Federal Court		Cour fédérale

Date: 20100921

Docket: T-983-09

Citation: 2010 FC 942

Ottawa, Ontario, September 21, 2010

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

MICHAEL DUDAS

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a Canadian citizen currently incarcerated in the United States. This is an application for judicial review of a decision of the Minister of Public Safety and Emergency Preparedness (the respondent Minister), dated May 14, 2009, denying the application to transfer the applicant to Canada pursuant to paragraph 10(2)(a) of the *International Transfer of Offenders Act*, S.C. 2004, c. 21 (the ITOA) and under the terms of the Treaty Agreements between the two countries, on the grounds that, in the Minister's opinion, the applicant will after the transfer, commit

terrorism or an organized criminal offence within the meaning of section 2 of the *Criminal Code*, R.S. 1985, c. C-46 (the Criminal Code).

[2] The applicant requests:

1. Relief in the nature of *certiorari* to quash the decision of the respondent Minister made the 14th day of May, 2009, denying the applicant's application for transfer of his sentence to Canada under the provisions of the ITOA.

2. A declaration that the applicant, by virtue of his Canadian citizenship and subsection 6(1) of the *Canadian Charter of Rights and Freedoms*, has a constitutional right to enter Canada and that the respondent Minister has no lawful jurisdiction to deny, refuse or postpone such entry and return to Canada, once the United States of America, in the circumstances, has granted him permission to go home to serve the balance of his sentence under the ITOA.

3. A declaration that the respondent Minister is obliged and is under a legal duty to approve the applicant's application for transfer pursuant to the ITOA and section 6 of the *Canadian Charter of Rights and Freedoms*, subject only to the applicant being a Canadian citizen and that any other limitations in the ITOA on the section 6 *Charter* mobility rights are not reasonable within the meaning of section 1 of the *Charter*.

4. A declaration that the provisions of the ITOA, namely, section 10 and in particular, 10(2)(a), is unconstitutional as being inconsistent with subsection 6(1) of the *Canadian Charter of Rights and Freedoms* and, as such, are of no force or effect by virtue of section 52 of the *Charter* and are not saved by section 1 of the *Charter*.

5. A declaration that the constitutional rights of the applicant, pursuant to section 6 of the *Canadian Charter of Rights and Freedoms*, have been violated by the respondent Minister and therefore that the applicant is entitled to an appropriate and just remedy pursuant to subsection 24(1) of the *Charter*, including an order for his immediate transfer back to Canada pursuant to the terms of the ITOA and the applicable Treaty or Convention between Canada and the United States of America.

6. An order for the reimbursement to the applicant of all costs and expenses and legal fees incurred in pursuing his constitutional rights.

Facts

[3] In September 2008, the applicant pled guilty to one count of conspiracy to import marijuana in the United States District Court for the Western District of Washington. He was sentenced to 60 months imprisonment plus four years supervised release.

[4] In an application dated September 25, 2008, the applicant requested, pursuant to the provisions of the ITOA, that he be transferred to Canada in order to serve the remainder of the sentence of imprisonment that had been imposed on him in the United States of America. The respondent Minister is vested, under the ITOA, with the authority to grant or deny such requests. Along with the information in the application, the applicant submitted letters in support. Supplementary material, in the form of an assessment prepared by the Correctional Service of

Canada (CSC), a U.S. certified case summary and a comprehensive community assessment prepared by CSC was also presented to the Minister for his consideration.

[5] On February 23, 2009, the application for transfer was approved by the United States.

[6] On May 14, 2009, the respondent Minister denied the transfer based on paragraph 10(2)(a) of the ITOA. The relevant part of the decision reads:

> The purpose of *the International Transfer of Offenders Act* is to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community. In each application for transfer, it is necessary to examine the application on its merits, taking into account the unique factors and circumstances in the context of the statutory framework that applies.
>
> There is evidence to suggest that Mr. Dudas has links to organized crime where he is involved in the trafficking of marijuana from Canada to the United States.
>
> Drug trafficking is deemed to have a significant impact on the community given the possibility of an extensive victim pool of both users and non-drug users. In this situation Mr. Dudas organized several helicopter flights into the United States as a method of importing marijuana. In addition, Mr. Dudas is identified as having ties to an organized crime group.
>
> These descriptions indicate deliberate planning of drug trafficking, actions and decisions that show that the applicant has already taken several steps down the road toward involvement in a criminal organization offence. Given the nature of the applicant's acts, I believe that he may, after the transfer, commit a criminal organization offence.

Issues

[7] The issues are as follows:

1. What is the appropriate standard of review?

2. Are the provisions of the ITOA which give the respondent Minister the jurisdiction to deny a Canadian citizen entry into Canada unconstitutional and as such, of no force or effect?

3. Did the respondent Minister act in a wholly unreasonable manner in exercising his discretion under the ITOA or come to an unreasonable conclusion?

Applicant's Written Submissions

Constitutional Question

[8] The individual elements of the Constitution must be interpreted by reference to the structure of the Constitution as a whole. The isolation of section 6 from the notwithstanding clause in section 33 demonstrates that any breach of section 6 must be subject to a very high degree of judicial scrutiny under section 1. Reasonable government interference with individual rights in one context may not be reasonable in the context of section 6.

[9] This point is strengthened by the limiting of the rights in section 6 to citizens. Canadian citizens have a special status conferred on them by sections 3, 6 and 23 of the *Charter*; a status that is not enjoyed by foreigners or permanent residents. There is a clear distinction between citizens and

non-citizens and citizenship is held only by those specified in the *Citizenship Act*, R.S. 1985, c. C-29. Once citizenship exists by birth, it cannot be lost or taken away on the basis of any personal characteristic such as bad conduct. If Canada revoked an individual's citizenship leaving him stateless, this would amount to a serious breach of international law, even if the individual was a criminal.

[10] As stated in *Van Vlymen v. Canada (Solicitor General)*, 2004 FC 1054, [2005] 1 F.C.R. 617, the section 6 rights of a Canadian citizen incarcerated in the U.S. remain unenforceable until such time as the U.S. approves his transfer, at which point they become enforceable and the Minister is required to recognize them. The decisions of this Court to the contrary in *Kozarov v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 866, [2008] 2 F.C.R. 377 and *Getkate v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 965, [2009] 3 F.C.R. 26, are wrongly decided because they erred by distinguishing extradition cases as involving the state in an active way from international transfers where the state is being passive.

[11] In view of the above, the applicant submits that as a Canadian citizen, he had a constitutional right to enter Canada once the United States of America approved his leave and he should have been given the opportunity to return to Canada at the next available reasonable time. The provisions of the ITOA (contained in sections 8 and 10) which purport to allow the Minister to prevent him from doing so violate the applicant's constitutional rights under section 6 of the *Charter* and are not saved by section 1. Since paragraph 10(2)(a) of the ITOA was used to prevent

the applicant from entering Canada, this particular section is impugned as unconstitutional in this application.

Minister's Decision

[12] In the alternative, the applicant submits that even if the applicant's section 6 *Charter* rights are not found to be engaged or if paragraph 10(2)(a) of the ITOA is found to be a reasonable limit, the Minister erred in fact and law in concluding that the applicant would, after the transfer, commit a criminal organization offence.

[13] Firstly, the Minister applied the wrong legal test for which the standard of review is correctness. Paragraph 10(2)(a) requires the Minister to be of the opinion that the applicant will commit such offences, not simply may, as the Minister stated in his decision.

[14] Secondly, neither the U.S. nor Canadian investigations into his background and the circumstances of his offending have specifically identified the applicant as associated or involved with any specific criminal organization. In fact, the evidence points to the contrary and to conclude otherwise was unreasonable. Certainly, the evidence does not support that the applicant will commit a criminal organization offence. The evidence provided the following things:

- The applicant had no previous criminal record;

- Upon being arrested in Canada, he waived extradition and turned himself over to U.S. authorities and pled guilty to the offence;

- The CSC only had a belief that he had links to organized crime;

- CSC concluded that the applicant should experience little difficulty securing employment on release;

- U.S. investigators determined that he was not affiliated with a drug cartel or gang;

- The district attorney for the Western District of Washington expressed the opinion that he did not view the applicant as a significant future violator, but rather a person who "regrets ever having gotten involved in this kind of thing in the first place" and one who "would like to turn the page and get on with the rest of his life with his wife, child, father and remaining family".

Respondent's Written Submissions

Constitutional Question

[15] The applicant's constitutional challenge has been previously addressed and answered by this Court in *Kozarov* above. In that decision, the Court determined that sections 8 and 10 of the ITOA do not infringe upon the rights contained in section 6 of the *Charter*. Section 6 rights are not absolute.

[16] The context in which the applicant has placed himself affects his *Charter* rights and his ability to exercise them. In that regard, although he is a Canadian citizen, he is also an offender and is in the custody of a foreign state. In those circumstances, there has been no infringement of section

6 at the hands of the Crown. The applicant's section 6 rights have already been qualified by his own actions in a foreign state and as a result, full recognition of section 6 rights cannot be had. In *Getkate* above, this Court has had a further opportunity to consider this same constitutional argument and concurred with the result in *Kozarov* above.

[17] A Canadian citizen convicted, sentenced and incarcerate abroad, despite his *Charter* rights has no ability to exercise the right of re-entry into Canada without access to the international transfer of an offender's regime. One privilege of the regime is to serve the sentence in Canada. However, access to that privilege is not unrestricted. The sending state and Canada have agreed pursuant to an international treaty, to terms that establish parameters of any transfer. Indeed, the power to refuse a transfer initially resides in the hands of the sending country whether or not a treaty exists. The power is then subject to the terms of any treaty and only following that to the provisions of the ITOA and the discretion of the Minister. In that context, the approval of the sending state is not unconditional. It expects Canada to fulfill its obligations pursuant to the agreement and satisfy itself that the objectives of the transfer system can be achieved through the transfer. The system is designed in that fashion because the foreign state is not in a position to conduct community assessments and analyze whether the Canadian correctional system can effectively rehabilitate the offender.

[18] In the alternative, if the Court found an infringement of section 6 of the *Charter*, it would determine the extent of the infringement and then consider whether the interference was justifiable under section 1. In that regard, the respondent points out that the main thrust of section 6 is to

prevent banishment or exile (see *United States of America v. Cotroni*, [1989] 1 S.C.R. 1469). The legislative scheme governing the international transfer of offenders does not strike at the core of those rights. At most, it imposes a temporary restriction. The infringement in this context is at the outer edge of the values protected by section 6.

Minister's Decision

[19] The Minister considered the factors in section 10 as required and also took into account the material submitted by the applicant, but came to the conclusion that approval of the transfer would not assist in achieving the objectives of the ITOA. Irrespective of whether the circumstances of this case fall neatly within the factor specified in paragraph 10(2)(a) of the ITOA, the fact is that the Minister's discretion is not circumscribed by any of the factors contained within section 10. The Minister is perfectly entitled to base his decision to refuse or approve a transfer request on any other relevant consideration in the context.

[20] In this case, the Minister took advice and chose to refuse the request on the basis that the applicant:

- Was responsible for orchestrating a complex criminal activity that demonstrated a significant degree of sophistication and planning, including the purchase of a helicopter and the recruitment of several individuals to facilitate the transport;

- Was identified by several of his associates, including the subject of the community assessment prepared by CSC as the leader of the group; and

- Had committed a serious offence which, in the Minister's view, has a significant detrimental effect on society.

[21] On those facts, it cannot be said that the Minister improperly exercised his discretion or acted in a wholly unreasonable manner. There was a factual foundation for the decision and the Minister was entitled to act as he did. As a result, this Court's intervention is neither warranted nor necessary.

Analysis and Decision

[22] **Issue 1**

What is the appropriate standard of review?

Discretionary decisions of a Minister are to be afforded the highest degree of deference. It was held in *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2, 44 N.R. 354 by Mr. Justice McIntyre at pages 7 and 8:

> Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

[23] The Supreme Court has done much to revise the approach to standard of review since then and in particular, has eliminated the standard of patent unreasonableness in favour a simpler approach with just two standards, correctness and reasonableness (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190). Even so, it has been recently held that discretionary decisions such as in the present case, are to be afforded the maximum degree of deference (see *Kozarov* above at paragraph 14 and *Getkate* above at paragraph 11). In following those decisions, the respondent Minister's ultimate decision is entitled to significant deference and will be reviewed on the reasonableness standard.

[24] With respect to the constitutional question raised by the applicant, the applicable standard of review is correctness.

[25] **Issue 2**

Are the provisions of the ITOA which give the respondent Minister the jurisdiction to deny a Canadian citizen entry into Canada unconstitutional, and as such, of no force or effect?

While the applicant raises an interesting argument with respect to the application and scope of his section 6 *Charter* rights, I must be cognizant of the fact that this is not a new argument raised before this Court. In fact, this is at least the fourth time that this precise argument has been raised, all on very similar circumstances. Although there has been a degree of inconsistency in the answers this Court has given, the more recent and more numerous decisions, most notably *Kozarov* and *Getkate* above, have answered the applicant's constitutional question in the negative. The principles of judicial comity require me to follow those more recent precedents unless they are shown to be manifestly wrong or made without regard to a statute or an authority that ought to have been

followed (see *Glaxo Group Ltd. v. Canada (Minister of National Health and Welfare)* (1995), 64 C.P.R. (3d) 65, 103 F.T.R. 1 (T.D.) per Richard J).

[26] The applicant has not convinced me that the decisions in *Kozarov* and *Getkate* above, are manifestly wrong, nor has the applicant provided me with convincing reasons not to follow them. I do not read *Kozarov* above, as being based on the distinction between the active state in extradition cases versus the passive state in transfers, which Mr. Justice Harrington referred to at paragraph 30. Later in *Getkate* above, Mr. Justice Kelen analyzed the constitutional question thoroughly and came to the same conclusion as Mr. Justice Harrington without any reliance on that distinction.

[27] In *Getkate* above, Mr. Justice Kelen engaged in a thorough analysis of the constitutional argument raised by the applicant and canvassed the decisions of Mr. Justice Russell in *Van Vlymen* above, and Mr. Justice Harrington in *Kozarov* above. Ultimately, Mr. Justice Kelen concluded:

> 27 I agree with Justice Harrington's conclusion that in the context of a transfer under the Act, an applicant's Charter mobility rights under section 6 are not engaged and, if they were, the provisions contained in the Act are a reasonable limitation on those rights given that the applicant has already had his mobility restricted due to his own illegal activity.
>
> (Emphasis added)

[28] Mr. Justice Kelen thus indicated two possible, constitutionally valid explanations for the impugned scheme within the ITOA. First, he held that those provisions do not infringe citizens' section 6 rights. Secondly, he found that even if they did, the scheme within the ITOA is saved by

section 1. While I am more inclined to believe that the latter is the correct explanation, I am satisfied that the impugned provisions are constitutional.

[29] There is further support for this position in the applicant's own submissions, as the applicant now does not contest the *vires* of section 8 of the ITOA. In oral argument before me, the applicant conceded the *vires* of the provision, yet subsection 8(1) is precisely the provision which expressly gives Canada the right to refuse transferee citizens whose transfer back to Canada has been approved by the sending state.

[30] **Issue 3**

Did the respondent Minister act in a wholly unreasonable manner in exercising his discretion under the ITOA or come to an unreasonable conclusion?

I am mindful that transfers under the ITOA are a discretionary privilege for offenders incarcerated abroad. There is no right to a transfer under the ITOA at any time. The Minister may lawfully come to his or her own conclusion. The fact that a Minister has come to a given conclusion before, does not prevent that same Minister or a different Minister from lawfully changing his or her mind if faced with the same set of facts at a later date.

[31] The applicant challenges the Minister's statements to the effect that the applicant has links to organized crime as a factual finding made without regard to the evidence and says that in fact the evidence points to the contrary.

[32] In this regard, the applicant does not take issue with the facts in the U.S. case summary indicating that the applicant had purchased a helicopter with cash over a year before the date that his accomplices were arrested. The pilot of the helicopter told U.S. drug enforcement agents that he was paid by the applicant a fee of $150 per pound of marijuana transported and that he had previously flown to the secluded location three times to deliver drugs. Another of the accomplices provided a statement that he was paid a flat fee by the applicant for his assistance on the ground during such operations.

[33] In the memorandum before the Minister from the CSC, it was stated that:

> … given the nature of the offence it is the belief of CSC's Regional Security Intelligence that Mr. Dudas has links to organized crime where he is involved in the trafficking of marijuana from Canada to the United States.

[34] In an interview conducted for the community assessment, a friend of the applicant thought identifying him as the leader of the operation was an overstatement and thought of it more as friends asking the help of other friends. Many letters were also before the Minister from individuals accepting the applicant's mistake and conveying their belief that he would not get involved in that behaviour again.

[35] Because of my final conclusion, I need not make a decision on this issue.

[36] Next, the applicant challenges the last sentence of the Minister's decision:

> Given the nature of the applicant's acts, I believe that he may, after the transfer, commit a criminal organization offence.

The applicant points out that the Minister used the word may instead of will as is used in the relevant legislated factor in paragraph 10(2)(a) of the ITOA.

[37] Again, because of my final conclusion, I need not make a decision on this issue.

[38] It may at times be quite desirable for duly elected members of the government to have the discretion to make such decisions as they see fit. It may also be desirable that such discretionary authority not be confined and thus allow decision-makers to take into account any and all considerations they deem relevant, both explicit and tacit. Indeed, such freedom may best facilitate honest and effective governance. The courts, however, cannot condone nor accept completely unstructured discretion. In circumstances where a decision has such a dramatic effect on the citizen in question, the law requires a complete explanation, however short, for the decision. The Supreme Court of Canada has long held that no public official is above the law (see *Roncarelli v. Duplessis*, [1959] S.C.R. 121).

[39] Recently in *Grant v. Minister of Public Safety and Emergency Preparedness* (March 4, 2010), T-1414-09, Mr. Justice Barnes explicitly dealt with the requirement on the Minister to provide a complete decision.

> 1. Ms. Lawrence made the point, and I accept it, that the Minister's decision under s. 10 of the *International Transfer of Offenders Act*, S.C. 2004, c. 21 (Act) attracts considerable deference on judicial review. At the same time the Minister has a statutory duty under ss. 11(2) to provide reasons for his refusal to consent to a transfer. Given the discretionary nature of the Minister's authority and the importance of such a decision to an offender incarcerated in a foreign jail, the Minister's reasons must be complete, intelligible and sufficient to allow the offender to know that all of the factors set out in s. 10 of the Act were fairly considered.
>
> 2. The Minister is under no duty to mention every piece of evidence considered. But in a case such as this one where the Minister decides not to follow the advice received, he has a duty to explain why and to clearly identify where his assessment differs from that of his advisors. I accept Ms. Lawrence's argument that the Minister is under no obligation to adopt the advice of his officials or to weigh the available evidence in any particular way. But the stronger the case in favour of relief the more onerous the responsibility to justify a contrary view. A decision which fails to meet this minimal standard is unreasonable and must be set aside.

[40] In the case at bar, the Minister's decision seems to rely solely on his statements in the final paragraph which correspond to the factor listed at paragraph 10(2)(a) of the ITOA:

> These descriptions indicate deliberate planning of drug trafficking, actions and decisions that show that the applicant has already taken several steps down the road towards involvement in a criminal organization offence. Given the nature of the applicant's acts, I believe that he may, after the transfer, commit a criminal organization offence.

[41] No other explanation is given for the Minister's refusal. The reader is reasonably lead to believe that the factor in paragraph 10(2)(a) was the only reason for the refusal. If this was indeed the case, the Minister has effectively turned that factor into the test he set out for himself and as discussed above, would have erred in law by applying the test incorrectly.

[42] The respondent, however, insists in his written argument and in oral submissions, that the Minister "took into account all relevant considerations and came to the conclusion that approval of the transfer request would not assist in achieving the objectives of the international transfer of offenders system", yet no such statement appears in the Minister's decision.

[43] If this was the case, it would have been incumbent on the Minister to state that this was the ultimate test he set out for himself. He would also need to have expressed which purpose or purposes were most crucially relied on in coming to his ultimate conclusion.

[44] By reason of these deficiencies in the Minister's decision, I would allow the judicial review. The Minister's decision is set aside and the matter is referred back to the Minister for redetermination within 45 days of the date of this decision.

[45] The applicant shall have his costs of the application.

JUDGMENT

[46] **IT IS ORDERED that:**

1. The application for judicial review is allowed, the decision of the Minister is set aside and the matter is referred back to the Minister for redetermination within 45 days of the date of this order.

2. The applicant shall have his costs of the application.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

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

6.(1) Every citizen of Canada has the right to enter, remain in and leave Canada.	6.(1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

International Transfer of Offenders Act, S.C. 2004, c. 21

3. The purpose of this Act is to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.	3. La présente loi a pour objet de faciliter l'administration de la justice et la réadaptation et la réinsertion sociale des délinquants en permettant à ceux-ci de purger leur peine dans le pays dont ils sont citoyens ou nationaux.
. . .	. . .
8.(1) The consent of the three parties to a transfer — the offender, the foreign entity and Canada — is required.	8.(1) Le transfèrement nécessite le consentement des trois parties en cause, soit le délinquant, l'entité étrangère et le Canada.
(2) A foreign offender — and, subject to the laws of the foreign entity, a Canadian offender — may withdraw their consent at any time before the transfer takes place.	(2) Le délinquant étranger et, sous réserve du droit de l'entité étrangère, le délinquant canadien peuvent retirer leur consentement tant que le transfèrement n'a pas eu lieu.
(3) The Minister or the relevant provincial authority, as the case may be, shall inform a foreign offender, and the Minister shall	(3) Le ministre ou l'autorité provinciale compétente, selon le cas, informe le délinquant étranger de la teneur de tout

take all reasonable steps to inform a Canadian offender, of the substance of any treaty — or administrative arrangement entered into under section 31 or 32 — that applies to them.

traité applicable ou de toute entente administrative applicable conclue en vertu des articles 31 ou 32; le ministre prend les mesures voulues pour en informer le délinquant canadien.

(4) The Minister shall, in writing, inform a Canadian offender as to how their foreign sentence is to be served in Canada and shall deliver to a foreign offender the information provided to the Minister by the foreign entity as to how their Canadian sentence is to be served.

(4) Le ministre informe le délinquant canadien par écrit des conditions d'exécution de sa peine au Canada et transmet au délinquant étranger les renseignements que lui a remis l'entité étrangère sur les conditions d'exécution de sa peine.

(5) In respect of the following persons, consent is given by whoever is authorized to consent in accordance with the laws of the province where the person is detained, is released on conditions or is to be transferred:

(5) À l'égard de telle des personnes ci-après, le consentement est donné par quiconque y est autorisé en vertu du droit de la province où la personne est détenue, est libérée sous condition ou doit être transférée :

(a) a child or young person within the meaning of the Youth Criminal Justice Act;

a) l'enfant ou l'adolescent au sens de la Loi sur le système de justice pénale pour les adolescents;

(b) a person who is not able to consent and in respect of whom a verdict of not criminally responsible on account of mental disorder or of unfit to stand trial has been rendered; and

b) la personne déclarée non responsable criminellement pour cause de troubles mentaux ou inapte à subir son procès, qui est incapable de donner son consentement;

(c) an offender who is not able to consent.

c) le délinquant incapable de donner son consentement.

. . .	. . .
10.(1) In determining whether to consent to the transfer of a Canadian offender, the Minister shall consider the following factors:	10.(1) Le ministre tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien :
(a) whether the offender's return to Canada would constitute a threat to the security of Canada;	a) le retour au Canada du délinquant peut constituer une menace pour la sécurité du Canada;
(b) whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;	b) le délinquant a quitté le Canada ou est demeuré à l'étranger avec l'intention de ne plus considérer le Canada comme le lieu de sa résidence permanente;
(c) whether the offender has social or family ties in Canada; and	c) le délinquant a des liens sociaux ou familiaux au Canada;
(d) whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights.	d) l'entité étrangère ou son système carcéral constitue une menace sérieuse pour la sécurité du délinquant ou ses droits de la personne.
(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister shall consider the following factors:	(2) Il tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien ou étranger :
(a) whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence within the meaning of section 2 of the Criminal Code; and	a) à son avis, le délinquant commettra, après son transfèrement, une infraction de terrorisme ou une infraction d'organisation criminelle, au sens de l'article 2 du Code criminel;

(b) whether the offender was previously transferred under this Act or the Transfer of Offenders Act, chapter T-15 of the Revised Statutes of Canada, 1985.

b) le délinquant a déjà été transféré en vertu de la présente loi ou de la Loi sur le transfèrement des délinquants, chapitre T-15 des Lois révisées du Canada (1985).

(3) In determining whether to consent to the transfer of a Canadian offender who is a young person within the meaning of the Youth Criminal Justice Act, the Minister and the relevant provincial authority shall consider the best interests of the young person.

(3) Dans le cas du délinquant canadien qui est un adolescent au sens de la Loi sur le système de justice pénale pour les adolescents, le ministre et l'autorité provinciale compétente tiennent compte de son intérêt pour décider s'ils consentent au transfèrement.

(4) In determining whether to consent to the transfer of a Canadian offender who is a child within the meaning of the Youth Criminal Justice Act, the primary consideration of the Minister and the relevant provincial authority is to be the best interests of the child.

(4) Dans le cas du délinquant canadien qui est un enfant au sens de la Loi sur le système de justice pénale pour les adolescents, son intérêt est la considération primordiale sur laquelle le ministre et l'autorité provinciale compétente se fondent pour décider s'ils consentent au transfèrement.

FEDERAL COURT

SOLICITORS OF RECORD

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