Date: 20091214

Docket: DES-3-08

Citation: 2009 FC 1263

Ottawa, Ontario, December 14, 2009

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

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

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

AND IN THE MATTER OF HASSAN ALMREI

REASONS FOR JUDGMENT

INTRODUCTION

[1] On February 22, 2008, the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration signed a certificate in which they state that Hassan Almrei is a foreign national who is inadmissible to Canada on security grounds. As required by subsection 77(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended,

("IRPA"), the certificate was referred to the Court for determination as to whether it is reasonable. These are my reasons for determining that the certificate is not reasonable.

[2] These reasons take into account the information and other evidence heard in closed hearings in the absence of Mr. Almrei and his counsel and of the public. As set out in paragraph 83(1)(c) of the IRPA, the Court may, and shall on the request of the Minister, hear information or other evidence in the absence of the public if, in the judge's opinion, its disclosure could be injurious to national security or endanger the safety of any person. A separate private set of reasons for judgment has been filed in the Designated Proceedings Registry of the Federal Court and will be accessible only to the Ministers and their counsel and to the Special Advocates and to any appellate court that may consider this matter further.

[3] In the aftermath of the tragic events of September 9, 2001 ("9/11"), it was reasonable to believe that Hassan Almrei posed a risk to the security of Canada. On the information then available to officials and to the Court, the inference was compelling that he was an extremist who supported the ideology of Osama Bin Laden and was involved in a global false document network. In security intelligence terms, Almrei had a "pedigree". He came from a Syrian family linked to the Muslim Brotherhood, an organization formerly known for terrorist acts. Raised in Saudi Arabia, he had travelled to Pakistan and Afghanistan to join the jihad against the communist regime in Kabul. He was known to have associated with a leader of the Arab Afghan mujahidin, Ibn al Khattab, and to have supported Khattab's jihad against the Russians in Chechnya.

[4] Following his admission to Canada in 1999, Almrei was linked to persons believed on reasonable grounds to have extremist views. Almrei was known to have contacts in Canada and abroad from whom he could obtain false identity and travel papers. He had himself used a forged passport to come to Canada. He lied to Canadian authorities about his background and concealed his travels to Afghanistan and Tajikistan. Canada extended its protection to Almrei by recognizing him as a Convention refugee. He returned the favour by providing a forged Canadian passport and funds to an Arab Afghan associate who had crossed our border illegally, arranged a marriage of convenience for a failed refugee claimant and dealt in illicit drivers' licenses.

[5] In 2001, Almrei was at the very least an opportunist willing, for a suitable fee, to violate Canada's laws while he took advantage of its generosity. His object was to gain Canadian permanent residency and Citizenship so he could travel freely abroad for business purposes. Prior to 9/11, this was known to the Canadian Security Intelligence Service ("CSIS") and their counterparts in the Royal Canadian Mounted Police ("RCMP"). CSIS had been watching his movements and collecting information about him and his associates for over two years. The RCMP was conducting its own criminal investigation. Much of the information collected by both agencies was provided by human sources. CSIS saw Almrei as a "sleeper" and were content initially to keep him under surveillance and to identify his contacts. The events of 9/11 instantly changed that dynamic. Almrei was then viewed, on reasonable grounds, to be part of a much greater threat to North American security as someone who had the skills and the contacts to arrange for terrorists to cross borders on forged papers.

[6] If these proceedings were based solely on the information available to the Ministers and the Court in October 2001, I would have no difficulty in concluding that Almrei's arrest and detention on a security certificate to contain the perceived threat was reasonable. But the Court is not engaged in that task. Nor is it conducting a judicial review of whether the Ministers who signed the fresh certificate in February 2008 made the correct decision. The question for the Court to determine is whether, on all of the information and other evidence presented in these proceedings, is the certificate reasonable to-day. Or, in other words, is the assertion that Almrei is presently a security risk based on objectively reasonable grounds.

[7] In arriving at a conclusion on that question, the Court has considered information and evidence that was not placed before the Ministers when the decision was made to issue the 2008 certificate, and that was not previously presented to the Court, which has cast a different light on circumstances and events.

[8] In these reasons, I will first set out the background to the issuance of the certificate, the procedural history of this application and the present legislative regime under which it was considered. Next, I will review the evidence and the issues, both legal and factual, that were raised during the proceedings. I will then outline the allegations concerning Mr. Almrei. Finally I will discuss my analysis and conclusions arising from the evidence and issues. Formal judgment will be reserved to allow the parties some time to review these reasons and propose questions for certification. An index is provided for convenient reference.

INDEX (by paragraph numbers):

BACKGROUND

[9] In January 1999, Almrei arrived at Pearson Airport using a false United Arab Emirates passport bearing a valid multiple entry visa, was admitted as a visitor, and subsequently claimed Convention refugee protection on the ground that he feared persecution in Syria. The Immigration and Refugee Board granted him protection in June 2000. He applied for permanent residence in November 2000.

[10] A certificate naming Almrei as a security risk was signed by the Minister of Citizenship and Immigration and the Solicitor General of Canada on October 19, 2001. Almrei was then taken into

custody and detained in accordance with subsection 40.1(1) of the *Immigration Act*, R.S.C. 1985, c. I-2, as amended, ("the former Act"). The matter was then referred to the Federal Court for a determination as to the reasonableness of the certificate. Hearings were held in October and November 2001. Following a ruling that he could not testify in a closed session, as he had requested, Mr. Almrei declined to provide evidence in that proceeding.

[11] The Court concluded that the closed evidence, heard in the absence of Mr. Almrei and his counsel, provided reasonable grounds to believe that Mr. Almrei was a member of an international network of extremist individuals who supported the Islamic extremist ideals espoused by Osama Bin Laden and that Mr. Almrei was involved in a forgery ring with international connections: *Almrei (Re),* 2001 FCT 1288, [2001] F.C.J. No. 1772.

[12] Efforts followed to remove Almrei from Canada. Opinions were issued by delegates of the Minister of Citizenship and Immigration that Almrei was a danger to the security of Canada and could be removed to Syria, his country of nationality. Mr. Almrei sought judicial review of those opinions in the Federal Court and brought several applications for release from detention: *Almrei v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 420, [2004] F.C.J. No. 509 affirmed, *Almrei v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 54, [2005] F.C.J. No. 213; *Almrei v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 355, [2005] F.C.J. No.437 *Almrei v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1645, [2005] F.C.J. No. 1994; *Almrei v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1025, [2007] F.C.J. No.1292.

[13] Mr. Almrei's appeal from the decision of the Federal Court of Appeal rejecting his challenge to the security certificate provisions of IRPA, as infringing sections 7 and 12 of the *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 ("the *Charter"*), was merged with those in the security certificate cases involving Adil Charkaoui and Mohammed Harkat. Reasons for judgment were issued by the Supreme Court of Canada on February 23, 2007 in *Charkaoui v. Canada (Minister of Citizenship and Immigration*), 2007 SCC 9, [2007] S.C.R. 350 ("*Charkaoui 1*"). In its decision, the Supreme Court concluded that the IRPA regime for determining the reasonableness of security certificates and for reviewing the detention of named persons was inadequate to protect their interests when classified information was provided to a designated judge of the Federal Court during the closed proceedings.

[14] The Supreme Court declared that the procedures under IRPA for the judicial confirmation of certificates and for the review of the detention of the named persons violated the fundamental justice provisions of section 7 and had not been shown to be justified under section 1 of the *Charter*. Accordingly, the procedures were of no force or effect. In order to give Parliament time to amend the law, the Supreme Court suspended its declaration with respect to the invalidity of the certificate procedure for one year from the date of the judgment. After that year, the certificates concerning Mr. Almrei and any other named person that had been declared "reasonable" would lose that status. Should the Ministers wish to issue a certificate thereafter, a fresh determination of reasonableness would be required under the new process to be devised by Parliament. Similarly, any detention review occurring after the delay would be subject to the new process: (*Charkaoui 1* at para. 140).

[15] The legislative response to *Charkaoui 1* was enacted within the one year timeline set by the Supreme Court. *An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act*, S. C. 2008, c. 3 ("Bill C-3") received Royal Assent on February 14, 2008 and came into force on February 22, 2008. The amendments to IRPA enacted through Bill C-3 provided for the appointment of Special Advocates to represent the interests of named persons during closed security certificate proceedings and revised the detention review procedures set out in IRPA.

[16] In *Charkaoui v. Canada (Citizenship and Immigration),* 2008 SCC 38, [2008] 2 S.C.R. 326 ("*Charkaoui II*") the Supreme Court of Canada considered the nature of the duty owed by the Service to retain and disclose information in its possession about a person named in a security certificate issued under subsection 77(1) of the Act. Previously, it had been the policy of the Service to destroy all operational notes after they had been transcribed into a report. The Supreme Court found this policy to be based upon a flawed interpretation of section 12 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23 (CSIS Act). The Court held that CSIS should be required to retain all of the information in its possession and disclose it to the Ministers and the designated judge in order to uphold the named person's right to procedural fairness. If such were done, the Court reasoned, Ministers would be better positioned to make appropriate decisions on issuing a certificate. The designated judge would also be able to consider all of the evidence in determining what should be protected on national security grounds and what should be disclosed to the named person.

[17] On February 22, 2008, the date that the amendments to IRPA came into effect, the Ministers signed new certificates naming Mr. Almrei and four other persons as security risks and referred the

certificates to the Federal Court for review under subsection 77(1) of IRPA. To initiate the present proceedings the Ministers filed a Notice of Referral of Certificate together with a top-secret Security Intelligence Report ("SIR") with supporting reference materials. The SIR is a narrative report prepared by CSIS setting out its grounds for believing that a person is inadmissible to Canada. A public summary of the SIR entitled a Statement Summarizing the Information, with the corresponding open source reference material, was served on Mr. Almrei and filed with the Court.

PROCEDURAL HISTORY OF THIS APPLICATION

[18] As Mr. Almrei remained in custody on February 22, 2008, more than seven years after his arrest on the initial certificate, a review of his detention was the initial priority. In compliance with the Supreme Court's decision in *Charkaoui I*, the revised statute required a detention review to begin within six months of the coming into force of the new legislation. It took time to resolve some preliminary matters including the appointment of counsel and the selection of Special Advocates. The detention review was begun on August 20, 2008 and continued through the fall months. Following a series of hearings, Mr. Almrei was ordered released from detention on strict terms and conditions. The grounds for that decision are set out in reasons for judgment issued on January 2, 2009: *Re Almrei*, 2009 FC 3, [2009] F.C.J. No. 1.

[19] In correspondence dated September 12, 2008, in the DES-4-08 certificate, counsel for the Ministers advised the Court they had asked CSIS to examine closely the information and other evidence in each of the five certificate cases in order to determine whether original operational notes had been preserved in accordance with the decision of the Supreme Court in *Charkaoui II*. Further

to motions filed by the respondent on September 30, 2008 (amended on October 31, 2008), a disclosure order was issued on October 10, 2008 in which CSIS was directed to produce all information and intelligence related to Mr. Almrei in its possession or holdings.

[20] CSIS was unable to meet the time-table initially fixed by the Court due to the quantity of records to be searched and the workload demands caused by similar orders in each of the other four certificate cases. Extensions of time were required to complete the work. In the interim, the proceedings continued, hearings were conducted and information was provided to the Court and the Special Advocates in response to undertakings made by CSIS and the Ministers' counsel during the detention review.

[21] On October 31, 2008 motions and a notice of constitutional question were filed by the respondent indicating his intention to challenge the standard of proof of "reasonable grounds to believe" set out in section 33 of the IRPA. Mr. Almrei sought an order that the standard of proof to be met by the evidence in the Court's determination of a certificate's reasonableness pursuant to section 78 of the IRPA is to a balance of probabilities or, in the alternative, a declaration that the standard is inconsistent with the right to a fair hearing protected by section 7 of the *Charter*. In case management conferences with Mr. Almrei and counsel, I indicated that I would defer ruling on these matters until the completion of the evidentiary hearings.

[22] Mr. Almrei had previously brought a motion challenging the constitutionality of subsections 85.4(2) and 85.5(b) of IRPA which limit communications by Special Advocates with the named persons and their counsel after the Special Advocates have had access to the closed

information in the SIR. This was linked with similar motions brought on behalf of three of the other named persons and which were collectively heard and adjudicated by the Chief Justice. In written reasons and an order released on November 3, 2008 (*Re Almrei*, 2008 FC 1216, [2008] F.C.J. No. 1488), the Chief Justice dismissed the constitutional motion as premature without prejudice to any party's right to challenge the constitutionality of the legislation with an appropriate factual matrix.

[23] By order dated January 2, 2009, the Chief Justice directed that my colleague Justice Eleanor Dawson adjudicate upon two common issues of law that had arisen in four of the certificate proceedings in relation to the *Charkaoui II* production, including this matter. The two common issues were identified in the order as follows:

> a) What is the role of the designated judge with respect to the additional information disclosed by the Ministers pursuant to the decision of the Supreme Court of Canada in *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38? More specifically, does paragraph 62 of that decision require the judge to "verify" all information disclosed by the Ministers if the Special Advocates and counsel for the Ministers all agree that a portion of that information is irrelevant to the issues before the Court?
>
> b) Should the information disclosed to the named persons and their counsel be placed on the Court's public files in these proceedings? If so, when?

[24] At paragraph 62 of its decision in *Charkaoui II*, the Supreme Court had made the following comments:

> As things stand, the destruction by CSIS officers of their operational notes compromises the very function of judicial review. To uphold the right to procedural fairness of people in Mr. Charkaoui's position, CSIS should be required to retain all the information in its possession and to disclose it to the ministers and the designated judge. The

> ministers and the designated judge will in turn be responsible for verifying the information they are given. If, as we suggest, the ministers have access to all the undestroyed "original" evidence, they will be better positioned to make appropriate decisions on issuing a certificate. The designated judge, who will have access to all the evidence, will then exclude any evidence that might pose a threat to national security and summarize the remaining evidence -- which he or she will have been able to check for accuracy and reliability -- for the named person. [Emphasis added]

[25] As a result of the highlighted phrases, a question arose as to whether the designated judge in a certificate case must personally verify all of the information provided to the Court in conformity with the disclosure obligation imposed on CSIS.

[26] In reasons for judgment released on March 5, 2009 (*Re Almrei*, 2009 FC 240, [2009] F.C.J. No. 346), Justice Dawson considered that the reference to verification in the *Charkaoui II* judgment stemmed from the context of the former legislative scheme, not that enacted by Bill C-3. The Supreme Court could not have intended that the Court consider information which the Ministers and the Special Advocates had agreed was irrelevant. Where the information was relevant, the Court was required under the amended statute to determine whether disclosure would be injurious to national security. That responsibility could not be delegated to counsel.

[27] At paragraph 62 of her reasons, Justice Dawson concluded as follows,:

> (a) Where the Ministers and the special advocate agree that material disclosed by the Ministers pursuant to Charkaoui 2 is irrelevant to the issues before the Court, the Court may rely upon that agreement. In such a case, the Court need not verify information that the Ministers and the Special Advocates agree to be irrelevant.
>
> (b) No information filed with the Court in confidence pursuant to Charkaoui 2 can be disclosed to the person named in a security certificate without the prior approval of the Court.

> (c) Information or evidence disclosed to the named persons pursuant to Charkaoui 2 should be disclosed directly to counsel for each person named in a security certificate. The Charkaoui 2 disclosure should not be placed on the Court's public file. Such information or evidence would only become public if it is relied upon by a party and placed into evidence.
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> (d) Summaries of evidence or information made pursuant to paragraph 83(1)(e) of the Act must be placed on the Court's public file because they relate to information relied upon by the Ministers and to what transpired in the in camera proceedings.

[28] Additional issues outside the scope of the Chief Justice's Order were raised at the hearing before Justice Dawson. It was argued that the designate judge should not have regard to any portion of the *Charkaoui II* disclosure unless it was necessary to adjudicate a disagreement or it was relied upon by one of the parties. Justice Dawson noted, at paragraphs 34-36 of her reasons, that it was premature to make any pronouncements circumscribing the role of the designated judge in reviewing the material absent an understanding of the content and submissions on a proper evidentiary basis. Each case would depend on its own circumstances and there could be many reasons for the Court to review the information.

[29] Justice Dawson expressly made no determination about the permissibility of the Ministers later seeking to augment the information upon which the security certificate is based, or to amend the report filed in support of the certificate, by relying upon a portion of the *Charkaoui II* disclosure (endnote 1 to the Reasons for Order). The question of whether the Ministers could augment the information in the SIR became an issue in this case but the additional information was from sources other than the *Charkaoui II* disclosure.

[30] On February 9, 2009, CSIS having completed their file search, the Ministers filed bound volumes entitled "*Charkaoui II Production*" including DVDs containing approximately 1276 records of varying size retrieved from the CSIS operational databank in an electronic format.

[31] Some of the information in the produced records was redacted or blacked out by CSIS as it concerned the investigation of other persons and was, in their view, irrelevant as outside the scope of the October 10, 2008 Order. Internal administrative information such as the names of CSIS employees, file and phone numbers and information which would disclose operational methods or identify human sources was also redacted. I considered it necessary to review unredacted or clear versions of these records to ensure that the redactions were valid and did not exclude information material to the proceedings. Based on that review, I was satisfied that for the most part, the redactions had been appropriate in that they did not obscure information that was material to this case and necessary for the Court and the Special Advocates to perform their functions in the closed proceedings.

[32] To illustrate, included in the records were documents such as periodic situation or overview reports concerning all of the CSIS investigative targets during the relevant time-frame. These records were produced because they incidentally contained Mr. Almrei's name and information concerning him. The remainder of the information in these documents was irrelevant to these proceedings and was properly redacted in the disclosed records. In this respect, I would note that paragraph 83(1)(j) of the IRPA provides that the Court shall not base a decision on information or other evidence provided by the Minister if the judge determines that it is not relevant or if the Minister withdraws it.

[33] In some instances, while the redacted information was not on its face material to these proceedings, I considered that the redactions had been excessive and tended to unnecessarily obscure portions of the records. For example, the names and other identifying particulars of casual contacts and sources of information, including police officers, was routinely redacted in these documents in keeping with the Service's policy of protecting human sources. This information was not sensitive and would not have put individuals at risk if inadvertently released. On March 20, 2008 I ordered reconsideration of the redactions in the documents filed on February 9, 2009. Ministers were also directed to conduct a further search for additional documents relating to certain named individuals with a connection to this case. On March 27, 2009 the Ministers filed revised copies of the February 9, 2009 document production with a number of redactions removed.

[34] It became apparent during the review of the February 9th documents that CSIS had conducted a thorough search of their operational databank for any records that contained Mr. Almrei's name (and his "kunya" or respect name), and variants thereof. A great deal of this material was repetitive and of no evidentiary value, as it merely reiterated previously collected information in the periodic reports required by the administrative procedures of the Service.

[35] It is doubtful that the Supreme Court had this type of disclosure in mind when they stated that "…CSIS should be required to retain all the information in its possession and to disclose it to the Ministers and the designated judge" at paragraph 62 of *Charkaoui II*. In hindsight, a more focused search would have saved considerable time. Produced records that were of value included electronic intercept and physical surveillance reports and reports of requests for information

addressed to foreign agencies and their responses, the implications of which will be discussed below.

[36] On March 24-25, 2009 the Ministers filed an Amended Security Intelligence Report ("A/SIR") and an additional reference volume, and an Amended Summary of the Security Intelligence Report together with corrections to the reference index of February 22, 2008 and additional public and private reference material. The respondent and the Special Advocates objected to the filing of this new material more than a year after the issuance of the certificate.

[37] In *Charkaoui II*, the Supreme Court commented on the practice of submitting evidence to the designated judge considering the reasonableness of the certificate which was not before the Ministers when they signed it. The Court concluded that any new evidence should be admitted, regardless of whether it is submitted to the designated judge by the Ministers or by the named person. The judicial review process is not limited to a consideration of the material before the Ministers or to the bases of their initial decision and new evidence can be as beneficial to the named person as to the Ministers: *Charkaoui II* at paragraphs 70-73.

[38] In my view, such a practice may in some circumstances constitute an abuse of the Court's process where, for example, information is unfairly withheld for tactical reasons and provided too late in the proceedings for the named person to respond, as was alleged here. In this instance, there was no evidence before me to substantiate such a finding. The material was accepted subject to further consideration following closing arguments. I recognize, however, that the practical effect of this decision was to allow the Ministers to bolster their case following the strong challenge

presented by the respondent during the detention review hearings. The Ministers filed a sizable body of material that had not been referenced or considered in the decision to issue the certificate.

[39] On March 27, 2009 I dismissed motions brought by the respondent in anticipation of the reasonableness hearings: *Re Almrei,* 2009 FC 322, [2009] F.C.J. No. 681. The first motion, regarding the constitutionality of subsections 85.4(2) and 85.5(b) of the IRPA, in relation to communications between the respondent and the Special Advocates, was largely based on the arguments previously heard and determined by Chief Justice Allan Lutfy in November.

[40] I concluded that the issue of the constitutionality of the restrictions on communication by the Special Advocates continued to be premature in the absence of a factual basis. The alternate remedy sought, to authorize the respondent to submit questions to the Special Advocates in a sealed envelope and to receive their replies without disclosure to the Court or to the Ministers, was also denied. I ruled that while there was no obstacle to the respondent asking questions of the Special Advocates without informing the Court or the Ministers, the Special Advocates would have to obtain judicial authorization prior to communicating their answers to the respondent so as to respect the Court's obligation to protect information that would injure Canada's national security.

[41] The Special Advocates were authorized throughout the proceedings to communicate with the respondent and his counsel regarding scheduling matters and, from time to time, to discuss certain legal issues so long as this did not involve disclosure of top secret information they had access to in the closed materials. They were also authorized to communicate with the Special Advocates appointed in the other security certificate cases regarding common disclosure issues

stemming from the closed hearings. On May 14, 2009, for example, Mr. Copeland was authorized to communicate to Mr. Almrei and his counsel that the top secret material filed by the Ministers did not rely upon information that was obtained by or derived from the interrogation of detainees by the US authorities at Guantánamo Bay, Cuba or at any of the so-called "black sites" said to be operated by US intelligence services. On May 20, 2009, Mr. Cameron was authorized to communicate with counsel for Mr. Almrei about the redacted contents of a RCMP report.

[42] In his motions, the respondent also sought a declaration that the *Charter* required the importing of the balancing test in section 38.06 of the *Canada Evidence Act* into paragraph 83(1)(e) of IRPA so as to allow for the disclosure of information where the interests of justice outweighed the injury to national security. I concluded that this motion was also premature as the situation anticipated by the respondent had, as yet, not occurred. I also declined to issue a declaration of principles with respect to disclosure at that time, as requested, for similar reasons.

[43] As matters progressed in the case, it did not prove necessary to decide the balancing issue as the conflict between the competing security and liberty interests did not arise on a disclosure motion. The Ministers objected to the disclosure of certain telecommunications and physical surveillance reports as they were not relied upon in support of the SIR and did not, on their face, provide material evidence of an exculpatory nature. But they resisted this disclosure on the grounds of a lack of relevancy and not because their release would injure national security. Upon considering the matter and concluding that they could be relevant and were non-injurious, summaries of the reports were ordered disclosed to the respondent.

[44] The closed evidentiary hearings in the fall of 2008 had proceeded on the understanding that the Ministers would present testimony from Service witnesses relating to both Mr. Almrei's alleged dangerousness and flight risk, for the purposes of the detention review, and to the reasonableness of the certificate. The respondent elected not to cross examine the Service witness who testified in the public hearing on matters going only to reasonableness on the understanding that he would be recalled for that purpose. For operational reasons, the Service witness was no longer available for the new dates scheduled when the reasonableness hearing was postponed. In the circumstances, the evidence of the witness relating to reasonableness was struck out and Ministers were granted leave to call a new Service witness to give evidence relating to the allegations at the public hearing. The same Service witness who testified in the closed hearings on detention gave evidence in the closed hearings on reasonableness.

[45] On April 17, 2009 following a series of closed hearings respecting disclosure to the respondent, the Ministers filed a document entitled *Public Disclosure of Information used in the Amended Security Intelligence Report (SIR).* This included summaries of intercepted conversations and physical surveillance reports that were relied upon in the A/SIR, and information provided to CSIS by CIC and the CBSA that was used in the A/SIR.

[46] On April 24, 2009 the Ministers filed documents entitled *Disclosure of Information in the Charkaoui II Production*. This consisted of summaries of intercepted communications involving Mr. Almrei between September 12, 2001 and October 18, 2001 together with an overview summary of physical surveillance reports concerning Mr. Almrei between August 1999 and October 2001.

[47] Public evidence hearings were conducted over the course of 18 days in Toronto between April 27, 2009 and May 27, 2009. The testimony will be described below. On six occasions during those hearings, the court held *in camera* and *ex parte* conferences in chambers with CSIS counsel and the Special Advocates to discuss disclosure and other issues relating to the closed information. A security cleared court reporter and registry officer were present to ensure the maintenance of a record.

[48] The parties filed extensive written submissions on the factual and legal issues in these proceedings and public oral argument was heard in Toronto on July 2, 3, 6, 2009.

[49] Closed hearings were held in Ottawa to address questions which had arisen with respect to the reliability of classified information provided to the Court and to the Special Advocates. On April 3, 2009 I ordered CSIS to conduct a search for any documents or other records in the possession of the Service not included in the February 9, 2009 documents which contained an assessment of the credibility and reliability of the information provided by specified human sources. The Ministers filed additional information respecting the human sources on May 1, 2009 and, on May 15, 2009, a Supplementary Response to the April 3, 2009 Order. On May 25, 2009 the Ministers fled a Revised and Amended Source Exhibit.

[50] On June 3, 2009, I issued a confidential direction to the Ministers and CSIS for production to the Court and the Special Advocates of copies of documents and other records from the CSIS human source files and instructions concerning a review of the files. On June 9, 2009 I ordered production of the original source exhibits filed with the Court in the prior

certificate proceedings. On June 17, 2009, an Order was issued for production of the source exhibits sworn in support of warrants issued in 2000 and 2001 relating to the respondent. That material was delivered and the Ministers filed a document entitled a “Source Précis” on June 22, 2009 containing additional and revised information.

[51] Examination and cross-examination of service witnesses with respect to issues arising from these documents and, more generally, with respect to the closed information relied upon by the Ministers in the A/SIR, took place in Ottawa between June 22 and 26, 2009. Closed oral submissions were heard in Ottawa on July 27-28, 2009.

[52] On July 24, 2009 the Special Advocates brought a motion in the closed proceedings to have the security certificate quashed on the grounds that it was an abuse of the Court’s process. The Ministers filed their written response on August 21, 2009. The respondent was informed of this on August 26, 2009. Reply submissions were received from the Special Advocates on September 4, 2009. While I deal with that motion in greater detail in my closed reasons due to the sensitive nature of the information referenced, I will also touch on it in these reasons.

[53] A review of the release conditions was begun on July 28, 2009 and continued in a public hearing on September 14, 2009. At that time, counsel for the Ministers advised that they wished to present information to the Court in a closed hearing. The proceedings were adjourned for closed hearings, conducted over the following two weeks during which the Court considered and authorized the disclosure of public summaries of a new CSIS threat assessment and a CBSA risk assessment. In the course of those hearings, additional issues arose which required the

postponement of the public condition review proceedings. At the request of the respondent, on October 5, 2009 they were adjourned *sine die* pending the outcome of the reasonableness determination.

LEGAL FRAMEWORK

[54] The relevant legislative provisions for the purposes of this case are set out in Divisions 4 and 9 of Part 1 of IRPA. Division 4 sets out the rules for determining, in general, inadmissibility to Canada. Division 9 deals with certificates and the protection of information. It will be necessary also to touch briefly on sections of the *Criminal Code* and the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The text of these provisions is set out in Annex "A" to these reasons.

[55] It is well established that non-citizens do not have an unqualified right to enter or remain in the country: *Chiarelli v. Canada (Minister of Citizenship and Immigration)*, [1992] 1 S.C.R. 711, [1992] S.C.J. No. 27. Permanent residents enjoy a qualified right to remain so long as they comply with any conditions imposed under the Regulations enacted under the Act; foreign nationals who are not permanent residents may be permitted to remain only on a temporary basis.

[56] Parliament has the constitutional authority to define the terms under which non-citizens, such as Mr. Almrei, may enter and stay in Canada and the Executive has the duty to enforce those terms and in doing so, may exercise considerable discretion, subject to the principles of fairness, to determine whether it is advisable for a non-citizen to be removed. Deportation does

not, in itself, violate a non-citizen's rights under the *Charter*: *Medovarski v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 539, [2005] S.C.J. No. 31, at paragraph 56. But actions associated with the deportation of a non-citizen, such as the procedures employed in the certificate process, may do so: *Charkaoui I,* above at paragraph 65.

[57] Both permanent residents and foreign nationals are inadmissible to Canada for security concerns, for violating human or international rights, serious criminality, organized criminality or for misrepresentation (Division 4 of IRPA – Inadmissibility). Security certificates may only be issued in respect of a permanent resident or foreign national.

Inadmissibility

[58] Section 34 of IRPA identifies those persons who are inadmissible on security grounds. It reads as follows:

s.34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	art.34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;	a) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
(b) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
(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;
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au 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).

[59] Where a security certificate asserts inadmissibility on more than one ground, each ground must be read disjunctively. If any one ground is established, the certificate is to be determined to be reasonable: *Zundel (Re),* 2005 FC 295, [2005] F.C.J. No. 314, at paragraphs 16 and 17.

[60] In this case, paragraphs 34(1) (a) (b) and (e) of IRPA have no application. The allegations against Mr. Almrei are that he constitutes a danger to the security of Canada as set out in paragraph 34(1)(d), has engaged in terrorism contrary to paragraph 34(1)(c) and is a member of an organization as described in paragraph 34(1)(f). He is said to have engaged in terrorism only in a broad sense in that by participating in the Afghan jihad and supporting Ibn al Khattab's Chechen jihad, he associated with and supported persons who are believed on reasonable grounds to have committed terrorist acts and is therefore complicit in those acts. He is alleged to share the ideology of Osama Bin Laden and has or is prepared to offer material support to an organization, the "Bin Laden Network" which has engaged in terrorism. There is no allegation that Almrei has directly engaged in any act of violence that might endanger the lives or safety of any person in Canada.

[61] These matters are mixed questions of fact and law: *Poshteh v. Canada (Minister of Citizenship and Immigration)* (F.C.A.), 2005 FCA 85, [2005] F.C.J. No. 381 (“*Poshteh*”). It is a question of law what the statute or legal principle means and a question of fact what the evidence discloses. A mixed question of fact and law requires the application of the statute or principle to the facts.

[62] In this case, legal issues include the interpretation of the terms "member" and “organization” in paragraph 34(1)(f) and “danger to the security of Canada” in paragraph 34 (1)(d). It is then a question of mixed question of fact and law whether Almrei falls within the scope of those provisions: *Mendoza v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 934, 317 F.T.R. 118, at paragraphs.12-14.

“*Member of an Organization”*

[63] There is no definition of these terms in the statute and the courts have not attempted a precise and exhaustive interpretation of their meaning. As was stated by Justice Rothstein in *Canada (Minister of Citizenship and Immigration) v. Singh* 1998 CanLII 8281 (F.C.), (1998), 151 F.T.R. 101 (F.C.T.D.), at paragraph 52:

> The provisions deal with subversion and terrorism. The context in immigration legislation is public safety and national security, the most serious concerns of government. It is trite to say that terrorist organizations do not issue membership cards. There is no formal test for membership and members are not therefore easily identifiable. The Minister of Citizenship and Immigration may, if not detrimental to the national interest, exclude an individual from the operation of subparagraph 19(1)(f)(iii)(B). I think it is obvious that Parliament intended the term "member" to be given an unrestricted and broad interpretation.

[64] The Federal Court of Appeal cited this passage with approval in *Poshteh,* above, at paragraphs 27 to 29. In *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C. 297, [2000] F.C.J. No. 2043, the Court of Appeal held that being a member means simply "belonging" to an organization. This Court has consistently applied an unrestricted and broad interpretation to the meaning of "member": *Ahani (Re),* (1998), 146 F.T.R. 223, [1998] F.C.J. No. 507; *Ikhlef (Re)*, 2002 FCT 263, [2002] F.C.J. No. 352; *Harkat (Re),* 2005 FC 393, [2005] F.C.J. No. 481.

[65] The meaning of "organization" has attracted less judicial attention as the issue in most cases in which the term is applied is not whether the organization actually exists, which is normally not in dispute, but whether it has been responsible for terrorist acts: see for example *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 568, [2007] F.C.J. No. 763. In this case, the existence of a “Bin Laden Network”, as broad as the Ministers characterize it, is a matter of controversy between the parties.

[66] It is accepted in the jurisprudence that terrorist organizations are “loosely structured groups that do not apply the niceties of agency law”, as Justice Rothstein said in *Singh* above at paragraph 5. In *Ikhlef*, above, at paragraph 64, Justice Blais, as he was then, referred to an organization as "a community of interests and thoughts and regular meetings with persons who were pursuing the same goals".

[67] In *Thanaratnam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 349, [2004] 3 F.C.R. 301, rev’d on other grounds, 2005 FCA 122, [2006] 1 F.C.R. 474 (*Thanaratnam*

FC) at paragraph 31, Justice James O'Reilly identified the characteristics of an organization as "identity, leadership, a loose hierarchy and a basic organizational structure". In *Sittampalam v. Canada (Minister of Citizenship and Immigration),* 2006 FCA 326, [2007] 3 F.C.R. 198 at paragraph 38, Justice Linden endorsed these factors as helpful in making a determination under s. 37 but considered that no one of them is essential. He held that an "unrestricted and broad" interpretation should be given to "organization" (at paragraph 36).

[68] 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.

[69] The effect of the statute and this line of authority is, therefore, that if I find that Mr. Almrei was at any time a member of an organization that there are reasonable grounds to believe has engaged in terrorism at some time in the past, he is inadmissible and a finding that he is no longer a member would be to no avail. The question may remain open whether the organization which committed the terrorist acts is the same organization as that to which the member belonged at the relevant times: *Gebreab v. Canada (Minister of Public Safety and Emergency Preparedness)* 2009 FC 1213.

"Terrorism"

[70] "Terrorism" is not defined in the statute. The term has also been given an unrestricted and broad interpretation in the jurisprudence. In *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] S.C.J. No. 3 at paragraph 98, the Supreme Court defined the word, in the context of the former Act and, following the language of the *International Convention for the Suppression of the Financing of Terrorism*, as including:

> …any "act intended to cause death or serious bodily injury to civilians, 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 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)

[71] 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 (Minister of Citizenship and Immigration)*, 2007 FC 671, [2007] F.C.J. No. 913. That definition is in two parts. The first part links the meaning of the term to the commission of certain listed offences enacted by Canada in the course of domestic ratification of international conventions and treaties against terrorism.

[72] The second part of the definition of terrorist activity in the *Criminal Code,* a copy of which is included in Annex "X", includes a number of elements which require proof of political, religious or ideological purpose, an intention to intimidate or compel action or inaction on the

part of a government, organization or person and harmful consequences such as death, serious property damage or interference with essential services.

[73] The motive clause of the definition, paragraph 83.01 (1) (b) (i) (A), was found to be unconstitutional by Mr. Justice Rutherford of the Ontario Superior Court in *R v. Khawaja*, [2006] O.J. No. 4245. That decision was expressly not followed by Mr. Justice Patillo of the same court in *United States of America v. Nadarajah*, [2009] O.J. No. 946, an extradition case. For the purposes of these proceedings, I do not consider it necessary to express an opinion on that issue.

[74] As I understand the Ministers' case, there are no allegations against Mr. Almrei that he committed any of the acts or omissions that would constitute an offence under either part of the *Criminal Code* definition. Rather the Ministers' claim is that he engaged in terrorism indirectly by participating in jihad and in supporting terrorist acts committed by Afghans or Afghan Arabs in Afghanistan, Tajikistan, Dagestan and Chechnya.

Armed conflict exemption

[75] Exempted from Part B of the *Criminal Code* definition is conduct committed during an armed conflict and that, at the time and place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law. The armed conflict exemption is relevant in these proceedings only in so far as it might apply to the actions of Afghan mujahedin

such as Abdul Rasul Sayyaf and to Afghan Arabs such as Ibn Khattab with whom Almrei was associated.

[76] Although the Public Summary does not include a direct characterization of Ibn Khattab as a terrorist, the Ministers' submissions speak of his "terrorist activities" in Chechnya. Sayyaf is said to have been complicit in the commission of war crimes against the civilian population and to have sheltered and mentored terrorists who passed through his camps. Mr. Almrei's contacts with Khattab and Sayyaf are proffered as evidence of his alleged "membership and complicity in terrorist activities". The respondent submits that, to the extent that he was involved with Sayyaf and Khattab, and at the material times, if their activities are covered by section 83.01, he should also be covered by this exemption.

[77] In *Khawaja*, above, Mr. Justice Rutherford considered that the acts falling within the exemption are only those ones which are considered by the laws of war to be legitimate during such a conflict. He noted that the provision is intended to remove from the ambit of the terrorism provisions of the *Criminal Code*, acts which are necessarily a part of war, so long as those war activities are conducted in accordance with the customary or conventional rules of war, stating at paragraph 127:

> The exception shields those who do acts while engaged in an armed conflict that would otherwise fit the definition of terrorist activity from prosecution as terrorists as long as the acts are within the internationally recognized principles governing warfare.

[78] The Ministers submit that the activities of Sayyaf and Khattab at issue in this proceeding fall outside the armed conflict exemption as the exemption does not apply when the victims are

persons not taking an active part in the conflict. They point to provisions of the *Geneva Conventions* and the *Rome Statute* which make it clear that terrorist activities are prohibited during armed conflict: Fourth Geneva Convention; Article 33; Protocol I, Article 51.2; Protocol II, Article 13.2. Causing terror to the civilian population is prohibited under international humanitarian law and constitutes a war crime under international criminal law: *Prosecutor v. Stanislav Galić*, Case No.IT-98-29-A (ICTY).

[79] The issue is, therefore, a question of mixed fact and law whether acts committed in the course of an armed conflict would fall within the legitimate scope of what is permitted under international law.

"*Danger to National Security"*

[80] The meaning of "danger to national security", as the expression appeared in the former Act, was discussed by the Supreme Court in *Suresh*, above. The Court observed, at paragraph 83, that the phrase was not synonymous with membership in a terrorist movement although the two concepts may be related, and, at paragraph 84, that it does not mean the same as danger to the public or any member of the public. But paragraph 34 (1) (d) calls for a present finding of dangerousness.

[81] Subject to those qualifications, the Court said at paragraph 85:

> [w]e accept that a fair, large and liberal interpretation in accordance with international norms must be accorded to "danger to the security of Canada" in deportation legislation. We recognize that "danger to the security of Canada" is difficult to define. We also accept that the determination of what constitutes a "danger to the security of Canada" is highly fact-based and political in a general sense. All this suggests a broad and flexible approach to national security and, as

> discussed above, a deferential standard of judicial review. Provided the Minister is able to show evidence that reasonably supports a finding of danger to the security of Canada, courts should not interfere with the Minister's decision.

And at para. 90:

> These considerations lead us to conclude that a person constitutes 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 threatened harm must be substantial rather than negligible.

Burden of Proof

[82] As stated by the Federal Court of Appeal in *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] F.C.J. No. 399, at paragraph 16, the burden of proof, standard of proof and the quality of the evidence necessary to meet the standard of proof are three different factual realities and legal concepts which should not be confused. In this case, there is no dispute between the parties that the evidentiary burden and the legal burden of persuasion rest with the Ministers.

Quality of the Evidence

[83] The quality of the evidence required to meet the standard of proof is set out in paragraph 83(1)(h) of the statute. That provision authorizes the judge to receive into evidence anything that, in the judge's opinion, is "reliable and appropriate" ("…digne de foi et utile"), even if it is inadmissible in a court of law, and to base a decision on that evidence. Thus, the best evidence rule

does not apply and hearsay evidence such as that provided to the Service by a human source or third party information collected by a foreign or domestic intelligence or law enforcement agency may be relied upon: *Almrei (Re),* 2009 FC 3, [2009] F.C.J. No. 1, at paragraph 53.

[84] Both official language versions of the statute are authoritative and require consideration of the shared meaning of the two texts: *R. v. Daoust*, [2004] 1 S.C.R. 217, [2004] S.C.J. No. 7. "Appropriate" ("utile" in French) was the term used in the pre-Bill C-3 statute and in this context has the sense of "proper", "fitting" and "useful": *Shorter Oxford English Dictionary*, Fifth Edition; *Le Petit Robert*, 2006. I read the two versions as requiring more than mere relevance. Evidence may be relevant but not useful or fitting for a variety of reasons including the manner in which it was obtained. This is reinforced where the term is coupled with "reliable" ("digne de foi") which imports a notion of "trustworthy", "safe", "sure", "worthy of belief". In the criminal law context, the manner in which evidence was obtained may make it unreliable as, for example, evidence obtained through the use of torture, and may result in the denial of fair trial rights: *R. v. Hape*, 2007 SCC 26, [2007] S.C.J. No. 26, at paragraph 19; *R. v. Khelawon*, 2006 SCC 57, [2006] S.C.J. No. 57, at paragraph 47. Parliament has expressly ordained that such information shall not be considered reliable and appropriate in certificate proceedings: ss. 83(1.1).

[85] Division 9 repeatedly refers to "information and other evidence". For the purposes of this part of IRPA, section 76 defines "information" ("renseignements") as security or criminal intelligence information and information that is obtained in confidence from a source in Canada, the government of a foreign state or an international organization or an institution of such foreign state or organization.

Standard of Proof

[86] Under subsection 77(1), the Ministers may only issue a warrant for the arrest and detention of a person named in a certificate if they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal (IRPA, s.81).

[87] Under the heading “Rules of Interpretation”, section 33 of IRPA provides that the facts that constitute inadmissibility under section 34 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.

[88] The Supreme Court of Canada has determined that “reasonable grounds to believe” requires an objective basis for the belief in the alleged facts based on compelling and credible information: *Suresh*, above, at para. 90; *R v. Zeolkowski*, [1989] 1 S.C.R. 1378, [1989] S.C.J. No. 50, at page 1385.

[89] Justice Dubé in *Chiau v. Canada (Minister of Citizenship and Immigration)*, [1998] 2 F.C. 642 (T.D.), [1998] F.C.J. No. 131, at paragraph 27, described the standard of proof required to establish “reasonable grounds” as:

> … more than a flimsy suspicion, but less than the civil test of balance of probabilities. And, of course, a much lower threshold than the criminal standard of "beyond a reasonable doubt". It is a bona fide belief in a serious possibility based on credible evidence.

[90] Justice Simon Noël further explained the standard as follows in *Charkaoui (Re)*, 2005 FC 248, [2005] F.C.J. No. 269, at paragraph 30:

> The "reasonable grounds" standard requires more than suspicions. It also requires more than a mere subjective belief on the part of the person relying on them. The existence of reasonable grounds must be established objectively, that is, that a reasonable person placed in similar circumstances would have believed that reasonable grounds existed:

[91] The standard is, therefore, somewhere between "mere suspicion" and the balance of probabilities. It is higher than the standard applied in the control order cases in the United Kingdom which requires reasonable grounds for suspecting involvement in terrorism related activity: see for example *Secretary of State for the Home Department v. AF and Another*, [2009] UKHL 28 [SSHD v. AF], at paragraphs 62-63. The habeas corpus proceedings relating to Guantanamo detainees are being conducted in the U.S. District Court on a preponderance of the evidence standard: *Al Mutairi v. United States*, 2009 WL 2364173, (D.D.C. July 29, 2009).

[92] The Ministers contend that the Court's determination should also be made on the reasonable grounds to believe standard. The respondent's position is that it should be the normal civil standard of proof on a balance of probabilities: *F.H. v. McDougall*, 2008 SCC 53, [2008] S.C.J. No. 54, at paragraph 40. He argues that the amendments contained in Bill C-3 which have changed the Court's role from a review of the reasonableness of the Ministers' opinion to a determination of the present reasonableness of the certificate calls for a higher standard. Moreover, he contends, application of the lower standard would not satisfy the fundamental justice requirements of section 7 of the *Charter*.

[93] In reviewing the role of the designated judge in certificate cases, the Supreme Court has noted that as IRPA subsection 82(1), now section 81, provided that the Ministers' decision to detain a permanent resident was based on "reasonable grounds to believe", it is "…logical to assume…" that the same standard would be used by the judge reviewing the detention: *Charkaoui 1*, para. 39. The Ministers' position, contested by the respondent, is that this is conclusive authority for the application of the same standard to the reasonableness determination. I am not so sure. The Supreme Court's reference to "reasonableness" as the standard for determination of the certificate issue in the same paragraph appears to recognize that there is a difference.

[94] Where the legislation requires "reasonable grounds to believe" a certain fact, the standard has been interpreted as meaning that proof of that fact itself is not required. Evidence that falls short of establishing the fact will be sufficient if it is enough to show reasonable grounds for a belief in the fact: *Canada v. Jolly*, [1975] F.C. 216 (C.A.) at pp. 225-226.

[95] *Jolly* was a case under s. 5(1) of the former Act, in which the Federal Court of Appeal addressed the inadmissibility of a person who was a member of an organization or group "concerning which there were reasonable grounds for believing that it promotes or advocates … subversion by force". At paragraph 18 the Court stated:

> … But where the fact to be ascertained on the evidence is whether there are reasonable grounds for such a belief, rather than the existence of the fact itself, it seems to me that to require proof of the fact itself and proceed to determine whether it has been established is to demand the proof of a different fact from that required to be ascertained. It seems to me that the use by the statute of the expression "reasonable grounds for believing" implies that the fact itself need not be established and that evidence which falls short of proving the subversive character of the organization will be sufficient if it is enough to show reasonable grounds for believing that the organization is one that advocates subversion by force, etc.

At paragraph 22, the Court of Appeal observed that:

> Subsection 5(l) does not prescribe a standard of proof but a test to be applied for determining admissibility of an alien to Canada, and the question to be decided was whether there were reasonable grounds for believing, etc., and not the fact itself of advocating subversion by force, etc. No doubt one way of showing that there are no reasonable grounds for believing a fact is to show that the fact itself does not exist. But even when prima facie evidence negativing the fact itself had been given by the respondent there did not arise an onus on the Minister to do more than show that there were reasonable grounds for believing in the existence of the fact. In short as applied to this case it seems to me that even after prima facie evidence negativing the fact had been given it was only necessary for the Minister to lead evidence to show the existence of reasonable grounds for believing the fact and it was not necessary for him to go further and establish the fact itself of the subversive character of the organization…
> (Emphasis added)

[96] The passage quoted from paragraph 18 of *Jolly* has been relied upon in subsequent jurisprudence as setting the bar below the civil standard. I would have no difficulty with that in the context of a judicial review of the adequacy of the Minister's grounds for making an inadmissibility determination. But that is not this case. The Court is assessing the reasonableness of the certificate on all of the evidence. In my view, the notion in paragraph 22 of *Jolly* that the Minister need not meet a *prima facie* case to the contrary can not be relied upon post-*Charkaoui I* and the enactment of Bill C-3. *Jolly* was decided in an era prior to the *Charter* when public interest immunity was absolute and judges did not examine classified information.

[97] In two cases dealing with an exclusion clause employing the phrase, "serious reasons to consider", the Federal Court of Appeal considered that it was analogous to "reasonable grounds to believe" and that both were less than the civil standard: *Ramirez v. Canada*, [1992] 2 F.C. 306 (C.A.); *Moreno v. Canada*, [1994] 1 F.C. 298 (C.A.). In *Moreno*, Justice Robertson said, at paragraph 17, that this type of legislative language should be regarded as a threshold rather than

a standard of proof. In his view, as stated at paragraphs 21-22, not all exclusion clause issues could be resolved by the "less than civil law" standard and that it should be confined to questions of fact. This conclusion was endorsed by the Supreme Court of Canada in *Mugasera,* above, at paras. 114-116.

[98] There is support in the jurisprudence for the position advanced by the respondent that the standard of proof should be the normal civil standard. In *Singh*, above, at para. 3, the Court held that the legal standard of proof was a balance of probabilities citing two Federal Court decisions under the former statute: *Farahi-Mahdavieh (Re),* (1993), 63 F.T.R. 120, [1993] F.C.J. No. 285 and *Al Yamani v. Canada,* (1995), 103 F.T.R. 105, [1995] F.C.J. No. 1453, at paras. 64 and 65.

[99] *Singh* and *Farahi-Mahdavieh* were inadmissibility determinations under the certificate process in the former Act. *Al-Yamani* was a judicial review of an inadmissibility decision of the Security Intelligence Review Committee. In *Farahi-Mahdavieh*, Justice Denault applied the standard articulated in *Jolly*. In *Al Yamani,* Justice MacKay dismissed an argument that a standard higher than that of the normal balance of probabilities was required holding, as the Supreme Court has recently confirmed in *McDougall*, above, that there is only one civil standard.

[100] In *Re Harkat*, 2005 FC 393, [2005] F.C.J. No. 481, a decision which followed the enactment of the IRPA, Justice Dawson held at paragraph 42, that while the legal test was reasonable grounds to believe, the standard of proof was separate and was proof on a balance of probabilities. Justice MacKay observed in *Jaballah (Re),* 2006 FC 1230, [2006] F.C.J. No. 1706

at paragraph 65, that the threshold of “reasonable grounds to believe” does not require proof on a balance of probabilities; rather it connotes a degree of probability, i.e. a *bona fide* belief in a serious possibility, based on credible evidence. At paragraph 68, he stated:

> Thus, whether facts alleged and established on the basis of the threshold of "a reasonable ground to believe" fall within the statutory provisions of s-s. 34(1) may depend on the quality and cogency of the evidence. The question for the Court is to assess whether that evidence, and the weight accorded to it, will lead to the conclusion that the requisite standard of proof is met to support a finding that the facts fall within the conduct prescribed by the statute…

[101] I am of the view that “reasonable grounds to believe” in s. 33 implies a threshold or test for establishing the facts necessary 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.

[102] The Ministers submit that, in applying the reasonableness standard, some deference is owed to their determination that the named person poses a danger to national security. They cite the following statement at paragraph 85 of *Suresh*:

> Provided the Minister is able to show evidence that reasonably supports a finding of danger to the security of Canada, courts should not interfere with the Minister’s decision.

[103] The Supreme Court in *Suresh* was conducting a standard of review analysis. They concluded that the factors of relative expertise and access to special information in matters of national security favoured deference to the Minister’s risk assessment, citing Lord Hoffman’s

speech to that effect in *Secretary of State for the Home Department v. Rehman*, [2001] 3 W.L.R. 877 (H.L.), at para. 62. Much has changed in the past eight years, including the Supreme Court's decision in *Charkaoui I* and the House of Lords decision in the Belmarsh case in which they resiled from the *Rehman* dictum where the question to be determined is legal as opposed to political: *A & others v. Secretary of State for the Home Department*, [2004] UKHL 56.

[104] In *Charkaoui 1*, at paragraph 38, the Supreme Court observed that Judges were correct to eschew an overly deferential approach in security certificate cases given the nature of the proceedings. And at paragraph 39 it was stated that "[t] he IRPA does not ask the designated judge to be deferential, but, rather, asks him or her to engage in a searching review."

[105] Here, the Court is making a fresh determination based on all of the information and other evidence presented including additional material which was not before the Ministers. The Court, as a result of *Charkaoui II,* has had access to operational and human source management information not previously made available. In the closed sessions, the information relied upon by the Ministers was called into question and the Court heard evidence about the manner in which the SIR was prepared. Having reviewed all of the information and evidence, I consider that little deference is owed to the Ministers decision.

Procedure

[106] When a certificate is signed by the Ministers stating that a permanent resident or a foreign national is inadmissible on grounds of security, they are required under section 77 of IRPA to refer the certificate to the Federal Court and file the "information and other evidence" on which the certificate is based and a summary of that information and other evidence that enables a person named in the certificate to be reasonably informed of the case but that does not include anything that, in the Minister's opinion, would be injurious to national security or endanger the safety of any person if disclosed. Under section 78, the judge shall determine whether the certificate is reasonable and shall quash it if he or she determines that it is not.

[107] The Supreme Court has repeatedly recognized the justification for security intelligence information to be kept secret in order to protect national security: *Chiarelli*, above at paragraph 58; *Ruby v. Canada (Solicitor General),* [2002] 4 S.C.R. 3, [2002] S.C.J. No. 73, at paragraph 43 and 44. That imperative may require a departure from the normal disclosure practices which allow a person, whom the state seeks to remove, to know the case that has to be met. The right to know the case to be met is not absolute: *Charkaoui I*, at paragraph 57.

[108] In the context of a security certificate proceeding where removal may place the person at risk of torture or death, the right to a fair hearing requires that the necessary information is provided or a substantial substitute is found to compensate for non-disclosure: *Charkaoui I*, above at paragraphs 61 and 139. Parliament has responded with the enactment of the Special Advocate regime as a substantial substitute for complete disclosure.

[109] Under paragraph 83(1)(a) of IRPA , the judge shall proceed as informally and expeditiously ("…sans formalisme et selon la procédure expéditive") as the circumstances and considerations of fairness and natural justice permit.

[110] The Court may, and on the application of the Ministers, shall hear information or other evidence in the absence of the public and of the named person and his counsel if, in the opinion of the judge, its disclosure could be injurious to national security or endanger the safety of any person: paragraph 83(1)(c) of IRPA.

[111] The Court shall ensure that the named person is provided with a summary of the information and other evidence that enables them to be reasonably informed ("…suffisamment informé…") of the Minister's case but that does not include anything that the judge believes would be injurious to national security or put someone in danger: paragraph 83(1)(e) of IRPA. A decision can be rendered on the information and evidence even if a summary has not been provided to the named person: paragraph 83(1)(i).

Role of the Special Advocates

[112] The Special Advocates role in these proceedings is to protect the interests of the subject of the security certificate when information or other evidence is heard in the closed proceedings. Special Advocates may challenge the Ministers' claim that the disclosure of information would be injurious to national security or endanger the safety of any person and they may challenge the relevance, reliability and sufficiency of the undisclosed information and the weight to be given to

it: s. 85.1 of IRPA. They may make oral and written submissions with respect to the undisclosed evidence and participate in a cross examine any witness who testifies in the closed proceedings: s. 85.2 of IRPA. The Ministers are obliged to provide the Special Advocates with a copy of all of the undisclosed information and other evidence provided to the judge: ss. 85.4 (1) of IRPA.

[113] The Special Advocates are prohibited from communicating with any person about the proceeding once they have had disclosure of the information or other evidence without the authorization of the judge: sections 85.4 (2) and 85.5 of IRPA. This limits the ability of the Special Advocates to obtain information and receive instructions from the named person and his counsel.

THE ISSUES

[114] The overarching issue is whether the certificate signed by the Ministers on February 22, 2008 in relation to Hassan Almrei is reasonable. Within the scope of that framework, the parties identified a number of factual and legal issues.

[115] The respondent launched a broadly based challenge to the constitutional validity of the legislative scheme enacted through Bill C-3. He contends that the new regime does not cure the constitutional defects identified by the Supreme Court of Canada in *Charkaoui 1* and, as a result, he was denied fundamental justice as guaranteed by section 7 of the *Charter*.

[116] In particular, Mr. Almrei submits that the limitations on communications between the named persons and the Special Advocates after the latter have seen the closed information renders the new procedure ineffective as a reasonable alternative to full disclosure. He contends that the reasonable grounds to believe standard of proof is constitutionally inadequate and that the *Charter* requires nothing less than the normal civil standard. The search of his apartment in 2000 by CIC officers and the seizure of a false passport in his possession is said to have breached his right to protection against unreasonable search and seizure under s.8 of the *Charter*.

[117] Due to the nature of the information and other evidence in this case, and the steps that were taken to authorize communication where it was necessary, the respondent was not, in my view, denied fundamental justice and the Special Advocates were not hampered in performing their functions by the statutory restrictions on communication. The process worked as it was intended to by Parliament.

[118] In light of the conclusions that I have reached on the factual issues, I do not consider it necessary to decide whether the new regime, as a whole, passes constitutional scrutiny. Similarly, as I have found that the certificate is not reasonable I do not need to determine whether the *Charter* requires the application of the balance of probabilities standard. I think it best to leave those questions to be addressed in another case where there may be a more suitable factual foundation and live controversy.

[119] With respect to the validity of the 2000 search and seizure, a decision on that issue would not affect the outcome of this case. Nor is there sufficient evidence before the Court on the

circumstances and the manner in which the search was conducted to arrive at a well-grounded opinion. I am also of the view that the respondent has implicitly waived his right to object to the search nine years after the event.

[120] The issues that I intend to address in these reasons are as follows:

1. Are the allegations against Almrei supported by the information and other evidence presented to the Court?
2. Should the certificate be quashed as an abuse of process?

THE ALLEGATIONS

[121] The certificate signed by Ministers on February 22, 2008 states that Almrei is inadmissible to Canada by reason of paragraphs 34(1)(c), 34(1)(d) and 34(1)(f) of the IRPA – in essence that there are reasonable grounds to believe that Almrei will engage in or has engaged in terrorism, is a danger to the security of Canada and is a member of an organization that there are reasonable grounds to believe will engage in, or, is or was engaged in terrorism.

[122] The grounds for the certificate are set out in the SIR and A/SIR, the Statement Summarizing the Information (the "Public Summary"), and the Amended Summary with additional information filed with the Court on March 25, 2009. The Amended Summary states that based on the information obtained from unclassified sources, human sources, intercepts, physical surveillance and information from foreign and domestic agencies, the Service believes that:

(a) Almrei supports the extremist Islamist ideology espoused by Osama Bin Laden, that he has connections to persons who share that ideology and that, through his involvement in an international document forgery ring, has the ability and capacity to facilitate the movement of those persons in Canada and abroad who would commit terrorist acts.

(b) Osama Bin Laden is the leader of an international terrorist network of groups and individuals committed to the use of violence to attain their political objectives, and Bin Laden has established substantial ties through alliances and cooperation with other extremist groups.

(c) The methodology of Al Qaeda's leadership has shifted since September 11, 2001. Operations have been carried out by distinct terrorist groups affiliated with Al Qaeda through their training experiences in Afghanistan or direct connection to Al Qaeda's mid-level leadership, or by autonomous units that adhere to Al Qaeda's core principles but do not have any direct connections to Bin Laden.

(d) Some scholars and academics believe that Al Qaeda is no longer a centrally-controlled organization, but recognize that its ideology lives on and that Bin Laden remains a powerful figurehead and inspiration for people around the world. Others believe that Al Qaeda remains a viable entity and may be regrouping in order to spark a new wave of attacks.

(e) The Bin Laden Network, through Al Qaeda, operated terrorist training camps in Afghanistan, Pakistan and Sudan, with cells in Somalia and Kenya.

(f) Graduates of the camps have been dispatched to conflicts around the world to support various Islamist groups and causes, including Chechen rebels fighting Russia.

(g) Other terrorist organizations have adopted the Al Qaeda brand name and they operate outside the Afghanistan-Pakistan Al Qaeda core area.

(h) Thousands of people have been inspired by the Al Qaeda ideology. They act locally, but see their operations as part of a greater whole, as defined by Al Qaeda, which in turn utilizes these groups as part of its global strategy.

(i) Eighteen individuals arrested in the summer of 2006 in the Greater Toronto Area and accused of terrorism offences, allegedly established training camps north of Toronto to practise military-inspired exercises. They had no formal affiliation to Al Qaeda but were believed to be inspired by Al Qaeda ideology.

(j) Al Qaeda and its followers are adept at using the internet as a means of communicating with each other securely and quickly, and use the internet for recruitment, indoctrination, fund raising and propaganda.

(k) In support of its clandestine actions, members of the Bin Laden Network use aliases and false documents, particularly passports, and manipulate official processes such as legal name changes, marriages of convenience and the arrival to a State without documents and registration under a false name in order to obtain official documents under new identities.

(l) Canadian citizens Abderraouf Jdey and Faker Boussora, who stated their intention to be involved in a martyrdom mission, are unknown and there is a strong likelihood that both are using false identities to remain undetected.

(m) The misuse of passports and other documents is intrinsically connected with international terrorism. Terrorist groups and their operatives need to travel to plan and commit attacks. Surreptitious travel is facilitated by using false or improperly obtained documents.

(n) Bin Laden has misappropriated donations made to Muslim charitable organizations in order to allow the Bin Laden Network to operate without the material support of a government or state sponsor.

(o) The Bin Laden Network has displayed a high level of security consciousness and is careful with communications so as to avoid detection, including the use of noms de guerre.

(p) Canada has been named as a legitimate target of attack on six occasions by Al Qaeda and groups or individuals linked to Al Qaeda.

(q) In June 2007, at the graduation of approximately 300 apparently newly trained suicide bombers at a terrorist training camp, a Taliban commander announced that Canadian interests were all viable targets and that the recent graduates would be deployed to Canada.

(r) Despite the dispersion of the Al Qaeda leadership and the group's reduced ability to centrally organize and control operations, Al Qaeda issues audio or video tapes which are widely distributed in the Arab and Muslim world and which serve to motivate fellow Muslims to take up the jihadist cause.

(s) Almrei has lied to Canadian officials, tribunals and Courts about his travel before coming to Canada.

(t) The Bin Laden Network is founded on the commitment of its members to its leader and his ideals held together by bonds of kinship. Almrei shares these bonds and has demonstrated his support of Bin Laden, those associated with or sponsored by him and his ideology.

(u) Almrei is associated with Arab Afghans connected to the Bin Laden network including Ibn Khattab, Nabil Almarabh, Ahmed al Kaysee and Hoshem al Taha.

(v) Almrei is able to and has international connections to procure false documentation; he obtained a false Canadian passport for Nabil Almarabh, he knew individuals in Montreal who could obtain false documents, he travelled to Thailand and met a human smuggler and discussed false passports with him, he arranged a marriage of convenience in Canada, he made referrals for United States ("U.S.") and Canadian driver's licences, and a person he knew was detained in the U.S. in 2001 with thirteen packages of identity documents including passports.

(w) Almrei has demonstrated concern for his security and an understanding of security procedures.

THE "INFORMATION AND OTHER EVIDENCE":

Overview:

[123] As discussed above, Division 9 of the IRPA provides that the judge presiding over the review of a certificate may receive into evidence and base a decision on anything that is reliable and appropriate, even if it is inadmissible in a court of law. This can include information from

open and covert sources. In this case, the Ministers based their allegations against Mr. Almrei on information collected from a variety of sources as described in the Security Intelligence Reports and Public Summaries.

[124] The Security Intelligence Reports or SIRs filed in this case, were prepared by CSIS as part of its duties under section 14 of the *Canadian Security Intelligence Act,* R.S., 1985, c. C-23. Section 14 authorizes the Service to advise Ministers on matters relating to the security of Canada and to provide them with information that is relevant to the performance of their duties under IRPA.

[125] The SIR is not mentioned in the Act. It is a narrative report consisting of assertions of fact drawn from open sources and information provided by human sources, intercepted communications, physical surveillance and foreign and domestic security and intelligence agencies. Each assertion in the SIR is, according to CSIS policy, to be evaluated for its relevance and reliability and 'facted" or linked to a documented covert or open reference held by the Service. The Public Summary, prepared by CSIS on behalf of the Ministers, contains that portion of the narrative which is deemed by the Service to be not injurious to national security or to source protection with footnoted references to open sources.

[126] The SIR, the amended SIR ("A/SIR"), the public summaries of both, together with volumes containing the referenced open and covert sources and supplementary materials were all filed with the Court for its use and that of the Special Advocates. The SIRs filed with the Court contained colour highlighting indicating which information was classified and withheld from Mr. Almrei and the public and that which was made public in the summaries.

[127] The Ministers presented testimony from Service officers in both the open and closed hearings and expert opinion evidence from one witness in the public hearings. The respondent testified on his own behalf and called several expert witnesses to give opinion evidence in the public hearings. The public testimony and opinion evidence is discussed below. The evidence presented in the closed hearings is discussed in the closed reasons for judgment.

The Open Source Information:

[128] The SIR, A/SIR and the public summaries of both reports contain footnoted references to extensive unclassified or open source material filed with the Court by the Ministers in the form of indexed reference volumes. Much of this material is taken from newspapers, magazines, scholarly journals and on-line sources not available in print. Some 35 of the referenced reports were taken from sources available solely on-line and more than 50 were articles from newspapers and other print media sources. In addition, both parties filed numerous excerpts from open source materials which were put to the witnesses during their testimony. The reliability of some of this material became an issue in these proceedings. In the closed proceedings, counsel entered documents into evidence that had been produced as a result of the *Charkaoui 2* orders.

[129] As the case proceeded and the Court reviewed the open and closed information, it became apparent just how little was known by western security intelligence agencies and scholars about Al Qaeda and the jihadist movement in the months leading up to and following the events of 9/11. As Thomas Hegghamer, of the Harvard Kennedy School and the Norwegian Defence Research Establishment, has written:

> We were all frightened by the destruction caused on 9/11. Yet most of us… assumed that there would be people in the intelligence services or in academia who possessed detailed knowledge about the jihadists… How wrong we were… [I]t has become increasingly clear how little was known about al-Qaeda back in 2001, and how long it will take for us thoroughly to understand the dynamics of global jihadism.
> (*Jihadi Studies*: Times Literary Supplement, April 4, 2008 p.15)

[130] Little attention had been directed to the jihadi phenomenon by security intelligence analysts and academic scholars. Hegghammer points out that the main contributions to the literature on Al Qaeda in the first few years after 9/11 came from investigative journalists, not academics or security specialists. This is apparent from the information filed in this case.

[131] In the reaction to 9/11 and the "Global War on Terror" initiated by the US and its allies, there was a rapid proliferation of instant experts and new organizations claiming knowledge in the field, as several of the witnesses testified. In Hegghammer's words, there was "a deluge of writing in which truth was mixed with factoids and conspiracy theories". This was borne out by much of the material filed in these proceedings and from the witnesses' testimony. The Court's task was, in part, to sort the fact from the rumour and truth from the speculation in the filed material to determine what was reliable and appropriate information and other evidence upon which a decision could be rendered.

Third Party Information:

[132] Division 9 of IRPA permits the reception of information obtained in confidence from foreign security intelligence and police agencies. CSIS sought information about Mr. Almrei from a

number of foreign agencies prior to and following his detention. I have more to say about this in my closed judgment. For the public record, I think it necessary to state that the responses from foreign agencies were largely negative respecting Mr. Almrei. He was not known to be an extremist suspect by the authorities in the jurisdictions canvassed.

[133] Relevant information was provided by foreign agencies regarding the arrest, detention and ultimate deportation of Nabil Almarabh from the United States and with respect to the respondent's Thai based contact, a Palestinian named Ghaleb, and his connections.

[134] Information was also provided to CSIS by the US Federal Bureau of Investigation (F.B.I.) with respect to Mr. Almarabh's responses to questions that CSIS had requested be posed to him regarding his relationship with Mr. Almrei while Mr. Almarabh was in US custody. A summary of that information had been previously disclosed to the respondent and his counsel. The full report was provided to the Court and to the Special Advocates as a result of the October 10, 2008 production order. The content of that report was relevant to the merits of the certificate and to the motion by the Special Advocates to quash the certificate on the ground of a breach of the duty of candour.

[135] As this Court has previously observed, where the government wishes to protect material information provided by a third party under caveat, the consent of the third party to disclose the information should normally be sought: *Khadr v. Canada (Attorney General)*, 2008 FC 549, [2008] F.C.J. No. 770, at paragraphs 93-95. In this case, the Special Advocates had access to the closed third-party information in the court file subject to the redaction of irrelevant content. The respondent

is also aware of the gist of the information and the allegations relating to Almarabh and Ghaleb. He replied to these allegations in his cross-examination of the government witnesses and in his testimony.

[136] In my view, disclosure of the third party reports would have been injurious to Canada's national security as the information was provided in confidence under protective caveats. Given that the essential facts were already part of the public record, I did not consider it necessary in this case to direct that the Service seek consent to disclosure from the foreign agencies that provided the information. I was also mindful of the obligation under the statute to conduct the proceedings in an expeditious manner. This decision was communicated to Mr. Almrei and his counsel on June 10, 2009.

[137] Information was also provided to the Service by the RCMP, the Department of Citizenship and Immigration Canada (CIC) and Canada Border Services Agency (CBSA). RCMP reports of information received from human sources shared with CSIS were disclosed to the Court and to the Special Advocates. As the reliability of the sources could not be determined and the information was vague and unsubstantiated, those reports carried very little weight and were not relied upon by CSIS in the preparation of the SIR and A/SIR.

[138] During the course of the proceedings certain reports prepared by the RCMP and CIC were provided to the Court and the Special Advocates, and with the redaction of non-material and sensitive information, disclosed to the respondent and his counsel. The factual accuracy of these reports became an issue in the open proceedings.

[139] CIC/CBSA information used in the SIR and A/SIR included reports on the information provided by Almrei in support of his unsuccessful visa application in 1998 and upon his entry in 1999. It includes a report on the search conducted at Almrei's apartment on September 13, 2000 when CIC officers attempted to arrest his roommate on a departure order. This report contained erroneous information about Almrei's refugee claim. Another report concerned a CIC file for an individual linked to Almrei; a Syrian male with Afghan experience who had traveled to the United States on altered and false passports.

[140] An RCMP investigation report in relation to certain events at Pearson Airport was produced late and only after repeated requests. The significance of the report will be discussed below.

Telecommunications Intercepts:

[141] The Ministers initially relied on a handful of intercept reports in the SIR. Following a review of these reports in the closed hearings, two were withdrawn by the Ministers upon the Court's finding that they were not relevant to the proceedings, as they concerned other persons and the use of a communication technique not connected to Mr. Almrei.

[142] Summaries of conversations used in the A/SIR were approved by the Court and disclosed to Mr. Almrei on April 17, 2009 (Exhibit A-13). In one of several conversations on September 14, 2001 an unknown male spoke with Almrei addressing him as Abu al Hareth and inquired about the contact numbers of a third person. This was, apparently, the Service's first confirmation that Almrei was known to his friends and associates by the name, Abu Al Hareth. But he was well known by

that name within the Muslim community in Toronto and, indeed, the RCMP had been making inquiries about him under that name.

[143] In the course of several conversations on October 9, 2001, Almrei was told by an acquaintance he had been followed that day by two men in a car who were, at the time of the conversations, parked in front of the acquaintance's building. Almrei was advised not to visit the acquaintance the next day as they were both under scrutiny. The acquaintance also spoke about providing funds to assist Almrei with his lawyer's fees. These intercepts, with other closed information, were offered in support of the assertion that Almrei was security conscious and took steps to avoid surveillance.

[144] On April 24, 2009, summaries of intercepted communications that had been disclosed to the Court and to the Special Advocates as part of the *Charkaoui II* production, were disclosed to Mr. Almrei and the public in a volume filed as Exhibit A-14. The summaries concerned some 55 conversations which took place on and between September 12, 2001 and October 18, 2001 which were not relied upon in the SIR and A/SIR as they contain no information in support of the Ministers' case.

[145] Several of these intercepts became relevant in the closed proceedings as the reports of the communications intercepted by the Service proved to be inconsistent with reports of information provided by human sources respecting conversations on the same dates. In that respect, they were also relevant to the motion to quash the certificate brought by the Special Advocates.

Physical Surveillance Reports:

[146] Almrei was under physical surveillance prior to his arrest and detention. Physical surveillance reports referenced in the A/SIR were disclosed in Exhibit A-13 on April 17, 2009. These concerned surveillance on September 17, 1999 and September 19, 1999. The first report concerned events at Pearson airport which will be discussed below. The second describes Almrei's driving behaviour as he was followed around Niagara Falls while he visited several nightclubs and restaurants. This second report was relied upon in support of an assertion that Almrei had exhibited security tradecraft in an effort to determine whether he was being followed. Another interpretation, conveyed by one of the surveillance teams, is that he was wandering around just to kill time.

[147] The *Charkaoui II* Order produced a considerable number of other physical surveillance reports. The Ministers objected to their disclosure to the respondent on the grounds that they contained no relevant information, would disclose covert operational methods and surveillance techniques and were not relied upon in the A/SIR. The Special Advocates considered that they were relevant if only to demonstrate that Almrei's behaviour on those dates had been innocuous. In the result, an overview summary of the surveillance conducted between August 1999 and October 2001 was approved for disclosure to Mr. Almrei and the public and forms part of Exhibit A-14.

[148] Several of the physical surveillance reports proved to be highly relevant in the closed proceedings in support of the motion to quash as their content was inconsistent with information

provided by a human source regarding Almrei's movements and contacts on specific dates. This will be discussed further below.

Information Obtained or Derived from Torture or Cruel, Inhumane or Degrading Treatment

[149] As outlined above, IRPA subsection 83(1.1) provides that reliable and appropriate evidence does not include information that is believed on reasonable grounds to have been obtained as a result of the use of torture within the meaning of section 269.1 of the *Criminal Code* or of cruel, inhuman or degrading treatment or punishment within the meaning of the *Convention Against Torture*.

[150] Questions arose in these proceedings as to whether any of the information in the SIR and A/SIR had been obtained as a result of the use of torture or cruel, inhuman or degrading treatment or punishment. From my review of the SIR and A/SIR, the records disclosed in response to the October 10, 2008 order and the evidence presented in the public and closed hearings, I was initially satisfied that the Ministers did not rely upon information that had been obtained through the use of such methods. The Special Advocates were authorized to communicate that view to Mr. Almrei and his counsel so as to avoid the calling of unnecessary expert opinion evidence during the public hearings about the treatment of certain high-level detainees by the US and allied forces. There were no such reports from such detainees claiming, for example, to have seen Mr. Almrei in a place or places consistent with the government allegations.

[151] During the public hearings, however, it became apparent that some of the open source reference documents contained information that was obtained by members of the US military or intelligence agencies from detainees captured in the aftermath of 9/11. Based on information in the public domain, the use of so-called "enhanced interrogation methods" such as waterboarding had been approved by the former US administration for use by US interrogators between 2002 and 2004.

[152] None of the documents in question contained information implicating Mr. Almrei but had been included as contextual reference material regarding Al Qaeda's operations and methods. The documents in question included several chapters of the 9/11 Commission Report. An explanatory note in the Report states that chapters 5 and 7 contain information obtained from the interrogations of certain named detainees. Without deciding the matter, I concluded that it is open to the Court to find that the information contained in those chapters of the Report, and similar US documents, was obtained through the use of torture or cruel, inhuman or degrading treatment as defined in the Code and the Convention and would not be admissible evidence or information in security certificate proceedings under IRPA, at subsection 83(1.1).

[153] When this issue was raised during the public hearings counsel for the Ministers properly took the position that they would no longer be relying upon the documents in question. The Court has not, therefore, taken them into consideration in arriving at a determination in these proceedings.

The Human Source Information:

[154] The strength of the Ministers' case rests to a considerable extent on information provided to CSIS by human sources. As presented to the Court, this information was drawn from source reports maintained in the Service's operational records database. Statements in the A/SIR attributed to the sources are supported by footnoted references to the reports which were reproduced in the classified reference materials filed with the Court. Typically the report would indicate that the writer, a CSIS employee, had met with the source on a certain date and had been given certain information. Notes of the interview, if any were made, were typically not retained. The source is identified only by a code number and word.

[155] A classified Source Exhibit containing information about the human sources was filed with the Court on September 5, 2008.

[156] Further to the delivery to the Court of the information produced in response to the *Charkaoui 2* disclosure order and the review of that information by the Court and the Special Advocates, on April 3, 2009 the Court issued a confidential order requiring the production of additional classified information respecting the human sources. The Ministers responded to that order by filing two volumes of documents on May 1, 2009. The Court required the production of further information respecting the Service's assessments of the credibility and reliability of the human sources. A supplementary response was filed on May 15, 2009.

[157] On May 25th, 2009 counsel for the Ministers submitted a Revised and Amended Source Exhibit for filing. This document contained revisions to the information filed on September 5, 2008. In respect of one human source, a polygraph examination had not been performed as was previously reported. With regard to a second human source, the circumstances surrounding a 2007 polygraph examination, not directly related to this matter, were in question. As a result of this and similar questions which had arisen in another certificate case, a review of the preparation of the source exhibits was undertaken by CSIS and the Department of Justice.

[158] On June 3, 2009 the Court issued a confidential direction requiring the production of additional information relating to a number of questions concerning the human sources. Top secret documents were filed by the Ministers in response to that direction on June 17-18, 2009, including a document entitled a "Source Précis". The Source Précis contained further extensive revisions to the information provided by CSIS regarding the human sources. It was then clear that the second human source was found to have been deceptive in providing answers during the 2007 polygraph examination. On June 22, 2009 a senior manager of the Service was examined and cross examined concerning the process which CSIS had followed in preparing the original and the revised source exhibits and the internal review of these processes. These developments were communicated to Mr. Almrei and his counsel on June 10 and June 26, 2009.

[159] The Court will deal with the merits of the information provided by the human sources in the closed judgment. However, in light of the disclosure of errors in the Source Exhibit and the resulting motion brought by the respondent to quash the certificate as an abuse of process, it is necessary to address the question of the reliability of this information in these public reasons.

[160] The Court is sensitive to the fact that human sources are an important component of the resources available to security intelligence agencies in collecting information to protect national security. CSIS is justifiably proud of its ability to recruit and develop directed human sources. For a comparatively small intelligence agency they have an established track record of success in recruiting productive sources. This may give CSIS a relative advantage in the collection and sharing of information between partner countries which have more extensive technological capabilities or more numerous personnel. That success no doubt serves Canada's security interests well.

[161] The precautions adopted by CSIS to protect human sources include the close guarding of any information that might possibly identify and expose the sources within the Service itself. Such information is only available on a strict need to know basis to a limited number of CSIS employees and is kept separate from the general reporting system and databanks.

[162] In this case, the reliability of the information provided by several human sources became a key issue. If the information from the sources is to be believed, Mr. Almrei is dedicated to the Bin Laden ideology and a threat to the security of Canada. It was crucial, therefore, for the Court to determine whether the sources were credible. That assessment depended in part on information held by CSIS in the source management files; how they were recruited, developed and managed as directed sources and the internal assessments of their reliability.

[163] Production of the *Charkaoui 2* information also allowed for a comparison of the reports of information provided by the human sources with other information held by CSIS including the intercept and surveillance reports. That comparison identified some serious contradictions. In the

result, I was satisfied that the highly relevant information provided by one source in particular was not credible as it conflicted with surveillance and intercept reports made by CSIS personnel regarding the same dates and times.

[164] It is of particular concern that these contradictions did not come to light until they were put to the Service witness in cross-examination by the Special Advocates. That witness was unable to provide satisfactory explanations for the failure of the Service to analyse the conflicting reports and to disclose this information to the Ministers and to the Court. This suggests a serious lack of analytical capacity in managing the enormous volume of information collected by the Service.

The Service Witnesses:

[165] The Ministers called CSIS employees as representative witnesses in both the open and closed proceedings. These were "representative" witnesses in the sense that they gave evidence based on information collected by the Service relevant to the proceedings and not from personal knowledge of the case. They also testified about the Service view of the danger to Canadian national security and the global risks posed by Sunni Islamic extremism. Neither of the three witnesses called (including the witness on the detention review) were tendered as experts to give opinion evidence. They testified as fact witnesses regarding their knowledge of the threat environment and the information compiled by CSIS relating to Mr. Almrei. I found them to be experienced, knowledgeable and professional.

[166] In the closed proceedings, the evidence of the Service witness dealt with the classified information referenced in the SIR and A/SIR and supporting documents. His identity was disclosed for the purposes of the record but I see no need to reveal it here. I discuss his evidence in greater detail in the closed reasons for judgment. For the public record, the witness testified with regard to the accuracy of the classified information derived from human and other sources. In particular, the witness testified as to the background of the human sources, their relationship with and motivation for cooperating with the Service, why their information was considered reliable and how it formed part of the Service's assessment of Mr. Almrei. The witness was cross-examined on that evidence and on records obtained from the Service operational and human source management databases.

[167] In the open proceedings, the Ministers called Mr. Robert Young, a manager with the Service's Toronto Region office. Mr. Young has a BA in political science and an M.A. in international relations. He has been an intelligence officer with the Service since 1986, serving as an investigator and analyst and, since 1999, as a manager. For the two years prior to his testimony he had been responsible for managing investigations into Sunni Islamic extremism in the Toronto region. In the course of his employment, he has traveled to Afghanistan, Pakistan, India, Sri Lanka and he had lived in the Middle East for three years in the late 90s dealing with Sunni extremism issues.

[168] Mr. Young had visited Afghanistan for operational reasons for about a week. Ministers' counsel objected to cross examination on the purpose of that visit on national security grounds. The matter was not pressed by the respondent and I did not consider this information to be relevant to

these proceedings. Mr. Young did not purport to be an expert on Afghanistan. He is familiar with the background to the conflict there but not the details. He doesn't speak any of the local languages.

[169] While there was some overlap with the testimony of the Service witness in the closed hearings, Mr. Young did not refer to the classified information and he had not read it in preparation for his testimony. His evidence reviewed the Service's mandate with regard to threats to the security of Canada under the CSIS Act. He then addressed the case against Mr. Almrei as it appears in the public summaries of the security intelligence reports. Much of his evidence was of a background nature, outlining the Service understanding of Al Qaeda and the Bin Laden Network, the role of the Afghan training camps in recruiting extremists, and Al Qaeda operational methodologies such as the use of false documentation and clandestine tradecraft.

[170] Mr. Young had not directly participated in the Almrei investigation. CSIS has only interviewed Almrei once just prior to his arrest in October 2001. They have not attempted to since. Young had read the interview notes and the transcript of an interview conducted by CIC that was entered into evidence. He indicated that the Service is reluctant to interview anyone involved in litigation. Their goal was to remove him from Canada and thought that they had completed their work after the first security certificate was upheld.

[171] Based on all of the available information, Mr. Young testified, the Service assessment is that Almrei supports the extremist ideology espoused by Osama Bin Laden, that he has connections to persons who share that ideology and that, through his involvement in an international document forgery ring, the Service believes he has the ability and capacity to facilitate the movement of

extremists in Canada and abroad who could commit terrorist acts. They consider that he has a "pedigree" with the skill sets that would make him useful to a terrorist organization.

[172] Almrei's participation in jihad on several different occasions is a concern to the Service, in particular because he has never renounced jihad and took pride in his willingness to participate in violence against others because of his religious or ideological beliefs. Mr. Young said that the Service's assessment was that Almrei's jihadist forays were not a one-off occasion such as might be expected from a curious young man.

[173] The Service position is that jihad is the same whether it is undertaken in one part of the world or globally. The person who engages in jihad is, in the Service view, willing to inflict violence and seeks to impose his will on the sovereignty of other nations. Their concern with Almrei is that they believe he would be willing to engage in jihad again when he believes it is justified to inflict violence in a political situation.

[174] Mr. Young noted that Almrei came to Canada from Jordan on a false U.A.E. passport which he claimed to have destroyed upon arrival. A search by immigration officials of Almrei's apartment later revealed the false U.A.E. passport. In the Service's view this is consistent with a person who is sympathetic to the jihadi cause, in that the travel document could be re-used by associates or others involved in jihadism.

[175] On cross-examination Mr. Young conceded that many people cross borders using false documentation who have no relationship with extremist groups. He agreed that this factor

wouldn't be alarming on its own. However, combined with all the other issues and facts known from the open information, it contributes to a greater concern for the Service.

[176] Almrei's connection to the Muslim Brotherhood was also a basis for concern because of that group's links to terrorism in the past. While the Service has no information linking Almrei to membership in the organization, his claim for refugee status was based on persecution due to the political beliefs of his father who had been a prominent member. He also claimed that his Syrian passport was provided to him by the Muslim Brotherhood. That, in itself, did not carry much significance Mr. Young said, on cross-examination. He also agreed that inaccurate information was provided to the Service by CIC regarding Almrei's refugee claim. He had never claimed, as reported by CIC, that his father had been killed and his mother imprisoned by Syria.

[177] Mr. Young suggested that Almrei was in a position to use his honey and perfume business as a cover to travel to countries to participate in jihad or to further the cause of Islamist extremism.While there is no evidence that Almrei did in fact use this trade to conceal weapons or to raise funds for extremist activities, that type of business has been used by extremists for such purposes in the past.

[178] On cross-examination, Mr. Young acknowledged that the Court had found in a 2005 detention review hearing that the role of the honey business was speculative. He agreed that there is no new evidence to support an adverse inference from this activity. Counsel for the Ministers indicated that they would not ask me to take a position different from that reached by my colleague in 2005.

[179] In the October 2001 interview, Almrei denied having been to a number of countries, which later turned out by his own admission to be untruthful, notably Afghanistan and Tajikistan. In Mr. Young's mind that raised the question: after having been recognized as a refugee claimant and having secured a certain status in Canada, why would he continue to lie? Almrei has also admitted that he withheld information from the Service and from the lawyer. He has thus demonstrated a pattern of being untruthful, which has made it difficult for the Service to actually discern what Almrei has done in the past and to what degree.

[180] Almrei's participation in the training camps goes beyond just a philosophical adherence to an ideology, according to Mr. Young. It shows a real commitment to follow through on that violent ideology, to take the time, put one's life at risk, to follow up on that cause, be willing to kill people because of a belief in jihad.

[181] Regarding Almrei's travels to Tajikistan, Mr. Young said he could only speculate about the reasons. He thinks it unlikely that all Almrei was doing there was participating in scouting missions. In his view, the purpose, in military terms, was to conduct pre-operational reconnaissance in advance of an attack to kill people. Supporting the jihad in Chechnya is also of concern. As is Almrei's visits to Sayyaf's and Khattab's guesthouses and camps. Guest houses were the initial reception areas for would-be mujahidin. They would receive basic ideological indoctrination. Passports and other identification were retained there. Thereafter, they would only use a kunya or nom de guerre.

[182] On cross-examination, the witness agreed that many of the men who went to Afghanistan in the late eighties were financed and encouraged by the Saudi government and the US. Their motivation was essentially to push the Russian infidel invaders out of a Muslim country and rejection of the Marxist, atheistic communist government in Kabul. For the Americans, Afghanistan was a cold war surrogate in the effort to weaken the Soviet Union. The fact that a person went to Afghanistan during the Soviet presence or the communist government doesn't mean they are associated with Bin Laden, but it would be of concern to the Service.

[183] Mr. Young considered that there was not much difference between offensive and defensive jihad as the latter may involve offensive action. He agrees that most of those who went to Afghanistan in the 1980s and early 1990s would have gone home afterwards to get on with their lives. The US decision to support the jihad as a surrogate war against the Soviets was ill-conceived in his view. In any event, there is nothing to compare that action with the present day role of the coalition forces in Afghanistan supporting the Karzai government.

[184] The witness testified that the Service view of Khattab is that he was a committed jihadist. This was derived from numerous sources. While it may be premature for history to come to any conclusions about his activities, he acknowledged, Khattab knew Bin Laden and may have received funding from Al Qaeda. Khattab was allied with Basayev, the Chechen insurgent leader believed to have committed terrorist acts and worked to establish a Muslim Caliphate in the region. His reputation in the early 1990's was that of a fierce and fearless fighter and brilliant commander. Young believes that Khattab's major contribution to what had begun as a sectarian conflict in Chechnya was to Islamicize the fight.

[185] Young didn't dispute that the Service has expressed a more benign view of Khattab in other proceedings. In Exhibit A-16, Appendix D to the 2008 Harkat summary, the following appears at paragraph 4:

> "*…contrary to Bin Laden, Ibn Khattab has never been quoted as calling for a struggle between Islam and the West, and has never called for Jihad against America or Jews. His struggle was against Russia and its occupation of the Caucasus.*"

[186] But in an Associated Press story out of Moscow dated September 14, 1999, Khattab was quoted as speaking approvingly of terrorist attacks against Russian civilians (A-15) and in another article, against American military forces in Saudi Arabia: "… Muslims have the right to seek such a solution." (Ex. A-1, V.1, T-4, p.2). Mr. Young acknowledged that there were conflicting accounts about Khattab's statements and that some of this might be attributable to Russian propaganda.

[187] In cross-examination, Mr. Young said he hadn't seen much to substantiate the claim in paragraph 63 of the summary regarding Khattab other than the claims of the author of "Chechen Jihad". He acknowledged that the author, Josef Bodansky, has been criticized for relying on Russian sources and for failing to identify his sources. FBI headquarters did not believe that Khattab was closely connected to Bin Laden or was hostile to the US (T-137 p.10). The fight in Chechnya was largely nationalistic and not ideological. Young is not aware of any contrary information to that given by Almrei in his statutory declaration regarding his contacts with Khattab between 1994 and 1997.

[188] Almrei's association with Nabil Almarabh was also a concern to the Service. Almrei had met him at a camp in Kunduz in 1994. In Ontario in 2001, he contributed funds for Almarabh's release on bail and acquired a false passport for him. Almarabh was taken into custody in the US after 9/11 on a material witness warrant as a suspected terrorist. He was released in 2004 and deported to Syria after being cleared of all terrorist allegations (Ex. A-1, T-98). Testimony before a US Congressional committee in August 2006 (Ex. A-1, T-99) claimed that he was linked to terrorist suspects.

[189] Mr. Young conceded that it is reasonable to assume that a number of contacts would have dried up while Almrei was in detention for seven years. He thinks it is equally reasonable to assume that others are still in business. A concern regarding Mr. Almrei is that he would continue along the path that he has chosen thus far in life, to connect with people involved in fraudulent documentation to assist the cause.

[190] Mr. Young had reviewed all of the open documentary record. The CSIS process in preparing the SIR is that after preparation by the Security Screening Branch, it goes up through several levels of review, including legal advice. The case is brought forward to the Director for approval and ultimately to the two Ministers for signature. The public summary and supporting reference documents are also prepared by the security screening branch. Great care is taken to ensure accuracy. The Service seeks to file reliable and balanced material as it goes to the credibility of the Service. The author's history or pedigree, sources, footnotes, etc., may be important. The Service doesn't differentiate between open and closed sources and seek to corroborate the facts.

[191] On cross-examination, Mr. Young was taken to a reference at paragraph 30 in the public summary (fn 62, T-122, Edmonton Journal article) to a confession disclosed in US military commission proceedings by a person described as a veteran Al Qaeda operative; Waleed bin Attash. Exhibit R-11, Report of the International Committee of the Red Cross to the CIA dated February 14, 2007 discusses bin Attash's treatment following his arrest in Karachi in April 2003. This is corroborated by Exhibit R-12, the August 1, 2002 US Department of Justice memorandum authorizing the CIA to use "enhanced interrogation techniques".

[192] Mr. Young agreed that it was a mistake for the Service to include the reference to the confession as it was likely obtained through abusive treatment falling within the scope of the exclusion in IRPA ss. 83(1.1). CSIS does not rely on information obtained by torture, according to Mr. Young and public statements by the Director and Minister. He noted that information obtained five years ago from Guantanamo may have been treated as reliable at that time. Now it would have to be reconsidered given more recent disclosures about the manner in which it may have been obtained. As noted above, the Ministers have withdrawn this information.

[193] On cross-examination, Mr. Young was taken to several other documents in the reference indices that relied upon information that may have been obtained under "enhanced interrogation techniques": e.g., T-52, T-123, T-128. He agreed that the information would be tainted if it had been obtained under duress.

[194] The witness was also taken to a selection of documents relied upon as references in the amended summary which contained information that was later proven to be inaccurate. For

example, a news report in T-105 regarding an allegedly bungled Al Qaeda arms experiment involving the poison ricin (Ex. R-16, R-17). Mr Young agreed that the report in T-105 should not have been used by CSIS without checking the facts.

[195] Paragraph 31 of the summary references an AP report reprinted in a Jane's publication that Columbian authorities had linked a forgery ring to Al Qaeda. CSIS relied on it as the source for a statement about false document usage. Other, more authoritative sources cast doubt on the story (Ex. R-19 and R-20). On re-direct, the witness said the Jane's report is accurate.

[196] In my view, the Jane's report is accurate only in the sense that it accurately reports a statement by the Columbian Attorney-General. That statement was without a factual foundation as the respondent's exhibits effectively demonstrated.

[197] The witness was taken to a statement in paragraph 14 of the amended summary that relied on a TimesONLINE report dated February 4, 2009 (fn 22 referencing T-109) for the claim that terror suspects under house arrest in the UK have maintained contact with terrorists and remain determined to mount terror attacks in the future. The TimesONLINE report took a few words out of context from the *Fourth Report by the Independent Reviewer on United Kingdom Terrorism Legislation* (Lord Carlisle) at para. 58, p. 20 (Ex. R-21). The actual text states:

> My view is that it is only in a few cases that control orders can be justified for more than two years… there are a few controlees who, despite the restrictions place upon them, manage to maintain some contact with terrorist associates and/or groups, and a determination to become operational in the future.

[198] This was turned into a headline that "Terror Suspects Plot Attacks While Under House Arrest" which was relied upon by the Service analyst who wrote the paragraph and who evidently did not check the actual source.

[199] Mr. Young was taken to a number of other reference sources relied upon by the Service including excerpts from Wikipedia and other sources of unknown reliability. He agreed that there were problems in the use of such sources. Some are solely published on-line and provide no information about who is behind them or where they get their information. Other reports were stale by the time they were relied upon. That is, the information they contained was shown to be inaccurate, incomplete or misleading in later reports. For example, a CSIS threat assessment written in January 2005 contained inaccurate information about an April 2004 arrest (T-72, T-73, Ex. R-24)). This raises the question as to why the Service continued to rely on the earlier reports.

[200] The witness agreed that the wording in paragraph 57 of the public summary left the impression that Abdul Rasul Sayyaf had a continuing relationship with Bin Laden whereas the sources placed their contacts to the period during the anti-Soviet jihad (see for example Ex. R-25). While the sources are clear that Sayyaf was a hard-line Islamist, Mr. Young agreed that after Bin Laden's return in 1996, Sayyaf supported the Northern Alliance which was fighting Bin Laden's Taliban allies. The evidence doesn't support a continuation of the relationship after the anti-Soviet jihad. But in documents the witness was taken to on re-direct examination to clarify his evidence, it is clear that Sayyaf was also a deeply conservative Islamist with views just as extreme as those of the Taliban.

[201] Mr. Young gave his evidence in a clear, concise and professional manner. He conceded weaknesses in the material relied upon by the Service when the deficiencies were apparent on the face of the documents or there was conflicting information on the record. He also held firmly to the Service position that Almrei is a risk to national security. But his repeated references to the fact that Almrei had lied or withheld information made me wonder whether the Service gave this factor more weight than it deserved in their assessment of the threat posed by Almrei. It is an unfortunate reality that many people lie in their encounters with the authorities over immigration matters. Particularly those who come from regions of the world where telling the truth to the authorities may not be advisable.

Hassan Almrei

[202] The respondent testified on his own behalf and asked that the Court take into consideration that his memory of details may be faulty after more than seven years of detention. He said that he had deliberately avoided reviewing the records of his previous hearings so as to tell his story to the Court as he recalls it now. He testified on his own behalf, in English and without the aid of an interpreter. He has learned English while in detention, mainly from the prison guards, television and reading.

[203] In the respondent's view, this was the first time that he has been able to give his complete story to the Court. He says that during the first security certificate proceedings in 2001, he refused to testify because he feared for the safety of his family and friends if he gave evidence in public. In his view, his opportunity to provide evidence during subsequent hearings was limited as the finding that

he was a security risk had already been made and the question at those hearings was whether he should continue to be detained pending the outcome of removal proceedings. Almrei believes the process remains unfair, notwithstanding the involvement of the Special Advocates, as he does not see the closed information.

[204] Almrei testified that he was born on January 1, 1974, in Syria, the fourth child of eleven. The family moved to Dammam, Saudi Arabia in 1981 because of a fear of persecution in Syria. Most of his family continue to live in Saudi Arabia. He has a sister in Lebanon and one sister and brother in England. He is the only sibling not to have attended university. His father taught Islamic studies in elementary school and taught at a mosque in the evenings which is where Almrei began to memorize the Koran from the age of five.

[205] Almrei is a *hafiz*, that is one who knows the Koran by heart. He also learned to recite it. Recital of the Koran is an art form in Islam. There are competitions for those who can do it well. Almrei says that he learned how to do this by buying tapes and emulating others. He also led others in prayer as an Imam. This is not the same as being a member of the clergy in the West, but simply refers to someone who has memorized the Koran and is able to recite it to lead others in prayer. Almrei does not consider himself to be an Islamic scholar but has read a great deal, particularly over the past eight years. He discussed his understanding of the basic tenets of the faith and the different schools of Islamic law.

[206] As a young boy, Almrei testified, he told his family that he wanted to be known as Abu Hareth, because one of the *Hadith* of the Prophet refers to the name Hareth as particularly

blessed. Almrei wished to give his son, when he had one, that name. Abu means father. The practice of adopting a *kunya,* or honorific and familiar name by which a male is known to family and close friends is common in the Middle East. It is often but not necessarily based on the first born son's name. Abu Hareth became Almrei's *kunya* from a young age. He says he did not adopt it as a *nom de guerre*, as the Ministers suggest, and did not attempt to conceal it from the authorities when he completed his refugee claim and was interviewed. He did not consider it a name that he should provide.

[207] Almrei's father was a member of the Syrian branch of the Muslim Brotherhood (MB). His uncle and his uncle's son had been jailed for their membership which was illegal in Syria at the time. His father had been sentenced to death *in absentia*. His mother was detained and interrogated on a later trip. Two of his uncles still live in Syria.

[208] The MB is a transnational Sunni Muslim movement founded in Egypt in 1928. The political arm of the movement is legal in Egypt and serves as an opposition party. The MB was tolerated in other Middle Eastern countries such as Jordan. In Syria, it was proscribed as it had been involved in repeated efforts to overthrow the government.

[209] An insurrection in 1981-82 was brutally suppressed by the ruling Baath party and membership was made a capital offence. Almrei testified that in 1982 as an eight-year-old boy attending mosque in Saudi Arabia he learned of the massacre in Hama, Syria in which thousands of Sunnis were killed by the Alewite controlled Syrian army.

[210] He says that it was the memory of this event, in part, that later led him to declare to his father that he wished to join a jihad against those who would slaughter innocent Muslims. As a teenager he learned about the jihad in Afghanistan in the Mosque and through reading a Pakistani magazine. Among his siblings, he was the only one so motivated. The family initially treated it as a joke. At 16 he decided to go and sought his parents' permission. His father's conditions were that he complete high school and finish memorizing the Koran. As it turned out, he testified, he had completed the latter but not the former when he first went to Afghanistan in 1990 during the summer recess from high school. Almrei was then 16 years old.

[211] Almrei described his understanding of jihad as an inner struggle. He regarded the jihad in Afghanistan to be a legitimate struggle against the Russian invasion. The killing of innocents is contrary to the Koran. The Koran says fight in the name of Allah, those who fight you; do not be the aggressor; do what you need to do but no more. Bin Laden and others do not read the entire Koran. They use some verses from the Koran and the hadith but not the whole thing. The Muslim ummah agreed that what was going on in Afghanistan was a legitimate jihad. Bin Laden and others will go anywhere to kill others. That is not jihad. There are conditions and limits to what is permitted in jihad even where a Muslim land becomes occupied.

[212] Regarding 9/11, Almrei is not sure whether it was a political or a religious act. In religious terms it was against Islam first because the hijackers killed themselves. In Islam they are murderers. This was *fitna* or a bad thing. Many people died. In political terms it made no sense also as it could not help the Palestinian people or other Muslims. He describes himself as anti-American policy, but not anti-American. He had no objection to the presence of the

American troops in Saudi Arabia and thought it was good for business. That could not be the occasion for jihad as they had come with the permission of the legitimate government with the approval of the ulemma or community of scholars.

[213] In 1990, he went to Afghanistan during his summer break from high school to fight the Russians and the communist regime they had left in place. He did not differentiate between the two. He flew from Damman to Islamabad, Pakistan and from there went by bus to Peshawar, the usual "staging area" for Arab jihadis entering Afghanistan. A government office in Riyadh had provided advice and a 75% discount on the price of an air ticket. He traveled on a Syrian passport which was valid for two years renewable every six months. His father sent it to the MB to get an extra stamp to allow him to travel to Afghanistan. He had not done the obligatory military service in Syria and they would not let him travel outside the region. The MB stamps looked like valid Syrian stamps. He did not himself join the MB.

[214] The bus took him to *Beit al Ansar* (House of Supporters) in Peshawar along with twenty or so others. This was big house in a nice neighbourhood with lots of rooms. They slept four or five to a room and also ate there. At *Beit al Ansar*, people ate, chatted, slept, hung around together. They could go out to restaurants or to the Mosque. People who had been to Afghanistan would come back for a rest. They did not talk about their personal lives. You would be regarded as an informer if you asked. There were many other houses in Peshawar for people of different nationalities. They didn't pay. He stayed 27 days and became infected with malaria. His father told him to come back.

[215] Almrei returned home for treatment. He missed the first semester of school that year and asked his dad when he recovered if he could go back. He returned to Pakistan in 1991 with a flight again subsidized by the government. This time he met an older man on the plane, Sala'ud'din, told him where he was going and that he had memorized the Koran. Sala'ud'din suggested that he go to an Afghan camp rather than one run by the Arabs. He went with him in a taxi to Pabbi (or Babhi), a village near Peshawar controlled by Abdul Rasul Sayyaf.

[216] Almrei knew of Sayyaf from the magazines he had read in Saudi Arabia. The Pakistan government had given each of the seven mujahidin groups in Afghanistan land for their refugees. Pabbi was Sayyaf's camp. It was well established with schools, etc. He stayed at one of Sayyaf's guest-houses because he was with Sala'ud'din. He met Sayyaf there. Almrei stayed for a few weeks waiting for a supply truck from Jalalabad and went back in the truck to a camp in Afghanistan. He testified that it is not what you might expect from the term "camp". It was no more than a mud house farm with a corner to pray in and a village near by.

[217] This was the Shahid Bilal camp near Jalalabad. The person in charge, Samir al Haq, showed him how to use an AK-47. This took about an hour to learn how to clean it, shoot it, etc., and then he was given one to use himself. He practised shooting at targets. While there were several other types of weapons there he did not train in their use. There were no other forms of training. He was there as a guest and could leave at any time. No one had a uniform; everyone wore the same clothes; there were no officers.

[218] The others at the camp were Afghan mujahidin belonging to Sayyaf's group. Sala'ud'din left after a few days, but Almrei stayed on for two months. He says that he spent his time largely teaching Arabic and leading prayers. When supplies were delivered to other camps in the area, he would often go along for the ride. Almrei says that in staying at the camp, he was practising *rebat*, or garrison duty; a form of jihad. He could hear occasional skirmishes but he himself did not see or take part in any fighting. He never saw Sayyaf there.

[219] Almrei describes himself as a naïve 17 year old at that time. He thought that he would go do jihad, get killed and go to paradise. Sala'ud'din had educated him about the reality of jihad in Afghanistan. Sala'ud'din advised him to avoid the problems at the Arab camps. He said that if you have 10 Arabs in one place, you have 11 emirs. Almrei says that he had heard of Bin Laden in Saudi Arabia but never met him. He did not know or understand his politics.

[220] He went home after the two months at the camp to finish high school. This took another year. At summer vacation in 1992 he returned to the Sayyaf guest house in Pabbi and the Shahid Bilal camp near Jalalabad. This trip took two months because that was the length of his summer vacation. He also visited Karachi on that occasion. Samir ul Haq was still in charge and gave him another AK-47. He met Sayyaf on that trip at the mosque in Pabbi, just to say hello. Sayyaf had no interest in a 17 year old. They never had a one to one meeting. In Peshawar and other locations he would get a room and just wander around.

[221] Following graduation from high school, he worked for three months at a Saudi charity that built schools, hospitals and orphanages in Africa. He also ran a business selling incense, honey and perfume.

[222] In 1994, he started hearing about the Russian occupation in Tajikistan in the Mosque in Saudi Arabia. Tajiks were becoming refugees in Afghanistan. He decided to go and see for himself. Asked for his father's permission again. There was no discount this time from the Saudi government. He returned to Pabbi, inquired about Tajikistan and was told about Ibn Khattab. He went to Khattab's guest house nearby and met Khattab later after evening prayers. They both spoke with a Saudi accent and Khattab was only three years older than him at that time. Khattab was also from Damman and still had family there whom Almrei later got to know. Khattab's family was Bedouin from Aram in Northern Saudi Arabia and his father worked for the oil company Aramco.

[223] Almrei travelled on to Khattab's houses in Paghman, near Kabul, and Kunduz in the north where the Tajik leader Ahmed Massoud was based. Fighting was underway at that time (late 1994) between Massoud's and Dostum's forces and those of the Pashtun leader Hekamatyar. Massoud and Dostum were loyal to the Prime Minister Rabbani. The Afghans had been fighting each other since the fall of the Najibullah government in 1992. Almrei says that Khattab had decided to go to Tajikistan as that was still a jihad against an external oppressor. They were ashamed of what was going on in Afghanistan with Muslims fighting Muslims.

[224] Almrei says he met Nabil Almarabh for the first time at the Kunduz house. Almarabh was passing through and stayed for just a few days.

[225] The Tajik refugee camp at Kunduz was led by Abdullah al Noury, a leader of the Tajik United Opposition party. There were many charitable organizations working to improve conditions and Khattab had offered to help. Almrei says that he became aware that they had a need for a girl's school. He says the Tajiks were more open to education for women.

[226] Almrei walked back to Jalalabad and went home to Saudi Arabia. While in Ryadh to buy oud for his business, he approached the Al Haramain Foundation and asked them for funding for a school for girls in Kunduz. He gave the name of a scholar from his home city as a reference. They gave him a cheque for 120,000 Rials (about $33,000 Cdn at the present exchange rate) which he cashed in to travel with. He returned to Pakistan in late 1995 and travelled from Pabbi to Kunduz with a guide and two Arabs mainly on foot and turned the money over to the men in charge of the camp.

[227] On this trip he accompanied Khattab on a scouting mission. He says that about twenty men went to the Amu Darya River bordering Tajikistan to see if there was anywhere they could cross without encountering a Russian ambush. They walked and rode donkeys rented from villagers. Almrei says he believed that Massoud and Rabbani had encouraged Khattab to enter into discussions or negotiations in Tajikistan but that they did not cross over on this occasion and returned to Kunduz. On a subsequent trip, he says they crossed over into Tajikistan on an inflatable boat and set up a camp on the north side of the river. It was not a military camp in any

sense and there was no fighting while they were there. On a typical day they would fish with grenades or hunted rabbits with their AK-47's. This was apparently a common practice in the region. He considered this period to be again, *rebat* or a form of garrison duty. He says they remained there two weeks and then he had to leave to return to Saudi Arabia to maintain his status there. The people he travelled with went on to Chechnya.

[228] While in the camp, Almrei says he talked about a variety of things with Khattab and came to know him well. He describes Khattab as devout and considerate to others and regards him to be a hero for his actions in Afghanistan and Chechnya. Almrei says he wasn't interested in following Khattab to Chechnya; it "wasn't in his blood". He does believe in jihad but his experiences had been enough for him. He wanted to get on with his life.

[229] Almrei acknowledged that the Khattab he knew could have changed in Chechnya but he doesn't believe it. He suspects the Russians set the bombs that they blamed on the insurgents to justify invading Chechnya. But if it were true that Khattab was involved, Almrei would no longer have any respect for the man as that is not jihad but a crime. Going to Chechnya to participate in a legitimate defensive jihad was supported by the Muslim *ummah* in Saudi Arabia.

[230] Before coming to Canada, Almrei says he ran a honey, incense and oud perfume business which he had started in high school. It was illegal for a non-Saudi citizen so he rented space in an established business and used a Saudi front man by the name of Mohamed al Blooshi. During his trips to Pakistan, he had realized how cheap the products were there. His last trip to Afghanistan

was in 1996. He took some additional cash for the school's expenses and returned with substantial quantities of honey and perfume for his business.

[231] Almrei says that the Saudi's began to crack down on businesses fronted by Saudis and his associate al Blooshi was being questioned. They were also aware of his travels to Pakistan and Afghanistan and that he had spoken out about political matters in Saudi Arabia. He sold the business in 1997 and began looking to move elsewhere. He applied for a Canadian visa in 1998 and was refused. He considered going to Australia also but was dissuaded when he learned that they put refugee claimants in a detention camp.

[232] In his 1998 application, Almrei said he would be visiting Hisham al Taha in Richmond, B.C. He didn't know him but had asked Abu al Walid in Pakistan for help and had been given two names and phone numbers in Canada. One was for Ahmed al Kaysee in Toronto who didn't answer when he called. Al Taha agreed when he was called. They were both Iraqi. Al Taha later did not recall having spoken to him when he was asked to assist in Almrei's legal proceedings. Almrei said that this type of arrangement was common in his part of the world. He appreciates now, after seven and a half years in prison, that it is not common here.

[233] When that attempt failed, Almrei went to Jordan and bought a UAE passport and Kuwaiti driver's license in the name of Yousuf Bilal (Exhibit R-28). This was a valid passport stolen or sold by the original holder and it came with a few entry stamps. In November-December 1998, he went to Bahrain to obtain a few additional documents to make the passport more credible. His friend al Blooshi obtained a multiple visit Canadian visa for him from the embassy at Abu

Dhabi. When he called on the second occasion in January 1999, Al Kaysee agreed to meet him at the Toronto airport. Al Kaysee was then an Imam at a Toronto Mosque.

[234] Almrei described some dealings with his Syrian/MB passport with the Jordanian authorities. He says that they confiscated the one that he had after he had travelled to Thailand in August 1998 and later it was returned to him by the MB. His Aunt worked in the MB office in Amman and arranged to have it stamped with a Syrian exit stamp. The passport he had used in his tourist visa application to Canada earlier that year was confiscated upon his return from a trip to Turkey. On that occasion he was questioned by Jordanian intelligence about his travels and was later asked by the MB to provide them with a report on the interview.

[235] Almrei used the UAE passport to come to Canada via the UK. That document has a Thai visa dated December 2, 1998 valid for a month. Almrei said initially that it was not his and came with the passport when he bought it. On cross-examination, he said it had to have been the one he obtained. He says he tested the passport by getting a visa from the Thai embassy but did not use it, hence the absence of entry and exit stamps.

[236] He went to Thailand in August 1998 because of its reputation for human smuggling. He went there to see if he could find a way to get to Canada, as well as for a holiday. In Bangkok he went to a night club and approached two men speaking Arabic. One of them was a Palestinian named Ghaleb. He met him the next day to discuss the matter at a hotel on Sukhimveit Road. Ghaleb told him he could arrange to smuggle him to Canada for about $10,000. Almrei didn't use his services as he did not trust him. But after he came to Canada, he stayed in touch with

Ghaleb about bringing people from Jordan to Canada. He says they spoke about three times at the instigation of his interpreter in Toronto who had asked for this assistance. All of this, he says, he told the RCMP after his arrest.

[237] Almrei completed a refugee application in January 1999 with Hassan Ahmed's assistance. It contained errors including incorrect dates. He says he was confused by the western calendar. That application was misplaced by CIC. The second application dated April 11, 1999 was prepared by his lawyer and contains information about his Syrian/MB passport. He did not disclose his travel to Pakistan, Afghanistan or Tajikistan, on the advice of his interpreter, he says. At the refugee hearing he did not mention Afghanistan but said he had travelled Pakistan to buy honey. He said he had destroyed the UAE passport which was not true.

[238] The UAE passport was seized during a search of his apartment in 2000. CIC officers were looking for one of his room mates, Yahya, who was not there. He could not speak English at the time. They asked him to produce ID and then to sit while they searched the premises. They opened his briefcase and found documents including the passport which they seized leaving a receipt. Almrei offered to bring the room mate to the CIC office when he returned, which he did the next day.

[239] Almrei says that he was called by the interpreter, Agha in 2001 and asked for assistance in getting a passport for Almarabh so he could leave the country to visit his mother in Kuwait. Almrei had previously learned of a contact in Montreal, Mohamed, who could provide false passports. The interpreter called him on several occasions trying to get him to obtain such

documents but never followed through with the money. Almrei's theory is that the interpreter is a government informant who was trying to set him up.

[240] Almrei's business in Toronto was two or three blocks away from the copy shop operated by Almarabh's uncle. He had seen Nabil at the shop but had not recognized him. When they spoke and he introduced himself as Abu Adnan, his kunya, Almrei recognized him as someone he had met in Kunduz in 1994. They both looked different. They had long beards and were skinny then. Both were beardless and considerably larger.

[241] Almrei agreed to arrange for a false passport. He called Mohamed, rented a car, took Nabil's money and drove to Montreal where he met Mohammed on St. Catherine St. He gave half of the money then with the photo. Mohamed's accent was Algerian. They met the next day to transfer the passport with the new photo, citizenship, driver's license and SIN card. He paid $2000 and kept the balance of $2000 for himself.

[242] Almarabh was detained after a failed attempt to be smuggled across the border at Niagara Falls on June 27, 2001. He had not attempted to use the false passport. He was charged under the *Immigration Act* and released on a $19,000 bond put up by his uncle Ahmad Shehab with a contribution from Almrei. He was then smuggled into the US on July 7, 2001.

[243] Almrei admits that he also participated in a scheme with Ibrahim Ishak to obtain valid Ontario driver's licenses for people who could not otherwise legally obtain them. An Ontario GI

permit would be taken to Michigan and exchanged for a Michigan license. They would then use those to obtain Ontario licenses with full driving privileges. They charged $500 for this service.

[244] Almrei and his friend bought the Eat-a-Pita restaurant in the Yorkville area but lost money and sold the business after about nine months. He hired Zenab Awaymer as a cook. She had no status in Canada and paid him $4000 to arrange a marriage of convenience with Ishak. Ishak later withdrew his sponsorship after becoming engaged to a Bosnian woman. Almrei says he repaid the money. Awaymer returned to Lebanon. Almrei claims that he has no knowledge of the documents that Ishak was carrying when he was stopped and searched at the Detroit airport in February 2000.

[245] Following 9/11, he says he became aware of the surveillance on him and became alarmed. He learned through news reports that the FBI was looking for Nabil Almarabh and knew that he would be connected through the false passport. His lawyer arranged for a meeting with CSIS. Almrei says that he was frightened. He comes from a region where he had heard terrible things about the intelligence authorities. In the result, he denied everything.

[246] Following his arrest, the RCMP interviewed him in jail about the passport he obtained for Almarabh and he agreed to talk to them on the understanding that it would not be used against him. No lawyer was present. He says they talked for about eight hours.

[247] Almrei denies having been involved in an international forged document ring. He says that the only ones he was involved with were those he had described in his testimony. He says he

never got anything from Ghaleb in Thailand; nothing more from the people in Jordan from whom he bought the UAE passport and that he had nothing to do with Ishak's package of documents. He acknowledges that there was reason to be suspicious about what he was doing with passports but he never expected to be thrown in jail for it. He says that it was worth it in a sense as it gave him the opportunity to meet many people who have touched his life.

[248] On cross-examination, Almrei explained that he had not disclosed his kunya, Abu al Hareth, to the immigration authorities as he does not consider it his name and does not use it in introductions. He was not asked by CSIS in October 2001 if he had a kunya. He did not withhold this information so that CSIS would have difficulty connecting him with his history. Most people in the community in Toronto had only known him as Abu al Hareth.

[249] Almrei was questioned closely on the passports he has held. Almrei says he had obtained three Syrian/MB passports. The one he received in 1990 required a Saudi stamp permitting exits for up to six months which could be renewed. He says that he lost that one after the first renewal and obtained a new one from the MB. That first passport is not in evidence. The second which he obtained in 1991, was taken by the Jordanians when he returned from Turkey in 1998 and he was given another by the MB. The third, which is in evidence, was issued in 1998 and was valid until May 2004. In the result, the passport which would document his travels from 1991 to 1998 is not in evidence.

[250] Almrei said he was confused by the number of passports he was issued by the MB and may have had another one. He identified a Saudi driver's license filed in the IRB proceedings

(A-24) which refers to a Syrian ID issued in 1995. He agrees that is probably a Syrian passport but has no idea where it is. His explanation is that in travelling across the bridge from Damman to Bahrain for shopping or dinner required an entry and exit visa stamp. Passports would be filled up rapidly and replaced. The MB in Jordan was allowed by that government to print Syrian passports and those passports were accepted in Saudi Arabia.

[251] Regarding the UAE passport, Almrei says that he lied about destroying it in the IRB proceedings as he feared he would not be accepted as a refugee. If that happened he wanted to be able to use the passport again. When he was accepted, he forgot about it until it was found in his apartment. In his 2004 testimony before the Court, Almrei said he bought the passport with the Canadian visa already in it. He did not mention Al Blooshi's role in obtaining it.

[252] Almrei acknowledged having had a Yemeni passport in the mid-90s. He had attempted to buy Yemeni citizenship in Saudi Arabia but destroyed the passport upon receipt as it came with someone else's name and date of birth. At that stage he wanted citizenship anywhere and believed it could be bought in Yemen.

[253] Saudi intelligence had spoken to al Blooshi about his political opinions. Saudi Arabia was interested in people who had been to Afghanistan in the aftermath of the 1996 bombings in Khobar. They jailed thousands of Shiites from the eastern provinces suspected of cooperation with Hezbollah. They were also inquiring about people who had openly expressed opinions about the Royal Family. But he had to leave Saudi Arabia not for that but because of the Saudi

law prohibiting non-Saudi's from owning businesses. He was no longer in school and was not employed. He did not want to have to join the MB which was the only other option.

[254] Almrei was taken back over his testimony about his travels in Afghanistan in detail on cross-examination. For the most part, his account held together in my view. He was uncertain on some dates and time-lines but that is not in itself surprising. On reflection, he said he thought his last trip to Pakistan was in 1995 and not 1996. He was there when the Egyptian Embassy was bombed in Islamabad, which was in November 1995. During his first trip to Kunduz, it was cold and snowy so that could have been early rather than late 1994. He didn't care about the dates then and did not keep a diary. Now he is relying upon his high school transcript to determine the years. He thinks that he did two trips to Tajikistan in 1994 and a third in 1995.

[255] Counsel for the Ministers questioned him closely on the reasons why he was allowed to stay at what he had characterized as Sayyaf's "VIP" guest house in Pabbi. He explained that it was because of Sala'ud'din and that it was nothing more than a small house made of brick and mud, painted white. He recalls playing ping-pong with Sayyaf after a dinner but apart from that had little contact with him. When pressed about news articles citing crimes committed by Sayyaf's men, he said he accepts that they may have done this but he never saw it and does not believe that Sayyaf would have allowed it. Almrei wondered why he was being asked to answer for Sayyaf's actions. He has no respect for the mujahidin leaders who killed civilians.

[256] Almrei freely admitted having lied to the Canadian consulate in his application for a visa in 1998, that he lied to the customs officer at the airport in January 1999, lied to the IRB and

CSIS. He says he assumed that they knew that people lie in coming to Canada. After 9/11, he would have freely told CSIS about his travels had they told him they were aware. He spoke to the RCMP when they told him they knew about the Almarabh passport. But CSIS was not interested after the first certificate was upheld. Almrei says he is sorry for what he has done, not who he is. He acted on the advice of his interpreter who told him that his travels to Afghanistan could not be verified as there were no visas issued.

[257] Almrei contributed $2500 to Almarahb's bail bond and was repaid after he was released. Almarahb called him later from the US and asked for other documents or the name of Almrei's contact in Montreal. Almrei refused. He acknowledged having a reputation within the community as a person who could get false documents. Assumes that was in part due to Agha spreading the word around.

[258] He met Ishak at a Toronto mosque in 1999 and worked with him at the airport on three occasions. Ishak Knew a man who was involved in a cleaning contract. The first and second jobs were to wash the exterior of aircraft in a hangar. The third night they cleaned the interior of aircraft in another hangar.

[259] In 2004, Almrei said that he did not believe that Bin Laden was responsible for 9/11. At that time, he says, he had limited English and believed the conspiracy theories that were common in the Muslim world. In his culture, conspiracy theories are the first to be accepted. They blame others for everything done by Muslims. He couldn't accept that a Muslim could do such an act. He has read a great deal since and has no doubt now. However, he still believes that Bin Laden

had given a lot to the Afghan people. Prior to 9/11 Bin Laden to him was just another person supporting the mujahidin. Now he is disgusted by his actions.

[260] On re-direct, Almrei said his reading and exposure to other influences has changed his view on many things. When he was in Afghanistan, he did not talk politics. He did not know who funded or controlled the guesthouses before he went there. No one spoke about Al Qaeda. He is confused about dates because he used the Islamic or Hijiric calendar until after he was arrested. It is not synchronized with the western calendar. He admits to blaming U.S. policy for 9/11 but did not mean that people deserved to die. In Toronto he knew no one who had been on jihad other than al Kaysee.

The Expert Opinion Evidence:

[261] The Ministers put forward one witness to be qualified as an expert, Dr. Martin Rudner. Initially, the respondent sought to have six witnesses qualified as experts. During the course of the proceedings, the respondent agreed that it would not be necessary to call two of them as the evidence which they would have offered was not a matter of controversy between the parties. In the result, the respondent tendered the opinion evidence of Mr. Thomas Quiggin, Dr. Brian Williams, Dr. Lisa Given and Sheikh Ahmed Kutty.

[262] In determining whether to admit the opinion evidence of these five expert witnesses, I considered the criteria set out in *R. v. Mohan*, [1994] 2 S.C.R. 9, [1994] S.C.J. No. 36, which are (a) relevance; (b) necessity in assisting the trier of fact; (c) the absence of any exclusionary rule; and (d)

a properly qualified expert. I had no difficulty concluding that each of the five witnesses satisfied these criteria, albeit with some limitations.

Dr. Martin Rudner

[263] Dr. Rudner holds Master's Degrees in International Relations and Asian Economics and Politics from McGill University and the University of Oxford and a Ph.D. in Asian Studies from the Hebrew University of Jerusalem (1974). He is presently Distinguished Research Professor Emeritus of Carleton University. He was founding Director of the Canadian Centre of Security and Intelligence Studies and established the Center for Security and Defence Studies at Carleton.

[264] In addition to his academic and research work, primarily focused on Southeast Asia, Dr. Rudner has organized and contributed to national and international conferences on intelligence and security issues and has consulted and lectured on security and counterterrorism issues to various government departments and agencies. For that work he has a top secret security clearance. He testified at the Air India inquiry and has served as an expert witness for the Attorney General in other proceedings.

[265] Dr. Rudner knows some Arabic, but could not read a newspaper or carry on a conversation in that language. He is fluent in other Islamic languages, including those spoken in Indonesia and Malaysia, and speaks French and Hebrew. He has a depth of knowledge on political developments in the Muslim world, particularly Indonesia, based on many years of scholarship of the role of religion in international affairs, particularly the balance between state

interests and religious objectives. In the course of his work in that field, he has gained a broad understanding of Al Qaeda and its affiliated extremist groups.

[266] Dr. Rudner was put forth by the Ministers to provide expert evidence on intelligence and counterterrorism dealing with Al Qaeda and its affiliated groups and movements around the world and on the misuse of identity documents, particularly passports, by terrorists and extremist groups in furtherance of their cross-border operations. He has written on that subject including a report for the Passport Office on terrorism and document misuse. His work in this area has been based on the empirical research of others.

[267] Dr. Rudner provided the Court with insightful and helpful opinion evidence on the historical, cultural and theological context to the worldwide phenomenon of Islamic extremism and terrorist violence. In his testimony, he demonstrated a deep knowledge of the development of fundamentalist Islamic thought including the Hanbali/Wahhabi school prevalent in Saudi Arabia and Salafism, the practice of emulating the ways of the prophet and his followers. This was particularly helpful in understanding the motivations that drive contemporary Islamic extremists. Dr. Rudner was careful not to equate Wahhabism and Salafism with terrorism.

[268] Dr. Rudner has an understanding of security intelligence matters related to terrorism derived from his broad reading in that field. However, he claims no expertise with respect to the Afghan conflict, has not visited the region and it has not been the focus of his research and publications. When it came to the history of the conflicts in the region, I preferred the evidence of Prof. Williams who has traveled and conducted research there. Dr. Rudner's knowledge, for

example, of the Afghan training camps stemmed primarily from publicly available literature, including the Al Qaeda training manual, and not from any direct experience in the region and acquaintance with the participants, as has Williams.

[269] The Ministers sought to have Dr. Rudner counter the evidence which Mr. Quiggin had given in the detention review proceedings with regard to the misuse of identity documents. While Dr. Rudner has written on the subject, he has not conducted any specific research on that topic and has relied on secondary or tertiary sources of information, such as newspaper articles, of questionable reliability. In any event, I did not find his opinion evidence on the subject to be necessary as the fact that terrorists cross borders with false documents could be established through fact evidence. For example, the CSIS witness Robert Young gave several specific examples of known cases.

[270] Dr. Rudner provided a helpful overview of the origins of modern Islamic extremism including the founding and spread of the Muslim Brotherhood and the writings of Syed Qutb and Abdullah Azzam. Qutb was an Egyptian member of the Brotherhood and influential author, executed in the 1960's for offences against the state. Sheikh Abdullah Azzam was a displaced Palestinian with a PhD from Al Azhar University in Cairo. Funded by the Muslim World League and other donors, Azzam had set up the *Mekhtab-al-Khidemat* (MAK) Islamic services agency with offices in the Middle East and elsewhere, including Europe and the US, to facilitate arrangements for Arab volunteers to join the jihad in Afghanistan against the Soviets.

[271] Azzam mentored Bin Laden and other Afghan Arabs introducing them to Qutb's pan-Islamic ideology centred on the *ummah* or Muslim nation. He was assassinated in 1989, allegedly by members of the Egyptian Islamic Jihad organization who had joined with Bin Laden and other supporters to form Al Qaeda. While the matter is not without controversy, Azzam is said to have disagreed with the direction taken by Al Qaeda, maintaining that a proper jihad was against combatants, and specifically against those who were directly oppressing Muslims in Muslim lands.

[272] Dr. Rudner disputed Thomas Quiggin's and Dr. Williams' assessments that Azzam was a moderate. He endorsed the journalist Peter Bergen's view (Ex. A-, T-4) that Azzam's dream was to restore the Khalifa (Caliphate); to unite Muslims throughout the world under one ruler. Dr. Rudner acknowledged that the severe Wahhabi traditions of the Arabian peninsula were alien to Afghans who generally followed the Hanafi school and Deobandi tradition. Azzam urged the Arabs to understand and be tolerant of Afghan practices they considered un-Islamic. His dispute with Al Qaeda was mainly over what was to come next. Azzam wanted to extend the jihad to the neighbouring countries of Central Asia dominated by the Russians. Bin Laden wanted to take the fight to the Arab heartland to overturn the apostate regimes. Bin Laden's innovation was in interpreting the Koranic "verse of the sword" as justification for external jihad as Islamic self-defence. In Dr. Rudner's view they shared the same values. The disagreement was over priorities. For Bin Laden, the "near enemy" were the apostate regimes that could only survive with the support of the west or the "far enemy" thus all were subject to attack.

[273] Bin Laden returned to Saudi Arabia after the Soviets left Afghanistan in 1989. His initial reception was as a hero and celebrity for his role in supporting the jihad. As described by Peter Bergen (Ex. A-2), he was "lionized" for having left the typical Saudi millionaire's comfortable life to join the jihad in Afghanistan. In Dr. Rudner's view, as a teenager growing up in Saudi Arabia and interested in jihad at this time, Hassan Almrei would have known of Bin Laden's reputation.

[274] Iraq's invasion of Kuwait led to Bin Laden's falling out with the Saudi government over the presence of American troops on Saudi territory. Bin Laden and his entourage moved to Sudan in 1991 at the invitation of the Islamist leader, Hassan Turabi. They left Sudan in 1996 after pressure was exerted by Saudi Arabia, the US and Egypt and returned to Afghanistan through Pakistan.

[275] During Bin Laden's absence, the jihad in Afghanistan had continued against the communist government which remained in power with Soviet support. An alliance of Afghan mujahedin groups formed to defeat the government. These groups were largely linked by ethnic and tribal ties and included Pashtun militias under Gulbuddin Hekmatyar and Abdul Rasul Sayyaf, Tajiks from the Panjshir Valley led by Burhanuddin Rabbani and Ahmed Shah Massoud, Aburashid Dostum's Uzbeks from Mazare Sharif, the Shiite Hazaras and others. While united in opposition to the government, they couldn't agree on how power was to be shared when it was defeated.

[276] When President Najibullah's support collapsed in April 1992, Massoud and Dostum outmanoeuvred Hekmatyar for control of Kabul and the central government. A government was installed, led by Rabbani. Civil war ensued. Much of the country was controlled by warlords and local militias. The Taliban, led by Mullah Omar and mainly Pashtun, emerged in 1994 from the south and proceeded to gather support and overcome the warlords. Bin Laden returned in May 1996. The Taliban took Kabul in September 1996. Bin Laden settled in Kandahar and took over or set up a network of training camps and guest houses. According to Dr. Rudner, there are estimates that about 70,000 mujahidin passed through these facilities from 1996 to 2001.

[277] Dr. Rudner discussed the Islamic concept of Takfir wa al Hijra. This refers to removal of oneself from an apostate community (Takfir) and going into exile (wa al Hijra). In modern times this has been interpreted by extremists as authorizing emigration or flight to take refuge in western countries to reform, mobilize and prepare for a return to their homelands. Going to the west was similar to what the prophet had done in going to Mecca, moving from dār al-harb (the world of war) to dār al-islām (the abode of peace and freedom).

[278] In Dr. Rudner's view, Sunni extremists adopted a doctrine of pretence and dissimulation (kitman and taquiya) to deceive western authorities, including the courts, citing a manual for mujahidin entitled "Encyclopaedia of the Jihad" (Ex. A-1, T-5). He referred to the work of the Syrian Al Qaeda theorist, Abu Musab al Suri, who promoted a model of distributed leadership.

[279] Commenting on the debate among experts on this topic (Sageman/Hoffman articles, Ex.A-5), Dr. Rudner acknowledged that a number of high level Al Qaeda activists have been

killed or captured but he doubts that it has weakened them. In his view, Al Qaeda is an "action oriented, learning organization". It doesn't matter what their numbers are as they have created the distributed organization planned by Al Suri, the strategist. On cross-examination, he agreed that the weight of opinion is that Al Qaeda is now both centralized and diffused in that there are experts who credibly believe that it is less dangerous today than it was in 2001.

[280] In his view, Hassan Almrei would have been an attractive recruit for al Qaeda because of his status as a veteran of the Afghan jihad and contacts with both Sayyaf and Khattab. His knowledge of how to obtain legitimate or forged travel documents would have been a useful skill set for a terrorist organization. He noted that Thailand has a reputation as a world centre for fraudulent passports and that Saudi Arabia was also known for the production of good quality false passports until the government cracked down in 2007.

[281] Dr. Rudner did not think that Almrei's account of obtaining funds from the Al Haramain Islamic Foundation for an Islamic school in Afghanistan was plausible. While Al Haramain is a large organization with its own accountability mechanisms, in his opinion, people who approached Al Haramain for funding would be couriers between the requesting agency and the organization. This would require validation and trustworthiness beyond what Almrei had described. In his view, it was more plausible that Almrei had couriered money to ibn Khattab for the jihad in Tajikistan and later in Chechnya. Al Haramain created a Foundation for Chechnya Fund to support the Chechen guerrillas (Ex. A-1, T-17).

[282] On cross-examination, Dr. Rudner acknowledged that the Saudi branch of the Al Haramain foundation was not included in the UN list of financial institutions (Ex. R-2) that funded terrorism. He agreed that financial transfers in the region would have to be in currency due to lack of banking systems. He has no personal knowledge of the Foundation's practices and could only speculate as to what they would require to validate a funding request.

[283] Dr. Rudner was cross-examined closely on the accuracy of sources he had referenced in his report, including a Washington Times article dated August 1, 2008 (Ex. R-3), an article on the use of deception by Raymond Ibrahim (Ex. R-4) and the Encyclopaedia of the Afghani Jihad (Ex. A-7). The content of the Washington Times article did not support the statement for which it was used as a reference. There is no explicit reference in the Encyclopaedia to support the statement that it encourages Al Qaeda members to deceive the court. Dr. Rudner acknowledged that Mr. Ibrahim's perspective may be biased.

[284] The witness was taken to an excerpt from Rohan Gunaratna's "Inside Al Qaeda" (Ex. R-6) which quotes Abdullah Azzam as being against the killing of innocents. After Azzam was killed an extremist faction of MAK joined Bin Laden but the mujahidin who had been close to Azzam constantly quarrelled with them. To seize control, Bin Laden had to rely on his Egyptian allies. Gunaratna says the Egyptians killed Azzam and that it was at least tacitly condoned by Bin Laden.

> By acquiescing in Azzam's murder, Osama freed the organization from being constrained by its founder's guiding principles and rules.

[285] On the classical doctrine of jihad which partitioned the world into Dar al-Islam and Dar al-Harb, Dr. Rudner agreed that since 9/11 there have been references to other worlds; e.g., Dar al Haq

or house of truce. People in the Islamic Diaspora to western countries are arguing this perspective but not those in the Islamic countries. Taken to some of his writings in 2003-2004 (Ex. R-8, R-9), he agreed that subsequent events and information have evolved and changed the views he expressed at that time.

[286] When taken to a text by Reza Aslan, "No God but God" (Ex. R-7), which asserts that there is an outright prohibition in the Koran of all but strictly defensive wars, Dr. Rudner said he sees this as an apologia. He accepts that there is a broader view of jihad in the Muslim world that is of a greater or spiritual jihad. "Islamism" in his view encompasses those who believe that action should be taken now to expand Dar al-Islam. Militant Islamists want to do it with force. On re-direct, he included Abdullah Azzam in that perspective and cited statements from Azzam's work "Join the Caravan" (Ex. A-3, T-2, pp.132-133):

> "… jihad is obligatory continuously until every piece of land that was once Islamic is regained."
> "…jihad when mentioned on its own only means combat with weapons…"
> "the saying, "we have returned from the 'lesser jihad' (battle) to the greater jihad" is a false, fabricated hadith…"

Mr. Thomas Quiggin

[287] Mr. Quiggin was qualified as an expert witness when he testified during the detention review proceedings for reasons which are set out in that decision (*Re Almrei*, 2009 FC 3, [2009] F.C.J. No. 1). He was permitted then to give opinion evidence on the structure and organization and evolution of the global jihadi movement. In this hearing, the respondent also sought to have him qualified as an expert in intelligence collection and reliability. Mr. Quiggin acknowledged that he is

not an expert in the Koran, Islamic history and Islamic jurisprudence. Nor has he ever recruited or managed a human source other than in the informal sense of connecting or networking to collect information.

[288] The Ministers dispute Mr. Quiggin's expertise in the reliability of national security intelligence on the grounds that neither his educational nor his professional credentials nor his employment history supports a conclusion that he possesses sufficient expertise in this area. His primary background is in military intelligence.

[289] As I stated, at paragraph 194 of the 2009 FC 3 decision, there are no specific credentials that potential experts must have in order to be admitted as experts. Opinion evidence may be given by a witness "who is shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify": *Mohan*, above, at para. 27. "The only requirement for the admission of expert opinion is that the expert witness possesses special knowledge and experience going beyond that of the trier of fact": *R. v. Marquard*, [1993] 4 S.C.R. 223, [1993] S.C.J. No. 119, at para. 35 quoting from *R. v. Beland*, [1987] 2 S.C.R. 398, [1987] S.C.J. No. 60, at p. 415.

[290] I continue to be satisfied that due to his work history and studies, outlined at paragraphs 187 to 192 of the January 2009 decision, Mr. Quiggin possesses special knowledge and experience going beyond that of the Court and that his opinion evidence assists the Court. In my view, that special knowledge and experience extends beyond the fairly narrow scope on which he was qualified for the detention review proceedings and includes the field of security intelligence. While

he is not a career intelligence officer, he has been employed in that area by the Canadian military and several government departments, including the Privy Council Office, and has studied and written on the subject of assessing the reliability of raw intelligence.

[291] In addition to his qualifications reviewed in the previous decision, Mr. Quiggin has recently taught a course on strategic intelligence analysis at the Canadian Centre for Intelligence and Security Studies at Carleton University and has undertaken a study of terrorist groups in 70 countries for the United States Department of State. I found his opinion evidence on intelligence collection and reliability and jihadi movements to be helpful and had no qualms in concluding that the proffered evidence satisfies the *Mohan* criteria.

[292] Mr. Quiggin was referred to the respondent's counsel for consultation by the US military defence counsel in the Omar Khadr matter. He had delivered a lecture to Guantánamo defence counsel on intelligence procedures. Mr. Quiggin reviewed the February 2008 public summary and became concerned about several questions: the absence of references to primary sources; a lack of information about where Mr. Almrei would fit in the larger scheme of global terrorism; and the irrelevance of unconnected references to other cases. He says that he would not have agreed to testify had the government's allegations in the summary appeared reasonable.

[293] Quiggin met Almrei before agreeing to testify. He says that he wanted to meet with the respondent to satisfy himself after reading the Crown's case. They talked for about four hours. As a result, he doesn't think he espouses the Al Qaeda ideology or that he is a danger to Canada. Almrei

shares views which are critical of American policy and are widely held in the Arab street and elsewhere. This does not equate in Quiggin's view with support for Al Qaeda.

[294] Opinions such as this go to the ultimate issue and it falls to the Court and not to the expert to make these determinations: *Mohan*, above at paragraph 24. Nonetheless, I thought it was useful to hear Mr. Quiggin's views on these matters as no one within the government has attempted to interview Mr. Almrei in recent years to determine whether he supports the Bin Laden ideology.

[295] The witness freely acknowledged that he is not an academic scholar and that his writings have appeared primarily in periodicals aimed at practitioners and a more general readership. He says he respects the role of academics, attends their conferences and finds their tools of analysis useful. But in his view, real world experience such as attending Muslim events, as he has done, is also valuable. From his perspective, there is reason to be optimistic about the nature of reform in Islam. He agrees with Dr. Rudner that there is a fundamentalist movement within Islam to return to the traditions of the Prophet. But, he believes there is also a growing effort among many Muslims to interpret Islam in a more modern and moderate way.

[296] Mr. Quiggin does not profess to be an expert on the Koran but has read widely and consulted others on how Koranic concepts related to the extremist ideology espoused by Bin Laden. This evidence fell within the outer boundaries of what I considered to be his expertise. In his understanding, defensive jihad is clearly set out within the Koran as the obligation to defend a Muslim majority territory. Offensive jihad, as he understands it, would be *haram*, or forbidden. Mr. Quiggin acknowledges that extremist scholars and Al Qaeda justify aggressive jihad but he believes

that most scholars do not support it. The notion of *hijra* or migration has also been distorted by Al Qaeda to support calls to jihad in foreign countries. Salafism, or the return to the practices and lifestyle of the first generations to follow the prophet, is also being used inappropriately. As is the concept of *shahid* or martyrdom in the context of suicide bombings. This is justified only by extreme ideologues. The mainstream view is that it is not permitted in Islam.

[297] *Takfir* or the concept of declaring someone an infidel or apostate has been adopted by Al Qaeda to justify killing anyone who doesn't agree with them including Muslims living in infidel lands. Devout Muslims are offended by this use of the principle; that Al Qaeda figures without religious credentials would declare someone else *takfir*. While counterintuitive, Quiggin considers that the lack of religious knowledge is more of an indicator of vulnerability to extremism among Muslims. High practicing individuals, in his view, are more likely to be resistant to such pressures.

[298] On cross-examination, the witness was taken back over this ground in detail. He does not dispute that extremists such as Bin Laden and al Zawahiri may be pious or devout Muslims but he considers that extremism, in general, does not equate with a deep religious knowledge. In his view, militants may speak with a religious voice but are predominantly secular and motivated by political considerations.

[299] In their closing submissions, the Ministers have argued that Mr. Quiggin erred in his understanding of some Islamic terms such as *hijra.* In the Koran, this refers to the Prophet's move to Medina. Quiggin spells it differently but defines it correctly as being used in the modern sense to refer to "migration". The transliteration of Arabic terms to English allows for a considerable

variation in spellings. In any event, I have put little weight on this or other differences between the witnesses on terminology. Aside from Sheik Kutty and Hassan Almrei himself, none of the others are native Arabic speakers and all rely on English translations.

[300] Mr. Quiggin observed that there is a problem of access to reliable information in the study of jihadism and a risk of state actors exaggerating the threat for their own purposes. He discussed the growth of the "intelligence industry"; i.e., private contractors producing analysis for profit and creating websites to feed the "terror industry".

[301] One example of this in the government reference documents are a series of reports attributed to an organization called "ERRI" which produced a "Daily Intelligence Report". This, as it turned out when the Court asked for an explanation, was a website created by a group of American paramedics and other first responders in 1990 which later was turned into a news aggregator service. In other words, it picked up and repeated news reports from other services. There is no assurance that this information is reliable.

[302] In Mr. Quiggin's view, intelligence is simply processed knowledge whether it consists of classified or unclassified information. The purpose of intelligence is to provide warning and understanding. Concerns about the reliability of intelligence can arise from many different issues: fixed mindsets, cognitive bias, stove-piping, deception and disinformation, transliteration and translation problems, cultural or contextual differences.

[303] Mr. Quiggin provided examples of how these concerns may cause problems. Of particular relevance were his comments about human source information. This information is highly valued by the intelligence community but comes with high risks. The personal backgrounds of such sources may be questionable and there is always the risk of embellishment where the source provides information he or she thinks the handler wants to hear. This is particularly the case where the source has become a directed agent. The fact that a source may be generally reliable does not mean that they are reliable every time or the time that is important.

[304] On cross-examination, the witness gave the example of a human source known as "curve-ball" who was relied on by the US government in the lead up to the invasion of Iraq. The information provided by that source was highly valued but has since been almost entirely discredited.

[305] Mr. Quiggin also pointed to the fact that intelligence information does not age well. As a general rule, information that is six months old should be verified. Information that is believed to be credible at one time because of the source may prove to be inaccurate later. It may have been fair to rely on it at the outset but such reliance would be invalid later if additional and contradictory information is available. This was, in my view, a telling observation with respect to much of the intelligence relied upon by the government in this case.

[306] The witness discussed reliability indicators and a methodology used by the Canadian military to assess intelligence. He reviewed what were, in Mr. Quiggin's view, significant problems with the reliability of some of the open sources used in this case. These raised issues to

him of accuracy and timeliness. Events described were subsequently determined not to have happened. The reports contain evasive words such as “suspected”, “said to have”, “according to”, “links to” which indicate that the information has not been substantiated. His concern was that there was no indication of a strenuous form of information checking by either the CSIS analysts who included this information in the SIR and the public summary or their supervisors.

[307] The witness came back to this on redirect. He stated that he was surprised to learn that the summary had been written seven years into the case. He could have understood and accepted the problems with it if it had been written at the outset. There was great pressure on intelligence services at that time, the indicators were weak, experts were not available and it was difficult to find references to substantiate the information. But seven years later, the selective use of misleading information is inexplicable, in his view.

[308] An example of this was the use of a reference to a newspaper account of Lord Carlisle’s report on the operation of the UK anti-terrorism legislation (T-109) rather than the primary source, the report itself. The headline and body of the newspaper article were misleading. In Quiggin’s view, the report itself was not used in the public summary because it did not support the proposition for which it was cited while the misleading news report did.

[309] Quiggin disputes the characterization of Ibn Khattab in the public summary as being a member of the Bin Laden network. He is aware of the controversy over this amongst historians and of the information that Khattab had met Bin Laden during the anti-Soviet jihad. His understanding is that Khattab was a Bedouin from the Saudi Arabia/Jordan border area. His

mother was Circassian, i.e., from the north Caucasus. Writings about him are largely retrospective. His brother has been quoted as saying Khattab had a deep hated of the Russians, stemming from the oppression of his mother's people. He was a late-comer to the Afghan jihad but participated in the fighting at the same time as Bin Laden. Khattab stayed in Afghanistan after the departure of the Soviets for the on-going civil war at the time when Bin Laden had gone back to Saudi Arabia and was concerned with the Kuwaiti invasion. Khattab participated in the Tajik civil war which involved a coalition of liberal and fundamental Islamists against government forces from the north supported by the Russians.

[310] There are two points of view about Ibn Khattab, according to the witness. One which says that he subscribed to global jihad. The other says that he went to Chechnya to kill Russians because of his personal history and interests. The Chechen insurgents were fighting their traditional enemies, the Russians. They did not change their target after Khattab became involved and allied himself with their leader Basayef. That is, they did not then join the global jihad against the West. The Chechens were grateful for support but would not submit themselves to Khattab's command. Moreover, while Bin Laden may have had an interest in the Chechen jihad, it could not be said that the Chechens had a strong interest in Al Qaeda.

[311] Regarding the kidnapping of civilians employed by non-governmental organizations in Chechnya, an allegation against Khattab, in Quiggin's view they may have been regarded as legitimate targets if they were perceived to be assisting the enemy. If Khattab was involved in that, it would make him a "bad guy" but not necessarily a member of Al Qaeda. In Quiggin's view, the claim that Khattab was responsible for terrorist bombings against Russian civilians is

typical Russian disinformation. Terrorist bombings were not Khattab's style. He preferred direct frontal attacks on military forces and would videotape them for their propaganda value.

[312] One has to look at the man himself, according to Mr. Quiggin. There is no record of hostile statements by him against the US or Israel. The quote attributed to Khattab (Ex. A-1, T-4) regarding attacks on US troops in Saudi Arabia < "They seized our territory, and Muslims have the right to seek such a solution" > is a widely held view among Muslims because Saudi Arabia is the site of two of their most holy places.

[313] On cross-examination, Quiggin disagreed with the suggestion that Khattab had Islamicized the Chechen conflict. In his view, the Chechens were Muslims to begin with, albeit mainly secular, and Khattab was not there long enough to have had that much influence on them.

[314] Regarding Sayyaf, Quiggin believes that his background is clearer. He is an Afghan Pashtun who studied in Egypt and speaks fluent Arabic and English. Addressed by the honorific title Ustad, he qualified to teach Islamic law and was a Kabul University Professor. While in Egypt he probably fell under the influence of the Muslim Brotherhood. Sayyaf emerged as a combat leader during the anti-Soviet jihad and was identified by the Arabs, including the Saudi government, as someone they could deal with. Sayyaf was based in the south but also operated in the north. Most of the real fighting was done by the Afghans rather than the Arab volunteers. The post-war mystique about the role of the MAK and Al Qaeda is overblown, in Quiggin's view.

[315] Sayyaf had authority over his own guesthouses and camps. He provided training for his own people. At the outset, during the anti-Soviet war, he had a positive relationship with Bin Laden. But his focus was on Afghanistan and not other countries. He shared the common view among Muslims about the presence of US troops in Saudi Arabia. Sayyaf supported Rabbani and fought with the northern alliance as the Americans came in. And he was sought out by the US special envoy in 2003 to form part of the new administration. In Quiggin's view, he is not known to support the global jihadist agenda or to have any territorial aspirations outside Afghanistan.

[316] The witness was taken to Exhibit A-2, T-3, Kathy Gannon's account in "I for Infidel" of a meeting in Pakistan's tribal region which suggests that Sayyaf willingly joined in the plot against the West. According to Quiggin, the outcome of the meeting does not suggest that Sayyaf submitted himself to the authority of an outsider and joined the global jihad. He remained focused on Afghanistan and loyal to Rabbani.

[317] On cross-examination, he acknowledged that the name of the Abu Sayyaf Islamist militant group in the Philippines was derived from the Afghan Sayyaf after the father of the founder had stayed in one of his guesthouses during the anti-Soviet jihad. Other documents indicate that among the persons who stayed at his guesthouses over time included Khalid Sheikh Mohammed and leaders of Jamayah Islamaiah from Indonesia (A-2, T-10). The US Department of State reports on Afghanistan for 1995 and 1996 say that Sayyaf continued to harbour and train potential terrorists. On redirect, Quiggin questioned the reliability of those reports as the Americans did not have personnel on the ground in Afghanistan at the time.

[318] The dispute in the MAK between Azzam and Bin Laden arose because the former preferred to work outwards in Central Asia. Others such as Bin Laden favoured returning to Egypt and Saudi Arabia to overthrow those governments. After Azzam is killed, Bin Laden fell under the influence of the virulent ideology of the EIJ members such as Ayman al Zawahiri. Many of the Afghan Arabs began to drift away to get on with their lives. Some went on to the jihad in other Central Asian countries. Others coalesced around Bin Laden and Al Qaeda.

[319] In Mr. Quiggin's view, it is a misconception that the Muslim Brotherhood and Al Qaeda are allied in a common cause. In 1973, the Brotherhood chose to abandon violence as counterproductive. Some did not accept and formed Egyptian Islamic Jihad, including Ayman al Zawahiri. There has been no major terrorist incident attributable to the Brotherhood since. The Syrian chapter later followed suit. Zawahiri's book "The Bitter Harvest" in 1991 was an attack on the Brotherhood. The head of Al Qaeda in Iraq issued a similar condemnation of the Brotherhood in 2003. Members of the Brotherhood are treated by Al Qaeda as apostates.

[320] In reference to Hassan Almrei's travels, Quiggin does not believe that someone who went to jihad in 1990-92 would be necessarily a threat to the security of Canada. He acknowledges that going to Tajikistan during their civil war would raise a concern to analysts. The association with Khattab and Sayyaf in itself is not a sufficient indicator, in his view, of a security risk.

[321] Al Qaeda's ideology while couched in religious terms, is a political movement generated by resentment against the effects of colonialism. The empirical research of Marc Sageman and others has demonstrated that it attracts persons from middle class, low practising family backgrounds with

higher education. The core membership was at a high point in 2001 (2000 – 3000) but recent estimates are of 2-300. There are about 23 affiliated groups which subscribe to the Bin Laden world view and recognize Al Qaeda leadership. Other home-grown individuals are inspired to act and connect with other like-minded persons through the Internet.

[322] The hypothesis that those who were once connected to Al Qaeda remain so forever does not stand up to scrutiny in Mr. Quiggin's opinion. Saudi Arabia has had some success with the rehabilitation of former extremists and Egypt has released thousands who have not gone back to violence. The Ministers case is concerned with inferences drawn from association or linkage to Al Qaeda. The Taliban supported Al Qaeda. Hamid Karzai supported the Taliban. Canada supports Karzai. If you took the logic to its extreme, in Mr. Quiggin's view, one could say that the Canadian government is linked to Al Qaeda. It is all a question of context.

Sheikh Ahmad Kutty

[323] Sheikh Kutty began his education in Islamic studies in India and Saudi Arabia. He has served as an Imam since coming to Canada. He then earned a master's degree in Islamic studies at University of Toronto and completed the coursework of doctoral studies in Shari'a law at McGill University. Presently he is a senior lecturer and resident scholar at the Islamic Institute of Toronto and a non-resident Imam at the Islamic Center of Canada, the Bosnian Islamic Center and Ansar Mosque. He also serves as a jurist-consult with IslamonLine.net, an international website supervised by international Muslim scholars, and on the Figh Council of North America, the pre-eminent Islamic legal body in North America.

[324] Sheikh is a term of respect within the community for a person of wisdom. Sheikh Kutty is also an Imam and a mufti. Imam is the term used to describe somebody who leads prayers; usually one who has memorized the Koran. A mufti is a scholar in Islamic jurisprudence who issues fatawa (singular is fatwa) or rulings on questions relating to the Islamic faith, including acts of worship, family life and business transactions. He has written a number of scholarly papers on subjects such as Wahhabism, Sufism and translated one of the works of Sayyid Qutb from Arabic into his native language, Malayalam. He has also lectured at conferences, seminars as an expert on Islamic thought, Islamic law and Islam in general.

[325] The Ministers acknowledged that Sheikh Kutty's lifelong study of Islam and his recognized expertise in his community render him an expert in Islam. I had no difficulty in accepting his opinion evidence on the Islamic concept of jihad and the meaning of other Islamic terms.

[326] Sheikh Kutty explained his understanding of several terms which frequently arose in the evidence:

> Dar ul-Islam vs. Dar ul-Harb: realm of Islam vs. the realm of war. The place is said to be Dar ul-Islam where there is no war and everybody is free to practice their religion. When Muslims are not free to practice their religion, that is said to be the realm of war and persecution. Sheikh Kutty explained that this division of the world is viewed by modern scholars as irrelevant as everyone in democratic countries is free to practise their religion.

Hafiz: one who has memorized the Koran. Memorization and recital of the Koran is valued as one of the most effective means of transmitting the Divine Word in Islam.

Harith/hareth: derived from a hadith "truest name is al hareth"; someone who strives and earns. Considered a very good kunya for someone who is religious.

Hijra: original concept is of immigrating to another country as a place of refuge.

Kunya/Kunyah (pl.): a common term of endearment and respect for males in Arab communities. It is not a name but something one is called.

Ribat: root is the Arabic word to tie, meaning to bind yourself together in solidarity. Muslims practice spiritual ribat – worshiping and meditating to God. By extension, it is used in the sense of guarding the frontier of Islamic territory where one might be called upon to engage in battle. Defending Islamic territory is considered *fard al-kifayah*, a sacred and collective duty. Ribat is a valid and important contribution where there is a legitimate jihad.

Shahid/Shaheed: literally one who testifies. The Islamic concept is that of standing as a witness of truth and justice. One who gives his life for the truth is called Shahid. The term has been distorted in its modern application to suicide bombers as taking one's own life is a cardinal sin of Islam.

Takfir: describing someone as an apostate; a Kaffir. The Sunni mainstream does not characterize anyone who prays to Mecca as apostate. But the term was employed by Sayid Qutb, a "born again Muslim" and not a scholar, to refer to anyone who did not rule according to Sharia law.

> Taqiyah: This is a Shia term, not Sunni. During a time of oppression by majority Sunni's, a Shi'ite may disguise himself as a Sunni. Dr. Rudner had discussed this in the context of the Al Qaeda approved practice of deception before the authorities.

[327] The witness explained that there have been more than 13 schools of jurisprudence in Sunni Islam. Some became predominant in different regions. To-day there are four main schools. Hanafism was the official school of the Ottoman Empire and the dominant tradition in North India, Pakistan and Afghanistan. In South India, the dominant school is the Shafi'i. Saudi Arabia follows the literalist tradition of the Hanbalis. Malakis are mainly in North Africa including Egypt. Wahhab was a Hanbali who struggled against some of the practices that were deemed pagan or foreign such as Sufi mysticism. Salafists are traditionalists who wish to go directly back to the original sources; the early supporters of the Prophet. To-day most Salafis would say that they do not belong to any of the schools.

[328] In Sheikh Kutty's view, the tragedy of Islam to-day is that there are engineers such as Bin Laden who claim to be scholars and are giving rulings based on their interpretation of the original Koran. The study of the original Koran requires an understanding of classical Arabic that takes years to acquire. The people most likely to adopt the Bin Laden philosophy are those who are not well brought up in Islam; those who are upset by other things and seek a religious justification for what they want to do; not those who are well educated in the faith. Similarly, the Taliban were half-learned scholars; a danger to faith as much as half-learned doctors are a danger to health.

[329] Sheikh Kutty testified that the word "jihad" stems from a root which means to exert oneself to the utmost. It is used in the Koran primarily to refer to exerting oneself for the sake of God to realize his will. In the widest sense, it includes all forms of struggle to make truth and justice prevail. The main or supreme form of jihad (often referred to as *al-jihad al-akbar*) is spiritual or internal warfare (*mujahada*) to master one's self. He acknowledged that the Koran does call for making jihad against the kaffirs or infidels but in the spiritual sense, not military.

[330] Each Muslim is bound by the five Pillars of Islam: profession of faith (*shahadah*), prayer five times daily (*salat*), almsgiving (*zakat*), fasting during Ramadan (*sawm*), and pilgrimage to Mecca once in a lifetime (*hajj*). Jihad is not one of the five pillars, but spiritual jihad engages all Muslims every day.

[331] Another aspect of jihad is a collective military duty. The verses that sanctioned the use of force in jihad were revealed in the aftermath of the oppression of the Prophet and his followers. According to Sheikh Kutty, military jihad is only allowed in the following cases:

a. To defend one's right to practice one's faith;

b. To defend oneself against aggression; and

c. To aid those who suffer persecution and aggression.

[332] In Sheikh Kutty's view, the only legitimate jihad is defensive jihad. Muslims may not engage in military or offensive jihad against those who allow them to live in peace. They may only fight combatants and can not attack non-combatants such as women and children. For a jihad to be legitimate, it must be declared by a legitimate authority. Many Muslim scholars said

that fighting the Soviets and liberating Afghanistan from the occupation was a valid jihad. This was supported by Saudi Arabia. Muslim scholars have also agreed that what happened in Tajikistan and Chechnya called for a legitimate jihad.

[333] Acts of terrorism such as those committed by Al Qaeda do not fall under the category of legitimate military jihad sanctioned by the Islamic faith. In Sheikh Kutty's view they are in clear violation of a number of established principles laid out in the Koran including that one cannot take one's own life such as in the course of a suicide bombing.

[334] Sheikh Kutty disagrees with Dr. Rudner's view of Islam requiring either conversion or death. He says that Islam recognizes the rights of religious minorities to autonomy. One can't be forced to convert. The result would be null and void because of the notion that there must be no compulsion in religion. He says that Koranic verses have been taken out of context for political reasons. The references relied upon are those which refer to attempts by pagan tribes to defeat the Prophet and his supporters. The Koran sanctioned attacks on them. The witness acknowledged that there have been historical instances of forced conversion; in India, for example, during the Mughal Empire.

[335] On cross-examination, Sheikh Kutty disagreed with Azzam's description of jihad, in particular that it referred only to combat with weapons (Ex. A-3, A-31). He disagreed with the proposition that Islam was spread only from the battlefield and described how it was propagated in his region of South India by wandering Sufi mystics. He discussed how some mixed cultural practices with Islamic religious obligations. He agreed that US foreign policy is not a

justification for murder in Islam and neither is the presence of US soldiers in Saudi Arabia so long as they are not desecrating the holy places.

Dr. Lisa Given

[336] Dr. Given is an Associate Professor in the School of Library and Information Studies, Faculty of Education, at the University of Alberta. In 2007 she became the director of the International Institute for Qualitative Methodology at the University of Alberta. She holds a Ph.D. in Library and Information Science.

[337] Dr. Given was tendered as an expert in research methodology in determining the reliability of documentation. She was asked by counsel for the Respondent to review and comment on the reliability of the sources cited in the Summary of the Security Intelligence Report prepared by CSIS.

[338] Dr. Given currently teaches graduate level courses in the areas of research methods and information literacy. She trains students in effective scholarship practices, including the critical assessment of information resources. Dr. Given has testified as an expert witness in information behaviour in two previous Federal Court cases, including one her affidavit evidence was accepted by this Court.

[339] The Ministers object to Dr. Given's opinion evidence on the ground that it trenched on the court's function of assessing the reliability and weight of the documentary evidence. They contend that her opinion is circumscribed by her lack of expertise in the subject matter at issue in

this case. In that regard, they submit, her opinion evidence does not meet the necessity criterion as she is not better placed than the Court to determine the reliability of a newspaper article or Internet report. They accept that she may and did offer fact evidence in relation to what she found when she went to Internet websites and described the content of the documents in the references indices.

[340] I found Dr. Given's evidence to be helpful, particularly her testimony about the five core criteria that are used in library and information science to determine the reliability of information: authority, accuracy, objectivity, currency and coverage. These criteria are simply a framework which anyone can use to assess the credibility and reliability of a document. They invite questions such as who has written the document, what are their credentials, what is their stance on the issues, do they have a bias or a particular agenda? What is the authority of those who are cited or quoted in the document itself? Can the factual content of the information be verified? Is the information current? Has new information come to light that may call into question an earlier report. Is the information complete or has an excerpt been pulled out of the context of the rest of the document?

[341] Dr. Given's evidence assisted the Court in considering the reliability of the information in the reference sources. She illustrated how those criteria could be applied to documents that CSIS had relied upon in preparing the SIR. In doing so, Dr. Given gave her opinion that the information in certain documents did not satisfy the criteria. She did not say that the content of the information was incorrect as she is not an expert in the subject matter, but that it would be difficult for an impartial reader to assess reliability when insufficient information was provided.

[342] For example, on-line organizations such as the “IntellCenter” provide little information about their methods or the people behind them. There is a circular citation pattern in which organizations such as this cite each other’s reports. This may lead the reader to believe that their sources are authoritative or that they are reporting more information than is actually the case. The firm Global Security is said to have been founded by John Pike in 2007 but no details are provided about his educational background and credentials. Who funds the organization?

[343] The document at tab 85 is said to have been last modified 27-04-2005 but what information was modified? There is no authority to the information from her perspective. The source of the document at tab 8, the ERRI website, is replete with hyperbolic language. There is no information about the authors and the vast majority of the links at its web site are dead and not being kept current. This is not a credible source.

[344] In other documents, questions of possible bias may be raised such as with Bodansky’s book on the Chechen Jihad (tab 136), given his alleged links with Russian intelligence. No citations are provided for the sources of Bodansky’s information. In other instances, the document contains a bald statement such as that found at tab 90 with no attribution: “Khattab is thought to have become involved with Bin Laden…”. The source is an article from The Express newspaper in the UK reporting on a football coach’s despair that his team has to play in war torn Dagestan.

[345] On cross-examination, Dr. Given acknowledged that the anonymity of a confidential source does not make the information inaccurate and that on-line sources such as Wikipedia can

contain accurate information. With some on-line sources, such as the Jane's publications, her review was limited as she did not have a subscription. However, she did not accept that the subscriber content would necessarily provide more detail of the sources. She agreed that she could have researched the authors of some of the sources on-line and found more information about them.

[346] A document at tab 25 posted on July 6, 2004 in Jane's Intelligence Review is said to be authored by a Dr. Christopher Jasparro of the "Asia Pacific Center for Security Studies" which appears to be linked with the US government. One would have to know who Dr. Jasparro was to give this report credit. Counsel for the Ministers produced a syllabus for the US Naval War College listing him as an instructor in security matters. Dr. Jasparro attributes the Madrid bombings to Al Qaeda. A report at tab 27 from Madrid dated March 9, 2006 says that the results of a two year investigation concluded that it was the responsibility of home-grown radicals.

[347] The point of this testimony, as Dr. Givens reiterated on re-direct examination, is that no one could assess the reliability of the Jasparro document from its presentation without more information. In many instances, the documents relied upon in support of statements in the public summary contain no detail about the source of the information.

[348] Dr. Given's evidence drew my attention to questions about the sources that were not apparent on the face of the documents. Ultimately, it is for the Court to determine whether the information provided by the Ministers is "reliable and appropriate" in the meaning of the statute.

Dr. Brian Williams

[349] Professor Williams is Associate Professor of Islamic History at the University of Massachusetts at Dartmouth. He teaches Middle Eastern and Central Asian history and the focus of his research is on Central Asia, Afghanistan and Chechnya. He previously lectured at the University of London School of Oriental and African Studies in Middle Eastern-Balkan History and at the University of Wisconsin in Islamic Central Asian and Medieval Middle Eastern History.

[350] Professor Williams has a Ph.D. in Middle Eastern and Islamic Central Asian History and two Masters' degrees, one in Russian and East European History and another in Ottoman Language and Turkic History. Professor Williams has published two books and has contributed to over 60 chapters and journal articles on Al Qaeda and jihadism in Afghanistan, Central Asia and Chechnya. He has also had his work reported in Time Magazine and the New York Times.

[351] In addition to his academic background, Professor Williams has had hands-on experience in areas relevant to this case. He carried out field work in Afghanistan for the Central Intelligence Agency's Counter-Terrorism Center in 2007 tracking suicide bombers and has served as an advisor for the U.S. Army's Special Operations Command and Joint Information Operations Warfare Command. In 2008 he wrote the field manual for the U.S. military on Afghanistan and testified as an expert witness in the trial of Osama Bin Laden's driver, Salim Hamdan, the first trial held at Guantanamo Bay. During his travels, Professor Williams had an

opportunity to interview Taliban prisoners of war and Al-Qaeda linked figures such as Abu Hamza Al Masri.

[352] Professor Williams has lived in a number of different countries, including Turkey, Kazakhstan, Russia in the former Soviet Union and the Ukraine. He has also traveled to various zones of jihad and terrorism in Central Asia and the Middle East from the Caucasus and Kosovo to Afghanistan and Kashmir. He speaks Turkish, Turkmen and Russian. He does work for the US government including training special operations forces and marines and had a top secret clearance. In addition to his field work for the CIA, he was returning to Afghanistan this year for the US Army. He has also worked for Scotland Yard and Afghan intelligence. In short, Professor Williams' experience is both academic and practical.

[353] Dr. Williams was tendered as an expert on the roles and relationships of the warlords, foreign jihadis, Chechens and terrorists who were operating in the region during the relevant timeframe. The Ministers accepted that he was qualified to give opinion evidence in this area due to his research and writing on the links between the Afghan Arabs in the Chechen conflict in general, and the prominent role that Khattab and his Arab followers played in that conflict.

[354] The Ministers contend, however, that Dr. Williams' report descends into advocacy and is not in the proper format for an expert opinion. They contend that the report argues the facts and advocates the respondent's position, "similar to what one would expect from counsel's closing argument" citing *Dulong v. Merrill Lynch Canada Inc*., (2006), 80 O.R. (3d) 378 at para. 30. They submit that in his testimony, Dr. Williams proved to be much more balanced and suggest

that he may have initially misapprehended the nature of the allegations against the respondent. I don't accept that conjecture. His knowledge of the Ministers' case against Hassan Almrei stems directly from the public summary of the SIR.

[355] Dr. Williams' report is highly critical of the content of the public summary. It lacks the veiled references that one might normally expect to see in an expert report. But that does not reflect advocacy or an abdication of the neutrality that the courts demand from experts. Rather, it reflects an academic expert's impatience with what he considered to be shoddy work. As Dr. Williams put it, he would have given the summary a failing grade had it been submitted by one of his students.

[356] The Ministers had some success in eliciting testimony more favourable to their case during Dr. Williams' cross-examination. In fact, he acknowledged the validity and strength of some of the documentary evidence assembled by the Ministers' legal team and the depth of the preparation by counsel. This reinforced my view of the objectivity of his opinion evidence. Nonetheless, Dr. Williams never abandoned the view he expressed in his report about the quality of the CSIS public summary.

[357] I found Dr. Williams' evidence to be very helpful in understanding the history of events in Afghanistan, Tajikistan and Chechnya relevant to these proceedings and the relationships between key actors in those events. His perspective on which authors could be considered authoritative was also very useful as he knows many of them personally, knows their work and how they came by the information they have published.

[358] Williams has turned down requests to testify in 14 Al Qaeda related cases. He was sceptical about this one also but agreed to read the materials. As he did, he says, he had a growing concern that the government story did not fit what he knew about the history of the region. He found glaring historical errors and misstatements. Williams says he would have failed a student who relied on flimsy internet sources such as those in the public summary. In his view, the document was prepared under pressure and with orders to find linkages between Almrei and Al Qaeda. As a result, the analysts used "wiki-intel" to hastily paste together reckless claims. Williams claims he had never seen such a poorly prepared analysis of this nature. In reading the summary he hadn't found the indicators or "red lights" that would have pointed to Almrei having an Al Qaeda involvement such as presence at Al Qaeda camps in the Pashtun belt in the mid-1990s after Bin Laden assumed control of them.

[359] Dr. Williams noted that very few people were studying Bin Laden and the Taliban prior to 9/11. Post 9/11, he says, many authors with no direct experience in the region "jumped on the bandwagon" and sensationalized Bin Laden and Al Qaeda.

[360] Williams had lived in Tashkent while he was doing research for his PhD prior to 1999. The Taliban were then ethnically cleansing non-Pashtun's, such as the Uzbeks in the north. He interviewed the refugees. In 2003 he went to Kabul and lived with the Uzbek leader, General Abdul Rashid Dostum. He travelled north through the Hindu Kush, carrying an AK-47 for protection, and interviewed Taliban prisoners of war. In 2005 he spent time with the Tajiks and lived in Kunduz, the area of the Taliban's last stand in 2001.

[361] Dr. Williams provided an overview of the development of Al Qaeda and its revival of the ancient concept of jihad that had died out in the modern era with nationalism, pan-Arabism, Baathism and other secular political movements. They did this with the CIA's support to fight the Soviets and attracted Arab volunteers. But the fighting was done mainly by the Afghans. It was a "Jihad tour" for the Arabs. The "Gucci Jihadis" came with lots of money for the adventure and to go home and glory in it. They weren't well trained, didn't fight well and were more of a burden for the Afghans. None of them were a decisive factor in the war against the Soviets. Most went home but some, like Khattab, stayed on to defend Islam in other territories.

[362] The larger jihad movement is part of Williams' research and teaching interests. After 9/11, he says, it was conflated with Al Qaeda by many. In his view, there is a difference between those who subscribe to Al Qaeda and those who are part of the global jihad. Al Qaeda was formed to overturn regimes in the Middle East that Bin Laden and those who followed him considered apostate such as Saudi Arabia.

[363] In contrast, Abdullah Azzam was a comparative moderate who wanted to defend oppressed Muslims and was not a supporter of terrorism. Abdullah Azzam was sponsored by the CIA to tour the US and collect funds for the jihad in Afghanistan. He was no Bin Laden and was ultimately murdered by the Egyptians in Al Qaeda. Similarly, Khattab took funds from the Saudi Royal Family through their charities, such as the Al Haramain foundation, at a time when Bin Laden was actively opposing them. They considered it their religious duty to defend endangered Muslim communities. Many members of the larger jihad movement were shocked and appalled

by 9/11 and considered Bin Laden to be a disgrace for violating the Koran's prescription on killing innocents.

[364] Sayyaf was the Saudi's man in Afghanistan and was funded by them and the CIA through Pakistan's ISI. He spoke fluent Arabic and controlled a Pashtun fighting force. A pragmatist willing to work with moderates He fought for years alongside Massoud in the Northern Alliance and not with the hard-core fundamentalist leaders such as Hekmatyar who allied themselves with the Taliban. Williams agrees that Sayyaf did terrible things such as the campaigns against the Hazzara in Kabul and has blood on his hands stemming from the civil war period.

[365] The claim in the public summary that Sayyaf was close to Bin Laden is not supported by the facts, in Williams view. The two men may have met and been together in the mujahidin war against the Soviets; but they clearly fought against each other later. Few Afghans were members of Al Qaeda; Sayyaf was part of the Northern Alliance that fought the Taliban and Al Qaeda, the majority of whom are Egyptians. Al Qaeda did not allow Afghans into their inner circles. Al Qaeda had pushed Sayyaf out of some of his camps. By the mid-1990's they had developed real fighting skills and formed an effective unit to support the Taliban. The "055" Brigade was highly trained and well equipped in contrast to the amateurs who had previously come as would be mujahidin. The 055 Brigade fought the northern alliance including Sayyaf's forces, until the US invasion in 2001. According to Williams, the authors of the public summary either didn't know the history of this period or deliberately ignored it. The summary was not written by experts. He suspects that the authors went to Google with about two weeks notice and cobbled the material together.

[366] Williams doesn't accept the claim put forward by the Associated Press reporter, Kathy Gannon, in her book "I is for Infidel" of a meeting in which Sayyaf agreed to take part in the global jihad with Bin Laden and others. He knows and respects Ms Gannon but doesn't consider the story plausible. He says it is similar to the conspiracy theories of Josef Bodansky. Sayyaf may have met Bin Laden upon the latter's return to Afghanistan in 1996. But within a year he was fighting Al Qaeda and the Taliban.

[367] Khattab (a kunya from the name of the 4th Caliph after the Prophet) was not part of Al Qaeda according to Williams. He says that position has been advanced by the Russian propagandist Joseph Bodansky. Bodansky's book gives no sources and he has not been to Chechnya. Bodansky makes wild claims about events that are not plausible. His work is considered fiction by scholars. *Bona fide* intelligence services would not rely upon it.

[368] The Saudi's provided support to the Chechens Muslims and hundreds of Saudi citizens volunteered to go there to fight the Russians. Khattab was admired and viewed as a hero in Saudi Arabia and mourned when he died. This contrasts with Bin Laden who is despised. US didn't have a stake in the Chechen jihad. Nor did they oppose it. The CIA did not define Khattab as a threat. Chechnya was not an autonomous republic and was seen by the Russians as part of their territory. They bitterly complained about the Saudi involvement.

[369] Khattab mocked the Russians by inviting captured soldiers' mothers to come and get their boys. Williams does not believe that Khattab was involved in the Moscow bombings. It is counterintuitive, as the Chechens had already won their independence. He thinks that it was the

work of Russian FSB agents seeking to procure a *casus belli*. Khattab didn't approve of terrorism. He called those who practised it cowards.

[370] "My Jihad" by Alkai Collins, an American who fought with Khattab says he relished frontal combat. He was a warrior; idolized for his style of fighting. The Chechen's saw him as the sole source of help in their hour of need. But not everyone there loved him. He went against the Chechen government will by launching an incursion into Dagestan to defend three villages from a Russian onslaught. That gave the Russians a pretext for launching a full scale invasion of Chechnya and launched the second Chechnyan war.

[371] Williams acknowledged that the material (exhibit A-1) produced for the hearing by government counsel is more professional and scholarly than what he calls the Wikipedia research in the summary. But apart from Bodansky's claims, there is nothing definitive about Khattab and Al Qaeda in the literature. Bin Laden's main target was Saudi Arabia. But the Saudis supported Khattab through the charities. Some of the Arabs who went to Chechnya broke from Khattab and joined Al Qaeda.

[372] Dr. Williams discussed the civil war that developed in Tajikistan, after the fall of the Soviet Union. Members of the old communist guard, the "Red Khans", continued to rule with an iron fist in a secular government. There was no democratic development as in the other former Soviet Republics. Democrats and Islamists and southern Tajiks launched a civil war. The Islamists called for support from Afghan Arabs saying the Soviets are still here. This was a continuation of the anti-Soviet, anti-communist jihad.

[373] In Afghanistan, the Arab mujahidin joined with those warlords who were trying to defeat the Communist government in Kabul. When the Najibullah government was overthrown, the war lords fought a civil war in Kabul and effectively destroyed the city. They all had blood on their hands for their actions during this period. Sayyaf was allied with Masood. Many of the Arabs were sickened by the internecine violence and left. Bin Laden went to Saudi Arabia and then to Sudan. Khattab went to Tajikistan. Others went to Kashmir to fight the Indians. The majority went home to brag about their exploits.

[374] The "055 Brigade" was annihilated during the invasion in 2001. The survivors melted across the border into the Federally Administered Tribal Areas of Pakistan. To-day Al Qaeda Central is a more furtive, limited organization, hiding in the mountains. It lacks the capacity to launch attacks in Williams' view. More dangerous to-day is "wannabe Al Qaeda'ism". But there is a lack of evidence that they are being directed from Al Qaeda Central. Al Qaeda has few members remaining; less than 500. They are not splattered across the globe as in the quicksilver analogy posited by Dr. Rudner. There is no evidence of links to the disparate groups claiming to be modeled on Al Qaeda.

[375] Williams noted that there have been books written from actual experience in the mujahidin camps of the 80's and 90s. Afghan Arabs went from camp to camp looking for one that suited them. The camps were in very primitive mud house compounds and the regime was very informal. There was a lot of shooting off of rifles and praying. The camps were full of dilettantes, adventurers, riff-raff. It was very ad hoc but incredibly weaponized. AK-47's were a

form of currency. John Walker Lindh, an American, walked into a camp and was given one. In contrast, Al Qaeda camps were very serious about security.

[376] The witness described how the Beit-al-Ansar guest house in Peshawar was initially run by Sayyaf. It closed down in 1992 and was reopened in the late 1990s and run by Al Qaeda. If Almrei had been there in 1997 or later, it would be much more likely that he was Al Qaeda.

[377] The guest houses were not training facilities. They were set up in residential areas and were more like a hotel. The tribal areas of Pakistan and Afghanistan do not have hotel chains. A series of guest houses facilitated the movement of men through the region. Williams had stayed in the one set up by Bin Laden in Kabul and in another in Bamiya. They were very primitive with no lights and no showers. Animals were kept downstairs. These were pre-existing guest houses that Bin Laden simply bought. He had bought a great deal of property in Afghanistan after 1996.

[378] During a break in the testimony, Dr. Williams and Almrei spoke briefly about this. Almrei apparently told him that he had stayed at Beit-al-Ansar. This was brought to my attention following the break by counsel for the Ministers and I cautioned the witness and Mr. Almrei not to speak with each other again. The matter was not pursued further and I do not believe that it influenced the testimony of either Dr. Williams or Mr. Almrei.

[379] Williams found it impressive that the respondent can recite the Koran. It suggests he was raised in a good family. Al Qaeda members tend to be “born again Muslims”, more convinced

and certain in their beliefs. They tend to be people who felt alienated from the society around them and began going to Mosques in their 20's. Someone who had a good normal Islamic upbringing is unlikely to do this. This applies as well to the wannabe groups. They are concerned about Israel, angered at Saudis and learn to reject their parents' guidance.

[380] On cross-examination, Williams acknowledged that he had never been to Chechnya and doesn't see himself as an expert on Chechnya. But he sees himself as qualified to give opinion evidence on the overlap between the jihadists who travelled from Afghanistan to Chechnya. He believes that someone could not be simultaneously a member of Al Qaeda and Khataab's organization but knows of 5 people who left Khattab and joined Al Qaeda. He accepts that people who were in Sayyaf's camps could have later joined Al Qaeda. To Williams, the facts that Almrei attended Sayyaf's camp, was a follower of Khattab and did not go to Sudan are among the strongest indicators that he was not a member of Al Qaeda.

[381] Williams agreed that Sayyaf engages in bombastic anti-western rhetoric. He says that all of the Afghan leaders ranted and raved about western intervention and used the same language. He was taken to a series of articles and book chapters which tended to suggest that Sayyaf and Bin Laden were close during the anti-Soviet jihad and the subsequent civil war. Bin Laden had attempted to achieve a reconciliation between the Pashtun warlord Hekmatyar (now allied with the Taliban) and the Tajik leader Massood. Massood and Dostum seized control of Kabul after the fall of Najibullah and Massood became defence minister. Williams sees Bin Laden's efforts at this time as an exercise in pragmatism.

[382] There were running battles in the streets of Kabul in 1993 between Hekmatyar's, Sayyaf's, Dostum's and Massood's forces in the midst of the civilians. Atrocities were committed. None of them were guiltless. Sayyaf is likely guilty of war crimes for the actions of his militia against the minority Shi'ite Hazzara community.

[383] Exhibit A-28 is an excerpt from "Architect of Global Jihad" by Brynjar Lia, a book on the life of Abu Mus'ab al-Suri, jihadi thinker and Al Qaeda strategist. At page 82 is a reference to training in the Sada camp by al-Suri, and Khalid Sheikh Mohammed. The author states that the camp had been established with the help of Azzam and Sayyaf but was only used by the nascent Al Qaeda to a limited extent for "limited duration recruits". In Williams view, these people were not Al Qaeda at the time. The training of the Arabs was very perfunctual. It was considered more of a burden by the hardened Afghan veterans. Some of the Arabs came more as tourists during spring break or summer vacation; jihad was cool for young Arab males.

[384] According to the author Jason Burke (Ex. A-2, tab 5), Ramzi Yusef, nephew of KSM, spent some time as a tutor in Sayyaf's Khaldan camp where he met Ahmed Ajaj, his accomplice in the 1993 WTC bombing. The work includes references to Sayyaf's "University" in Pabbi, near Peshawar, and alleged involvement in an attempt to kill Benazir Bhutto. Sayyaf's compound in Pabbi was searched by the Pakistani authorities following the 1995 attempt on President Mubarak in Ethiopia. Williams says this was not an Al Qaeda action.

[385] Williams agrees that unsavoury people who passed through Sayyaf camps in the 1990's were later engaged in terrorism but considers that Al Qaeda was at that time a separate operation.

He agrees that an association with Sayyaf does not preclude a linkage with terrorism but holds to the view that being in Sayyaf's camps while Bin Laden was in Sudan is a contra-indication.

[386] US Department of State reports on Afghanistan for 1994 and 1995 were entered in evidence (tabs 11 and 12 of Ex. A-2). Williams did not doubt the statements in these reports that the Afghan camps, including those run by Sayyaf continue to harbour and train militants and potential terrorists.

[387] A compilation of Dr. Williams' publications was entered as Exhibit A-30 and he was cross-examined closely on prior statements he had made in his writings about events and personages in the region. In one assessment of the role of foreign fighters in the Chechen insurgency, for example, he had written that the Arabs who went there perceived themselves as holy warriors and were not engaged in a sectarian or nationalist struggle. He describes them as having "radicalized' members of the Chechen armed forces. He didn't see this as having had a good effect on Chechnya.

[388] Williams says he believes that Khattab's world view was transnational i.e., not bound by borders, as evidenced by his invasion of Dagestan. The President of Chechnya was opposed to this because of the provocation it would give the Russians. Khattab saw this as defensive jihad. But it is more a form of offensive jihad because it was an external invasion. Williams believes it was a clever ploy on the part of the Russians for having lured Khattab into invading; they did so by levelling the villages close to his local family.

[389] Khattab's tactics were guerrilla operations. Williams does not agree that Khattab engaged in terrorist acts during that period. He concedes the point that Khattab's activities would have been construed as terrorist by the Russians. But only the Russians, themselves guilty of state sponsored terrorism in Chechnya, call Khattab a terrorist. The Chechen leader Basayef had engaged in terrorism and there is a blurring of the lines between the two.

[390] Williams testified that he looked long and hard for links to establish operational ties between Khattab and Al Qaeda. He says that foot soldiers who tired of frontal combat and wanted something more glorious and dynamic and those who wanted to wage war against America had to join a different organization. Khattab had a different enemy – Russia. Khattab's website was focused on the military activity against Russia. In contrast, Al Qaeda's website glorified the murder of Americans and Jews. Williams disputes reports that Khattab and Bin Laden fought together. He says they may have been in a major battle against the Russians at Jalalabad with all of the other Afghan Arabs. Khattab wasn't with Bin Laden at Jagi which was the only battle that Bin Laden led.

[391] Bin Laden financed the jihad in Chechnya but didn't personally join it. His number one concern was Saudi Arabia and the US. The US because it supports the Saudi regime. Khattab was supported by the Saudi dynasty. Members of the Royal Family contributed money to al Haramain. Khattab set up an office with al Haramain to equip his forces. Williams agrees that some al Haramain offices also supported Al Qaeda. But the Saudi's arrested one of their own people for this. The Chief Mufti of Saudi Arabia spoke out in favour of the Chechnyan jihad.

The Royal Family mourned his death. They revile Bin Laden. It is permissible to admire Khattab in Saudi Arabia but Bin Laden is considered a threat to the state.

[392] Williams agrees that Khattab shared Bin Laden's view that infidels should be driven out of Muslim lands and supported the attacks on US military personnel in Saudi Arabia. He did not condemn Bin Laden in quotes attributed to him in the late 1990s (e.g., Ex.A-31). Khattab would have subscribed to the conspiracy theories about US intentions that were then prevalent in the Muslim world. Williams does not think that Khattab would have condemned another jihadi but condemned terrorism against civilians. He probably agreed with much of what Bin Laden was doing or may have believed that his Saudi funding would have dried up if he had condemned him at that time. But Khattab condemned terrorism against civilians and the Americans never saw Khattab as a threat.

[393] Williams held to his view on cross-examination that there were two streams of jihad. One was led by Abdullah Azzam who held to a clear line against terrorism and killing fellow Muslims. He sought the creation of a rapid reaction team, the Azzam Brigades, to attack non-Muslims fighting Muslims. The other stream was led by the Egyptians, notably al Zawahir who wanted to attack Muslims and use terror as a tactic. Azzam was not close to the Egyptian extremists. He had taught at al Azhar University in Cairo and could not have held that position if he had been viewed as a threat by the Egyptian Government. He worked with that government to obtain weapons for the jihad in Afghanistan. Azzam did not want fitna or dissension within the Islamic community, contrary to Bin Laden.

[394] On re-direct, Williams clarified that Sayyaf's training camps south of Jalalabad were taken over by Al Qaeda about 1998. Sayyaf continued to control territory north of that city. During the anti-Soviet jihad, all of the Afghan Arabs would have gone through either Hekmatyar's camps or Sayyaf's camps. Of the tens of thousands, almost all went back home and are living normal lives. Only a small number went on to become Al Qaeda. Similarly, some of those who went to the Chechen camps went on to join Al Qaeda. He has identified about 10 who did so and is surprised there is not more. He suspects it is because Khattab trained his warriors not to engage in terrorism.

ANALYSIS

Are the factual allegations against Almrei supported by the information and other evidence?

[395] In their closing submissions, the Ministers argue that the foundation for findings that Almrei is inadmissible to Canada on national security grounds and that the certificate is reasonable rests on the following alleged facts: Almrei's participation in jihad; his connections to others affiliated with Osama Bin Laden and his network, and with whom, they contend, he shares an extremist ideology; and his participation in an international document procurement network.

[396] The Ministers submit that, prior to arriving in Canada, Almrei engaged in terrorism by supporting terrorist activity and concealed from Canadian authorities the fact that he had supported Islamic extremists and had traveled to Pakistan, Afghanistan and Tajikistan to do so.

They claim that he supported terrorist activity as a member of the terrorist group known as the Bin Laden network, which includes Al Qaeda. His international contacts and fraudulent document procurement and willingness to assist with such document procurement, including for an individual associated with the Bin Laden network, make him a danger to the security of Canada in the Ministers' opinion.

[397] The specific facts relied upon by the Ministers in support of these submissions include Almrei's belief in jihad, his trips to Afghanistan and Tajikistan to engage in jihad and his willingness to fight and, if necessary, to die to defend Muslims. His association with Sayyaf and Khattab is said to be an indication that he shares a positive view of Bin Laden and a belief in militant Salafism. Almrei's admission that he met Nabil Almarabh in Kunduz, Afghanistan, a suspected terrorist, and later provided him with a false Canadian passport, gives rise, in the Ministers' submission, to a reasonable belief that Almrei could provide material support to a terrorist, in Canada or elsewhere.

[398] To organize my comments and findings about the information and evidence I will follow the arrangement of the Amended Public Summary of the SIR filed on March 24, 2009. The closed information and evidence has been taken into consideration.

Osama Bin Laden, Al Qaeda and the "Bin Laden Network"

[399] Much of the information and other evidence presented to the Court concerned Osama Bin Laden, Al Qaeda and the "Bin Laden Network". This was offered in support of the allegation

that the respondent is a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in terrorism, as set out in s.34 of the Act. The Amended Public Summary devotes 36 paragraphs and 83 footnotes to establishing the existence of this organization and its linkage to terrorism.

[400] The status of Al Qaeda as an organization within the meaning of paragraph 34 (1) (f) of the Act was not in any doubt in these proceedings. However, there is no evidence that Almrei is or ever has been a member of Al Qaeda. Thus, the Ministers' case under that ground of inadmissibility rests on the proposition that Almrei is a member of the more amorphous notion of a “network” inspired and led by Bin Laden that engages in terrorism. The respondent disputes that such an organization exists or that those who are said to be members can be held accountable for the actions of other individuals operating independently.

[401] The concept of a “network” does not easily satisfy criteria such as those that Justice O'Reilly identified in *Thanaratnam*, above, at paragraph 31: “identity, leadership, a loose hierarchy and a basic organizational structure”. These factors undoubtedly apply to Al Qaeda itself but are less readily apparent the farther removed from Al Qaeda is the group or individual said to be associated with the network. I note that the "Bin Laden network" is not a proscribed entity, unlike Al Qaeda, in the lists of terrorist organizations maintained by Canada, the United Nations or the United States (Reference Index Vol.1, T-12, T-13, T-14).

[402] There is a consensus among the experts that a number of organizations are now affiliated with Al Qaeda and others draw their inspiration from Bin Laden. Mr. Quiggin estimated that

there were six affiliated groups and about 23 others who have expressed an ideology sympathetic to that of Al Qaeda. These groups, he says, are focused primarily on local and regional issues. But these groups would themselves qualify under the rubric of organizations that engage in terrorism and membership renders the individual inadmissible. There is no evidence that Almrei is a member of any of the affiliated groups. At best, the Ministers assert that he is part of a loosely connected matrix of jihadi veterans with shared experiences in Afghanistan.

[403] The home-grown “wannabes” are not recruited, financed or directed by Al Qaeda but have adopted a similar world view. Examples given by the witnesses include those responsible for the Madrid bombings, the "Operation Crevice" conspirators in the United Kingdom, Momim Khawaja and the so-called "Toronto 18" in Canada. These persons are unquestionably a threat to national security and public safety but they have no direct connection to Al Qaeda and it is doubtful, in my view, that they can be said to be part of the same terrorist organization within the meaning of paragraph 34(1)(f).

[404] As I understand the Ministers' position, anyone who shares the principles of Al Qaeda and is in some way linked to it is a member of the Bin Laden network. Applying the “unrestricted and broad” interpretation approved by the Court of Appeal in *Sittampalam*, I accept that Al Qaeda and its affiliated groups can be termed an organization within the meaning of paragraph 34(1)(f). This "Bin Laden network" may also encompass those groups that are inspired by and willing to take direction from Bin Laden but are not formally affiliated with Al Qaeda: *Re Iklef*, 2002 FCT 263 at para.54.

[405] Individuals and groups who have no connection with Al Qaeda cannot be said to be part of the network without some other indicia of membership such as a willingness to follow directions from Bin Laden. It is not enough, in my view, to assert membership in an organization merely on the basis of a shared ideology. That is what I believe the Ministers have been attempting to do in this case. They can't establish that Almrei is a member of Al Qaeda or an affiliated organization and have attempted to bring him within the scope of this amorphous concept of a network based on his belief and participation in jihad.

[406] An "unrestricted and broad" interpretation of organization does not encompass those who have expressed views that are sympathetic to the ideology of Bin Laden and Al Qaeda and approval of the actions that they have taken. That is far too broad a net to cast and would be incompatible with the freedom of expression guaranteed by our *Charter*. There has to be something more to demonstrate that a person who has expressed those views has taken steps to associate himself with the network and to act in accordance with its objectives.

[407] I don't doubt, as the Ministers assert, that Al Qaeda remains committed to the use of terrorism to achieve its political goals but it is a matter of controversy between the experts whether Bin Laden retains the "resources and organization to launch a terrorist strike in any country he wishes" as stated in paragraph 9 of the summary. The source given for this proposition is a January 1999 report from a non-authoritative, and now stale, online source. While that may have been true in 1999, it is questionable to-day.

[408] In a paragraph added to bolster the Ministers' case following Mr. Quiggin's testimony during the detention review hearings it is stated that:

> Some scholars and academics believe that Al Qaeda is no longer a centrally controlled organization, but recognize that its ideology lives on and that Osama bin Laden remains a powerful figurehead and inspiration for people around the world. Still others believe that Al Qaeda remains a viable entity and may be regrouping in order to spark a new wave of attacks. Yemen has been identified as a possible new home for Al Qaeda, with Saudi and Yemeni militants joining forces. (Paragraph 13)

[409] The paragraph alludes to a debate between two renowned American experts on Al Qaeda and terrorism: Prof. Bruce Hoffman and Dr. Marc Sageman. Excerpts of their writings were filed in evidence including articles from the issues of the *Foreign Affairs* magazine in which they exchanged their views (Ex. A-5). Hoffman is a professor at Georgetown University and the author of *Inside Terrorism.* Sageman is a former CIA field operative turned psychiatrist and the author of *Understanding Terror Networks* and a 2008 work entitled *Leaderless Jihad*. It was the publication of that book which led to the debate with Hoffman. Dr. Williams described Dr. Sageman as the foremost terrorist profiler in the world and a mentor to him in understanding what attracts recruits to extremist organizations.

[410] In essence, the controversy is over the question of whether the West continues to face a grave threat from Al Qaeda or whether the true menace comes from loose knit cells of Western born Muslims or Muslim immigrants studying and working in the West; what Sageman calls disaffected "bunches of guys" who undergo the process of radicalization together.

[411] Hoffman maintains that “Al Qaeda Central” or "core Al Qaeda" as the witnesses variously described it, continues to be a major threat (Ex. A-5, Hoffman, “The Myth of Grass-

Roots Terrorism", *Foreign Affairs*, May/June 2008). Sageman, in rejoinder, says he has never denied that Al Qaeda remains a threat but asserts that it has been contained operationally (*Foreign Affairs*, July/August 2008). High level Al Qaeda personalities have been killed or captured and the remnants have been forced into remote tribal areas of Pakistan adjoining Afghanistan.

[412] Dr. Williams and Mr. Quiggin share the view that core Al Qaeda has been greatly weakened and no longer has the same power, resources or capacity to train it had when it was a state within a state under the Taliban. Mr. Young and Dr. Rudner believe that Al Qaeda Central retains a significant operational capacity.

[413] While the experts may disagree about the nature of the security threat and how it can be managed, it is clear from the evidence that their knowledge and understanding of the risk has evolved considerably since 2001. This was not reflected in the SIR and public summary until after Mr. Quiggin was called as a witness in the detention review proceedings and questioned the Service's assessment and the sources on which it was based. I found it troubling that the work done to prepare the new SIR in 2008 had not kept pace with developments in the field. And the sources relied upon by the Service were often non-authoritative, misleading or inaccurate.

[414] The Ministers dismissed this concern as an inevitable consequence of the preparation of a narrative report with supporting documentation of varying degrees of persuasiveness (Ministers' reply submissions para. 16). While it is true that some information will prove to be merely

unpersuasive, that does not absolve the Ministers and the Service from fairly presenting the information in their possession.

[415] As discussed above, the summary cites a news article reporting on Lord Carlisle's Fourth Report to the UK Parliament for the proposition that terror suspects under house arrest have been able to maintain contact with terrorist organizations or individuals and remain determined to mount attacks in the future. The full passage which appears at paragraph 58 of the report reads as follows:

> My view is that it is only in a few cases that control orders can be justified for more than two years. After that time, at least the immediate utility of even a dedicated terrorist will seriously have been disrupted. The terrorist will know that the authorities will retain an interest in his or her activities and contacts, and will be likely to scrutinize them in the future. For those organizing terrorism, a person who has been subject to a control order for up to two years is an unattractive operator, who may be assumed to have the eyes and ears of the State upon him/her. Nevertheless, the material I have seen justifies the conclusion there are a few controlees who, despite the restrictions placed upon them, manage to maintain some contact with terrorist associates and/or groups, and a determination to become operational in the future. [My emphasis]
>
> Fourth Report of the Independent Reviewer Pursuant to Section 14(3) of the *Prevention of Terrorism Act 2005*; Lord Carlisle of Berriew Q.C. wrote at paragraph 58:

[416] The thrust of the actual reference was that most terrorist operatives lose their utility to those who may be interested in making use of their services when they have been under the control of the authorities for an extended period of time. A few will continue to present a risk. This was a finding relevant to this case given the length of Almrei's detention. It was not fairly presented in the Public Summary.

[417] In the same paragraph of the Public Summary (14), it is noted that one prominent Al Qaeda militant who had undergone a stringent Saudi rehabilitation program and was released

from custody has recently emerged as a key leader of Al Qaeda. This is accurate, but ignores the fact that Saudi Arabia has reported a high degree of success with this program and that other countries had taken steps to emulate it. The purpose of including this statement in the summary, presumably, was to dissuade the Court from taking a chance on Almrei. But the effect was rather to contribute to a finding that the authors had not sought to be fair and balanced.

[418] Considerable evidence was heard about the nature of the concept of jihad in Islam. The public summary, at paragraph 10, describes this as interpreted in two ways by Muslims: an "internal" jihad that everyone engages in to become a better Muslim, and an "external" jihad that is necessary to defend Islam when it is under attack. The summary states that Al Qaeda has adopted the latter definition as central to Islam. The weight of the evidence, particularly that of Sheikh Kutty, supports a finding that external jihad can be both offensive and defensive. The type of offensive jihad undertaken by Al Qaeda is not supported by the sacred texts in Islam as interpreted by mainstream scholars.

[419] There is no dispute between the parties that the jihad against the Soviets and the Najibullah regime in Afghanistan was supported by the *ulemma* or community of Islamic scholars that individually and collectively have the authority to issue *fatawa.* This was also viewed by the US and Middle Eastern governments as a legitimate conflict. The Afghans and the Arabs who supported them were engaged in a defensive jihad. There was also evidence that the conflicts in Tajikistan and Chechnya were approved, if not by the Western governments who had no direct interest in those affairs, at least by the Saudi *ulemma* and Royal family. Participation or

support for those actions, in itself, does not provide reasonable grounds to believe that an individual subscribed to Bin Laden's notion of global jihad or became a member of his network.

[420] The summary refers to the creation of training camps and an elaborate infrastructure by Bin Laden and cites the warnings he issued to the West (para.11). This is accurate but it ignores the crucial question of timing. This infrastructure and the warnings followed his return to Afghanistan in 1996. Prior to the fall of the Najibullah regime in 1992, Bin Laden was just one of the mujahedin leaders operating camps. His role in the fighting was modest. The bulk of it was done by the Pashtuns, Tajiks and Uzbeks under leaders such as Hekmatyar, Sayyaf, Massoud and Dostum.

[421] In paragraph 15, the summary notes that "[b]y 2000, Al Qaeda was estimated to have operated approximately a dozen camps in Afghanistan where as many as 5000 militants may have been trained who, in turn, may have created cells in 50 countries". The source for this statement is said in the footnote, inaccurately, to be the US State Department. The source is actually a newspaper article that attributes the information to "a recent Central Intelligence Agency analysis", which is not in evidence.

[422] Applying Dr. Givens' criteria, it is apparent that this source is not authoritative. But even if it is taken at face value it does not cover the timeframe in this case. After 1996 Bin Laden had effectively declared war on Saudi Arabia and its Western allies, particularly the United States, and was training terrorists to conduct operations abroad. But there is no evidence that Hassan Almrei passed through any of Bin Laden's camps after 1996.

[423] At best, the evidence indicates that he spent a brief time at the Beit al Ansar guesthouse in Peshawar in 1990 which was established and run by the MAK and may have been funded by Bin Laden at that time. That guesthouse was a way station en route to camps in Afghanistan which were run by Sayyaf and Hekmatyar. Almrei didn't get to one of those camps in 1990 because he fell ill. There is no evidence that he was trained or indoctrinated, as Mr. Young speculated, at that guesthouse. And the witnesses are all agreed that the vast majority of the 35,000 or more Afghan Arabs who passed through the camps went home to get on with their lives after their adventure.

[424] The supposition that Al Qaeda has created "cells" and sent "sleepers" abroad is a matter of some controversy. As noted, the sole source for the statement about cells is a newspaper article from January 2001. In paragraph 34 of the summary there is a statement that the Bin Laden network uses "sleepers" in its international terrorist operations. These are described as individuals who establish themselves in foreign countries for extended periods of time prior to being given orders to execute an operation. Preceding the activation of the operation, they may live as regular citizens, leading unremarkable lives, and avoiding attention from local authorities. The sole source that is given for these propositions is a 1999 book by Simon Reeve entitled *The New Jackals*. The implication is that Mr. Almrei was such a sleeper. The closed information indicates that is how he was perceived by CSIS after he came to their attention in 1999. But, as far as I could determine, this was based solely on the inferences drawn from human source information of doubtful reliability.

[425] A great deal of knowledge has been acquired since 2001 about Al Qaeda's methods of operation. Sageman, for example, states at pages 106 and 162 of *Leaderless Jihad* that there have been no sleeper cells in the United States with the possible exception of one individual who was arrested in December 2001, which he doubts. Dr. Williams conceded that he has himself used the "sleeper" terminology to describe persons arrested in the US but now considers that Sageman is correct that Al Qaeda sent agents to conduct operations within a planned time-frame, not to integrate into the community and await further instructions at some later date.

[426] It is understandable that the Service would have been concerned between 1999 and 2001 that Al Qaeda was employing methods similar to those used by foreign espionage services when little was known about Al Qaeda and the jihadi phenomenon. And I can appreciate that there may be differences of opinion on this among security experts. But the SIR presented in 2008 simply recycled stale information without attempting to offer a more balanced and nuanced view.

[427] Much of what is contained in the summary relating to Al Qaeda and the Bin Laden network is irrelevant, in my opinion, because it does not point to Almrei. For example, paragraphs 22 and 23 address the use of the Internet for communications between members of Al Qaeda and its followers and their use of extremist websites for recruitment, indoctrination, fund raising and propaganda. This is interesting but there is no evidence that Almrei used his computer for these purposes. It did not materially assist the Court to be told that other terrorist suspects have employed these methods when there was no evidence to suggest that Almrei had done so. Both the RCMP and CSIS had the opportunity to scrutinize the hard drive of his

computer and there were other, more intrusive, investigative methods available to them to investigate this possibility.

[428] I accept the evidence given by Mr. Young and Dr. Rudner, supported by the reference documents, that terrorists employ false identification papers and have need of sources who can provide reliable travel documents to allow them to cross borders. This evidence was relevant to the question of whether Almrei had the necessary skills to be of use to a terrorist organization. It supported the Service's assessment that his own use of such documents and contacts in Bangkok and Montréal was an important part of his "pedigree". Coupled with the fact that he obtained a false passport and supporting documentation for Nabil Almarabh in 2001, this was a key element of the case which justified his arrest and detention following 9/11.

[429] Mr. Young fairly conceded that some of Almrei's contacts would have dried up after more than seven years in detention. He thought that Almrei might still have other undisclosed contacts that would be willing to deal with him. Indeed, that is possible but I am sceptical that someone whose identity is now in security databanks around the world and has testified that he disclosed what he knew in an eight hour interview with the RCMP could reactivate those contacts.

Almrei's Travel and Status in Canada:

[430] The information in the SIR and the summary regarding Almrei's travels prior to and in coming to Canada is largely based on his disclosures subsequent to the 2001 certificate

determination. This information reinforces the fact that he misled Canadian officials about his background and lied when directly asked about the countries to which he had traveled. As several of my colleagues have previously observed, Almrei was economical with the truth when provided with opportunities to explain where he had been and what he had done. He has disclosed additional information only when it became apparent that the authorities were aware of the facts. His credibility, therefore, is suspect.

[431] The summary states that Almrei was not forthcoming about the honey business that he engaged in both in Pakistan and Saudi Arabia. He says that he found honey (and oud, an incense) less expensive in Pakistan and imported some to Saudi Arabia where he had a small retail business that he had started in high school. It was reported in the media in 2001 that members of Al Qaeda had used the honey business as a cover for the shipment of explosives and money. The summary notes that there is no evidence that Almrei did in fact use honey to conceal weapons or munitions or in order to raise funds for extremist activities. He may have sent a portion of his proceeds to Khattab in Chechnya. As noted above, counsel for the Ministers took the position during the hearings that they did not expect me to arrive at a conclusion other than that this information was merely speculative.

[432] As stated by Mr. Young, Almrei's lies were a major factor in the Service's assessment that he constitutes a threat to national security. But they began to keep an eye on him in 1999 largely because of what they were told by a human source about Almrei’s background and connections. I deal with that source’s credibility in my closed reasons but the gist of what he told the Service

in 1999 was at least partially corroborated by later information they received including Almrei's own disclosures.

[433] Over the course of the next two years, the Service collected information about Almrei's statements and actions from human sources which, if credible, would suggest that he was a committed Bin Laden supporter and participant in an international false document network. The Service then drew certain inferences from that information which, in my view, were not well-founded.

[434] Almrei was under surveillance but there is no indication in the record of any intention to take action against him until 9/11. He may have encountered difficulties in obtaining the permanent resident status he had applied for and steps may have been taken to revoke the refugee finding on the grounds of his representation but he was not a candidate for a security certificate prior to those attacks.

Almrei's association with Osama Bin Laden and support for jihad

[435] At paragraph 54, the summary states that Service information indicates that Almrei shares bonds of kinship as well as faith with the Bin Laden network and has demonstrated his support of Bin Laden, those associated with or sponsored by him and his ideology. This is a reference to human source information dealt with in the closed proceedings. The summary also relies on the information Almrei disclosed in his solemn declaration of November 2002 that he had gone on jihad in Afghanistan and Tajikistan, had received weapons training in the use of the

AK-47 assault rifle and had been in guest houses and camps under the command of Sayyaf and Khattab.

[436] As indicated above, I am satisfied that certain of the human sources relied upon by the Service are not credible and that the information that they provided is not reliable and appropriate within the meaning of the statute.

[437] I state my findings about the sources in the closed set of reasons for judgment. My conclusion about their credibility is based upon operational and source management reports and the cross-examination of the Service witness conducted by the Special Advocates in the closed hearings. Having considered all of the information and evidence carefully, I am satisfied that certain of the human sources in this case had motives to concoct stories that cast Almrei in a negative light.

[438] Information was provided by one source in September 2001 that is implausible given what is known now about the chronology of events including Almrei's travels and Bin Laden's movements. I accept that the Service did not have reason to doubt the information at that time, although the source was then designated as being of unknown reliability. However, when given a further opportunity in 2004 to recount his knowledge of what Almrei had told him about his experiences in Afghanistan, the source provided information which is consistent with Almrei's own evidence. The source was highly motivated to curry favour with the Service in 2001. In preparing the SIR, the Service chose to go with the 2001 account and ignored what he said three years later.

[439] Almrei, in common with many others, has made comments that were critical of US policy towards the Middle East. He has freely acknowledged this. So long as he lacked the intent to act upon those views in a violent manner, that does not make him a security risk. The Ministers do not claim that he intended to commit an act of violence.

[440] I find Almrei's evidence to be credible that prior to 9/11 he did not know much about Bin Laden other than that he was a wealthy Saudi who had supported the mujahedin during the anti-Soviet jihad and was then close to the Taliban. Almrei was certainly aware of events in the Middle East at that time but his primary interest was in Khattab and his role in the Chechnyan insurgency.

[441] The evidence does not provide reasonable grounds to believe that Almrei had any association with Bin Laden or opportunity to meet apart from a brief period of time when their presence in Afghanistan may have coincided. There is no evidence that Bin Laden was at Beit al Ansar when Almrei was there and the evidence does not indicate that Almrei later went to any camps that Bin Laden controlled. Rather, he went to camps run by Sayyaf and Khattab, neither of whom can be reasonably said to be part of Al Qaeda.

[442] Mr. Quiggin and Dr. Williams testified that they did not see the indicators in Almrei's history that would suggest to them that he was Al Qaeda, such as evidence that he had gone to Sudan between 1992 – 1996 when Bin Laden and his entourage were based there.

[443] The main thrust of the Ministers' case during the public hearings was on Almrei's support for jihad, his experiences in Afghanistan and Tajikistan, contact with Abdul Rasul Sayyaf and support for Ibn Khattab's role in Chechnya. Almrei's position is that his involvement in the Afghan jihad was supported at the time by the Islamic establishment. He had minimal contact with Sayyaf, did not know about the crimes attributed to Sayyaf's forces and was not himself directly involved in any fighting. His stays at Sayyaf's and Khattab's camps were in the nature of *rebat* or garrison duty. He was trained in the use of an AK-47 but never had occasion to use it in combat.

[444] Almrei's evidence about his time in Afghanistan is consistent with Dr. Williams' evidence about the reality of the jihad experience for most of the Arab Afghans. The label "Gucci Jihadi", which Williams said was applied by the Afghans to some of the volunteers, doesn't fit Almrei. He was not wealthy and he was not there as a tourist. He was a young man seeking adventure and, possibly, a ticket to paradise. Almrei went back and forth to his home in Saudi Arabia to complete high school and later to attend to his business affairs. Eventually, he had had enough adventure and wanted to get on with his life, as did the great majority of Arab Afghan veterans. There is no reliable evidence that while he was in Afghanistan he was indoctrinated by and committed himself to Al Qaeda's vision of global jihad.

[445] Almrei testified that while he had met Sayyaf, the mujahidin leader would have had little, if any interest in him. Sayyaf was a major figure in Afghan politics. Almrei was just one of the many young Arab volunteers who passed through his guest houses and camps at that time. I accept Dr. Williams' view that Sayyaf maintained his camps primarily to protect his position in

Afghanistan, not to export terror. Some of those who passed through Sayyaf's camps later joined Al Qaeda.

[446] Almrei volunteered the information that he had stayed at a guest house in Babhi reserved for more important travelers. He explained how that came to be. The Ministers rely on his stays there to suggest that Almrei enjoyed a greater degree of intimacy with Sayyaf than that to which he has admitted. I am not persuaded by that. It is simply implausible to believe, given everything that has been presented in this case about Sayyaf, that he would have picked Almrei out of the herd and indoctrinated him in the "web of hate and terrorism over which Sayyaf presided" as the Ministers suggest.

[447] Had Almrei stayed with Sayyaf for any significant length of time or attended the university that Sayyaf ran at Babhi, an inference might have been drawn that he was being trained for other purposes. But Almrei moved on to a camp where he received basic training in the ubiquitous AK-47 and led prayers. On the second trip he connected with Khattab. Almrei played ping-pong one evening with Sayyaf . That was the extent of the relationship.

[448] There is no doubt that Sayyaf is an ultra conservative Islamist with views on many issues as extreme as those of the Taliban. In a September 2, 2004 editorial, the New York Times described him as "a notorious warlord and savage fundamentalist who in the 1980s and 1990s served as the chief mentor and protector of Khalid Sheikh Muhammad, the Qaeda mastermind of the September 11 terrorist attacks" (T-114). Incredibly, the editorial noted, Sayyaf had been a major beneficiary of the American-led invasion and was then one of the country's leading power

brokers whose endorsement was sought by all of the presidential candidates including Hamid Karzai.

[449] Sayyaf's focus throughout his career has been on Afghan politics. It appears from the evidence that he picked the sides that he fights on carefully to advance those interests. By all accounts, he was the Saudi's favourite war lord in Afghanistan during the anti-Soviet jihad as he was one of the few who spoke Arabic fluently. That may explain why he chose to go against Bin Laden and the Taliban and to join with Massoud and the other members of the northern alliance and why the US favoured him following the invasion.

[450] Sayyaf's actions speak louder than his words, as Williams and Quiggin stated. He could not have been part of the Bin Laden network while he was actively trying to kill Bin Laden and other members of Al Qaeda. It is also implausible that he would have turned against his sponsors to support Bin Laden's objective of overturning the House of Saud. And I find it inconceivable that the US would have done business with him if they had reason to suspect his involvement or support of attacks on American personnel.

[451] Some of those who went through Sayyaf's facilities near Peshawar and his camps in Afghanistan went on to become part of Al Qaeda and its affiliated groups or associated themselves with the Bin Laden philosophy and have committed terrorist acts outside the region. These individuals made their own choices. If there was any evidence that Sayyaf had sponsored or was otherwise linked to their actions, I doubt that he would have remained free following the

coalition invasion of Afghanistan or would have been allowed to become a member of the new parliament and exert influence over the Karzai government.

[452] There is considerable evidence that Sayyaf's forces committed war crimes or crimes against humanity during the efforts to oust the Najibullah regime. Sayyaf is quoted as having said that anyone remaining in Kabul was a Najibullah supporter and deserved to die (Ex. A-3, T-6, p.16). His forces are said to have attacked the minority Shi'ite, Hazara community with "unrestrained fury beheading old men, women, children and dogs" during the ensuing civil war (Ex. A-27, p.263). I agree with the Ministers that the respondent's contention that Sayyaf's activities fall within the parameters of the armed conflict exemption in the *Criminal Code's* definition of terrorism is untenable with respect to those events. I do not agree that it would have no application to all of Sayyaf's activities including his involvement in the anti-Soviet jihad and the internal war against the Taliban. In any event, there is no evidence or information before me that Almrei participated in any of the attacks that could be characterized as war crimes or crimes against humanity.

[453] Mr. Justice Russell Zinn cautioned about the risk of guilt by association in *Abdelrazik v. Canada (Minister of Foreign Affairs),* 2009 FC 580, [2009] F.C.J. No. 656. At paragraph 53 of his reasons, Justice Zinn pointed out that a fundamental principle of justice is that the accused does not have the burden of proving his innocence and that proving the negative of an association with an extremist group can be extremely difficult. In that case, the applicant was acquainted with at least one confirmed terrorist, Ahmed Ressam, but there was no evidence that he himself had ever committed such an act. In other proceedings, the Court has been prepared to

find that the named person's involvement with terrorist networks was substantiated on the evidence and went beyond mere "guilt by association" reasoning: see for example, *Mahjoub v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1503, [2006] F.C.J. No. 1862. In my view, Almrei cannot be found to be a danger to national security or a member of a terrorist organization due to his limited association with Sayyaf. If that were the case, it would apply to much of the current Afghan Government including the President.

[454] Among Almrei's communications intercepted following 9/11 is one in which he and his caller expressed concern that the attacks were committed by Muslims or Arabs. The closed information does not suggest in any way that Almrei knew or was expecting these events. I don't believe, as the Ministers contend, that his testimony suggests that he found the attacks objectionable simply because they involved the suicide of the attackers, an act which is prohibited by the Koran. I accept his evidence that he considers the attacks to be morally wrong and contrary to the teachings of Islam because they involved the killing of innocents.

[455] The summary states that in Federal Court proceedings in 2004 Almrei identified photographs found on his computer during an RCMP search including photos of Bin Laden and one of the 9/11 hijackers, Mohammad Atta (paragraph 55). These are photographs of the sort that are downloaded to a computer when one visits news websites. The evidence given in the prior proceedings was that Almrei followed events on-line. A great many people would have had these photographs on their computers following 9/11. The Ministers did not press this allegation during the hearings and in their closing submissions and I have given it no weight. I mention it only because the allegation remains on the public record.

Arab Afghan Connections:

[456] The Ministers assert that Almrei is associated with Arab Afghans connected to the Bin Laden network. It is clear from the evidence that Almrei took advantage of his connections in the network of Arab Afghan veterans when he required assistance to make his way to Canada, that he associated with at least one veteran while in Canada and that he aided another by procuring a false passport and contributing to his bail bond. What is less clear is whether any of these individuals were part of the Bin Laden network as described in the Public Summary and the Ministers' evidence.

Ibn Khattab

[457] There is contradictory information in the record about Khattab and he remains a shadowy figure in the history of the region. The weight of the evidence before me in this case favours a finding that he was not a terrorist in his own right or a terrorist patron but I accept that there are reasonable grounds to believe the contrary. Khattab was a committed jihadist with a fundamentalist, Wahhabi outlook on Islam and the world. His reasons for participating in jihad in Afghanistan were the same as the other Afghan Arabs. With the fall of the Najibullah government, he declined to become involved in the Afghans' internecine strife and looked around for another place where he considered Muslims were oppressed. He found it first in Tajikistan and then in Chechnya.

[458] Tajikistan was under the control of a hard-line communist government which remained in office with the support of the Russians when civil war broke out in May 1992. Supporters of the opposition were forced to take refuge in northern Afghanistan where they were protected by Ahmad Shah Masoud. Khattab allied himself with the United Tajik Opposition (UTO) party, a coalition of democratic reformists and Islamists led by Sayid Abdullah Nuri.

[459] Almrei testified that he stayed in Khattab's house at the Tajik refugee camp in Kunduz. During the Tajik civil war, Russian forces were deployed along the border to repel infiltration from Afghanistan. The UN negotiated a ceasefire in October, 1994 which led, to a peace agreement in 1997. I think that this may explain why Khattab moved on to Chechnya. Almrei's evidence that he had traveled to the border region with Khattab to scout Russian positions but they did not engage in fighting is, in my opinion, credible as the cease fire would have been in place during the months he was in the region.

[460] Khattab was a warrior. He favoured frontal attacks on the Russians. The information that he was directly involved in terrorist activities in Chechnya is not, in my view, persuasive but there is some information to that effect. The most troubling aspect regarding Khattab's sojourn in Chechnya is his association with Basayef, against whom a stronger case can be made of terrorism. There is also information that Khattab's group may have engaged in terrorist acts after his death. The information that Khattab condoned the attacks on Americans in Saudi Arabia is credible as it would be consistent with his personal mission to drive foreigners out of Muslim lands.

[461] The information and evidence presented in this case does not in my opinion support a finding that Khattab was a member of the Bin Laden network. They had likely encountered each other during the anti-Soviet jihad but did not fight in the same unit. Bin Laden may have contributed funds to Khattab in Chechnya and some of Khattab's fighters moved on to join Al Qaeda. But Dr. Williams thought that the number was very low. Khattab was unwilling to criticize Bin Laden but the evidence does not indicate that he was prepared to support or join Bin Laden's global jihad.

[462] Almrei's association with Khattab was limited to a meeting in Babhi (Pabbi), a few trips to Kunduz and forays to and across the Amu Darya River into Tajikistan. He says that he took some food with him on his later trips as it was scarce in the Tajik refugee camp at Kunduz and that he obtained a grant from the Al Haramain Foundation in Ryadh to help the Tajiks build a school for girls in the camp run by the UTO. He subsequently followed Khattab's fortunes in Chechnya by long-distance from Saudi Arabia and later Canada.

[463] The Ministers regard the story about the girls school to be a complete contrivance intended to appeal to Canadian sensibilities and to conceal the funding of weapons and munitions and other supplies for Khattab. I was also sceptical of Almrei's claim until I read a report by a human source that Almrei had told him of this when he had described his experiences in Afghanistan. It remains difficult for Western minds to accept that a charitable foundation would write a check for roughly $35,000 to a young man who walked in off the street with a story about building a school to aid refugees. Almrei says he had a reference from an Islamic scholar in his hometown that was sufficient evidence of his *bona fides* for the foundation. I note that while

some of the Al Haramain foundation offices have been listed for supporting terrorism, the Riyadh office was not included. There is evidence that Khattab was supported by many Saudis. Dr. Williams said he was considered to be a hero and was publicly mourned in Saudi Arabia, including by the Royal family, when he was killed by the Russians in 2002.

[464] Almrei admired Khattab and supported his actions in Tajikistan and Chechnya. They were from the same city in south-eastern Saudi Arabia, Damman, and just a few years apart in age. But Khattab was a leader and a warrior. Almrei was content to go where others suggested and, if his evidence is to be believed, did no fighting at all. His association with Khattab does not, in my opinion, support a finding that he is a danger to the security of Canada.

Nabil Almarabh

[465] Nabil Almarabh is a Syrian national who originally went to the United States in 1989 and remained there until 1991. He then went to Pakistan and Afghanistan with the support of the World Muslim League. Almrei met Nabil Almarabh at Kunduz. He knew Almarabh then by his kunya or respect name. Almarabh returned to the US in 1993. He was denied refugee status in Canada and deported to the US in 1995. He worked as a taxi driver in Boston at the same firm that employed Raeed Hijazi, later convicted in Jordan in relation to a terrorist plot. Almarabh returned to Canada in 2001 where he met Almrei at his uncle's Ahmed Shehab’s print shop in Toronto.

[466] Almarabh asked for Almrei's help in obtaining a passport, ostensibly to visit his mother in Jordan. Almrei contacted a person he knew in Montréal and obtained a passport and other identity documents for Almarabh and pocketed a fee for the service. When Almarabh was caught attempting to enter the United States and returned to Canada where he was detained, Almrei contributed to the cash bond that Almarabh's uncle posted to get him released. Almarabh then arranged to have himself smuggled back into the United States in July 2001. He was convicted in Boston of an assault causing bodily harm, fined and placed on probation. Following 9/11, he was arrested by the FBI in Chicago on a material witness warrant at the grocery store where he was working. He had a substantial amount of cash in his possession and amber jewellery which he said was the proceeds of the sale of his share of his uncles' shop.

[467] In July 2002, Almarabh pled guilty to charges of entering the country illegally and was sentenced to time served. He was deported to Syria in January, 2004. It seems as he escaped the attention of the Syrian authorities until sometime later when he registered for military service. A report from a human rights organization indicated that he remained in detention in 2008.

[468] The public summary cites a number of media reports for information that Almarabh was linked to several of the 9/11 hijackers, was involved in money transfers that may have helped finance the 9/11 attacks, and was linked to an international forgery ring in which participants collected and traded passports and drivers licenses. In one newspaper report from 2004, a US immigration judge is said to have found that Almarabh presented a danger to national security, was credibly linked to elements of terrorism and had a propensity to lie.

[469] The Court had the benefit of additional information in the closed proceedings. I am satisfied on the basis of that information that the more alarming media reports about Almarabh were not substantiated by the F.B.I, US Attorney' s Office and US District Court which dealt with his case. Nonetheless, it is clear that Almarabh was prepared to violate US and Canadian law whenever it suited him and that Almrei was willing to aid him in that regard.

Ahmed Al Kaysee

[470] Ahmed Al Kaysee was also a veteran of the jihad in Afghanistan. Almrei says that he obtained his name from someone in Pakistan and called him prior to coming to Canada. Al Kaysee had become a Canadian citizen and was preaching as an Imam at a Toronto mosque. Al Kaysee met Almrei at the Toronto airport and helped him get settled. They remained friends until sometime after Almrei was detained. He initially tried to help Almrei by raising funds for legal fees. They are no longer close and Al Kaysee declined to assist in the latest proceedings.

Hisham Al Taha

[471] When Almrei first applied to come to Canada in 1998, he said he intended to visit Al Taha in Richmond, B.C. In his testimony, Almrei says he was also given Al Taha’s name by his contact in Pakistan. Al Taha agreed to let him use his name when Almrei called, although the two had never met. He later denied speaking to Almrei and refused to assist him in the legal proceedings.

Involvement in False Documentation:

[472] Almrei has admitted knowing people in Montréal who could obtain false documents and that he had a reputation in the community for being able to do this. He has admitted that he traveled to Thailand in 1998 and met an individual who was involved in human smuggling and document procurement and that he contacted that person on several occasions after coming to Canada. He has admitted arranging a marriage of convenience between his employee and Ibrahim Ishak, that he provided a fraudulent reference letter for Ishak and that the two of them were involved in a scheme for obtaining Michigan and Ontario drivers licenses.

[473] This information supports the finding that Almrei was prepared to and did engage in criminal activity. It does not, in my opinion, point to a conclusion that he is a national security risk.

[474] The public summary notes that Ishak was detained by US authorities at the Detroit airport en route from Bosnia and had in his possession 13 packages of identity and other documents including passports. Almrei has denied knowing anything about these documents. Information from the *Charkaoui II* disclosure was considered in the closed proceedings regarding this matter. I am satisfied that there is no information to suggest that Almrei was involved or that Ishak was doing anything nefarious with those documents. Ishak was operating an immigration consultancy at that time. One of the sets of documents related to his fiancée whom he wished to help emigrate to Canada at that time, while still married to Almrei's employee. The information as a whole indicates that Ishak was involved in fraudulent activity but not terrorism.

[475] The public summary states that Almrei and five other individuals gained access to a restricted area at Pearson International Airport on September 17, 1999. Security officials were said to be probing a number of missing clearance and security passes for the most sensitive areas of the airport. These alarming statements are coupled with other information that a number of photographs were found on Almrei's computer during an RCMP search including a security badge, passport photo and the cockpit of an airplane.

[476] This was the only new allegation against Almrei in the 2008 SIR and public summary. Airports are an obvious target for terrorist acts. When Mr. Young testified, he had not read the RCMP report which resulted from the Force's investigation of the incident. That report was obtained during the hearing.

[477] Almrei and the other men were observed washing planes and restocking supplies for a company that had a contract to service aircraft. Almrei was seen using a magnetic security pass to gain access to the hangar. It was later determined that he did not have a pass issued by the airport authority but Ishak did. Ishak's pass was subsequently suspended by Transport Canada. The RCMP investigation concluded that the men were merely engaged in cleaning and restocking the aircraft.

[478] But apart from the evidence that he had acquired such documents for his own use and procured them for Almarabh, the information presented to the Court did not support a finding that he was a member of a false document network.

Security Consciousness and Use of Clandestine Methodology:

[479] The public summary says nothing more than that Almrei has demonstrated concern for his security and an understanding of security procedures. It states that he was aware that his activities might be of interest to the authorities. This refers to information which was considered in the closed proceedings. I have addressed these matters in my private reasons for judgment.

Should the Certificate be Stayed as an Abuse of the Court's Process?

[480] In closing argument, the respondent submitted that the certificate should be stayed as an abuse of process because:

a. he had been denied an opportunity to know and meet the case against him and this deficiency had not been cured by the presence of the Special Advocates;
b. the Ministers had destroyed evidence which was required by the Special Advocates to determine the reliability of information and because the Ministers rely on unreliable evidence;
c. the Government of Canada chose to use the security certificate procedure with all of its limitations on the rights of the respondent in lieu of an appropriate alternate procedure, namely criminal charges related to his admitted role in procuring a false Canadian passport; and because
d. the Ministers breached their duty of candour to the Court.

[481] The Special Advocates filed a related motion in the closed proceedings seeking to have the Certificate quashed on the ground that the Ministers and the Service breached their duties of candour. Their submissions were, in brief, that the SIR and Public Summary were prepared, and evidence and other information was presented to the Court during the evidentiary portion of this

proceeding in a manner that failed to disclose material exculpatory evidence and other information that was in the possession of the Service and was only disclosed through the *Charkaoui II* disclosure. I have addressed that motion in my private decision and my findings in respect to the specific examples of material non-disclosure alleged have also been taken into consideration in arriving at a decision on the merits of the certificate.

[482] In considering whether proceedings constitute an abuse of the court's process, the test is that set out in *Blencoe v. B.C. Human Rights Commission*, [2000] 2 S.C.R. 307, [2000] S.C.J. No. 43, at paragraph 121. The court must be satisfied that the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted. The proceedings must be unfair to the point that they are contrary to the interests of justice or will undermine the integrity of the judicial process: *Canada v. Tobias*, [1997] 3 S.C.R. 391, [1997] S.C.J. No. 82. Such cases will be extremely rare.

[483] The respondent submits that the test is satisfied by the cumulative effect of the identified concerns even if one or more would be insufficient.

Lack of Disclosure/Inability to Meet the Case

[484] The first of the abuse of process grounds raised by the respondent is associated with his broad *Charter* based challenge to the legislative scheme. As I indicated above, I do not consider it necessary to address that challenge in this case in view of the conclusions I have reached on

the evidence. I think it important to comment, however, on the respondent's argument that he was denied procedural fairness because of the lack of full disclosure. It is my view that the essential elements of the government's allegations against Mr. Almrei were disclosed to him in these and the prior proceedings. Based on his testimony and the submissions made on his behalf, Mr. Almrei was clearly aware of the Ministers' allegations against him. He was not given full disclosure of all of the closed information that supported the Ministers' case, such as human source reports, but that was unavoidable in the circumstances.

[485] In support of this argument, the respondent relies on recent decisions of the European Court of Human Rights and the courts of the United Kingdom: *Secretary of State v. M.B.*, [2007] UKHL 46 ["*SSHD v. MB*"]; *A. and Others v. the United Kingdom*, Application 3455-05, and ECHR Feb.19, 2009; *Secretary of State for the Home Department v. AF and others*, [2009] UKHL 28 ["*SSHD v. AF*"].

[486] In *SSHD v. M.B.,* above, at paragraph 35, Lord Bingham commented on the "grave disadvantages" of the person affected not been aware of the case against him. He noted that the reason is obvious:

> In any ordinary case, the client instructs his advocate what his defence is to the charges made against him, briefs the advocate on the weaknesses and vulnerability of the adverse witnesses, and indicates what evidence is available by way of rebuttal. This is a process which may be impossible to adopt if the control person does not know the allegations made against him and cannot therefore give meaningful instructions, and the special advocate, once he knows what the allegations are, cannot tell the controlled person or seek instructions without permission, which in practice (as I understand) is not given.

[487] As counsel for the respondent fairly acknowledged, the practice in Canada in security certificate cases is not the same as that which applies in control order proceedings in the United Kingdom. In certain of the UK cases, details of the allegations against the affected individual have been wholly or largely withheld because of national security concerns. The public allegations may be so general as to preclude a cogent defence: *SSHD v. AF*, above at paragraph 63 to 65. The individual is not provided with an extensive summary of the closed case, as is the practise here, and the Court lacks the discretion to direct the disclosure of additional information in order to ensure that the subject of the process is reasonably informed of the Minister's case, subject to withdrawal of the information by the Minister. Thus the issue in the UK cases, which has now been resolved, has been whether there is a "irreducible core minimum of information" that must be provided to ensure a fair hearing. The amount of information provided in the Canadian certificate cases is far above that level.

[488] In this case, most of the information relied upon by the Ministers that was not disclosed to the respondent consisted of reports from human sources. To disclose the information would have lead to the identification of the sources. In *SSHD v. AF* at paragraphs 65 and 66, the House of Lords, applying the decision of the Grand Chamber of the European Court of Human Rights in *A. v. the United Kingdom*, above, accepted the principle that it may be acceptable not to disclose the source of evidence so long as counterbalancing procedures ensured that the party was accorded "a substantial measure of procedural justice."

[489] This is essentially the same conclusion as that reached by the Supreme Court of Canada in *Charkaoui 1* in 2007. The individual must be provided with full disclosure or a "substantial

substitute" to full disclosure. In my view, Parliament's effort to craft a suitable alternative was successful in this case for two reasons. The first is that the respondent was provided with a sufficient understanding of the allegations that were made against him in the SIR through the public summary and the further information that was ordered disclosed. The second is that the Special Advocates very effectively performed the roles for which they were given a statutory mandate: to protect the interests of the respondent in the closed proceedings; to question the withholding of information; and to challenge the relevance, reliability and appropriateness of the non-disclosed information and other evidence relied upon by the Ministers.

Destruction of Evidence

[490] This concern is founded upon the fact that during the time of the investigation of the respondent, CSIS's policy was to destroy primary source material. This is the issue that was addressed by the Supreme Court of Canada in *Charkaoui II*. The Supreme Court did not rule on the respondent's abuse of process application in that case, holding that it was for the court of first instance to review the evidentiary record and make the determination.

[491] The respondent's argument on this question is framed primarily in the context of the destruction of electronic surveillance information. As discussed above, this is not a case which turned on the significance of electronic intercepts. Accordingly, the failure to keep original recordings of all of the intercepts conducted did not, in my view, have a material effect on the outcome of the case. In any event, I found that a summary of the intercept reports would be sufficient to provide reasonable disclosure to the respondent.

[492] The destruction of original interview notes by source handlers was also not an issue of major concern in this case because of the contemporaneous reports which they had prepared. I did not consider it necessary to call any of the handlers as witnessed to be examined and cross-examined on the accuracy of those reports. In the circumstances and given the volume of material that the Court and Special Advocates had to review, I doubt that it would have proven effective to proceed in that manner. That is not to say that it could not be important in a certificate case if a significant issue arose as to whether a statement attributed to a source was reported accurately.

Choice of Procedure

[493] The respondent submits that had he been charged under the *Criminal Code* with offences related to the passport he procured for Nabil Almarabh, he would have been entitled to all of the procedural due process rights available in the criminal justice system. The decision to proceed under the security certificate procedure with its inherent limitations has deprived him of the full enjoyment of those rights.

[494] The Court may have encouraged this argument by questions posed to the government witnesses during the detention review proceedings. At first impression, it had occurred to me that Almrei could have been charged under the Code and, if convicted, steps could have been taken to reopen the refugee determination and remove him from Canada. I asked the Service and CBSA witnesses why that was not done and they were unable to answer.

[495] The security certificate procedure, although intended by Parliament to be more expedient, results in a label being attached to the named person which may complicate removal procedures. In Almrei's case, the immigration authorities contributed to that label by informing the Syrian Embassy in Ottawa that he was a terrorist suspect when they requested a travel document for him after the first Certificate was upheld. That had the effect of alerting the Syrians to Mr. Almrei's alleged pedigree and association with Al Qaeda. Syria is one of the Middle Eastern countries that Al Qaeda theorists, such as the Syrian Abu Musab Al Suri, consider corrupt and apostate.

[496] What the government knew and could prove in the fall of 2001 are, of course, two different things. The information about Almarabh and the passport was intelligence that could not have been introduced as evidence in a criminal proceeding without compromising the sources. Almarabh was a material witness in the hands of the FBI and unlikely to be made available to testify.

[497] In any event, the choice of procedure against a suspect, whether criminal or administrative, is entirely a matter for the Executive. There is no right to be charged with a criminal offence when Parliament has provided an alternative procedure to achieve the objective of protecting national security and the safety of Canadians. It is not an abuse of the Court's process to make use of that procedure.

Breach of the Duty of Candour

[498] The Supreme Court has emphasized that a party before the Court on an *ex parte* basis is under a duty of utmost good faith: *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3, [2002] S.C.J. No. 73, at para. 27. This is particularly true in the area of national security law characterized by *in camera* hearings and *ex parte* representations made by the government. The evidence presented must be complete and thorough and no relevant information adverse to the interest of that party may be withheld: *Ruby*, above, at para. 47.

[499] The application of this duty in security certificate proceedings prior to Bill C-3 was recognized by the Federal Court of Appeal in *Charkaoui v. Minister of Citizenship and Immigration et al*., 2006 FCA 206, [2006] F.C.J. No. 868, at para. 18. In my view, the enactment of Bill C-3 has not altered the duty owed to the Court by the Service and the Ministers. Proceedings continued to be conducted in closed sessions and they remain *ex parte* in the sense that the respondent and his counsel are not present. The presence of the Special Advocates and their ability to receive the same information that is now disclosed to the Court, pursuant to *Charkaoui II,* does not alter that fact.

[500] The duties of utmost good faith and candour imply that the party relying upon the presentation of *ex parte* evidence will conduct a thorough review of the information in its possession and make representations based on all of the information including that which is unfavourable to their case. That was not done in this instance. The 2008 SIR was assembled with information that could only be construed as unfavourable to Almrei without any serious attempt to

include information to the contrary, or to update their assessment. As Mr. Young observed, in an unguarded moment, they thought that they had done their job in 2001 and there was no need to continue the investigation.

[501] The Ministers submit that the failure to consider information that casts the Service's opinion in a different light should not undermine the legitimacy or fairness of the proceeding as long as that information has been made available in the course of the reasonableness hearing. Indeed, the Ministers assert in their closing reply submissions, at paragraph 15, that there is no requirement that the SIR advance a case against a finding of inadmissibility. The SIR, in other words, is merely a document crafted by CSIS to plead their case and does not need to present the contradictory information within their possession. In my view, that is clearly incompatible with the duties of good faith and candour which the Court expects from the Service and the Ministers.

[502] In this case, information that was inconsistent with that presented to the Court through the SIR only came to light when it was ordered produced in conformity with the Service's *Charkaoui II* obligations. This included surveillance and intercept reports that contradicted human source reports on which the Service and the Ministers relied. Information that was inconsistent with the content of the Source Exhibit was only disclosed when the Court began to order the production of information from the human source management files. The *Charkaoui II* disclosure obligation does not absolve the Service from the responsibility to fairly consider and present the information in their possession when they prepare the SIR. Nor does it absolve the Ministers from the responsibility to ensure that the information and evidence filed in support of the certificate is complete, thorough and fairly presented.

[503] I find, therefore, that the Service and the Ministers were in breach of their duty of candour to the Court. As for a remedy, a determination of the reasonableness of the certificate based on the Court's assessment of all of the information and evidence presented in this case is the most appropriate course of action at this stage of the proceedings.

CONCLUSION

[504] Having considered all of the information and other evidence presented to the Court, I am satisfied that Hassan Almrei has not engaged in terrorism and is not and was not a member of an organization that there are reasonable grounds to believe has, does or will engage in terrorism. I find that there are no reasonable grounds to believe that Hassan Almrei is to-day, a danger to the security of Canada. Thus, I find that none of the grounds of inadmissibility in subsection 34(1) of the Act have been made out and, accordingly, I find that the certificate is not reasonable and must be quashed.

[505] In arriving at this conclusion, I am taking into consideration that Hassan Almrei lied and engaged in criminal activities prior to and following his entry to Canada. He maintained contacts with other Afghan Arab veterans, associated with persons who were believed to be Islamic extremists and made contact with others who were involved in human smuggling and the false document trade. He was prepared to assist others in obtaining those services and himself procured a false passport and other travel documents. As I said at the outset of these reasons, I would have had no difficulty upholding the certificate in 2001 on the grounds that he constituted

a danger to the security of Canada and that there were reasonable grounds to believe then that he was a member of a terrorist organization, on the information available to the Court at that time. Almrei did not lead evidence to contest those findings and the information presented *in camera* was not challenged as it has been in these proceedings.

[506] The Hassan Almrei of 2001 is not the same person that I heard and observed in the courtroom. As he acknowledged in his testimony, he has been changed by the experience, by the people who have befriended and supported him in the years in which he was in custody and through the reading he has done on a broad range of subjects. One constant in his life over the course of the past eight years has been his religious devotion. I do not believe that he will now proceed to violate the principles of his faith.

[507] I am also persuaded by the evidence that if he is the person that the Ministers believe him to be, it is unlikely that after such a prolonged period of detention that he could re-enter the life that he had and reactivate his contacts in the false document trade. Given the notoriety that he has acquired, that would be foolhardy for him and for anyone inclined to do business with him.

[508] I note that CSIS, in their most recent assessment of Mr. Almrei, considers that the risk that he poses a threat to the security of Canada, if released without conditions, was reduced as a result of a number of factors. They had no new information to indicate that he was engaged in threat-related activities, his original network of contacts has been disrupted and his high public profile and lack of anonymity would render him less effective.

[509] The Service's assessment in the February 2008 SIR was prepared, in my view, without sufficient consideration of all of the information within its possession and without considering whether the state of knowledge about the risks to national security posed by Islamist extremists had evolved since Almrei was detained in 2001. That task fell on the Court with the assistance of counsel for both parties and the Special Advocates.

Certified Questions

[510] In accordance with section 79 of *IRPA,* no appeal may be made to the Federal Court of Appeal from this decision unless this Court certifies that a serious question of general importance is involved in the determination which has been made in the case and states the question for the purposes of appeal.

[511] The Ministers have proposed a number of questions for consideration. The respondent is opposed to the certification of any question on the ground that should he have succeeded on the factual merits of the case against him, it would be unfair to subject him to a possibly long drawn-out appellate process after he has spent over seven years in custody.

[512] In light of the findings that I have made and the length of these reasons, I think it appropriate to allow the parties some time to consider whether they wish to re-submit or withdraw their proposed questions or submit new questions. Accordingly, a formal order will not issue immediately and I will make myself available to discuss the matter in conference with counsel at a convenient date and time.

[513] I wish to express my appreciation to all of the counsel who took part in these proceedings, including those who moved on to other matters along the way, for their diligence, thoughtfulness, courtesy and good humour which made my task much easier.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	DES-3-08
STYLE OF CAUSE:	**IN THE MATTER OF a certificate signed pursuant to section 77(1) of the *Immigration and Refugee Protection Act* (*IRPA*);** **AND IN THE MATTER OF the referral of a certificate to the Federal Court pursuant to section 77(1) of the *IRPA*;** **AND IN THE MATTER OF HASSAN ALMREI**
PLACE OF HEARING:	Ottawa and Toronto, Ontario
DATES OF PUBLIC HEARINGS:	April 27, 28, 29 and 30, 2009 May 5, 6, 7, 8, 11, 12, 13, 14, 19, 20, 21, 22, 25, 26 and 27, 2009 July 2, 3 and 6, 2009
DATES OF *IN CAMERA* HEARINGS:	March 18, 2009 April 1, 2, 14, 15, 16, 17, 2009 June 10, 22, 23, 24, 25 and 26, 2009 July 27 and 28, 2009 September 18, 25 and 30, 2009
REASONS FOR JUDGMENT:	MOSLEY J.
DATED:	December 14, 2009

APPEARANCES:

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