Court File No. 36981

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF BRITISH COLUMBIA)

BETWEEN:

ATTORNEY GENERAL OF CANADA ON BEHALF OF THE REPUBLIC OF INDIA

APPELLANT

AND:

SURJIT SINGH BADESHA and MALKIT KAUR SIDHU

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PART I – OVERVIEW

1. The David Asper Centre for Constitutional Rights ("the Asper Centre") takes the position that the Minister's decision to surrender a person for extradition under the *Extradition Act* (including whether or not to seek assurances pursuant to s. 40(3) of the Act) must take into account the proportionality test set out in *Doré v Barreau du Quebec*.[1] Section 7 of the *Charter* is engaged by surrender and the principles of fundamental justice must be respected throughout the extradition process.[2] Potential consequences in the requesting state must also be considered. While a person's liberty interests under s.7 of the *Charter* are always engaged by extradition, where surrender places the person at risk of torture or mistreatment in the requesting state, it also engages other interests protected under s. 7 and potentially contravenes the principles of fundamental justice.

2. Where a person sought for extradition has provided credible evidence that there is a risk of treatment or punishment in the requesting state that would not comply with the principles of fundamental justice, the Minister must weigh this limitation of the right against the relevant statutory objectives in the specific factual context when determining whether surrender would be a proportionate limitation on s. 7 rights. This, in turn, requires the Minister to consider the rights-protecting provisions of the *Extradition Act*, in addition to the objective of meeting Canada's international obligations, and to provide an adequate factual basis for the conclusion that the right had been justifiably limited. Proportionality demands that the state rely upon *evidence* to conclude that the limitation was justified in the circumstances. Reliance on diplomatic assurances alone cannot strike a proportionate balancing of the *Charter* protections where there is credible evidence of a risk of torture or other mistreatment in the requesting state.

3. While the Minister's surrender decision is afforded deference on review, the assessment of the reasonableness of the Minister's decision, including with respect to the Minister's assessment of assurances against torture or other mistreatment, must take into account whether the decision reflects a proportionate balancing of the *Charter* protections at play. A deferential standard of review contemplates that there may be a range of acceptable outcomes but in some situations there may be only one outcome that strikes the required balance. Should the Minister fail to strike that balance, the surrender decision must be set aside.

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[1] *Doré v Barreau du Quebec*, 2012 SCC 12 [*Doré*].
[2] *United States of America v. Cobb,* [2001] 1 SCR 587 at para. 34.

4. The Asper Centre relies upon the facts as set out in the parties' Memoranda of Argument, and in particular the facts and evidence related to the existence of human rights violations in Indian prisons. Where there is a dispute in respect of the facts between the parties, the Centre takes no position.

PART II – QUESTIONS IN ISSUE

5. The Asper Centre's position in respect of the issues on which it has intervened is set out above.

PART III: STATEMENT OF ARGUMENT

A. Section 7 is Engaged by Extradition

6. In *United States of America v. Ferras*, this Honourable Court observed that extradition "constitutes a serious denial of liberty and security of the person. A person is taken from Canada and forcibly removed to another country to stand trial according to that other country's rules."[3] Consequently, s. 7 of the Charter is engaged and the principles of fundamental justice must be respected throughout the process. Justice Arbour observed in *United States of America v. Cobb* that s. 7 of the Charter "permeates the entire extradition process and is engaged, although for different purposes" at both the committal and surrender stages of the proceedings.[4]

7. Among the issues to be determined is whether, in the particular circumstances of the case, surrender offends against the basic demands of justice and, thus, is contrary to s. 7 of the *Charter*. The punishment or treatment reasonably anticipated in the requesting state is relevant to this assessment. As this Honourable Court held in *United States v. Burns*, "Section 7 is concerned not only with the act of extraditing but also the potential consequences of the act of extradition."[5] The "guarantees of fundamental justice apply even where deprivations of life, liberty or security may be effected by actors other than the Canadian government, if a sufficient causal connection exists between the participation of the Canadian government and the ultimate deprivation effected."[6] The Minister must thus consider the potential consequences for the person sought if surrendered.

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[3] *United States of America v. Ferras*, [2006] 2 SCR 77 at para. 12.
[4] *United States of America v. Cobb, supra*, at para. 34.
[5] *United States v. Burns*, [2001] 1 SCR 283 at para. 60 (emphasis in original).
[6] *Application under s. 83.28 of the Criminal Code (Re)*, [2004] 2 SCR 248, at para. 75. See also *Németh v. Canada*, [2010] 3 S.C.R. 281 at para. 73.

8. The risk of torture in the requesting state is one such risk that the Minister must assess under s. 7 of the *Charter*. This Court has recognized that extradition to face torture would be inconsistent with fundamental justice.[7] Torture is seen in Canada as fundamentally unjust.[8] There can be no doubt that the prohibition of torture has reached the level of a peremptory norm in international law.[9]

B. The *Doré* Framework Applies to the Surrender Decision

9. It has been settled law since *Baker v. Canada (Minister of Citizenship and Immigration)* that administrative decision-makers must consider fundamental values, including those enshrined in the *Charter*, when exercising their discretion.[10] Recently, the Court noted that it "goes without saying that administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values."[11] Less clear, at least until *Doré*, was precisely how an administrative decision-maker ought to proceed when its decision engages *Charter* rights or values and, further, what framework a court should use to scrutinize how those rights or values were applied, especially when reviewing an administrative decision that is said to limit *Charter* rights.[12]

10. *Doré* provides the following guidance to administrative decision-makers when *Charter* rights or values are implicated in the decision:

> How then does an administrative decision-maker apply *Charter* values in the exercise of statutory discretion? He or she balances the *Charter* values with the statutory objectives. In effecting this balancing, the decision maker should first consider the statutory objectives […].
>
> Then the decision-maker should ask how the *Charter* value at issue will be best protected in view of the statutory objectives. This is at the core of the proportionality exercise, and requires the decision-maker to balance the severity of the interference of the *Charter* protection with the statutory objectives.[13]

This framework applies to Ministerial decision-making that implicates *Charter* rights and values.[14]

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[7] *Suresh v Canada (Minister of Citizenship and Immigration),* 2002, SCC 1 at para. 56.
[8] *Ibid.* at paras. 50-51.
[9] *Kazemi Estate v Islamic Republic of Iran*, 2014 SCC 62 at para. 47
[10] [1999] 2 S.C.R. 817, at paras. 53 – 56, per L'Heureux-Dubé
[11] *Doré*, *supra*, at para. 24
[12] The jurisprudential and academic debates on this point are summarized in *Doré* at paras. 23-42
[13] *Doré*, *supra*, at paras. 55 – 56.
[14] See *Divito v. Canada (Public Safety and Emergency Preparedness),* [2013] 3 SCR 157, at para. 49.

11. On judicial review, "the question becomes whether, in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing of the *Charter* protections at play."[15] "If, in exercising its statutory discretion, the decision-maker has properly balanced the relevant *Charter* value with the statutory objectives, the decision will be found to be reasonable."[16] As the Court further explained in *Loyola High School v. Québec (Attorney General)*, a "proportionate balancing is one that gives effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate." [17]

12. The *Doré* analysis is "a highly contextual exercise" and under it there "may be more than one proportionate outcome that protects values as fully as possible in light of the applicable statutory objective and mandate."[18] If, however, a decision lacks this proportionate balancing, it will be found to be unreasonable on review.[19] *Doré* thus adds a proportionality assessment to reasonableness review under the *Charter*. The court must look beyond administrative law principles by infusing the "spirit" and "justificatory muscles" of *Oakes* into judicial review.

13. It is submitted that the *Doré* framework applies in the extradition context. There the Minister must balance *Charter* rights with the objectives of the *Extradition Act*. The Minister must ask how the rights at issue will best be protected in view of the statutory objectives: "This is at the core of the proportionality exercise, and requires the decision-maker to balance the severity of the interference of the *Charter* protection with the statutory objectives."[20]

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[15] *Doré, supra,* at para. 57
[16] *Ibid.,* at para. 58
[17] *Loyola High School v. Québec (Attorney General)* 2015 SCC 12, [2015] S.C.J. No. 12, para. 39, per Abella J.
[18] *Ibid.,* at para. 41
[19] That was the result, for example, in *Loyola.* In their concurring reasons, McLachlin C.J. and Moldaver J. took a different approach, stating: "However one describes the precise analytic approach taken, the essential question is this: did the Minister's decision limit Loyola's right to freedom of religion proportionately – that is, no more than was reasonably necessary?" (at para. 114). On their approach, the decision in issue was found to infringe Loyola's *Charter* right in a way that could not be justified under s. 1 of the *Charter* because the decision was not minimally impairing (at para. 151).
[20] *Doré, supra* at para. 56

14. The extradition process serves two important objectives: ensuring prompt compliance with Canada's international obligations, and protecting the rights of the person sought.[21] The process takes place in three stages in accordance with the *Extradition Act*: the authority to proceed (ATP), committal, and surrender.[22] While the first two stages are concerned with the sufficiency of the evidence and whether preliminary conditions – such as the principle of double criminality – permit extradition, the surrender phase is a critical protection for those who have passed through the first-two phases.[23] The Minister must determine "whether it is politically appropriate and not fundamentally unjust for Canada to extradite the person sought."[24] While the Minister's surrender decision is "primarily political in nature,"[25] the *Charter* and the *Extradition Act* place important legal limits on the Minister's power to order surrender, defining considerations (including fundamental rights) that the Minister must weigh.

15. Sections 44 through 47 of the *Extradition Act* set out various grounds upon which the Minister either must or may refuse surrender. (Some of these grounds may be superseded by the terms of specific extradition agreements: see *Extradition Act*, s-s. 45(1) and (2).) The orientation of s. 44 of the *Act* in particular "is the protection of human rights."[26] Writing in dissent in *M.M.* (although not on this point), Abella J noted that the surrender provisions in the *Extradition Act* serve an important "humanitarian purpose."[27] Parliamentary debates concerning the 1999 amendments to the *Act* confirm that the surrender provisions were meant to function as "important safeguards" on the *Charter* rights of those subject to extradition.[28] At the surrender stage, the Minister's role is to twofold: protecting the interests of Canadian citizens and meeting Canada's geopolitical obligations abroad. A mandatory ground for refusing surrender under the Act "leaves the Minister no discretion to depart from statutory language to give effect to a treaty obligation."[29]

16. It is submitted that in this appeal the Minister takes an unduly narrow approach to the considerations at play in the surrender decision by assuming that the *Extradition Act* is inherently

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[21] *M.M. v United States of America,* 2015 SCC 62 at para 1.
[22] *Ibid* at para 201.
[23] *Ibid* at para 251.
[24] *Fischbacher v. Canada (Minister of Justice)*, [2009] 3 SCR 170 at para. 36.
[25] *Idziak v. Canada (Minister of Justice),* [1992] 3 SCR 631 at p. 659.
[26] *Németh v. Canada, supra,* at para. 71
[27] *Supra*, at para 259.
[28] *Ibid.* at para 252.
[29] *Németh v. Canada, supra,* at para. 69

antagonistic to the engaged *Charter* rights. On the Minister's approach in the case at bar, the paramount consideration is Canada's obligation to meet its obligations to its extradition partners, which outweighs the *Charter* rights of the Respondents. Under *Doré*, however, striking the right balance between limiting a right and the relevant statutory objectives is not a matter of reconciling opposing objectives – meeting statutory objectives on the one hand and protecting *Charter* rights on the other. While the statutory objectives include meeting Canada's international obligations, they also include important protections for the individual sought for extradition. In other words, protecting the *Charter* rights of persons sought for extradition is not antithetical to the statutory objectives; on the contrary, it will promote them. In approaching the central question in this case as he did, the Minister applied the wrong test.

C. The Burden on the Minister

17. As set out above, decision-makers whose decisions may limit *Charter* rights are required to weigh the limitation of a *Charter* right against the entire "statutory and factual contexts."[30] The centrality of the underlying facts in a reasonableness assessment (which must now include proportionality) was underscored by this court in *Lake*, where it was held that the reasonableness of a decision to extradite is a "primarily fact-based balancing test."[31]

18. In *Németh* this Honourable Court noted that it has been held that "where a person sought alleges that he or she will face persecution so that surrender would be contrary to the principles of fundamental justice and therefore unjust and oppressive, he or she bears the burden of proof on the balance of probabilities that such persecution will be suffered and that it would shock the conscience of Canadians."[32] This Court expressly left open the general question of whether this is the correct approach.

19. It is submitted that where a right has been limited by state action, the state must adduce *evidentiary support* for the arguments it relies on to demonstrate that the test of proportionality has been met. There are several reasons for placing this burden on the Minister.

20. First, proportionality is a primarily fact-driven inquiry – meaning that, without the facts, a meaningful proportionality assessment cannot be conducted either by the Minister or by the court sitting in judicial review of the Minister's decision. While the ultimate question of whether the limitation of a

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[30] *Doré*, *supra*.
[31] *Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 41.
[32] *Supra*, at para. 73, citing *United States of Mexico v Hurley* (1997), 35 O.R. (3d) 481 (C.A.).

right is proportional is a mixed question of fact and law, the considerations that led to the conclusion that proportionality has been met are largely factual in nature.[33] For this reason, it has been said that the state shoulders both a burden of persuasion and a burden of *evidence* at the proportionality stage of the analysis.[34] In order for the court to meaningfully assess whether a right has been properly balanced against the state's legitimate objective, the court must assess the factual framework the decision-maker relied on. As Justice Zamir noted for the Israeli Supreme Court, when dealing with the limitation of a right in the administrative law context:

> …the court can initiate and require the state to provide answers to several additional questions, or to produce certain evidence – all is deemed necessary by the court. This is one of the main differences between a public-law dispute and a civil-law or a criminal law dispute. The difference stems, first and foremost, from the nature of the administrative process: such a process deals with a decision adopted by a state actor – a public agency operating on behalf of the people and for the people; therefore, the people have a *principled right to know both the facts and the reasons that led to the decision.*[35] (Emphasis Added)

21. Second, these matters fall squarely within the Minister's areas of expertise. As this Court noted in *Lake,* "to ensure compliance with the *Charter* in the extradition context, the Minister must balance competing considerations, and where many such considerations are concerned, the Minister has superior expertise."[36] The state (in this case, the Minister) has privileged access to relevant information, including information available from the requesting state. Moreover, in cases where assurances may be required, the state has exclusive authority to seek and negotiate such assurances. It is simply more practical, and more fair, to place a burden on the Minister to gather and produce evidence to support the decision.

22. Third, while the two are not completely analogous, the *Doré* proportionality analysis captures many of the key insights from jurisprudence dealing with s. 1 justifications of limitations on *Charter* rights prescribed by law. The Court sought to establish "conceptual harmony" between a reasonableness review and the *Oakes* framework.[37] The Court did note that "when exercising discretion under a provision or statutory scheme whose constitutionality is not impugned, it is conceptually difficult to see what the 'pressing and substantial' objective of a decision is, or who would have the burden of defining and

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[33] Aharon Barak, *Proportionality: Constitutional Rights and their Limitations*, (New York: Cambridge University Press, 2012) at 437.
[34] *Ibid* at 447.
[35] Quoted in *Ibid* at 452.
[36] *Supra*, at para. 34
[37] *Doré, supra*, at para. 57.

defending it."[38] Nevertheless, it is submitted that the same rationales for placing the ultimate burden on the state to justify a limitation on a right prescribed by law apply when that limitation is the result of the exercise of discretion by a state actor.

23. Fourth, placing this burden on the Minister would be consistent with this Court's conclusion in *Németh* that the burden should rest on the Minister to justify the surrender of a Convention refugee notwithstanding s. 44(1)(b) of the *Extradition Act*.[39] The Court concluded there that the Minister "must be satisfied on the balance of probabilities that the person sought is no longer entitled to refugee status in Canada."[40] While Cromwell J. expressly noted there that nothing he had said "affects the burden on a person who has not been granted refugee status who relies on mandatory grounds of refusal of surrender under s. 44,"[41] it is submitted that the case at bar presents an opportunity to extend this reasoning to non-refugees who face a risk of unacceptable punishment or treatment in the requesting state. As long as such an individual can produce credible evidence of a risk of mistreatment in the requesting state, the burden should shift to the Minister to establish on a balance of probabilities either that there is no such risk, or that it can be effectively addressed by diplomatic assurances.

24. Fifth, this approach is consistent with the Court's ruling in *Canada (Attorney General) v PHS Community Services Society*. There, the claimants had adduced evidence that their s.7 rights had been limited by a decision to shut down "safe injection" sites.[42] In doing so, the court accepted the evidence that a failure to provide these facilities would expose addicts to illness and death, and accepted the claimants' evidence that crime rates had not risen since the implementation and operation of the sites.[43] In light of this, the burden was placed on the state to justify this limitation.

25. Finally, it should be noted that the usual reasons for declining to impose an evidentiary burden on an administrative decision maker do not apply in the extradition context. In the past this Court has been skeptical about "shifting" burdens because (a) administrative bodies are often tasked with adjudicating

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[38] *Ibid.*, at para. 38
[39] *supra*, at paras. 103-113
[40] *Ibid.*, at para. 112
[41] *Ibid.*, at para. 113
[42] *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 136. [*Insite*]
[43] *Ibid* (Factum of the Respondent at para 112).

between private parties, or (b) the decision-maker is meant to operate independently of the state.[44] Neither is the case here. In issuing a surrender order, the Minister was not engaged in dispute resolution, and was unquestionably acting as an agent of the state.

26. Under the approach advanced here, diplomatic assurances are insufficient, by themselves, to justify a limitation of a *Charter* right. Specifically, where a claimant has adduced credible evidence that his or her life, liberty or security interests under s. 7 of the *Charter* are at risk in the requesting state, reliance on assurances cannot, without more, discharge the burden of justifying this limitation.

27. If the reasonableness (or proportionality) of a decision is indeed a "fact-based balancing test," then broad assurances that a country will make "every reasonable effort" to comply with the *Charter* are insufficient to discharge the Minister's evidentiary burden to justify the limitation on the *Charter* right.[45] This is particularly important in cases where "there is doubt about the government's ability to control its security forces."[46] Without additional evidence concerning how, exactly, the assurances are expected to work, the court can have no way of knowing whether the proper balance has been struck.

D. Assessing the Reasonable Outcome

28. The Minister's decision to extradite is assessed on a standard of reasonableness provided that he or she identified the correct legal test.[47] On judicial review, a court must assess whether, in light of the circumstances, the Minister's reasoning was intelligible, justifiable and transparent and whether the decision fell within a reasonable range of outcomes.[48] The range of "reasonable outcomes," however, depends on the facts of the case and the matter to be decided. While the standard of reasonableness typically contemplates a range of acceptable outcomes, this is not always the case. Often extradition involves a binary determination: to surrender or not. Sometimes a slightly broader range of outcomes are possible, such as when assurances may be required.

29. This Court stated in *United States of America v. Lake*: "Reasonableness does not require blind submission to the Minister's assessment; however, the standard does entail more than one possible

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[44] *Multani v Marguerite-Bourgeoys (Commission scolaire)*, 2006 SCC 6 at para 111. See also: *Hill v Church of Scientology*, [1995] 2 SCR 1130 at paras 97-8 for a discussion on the applicability of the *Charter* where a decision-maker is tasked with settling a private dispute.
[45] Cf. Respondent's Factum at para 56.
[46] *Supra* at para 125.
[47] *Supra* at para 41.
[48] *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

conclusion."[49] While it is true as a general proposition that the reasonableness standard implies that there can be a range of reasonable answers with respect to any given question, this will not always be the case. In *McLean v. British Columbia (Securities Commission)*, Moldaver J. observed:

> [38] It will not always be the case that a particular provision permits multiple reasonable interpretations. Where the ordinary tools of statutory interpretation lead to a single reasonable interpretation and the administrative decision maker adopts a different interpretation, its interpretation will necessarily be unreasonable — no degree of deference can justify its acceptance; see, e.g., *Dunsmuir*, at para. 75; *Mowat*, at para. 34. In those cases, the "range of reasonable outcomes" (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 4) will necessarily be limited to a single reasonable interpretation — and the administrative decision maker must adopt it.[50]

As the Court of Appeal for Ontario has recognized, depending on the specific circumstances of a given case, only one interpretation or solution may be reasonable, in which case any other interpretation or solution would be unreasonable.[51] There is no "range" of permissible outcomes.

PART IV – COSTS

30. The Asper Centre seeks no costs, and requests that none be awarded against it.

PART V – ORDER SOUGHT

31. The Asper Centre takes no position on the disposition of the appeal.

All of which is respectfully submitted this 10th day of March, 2017.

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Per John Norris and Cheryl Milne
Counsel for the Asper Centre

[49] *Supra*, at para. 41.
[50] *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67 at para. 38
[51] *United States of America v. Leonard* (2012), 291 C.C.C. (3d) 549 (Ont C.A.), at para. 92

PART VI: TABLE OF AUTHORITIES

Jurisprudence **Paragraph(s)**

Secondary Sources

Part VII: Legislation Cited

Extradition Act, SC 1999, c 18.

Reasons for Refusal	Motifs de refus
When order not to be made **44 (1)** The Minister shall refuse to make a surrender order if the Minister is satisfied that	**Motifs de refus** **44(1)** Le ministre refuse l'extradition s'il est convaincu que:
(a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or	**(a)** soit l'extradition serait injuste ou tyrannique compte tenu de toutes les circonstances;
(b) the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.	**(b)** soit la demande d'extradition est présentée dans lebut de poursuivre ou de punir l'intéressé pour des motifs fondés sur la race, la nationalité, l'origine ethnique,la langue, la couleur, la religion, les convictions politiques, le sexe, l'orientation sexuelle, l'âge, le handicap physique ou mental ou le statut de l'intéressé, ouil pourrait être porté atteinte à sa situation pour l'un de ces motifs.
When Minister may refuse to make order **(2)** The Minister may refuse to make a surrender order if the Minister is satisfied that the conduct in respect of which the request for extradition is made is punishable by death under the laws that apply to the extradition partner.	**Pouvoir de refuser** **(2)** Il peut refuser d'extrader s'il est convaincu que les actes à l'origine de la demande d'extradition sont sanctionnés par la peine capitale en vertu du droit applicable par le partenaire.
Refusal in extradition agreement accords **45 (1)** The reasons for the refusal of surrender contained in a relevant extradition agreement, other than a multilateral extradition agreement, or the absence of reasons for refusal in such an agreement, prevail over sections 46 and 47.	**Primauté des accords** **45 (1)** Les motifs de refus prévus à l'accord applicable — sauf à un accord multilatéral — l'emportent sur ceux prévus aux articles 46 et 47 et l'absence de tels motifs également.
Exception — multilateral extradition agreement **(2)** The reasons for the refusal of surrender contained in a relevant multilateral extradition agreement prevail over sections 46 and 47 only	**Accord multilatéral** **(2)** Ceux prévus dans un accord multilatéral l'emportent sur les dispositions incompatibles des articles 46 et 47

to the extent of any inconsistency between either of those sections and those provisions.

When order not to be made
46 (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that

(a) the prosecution of a person is barred by prescription or limitation under the law that applies to the extradition partner;

(b) the conduct in respect of which extradition is sought is a military offence that is not also an offence under criminal law; or

(c) the conduct in respect of which extradition is
sought is a political offence or an offence of a political character.

Restriction
(2) For the purpose of subparagraph (1)(c), conduct that constitutes an offence mentioned in a multilateral extradition agreement for which Canada, as a party, is obliged to extradite the person or submit the matter to its appropriate authority for prosecution does not constitute a political offence or an offence of a political character. The following conduct also does not constitute a political offence or an offence of a political character:

(a) murder or manslaughter;

(b) inflicting serious bodily harm;

(c) sexual assault;

(d) kidnapping, abduction, hostage-taking or extortion;

(e) using explosives, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and

(f) an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the

Refus obligatoire dans certains cas
46 (1) Le ministre refuse l'extradition s'il est convaincu que:

(a) toute poursuite à l'endroit de l'intéressé est prescrite en vertu du droit du partenaire;

(b) les actes reprochés constituent une infraction militaire sans constituer par ailleurs une infraction criminelle; **(c)** les actes reprochés constituent une infraction à caractère politique.

(c) les actes reprochés constituent une infraction à caractère politique.

Infraction à caractère politique
(2) Ne peuvent être considérés comme une infraction à caractère politique les actes qui aux termes d'un accord multilatéral auquel le Canada est partie constituent une infraction pour laquelle l'extradition — ou le renvoi de l'affaire aux autorités compétentes au Canada pour intenter la poursuite — est obligatoire, ni les actes suivants:

a) le meurtre ou l'homicide involontaire coupable;

b) l'infliction de lésions corporelles graves;

c) l'agression sexuelle;

d) l'enlèvement, le rapt, la prise d'otage ou l'extorsion;

e) l'utilisation d'explosifs, d'engins incendiaires, de
substances ou d'appareils qui est susceptible de mettre en danger la vie ou de causer des lésions corporelles graves ou des dommages considérables à la propriété;

f) la tentative, le complot, la complicité après le fait, le conseil, l'aide ou l'encouragement à l'égard des actes visés aux alinéas a) à e).

fact in relation to, the conduct referred to in any of paragraphs (a) to (e).

When Minister may refuse to make order
47 The Minister may refuse to make a surrender order if the Minister is satisfied that

(a) the person would be entitled, if that person were tried in Canada, to be discharged under the laws of Canada because of a previous acquittal or conviction;

(b) the person was convicted in their absence and
could not, on surrender, have the case reviewed;

(c) the person was less than eighteen years old at the time of the offence and the law that applies to them in the territory over which the extradition partner has jurisdiction is not consistent with the fundamental principles governing the Youth Criminal Justice Act;

(d) the conduct in respect of which the request for extradition is made is the subject of criminal proceedings in Canada against the person; or

(e) none of the conduct on which the extradition partner bases its request occurred in the territory over which the extradition partner has jurisdiction.

Autres cas de refus
47 Le ministre peut refuser d'extrader s'il est convaincu que:

a) l'intéressé, s'il subissait son procès au Canada, bénéficierait d'une libération du fait d'une condemnation ou d'un acquittement antérieurs;

b) l'intéressé a été condamné par défaut et ne pourrait,une fois extradé, obtenir une révision de son procès;

c) l'intéressé avait moins de dix-huit ans au moment de la perpétration de l'infraction et le droit applicable par le partenaire est incompatible avec les principes fondamentaux mis en oeuvre par la *Loi sur le système de justice pénale pour les adolescents*;

d) l'intéressé fait l'objet d'une poursuite criminelle au Canada pour les actes à l'origine de la demande d'extradition;

e) aucun des actes à l'origine de la demande d'extradition n'a été commis dans le ressort du partenaire.