Federal Court		Cour fédérale

Date: 20100921

Docket: T-984-09

Citation: 2010 FC 943

Ottawa, Ontario, September 21, 2010

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

BRENT JAMES CURTIS

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 December 2007, the applicant pled guilty in United States District Court to one count of conspiring to possess with intent to distribute cocaine. He was sentenced to 57 months imprisonment plus three years supervised release.

[4] In an application dated March 24, 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 December 10, 2008, 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 decision reads in part:

> 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.
> 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 light of the volume of drugs involved and his association with accomplices, the offence severity is assessed as potentially having a significant impact on society. A review of the file information suggests that the offence may have been committed for financial gain and that Mr. Curtis' role was that of the 'money man'.
>
> The U.S. case summary also indicates that one of his accomplices labeled him as a "transporter". 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.

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.

[12] None of the factors listed in subsections 10(1) and (2) of the ITOA are factors which, if relied upon to deny a Canadian citizen a right of return under section 6 of the *Charter*, are reasonable limits within the meaning of section 1. They are all inconsistent with the ITOA and the spirit and purposes of international prisoner transfer treaties and conventions. Potential administrative or economic reasons for denying a transfer cannot override a *Charter* right. Further, the factors in section 10 of the ITOA are so broad and undefined they give the Minister too broad a discretion to refuse a transfer.

[13] Moreover, the security of Canada and its citizens is better protected by approving all transfers, because the person becomes a known offender in the Canadian criminal justice system and is subject to classification, placement, assessment and ultimately parole supervision. In most cases where transfers are refused following the completion of his sentence, the individual will be immediately deported to Canada and allowed to enter with no such constraints. If such a prisoner were to re-offend in Canada, he or she would be considered a first-time offender under the *Corrections and Conditional Release Act,* S.C. 1992, c. 20.

Minister's Decision

[14] 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.

[15] 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.

[16] Secondly, neither 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;

- 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;

Respondent's Written Submissions

Constitutional Question

[17] 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.

[18] 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.

[19] Although the applicant challenges apparently all of the factors listed in section 10 of the ITOA, this Court should refrain from ruling on all but paragraph 10(2)(a), because that is the only factor on which the decision was made, making it the only one with a factual foundation for judicial analysis.

[20] The applicant's position can be distilled to the following proposition. A Canadian citizen has a right to re-enter Canada and refusing the transfer would effectively strip him of a right of citizenship. The respondent disagrees. A Canadian citizen convicted, sentenced and incarcerated abroad, despite his *Charter* rights, has no ability to exercise the right of re-entry into Canada without access to the international transfer of 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.

[21] The Court in *Van Vlymen* above, decided the matter largely on the basis of the conduct of the respondent in that case delaying a decision on the transfer for over ten years. While the Court found that the citizen offender's section 6 *Charter* rights existed and had to be taken into account at the time consent is addressed by the Minister, it specifically refrained from conducting a section 1 analysis. Since the Court did not complete the analysis, the subsequent rulings in *Kozarov* and *Getkate* above, did not overrule *Van Vlymen* above.

[22] 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.

[23] In regards to a section 1 analysis, the respondent first submits that the objectives of the ITOA are pressing and substantial and those objectives are reflected in the factors specified within section 10. The purpose of the treaties and the legislation is humanitarianism and to contribute to the administration of justice and the rehabilitiation and reintegration of offenders. The factor set forth in paragraph 10(2)(a) directly relates to the overall objective because the objectives of protecting society and rehabilitating the offender are not served where, in the Minister's view, the applicant will be able to continue similar organized criminal activity. In regards to minimal impairment, the respondent submits that a much more exhaustive list of factors would leave the respondent with no discretion and would be too restrictive. In regards to proportionality, there are simply no deleterious effects associated with the factors specified under the ITOA.

Minister's Decision

[24] The Minister considered the factors under 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 objective. 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.

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

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

- Played a role in that offence that could be characterized as more than a minor player contrary to the applicant's suggestions.

[26] 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

[27] **Issue 1**

What is the appropriate standard of review?

As I have stated in *Dudas v. Minister of Public Safety and Emergency Preparedness*, 2010 FC 942, 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.

[28] 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.

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

[30] **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?

Again, as I have stated in *Dudas* above, 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).

[31] 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.

[32] 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)

[33] 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.

[34] 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.

[35] **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?

The respondent Minister, in making his discretionary decision, appeared to rely at least in part on the factor listed at paragraph 10(2)(a) of the ITOA which provides as follows:

> …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.

[36] Indeed, the Minister's decision stated:

> In light of the volume of drugs involved and his association with accomplices, the offence severity is assessed as potentially having a significant impact on society. A review of the file information suggests that the offence may have been committed for financial gain and that Mr. Curtis' role was that of the 'money man'.
>
> The U.S. case summary also indicates that one of his accomplices labelled him as a "transporter". 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.
>
> (Emphasis added)

[37] While this conclusion may have been open to the Minister, given the discretionary nature of the decision, there is little in the way of evidence to support it and it appears a key error was made in the analysis.

[38] From a plain reading of this decision, the apparent reason for the Minister's final conclusion that the applicant may commit a criminal organization offence, was the nature of the offence for which the applicant was arrested and the applicant's role in that offence. Yet, there is a key error in coming to this conclusion. The Minister believed that the file information suggested that the applicant was the money man.

[39] The certified U.S. case summary at page 40 of the certified record appears to clarify the error. Under the heading, Description of the Offence, it states:

> On October 12, 2007, BT, BC [the applicant] and MR met with a confidential informant (CI) in Bal Harbour, Florida, to arrange to purchase cocaine from the CI. BT and MR negotiated with the CI to purchase 100 kilograms (one hundred kilograms) of cocaine, at a price of $14,500 per kilogram. MR emphasized he was the "money man," who was in charge of the operation. MR clarified that BT and BC were the "transporters."
>
> […]

[40] As I stated in *Haque v. Canada (Minister of Citizenship and Immigration and Minister of Public Safety and Emergency Preparedness)*, 2010 FC 703, when reviewing an administrative decision against the reasonableness standard articulated in *Dunsmuir* above, even the existence of a real error, omission or misconstruction will not discharge the burden before the applicant. Some errors may directly impugn the very merits of a decision, while other errors may be of little consequence. Here, it appears that the error likely went directly to the Minister's appreciation of the applicant's role in the offence, which in turn heavily influenced his ultimate conclusion.

[41] It is not for this Court to speculate as to what weight was given to the above error, but after removing the error from the decision, there is little else in the way of evidence to support the Minister's conclusion.

[42] Unlike the CSC memorandum in *Dudas* above, the CSC's report on the proposed transfer of the applicant did not contain a statement that CSC's intelligence believed the applicant had links to

organized crime. In fact, the CSC conveyed its belief that he would not commit an act of organized crime. Nor did the applicant have any previous convictions.

[43] As a result of the preceding analysis, I find that the respondent Minister's decision was unreasonable and ought to be reconsidered.

[44] The application for judicial review is therefore 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 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 decision.

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

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

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

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 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.	(3) Le ministre ou l'autorité provinciale compétente, selon le cas, informe le délinquant étranger de la teneur de tout 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	(5) À l'égard de telle des personnes ci-après, le

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:

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

c) le délinquant a des liens

social or family ties in Canada; and

(d) whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights.

(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister shall consider the following factors:

(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

(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.

(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.

(4) In determining whether to consent to the transfer of a Canadian offender who is a child within the meaning of the

sociaux ou familiaux au Canada;

d) l'entité étrangère ou son système carcéral constitue une menace sérieuse pour la sécurité du délinquant ou ses droits de la personne.

(2) Il tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien ou étranger :

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) 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) 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) Dans le cas du délinquant canadien qui est un enfant au sens de la Loi sur le système de justice pénale pour les

Youth Criminal Justice Act, the primary consideration of the Minister and the relevant provincial authority is to be the best interests of the child.

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

DOCKET:	T-98-09
STYLE OF CAUSE:	BRENT JAMES CURTIS - and - MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	March 24, 2010
REASONS FOR JUDGMENT AND JUDGMENT OF:	O'KEEFE J.
DATED:	September 21, 2010

APPEARANCES:

John W. Conroy, Q.C.	FOR THE APPLICANT
Curtis Workun Keitha Elvin-Jensen	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Conroy & Company Abbotsford, British Columbia	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT