

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

PIERINO DIVITO

APPELLANT

- AND -

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

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PART I – OVERVIEW OF POSITION AND STATEMENT OF FACTS

1. The David Asper Centre for Constitutional Rights (“AC”) supports the position of the Appellant that sections 10(1)(a) and 10(2)(a), read in conjunction with section 8(1) of the *International Transfer of Offenders Act* (“Act”) violate section 6(1) of the *Charter of Rights and Freedoms* (“Charter”) and such a violation is not justified under section 1.
2. The AC submits that a finding of section 1 justification does not complete the *Charter* inquiry. Where a statute authorizes an exercise of discretion that potentially impairs *Charter* rights, that exercise of discretion must also be assessed for its *Charter* compliance. A section 1 analysis can articulate the constitutional boundaries within which the statutory discretion must be exercised, but a review of the decision will still require a principled proportionality analysis to ensure that the specific exercise of discretion respected those boundaries. The proposed “administrative law proportionality framework” retains the justificatory essence of *Charter* scrutiny while respecting the flexibility of administrative law review.
3. The AC accepts the facts as outlined in the Appellant’s and Respondent’s facts and takes no position where those facts may be contested. The AC notes that the Appellant challenged the reasonableness of the Minister’s exercise of discretion before the Federal Court and while the Federal Court of Appeal stated that he did not do so at that level, the factum filed with the Federal Court of Appeal by the Appellant addressed this issue.¹ In any event, the lower court decisions were rendered without the benefit of this Court’s decision in *Doré*.² The framework proposed by the AC may not have been applicable at the time to the review of the reasonableness of the Minister’s decision, but is relevant now.

PART II - POSITION WITH RESPECT TO THE APPELLANT’S QUESTIONS

4. The AC’s position is that even if this Court upholds the constitutionality of the *Act*’s structuring of discretion under section 1, this does not exhaust the constitutional inquiry, because discretion must also be applied in a manner that respects the *Charter*. The AC addresses the assessment of reasonableness in the individual exercise of discretion that may violate a *Charter* right. To this end, the AC proposes an administrative law proportionality framework.

¹ Appellant Factum (Federal Court of Appeal) at paras 70-81.

² *Doré v Quebec* 2012 SCC 12 (“*Doré*”).

PART III – STATEMENT OF ARGUMENT

The need for an administrative law proportionality framework

5. In *Doré*, this Court held that the methodology for reviewing *Charter* compliance of discretionary decisions would be the administrative law inquiry into the reasonableness of the exercise of discretion, rather than the formulaic application of the *Oakes* framework. However, the Court indicated that the choice between methodologies was guided by analytical considerations, and not by an intention to confer different levels of rights protection depending on whether the state acts through a stipulated rule or via the exercise of discretion. Rather, the Court sought to “reconcile the two regimes in a way that protects the integrity of each.”³

6. The need for a framework to assess the constitutionality of discretionary decisions follows from the fact that “an adjudicator exercising delegated powers does not have the power to make an order that would result in an infringement of the *Charter*, and he exceeds his jurisdiction if he does so.”⁴ As the legislature does not have the power to violate the constitution, it cannot, in turn, delegate that power to the executive. As this Court stated in *Baker*, “though discretionary decisions will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the *Charter*.”⁵

7. The AC proposes an administrative law proportionality analysis that will employ “the same justificatory muscles: balance and proportionality” to inform the content of reasonableness.⁶ This approach furthers this Court’s stated goal of “building coherence in public law” by allowing administrative law, “a rich source of thought and experience about law and government” to inform assessments of constitutionality.⁷

Ensuring that deference does not devalue Charter protections

8. The challenge of utilizing the administrative law reasonableness inquiry in the *Charter* context is to ensure that deference does not shield *Charter* violations that would be impermissible

³ *Ibid* at para 3.

⁴ *Slaight Communications v Davidson*, [1989] 1 SCR 1038 at 1078 (Lamer J)

⁵ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 174 DLR (4th) 193 at para 56.

⁶ *Doré* at para 5.

⁷ *Ibid* at paras 34-35.

were they explicitly authorized by statute. We adopt David Mullan’s observation:

There is room for deference to the discretionary judgments of statutory authorities exercising powers that have the potential to affect *Charter* rights and freedoms. To accept that is not to devalue inappropriately those *Charter* rights and freedoms. However, to prevent that devaluation occurring, there should be recognition that the framework within which deference operates will often, perhaps invariably need to be different than in the case of judicial review of administrative action that does not affect *Charter* rights and freedoms.⁸

9. In *Doré*, the Court held that “[t]he notion of deference in administrative law should no more be a barrier to effective *Charter* protection than the margin of appreciation is when we apply a full s. 1 analysis.”⁹ In order to ensure that deference does not obstruct effective *Charter* protection, it is important to situate the function of expertise, legitimacy and independence at the intersection of administrative law and the *Charter*.

10. The superior expertise of administrative decision-makers over courts in relation to the subject matter of regulatory regimes is a major reason for curial deference in administrative law. In *Doré*, this Court referred to decision-makers who have, “by virtue of expertise and specialization, particular familiarity with the competing considerations at play in weighing *Charter* values” in the exercise of discretion under their home statute.¹⁰ The AC submits that the expertise that animates deference in administrative review may complement judicial expertise in law and the *Charter*, but it will not always do so. Nor will it subsume the unique legal expertise of courts or the task conferred upon them to interpret and apply the *Charter*.

11. In the *CUPE v Ontario (Minister of Labour)*,¹¹ Bastarache J (dissenting) stated that a statutory grant of discretion to a Minister “as opposed to an apolitical figure”¹² signaled legislative confidence in the role of political accountability, and supported a posture of curial deference.¹³ The political legitimacy and access to expert advice that a Minister possesses may attract deference, but where the rights of marginalized individuals or groups are at issue, the AC submits that a Minister’s lack of independence from political pressure, and the absence of neutrality, calls for a more contextually sensitive application of deference.

⁸ David Mullan, “Administrative Tribunals and Judicial Review of *Charter* Issues after *Multani*,” 21 Nat’l J Const L 127 (2006) at page 149.

⁹ *Doré*, *supra* note 2 at para 5.

¹⁰ *Ibid* at para 47.

¹¹ *CUPE v Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 SCR 539 [*Retired Judges*].

¹² *Ibid* at para 18.

¹³ See also *Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 SCR 281 at para 58 (per Binnie J).

12. In *Doré*, the discretion was exercised by the Barreau du Québec, an independent, quasi-judicial tribunal composed of lawyers. Administrative decision-makers situated elsewhere on the executive spectrum between legislator and judiciary should not be presumed to possess comparable expertise or neutral disposition toward rights protection. As Ruth Sullivan notes of many ‘non-judicial’ administrative actors:

Their focus tends to be narrow and coloured by the concerns and possibly by the biases of their own professional culture. They may have particular interests to promote on behalf of their department or agency or they may have strong views respecting the groups or problems regulated by their legislation. This may put them into an adversarial position with other interested parties.¹⁴

13. The AC submits that the deference accorded by courts to discretionary decisions that violate the *Charter* should take account of the nature of the expertise and the extent of the decision-maker’s independence, assessed in relation to the decision-maker’s due regard for the rights of the individual.

The proposed administrative law proportionality framework

14. Section 11(2) of the *Act* requires the Minister to issue reasons for a refusal to consent to a transfer. The proposed proportionality analysis does not presume that reasons should replicate the formality of an *Oakes*-style test, but they should nonetheless display “the existence of justification, transparency and intelligibility within the decision-making process”¹⁵ that are the indicia of reasonableness and which embody the logic of proportionality.

15. In administrative law *Charter* review, where discretion does not dictate a single outcome, reasoned justification enables a reviewing court to be satisfied that the outcome is the product of appropriately structured reasoning. An exercise of discretion that impairs a *Charter* right will be reasonable if it justifies a rights violation. A rights violation will be justified if the rights violating means are proportional to the value of ends they serve, where due regard is given to the primacy of *Charter* rights.

16. Where the exercise of discretion engages a *Charter* right, reasonableness is not demonstrated by merely identifying the array of factors (including the *Charter*) that are ingredients in a balancing exercise; a reasonable decision must discharge the burden of *justifying*

¹⁴ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Markham, ON: LexisNexis, 2008) at 625.

¹⁵ *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47.

breach of a right. This is in keeping with the normative primacy and priority of rights as compared to interests, values or entitlements. King, commenting on the British system, reserves the use of proportionality for “specific cases where there is a *special demand* for greater than ordinary judicial scrutiny of administrative acts,” including where the impugned conduct “affects a fundamental interest that is akin to an internationally recognized human right.”¹⁶

17. The salient elements of a proportionality analysis will necessarily vary with the statutory context and the facts of individual cases. The following criteria describe, in general terms, the logic of a proportionality analysis as applied to the exercise of statutory discretion. A reasonable decision need not explicitly attend to each and every element of the framework, but a reasonable decision must be consistent with it:

- a. Recognition of the normative primacy and priority of the *Charter* right(s);
- b. Constitutionally and statutorily valid objectives sought to be achieved by the exercise of discretion in the individual case;
- c. An evidentiary basis beyond mere speculation for material facts, and inferences from those facts;
- d. Where protection of a *Charter* right may conflict with attainment of a valid objective, the reasons should show that the conflict is genuine and the choice to infringe a *Charter* right is necessary in the individual case.
 1. A conflict is not *genuine* where the specific rights infringement does not demonstrably advance attainment of the objective in relation to that case.
 2. A conflict is not *genuine* where the objective can be advanced without violating a *Charter* right or by a less severe intrusion on that right.
 3. A conflict is not *necessary* when a reasonable compromise in attainment of the objective in the individual case can minimize or avoid a rights violation.

The normative primacy and priority of the Charter right(s)

18. *Charter* rights are distinct from other interests, values or entitlements. To denominate an interest as a right is to recognize its normative *primacy*. As such, a *Charter* right intrinsically ‘weighs’ more (by virtue of being a right) than something called an interest, value or entitlement. A *Charter* right, once established, also possesses normative *priority*. A rights bearing individual

¹⁶ Jeff King, “Proportionality: A Halfway House,” NZ L Rev 2 (2010) at page 360.

need not justify protection of a *Charter* right; rather, the state must justify infringing it.

19. The prioritization of *Charter* rights exemplifies what David Dyzenhaus describes as a rule of law culture of justification, as opposed to a ‘managerial culture’:

“[The culture of justification] is shaped by the assumption that *the public authority bears the onus of justifying the limit on the right asserted*, and it requires that the authority regard persons as bearer of rights, not as individuals who may or may not be accorded a privilege.”¹⁷

20. The normative uniqueness of *Charter* rights structures the proportionality inquiry. As this Court stated in *Doré*, “decision-makers [...] must remain conscious of the fundamental importance of *Charter* values in the analysis.”¹⁸

21. In *Doré*, this Court held, “[i]n the *Charter* context, the reasonableness analysis is one that centres on proportionality, that is, on ensuring that the decision interferes with the relevant *Charter* guarantee *no more than is necessary* given the statutory objectives.”¹⁹ The assessment of the necessity of a *Charter* infringement cannot be made without attending to the existence and extent of conflict between advancing statutory objectives and protecting a *Charter* right, possible alternatives to conflict, and the necessity of resolving that conflict in the manner chosen.

22. The use of the term *Charter* ‘value’, as opposed to ‘right’, in relation to discretion does not denote a different justificatory framework. The concept of a *Charter* ‘value’ was invoked in *Dolphin Delivery*,²⁰ and the associated analytical structure developed in *Hill v Church of Scientology*.²¹ The purpose was to enable courts *qua* neutral arbiters to review and revise potential *Charter*-infringing common law rules applicable as between private litigants, without unfairly imposing the justificatory burden on private parties. These considerations are not apposite to evaluating *Charter* compliance of discretionary decisions by government officials.

23. In the case at bar, respecting the primacy of the *Charter* would entail recognition that section 6 is engaged by the Minister’s consent to the transfer of a Canadian offender from a foreign to a Canadian prison. While his liberty is not within Canada’s control, his relocation to Canada is entirely within the control of the Canadian government, given the regime established

¹⁷ David Dyzenhaus, 'Proportionality and Deference in a Culture of Justification' in Grant Huscroft, Brad Miller, and Gregoire Webber, eds., *Proportionality* (Cambridge University Press, forthcoming) at 63 [emphasis added].

¹⁸ *Doré*, *supra* note 2 at para 54.

¹⁹ *Ibid* at para 7 [emphasis added].

²⁰ *RWDSU v Dolphin Delivery Ltd*, [1986] 2 SCR 573.

²¹ *Hill v Church of Scientology*, [1995] 2 SCR 1130.

under the *Act* and given US consent. Respecting the priority of the *Charter* would entail recognition that denying consent to the transfer of a Canadian prisoner requires justification.

Articulation of the constitutionally valid objective sought to be achieved

24. The decision-maker must articulate the objective sought to be achieved by the particular exercise of discretion, in order to confirm that the decision is properly motivated by the attainment of one or more constitutionally valid objectives. As this Court held in *Insite* (in the context of section 7 of the *Charter*), a *Charter*-infringing decision cannot be justified “on the basis of *policy simpliciter*.”²² The justification must stem from a statutory objective of sufficient importance to warrant overriding a constitutionally protected right.

25. A statutory regime may have one or more purposes, and identify factors to consider, in addition to the impact on a *Charter* right. Where the statute’s constitutionality is affirmed, the factors relevant to the exercise of discretion must be assessed by reference to the statutory purpose and the *Charter* right. The decision itself must “target the purpose of the *Act*.”²³

26. In the case at bar, section 3 of the *Act* stipulates the statutory purpose of contributing to the “administration of justice” and the rehabilitation and reintegration of offenders “by enabling offenders to serve their sentences in the country of which they are citizens.” These purposes are consistent with giving priority given to a Canadian offender’s section 6 right to enter Canada.

Demonstration of an evidentiary basis for adverse factual findings

27. In *R v Minister of Defence, ex p Smith*,²⁴ the Court of Appeal adopted the submission that “the more substantial the interference with human rights, the more the court will require by way of justification before it is satisfied that the decision is reasonable.”²⁵

28. The AC submits that this principle is applicable to findings of fact and inferences drawn from them. Where a decision-maker asserts facts or inferences in support of violating a constitutional right, especially where the decision-maker is credited with expertise in matters of fact, a reasonable decision will provide the evidentiary support for those facts. Predictions of future events may not be susceptible to proof of certainty, but this does not obviate the need or

²² *Canada (AG) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 SCR 134 [*“Insite”*] at para 128.

²³ *Ibid* at para 129.

²⁴ *R v Ministry of Defence Ex p Smith*, [1995] EWCA Civ 22 (per Sir Thomas Bingham and Lord Justice Thorpe).

²⁵ *Ibid* at 554.

possibility of substantiating factual claims.

29. The factors identified under section 10 of the *Act* allow consideration of whether transfer will, in the case of an individual offender, undermine rather than advance the purposes of the *Act*. Each factor requires specific attention to the individual circumstances of the offender. They preclude reliance on a generic prediction that any offender entering a Canadian prison marginally increases the risk to public safety by the fact of his presence. In the case at bar, the Minister's reasons contain two unsubstantiated factual claims: that the Appellant is implicated in organized crime; and that the Appellant will, by virtue of his offence and affiliation, pose a danger to public safety if transferred. Neither assertion is supported in the reasons by reference to evidence. The Minister's access to expertise (or greater resources) places him in a superior position to a court to present evidence that the Appellant poses a uniquely unmanageable public safety risk if transferred into the custody of Correctional Services Canada. Absent such evidence, the inference that transferring the Appellant to a Canadian prison increases the risk to public safety is unintelligible and not justified in a way that has sufficient regard to the Charter right at stake.

The conflict between the Charter right and the statutory purpose is genuine

30. An administrative law proportionality analysis must consider "how the *Charter* value at issue will best be protected in view of the statutory objectives."²⁶ An assessment of how the *Charter* right will *best* be protected requires the identification of the nature and extent of the conflict between the *Charter* right at issue and the constitutionally valid statutory purpose, and a serious evaluation of the measure chosen and its efficacy at resolving that conflict. If it is possible to advance the government's objective without infringing *Charter* rights, then the two interests are not genuinely in conflict and the *Charter* right would be best protected by choosing an alternative, non-*Charter*-infringing, means.

31. For example, if the *Charter*-infringing measure chosen by the decision-maker does not actually advance the valid statutory objective, the objective and the *Charter* right are not genuinely in conflict. The objective would be served just as well by not taking the *Charter*-infringing measure, and so the measure is not necessary to the attainment of that objective.

32. In the present case, refusing consent to prisoner transfer does not prevent the ultimate

²⁶ *Doré*, *supra* note 2 at para 56.

return of a Canadian citizen, but rather delays it until he completes his sentence, is released, and is deported to Canada as a free person. Demonstrating a genuine conflict between the *Charter* right and the statutory purpose would entail explaining how, in light of the alternative scenario, the purposes of the legislation (administration of justice, rehabilitation and reintegration) are actually advanced by denying consent to a transfer. This would entail explaining why the Canadian penal system cannot protect Canadians from the alleged risk posed by the Appellant, and why his eventual return to Canada without any Canadian correctional controls such as parole better protects the public.

33. Similarly, if there are other measures which would be equally effective at attaining the government's objective without infringing *Charter* rights, the government objective would be served just as well by choosing the alternative measure, and so the *Charter* infringement is not necessary to its attainment. Here, the reasons could explain why administration of justice, rehabilitation and reintegration are better advanced by denying the transfer in violation of the Appellant's section 6 rights, than by enabling him to complete his sentence under the control of Canadian prison and parole authorities. If the likelihood of achieving these goals is no worse if the Appellant is transferred, the conflict between the *Charter* right and the statutory purpose is not necessary.

Balancing the impact on Charter rights against the advancement of legitimate objectives

34. If there is a real conflict between the individual's *Charter* right and the attainment of the government's legitimate objective, the decision-maker must then balance the *Charter* violation against the extent to which the impugned measure advances the legitimate government objective. When engaging in this final balancing, decision-makers are not to consider the importance of the statutory objective writ large, but rather the specific contribution of the *Charter*-infringing measure to the advancement of that broader objective on the facts of the case. To do otherwise risks over-stating the importance of the rights-infringing measure such that the importance of the *Charter* right will be undermined.

35. For example, if the measure is not *guaranteed* to advance the government objective, but only increases the *chances* of obtaining that objective, "the importance of the objective must be

discounted to take account of the uncertainty of its achievement.”²⁷ Similarly, if the impugned measure is not the only way to attain the government’s objectives but was chosen over a less rights-infringing alternative, it is not the objective itself but rather the marginal improvement in the attainment of the objective obtained by choosing the rights-infringing measure over the alternatives that should be weighed against the *Charter* infringement at the last step.²⁸

36. It is in this final weighing and balancing step where curial deference is most appropriate. The administrative decision-maker’s proximity to the facts of the case may equip them to determine how well the impugned measure will advance the government’s objectives, its benefits over alternative options, and the impact of the rights infringement on the individual. However, even those assessments, as discussed above, must be grounded in an evidentiary foundation and supported by reasoned justification in order to earn deference from the courts.

37. In the event that a proportionality analysis reaches this stage in the case at bar, the final balancing would require that the reasons explain how a speculative, marginal and temporary decrease in the danger to public safety advanced by withholding consent to a transfer is sufficiently momentous to warrant violating the Appellant’s section 6 *Charter* right.

PART IV – COSTS

38. The AC does not seek costs and respectfully requests that none be awarded against it.

PART V – ORDER REQUESTED

39. The Asper Centre takes no position on the disposition of the appeal but requests that it be allowed 10 minutes to provide oral representations.

All of which is respectfully submitted, this 7th day of February, 2013.

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²⁷ Denise Réaume, “Limitations on Constitutional Rights: The Logic of Proportionality,” University of Oxford Legal Research Paper Series, Paper No 26/2009, August 2009 at 18.

²⁸ *Ibid* at 22-23.

PART VI – TABLE OF AUTHORITIES

Cases	Paragraph
1. <i>Baker v Canada (Minister of Citizenship and Immigration)</i> , [1999] 2 SCR 817	6
2. <i>Canada (Attorney General) v PHS Community Services Society</i> , 2011 SCC 44, [2011] 3 SCR 134	24, 25
3. <i>CUPE v Ontario (Minister of Labour)</i> , 2003 SCC 29, [2003] 1 SCR 539	11
4. <i>Doré v Quebec</i> , 2012 SCC 12, [2012] 1 SCR 395	3, 5, 7, 9, 10, 12, 20, 21, 30
5. <i>Dunsmuir v New Brunswick</i> , 2008 SCC 9, [2008] 1 SCR 190	14
6. <i>Hill v Church of Scientology</i> , [1995] 2 SCR 1130	22
7. <i>Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services)</i> , 2001 SCC 41, [2001] 2 SCR 281	11
8. <i>R v Minister of Defence, ex p Smith</i> , [1996] QB 517	27
9. <i>RWDSU v Dolphin Delivery Ltd</i> , [1986] 2 SCR 573	22
10. <i>Slaight Communications v Davidson</i> , [1989] 1 SCR 1038	6
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11. David Dyzenhaus, "Proportionality and Deference in a Culture of Justification" in Grant Huscroft, Brad Miller, and Gregoire Webber, eds., <i>Proportionality</i> (Cambridge University Press, forthcoming)	19
12. David Mullan, "Administrative Tribunals and Judicial Review of <i>Charter</i> Issues after <i>Multani</i> ," 21 Nat'l J Const L 127 (2006)	8
13. Denise Réaume, "Limitations on Constitutional Rights: The Logic of Proportionality," University of Oxford Legal Research Paper Series, Paper No 26/2009, August 2009	36
14. Jeff King, "Proportionality: A Halfway House," NZ L Rev 2 (2010)	16
15. Ruth Sullivan, <i>Sullivan on the Construction of Statutes</i> , 5 th ed (Markham, ON: LexisNexis, 2008)	12

PART VII – STATUTORY PROVISIONS

<i>International Transfer of Offenders Act, SC 2004, c 21</i>	<i>Loi sur le transfèrement international des délinquants, LC 2004, c 21</i>
<p>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.</p> <p>8. (1) The consent of the three parties to a transfer — the offender, the foreign entity and Canada — is required.</p> <p>10. (1) In determining whether to consent to the transfer of a Canadian offender, the Minister shall consider the following factors:</p> <p>(a) whether the offender's return to Canada would constitute a threat to the security of Canada;</p> <p>(b) whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;</p> <p>(c) whether the offender has social or family ties in Canada; and</p> <p>(d) whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights.</p> <p>(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister shall consider the following factors:</p> <p>(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</p>	<p>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.</p> <p>8. (1) Le transfèrement nécessite le consentement des trois parties en cause, soit le délinquant, l'entité étrangère et le Canada.</p> <p>10. (1) Le ministre tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien :</p> <p>a) le retour au Canada du délinquant peut constituer une menace pour la sécurité du Canada;</p> <p>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;</p> <p>c) le délinquant a des liens sociaux ou familiaux au Canada;</p> <p>d) l'entité étrangère ou son système carcéral constitue une menace sérieuse pour la sécurité du délinquant ou ses droits de la personne.</p> <p>(2) Il tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien ou étranger :</p> <p>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 <i>Code criminel</i>;</p>

<p>the <i>Criminal Code</i>; and</p> <p>(b) whether the offender was previously transferred under this Act or the <i>Transfer of Offenders Act</i>, chapter T-15 of the Revised Statutes of Canada, 1985.</p> <p>11. (1) A consent, a refusal of consent or a withdrawal of consent is to be given in writing.</p> <p>(2) If the Minister does not consent to a transfer, the Minister shall give reasons.</p>	<p>b) le délinquant a déjà été transféré en vertu de la présente loi ou de la <i>Loi sur le transfèrement des délinquants</i>, chapitre T-15 des Lois révisées du Canada (1985).</p> <p>11. (1) Le consentement au transfèrement, le refus de consentement et le retrait de consentement se font par écrit.</p> <p>(2) Le ministre est tenu de motiver tout refus de consentement.</p>
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