triki:

In September 1996. Harkat discussed with acquaintances the upcoming visit to Canada of his Tunisian friend, Wael who used the name of Mohamed Issa for his visit to Canada. (Wael is believed identical to Mohammed Aissa Triki). Harkat counselled "Wael" on his processing through Canadian Immigration. Harkat advised Triki to tell his story as it is and not to lie. Then, Harkat advised Triki to deny knowledge of anyone in Canada and instructed Triki to contact Harkat once he had cleared Canadian immigration. Triki, who claimed to have $45,000.00 dollars when he arrived in Montreal in September 1996, travelled directly to Ottawa, and took up residence with Harkat.

Triki left Toronto on October 23, 1996, carrying a false Saudi passport bearing the name Mohamed Sayer Alotaibi. Later, in November 1996, it was learned that Harkat would reimburse an individual for any out standing telephone call bills made by Triki while in Canada.

Immigration process:

In October 1996, it was learned that Harkat did not want to be associated with anybody until he had finished with his Immigration process.

Finance:

In November 1996, during a conversation between Harkat and an individual, the latter asked how much Harkat was willing to pay to purchase a car. Harkat advised that money was not an issue for him. He furthered that he would pay up to $8,000.00 dollars for a car in good shape. In December 1996, Harkat advised an individual that he would pay $7,650.00 for the car. When asked if he had the money ready, Harkat replied that his friend at the school where he learns English had guaranteed the money for him. Harkat furthered that the money was in the States, and he would be transferring the money.

Contacts with Abu Messab Al Shehre:

In November 1996, Abu Messab Al Shehre spoke to Harkat from London, United Kingdom. Al Shehre addressed Harkat as "Abu Muslim" and asked how the "brothers" were doing. When Al Shehre said that Harkat might remember him as "Abu Messab Al Shehre of Babi", Harkat, who identified himself as Mohamed, quickly said that Abu Muslim was not there. When asked, Harkat told Al Shehre that

he did not know where Abu Muslin was, and said he did not know when Abu Muslim would be returning. In concluding, Al Shehre said sorry to bother you, Sheikh Mohamed. Later, in November 1996, Harkat received an apology on behalf of Abu Messab Al Shehre for the use of Harkat's alias, Abu Muslim. Harkat tried to avoid being called Abu Muslim. In December 1996, Harkat revealed to an individual that he knew Al Shehre very well and that Al Shehre was his friend.

On his arrival in Canada in December 1996, Al Shehre's effects were searched by officials of Revenue Canada Customs and Excise (RCCE), now known as the Canada Border Services Agency (CBSA). In his possession were various documents and paraphernalia, including a shopping list of munitions and weapons (for example, Kalashnikov rifle, RPG (rocket propelled grenade)) and instructional documents on how to kill. Among the weapons seized by RCCE during their search were a nanchuk (a prohibited weapon under the *Criminal Code* (of Canada)), a garrotte, and a samurai sword (Wazi). Also found were a shoulder holster (reported to be for a Russian-made gun), a balaclava and a head banner usually worn by Islamist extremists when in combat, believed to be covered with written Koranic verses. As a result, Al Shehre was detained by RCCE.

Throughout this period, Harkat was regularly in contact with certain acquaintances in order to keep abreast of Al Shehre's situation. Harkat urged one of them to find money to pay Al Shehre's lawyer, and suggested that that person contact Al Shrehre's brother abroad and ask him for money. Harkat kept himself abreast of Al Shehre's situation until the latter's deportation on May 29, 1997, to Saudi Arabia, where he was arrested on May 30, 1997.

1997

Immigration process:

In February 1997, Harkat informed some acquaintances that he had been accepted as a refugee, and that he was now able to apply for landed immigrant status.

Contact with Hadje Wazir:

In February 1997, Harkat contacted an individual in Pakistan whom he addressed as Hadje Wazir. Identified himself as "Muslim" from

Canada. Harkat proceeded to inquire about "Khattab" (believed to be identical to Ibn Khattab) or any of his "people". Wazir replied that Khattab had not shown up for a long time but his people had. At this point, Harkat asked if Wael (believed to be identical to Mohammed Aissa Triki) was visiting Wazir on a regular basis. Wazir advised in the positive. Harkat furnished his telephone number and asked to be contacted by Wael. Harkat further asked that his telephone number be provided either to Wael or any brother who showed at Wazir's Centre to do transactions. Harkat went on to explain that he also used to do transactions at Wazir's Centre.

In August 1997, Harkat said that he intended to travel to where Hadje Wazir was residing and ask him for money. Harkat added that he could easily get money from Hadje Wazir.

Contacts with Ahmed Said Khadr:

In March 1997, Harkat said he had met Ahmed Said Khadr at the Islamic Information and Education Centre (IIEC) in Ottawa and would meet him again shortly.

Links with Abu Zubaydah:

In March 1997, Harkat discussed financial arrangements with an acquaintance in Ottawa who stated that he contacted Abu Zubaydah, at the "place" where Harkat "used to be". Abu Zubaydah wanted Harkat to help pay Abu Messab Al Shehre's legal fees, and Harkat was asked if he could come up with $1,000.00 dollars. Harkat replied that he was ready to pay that amount if he was contacted by Abu Zubaydah. When asked, Harkat said he did not fear being contacted at home by Abu Zubaydah, and that he knew Abu Zubaydah personally. At one point during the discussion, the acquaintance referred to Abu Zubaydah as Addahak / Aldahak

Employment

In March 1997, Harkat discussed with a potential business partner the possibility of getting into a business venture together. Harkat revealed that he would travel and get funds from a mutual friend. Harkat explained that he would open a franchise for their mutual friend's business in Canada. Harkat further said that he would travel to Saudi Arabia to get the money if his future partner was serious about getting into a partnership business. The partner stated that the best business he and Harkat could do was to run a gas station. This

business would require $45,000.00 dollars from each partner. Harkat replied that money was not an issue for him.

In October 1997, Harkat began working as a delivery person for a pizzeria in Orleans but quit two days later.

Attending school:

In September 1997, Harkat registered as a full time student at an adult high school located in Ottawa. Harkat wanted to continue his studies in English, physics and chemistry.

Past activities:

In October 1997, Harkat indicated to an acquaintance that CSIS interviewed Mohamed Elbarseigy for six hours, and the latter told CSIS every thing he knew about him, including that he worked in Amanat.

1998 to 1999

Contact with Abu Messab Al Shehre:

In February 1998, in a conversation with Abu Messab Al Shehre, in Saudi Arabia at that time, Al Shehre, who addressed Harkat as our Sheikh, asked Harkat how he viewed his friendship with him. Harkat described it as a kind of brotherhood. Al Shehre replied that it is more than brotherhood. Harkat stated that since he needed status in Canada, he tried to keep a low profile during Al Shehre's detention, but he managed to send an acquaintance of his to prison and provide Al Shehre with all kinds of help. Harkat asked Al Shehre to send $1,500.00 to cover Al Shehre's legal fees. Harkat advised Al Shehre to acquire the funds from the "group" if he could not get it on his own. Harkat openly stated that he had to keep a "low profile" as he needed status in Canada. Further, Harkat told Al Shehre that as soon as he received his "status" he would be "ready".

Plans to get married:

In June 1998, Harkat indicated to an acquaintance that he feared being expelled by Canadian authorities, so he decided to marry a Muslim Canadian woman to avoid deportation.

In February 1999, Harkat advised his girlfriend in Ottawa that he would be coming over to her place the following day to seek her hand in marriage.

In July 1999, Harkat revealed to an acquaintance that his parents had also found him a bride in Algeria. When it was suggested that Harkat bring the bride to Canada, Harkat stated that his current girlfriend in Ottawa would not accept that."

Employment

In 1998 and 1999, Harkat held jobs at various gas stations and at a pizzeria.

In October 1998, Harkat revealed to an acquaintance that he planned to purchase the lease of a gas station if he was granted status. Harkat revealed that he had no problem finding the money. He only needed $25,000.00 dollars deposit.

In August 1999, Harkat made an appointment with Canada Trust to discuss a potential loan of $30,000.00 dollars to invest in a gas station.

Plans to Visit Algeria and Tunisia:

In December 1998, Harkat revealed that he would be visiting his family in Algeria in the summer of 2001. In August 1999, Harkat told an acquaintance that his family had advised him against returning to Algeria and suggested they meet them in Tunisia. Harkat revealed that if he went to Algeria, he risked being arrested simply because he was someone of importance within the Front.

Taking courses:

In August 1999, Harkat revealed that he would register at an adult high school to take an English as a second language course.

In December 1999, Harkat was looking for someone to pass his taxi driver's test on his behalf. In February 2000, an acquaintance of Harkat told him that he had found someone to pass Harkat's taxi driver's test on his behalf.

Finance:

In October 1999, Harkat confided to his girlfriend that he had made a mistake in quitting his other job. He added that he could not afford to not have two jobs because he had large bills to pay. He further revealed that he had argued with the owner of the pizza store over a pay increase and over his schedule and the man had let him go. With two jobs, Harkat related, he used to make $2,500.00 dollars a month and now with only one job at the gas station and working seven days a week, he was making $1,5000.00 dollars a month. Harkat further concluded that his situation would be better if he could pass the taxi driver test in November 1999. However, by the end of the same month he was back working at the pizza store doing the same shift as before. He justified his return to work at the pizza store by noting that he had to pay his debts.

2000 to 2002

Immigration process:

From 2000 to 2002, Harkat was very preoccupied with the status of his permanent resident application and often discussed his predicament with his friends. Moreover, during this period, Harkat was in regular contact with Citizenship and Immigration Canada (CIC) to find out the status of his application.

Getting married:

In March 2000, Harkat believed that the only solution to his problems with immigration was to get married. In April 2000, Harkat found a new girlfriend, Sophie Lamarche. Harkat did not want to put pressure on her in order to get married, however, he was thinking of keeping her as an alternative.

In April 2000, Harkat revealed that he talked to Sophie about his situation who in turn told him that she promised to help him at the appropriate time. Harkat revealed that if something happened, he would marry her.

In May 2001, it was learned that Harkat had married Sophie in January 2001. Later in May 2001, Harkat revealed that his marriage with Sophie was not serious and he could leave her at any time.

Plans to travel to Algeria:

In March 2000, Harkat was planning to travel to Algeria in August 2000. In May 2001, Harkat said that once he received his permanent resident status, he would go to Algeria. In June 2001, Harkat indicated that he would like to receive his permanent resident status soon so he could travel to Algeria. In July 2001, Harkat indicated that he was planning to go to Algeria in January 2002.

Taking a course:

In July 2001, Harkat began a truck driving course.

Gambling at the casino:

In December 2001, Harkat revealed that he had been going to the casinos for five years and was still going. From1997 to 2002, Harkat regularly went to the Lac Leamy Casino in Hull (Gatineau), and to a lesser extent the Montreal Casino. During this period, Harkat won and lost large amounts of money. According to Harkat, in June 2001, the casino gave him a pass in the first row of the theatre for all the shows at the casino because they knew that he had lost $100,00.00 dollars while gambling. Thus, over the years, Harkat often had to borrow money from his girlfriend and her brother. During his testimony before the Federal Court on October 27, 2004, Harkat acknowledged that he had a gambling problem.

Employment:

In February 2000, Harkat had three jobs: gas station attendant, pizza delivery man and car parts deliveryman. In March 2000, Harkat resigned from the pizzeria and lost his two other jobs, but found two other jobs, including one at a gas bar.

In December 2001, Harkat was receiving unemployment insurance while working for a pizzeria. Harkat indicated that the manager at the pizzeria had agreed to sign a letter stating Harkat had begun to work on the 15th of that month and if asked, Harkat would claim he had worked at the pizzeria on a voluntary basis when he was bored at home or as a favour when the manager needed some help. Harkat was never paid by cheque therefore they could not prove anything.

> **Previous employment:**
>
> In September 2001, Harkat indicated that he had worked for Human Concern International (HCI) in Saudi Arabia and for the company 'Muslim'."
>
> (See Summary of the *Charkaoui #2* Disclosure, April 23, 2009, ex. M15 – the underlining shows what was previously disclosed to Mr. Harkat). This document was part of the *Charkaoui #2* disclosure to Mr. Harkat. Both groups of lawyers agreed that not all the information found in that document could be used judicially as evidence but only the information that was used in examination and cross-examination of witnesses. It is included here in order to show the extent of the disclosure made to Mr. Harkat.)

[70] A further Summary of Conversations he had with members of his family, friends and a fiancée and her mother in Algeria in May and June 2001 was also made available to Mr. Harkat (made part of Appendix K of the Public SIR (ex. M7) following the judgment in *Harkat (Re),* 2009 FC 167).

[71] The public hearings resulted in 52 exhibits for the Ministers and 85 exhibits for Mr. Harkat, as well as 9 witnesses. The public evidence is voluminous and is instructive as to the factual situation at play, the history of Islam, the political reality of the time involving countries such as Algeria, Saudi Arabia, Pakistan, Afghanistan and Russia (Chechnya and Dagestan). It also gives a good understanding of our Canadian immigration process insofar as it relates to Mr. Harkat. The public evidence is such that Mr. Harkat knows all of the allegations made against him, with supporting factual evidence. The entire factual basis may not be known to him (it is known to the special advocates who are representing his interests in closed hearings), but his knowledge is such that, as it was seen during the presentation of his evidence, he was able to respond to it. The written

submissions of public counsel for Mr. Harkat confirm it quite clearly. I conclude that the public evidence provided Mr. Harkat with adequate knowledge of the allegations made against him. It also gave him much of the factual evidence on which the Ministers relied.

[72] During the closed hearings, an important number of exhibits from the Ministers and the special advocates were produced. Witnesses were cross-examined. All pertinent avenues were explored. Because of the polygraph issue, human sources files in their full integrity were exceptionally produced, read and reviewed. All participants to the process became fully cognisant and were able to assume their duties accordingly.

[73] The value of open source material (i.e. newspaper articles, information from the Internet, etc.) was challenged by Mr. Harkat through the testimony of Dr. Lisa Given. As admitted, Dr. Given does not have any expertise in national security or terrorism. She reviewed the public documentation using criteria that librarians use to evaluate documents and her own criteria for assessing the quality of university-level papers. Dr. Given discussed the conventional standards of accuracy, impartiality and reliability. These standards do need to be adapted to the harsh reality of on-going reviews of historical situations that evolve as the information comes along. Her comments on bias attributed to authors were helpful. The Court is sensitive to the issue of potential bias and kept it in mind constantly when evaluating open source documentation.

[74] The public process has been such that Mr. Harkat was able, through expert testimony, to produce his own open source documentation. Hence, any concerns that might have arisen from open

source information relied upon by the Ministers were neutralized keeping in mind the testimony of Dr. Given.

The Issue

[75] In the light of the evidence presented in the public and the closed hearings, is the certificate signed by the Ministers on February 22, 2008, stating that Mr. Harkat is inadmissible because he is a member of a terrorist organization, he has engaged, engages or will engage in terrorism and that he is a danger to the security of Canada, reasonable?

Key Words

[76] To make a proper determination in relation to the alleged security grounds invoked by the Ministers against Mr. Harkat, key words and phrases need to be defined: terrorism (paragraph 34(1)(c) of the IRPA); danger to the security of Canada (paragraph 34(1)(d) of the New IRPA); member of an organization (paragraph 34(1)(f)). Other words referred to during the hearings as they were used in the RPSIR will also be defined: Al-Qaeda core, Al-Qaeda, Bin Laden Network, jihad, Mujahideen and Islamist extremism.

Terrorism

[77] The IRPA does not define "terrorism". In *Suresh v. Canada (M.C.I.)* 2002 SCC 1 at para. 98, the Supreme Court gives an unrestricted and broad interpretation of the term by relying on the definition in the International Convention for the Suppression of the Financing of Terrorism:

> In our view, it may safely be concluded, following the International Convention for the Suppression of the Financing of Terrorism, that

> "terrorism" in s. 19 of the Act includes any "act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". This definition catches the essence of what the world understands by "terrorism". Particular cases on the fringes of terrorist activity will inevitably provoke disagreement. (emphasis added)

The Court notes that the use of the term "includes" appears to indicate that the list is not exhaustive and could require some adaptation with time.

[78] In relation to the prior Immigration statute, the Court's case law has held that the word "terrorism" must receive an unrestrictive interpretation (see *Baroud (Re)*, (1995) 98 F.T.R. 99 at para. 30 and also *Suresh (Re)*, (1997) 140 F.T.R. 88 at para. 29).

[79] As noted by my colleague Justice Mosley in *Almrei (Re)*, 2009 FC 1263 at paras. 71 to 74, "any attempt to define "terrorism" in the immigration context must also now take into account the definition of "terrorist activity" found in subsection 83.01(1) of the *Criminal Code: Soe v. Canada (M.C.I.)*, 2007 FC 671", depending on the circumstances. In any event, the Ministers rely on section 34(1)(c) of IRPA and the Supreme Court's definition of terrorism in *Suresh* cited above still applies to the present IRPA requirements.

[80] The definition of terrorism also includes material support. For example, providing financing, training, false documentation, recruitment, shelter, although not directly linked to violent acts on

vulnerable civilians as an integral part of the activities of individuals involved in terrorism. The provision of support services is as important in terrorism as the commission of violent acts. In *Suresh,* supra, the Supreme Court noted at paragraph 88 that "the global transport and money networks that feed terrorism abroad [in Sri Lanka] have the potential to touch all countries, including Canada, and to thus implicate them in the terrorist activity". In *Ikhlef (Re)*, 2002 FCT 263, concerning a member of a cult of the Armed Islamic Group ("GIA") in Algeria, Justice Blais, as he then was, gave some examples of material support at para. 54:

> The information summary that was given to Mr. Ikhlef described Bin Laden's network and operating methods in detail. It shows the tactics used by the members and, in particular, the way in which individuals such as Ahmed Ressam use the other members of the network, who are often referred to as "sleepers", to help them set up logistics needed so they can commit their crimes. This may include forging documents, obtaining forged passports, committing theft, setting up sophisticated electronic equipment, raising money to fund terrorist operations, and all of the various assistances that was provided in the months or even years leading up to the actual attacks.

[81] Terrorism knows no territorial boundaries. Material support given in a country may be used for a terrorist activity in another. For example, providing false passports helps terrorists to travel internationally. False passports for terrorism mean transnational operations. Financial material support for clandestine transfer of money across international borders is another example of material support. Whether material support is provided through making false passports or through financial means, this does not constitute a violent act of terrorism in itself. However, where support is provided to facilitate the commission of terrorist acts, it is viewed as a form of involvement. Material support is the *sine qua non* of international terrorism and must be viewed as a form of participation in terrorism.

Danger to the Security of Canada

[82] In *Suresh*, supra, at para. 90, the Supreme Court of Canada determined that a person will constitute "a danger to the security of Canada":

> If he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious", in the sense that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threat and harm must be substantial rather than negligible. (emphasis added)

[83] Section 33 of the IRPA must be read together with paragraph 34(1)(d); hence, proof of the facts in support of this ground of inadmissibility may be based on facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur. This may mean that past actions could justify a determination of admissibility on security grounds. Ministers' evidence may relate to past, present or anticipated future activities of a person's inadmissibility to base a finding of inadmissibility on security grounds (see *Al Yamani v. Canada (Minister of Public Safety and Emergency Preparadeness)*, 2006 FC 1457; and *Zûndel (Re)*, 2005 FC 295 at para. 112).

[84] My colleague's interpretation of the statute in *Almrei (Re)*, supra, is that for the purposes of paragraph 34(1)(d), present danger is required. There is no specific reference to section 33 of the IRPA. However, the language of section 33 makes it clear that "the facts that constitute inadmissibility under section 34 (…) include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur". This language is clear. Past, present and possibilities of future facts are relevant for the purposes of paragraph 34(1)(d) as it does for other provisions. Again, I emphasize that in *Suresh*, supra, the Supreme Court mentioned that "danger to

the security of Canada" must be given "a fair, large and liberal interpretation in accordance with institutional forums", that "the determination of what constitutes" such danger "is highly fact-based and political in a general sense" and that this "suggests a broad and flexible approach to national security" (see para. 85). The Supreme Court also mentioned that the threat need not be direct and could be related to distant events that may indirectly harm Canadian security (see paras. 87 and 88). The elements of globality and transnationality of terrorism were relevant to the Supreme Court in *Suresh*.

Membership - Member

[85] Terrorist organizations do not issue membership cards. It is the belief in a cause and the actions of individuals in relation to that cause with the recognition of leaders that establish informal membership. Therefore, many scenarios can be considered (see *Canada (M.C.I.) v. Singh* (1998) 151 F.T.R. 101 at para. 52).

[86] It has been the approach of courts to give an unrestricted and broad interpretation to the word "member", and more so when national security is involved (see *Poshteh v. Canada (M.C.I.),* 2005 FCA 85, para. 27; *Almrei (Re)*, 2009 FC 1263, para. 64).

[87] Under the former legislation, at subsection 19(1), the word "member" was given an unrestricted interpretation by this Court (see *Ahani (Re),* (1998) 146 F.T.R. 223 at para. 9, *Ikhlef (Re)*, 2002 FCT 263 at para. 64, *Kanendra v. Canada (M.C.I.)*, 2005 F.C. 923 at paras. 21-26). For the purpose of the IRPA at paragraphs 34(1)(f) and 37(1)(a), this interpretation stands.

[88] In *Harkat (Re)*, 2005 FC 393 at para. 45, Justice Dawson, as she then was, thus summarized the case law pertaining to the notion of "member" in the following way:

> The term "member" is to be given an unrestricted and broad interpretation. See, Singh, at paragraph 52. "Member" may be equated with "belonging to" an organization. See Chiau, supra, at paragraph 57. See also: Poshteh v. Canada (Minister of Citizenship and Immigration, 2005 FCA 85; [2005] F.C.J. No. 381 at paragraphs 27 though 29.

Organization ("Member of an organization": paragraph 34(1)(f) of IRPA)

[89] In *Husein v. Canada (M.C.I.)*, [1999] F.C.J. No. 1375 at paragraph 5, Justice Rothstein said:

> Terrorist organizations are not organized states or corporations where the niceties of agency law are applicable. Terrorist organizations are loosely structured groups. Even if I were to accept that an act carried out by an individual might not be attributed to an organization, where there is evidence that the leaders of an organization are involved in the acts of terrorism, I have no doubt that for purposes of subparagraph 19(1)(f)(iii)(B), there are reasonable grounds to believe that the organization itself is involved in acts of terrorism. (emphasis added)

[90] Terrorist organizations are loosely structured and extremely secretive. One part of the organization may not know what the other parts are doing. They have a common objective, and use dangerous means and they target innocent civilians. Their ranks vary in time. They change leadership, members and ways to attack and they adapt to new circumstances. No definition can be exhaustive since these organizations are always fluid. Therefore, the word "organization" calls for a broad reading (see *Sittampalam v. Canada (M.C.I.),* 2006 FCA 326 at para. 38).

[91] Further, paragraph 34(1)(f) of IRPA does not call for temporal restriction as to the timeframe in which the organization engaged in terrorism or during which the individual was a member of such organization. As Justice Snider stated in *Al Yamani v. Canada (Minister of Public Safety and Emergency Preparadeness)*, 2006 FC 1457 at paras. 12 and 13:

> Membership by the individual in the organization is similarly without temporal restrictions. The question is whether the person is or has been a member of that organization. There need not be a matching of the person's active membership to when the organization carried out its terrorist acts.
>
> The result may seem harsh. An organization may change its goals and methodologies and an individual may choose to leave the organization, either permanently or for a period of time. The provision seems to leave no option for changed circumstances by either the organization or the individual. Fortunately, Parliament, in including s. 34(2) in IRPA, provided means by which an exception to a finding of inadmissibility under s. 34(1) can be made. Under that provision, a permanent resident or a foreign national may apply to satisfy the Minister that "their presence in Canada would not be detrimental to the national interest". Parliament has provided all persons, who would otherwise be inadmissible under s. 34(1), with an opportunity to satisfy the Minister that their presence in Canada is not detrimental to the national interest. Under this procedure, factors such as the timing of membership or the present characterization of the organization may be taken into account.

In *Jaballah (Re)*, 2006 FC 1230, Justice Mackay came to the same conclusion at para. 38:

> Counsel for Mr. Jaballah suggested there is no current evidence that the AJ still exists, but that is irrelevant when the evidence is that it did exist in the 1980s and 1990s, years when Mr. Jaballah was active. In any event, both organizations continue to be designated in Canada, by P.C. S0R/2002-284, dated July 23, 2002, pursuant to ss. 83.05(1) of the Criminal Code as amended by S.C. 2001, c.41, s.4, as entities that there are reasonable grounds to believe, have knowingly carried out, attempted to carry out, participated in or facilitated terrorist activity."

Recently, in *Almrei (Re)*, Justice Mosley came to the same conclusion. At para. 68, he states:

> There is no temporal nexus in the statute between membership in the organization and the timeframe in which terrorist acts may be attributed to the group. A current lack of dangerousness does not avail the named person if he is found to be a member. The question is whether the person is or has been a member of that organization, not whether the person was a member when the organization carried out its terrorist acts: *Al Yamani v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1457, [2006] F.C.J. No. 1826, at paras. 11-13; *Jaballah (Re)*, 2006 FC 1230, [2006] F.C.J. No. 1706, at para. 38; *Sittampalam*, above, at paragraph 20.

And finally, it was confirmed by the Federal Court of Appeal that it is not a requirement for inadmissibility under s. 34(1)(f) of the IRPA that the dates of an individual's membership in the organization correspond to the dates on which that organization committed acts of terrorism or subversion by force (*Gebreab v. Canada (Public Safety and Emergency Preparedness)*, 2010 FCA 274).

Other definitions

[92] For the purpose of these reasons, the RPSIR refers to certain words and phrases that need to be defined.

Al-Qaeda Core

[93] The term refers to the key members of Al-Qaeda who surround Osama Bin Laden. Dr. Rudner refers to them as Al-Qaeda al-O-U-M, meaning Mother Al-Qaeda. It refers to the core of the

original Al-Qaeda movement as it was known (see Transcript of Proceedings, Vol. 7 at 108; and Vol. 8 at 3).

[94] For Professor Wark, Al-Qaeda emerged from the veterans of the Afghan jihad in the post - 1989 period. The Al-Qaeda core moved with Bin Laden on his pilgrimage to Sudan and then to Afghanistan after 1996 (see Transcript of Proceedings, Vol. 17 at 89 and 90; and Vol. 18 at 186 and 187).

[95] For our purposes, Al-Qaeda core would be best limited to the people surrounding Bin Laden following the Afghan jihad in the post-1989 period.

The Bin Laden Network

[96] The Ministers' witness John defined the Bin Laden Network as follows:

> The Bin Laden Network is the grouping of organizations that subscribe to the notion of an international Islamic jihad, a global jihad, the goal of which is to overthrow either apostate regimes, regimes that the extremists believe don't follow the way of proper Islam, and to bring the notion of a prophet into existence.
>
> The idea of the caliphate that Bin Laden subscribes to is the notion that shortly after Muhammad's time there was a period in which Islam was very pure, in which the Islamic world adhered to the sharia law and to the fundamental principles of the religion. Their perception is that Islam has drifted away from that, they wish to bring the Islamic world, and ultimately the entire world, back to this state.
>
> The ideology, as Bin Laden espouses, is one in which they believe most governments in the Islamic world are not adhering to this ideal and therefore need to be removed. They further believe that the reason that the people have not been able to remove these

> governments in places like Algeria, Egypt, Saudi Arabia and so on-Egypt and Algeria, for example, being places where there have been considerable uprisings before the international jihad took as strong a hold as it has now – is because of external influences, particularly Western influences that keep the governments in place.
>
> Bin Laden believes that it is necessary to strike against these external influences, to drive them out of the Islamic world in order to create the conditions whereby the caliphate can come back into being, where the people can rise up and the local governments would be swept away in favour of the concept of caliphate.
>
> Bin Laden has an organization that is responsible to him and that is Al Qaeda, the Base. But in addition to Al Qaeda which is still very capable of mounting terrorist attacks, you have a whole bunch of organizations that adhere to the same philosophy but have greater or lesser degrees of interaction with Al-Qaeda and with Bin Laden.
>
> It has been an evolutionary process. Some of these organizations over time have joined directly with Al Qaeda. Examples of this would be the Egyptian Al Jihad and the Algerian Salafist Group for Call and Combat, GSPC is how it's known by its French acronym, which is not the Al Qaeda in Maghreb. There is also an organization now called the Al Qaeda in the Arab Peninsula, which again is local groups that have formally joined with Al Qaeda and with Bin Laden.
>
> But in the period of the 1990s, most of these organizations were independent but still adhered to the same philosophy, and that's what we mean by the Network, a series and a grouping of organizations and of individuals who adhere to the idea of the global jihad, who will interact with each other and share resources but may have greater or lesser degrees of individual autonomy.
> (see Transcript of Proceedings, Vol. 1 at 27, 28 and 29)

[97] Mr. Quiggin testified in the Khawaja trials as a witness for the Crown and offered the following definition of Al-Qaeda:

> Al-Qaeda's organization and operational structures differ greatly from any other guerrilla or terrorist or insurgency group. It is a transnational phenomenon. Its structure is novel, or its type of structure or lack of structure actually is novel for its ability to

> regenerate quickly from damage, and it has a diverse recruiting base that cuts across ethnic, class and national boundaries. It is not a single group, nor can it correctly be called a coalition of groups. It has a conglomerate of Islamist parties and charities and groups and does have the ability to draw on otherwise independent groups and individuals for offensive actions or other responsibilities on a global scale.
> (see Transcript of Proceedings, Vol. 16 at 92 and 93)

I note that for Mr. Quiggin, Al-Qaeda is not a single group. It is a conglomerate of Islamist parties, charities and groups. This description of Al-Qaeda is appropriate.

[98] In his report, Mr. Quiggin refers to six groups who are linked to the core of Al-Qaeda or Bin Laden, and 23 other groups regionally located around the world who have expressed ideological sympathies to the core (ex. H10, tab B5).

[99] Dr. Rudner selected a different vocabulary when explaining what is the Bin Laden Network:

> I think it's widely used in the literature by nonspecialists, let's put it this way, certainly, and by other writers who are writing generally about the role of Osama bin Laden, al Qaeda and the world of terror.
>
> I tend to, for example, prefer to use a word which Osama bin Laden and his people would use, and that's system of systems.
>
> (…)
>
> Now, a system of systems, if we think of it, is a network as distinct from a pyramid. So I think what the Service was saying when it said a network was saying don't think of al Qaeda or Osama bin Laden's organization as a government department, a bureaucracy, a pyramid. Think of it as a much more flat structure with nodes, in other words, a network.
>
> In the system of systems model, (…) [w]hat you need is a distributed system where authority is distributed locally to different cells as part

> of a network, where the cells have local responsibilities and accountabilities but they get direction, guidance and inspiration from the centre, the Mother so to speak, al Qaeda al-Oum, and when they need it, they could command resources from the centre, but only when they need it. Mostly they'll command resources locally. They'll do local recruitment; they'll raise local funds; they'll procure falsified passports or weapons locally. But if they can't do this locally, they know who their mother is and they know where their mother is. So that would be the al-Suri model, call it the network model.
> (see Transcript of Proceedings, Vol. 7 at 113, 114 and 115)

[100] Professor Wark had some reservation about the lack of precision and vagueness surrounding the Bin Laden Network terminology:

> Al Qaeda is an organization that has evolved. There are different views on where it has evolved to now, how centralized, decentralized it is, what al Qaeda means, what role of leadership of al Qaeda might be in transnational terrorism, an understanding of al Qaeda would change depending on the historical circumstances we are talking about. Perhaps that was just the point of the comment about the ways in which it had evolved.
>
> But it is, from my perspective, certainly a more precise term than the bin Laden network. People have argued that al Qaeda has evolved into a network, but even the notion of al Qaeda is a slightly tighter concept, particularly over the historical span of time which it has existed than something that I regard as more amorphous or a looser terminology, the bin Laden network..
> (see Transcript of Proceedings, Vol. 18 at 166 and 167)

[101] Some common themes appear to emerge from the views of John, Dr. Rudner and Mr. Quiggin: transpiring leadership, past reputation and religious objectives, material support given through financing or the provision of technology, exchange of services, etc.

[102] I agree with the view expressed by Dr. Rudner when he states "(…) don't think of al Qaeda or Osama bin Laden's organization as a government department, a bureaucracy, a pyramid. Think of it as a much more flat structure with nodes, in other words, a network" (see Transcript of Proceedings, Vol. 7 at 114). That terminology may be loose, as Mr. Wark said, but it is wide and can be used by the Court, if need be. It also has the benefit of reflecting the realities of the groups as they evolve.

Jihad

[103] The *Oxford English dictionary*, 2d ed., defines "jihad" as "a holy war undertaken by Muslims for the propagation or defense of Islam" or "a campaign or crusade in some cause". Not all jihads are terrorist movements. Jihad is a part of Islam; the idea is that Muslims are entitled to defend their faith. Jihad is a spiritual struggle. This type of jihad is of no concern: it is an intense but peaceful and spiritual struggle. The jihad associated to Al-Qaeda and Bin Laden, however, does raise major concerns. It is a religious war directed at any governments who do not abide by Islamic values, including Western democracies. They conduct jihad through violent means and often target innocent civilians. This Islamic jihad, also called global jihad as aspired to by Al-Qaeda and Bin Laden, raises terrorism implications and has been the cause and inspiration of terrorist attacks, whether planned or committed.

Mujahideen

[104] The *Oxford English dictionary*, 2d ed., defines mujahideen as "guerilla fighters in Islamic countries, especially supporting Muslim fundamentalism" and "one who fights jihad". At the time

of the Soviet invasion of Afghanistan, the mujahideen from all over the Islamic world went to fight what was considered a force against Islam in response to a foreign occupation of a primarily Islamic state. The war was directed against a military occupying power, the Soviet Union. At the end of the war, most mujahideen went back home, but some opted for Islamic jihad, the global jihad as defined by Al-Qaeda and Bin Laden directed against countries, governments and civilians who are characterized as being anti-Islam. Some of these mujahideen have been implicated in terrorist activities.

Islamist Extremism

[105] The RPSIR defines Islamist extremism at page 5, footnote 8, as referring:

> To individuals who, through an extreme interpretation of Islamic principles, espouse the use of serious violence in order to achieve an ideological, religious or political objective.

[106] John made it clear that CSIS does not label all Islamist extremists as terrorists. The key element that connotes adherence to terrorism is the use of serious violence. Expressing ideas of an extreme nature does not in itself categorize someone as an Islamist extremist. The key factor in such a determination is the advocacy of violence to achieve religious ends:

> (…) it refers to individuals who, through an extreme interpretation of Islamic principles, espouse the use of serious violence. Now, not everyone who may be sympathetic to certain ideals will be the extremist. It depends on what – it depends on a combination of their belief in the extreme interpretation of Islamic principles combined with their support for the use of serious violence. If they do those two elements, then we would say that they're Islamist extremist and that they are therefore a terrorist, under those conditions
> (see Transcript of Proceedings, Vol. 3 at 125)

[107] Having heard and reviewed the evidence on that subject and having noted that there was no major substantive disagreement, the Court is satisfied with John's definition. Having defined these key terms and reviewed the applicable law, I will now proceed to review the evidence presented during this proceeding.

Conversations and Summaries of CSIS Interviews

[108] In support of the public SIR, the Ministers filed summaries of conversations involving Mr. Harkat. The summaries do not specifically mention where they originate from. This was deliberate. Human source information should not be identified. By not being more specific as to how the information was obtained, it would protect from any identification. It is the position of Mr. Harkat that, since the originals of these summaries have been destroyed in accordance with the CSIS policy at the time, the Court should not rely on them.

[109] Mr. Harkat denies having participated in most of the conversations summarized by CSIS (see K5, K6, K7, K8, K9 and K12 and written submissions of public counsel, Annex B). He testified that he may have had other conversations (K1, K3, K4 and K13).

[110] He disagrees with the comments made about him by two acquaintances (on AGAI and money coming from Saudi Arabia) but the evidence shows that when he started visiting casinos, his lifestyle changed (see K10).

[111] Conversations involving Wael (Triki) are generally accepted with nuances (see K1 and K2). He testified that, although he does not know Shehre, he may have had a conversation with him (see K4), but strongly denies having had others in February 1998 (see K12). The K4 conversation refers to the use of the alias Abu Muslim, which he explains that he used while working for the Muslim World League ("MWL") in Pakistan.

[112] Having reviewed the summaries of conversations, Mr. Harkat denies that:

1) He had used the alias Abu Muslim or Muslim. It is only during the first certificate proceeding that he admitted to having such an alias.

2) He is connected with Khattab or Khattab's people;

3) He knows Al Dahhak;

4) He met Ahmed Said Khadr in March 1997;

5) He is an acquaintance of Abu Zubaydah;

6) He knows Al Shehre;

7) He was involved in the payment of Shehre's legal fees and his involvement in their payment;

8) He inquired about Al Dahhak and others;

9) He spent $30,000.00;

10) He was able to obtain money from Wazir;

11) He supported the AGAI, as a member thereof, but not required to do great things because of his leg;

12) The money he was receiving from contacts overseas was not used properly;

13) He had to keep a "low profile" as he needed status in Canada and then would be "ready";

14) His immigration case began to undergo problems following Al Shehre's visit to Canada;

15) He asked Al Shehre to send him $1,500.00 to cover Al Shehre's legal fees;

16) He asked Al Shehre to get the money from "the group" if he was not able to pay.

[113] Any one of these matters, if admitted in whole or in part by Mr. Harkat or explained in view of the context, would give some indications as to the reasonableness of the certificate. All of these elements pertain in some way to the allegations made against Mr. Harkat.

[114] The summaries of conversations with his family in May and June 2001 are not contested by Mr. Harkat. I note that, in contrast to the other summaries of conversations, he agrees with their content without reservation. This can only demonstrate that the summaries of the conversations produced by CSIS are more reliable than not.

[115] John was cross-examined about the summaries of conversations (see Transcript of Proceedings, November 4, 2008). It was accepted by the witness that errors can occur, but CSIS has followed various methods to minimize them. Classified evidence was also given during the closed hearings on this matter. (see also footnote 6)

[116] These scenarios of conversations relate to conversations that have occurred. The originals would have given a better understanding of them. The Court has reviewed the public and closed evidence on the policies and procedure followed by CSIS when preparing summaries from the original material. John testified on this matter:

Q. They don't take verbatim notes of what was said on these calls normally, do they, sir?

A. It's been a long time since I was in the region talking to them. I think there's different techniques. Some might. In some cases, they will if there's a particular reason, but generally they produce a summary report, a summary of the call.

Q. Because the purpose of gathering is not for an evidentiary hearing; it's not for some lawyer to be sitting and challenging every word. It's generally for advice or predicting trends and so on.

A. It's to bring forward the key elements of the conversations that are relevant to the investigation so that we can carry forward, but you're right, it's not for an evidentiary purpose usually.

Q. So the person who is listening will be instructed to look for certain names or certain words. That would be a technique; if you hear this name or you hear this person, record it, but we don't really need to hear about a lot of other things that may be going on?

A. That's true. They would listen to every conversation, but they would only write a report on the ones and on the parts of the conversations they thought were significance.

(see Transcript of Proceedings, Vol. 1 at 160 and 161)

[117] The Court is to make pronouncements as to the veracity of the summarized content in view of a number of factors, such as: consistency in his story, the coherence of the information summarized in relation to the whole story, the facts that emerge between conversations and the relationship of key individuals with him, if any, as well as corroborative evidence. The Court is satisfied that the summaries have been made in accordance with the policies and procedures of CSIS. These summaries set out, in substance, the relevant facts, and an opportunity has been given to Mr. Harkat to challenge them. In most part, he either denied that some conversations ever occurred, or challenged their tenor, as reported. When faced with a denial and keeping in mind the

public and classified information, the only conclusion that can be reached is that Mr. Harkat was not truthful with the Court on these subject matters. The Court could only accept Mr. Harkat's denials or simplistic explanations if the Ministers have made up this evidence in order to support the allegations. There is absolutely no evidence to that effect. Consequently, I intend to assign weight to these summaries which I find to be reliable. The reality of Mr. Harkat's life at the time must prevail and the summaries do indeed reflect it.

[118] As part of the public SIR, the Ministers also filed summaries of interviews of Mr. Harkat by Intelligence officers from May 1997 to September 2001. It is also my view that these summaries are reliable. No transcripts of interviews are available and the handwritten notes of the Intelligence officers have been destroyed in accordance with the CSIS policies and procedures of the time. Mr. Harkat contests some of their content on the ground that the reports were not accurate. I agree with the summaries in good part. An interpreter was present for some of the interviews. My review of the entire evidence (public and closed) shows that some of the facts related to these interviews can be related to Mr. Harkat's life and can be corroborated. His version of events of the time is reproduced in most part in these summaries. There may be some inconsistencies, but to the extent that they are exceptional, I have used and assessed them whenever it was appropriate to do so.

[119] My review of the entire evidence (public and closed) allows me to state that throughout the six interviews and his most recent sworn testimony, Mr. Harkat has been inconsistent as to his life. Some of the earlier versions were contradicted by subsequent testimonies. However, the more recent his own evidence is to an event, the better his memory should be. For example, his testimony

before the Court in 2010 contradicts his own documentary evidence produced in 1996 in relation to when he became a member of FIS. As it will be seen in these reasons, this gives the Court the impression that he has adapted his testimony for his own convenience and that can only impact on his credibility.

Approach followed to make a judicial determination

[120] The allegations of the Ministers against Mr. Harkat are supported by the evidence which they have adduced, including the testimony of John and, to some extent, that of Dr. Rudner. Closed evidence was presented as well and witnesses were cross-examined by the special advocates. This evidence has to be reviewed in light of Mr. Harkat's testimony and the expert evidence he has presented. As will be seen, I find that the Ministers have proved most of the allegations made against Mr. Harkat.

[121] In order to understand and assess Mr. Harkat's evidence, it has to be discussed in detail. Specific elements, in themselves, may not be determinative, but taken as a whole, that evidence may enable the Court to make a proper determination. Some can say that the focus of the Court is too narrow. I disagree. It is by scrutinizing a story that a decision can be made as to the veracity thereof. The facts need to be studied in detail in order to find a foundation to the story. This approach will give some perspective into the realities of the story as a whole, as told by Mr. Harkat.

[122] In the following paragraphs, the Ministers' evidence and Mr. Harkat's will be assessed on a balance of probabilities.

Membership in the Front Islamique du Salut ("FIS")

[123] In the summer of 1989, at the age of 21, Mr. Harkat was studying for his high school national exams with some friends. He needed to pass this exam to be accepted by an Algerian university.

[124] A teacher named Abdulkader, a FIS active member, helped them to study for the national exams. They would study at Mr. Harkat's father's house in the city of Zamlet Al-Amir Abdelkader ("Zamlet"). Mr. Harkat's father had a family residence in the rural area called Zarch and a house in the city, which were about 10 kilometres apart.

[125] Mr. Harkat did pass his national exams and was accepted by the electronic engineering department of the University of Oran (the city of Oran is called Wahran in Arabic). He registered as a student in late August 1989, and lived in a dormitory.

[126] His involvement in the FIS (a party formally legalized on March 1, 1989), may explain why he left Algeria so rapidly. According to Mr. Harkat, the police was looking for him because he had allowed his teacher Abdulkader to use his father's house in Zamlet for the benefit of the FIS party. As discussed below, there is some uncertainty concerning the circumstances surrounding his decision to let the FIS use his father's house.

[127] As a result, he went into hiding, retained the services of a travelling agency and left Algeria in April 1990 for Saudi Arabia, where he would either study or work.

[128] According to Mr. Harkat, he did not have an interest in international, national or local politics except for his involvement with the FIS. He did not read newspapers or watch television. He did listen to music on the radio but nothing else. He did not know about the Russian invasion in Afghanistan or the mujahideen. Professor Williams declared that Mr. Harkat's purported lack of interest was "incredulous":

> Q. I am assuming, based on your responses then, that you find it a little bit incredulous that someone who grew up in a North African or Middle Eastern country, enter university, be a regular at mosques and be completely ignorant for the 10 years that this was going on, never hear about it?
>
> A. Never heard about Afghanistan?
>
> Q. Yes, what was going on in Afghanistan.
>
> A. Yes, I would.
> (see Transcript of Proceedings, Vol. 22 at 139).

[129] Mr. Harkat testified that the Afghan war was not a topic of discussion among university students. However, it is Professor Joffé's opinion that university campuses were targets for the FIS, a place to recruit new members and an environment propitious for "buoyant" political activism (see Transcript of Proceedings, Vol. 24 at 121, 122 and 123).

[130] Mr. Harkat testified that he became interested in the FIS platform through his teacher, Abdulkader. However, he states in his Personal Identification Form ("PIF") that he would have heard of FIS on television (see ex. M5, Reference Index Vol. 1, Tab 2). In cross-examination, he informed the Court that he did not know the importance of Islam in the FIS platform. For him, the

FIS' full name, "Front Islamique du Salut", was not indicative of an Islamic objective, as he interpreted the word "Salut" as "Rescue", i.e. to "Rescue the Country". He was not informed about the FIS objective to form an Islamic government. For him, the FIS was a social and economic movement. It is Professor Joffé's evidence that the FIS had an explicit Islamic agenda, which was not concealed. According to him, a person involved in FIS would have no doubt about their Islamic agenda:

> Q. In the first complete sentence there, you say: "The FIS, however, had an explicitly Islamic agenda which it had never tried to conceal".
>
> A. That is correct.
>
> Q. So that a person who was involved with the FIS wouldn't have been under any illusions about its Islamist agenda, would they?
>
> A. No.
> (see Transcript of Proceedings, Vol. 24 at 78).

[131] Mr. Harkat testified that he knew that the FIS was protesting against the government in the capital. He liked their policies and he joined the party because he felt "reassured about them and their objectives" (see RPSIR, ex. M7, Appendix "I", Service interviews of Mohamed HARKAT, October 1997 at 9).

[132] Mr. Harkat has allegedly become a member of FIS some time in 1989. However, his statements and testimonies are inconsistent as to the specific time when he became a member. He is supposed to have joined that party when his teacher, Abdulkader, informed him of the content of the platform; that is inconsistent with his evidence.

[133] In the five CSIS summaries of interviews with Mr. Harkat, there is no reference to Abdulkader as being an influence in helping him join the FIS. There are references to the teacher in the June 1998 interview in relation to lending the house for FIS activities and being arrested, but not on his influence on Mr. Harkat with respect to his membership.

[134] In his PIF declaration of 1995 (see ex. M5, Reference Index Vol. 1, tab 2), Mr. Harkat states that he learned about FIS on television. He however testified in this proceeding that he never watched it (see Transcript of Proceedings, Vol. 13 at 2).

[135] In the summaries of interviews, he mentions that he joined the FIS because he liked their objectives and their platform (see ex. M7, Appendix "I", October 1997 at 9; and June 1998 at 25).

[136] In his most recent testimony, he states that he became a FIS member in the summer of 1989 when he was preparing for the national exams with his teacher, before leaving for university. In his PIF signed in 1995, he declared that he joined the FIS at the end of 1989. In his Immigration Refugee Board (IRB) testimony in 1997, he said that he joined the party at the end of 1989. In the CSIS summary of interview of May 1997, he said it was "just before 1990" (ex. M7, Appendix "I", May 1997 at 3 and 5). In the CSIS summary of interview of June 1998, he would have answered "maybe October", and then "in October of 1989 because I liked their ideas" (see ex. M7, Appendix "I", June 1998 at 21 and 25). His past statements seem to indicate that he joined FIS while he was a university student. As noted, he recently testified it was in the summer of 1989.

[137] The Ministers submit that the different statements are significant because if Mr. Harkat really became a member while in university, it would contradict his account of why he left. If he was not a member of FIS before leaving for university, then his explanation of why the police were looking for him in his home city of Zamlet would not make sense; he would not have lent the house to his teacher for FIS purposes in the summer of 1989 if he was not a member. The contradictions undermine the credibility of Mr. Harkat's explanation of why he left Algeria abruptly.

[138] This in itself is not determinative of the reasonableness of the certificate since the FIS has never been found to be a terrorist organization, and membership in FIS in itself would not mean someone is inadmissible to Canada (see also footnote 7). However, the date he joined FIS is to be considered in the light of the entire context. That date has an impact on why he left Algeria.

[139] The Ministers assert that his alleged limited knowledge of the FIS policies (which excludes the Islamic component) is also informative. Mr. Harkat is an educated and knowledgeable person. It is surprising that he did not know about the Islamic platform of the FIS. As the Ministers submit, it gives an impression that he is determined to distance himself from anything that could support any affiliation with Islamic extremism. On this point, I accept Professor Joffé's evidence that it is unlikely that a student member of FIS would be unaware of its policies and platform. Once again, this can only undermine the credibility of Mr. Harkat's testimony on his reasons for leaving Algeria.

[140] The Court also finds ambiguous that the teacher, Abdulkader, asked Mr. Harkat to use his father's house. According to his recent testimony, he was asked to lend his father's house for FIS

meetings after he passed the national test (see Transcript of Proceedings, Vol. 11 at 29). That request would therefore have been made in the late summer of 1989.

[141] In his June 1998 interview with CSIS officers, Mr. Harkat informed them that all he did for the FIS was to lend the house to allow them to recruit new members and distribute information. The FIS request had been made by Mr. Omar Alayn Abdulkader (see pages 21, 25). In the May 1997 interview with Intelligence officers, he explained that, as a FIS member, he gave assistance by endowing "them" his home in Zamlet as a gift to "them" to use as an office (see page 3). His teacher's involvement was not mentioned. In the following interview in October 1997, his statement was that he endowed his house to "them" and again made no reference to the teacher's involvement in the request (see page 9). In the June 1998 interview, the teacher requested the house when Mr. Harkat was at university (see page 21).

[142] In conclusion, the evidence as presented shows that Mr. Harkat's story concerning his membership in FIS, his knowledge or lack thereof of the Islamic component of FIS, as well as the timing of the request to use his father's house is vague and inconsistent and, at times, contradictory. This is important to establish the foundation on which he would have become a person of interest for the authorities which brought him to go into hiding and leave Algeria for Saudi Arabia. This undermines the credibility of his version of the events which led to his decision to go into hiding and leave Algeria on April 2nd, 1990.

GIA

[143] The Ministers allege that Mr. Harkat indicated that his loyalties were with the GIA when it severed its links with the FIS. Mr. Harkat denies having had such loyalties to the GIA. The GIA is an Islamist extremist splinter group of the FIS that engaged in frequent attacks against civilians and government workers. In the view of the Service, Mr. Harkat's decision to align himself with the GIA is an indication of support for violence. There is insufficient evidence linking Mr. Harkat to this group. Therefore, on a balance of probabilities, I conclude that he was not affiliated with the GIA. (see also footnote 8).

AGAI

[144] According to an article written by André Noël in the newspaper La Presse, Adnani (an alias the Ministers believe is associated with Mr. Harkat) was a member of the Egyptian terrorist organization Al Gamaa al Islamiya (AGAI) (see ex. M7 at tab 6; and a summary of conversations in relations to this matter found at M7, Appendix K, conversation 10). AGAI organized the terrorist attack against the World Trade Center in 1993. The newspaper article was also challenged by Mr. Harkat as it seems the writer was referring to another individual. This unsubstantiated report should not be given weight. However, Mr. Harkat's connection to AGAI is referred in some of the conversation summaries (See K10). There is confidential evidence linking Mr. Harkat to AGAI, which corroborates the public summary of the conversation. This evidence was reviewed by all involved in the closed hearing. The originators of this information linking Mr. Harkat and AGAI are credible. Therefore, in view of the Public Summary of the conversation and the confidential

evidence on which the summary is based, which links Mr. Harkat to Adnani, I conclude on a balance of probabilities that Mr. Harkat had links to AGAI (see also footnote 9).

The Passport Issue

[145] The Ministers submit that the obtention of a passport in the fall of 1988 is indicative of Mr. Harkat's interest in traveling outside of Algeria. They also allege that his explanation as to why he obtained a passport at that time and his involvement with the Front Islamique du Salut ("FIS") is not credible.

[146] Mr. Harkat was 20 years old and still in high school when he applied for an Algerian passport. At the time, he had no plans to travel outside the country. He states that he needed a passport to travel from city to city and to register in hotels, and only used it for identification purposes within Algeria. The passport was issued on October 29, 1988, at the beginning of the academic year.

[147] According to his testimony, he did not watch television or read newspapers at the time. His teachers did not talk about the Soviet military invasion in Afghanistan. He testified that he did not know about the presence of the Mujahideen in Afghanistan and that many young Algerians went to that country to join them. He then developed an interest in the FIS movement.

[148] He states that, when he attended the University of Oran, he could not watch television as there was not any. He did listen to the radio, but only to music. On the university campus, no one talked about Afghanistan or about the war. Students were only interested by the situation in Algeria.

[149] It is only when he went to Saudi Arabia in April 1990 that he learned of the situation in Afghanistan (see Transcript of Proceedings, Vol. 12 at 171).

[150] Professor Joffé commented on the atmosphere in Algeria in the late 1980's'. Major country-wide riots occurred in October 1988. As a consequence, the presidency implemented major political changes. Between late 1988 and 1992, the Islamist movement evolved during a liberalization period:

> The current situation in Algeria must therefore be seen in the context of the way in which this movement has developed since 1988. During the brief interregnum between the collapse of the old one-party system in 1988 and the army-backed coup of 1992, Algeria, at a popular level at least, experienced a genuine liberalization.
>
> Political diversity flourished, the press was virtually unrestricted and public life blossomed with most of the old restrictions on public morality being eliminated. At the same time, public opposition to such diversity also mounted, particularly among older groups and those who sympathized with the nascent Islamic political movements. Before the 1988 riots, the Islamist movement – the movement of Muslims who seek a specific political relevance for Islam as an alternative ideology of political organization of the state – had existed in effective clandestinity as described below, although it was occasionally exploited by the government of President Bendjedid to counter other political currents that the regime found disturbing.
> (see Professor Joffé, "Report – Mohamed Harkat", ex. H10, Tab J2 at 538-539)

[151] In a subsequent report, Professor Joffé mitigates his previous statement and explains that the members of Islamist movements such as FIS were harassed and arrested by the Algerian security forces (see ex. H28). However, the atmosphere did improve and Algeria experienced a more liberal atmosphere at that time.

[152] John P. Entelis, Mr. Harkat's expert, and Dr. Rudner, expert witness for the Ministers, both agreed about the liberalization of political life in Algeria at that time. In his report, Professor Entelis states that "[o]ne of the immediate consequences of the *événements* of October 1988 was the liberalization of political life as reflected in the amended constitution of 1989 that introduced a multiparty system and competitive elections" (see ex. H10-2). During his testimony, Dr. Rudner mentioned that:

> It was certainly the most open, pluralistic, democratic in Algeria's history, and it was genuine in the sense that competing parties were legitimate. They were legal. Parties did compete for election, did mobilize public support, were free to campaign. Not only were they free to campaign, they did campaign, and more to the point, they did win elections, which is your ultimate sign that there was latitude and freedom for parties to compete. (see Transcript of Proceedings, Vol. 7 at 159)

[153] However, Dr. Rudner and Mr. Harkat's two experts disagree on whether, during that era, members of FIS were subject to petty harassment and arrests by the authorities. Dr. Rudner did not note such activities (see Transcript of Proceedings, Vol. 7 at 163).

[154] The evidence also suggests that, when Mr. Harkat states that he was wanted by the police in April 1990, he was able to travel by bus without problems from the University of Oran to the Algiers airport. He mentions that he gave his passport to a travel agency which made all the

necessary arrangements (such as a visa, travel costs, airline ticket) so he could travel to Saudi Arabia. He got his passport back from the agency at the airport. He went through customs, and left the country without any interference from the Algerian government or the police.

[155] Mr. Harkat testified that he did not encounter problems while leaving Algeria because the police was looking for him in his hometown, not in the rest of the country (see Transcript of Proceedings, Vol. 13 at 75). This is inconsistent with the fact that once being told that the police was looking for him in his hometown, Mr. Harkat went into hiding at the University of Oran, located more than 400 kilometres away from Zamlet.

[156] The Court also notes that although Mr. Harkat explained that he needed a passport as an identification document, he did little travelling within Algeria between 1988 and April 1990. The evidence shows that he travelled from his village Zamlet for his high school studies and to Oran to attend university. He also travelled to the Algiers airport when he left for Saudi Arabia without a passport. Therefore, he travelled within Algeria solely as needed for his studies.

[157] From 1988 to 1992, although there were still ongoing frictions between the opposition and the governmental authorities, there were major political changes in Algeria. For example, in the municipal elections of June 1990, the FIS received 55 percent of the votes, and thereby gained control of 856 of Algeria's 1,541 municipal councils and 31 of the 48 provincial assemblies – a major democratic upset (see ex. H10, tab J2 at 548).

[158] At the same time, the Soviet military invasion of Afghanistan which had begun at the end of the seventies was slowly coming to an end as the Afghan Mujahideen were gaining the upper hand and were forcing the Russian forces to retreat. The fall of 1988 shook up the Islamist movement in Algeria and in Afghanistan.

[159] According to his testimony, Mr. Harkat had no interest in these political movements, but felt the need to obtain a passport to travel from city to city within Algeria and to register in hotels. Mr. Harkat's explanation as to why he obtained a passport in October of 1988 while he was still attending high school does not leave an impression of truthfulness. Although not determinative for the purposes of the reasonableness of the certificate, it is to be taken into consideration.

Mr. Harkat's Reasons for Leaving Algeria for Saudi Arabia

[160] Mr. Harkat left his hometown, Zamlet, in the fall of 1989 to go to the University of Oran, over 400 kilometres away. He stayed in a dormitory on campus. According to his testimony, he lent his father's house to his teacher for FIS activities in the summer of 1989.

[161] As seen earlier, all three of the experts who testified about the atmosphere in Algeria in the late 1980's argued that the time was one of democratic openness. Political parties were formed. The Front Islamique du Salut was legalized in March 1989.

[162] Some time in March 1990, Mr. Harkat received a phone call from his uncle who told him that his father's house in the city had been closed down and that the police was arresting FIS

members. His uncle also told him that the police were looking for him because he had allowed FIS members to use the house. After this conversation, he went into hiding for four to six weeks and left Algeria in April 1990.

[163] His testimony on the circumstances leading to his decision to go into hiding is somewhat confusing and contradictory.

[164] In a declaration to claim refugee status made a week after his arrival in Canada, Mr. Harkat explained that "the gendarmerie wanted to see me (1989), but I decided not to go to the gendarmerie (police)" and then "escaped" to Saudi Arabia. In his most recent testimony, he states that his uncle called in March 1990 to tell him that the police were looking for him. He was so scared that he felt he had to go into hiding. His uncle told him to disappear, because they had arrested everybody, "… like nightmare stuff" (see Transcript of Proceedings, Vol. 11 at 36). More importantly, it appears that the call was made in March of 1990, but then he said he escaped to Saudi Arabia, where he wanted to study, in late 1989. In cross-examination, Mr. Harkat said that he did not "remember" (see ex. M5, Reference Index Vol. 1, Tab 2; IRB Transcript, Tab 1 at 29; and Transcript of Proceedings, Vol. 14 at 83 and 84).

[165] In his PIF of December 1995, Mr. Harkat refers to his uncle's phone call of March 1990 where he informs him of the arrests and warns him not to return to his home as the government security forces are looking for him. He states that he subsequently went into hiding, quit university, left the dormitory and moved in with a friend where he stayed for six weeks. In April of 1990, he

left for Saudi Arabia and then went to Pakistan. His PIF does not mention that he intended to study in Saudi Arabia.

[166] In his first interview with CSIS officers, in May 1997, he declared that he left Algeria in April 1990 "when the situation between the government and the FIS started to escalate" (see ex. M5, Appendix "I", May 1997 at 4). However, in the municipal elections in June 1990, FIS won "a crushing victory", gaining 55 percent of the votes and obtaining the control of the majority of municipal councils and of the provincial assemblies. Eventhough some FIS members were subjected to "petty harassment which interfered with the movement's activities, […] the Algerian population increasingly demonstrated its support by thronging to well-known FIS mosques …" (see Professor Joffé, "Statement – Mohamed Harkat", ex. H28 at para. 7). In another interview, Mr. Harkat stated that "the government closed the house (in Zamlet) in March 1990 and started looking for everybody because they wanted to destroy the political party" (see ex. M5, Appendix "I", June 1998 at 21).

[167] In another interview with the CSIS officials, in October 1997, Mr. Harkat said that he left Algeria in April 1990 because he "suspected that he was wanted by Algerian authorities" and "before the FIS was banned by the government" (see page 9). The FIS was banned two years later in March 1992 (see RPSIR, ex. M7 at Appendix "B").

[168] In another interview eight months later, he referred to his uncle as saying that "the government wanted to catch me" (see June 1998 interview at 22). In that same interview, his father,

not his uncle, made the call and told him that “the government was looking for me” (see June 1998 interview at 29). He said he left in late April 1990. However, the evidence shows that his father did not have a phone (see Transcript of Proceedings, Vol. 11 at 6).

[169] In his most recent testimony, Mr. Harkat explained that his father, the owner of the house he lent to the FIS, and his family were not arrested or mistreated by the authorities. Incredibly, he says that he never called back his uncle to inquire about his situation, because he did not know the code to call Algeria from Pakistan (see Transcript of Proceedings, Vol. 13 at 167).

[170] In the June 1998 interview with CSIS officials, Mr. Harkat said that he went to the Saudi Arabian Embassy to obtain a visa for a religious pilgrimage (see pages 22 and 23). In his recent testimony, he states that he gave the travel agency his passport and they met him at the Algiers airport to give him all the necessary papers, including a visa to travel to Saudi Arabia. He was able to travel from Oran to Algiers without his passport and did not have problems with the authorities. This is inconsistent with his evidence that he went into hiding at his university friend’s place because he was sought by the police, as well as with the evidence that he needed a passport to travel within Algeria.

[171] Again, the Court finds inconsistencies and contradictions in his different statements on his decision to leave Algeria.

The Purpose of the Trip to Saudi Arabia

[172] The evidence about why Mr. Harkat decided to go to Saudi Arabia is also contradictory. In his declaration following his arrival in Canada, in October 1995, he stated that he had wanted to study in Saudi Arabia and that he had a chance to do that, but that he went to Pakistan to work instead. Later on, he said that "… he left Algeria in late 1989 … to go to Pakistan" (ex. M22 at 6). In his December 1995 PIF, he did not mention that he travelled to Saudi Arabia to study. That leaves the impression that the Umrah temporary visa was obtained in order to transit to Pakistan.

[173] In his CSIS interview of May 1997, the summary states that Mr. Harkat "…went to Saudi Arabia because it was easy to obtain a visa …" and that "… he used the excuse of wanting to do a pilgrimage to Mecca to obtain the Saudi visa" (see CSIS interview of May 1997 at 4). Later on, he told the Intelligence officers that he tried to become a Saudi Arabian resident, but that it was not possible (see interview of October 1997 at para. 19). The following year, Mr. Harkat added that it was difficult to remain in Saudi Arabia, and he started to look for work without success. Then, at the suggestion of some people, he inquired about working for the Muslim World League in Parkistan (see interview of June 1998 at 23 and 30). During cross-examination in this proceeding, Ministers' counsel referred to his testimony during the first proceeding where he said that he started to look for employment in Saudi Arabia (see ex. M5, Reference Index Vol. 1, tab 7 at 66).

[174] In his recent testimony, Mr. Harkat stated that he did not tell the travel agency that he wanted to study in Saudi Arabia and that the agency did not tell him that his visa was only valid for

15 days. Mr. Harkat had not informed the agency of his intention to study in Saudi Arabia because it was not their responsibility:

Q. You mentioned the travel agency. Did you tell the travel agency or anybody there that your plan was to study in Saudi Arabia?

A. No.

Q. Why not?

A. Because he's not responsibility for -- he just, you know, just want to make money and doing his business, travel agency, try to secure for you a visa and ticket.

Q. Did you go to anybody and say "If I want to study in Saudi Arabia, what's the best kind of visa to get"?

A. No, I didn't ask him.

Q. Really?

A. No.

Q. Okay. Did the travel agent tell you that your Umrah visa wouldn't let you stay in Saudi Arabia for more than a couple of weeks?

A. I find that out when I went to Saudi Arabia.

Q. Which suggests to me that the travel agent didn't tell you that. Right?

A. Umrah, that experience of time, I thought since you go to Saudi Arabia, I can study there and change the situation from -- to stay there to study, basically.

Q. The travel agent didn't tell you "With this visa you can't stay more than a couple of weeks in Saudi Arabia." Right?

A. He didn't tell me that.

Q. He didn't tell you that. Not much of a travel agent, is he?

A. How much?

Q. Not much of a travel agent, is he?

A. He is travel agent.

Q. He is not a very good one, I am suggesting to you. That's a fairly important piece of information to give to somebody you have just arranged a visa for, isn't it?

A. Well, these days, you know, he has a business to run and that what I got, that what would happen.

Q. I am going to suggest to you that there wasn't any discussion of that because a visa that was only good for a couple of weeks wasn't going to be a problem because your plan was to go on to Pakistan and participate in the jihad. Am I right or am I wrong?

A. No. That's wrong, sir.
(see Transcript of Proceedings, Vol. 13 at 73, 74 and 75)

[175] His testimony is surprising. He is leaving Algeria, but he does not tell the agency the real purpose of his trip and, in addition, does not know the duration of his visa. That can suggest that the purpose of his trip was different.

[176] From Oran to the Algiers airport, Mr. Harkat had to travel many hundreds of kilometres through cities and villages (see ex. M21D). He did so without the use of his passport and without encountering any problems. In his recent testimony, he mentioned that he "was not thinking all the time" and "they didn't catch me" (see Transcript of Proceedings, Vol. 13 at 76 and 77).

[177] Mr. Harkat testified that the local police was only looking for him in his own town. He was afraid that the information would spread and that they would come to get him, even though he admits that the Algerian police system is not comparable to the Canadian system and that, at that time, there were no computers; all files were on paper (see Transcript of Proceedings, Vol. 13 at 75 and 76). However, as stated before in these Reasons, Mr. Harkat testified as well that he did not have problems leaving Algeria because the police was looking for him in his hometown and not in the rest of the country (see Transcript of Proceedings, Vol. 13 at 75). This raises doubts as to why he went into hiding and left university after his uncle phoned him to say that the police was looking for him in Zamlet.

[178] At the Algiers airport, he showed his passport to the immigration authorities. In cross-examination, he said the following:

> Q. Does that seem likely if you are wanted by the police?
>
> A. It's not like system like here. It doesn't matter, if I stayed in Algeria, they catch me anyway. And the airport, that's the way I just get out from the country.
>
> Q. So you took the chance.
>
> A. I wasn't thinking all the time. I know the police – it's a different department from immigration at that time and they didn't catch me.
>
> Q. I am going to suggest to you that you weren't taking a chance at all. In fact, this was just a planned trip and it wasn't fleeing from the police at all.

> A. Yes, I told you at the beginning. I said the reason, studying in university, making good money and all of a sudden leave my family until now I can't see them and end up basically homeless in Saudi Arabia.
> (see Transcript of Proceedings, Vol. 13 at 76 and 77)

[179] Again, his recent testimony is confusing, contradictory and implausible, more so when it is compared with his earlier statements, declarations and testimonies.

Mr. Harkat's Reasons for Being in Saudi Arabia

[180] Mr. Harkat testified that he left Algeria by plane in late April 1990 from the Algiers airport to Jeddah, Saudi Arabia. To facilitate the obtention of the visa, the travel agency stated that the purpose of his trip was to visit the country to do the Umrah Pilgrimage. Mr. Harkat did not know anybody in Saudi Arabia, but obtained the telephone numbers of students he knew enrolled at Medina University from students at the University of Oran.

[181] When he arrived in Jeddah, he took a bus to Mecca to do the pilgrimage. He stayed in that city for approximately two days.

[182] He then realized that the cost of living in Saudi Arabia was much higher than in Algeria. He testified that he had not asked anyone about this before leaving Algeria. He started looking for work, without success.

[183] According to his testimony, his plan was to settle down and to attend university. He discovered he had to apply from outside Saudi Arabia and pass a test. There were also restrictions on his ability to work and travel within the country. Moreover, he discovered that his visa was only valid for 15 days once in Saudi Arabia.

[184] In Mecca, he tried, without success, to call the students at the university in Medina. He then decided to travel to Medina and meet them. He stayed with the students and learned that he could not register at the university. He explained the difficult situation he faced in Algeria and they gave him the name and phone number of a contact at the Muslim World League in Jeddah. He went back to Mecca via Jeddah, and phoned the contact from there.

[185] He then travelled back to Jeddah to meet the MWL contact. That person told him that he might have a job for him in Pakistan if he could obtain a visa but made no promises. Mr. Harkat left his passport with this unknown contact and went back to Mecca where he slept at the Mosque and survived on bread and water.

[186] Five days later, he phoned the MWL contact back and was told that the MWL had a job for him in Pakistan. Mr. Harkat went back to Jeddah and met the individual, who gave his passport back. In May 1990, he flew from Jeddah to Islamabad, Pakistan. He was unaware of the work he would assume, his salary, where he would be working and only had a general idea of what the MWL did. He testified that he had no choice but to accept that employment because going back to Algeria was impossible.

[187] In his case-claim highlight of October 1995 (ex. M22 at 2 and 6), he states that a friend told him to go and work in Pakistan for the MWL. Later on, he claims to have left Algeria for Pakistan. In his PIF of December 1995, he states that he left Algeria for Saudi Arabia and then states that from there he "was able to go to Pakistan" (see ex. M5, tab 2 at 7).

[188] As it will be seen, in some interviews with Intelligence officers, Mr. Harkat explains the involvement of students somewhat differently in relation to his study plans.

[189] During an interview with Intelligence officers in May 1997, he says that he met Algerian students who were doing the short pilgrimage. He said that he obtained their addresses from students at the University of Oran. The Algerian students in Saudi Arabia were from Medina, Jeddah and Mecca; however, in his recent testimony, he said that the students were all from Medina. The summary also mentions that the students introduced him to a MWL contact. Recently, he said the students gave him a phone number to get in touch with the MWL contact (see the summary of interview May 1997 at 4 and 5).

[190] In October 1997, the summary of interview states that while in Saudi Arabia, Mr. Harkat stayed with Algerian students who had student visas in Jeddah and Medina. In his recent testimony, he says he was with students in Medina for one to two days. He spent the rest of his time in hotels and at the Mosque in Mecca. He testified that, when he realized that he would not stay in Saudi Arabia, the Algerian students told him to join the MWL to work abroad. However, the summary of

the interview states that the students introduced him to the MWL contact (see CSIS interviews at 10). This again differs from his recent testimony in that the students are supposed to have given him a phone number for the MWL.

[191] In October 1998, Mr. Harkat told the Intelligence officers that he "… met some people who said that they were looking for people to go [sic] the Pakistan to work for the MWL. I took the job and they arranged a visa and bought me a ticket for Islamabad, Pakistan" (see CSIS interviews at 23). Later on in the same interview according to the summary, he said that he arrived in Jeddah with telephone numbers from friends he had met at university. He did not call them. He went to Mecca, then to Medina where he met students that were at university. He ran out of money. At that point "(he) was trying to find work, (he) met people from MWL" (see pages 29-30). The students' role in directing him towards the MWL is not clear like in his recent testimony.

[192] In his IRB testimony of May 15, 1996, referred to during Mr. Harkat's cross-examination in the present proceedings, he states that his friends at the University of Oran gave him the telephone numbers of three universities, and not the numbers of Algerians studying in Saudi Arabia (see at 67 and 68). In his testimony, he does not make a specific reference to the Algerian students giving him the MWL contact phone number (see at 81).

[193] Once he had made contact with the MWL, Mr. Harkat was able to easily secure employment. As such, he was responsible for supervising the warehouse staff and had to make sure that the goods were safe and protected for distribution to the Afghan refugees. The MWL trusted

Mr. Harkat with their supplies. The testimony of Professor Rudner, expert for the Ministers, and Mr. Sulaimen A. Khan, a witness for Mr. Harkat, differ as to whether Mr. Harkat, as an unknown Algerian student, would have been able to secure such a position without reference checks and the like.

[194] Professor Rudner has an academic knowledge (from the relevant literature and contacts with Saudi Arabian individuals) on employment customs and traditions, but no personal knowledge on how people are hired in Saudi Arabia. He considers that personal trust is extremely important when hiring people in Saudi Arabia.

[195] In his opinion, an employer, such as the MWL, would want to know if the candidate is of the same religious background as that organization, that is, an adherent of Wahabi Islam.

[196] In addition, Professor Rudner opines that in the case of an Algerian citizen, the MWL would make sure that the person was not an agent of the Front de Libération Nationale (FLN), a secularist, a socialist or a representative of any other cause that would be unacceptable given the causes promoted by the potential employer.

[197] In Dr. Rudner's opinion, the MWL will use reliable references that will vouch for the trustworthiness of the candidate, his adherence to the Islamic faith and his competence.

[198] Professor Rudner considers that a warehouse supervisor position in Pakistan is very important for the MWL:

> Q. Who would be hired and sent a few thousand miles away to oversee a particular operation?
>
> A. Which, incidentally, at the time, would have been considered a very important operation because, after all, from the point of view of the Muslim World League, this was channelling dawa, and IIRO support probably as well, to the frontier of Afghanistan where the struggle is taking place against the Marxist-Leninists in Kabul, against the Soviet occupiers, and caring for the refugees; so this was a very important role, and it certainly wouldn't have been assigned to someone who the Saudis didn't have letters of trust.
>
> (see Transcript of Proceedings, Vol. 7 at 177 and 178)

[199] Mr. Khan, who is in charge of the Islam Care Centre in Ottawa, testified on behalf of Mr. Harkat on a number of subjects. He also gave his opinion on the investigative units of employers such as the MWL when assessing candidates for an employee of a warehouse in Pakistan. For him, investigations and reference checks are sporadic. Since people go to Saudi Arabia for religious purposes, it was easy to make contact with the MWL. These types of jobs are not interesting for Saudis (see ex. H12 at 2). According to him, " ….. a person like that would definitely have been in demand" (see Transcript of Proceedings, Vol. 23 at 201).

[200] In his written statement, Mr. Khan refers to Mr. Harkat's employment at the warehouse. Mr. Harkat became supervisor of the warehouse and was therefore in charge of employees. Mr. Harkat's salary shows the importance of his responsibilities compared to other employees. For instance, Mr. Harkat was making 10,000 rupees a month but his driver was paid 1,500 rupees a month (see Transcript of Proceedings, Vol. 11 at 130 and 138).

[201] Mr. Khan also says that, in his experience working for Human Concern International, applicants are rarely investigated and that few reference checks are made. In his statement, he says:

> I have also been asked for my opinion as to how unusual or not it would have been for an employee of a warehouse in Pakistan to have been offered such a job while in Saudi Arabia and apparently without much by way of prior investigation. In my opinion this would not be unusual at all. Many people of course would go to Saudi Arabia for religious reasons and when there, it would have been quite easy for them to make contact with organizations such as the World Muslim League. I recall myself, having had numerous contacts with the World Muslim League while in Saudi Arabia. Further, the fact that such a job might be offered without much by way of reference checks etc. was also relatively common. The fact of the matter is a Saudi is not likely to have been interested in such a job (emphasis added).
> (see ex. H12 at 2)

[202] I have carefully reviewed the evidence on this matter. Mr. Khan's testimony on the rarity of reference checks is implausible, unless as it seems to be, he was discussing recruitment practices as to simple employees, as opposed to managerial positions, such as Mr. Harkat's position. Surely, an employer who intends to delegate supervisory duties and responsibility of taking appropriate care of the goods would make some reference checks. It is difficult to conceive that an employer would blindly employ the services of an individual without gathering information on him as to his trustworthiness. That remains true even if Saudi nationals are, by and large, uninterested in such positions. I have noted that it took five days for Mr. Harkat to be told that a position with the MWL was available in Pakistan.

[203] I believe that for the MWL, a warehouse supervisor was important because of the location and the religious cause being promoted and the role played to distribute “dawa”.

[204] In the case of Mr. Harkat, there is no evidence that any reference check was done or that Mr. Harkat provided them with references. In my view, this is implausible considering the important role of a supervisor. Trustworthiness had to be an essential factor of recruitment for such a position.

[205] It is also surprising that Mr. Harkat also trusted the MWL immediately, without any prior knowledge of the organization. He left his passport with them without reticence to an unknown person. During his cross-examination, he stated the following:

> Q. Had you ever heard of the Muslim World League before that time?
>
> A. No.
>
> Q. So you have no idea what this company is.
>
> A. When I got the number, yes, it’s like a company – a charity company.
>
> Q. Right. The student who gave you the number gave you a general idea of who they are and what they do.
>
> A. That’s the company is, yes.
>
> Q. On the strength of that, you hand over your passport to a man you have never met before.
>
> A. Yes. I never met him before.
>
> Q. I am going to suggest to you, Mr. Harkat, that you trusted this man, or somebody, with your passport because all this had been prearranged, that your travel through Saudi Arabia to Pakistan had all been

> prearranged with contacts established beforehand and that you knew to trust this man because you had already made contacts and he knew to trust you because there had already been contacts before this time. Am I right or am I wrong?
>
> A. You are wrong, sir. That's never happened. I don't know the person. This is the first time I called him and explained my situation. That's what the Muslin World league to do for – it's not just for me, it's worldwide. Then I discover clearer when I work for them. I know it's organization for – relief organization. So they doing that service for people, refugee in other places in the world anyway. That's why he want to help me out.
>
> (see Transcript of Proceedings, Vol. 13 at 99, 100 and 101)

[206] To repeat, even though Mr. Harkat did not know anything about the organization, he left his passport with the contact of the MWL for five days and went back to Mecca. However, in Saudi Arabia, there were travelling restrictions within the country at that time.

[207] This is the second time that he left his passport with a stranger; let us recall that he did so with the travel agency in Algeria prior to leaving for Saudi Arabia.

[208] The Court concludes that Mr. Harkat's account of the following matters is not credible:

- The reason for his trip to Saudi Arabia;
- The way he contacted students in Saudi Arabia and the manner in which they assisted him;
- The ease with which he obtained a job with the MWL and the absence of assessment of trust during the employment process; and
- The fact that he did not have any knowledge of the MWL but still gave his passport to an unknown individual.

Once again, I find that Mr. Harkat's account of the events is not credible.

Arrival in Pakistan and Working Life with the MWL

[209] Mr. Harkat's version of events is that he left Jeddah for Islamabad, Pakistan in May 1990 with some other people involved with the MWL. Once in Islamabad, he traveled to Peshawar by van. The morning after, he went to the MWL office in Peshawar where he met the person in charge, Abu Dahr.

[210] The staff of MWL helped him complete forms and paperwork required in Pakistan. He went to the police station to obtain a Residential Permit (see ex. H32), an essential document that had to be renewed every six months and shown to police authorities along with his passport when required.

[211] The government of Pakistan also issued other documents to Mr. Harkat, such as a residential permit form, an identification card from the government of the Afghan Northwest Frontier Province of Pakistan (NWFP), and a driver's license issued in February 1992 in Peshawar (ex. H32 and H33).

[212] In addition, the police authorities gave him a certificate of registration (see ex. H34) along with the residential permit (see ex. H32). It indicates that he arrived on May 13, 1990 in Peshawar from Jeddah, Saudi Arabia.

[213] In addition to Abu Dahr, Mr. Harkat met an engineer named Abdullah, the second in charge of the MWL in Peshawar. Abu Dahr drove him to the site of the warehouse in Hyamuhajareen, an hour away, near where Afghan refugees live. The refugee camp is located within the city of Babbi.

The refugee camp in Hyamuhajareen is controlled by the Afghanis (Haji Mohamed Dost ("Dost") was in charge of the refugee camp). To go to the camp, people would have to go through Babbi, which was controlled by the Pakistani police.

[214] At the warehouse, Mr. Harkat was the supervisor of three employees. They spoke Pashto and Farsi, the local languages, and were helpful in translating for Mr. Harkat. He was in charge of obtaining the supplies from the Peshawar airport, the train station or the MWL office. Once the supplies had arrived at the warehouse, they were sent to Dost who distributed them.

[215] Other relief agencies such as the Red Cross, the Kuwait Crescent International Islamic Relief Organization and the UN were operating in the same area.

[216] During the five years he spent in Pakistan, Mr. Harkat testified that he limited his travels to Peshawar, Babbi and their surroundings. He did not travel to the Afghan border (that requires a 4 to 4.5 hour drive, although it appears closer on the map) where a tourist location, Khyber Pass, is located, nor did he travel within Afghanistan. He lived at the warehouse during his employment with the MWL. In the fifth year when he was in Pakistan, he was unemployed and stayed at a location supplied by Dost within Hyamuhajareen.

[217] Supplies started to decrease in his third year of employment with the MWL. The Afghan refugees began to slowly return to their home country. On January 2, 1994, the Commissioner of the Afghan refugees issued a letter informing that Egyptians, Algerians and Tunisians would have to

leave Pakistan “immediately” (ex. H35). For that reason, it became impossible to have the residential permit (ex. H32) renewed every six months as required. Mr. Harkat terminated his employment with the MWL in June 1994 and only left Pakistan in late September 1995. At that point he could not stay in Pakistan and it was unthinkable for him to go back to Algeria. After assessing the situation over a period of more than 15 months without any apparent employment and without renewing his Algerian passport, Canada became Mr. Harkat’s destination of choice.

[218] Even though he was going to the airport or the train station to get supplies, he never saw or met Mujahideen on their way to or from Afghanistan. He had heard about them. Mr. Harkat never carried weapons for his own safety or to protect the supplies. Dost and the police did. There were no weapons at the warehouse (see also footnote 10).

[219] Five issues of concern emerge from his version of events in relations to his employment with the MWL, when compared with the Ministers’ allegations and evidence: his residence, his travels limited to around Peshawar, his lack of rush to leave Pakistan, the fact that he stayed unemployed for 15 months and the renewal of his passport. These facts, as related by Mr. Harkat, are not persuasive. It is the Ministers’ position that he was domiciled not only in Hyamuhajareen. They allege that he traveled to Afghanistan and elsewhere like Saudi Arabia and that, at least for the fifth year in Pakistan, he was not unemployed but operated a guest house for Mujahideen on their way to, or back from, Afghanistan on behalf of Ibn Khattab and his group.

[220] It is the Ministers' opinion that the MWL's office in Peshawar was in Hayatabad. Mr. Harkat testified that it was in Hyamuhajareen. As referred to in the public hearings, he is supposed to have said that it was in Hayatabad during the first certificate proceeding but that was a "mistake" (see M5, tab 7 at 152).

[221] In the October 4, 1997 CSIS summary of interview, he gave the MWL office located in Islamabad as his address in Pakistan. He also said that he never stayed or visited the district of Hayatabad in Peshawar, although he admitted that the MWL office for Peshawar was in Hayatabad. In cross-examination, Mr. Harkat denied having said that and he was unable to clearly identify the street where the MWL office was located on the Peshawar map (ex. M21C) even though he went there almost daily. In addition, he did testify recently that he had gone to Hayatabad to visit his best friend, Mokhtar (see Transcript of Proceedings, Vol. 11 at 166 and 167).

[222] In the interview of June 1998, he described the office of the MWL in Peshawar as a house with a computer in the middle of the town. He added that he lived at the warehouse (see CSIS interviews at 31).

[223] In the August 1998 interview, Mr. Harkat told Intelligence officers that he had nothing to do with the Mujahideen in Pakistan or Afghanistan and denied that he operated a guest house where Mujahideen would stay en route to Afghanistan (see at 43, para. 41).

[224] The Certificate of Registration (H34) that he received shortly after his arrival mentions that his planned address was in Hayatabad. In cross-examination, he explained that it might have been Abdullah who gave that address even though he knew that he would stay at the warehouse.

[225] There is confusion regarding his residence while he worked for the MWL.

[226] Mr. Harkat denies going to the Afghan border and crossing it. He testified that, according to the Afghan refugees, it would take about 4.5 hours to go from Babbi to the border. By looking at the map (ex. M21), this assessment seems exagerated. It is not relatively far from Babbi. It is surprising that Mr. Harkat, working for a relief agency for the benefit of Afghans located not far from the border, did not travel to the border or did not go to Afghanistan. When questioned about his travels, he stated that he had only gone to Peshawar. The evidence on this matter is contradictory. In view of the closed evidence which was tested by the special advocates, the Court is prepared to accept the Ministers' allegation that Mr. Harkat visited Afghanistan (see also footnote 11).

[227] The Pakistani government wanted all Algerians to leave the country "immediately", as of January 2, 1994 (see ex. H35). This is why he lost his position with the MWL in June 1994. At that time, he no longer had a permit to reside in Pakistan. He even said during his testimony that he was worried he would be sent back to Algeria if he was arrested by the Pakistanis:

> Q. All right. So does this accord with what you're telling us, that this was the policy, then, that you couldn't stay to work? You had to leave the country as an Algerian?

> A. Yes. Even if you don't receive this one, they will send it to the police if you didn't renew – didn't renew my paper. If I caught driving or going, they going to send me to Algeria.
> (see Transcript of Proceedings, Vol. 11 at 145)

[228] There is lack of clarity as to when he obtained the false passport to travel to Canada. His recent testimony shows that he received it in 1995. In his IRB testimony, referred to during his cross examination, he stated he secured it in 1994 (see Tab 1 at 108).

[229] During a 15-month period, he only had lunches with Thaer Hafez, made arrangements to obtain a false passport (through a man that he was referred to by Mokhtar) and bought airline tickets to come to Canada, even though he was scared to be sent back to Algeria. However, Mr. Harkat's testimony does not reveal any such fear. During that time period, he did not work and did not receive money. He did nothing to leave rapidly even though he was required to leave Pakistan "immediately" (see ex. H35).

[230] As well, Mr. Harkat went to the Algerian Embassy in Pakistan to have his passport renewed in 1994. He feared the Algerian authorities. However, he went to the Embassy, met Algerian personnel and requested an extension of his passport. By doing so, he made his whereabouts known to the Algerian authorities. As well, all the Algerians were asked to leave Pakistan at that time. In cross-examination, he explained that his problems in Algeria were with the police. His behaviour is inconsistent with his story.

[231] His place of residence while living in Pakistan, his period of unemployment of 15 months, his failure to leave Pakistan "immediately", his denial of not having visited Afghanistan and the renewal of his Algerian passport cast a shadow over his story.

Financial Situation of Mr. Harkat while in Pakistan

[232] As a warehouse supervisor working with the MWL, Mr. Harkat had a monthly income of 10,000 rupees (varying between USD $333.00 to $500.00, depending on the exchange rates, as the evidence shows). Every month, he testified that would go to Peshawar at Hadje Wazir's business to exchange his rupees into American dollars. He would keep the US money on him or at the warehouse in a suitcase.

[233] Mr. Harkat denies having told the Intelligence officers in October 1997 at para. 29, that he had deposited USD$12,000.00 in Wazir's bank. He asserts that there were no bank account services at his business. Wazir was just a currency exchanger. There were banks with account facilities in Pakistan but he did not open an account.

[234] During the cross-examination of Mr. Harkat, calculations were made to be understand how he could have saved USD$18,000.00. In a CSIS interview in June 1998, he is recorded as saying that he had saved USD$9,000.00 (see page 32) while in Pakistan. These savings allowed him to pay all the expenses necessary to travel to Canada and have some money upon his arrival. It is the opinion of the Ministers however that Mr. Harkat had other financial resources available to him.

[235] According to Mr. Harkat, he earned between $16,000.00 and $24,000.00 US depending on the exchange rate over a four years period working for the MWL. Out of this, he saved USD$18,000.00, which would represent between 110% and 75% of his total income.

[236] To explain this elevated rate of savings, Mr. Harkat said that the MWL paid for everything, including his accommodation and transportation. He had minimal expenses which he estimated to be 2,000 rupees per month (between USD$66.00 and USD$100.00). He spent an additional USD$2,000.00 for dental work.

[237] He testified that he was unemployed during his fifth year. He said that he stayed rent-free at a house supplied by Dost (the administrator of the camp) in the refugee camp. He must have paid for food and transportation, but no evidence was offered on that.

[238] It is difficult to believe that Mr. Harkat was able to save USD$18,000.00 on the basis of the numbers provided by him. When assessing these numbers, personal expenses from USD$66.00 to $100.00 a month and dental fees have to be considered. In addition, the expenses incurred during the fifth year, for which we have no information, is also relevant. Savings of that magnitude are out of the ordinary, if not impossible. The closed evidence on this matter is substantial and corroborated. Therefore, the Court does not find Mr. Harkat's version of his finances while in Pakistant to be credible (see also footnote 12).

[239] The two following subject matters concern two individuals Mr. Harkat knew from Pakistan who had access to large sums of money. The Ministers argue that Wazir was a major financier who was closely tied to Al-Qaeda. Mokhtar was referred to during the present proceedings by Mr. Harkat to explain the amounts of money he received from abroad.

Wazir

[240] It is the opinion of the Ministers that Hadje Wazir and Pacha Wazir are one and the same. Mr. Harkat referred to Hadje Wazir as a "friend" during the October 1997 interview with the CSIS intelligence officers. For the Ministers, Wazir is a United Arab Emirates national who was operating storefront banks and wire transfer stations across South Asia and Europe. From a storefront bank located in Pakistan, Wazir handled financial transactions for Khattab and the Bin Laden network. He is alleged to have been the main money-handler for Osama Bin Laden. Mr. Harkat was associated in some way with such financial transactions and was not truthful when discussing his association with Wazir.

[241] In the October 1997 interview, the summary states that Mr. Harkat deposited USD$12,000.00 in Wazir's bank, which were his earnings from the MWL. In a subsequent interview in June 1998, he changed from his earlier version and said that he did not have a bank account and kept all of his savings with him in a suitcase.

[242] The Ministers also rely on a February 1997 summary of a conversation between Mr. Harkat and Hadje Wazir during which he identified himself as "Muslim" from Canada and inquired about

Khattab or any of the Khattab's "people". He gave his phone number so that it could be passed on to Triki or any brother showing up at Wazir's centre for their transactions. Mr. Harkat asked for Abu Maher's phone number. He also inquired about Al Dahhak and Dr. Abdelsamad and asked for Wael's phone number (ex. M7 at K6) (see also footnote 13).

[243] In another summary of conversation in August 1997, Mr. Harkat said he had spent "the $30,000.00 he had on the side" and that he could easily obtain money from Hadje Wazir. The summarie recounts that Mr. Harkat indicated that it was his intention to travel where Wazir resided to ask him for money (See ex. M7 at K9) (see also footnote 14).

[244] Mr. Harkat admitted to knowing Wazir. However, he states that he was just a money exchanger and a loan transferor. He was approximately 50 years old, had white hair and a beard. His storefront bank was a small place, open to the public, somewhat shabby.

[245] He denied having said that he deposited $12,000.00 (USD) in an account in Wazir's bank, because Wazir did not offer that type of service. He kept his money in a suitcase at the warehouse. Other Pakistani banks offered bank accounts services, but he did not use them. He had a bank account in Algeria, that he opened in the fall of 1996, and three accounts at three different banks in Canada (Canada Trust, Toronto Dominion and Royal Bank), but none in Pakistan.

[246] Mr. Harkat testified that he cannot explain the February 1997 summary of conversation since he does not know Al Dahhak, Khattab or the other persons mentioned during that

conversation. He, however, does know Wazir and Wael. He also denies having had the conversation in August 1997. He says that he never received money from Wazir. For him, it would be unthinkable that he said he would travel to Pakistan to see Wazir.

[247] Mr. Harkat also challenges the allegations that Hadje Wazir and Pacha Wazir are the same individual (Hadje and Pacha Wazir). He noted that an individual named Hadje Pacha Wazir was arrested in Karachi, Pakistan on November 13, 2003, and was released from Bagram in February 2010 after it was concluded that there were no documents tending to prove that he had facilitated and funded the Al-Qaeda network through the use of his transfer shops in Jalalabad, Herat, Kabul, Chawke Yadgar in Pakistan, Dubai, Germany and England for loaning money and funding Al-Qaeda, the Taliban and Hezb e Islami. (See ex. H73 and H75). In his view, Hadje Wazir cannot be linked to Al-Qaeda or the Bin Laden network.

[248] The public information on this individual is limited. The "One Percent doctrine", authored by Ron Suskind, describes him as a "shadowy financial king pin" from the United Arab Emirates operating "a chain of hawalas" (a means of payment to release the transferor from a debt from one city to another foreign city through a broker) who is the main money handler for Osama Bin Laden (see ex. M5, Tab 24 at 142).

[249] For John, in view of the evidence, there are reasonable grounds to believe that Hadje and Pacha Wazir are the same person (See ex. M14 and H75). The link to Bin Laden is based on the book "The One Percent doctrine" (See ex. M5, Tab 24 at 142). However, nothing in the public

evidence relates to Hadje Pacha Wazir operating a store front bank in Peshawar except for the testimony of Mr. Harkat who identifies a Wazir from that city but not related to Bin Laden or the Bin Laden network. Also, the summaries of conversations link Mr. Harkat and Wazir (see ex. M7 at K6 and K9).

[250] In this proceeding, Mr. Harkat explained how he would exchange his MWL salary in rupees for American money through Hadje Wazir's storefront bank in Peshawar on a monthly basis. He would keep the US currencies in cash in a suitcase at the warehouse. The exchange rate would vary through time. He dealt directly with Hadje Wazir since the latter spoke Arabic and none of the other employees did.

[251] At the time he is supposed to have had the August 1997 conversation (see ex. M7 at K9), Mr. Harkat was in Canada and had no intention of going to Pakistan to get money from Hadje Wazir. He also added that there was "no way" that Wazir would give him the money.

[252] The October 1997 summary of interview reads as follows:

> Mohamed was then asked if he had contact or access to any financial institution abroad to which he replied in the affirmative. Mohamed revealed that he has a friend named Haji WAZIR who works in a bank in Pakistan. Mohamed stated that he deposited his money with WAZIR. When asked for the amount, Mohamed stated he deposited $12,000.00 (US) in WAZIR's bank. The money he deposited with WAZIR explained Mohamed was his earnings he received over the years that he worked for the MWL.
> (see ex. M7, tab I at 14 and 15 para. 29)

[253] Mr. Harkat admits that Wazir, a storefront money exchanger and loan transferor, was a friend through whom he exchanged his monthly salary into US currency. He denies having deposited USD$12,000.00 at Wazir's bank. He claimed that he saved USD$18,000.00 from his employment with the MWL. In an October interview, he stated that he had saved USD$12,000.00, not USD$18,000.00. This last amount was only mentioned later by Mr. Harkat. He arrived in Canada in early October 1995 with between USD$1,000.00 and $1,500.00.

[254] During a conversation in August 1997 involving Mr. Harkat, he states that "he had spent the $30,000.00 he had on the side" (see ex. M7 at K9).

[255] In his recent testimony, Mr. Harkat states that he began gambling some time in late 1996, and spent the $18,000.00 Cdn lent to him by Mokhtar. His evidence shows that he was playing with a lot of money originating from his power lines of credit from different Canadian banks, loans from an ex-girlfriend and his incomes from his different jobs.

[256] It is significant that Mr. Harkat was able to spend USD18,000$ given that he came to Canada with between USD$1,000 and 1,500, lived on welfare until late 1996 and then had jobs that paid only the minimum wage.

[257] As of November 1997, some acquaintances of Mr. Harkat observed that he was straying from his religious duties and the fact that he had become addicted to gambling and accustomed to western life. In February 1998, two acquaintances of Mr. Harkat commented on his new lifestyle

and suggested that Harkat's contacts in Saudi Arabia should stop wiring money to him because he was not using it properly (See ex. M7 at K10 and K11) (see also footnotes 15 and 16).

[258] However, the Court does draw conclusions about the flow of money between Mr. Harkat and Hadje Wazir. The evidence does raise serious questions about the source of funds available to Mr. Harkat, but is not conclusive.

[259] The public evidence concerning Hadje Wazir being linked to Bin Laden is also inconclusive. Except for a reference in "the One Percent doctrine", there is very little. Mr. Hadje Wazir has been released from the Bagram air base in Afghanistan following a military review procedure (see ex. H75).

[260] As to whether Hadje and Pacha Wazir are one and the same or not, the Court notes that these names are common in Pakistan. The evidence is therefore also inconclusive in that regard.

[261] The Court remains concerned about the following contradictions: Mr. Harkat said in October 1997 that he deposited $12,000.00 of his savings at Wazir's bank and denied that subsequently; furthermore, the USD$12,000.00 savings became USD$18,000.00.

[262] In addition, Mr. Harkat's denial of having had a conversation in February 1997 with Wazir discussing individuals such as Khattab and Dahak is of concern if we keep in mind the importance

of the two individuals. Mr. Harkat denies knowing these individuals. More will be said on this at a later stage in these reasons.

[263] Many things, such as the flow of money to and from Mr. Harkat, the corrections of past statements to reconcile them with his more recent testimony, his lifestyle in Ottawa over the years and his low paid jobs raise questions.

Mokhtar, his valuable friend

[264] Mr. Harkat testified that he became a good friend of Mokhtar. Mokhtar was the only one that visited him at the warehouse in the refugee camp.

[265] In his recent testimony, he explains that Mokhtar, a Libyan who used to work for the MWL, started a very lucrative honey business. Mokthar lived in the rich district of Hayatabad, in Peshawar. Mokhtar had a nice house and a nice car (see Transcript of Proceedings, Vol. 11 at 166 and 167). It was Mokhtar who gave Mr. Harkat Abdullah Pakistani's phone number so he could make a false passport for him to leave Pakistan en route to Canada.

[266] Mr. Harkat referred to Mokhtar only once during the June 1998 interview: "Mokhtar works at Arabat al Islami (ph), an aid agency. He (Mokhtar) is responsible for the main office" (see CSIS interviews at 39). The lucrative honey business is mentioned but in relation to another individual. Mr. Harkat questions the veracity of some of the information found in the summaries of interviews where Wael gave him $18,000.00 Cdn. He mentions that, in fact, it was Mokhtar who lent him the

money. In support of this version, Mr. Harkat filed his lawyer's handwritten notes of the interview (Ex. H51), which refers to Mokhtar. Mr. Creates, his lawyer, also testified on this matter.

[267] Mr. Harkat states that Mokhtar forwarded his personal documents when he arrived in Canada in October 1995. He left all his documents with the MWL when he left Pakistan with his false Saudi passport and his Algerian passport. He never received the identification card of the MWL with the alias Abu Muslim on the back. In his recent testimony, Mr. Harkat stated that Mokhtar failed to send it to him. Mokhtar also gave Mr. Harkat's phone number in Canada to Wael prior to his arrival in September 1996.

[268] Mr. Harkat telephoned Mokhtar in late 1996 when he decided to recover the $2,000.00 US from Hanifah initially sent to his mother in September 1995. Mokhtar told him that Hanifah was in Yemen.

[269] Around October 1996, Mr. Harkat seriously considered opening an antique store with an individual called Mohamed Elbarseigy ("Elbarseigy"), an Egyptian who knew Ahmed Said Khadr. To do so, Mr. Harkat needed $8,000.00 Cdn.

[270] At that time, Mr. Harkat had no funds. He therefore telephoned Mokhtar who agreed to lend him the money. The transfer was made directly into Elbarseigy's bank account. A the end of the day, the business was never started because Mr. Harkat learned from Ahmed Maghrebi, who lived

on the same street as him, that Elbaseigy had a similar business that eventually failed. Mr. Harkat was reimbursed.

[271] In his testimony, Mr. Harkat stated that Ahmed Maghrebi, who was subsequently deported to Morocco, introduced him to Derbas in 1996. They became friends. Because of his good English, Derbas was useful to Mr. Harkat.

[272] Mr. Derbas and Mr. Harkat then decided to open a gas station in Ottawa, which would require from each of them an investment of $20,000.00 Cdn. He called his best friend Mokhtar in Pakistan, who again agreed to lend him $10,000.00. Mokhtar transferred the money into the bank account of a person at the Mosque. With the USD$2,000.00 from Yemen, the $8,000.00 from the antique business and this new loan from Mokhtar, Mr. Harkat had the $20,000.00 required to open the gas station.

[273] The deal did not go through because Derbas could not raise the requisite funds. Mr. Harkat did not however give the money back to Mokhtar as he spent it at the casino. He explained that he never telephoned Mokhtar again as his business card with his phone number on it had been stolen during a burglary of Mr. Harkat's apartment. Mokhtar never phoned him to inquire about his loan either (see also footnote 17).

[274] Mr. Harkat testified that he did not receive any other amount of money from abroad. This is contradicted by a summary of a conversation between two acquaintances of Mr. Harkat held in

January 1998, where one told the other to inform Harkat's contacts in Saudi Arabia to stop wiring money to him because he was frequenting the casino, disco bars and drinking alcohol and that "… the money he was receiving was not used properly" (see K11). Mr. Harkat denied having received money from Saudi Arabia.

[275] Mr. Harkat's version of events is not credible. Although he was able to telephone Mokhtar repeatedly, he stopped calling him once he received the $18,000.00 because his business card was stolen. It is unlikely that Mokhtar did not inquire about his loans since, as the evidence suggests, he had Mr. Harkat's phone number when he gave it to Wael (Triki) in September 1996. Mr. Harkat's version of events on this matter cannot be accepted.

On Leaving Pakistan

[276] As mentioned, in January 1994, the government of Pakistan announced that all Algerians had to leave the country "immediately" (see H35). This led the MWL to terminate Mr. Harkat's employment in June 1994. From then on, Mr. Harkat considered his options as to where he would go.

[277] Mr. Harkat first met Abdullah Pakistani, an individual who was referred by Mokhtar . He told Mr. Harkat that he could arrange for him to leave the country for USD$6,000.00. Mr. Harkat refused. They discussed again later on, and agreed to secure for Mr. Harkat a false Saudi passport for USD$1,200.00.

[278] Mr. Harkat then bought a round trip airline ticket that would bring him from Peshawar to Karachi and then to Vancouver. At that time, he simply left with his false Saudi passport. He arrived in Karachi where, before boarding for Vancouver, an airport official identified the false passport. Mr. Harkat had to fly back to Peshawar.

[279] Back in Pakistan, Mr. Harkat decided to send USD$2,000.00 to his mother, through an Algerian named Hanifah, who could travel to and from Algeria easily. The money never reached his mother and, as seen earlier, Mr. Harkat was able to recover it from Hanifah some time in the summer or fall of 1996 through the services of Mokhtar. In the October 1997 interview with CSIS Intelligence officers, he states at paragraph 28 that he received USD$3,000.00 from Yemen from an unidentified Algerian male to purchase a computer, but did not purchase it and kept the money.

[280] In September 1995, he bought airline tickets from Peshawar to Karachi and from there to Kuala Lumpur. He boarded the airplane in Peshawar with his Algerian passport but used his Saudi passport at his arrival in Kuala Lumpur. Thus, a passenger named Harkat went on the plane and that same passenger dressed as a Saudi, with a different name, arrived in Malaysia.

[281] Once in Kuala Lumpur, there was no flight available for Canada so he stayed there for four or five days. He initially booked a round trip from Kuala Lumpur through Hong Kong and London to Canada. He was then told by the travelling agency company that he needed a clearance from Saudi Arabia in Hong Kong. He looked for an alternative, which was a business class ticket from Kuala Lumpur to Canada through London, which he bought for USD$5,000.00 (which included a

reimbursment of cancelled airline tickets). He left Kuala Lumpur on October 5, 1995 (see ex. H37). He incurred expenses in the five days he stayed in Malaysia. He slept in a Mosque, at a hotel and at a house (see CSIS interviews, June 1998 at 35).

[282] Aside from his Algerian and his false Saudi passport, Mr. Harkat left all his personal belongings, including his identification cards with Abdullah of the MWL in Peshawar. Once in Canada, he asked Mokhtar to send them to him.

[283] He arrived in Toronto on October 6, 1995 and declared his false Saudi passport to the Immigration officials and showed them his Algerian passport. He had approximately USD$1,000.00 left.

[284] This version of events raises a number of issues.

[285] First, the Court is unclear as to how he could have USD$18,000.00 in savings before he left Pakistan and arrived in Canada with USD$1,000.00 only.

[286] In addition, on his first trip out from Peshawar, he only used his Saudi Arabian passport to Karachi, without success. For his second trip to Kuala Lumpur, he used his Algerian passport to leave and then his false Saudi Arabian passport to arrive in Malaysia. To reach Canada, he used his false passport and upon arrival, he declared both passports to the Immigration officials.

[287] His explanation of the use of the two passports on the second trip out of Peshawar is surprising. Boarding a plane with one passport and leaving it with another is somewhat out of the ordinary. This change of nationality did not raise any concerns, as Mr. Harkat says.

[288] Mr. Harkat explains that he had no choice but to fly business class from Malaysia to Canada, which is again surprising given his financial resources at the time. It is also out of the ordinary for a refugee seeking better living conditions elsewhere (see ex. H37 for a copy of the business class airline ticket).

[289] In view of all this, again, his version of events raises concerns.

The Use of Aliases

[290] It is the Ministers' allegation that Mr. Harkat used aliases in order to hide his identity and his activities on behalf of Islamist extremists. The aliases used are: Mohamed M. Mohammed S. Al Qahtani (the name on his false Saudi Arabian passport), Abu Muslim, Abu Muslima, Mohamad Adnani, Mohamed Adnani, Abou Muslim, Mohammed Harkat and Mohamed – The Tiarti.

[291] In November 1996, a summary of conversations involving Mr. Harkat, Shehre addressed him as "Abu Muslim" and was asked how the "brothers" were doing. Shehre told Mr. Harkat that he might remember him as "Abu Messah Al Shehre of Babi". Mr. Harkat answered quickly that Abu Muslim was not present and identified himself as Mohamed. He told Shehre that he did not know

where Abu Muslim was or when he would be returning. Shehre then apologized about using the alias Abu Muslim (see RPSIR, ex.M7, Appendix K at 4 and 5) (see also footnotes 18 and 19).

[292] In a CSIS interview dated October 4, 1997, Mr. Harkat informed the Intelligence officers that he used aliases only when he met people he did not trust, but that aliases were common in Pakistan. He denied using the aliases Abu Muslim or Abu Muslima. In other CSIS interviews, he denied again having used the alias Abu Muslim or Abu Muslima (see CSIS interviews, June and August 1998 at 41 and 43). In a summary of conversations between two acquaintances, reference is made to Mr. Harkat as Abu Muslim (see M7, Appendix K at 11).

[293] Mr. Harkat has now admitted to having used the alias Abu Muslim, which he said was given to him by the MWL when he arrived in Peshawar in May 1990; an employment ID card was given to him with his official name on the front and with Abu Muslim written on the back. He used that card for employment purposes. He left the card with the MWL when he came to Canada and his friend Mokhtar did not send it to him with his other personal documents in October 1995. The card is therefore not available to the Court, contrary to other identification documents which were filed.

[294] When asked if he had used any other names in his PIF prepared in December 1995, he did not write anything (see ex. M7, Tab 2 at 1). He testified that he did not mention it because in his mind it asked for his name used while in Algeria and not in Pakistan.

[295] He never used the name Abu Muslim in Canada and only Thaer Hafez and Derbas were aware of it. He denied having used any other aliases.

[296] When commenting on the summary of conversation involving Shehre, Mr. Harkat testified that if someone phoned him in Canada using the name Abu Muslim, he would hang up if he did not know the caller.

[297] However, as it will be seen later, Al Shehre, an Islamist extremist, knew Mr. Harkat when he phoned him in November 1996. Mr. Harkat states that he did not know him and only tried to obtain proper legal services for him; he met him once in jail. Now, Mr. Harkat's admission that he used Abu Muslim as an alias while working in Pakistan bolsters the credibility of the November 1996 summary of conversation. The fact that he did not want at that time to be associated with the alias Abu Muslim raises concerns (see also footnote 20). Mr. Harkat did not comment further. It is the opinion of the Ministers that Mr. Harkat lied about the use of aliases such as Abu Muslim in part to distance himself from the Bin Laden Network.

[298] The Ministers also offered public evidence that Mr. Harkat used the alias Adnani (see ex. M5 at tab 6). Although the Court cannot conclude that Mr. Harkat used this alias on the basis of the public evidence presented, there is substantial closed evidence that supports such finding (see also footnote 21). There is therefore, on a balance of probabilities favouring the Ministers, proof that Mr. Harkat did use aliases to hide his real identity and activities.

Mr. Harkat's arrival and life in Canada

[299] When Mr. Harkat arrived at Pearson airport in Toronto on October 6, 1995; he had approximately USD$1,000.00 on him. He gave his false Saudi passport together with his Algerian passport to the Immigration officials and sought refugee status. He was asked to return to Pearson airport for an interview on October 16, 1995, which he did (see ex. M22).

[300] Mr. Harkat phoned Thaer Hafez ("Hafez"),a person who worked for HCI with whom he had lunch with in June 1994 in Peshawar, Pakistan. Hafez was a taxi driver living in Ottawa. Mr. Harkat did not admit to having made this phone call until later. They made arrangements for Hafez to meet Mr. Harkat at the Ottawa bus station.

[301] Mr. Harkat met Hafez who brought him to the Mosque on Scott Street. Once there, he met a Canadian named Ibrahim who had converted to Islam, and stayed at his residence for four days. In his first interview with Intelligence officers, he did not admit to knowing Hafez because Hafez did not want his name mentioned.

[302] He then moved to Elbarseigy's apartment on Brittania Road, where he stayed until the early summer of 1996.

[303] Until the late spring of 1996, Mr. Harkat lived in Elbarseigy's apartment. He could not work, was on social welfare and took English classes. He then moved to an apartment at 391 Nelson

Street. He intended to enrol in a computer program at the University of Ottawa, then get married and start a family. He however had to wait for his Immigration status.

[304] In the fall of 1996, he opened bank accounts at the Scotia Bank, Royal Bank and Canada Trust.

[305] In September 1996, Mohamed Aissa Triki (Wael) stayed at Mr. Harkat's place. In November 1996, another individual, Al Shehre, an Islamist extremist, also came to Canada, and was linked to Mr. Harkat. More will be said about these individuals later on.

[306] As seen previously in these reasons, Mr. Harkat had potential business projects with Elbarseigy and Derbas which never materialized.

[307] He began to gamble at the Casino de Hull, with his friend Derbas, in late 1996. He testified that he used the $18,000.00 Cdn he received from Mokhtar for gambling (see also footnote 22).

[308] On February 24, 1997, Mr. Harkat was granted refugee status by the IRB.

[309] In February 1997, he apparently had a conversation with Wazir, during which he inquired about individuals, such as Khattab, Dahak, etc., and asked for Wael's phone number. Mr. Harkat denies having had that conversation and testified he did not know most of these people.

[310] The summary of conversations held in March 1997 indicates that Mr. Harkat knew Ahmed Khadr was in Ottawa, that he had met him and would meet him again. Mr. Harkat denies having had such conversations.

[311] In the same month, another Summary of Conversation states that Mr. Harkat and an acquaintance discussed the payment of Shehre's legal fees and Zubaydah's involvement. Mr. Harkat denies having had this conversation.

[312] Mr. Harkat had two interviews with CSIS Intelligence officers in May and October 1997.

[313] He secured his first job at Pizza-Pizza. His addiction to gambling increased during that period. He therefore started to look for additional jobs. He worked at Petro-Canada and Econo gas.

[314] He worked for all these companies until 1999-2000, when he secured a full-time job with Promicron for five months, until he was laid off. During that period, he kept the Pizza-Pizza job. He then began to take a course to obtain an eighteen-wheel driver's license.

[315] In 1998, he was interviewed twice by CSIS Intelligence officers (June and October 1998).

[316] He started to work three jobs at the same time again (Econo gas station, Mr. Gas and Pizza-Pizza) for a year when he decided to obtain a taxi driver's license which he never received because of his arrest in December 2002 following the issuance of the 2002 certificate.

[317] His gambling became a problem. In 1998-1999, he met with the security people at the Casino and signed an agreement whereby he was banned from the casino. His friendship with Derbas came to an end at that time.

[318] According to his testimony, he spent every single penny he had, all his credit cards on gambling. He had a line of credit of $10,000.00 Cdn with Canada Trust as well as a power line. Some financial records (ex. M25) show a significant flow of money over a three-month period where he received more than $25,000.00 in advances. His girlfriend at the time also lent him money. This adds up to a large amount of money for an individual working on three (3) jobs at a minimum salary wage.

[319] He started gambling again in late 2000, and at one point lost $65,000.00 Cdn. This loss tested his relationship with Sophie Lamarche. They were married in January 2001.

[320] He went back to see the security officers at the casino again and agreed to be banned for five years. Since then, he has not gambled.

[321] In May and June 2001, Mr. Harkat had conversations with his “fiancée” and her mother in Algeria. He told them that when his immigration situation would be resolved, he would travel to Algeria and get married. He also suggested buying a house in Algeria. His fiancée expressed a wish

to come to Canada. Mr. Harkat said that he would like her to remain in Algeria and raise their future children there.

[322] He had other conversations as well with his father and brother in Algeria. With his family in Algeria, he discussed about his brother wanting to come to Canada, as well as the political situation in Algeria. In June 2001, he asked his brother to find him a house in Algeria and told his father that he was planning to come home in the following two months (see K conversations, Further summary of Mohamed Harkat's conversations from May and June 2001).

[323] Mr. Harkat testified that he told his family he wanted to go to Algeria to please them and give them hope. He had no plans to go back home, to buy a house or get married. His father did not have a phone line so they would use the family neighbour's. His relationship with his "fiancée" was only over the telephone. He never met her and did not know how to terminate the relationship. He had decided to marry Sophie. He kept sending money to his family so that they would have "a good life". The Court notes that his behaviour with his fiancée and family on the phone is not at all indicative of an individual who fears to return to Algeria.

[324] He was arrested in December 2002, when the first certificate was issued against him. As of today, he still does not have permanent resident status in Canada.

[325] In the following chapters, more will be said about his life in Canada and the people he was involved with.

Mohammed Aissa Triki ("Wael")

[326] The Ministers are of the opinion that Mr. Harkat assisted Wael, an Islamist extremist, in entering and while in Canada.

[327] In September 1996, Mr. Harkat facilitated the arrival of Wael to Canada, helped him go through the Canadian Immigration process and put him up for at least three days at his Nelson Street apartment. Wael left Canada on October 23, 1996, using a different false passport from the one he came in with (see ex. M15).

[328] The Ministers' opinion is that this assistance demonstrates that even from Canada, Mr. Harkat continued to associate with individuals who are believed to be linked to Islamist extremist or terrorist organizations.

[329] The Ministers also allege that through Wael, Mr. Harkat maintained links to the financial structure of the Bin Laden network. For the Ministers, this shows Mr. Harkat's attempt to receive, hold or invest money originating from the Network in Canada.

[330] In a June 1998 interview with Intelligence officers, Mr. Harkat stated he had received a visit from Wael, and that the latter obtained his name and phone number from Mokhtar. Wael came to Canada with $60,000.00 Cdn in cash to start a business. According to Mr. Harkat, when he was asked how he found the money to gamble, he answered that Wael liked him and gave him

$18,000.00. More recently, he corrected what he states was a mistake in the summary and said that it was Mokhtar who gave him the money.

[331] In the October 1997 interview, a year after Wael visited Canada, Mr. Harkat identified him in a picture and described him as a Tunisian of about his age. He knew him from Pakistan. Wael worked for the International Islamic Relief Organization (IIRO). Mr. Harkat was aware that he wanted to visit Canada but did not know when he would be coming. When he arrived, he stayed at Mr. Harkat's apartment for three days and then moved to a hotel until he left Canada. Mr. Harkat did not hear from him after his departure.

[332] Wael is a person of interest to CSIS, as John testified. He came with a false passport and left Canada on October 23, 1996 carrying another false Saudi passport bearing the name Mohamed Sayer Alotaibi.

[333] For Professor Wark, "… the strongest allegations about links between Muslim charities and terrorist work concerns organizations and branches of organizations, like the IIRO in various parts of the world …". The association of Mr. Harkat with the MWL however did not raise concerns in his mind (see Transcript of Proceedings, Vol. 17 at 195). In his written report, he refers to a secret FBI review of global terrorism reportedly naming the IIRO and the MWL as "important resources" for a new generation of Sunni Islamic terrorists (see H10, A-2 at 33). Wael was working for the IIRO. Working for an aid agency, he was able to enter Canada with $60,000.00 Cdn and wanted to apply for refugee status.

[334] Although some elements suggest that he is an Islamist extremist, the public evidence is not sufficient to warrant such a finding. However, if the evidence which was examined during the closed hearings is added to the public evidence, the Court can conclude that Wael was an Islamist extremist (see also footnote 23).

[335] Mr. Harkat does not deny having had conversations with Wael before and after his arrival in Canada.

[336] In September 1996, Mr. Harkat told Wael to deny knowing anyone in Canada. Wael asked Mr. Harkat not to inform "the guys in Peshawar" of his arrival. He then informed Mr. Harkat that he had arrived and could be reached at a hotel in Montreal. Later, they discussed how Wael would get to Ottawa and who would pick him up. At the request of Mr. Harkat, Derbas brought Wael up to Mr. Harkat's apartment where he stayed for three days before moving to a hotel (see M7, Appendix K at 3). He left Canada three weeks later (see also footnote 24).

[337] When speaking to Wazir in another conversation in February 1997, Mr. Harkat asked for Wael's phone number which Wazir did not have (see M7, Appendix K at 6). Mr. Harkat denies having had this conversation.

[338] Mr. Harkat admits to having had a meeting with a Montreal lawyer for Wael's immigration file with Wael and Derbas.

[339] Mr. Harkat was Wael's contact in Canada. He guided him on how to deal with Immigration officials and helped him to make transport arrangements. He also lived at his house for three days.

[340] Mr. Harkat denied receiving any money from Wael while in Canada. He says that Mokhtar gave him the money ($18,000.00 Cdn) not Wael. That money was received before Wael's arrival (see Transcript of Proceedings, Vol. 12 at 40; and Vol. 14 at 207).

[341] The evidence as presented seems to suggest that they discussed the gas station project in the fall of 1996, not before Wael's arrival in September 1996. Apparently, Mr. Harkat obtained $10,000.00 Cdn from Mokhtar for that purpose.

[342] Mr. Harkat recently testified that he told Wael about his plan to start a gas station but he did not like it. "It costs too much money and that was the end of that" (see Transcript of Proceedings, Vol. 20 at 78).

[343] A contradiction emerges from the summary of the June 1998 interview with Intelligence officers about the origin of the $18,000.00. Warren Creates, Mr. Harkat's lawyer at the time, was present at the last part of this interview and states that Mr. Harkat said that Mokhtar gave him the $18,000.00. The handwritten notes of Mr. Creates also support this finding (see ex. H51). According to the preponderance of the evidence, Mr. Harkat's story is preferred. No negative credibility finding can be made on that basis.

[344] Wael stayed in Canada for the first three weeks of October 1996. A few days after his arrival, he learned that he could not obtain refugee status. He moved into a hotel, bought a car and left on October 23, 1996. Before leaving, he gave the car to Derbas.

[345] The evidence shows that Mr. Harkat assisted Wael, an Islamist extremist and a person of interest to CSIS, to enter Canada and while he stayed in the country. He also wanted to keep in touch with him after Wael's departure from Canada.

Allegation that Mr. Harkat is a "sleeper agent"

[346] It is alleged in the RPSIR that Mr. Harkat is a "sleeper agent" acting for the Bin Laden network: he has all the characteristics of a sleeper agent (see ex. M7 at 4, 13, 14). The Ministers argue in their written and oral submissions that the applicability of subsection 34(1) of the IRPA is not contingent upon whether Mr. Harkat's behavior in Canada reflect the notion of a "sleeper agent".

[347] The RPSIR describes several examples of the Al-Qaeda operatives who exhibited some of the characteristics of a sleeper agent. John defines a sleeper agent as an operative who is deployed into a country for a period of time, months or years, in advance of a planned operation. The individual will seek to avoid attracting the attention of the authorities and may or may not be requested to conduct local surveillance and identify targets; the important thing is that he is prepared to act when called upon (see Transcript of Proceedings, November 4, 2008 at 302).

[348] The experts debated on that topic at length to try to find an acceptable definition of sleeper agent. They tried to see if Mr. Harkat's life in Canada fitted that definition and whether or not the Bin Laden network used sleeper agents. The experts disagreed on the definition.

[349] Dr. Rudner explained that a sleeper agent is usually not sent to conduct an operation. Normally, his task is that of a facilitator who puts the ground work in place so that the operation becomes functional. He is an enabler (see Transcript of Proceedings, Vol. 7 at 197 to 200). He also noted that the Al-Qaeda manual provides instructions for covert operations (see Transcript of Proceedings, Vol. 8 at 69, 70).

[350] Mr. Quiggin was unsure about Al-Qaeda's use of sleeper agents. The plea agreement of Al-Marri which sets out some of the key elements of a sleeper agent was not, in the opinion of Mr. Quiggin, proving that he was a sleeper agent (see Transcript of Proceedings, Vol. 16 at 185 and 186), contrary to the opinion of Professor Wark, who described Al-Marri as being a "true Al Qaeda Sleeping agent sent to North America" (see ex. H10, Tab A2 at 23).

[351] The RPSIR contains other examples of who the Ministers consider to be sleeper agents of Bin Laden (Mohammed Sadeek Odeh, Wadih el Hage, ex. M7 at 13, 14). The case of Marzouk was also referred to. The testimony of Dr. Rudner along with the factual understanding of John, was helpful in understanding this vague terminology.

[352] Dr. William's testimony on this topic was also uncertain. For him, in view of a 2009 study (ex. H71), a sleeper agent becomes actively engaged in a terrorist operation not too long after having completed his training. Sleeper agents are "an anomaly, not a trend, not a mainstream option" (see Transcript of Proceedings, Vol. 22 at 140). He said otherwise when he testified in 2007 before the Military Commission Trial Board in the trial of Salim Hamdan (see ex. M39): he declared at that time that there were Al-Qaeda sleeper cells existing post 9/11 in Madrid, Bali, etc. (see Transcript of Proceedings, Vol. 22 at 154 and 155). He told the court that he had changed his mind after having read an extract of a 2009 study authored by Dr. Marc Sageman (see Transcript of Proceedings, Vol. 22 at 158 to 161).

[353] One thing clearly emerges from all the expert evidence: there is no accepted academic definition of a sleeper agent for terrorist organizations. It is by keeping abreast of practical realities that we can have a better perspective on this issue.

[354] There is no legal definition of a sleeper agent. I accept the evidence of Dr. Rudner that the Bin Laden Network has employed sleeper agents. I also accept his characterization of a sleeper agent as someone who facilitates the realization of an operation. In my view, a sleeper agent is one who attempts to establish himself in a country for the purposes of facilitating the work of a terrorist organization, in this instance, the BLN. Sleeper agents employ various techniques but must avoid coming to the attention of the local authorities. The phrase was used in the RPSIR to describe the perceived life of Mr. Harkat since his arrival in Canada in the early fall of 1995. Having said that, it may be helpful in understanding the facts before us.

[355] There are some aspects of Mr. Harkat's behaviour that recall some of the characteristics generally attributed to sleeper agents.

[356] The Ministers allege that his use of false documents upon his arrival in Canada, his use of aliases, his low profile at the beginning, his use of security techniques and his dissimulating approach concerning his previous whereabouts and links with Islamist extremists are suggestive of the *modus operandi* of a sleeper agent (see ex. M7 at 12).

[357] For terrorists traveling throughout the world, the use of false documents, including passports, is a key element (see Transcript of Proceedings, November 4, 2008 at 278; Vol. 8 at 59 and 60; and ex. M19B at 33, 34). However, the Court accepts that genuine refugees also use false documents to escape from persecution as well.

[358] When he arrived in Toronto, Mr. Harkat declared his false Saudi passport and provided his genuine Algerian passport to the Canadian authorities. It is suggested that such attitude is consistent with that of a genuine refugee fleeing persecution.

[359] However, it was not his intention initially to declare his Algerian passport upon arrival. On his first attempt to leave Pakistan for Vancouver which was aborted because his false passport was identified by the Customs authorities at the airport in Karachi, he only left with his false passport, leaving all his other genuine identification documents behind. He testified that following his arrival

in Vancouver, it would have been then his intention to ask Mokhtar to forward his original identification papers, including his Algerian passport to Canada, so that he could hand them in to the Canadian Immigration authorities.

[360] The circumstances surrounding Mr. Harkat's first attempt to enter Canada are inconsistent with the actions of a genuine refugee fleeing persecution. They are in line with Dr. Rudner's explanation as to the use of false documents by terrorists or people associated to them (see Transcript of Proceedings, Vol. 8 at 59 and 60). As well, I note that Wael came to, and left Canada without any authentic passport.

[361] The evidence also shows that Zubaydah requested five Canadian passports, presumably for some of his camp instructors from Ressam. Zubaydah confirmed the request but said that the passports were not meant to be used for terrorist activities (see ex. M5 at tab 15).

[362] As stated earlier, it is the Ministers' opinion that prior to his arrival in Canada, Mr. Harkat used many aliases. In their opinion, Mr. Harkat used them in order to conceal his identity and his real activities on behalf of Islamist extremists. It is only in the first certificate proceeding in October 2004 that he admitted to having used the alias Abu Muslim while working in Pakistan. His recent testimony confirms the use of the alias Abu Muslim, but not other aliases. According to the Ministers, his lack of openness on this subject suggests that he wants to distance himself from the BLN.

[363] As stated earlier, the closed evidence suggests that Mr. Harkat did use some aliases while in Pakistan, which is consistent, in the Ministers' opinion, with the concept of a sleeper. However, Mr. Harkat did not use any alias since his arrival in Canada.

[364] In a conversation with Al Shehre in February 1998, Mr. Harkat is summarized as saying that he had to keep a low profile as he needed to secure his status in Canada, and then he would be "ready". He is said to have added that he was not in a position to say what he wanted to say (see the K12 summary of conversation) (see also footnote 25).

[365] Mr. Harkat denied having had this conversation. This Court finds, as it will be later detailed, that he knew Al Shehre, an Islamist extremist, while in Pakistan, that he had conversations with him prior to his arrival in Canada, that he helped Al Shehre while he was in jail in Ottawa and that he spoke with him after he left Canada. There is also information indicating that Mr. Harkat helped to pay Shehre's legal fees. Mr. Harkat's denial of this conversation is not accepted. The content of the conversation indicates that his priority was to obtain Canadian status. For that purpose, he had to maintain a low profile, which meant he could not be seen to be a close associate of Al Shehre. This behavior is also compatible with that of a sleeper.

[366] Mr. Harkat was also somewhat unclear as to his whereabouts and past associations. He still is. This again can be associated with the behaviour of a sleeper agent.

[367] Furthermore, upon his arrival, Mr. Harkat denied having friends in Canada. He did not reveal knowing Hafez. Within ten days following his arrival, he met A. Khadr and travelled with him to Toronto. This trip was only disclosed later. When interviewed by the Service in June 1998, he said that he had met A. Khadr in Toronto with Elbarseigy but that he did not really talk to him. He testified that he did not know A. Khadr while in Pakistan, but that he had heard about him. He also does not know Zubaydah, never met him or talked to him. He does admit knowing Wazir, the financier who was in charge of exchanging his money while working for the MWL. He does not admit, however, having discussed in February 1997 about Ibn Khattab or inquiring about any of Khattab's people or about Aldahhak (see K6). He does admit knowing Wael (or Triki) who stayed at his place for a few days. His testimony on this matter gives a clear impression that he is trying to conceal in part his past life in order not to be associated to Islamist extremists.

[368] Mr. Harkat's use of false documents, his efforts not to be linked to at least one alias, his objective of keeping a low profile and his secretive approach about people and his past, and links to Islamist extremists do not conclusively show that he is a sleeper agent, but they are troubling ingredients that can be attributed to a sleeper agent. This can only impact Mr. Harkat's credibility.

[369] From his arrival in Canada in the fall of 1995, Mr. Harkat lived a life full of unanswered questions. As the evidence shows, he was here to obtain Canadian status and then be "ready". To be ready for an unknown objective is of concern to the Court and it would have been extremely helpful to understand more about it. His silence and denials on such important facts is troubling.

[370] As his gambling habits worsened and became financially more burdensome, as he adapted to North American life, Mr. Harkat began to slowly leave his past behind him. He desperately looked for marriage opportunities in order to facilitate access to his Canadian status.

Ibn Khattab

[371] The Ministers allege that Ibn Khattab's organization is a terrorist group which participated actively in the war against the Russians in Tajikistan, Chechnya and Dagestan. They also assert that this organization was linked to the Bin Laden Network. Mr. Harkat's association with Ibn Khattab is said to reveal that he is a member of such network.

[372] The Ministers also submitted that Mr. Harkat operated a guesthouse linked to Ibn Khattab in Peshawar, Pakistan, between 1994 and 1995. This guesthouse has been used by Mujahideen on their way to and from training camps in Afghanistan. Mr. Harkat has facilitated their movement, ran errands and worked as a chauffeur for Ibn Khattab (see Summary of information contained in the SIR dated April 23, 2009, ex. M10; and Public Summary of the Supplementary SIR dated December 10, 2009, ex. M11).

[373] In relation to the allegations in relation to Khattab, the Ministers relied upon the expert evidence of Professor Rudner in public hearings to support the characterization of the Khattab organisation as a terrorist group linked to the BLN.

[374] Mr. Harkat presented evidence showing that Khattab was not the leader of a terrorist group and that his organization did not have links to the Bin Laden Network. As a result, he is not a member of that network. Two expert witnesses, Professor Williams and Mr. Quiggin, addressed this point on his behalf.

[375] Mr. Harkat also denied knowing Khattab and having operated a guesthouse or ran errands on his behalf. He testified that he never ran a guesthouse in Peshawar (see Transcripts of Proceedings, Vol. 12 at 141, 142 and 143; Vol. 14 at 117 and 118).

[376] Mr. Harkat denies having had a conversation with Hadje Wazir in February 1997 where he identified himself as "Muslim" from Canada. During that conversation, he allegedly was inquiring about Khattab or any of Khattab's people. Hadje Wazir responded that he had not seen Khattab for a long time but that he had seen "his people". When questioned about that conversation, Harkat responded as follows:

> Q. Did you know or had you ever heard of the name at the time, February 1997, of Khattab?
>
> A. No, I don't.
>
> Q. Did you make this call or did you have this communication?
>
> A. No, I don't make this call.
>
> Q. And how do you know you did not?
>
> A. No, I did not make this call.
>
> Q. And how can you be sure you did not make this call?

A. Because the names there, I don't know them. There is lots of names that I don't know.

Q. You have no recollection of those names in your past at all?

A. No.
(see Transcript of Proceedings Vol. 12 at 130 and 131)

[377] Therefore, Mr. Harkat denies knowing Khattab and having been involved in a group lead by him.

Factual background on Ibn Khattab

[378] Known as "the lion of Chechnya", Ibn Khattab was Samir Saleh Abdullah al-Suwailem's "nom de guerre". Khattab was an Arab of Saudi or Jordanian origin, an Islamic warrior, and a wahhabi who first fought in Afghanistan against the Soviets. After the Soviets' withdrawal from Afghanistan in 1989 and the creation of the Russian Federation in 1991, Khattab developed a strong will to conduct a Jihad in the Caucasus, mainly in Tajikistan, and then in Chechnya and Dagestan.

[379] Khattab considered Chechnya as a Muslim nation under attack by the infidels, like Afghanistan. He believed Chechnya was "a country to liberate, Islamize, and use as a model for the conquest of all Muslim lands in the Caucasus and southern Russia" (see Lorenzo Vidino, "The Arab Foreign Fighters and the Sacralization of the Chechen Conflict" (2006) The Fletcher School Online Journal for issues related to Southwest Asia and Islamic Civilization at 2, ex. M12-A, Tab 14).

[380] Khattab arrived in Chechnya in 1995, after having fought for two years with the Islamic opposition against the Russian-backed forces in Tajikistan. He was in charge of a group of as many

as 300 Afghan-Arabs, known as the Khattab's International Islamic Brigade (see Julie Wilhelmsen, "Between a Rock and a Hard Place: The Islamisation of the Chechen Separatist Movement" (2005) 57(1) Europe-Asia Studies at 41, ex. M12-A, Tab 15; and Carlotta Gall, "Muslim Fighter Embraces Warrior Mystique" *The New York Times* (17 October 1999) 2, ex. M12-A, Tab 4).

[381] Once in Chechnya, Ibn Khattab joined forces with the Chechen commander Shamil Basayev. Basayev was responsible for the bus hijackings of 1993 and 1994, as well as for other violent attacks against Russian military units and civilians:

> During and following the disastrous Russian 20-month campaign of 1994-1996 there were a number of terrorist attacks by Chechen militias, including many on foreign contract workers, humanitarian workers, missionaries, as well as against Russians and moderate Chechens. On 14 June 1995 a Chechen rebel leader and extremist, Shamil Basaev, seized 1,000 hostages at a hospital in the Russian town of Budyonnovsk. After four days of fighting Russian troops retook the hospital at a cost of 150 lives but the rebels escaped with about 100 hostages. On 4 December 1995 a bombing of the Russian administration building in Grozny killed 11 persons and wounded more than 60. On 9 January 1996 Chechen rebels attacked a hospital in Kizlyar, Daghestan, and seized over 3,000 hostages. A week later Chechen rebel sympathizers hijacked a Black Sea ferry bound from Trabzon, Turkey, to Sochii, Russia, holding 165 passengers and crew hostage but releasing them shortly later.
> (see Sean Kendall Anderson and Stephen Sloan, "Terrorism: Assassins to Zealots", (2003) The Scarecrow Press, Inc. at 82, ex. M12-A, Tab 9; as well, see Anatol Lieven, "Russia on the Eve: Nightmare in the Caucasus" *The Washington Quarterly* (Winter 2000) at 145, ex. M12-A, Tab 10)

[382] These violent acts in response to Russians' similar actions against the rebels and against civilians brought a tentative peace to the Chechen conflict in 1996 in favour of the Chechen

movement. It would appear that Khattab was only involved in military actions. He however joined Basayev's side and never objected to the atrocities committed and to the use of civilians as shields.

[383] With the support of Basayev, Khattab remained in Chechnya and established several military training camps. Personnel, equipment and financing originating from Afghanistan and the Middle East enabled Khattab to establish more than three camps which would train on average 400 people per two-month sessions (see ex. M12-A, Tab 14 at 2; and M12-A, Tab 15 at 43). This new force became essential to the activities of the Basayev movement in Chechnya.

[384] In cooperation with Ibn Khattab, Basayev and other Chechen extremists made attacks against the Russians in Dagestan in the summer of 1999. This brought a strong response which enabled the Russians to recapture Dagestan villages. Basayev had no choice but to retreat to Chechnya where the war resumed (see ex. M12-A, Tab 9 at 84).

[385] In September of 1999, bombs exploded in apartment buildings in Moscow and Volgodonsk, killing 217 people. The Moscow theatre was attacked. According to Russian sources, those attacks were committed by the Chechen movement. However, the movement denied those allegations. The Russian troops came back to Chechnya and launched a second Chechen war, where military and civilian casualties occurred on a large scale. (See ex. M12-A, Tab 9 at 84; and Lorenzo Vidino, "How Chechnya became a Breeding Ground for Terror" (2005) Middle East Quarterly at 3, ex. M-12A, tab 13). The Russian troops eventually re-conquered Chechnya.

[386] Ibn Khattab was killed in March 2002 by a poisoned letter. It is alleged that the Russian intelligence is responsible for his death.

Mr. Harkat and Ibn Khattab

[387] The public and closed evidence presented by the Ministers suggests that Mr. Harkat knew Ibn Khattab while he was in Pakistan. Mr. Harkat denied knowing him. He testified that he had never heard of the name before.

[388] In these circumstances, a simple denial will not suffice. The evidence offered by the Ministers in public and closed hearings is serious, consistent and indicates that Mr. Harkat knew Ibn Khattab while in Pakistan. According to the public evidence, they knew each other. His conversation of February 1997 with Wazir refers to Khattab and "his people". Furthermore, his testimony on his lack of employment for a period of 15 months between 1994 and 1995 is not credible. The Ministers allege that it is during at least that time that he operated a guesthouse on behalf of Ibn Khattab.

[389] As discussed earlier, Mr. Harkat denies having had a conversation with Wazir in February 1997 (see K6). This is not credible because he admits knowing him from Pakistan.

[390] In the February 1997 summary of conversations, Mr. Harkat uses the name "Muslim" from Canada when speaking to Hadje Wazir. This refers to an alias, Abu Muslim, which he stated was given to him by the Muslim World League at the beginning of his employment (see Transcript of

Proceedings, Vol. 11 at 125 and 126). Although he does not admit to having made this call, I find that it occurred and that the use of the name "Muslim" from Canada is another indication that Mr. Harkat and Mr. Wazir were acquaintances. For the reasons given in the chapter on the K Summaries of Conversations, I do give credence to the content of the summary. Mr. Harkat, while speaking to Wazir, inquired about Khattab or any of Khattab's people, and therefore this leads to the conclusion that Mr. Harkat knew Khattab well enough to inquire about him. Considering all the evidence presented, the information before the Court supports this finding.

Mr. Harkat's work for Ibn Khattab

[391] For about 15 months after being told that his employment with the Muslim World League would not be renewed and that he needed to leave Pakistan "immediately", Mr. Harkat did nothing but meet with Thaer Hafez and obtain a false passport. During that time, he lived in a house supplied by an acquaintance:

> Because I know Hadje Wazir -- not Hadje Wazir, Haji Mohamed Dost supervising, he knows me, he knows like -- and I ask him if I can live until I leave the country, and I said most of the Afghans start leaving. There is some house around the school that is empty. So he give me one until I leave the country (emphasis added).
> (see Transcript of Proceedings Vol. 11 at 150)

[392] Mr. Harkat learned that he had to leave the country in early 1994, but he did not because, according to him, he had no country to go to:

> Q. So what do you do between June of 1994 to September 1995?
>
> A. I preparing for to get out from the country, but I don't know how.
>
> Q. Right.

A. So that period of time I met Thaer. That one doesn't work. He said I believe it's shorter period, so you think about which country you go to, and it is a matter of time. It is not like I want like a rush. I would like this time I just settle some place forever. So which place, it's a whole -- nobody going to give you a visa. Tried all the option. That's why I don't want to rush. Second time I end up, you know, moving from another country too. So I'm getting old and I would like to, you know, all the thinking, you know, at that age you want to find a place where you can live.

So after 1995, that what -- there is no other option. Only option I can buy -- first thinks he want to send me to Canada with 6,000, and I didn't accept that route because it doesn't explain to me how to get here, so I try to buy document.

(see Transcript of Proceedings, Vol. 13 at 194)

Q. So, I don't know, in October of 1994, you are living in this house in the refugee camp and you wake up on a Monday morning and what do you do? What are you doing during that time?

A. Nothing. Where you want me to go?

Q. I don't know. Are you working?

A. No, I wasn't working.

Q. What are you doing?

A. Just planning to get out of the country.

Q. The planning that you do during that time in 1994 leads to one meeting and nothing else.

A. Yes. That's for as he going to send me -- coming legally, like paperwork.

(see Transcript of Proceedings Vol. 14 at 23)

[393] A directive was issued by the Pakistani government at the beginning of 1994 forcing a number of non-Pakistanis to leave the country "immediately" (see ex. H35). However, Mr. Harkat only left in September 1995, in violation of the government's directive.

[394] Mr. Harkat hardly took any steps to leave the country during the 15 months after he stopped working for the Muslim World League. He first meets with Thaer who tells him that it would be impossible to come to Canada legally. He then gets the telephone number of Abu Abdullah Pakistan from his friend Mokhtar. Abu Abdullah Pakistan offers to make some arrangements for him for $6,000, which does not go through. Then Mr. Harkat obtains from that same individual a false Saudi passport for $1,200 and does not leave Pakistan until late September of 1995.

[395] Mr. Harkat does not, in my opinion, explain why it took him so long to leave Pakistan, in spite of the government' directive to leave the country "immediately" and the absence of any employment. Although he gives general comments about what happened between 1994 and 1995, I find his explanation not convincing in the circumstances.

[396] Mr. Harkat's denial of knowing Khattab is also not credible. Moreover, the explanation about his whereabouts between 1994 and 1995 is not credible. His credibility is seriously put into question in this respect.

[397] Mr. Harkat's answers to some questions were evidently erroneous and lacked sincerity. Some of his answers were at best improbable. Mr. Harkat did not appear trustworthy to the Court. It

is my opinion that Mr. Harkat knew Ibn Khattab and worked for him at least for a 15 months period. The public and closed evidence on a balance of probabilities supports the Ministers' allegations (see also footnotes 26 and 27).

Was Ibn Khattab a Terrorist?

[398] There is no doubt that the Chechen wars brought about massive killings of civilians and military people. Casualties are inevitable during a war. However, when warring parties deliberately target civilians, or use some of them as shields, that is unacceptable and untolerable.

[399] The Basayev movement has a history of taking hostages and using civilians as human shields. Whatever the motivation for these actions, it is clear that the intentional targeting of civilians is the essence of terrorism. Terrorists use civilians as targets to achieve their means. Although it appears that the Basayev Chechen movement was responding to Russian brutality, there is no possible justification for the inhumane acts of violence perpetuated by the Basayev group.

[400] Ibn Khattab became involved in the Chechen movement in 1995. There is absolutely no indication in the documents of record that he objected to the use of such methods. The experts were not in a position to say otherwise.

[401] While there is no information suggesting that Ibn Khattab himself deliberately targeted civilians, or used them as hostages or shields, his support for Basayev's Chechen movement reveals at least implicit support for such actions.

[402] Some of his statements given during that time period can help to understand his support to the cause or even reinforce it:

> In October 1999, Khattab said the "day Russia loses Dagestan, it will lose the whole of the Caucasus." He then echoed bin Laden on the killing of civilians, telling *Al-Watan Al-Arabi* the war "has been shifted to all Russian cities and would be directed against all Russians of all ages and ethnic backgrounds".
> (Scheuer, Michael, "Through our enemies' eyes: Osama Bin Laden, Radical Islam, and the Future of America", Potomac Books Inc., 2006 at 213, see ex. M19C)

A month earlier, he gave the following answer:

> We as Muslim and Mujahideen are fighting only against the disbelieving soldiers. It is not permissible for us to kill women and children(…)
>
> As long as the Russian army is continuing its bombing campaign against Chechen civilians and oppressing Muslims in the Caucasus, we cannot condemn the series of explosions in Moscow and Russia.
>
> Obviously, the world will accuse Shamil Basayev and me of making those explosions in Moscow and Russia. We denied being responsible or having any part to play in those series of explosions. Our role and responsibilities are to organize the Mujahideen in order to fight against the oppressive Russian army in the Caucasus region. Like the scientist Isaac Newton said, "Every action has an equal and opposite reaction."
> (See World Exclusive Interview with Ibn-al-Khattab" (27 September 1999), online: Islamic Awakening http://www.islamicawakening.com, ex. M-12A, tab 16 at 4-5)

[403] The Basayev Chechen movement, known as the Islamic International Brigade (IIB) or the Islamic International Peace Keeping Brigade (IIPB) was considered by Mr. Quiggin as "The most violent group in Chechnya" and as one of the "Three terrorist groups" operating in Chechnya (see

Thomas Quiggin, "Al-Qaeda and its Associated Groups", ex. H10, Tab B5 at 18-19). When asked to explain this passage, Mr. Quiggin stated:

> Q. Just to make clear for me, can you distinguish between Mr. Basayev and Mr. Khattab?
>
> A. As we were just discussing, I think it's completely fair and accurate looking at assessments at the time and assessments today that Mr. Basayev was under the influence of Al Qaeda. There is a fair amount of evidence to show that the maintained connections with them. There is a substantive body of evidence to show that he used attacks or tactics to support a strategy which was highly consistent with what he had been taught by Al Qaeda.
>
> In the case of Ibn Khattab, Ibn Khattab prided himself on his military skills, made statements that he didn't think it was appropriate to use bombs and guns on sleeping civilians, words to that effect, and has never made any statements consistent with the ideology of Al Qaeda as we recognize it through its global jihad. He never made any statements that were consistent with the objectives of Al Qaeda. He was very clear that he was there to fight Russians.
>
> (see Transcript of Proceedings, Vol. 16 at 52)

He, however, stated at page 50:

> JUSTICE NOËL: And Basayev is in contact with Khattab. They connect between themselves.
>
> THE WITNESS: At a certain point they are actually regarded as co-commanders. Certainly Ibn Khattab is noted as the military field commander. He is the guy who actually organizes and carries out and frequently leads the military attacks.
>
> (see Transcript of Proceedings, Vol. 16 at 50 and 51)

Mr. Quiggin testified that both Basayev and Khattab were co-commanders, but eventually diverged ideologically.

[404] In an article he published on the role of outsiders and Al-Qaeda in Chechnya, Professor Williams states that:

> Of far more importance than their actual military contribution to the Chechens' cause in a numeric sense (which modestly resembled the impact that the Afghan-Arabs had in Afghanistan and Bosnia) was the Chechen-Arabs' role in radicalizing elements in the Chechen armed forces after coming under the influence of Khattab's spiritual adviser, Abu 'Umar al-Sayyaf. One can surmise that the seeds of Chechen terrorism came to be planted at this time, for the Afghan-Arabs had always considered terrorism to be a legitimate component of their total war against the infidels.
> (emphasis added)
>
> (See Brian Glyn Williams, "Allah's Foot Soldier: An assessment of the role of foreign fighters and Al-Qa'ida in the Chechen insurgency" at 161, ex. H67)

In one of his publications, Dr. Williams describes Khattab's camps as terrorist bases:

> The Chechen moderate leadership was unable to evict Khattab and he was able to hatch his plans for creating a macro-Caliphate for all Caucasian Muslims. By 1997 Khattab and his local Chechen ally, Shamil Basaiyev, had begun to build jihad training camps in the inaccessible mountains of south-eastern Chechnya (the so-called Kavkaz complex in the vicinity of Serzhen Yurt). As thousands of militants from throughout the Caucasus passed through these camps, the Chechen secular leadership fought to expel the dangerous foreigners and even asked for the Kremlin's assistance in doing so. But events would show that Russia was more interested in undermining Chechen independence than destroying Khattab's terrorist bases.
> (see ex. M37 at tab 2 at 10)

In an article, Lorenzo Vidino states that:

> Today the character, actors, tactics, and very nature of the ongoing second Chechen war have all been profoundly influenced by the activities of the foreign mujahideen who have successfully "sacralized" a separatist conflict into a militant Islamist uprising.
> (see ex. M12-A, tab 14 at 1)

[405] These passages show that Khattab's group brought terrorism with them when joining forces with the Basayev Chechen movement. As seen before, hijackings of buses had already occurred by 1993 and 1994, as well as the 1995 taking of hospital hostages by Basayev. The seeds of terrorism by Khattab's group were already planted. The involvement of Khattab's group worsened the situation (see Peter L. Bergen, "Holy War, Inc.: Inside the Secret World of Osama Bin Laden" (2001) The Free Press at 219, ex. M12A, tab 1).

[406] During the hearing, Professor Williams tried to qualify his earlier statements concerning Khattab:

> (…) I don't want to put them on a pedestal and exonerate someone like jihad warrior Khattab, because ultimately he was involved in the business of waging war, and war is a bloody business.
> So I don't want to portray him as innocent or a cub scout or anything like that. This was a man who certainly – and I would gladly concede the point – did have blood on his hands as a warrior, and certainly he had some allies, like Basayev, who I would definitely call a terrorist.
> (see Tanscript of Poceedings, Volume 21 at 103 and104)

[407] Considering all the evidence and keeping in mind the declarations of Professor Williams and Mr. Quiggin that the Basayev group was a terrorist group and that the involvement of the Khattab group inserted an element of terrorism into the Chechen war, I do find that the Khattab group was part of the Basayev terrorism group. Professor Rudner's testimony also supports such finding:

> Most of the concrete examples that I can think of date from his time in Chechnya, which he arrived in 1995. They included in the interwar period after the period from 1996 to 1999, before the onset of the Second Chechen War, attacks on Red Cross workers or – may not be Khattab's organization necessarily. He was very closely aligned with another fellow by the name of Shamil Basayev, and Basayev's men were often credited with some of these attacks.

> But the information in the public documentation here show that there were a series of attacks that occurred against civilian targets basically in the mid '90s and of course leading up to the Second Chechen War in 1999, and as I mentioned, there was the allegation that his organization was involved in the apartment building bombings of September 1999 that killed between two an three hundred civilians across Russia.
> (see Transcript of Proceedings, Vol. 6 at 180).

[408] Mr. Harkat's activity as a guesthouse operator on behalf of Ibn Khattab, facilitating the transfer of warriors to and from the training camps and assuming other duties, makes him part of Khattab's group which supported terrorist activities in Chechnya. His support of the group makes him as involved in the cause as the front line fighters in Chechnya. The fact that this involvement goes back to at least 1994 and 1995 does not change the fact that Khattab was already associated with terrorism then as he was later on. As mentioned before, Khattab knew about the taking of hospital patients and employees as hostages by Basayev in 1995, as well as other incidents. His silence is quite eloquent, and as such, I find that he supported the Basayev movement. Further, his involvement in spreading the Chechen "seeds of terrorism" in the Chechen war and the operation of "Khattab's terrorist base" make him a participant in terrorist related activities. Khattab's behavior in the years following that incident only confirms such support.

[409] I find that Mr. Harkat facilitated Ibn Khattab's work. He was a member of the Khattab group. By operating Khattab's guesthouse in Pakistan, he was facilitating the operation of the Khattab group. The case law cited earlier clearly supports that conclusion. He was assuming a militant role within a group that was seeding elements of terrorism in Chechnya, operating "terrorist bases" and supporting the Basayev terrorist organization.

[410] This conclusion on Ibn Khattab differs from the one reached by Mosley J. in *Almrei*. As I was told by counsel, I had more information on this matter than my colleague. Some of Mr. Quiggin's reports and other documents such as his statements were not offered in evidence before my colleague. Hence, my different conclusion.

Ibn Khattab and the Bin Laden Network

[411] The Ministers do not submit that Khattab was a member of Al-Qaeda. Their position is that Ibn Khattab was part of the Bin Laden Network, but did not receive orders from Al-Qaeda. Since Mr. Harkat was a facilitator of the Khattab group, he was also part of the Bin Laden Network.

[412] The evidence indicates that there are links between Bin Laden, Ibn Khattab and the Basayev group. These links vary from common objectives or views to the exchange of, for instance, equipment and documents. Al-Qaeda refers to Khattab's training on its website (see also footnotes 28 and 29).

[413] Bin Laden and Ibn Khattab knew each other since the Afghan war (see M12A, Tab 4 at 2). Some state that they established a "father-son" relationship while Ibn Khattab was fighting the Soviets as a teenager (see ex. M12A, tab 1 at 219). Others say that Ibn Khattab was Bin Laden's friend (see M12A , Tab 10 at 157). Khattab himself referred to Bin Laden as "a brother in Islam" (see ex. M12A, Tab 16 at 5).

[414] Although they were said to be competing, to assert control over each other, they shared common objectives; they fought for the sake of Allah, against the Russian and, in turn, the American forces, which are one and the same for Khattab (see Fawaz A. Gerges, "The Far Enemy: Why Jihad Went Global" (2005) Cambridge University Press at 57-58, ex. M12A, Tab 5; and M12A, Tab 16, at 5; and M12A, Tab 4 at 2). Bin Laden also supported the Chechen wars and Khattab's group in trying to establish a Muslim state in Chechnya.

[415] As early as March 1994, Basayev, in preparation for future attacks in Chechnya, underwent Mujahideen training in Afghanistan and had a close connection with Al-Qaeda. Several hundred Chechens later trained in Al-Qaeda camps in Afghanistan (see United States Department of State, "Chechen terrorist organizations: statement of the case" (28 February 2003) American Committee for Peace in Chechnya at 3, ex. M12-A, tab 18). The analysis of the United States Department of State concludes that there are organizational and personal links between the Basayev and Khattab groups involved in the Chechen wars and Al-Qaeda (see M12-A, tab 18 at 4). The Court notes that Basayev resided in Peshawar while in transit to training camps in 1994 and 1995.

[416] The evidence also shows that the Chechen movement received money from the same sources as Al-Qaeda and that some of that money was channeled through Ibn Khattab. Apparently, Al-Qaeda was contributing financially to the Chechen war as early as 1994 and 1995, by sponsoring warriors at a cost of $1,500 each to go to Chechnya and to Khattab's group; also, Bin Laden sent substantial funding to Basayev and Ibn Khattab afterwards, in order to train gunmen, recruit mercenaries and buy ammunitions (see M12A, tab 13 at 4, M12A, tab 1 at 86; and H67 at 169).

[417] Some information also shows that Al-Qaeda sent a number of operational people to Chechnya in 1995 (see M12A, tab 14 at 1).

[418] Through emissaries, Basayev and Ibn Khattab asked Bin Laden for military assistance and for financial aid in 1999, which was provided (see United States Department of State, "Patterns of Global Terrorism" (2006) at 3, M12A, tab 17).

[419] In public statements, Ibn Khattab denied having links with Bin Laden or Al-Qaeda. His statements claim that he worked independently but the evidence shows consistently that there were substantial links between him, the Basayev movement, Bin Laden and Al-Qaeda.

[420] The December 1999 American Congressional Research Service Report states that "in an early October 1999 interview with Reuters, Khattab denied links with Bin Laden but in an interview with a Qatari television station later in October he called the Chechen conflict "an issue for all Moslems, including bin Ladin, who has made great efforts in previous Moslem issues"" (see Kenneth Katzman, "Afghanistan: Connections to Islamic Movements in Central and South Asia and Southern Russia" (1999) Congressional Research Service for Congress at CRS-3, M12A, Tab 8). The inclusion of Bin Laden in Khattab's statement corroborates the conclusion that there was a link between the Chechen war and Al Qaeda.

[421] In 1997, Dr. Ayman Al-Zawahiri, one of Al-Qaeda's top leaders and member of Al-Qaeda core, travelled to Chechnya as the head of the Islamic jihad. He was arrested and jailed by the Russian police. He was released after 6 months. The purpose of his trip was "to scope out Chechnya as a possible sanctuary for his wounded cause", to obtain a secure base and contact Khattab. After being released from jail, he sent Mr. Shehata to meet Khattab (see Andrew Higgins and Alan Cullison, "Terrorist Odissey: Saga of Dr. Zawahiri illuminates Roots of Al-Qaeda Terror" (2 July 2002) *The Wall Street Journal*, A1 at 8 to 12, M12A, tab 6). Dr. Al-Zawahiri was clearly involved in Al-Qaeda and showed a real interest in Chechnya and Khattab.

[422] As early as 1994, Al-Qaeda's recruitment videotape included Khattab's exploits. This videotape was accessible on the web in Real Player Format (see M12A, Tab 1 at 40). Khattab was an innovator as he filmed jihadist attacks for propaganda purposes. Al-Qaeda quickly followed his example and used this tool. Ibn Khattab's successors continued this practice even after his death. For example, the "Chechen terrorists" filmed the siege of a school in Beslan, Ossetia in August 2005 (see Bruce Hoffman, *Inside Terrorism* (2006) Columbia University Press, The New Media c.7 at 222, ex. M12A, Tab 7). Not only was Al-Qaeda helping Khattab's group, it also benefited from Khattab's innovations.

[423] The impact of Khattab's involvement in the Chechen war is still felt today. In 2008, two videotapes showed Bin Laden and Dr. Zawahiri preaching that Russia is a major infidel enemy and that "brothers" in Chechnya should give their support. The Chechen wahabis are now not only in war with Russia but also against the Americans and their allies (see Walid Phares, *The*

Confrontation, using the war against future jihad, (March 2008) Palgrave Macmillan at 182 and 187, ex. M12A, Tab 11).

[424] Professor Williams considers that there are certain links between Al-Qaeda, Bin Laden, the Basayev movement and the Khattab group. However, according to him, these links are not such as to include Khattab as part of Al-Qaeda or subject to the leadership of Bin Laden. He quotes the Asharq al Alwsat at page 9 of his report:

> It should however be stated that Khattab, often seen as the 'connecting dot' between the Chechens and Al-Qaeda, was never a member of Bin Laden's Sudan and Afghanistan based organization" (See Asharq Alawsat, "The Afghan-Arabs Part Two" (2005) online: http://www.aawsat.com at 164, ex. M12A, Tab 12)

[425] Mr. Quiggin goes further. For him, the Basayev group (the IIB) is an affiliate of Al-Qaeda which uses this group, as well as the Islamic Movement of Uzbekistan, to channel its activities in the Caucasus and in Central Asia. The implication of Khattab is noteworthy. In his report, he states that:

> The Islamic International Brigade shares Amir al-Khattab and bin Laden's 1995 declaration to "create one Muslim nation on the Caucasus under fundamentalist rule".
>
> Through Amir al-Khattab, who had connections with bin Laden, the group was able to receive extensive funding as well as volunteers and its cadres received training in Afghanistan as well as indoctrination of the Wahabbi creed in various "learning centers" across Chechnya.
>
> IIB is a fluid and overlapping organization having extensive personal and organizational linkages, with the Special Purpose Islamic Regiment and the Riyadus-Salikhin Reconnaissance or Sabotage Battalion of Chechen Martyrs sharing fighters, weapons, and material in their ethno-nationalist struggle.

In 1994, Shamil Basayev traveled to Afghanistan visiting Khost province in 1994 where he met with Khattab. He also toured various mujahadeen camps and received training. He also recruited Islamic fighters and brought them to Chechnya with him. The Group became famous after its 1995 raid on the town of Budyonnovsk, when fighters led by Shamil Basayev took more than 1,000 people hostage at a hospital. Some of the hostages were used as human shields as the rebels escaped back to Chechnya. More than 100 civilians, police and soldiers were killed during gun battles with Russian troops. Some 16 of the fighters have already been tried and sentenced for their role in the incident.

The IIB and its Arab leaders appear to be a primary conduit for Islamic funding for the Chechen guerillas, in part through links to Al Qaeda related financiers on the Arabian Peninsula. The group is believed to have extensive ties with Al Qaeda and Osama bin Laden. In 1999, the group members visited Kandahar, Afghanistan and met Bin Laden who arranged to send military and financial assistance to Chechen fighters battling Russian forces. US State Department believes that Bin Laden sent "substantial" amounts of money to Basayev and Ibn al-Kattab, to train gunmen, recruit mercenaries and buy ammunition. Chechen fighters associated with Basayev and al-Kattab are also believed to have fought in Al Qaeda's elite "055 Brigade" which battled the Northern Alliance in Afghanistan throughout 2001. Abu Omar Seif – an Islamic spiritual leader was identified by the Russians as a link to Arab funding sources. He was shown to be seated with Basayev in a video tape along with Movsar Barayev, of the Special Purpose Islamic Regiment (SPIR) who led the hostage-takers at Dubrovka.

The most concerted Chechen-Al Qaeda link appears to have been established in Georgia's Pankisi Gorge which was used by Al Qaeda units fleeing Afghanistan to set up a new bases and training camps. The area came to limelight recently following the discovery of traces of ricin in Britain as well as to earlier incidents in France that were foiled by law enforcement officials in late 2002. It was believed that a terrorist mastermind with knowledge of toxins and chemical weapons was at a makeshift camp in the gorge, similar to Al Qaeda camps in Afghanistan. Fighters of Arab origin had built and equipped military facilities in the gorge with funds directly through Al Qaeda channels. Large amounts of cash were smuggled into the gorge on orders of people close to Osama Bin Laden. The money was reportedly used to set up training camps and a firing range. One of Bin Laden's main lieutenants in this region was a Jordanian

> known as Abu Atiyya. Abu Musab al Zarqawi and Abu Khabab who ran the Al Qaeda's chemical and biological weapons testing facility at the Darunta camp in Afghanistan trained at a camp in the Pankisi Gorge. The formulas for chemical weapons found during the searches appeared to be different from the formulas in Al Qaeda's Encyclopedia of Jihad and other training manuals for developing bombs and chemical and biological agents that were recovered from abandoned camps in Afghanistan. This indicates that those being trained in the Caucasus region may also be receiving instruction from men who had experience with chemical and biological weapons in the Russian army.
>
> Al Qaeda's influence is also evident from a large number of suicide attacks the perpetrators of which were trained and indoctrinated by persons close to Al Qaeda and its movement. For Al Qaeda, Chechnya is another zone for jihad and a laboratory for terrorist and guerilla warfare against a conventional military power. (emphasis added)
> (see ex. H10, Tab B5 at 19, 20 and 21)

[426] During his testimony, Mr. Quiggin tried to backtrack from his written statement on this matter in favor of Professor Williams. The Court does not accept such change of opinion. His earlier opinion remains important to the Court and is in line with the testimony of Professor Rudner (see Transcript of Proceedings, Vol. 6 at 180).

[427] Taking into consideration the documentary evidence filed as exhibits, the reports and the testimonies of all the expert witnesses, I conclude that there are links between Al-Qaeda, Bin Laden and his network, the Basayev and the Khattab movements. I also find that such substantive link between the individuals concerned and their respective organizations is a reality. Having said that, I find that Al-Qaeda and Bin Laden were not the guiding force behind Basayev and Khattab's groups. They were independent in their actions but were linked through ideologies, mutual respect, training, use of resources and financial contributions. As the evidence shows, the Bin Laden network was

involved in the Chechen war from 1994 to 2008. Professor Rudner referred to the concept of "system of systems" to explain the Bin Laden Network. Among the system of systems existed the Khattab and Basayev groups.

[428] Mr. Harkat, who I have found knew Ibn Khattab, worked for him and was a member of his group, is linked to the Bin Laden network through the ties between Al-Qaeda, Bin Laden, the Basayev and the Khattab groups.

Al Shehre

[429] The Ministers allege that Mr. Harkat assisted Islamist extremists' entry in Canada and that he maintained contacts with Islamist extremists.

[430] More specifically, the Ministers allege that Mr. Harkat provided moral and financial assistance to Fahad M.A. Al Shehre ("Shehre") when he was detained in Ottawa. It is alleged that Harkat has paid for his professional legal fees or that he was involved in arranging the payment thereof.

[431] Mr. Harkat denied knowing Shehre prior to arriving in Canada. He stated that he knew he worked for an aid agency in the Peshawar area, but had never met him. He informed the Court that he visited Shehre once in an Ottawa jail, to convince him to hire his own immigration lawyer, Mr. Warren Creates. Mr. Creates told him that he wanted the case (see Transcript of Proceedings, Vol. 14 at 101). Mr. Harkat denied having conversations with Shehre in the fall of 1996 and in February

1998 as well as a conversation with an acquaintance which related to the payment of Shehre's legal fees in March 1997.

[432] John and Mr. Harkat were the main witnesses who dealt with this allegation in the public hearings. In support of his position, Mr. Harkat offered evidence from Professor Wark, Mr. Warren Creates, Harkat's counsel at the time, and Mr. Suleiman Khan. Public exhibits were filed.

Who is Al Shehre?

[433] Shehre is a citizen of Saudi Arabia, born on October 8, 1976. His passport showed that he had traveled to numerous countries, such as Azerbaijan, Bosnia, UAE, Georgia, Pakistan and England. There is evidence suggesting that he may have been involved with a relief organization in Peshawar (see Transcript of Proceedings, Vol. 12 at 110). When he arrived in Ottawa on December 6, 1996 from London, England, he told the Immigration officer that he had been in Peshawar for 7 or 8 months (see Summary of Documents concerning examinations by Canadian Immigration Officials of Fahad Al-Shehre, December 1996, ex. M16, document 3 at 2).

[434] Al Shehre wanted to claim refugee status in Canada for political reasons since his country of citizenship, Saudi Arabia, was persecuting him. He specified that "his government would not allow him to practice his Muslim Religion the way he wants" (see ex. M16, document 3 at 1).

[435] Furthermore, he told the immigration officer that Saudi Arabia was looking for him in connection with the bombing of an American military base, that he was considered a militant and

that all of his friends had been arrested. When asked if he had been involved, he did not answer but stated that he supports the opposition party in Saudi Arabia. By coming to Canada, Shehre wanted to tell the world how bad the Saudi Arabian government was. He also wanted to collect money for the mujahideen. He shared many of their beliefs and gave them clothing (see ex. M16, document 3 at 1 and 2).

[436] As well as his passport, Shehre had the following identification documents on him at his arrival in Ottawa:

> - "ID from a UAE youth hostel;
> - ID from an organization helping the Muslims in Russia;
> - A paper letter: Nehzat Islami Tajikistan – which presented him to other Islamic groups for the purpose of helping to support in Northern Afghanistan and collecting money;
> - ID for the High Organization to Collect Help for the Islamic People of Bosnia."
>
> (see ex. M16, document 3 at 1)

[437] The Canadian custom officials seized the following items:

> 1. "Several weapons and a Russian-made gun holster;
> 2. A hand written note which reads the following: How to kill / assassinate with cold steel and poison
>
> a- COLD STEEL (KNIFE / BLADE OR KNOTWEED / CANE OR ROPE)
>
> **Knife/Blade
> If you had your enemy face to face, try to hit him in the following areas:
> - Thoracic Cavity
> - Eyes
> - Pelvis point (area)
> - The area of the genital organs.
>
> If you had him from behind, hit one of the following areas:
> - Spinal cord
> - Lower back
>
> ** Knotweed / Cane

- Between the eyes
- Arteries and Veins area
- Stomach
- The genital organs
- Strangle him
- Cerebrum area (if you had him from behind).
- Left ear

** ROPE

- One way only: Strangling

b- POISON

(text was not available)

3. A hand written note / list in Arabic containing the following items and figures (appears to be some kind of a shopping list / receipt):

QUOTE
1 – Weapons
2 – Ammunition
3 – Training Requirements / prerequisites / accessories
200 x 7

1400
4 – irrecoverable - (word scratched out)
5 – Meal
1 1000 – RPG
2 1000 – Alpeka / Albeka
3 1000 – Ammunition
4 1200 – (irrecoverable word)
5 1000 – (scratched out)

4,200

RPG	1000
Albeka / Alpeka	1000
Ammunition	1200
(word irrecoverable)	1200
Meal	500
Klachinkov	1400

6100 Marks
UNQUOTE"
(see Reference Index Volume III, February 5, 2009, ex. M8 at Tab 91)

[438] The Immigration officer noted in his report that the seized documents indicated that Shehre:

> … was in possession of lethal weapon in his luggage… in possession of document written in Arabic, that after being looked at by a translator, look like a list of guns and ammunition to be purchased… is also in possession of documents that were translated, which seem to give instruction on how to forge documents… (and) also to be in possession of tools for the purpose of forging documents… (see ex. M16, document 3 at 2)

[439] The Canadian authorities concluded that Shehre was a member of an inadmissible class of persons, more specifically, persons who are or were members of an organization that there are reasonable grounds to believe is or was engaged in terrorism (see paragraph 34(1)(f) of the IRPA).

[440] Shehre was deported to Saudi Arabia on May 29, 1997. John noted that Shehre was considered to be a threat to the security of Canada by the Canadian authorities and was therefore deported on May 29, 1997.

[441] According to John, there are indications that Shehre was associated with Al-Qaeda and the Bin Laden network. When Shehre arrived in Canada, he had documentation on how to kill which contained a list "very, very similar to a particular excerpt out of the al Qaeda terrorist training manual -- so close that I would consider them to be the same, to be copied from the al Qaeda manual (see Transcript of Proceedings, Vol. 1 at 102).

[442] If one is to read the list of items seized on Shehre with the Al-Qaeda training manual (see ex. M9, tab 2 at UK/BM-154 and following), the similarities are striking (see also Transcript of Proceedings, Vol. 1 at 105 to 108).

[443] The Al-Qaeda training manual was discovered by the Manchester police in 2000 and filed as public evidence in a Court hearing in 2001 (see Transcript of Proceedings, Vol. 18 at 23). Apparently, the manual was written in Peshawar, Pakistan sometimes between 1991 and 1996 by veterans of the jihad in Afghanistan. At the time of Shehre's arrest in Ottawa in 1996, the Al-Qaeda training manual was a secretive document accessible to only a few people with links to Al-Qaeda (see Transcript of Proceedings, Vol. 18 at 26).

[444] In his report, Professor Wark states that the Ministers' allegation regarding Shehre in the RPSIR does not give sufficient details to establish that he is an Islamist extremist (see ex. H10 tab A1 at 19). However, the RPSIR gives further references to the items seized on Shehre.

[445] Having reviewed the immigration and customs documents released in December 2009 (ex. M16), Professor Wark modified his conclusion on Shehre. He labels Shehre as an "honest jihadist", because he did not try to conceal his beliefs from the Canadian authorities, although the Al-Qaeda training manual requires its members to conceal such information when caught in similar situations (see Transcript of Proceedings, Vol. 18 at 31 and 32).

[446] In fairness, Professor Wark stated during his testimony that Shehre was a terrorist:

> I have no doubt that the Immigration authorities reached absolutely the right conclusion about this man on the basis of what they found in his possession and his own statements that he was an individual who appeared to be engaged in terrorist activities and was inadmissible to Canada. I think that was absolutely the right conclusion. (…) The point simply that I wanted to make is that in

> terms of his activities on arrival in Canada, from my perspective, he does not comport with the kinds of instructions contained in that manual (…) and I am not claiming that he wasn't a terrorist."
> (see Transcript of Proceedings, Vol. 18 at pages 36 and 37)

[447] Based on the evidence before me, I find that Al Shehre was a jihadist, a terrorist, an Islamic extremist with some connection to Al-Qaeda and/or the Bin Laden network (see also footnote 30).

Harkat assisted Shehre in entering Canada and while in Canada

[448] Five pertinent summaries of conversation are important for the purpose of this analysis:

1) In November 1996, Al Shehre spoke to HARKAT from London, United Kingdom. Al Shehre addressed HARKAT as "Abu Muslim" and asked how the "brothers" were doing. When Al Shehre said that HARKAT might remember him as "Abu Messab Al Shehre of Babi", HARKAT quickly said that Abu Muslim was not there and identified himself as Mohamed. When asked, HARKAT told Al Shehre that he did not know where Abu Muslim was, and said he did not know when Abu Muslim would be returning.

2) In November 1996, HARKAT received an apology on behalf of Abu Messab Al Shehre for the use of HARKAT's alias, Abu Muslim. HARKAT tried to avoid being called Abu Muslim.

3) In March 1997, HARKAT discussed some financial arrangements with an acquaintance in Ottawa who stated that he contacted Abu Zubaydah, at the "place" (believed to be a country) where HARKAT "used to be". Abu Zubaydah wanted HARKAT to help pay Abu Messab Al Shehre's legal fees, and HARKAT was asked if he could come up with $1,000.00 dollars. HARKAT replied that he was ready to pay that amount if he was contacted by Abu Zubaydah. When asked, HARKAT said he did not fear being contacted at home by Abu Zubaydah, and that he knew Abu Zubaydah personally (see also footnote 31).

4) In February 1998, HARKAT told Fahad Al Shehri that he had to keep a "low profile" as he needed status in Canada. HARKAT mentioned that he had at the very least managed to send a friend to visit and help Al Shehri while he was in prison. HARKAT told Al Shehri that as soon as he received

> Canadian status, he would be "ready". HARKAT advised that he was not in a position to say what he wanted to say.
>
> 5) In February 1998, HARKAT discussed his immigration case with Al Shehri. HARKAT's problems with Immigration erupted following Al Shehri's visit to Canada and the confirmation that HARKAT and Al Shehri were associated. HARKAT asked Al Shehri to send him $1500.00 dollars to cover the legal fees for his immigration process. Al Shehri promised to send the money as soon as possible. HARKAT asked Al Shehri to get the money from "the group" if he could not get it on his own.
> (see RPSIR, Appendix K – conversations 4, 5, 8 and 12)

[449] Mr. Harkat denied having had these conversations. The conversations between Shehre and Harkat took place before Shehre's arrival in Canada and after. It can therefore be inferred that they originate from telephone intercepts.

[450] During his testimony concerning the first summary of conversation, Mr. Harkat explained that if a person referred to him as Abu Muslim, he would "close the line". It is not a name he uses in Canada and he only used it for his work in Pakistan. He did not give further explanation aside from the fact that he denies knowing Shehre in November 1996 (see Transcript of Proceedings, Vol. 12 at 68). However, in November 1996, through an acquaintance, Al Shehre apologized to Mr. Harkat for using the name Abu Muslim. Mr. Harkat testified that he did not know Shehre in November 1996 and therefore states that it would have been impossible to receive an apology on his behalf. He also denied having had anything to do with the payment of Shehre's legal fees.

[451] The Ministers' evidence heard in public and during the closed hearings strongly suggests that Mr. Harkat knew Shehre while in Pakistan and continued to help Shehre while in Canada (see also footnote 32).

[452] The Court accepts the Ministers' evidence on a balance of probabilities that Mr. Harkat knew Al Shehre in Pakistan and assisted him in Canada. The Ministers' evidence heard in public and closed hearings support such a finding.

[453] Indeed, Mr. Harkat's own account of his reason for visiting Shehre in jail is not supported by the evidence of his own witness, Mr. Warren Creates, his lawyer at the time of the events. Again, Mr. Harkat's testimony on this point was not convincing. His description of the meeting in the parking lot of the jail with Mr. Creates and others, as well as his visit to Shehre with Mr. Derbas where he spoke with Shehre for five minutes is not credible (see Transcript of Proceedings, Vol. 12 at 62 and 63). Moreover, Mr. Creates has no memory of such a meeting in the parking lot (see Transcript of Proceedings, Vol. 20 at 17 and 18).

[454] Mr. Creates testified that he searched his records and did not find any reference to Shehre. He did mention, however, that in the early days of his practice, he did not open up files for simple punctual consultations. He does not recollect meeting Shehre and it was not his practice to take jail cases except on cash retainer basis.

[455] To the question asked about imploring Mr. Harkat to get “this case” for him, Mr. Creates answered “I don’t think I have ever begged for a case, if that’s what you are getting at” (see Transcript of Proceedings, Vol. 20 at 82).

[456] The evidence shows that at least twice during his testimony, Mr. Harkat said that Mr. Creates had asked him to intervene with Shehre so that he could be retained by him (see Transcript of Proceedings, Vol. 12 at 62 and 63; and Vol. 14 at 96). The Court concludes that Mr. Creates’ version is to be preferred to Mr. Harkat’s. The credibility of Mr. Harkat is seriously put in doubt in view of one of his own witnesses in the present proceedings.

[457] Shehre and Mr. Harkat share a similar past. Both worked for relief organizations in Pakistan. Shehre collected money for the organization in Saudi Arabia (see Transcript of Proceedings, Vol. 12 at 110). Apparently, Shehre was in Peshawar, Pakistan for seven to eight months (see ex. M16, doc. 3 at 2). The Court already determined in these reasons that Mr. Harkat worked for the Khattab group who was active in Tajikistan, Chechnya and Russia. Upon arriving in Ottawa, Shehre had the following identification cards: of an organization to help the Muslims in Russia; Paper Letter: Nehzat Islami Tajikistan; and a letter presenting Shehre to any other Islamic group for the purpose of helping to support the (sic) in Northern Afghanistan (See ex. M16, doc. 3 at 1). These documents link him to activities in Chechnya and Russia. It is important to note that similarities do not mean convergence. They should only be read in view of the general context in order to understand the factual situation at play.

[458] The Ministers also offered evidence to the effect that while Shehre was in Canada, Mr. Harkat did help Mr. Shehre and was involved in insuring that Shehre's legal fees would be paid (see K8). Mr. Harkat denied having had any dealings with Shehre's legal fees.

[459] Three summaries of conversation show that Mr. Harkat was involved in the payment of Al Shehre's legal fees. These summaries inform the Court that:

- Abu Zubaydah wanted Mr. Harkat to pay Shehre's legal fees;
- Mr. Harkat said that he would pay the fees if Zubaydah asked him to do so;
- He also mentioned that he knew Abu Zubaydah personally and was not afraid to be called by him at home;
- Mr. Harkat asked Shehre to send him $1,500 to cover his legal fees. Shehre promised to send the money as soon as possible. Mr. Harkat suggested that if he could not get the money on his own, he could get it from "the group"

(see RPSIR, Appendix K, conversations 4, 5, 8 and 12).

[460] Mr. Harkat's response to the allegation of his involvement in the payment of Shehre's legal fees was that Derbas was making efforts to get the money and would call Shehre's family in Saudi Arabia. He denies knowing Abu Zubaydah and stated that he did not discuss the payment of legal fees with anybody.

[461] The Ministers' evidence shows that Mr. Harkat was involved in trying to help Shehre but did not want his activities to be known since it might jeopardize his immigration application.

[462] John points out that in March 1997, Mr. Harkat appears to be asked by Abu Zubaydah to pay Shehre's legal fees of $1,000. Then, in February 1998, Harkat asked Shehre to send him $1,500 to cover the legal fees. John concluded that Mr. Harkat asked Shehre to reimburse him for a previous payment he had made (see Transcript of Proceedings, Vol. 5 at 203 and 204).

[463] Although it is not essential for the purposes of the case at bar, there is a logical link between both summaries of conversation. These facts show that Mr. Harkat did more than assist Shehre while in Canada; it appears that he was tasked to pay his legal fees by external people interested in the cause of Islamist extremism.

[464] On a balance of probabilities, the position of the Ministers is accepted: when he arrived in Ottawa in December 1996, Al Shehre was an Islamist extremist and had on him tools and information as required by the Al-Qaeda training manual. Mr. Harkat knew Shehre prior to his arrival in Canada. Although Mr. Harkat decided not to have any contacts with anybody in the fall of 1996, he still helped Shehre in providing support in getting his legal fees paid and got someone to visit him in jail. He made at least one visit to the jail. I therefore conclude that Mr. Harkat did assist Shehre in Canada and did maintain contacts with him before and after Shehre's stay in Canada.

Ahmed Said Khadr

[465] The Ministers submit that the evidence shows that Mr. Harkat was acquainted with Ahmed Said Khadr ("A. Khadr" or "Khadr") before he came to Canada and that Mr. Harkat was entrusted with specific tasks on his behalf before Mr. Harkat's arrival in Canada.

[466] It is also alleged by the Ministers that after Mr. Harkat's arrival in Canada, he continued to associate with A. Khadr, a known affiliate of Osama Bin Laden.

[467] In support of their submissions, the Ministers relied on the testimony of John, specific allegations made and communicated to Mr. Harkat based on closed evidence, public documentation filed as part of the RPSIR and a public summary of a conversation held in March 1997.

[468] Mr. Harkat denied the allegations that he knew Khadr. He states that the only time he met Khadr was in October 1995 in Canada. An acquaintance, Elbarseigy, introduced A. Khadr to Mr. Harkat when they drove from Ottawa to Toronto.

[469] An expert witness, Professor Wark, testified in relation to these allegations and informed the Court on HCI, A. Khadr's involvement and his radicalization through time. Mr. Khan, an ex-member of the Board of Administration of HCI and old acquaintance of A. Khadr, testified as well.

[470] Evidence before the Court establishes that Ahmed Said Khadr, also known as Al Kanadi, was born on March 1, 1948 in Cairo, Egypt. He came to Canada to finish his engineering degree

and obtained his Canadian citizenship. He lived in Montreal and Ottawa, but ultimately settled in Toronto. He married Elsamnah in 1977. In 1982, they left with their 2 children for Bahrain, where Khadr worked as an educator. In January 1985, he began to work for a Kuwaiti Relief organization (Lajnat al Dawa) and moved with his family to Peshawar, Pakistan. In 1988, he joined HCI, a Canadian charitable humanitarian organization founded in the early nineteen eighties. He became very good at collecting funds for the charity in Canada.

[471] In 1986, A. Khadr met a well known Islamist extremist, Al Zawahiri, an Egyptian surgeon who was a senior member of the Islamic Jihad, one of two militant groups who wanted to overthrow the secular government of Egypt. They became friends. Later on, Zawahiri became one of the key core members of Al-Qaeda. In 1992, A. Khadr was seriously injured. It is unknown whether it was caused by him stepping on a landmine or as a result of a military operation. He recovered in Canada and returned to Peshawar, Pakistan, in the fall of 1993 (see Michelle Sheppard, "Guantanamo's Child, the Untold story of Omar Khadr" (2008) Wiley, ex. M33).

[472] It is alleged that A. Khadr used his position working for charitable organizations such as HCI to divert funds to finance terrorist operations. For example, the bombing of the Egyptian embassy in Islamabad, Pakistan in November 1995 was said to have been ordered by Zawahiri and partly financed by rerouted HCI funds (from which allegedly $325,000 from 1980 to 1997 came from the Canadian International Development Agency (CIDA)). Khadr was arrested by the Pakistani police in connection with this bombing but was released after the intervention of Prime Minister Jean Chrétien. CIDA stopped financing HCI in 1997 (see Stewart Bell, "Khadr tied to Al-

Qaeda as far back as 1988: Canada bankrolled man's aid agency during that time" *National Post* (February 1, 2003), ex. M5 at tab 84; and Michael Friscolanti, "The house of Khadr" *Maclean's* (4 August 2006), ex. M5 at tab 85). HCI laid off A. Khadr after the bombing. Khadr subsequently created his own charitable organization, Health and Education Project International ("HEPI") which operated until the United Nations identified him as a high ranking Al-Qaeda member and his assets were seized (see ex. M5 at tab 85; and "The new consolidated list of individuals and entities belonging to or associated with the Taliban and the Al-Qaida organization as established and maintained by the 1267 committee" (14 November 2007) United Nations at 42, ex. M5 at tab 27).

[473] A. Khadr knew Bin Laden. One of Khadr's sons, Abdurahman, testified in Adil Charkaoui's first certificate proceedings and informed the Court that the Khadr family moved into the Bin Laden compound in Jalalabad and became an Al-Qaeda family (see Stewart Bell, "A lot of Canadians in Al-Qaeda, Khadr says: Toronto, Vancouver men at terror camp" *National Post* (7 August 2004), ex. M5 at tab 82) (see also footnote 33).

[474] A. Khadr's son described his family home in Peshawar as a home of Canadian jihadists before they went to, or came back from, Al-Qaeda training camps in Afghanistan. His house in Scarborough was a place where persons of interest for the police would come to (see Stewart Bell, "Under Western Eyes" *National Post* (14 October 2005), M5 at tab 83).

[475] In 1994, A. Khadr sent two of his sons to the Khalden training camp in Afghanistan, where they received instruction about weapons and explosives handling. A. Khadr's son said that his father repeatedly urged him to become a suicide bomber (see ex. M5 at Tab 85).

[476] After the 9/11 Al-Qaeda terrorist attacks in New York, A. Khadr went underground. In 2003, he was killed by Pakistani troops. His youngest son was also paralyzed during that incident. Except for Abdurahman, the black sheep of the family, Khadr's wife and all his children remain loyal to his cause.

[477] Professor Wark considers A. Khadr to be an Al-Qaeda member and a close associate of Osama Bin Laden. However, he differs from the Ministers as to the time when he became radicalized and fully supportive of the Al-Qaeda doctrine of total jihad, promoted the Muslim cause and Islamist extremists to the detriment of Western interests.

[478] Professor Wark considers that in 1994-1995 A. Khadr appeared to be closer to adopting Islamist extremist views, but had not fully done so. In his view, this did not occur until the following years. The public information does not contain any evidence about Khadr's fundraising activities with HCI or about his alleged redirecting funds for the Islamist extremist cause.

[479] Mr. Khan, a friend of A. Khadr, was quite surprised when he learned of his involvement with Al-Qaeda. He thought A. Khadr was a well educated individual, respected and quite admired. Mr. Khan, an ex-administrator of HCI, informed the Court that A. Khadr's employment was

terminated because of the "bad publicity" he was giving the organization, but there was no concern within the group about funds being redirected to terrorist groups (see Transcript of Proceedings, Vol. 23 at 218, 220, 221, 222, 239 and 240).

[480] From all the public evidence presented, important events such as the 1986 meeting with Zawahiri as well as his friendship with him, the 1992 injury which observers say caused him to change, the decision to send two of his sons to training camps in Afghanistan in 1994 and, to a lesser extent, his presumably indirect participation in the bombing of the Egyptian embassy in Islamabad, Pakistan in the fall of 1995, suggest that A. Khadr adopted the Islamist extremist cause sometime in the early 1990s (see also footnote 34).

[481] Sending two sons to training camps in Afghanistan clearly shows that A. Khadr had already espoused violent jihad in 1994. These camps were teaching gun and explosive devices use and killing techniques (see Ressam testimony, ex. M5, Vol. 1 at Tab 15; and Al-Qaeda training manual, ex. M9 at tab 2). As stated earlier, Abdurahman testified as to the fact that his father wanted him to be a suicide bomber. The Court concludes that when a father sends his own sons for that kind of training, he is no longer merely sympathetic toward Islamist extremism; he has become an Islamist extremist.

[482] I conclude that by 1994 at the latest, A. Khadr had adopted the Islamist extremist cause which culminated into his becoming a key leader of Al-Qaeda. That conclusion is dictated by the public evidence as well.

Links between A. Khadr and Mr. Harkat in Pakistan

[483] The Ministers allege that Mr. Harkat knew A. Khadr while in Pakistan, worked for HCI and was entrusted with specific tasks. Mr. Harkat testified that he did not meet A. Khadr in Pakistan. He knew of him by reputation and of his involvement with HCI. The closest he came to HCI and A. Khadr while in Pakistan was when he met with Thaer Hafez in Peshawar (see Transcript of Proceedings, Vol. 11 at 161 and 162).

[484] Although the information offered is not sufficient to conclude that on a balance of probabilities, Mr. Harkat worked for HCI and/or A. Khadr in Pakistan, this Court notes that Mr. Harkat travelled to Toronto with Khadr within close to a week after his arrival in Canada. A. Khadr and Mr. Harkat also both worked in the same field in Peshawar, Pakistan (see also footnote 34).

Links between A. Khadr and Mr. Harkat in Canada

[485] Mr. Harkat denied knowing A. Khadr or associating with him after his arrival in Canada in early October 1995, except for a van ride he had with him to Toronto.

[486] Mr. Harkat testified that he met A. Khadr through Elbarseigy during a four-hour van ride to Toronto en route to an immigration interview. He also visited the Khadr family house for prayers in Scarborough. During the ride to Toronto, he claimed that he only conversed with A. Khadr for a few minutes. Elbarseigy and A. Khadr conversed in English and Egyptian Arabic; hence Mr. Harkat

could not understand what they were discussing. This is the only time that he says he met A. Khadr (see Transcript of Proceedings, Vol. 11 at 231 and 232; and Vol. 12 at 4).

[487] Mr. Harkat says that he spoke to Mr. Khadr "very, very little" during the trip (see Transcript of Proceedings, Vol. 11 at 237). He was sitting in the back, Elbarseigy was driving and A. Khadr was in the front passenger seat.

[488] During the van ride to Toronto, Mr. Harkat concentrated on his immigration interview. He does not remember discussing at length with the other passengers in standard Arabic. When asked if it was impolite in his culture for Elbarseigy and A. Khadr not to converse with him, Mr. Harkat stated that it was not (see Transcript of Proceedings, Vol. 14 at 72).

[489] Mr. Khan contradicted Mr. Harkat on this point. He testified that:

> Q. During a long trip, would it be considered rude, in your culture, to not speak the same language as the person may speak?
>
> A. Yes, it is rude. If there is a third person sitting there that doesn't speak the language of two other people, it is rude for those two people to have a conversation in their language.
>
> Q. It is important that if they all understand the same language, to use it?
>
> A. Culturally and Islamically, yes, they should not be speaking in a language that their third person doesn't understand, but that doesn't mean it doesn't happen.
>
> (see Transcript of Proceedings, Vol. 23 at 242 and 243)

[490] Mr. Harkat is not credible when he says that he spoke "very, very little" to A. Khadr. Considering the length of the trip, the fact that all the passengers could speak standard Arabic with him and that it is impolite or rude not to speak a language that everybody understands, I conclude that Mr. Harkat spoke at length with A. Khadr and Elbarseigy during the four-hour van ride to Toronto, more than Mr. Harkat is willing to admit. I also find that the three of them could converse easily in standard Arabic and that they did so. I also note that, as admitted by Mr. Harkat, he visited the family home of Khadr during the trip. Whether it was for religious or personal purposes, the significance of that visit should not be discounted.

[491] A. Khadr is a key figure within the Islamist extremist movement in Peshawar in the 1990s'. Any association with him could only generate problems for Mr. Harkat. It is noteworthy that he reluctantly told the CSIS intelligence officers during a June 11, 1998 Interview that he had gone to A. Khadr's house with Elbarseigy and Derbas when he visited Toronto for his immigration interview (see CSIS interview reports, June 11, 1998). His account of the van ride was first given in 2004 during his testimony in the first certificate proceeding.

[492] In one summary of a conversation, there is evidence that Mr. Harkat had met A. Khadr in March 1997 and met him again. Mr. Harkat denied having had such conversation (see ex. M7 at K7) (see also footnotes 35 and 36).

[493] The Court being privy to the confidential information, which was tested by the special advocates, accepts this summary of conversation as accurate. Again, Mr. Harkat is not credible. The

Court, on a balance of probabilities, concludes that, in March 1997, Mr. Harkat had met A. Khadr and met him again. This in itself clearly associates Mr. Harkat with A. Khadr, an important member of Al-Qaeda.

[494] When Mr. Harkat testified on this matter, he was hesitant and, in my view, deliberately unclear. A review of his testimony shows his lack of transparency (see Transcript of Proceedings, Vol. 11 at 154, 155, 163, 164 and 231; Vol. 12 at 4; Vol. 13 at 183 and 184; and Vol. 14 at 70).

[495] On a balance of probabilities, the evidence shows that Mr. Harkat associated with A. Khadr after his arrival in Canada. The evidence also shows that, at least by the beginning of 1994, A. Khadr was an Islamist extremist and a member of Al-Qaeda

Abu Zubaydah

[496] The Ministers allege that Mr. Harkat knew Zayn Al-Abidin Mohammed (known as Abu Zubaydah) who was born in Saudi Arabia and was perceived as being a Bin Laden's lieutenants since the early 1990s. The Ministers also allege that Mr. Harkat was in contact with him while in Canada.

[497] Although his status within the Bin Laden organization has changed over time, Zubaydah remains a person of importance within the Bin Laden network according to the Ministers. He trained individuals and some became Islamist extremists.

[498] The public evidence on the subject matter was presented by John and a number of public documents became exhibits. The Ministers also rely on a summary of a conversation held in March 1997 referring to Zubaydah. Confidential evidence was filed during the course of the closed hearings and was tested by the special advocates.

[499] Mr. Harkat denied knowing Zubaydah prior to his arrival in Canada and associating with him once in Canada. Furthermore, he also denied the conversation linking him to paying Shehre's legal fees at the request of Zubaydah.

[500] As part of his defense, Mr. Harkat submitted that Zubaydah was not one of Bin Laden's top lieutenants and the Islamist extremist depicted by the Ministers.

[501] John testified that Zubaydah was associated with the Bin Laden network and assumed a role in the training of extremists and in identifying potential candidates for carrying operations such as 9/11. In view of the public evidence, he became aligned with Al-Qaeda.

[502] A convicted Al-Qaeda bomb plotter, Sakka and the millennium bomber, Ressam, both clearly implicate Zubaydah as running a terrorist training camp. Sakka and Zubaydah were both sentenced *in absentia* for their implication in the foiled Jordanian millennium bomb attacks in 2000 (See ex. M5, Tab 28).

[503] In his testimony in the Mokhtar Haouari trial, Ressam described Zubaydah as the person in charge of the camps for young recruits where they received training in the use of light weapons, handguns, small machine guns, small rocket launcher and explosives destined to infrastructures.

[504] In 1999, before returning to Canada, Ressam met Zubaydah in Pakistan. Zubaydah made arrangements for his trip. During that meeting, Zubaydah apparently asked Ressam to send him Canadian passports so that he could give them to people who would come "to carry out operations in the U.S." (See Michael Dobbs, "A Few Loyal men Direct Bin Laden's Sprawling Network" *The Washington Post* (27 September 2001 at 3, ex. M12-B, Tab 24). Ressam traveled on a false French passport. He was arrested in December 1999 near Seattle and was found guilty of terrorism, including transporting explosives. He testified for the prosecution during the Mokhtar Haouari trial. He later recanted his evidence about Zubaydah in reaction to the sentence rendered (see Jason Leopold, "US Recants Claims on "High-Value" Detainee Abu Zubaydah" *Truthout Report* (30 March 2010) at 4, ex. H78).

[505] In his testimony, Dr. Rudner explained that Zubaydah "was seen as the person, and at the time this was legitimate, as channeling the recruits who were recruited abroad, (…) and he was the point person in Pakistan who channeled them onwards to the guest house, remembering that for each stage one required a referee in order to demonstrate *bona fides* and trustworthiness". He also stated that "Mr. Ressam was being tasked to obtain genuine Canadian passports obviously through fraudulent means not for himself but for his emir, Abu Zubaydah" (see Transcript of Proceedings, Vol. 9 at 105 and 106; and Vol. 10 at 84 and 85).

[506] The Ministers also cite the summary of a conversation held in March 1997 between Mr. Harkat and an acquaintance who told him he had spoken with Zubaydah who wanted Mr. Harkat to pay for Shehre's legal fees. He reportdedly answered that he was ready to pay them if he was contacted by Zubaydah himself. During the conversation, Mr. Harkat made it known that he knew Zubaydah personally (See ex. M7 at K8).

[507] As to this allegation, Mr. Harkat testified that he did not know Zubaydah in Pakistan and did not have any association with him in Canada. He denied having had the March 1997 conversation.

[508] In the presence of a translator, Zubaydah testified in Guantanamo Bay on March 27, 2007. Zubaydah's training camp (Khalden) came into existence at the time of the Russian invasion of Afghanistan. His mission was to train Muslim brothers for defensive jihad. Contrary to Osama Bin Laden and Al-Qaeda's espousal of offensive jihad, Zubaydah's targets were military personel, not civilians.

[509] Zubaydah further testified that he operated the camp since 1994 and guest houses in Peshawar and Islamabad, and that he was in charge of the logistics for the brothers coming from their countries en route to Khaden. Upon their return, he would send them to Chechnya and Bosnia. He was not aware of the details of the training that occured at the camp. After the bombing of the World Trade Center in 2001, however, he did work with Al-Qaeda in Afghanistan.

[510] Zubaydah admitted having requested five Canadian passports from Ressam " … to be used for personal matters, not terrorist-related activities (…) not for America; they were for Canada and other countries for people other than RESSAM" (see ex. M12-B, Tab 27 at 9, 10, 11).

[511] The diary of Zubaydah contained an entry in 2000 which describes plans against America consisting of explosions and the burning of cities and farms. It is difficult to reconcile this with the statement that he only aimed at military targets (see M12B, Tab 27 at 14 and 15).

[512] Zubaydah notes that Ressam was only a trainee, and therefore was not aware of everything. He came to train and then left:

> He leave our camp and he joined this group they put in his mind more ideas because he, by himself, he is ordinary Muslim – not a scholar, not have any too much knowledge. He have ideas to make problems against Jew in Canada. I tell him if they are helping Israel, I told him this is good war. But if only Jew, it is not our headache. (see ex. M12B, Tab 27 at 16)

As to the request for Canadian passports, he stated:

> At that time, RESSAM, I request him passport, I was famous. I was me, myself, a big market for fake passport. I can send anybody to any place; it is easy. So this is my work. I am not shy from it, but RESSAM and other brothers in Africa, the Gulf, and Britain, French, I request please, I need real passports. (see ex. M12B, Tab 27 at 17 and 18)

He needed these passports to make it easier for his five instructors and their families to travel.

[513] The personal representative's last statement on behalf of Zubaydah was as follows:

> I have been an enemy of yours since I was a child because of your unjust acts against my people, the Palestinians, through your help

> and partnership with Israel in occupying our land and by killing our men and raping our women and kicking out our people and turning them into refugees for more than 60 years. (…) My moral position is not against the American people or America, but against the government which I see as a partner in oppression. A partner of a killer is also a killer (…) but I deny that I am an enemy combatant. I never conducted nor financially supported, nor helped in any operation against America (…) I feel good when operations by others are conducted against America but only against military targets such as the U.S.S Cole. But, I get angry if they target civilians, such as those in the World Trade Centre. This I am completely against. (see ex. M12B, Tab 27 at 22)

[514] As noted by Dr. Rudner in his report, Peshawar is the logistical and operational hub for Arab Afghan and Mujahideen campaign against the Soviet invasion of Afghanistan. Supply depots existed to provide for the combatants as well as supplies for Afghan refugees encamped thereabouts, and also "guest houses", which were actually training compounds that were established to accommodate and train Arab Afghan fighters (see ex. M19-B at 9).

[515] Abu Zubaydah operated guest houses in the first part of the 1990s in Peshawar and in Islamabad. Up to June of 1994, Mr. Harkat testified that he was managing a supply warehouse close to Babbi not far from Peshawar. Mr. Harkat denied having operated a guest house for Khattab. Zubaydah was actively operating such a house in 1994. In these Reasons, I have come to the conclusion that Mr. Harkat did operate a guest house for Khattab in the Peshawar area at least from 1994 to 1995.

[516] In light of the evidence, including the summaries of conversations, it is reasonable to infer that Mr. Harkat became acquainted with Zubaydah since both of them assumed similar

responsibilities in their respective guest houses. Moreover, they were both in Peshawar at the same time (see also footnote 37).

[517] Abu Zubaydah has a questionable past. He is associated with Khalid Sheikh Mohamed (alias Mokhtar), "the one behind 9/11". He was also convicted and sentenced *in absentia* for the unsuccessful millennium bomb attacks in Jordan in 2000, along with Sakka, an Al-Qaeda member. The Jordanian officials tie him to terrorist plots to attack a hotel as well as Christian holy sites in their country (See ex. M12B, Tabs 7, 17 and 28). He is also considered to be a "travel facilitator", a "fixer" for radical Muslim ideologies, a "travel agent" and a "safe house keeper" (See ex. M12B, Tabs 6, 17 and 18).

[518] I accept that Zubaydah was not a lieutenant in Al-Qaeda through the 1990s and 2000s. He was operating the Khalden camp outside the city of Khowst by himself. He was not closely linked to Al-Qaeda and did not have detailed operational knowledge of terrorist plots or attacks. He may have had general information on some of them.

[519] Since his arrest in 2002, the Central Intelligence Agency (CIA) has downgraded Zubaydah's assessment. He is quoted as being "an important terrorist facilitator" who has disclosed "essential raw material for successful counterterrorist action" (See ex. M12B, Tab 16).

[520] A young Syrian, Noor al-Deen, who was a teenager when captured with Zubaydah in 2002, described him as being "a well-known functionary with links to al-Qaeda, but he knew little detailed information about the group's operations" (see M12B, Tab 20).

[521] In the months following his arrest, the assessment that he was initially a "top man in Al-Qaeda" was lowered to that of a "logistic guy" who served as a "flight booker" and "greeter". He "knew very little about real operations or strategy" (see ex. M12B, Tab 9).

[522] The evidence therefore shows that he was not a top lieutenant of Al-Qaeda. He was not close to Al-Qaeda or Bin Laden. That said, I find that in his capacity as a guesthouse operator, he helped Muhjahideen recruits, some of whom later became Al-Qaeda members. There is also some evidence also tying him with certain terrorist acts. These findings and the evidence establish some association between Abu Zubaydah and the Bin Laden network (see also footnote 38).

[523] Sakka and Ressam explained that the Khalden camp's training included the use of arms, explosives, and destruction of civil infrastructures. Ressam's retraction concerning his statement on Zubaydah is not sufficient to dismiss those facts. Zubaydah accepts a large number of them. Zubaydah's role in relation to the guest house and his request for five Canadian passports are instances where he acknowledges the underlying facts, although he gives them a different explanation. This evidence demonstrates that Zubaydah was an important facilitator for activities undertaken for the Bin Laden network. Terrorist organizations are commonly known to use false passports. The combination of operating a guesthouse, a training camp and collecting passports

makes him a participant into the cause of Islamist extremism. It can be said that he facilitated terrorist activities.

[524] Mr. Harkat denied knowing Zubaydah or having had a conversation with him (see Transcript of Proceedings, Vol. 12 at 131 and 132).

[525] The evidence as presented in both the public and closed hearings does not put in doubt the veracity of the summaries of the conversations provided to Mr. Harkat. Given my assessment of Mr. Harkat's credibility as a witness and his bald denial of the content of the summary of conversation, I have concluded, on a balance of probabilities that Mr. Harkat was acquainted with Abu Zubaydah and that he had contact with him after he arrived in Canada in relation to the payment of Al Shehre's legal fees. This finding is supported by evidence which shows that both Mr. Harkat and Abu Zubaydah lived in Peshawar, Babbi. The evidence shows that they both operated guesthouses in Peshawar that were used to facilitate the movement of mujhaideen to training camps.

[526] In concluding that there was a relationship between Mr. Harkat and Abu Zubaydah, the Court did not rely on any information relating directly or indirectly to torture.

Abu Dahhak

[527] The Ministers allege that from 1994 to 1995, one of Mr. Harkat's friends was Dahhak, an individual associated with Al-Qaeda (see ex. M11). In a summary of conversations, Mr. Harkat is

said to have asked Wazir whether he knew Dahhak (see ex. M7 at K6). Mr. Harkat testified he did not know Dahhak.

[528] There is closed evidence to support the allegation presented against Mr. Harkat with regards to Abu Dahhak (see also footnotes 39 and 40). Confidential evidence was dealt with by all in closed hearings. Such evidence shows that Mr. Harkat knew Abu Dahhak. This substantial confidential evidence, which was tested by the special advocates in closed hearings, has satisfied the Court that, on a balance of probabilities, Mr. Harkat knew Abu Dahhak, an individual associated with Al-Qaeda.

Mr. Harkat's Credibility

[529] This Court must decide whether the activities of an individual are related to terrorism within the parameters established by the IRPA, as amended. In order to decide on the reasonableness of the certificate, it must review all of the evidence before it and make findings of fact and credibility.

[530] The allegations made against Mr. Harkat are serious. In general, they are well supported by the public and closed evidence. Mr. Harkat's testimony was essential if he wanted to refute the allegations made against him.

[531] Mr. Harkat did not provide the Court with credible evidence that would allow the Court to prefer his version over the evidence and information filed by the Ministers in support of the certificate. It appeared to the Court that Mr. Harkat has memorized a story that avoids linking

himself to anything related directly or indirectly to Islamist extremism. As is demonstrated by my analysis in these reasons, his story is often implausible, inconsistent and at times contradictory.

[532] During his testimony, Mr. Harkat gave the impression that he was telling a fabricated story; he was not drawing on events from memory, but rather reciting a story that he had prepared meticulously. Often, he gave answers irrelevant to the questions asked. For example:

- in response to questions asked about where he would meet students and talk about politics, Mr. Harkat wanted to give an answer about the FIS platform (see Transcript of Proceedings, Vol. 12 at 175);
- in response to questions about whether other students talked about the FIS, Mr. Harkat wanted to give an answer about the FIS using his house for meetings (see Transcript of Proceedings, Vol. 13 at 16); and
- in response to a question about whether he repaid the $18,000.00 to Mokhtar, Mr. Harkat wanted to give an answer about his house being broken into (which is his explanation for not contacting Mokhtar)

(see Transcript of Proceedings, Vol. 14 at 199).

[533] His simplistic denial of key factual elements of the Ministers' case, which were supported by public evidence, affected his credibility. For example, he denied knowing Ibn Khattab, Al Shehre, A. Khadr, Abu Dahhak and Abu Zubaydah. Mr. Harkat took the position that due to a lack of disclosure, he could do nothing but simply deny the allegations. I disagree. The public evidence presented by the Ministers was serious and substantial and Mr. Harkat's evidence was not sufficient

to refute it. As noted above, the Court has concluded that in most instances, Mr. Harkat's testimony was not credible.

[534] His testimony also showed inconsistencies when compared to the answers he gave to Intelligence officers during six interviews as well as his own documentary evidence. As seen earlier, parts of his most recent story contradicts information given to Intelligence officers in 1997 and 1998 and also to his documentary evidence of 1996.

[535] For the Court, honesty, truthfulness and transparency are essential to establish credibility. It is with these key components that a judge can assume his or her judicial obligations. When a person lies, that in itself does not mean that he is a terrorist or a member of a terrorist organization. However, when those lies are viewed in light of contradictory evidence, the Court may reasonably accept the evidence submitted by the Ministers on a balance of probabilities.

[536] To be credible, an account of events has to be plausible, coherent and logical. This is not the case with the evidence as presented by Mr. Harkat; which was often implausible, incoherent and illogical. The evidence shows that:

- Mr. Harkat claims he was not aware of the Islamic emphasis in the FIS platform when the expert evidence shows that the FIS had an explicit Islamic agenda;

- Mr. Harkat's claim that he was unaware of the situation in Afghanistan in the late 1980s, which was undermined by expert witnesses called on his behalf;

- His explanation that he obtained a passport in 1988 solely for the purposes of travel in Algeria and not for traveling abroad is implausible;

- His explanation of why he left Algeria is illogical and inconsistent;

- His explanation that he did not phone his parents or uncle while in Pakistan because he had lost the correct dialing code, is implausible;

- His claim that his friend Mokhtar lent him $18,000.00 and that Mokhtar never sought to be reimbursed is not plausible.

These are only a few examples of the implausibilities and inconsistencies in Mr. Harkat's testimony.

[537] The Court rejects Mr. Harkat's testimony, on the basis that is not credible, on the following matters:

- His reason for obtaining a passport in the early fall of 1988;

- His contradicted evidence as to when he became a FIS member and why he left Algeria before the end of the university year;

- His lack of knowledge of the Islamic platform of FIS and the involvement of Algerian-Mujihadeen in the war in Afghanistan;

- His account of how he left Algeria;

- The purpose of his trip to Saudi Arabia and the events he recounted in Saudi Arabia;

- His explanation as to how he obtained his supervisory job with the MWL;

- His exact place of residence while in Pakistan;

- His explanation as to what he did during 15 months in 1994-1995, considering that the evidence shows that he had to leave “immediately” but did not do so and that his residential permit was not renewed;
- His version of when and how he acquired the false passport before leaving Pakistan;
- The fact that he was able to save $18,000.00 during four years while in Pakistan and the importance of that money to explain the expenses incurred to come to Canada;
- That his friend Mokhtar, who lent him $18,000.00, never asked for anything in return and never called back looking for repayment;
- His story on how he left Pakistan for Canada, initially only using the false passport, buying different airline tickets, his departure with his Algerian passport and using the Saudi passport on the same flight, his five-days spent in Kuala Lumpur, how he bought a business class airline ticket;
- That he does not know Ibn Khattab, Al Shehre, A. Khadr, Abu Dahhak and Zubaydah;
- That he did not operate a guesthouse for Ibn Khattab and his group;
- That he did not know A. Khadr, even though the evidence shows that he met him more than once in Canada;
- Why he had easy access to money in Canada even though he had jobs that paid minimum wage;

- His statement that he never intended to buy a house in Algeria, marry his fiancée and eventually return to Algeria;

On a balance of probabilities, the Ministers' evidence as presented in public and *in camera* is accepted.

[538] Overall, Mr. Harkat's testimony cannot be characterized as honest and transparent. His story was so well memorized that, at times, he did not answer the questions. His denials on numerous matters were not credible when compared to the Ministerial evidence. It was also inconsistent with prior statements he made. In essence, this Court finds that he was not truthful, honest and transparent. It is evident to this Court that Mr. Harkat has not revealed the true story of his life considering all the evidence presented.

Is Mr. Harkat a Danger to the Security of Canada?

[539] The Ministers submit that because of Mr. Harkat's connections to terrorists and Islamist extremists, his activities in support of terrorism for the Khattab group and the Bin Laden Network, his acts in support of extremists coming to Canada, such as Shehre and Triki, his association with A. Khadr, his money originating from outside Canada and his denial of these activities made him a danger to the security of Canada. According to them, he continues to be a danger to the security of Canada.

[540] The shadowy life of Mr. Harkat in the late 1980s beginning in Algeria, then Saudi Arabia, Pakistan and later in Canada, in 1995, does not inspire trust insofar as his activities are concerned.

His explanations do not have the ring of truth and give the impression that a lot remains untold. He deliberately keeps his past activities to himself, probably because he knows that they would preclude the obtention of obtaining Canadian status. It is as if Mr. Harkat has surrounded himself in clouds through which he does not let any light come through.

[541] Having in mind the definition of danger to the security of Canada used by the Supreme Court of Canada in *Suresh*, upon his arrival in Canada, Mr. Harkat's behavior clearly showed that he posed a risk to the security of Canada. As the public evidence shows, he associated immediately with A. Khadr and saw him again at least in 1997 (ex. M7 at K7). He has been secretive about his past life or his past associations. He facilitated the entry to Canada of individuals such as Al Shehre and Wael. He was able to get $18,000.00 from his friend Mokhtar and never reimbursed it. The evidence shows that he had access to substantial amounts of money and that he was able to gamble important sums even if he had minimum wage jobs. His sources of money remain murky and there are substantial indications that it came from Pakistan and Saudi Arabia. He also said to Al Shehre in February of 1998 that he had to keep a low profile as he needed status in Canada and then he would be "ready". These are strong indications that he is a source of risk for the security of Canada. Mr. Harkat denies knowing Al Shehre and A. Khadr (except for that trip to Toronto in October 1995). This Court finds that Mr. Harkat is a danger to the security of Canada. His behaviour was never, in the view of the Court, satisfactorily explained.

[542] However, while reviewing the conditions of release, this Court in *Harkat(Re)*, 2009 FC 241, found that due to the passage of time and the fact that Mr. Harkat had been under the watchful eyes

of the Canadian authorities since 1995, his social and professional contacts had been disrupted. Common sense dictates that a terrorist organization would lose interest in a sleeper agent if he was under constant surveillance.

[543] This is now 2010. Mr. Harkat has been in Canada since 1995 and since then has been under surveillance, in jail or released with conditions. This is relevant to the assessment of the risk he poses for the security of Canada. During his first years in Canada up to his arrest in December 2002, the danger associated to him was towards the high end of the spectrum. Now, after having been incarcerated for years, released on conditions which were loosened with the passage of time, the risk he poses to Canada has decreased.

[544] A public summary of the threat assessment was released in September 2009 (see ex. M6). It states that Mr. Harkat's activities are suspected of constituting a threat to the security of Canada, but no new information indicated that he had resumed threat-related activities since his release or that he had renounced his beliefs and support to Islamist extremism. Mr. Harkat is not known to have engaged in acts of violence, but his role in the international Islamist extremist movement prior to his arrival in Canada would have been largely one of logistics and facilitation confirmed by his immediate connections within the network of extremists. His public profile made it unclear whether or not he could re-establish ties if all conditions were abandoned. The public summary concluded that the danger to national security has diminished over time, but that the Ministers continue to view him as a danger to the security of Canada.

[545] Mr. Harkat has not explained his past life and leaves the impression to any neutral observer that something remains untold. His past links to Khattab, Khadr, Dahhak, Zubaydah, Shehre and others who are all known Islamist extremists, his activities as a guest house operator for Khattab in Pakistan, his role as a facilitator for Wael and Shehre, his important sources of money and his statement that when he obtains Canadian status, he will "be ready", all demonstrate on a balance of probabilities that there are reasonable grounds to believe that, in view of his past activities he had become a significant source of danger to the security of Canada; that risk still exists, but it is much lower today. His lack of truthfulness about his past, his persistent denials in the face of the evidence presented by the Ministers against him show that danger still exists, although lessened to a certain extent. The impact of this judgment will also have to be taken into consideration.

[546] As part of these proceedings, the parties were asked to submit any changes to the conditions in case the certificate was found to be reasonable. The Ministers and Mr. Harkat submit that any detailed review of the conditions should only take place once the determination on the reasonableness of the certificate is made. They are invited to make those submissions.

[547] This Court concludes that the security of Canada remains at risk, but that risk is now lower than in 1995. The parties are therefore invited to make submissions on this point. For the time being, the conditions of release remain unchanged.

The Reasonableness of the Certificate

[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.

[549] The parties are invited to make submissions with respect to the conditions of release within 15 days from the date of the issuance of these reasons. They shall have 10 more days to comment on the submissions made, if any.

[550] At the request of all counsel, the Court postpones the issuance of a formal judgment for a period of 30 days, to allow the parties to review the matter and instruct counsel accordingly.

[551] The parties are invited to submit any serious questions of general importance pursuant to section 82.3 of the IRPA. They shall have 15 days to do so. The parties shall have an additional 5 days to reply to any such submissions.

"Simon Noël"

Judge